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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@coloradosos.gov.

Notice of Proposed Rulemaking

Tracking number

2022-00811

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

02/16/2023

Time

09:15 AM

Location

1707 Cole Blvd, Redrocks Conference Room, Lakewood, CO 80401, and virtually

Subjects and issues involved

Promulgation of Rules to allow for the use of cashless systems technology in Colorado casinos.

Statutory authority

Sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., and 44-30-806, C.R.S.

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BASIS AND PURPOSE FOR RULE 12

The purpose of Rule 12 is to establish a procedure for the testing and approval by the Commission of gaming devices and equipment, to establish requirements for the gaming devices and equipment to be used in limited gaming in Colorado, and to establish procedures for the storage of gaming devices and equipment in compliance with section 44-30-302 (2), C.R.S. The statutory basis for Rule 12 is found in sections 44-30-201, C.R.S., 44-30-203, C.R.S., 44-30-302, C.R.S., and 44-30-806, C.R.S.

RULE 12 GAMING DEVICES AND EQUIPMENT

30-1296 CASHLESS SYSTEMS.

(1) A CASHLESS SYSTEM ALLOWS PLAYERS TO PLAY SLOT MACHINES OR AUTHORIZED GAMES THROUGH THE USE OF A PLAYER CARD OR OTHER APPROVED INTERFACE METHOD, WHICH ACCESSES A PLAYER'S ACCOUNT AT THE GAMING SYSTEM OR OTHER APPROVED SYSTEM. FUNDS MAY BE ADDED TO THIS PLAYER CASHLESS ACCOUNT VIA COINS, TICKETS, VOUCHERS, BILLS, COUPONS, AND DIGITAL/ELECTRONIC WALLETS AND ANY OTHER FUNDS APPROVED BY THE DIRECTOR. THE ACCOUNT VALUE MAY BE REDUCED EITHER THROUGH DEBIT TRANSACTIONS AT A SLOT MACHINE OR BY CASHING OUT AT A CASHIER'S CAGE. A CASHLESS SYSTEM IS CHARACTERIZED AS A SYSTEM WHEREBY A PLAYER MAINTAINS AN ELECTRONIC ACCOUNT ON THE CASINO'S DATABASE. A CASINO ISSUES A PATRON WITH A PROCESS TO ACCESS CASHLESS ACCOUNTS, INCLUDING PASSWORD AND MULTI-FACTOR AUTHENTICATION FOR MOBILE DEVICES. ALL MONETARY TRANSACTIONS BETWEEN A SUPPORTING GAMING MACHINE AND THE APPROVED CASHLESS SYSTEM MUST BE SECURED. AFTER THE PLAYER'S IDENTITY IS CONFIRMED, THE DEVICE MUST VISIBLY DISPLAY THE PRESENT TRANSFER OPTIONS TO THE PATRON, WHICH REQUIRES SELECTION USING A KEYPAD/TOUCH SCREEN, OR OTHER APPROVED INTERFACE METHOD, BEFORE OCCURRING. SUCH OPTIONS SHALL INCLUDE HOW MANY CREDITS THE PLAYER WISHES TO WITHDRAW AND PLACE ON THE MACHINE THE PLAYER IS PLAYING. A SYSTEM WILL DEBIT THE PATRON DEFINED AMOUNT AND ADD THE CREDITS TO THE GAMING DEVICE FOR PLAY OR FOR PURCHASE OF CHIP/TOKENS. ONCE PLAY IS COMPLETE THE PLAYER MAY MOVE SOME OF THE CREDITS BACK TO THE PLAYER'S ACCOUNT OR CASH OUT SOME CREDITS. A SYSTEM MAY REQUIRE THAT THE ENTIRE CREDIT VALUE BE TRANSFERRED BACK TO THE SYSTEM. THE CASHLESS SYSTEM WILL DEFINE A PERIOD OF TIME WITH NO ACTIVITY, AFTER WHICH, A GAMING DEVICE IS CONSIDERED IDLE. ONCE IDLE, THE SYSTEM WILL TRANSFER THE REMAINING CREDITS BACK TO THE PLAYER'S ACCOUNT.

CASHLESS SYSTEMS MUST INCLUDE THE ABILITY FOR THE PATRON TO SET LIMITS ON THE AMOUNT OF CREDITS TRANSFERRED FROM CASHLESS ACCOUNTS. THE SYSTEM MUST INCLUDE INITIAL PATRON TRANSFER LIMITS THAT THE PATRON MAY CHANGE. THESE LIMITS SHALL FIRST BE AVAILABLE TO THE PATRON AT THE TIME OF ACCOUNT REGISTRATION AND ANY TIME THE ACCOUNT REMAINS OPEN. THESE LIMITS MUST INCLUDE THE AMOUNT ALLOWED TO BE TRANSFERRED, THE TOTAL NUMBER OF TRANSFERS IN A 24-HOUR PERIOD, AND A SELF-IMPOSE "COOLING OFF PERIOD" ONCE THESE LIMITS ARE MET.

(2) PATRON ACCOUNTS. IN ORDER TO ESTABLISH A CASHLESS ACCOUNT, PLAYERS MUST PROVIDE THE FOLLOWING:

(A) LEGAL NAME;

(B) DATE OF BIRTH;

(C) SOCIAL SECURITY NUMBER, BUT AT A MINIMUM MUST BE THE LAST FOUR DIGITS THEREOF, OR AN EQUIVALENT IDENTIFICATION NUMBER FOR A NONCITIZEN PATRON, SUCH AS A PASSPORT OR TAXPAYER IDENTIFICATION NUMBER;

(D) Residential address; a post office box is not acceptable;

(E) Electronic mail address;

(F) Telephone number;

(G) Any other information collected from the patron used to verify his or her identity;

(H) Acknowledgement of the terms and conditions of the cashless system; and

(I) Acknowledgement of the penalties for violation of gaming regulations.

Using this information, licensees must verify the player's identity, and then establish the patron account. To ensure that patron information remains up-to-date, this information must be updated, at the minimum, once every 18 months.

Personal information, like a patron's social security, taxpayer identification number, and player access code must be encrypted.

(3) Currency transaction reporting. Licensees that allow players to use a cashless gaming system must establish internal control minimum procedures to comply with FinCEN and Bank Secrecy Act requirements.

(4) Phases of certification. For the approval of cashless systems see Regulation 30-1202.

(5) Configuring cashless transactions on a gaming device. Since a cashless feature impacts the electronic accounting meters, all communications between gaming devices and the cashless system must be robust and stable enough to secure all transactions such that all transaction can be identified and logged for subsequent audit and reconciliation.

(6) Audit trails for cashless transactions. A gaming device configured for cashless functionality must have the ability to recall at least 25 monetary transactions received from the gaming system or cashless system, and at least 25 monetary transactions transmitted to the gaming system or cashless system. However, if a gaming device has promotional or host-bonusing features, or both, enabled simultaneously with cashless features, a single 100-event log is sufficient. The following information must be displayed:

(A) The type of transaction (upload/download);

(B) The nature of the transaction (e.g. promotion, bonus, cash);

(C) The transaction value;

(D) The time and date; and

(E) The player's account number or a unique transaction number, either of which can be used to authenticate the source of the funds.

(7) Transaction confirmation. The gaming device, system display or mobile device, must be capable of providing confirmation or denial of every cashless transaction initiated. This confirmation or denial must include:

(a) The type of transaction (upload or download);

(b) The transaction value;

(c) The time and date (if printed confirmation);

(d) The player's account number or a unique transaction number, either of which can be used to authenticate the source of the funds; and

(e) A descriptive message as to why the transaction was not completed as initiated. This applies only to the denied transactions.

(8) Error conditions. The following subdivisions outline the error conditions that apply to the:

(a) Host system. The following conditions must be monitored and a message must be displayed to the player at the host card reader, for the following:

(i) Invalid player access code or Player ID (prompts for reentry up to a certain number of times); and

(ii) Account unknown; and

(b) Any credits on the cashless gaming device that are attempted to be transferred to the host system, that result in a communication failure for which this is the only available payout medium for the player to cash out, must result in an error condition on the gaming device.

(9) Transfer of transactions. If a player initiates a cashless transaction and that transaction exceeds game configured limits including the credit limit, the transaction may only be processed provided that the player is clearly notified that the player has received or deposited less than requested to avoid player disputes.

(10) Identifying a cashless device. A player shall be able to identify each cashless compatible gaming device by a means left to the discretion of the Division. With the Division's approval the licensee may remove display menu items that pertain to cashless operation for gaming devices not participating; provide a host message indicating cashless capability; or affix a specific sticker on gaming machines to indicate participation or non-participation.

(11) Systems in a cashless environment. The gaming system and/or other approved system, must allow for changing of any of the associated parameters or accessing any player account. Additionally, the communication process used by the cashless gaming device and the gaming system and/or other approved system, must be robust and stable enough to secure each cashless transaction such that any failure event may be identified and logged for subsequent audit and reconciliation.

EACH CASINO LICENSEE SHALL PERFORM AN ANNUAL SYSTEM INTEGRITY AND SECURITY ASSESSMENT CONDUCTED BY AN INDEPENDENT PROFESSIONAL SELECTED BY THE LICENSEE, SUBJECT TO THE APPROVAL OF THE DIVISION. THE INDEPENDENT PROFESSIONAL'S REPORT ON THE ASSESSMENT SHALL BE SUBMITTED TO THE DIVISION ANNUALLY AND SHALL INCLUDE:

(A) THE SCOPE OF REVIEW;

(B) THE NAME AND COMPANY AFFILIATION OF THE INDIVIDUAL(S) WHO CONDUCTED THE ASSESSMENT;

(C) THE DATE OF THE ASSESSMENT;

(D) THE FINDINGS;

(E) THE RECOMMENDED CORRECTIVE ACTION, IF APPLICABLE; AND

(F) THE CASINO LICENSEE'S RESPONSE TO THE FINDINGS AND RECOMMENDED CORRECTIVE ACTION.

(12) MODIFICATION OF PLAYER INFORMATION. PLAYER INFORMATION MAY ONLY BE CHANGED BY AN AUTHORIZED, LICENSED, EMPLOYEE, OR PATRON. SECURITY OF THIS INFORMATION, INCLUDING A PLAYER ACCESS CODE OR EQUIVALENT PLAYER IDENTIFICATION MUST BE GUARANTEED AT ALL TIMES.

(13) BALANCE ADJUSTMENTS. LICENSEES MUST ESTABLISH THE AMOUNT OF AN ADJUSTMENT TO AN ACCOUNT BALANCE THAT REQUIRES A SUPERVISOR'S APPROVAL WITH EACH ADJUSTMENT BEING LOGGED OR REPORTED, OR BOTH, INDICATING WHO, WHAT, WHEN, AND THE ITEM VALUE BEFORE THE ADJUSTMENT, INCLUDING THE REASON FOR THE ADJUSTMENT.

(14) SECURITY LEVELS. THE HOST SYSTEM MUST HAVE THE ABILITY TO STRUCTURE PERMISSION LEVELS AND LOGINS SO THAT USER ROLES MAY BE SEPARATED.

(15) PREVENTION OF UNAUTHORIZED TRANSACTIONS. THE FOLLOWING MINIMAL CONTROLS SHALL BE IMPLEMENTED TO ENSURE THAT EACH GAME IS PREVENTED FROM RESPONDING TO ANY COMMAND FOR CREDITING OUTSIDE OF A PROPERLY AUTHORIZED CASHLESS TRANSACTION:

(A) THE NETWORK HUB IS SECURED EITHER IN A LOCKED AND MONITORED ROOM OR AREA AND NO ACCESS IS ALLOWED ON ANY NODE WITHOUT VALID LOGIN AND PASSWORD;

(B) THE NUMBER OF STATIONS WHERE CRITICAL CASHLESS APPLICATIONS OR ASSOCIATED DATABASES MAY BE ACCESSED IS LIMITED; AND

(C) THE PROCEDURES SHALL BE IN PLACE ON THE SYSTEM TO IDENTIFY AND FLAG SUSPECT PLAYER AND EMPLOYEE ACCOUNTS TO PREVENT UNAUTHORIZED USE INCLUDING:

(I) ESTABLISHING A MAXIMUM NUMBER OF INCORRECT PIN ENTRIES BEFORE ACCOUNT LOCKOUT;

(II) FLAGGING OF HOT ACCOUNTS WHERE CARDS HAVE BEEN STOLEN;

(III) INVALIDATING ACCOUNTS AND TRANSFERRING BALANCES INTO A NEW ACCOUNT; AND

(IV) ESTABLISHING LIMITS FOR MAXIMUM CASHLESS ACTIVITY IN AND OUT AS A GLOBAL OR INDIVIDUAL VARIABLE TO PRECLUDE MONEY LAUNDERING.

(16) Diagnostic tests on a cashless gaming device. Any testing or test account must be logged by the host system. No person may perform any cashless activity without being logged by the system.

(17) Cashless system technology. The host system may allow a player to access the player's account using any tested and certified technology, including but not limited to magnetic strip and smart cards, and mobile devices (e.g., cell phones.)

(18) Loss of communication. If communication between the cashless accounting system and the cashless gaming device is lost, the game or system display must display a message to the player that cashless transfers cannot currently be processed.

(19) Encryption. All communication relating to cashless operation must employ encryption technology, which technology must be reviewed and approved by the Division. This section does not apply to any communication between the slot machine and the interface element.

(20) Cashless system logs. The host system shall be able to produce logs for all pending and completed cashless transactions. These logs shall be capable of being filtered by:

(a) Machine number;

(b) Player account; and

(c) Time and date.

(21) Cashless system reports. The host system shall be able to produce the following financial and player reports:

(a) Player account summary and detail report. This report shall be immediately available to a player upon request. The report shall include beginning and ending account balance, transaction information depicting gaming machine number, dollar or credit amount, and date and time;

(b) Liability report. This report is to include previous days ending value or today's starting value of outstanding cashless liability, total cashless-in and total cashless-out and the current day's ending cashless liability;

(c) Cashless meter reconciliation summary and detail report. This report shall reconcile each participating slot machine's cashless meter against the host system's cashless activity; and

(d) Cashier summary and detail report. This report shall include player account, buy-ins and cash-out, amount of transaction, and the date and time of transaction.

(22) Monetary transactions. Any monetary transaction between a supporting cashless gaming device and the host system must be secured by an approved access method. After the player's identity is confirmed, the device must present transfer options to the patron which requires selection using a keypad or touch screen before occurring. Such options may include how much money the player wishes to withdraw after ensuring the player-imposed limits are not exceeded, and be placed on the cashless gaming device. A host

SYSTEM MAY MOVE THE ENTIRE PLAYER'S BALANCE TO THE MACHINE FOR PLAY, IF DOING SO DOES NOT EXCEED THE PLAYER IMPOSED LIMITS. ONCE PLAY IS COMPLETE THE PLAYER MAY HAVE THE OPTION TO MOVE SOME OF THE CREDITS BACK TO THE ACCOUNT OR CASH OUT. A HOST SYSTEM MAY REQUIRE THAT THE ENTIRE CURRENCY VALUE OF THE CREDIT BALANCE BE TRANSFERRED BACK TO THE CASHLESS SYSTEM.

(23) ADDING MONEY TO A PLAYER'S ACCOUNT. MONEY MAY BE ADDED TO THE PLAYER'S ACCOUNT VIA A CASHIER STATION OR ANY SYSTEM-CONTROLLED KIOSK. THE SYSTEM-CONTROLLED KIOSK MUST BE TESTED AND CERTIFIED. MONEY MAY ALSO BE ADDED BY ANY SUPPORTING CASHLESS GAMING DEVICE THROUGH CREDITS WON, THE INSERTION OF COINS, VOUCHERS, DOLLAR CURRENCY, OR COUPONS.

(24) REMOVING MONEY FROM A PLAYER'S ACCOUNT. MONEY MAY BE REMOVED FROM A PLAYER'S ACCOUNT EITHER THROUGH DOWNLOADING OF CREDITS TO THE CASHLESS GAMING DEVICE, BY CASHING OUT AT A CASHIER'S CAGE, SYSTEM-CONTROLLED KIOSK, OR THE ORIGINATING DIGITAL/ELECTRONIC WALLET.

(25) MOVEMENT OF MONEY. A PLAYER MAY BE PROVIDED THE OPTION OF MOVING THE PLAYER'S SYSTEM CREDIT TO A CASHLESS GAMING DEVICE THROUGH WITHDRAWAL FROM THE PLAYER'S ACCOUNT, WHICH IS MAINTAINED BY THE HOST SYSTEM. WHEN THE PLAYER IS FINISHED PLAYING, THE PLAYER MAY DEPOSIT THE BALANCE FROM THE MACHINE ONTO THE PLAYER'S ACCOUNT.

(26) PLAYER ACCOUNT BALANCE. CURRENT PLAYER ACCOUNT BALANCE INFORMATION SHALL BE AVAILABLE ON DEMAND FROM ANY PARTICIPATING SLOT MACHINE VIA THE ASSOCIATED CARD READER OR ITS EQUIVALENT, AFTER CONFIRMATION OF PLAYER IDENTITY. THE PLAYER ACCOUNT BALANCE SHALL BE PRESENTED IN TERMS OF CURRENCY TO THE PLAYER.

Notice of Proposed Rulemaking

Tracking number

2022-00806

Department

700 - Department of Regulatory Agencies

Agency

704 - Division of Securities

CCR number

3 CCR 704-1

Rule title

RULES UNDER THE COLORADO SECURITIES ACT

Rulemaking Hearing

Date

01/30/2023

Time

10:00 AM

Location

1560 Broadway, DORA Conference Center, Denver, Colorado

Subjects and issues involved

Rules under the Colorado Securities Act are being amended to:

Incorporate U.S. Securities & Exchange Commission Regulation Best Interest and include a violation of the rule as unfair and dishonest dealings.

Require broker-dealers to maintain written policies and procedures to ensure the "physical security of records" in addition to current requirements for policies and procedures related to cybersecurity.

Clarify the requirements for the filing, through IARD, of an Annual Updating Amendment of Form ADV.

Comply with the "lawful presence" provisions of Senate Bill 21-077.

Statutory authority

11-51-704, C.R.S.

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DEPARTMENT OF REGULATORY AGENCIES

Division of Securities

RULES UNDER THE COLORADO SECURITIES ACT

3 CCR 704-1

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

CHAPTER 1 (Reserved for future use)

CHAPTER 2 DEFINITIONS AND FEDERAL COORDINATION

51-2.1 The following terms as used in these Rules, unless the context otherwise requires, are defined:

A. "33 Act" means the federal Securities Act of 1933 and the Rules and regulations promulgated thereunder.

B. "34 Act" means the federal Securities Exchange Act of 1934 and the Rules and regulations promulgated thereunder.

C. "40 Act" means the federal Investment Advisers Act of 1940 and the Rules and regulations promulgated thereunder.

D. "Act" means the Colorado Securities Act.

E. "Beneficial ownership" is interpreted in the same manner as it would be under 17 C.F.R. § 240.16a-1 in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) and the rules and regulations thereunder. Any report required by 17 C.F.R 275.204A-1(b) may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security to which the report relates.

~~A.~~F. "Commissioner" or "Securities Commissioner" means the Colorado Securities Commissioner.

~~B.~~G. "Confidential Personal Information" shall mean a first name or first initial and last name in combination with any one or more of the following data elements:

(1) Social Security number;

(2) Driver's license number or identification card number;

(3) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account;

(4) Individual's digitized or other electronic signature; or

(5) Username, unique identifier or electronic mail address in combination with a password, access code, security questions or other authentication information that would permit access to an online account.

H. "Confidential Personal Information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

I. "CRD" means the Central Registration Depository of the Financial Industry Regulatory Authority, Inc. and the North American Securities Administrators Association, Inc. The CRD address is P.O. Box 9401, Gaithersburg, MD 20898-9401.

J. "Division" means the Colorado Division of Securities, 1560 Broadway, Suite 900, Denver, CO 80202.

K. "EFD" means the Electronic Filing Depository System.

~~C.~~A. ~~"NASAA" means the North American Securities Administrators Association, Inc.~~

L. "FINRA" means the Financial Industry Regulatory Authority.

M. "IARD" means the Investment Adviser Registration Depository of the federal Securities and Exchange Commission and the North American Securities Administrators Association, Inc., as maintained by the Financial Industry Regulatory Authority, Inc. The IARD address is 9509 Key West Avenue, Rockville, Maryland 20850.

N. "Mortgage broker-dealer" means a "broker-dealer" other than a broker-dealer registered under the 34 Act whose business is limited exclusively to effecting transactions in notes, bonds or evidences of indebtedness secured by mortgages or deeds of trust upon real estate.

O. "Mortgage sales representative" means a "sales representative" who represents a mortgage broker-dealer.

~~D.~~P. "NASAA" means the North American Securities Administrators Association, Inc.

~~E.~~Q. "SEC" means the federal Securities and Exchange Commission.

~~F.~~

~~G.A. "33 Act" means the federal Securities Act of 1933 and the Rules and regulations promulgated thereunder.~~

~~H.A. "34 Act" means the federal Securities Exchange Act of 1934 and the Rules and regulations promulgated thereunder.~~

~~I. "Mortgage broker-dealer" means a "broker-dealer" other than a broker-dealer registered under the 34 Act whose business is limited exclusively to effecting transactions in notes, bonds or evidences of indebtedness secured by mortgages or deeds of trust upon real estate.~~

~~J. "Mortgage sales representative" means a "sales representative" who represents a mortgage broker-dealer.~~

~~K. "40 Act" means the federal Investment Advisers Act of 1940 and the Rules and regulations promulgated thereunder.~~

~~L. "IARD" means the Investment Adviser Registration Depository of the federal Securities and Exchange Commission and the North American Securities Administrators Association, Inc., as maintained by the Financial Industry Regulatory Authority, Inc. The IARD address is 9509 Key West Avenue, Rockville, Maryland 20850.~~

51-2.1.1 Pursuant to the authority of the Securities Commissioner provided at section 11- 51-201(2)(d), C.R.S., "broker-dealer" as defined at section 11-51-201(2), C.R.S., does not include:

A. A person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

1. Only effects or attempts to effect transactions in securities

   a. With or through the issuers of securities involved in the transactions, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies (as defined in the federal Investment Company Act of 1940), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

   b. With or for a person from Canada who is present temporarily in this state, with whom the Canadian person had a bona fide business relationship before the person entered this state, or

   c. With or for a person from Canada who is present in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor; and

2. Files a notice in the form of their~~his~~ current application required by the jurisdiction in which the head office of such person is located and a consent to service of process;

3. Is a member of a self-regulatory organization or stock exchange in Canada;

4. Maintains the provincial or territorial registration and membership in a self-regulatory organization or stock exchange of such person in good standing;

5. Discloses to the clients of such person in this state that such person is not subject to the full regulatory requirements of the Colorado Securities Act; and

6. Is not in violation of section 11-51-501(1), C.R.S.

B. A person who acts as a business broker with respect to a transaction involving the offer or sale of all of the stock or other equity interests in any closely held corporation or limited liability company provided that such stock or other equity interest is sold to no more than one person, as that term is defined in the Act.

51-2.2 SEC Amendments Coordinated

A. If any SEC Rule or regulation incorporated in these Rules is amended by the SEC subsequent to the date the Colorado Rule was adopted, pursuant to section 11-51-202, C.R.S., such subsequent amendment may apply to the Rule provided that the Securities Commissioner does not commence Rule making proceedings within ninety (90) days of the effective date of any such amendment.

B. Information concerning any SEC Rule or regulation incorporated in these Rules may be obtained from:

Deputy Securities Commissioner 1560 Broadway, Suite 900 Denver CO 80202

CHAPTER 3 REGISTRATION OF SECURITIES AND EXEMPTIONS

51-3.1 Registration by Coordination.

Preliminary Note: Securities for which a registration statement has been filed under the federal "Securities Act of 1933" or any securities for which filings have been made pursuant to the SEC's regulation A may be registered by coordination in Colorado. Various sections of the Colorado Securities Act, these Rules, and certain NASAA forms require a person seeking registration by coordination to file with the Securities Commissioner certain documents that are submitted to the SEC. The Division finds that the duplicative filing of such documents increases offering costs and harms the environment, and, therefore, not requiring these paper filings is in the public interest.

A. Filing Information

1. When securities are registered by coordination under Section 11-51-303, C.R.S., any document filed with the SEC in connection with such offering shall be considered filed with the Securities Commissioner when such document is received by the SEC.

2. Application for registration by coordination in the State of Colorado is made by filing the NASAA Form U-1 and the documents required by it, along with the information required for registration by coordination under section 11-51-303(1)(a) and (b)(I)-(III), C.R.S.

3. The application for registration by coordination shall also include a specimen, copy, or detailed description of the security to be offered and sold. The description shall include details of all terms and conditions to which the security, or its holder, are subject.

4. A person seeking registration by coordination shall also file a Consent to Service of Process on the NASAA Form U-2 (see Rule 51-7.1) with the Securities Commissioner, along with a filing fee as specified by the Securities Commissioner.

B. Effective Date

1. A registration statement required to be filed with the Securities Commissioner in connection with a registration by coordination is considered effective simultaneously with or subsequent to the registration statement filed with the SEC when the following conditions are satisfied:

   a. A stop order issued under sections 11-51-303(4) or 11-51-306, C.R.S., or a stop order issued by the SEC, is not in effect, and a proceeding is not pending against the person seeking registration by coordination under section 11-51-410, C.R.S.; and

   b. The complete registration statement has been on file with the Securities Commissioner for a period of at least ten (10) days.

2. The person seeking registration by coordination shall promptly notify the Securities Commissioner of the date when the registration statement filed with the SEC becomes effective, and the content of any price amendment. The notification containing the price amendment shall be promptly filed with the Securities Commissioner, and if not timely filed, the Securities Commissioner may, without prior notice or hearing, issue a stop order under section 11-51-306, C.R.S., which stop order shall retroactively deny the effectiveness of the registration statement, or suspend the effectiveness of the registrations statement until the person seeking registration complies with the conditions in this Rule 51-3.1.

3. The Securities Commissioner shall promptly notify the person seeking registration of a stop order by telegram, telephone, facsimile, or other electronic means, and shall maintain evidence that such notification was given in the form of a certificate or affidavit of service or other appropriate document.

4. In the event the person seeking registration complies with the notice requirements of this Rule 51-3.1.B. subsequent to entry of a stop order, the stop order shall become void as of the date of its issuance.

5. In the event the Securities Commissioner intends to institute a proceeding for a stop order under section 11-51-306, C.R.S., in connection with the registration statement, the Securities Commissioner shall notify the person seeking such registration. Evidence of such notice by the Securities Commissioner may include a certificate or affidavit of service, or other appropriate documentary evidence.

C. Amendments

Any amendments to the federal prospectus filed with the Securities Commissioner pursuant to section 11-51-303(2) shall be made by filing an amended Form U-1 and an amended registration statement. The amendment becomes effective when the amended registration becomes effective with the SEC and any requirements of this Rule 51-3.1 have been satisfied. Such amendment shall also contain any post-effective amendments to such SEC registration that would result in net proceeds from the sale of registered securities that are subject to the escrow requirements of section 11-51-302(6), C.R.S. and Rule 51-3.4.

D. Closing Report

Within 30 days of the close of the offering or the termination of the registration statement, whichever occurs first, the registrant shall file with the Securities Commissioner a closing report. The closing report shall be filed on the Division’s Form RC-C.

E. Designees

At such time as the Securities Commissioner authorizes the electronic filing of registration statements, the Securities Commissioner may designate other persons or entities to receive filings on behalf of the Division under this Rule 51-3.1, including but not limited to, applications, registration statements, and fees. Any such designation shall be for the sole purpose of receiving such filings and transmitting those documents to the Division.

F. Prompt filing; Notification

1. For purposes of this Rule 51-3.1, when an act is required to be done "promptly," or any person is required to "promptly file" or "promptly notify," such terms shall mean within five (5) business days of the date the action was taken or order entered.

2. Methods of "notification," as required by this Rule 51-3.1, may include certified or registered mail, telegram, telephone, facsimile, e-mail, or other electronic means. The person sending any required notification shall assure receipt of such notification by retaining all necessary documents reflecting that the notice was sent and received, including preparing and maintaining a certificate or affidavit of service, with appropriate documentation attached.

51-3.2 Registration by Qualification

A. An application for registration of an offering of securities by qualification pursuant to section 11-51-304(2), C.R.S., is made by filing with the Securities Commissioner Form RQ, and a registration statement as required by said section. Pursuant to section 11-51-302(4), C.R.S., the Securities Commissioner will permit public offerings made under Rule 504 of the SEC to apply for registration on Form U-7 (Registration Form for Small Corporate Offerings), provided that the form is completed and there is full compliance with all of the form's requirements, conditions and limitations.

B. A person seeking registration by qualification must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

~~B.~~C. Required filings and fees may be made through the Electronic Filing Depository (EFD).

51-3.3 Limited Offering Registration

A. An application for registration of a limited offering of securities under section 11-51-304(6), C.R.S., is made by filing with the Securities Commissioner a registration statement on Form RL.

B. A person seeking registration by qualification under section 11-51-304(6), C.R.S., must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

51-3.4 Escrow and Release of Funds under Section 11-51-302(6), C.R.S.

A. For the purposes of section 11-51-302(6), C.R.S.:

1. "Committed for use" means an identification of general or specific purposes for which specific portions of the net proceeds from the offering are intended in good faith to be used in the manner and within the time specified in the registration statement. Nothing contained herein shall preclude the issuer from making a good faith reallocation of anticipated expenditures of the net proceeds within the categories specified in the registration statement, or an allocation to new categories not reasonably anticipated at the date the registration statement was declared effective.

2. "Completion of a transaction or series of transactions" means the closing or other completion of substantially all of the material obligations, but for the actual conveyance of escrow funds, of all parties to one or more agreements between an issuer subject to the escrow requirements of section 11-51-302(6), C.R.S., and one or more other persons by which the issuer obtains interests in one or more specific lines of business.

3. "Improper release" means any release by a depository of escrowed funds without certification to the depository by the issuer that the requirements for such release under subsections 11-51-302(6)(a)(I) and (II), C.R.S., are satisfied, and where, in fact, such requirements are not satisfied at the time of the release, unless the depository is in receipt of a notification from the Securities Commissioner that the release prior to the expiration of the time period specified in section 11-51-302(6)(a)(II), C.R.S., is permissible.

4. "Net proceeds" means the gross proceeds less selling and organizational costs.

5. "Selling and organizational costs" means all expenses incurred by the issuer within twelve (12) months prior to the date of effectiveness of the registration in Colorado and those reasonably anticipated to be incurred within six (6) months after the date in connection with:

   a. the issuance and distribution of the securities to be registered in the offering, including, but not limited to, registration and filing fees, printing and engraving expenses, accounting and legal fees and expenses, "blue sky" fees and expenses, transfer and warrant agent fees, expenses of other experts, and underwriting discounts and commissions; and

   b. the organization of the issuer and the preparation of the organizational documents, including, but not limited to, filing fees, and legal, accounting, and tax planning fees and expenses, provided that said expenses are to be paid out of the proceeds of the offering.

6. "Specific line of business" means any commercial, industrial or investment activity that is generally recognized as a distinct economic undertaking or enterprise intended to generate a profit for the issuer. Although certain characteristics may commonly be used to assist in determining whether a specific line of business has been so identified, no single characteristic is determinative in all cases. The determination whether a specific line of business has been identified depends on the Securities Commissioner's review of the facts and circumstances of each case and the Commissioner's determination as to whether the management of the issuer has acted in good faith.

B. To comply with the escrow requirements of section 11-51-302(6), C.R.S., an issuer, or one or more broker-dealers or sales representatives acting on behalf of such issuer, shall deliver at least eighty percent (80%) of the net proceeds received from the offering of securities to an unaffiliated depository to be held in accordance with section 11-51-302(6), C.R.S., until completion of a transaction or series of transactions in which at least fifty percent (50%) of the gross proceeds is committed to a specific line of business. If such transactions have not been completed within two (2) years from the date of effectiveness of the offering in Colorado, the funds shall be distributed to the then security holders of record of the securities sold pursuant to the registered offering (except warrants or other rights to subscribe to or purchase other securities) unless said security holders have approved by majority vote the renewal of the escrow not to exceed one year. The escrow agreement may be renewed in subsequent years by means of the same procedure. The Commissioner shall not be a party to an escrow agreement, but an executed or conformed copy of the escrow agreement shall be provided to the Commissioner.

1. In any instance where the escrow of the proceeds of sale of securities is required pursuant to section 11-51-302(6), C.R.S., the escrow shall be evidenced by a written agreement between the issuer (as depositor) and an unaffiliated depository, and other interested parties.

2. Each agreement for the establishment of an escrow shall include:

   a. The date of the agreement;

   b. The names and addresses of the issuer, the depository, and any other parties to the agreement;

   c. The terms of the escrow, including a specific reference to section 11-51-302(6), C.R.S.;

   d. The conditions under which the escrowed funds are to be released to the issuer or are to be distributed, and by whom and in what manner such distribution is to be effected;

   e. Whether the escrowed funds will earn interest, and if so, a description of the manner in which interest accrued on the escrowed funds will be used or otherwise distributed; and

   f. A statement that the proceeds of the escrow may not be released to the issuer until the lapse of more than nine (9) days after the receipt by the Commissioner of notice of the proposed release of funds from such escrow or upon authorization of the Commissioner of any earlier release.

3. The Commissioner may, in ~~their~~~~his~~the Commissioner's sole discretion, authorize release of funds escrowed pursuant to section 11-51-302(6), C.R.S., prior to the lapse of nine (9) days after receipt by the Commissioner of the notice provided in paragraph C. below. In such cases, the Commissioner shall provide the issuer with such authorization in writing in a form that may be presented to the depository.

C. A notice of proposed release of funds from escrow under section 11-51-302(6), C.R.S., shall be filed with the Commissioner on Form ES. Proof of filing of the Form ES with the Commissioner may be established by a receipt or other writing upon which the Commissioner, by stamp or other writing, evidences that the Form ES was received.

D. The notice shall contain, at a minimum, the following information:

1. The gross amount of aggregate proceeds received from the sale of any and all of the securities registered in this offering;

2. Whether the offering has closed;

3. Whether any additional funds may be received by the issuer in exchange for securities issued in the offering;

4. Whether a transaction or series of transactions has been completed which commit(s) at least fifty percent (50%) of the gross amount of aggregate proceeds for use in one or more specific lines of business;

5. A description of each transaction, including the dates of each transaction, the parties to each transaction, the amount committed in each transaction, a description of how the proceeds are to be spent under the terms of each transaction, and the specific lines of business; and,

6. Any additional information the Securities Commissioner may require as material to the Commissioner's determination.

51-3.5 (Repealed)

51-3.6 Required Filings for Exemption for Certain Non-Issuer Distributions under Section 11-51-308(1)(b)(V), C.R.S.

The information that must be filed with the Securities Commissioner in order for the transactional securities registration exemption provided by section 11-51-308(1)(b)(V), C.R.S., for a non-issuer distribution of the outstanding securities of an issuer to apply shall be filed by the issuer on Form ST.

51-3.7 Notification of Exemption under Section 11-51-308(1)(p), C.R.S., for Certain Securities or Transactions Exempt from Registration under the 33 Act

A. The notification of exemption required under section 11-51-308(1)(p), C.R.S., is made by filing with the Securities Commissioner, or his or her designee, the forms which must be filed with the SEC pursuant to Rules and regulations promulgated under the 33 Act in connection with reliance on a securities or transactional exemption from registration created by said Rules or regulations under the 33 Act relevant to the Colorado exemption, and by paying a filing fee.

B. The required filings must be made with the Securities Commissioner no later than the time when such filings in connection with the federal exemption would have to be made with the SEC. Any filing required under (A), and any amendment required under (C) or (D), must be submitted to the Securities Commissioner through the Electronic Filing Depository (EFD) operated by NASAA, and must comply with the following;

1. All filing fees shall likewise be submitted through EFD;

2. A person duly authorized by the issuer shall affix his or her electronic signature to the Form D filing by typing his or her name in the appropriate fields and submitting the filing through the EFD, which shall constitute irrefutable evidence of legal signature by the individual whose name is typed on the filing; and

3. The electronic filing of documents and the collection of related filing fees shall not be required until such time as the EFD system provides for receipt of such filings and fees. Any documents or fees required to be filed with the Securities Commissioner that are not permitted to be filed with, or cannot be accepted by, the EFD system shall be filed directly with the Securities Commissioner.

C. An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

D. An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

1. To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

2. To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

    a. The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

    b. An issuer's revenues or aggregate net asset value;

    c. The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

    d. Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

    e. The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

    f. The amount of securities sold in the offering or the amount remaining to be sold;

    g. The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

    h. The total number of investors who have invested in the offering;

    i. The amount of sales commissions, or use of proceeds for payment to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all the other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

3. Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

E. An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

51-3.8 Multijurisdictional Disclosure Statement ("MJDS")

A. Canadian registration statements filed with the Securities and Exchange Commission on forms designated as Form F-7, F-8, F-9 or F-10 by the SEC may be filed with the Securities Commissioner as registration statements under section 11-51-303, C.R.S. For those offerings for which a registration statement has been filed with the Securities Commissioner on the Form F-7, F-8, F-9 or F-10, the registration statement will take effect upon effectiveness with the SEC pursuant to section 11-51-303, C.R.S.

B. Financial statements and financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, and contained in a registration statement which has been filed with the Securities Commissioner on Form F-7, F-8, F-9, or F-10, will be accepted without reconciliation with U.S. generally accepted accounting principles.

C. The Commissioner will accept Form F-7 in lieu of any form that may be required to be filed by the Colorado Securities Act to claim an exemption for any transaction pursuant to an offer to existing security holders of the issuer making the Rights Offering under a Multijurisdictional Disclosure Statement.

D. The Commissioner exempts from registration any non-issuer transaction, whether or not effected through a broker-dealer, involving any class of an issuer's security where the issuer has filed with the Commissioner a registration statement on Form F-8, F-9, or F-10 that is effective.

51-3.9 Transactional Securities Exemption for Non-Issuer Distribution of Outstanding Security

For the purposes of section 11-51-308(1)(b)(I), C.R.S., the following manuals are recognized:

A. Mergent Industrial Manual;

B. Mergent Municipal and Government Manual;

C. Mergent Transportation Manual;

D. Mergent Public Utility Manual;

E. Mergent Bank and Finance Manual;

F. Mergent OTC Industrial Manual;

G. Mergent International Manual;

H. OTC Markets Group Inc. (with respect to securities included in the OTCQX and OTCQB markets).

I. Periodic supplements to each recognized securities manual.

51-3.10 Exemption for Oil and Gas Auctions

The offer and sale by auction of interests in or under oil, gas or mining leases, fees, or titles, including real property from which the minerals have not been severed, or contracts relating thereto, are transactions in securities exempted from the securities registration requirements of the Colorado Securities Act, provided as follows:

A. This transactional exemption applies only to:

1. transactions in those securities within the meaning of the clause “interests in or under oil, gas or mining leases, fees, or titles, including real property from which the minerals have not been severed, or contracts relating thereto,” as contained in the definition of “security” provided at section 11-51-201(17), C.R.S., (hereinafter described as “interests”), and

2. offers and sales of such interests that are not part of an offering or other distribution by an issuer of said interests and are not being made for the benefit of an issuer or any affiliate of an issuer of the interests.

B. All offers and sales by auction of the interests are conducted by a Colorado licensed broker-dealer registered with the SEC as a broker and dealer and a member of FINRA.

C. The purchaser at auction of such interests either must be engaged in the business of oil and gas exploration or production, or must be an “accredited investor” as defined in Regulation D, promulgated by the SEC under section 3(b) of the 33 Act.

D. The transactional securities registration exemption shall apply only to those interests that the seller acquired for investment purposes and not those acquired with the intention of reselling, unless the seller was forced to acquire the interests in a package in order to obtain other properties in the package.

E. The interests being auctioned are not “fractionalized” or converted into undivided interests in the interest for the purpose of resale at auction. The seller is required to offer its entire ownership of the interest being offered for sale; however, the seller shall not be considered to be fractionalizing its interest in sales where the seller horizontally severs the property by retaining all of its existing rights in certain formations or depths under the whole property. There must be only one purchaser for each interest offered and sold.

F. With respect to each interest offered or sold at auction, the seller must make available to the prospective and actual purchaser(s) of said interest all material information regarding said interests.

G. The seller or the broker-dealer/auction company must record, or in the alternative, must deliver to the purchaser the documents or notices necessary for the purchasers themselves to record, evidence of lawful conveyance of said interests to the purchaser. All payments for properties shall be made by the purchasers to an independent bank that shall act as escrow agent for the proceeds of the sales.

H. The only compensation received by the broker-dealer is a commission based on the sales of the interests.

51-3.11 Unavailability of Exemptions for Certain Issuers

The exemptions specified at section 11-51-308(1)(i), (1)(j), or (1)(p), C.R.S., are unavailable if the issuer, any of its predecessors, or any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, or any of its promoters then presently connected with the issuer in any capacity has been convicted within the past ten years of any felony in connection with the purchase or sale of any security.

51-3.12 Transactional Securities Registration Exemption for Securities Issued Pursuant to Court or Governmental Order

The offer and sale of securities in exchange for bona fide claims or property interests within or from this State made pursuant to a final judgment or order, in either event no longer subject to appeal, of a federal or state court of competent jurisdiction or other governmental authority expressly authorized by law are transactions in securities exempted from the securities registration requirements of the Colorado Securities Act, provided as follows:

A. The terms and conditions of such offers and sales are approved by said court or governmental authority; and

B. The final judgment or order was issued after reasonable notice and opportunity to be heard is given to all interested parties.

51-3.13 Transactional Securities Registration Exemptions under section 11-51-308(1)(p)

A. The exclusion of Regulation A from the registration exemption in 11-51-308(1)(p) shall only apply to Tier 1 offerings. The following provisions apply to offerings made under Tier 2 of federal Regulation A and Section 18(b)(3)of the Securities Act of 1933:

1. Initial filing. An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit the following at least 21 calendar days prior to the initial sale in this state:

a. A completed Regulation A – Tier 2 notice filing form or copies of all documents filed with the Securities and Exchange Commission;

b. A consent to service of process on Form U-2 if not filing on the Regulation A – Tier 2 notice filing form; and

c. The filing fee prescribed by the ~~s~~Securities ~~c~~Commissioner.

2. The initial notice filing is effective for twelve months from the date of the filing with this state.

B. For each additional twelve-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew its notice filing by filing the following on or before the expiration of the notice filing:

1. The Regulation A – Tier 2 notice filing form marked “renewal” and/or a cover letter or other document requesting renewal; and

2. The renewal fee prescribed by the ~~s~~Securities ~~c~~Commissioner to renew the unsold portion of securities for which a filing fee has previously been paid.

C. An issuer may increase the amount of securities offered in this state by submitting a Regulation A – Tier 2 notice filing form marked “amendment” or other document describing the transaction and a fee prescribed by the ~~s~~Securities ~~c~~Commissioner.

51-3.14 Securities Registration Exemption for Securities Issued by Persons Organized for Religious. Educational, Benevolent or Charitable Purposes

Any security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes shall be exempt from the securities registration requirement of the Colorado Securities Act ~~(“Act”)~~ provided as follows:

A. The issuer has not defaulted during the current fiscal year and within the three preceding fiscal years in the payment of principal, interest or dividends on any security or debt of the issuer (or any predecessor of the issuer) with a fixed maturity or a fixed interest or dividend provision:

B. The issuer‘s total debt service, after completion of the offering, does not exceed 35 percent of the issuer‘s gross revenues for the previous full fiscal year or the previous twelve months. The total debt service of the first two years may be lower than later years of debt service payments provided the lowest payment is equal to at least interest on the debt and the greatest payment does not exceed a payment amount that is 10 percent higher than the straight line method of payment, using the same total number of years; and

C. The issuer's debt is secured by real estate and such other properties necessary to secure the debt, pursuant to a trust indenture and related deed of trust, trust deed, or mortgage, and the aggregate amount of the indebtedness created by the issuance of the securities does not exceed 75 percent of the value of the properties pledged to secure the debt.

For purposes of this subsection C., the term "value" shall mean book value, as found in audited financial statements, or market value of existing real estate securing the debt, as contained in a written report prepared by a qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practices adopted by the Appraisal Standards Board of the Appraisal Foundation. Both book value and market value may be increased by anticipated construction costs and property to be acquired with proceeds of the offering, if applicable.

51-3.15 Securities Registration Exemption for Securities Issued by Certain Religious Organizations

Any security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes shall be exempt from the securities registration requirement of the Colorado Securities Act ~~("Act")~~ provided as follows:

A. The issuer is: (1) a religious organization affiliated with, associated with, or authorized by a religious denomination or denominations, or (2) a religious organization that consists of or acts on behalf of individual or local churches or local or regional church organizations;

B. The issuer is an organization that qualifies and operates under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

C. The issuer, alone or through its predecessor organization:

1. Has been in existence for over ten years;

2. Has received audited financial statements with an unqualified opinion from a certified public accountant for its most recent three fiscal years; and

3. Has experienced no defaults on any outstanding obligations to investors for the period that it has issued securities;

D. The issuer's:

1. Cash, cash equivalents and readily marketable assets have had a market value of at least five percent of the principal balance of its total outstanding debt securities for the last three fiscal years or 36 months prior to the issue; or

2. Net worth, as that term is used in Generally Accepted Accounting Principles, has been at least equal to three percent of its total assets for the last three fiscal years or 36 months prior to the issue;

E. Prior to any sale of the securities, the issuer provides an investor with a disclosure document reflecting financial and other information concerning the issuer and relevant risks involved in the investment;

F. The issuer makes loans to or otherwise utilizes the net proceeds of the offering in support of:

1. Local churches, or other religious organizations affiliated or associated with such churches; or

2. Related religious organizations; and

G. The issuer:

1. Has a net worth, as that term is used in Generally Accepted Accounting Principles, of $5,000,000.00 or more which includes all church owned property; or

2. Makes loans, secured by either real property or by a pledge of readily marketable securities, at all times, having equal or greater value than the loan amount, to finance the purchase, construction or improvement of church related property, buildings, related capital expenditures, or to refinance existing debt to be secured by such property, or for other operating expenses of the entities described in F. above provided the obligation is secured by such property.

51-3.16 Securities Registration Exemption for Securities Issued by Student Loan Organizations

Any security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes shall be exempt from the securities registration requirement of the Colorado Securities Act ~~("Act")~~ provided as follows:

A. The issuer is established for the purpose of acquiring or originating student and parent education loans ("Student Loans") under state or federal law regarding such organizations;

B. There is nothing in such laws that would prohibit the issuance of securities by such entities; and

C. The net proceeds of the offering of such securities are used to either finance the acquisition or the origination of Student Loans, or to refund or otherwise redeem or retire previous issues of securities made in connection with Student Loans.

51-3.17 Securities Registration Exemption for Securities Offered, Sold or Purchased by Canadian Broker-Dealers Excluded from Broker-Dealer Definition Pursuant to Rule 51-2.1.1.

Any offer, sale or purchase of a security effected by a person excluded from the definition of "broker-dealer" pursuant to Rule 51-2.1.1 shall be exempt from the securities registration requirement of the Colorado Securities Act.

51-3.18 World Class Issuer Exemption

Any security that meets all of the following conditions shall be exempt from the securities registration requirements of the Colorado Securities Act:

A. The securities are:

1. Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase such options, warrants, convertible securities or preferred stock;

2. Units consisting of equity securities permitted under subparagraph (1) and warrants to purchase the same equity security being offered in the unit;

3. Non-convertible debt securities rated in one of the four highest rating categories of Standard and Poor's, Moody's, Dominion Bond Rating Services of Canadian Bond Rating Services or such other rating organization the Commissioner by Rule or order may designate. For purposes of this subparagraph (2), the term “non-convertible debt securities” means securities that cannot be converted for at least one year from the date of issuance and then, only into equity shares of the issuer or its parent; or

4. American Depositary Receipts representing securities described in subparagraphs (1) and (2) above;

B. The issuer is not organized under the laws of the United States, or of any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico;

C. The issuer, at the time an offer or sale is made in reliance on the securities exemption embodied in this Rule, has been a going concern engaged in continuous business operations for the immediate past five years and during that period has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding. For purposes of this paragraph, the operating history of any predecessor that represented more than 50% of the value of the assets of the issuer that otherwise would have met the conditions of this Rule may be used toward the five year requirement;

D. The issuer, at the time an offer or sale is made in reliance on the securities exemption embodied in this Rule, has a public float of US $1 billion or more. For purposes of this paragraph:

1. The term “public float” means the market value of all outstanding equity shares owned by non-affiliates;

2. The term “equity shares” means common shares, non-voting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares; and

3. An “affiliate” is anyone who owns beneficially, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding equity shares of such person;

E. The market value of the issuer's equity shares, at the time an offer or sale is made in reliance on the securities exemption embodied in this Rule, is US $3 billion or more. For purposes of this paragraph, the term “equity shares” means common shares, non-voting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares; and

F. The issuer, at the time an offer or sale is made in reliance on the securities exemption embodied in this Rule, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in SEC Rule 902(a)(1) or designated by the SEC under SEC Rule 902(a)(2).

51-3.19 Model Accredited Investor Exemption

Any offer or sale of a security by an issuer in a transaction that meets the requirements of this Rule is exempted from the securities registration requirements of the Colorado Securities Act ~~(“the Act”)~~.

A. Sales of securities shall be made only to persons who are or the issuer reasonably believes are “accredited investors” as that term is defined in SEC Rule 501(a) of Regulation D.

B. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

C. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under the securities registration requirements of the Act or to an accredited investor pursuant to another applicable exemption under the Act.

D. Disqualification

1. This exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

a. within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;

b. within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

c. is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

d. is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

2. Subparagraph D.1. shall not apply if:

a. the party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

b. before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

c. the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph.

E. General Announcement

1. A general announcement of the proposed offering may be made by any means.

2. The general announcement shall include only the following information, unless additional information is specifically permitted by the Commissioner:

a. The name, address and telephone number of the issuer of the securities;

b. The name, a brief description and price (if known) of any security to be issued;

c. A brief description of the business of the issuer in 25 words or less;

d. The type, number and aggregate amount of securities being offered;

e. The name, address and telephone number of the person to contact for additional information; and

f. A statement that:

i sales will only be made to accredited investors;

ii. no money or other consideration is being solicited or will be accepted by way of this general announcement; and

iii. the securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

F. The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph E., if such information:

1. is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

2. is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

G. No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

H. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this Rule.

I. The issuer must file or cause to be filed with the Commissioner a notice of exemption in the form prescribed by the Commissioner, a copy of any general announcement, and the prescribed fee, as provided in Rule 51-3.7, all within 15 days after the first sale in this state.

51-3.20. Crowdfunding – Fees and Notice Filing Forms

A. Not less than ten days before the commencement of an offering pursuant to the exemption from registration provided in section 11-51-308.5 (the Colorado Crowdfunding Act), the issuer shall pay a fee, which shall be determined and collected pursuant to section 11-51-707.

B. Before acting as an on-line intermediary for an offering pursuant to the exemption from registration provided in section 11-51-308.5 (the Colorado Crowdfunding Act), the on-line intermediary shall pay a fee, which shall be determined and collected pursuant to section 11-51-707.

C. The issuer notice filing required by section 11-51-308.5(3)(a)(IV)(A) of the Colorado Crowdfunding Act shall be made by filing Form CF-1 with the Securities Commissioner.

D. The notice of intention to act as an on-line intermediary for an offering to be conducted pursuant to the Colorado Crowdfunding Act required by section 11-51-308.5(3)(c)(I)(E) shall be made by filing Form CF-3 with the Securities Commissioner.

E. Notice Filing Review.

1. If an issuer, submits a crowdfunding notice filing pursuant to section 11-51-308.5(3)(a)(IV)(A), that fails to comply with, and/or violates section 11-51-308.5, C.R.S., Rules under the Colorado Crowdfunding Act, the Colorado Securities Act, Rules under the Colorado Securities Act, and/or any order or orders issued by the ~~s~~Securities ~~c~~Commissioner; the ~~s~~Securities ~~c~~Commissioner may reject the notice filing, require that the issuer correct the incompliance and/or violation(s), and re-submit the notice filing.

2. Revised crowdfunding notice filings shall be re-submitted pursuant to section 11-51-308.5(3)(a)(IV)(A) and shall occur not less than ten days before the commencement of the offering, pursuant to the exemption from registration provided in the Colorado Crowdfunding Act.

3. If any notice filing that was corrected and is resubmitted pursuant to section 11-51-308.5(3)(a)(IV)(A), fails to comply with, and/or violates section 11-51-308.5, C.R.S., Rules under the Colorado Crowdfunding Act, the Colorado Securities Act, Rules under the Colorado Securities Act, and/or any order or orders issued by the ~~s~~Securities ~~c~~Commissioner, the ~~s~~Securities ~~c~~Commissioner may reject the re-submitted notice filing, require that the issuer correct the incompliance and/or violation(s), and re-submit the notice filing.

~~3.~~F. Required filings and fees may be made through the Electronic Filing Depository (EFD).

51-3.21. Crowdfunding – Consent to Service of Process Form

A. The issuer consent to service of process required by section 11-51-308.5(3)(a)(IV)(A) of the Colorado Crowdfunding Act shall be made by filing NASAA Form U-2 with the Securities Commissioner at the same time that the issuer files Form CF-2 with the Securities Commissioner.

51-3.22. Crowdfunding – Disclosure Document

A. Not fewer than ten days before commencing an offering pursuant to the exemption from registration provided in the Colorado Crowdfunding Act, and to comply with section 11-51-308.5(3)(a)(IV)(C), the issuer of securities shall timely file with the Securities Commissioner a completed Form CF-2 together with the escrow agreement required to be filed with the Securities Commissioner pursuant to section 11-51-308.5(3)(a)(IV)(D). Before commencement of any offering pursuant to the Colorado Crowdfunding Act, the issuer shall also provide a completed Form CF-2 to the broker-dealer, sales representative, or on-line intermediary through which the offering pursuant to the Colorado Crowdfunding Act is being conducted, and provide a copy of the filed Form CF-2 to each offeree at the time the offer of securities is made. The issuer can comply with section 11-51-308.5(3)(a)(X) by ensuring that the broker-dealer, sales representative, or on-line intermediary provides a copy of the filed Form CF-2 to each offeree.

B. Utilizing Form CF-2 to conduct an offering pursuant to the Colorado Crowdfunding Act through a broker-dealer, sales representative, or on-line intermediary shall not relieve the issuer of its obligation to provide full and fair disclosure to investors of all material facts relating to the issuer and the securities being offered as required by section 11-51-501(1).

C. If the offering is for more than $1 million, the Form CF-2 must include the issuer's financial statements for its most ~~recently completed~~recently completed fiscal year which have been reviewed by a certified public accountant licensed to practice accountancy within the state of Colorado. If the end of the most recently completed fiscal year of an issuer subject to this subsection is of a date that is more than four months before the commencement of the offering pursuant to the Colorado Crowdfunding Act, interim financial statements, which must be reviewed by the same certified public accountant that performed the audit, as of a date within four months of the commencement of the offering must be included. No issuer subject to this subsection may complete the sale of any securities pursuant to the Colorado Crowdfunding Act if the most recently audited or
reviewed financial statements are for a period ending more than twelve months before the completion of the sale.

D. Within five (5) business days of any material change, addition, or update, an issuer shall file with the Commissioner, and provide to the broker-dealer, sales representative, or on-line intermediary and to all other holders of the issuer's securities an amendment to the disclosure document to disclose any material changes, additions, or updates to information that it provided to investors if the offering has not yet been completed or terminated.

E. An issuer must disclose to the Commissioner and (through the broker-dealer, sales representative, or on-line intermediary) to offerees and (directly by the issuer) to all other holders of its securities its progress in meeting the target offering amount no later than five (5) business days after the issuer reaches the minimum and maximum target offering amount, and after the date the offering proceeds are released from any escrow, or upon termination of the offering being conducted pursuant to the Colorado Crowdfunding Act when the offering is not completed and the offering proceeds are returned to the offerees who subscribed to purchase the securities in accordance with the escrow agreement.

51-3.23. Crowdfunding – Issuer Records

A. Issuers shall make and preserve all records with respect to any offering conducted pursuant to the exemption provided by the Colorado Crowdfunding Act for five years after the completion or termination of the offering. These records shall include, at a minimum:

1. All organizational documents, including but not limited to, partnership agreements, operating agreements, articles of incorporation or organization, bylaws, minute books, and stock certificate books (or other similar type documents) and any agreements among the issuer's owners relating to voting or transferability of the owner's interests;

2. The issuer's Form CF-1, Form CF-2, including all exhibits, together with all amendments thereto, and Form ES-CF;

3. All records related to any person who purchases or attempts to purchase securities through the on-line intermediary or issuer, including evidence of residency from each such person in the offering as well as documentation obtained by the issuer showing that such person met any suitability standards set forth in the Form CF-2, including all records and information used to establish that an investor is an accredited investor as defined by the Securities and Exchange Commission's Rule 501 of Regulation D (17 CFR 230.501);

4. Records of all communications with all other holders of the issuer's securities, including all quarterly reports;

5. The escrow agreement executed in connection with the offering;

6. Any agreement between the issuer and any broker-dealer, sales representative, or on-line intermediary, and records reflecting the payment of compensation by the issuer or any person on behalf of the issuer to any broker-dealer, sales representative, or on-line intermediary; and

7. All records required to demonstrate compliance with section 11-51-308.5(3)(a)(VII).

B. The issuer may contract with the on-line intermediary or other service provider to collect such information and preserve such records, but the issuer retains the responsibility for the accuracy, completeness, and availability of such records.

51-3.24. Crowdfunding – Additional Issuer Requirements

A. *Investor Qualifications*.

1. Before accepting any investment, an issuer must verify that the aggregate amount sold by the issuer to any person during the twelve-month period preceding the date of sale does not exceed $5,000, or take reasonable steps to verify that any person who has purchased an aggregate amount greater than $5,000 from the issuer during any twelve-month period satisfies the accredited investor definition under the SEC's Rule 501 of Regulation D (17 CFR 230.501).

2. Before accepting any offer to purchase securities from any person pursuant to the Colorado Crowdfunding Act, an issuer must comply with the certification requirements of section 11-51-308.5(3)(a)(VII).

B. *Communications Between the Offerees and the Issuer*. After reviewing any Form CF-2 posted by an issuer through an on-line intermediary, any offeree may communicate directly with the issuer pursuant to the method described in the Form CF-2 to obtain further information or to provide the issuer with a notice that the offeree intends to make an investment in the offering as described in the Form CF-2.

C. *Notice of Investment Commitment*. After a person directs funds to the escrow account in an offering being conducted through an on-line intermediary, the issuer must promptly send to such person a notification disclosing:

1. The dollar amount of the investment commitment;

2. The price of the securities;

3. The name of the issuer;

4. The amount of the minimum offering and the maximum offering;

5. The amount of proceeds received in the escrow account as of the date of such notification; and

6. Whether such person has the right to cancel their investment prior to the deadline in the escrow agreement to reach the minimum offering amount and what such person must do to invoke that right.

D. *Notice of Completion of Transaction*. The issuer must, at or before the release of funds from escrow pursuant to Rule 51-3.24(F), send to each investor a notification disclosing:

1. The date of the transaction;

2. The type of security that such person is purchasing;

3. The identity, price, and number of securities being purchased by such person, as well as the number of securities sold by the issuer in the transaction through the date of the notification, and the price at which the securities were sold;

4. If a debt security, the interest rate and yield to maturity calculated from the price paid and the maturity date;

5. If a callable security, the first date that the security can be called by the issuer;

6. Whether the offering is being continued or is completed; and

7. Other information that the issuer determines is appropriate or necessary to provide to the person purchasing securities from the issuer in the offering being conducted pursuant to the Colorado Crowdfunding Act.

E. *Transmission of Funds*. The on-line intermediary and issuer shall direct investors to transmit all payments for the purchase of securities directly to the escrow account specified in the Form CF-2 until the offering is completed or terminated.

F. *Escrow Agreement*. For transactions occurring pursuant to section 11-51-308.5, C.R.S., issuers must place all funds received from investors in an escrow account which shall be established pursuant to a written agreement between the issuer (as depositor) and an unaffiliated depository institution or other escrow agent approved by the ~~c~~Commissioner, and other interested parties (if any). The written agreement shall meet the requirements of the Colorado Crowdfunding Act and these Rules.

1. Each agreement for the establishment of an escrow account shall include:

   a. The date of the agreement;

   b. The names and addresses of the issuer, the escrow agent, and any other parties to the agreement;

   c. The terms of the escrow, including a specific reference to section 11-51-308.5, C.R.S.;

   d. A provision for the delivery of the purchased securities by the issuer to the investor at the time of, or prior to, the release of funds to the issuer;

   e. Whether the escrowed funds will earn interest and, if so, a description of the manner in which interest accrued on the escrowed funds will be used or otherwise distributed;

   f. Unless the minimum/maximum requirement is waived or modified by the ~~c~~Commissioner, the agreement shall contain a provision that prohibits the issuer from accessing the escrowed funds until the aggregate funds raised from all investors equals or exceeds the minimum offering amount in a timely fashion (as the minimum offering amount and the period of the offering are defined in the issuer's Form CF-2 as filed with the Commissioner), a provision detailing the conditions under which the escrowed funds are to be released to the issuer or are to be returned to the prospective investors, and whether, after any initial closing and distribution of funds to the issuer, the offering may continue with further funds being deposited into the escrow account; and

g. A statement that the escrowed funds may not be released to the issuer until the lapse of at least seven (7) days after the receipt by the Commissioner of notice of the proposed release of funds from such escrow, provided in paragraph 3 below, or upon written authorization of the Commissioner of any earlier release.

2. The Commissioner may, in their~~his~~ sole discretion, authorize release of escrowed funds pursuant to section 11-51-308.5, C.R.S. prior to the lapse of seven (7) days after receipt by the Commissioner of the notice provided in paragraph 3 below. In such cases, the Commissioner shall provide the issuer with such authorization in writing in a form that may be presented to the escrow agent.

3. A notice of proposed release of funds from escrow under section 11-51-308.5, C.R.S. shall be filed with the Commissioner on Form ES-CF. Proof of filing the Form ES-CF with the Commissioner may be established by a receipt or other writing upon which the Commissioner, by stamp or other writing, evidences that the Form ES-CF was received.

4. The notice shall contain, at a minimum, the following information:

a. The gross amount of aggregate proceeds received from the sale of any and all of the securities sold in the offering;

b. Whether the offering is completed;

c. Whether any additional funds may be received by the issuer in exchange for securities issued in the offering;

d. A description of each transaction, including the dates of each transaction, the parties to each transaction, the amount committed in each transaction, a description of how the proceeds are to be spent under the terms of each transaction, including the specific lines of business, and a description of how the securities will be delivered to the purchaser; and

e. Any additional information the Commissioner may require as material to the Commissioner's determination.

G. *Single Intermediary*. An issuer shall not conduct an offering or concurrent offerings in reliance on the Colorado Crowdfunding Act using more than one on-line intermediary.

H. *Sales Representative*. An issuer shall not conduct an offering in reliance on the Colorado Crowdfunding Act through a sales representative who is not associated with nor acting on behalf of a broker-dealer that is a member of FINRA.

I. *Quarterly Report Timing*. Each quarterly report shall be provided to all holders of the issuer's securities and the Commissioner within forty-five days after the end of each fiscal quarter.

J. *Issuer Distribution of Notice of Offering*. The issuer may, in accordance with section 11-51-308.5(3)(a)(XIV), distribute a statement that the issuer is conducting an offering. When used in section 11-51-308.5(3)(a)(XIV), the term "within Colorado" includes a statement distributed by, at the direction of, or on behalf of the issuer on the issuer's website or through electronic mail or social media if the statement includes (at a minimum) disclaimers and restrictive legends making it clear that the offering is limited to residents of Colorado and there is in fact a confirmation of residency before the recipient or viewer of such statement can access the Form CF-2 or other information related to the offering.

K. Single Plan of Financing. In accordance with section 11-51- 308.5(3)(a)(XI), the exemption provided by the Colorado Crowdfunding Act shall not be used in conjunction with any other exemption pursuant to section 11-51- 307, 11-51- 308, or 11-51- 309 during the immediately preceding twelve-month period which is part of the same issue. The determination whether offers, offers to sell, offers for sale, and sales of securities are part of the same issue (i.e., are deemed to be integrated) is a question of fact and will depend on the particular circumstances. In determining whether offers and sales should be regarded as part of the same issue and thus should be integrated, any one or more of the following factors may be determinative:

1. Are the offerings part of a single plan of financing;

2. Do the offerings involve issuance of the same class of securities;

3. Are the offerings made at or about the same time;

4. Is the same type of consideration to be received; and

5. Are the offerings made for the same general purpose.

L. Federal Rules Applicable. Offerings made pursuant to the Colorado Crowdfunding Act must be conducted in a manner consistent with SEC Rule 147 (17 CFR 230.144) or Rule 147A (17 CFR 230.147A).

M. Failure of an issuer to comply with any of the provisions of section 11-51-308.5, these Rules, or any order, will constitute a violation of those provisions, Rules, or orders, and subject the issuer to the enforcement authority of the Commissioner under section 11-51-602.

51-3.25. Crowdfunding – On-line Intermediary Records

A. An on-line intermediary shall make and preserve all records required to demonstrate compliance with the requirements of section 11-51-308.5(3)(c) and any applicable Rules under the Colorado Securities Act, including the following records, for five (5) years after the completion or termination of an offering:

1. All records of compensation received for acting as an on-line intermediary, including the amount of compensation and method used to determine such amount, the name of the payor, the date of payment, and name of the issuer;

2. All records related to issuers who offer or attempt to offer securities through the on-line intermediary and the control persons of such issuers, including all information used to establish Colorado residency;

3. Records of all communications that occur on or through the on-line intermediary's website;

4. All records related to persons that use communication channels provided by an on-line intermediary to promote an issuer's securities or communicate with potential investors;

5. To the extent received by the on-line intermediary, all records and information used to establish that an investor is an accredited investor as defined by the Securities and Exchange Commission's Rule 501 of Regulation D (17 CFR 230.501);

6. All notices provided by such on-line intermediary to issuers and investors generally through the on-line intermediary's website or otherwise, including, but not limited to, notices addressing hours of on-line intermediary operations (if any), on-line intermediary malfunctions, changes to on-line intermediary procedures, maintenance of hardware and software, instructions pertaining to access to the on-line intermediary and denials of, or limitations on, access to the on-line intermediary;

7. All agreements and contracts between the on-line intermediary and an issuer or investor;

8. All information that the on-line intermediary is required to collect from persons pursuant to Rule 51-3.28;

9. Any other records of all offers of securities effected through the on-line intermediary's website; and

10. Any written supervisory procedures or policies as required by section 11-51-308.5(3)(c)(II)(C).

B. An on-line intermediary shall make and preserve during the operation of the on-line intermediary and of any successor on-line intermediary all organizational documents relating to the on-line intermediary, including, but not limited to, partnership agreements, articles of incorporation or charter, minute books, and stock certificate books (or other similar type documents).

C. The records required to be made and preserved pursuant to paragraph A. of this Rule must be produced, reproduced, and maintained in the original, non-alterable format in which they were created.

51-3.26. Crowdfunding – On-line Intermediary Financial and Other Information

A. An on-line intermediary shall make an annual filing with the Commissioner listing each offering completed pursuant to section 11-51-308.5 accompanied by how much compensation the on-line intermediary received for each offering completed and listing all other offerings pursuant to section 11-51-308.5 accompanied by how much compensation the on-line intermediary received for all other offerings for the reporting period. This filing shall be made on Form CF-4.

51-3.27. Crowdfunding – Small Offering Exemption

Upon approval of the Commissioner, an issuer who files a Form CF-1, a consent to service of process, and a Form CF-2 as required by Rules 51-3.20, 51-3.21 and 51-3.22, pays the required fees, maintains issuer records required by Rule 51-3.23, meets the additional issuer requirements set forth in Rule 51-3.24 and is not disqualified as contemplated in Rule 51-3.30, and the issuer is not seeking to raise not more than $500,000 in any twelve-month period, the issuer may proceed with the offering under these Rules without imposing a minimum offering and without using an online intermediary. If the offering is proceeding without imposing a minimum offering, the offering may proceed without requiring that the proceeds be placed in escrow provided that the funds are maintained in a segregated account until spent on a proposed use of proceeds.

51-3.28. Crowdfunding – Additional On-line Intermediary Requirements

A. Before permitting any person to view offerings being conducted through the on-line intermediary, the on-line intermediary shall gather the following information from such person:

1. Such person's name;

2. Such person's address;

3. Such person's telephone number;

4. Such person's email address;

5. Such person's date of birth; and

6. Information to establish Colorado residency.

B. Before permitting any person to view the offerings being conducted through the on-line intermediary, the on-line intermediary shall have each such person acknowledge that:

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH, APPROVED BY, OR RECOMMENDED BY ANY FEDERAL OR STATE AGENCY. IN MAKING AN INVESTMENT DECISION, PURCHASHERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SECURITIES AND EXCHANGE COMMISSION RULE 147, 17 CFR 230.147(e), AS PROMULGATED PURSUANT TO THE FEDERAL "SECURITIES ACT OF 1933," AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

C. An on-line intermediary in a transaction involving the offer or sale of securities in reliance on the Colorado Crowdfunding Act must deny access to its platform if the on-line intermediary:

1. Has a reasonable basis for believing that an issuer is not in compliance with section 11-51-308.5;

2. Has a reasonable basis for believing that the issuer has not established means to keep accurate records as required by the Colorado Crowdfunding Act and these Rules; or

3. Has a reasonable basis for believing that the issuer or offering presents the potential for fraud or otherwise raises concerns regarding investor protection.

D. An on-line intermediary that has denied an issuer access to its platform based upon any of the grounds specified in Rule 51-3.28(C) shall promptly report such denial to the Commissioner.

E. Failure of the on-line intermediary to comply with any of the provisions of section 11-51-308.5, these Rules, or any order, will constitute a violation of those provisions, Rules, or orders, and subject the on-line intermediary to the enforcement authority of the Commissioner under section 11-51-602.

51-3.29. Crowdfunding – On-line Intermediary Prohibited Activities

A. An on-line intermediary shall not:

1. Offer investment advice or recommendations absent licensure and residency as stated in section 11-31-308.5(3)(b)(I) or (II);

2. Receive a financial interest in an issuer as compensation for services provided to or on behalf of an issuer unless disclosed on Form CF-2; or

3. Hold, manage, possess, or otherwise handle purchaser funds or securities.

B. An on-line intermediary that does nothing more than collect information regarding the purchase of securities pursuant to the Colorado Crowdfunding Act and provides a link to transmit funds to the escrow agent is not conducting any activity prohibited by Rule 51-3.29(A).

C. The fee charged by an online intermediary may be a variable amount based upon the number of investors in an offering.

51-3.30. Crowdfunding – Disqualification from Relying on Crowdfunding Exemption

A. No exemption under section 11-51-308.5 shall be available for a sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member or manager of the issuer; any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such solicitor; or any director, executive officer or other officer participating in the offering of any such solicitor or general partner or managing member of such solicitor:

1. Has a conviction that became final within ten years before such sale, of any felony or misdemeanor:

   a. In connection with the purchase or sale of any security;

   b. Involving the making of any false filing with the Securities and Exchange Commission or a state securities regulatory agency;

   c. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities; or

   d. Involving fraud or deceit in which the loss to the victim or victims exceeds $10,000;

2. Is subject to any final order, judgment or decree of any court of competent jurisdiction, entered within five years before such sale, that, at the time of such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

   a. In connection with the purchase or sale of any security;

   b. Involving the making of any false filing with the Securities and Exchange Commission or a state securities regulatory agency; or

   c. Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

3. Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); a federal banking agency; the Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission; the Federal Trade Commission, the Consumer Financial Protection Bureau, or the National Credit Union Administration that:

    a. At the time of such sale, bars the person from:

        i. Association with an entity regulated by such commission, authority, agency, bureau or officer;

        ii. Engaging in the business of securities, insurance or banking; or

        iii. Engaging in savings association or credit union activities; or

    b. Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct, including making untrue statements of material facts or omitting to state material facts, entered within five years before such sale;

4. Is subject to a final order of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o–4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e) or (f)) that, at the time of such sale:

    a. Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

    b. Places limitations on the activities, functions or operations of such person; or

    c. Bars such person from being associated with any entity or from participating in the offering of any penny stock;

5. Is subject to any final order of the Securities and Exchange Commission entered within five years before such sale that orders the person to cease and desist from committing or causing a violation or future violation of:

    a. Any scienter based anti-fraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 CFR 240.10b–5, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(1)), or any other Rule or regulation thereunder; or

    b. Section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

6. Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission constituting conduct inconsistent with just and equitable principles of trade;

7. Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the Securities and Exchange Commission that, within five years before such sale, was the subject of a final refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued;

8. Is subject to a final United States Postal Service false representation order entered within five years before such sale, or is, at the time of such sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations;

9. Has filed a registration statement which is subject to a final stop order entered under section 11-51-306, or any other state's securities law, within five years before such sale; or

10. Is currently subject to any final state administrative enforcement order or judgment, including Colorado, entered by the Commissioner, or any other state's securities administrator, within five years prior to such sale.

B. For purposes of paragraph A. of this Rule, "final order" shall mean a written directive or declaratory statement issued by a federal or state agency described in subparagraph A.3. under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

C. The Commissioner may, following a written request, and in the exercise of discretion, waive, either before or after an offering has commenced, subparagraphs 5. through 10. of paragraph A. of this Rule and subsections (d)(1)(v) through (viii) of Rule 506 (17 CFR 230.506(d)(1)(v)-(viii)) if upon a showing of good cause and without prejudice to any other action by the Commissioner, the Commissioner determines that, in balancing all relevant factors, granting the waiver is consistent with the objective of the Colorado Securities Act to protect investors and maintain public confidence in securities markets while avoiding unreasonable burdens on participants in capital markets.

51-3.31. Notice Filing Requirement for Federal Crowdfunding Offerings

The following provisions apply to offerings made under federal Regulation Crowdfunding (17 CFR §227) and Sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933:

A. Initial filing.

1. An issuer that offers and sells securities in this state in an offering exempt under federal Regulation Crowdfunding, and that either (1) has its principal place of business in this state or (2) sells 50% or greater of the aggregate amount of the offering to residents of this state, shall file the following with the ~~s~~Securities ~~c~~Commissioner:

a. A completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the Securities and Exchange Commission

b. A consent to service of process on Form U-2 if not filing on the Uniform Notice of Federal Crowdfunding Offering form; and

c. The filing fee prescribed by the ~~s~~Securities ~~c~~Commissioner.

2. If the issuer has its principal place of business in this state, the filing required under paragraph (A) shall be filed with the ~~s~~Securities ~~c~~Commissioner when the issuer makes its initial Form C filing concerning the offering with the Securities and Exchange Commission. If the issuer does not have its principal place of business in this state but residents of this state have purchased 50% or greater of the aggregate amount of the offering, the filing required under paragraph (A) shall be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than thirty (30) days from the date of completion of the offering.

3. The initial notice filing is effective for twelve (12) months from the date of the filing with the ~~s~~Securities ~~c~~Commissioner.

B. Renewal. For each additional twelve-month period in which the same offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew its notice filing by filing the following on or before the expiration of the notice filing:

1. A completed Uniform Notice of Federal Crowdfunding Offering form marked "renewal" and/or a cover letter or other document requesting renewal; and

2. The renewal fee prescribed by 11-51-308.5(3)(a)(IV)(B).

3. If the amount of securities subject to the notice filing is being increased, the fee prescribed by the ~~s~~Securities ~~c~~Commissioner.

~~3.~~C. Required filings and fees may be made through the Electronic Filing Depository (EFD).

51-3.32 Use of Electronic Offering Documents and Electronic Signatures

A. The following terms are defined for purposes of this section, 51-3.32

1. "Offering documents" include, but are not limited to, the registration statement, prospectus, applicable agreements, charter, by-laws, opinion of counsel and other opinions, specimen, indenture, consent to service of process and associated resolution, sales materials, subscription agreement, and applicable exhibits.

2. "Sales materials" include only those materials to be used in connection with the solicitation of purchasers of the securities approved as sales literature or other related materials by the SEC, FINRA, and the States, as applicable.

B. Use of Electronic Offering Documents and Subscription Agreements

1. An issuer of securities or agent acting on behalf of the issuer may deliver offering documents over the Internet or by other electronic means, or in machine readable format, provided:

a. Each offering document:

i. is prepared, updated and delivered in a manner consistent and in compliance with state and federal securities laws;

ii. satisfies the formatting requirements applicable to printed documents, such as font size and typeface, and which is identical in content to the printer version (other than electronic instructions and/or procedures as may be displayed and non-substantive updates to daily net asset value which can be updated more efficiently in the electronic version);

iii. is delivered as a single, integrated document or file; when delivering multiple offering documents, the documents must be delivered together as a single package or list;

iv. where a hyperlink to documents or content that is external to the offering documents is included, provides notice to investors or prospective investors that the document or content being accessed is provided by an external source; and

v. is delivered in an electronic format that intrinsically enables the recipient to store, retrieve and print the documents;

AND

b. the issuer or agent acting on behalf of the issuer:

i. obtains informed consent from the investor or prospective investor to receive offering documents electronically;

ii. ensures that the investor or prospective investor receives timely, adequate, and direct notice when an electronic offering document has been delivered;

iii. employs safeguards to ensure that delivery of offering documents occurred at or before the time required by law in relation to the time of sale; and

iv. maintains evidence of delivery by keeping records of its electronic delivery of Offering Documents and makes those records available on demand by the Commissioner.

2. Subscription agreements may be provided by an issuer or agent acting on behalf of the issuer electronically for review and completion, provided the subscription process is administered in a manner that is similar to the administration of subscription agreement in paper form, as follows:

a. before completion of any subscription agreement, the issuer or agent acting on behalf of the issuer must review with the prospective investor all appropriate documentation related to the prospective investment including on how to complete the subscription agreement;

b. mechanisms are established to ensure a prospective investor reviews all required disclosure and scrolls through the document in its entirety prior to initialing and/or signing; and

c. unless otherwise allowed by the ~~s~~Securities ~~c~~Commissioner, a single subscription agreement is used to subscribe a prospective investor in no more than one offering

3. Delivery requires that the offering documents be conveyed to and received by the investor or prospective investor, or that the storage media in which the offering documents are stored be physically delivered to the investor or prospective investor in accordance with subsection (A)(1).

4. Each electronic document shall be preceded by or presented concurrently with the following notice: "**Clarity of text in this document may be affected by the size of the screen on which it is displayed**."

5. Informed consent to receive offering documents electronically pursuant to (A)(2)(a) in this section may be obtained in connection with each new offering or globally, either by an issuer or an agent acting on behalf of the issuer. The investor may revoke this consent at any time by informing the party to whom the consent was give, or, if such party is no longer available, the issuer.

6. Investment opportunities shall not be conditioned on participation in the electronic offering documents and subscription agreements initiative.

7. Investors or prospective investors who decline to participate in an electronic offering documents and subscription agreements initiative shall not be subjected to higher costs- other than the actual direct cost of printing, mailing, processing, and storing offering documents and subscription agreements- as a result of their lack of participation in the initiative, and no discount shall be given for participating in an electronic offering documents and subscription agreements initiative.

8. Entities participating in an electronic initiative shall maintain, and shall require participating underwriters, dealer-managers, placement agents, broker-dealers, and/or other selling agents to maintain written policies and procedures covering the use of electronic offering documents and subscription services.

9. Entities and their contractors and agents having custody and possession of electronic offering documents, including electronic subscription agreements, shall store them in a non-rewriteable and non-erasable format.

10. This section does not change or waive any other requirement of law concerning registration or presale disclosure of securities offerings.

C. Use of Electronic Signatures

1. An issuer of securities or agent acting on behalf of the issuer may provide for the use of electronic signatures provided:

a. The process by which electronic signatures are obtained:

i. will be implemented in compliance with the Electronic Signatures in Global and National Commerce Act ("Federal E-Sign"), and the Uniform Electronic Transactions Act, including an appropriate level for security and assurances of accuracy, and where applicable, required federal disclosures

ii. will employ an authentication process to establish signer credentials;

iii. will employ security features that protect signed records from alteration, and;

iv. will provide for retention of electronically signed documents in compliance with applicable laws and regulations, by either the issuer or agent acting on behalf of the issuer;

b. An investor or prospective investor shall expressly opt-in to the electronic signature initiative, and participation may be terminated at any time; and

c. Investment opportunities shall not be conditioned on participation in the electronic signature initiative.

2. Entities that participate in an ~~electronic signature initiatives~~electronic signature initiative shall maintain, and shall require underwriters, dealer-managers, placement agents, broker-dealers, and other selling agents to maintain, written policies and procedures covering the use of electronic signatures

3. An election to participate in an electronic signature initiative pursuant to (1)(b) in this section may be obtained in connection with each new offering, or by an agent acting on behalf of the issuer, The investor may revoke this consent at any time informing the party to whom the consent was given, or , if such party is no longer available, the issuer.

D. Incorporation by Reference

1. Electronic Signatures in Global and National Commerce Act ("Federal E-Sign"), as effective on June 30, 2000 is hereby incorporated by reference. No later amendment or edition of Federal E-Sign is incorporated into this Section 51-3.32. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Securities, Department of Regulatory Agencies, 1560 Broadway, Suite 900, Denver, CO 80202. The Division of Securities will provide certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy.

2. Uniform Electronic Transactions Act, C.R.S. section §24-71.3-102 et seq., as effective on May 30, 2002 is hereby incorporated by reference. No later amendment or edition 24-71.3-101 et seq., is incorporated into this Section 51-3.32. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Securities, Department of Regulatory Agencies, 1560 Broadway, Suite 900, Denver, CO 80202. The Division of Securities will provide certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy.

Rule 3.33. Licensing Exemption for Merger and Acquisition Brokers

A. IN GENERAL Except as provided in paragraphs (B) and (C), a Merger and Acquisition Broker shall be exempt from licensing pursuant to C.R.S. § 11-51-402 under this section.

B. EXCLUDED ACTIVITIES – A Merger and Acquisition Broker is not exempt from licensing under this paragraph if such broker does any of the following:

1. Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

2. Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 Section 15 subsection (d), 15 U.S.C. 78o(d).

3. Engages on behalf of any party in a transaction involving a public shell company.

C. DISQUALIFICATIONS – A Merger and Acquisition Broker is not exempt from licensing under this paragraph if such broker is subject to –

1. Suspension or revocation of registration under Section 15(b)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4);

2. A statutory disqualification described in section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(39);

3. A disqualification under the Rules adopted by the United States Securities and Exchange Commission under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note); or

4. A final order described in paragraph (4)(H) of Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(H).

D. RULE OF CONSTRUCTION – Nothing in this paragraph shall be construed to limit any other authority of this Commission, to exempt any person, or any class of persons, from any provision of this title, or from any provision of any Rule or regulation thereunder.

E. DEFINITIONS – In this paragraph:

1. CONTROL – The term “control” means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who –

a. is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

b. has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or

c. in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital.

2. ELIGIBLE PRIVATELY HELD COMPANY –IN GENERAL – The term “eligible privately held company” means a company meeting both of the following conditions:

a. The company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d).

b. In the fiscal year ending immediately before the fiscal year in which the services of the Merger and Acquisition Broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

i. The earnings of the company before interest, taxes, depreciation, and amortization are less than $25,000,000.

ii. The gross revenues of the company are less than $250,000,000.

3. Merger and Acquisition Broker – The term "Merger and Acquisition Broker" means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company –

a. if the broker reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

b. if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

4. PUBLIC SHELL COMPANY – The term "public shell company" is a company that at the time of a transaction with an eligible privately held company –

a. has any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12, 15 U.S.C. 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d); and

b. has no or nominal operations; and

c. has –

i. no or nominal assets;

ii. assets consisting solely of cash and cash equivalents; or

iii. assets consisting of any amount of cash and cash equivalents and nominal other assets.

F. INFLATION ADJUSTMENT

1. IN GENERAL – On the date that is five years after the date of the enactment of the Rule, and every five years thereafter, each dollar amount in subparagraph (E)(ii)(II) shall be adjusted by –

a. dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2012; and

b. multiplying such dollar amount by the quotient obtained under sub clause (I).

2. ROUNDING – Each dollar amount determined under clause (i) shall be rounded to the nearest multiple of $100,000.

51-3.34. Digital Token Act Registration Exemption – Fees, Notice Filing Forms and Review

A. For all digital tokens issued on or after August 2, 2019, the issuer shall provide notice of exemption to the Ssecurities ~~c~~Commissioner before the issuance of a digital token that is exempt from registration as provided in section 11-51-308.7 of the Colorado Digital Token Act.

B. For digital tokens issued before August 2, 2019, the issuer shall provide notice of exemption to the ~~s~~Securities ~~c~~Commissioner of a digital token that is exempt from registration as provided in section 11-51-308.7 of the Colorado Digital Token Act.

C. The registration exemption notice filing required by section 11-51-308.7(3)(a) of the Colorado Digital Token Act shall be made by filing Form DT-1 with the ~~s~~Securities ~~c~~Commissioner.

D. A Colorado Digital Token Act registration exemption notice filed pursuant to section 11-51-308.7(3)(a), that fails to comply with, and/or violates section 11-51-308.7(a), the Colorado Digital Token Act, Rules under the Colorado Digital Token Act, the Colorado Securities Act, Rules under the Colorado Securities Act, the Colorado Commodity Code and/or any order or orders issued by the ~~s~~Securities ~~c~~Commissioner; the ~~s~~Securities ~~c~~Commissioner may reject the notice filing or require that the issuer correct any deficiencies and re-submit the notice filing.

E. An issuer of an exempt digital token must file an amendment to a previously filed notice to correct a material mistake in the previously filed notice or to reflect a material change in the previously filed notice within 30 days after discovery of the mistake or change.

51-3.35 Digital Token Act Licensing Exemption – Fees, Notice Filing Forms and Review

A. A person who engages in the business of effecting or attempting to effect the purchase, sale, or transfer of a digital token who is exempt from the licensing requirements of section 11-51-401, as provided in section 11-51-308.7 of the Colorado Digital Token Act, shall provide notice of exemption to the ~~s~~Securities ~~c~~Commissioner.

B. The exemption from licensing is only available to a person who is engaged in the business of effecting or attempting to effect the purchase, sale, or transfer of digital tokens that have a primarily consumptive purpose.

C. The licensing exemption notice filing required by section 11-51-308.7(3)(c) of the Colorado Digital Token Act shall be made by filing Form DT-2 with the ~~s~~Securities ~~c~~Commissioner.

D. A Colorado Digital Token Act licensing exemption notice filed pursuant to section 11-51-308.7(3)(c), that fails to comply with, and/or violates section 11-51-308.7(b), the Colorado Digital Token Act, Rules under the Colorado Digital Token Act, the Colorado Securities Act, Rules under the Colorado Securities Act, the Colorado Commodity Code and/or any order or orders issued by the ~~s~~Securities ~~c~~Commissioner; the ~~s~~Securities ~~c~~Commissioner may reject the notice filing or require that the issuer correct any deficiencies and re-submit the notice filing.

E. A person who is exempt from licensing pursuant to section 11-51-308.7 of the Colorado Digital Token Act must file an amendment to a previously filed notice to correct a material mistake in the previously filed notice or to reflect a material change in the previously filed notice within 30 days after discovery of the mistake or change.

51-3.36. Digital Token Act – Books and Records Requirements

A. An Issuer or person filing notice of an exemption from registration or licensing shall make and preserve all records with respect to any issuance, purchase, sale, offer or transfer of a digital token conducted pursuant to the exemptions provided by the Colorado Digital Token Act for a period of five years.

B. The ~~s~~Securities ~~c~~Commissioner, in a manner reasonable under the circumstances, may examine, without notice, the records, within or without this state, of a person claiming an issuer or licensing exemption under 11-51-308.7 of the Colorado Digital Token Act.

CHAPTER 4 LICENSING OF BROKER-DEALERS AND SALES REPRESENTATIVES

51-4.1 Application for a Broker-Dealer License

A. A person applying for a license as a broker-dealer in Colorado shall make application for such license and amendments to such application on Form BD (Uniform Application for Broker-Dealer Registration).

B. A person applying for a license as a broker-dealer in Colorado who is registered under the 34 Act shall send such application and amendments to such application, and any applicable fee, made payable to FINRA (or such other payee as FINRA or CRD may designate), to the CRD with Colorado designated as a recipient state. An application or amendment shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

C. A person applying for a license as a broker-dealer in Colorado who is not registered or registering as such under the 34 Act shall send such application and amendments to such application to the Securities Commissioner.

D. Any applicant for a broker-dealer license must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

E. A mortgage broker-dealer whose business is limited exclusively to effecting transactions with financial institutions [as defined in section 11-51-201(6), C.R.S.] is exempt from the licensing 3 requirements of section 11-51-401(1), C.R.S.

51-4.2 Withdrawal of a Broker-Dealer License

A. An application to withdraw as a licensed broker-dealer in Colorado and any amendments to such application shall be made on Form BDW (Uniform Request for Withdrawal from Registration as a Broker-Dealer).

B. A broker-dealer licensed in Colorado who is or was registered under the 34 Act shall send any application for withdrawal and any amendments to such application to the CRD with Colorado designated as a recipient state. An application for withdrawal and any amendments shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

C. A Colorado broker-dealer who is not and was not registered under the 34 Act shall send any such application and any amendments to such application to the Securities Commissioner.

51-4.3 Application for a Sales Representative License

A. A person applying for a license as a sales representative in Colorado shall make application for such license and amendments to such application on Form U-4 (Uniform Application for Securities Industry Registration or Transfer).

B. A person affiliated with a FINRA broker-dealer applying for a license as a sales representative in Colorado shall send the application, any amendments to such application and any applicable fee, with check made payable to FINRA (or such other payee as FINRA or CRD may designate), through such FINRA broker-dealer, to the CRD with Colorado designated as a recipient state. An application and amendments to such application shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

C. A person who is not affiliated with a FINRA broker-dealer who is applying for a license as a sales representative in Colorado shall send the application and amendments to such application, through the broker-dealer or issuer with which the person is affiliated, to the Securities Commissioner.

D. Any applicant for a sales representative license must also file a Consent to Service of Process form (see Rule 51-7.1) with the Commissioner.

E. An applicant for a license under section 11-51-403, C.R.S., as a sales representative for a broker- dealer who is not registered as a broker-dealer under the 34 Act, including a mortgage sales representative, or for an issuer shall successfully complete the Uniform Securities Agent State Law Examination (Series 63) administered through FINRA.

F. In addition to the examination required by paragraph E above, an applicant for a license under section 11-51-403, C.R.S., as a sales representative for either a broker-dealer who is not registered as a broker-dealer under the 34 Act and whose securities business is limited solely to the offer and sale of direct participation investments involving real estate related securities or an issuer whose business is equally limited, in addition to the examination required in paragraph E above, shall successfully complete the Direct Participation Program Representative Examination (Series 22) or the Direct Participation Principal Examination (Series 39) administered through FINRA.

G. Unless currently licensed as a sales representative with a broker-dealer registered under the 34 Act, the examination requirement described in paragraph E above may be satisfied upon proof that the respective examination was successfully completed within the two (2) year period immediately preceding the date of the application for licensing.

H. A sales representative of an issuer that qualifies for an exemption from registration pursuant to Rule 51-3.15 is exempt from the licensing requirements of section 11-51-401(1), C.R.S. if:

1. That sales representative is an officer, director, partner, trustee, employee or other representative of the issuer; and

2. That individual acts as a sales representative only with respect to the offer and sale of securities for and on behalf of the issuer; and

3. That sales representative receives no commissions, fees or other special remuneration for or arising out of the offer and sale of securities.

I. No FINRA broker-dealer or SEC registered entity shall permit any applicant for a sales representative license in Colorado to apply for such a license, or any affiliated sales representative license in Colorado to continue to perform duties as a sales representative, unless such person has complied with the requirements of subparagraph (1) hereof.

1. Any applicant or affiliated sales representative must provide the applicant's name, address, and social security number. If the applicant does not have a social security number, ~~he~~the applicant shall provide the applicant's individual taxpayer identification number, or another document verifying the applicant's identity.

~~1.~~2. ~~be lawfully present in the United States.~~ An applicant or affiliated sales representative may verify their identity ~~lawful presence in the United States~~ by producing to the FINRA broker dealer or the SEC registered entity any of the following:

a. Federal Form I-9 Employment Eligibility Verification Form;

b. A state identification (ID) card, expired less than one year,

c.A state issued driver license, expired less than one year,

d. A current US passport or passport card that is not expired,

e. A current foreign passport that is not expired,

f. A US military card (front and back),

g. A Permanent Resident Card,

h. A Certificate of Citizenship, ~~or~~

i. A Certificate of Naturalization, or

~~a.~~j. Another document verifying the applicant's identify as determined by the Commissioner, and ~~,~~

~~b.~~k.

A certification by the applicant that the applicant has provided true and correct information verifying their identity. ~~An executed affidavit stating that he or she is a United States citizen or legal permanent resident in a form substantially similar to Form AE;~~

3. Every FINRA broker-dealer or SEC registered entity shall record, maintain, and preserve in an easily accessible place the documentation, or copies thereof, which the applicant and affiliated sales representative produced which verifies an applicant's identity. ~~their lawful presence in the United States.~~

4~~J~~. A person who is not affiliated with either a FINRA broker-dealer or SEC registered entity, who is applying for a license as a sales representative in Colorado, or continuing to perform duties as a sales representative in Colorado, shall send with their application or renewal to the Securities Commissioner the following documentation:~~:~~

a. Federal Form I-9 Employment Eligibility Verification Form;

b. A state identification (ID) card, expired less than one year,

c. A state issued driver license, expired less than one year,

d. A current US passport or passport card that is not expired,

e. A current foreign passport that is not expired,

f. A US military card (front and back),

g. A Permanent Resident Card,

h. A Certificate of Citizenship,

i. A Certificate of Naturalization, or

~~a.~~j. Another document verifying the applicant's identify as determined by the Commissioner, and~~.~~

k. A certification by the applicant that the applicant has provided true and correct information verifying their identity.

~~2. Documentation verifying their lawful presence in the United States. A person may verify their lawful presence in the United States by providing to the Securities Commissioner the following:~~

~~a. An executed affidavit stating that he or she is a United States citizen or legal permanent resident in a form substantially similar to Form AE;~~

~~3. Documentation verifying the applicant's identity: by providing to the Securities Commissioner any of the following documents:~~

~~a. Any Colorado Driver License, Colorado Driver permit, or Colorado Identification Card, expired less than one year (Temporary paper license with invalid Colorado Driver License, Colorado Driver Permit, or Colorado Identification Card, expired less than one year is considered acceptable);~~

~~b. Out-of-state issued photo Driver's License or photo identification card, photo driver's permit expired less than one year;~~

~~c. Valid foreign passport with I-94 or validly processed for 1551 stamps;~~

~~d. Valid I-94 issued by Canadian government with L1 or R1 status and a valid Canadian driver's license or valid Canadian identification card;~~

~~e. Valid 1551 Resident Alien/Permanent Resident card. No border crosser or USA B1/B2 Visa/BCC cards;~~

~~f. Valid 1688 Temporary Resident Card, 1688B and 1766 Employment Authorization Card;~~

~~g. Valid U.S. Military Identification (active duty, dependent, retired, reserve and National Guard);~~

~~h. Tribal Identification Card with intact photo (U.S. or Canadian);~~

~~i. Certificate of Naturalization with intact photo;~~

~~j. Certificate of U.S. Citizenship with intact photo.~~

~~J.Sales Representative Business Email.~~

~~1. Each person licensed as a sales representative in this state shall file such person's current business email address with the Securities Commissioner. The business email address shall be filed electronically on an annual basis through a link provided by the Division on its website.~~

~~2. Each person's employing broker-dealer may file the person's required email address with the Securities Commissioner on behalf of the person using a form designated by the Securities Commissioner.~~

51-4.4 Withdrawal of a Sales Representative License

A. An application to withdraw as a sales representative in Colorado and any amendments to such application shall be made on Form U-5 (Uniform Termination Notice for Securities Industry Registration).

B. For a person affiliated with a FINRA broker-dealer, an application to withdraw as a sales representative in Colorado and any amendments to such application shall be sent, through such FINRA broker-dealer, to the CRD with Colorado designated as a recipient state. An application for withdrawal and any amendments to such application shall be deemed filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

C. For a person not affiliated with a FINRA broker-dealer, an application for withdrawal from licensing in Colorado as a sales representative and any amendments to such application shall be sent through the broker-dealer or issuer with which the person is affiliated to the Securities Commissioner.

D. The Securities Commissioner may deem an application for licensing as a broker-dealer or securities sales representative to be abandoned when an applicant fails to adequately respond to any request for additional information required under § 11-51-403, C.R.S. or the regulations thereunder. The Commissioner shall provide written notice of warning 30 calendar days before the applications is deemed abandoned. The applicant may, with the consent of the Commissioner, withdraw the application.

51-4.5 Books and Records Requirements for Licensed Broker-Dealers

Unless otherwise provided by Rule or order of the Securities Commissioner, every broker-dealer must make, maintain and preserve the books and records required under SEC Rules 15g, 15c2-11, 17a-3 and 17a-4, found at 17 CFR 240.15g-1 through g-100, 17 CFR 240.15c2-11, 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

51-4.6 Financial Responsibility and Books and Records Requirements for Mortgage Broker-Dealers

A. A mortgage broker-dealer who does not maintain possession or control of investor funds or securities is not required to satisfy minimum financial responsibility requirements. A mortgage broker-dealer will not be deemed to be in possession of investor funds or securities if:

1. All funds received from an investor in connection with the purchase of securities are deposited no later than within forty-eight (48) hours of receipt in an escrow account maintained for the funds of customers of the mortgage broker-dealer at a financial institution. Investor checks or other forms of payment by which such a purchase is made are made payable to this escrow account. Funds held in the escrow account may only be disbursed to a specific loan escrow account for the purpose of purchasing a particular security;

2. The escrow agreement provides that the escrowed funds will not be subject to any claims of creditors of the mortgage broker-dealer. The escrow agreement further provides a date on which each deposit of an investor placed in the general escrow account will be returned to said investor if not transferred to a specific loan escrow account within sixty (60) days after the date the funds were received by the mortgage broker-dealer from the investor; and

3. Promptly following the disbursement of funds from the escrow account to a specific loan escrow account in connection with the purchase of a security, the mortgage broker-dealer records or causes to be recorded the applicable instruments in the appropriate place.

B. A mortgage broker-dealer who maintains possession or control of investor funds or securities must meet at least one of the following requirements:

1. Maintain minimum net liquid assets of at least twenty-five thousand dollars ($25,000) calculated by totaling all liquid assets then subtracting from that all current liabilities;

2. Maintain minimum net worth of at least one million dollars ($1,000,000) as determined by generally accepted accounting principles; or

3. File a surety bond in the face amount of at least fifty thousand dollars ($50,000) in a form satisfactory to the Securities Commissioner.

C. A mortgage broker-dealer must file an affidavit in connection with the payment of the annual license fee verifying to the Securities Commissioner that at least one of the requirements of paragraph B. above are satisfied. A mortgage broker-dealer failing to meet at least one of these requirements must notify the Securities Commissioner in writing as to such failure within no more than seventy-two (72) hours of the occurrence of such failure, and must immediately cease all sales of securities.

D. Mortgage broker-dealers are exempt from the books and records requirements set out in Rule 51-4.5. However, mortgage broker-dealers must maintain and keep current the following books and records:

1. All checkbooks, bank statements, deposit slips and canceled checks;

2. General and auxiliary ledgers, or other comparable records, reflecting the assets, liabilities, capital, income and expense accounts;

3. Documentation to support the source of and purpose for each receipt of funds in order that the receipts may be reconciled to bank deposits and to the books of the mortgage broker-dealer;

4. Documentation to support all disbursements of funds;

5. Separate loan files for each loan which has been funded or for which the mortgage broker-dealer is soliciting funds, which file shall, at a minimum, contain:

    a. the loan application of the borrower and all supporting documents such as the credit report on the borrower;

    b. a copy of each appraisal relied upon

    c. copies of all documents of title representing current interest in the real property securing the loan;

    d. copies of title insurance policies and any other insurance policies on the real property securing the loan; and

    e. all contracts, letters, notes and memoranda for each customer;

6. Separate investor files for each loan which has been funded or for which the mortgage broker-dealer is soliciting funds, which file shall, at a minimum, contain:

    a. copies of acknowledgment of receipt by each investor of the disclosure information required by Rule 51-4.7.G.1 below;

    b. any subscription agreement; and

    c. all correspondence with the investor relating to the loan;

7. Separate files for all written complaints by investors and action taken by the mortgage broker-dealer, if any, or a separate record of each such complaint and a clear reference to the file containing the correspondence connected with it;

8. Full, correct and complete copies of any and all Forms U-4 and U-5 for their mortgage sales representatives; and

9. For mortgage broker-dealers subject to the requirements of paragraph B. above, such records as are necessary to establish compliance with said paragraph, and:

    a. Separate records of account for each investor;

    b. Copies of all service agreements; and

    c. Ledgers or accounts (or other records) itemizing separately each cash account of every investor, including but not limited to:

        i. funds in the escrow and trust account of the mortgage broker-dealer:

        ii. proceeds of sales;

        iii. refinancing or foreclosure of or similar transaction regarding the property securing all loans; and

iv. all monies collected from borrowers on behalf of investors.

E. Preservation of Records

1. All mortgage broker-dealers shall preserve for a period of not less than three (3) years [the first two (2) years, in an easily accessible place] such books and records as are required by paragraph D. above. All mortgage broker-dealers shall preserve employment or similar information for a period of not less than three (3) years after a mortgage sales representative has terminated employment or any other association with the mortgage broker-dealer. All books and records as are required by paragraph D. 9. above shall be preserved for the life of the loan and for two (2) years thereafter.

2. If a mortgage broker-dealer subject to the requirements of paragraph D. above withdraws from licensing or otherwise ceases to engage in business as a mortgage broker-dealer, such mortgage broker-dealer shall nonetheless preserve the records required by said paragraph for the period of time specified.

51-4.6.1 Mortgage Broker-Dealer Cybersecurity

A. A mortgage broker-dealer must establish and maintain written procedures reasonably designed to ensure cybersecurity. In determining whether the cybersecurity procedures are reasonably designed, the ~~e~~Commissioner may consider:

1. The firm's size;

2. The firm’s relationships with third parties;

3. The firm’s policies, procedures, and training of employees with regard to cybersecurity practices;

4. Authentication practice

5. The firm’s use of electronic communications;

6. The automatic locking of devices that have access to Confidential Personal Information;

and

7. The firm’s process for reporting of lost or stolen devices;

B. A mortgage broker-dealer must include cybersecurity as part of its risk assessment.

C. To the extent reasonably possible, the cybersecurity procedures must provide for:

1. An annual assessment by the firm or an agent of the firm of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Confidential Personal information;

2. The use of secure email for email containing Confidential Personal Information, including use of encryption and digital signatures;

3. Authentication practices for employee access to electronic communications, databases and media;

4. Procedures for authenticating client instructions received via electronic communication; and

5. Disclosure to clients of the risks of using electronic communications.

51-4.7 Unfair and Dishonest Dealings

The following practices shall be deemed to be "unfair and dishonest dealings" for purposes of section 11-51-410(1)(g), C.R.S.:

A. Executing a transaction for a customer without legal authority or actual authorization of the customer to do so;

B. Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer or sales representative;

C. Making a recommendation to a retail customer, that places the financial or other interests of the dealer or the salesperson ahead of the interest(s) of the retail customer, recommending the sale or purchase of any security without a reasonable basis to believe that the recommendation is in the best interests of the retail customer based on the customer's investment profile and the potential risks, rewards, and costs associated with the recommendation, or otherwise fail to comply with the obligations set forth in Regulation Best Interest, as set forth in rule 17 C.F.R. 240.15l;

~~C.~~D. Acting in violation of the following SEC Rules

[for purposes of this Rule, the terms "broker" and "dealer" as used in the SEC Rules shall have the same meaning as "broker-dealer" as defined in Section 11-51-201(2), C.R.S., and the term "penny stock" shall have the meaning as set forth in SEC Rule 3a51-1, found at 17 CFR 240.3a51-1]:

1.

a. SEC Rule 15c2-6, found at 17 CFR 240.15c2-6;

b. SEC Rule 15c2-11, found at 17 CFR 240.15c2-11;

2. Unless the subject transactions are exempt under SEC Rule 15g-1, found at 17 CFR 240.15g-1, or otherwise:

a. SEC Rule 15g-2, found at 17 CFR 240.15g-2;

b. SEC Rule 15g-3, found at 17 CFR 240.15g-3;

c. SEC Rule 15g-4, found at 17 CFR 240.15g-4;

d. SEC Rule 15g-5, found at 17 CFR 240.15g-5; or

e. SEC Rule 15g-6, found at 17 CFR 240.15g-6;

~~D.~~E. Failing or refusing, after a solicited purchase of securities by a customer in connection with a principal transaction, to execute promptly sell orders in said securities placed by said customer;

~~E.~~F. In connection with a principal transaction, imposing as a condition of the purchase or sale of one security, the purchase or sale of another security;

~~F.~~G. Failure by a sales representative, in connection with a customer's purchase or sale of a security which is not recorded on the books and records of the broker-dealer by which the sales representative is employed or otherwise engaged, to obtain the broker-dealer's prior written approval of the sales representative's participation in the purchase or sale of the security.

~~G.~~H. Failing to comply with any of the following applicable fair practice or ethical standards contained in the following sections of the FINRA Rules:

1. Section 2000, Duties and Conflicts;

2. Section 3000, Supervision and Responsibilities Relating to Associated Persons;

3. Section 4000, Financial and Operational Rules; and

4. Section 5000, Securities Offering and Trading Standards and Practices.

~~H.~~I. In connection with the offer or sale of securities by mortgage broker-dealers and mortgage sales representatives:

1. Failing to provide to each investor prior to the time of the sale a written disclosure document which shall contain at least the following:

   a. A description of the priority of the lien created by the security and the total face amount of any senior lien(s). (A title insurance policy running to the benefit of the purchaser may be provided in lieu of the description of the priority liens);

   b. A statement as to whether any future advances may have a priority senior to that of the lien created by the security;

   c. A copy of the most recent property tax statement covering the real property underlying the security;

   d. The value of the real property underlying the security provided by either the tax assessed value if it is one hundred percent (100%) of the true cash value and is on the same property underlying the security, or an appraisal by an independent appraiser [subsequent to July 1, 1991, this appraisal must be performed by a licensed real estate appraiser under section 12-61-701, *et seq.*, C.R.S.];

   e. The debtor's payment record on the instrument being sold for the two (2) years immediately preceding the sale or if not available, the payment record to date or a statement that payment records are not available, and a current credit report on the debtor prepared by a credit reporting agency or a current financial statement of the debtor;

   f. The terms of any senior lien or a copy of the instrument creating the lien and any assignments;

   g. A statement of any commissions, collection fees, and other costs chargeable to the purchaser of the security;

   h. A prominent statement of any balloon payments;

   i. In the case of a sale of a note, bond or evidence of indebtedness secured by a mortgage or deed of trust on real estate which is junior to one or more senior liens, a statement of the risk of loss on foreclosure of such senior lien(s); and

   j. A statement as to whether or not the purchaser of the security will be insured against casualty loss;

2. Failing to deliver to the purchaser or licensed escrow agent or title company the original written evidence of the obligation properly endorsed or a lost instrument bond in twice the amount of the face value of the instrument, together with the original or a certified copy of the instrument creating the lien;

3. Failing in a timely manner to record or cause to be recorded the instrument creating the lien or assignment of lien involved in the county or counties where the property is located;

4. Causing an investor to sign a reconveyance of title, quit claim deed, or any like instrument before such instrument is required in connection with a transaction such as a payoff or a foreclosure;

5. Failing to deliver proceeds due to an investor within a reasonable time after receipt by the mortgage broker-dealer; or

6. In the case of a mortgage broker-dealer who undertakes to provide to an investor management and collection services in connection with the note, bond or evidence of indebtedness involved, failing to provide in writing to the investor that:

   a. Payments received will be deposited in a specific loan escrow account immediately upon receipt by the mortgage broker-dealer;

   b. Investor funds will not be commingled with those of the mortgage broker-dealer or used in any manner not specifically authorized in advance by the investor;

   c. If the mortgage broker-dealer uses funds of the mortgage broker-dealer to make a payment due from the borrower to the investor, the mortgage broker-dealer may recover the amount of such advance from the specific loan escrow account when the past due payment is received by the mortgage broker-dealer from the borrower; and

   d. That the mortgage broker-dealer will file a request for notice of default upon any prior encumbrance on the real property securing the obligation that is the subject of the servicing agreement and will promptly notify the investor of any default on such prior encumbrance, or on the obligation.

~~I~~J.

1. The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, and investment business within the meaning of the Colorado Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

   a. use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

   b. use of a nonexistent or self-conferred certification or professional designation;

c. use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

d. use of a certification or professional designation that was obtained from a designating or certifying organization that:

i. is primarily engaged in the business of instruction in sales and/or marketing;

ii. does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

iii. does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

iv. does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

2.

a. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:

1. The American National Standards Institute; or

2. The National Commission for Certifying Agencies.

b. Certifications or professional designations offered by an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" may qualify when the certification or professional designation program also specifically meets the paragraph 1(d) requirements listed above.

3. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

a. use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

b. the manner in which those words are combined.

4. For purposes of this Rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

a. indicates seniority or standing within the organization; or

b. specifies an individual's area of specialization within the organization

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

5. Nothing in this Rule shall limit the Securities Commissioner's authority to enforce existing provisions of law.

~~J~~K. Failing to comply with a child support order as described in section 26-13-126, C.R.S. This rule incorporates the requirements of section 26-13-126, C.R.S. An individual may inspect a copy of section 24-13-126, C.R.S. by making such request to the Colorado Department of Human Services at 1575 Sherman Street, 8th Floor, Denver, Colorado 80203 or the Colorado Division of Securities at 1560 Broadway, Suite 900, in Denver, Colorado 80203.

51-4.8 Broker-Dealer Physical Security and Cybersecurity

A. A broker-dealer must establish and maintain written procedures reasonably designed to ensure physical security of records and cybersecurity. In determining whether the cybersecurity procedures are reasonably designed, the ~~c~~Commissioner may consider:

1. The firm's size;

2. The firm's relationships with third parties;

3. The firm's policies, procedures, and training of employees with regard to physical security of records and cybersecurity practices;

4. Authentication practices;

5. The firm's use of electronic communications;

6. The automatic locking of devices that have access to Confidential Personal Information; and

7. The firm's process for reporting of lost or stolen devices;

B. A broker-dealer must include physical security of records and cybersecurity as part of its risk assessment.

C. To the extent reasonably possible, the cybersecurity procedures must provide for:

1. An annual assessment by the firm or an agent of the firm of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Confidential Personal information;

2. The use of secure email for email containing Confidential Personal Information, including use of encryption and digital signatures;

3. Authentication practices for employee access to electronic communications, databases and media;

4. Procedures for authenticating client instructions received via electronic communication; and

5. Disclosure to clients of the risks of using electronic communications.

CHAPTER 4 (IA) NOTICE FILING FROM FEDERAL COVERED ADVISERS. LICENSING OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

51-4.1(IA) General Provisions

A. Pursuant to section 11-51-403(4), C.R.S., the Securities Commissioner designates the IARD to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the Securities Commissioner.

B. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Securities Commissioner on or after July 31, 2001, shall be filed electronically with and transmitted to IARD. The following conditions relate to such electronic filings:

1. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the ~~applicant~~ applicant themselves~~him or herself, as may be~~, shall affix their ~~his or her~~ electronic signature to the filing by typing their ~~his or her~~ name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

2. Solely for the purposes of a filing made through IARD, a document is considered filed with the Securities Commissioner when all fees are received and the filing is accepted by IARD on behalf of the Securities Commissioner.

C. Notwithstanding subsection B. of this Rule, the electronic filing of any particular document and the collection of related processing fees, if any, shall not be required until such time as IARD provides for receipt of such filings and fees and 30 days notice is provided by the Securities Commissioner. The notice provided by the Securities Commissioner may set the effective date for any such electronic filing. Any documents or fees required to be filed with the Securities Commissioner that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Securities Commissioner.

D. Investment advisers or investment adviser representatives licensed or required to be licensed in Colorado who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically, upon compliance with the following conditions:

1. File Form ADV-H in paper format with the Securities Commissioner no later than one business day after the filing subject to the Form ADV-H was due; and

2. Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven (7) business days after the filing was due.

The hardship exemption will be deemed effective upon receipt by the Securities Commissioner of the complete Form ADV-H, and only for the period provided in this paragraph F. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Securities Commissioner.

51-4.2(IA) Notice Filing from a Federal Covered Adviser

A. The notice filing for a federal covered adviser pursuant to section 11-51-403(3), C.R.S., shall be filed with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration). A notice filing of a federal covered adviser shall be deemed filed when the fee required by section 11-51-403(4), C.R.S., and the Form ADV are filed with and accepted by IARD on behalf of the Securities Commissioner.

B. Until IARD provides for the filing of Part 2 of Form ADV, the Securities Commissioner will deem filed Part 2 of Form ADV if a federal covered adviser provides, within 5 days of a request from the Securities Commissioner, Part 2 of Form ADV. Because the Securities Commissioner deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Securities Commissioner unless requested.

C. The annual renewal of the notice filing for a federal covered adviser pursuant to section 11-51-403, C.R.S., shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the fee required by section 11-51-403(4), C.R.S., is submitted to and accepted by IARD on behalf of the Securities Commissioner.

D. A federal covered adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered adviser's Form ADV.

E. A federal covered adviser must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

51-4.3(IA) Application for an Investment Adviser License

A. A person applying for an initial license as an investment adviser in Colorado shall make application for such license by completing Form ADV (Uniform Application for Investment Adviser Registration) in accordance with the form instructions and by filing the form with IARD.

B. Any applicant for an investment adviser license must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

C. An application and any amendments to such application shall be deemed filed with the Securities Commissioner on the date any required fee and all required submissions have been received by the Securities Commissioner.

D. Unless a proceeding under section 11-51-410, C.R.S., is instituted, the license of an investment adviser becomes effective upon the last to occur of the following:

1. The passage of thirty days after the filing of the application or, in the event any amendment is filed before the license becomes effective, the passage of thirty days after the filing of the latest amendment, if the application, including all amendments, if any, was complete at the commencement of the thirty-day period;

2. The requirements of section 11-51-407, C.R.S., are satisfied;

3. The fee required under section 11-51-403, C.R.S., have been paid; and

4. Any other information the Securities Commissioner may reasonably require.

E. The annual license fee required by section 11-51-404, C.R.S., for an investment adviser shall be filed with IARD.

F. Updates and amendments to an investment adviser's Form ADV shall be filed with IARD in accordance with the instructions in Form ADV. An amendment will be considered promptly filed if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.

G. Within ninety (90) days after the end of the investment adviser's fiscal year, an investment adviser shall file with IARD an Annual Updating Amendment of Form ADV, which includes updating all information within the Form ADV Part 1A, 1B, 2A (Firm Brochure), and 2B (Brochure Supplement).

H. The Securities Commissioner may authorize an earlier effective date of licensing.

I. The license of an investment adviser is effective until terminated by revocation or withdrawal.

J. Acts or practices which require licensing as an investment adviser and compliance with statutes and Rules pertaining thereto

1. Lawyers, accountants, engineers or teachers

a. A lawyer, accountant, engineer or teacher (professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not "solely incidental" to the professional's regular professional practice with respect to clients.

b. For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances would NOT be considered to be "solely incidental":

i The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

ii. The professional advertises or otherwise holds themself ~~himself~~ out to the public as a provider of investment advice; or

iii. The professional holds funds for clients pursuant to discretionary authority to invest such funds.

c. The following are examples to assist in understanding the meaning of "solely incidental":

i. If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds ~~him~~themself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

ii. If the professional advertises or otherwise holds ~~him~~themself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

iii. If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

2. Broker-dealers and broker-dealer agents

   a. A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker-dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

   b. For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

      i. Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

      ii. Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

      iii. Receiving compensation from an investment adviser to whom the broker-dealer or agent refers clients.

3. Insurance agents

   a. An insurance agent who, for a fee, provides investment advice to a client must be licensed as an investment adviser or investment adviser representative.

   b. An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

   c. An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment adviser or investment adviser representative.

4. Others

   a. One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (J) if:

      i. Advertising, or otherwise holding oneself out as a provider of investment advice;

      ii. Publishing a newspaper, news column, newsletter, news magazine, or business or financial publication, which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

      iii. Receiving a fee from an investment adviser for client referrals.

51-4.4(IA) Application for an Investment Adviser Representative License

A. A person applying for a license as an investment adviser representative in Colorado pursuant to section 11-51-403, C.R.S., shall make application for such license and any amendments to such application by completing Form U-4 (Uniform Application for Securities. Industry Registration or Transfer) in accordance with the form instructions and by filing the Form U-4 with IARD. The application for such initial licensing shall also include the following:

1. The fee required by section 11-51-403, C.R.S.;

~~2.]Verification of the applicant's lawful presence in the United States by providing to the affiliated Investment Adviser any of the following documents:~~

~~a. Federal Form I-9 Employment Eligibility Verification Form;~~

~~b. An executed affidavit stating that he or she is a United States citizen or legal permanent resident in a form substantially similar to Form AE;~~

~~3.~~2. Documentation verifying the applicant's identity by providing to the affiliated Investment Adviser any of the following documents:

a. Federal Form I-9 Employment Eligibility Verification Form;

b. A state identification (ID) card, expired less than one year,

c. A state issued driver license, expired less than one year,

d. A current US passport or passport card that is not expired,

e. A current foreign passport that is not expired,

f. A US military card (front and back),

g. A Permanent Resident Card,

h. A Certificate of Citizenship, ~~or~~

i. A Certificate of Naturalization, or

j. Another document verifying the applicant's identify as determined by the Securities Commissioner; and

k. A certification by the applicant that the applicant has provided true and correct information verifying their identity.

~~a. Any Colorado Driver License, Colorado Driver permit, or Colorado Identification Card, expired less than one year (Temporary paper license with invalid Colorado Driver License, Colorado Driver Permit, or Colorado Identification Card, expired less than one year is considered acceptable);~~

~~b. Out-of-state issued photo Driver's License or photo identification card, photo driver's permit expired less than one year;~~

~~c. Valid foreign passport with I-94 or validly processed for 1551 stamps;~~

~~d. Valid I-94 issued by Canadian government with L1 or R1 status and a valid Canadian driver's license or valid Canadian identification card;~~

~~e. Valid 1551 Resident Alien/Permanent Resident card. No border crosser or USA B1/B2 Visa/BCC cards;~~

~~f. Valid 1688 Temporary Resident Card, 1688B and 1766 Employment Authorization Card;~~

~~g. Valid U.S. Military Identification (active duty, dependent, retired, reserve and National Guard);~~

~~h. Tribal Identification Card with intact photo (U.S. or Canadian);~~

~~i. Certificate of Naturalization with intact photo;~~

~~j. Certificate of U.S. Citizenship with intact photo.~~

~~4.~~3. The Investment Adviser shall record, maintain, and preserve in an easily accessible place the documentation, or copies thereof, produced by the applicant or affiliated investment adviser representative in compliance with the subparagraphs (2) and (3) hereof.

~~5.~~4. Any other information the Securities Commissioner may reasonably require.

B. Any applicant for an investment adviser license must also file a Consent to Service of Process form (see Rule 51-7.1) with the Securities Commissioner.

C. An application and any amendments to such application shall be deemed filed with the Securities Commissioner on the date any required fee and all required submissions have been received by the Securities Commissioner.

D. An investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. In this regard, an investment adviser representative and the investment adviser must file promptly with IARD any amendments to the representative's Form U-4 to reflect such changes. Such amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.

E. Except as otherwise provided in sections F and G below, an applicant for a license under section 11-51-403, C.R.S., as an investment adviser representative shall obtain a passing score on one of the following examinations:

1. The Uniform Investment Advisor Law Examination (Series 65 examination) within the two (2) year period immediately preceding the date of the application for licensing; or

2. The Uniform Combined Law Examination (Series 66 examination) within the two (2) year period immediately preceding the date of the application for licensing and

   a. The General Securities Representative Examination (Series 7 examination) within a two (2) year period immediately preceding the date of the application for licensing (Series 7 examination prior to October 1, 2018), or

   b. An active agent registration or license (Series 7 examination qualified prior to October 1, 2018) within a two (2) year period immediately preceding the date of the application for licensing, or

   c. As of October 1, 2018, The Securities Industry Essentials Examination (SIE examination) within four (4) or more years immediately preceding the date of the application for licensing and the revised Series 7 examination within a two (2) year period immediately preceding the date of the application for licensing, or

   d. After October 1, 2018, an active agent registration or license (SIE examination four (4) or more years immediately preceding the date of the application for

licensing and the Series 7 examination within a two (2) year period immediately preceding the date of the application for licensing).

F. At the discretion of the Cc~~c~~ommissioner, an investment adviser representative who has been licensed or registered as an investment adviser representative, or its equivalent, under the securities act of any state or jurisdiction and whose most recent license or registration in such capacity has been terminated for not more than two years immediately before the date of the application for licensing shall not be required to satisfy the examination requirement in section (E) above.

G. The examination requirements described in section (E) above may be satisfied upon proof of alternative qualifications or credentials in good standing including:

1. Designation of Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

2. Designation of Chartered Investment Counselor (CIC) granted by the Investment Adviser Association;

3. Certification as a Chartered Financial Consultant (ChFC) granted by The American College;

4. Designation of Certified Financial Planner (CFP) by the Certified Financial Planner Board of Standards;

5. Designation of Personal Financial Specialist (PFS) granted by the American Institute of Certified Public Accountants.

H. The annual license fee required by section 11-51-404, C.R.S. for an investment adviser representative shall be filed with IARD.

~~I. Investment Adviser Representative Business Email.~~

~~1. Each person licensed as an investment adviser representative in this state shall file such person's current business email address annually with the Securities Commissioner. The business email address shall be filed electronically through a link provided by the Division on its website.~~

~~2. Each person's employing investment adviser may file the person's required email address with the Securities Commissioner on behalf of the person using a form designated by the Securities Commissioner.~~

~~J.~~I. Regardless of subsection (A) of this provision, an investment adviser representative applicant, who also has an unpaid FINRA arbitration award against them, pursuant to section 11-51-403, C.R.S. must submit a written explanation stating the reason(s) for not paying the award. In addition, the applicant must provide the following:

1. Where the complaint was filed, who filed the complaint, and the facts and circumstances surrounding the complaint;

2. Type of controversy and type of security involved;

3. The final order from arbitration;

4. Any other information reasonably related to the proceeding.

51-4.4.1(IA) Investment Adviser Representative Continuing Education

A. IAR Continuing Education. Every investment adviser representative registered under 11-51-

401(1.5), C.R.S. must complete the following IAR continuing education requirements each Reporting Period:

1. IAR Ethics and Professional Responsibility Requirement. An investment adviser representative must complete six (6) Credits of IAR Regulatory and Ethics Content offered by an Authorized Provider, with at least three (3) hours covering the topic of ethics; and

2. IAR Products and Practice Requirement. An investment adviser representative must complete six (6) Credits of IAR Products and Practice Content offered by an Authorized Provider.

B. Agent of FINRA-Registered Broker-Dealer Compliance. An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA's continuing education requirements is considered to be in compliance with this Rule subsection (A)(2) above for each applicable Reporting Period so long as FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

1. The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards.

2. The continuing education content is derived from state and federal investment advisory statutes, rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.

3. The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

C. Credentialing Organization Continuing Education Compliance. Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under Rule 51-4.4(IA)(G) comply with this Rule subsections (A)(1) and (2) above provided all of the following are true:

1. The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant Reporting Period.

2. The credits of continuing education completed during the relevant Reporting Period by the investment adviser representative are mandatory to maintain the credential.

3. The continuing education content provided by the credentialing organization during the relevant Reporting Period is Approved IAR Continuing Education Content.

D. IAR Continuing Education Reporting. Every investment adviser representative is responsible for ensuring that the Authorized Provider reports the investment adviser representative's completion of the applicable IAR continuing education requirements.

E. No Carry-Forward. An investment adviser representative who completes credits of continuing education in excess of the amount required for the Reporting Period may not carry forward excess credits to a subsequent Reporting Period.

F. Failure to Complete or Report. An investment adviser representative who fails to comply with this rule by the end of a Reporting Period will renew as "CE Inactive" at the close of the calendar year in this state until the investment adviser representative completes and reports all required IAR continuing education credits for all Reporting Periods as required by this rule. An investment adviser who is CE Inactive at the close of the next calendar year is not eligible for investment adviser representative licensing or renewal of an investment adviser representative license.

G. Discretionary Waiver by the Commissioner. The Commissioner may, in the Commissioner's discretion, waive any requirements of this rule.

H. Home State. An investment adviser representative registered or required to be registered in this state who is registered as an investment adviser representative in the individual's Home State is considered to be in compliance with this Rule provided that both of the following are true:

1. The investment adviser representative's Home State has continuing education requirements that are at least as stringent as this Rule.

2. The investment adviser representative is in compliance with the Home State's investment adviser representative continuing education requirements.

I. Unlicensed Periods. An investment adviser representative who was previously licensed under the Act and became unlicensed must complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative became unlicensed and when the person became licensed again under the Act unless the investment adviser representative takes and passes the examination as required by Rule 51-4.4(IA) or receives an examination waiver in connection with the subsequent application for licensing.

J. Definitions. As used in this rule, the following terms mean:

1. "Approved IAR Continuing Education Content" means the materials, written, oral, or otherwise that have been approved by NASAA or its designee and which make up the educational program provided to an investment adviser representative under this rule.

2. "Authorized Provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this ~~r~~Rule.

3. "Credit" means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.

4. "Home State" means the state in which the investment adviser representative has its principal office and place of business.

5. "IAR Ethics and Professional Responsibility Content" means Approved IAR Continuing Education Content that addresses an investment adviser representative's ethical and regulatory obligation.

6. "IAR Products and Practice Content" means Approved IAR Continuing Education Content that addresses an investment adviser representative's continuing skills and knowledge regarding financial products, investment features, and practices in the investment advisory industry.

7. "Investment adviser representative" or "IAR" means an individual who meets the definition of "investment adviser representative" under 11-51-201(9.6)(a) and (b), C.R.S.

8. "NASAA" means the North American Securities Administrators Association or a committee designated by its Board of Directors.

9. "Reporting Period" means one twelve-month (12) period as determined by NASAA. An investment adviser representative's initial Reporting Period with this state commences the first day of the first full Reporting Period after the individual is licensed or required to be licensed with this state.

51-4.5(IA) Withdrawal of an Investment Adviser or Investment Adviser Representative License

A. An application for withdrawal from licensing as an investment adviser in Colorado and any amendment to such application shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) and filed upon Form ADV-W with IARD.

B. An application for withdrawal from licensing as an investment adviser representative for an investment adviser or federal covered adviser in Colorado and any amendment to such application shall be completed by following the instructions on Form U-5 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5 with IARD.

C. The Securities Commissioner may deem an application for licensing as an investment adviser or investment adviser representative to be abandoned when an applicant fails to adequately respond to any request for additional information required under § 11-51-403, C.R.S. or the regulations thereunder. The Commissioner shall provide written notice of warning 30 calendar days before such the application is deemed abandoned. The applicant may, with the consent of the Commissioner, withdraw the application.

51-4.6(IA) Books and Records Requirements for Licensed Investment Advisers

A. Except as otherwise provided in section I for out-of-state investment advisers, every investment adviser licensed or required to be licensed under the Act shall make and keep true, accurate and current the following books, ledgers and records:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;

2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;

3. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction or non-discretionary client approval received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, ~~, and~~ of any modification or cancellation of any such order or instruction, and of any trade order entered in error. In any such memorandum, the investment adviser shall:

   a. show the terms and conditions of the order, instruction, modification or cancellation;

   b. identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; ~~and~~

   c. show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate~~;~~

   d. o~~O~~rders entered pursuant to the exercise of discretionary power shall be so designated and orders entered pursuant to the exercise of non-discretionary authority shall document the date and method by which the investment adviser received client approval~~;~~ and

   ~~d.~~e. show the actions taken to correct orders entered in error.

4. All check books, bank statements, canceled checks and cash reconciliations of the investment adviser;

5. All bills, ~~or~~ statements, and invoices (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser;

6. All trial balances, financial statements (prepared in accordance with generally accepted accounting principles i.e. accrual basis) and internal audit working papers relating to the investment adviser's business as an investment adviser. [For purposes of this subsection, the term "financial statements" means a balance sheet, an income statement, and a cash flow statement prepared in accordance with generally accepted accounting principles~~., an income statement and a cash flow statement~~];

7. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser~~:~~

~~a. any recommendation made or proposed to be made and any advice given or proposed to be given;~~

~~b. any receipt, disbursement or delivery of funds or securities; or~~

~~c. the placing or execution of any order to purchase or sell any security, provided, however, that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement, a memorandum describing the list and its source;~~

8. A list or other record of all clients and accounts, including a list of services provided to each client/account including the value of each account and identifying those accounts in which the investment adviser is vested with any discretionary authority;

9. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser;

10. A copy in writing of each agreement or investment advisory contract entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser;

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and, if in such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media), the investment adviser recommends the purchase or sale of a specific security but does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation;

12. A record of transactions in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership (except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control, and transactions in securities that are direct obligations of the United States),

~~d.~~a. such record shall state:

i. the title and amount of the security involved;

ii. the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition);

iii. the price at which it was effected; and

iv. the name of the broker-dealer or bank with or through whom the transaction was effected.

~~e.~~b. The record may also contain a statement in which the investment adviser declares that the reporting or recording of any transaction shall not be construed as an admission the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

~~f.~~c. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

~~g.~~d. For purposes of this Rule subsection (A)(12):

i. the term “advisory representative” means:

A. any partner, officer or director of the investment adviser;

B. any employee who participates in any way in the determination of which recommendations shall be made;

C. any employee who, in connection with his/her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and

D. any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

I. any person in a control relationship to the investment adviser;

II. any affiliated person of a controlling person; and

III. any affiliated person of an affiliated person;

ii. the term “control” means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company is presumed to control such company.

~~h.~~e. An investment adviser shall not be deemed to have violated the provisions of this Rule subsection (A)(12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. Notwithstanding the provisions of Rule subsection (A)(12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership (except transactions effected in any account over which neither the investment adviser nor any

advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities that are direct obligations of the United States),

a. such record shall state:

i. the title and amount of the security involved;

ii. the date and nature of the transaction (*i.e.*, purchase, sale, or other acquisition or disposition);

iii. the price at which it was effected; and

iv. the name of the broker-dealer or bank with or through whom the transaction was effected.

b. The record may also contain a statement in which the investment adviser declares that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

c. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

d. For purposes of this Rule subsection (A)(13):

i. An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of:

A. its total sales and revenues; and

B. its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

ii. the term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

A. any person in a control relationship to the investment adviser;

B. any affiliated person of a controlling person; and

C. any affiliated person of an affiliated person; and

iii. the term “control” means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

e. An investment adviser shall not be deemed to have violated the provisions of this Rule subsection (A)(13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of section 11-51-409.5, C.R.S. and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. All accounts, books, internal working papers, and any other records or documents necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts satisfies the requirements of this Rule subsection (A)(11~~16~~).

16. A file containing a written summary of all oral client complaints and a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

17. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

18. Written procedures to supervise the activities of employees and investment adviser representatives.

An investment adviser must establish and maintain written supervisory procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

19. A file containing a copy of each document (other than any notices of general dissemination) filed with or received from any state or federal agency or self-regulatory organization and that pertains to the licensee or its advisory representatives as that term is defined in Rule subsection (A)(12)(d) above, which file should contain, but is not limited to, all applications, amendments, renewal filings and correspondence.

20. Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser and on behalf of the investment adviser representative for whom it is filing, and must be made available for inspection upon request by the Securities Commissioner.

21. A file memorializing the due diligence conducted for alternative and non-exchange traded investment products recommended to or purchased on behalf of clients.

B. If an investment adviser has custody or possession of securities or funds of any client, the following records are required to be made and kept in addition to those required in section (A) above:

1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts;

2. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

3. Copies of confirmations of all transactions effected by or for the account of any client; and

4. A record for each security in which any client has a position, in which record shall be shown the name of each client having any interest in each security, the amount or interest of each client, and the location of each security;

C. Every investment adviser licensed or required to be licensed as such under the Act who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

1. Records in which are shown separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale; and

2. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client;

D. Any required books or records may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services are indicated by numerical or alphabetical code or some similar designation;

E. Every investment adviser licensed or required to be licensed as such under the Act shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of Rule sections (A) and (B) and subsection (C)(1) above, inclusive, [except for books and records required to be made under the provisions of Rule subsections (A)(11) and (16) above], shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser;

2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise;

3. Books and records required to be made under the provisions of Rule subsections (A)(11) and (16) above shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media;

4. Books and records required to be made under the provisions of subsections (A)(17)-(A)(20), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was licensed or required to be licensed in the state, if less;

5. Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

   a. records required to be preserved under Rule subsections (A)(3), (7)–(10), (14)–(15), (17)–(19), and sections (B) and (C) above, inclusive; and

   b. records or copies required under the provision of Rule subsections (A)(11) and (16) above in which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number.

   c. The records will be maintained for the period described in this Rule section (E)

F. An investment adviser licensed or required to be licensed as such under the Act, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the Securities Commissioner in writing of the exact address where the books and records will be maintained during the period.

1. The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in Rule subsection (F)(2) below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

   a. arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

   b. be ready at all times to provide promptly any facsimile enlargement of film or computer printout or copy of the computer storage medium that the examiners or other representatives of the Securities Commissioner request;

   c. store separately from the original one other copy of the film or computer storage medium for the time required;

   d. with respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

   e. with respect to records stored on photographic film, at all times have available for

the Securities Commissioner's examination of its records pursuant to section 11-51-409 of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to Rule subsection (F)(1) above, an investment adviser may maintain and preserve on computer tape or disk or other computer storage medium records that, in the ordinary course of the investment adviser's business, are created by the investment adviser on electronic media or are received by the investment adviser solely on electronic media or by electronic data transmission.

G. For purposes of Rule 51-4.6(IA):

1. the term “investment supervisory services” means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and

2. the term “discretionary power” does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

H. Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the 34 Act that is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Rule 51-4.6(IA) shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

I. Every investment adviser licensed or required to be licensed in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this Rule, provided the investment adviser is licensed or registered in such state and is in compliance with such state's recordkeeping requirements.

51-4.7(IA) Mandatory Disclosure

A. An investment adviser and its investment adviser representative shall furnish each advisory client and prospective advisory client a copy of Part 2 of the investment adviser's Form ADV.

B. INITIAL DELIVERY. An investment adviser and its investment adviser representative, except as provided in section (F), shall deliver the disclosure statement required by this section to an advisory client or prospective advisory client:

1. not less than 48 hours prior to entering into any written investment advisory contract with such client or prospective client, or

2. at the time of entering into any such contract, if the advisory client has a right to terminate the contract without fees or penalty within five business days after entering into the contract.~~2.~~

C. ANNUAL DELIVERY: An investment adviser and its investment adviser representative, except as provided in section (F) must:

1. Deliver within one hundred twenty days of the end of your fiscal year a free, updated Part 2 of the investment adviser’s Form ADV disclosure statement required by this section which include or are accompanied by a summary of the material changes; or

2. Deliver within one hundred twenty days ~~of~~at the end of your fiscal year a free ~~a~~ summary of material changes that includes an offer to provide a copy of the updated Part 2 of the investment adviser’s Form ADV disclosure statement and information on how the client may obtain a copy of the disclosure statement.

D. An investment adviser and its investment adviser representative shall furnish each advisory client

or prospective client participating in a wrap fee program a copy of Part 2 of the investment advisors Form ADV in addition to a copy of Part 2A Appendix 1 of Form ADV (the wrap fee brochure).

E. An investment adviser and its investment adviser representative shall furnish each advisory client or prospective client participating in a pooled investment vehicle, including hedge funds, a copy of Part 2 of the investment adviser's Form ADV.

F. Delivery of the statement required by section (A) need not be made to clients who receive only impersonal advi~~c~~se and who pay less than $500 in fees per year.

G. Nothing in this rule shall relieve any investment adviser or investment adviser representative from any obligation pursuant to any provision of the Act or the Rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this Rule.

51-4.8(IA) Dishonest and Unethical Conduct

Introduction

A person who is an investment adviser, an investment adviser representative or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser or an investment adviser representative and its clients and the circumstances of each case, an investment adviser, an investment adviser representative or a federal covered adviser shall not engage in unethical business practices, including the following:

A. Recommending to a client, to whom investment supervisory, management or consulting services are provided, the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

B. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specific security that shall be executed, or both.

C. Inducing trading in a client's account that is excessive in size or frequency in view of the client's financial resources, investment objectives and the character of the account in light of the fact that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account.

D. Placing an order to purchase or sell a security for the account of a client without authority to do so.

E. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

F. Borrowing money or securities from a client, unless the client is a broker-dealer, an affiliate of the investment adviser, a family member, or a financial institution engaged in the business of loaning funds.

G. Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or a family member.

H. To misrepresent to any advisory client, or prospective advisory client, the qualifications of the

investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading.

I. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

J. Charging a client an advisory fee that is unreasonable in light of the type of services to be provided, the experience of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.

K. Failing to disclose to clients, in writing, before any advice is rendered, any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice, including:

1. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

2. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees,

L. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice to be rendered.

M. Publishing, circulating, or distributing any advertisement which does not comply with Rule 206 (4)-1 under the 40 Act.

N. Disclosing the identity, affairs, or investments of any client, unless required by law to do so, or unless consented to by the client.

O. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of11-51-407(5)(a)-(f), C.R.S. or Reg. 206 (4) -2 under the 40 Act (for federally covered advisers).

P. Entering into, extending, or renewing any investment advisory contract, unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract. ~~information required by Part 2of Form ADV. The information required by Part 2 of Form ADV may be disclosed in a document other than the investment advisory contract, so long as it is disclosed at the time the contract is entered into, extended or renewed.~~

Q. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the 40 Act.

R. Entering into, extending, or renewing any investment advisory contract contrary to the provisions of Section 205 of the 40 Act. This provision shall apply to all advisers and investment adviser representatives licensed or required to be licensed under this Act notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the 40 Act.

S. To indicate, in an advisory contract any condition, stipulation, or provision binding any person to

waive compliance with any applicable provision of this Act, any Rule promulgated thereunder or the 40 Act, or any Rule promulgated thereunder, or to engage in or any other practice that would violate Section 215 of the 40 Act.

T. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions of Section 206(4) of the 40 Act notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the 40 Act.

U. Engaging in any conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this act or any Rule thereunder. Such conduct or act includes, but is not limited to, that conduct set forth in this Rule. Engaging in other conduct such as forgery, embezzlement, theft, exploitation, non-disclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices, or aiding or abetting any unethical practice, shall be deemed an unethical business practice and shall be grounds for denial, suspension or revocation of a license. The federal statutory and regulatory provisions referenced herein shall apply to all investment advisers and investment adviser representatives only to the extent permitted by the National Securities Markets Improvement Act of 1996.

V. The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, and investment business within the meaning of the Colorado Securities Act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

1. use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

2. use of a nonexistent or self-conferred certification or professional designation;

3. use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

4. use of a certification or professional designation that was obtained from a designating or certifying organization that:

   a. is primarily engaged in the business of instruction in sales and/or marketing;

   b. does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

   c. does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

   d. does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

5.

   a. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:

      i. The American National Standards Institute; or

ii. The National Commission for Certifying Agencies.

b. Certifications or professional designations offered by an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" may qualify when the certification or professional designation program also specifically meets the paragraph 1(d) requirements listed above.

6. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

a. use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

b. the manner in which those words are combined.

7. For purposes of this Rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

a. indicates seniority or standing within the organization; or

b. specifies an individual's area of specialization within the organization

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

8. Nothing in this Rule shall limit the Securities Commissioner's authority to enforce existing provisions of law.

W. Failing to provide advisory fee billing information to each client in compliance with the requirements of Rule 51-4.10(IA)(B)(2).

X. Accessing a client's account by using the client's own unique identifying information (such as username and password).

Y. Failing to comply with a child support order as described in section 26-13-126, C.R.S. This rule incorporates the requirements of section 26-13-126, C.R.S. An individual may inspect a copy of section 24-13-126, C.R.S. by making such request to the Colorado Department of Human Services at 1575 Sherman Street, 8th Floor, Denver, Colorado 80203 or the Colorado Division of Securities at 1560 Broadway, Suite 900, in Denver, Colorado 80203.

51-4.9(IA) Financial Reporting Requirements for Investment Advisers

Every licensed investment adviser who has custody of client funds or securities other than that provided for in Rule 51-4.10(IA)B.2 and B.3 or requires payment of advisory fees six months or more in advance in excess of $500 for any one client shall file an audited balance sheet with the ~~c~~Commissioner at the end of the adviser's ~~fisical~~fiscal year. The balance sheet filed pursuant to this Rule must be:

A. Audited by an independent certified public accountant;

B. Examined in accordance with generally accepted accounting auditing standards and prepared in conformity with GAAP;

C. Accompanied by an opinion of the accountant as to the report of financial position and by note stating the principles used to prepare it.

51-4.10(IA) Custody and Safekeeping Requirements

A. Definitions. For purposes of this section:

1. "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them or has the ability to appropriate them.

a. Custody includes:

i. Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

ii. Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle) that gives you or your supervised person legal ownership of or access to client funds or securities.

2. "Independent representative" means a certified public accountant or attorney who:

a. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

b. Is engaged by you to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

c. Does not control, is not controlled by, and is not under common control with the investment adviser, investment adviser representative, or any related entity; and

d. Does not have, and has not had within the past two years, a material business relationship with the investment adviser, investment adviser representative, or any related entity.

3. "Qualified custodian" means the following independent institutions or entities that are not affiliated with the adviser by any direct or indirect common control and have not had a material business relationship with the adviser in the previous two years:

a. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

b. A licensed broker-dealer holding the client assets in customer accounts;

c. A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

B. No investment adviser or investment adviser representative, licensed or required to be licensed in this state shall take or maintain custody or possession of any funds or securities in which any client of such person has any beneficial interest unless:

1. The investment adviser or investment adviser representative complies with § 11-51-407 (5)(a)-(f), or

2. If the investment adviser or investment adviser representative has custody as defined in Rule 51-4.10(IA).A.1 due solely by having fees directly deducted from the client accounts and complies and provides the following safeguard requirements:

   a. Written Authorization. Investment advisers directly deducting fees must have written authorization from the client to deduct fees from the account held with the qualified custodian;

   b. Notice of fee deduction. Each time a fee is charged directly to a client or directly deducted from a client account, the investment adviser must concurrently:

      i. Send the qualified custodian an invoice specifying the amount of the fee to be deducted from the client's account; and

      ii. Send the client an invoice specifying and itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management or investment advisory services the fee is based on, the amount of time charged and the services provided for hourly billing, and the time period covered by the fee;

   c. The qualified custodian sends statements to the clients showing all disbursements for the custodian account, including the amount of the advisory fee. Statements should coincide with the investment adviser or investment adviser representative billing period.

   d. The investment adviser notifies the Commissioner in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV, or

3. If the investment adviser or investment adviser representative has custody as defined in Rule 51-4.10(IA).A.1 by having an association or an affiliation with a Pooled Investment Vehicle and complies and provides the following safeguard requirements:

   a. Engage an Independent Representative. Hire an independent representative to review all fees, expenses and capital withdrawals from the pooled accounts;

   b. Review of Fees. Send all invoices or receipts to the independent representative, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent representative can:

      i. Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

      ii. Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

   c. Notice of Safeguards. The investment adviser notifies the Commissioner in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

51-4.11(IA). Licensing Exemption for Investment Advisers to Private Funds.

A. Definitions. For purposes of this regulation, the following definitions shall apply:

1. "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.

2. "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.

3. "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1.

4. "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

5. "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.

B. Exemption for private fund advisers. Subject to the additional requirements of paragraph (c) below, a private fund adviser shall be exempt from the licensing requirements of Section 11-51-401(1.5) if the private fund adviser satisfies each of the following conditions:

1. neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. § 230.506(d)(1);

2. the private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

3. the private fund adviser pays the fees prescribed by the ~~s~~Securities ~~c~~Commissioner.

C. Additional requirements for private fund advisers to certain 3(c)(1) funds. In order to qualify for the exemption described in paragraph (b) of this regulation, a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraphs (b)(1) through (b)(3), comply with the following requirements:

1. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

2. At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

   a. all services, if any, to be provided to individual beneficial owners;

   b. all duties, if any, the investment adviser owes to the beneficial owners; and

   c. any other material information affecting the rights or responsibilities of the beneficial owners.

3. The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

D. Federal covered investment advisers. If a private fund adviser is licensed with the Securities and

Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Section 11-51-401(1.6)

E. Investment adviser representatives. A person is exempt from the licensing requirements of Section 11-51-403 if he or she is employed by or associated with an investment adviser that is exempt from licensing in this state pursuant to this regulation and does not otherwise act as an investment adviser representative.

F. Electronic filing. The report filings described in paragraph (B)(2) above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee prescribed by the ~~s~~Securities ~~c~~Commissioner are filed and accepted by the IARD on the state's behalf.

G. Transition. An investment adviser who becomes ineligible for the exemption provided by this Rule must comply with all applicable laws and Rules requiring licensing or notice filing within ninety (90) days from the date the investment adviser's eligibility for this exemption ceases.

H. Waiver Authority with Respect to Statutory Disqualification. Paragraph (B)(1) shall not apply upon a showing of good cause and without prejudice to any other action of the Colorado Securities Commissioner, if the ~~s~~Securities ~~c~~Commissioner determines that it is not necessary under the circumstances that an exemption be denied.

51-4.12(IA) Investment Adviser Written Policies and Procedures

A. It is unlawful for an investment adviser licensed or required to be licensed pursuant to 11-51-401(1.5), C.R.S. to provide investment advice to clients unless the investment adviser establishes, maintains, and enforces written policies and procedures tailored to the investment adviser's business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser. The written policies and procedures must provide for at least the following:

1. Compliance Policies and Procedures. The investment adviser must establish, maintain, and enforce written compliance policies and procedures reasonably designed to prevent violations by the investment adviser of the Act and the rules that the Commissioner has adopted under the Act;

2. Supervisory Policies and Procedures. The investment adviser must establish, maintain, and enforce written supervisory policies and procedures reasonably designed to prevent violations by the investment adviser's supervised persons of the Act and the rules that the Commissioner has adopted under the Act;

3. Physical Security and Cybersecurity Policies and Procedures. An investment adviser must establish and maintain written procedures reasonably designed to ensure physical security and cybersecurity.

a. In determining whether the cybersecurity procedures are reasonably designed, the ~~c~~Commissioner may consider:

i. The firm's size;

ii. The firm's relationships with third parties;

iii. The firm's policies, procedures, and training of employees with regard to cybersecurity practices;

iv. Authentication practices;

v. The firm's use of electronic communications;

vi. The automatic locking of devices that have access to Confidential Personal Information; and

vii. The firm's process for reporting of lost or stolen devices;

b. An investment adviser must include physical security and cybersecurity as part of its risk assessment.

c. To the extent reasonably possible, the cybersecurity procedures must provide for:

i. An annual assessment by the firm or an agent of the firm of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Confidential Personal Information;

ii. The use of secure email containing Confidential Personal Information, including use of encryption and digital signatures;

iii. Authentication practices for employee access to electronic communications, databases and media;

iv. Procedures for authenticating client instructions received via electronic communication; and

v. Disclosure to clients of the risks of using electronic communications

d. Privacy Policy. The investment adviser must deliver upon the investment adviser's engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by ~~s~~State and F~~f~~ederal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

4. Code of Ethics.

a. The investment adviser must establish, maintain, and enforce a written code of ethics that, at a minimum, includes:

i. A standard (or standards) of business conduct that the investment adviser requires of its supervised persons, which must reflect the investment adviser's fiduciary obligations and those of its supervised persons;

ii. Provisions requiring the investment adviser's supervised persons to comply with applicable State and Federal securities laws;

iii. Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities- transactions and holdings periodically as provided below;

iv. Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, provided the investment

adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics; and

v. Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments, and requiring the investment adviser's supervised persons to provide it with a written acknowledgment of their receipt of the code and any amendments.

b. Holdings reports. The code of ethics must require the investment adviser's access persons to submit to its chief compliance officer or other persons designated in the investment adviser's code of ethics a report of the access person's current securities holdings that meets the following requirements:

i. Content of holdings reports. Each holdings report must contain, at a minimum:

1. The title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership;

2. The name of any broker, dealer, or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

3. The date the access person submits the report.

ii. Timing of holdings reports. The investment adviser's access persons must each submit a holdings report:

1. No later than 10 days after the person becomes an access person, and the information must be current as of a date no more than 45 days prior to the date the person becomes an access person.

2. At least once each 12-month period thereafter on a date selected by the investment adviser, and the information must be current as of a date no more than 45 days prior to the date the report was submitted.

c. Transaction reports. The code of ethics must require access persons to submit to the investment adviser's chief compliance officer or other persons designated in the investment adviser's code of ethics quarterly securities transactions reports that meet the following requirements:

i. Content of transaction reports. Each transaction report must contain, at minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

1. The date of the transaction, the title, and as applicable the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved;

2. The nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition);

3. The price of the security at which the transaction was effected;

4. The name of the broker, dealer, or bank with or through which the transaction was effected; and

5. The date the access person submits the report.

d. Timing of transaction reports. Each access person must submit a transaction report no later than 30 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

e. Exceptions from reporting requirements. The investment adviser's code of ethics need not require an access person to submit:

i. Any report with respect to securities held in accounts over which the access person had no direct or indirect influence or control;

ii. A transaction report with respect to transactions effected pursuant to an automatic investment plan in which regular periodic purchases or withdrawals are made automatically in or from investment accounts in accordance with a predetermined schedule and allocation, including a dividend reinvestment plan;

iii. A transaction report if the report would duplicate information contained in broker trade confirmations or account statements that the investment adviser holds in its records so long as the investment adviser receives the confirmations or statements no later than 30 days after the end of the applicable calendar quarter.

f. Pre-approval of certain investments. The investment adviser's code of ethics must require its access persons to obtain the investment adviser's approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

g. Small advisers. If the investment adviser has only one access person, it is not required to submit reports to itself or to obtain its own approval for investments in any security in an initial public offering or in a limited offering, if the investment adviser maintains records of all of its holdings and transactions that this section would otherwise require the investment adviser to report.

5. Material Non-Public Information Policy and Procedures. The investment adviser must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the investment adviser or any person associated with the investment adviser.

6. Business Continuity and Succession Plan. The investment adviser must establish, maintain, and enforce written policies and procedure relating to a business continuity and succession plan. The plan must provide for at least the following:

a. The protection, backup, and recovery of books and records.

b. Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians),and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

c. Office relocation in the event of temporary or permanent loss of a principal place of business.

d. Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.

e. Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

B. Annual review. The investment adviser must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation.

C. Chief Compliance Officer. The investment adviser must designate a supervised person as the chief compliance officer responsible for administering the investment adviser's policies and procedures.

D. Definitions. As used in this rule, the following terms mean:

1. "Access person" means:

a. Any of the investment adviser's supervised persons:

i. Who has access to non-public information regarding any client's purchase or sale of securities, or non-public information regarding the portfolio holdings of any reportable fund, or

ii. Who is involved in making securities recommendations to clients, or who has access to such recommendations that are non-public.

b. If providing investment advice is the investment adviser's primary business, all of its directors, officers and partners are presumed to be access persons.

2. "Chief compliance officer" means a supervised person with the authority and resources to develop and enforce the investment adviser's policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.

3. "Federal securities laws" means the Securities Act of 1933 (15 U.S.C. 77a-aa), the Securities Exchange Act of 1934 (15 U.S.C. 78a-mm), the Investment Company Act of 1940 (15 U.S.C. 80a), the Investment Advisers Act of 1940 (15 U.S.C. 80b), title V of the Gramm-Leach-Bliley Act (Pub. L. 106-102, 113 Stat. 1338 (1999), the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)), any rules adopted by the U.S. Securities and Exchange Commission under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311-5314; 5316-5332) as it applies to funds and investment advisers, and any rules adopted thereunder by the U.S. Securities and Exchange Commission or the U.S. Department of the Treasury.

4. "Fund" means an investment company registered under the Investment Company Act.

5. "Initial public offering" means an offering of securities registered under the Securities Act of 1933 (15 U.S.C. 77a), the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

6. "Limited offering" means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4(2) or section 4(5) (15 U.S.C. 77d(2) or 77d(5)) or pursuant to §§ 230.504, 230.505, or 230.506 of this chapter.

7. "Material, nonpublic information" is material information that has not been disseminated in a manner making it available to investors generally. Information is material when it is substantially likely that the information would be important to a reasonable investor making an investment decision or is likely to have a significant impact on valuation.

8. "Purchase or sale of a security" includes, among other things, the writing of an option to purchase or sell a security.

9. "Reportable security" means a security as defined in section 202(a)(18) of the Securities Act of 1933(15 U.S.C. 80b-2(a)(18)), except that it does not include:

   a. Direct obligations of the Government of the United States;

   b. Bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements;

   c. Shares issued by money market funds;

   d. Shares issued by open-end funds other than reportable funds; and

   e. Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

10. "State securities laws" means all applicable state securities statutes, rules, and regulations, including, without limitation, the registration, permit or qualification requirements thereunder and the Protection of Vulnerable Adults from Financial Exploitation Act at 11-51-1001, C.R.S.

11. ''Supervised person'' means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other person acting on the behalf of the investment adviser.

~~**51-4.12(IA) Business Continuity and Succession Planning**~~

~~A. Every investment adviser shall establish, implement, and maintain written procedures relating to a Business Continuity and Succession Plan.~~

~~B. The plan shall be based upon the facts and circumstances of the investment adviser's business model including the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.~~

~~C. The plan shall provide for at least the following:~~

~~1. The protection, backup, and recovery of books and records.~~

~~2. Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians),and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.~~

~~3. Office relocation in the event of temporary or permanent loss of a principal place of business.~~

~~4. Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.~~

~~5. Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.~~

51-4.13(IA) Net Worth Requirements

A. Liquid Net Worth Requirements:

1. Positive Liquid Net Worth Requirement for Investment Advisers. An investment adviser must maintain a positive net worth at all times calculated under the requirements of Rule 51-4.6(IA)(A)(6).

2. Minimum Liquid Net Worth for Investment Advisers with Discretionary Authority. An investment adviser with discretionary authority over client funds or securities must maintain a minimum liquid net worth of ten thousand dollars ($10,000) at all times, unless the investment adviser is subject to the greater requirements of subdivision (3) below.

3. Minimum Liquid Net Worth for Investment Advisers with Custody. An investment adviser with custody of client funds or securities must maintain a minimum liquid net worth of thirty-five thousand dollars ($35,000) at all times, except investment advisors with custody solely because the investment adviser has fees directly deducted from client accounts and the investment adviser complies with the safekeeping requirements in 51-4.10(IA) above and the recordkeeping requirements of 51-4.6(IA);

4 Notification. An investment adviser must notify the ~~c~~Commissioner by the close of business on the next business day if the investment adviser's liquid net worth is less than the minimum required. After filing the notice, the investment adviser must file a report with
the ~~c~~Commissioner of its financial condition by the close of business on the business day following notice including:

a. A trial balance of all ledger accounts;

b. A statement of all client funds or securities that are not segregated;

c. A computation of the aggregate amount of client ledger debit balances; and

d. A statement indicating the number of client accounts.

5. Appraisals. The ~~c~~Commissioner may require an investment adviser to submit a current appraisal to establish the worth of any asset.

6. Exception for Out-of-State Advisers. An investment adviser with its principal place of business in a state other than Colorado, properly licensed in that state must maintain the minimum capital required by that state.

B. Surety Bond.

1. Additional Bond Requirement. An investment adviser with discretionary authority or custody who does not meet the minimum liquid net worth requirement of subdivisions (A)(2) and (3) above must also be bonded for the amount of the liquid net worth deficiency rounded up to the nearest five thousand dollars ($5,000) and file a Form U-SB with the ~~c~~Commissioner.

2. Exemptions. An investment adviser is exempt from the requirements of subdivision (1) above if the investment adviser:

a. Does not have discretionary authority; or

b. Has its principal place of business in a state other than Colorado, is properly licensed in that state, and satisfies the bonding requirements of that state.

~~**51-4.14(IA) Investment Adviser Cybersecurity**~~

~~A. An investment adviser must establish and maintain written procedures reasonably designed to ensure cybersecurity. In determining whether the cybersecurity procedures are reasonably designed, the commissioner may consider:~~

~~1. The firm's size;~~

~~2. The firm's relationships with third parties;~~

~~3. The firm's policies, procedures, and training of employees with regard to cybersecurity practices;~~

~~4. Authentication practices;~~

~~5. The firm's use of electronic communications;~~

~~6. The automatic locking of devices that have access to Confidential Personal Information; and~~

~~7. The firm's process for reporting of lost or stolen devices;~~

~~B. An investment adviser must include cybersecurity as part of its risk assessment.~~

~~C. To the extent reasonably possible, the cybersecurity procedures must provide for:~~

~~1. An annual assessment by the firm or an agent of the firm of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Confidential Personal Information;~~

~~2. The use of secure email containing Confidential Personal Information, including use of~~

~~encryption and digital signatures;~~

~~3. Authentication practices for employee access to electronic communications, databases and media;~~

~~4. Procedures for authenticating client instructions received via electronic communication; and~~

~~5. Disclosure to clients of the risks of using electronic communications~~

51-4.1~~45~~(IA) Performance-Based Compensation Exemption for Investment Advisers

Any licensed investment adviser who wishes to charge a fee based on a share of the capital gains or the capital appreciation of the funds or any portion of the funds of a client must comply with SEC Rule 205-3 (17 Code of Federal Regulations §275.205-3), which permits the use of such fee if the client is a "qualified client" as defined therein.

CHAPTER 5 (Reserved for future use)

CHAPTER 6 PROCEDURES FOR HEARINGS CONDUCTED BY THE COLORADO SECURITIES BOARD AND THE OFFICE OF ADMINISTRATIVE COURTS

51-6.0 Definitions.

In addition to those terms defined in Rule 51-2.1, unless the context otherwise requires, the following are defined:

1. "Administrative Law Judge." An administrative law judge with the Office of Administrative Courts appointed pursuant to section 24-30-1001, et seq., C.R.S.

2. "Authorized Representative". An attorney, or other person authorized by a Party to represent themselves ~~him/her/it~~ in a cease and desist proceeding.

3. "Board". The Colorado Securities Board as created pursuant to section 11-51-702.5, C.R.S.

4. "Business Day". Any calendar day except Saturday or Sunday, New Year's day, Dr. Martin Luther King Jr. day, Washington-Lincoln day, Memorial day, Independence day, Labor day, Columbus day, Veteran's day, Thanksgiving, Christmas, or any other day upon which the Division is not open for business.

5. "Party". The Division and/or the specifically named Person(s) whose legal rights, duties or privileges are being determined in a cease and desist proceeding; any other Person(s) who, as a matter of constitutional right or by any provision of the law, is entitled to participate fully in the proceeding.

6. "Presiding Member". The member of the Board designated by the chairperson to preside over a cease and desist proceeding before the Board.

7. "Person". Those individuals, entities or organizations set forth in section 11-51-201(12), C.R.S.

8. "Respondent". Party(ies) who are named in the petition filed by the Division initiating the cease and desist proceeding.

51-6.10 Representation

A. At all hearings, an individual may appear on his or her own behalf, or be represented by an attorney authorized to engage in the practice of law in Colorado. Any other person or entity who is a Party must be represented by an attorney who is licensed or otherwise authorized to engage in

the practice of law in Colorado, except as described by § 13-1-127, C.R.S.

B. An attorney representing a Respondent shall enter his or her appearance with the Division, and as the case may be, with either the Office of Administrative Courts or the Board prior to the time a written answer is due. The entry of appearance shall contain the attorney's name, address, telephone number, bar number, facsimile number, the firm name, if the attorney is a member of a law firm, and the name, address and telephone number of the Party represented.

51-6.1 Hearings to Review Either Summary Stop Orders or Summary Orders Suspending an Exemption

A. Any person against whom the Commissioner has entered either a summary stop order or a summary order suspending an exemption pursuant to section 11-51-606(3) (a) or (b), C.R.S. may make a written request for a hearing before the Colorado Securities Board (the "Board"). A written request in the form provided for by this Rule must be received by the Division within twenty-one (21) calendar days from the date of the order that is the subject of the appeal, or the Commissioner's order shall become final twenty-one days after entry if no such request is received.

B. The written request for hearing shall respond to each provision of the Commissioner's order and shall state with reasonable particularity the reasons why the order should not be continued. The written request shall further specify any dates within the next twenty-one (21) calendar days on which the requesting party shall be unable to attend a hearing.

C. Upon receipt of a satisfactory written request for a hearing, the Commissioner immediately shall notify the chairperson of the Board who, after consulting with other Board members, the Commissioner and the Attorney General's Office, shall set a date and time for the requested hearing within twenty-one (21) calendar days from the date the written request was received by the Division. Written notice of the date and time of the haring shall be provided immediately by mail to the parties. No continuance of the hearing shall be granted by the Board except as necessary to enable Board members to attend or as agreed to by mutual consent of all parties to the hearing.

D. The Board chairperson shall designate three (3) member of the Board to serve as a hearing panel to conduct the hearing and issue an initial decision on behalf of the Board. If a member of the hearing panel shall recuse himself or herself from participation, the remaining panel members shall conduct the hearing and issue the initial decision.

E. The sole issues for review at the hearing shall be whether the Commissioner's summary order was based upon sufficient evidence of violations of the securities laws and whether immediate issuance of the summary order was imperatively necessary for the protection of investors.

F. The hearing shall be conducted pursuant to section 24-4-105, C.R.S., the hearings provisions of the state Administrative Procedures Act. The hearing panel may order such procedures as may be necessary to conduct a fair hearing within the expedited time period, including, but not limited to: expedited discovery procedures, restrictions on the number of witnesses and length of testimony presented and limits on the length of argument and the extent of any motion practice.

G. A person requesting a hearing shall be represented by legal counsel, who shall enter an appearance when the request for hearing is filed, unless that person is an individual appearing on his or her own behalf. Notices concerning the hearing shall be mailed first class to the attorney of record or to the person if appearing on his or her own behalf.

H. No later than fourteen (14) calendar days following the completion of the hearing, unless extended by the hearing panel for good cause, the hearing panel shall issue its initial decision, accompanied by findings of fact and conclusions of law. A copy of the initial decision shall be mailed to the attorneys for the parties, and to any individual appearing on his or her own behalf. The Commissioner shall enter his final decision, based upon the initial decision of the Board, that shall be a final order for purposes of judicial review.

51-6.2 Hearings on Orders to Show Cause Why a Securities License Should Not be Suspended Summarily

A. At the time of entry of an order to show cause pursuant to section 11-51-606(4), C.R.S. the Commissioner shall contact the chairperson of the Colorado Securities Board (the "Board") and obtain a date and time for a hearing before the board to consider the order to show cause. The hearing shall commence no sooner than seven (7), nor later than twenty (20), calendar days following the date the order to show cause is mailed to the persons against whom the order has been entered. The notice sent to such persons shall contain a copy of the order to show cause and specify the date and time for the hearing, which date shall not be continued. The notice shall be mailed as required by section 11-51-606(4) (b) and contain a certificate by an employee of the Division that the statutory requirements for providing notice have been met. Once commenced, the hearing may be recessed only if necessary to permit Board members to participate or upon mutual consent of the parties and approval by the Board.

B. No later than five (5) business days prior to the hearing date, the respondent shall file a written answer to the order to show cause responding specifically to the provisions of the order to show cause and raising any defenses that the respondent believes are applicable. A copy of the answer shall be filed with the Division, which shall provide copies immediately of the chairperson of the Board and the office of the attorney general.

C. The Board chairperson shall designate three (3) members of the Board to serve as a hearing panel to conduct the hearing and issue an initial decision on behalf of the Board. If a member of the hearing panel shall recuse themselves ~~himself or herself~~ from participation, the remaining panel members shall conduct the hearing and issue the initial decision.

D. If the respondent does not appear at the date and time of the hearing, the Division shall present evidence that notification was promptly sent to the respondent as required by section 11-51-606(4) (b), C.R.S. and evidence to establish there is a reasonable basis to believe the respondent either received actual notice, or, after reasonable search by the Division, cannot be located. The Division shall have the burden to present evidence to establish that the securities license of the respondent should be suspended summarily or that the securities activities of the respondent should be limited or conditions imposed summarily pending final determination of a proceeding under the State Administrative Procedures Act.

E. The sole issues for review at the hearing shall be whether there is sufficient evidence that any of the grounds specified in section 11-51-410(1) exist so as to warrant summary suspension of respondent's securities license or the imposition of limitations on respondent's securities activities pending full administrative review.

F. The hearing shall be conducted pursuant to section 24-4-105, C.R.S., the hearings provision of the state Administrative Procedures Act. The hearing panel may order such procedures as may be necessary to conduct a fair hearing within the expedited time period, including, but not limited to: expedited discovery procedures, restrictions on the number of witnesses and length of testimony presented and limits on the length of argument and the extent of any motion practice.

G. Any respondent who is not an individual shall be represented at the hearing by legal counsel, who shall enter an appearance at the time the written answer is due. An individual respondent may appear on his or her own behalf.

H. Promptly after the conclusion of the hearing, the hearing panel shall enter findings of fact, conclusions of law, and its initial decision recommending to the Commissioner what action should be taken. A copy of the initial decision shall be mailed immediately to legal counsel for the parties at the hearing, or directly to respondent, if not represented by legal counsel, at the last known mailing address or if respondent as shown on the records of the Division. Within ten (10) calendar days of the date of entry of the initial decision, either respondent or the Division may file written exceptions to the initial decision with the Commissioner; provided, however, that if the initial decision is mailed on a date later than the date the initial decision was entered, the ten (10) day period shall begin on the date the initial decision was mailed. On the basis of the initial decision and any written exceptions, the Commissioner shall then issue his order, that shall be a final

order for purposes of judicial review.

51-6.3 Hearings on Orders to Show Cause Why a Cease and Desist Order Should Not Enter.

A. Scope of this Rule

1. Pursuant to section 11-51-606(1.5)(d)(III), C.R.S., this Rule 51-6.3 shall govern cease and desist proceedings under section 11-51-606(1.5), C.R.S., and shall be supplemented by the Administrative Procedures Act as adopted in Colorado, and specifically section 24-4-105, C.R.S., the hearings provision of the State Administrative Procedures Act.

2. To the extent a specific provision of this Rule is in conflict with the State Administrative Procedures Act, the provision of this Rule shall govern.

3. To the extent a specific provision of this Rule is in conflict with the Rules of Procedure for the Office of Administrative Courts, the provisions of this Rule shall govern.

B. Commencement of Cease and Desist Proceedings

1. The Division may commence a cease and desist proceeding by filing with the Commissioner a Petition, signed by an officer or employee of the Division, requesting the Commissioner issue an order to the named Respondent(s) to show cause why the Commissioner should not enter a final order directing such person(s) to cease and desist from the unlawful act or practice specified, or impose such other sanctions as provided in section 11-51-606(1.5)(d)(IV), C.R.S.

2. The Petition shall state clearly and concisely the facts which are the grounds for the unlawful act or practice in question as set forth in section 11-51-606(1.5)(b), C.R.S., the relief sought, and any other additional information or documents in support of the grounds in the Petition.

3. The Commissioner, upon issuance of the order to show cause, may refer, in his or her sole discretion, the matter for conduct of the hearing either to an Administrative Law Judge or the Board, based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter.

4. Within two calendar days of issuance of an order to show cause pursuant to section 11-51-606(1.5)(a), C.R.S., the Commissioner shall notify the Board or the Office of Administrative Courts, and obtain a date, time, and place for a hearing on the Order to Show Cause. The hearing shall commence no sooner than ten (10), nor later than twenty-one (21) calendar days following service or transmission of the Notice, the Order to Show Cause, and other information as required by section 11-51-606(1.5)(c), C.R.S. The hearing may be continued by agreement of all of the Parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than thirty-five (35) calendar days following the service or transmission of the Notice as required by section 11-51-606(1.5)(c), C.R.S.

5. The Notice shall be delivered, transmitted or served as required by section 11-51-606(1.5)(c), C.R.S., and contain a certificate by an employee or officer of the Division that the statutory requirements for providing notice have been met. Such certificate shall be deemed competent evidence of service of the Notice.

6. In cases referred to the Board by the ~~e~~Commissioner, the chairperson of the Board shall designate no less than three (3) members of the Board to serve as the Hearing Panel to conduct the hearing on the Order to Show Cause. The Board chairperson shall also designate the Presiding Member for purposes of the hearing. The Hearing Panel, through the Presiding Member, shall have the authority to do all things necessary and appropriate to discharge their duties, including, but not limited to, the following:

a. Administering oaths and affirmations;

b. Signing and issuing subpoenas as authorized by law, subject to the provisions of subparagraph E.9., below;

c. Regulating the course of the proceeding and the conduct of the Parties and their counsel;

d. Allowing the appearance or participation of Hearing Panel members, witnesses, or Parties by telephone, as the Panel, in its sole discretion, deems appropriate;

e. Conducting such prehearing conferences or proceedings as the Hearing Panel deems appropriate, and issuing appropriate orders that shall control the subsequent course of the proceedings;

f. Allowing recusal of any Hearing Panel member from participating in the proceedings or hearing, in which case the remaining panel members shall conduct the hearing and issue findings of fact, conclusions of law, and the Hearing Panel's initial decision;

g. Requiring the filing of briefs and proposed findings of fact and conclusions of law by the Parties in preparation for the initial decision;

h. Disposing of motions made during the course of the hearing;

i. Ruling on admissibility or exclusion of evidence; and

j. Preparing and transmitting the initial decision to the Commissioner as required in section 11-51-606(1.5)(d)(III), C.R.S.

7. No later than three (3) business days prior to the hearing date, the Respondent(s) shall file a written answer to the Order to Show Cause admitting, denying, or otherwise specifically responding to the allegations and assertions in the Order and Petition, and raising any defenses that the Respondent(s) believes are applicable. A copy of the answer shall be filed in accordance with Rule 51-6.3.D.3., and served on the other Parties to the proceeding.

8. No later than three (3) business days prior to the hearing date, the Parties shall file a written statement in accordance with Rule 51-6.3.D.3., with service on the other Parties, setting forth the name, address, telephone number, and a brief statement of the substance of the testimony for each witness the Party intends to call at the hearing, including any expert witness. The Hearing Panel or the Administrative Law Judge, in their discretion, may permit modification of, or divergence from the written statement prior to or during the hearing, for good cause shown.

9. All discovery, either by deposition or in writing, including requests for production of documents, shall not be allowed in cease and desist proceedings.

10. In cases referred to the Office of Administrative Courts by the Commissioner, Rule 18 of Office of Administrative Courts' Rules of Procedure shall apply as to subpoenas.

11. In a matter referred to the Board by the Commissioner, the Hearing Panel, through the Presiding Member, as identified below in this Rule, may issue subpoenas requiring the attendance and testimony of witnesses in accordance with the following provisions:

a. A Party may make a written application to the Hearing Panel no later than three (3) business days prior to the hearing date. The Hearing Panel may issue the subpoena requested in the name of the Commissioner, and the Presiding Member for the Hearing Panel may sign the subpoena. Where it appears to the

Hearing Panel that the subpoena sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, or may result in undue delay in the proceedings, the Presiding Member may, in his or her discretion, require the Party requesting the subpoena to show the general relevance and reasonable scope of the testimony or evidence sought. In the event the Hearing Panel and Presiding Member, after consideration of all the circumstances, determine that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, unduly burdensome, or will result in undue delay, they may refuse to issue the subpoena, or issue the subpoena only upon such terms and conditions as fairness requires.

b. Every subpoena shall show on its face the name and address of the requesting Party. Notice to the other Parties shall not be required for issuance of a subpoena. The form of the subpoena shall adhere to the form used in administrative hearings before the Division Administrative Hearings in the Department of General Support Services.

c. Any Person to whom a subpoena is directed may, no later than three (3) calendar days prior to the date set for the hearing, file in writing a motion that the subpoena be vacated or modified. The Presiding Member shall give prompt notice to the Party who requested issuance of the subpoena of the motion. The Hearing Panel, through the Presiding Member, may grant the petition in whole, or in part, upon a finding that the testimony or evidence requested does not relate with reasonable directness to any matter in question, or upon a finding that the subpoena is unreasonable, oppressive, excessive in scope, unduly burdensome, or will cause undue delay in the proceedings, or has not been served with forty-eight (48) hours of the commencement of hearing, as required by Rule 45 of the Colorado Rules of Civil Procedure.

d. A subpoena issued under this Rule shall be delivered to the Party requesting the subpoena and served by such Party in the same manner as a subpoena issued by a district court in Colorado.

e. Except for witnesses subpoenaed by the Division, witnesses subpoenaed pursuant to this Rule shall be paid by the requesting Party the same fees for attendance and mileage at the time of service, as are paid witnesses in the district courts of the state of Colorado.

f. Upon the failure or refusal of any witness to comply with a subpoena issued and served upon them under this Rule, the Board, through the Division, may petition the District Court for the City and County of Denver for an order citing such witness in contempt for such failure or refusal. The procedure for such contempt proceedings shall be governed pursuant to section 24-4-105(5), C.R.S..

C. Pleadings; Signatures; Copies; Computation of Time; Service

1. Pleadings and other papers filed in a cease and desist proceeding shall contain the caption “BEFORE THE SECURITIES COMMISSIONER, STATE OF COLORADO,” the title of the proceeding, designated as “IN THE MATTER OF (name of Respondent(s)),” the docket number and the name of the pleading. Such pleadings and papers shall be submitted on 8 ½ -inch by 11-inch paper, with left-hand margins not less than 1 ½ inches wide and the other margins not less than 1 inch. The impression contained on such pleadings or papers shall be only on one side of the page.

2. Pleadings and papers filed in cease and desist proceedings shall be signed and dated by the Party on whose behalf the filing is made or by the Party’s Authorized Representative, and also contain the address, telephone number and facsimile number of such Party or Authorized Representative. Signature constitutes a certification by the signer that he has read the document, knows the contents thereof, that such statements are true, that it is not interposed for delay, and that if the document has been signed by an Authorized

Representative, that such Representative has full power and authority to do so.

3. Each Party filing pleadings or papers in cases referred to the Board by the Commissioner will file the original and two copies, with the original and one copy filed with the Board, and one copy filed with the Division, unless otherwise directed by the Commissioner or the Board. Such pleadings and papers shall be filed by sending or delivering them to the Board, in care of the Division at its current address, and to the Division at its current address. In cases referred to an Administrative Law Judge by the Commissioner, each Party will file the original pleading or papers with the Office of Administrative Courts and one copy filed with the Division.

4. Except when otherwise provided by this Rule, service of all pleadings and other papers by a Party shall be made by personal delivery, U.S. Mail (including express or overnight mail or delivery), or facsimile transmission as follows:

   a. Service of such pleadings or papers shall be deemed complete as of the date of delivery by hand, the date of deposit in the United States mails, postage prepaid, or the date a facsimile is transmitted and received. A Party who has served a pleading or paper shall attach proof of service to the original filed in accordance with this Rule, which proof of service shall be in affidavit form and specify the method of service, the identity of the server, the person served (if by personal service), the date and place of service, and the address to which the materials were mailed. If the service is made by certified or registered mail, the mailing receipt shall be attached to the affidavit of service. If service is made by facsimile transmission, a copy of the cover page indicating the documents transmitted, the date of transmission, the person transmitting the materials, the Party receiving the transmission, and successful transmission of the materials shall be attached to the affidavit of service.

   b. In computing any period of time prescribed or allowed by this Rule, the provisions of Rule 6(e) of the Colorado Rules of Civil Procedure shall apply.

5. Unless otherwise specifically provided by law, computation of any time period referred to in this Rule 51-6.3 shall begin with the first day following the act that initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, legal holiday, or any other day on which the Division is closed, in which event the period shall run until the end of the next following business day. When the time period is less than seven (7) days, intervening days when the Division is closed shall be excluded in the computation.

6. In cases referred to the Board by the Commissioner, the Division will maintain all records of, and filings received by the Board in accordance with statutory requirements.

7. An attorney representing a Party in a cease and desist proceeding may withdraw his or her appearance of the Party only upon notice of such withdrawal being filed no later than two (2) business days before the scheduled hearing, with such notice served upon the Party as provided in this Rule. Any such withdrawal shall not be effective unless approved by the Board or the Administrative Law Judge. The approved withdrawal shall not constitute grounds for continuance of the commencement of the hearing in the cease and desist proceeding.

D. Conduct of the Hearing

1. The sole issues for determination at the hearing shall be whether Respondents have engaged, or are about to engage in any of the acts or practices specified in section 11-51-606(1.5)(b), C.R.S. so as to warrant the imposition of sanctions as provided in section 11-51-606(1.5)(d)(IV), C.R.S.

2. The burden of proof at the hearing shall be on the Division to establish that the Respondent(s) have or are about to commit any of the acts or practices set forth in

section 11-51-606(1.5)(b), C.R.S. by a preponderance of the evidence. Any Party asserting an affirmative defense, including any exemption, exception or exclusion, shall have the burden of proof to establish such defense, exemption, exception or exclusion by a preponderance of the evidence.

3. In the event the Respondent(s) does not appear at the date and time of the hearing, the Division shall present evidence as follows:

   a. That notification was properly sent or served upon such Respondent(s) as required by section 11-51-606(1.5)(c), C.R.S.; and

   b. To establish there is a reasonable basis to believe the Respondent(s) either received the notification, or, after reasonable search by the Division, cannot be located.

4. In the event the Respondent(s) fails to file an answer as provided in this Rule, in addition to the Division presenting the evidence as set forth in clauses (a) and (b) of this subparagraph D.3., the Division shall present evidence, or request the Hearing Panel or the Administrative Law Judge to take Administrative Notice, that the Respondent(s) failed to file an answer as provided in this Rule.

5. Unless otherwise provided by law, the Hearing Panel and the Administrative Law Judge shall observe a relaxed standard in applying the Colorado Rules of Evidence. The Hearing Panel and the Administrative Law Judge shall, however, observe the Rules of privilege as provided by law. Evidence admissible at the hearing includes, but shall not be limited to, such evidence as may be admissible in a civil non-jury case in Colorado under the Colorado Rules of Evidence; hearsay evidence, unless the Hearing Panel or Administrative Law Judge determines that the potential prejudice of such evidence clearly outweighs its probative value; certified or self-authenticated documents, orders, or other papers; and any record, investigative report, document and stipulation which is offered and is not determined to be irrelevant or immaterial by the Hearing Panel or Administrative Law Judge. The Hearing Panel or Administrative Law Judge may take notice of any fact that may be judicially noticed by the courts of Colorado, or of general, technical or scientific facts within the Panel's specialized knowledge, and which is specified in the record. The Hearing Panel or Administrative Law Judge will notify the Parties of the material so noticed and provide the Parties an opportunity to contest the facts so noticed.

6. Evidence objected to may be received by the Hearing Panel or Administrative Law Judge, and rulings on the admissibility or exclusion of such evidence, if not made at the hearing, shall be made as part of the findings of fact, conclusions of law, and initial decision. The Hearing Panel or Administrative Law Judge shall be authorized to impose limits on the number of witnesses and documentary or other evidence on any issue to prevent undue delay, waste of time, or the needless presentation of cumulative evidence. This authority shall include the power to limit or preclude the testimony of any expert witness called by any Party.

7. The weight to be attached to any evidence on the record will rest within the sound discretion of the Hearing Panel or Administrative Law Judge. The Hearing Panel or Administrative Law Judge may require any Party, with appropriate notice to the other Parties, to submit additional evidence on any matter relevant to the issues in the hearing.

8. The proceedings conducted in connection with the hearing shall be electronically or stenographically recorded. Transcripts of the proceedings shall be supplied to any Party, upon reasonable request, at the expense of the requesting Party. In such event, a copy of the transcript and the record, as defined herein, shall be provided to the Board, through the Division, at no expense to the Board, and upon such other terms as the Commissioner shall order. The record of the hearing shall include, in addition to the transcript, all pleadings, motions, papers and filings; all evidence received or considered, including a statement of matters officially noted; questions or offers of proof, objections,

and rulings on such objections; findings of fact, conclusions of law, and initial decision; and the final order entered by the Commissioner.

9. In the case of any hearing not continued by agreement of the parties, the hearing shall conclude no later than twenty-six (26) calendar days following the service or transmission of the Notice as required by section 11-51-606(1.5)(c), C.R.S. In the case of any hearing continued by agreement of the parties, the hearing shall conclude no later than forty (40) calendar days following the service or transmission of the Notice as required by section 11-51-606(1.5)(c), C.R.S. The Hearing Panel or Administrative Law Judge shall not evade the time limits contained herein by commencing the hearing within the time requirements and then recessing or continuing the hearing, or conducting any portion of the hearing, past the time limits for concluding the hearing set forth herein.

E. Initial Decision; Final Order

1. After the conclusion of the hearing, the Hearing Panel or Administrative Law Judge shall enter written findings of fact, conclusions of law, and its initial decision based on the record of the hearing, recommending to the Commissioner that a final order be issued affirming, denying, vacating, or otherwise modifying the Order to Show Cause. These findings of fact, conclusions of law and initial decision shall be issued within ten calendar days after the conclusion of the hearing and shall be promptly submitted to the Commissioner, with courtesy copies served on the Parties by the Division.

2. If, after reviewing the findings of fact, conclusions of law, and initial decision, and the record of the hearing, the Commissioner reasonably finds that the Respondent(s) has engaged, or is about to engage, in any of the acts or practices set forth in section 11-51-606(1.5)(b), C.R.S., and upon making the findings required by section 11-51-704(2), C.R.S., the Commissioner may issue a final cease and desist order imposing one or more of the sanctions set forth in section 11-51-606(1.5)(d)(IV), C.R.S. The Commissioner shall provide notice of the final order within ten calendar days after receiving the initial decision.

3. The Division shall promptly provide notice of the final order to all the Parties and each Party against whom such order has been entered pursuant to section 11-51-606(1.5)(c), C.R.S.

51-6.4 Hearings on the denial, suspension or revocation of a registration statement and the denial or revocation of exemption from registration.

A. Following the filing of request for any hearing filed pursuant to 11-51-310, C.R.S., the Commissioner shall notify the Office of Administrative Courts, and obtain a date, time, and place for a hearing. The hearing shall commence no later than 120 calendar days following filing at the Office of Administrative Courts of the Notice to Set, Notice of Duty to Answer or Notice of Charges. The hearing may be continued by agreement of all of the Parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter. The hearing shall be conducted pursuant to section 24-4-105, C.R.S., the hearings provision of the state Administrative Procedures Act.

B. An attorney representing a Party in a hearing on a denial, suspension or revocation of a registration statement and the denial or revocation of exemption from registration may withdraw his or her appearance of the Party only upon notice of such withdrawal being filed no later than two (2) business days before the scheduled hearing, with such notice served upon the Party as provided in this Rule. Any such withdrawal shall not be effective unless approved by the Board or the Administrative Law Judge. The approved withdrawal shall not constitute grounds for continuance of the commencement of the hearing in the denial, suspension or revocation proceeding.

51-6.5 Hearings on the denial of an applicant or suspension, revocation, censure, limit or other conditions on the securities activities of a broker-dealer, sales representative, investment adviser or investment adviser representative.

A. Following the filing of request for any hearing filed pursuant to 11-51-410, C.R.S., the Commissioner shall notify the Office of Administrative Courts or the Board, and obtain a date, time, and place for a hearing. The hearing shall commence no later than 120 calendar days following filing at the Office of Administrative Courts or the Board of the Notice of Duty to Answer or Notice of Charges. The hearing may be continued by agreement of all of the Parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter. The hearing shall be conducted pursuant to section 24-4-105, C.R.S., the hearings provision of the state Administrative Procedures Act.

B. An attorney representing a Party in hearing on the suspension or revocation or the denial of an application of a license as broker-dealer, sales representative, investment advisor or investment advisor representative may withdraw his or her appearance of the Party only upon notice of such withdrawal being filed no later than two (2) business days before the scheduled hearing, with such notice served upon the Party as provided in this Rule. Any such withdrawal shall not be effective unless approved by the Board or the Administrative Law Judge. The approved withdrawal shall not constitute grounds for continuance of the commencement of the hearing in the denial of an applicant or suspension, revocation, censure, limit or other condition on the securities activities proceeding.

CHAPTER 7 ADMINISTRATION AND FEES

51-7.1 Consent to Service of Process

A. An applicant who files Form BD, ADV, or U-4, pursuant to Chapter 4 or Chapter 4 (IA) of these Rules, shall file the required Consent to Service of Process by completing the relevant portion of Form BD, ADV or U-4.

B. An applicant who is registered or registering with FINRA or who is affiliated with a FINRA broker-dealer shall file the Consent to Service of Process, through such FINRA broker-dealer, with the CRD. The Consent to Service of Process shall be deemed to be filed with the Securities Commissioner on the date CRD enters it if CRD verification is not required, or the date CRD verifies it if CRD verification is required.

C. An applicant who is registered or registering with the SEC, or is licensed or licensing with the Securities Commissioner as an investment adviser, or who is affiliated with an investment adviser or federal covered adviser shall file the Consent to Service of Process, through such investment adviser, with the IARD. The Consent to Service of Process shall be deemed to be filed with the Securities Commissioner on the date all fees are received and the filing is accepted by IARD on behalf of the Securities Commissioner.

D. The Consent to Service of Process of a sales representative who is not registered or registering with FINRA or who is not affiliated with a FINRA broker-dealer shall be filed through the broker-dealer, or issuer with which the person is affiliated with the Securities Commissioner.

E. Any other person who must file a Consent to Service of Process form shall file Forms U-2 (Uniform Consent to Service of Process) and U-2A (Uniform Corporate Resolution), if applicable, with the Securities Commissioner.

51-7.2 Requests for Notification of Rule Making

A. Pursuant to section 24-4-103(3) (b), C.R.S. (1989), the Division shall keep a list of persons who request to be notified of proposed rule making.

B. Any person who requests to be placed on this list must send a written request to the Securities Commissioner.

C. It is the responsibility of the person requesting such notification to keep the Division informed in writing of any changes in the address to which the notice is to be sent.

D. A person may request such notification only on his or her own behalf.

51-7.3 Filing of Forms and Payment of Fees

Unless otherwise specified by the Colorado Securities Act or by Rule or order promulgated thereunder:

A. All forms or notices required to be filed under the Colorado Securities Act and the Rules and orders promulgated thereunder must be filed with the Securities Commissioner at the following address:

Colorado Division of Securities 1560 Broadway, Suite 900 Denver, Colorado 80202

B. All fees shall be made by check or warrant payable to the “Colorado State Treasurer.”

51-7.4 Form and Content of Financial Statements

A. The annual financial statements, or any other financial statements required to be filed with the Commissioner, except as noted in B. below, shall be audited by a Certified Public Accountant (“CPA”) and contain:

An Unqualified Auditor's Report,

Balance Sheet,

Statement of Operations,

Statement of Changes in Shareholders' Equity,

Statement of Cash Flows, and

All notes and disclosures as required by generally accepted accounting principles (“GAAP”)

Comparative financial statements shall be prepared for all entities that have been in operation for more than 12 months.

B. The interim financial statements required to be filed with the Commissioner shall be reviewed by a CPA and contain:

A CPA's Unqualified Accountant's Review Report,

Balance Sheet,

Statement of Operations,

Statement of Changes in Shareholders' Equity,

Statement of Cash Flows, and

All notes and disclosures as required by GAAP unless waived by order of the Commissioner.

Comparative financial statements shall be prepared for all entities that have been in operation for more than 12 months.

C. Any and all other presentations of financial data including, but not limited to, projections and supplementary data shall be reviewed by a CPA and be covered by an Unqualified Accountant's Review Report issued by a CPA.

CHAPTER 8 EFFECTIVE DATE

51-8.1 Savings Provisions

For the purposes of section 11-51-802(3), C.R.S. (1990), the phrase "... an offering begun in good faith before July 1, 1990 …" means an offering of securities in which at least one offer was made in good faith in Colorado prior to July 1, 1990.

CHAPTER 9 LOCAL GOVERNMENT INVESTMENT POOL TRUST FUNDS

51-9.1 Authority

The regulations provided in this Chapter 9 have been adopted pursuant to the authority granted to the ~~s~~Securities ~~c~~Commissioner in sections 11-51-901, et seq. C.R.S. and 24-75-701, et seq., C.R.S.

51-9.2 Definitions

For purposes of this Rule, the terms identified below shall have the following meanings:

A. "Board of trustees" shall have the same meaning as that term is defined in section 24-75-701(2), C.R.S.;

B. "Investment adviser" shall have the same meaning as that term is defined in section 24-75-701(5), C.R.S.;

C. "Local government investment pool trust fund" shall have the same meaning as that term is defined in section 24-75-701(9), C.R.S., and as established pursuant to sections 11-51-901, et seq., and 24-75-701, et seq., C.R.S. ("LGIP");

D. "Participating local government" shall have the same meaning as that term is defined in 24-75-701(10), C.R.S.; and

E. "Securities ~~c~~Commissioner" shall have the same meaning as that term is defined in section 24-75- 701(11), C.R.S.

51-9.3 Registration, Reports and Bookkeeping of the Local Government Investment Pool Trust Funds

A. Prior to an LGIP's investment of any trust fund assets, the LGIP board of trustees must register the LGIP with the Securities Commissioner pursuant to section 11-51-905, C.R.S.

B. Quarterly reports to the Securities Commissioner pursuant to section 11-51-906(2), C.R.S., shall be filed by all LGIPs with the Securities Commissioner within thirty (30) days after the end of the quarter and shall contain the following information:

1. Financial statements that contain a balance sheet, an income statement, and a statement of changes in net assets for the previous quarter; and

2. The quarterly report to participating local governments.

C. The quarterly report to participating local governments shall include, at a minimum, the following information:

1. A statement of net assets;

2. A statement of operations;

3. A statement of changes in net assets;

4. A listing of portfolio assets that, at a minimum, describes each investment instrument by issuer, face value, yield at purchase, final maturity date, cost, and market value;

5. The average daily yield for the month and the average annualized yield;

6. The expense ratio;

7. A diversification report that, at a minimum, identifies the percentage of the total net assets of the fund by each issuer and the percentage of the total issue the fund invested in any individual issue; and

8. The weighted average maturity to final and the weighted average maturity to reset.

9. Any other material information.

51-9.4 Written Policies and Procedures

All LGIPs shall establish, maintain, and enforce written policies and procedures that are reasonably designed to achieve compliance with the following requirements:

A. Written policies and procedures intended to ensure that each entity that seeks to become a participating local government, and entities actively participating in an LGIP are "local governments" as that term is defined in section 24-75-701(8), C.R.S., for the duration of the local governments' participation in an LGIP.

B. Written policies and procedures to ensure that the LGIP complies with GASB Statement No. 79, Certain External Investment Pools and Pool Participants, if the LGIP elects to report on an amortized cost basis. An LGIP that does not comply with GASB Statement No. 79 may continue to operate as a stable Net Asset Value pool but must use fair value for financial reporting purposes in accordance with GASB Statement No. 31, Accounting and Financial Reporting for Certain Investments and for External Investment Pools, or FASB Accounting Standards Codification 820, Fair Value Measurement.

C. Written investment policies and procedures that define the credit, liquidity, maturity, and diversification objectives of the LGIP and the means to achieve these objectives. These policies and procedures shall, at a minimum, address:

1. Safety of capital as a priority so as to ensure preservation of principal;

2. Sufficient liquidity be maintained to enable funding of all reasonably expected cash needs given the participant composition and history as well as economic and market conditions;

3. Investment return, taking into consideration a pool's cash flow expectations;

4. Diversification of investment, including deposits adequate to reduce portfolio risks from an over concentration in any specific maturity, issuer, counterparty, depository, security, or class of securities;

5. Defining, monitoring and controlling interest rate risk; and,

6. Compliance with section 24-75-601.1,C.R.S.

D. Written policies and procedures that require the LGIP to monitor redemptions and reduce risk of unusually high redemptions in order to meet participants' daily cash flow needs. The written policies and procedures shall require the LGIP to position its portfolio so as to be able to fund unexpected withdrawals. The level of liquidity may be adjusted to take into consideration the distinctive characteristics and composition of the participating local governments and historical redemption patterns for the pool. A minimum of 90 percent of an LGIP's portfolio should be comprised of highly liquid investments and deposits. Liquid investments and deposits are investments and deposits that can be redeemed or sold within five business days.

E. Written policies and procedures for managing credit that require a thorough, constant and independent credit analysis process that adequately assess and manage the credit risk of an LGIP's investments. These policies shall at a minimum require:

1. Utilization of an experienced credit analyst that has the ability to manage and analyze credit risk;

2. For securities other than U.S. Treasuries and Agencies, an approved issuer list that is updated regularly; and

3. Policies that address assessing and liquidating positions in distressed credit situations as well as assessing and monitoring the credit quality and value of pledged collateral.

F. Written policies and procedures requiring LGIP's to perform and maintain the results of, and assumptions used in connection with, monthly, or more frequent, stress testing. Such written policies and procedures shall further require the board of trustees and investment adviser of the LGIP to review the results of each stress test performed.

G. Written policies and procedures that require each LGIP that utilizes amortized cost accounting to calculate a "shadow" NAV daily.

H. Written policies and procedures that require compliance reviews to be performed at least weekly to assure compliance with investment policies, guidelines and procedures.

I. Written policies and procedures intended to ensure that private information of an LGIP's participants remains confidential at all times;

J. Written policies and procedures intended to ensure that LGIP's and its investment adviser(s)' computers, servers, cloud storage and backup system(s), and web-based portals and applications are reasonably protected against cyber-attacks and hardware failure;

K. Written business continuity plan intended to ensure continuous, efficient and timely critical business operations in the event of an emergency and/or unforeseen disruption to normal business operations of the LGIP and/or its investment adviser(s).

51-9.5 Recordkeeping

A. For a period of not less than five years following an LGIP's replacement of any written policies or procedures with new written policies or procedures, the LGIP must maintain and preserve copies of the replaced policies and/or procedures.

B. For a period of not less than five years following a board of trustees' considerations and actions in connection with the discharge of the board of trustees' responsibilities, a written record of such considerations and actions must be maintained and preserved by the LGIP.

51-9.6 Notice to the Commissioner

Each LGIP shall promptly notify the Securities Commissioner, or the Securities Commissioner's designee, by electronic mail of any:

A. Default or insolvency of any issuer of a security that is held by the LGIP; and

B. Instance wherein a board of trustees believes that the applicable LGIP may be unable to comply with an actual or potential request by a participating local government to liquidate the participating local government's funds.

51-9.7 Incorporation by Reference

A. GASB Statement No. 79, *Certain External Investment Pools and Pool Participants*, as effective on December 2015, is hereby incorporated by reference. No later amendment or edition of GASB Statement No. 79 is incorporated into this Section 51-9.3. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Securities, Department of Regulatory Agencies, 1560 Broadway, Suite 900, Denver, CO 80202. The Division of Securities will provide certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy.

B. GASB Statement No. 31, *Accounting and Financial Reporting for Certain Investments and for External Investment Pools*, as effective on December 2015, is hereby incorporated by reference. No later amendment or edition of GASB Statement No. 31 is incorporated into this Section 51-9.3. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Securities, Department of Regulatory Agencies, 1560 Broadway, Suite 900, Denver, CO 80202. The Division of Securities will provide certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy.

C. FASB Accounting Standards Codification 820, *Fair Value Measurement*, as effective on May 2011 is hereby incorporated by reference. No later amendment or edition of FASB Accounting Standards Codification 820 is incorporated into this Section 51-9.3. All referenced laws and regulations shall be available for copying or public inspection during regular business hours from the Division of Securities, Department of Regulatory Agencies, 1560 Broadway, Suite 900, Denver, CO 80202. The Division of Securities will provide certified copy of the material incorporated at cost or will provide the requester with information on how to obtain a certified copy.

Form DT-1 (08/2019)

Colorado Division of Securities
1560 Broadway St., Ste. 900
Denver, CO 80202
(303) 894-2320

Initial Filing _
Amended Filing _

NOTICE OF CLAIM OF EXEMPTION FROM REGISTRATION FOR CERTAIN DIGITAL TOKENS

The person submitting notice of this exemption from the licensing requirements from section 11-51-401, certifies that the following is true. Pursuant to the requirements of section 11-51-308.7, C.R.S. notice of claim of exemption from the registration requirements of the Colorado Securities Act is submitted to the Securities Commissioner as follows:

1. NAME, ADDRESS & PHONE NUMBER OF ISSUER:

~~1.~~**2. ISSUE DESCRIPTION:**

Name of Token and date of initial issuance:

Describe how the token has a primarily consumptive use

~~2.~~**3. NAME, TITLE, FIRM, ADDRESS & PHONE NUMBER OF RELATED PERSONS (Related persons include each executive officer and director of the issuer and persons performing similar functions):**

EXEMPTIONS FROM REGISTRATION UNDER THE COLORADO DIGITAL TOKEN ACT

(All references are to either section 11-51-308.7, C.R.S. or Rules 51-3.34, 51-3.35 & 51-3.36 promulgated under section 11-51-308.7(3)(a)(I)(A).

The person submitting notice of this exemption for the digital token(s) listed in section 1 (Issue Description) of this Form DT-1, certifies that the following is true:

(CHECK ALL THAT APPLY)

1. The primary purpose of the digital token(s) is a consumptive purpose: _

2. The issuer of the digital token has marketed the digital token to be used for a consumptive purpose: _

3. The issuer of the digital token has not marketed and will not market the digital token to be used for a speculative or investment purpose: _

4. Availability of the digital token:

   A. The consumptive purpose of the digital token is available at the time of sale. _

   OR

   B.

      1. The consumptive purpose of the digital token will be available within one hundred eight days after the time of sale or transfer of the digital token: _

      2. The initial buyers are prohibited from reselling or transferring the digital token until the consumptive purpose of the digital token is available: _

      3. The initial buyers will provide a knowing and clear acknowledgement that initial buyers purchased the digital token with the primary intent to use the digital token for a consumptive purpose and not for a speculative or investment purpose: _

In the event that the information contained in this Notice of Intent becomes inaccurate in any material respect, for any reason, the noticing party, the issuer of the digital token or other person shall file an amendment to this Notice of Intent with the ~~s~~Securities ~~c~~Commissioner within thirty days.

By: _

Name of person filing notice of exemption _____ Title

_____ _____

Signature Date

Form DT-2 (08/2019)

Colorado Division of Securities
1560 Broadway St., Ste. 900
Denver, CO 80202
(303) 894-2320

NOTICE OF CLAIM OF EXEMPTION FROM LICENSING FOR PURCHASE, SALE OR TRANSFER OF CERTAIN DIGITAL TOKENS

Pursuant to the requirements of sections 11-51-308.7(3)(b) & (c), C.R.S. this notice of intent is submitted to the Securities Commissioner as follows:

NAME, TITLE, FIRM, ADDRESS & PHONE NUMBER OF RELATED PERSONS (Related persons include each executive officer and director of the issuer and persons performing similar functions):

_____

_____

_____

The person submitting notice of this exemption from the licensing requirements from section 11-51-401, certifies that the following is true:

1. The person/entity seeking the exemption from licensing engages in the business of effecting or attempting to effect the purchase, sale or transfer of a digital token; and

2. The digital token that is purchased, sold or transferred can be used for a consumptive purpose at the time the person/entity effects or attempts to effect, the purchase, sale, or transfer of the digital token; and

3. The person/entity will take reasonably prompt action to cease effecting, or attempting to effect, the purchase, sale or transfer of any digital asset that does not conform to the requirements for exemption found at 11-51-308.7(3)(b) and rules promulgated pursuant to the Colorado Digital Token Act.

In the event that the information contained in this Notice of Intent becomes inaccurate in any material respect, for any reason, the noticing party, the issuer of the digital token or other person shall file an amendment to this Notice of Intent with the ~~s~~Securities ~~c~~Commissioner within thirty days.

By: _____ _____
Name of person filing notice of exemption Title

_____
Signature

_____
Date

Editor's Notes

History

Rules 51-3.5, 51-3.7, 51-4.7, 51-4.8(1A) eff. 12/01/2008.

Rules 51-2.1; 51-3.9(a-g), 51-3.10b; 51-4.1B, 51-4.3, 51-4.4; 51-4.1(1A)(C-D), 51-4.3(1A)(G-I), 51-4.4(1A) A, E-H, 51-4.5(1A)C, 51-4.6(1A)A15(c), 51-4.8(1A)R, 51-4.10(1A), 51-7.1 eff. 11/30/2010.

Rule 51-2.1.1.B eff. 10/15/2013.

Rules 51-4.7.G-51-4.7.I eff. 01/30/2015.

Rules 51-4.3.K, 51-4.4(IA).I eff. 06/01/2015.

Rules 51-3.20-51-3.30 emer. rules eff. 08/05/2015.

Rules 51-3.20-51.3.30 eff. 10/15/2015.

Rules 51-3.1, 51-3.7 eff. 01/30/2016.

Rules 51-2.1 B-C, 51-3.5, 51-3.9 H, 51-3.13, 51-3.24.K-L, 51-3.31, 51-3.32, Rule 3.33, 51-4.5, 51-4.8, 51-4.3(IA) J, 51-4.4(IA) J, 51-4.6(IA) 19, 51-4.6(IA) E.4, 51-4.7(IA), 51-4.8(IA) R, 51-4.11(IA), 51-4.12(IA), 51-4.13(IA), 51-4.14(IA), 51-4.15(IA), Chapter 6, rule 51-9.3 eff. 07/15/2017.

Rules 51-2.1, 51-3.13 C, 51-3.20.E, 51-3.22.C, 51-3.23.A.3, 51-3.24.F, 51-3.24.M, 51-3.27, 51-3.29.A.2, 51-4.3.F-G, 51-4.4(IA) F, 51-4.6(IA) A.19, 51-4.7(IA), 51-4.10(IA) B.2.b.ii, 51-4.11(IA).F, 51-4.13(IA) A.4, 51-4.13(IA) B.2.a, 51-6.10 A, 51-6.3 B.9, 51-6.3 D.9 eff. 07/31/2018. Rules 51-4.9(IA), 51-4.11(IA).I repealed eff. 07/31/2018.

Rules 51-3.34, 51-3.35, 51-3.36, Forms DT-1, DT-2 emer. rules eff. 08/02/2019; expired 11/30/2019.

Rules 51-3.34, 51-3.35, 51-3.36, 51-4.3 K, 51-4.6.1, 51-4.7 G, 51-4.4(IA) E, 51-4.4(IA) I, 51-4.6(IA) A.6, 51-4.6(IA) A.8, 51-4.6(IA) A.10, 51-4.6(IA) 15-21, 51-4.7(IA) A, 51-4.8(IA) Introduction, 51-4.8(IA) O, 51-4.8(IA) V-X, 51-4.9(IA), 51-4.10(IA) B.2.a-b, 51-4.13(IA) A-B.1, 51-6.5 A, Forms DT-1, DT-2 eff. 12/15/2019. Rule 51-3.5 repealed eff. 12/15/2019.

Rules 51-3.27, 51-4.7 J, 51-4.8(IA) Y, 51-6.3 D.4 eff. 03/30/2020.

Notice of Proposed Rulemaking

Tracking number

2022-00826

Department

700 - Department of Regulatory Agencies

Agency

718 - Passenger Tramway Safety Board

CCR number

3 CCR 718-1

Rule title

PASSENGER TRAMWAYS

Rulemaking Hearing

Date

02/01/2023

Time

09:15 AM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_q2vRH63ZQcqO4m4W-FDMWw

Subjects and issues involved

The Colorado Passenger Tramway Safety Board is proposing revisions to multiple rules that will provide clarity; correct rule omissions; address deficiencies and inspection reports; and provide general updates based on recent updates to the American National Standard for Passenger Ropeways Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors Safety Requirements, and American National Standard for Funiculars Safety Requirements. Additionally the Board will consider adopting proposed rule changes as required by the mandatory rule review in section 24-4-103.3, C.R.S., to assess the continuing need, appropriateness, and cost-effectiveness of the rules to determine if they should be continued in their current form, modified, or repealed.

Statutory authority

Sections 12-20-204(1), 12-150-105(1)(a), 24-4-103, and 24-4-103.3, C.R.S.

Contact information

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DEPARTMENT OF REGULATORY AGENCIES

Passenger Tramway Safety Board

PASSENGER TRAMWAYS

3 CCR 718-1

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

Rule 0.1 Preamble and incorporation by reference. Sections 12-20-204(1) and 12-150-105(1)(a), C.R.S., allows the Colorado Passenger Tramway Safety Board ("Board") to "use as general guidelines the standards contained in the 'American Standard Safety Code for Aerial Passenger Tramways', as adopted by the American Standards Association, Incorporated, as amended from time to time." Since 1965, when this provision was enacted, the American Standards Association, Inc., has been succeeded by the American National Standards Institute, Inc. and the American Standard Safety Code updated. The relevant publications are now known as the "American National Standard for Passenger Ropeways – Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors – Safety Requirements" ("ANSI B77.1-2017") and the "American National Standard for Funiculars – Safety Requirements" ("ANSI B77.2-2014").

The Board adopts and incorporates by reference, with certain additions, revisions, and deletions, the ANSI standards as listed below:

B77.1-1960	June 8, 1960	USA standard Safety Code for Aerial Passenger Tramways
B77.1a-1963	July 1, 1963	Addenda to USA standard Safety Code for Aerial Passenger Tramways
B77.1b-1965	July 26, 1965	Addenda to USA standard Safety Code for Aerial Passenger Tramways
B77.1-1970	March 17, 1970	American National Standard - Safety Requirements for Aerial Passenger Tramways
B77.1-1973	January 25, 1973	American National Standard - Safety Requirements for Aerial Passenger Tramways
B77.1-1976	November 19, 1975	American National Standard - Safety Requirements for Aerial Passenger Tramways
B77.1a-1978	January 17, 1978	Addendum to American National Standard - Safety Requirements for Aerial Passenger Tramways
B77.1-1982	July 16, 1982	American National Standard - for passenger tramways - aerial tramways and lifts, surface lifts and tows – Safety Requirements
B77.1a-1986	December 2, 1985	Supplement to American National Standard - for passenger tramways - aerial tramways and lifts, surface lifts and tows – Safety Requirements
B77.1b-1988	March 14, 1988	Supplement to American National Standard - for passenger tramways - aerial tramways and lifts, surface lifts and tows – Safety Requirements

B77.1-1990	March 26, 1990	American National Standard for Passenger Tramways - Aerial Tramways and Lifts, Surface Lifts and Tows - Safety Requirements
B77.1-1992	December 2, 1992	American National Standard for Passenger Tramways - Aerial Tramways, Aerial Lifts, Surface Lifts, Tows - Safety Requirements
B77.1-1999	March 11, 1999	American National Standard for Passenger Ropeways - Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors - Safety Requirements
B77.2-2004	December 31, 2003	American National Standard for Funiculars- Safety Requirements Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors - Safety Requirements
B77.1-2006	April 17, 2006	American National Standard for Passenger Ropeways - Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors - Safety Requirements
B77.1-2011	May 2, 2011	American National Standard for Passenger Ropeways - Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors - Safety Requirements
B77.1-2017	April 15, 2019	American National Standard for Passenger Ropeways - Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors - Safety Requirements
B77.2-2014	April 15, 2019	American National Standard for Funiculars- Safety Requirements Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors - Safety Requirements
B77.1-2022	May 2, 2023	American National Standard for Passenger Ropeways – Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors – Safety Requirements

Commented [MD1]: Should this be removed?

As used in this document, the term “rules and regulations” means the referenced ANSI Standards and the “State of Colorado Department of Regulatory Agencies Passenger Tramway Safety Board Rules and Regulations.” The Board Rules and Regulations do not include any later amendments to or editions of the standards listed above.

A copy of each of the standards, codes, and guidelines listed above are available for public inspection at the Board office at the Division of Professions and Occupations, Department of Regulatory Agencies, 1560 Broadway, Suite 1350, Denver, Colorado, 80202, and at any state publications depository library. For further information regarding how this material can be obtained or examined, contact the Board's Program Director at 1560 Broadway, Suite 1350, Denver, Colorado, 80202, (303) 894-7785.

…

REPLACES ANSI SPECIFIC TIMEFRAMES

Section 2 Aerial Tramways

Note: Timeframes relate to the ropeway installation date or modification date whichever controls, unless otherwise noted.

IN ADDITION TO ANSI 2.1.1.3 Location

2.1.1.3.1 **Location of power lines.** Power lines shall be located a minimum distance equal to the height of poles or support structures from any passenger tramway so that poles and electrical lines cannot touch any portion of the tramway, loading or unloading points or platforms and tow path, if applicable, upon collapse of poles or lines, unless suitable and approved precautions are taken to safeguard human lives.

2.1.1.3.2 **Air space requirements.**

2.1.1.3.2.1 Structures.

Note: Timeframes stated for this Rule define the air space requirements for each ropeway at the time when the encroachment was known to the area and DO NOT pertain to the installation date of the ropeway.

No passenger tramway installation shall be permitted to operate when a structure encroaches into the air space of the passenger tramway, defined as the area bounded by vertical planes commencing at a point thirty-five feet from the intersection of the vertical planes of the ropes or cables and ground surface.

For purposes of this Rule, buildings controlled by the licensee used primarily for maintenance and operation of the lift and other tramways shall not be considered structures; however, buildings must comply with the following.

(1) No flammable liquids may be stored in the building outside of a UL listed container or storage cabinet, unless such flammable liquids are in the original containers and intended for daily usage. Quantities must be consistent with normal daily use. Class I or II flammable storage materials shall be limited to two gallons in a UL listed container and must be stored either in an outside storage area or in a UL listed cabinet.

(2) The building must be within the view of the attendant but not impair the sight line of the lift.

(3) Entrances to all machinery, operators', and attendants' rooms shall be locked when not in use. Unattended entrances accessible to public, which may be left open, shall be equipped with barriers to prevent entry.

2.1.1.3.2.2 Cables or ropes.

Note: Timeframes stated for this Rule define the air space requirements for each ropeway at the time when the encroachment was known to the area and DO NOT pertain to the installation date of the ropeway.

Any cable or rope installed on or near a ropeway that may represent a hazard to the ropeway shall be monitored to automatically stop the ropeway if the cable or rope fails. Failure would be defined as per Section 23.1 (g).

EXCEPTION: Track or haul ropes are excluded from this Rule.

~~**2.1.1.6 Structures and foundations.**~~

Commented [MD2]: Replaced by ANSI-B77.1 2022 - 2.1.2.6 Structures and foundations

~~*Prior to April 15, 2019:*~~

~~All structures and foundations shall be designed and constructed in conformance with 1.3 and shall be appropriate for the site. Applied design loads shall include dead, live, snow, wind, and dynamic loads due to normal conditions and for foreseeable abnormal conditions.~~

~~Structures and foundations located in snow creep areas shall be designed for such conditions and loads, or protective structures shall be provided as required by the conditions.~~

2.1.1.11.2 Acceptance tests.

~~Before an aerial tramway that is new or relocated or that has not been operated for routine maintenance within the previous two years is opened to the public, it shall be given thorough tests by qualified personnel to verify compliance with the plans and specifications of the designer. The designer or manufacturer shall propose and submit an acceptance test procedure.~~

~~Thorough load and operating tests shall be performed under full loading and any partial loadings that may provide the most adverse operating conditions. Test load per carrier shall be 110% of the design live load. The functioning of all manual and automatic stops, limit switches, deropement switches, and communications shall be checked. Acceleration and deceleration rates shall be confirmed under all loadings (see 2.1.2.4, 2.1.2.5). Motive power and all braking devices (see 2.1.2.6) shall be proved adequate under the most adverse loading conditions.~~

~~A plot of rope speed versus time shall be recorded for stops that the manufacturer or Qualified Engineer has designated in the acceptance test procedure. As a minimum, the plot shall show the rope speed every 0.2 seconds from the initiation of the stop to when the rope is stopped.~~

~~The final brake system settings and brake force test values shall be documented in the acceptance test results (see also 2.1.2.6).~~

ADDITIONAL PARAGRAPH ADDED TO ANSI 2.1.11.2 Acceptance tests

Any changes to software logic that would affect a ~~Protection or Operation~~ Control Circuit after the start of initial testing shall result in a restart of testing to ensure software logic changes have not affected those systems already tested. Retesting for changes in software parameters shall be at the discretion of the Authorities Having Jurisdiction (AHJ).

~~**2.1.1.12 Safety of operating and maintenance personnel.**~~

~~Provision shall be incorporated in the aerial tramway design to render the system inoperable when necessary for the protection of personnel working on the aerial tramway. See 2.3.1.1 for placement of applicable warning signs.~~

~~The aerial tramway shall incorporate an audible warning device that signals of an impending start of the ropeway. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds and shall continue until the ropeway begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.~~

Commented [MD3]: Replaced by ANSI-B77.1 2022 - 2.2.9 Safety of operating personnel

~~**2.1.2.1.2 Evacuation power unit.**~~

~~*Prior to April 15, 2019:*~~

~~An evacuation power unit with an independent power source shall be provided to move the carrier(s) to a terminal in the event of failure of the primary power unit(s). The power unit shall be electrically wired to meet the requirements of 2.2.3.1 so that it can be stopped by the Emergency Shutdown Circuit.~~

~~The evacuation power unit shall not depend upon the mechanical integrity of the prime mover to move the aerial tramway. The prime mover shall be disconnectable in the event of a mechanical lockup.~~

~~The evacuation power unit shall be designed to become operational and move the loaded passenger carriers to the terminals within one hour from the time of initiating its connection.~~

Commented [MD4]: Replaced by ANSI-B77.1 2022 - 2.1.2.1.2 Evacuation power unit

~~**2.1.2.1.4 Rescue system drive.**~~

~~*Prior to April 15, 2019:*~~

~~A separate drive system or a permutation of the Evacuation Drive used to move the rope for a separate rescue car shall be electrically wired to meet the requirements of 2.2.3.1 so that it can be stopped by an Emergency Shutdown Circuit.~~

Commented [MD5]: Replaced by ANSI-B77.1 2022 - 2.1.2.1.4 Rescue system drive

REPLACES ANSI FOR SPECIFIC TIMEFRAMES

2.1.2.6~~5~~ Brakes.

Prior to April 15, 2019:

The aerial tramways shall have the following friction-type brakes:

– service brake (see 2.1.2.5.1);

– drive sheave brake (see 2.1.2.5.2);

– track cable brake (see 2.1.4.3.2).

All drive braking systems shall be designed and monitored to ensure that:

a) Once the aerial tramway begins movement in the intended direction, the brakes are maintained in the open position;

b) The service brake shall not open prior to the drive system developing torque;

c) Multiple brakes or brake systems shall not be simultaneously applied such that excessive deceleration is applied to the aerial tramway under any condition of loading;

d) The failure of one braking system to properly decelerate the aerial tramway shall automatically initiate a second braking system, if any.

The service brake and drive sheave brake shall be designed such that failure of one braking system shall not impair the function of the other systems, and all brakes shall have the braking force applied by springs, weights, or other approved forms of stored energy.

The service brake and drive sheave brake shall be designed to assure operation under all anticipated conditions.

Deceleration rates specified in 2.1.2.4 shall be achieved by each brake without the aid of other braking devices or drive regeneration.

All drive braking systems shall be capable of operation to comply with the daily inspections and periodic testing.

A qualified engineer shall furnish a written procedure to be followed and specify the auxiliary equipment necessary for periodic testing and adjustment of the holding force of each brake. This procedure shall be performed during the acceptance test, and at the frequency specified, to demonstrate the ability of each brake to produce the required torque.

Such testing shall be accomplished as part of normal maintenance during the operating season, but shall be performed when the aerial tramway is not open to the public.

2.1.2.~~6~~5.1 Service brake.

Prior to April 15, 2019:

The service brake can be located at any point in the drive train such that there is no belt, friction clutch, or similar friction-type device between the brake and the drive sheave.

The service brake shall be an automatic brake to stop and hold the aerial tramway under the most unfavorable design loading condition. The rate of

application of this brake shall be adjustable. This brake shall have the design capability to decelerate the aerial tramway at a rate of two feet (0.6 meter) per second squared when operating under the most unfavorable condition of overhauling load and at full speed.

2.1.2.~~6~~5.2 BullwheelDrive sheave brake.

Prior to April 15, 2019:

Drive sheave brake controls shall be located and the brake activated in a manner that deceleration will begin within three seconds after the operator or attendant reacts to the stimulus to apply the brake.

The drive sheave brake shall operate on the drive sheave assembly.

Application of the drive sheave brake shall automatically disconnect the power source to the power unit in use. This brake shall act automatically when the speed of the haul rope exceeds the design speed by 15% in either direction or if the carriers travel beyond their normal stopping position in either terminal.

The drive sheave brake shall be an automatic brake to stop and hold the aerial tramway under the most unfavorable design loading condition. The rate of application of this brake shall be adjustable. This brake shall have the design capability to decelerate the aerial tramway operating at full speed, with the design loading condition most unfavorable to stopping, at 1.5 feet (0.5 meter) per second squared and within the parameters specified in 2.1.2.4.

~~2.1.2.6.1 General.~~

~~Moving machine parts that normally may be in reach of personnel shall be fitted with guards conforming to *American National Standard Safety standard for mechanical power transmission apparatus*, ANSI/ASME B15.1-1992.~~

~~Protection against static electricity shall be provided.~~

~~Fire-fighting device(s) shall be available.~~

Commented [MD6]: Replaced by ANSI-B77.1 2017 - 2.1.2.7 Machinery systems

2.2.3~~2.1.2.11~~ Safety related control devices~~Manual and automatic control devices.~~

Prior to April 15, 2019:

All control devices and switches shall conform to the requirements of 2.2.1.7.

2.1.2.11.1 Manual control devices. (ANSI B77.1-2011 Numbering)

The following manual control devices that will initiate a stop shall be installed and conspicuously and permanently marked:

a) A stop device at each terminal platform;

b) A stop device on the conductor's control console in each carrier when a conductor is required in the carrier;

c) A stop device at the operator's station;

d) Emergency shutdown device (see 2.1.5 and 2.2.1.7.2).

2.1.2.11.2 Provisions for automatic stop devices. (ANSI B77.1-2011 Numbering)

The following automatic stop devices or systems shall be installed:

a) A device(s) that will be actuated in the event manual or automatic controls fail to reduce aerial tramway speeds to design values at critical control points along the line;

b) A device(s) that will stop the aerial tramway before the carrier reaches its limit of travel. An adequate bumper system shall also be installed;

c) A device(s) that will stop the aerial tramway before any counterweight, other tension system device, or tension sheave carriage reaches either end of its travel, or when the tension system exceeds its range of normal operating travel. When pneumatic or hydraulic tension systems are used, pressure-sensing devices shall also be incorporated that will stop the aerial tramway system in case the operating pressure goes above/below the design pressure range. Such pressure-sensing devices shall be located close to the actual tensioning device. It shall not be possible to isolate the pressure sensor from the actual tensioning device;

d) A device that will be actuated by the application of a track cable brake. These devices shall effect an emergency shutdown;

e) A device that will stop the aerial tramway in the event a cabin door is not closed;

f) A mechanical overspeed device mounted on the driving sheave shall effect an emergency shutdown in the event of a 15% overspeed;

g) A device that will effect a stop of the aerial tramway in the event of inadvertent actuation of the brake system(s);

h) A device that will stop the aerial tramway in the event that the haul rope comes in contact with the track cable or other grounded equipment (bicable systems only).

~~2.1.3.3.2 Sheave and sheave unit design.~~

~~*Prior to April 15, 2019:*~~

Commented [MD7]: Replaced by ANSI-B77.1 2022 - 2.1.3.3.2 Sheave and sheave unit design

~~Sheave flanges shall be as deep as possible, considering other features of the system. At the same time, rope attachments shall be designed in relation to the sheave groove so as not to contact sheave flanges during normal operations, taking into consideration the anticipated amount of wear of the sheave liner groove. Attachments shall be allowed to contact sheave flanges adjacent to the haul rope when the carrier swings, provided that this is considered in the design of the attachments and sheaves. Furthermore, rope attachments, sheave flanges, and hanger guides shall be designed so that hangers cannot be caught behind guides, and so that ropes and attachments cannot be deroped from sheaves if the carrier is swinging within design limits as it approaches or passes the tower.~~

~~Suitable guards, of sufficient strength to resist the lateral forces caused by an inside deropement, shall be installed.~~

~~Construction of the entire sheave unit shall be such that the rope cannot become entangled in the sheave unit in the event the rope leaves the sheave toward the outside.~~

~~A suitable device, or system shall be installed and maintained that will stop the aerial tramway in case of deropement of a sheave unit (see 2.2.3.4).~~

~~If the gauge of the haul rope system is varied at any point along the line, the horizontal departure at any one tower shall be provided for in the design so that deropement cannot occur by virtue of such a departure.~~

~~Sheave mounts or mounting frames shall be designed to be adjustable, allowing the sheave units to be aligned and held in the plane of the rope.~~

~~See also 2.1.1.5 through 2.1.1.5.7 for the effect of tower height and location on sheave units.~~

2.1.3.4 Track cable saddles and mounts.

Prior to April 15, 2019:

Cable catchers shall be provided on the saddles on both sides of each track cable. Cable catchers are not required if the track cable shoes are designed to reduce the risk of deropement. The radius of a track cable saddle shall be determined by the one of the following criteria that requires the largest radius:

a) To be large enough to minimize bending stresses in the cable. In any event, the radius shall be equal to at least 1200 times the largest dimension of the outer wire of the cable;

NOTE – In shaped wire, consider the greater dimension (width or height) not diagonal measurement.

b) To be large enough to provide smooth transition of the carriage assembly from span to span;

c) To be large enough to reduce the bearing pressure to a value that will permit proper lubrication of the cable to facilitate sliding in the saddle groove;

d) To be large enough so that the radial acceleration of the carrier is not greater than 6.6 feet (2.0 meters) per second squared calculated as follows:

V2/R is not greater than 6.6 feet (2.0 meters) per second squared

V = Carrier speed in feet (meters) per second
R = Radius of shoe in feet (meters)

The minimum pressure on the saddle shoes shall be not less than 1.5 times the pressure required to hold the rope in contact with the shoes when a wind force of six pounds per square foot (290 pascals) is applied upwards on the rope, parallel to the reaction on the tower.

The saddle shall be long enough to ensure that, under maximum design loading conditions, the cable will not come into contact with the end of the saddle groove.

Saddles shall be designed so that the track cable brake, if any, may function at the time the carrier is passing the saddle without deropement of the carriage wheels.

Saddles shall permit free passage of the carriage even when the carrier is swinging laterally to its design limit as it approaches or passes the tower.

If the gauge of the aerial tramway is varied at any point along the line, horizontal departure at any one tower shall be kept to a minimum to avoid deropement of the carriage wheels as they pass over the saddle.

Systems without track cable brakes shall have the saddles encircle the track cables not less than 180 degrees.

~~**2.1.5 Provisions for operating personnel.**~~

Commented [MD8]: Replaced by ANSI-B77.1 2022 - 2.1.5 Provisions for operating personnel

~~Operator and attendant stations shall be located to provide visual surveillance of the station and the line in the vicinity of the station or in a cabin. When enclosed, they shall be heated, ventilated, and lighted as required to perform the function of the station. They shall contain, inside the station when enclosed:~~

~~a) The communications and controls required of the station;~~

~~b) The operating instructions and emergency procedures;~~

~~c) A fire extinguisher.~~

~~This does not preclude additional communications and controls located outside the enclosed station. All enclosed stations shall be locked to prevent unauthorized entry when unattended.~~

~~The operator shall be located where he/she can observe the aerial tramway in operation and may be located in a cabin. The physical appearance, operation, and location of emergency shutdown devices shall differentiate them from other operating devices or controls. The operator's controls and communicating devices shall be within reach without leaving his/her position.~~

~~**2.1.6.1 Operational manual.**~~

~~The designer of each new or reinstalled aerial tramway shall prepare an operational manual for use with each installation. The manual shall describe the function and operation of the components and provide instructions for the correct usage of the installation.~~

2.2 Electrical design and installation.

Prior to April 15, 2019:

2.2.1.3 Protection. **(ANSI B77.1-2011 Numbering)**

All transformer stations and other high voltage electrical equipment shall be marked with conspicuous warning signs and shall be protected so as to prevent unauthorized persons from entering the area or coming in contact with any portion of the equipment or wiring. All power equipment shall be protected against overloads by circuit breakers or fuses.

~~**2.2.1.4 Voltage limitations for overhead circuits.**~~

~~Signal, communication, and control circuits may be supported between towers that support the aerial tramway. Voltage on overhead or exposed circuits shall be limited to fifty volts with the exception of the intermittent ring-down circuits for telephone systems.~~

Commented [MD9]: Replaced by ANSI-B77.1 2022 - 2.2.1.4 Voltage limitations for overhead circuits

2.2.1.7 Operating control circuits. **(ANSI B77.1 – 2011 Numbering)**

2.2.1.7.1 Operating circuits.

All aerial tramway systems shall contain one or more normally de-energized circuit(s) that, when energized, allow(s) the system to start, accelerate to and run at designated speeds, and when interrupted or de-energized by manual stop switches, automatic stop devices, inadvertent ground or a power failure, cause(s) the system to stop.

Operating circuits shall not have anything across or parallel with the contacts of switches, relays, or automatic stopping devices (including solid state devices monitoring the circuits or devices), unless it can be shown that any failure mode of the device placed across the contacts does not defeat the purpose of the operating circuit devices.

All start/run/stop and speed control switches shall be conspicuously and permanently marked with the proper function.

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

2.2.1.7.2 Emergency shutdown circuit.

All aerial tramway systems shall include a normally de-energized circuit that, when energized, allows the system to run and when interrupted, effects a shutdown (see 1.4.22). The shutdown shall have priority over all other control stops or commands. If, for any reason, the operator has lost control of the aerial tramway while using the operating control circuitry, the controls shall include an emergency shutdown circuit allowing the operator/attendant to stop the aerial tramway. Any one of the following conditions is considered a loss of control of an aerial tramway:

a) Aerial tramway will not SLOW DOWN when given the command to do so;

b) Aerial tramway will not STOP when given the command to do so;

c) Aerial tramway OVERSPEEDS beyond control settings and/or maximum design speed;

d) Aerial tramway ACCELERATES faster than normal design acceleration;

e) Aerial tramway SELF-STARTS or SELF-ACCELERATES without the command to do so;

f) Aerial tramway REVERSES direction unintentionally and without the command to do so.

The shutdown circuit shall not have anything across or parallel with the contacts of switches, relays, or other devices in this circuit, but can have such devices as solid state monitoring devices and microprocessors in series with the manual shutdown device and main control contactor (main control disconnect coil).

This circuit shall include a manual shutdown device at each station and in the machine room. The shutdown device shall be conspicuously and permanently marked and shall be red in color (see 2.1.5).

~~**2.2.1.7.3 Bypass circuits.**~~

~~A temporary bypass circuit may be installed for malfunctions in operating control circuitry (see 2.3.2.5.9).~~

Commented [MD10]: Replaced by ANSI-B77.1 2022 - 2.3.2.5.9 Bypass requirements

~~**2.2.9 Manual control devices.**~~

~~All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.~~

~~Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.~~

~~Manual control devices shall be installed at all conductor and operator work positions, control rooms, machine rooms, and out-of-doors in proximity to all loading and unloading areas.~~

~~As a minimum, each operator and conductor work position shall include an emergency shutdown device and a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet.~~

Commented [MD11]: Replaced by ANSI-B77.1 2017 - 2.2.4 Control functions

~~All control devices shall be conspicuously and permanently marked with the proper function and color code.~~

~~**2.2.12 Software security.**~~

~~The "as built" documents shall include a procedure, developed by the aerial lift manufacturer or a Qualified Engineer, to ensure the security of the software logic and operating parameters that will control the aerial lift. Upon completion of the acceptance testing this procedure shall be implemented in a manner that will prevent unauthorized personnel from making changes to the software logic or operating parameters. All programmable logic and parameters shall be documented.~~

~~Software programming and changes to the software logic shall be made by a qualified software programmer. Software programmers shall provide documents that include:~~

~~1. Software logic development date;~~

~~2. Software logic current revision number;~~

~~3. Software logic current revision date;~~

~~4. List of software logic changes for each revision that explain changes in detail;~~

~~5. Name of software logic programmer that made each revision;~~

~~6. Testing procedures for each change of software logic;~~

~~7. Personnel that completed the testing.~~

Commented [MD12]: Replaced by ANSI-B77.1 2022 - 2.2.11 Software security

2.3.1.3 Operational plan for transportation of recreational equipment. Each licensee shall have an operational plan that has procedures for transportation of sports equipment and recreational devices by foot passengers. This plan shall be consistent with the tramway manufacturer's specifications and instructions, if any.

IN ADDITION TO ANSI 2.3.2.5 Operation requirements

~~**2.3.2.5 Operational requirements.**~~

~~**2.3.2.5.1 General.**~~

~~The owner and supervisor of each aerial lift shall review the requirements of Section 2 and referenced Annexes of this standard to ascertain that original design and installation conditions have not been altered in a manner so as to violate the requirements of the standard.~~

2.3.2.5.10~~2~~ Preoperational minimum ridership requirements.

Each licensee shall have an operational plan that identifies criteria for pre-operational tramway inspections for the transportation of personnel on aerial ropeways. Implementation of these procedures is intended for the protection of all personnel and shall be the responsibility of the area operator, supervisor, and the authorized individual.

The preoperational plan shall include, but not be limited to:

Minimum Requirements

Prior to the daily preoperational ride and the completion of X.3.2.4.2 Daily preoperational inspection, or any initial start-up of the ropeway, the following minimum steps shall be taken;

1. At least one brake and stop switch has been operated and proves to function properly, and either items two or three are performed.

2. The ropeway is operated slowly for a minimum of three minutes, or a length of time equal to the time a carrier takes to cross the longest span on the installation.

3. The lift line is visually inspected in one of two ways:

    a) The entire lift line is visually inspected from the ground by trained personnel.

    b) The lift line inspection occurs while riding the aerial ropeway. If this method is used, the first rider shall be in constant communication with the operator.

The plan shall also include the following requirements:

i) **Evacuation of pre-ride personnel.** The number of available evacuation personnel, the method of transportation of those persons, the required evacuation equipment and the method of transport of evacuated personnel.

ii) **Trained operational and maintenance availability.** A requirement that trained operational and maintenance personnel shall be immediately available to attempt to restart the tramway if the tramway stops.

For the purpose of this Rule, “area employee” means an individual: (1) who performs services for an area operator, as that term is defined by section 12-150-103(1), C.R.S.; (2) who receives financial compensation directly from the area operator for those services; and (3) whose services only the area operator has the right to control (i.e., the area operator has the right to direct the services the individual will perform for the area operator and how the individual will perform those services).

A. For Licensed Ropeways and Unlicensed Ropeways After Initial Testing, including Expired Licenses

An area employee that is directly related to the opening of the aerial lift (i.e. Ski Patrol, Lift Maintenance, and Lift Operators) shall conduct the pre-operational inspection ride. If any other area employee is to ride the lift prior to the completion of the pre-operational inspection, the personnel responsible for the pre-operational inspection ride shall ride in the first carriers in front of the area employee. As used in this Rule, the term “area employee” specifically excludes independent contractors, subcontractors, vendors, and their personnel.

B. Unlicensed Ropeways Prior to Testing and Licensing

Only personnel related to the completion of the construction, operation, and buildings directly related to the operation of the tramway may be transported by the tramway prior to testing and licensing.

~~**2.3.2.5.3 Starting.**~~

~~Following procedural clearances, the aerial lift shall be started by the operator or at the direction of the operator.~~

~~**2.3.2.5.4 (Reserved)**~~

~~**2.3.2.5.5 Stops.**~~

~~After any stop of an aerial lift, the operator shall determine the cause of the stop, and not restart until clearance has been obtained from all attended stations.~~

~~**2.3.2.5.6 Termination of daily operations.**~~

~~Procedures shall be established for terminating daily operations in such a manner that passengers will not be left on the aerial lift after it has been shut down. Loading ramps, as required, shall be closed and so marked.~~

~~When either loading or unloading portions of an intermediate station are not in operation, it shall be so signed and the loading station shall be closed to public access.~~

~~**2.3.2.5.7 Damage to carriers.**~~

~~Should any carrier become damaged or otherwise rendered unfit for passenger transportation during normal operation, it shall be clearly and distinctively marked and not used for passengers until repaired or replaced. It shall be removed from the line as soon as feasible.~~

~~**2.3.2.5.8 Hazardous conditions.**~~

~~When wind or icing conditions are such that operation is hazardous to passengers or equipment, according to predetermined criteria based upon the area's operational experience and the designer's design considerations, the aerial lift shall be unloaded and the operation discontinued. If necessary under the predetermined criteria, device(s) shall be installed at appropriate location(s) to ascertain wind velocity and direction when aerial lifts are operated. No aerial lift shall operate when there is an electrical storm in the immediate vicinity. Should such conditions develop while the aerial lift is in operation, loading of passengers shall be terminated, and operation shall be continued only as long as necessary to unload all passengers. When such shutdown has been caused by an electrical storm, grounding of control circuits and haul ropes that are used as conductors in communication systems is permissible. Such grounding shall be removed prior to resumption of passenger operations.~~

~~**2.3.2.5.9 Bypass requirements.**~~

Commented [MD13]: Replaced by ANSI-B77.1 - 2017 - 2.3.2.5.3 Starting

Commented [MD14]: Replaced by ANSI-B77.1 2017 - 2.3.2.5.4 Stops

Commented [MD15]: Replaced by ANSI-B77.1 2017 - 2.3.2.5.8 Termination of daily operations

Commented [MD16]: Replaced by ANSI-B77.1 2017 - 2.3.2.5.5 Damage to carriers

Commented [MD17]: Replaced by ANSI-B77.1 2017 - 2.3.2.5.6 Hazardous conditions

Commented [MD18]: Replaced by ANSI-B77.1 2017 - 2.3.2.5.9 Bypass requirements

~~The use of temporary circuits that have been installed for the purpose of bypassing failed electrical circuit(s) (see 2.2.6) shall meet these requirements in the following order:~~

~~a) The condition that the circuit indicated is in default shall be thoroughly inspected to ensure an electrical operating circuit malfunction, rather than the indicated condition, actually exists;~~

~~b) The bypass shall be authorized only by the aerial lift supervisor or his/her designated representative;~~

~~c) When a bypass is in operation, the function bypassed shall be under constant, close visual observation;~~

~~d) The use of a bypass circuit shall be logged and shall indicate when, who authorized, and for what duration a bypass was used;~~

~~e) The operator control panel shall indicate that a bypass is in use.~~

~~**2.3.2.5.10 Evacuation.**~~

Commented [MD19]: Replaced by ANSI-B77.1 2017 - 2.3.2.5.7 Evacuation

~~A plan for evacuation of passengers from each aerial lift shall be developed and documented. The plan shall include:~~

~~a) The definition of the line of authority in the event of an evacuation. This line of authority shall list:~~

~~1) The positions responsible for determining the need for and ordering an evacuation by use of the evacuation power unit or evacuation from individual carriers;~~

~~2) The personnel responsible for performing the evacuation, for first aid, and for ground care of evacuated passengers.~~

~~b) A description of the equipment necessary for evacuation and where it will be stored;~~

~~c) Provisions for adequate training in the functions performed in the evacuation process at least once each operating season. Such drills are to be recorded in the operational log of each aerial tramway (see 2.3.5.1);~~

~~d) An estimate of the time necessary for the total evacuation of each aerial lift;~~

~~e) A description of unusual terrain conditions and how each of these conditions will be dealt with during an evacuation;~~

~~f) An estimate of when the evacuation should begin in the event the aerial lift becomes inoperable;~~

~~g) Provisions for communications with passengers of an inoperable aerial lift, the frequency of such communication, how soon after the aerial~~

~~tramway becomes inoperable such communication to the passengers will start, and the frequency of communications thereafter;~~

~~h) The methods of evacuation to be used for the typical passenger, incapacitated passenger, passengers using common adaptive ski equipment, and non-ambulatory passengers;~~

~~i) Provisions for communication with the evacuation teams;~~

~~j) Provisions for suspending the evacuation in the event that the aerial lift is made operable during the evacuation;~~

~~k) Provisions for control and assistance of evacuated persons until released;~~

~~l) Provisions for a post-evacuation report.~~

~~All nonmetallic rope used for evacuation shall be of nylon or polyester (Dacron) fiber of either laid or braided construction. Laid rope of nylon shall be of a hard lay. These ropes shall be either of a static rescue type or a dynamic mountaineering type. Breaking strength, when new, shall be at least 15 times the maximum expected operating load but in no case less than 4000 pounds (17.8 kilonewtons). No natural fiber or polypropylene ropes shall be used.~~

~~These ropes shall be carefully stored when not in use and shall be examined after each completed aerial lift evacuation and prior to each season of operation, both summer and winter, to ascertain that they are in satisfactory condition.~~

~~Carabiners, if used, shall be of the locking type.~~

IN ADDITION TO ANSI 2.3.5

2.3.5.6 Software parameter log.

A software parameters log shall be maintained for each aerial lift. This log is intended for changes in software parameters that can be altered which affect the supervision circuit. The log shall include, but not be limited to:

a) Current software parameter values;

b) Changes to software parameter values;

c) Date of changes made;

d) Documentation of testing for each change of parameter values;

e) Personnel making parameter changes.

Section 3 Detachable grip aerial lifts

Note: Timeframes relate to the ropeway installation date or modification date whichever controls, unless otherwise noted.

IN ADDITION TO ANSI 3.1.1.3 Location

3.1.1.3.1 Location of power lines.

Jan, 1, 1977 to Present:

Power lines shall be located a minimum distance equal to the height of poles or support structures from any passenger tramway so that poles and electrical lines cannot touch any portion of the tramway, loading or unloading points or platforms and tow path, if applicable, upon collapse of poles or lines, unless suitable and approved precautions are taken to safeguard human lives.

3.1.1.3.2 Air space requirements.

3.1.1.3.2.1 Structures.

Note: Timeframes stated for this Rule define the air space requirements for each ropeway at the time when the encroachment was known to the area and DO NOT pertain to the installation date of the ropeway.

May 15, 2000 to Present:

No passenger tramway installation shall be permitted to operate when a structure encroaches into the air space of the passenger tramway, defined as the area bounded by vertical planes commencing at a point thirty-five feet from the intersection of the vertical planes of the ropes or cables and ground surface.

For purposes of this Rule, buildings controlled by the licensee used primarily for maintenance and operation of the lift and other tramways shall not be considered structures; however, buildings must comply with the following.

(1) No flammable liquids may be stored in the building outside of a UL listed container or storage cabinet, unless such flammable liquids are in the original containers and intended for daily usage. Quantities must be consistent with normal daily use. Class I or II flammable storage materials shall be limited to two gallons in a UL listed container and must be stored either in an outside storage area or in a UL listed cabinet.

(2) The building must be within the view of the attendant but not impair the sight line of the lift.

(3) Entrances to all machinery, operators', and attendants' rooms shall be locked when not in use. Unattended entrances accessible to public, which may be left open, shall be equipped with barriers to prevent entry.

Jan. 1, 1994 to May 15, 2000:

No passenger tramway installation shall be permitted to operate when a structure encroaches into the air space of the passenger tramway, defined as the area bounded by planes having an outward slope of one horizontal and two vertical and commencing at a point twenty feet horizontally outside of the intersection of the vertical planes of ropes or cables and ground surface.

Dec. 30, 1977 to Jan. 1, 1994:

No passenger tramway installation shall be permitted whenever the Passenger Tramway Operator does not have permanent and irrevocable control of the following air space (except when the passenger tramway is located on Forest Service land): the area bounded by planes having an outward slope of one horizontal and two vertical and commencing at a point twenty feet horizontally outside of the intersection of the vertical planes of ropes or cables and ground surface.

Prior to Dec. 30, 1977:

None required

3.1.1.3.2.2 Cables or ropes.

Note: Timeframes stated for this Rule define the air space requirements for each ropeway at the time when the encroachment was known to the area and DO NOT pertain to the installation date of the ropeway.

May 15, 2000 to Present:

Any cable or rope installed on or near a ropeway that may represent a hazard to the ropeway shall be monitored to automatically stop the ropeway if the cable or rope fails. Failure would be defined as per Section 23.1 (g).

EXCEPTION: Track or haul ropes are excluded from this Rule.

Prior to May 15, 2000:

Not required

REPLACES ANSI FOR SPECIFIC TIMEFRAMES

3.1.1.5.2.1 Line Clearances.

Jan, 1, 1984 to Nov. 1, 1991:

Terminals and towers shall be designed and installed to provide the clearances as herein specified and to minimize surge of the line under operating conditions. Local wind conditions shall be taken into consideration.

The minimum distance between passing carriers, each swung ten degrees inward from the vertical, shall be the greater of the following:

a) 2 feet 6 inches

b) 1/2% of the span length (applies to gondolas only).

The distance between haul ropes, (or track cables), for the purpose of these checks, shall be considered as equal to the gauge of the line.

External structures, posts, or obstructions, other than lift structural components, shall have at least four feet (1.22 meters) of clearance from either edge of a loaded open carrier passenger seat or open cabin body (measured from the outermost attachments on or parts of the carrier while the carrier is hanging in a vertical position).

Prior to Jan. 1, 1984:

Terminals and towers shall be designed and installed to provide the clearances as herein specified and to minimize surge of the line under operating conditions. Local wind conditions shall be taken into consideration.

The minimum distance between passing carriers, each swung 10 degrees inward from the vertical, shall be the greater of the following:

a) 2 feet 6 inches

b) 1/2% of the span length (applies to gondolas only).

The distance between haul ropes, (or track cables), for the purpose of these checks, shall be considered as equal to the gauge of the line.

3.1.1.5.2.3 Terminal clearances.

Prior to Nov. 1, 1991:

Not required.

~~**3.1.1.6 Structures and foundations.**~~

Commented [MD20]: Replaced by ANSI-B77.1 2022 - 3.1.1.6 Structures and foundations

~~*Prior to April 15, 2019:*~~

~~All structures and foundations shall be designed and constructed in conformance with 1.3 and shall be appropriate for the site. Applied design loads shall include dead, live, snow, wind, and dynamic loads due to normal conditions and for foreseeable abnormal conditions.~~

~~Structures and foundations located in snow creep areas shall be designed for such conditions and loads, or protective structures shall be provided as required by the conditions.~~

3.1.1.11.2 Acceptance tests.

~~Before an aerial lift that is new or relocated or that has not been operated for routine maintenance within the previous two years is opened to the public, it shall be given thorough tests by qualified personnel to verify compliance with the plans and specifications of the designer. The designer or manufacturer shall propose and submit an acceptance test procedure.~~

~~Thorough load and operating tests shall be performed under full loading and any partial loadings that may provide the most adverse operating conditions. Test load per carrier shall be 110% of the design live load. The functioning of all push-button stops, stop cords, automatic stops, limit switches, deropement switches, and communications shall be checked. Acceleration and deceleration rates shall be confirmed under all loadings (see 3.1.2.4, 3.1.2.5). Motive power and all braking and rollback devices (see 3.1.2.6) shall be proved adequate under the most adverse loadings.~~

~~On systems operating at 600 feet per minute (3 meters per second) or greater, a plot of rope speed versus time shall be recorded for stops that the manufacturer or Qualified Engineer has designated in the acceptance test procedure. As a minimum, the plot shall show the rope speed every 0.2 seconds from the initiation of the stop to when the rope is stopped. The final brake system settings and brake test values shall be documented in the acceptance test results.~~

ADDITION PARAGRAPH ADDED TO ANSI 3.1.11.2 ACCEPTANCE TESTS

Any changes to software logic that would affect a Protection or Operation Circuit after the start of initial testing shall result in a restart of testing to ensure software logic changes have not affected those systems already tested. Retesting for changes in software parameters shall be at the discretion of the Authorities Having Jurisdiction (AHJ).

REPLACES ANSI FOR SPECIFIC TIMEFRAMES

3.1.2.1.2 Evacuation power unit.

Prior to April 15, 2019:

An evacuation power unit (see 1.4 – *evacuation power unit*) with an independent power source shall be provided that can readily be used to unload the aerial lift in the event of failure of the prime mover. The evacuation power unit shall not depend upon the mechanical integrity of any other power unit to drive the aerial lift. This unit shall be electrically wired to meet the requirements of 3.2.3.1 so that it can be stopped by the Emergency Shutdown Circuit. As a minimum, the evacuation power unit shall be capable of starting and moving a line with all carriers loaded to 110% of capacity in weight in a forward direction at not less than 100 feet per minute (0.51 meters per second).

The evacuation power unit shall be designed to become operational and move all the carriers to or through terminal areas within one hour from the time of initiating its connection.

3.1.2.1.3 Power unit interlock.

Prior to May 15, 2006:

Not required.

3.1.2.5 Stops and shutdowns.

REPLACES FIRST PARAGRAPH of ANSI 3.1.2.5 Stops and shutdowns

For all stops, the minimum average rate of the carrier's horizontal deceleration shall be adequate to prevent carrier collision in the receiving and launching mechanisms.

The maximum rate of the rope deceleration shall be five feet per second squared (1.52 meters per second squared). These measurements shall be measured over any one second interval under any operating condition while the carrier is attached to the haul rope and referenced to the rope speed at the drive terminal.

~~Normal stop: (see 1.4 – *normal stop*). If a service brake is required (see table 3-1), it shall have been applied by the time the aerial lift comes to a stop.~~

~~Emergency shutdown: (see 1.4 – *emergency shutdown*) The drive sheave brake shall be applied. The service brake, if installed, shall have been applied by the time the aerial lift comes to a stop. The designer shall designate which control functions of the ropeway system shall initiate an emergency shutdown.~~

~~The designer may define other stopping modes other than normal and emergency shutdown. For other stopping modes, the designer shall specify the method of stopping, including the type and timing of brake(s) that may be applied, and the stopping criteria.~~

~~Table 3-1 Required Stopping Devices~~

~~**Aerial lift category**~~	~~**Service Brake**~~	~~**Drive sheave brake**~~	~~**Rollback device**~~	~~**Retarding device (see 3.1.2.4)**~~
~~**Self braking:** A lift that decelerates, stops & remains stopped within the service brake performance requirements without a braking device~~	~~Required*~~	~~Required~~	~~Not Required~~	~~Not Required~~
~~**Non-overhauling:** A lift that will not accelerate in either direction when it is not driven, but is not self-braking~~	~~Required~~	~~Required~~	~~Not Required~~	~~Not Required~~
~~**Overhauling reverse direction:** A lift that will accelerate in the reverse direction when it is not driven~~	~~Required*~~	~~Required~~	~~Required~~	~~Not Required~~
~~**Overhauling forward:** A lift that will accelerate in the forward direction when it is not driven~~	~~Required~~	~~Required~~	~~Not Required~~	~~Required~~
~~* A service brake is not required if the overhauling reverse direction aerial lift will meet the service brake stopping requirements under the most unfavorable design loading conditions~~				

REPLACES ANSI FOR SPECIFIC TIMEFRAMES

3.1.2.6 Brakes and rollback devices.

May 15, 2006 to April 15, 2019:

The aerial lift shall have the following friction-type brakes and other devices as specified in table 3-1:

– Service brake (see 3.1.2.6.1);

– Drive sheave brake (see 3.1.2.6.2);

– Rollback device (see 3.1.2.6.3).

All braking systems shall be designed and monitored to ensure that:

a) Once the aerial lift begins movement in the intended direction, the brakes are maintained in the open position;

b) The service brake shall not open prior to the drive system developing sufficient torque to prevent overhauling;

EXCEPTION – For an aerial lift that overhauls only in the reverse direction, a drive train backstop (3.1.2.6.4) may be used in lieu of the above.

c) Multiple brakes or brake systems shall not be simultaneously applied such that excessive deceleration is applied to the aerial lift under any anticipated conditions of loading;

d) The failure of one braking system to properly decelerate the aerial lift shall automatically initiate a second braking system, if any.

The service brake, drive sheave brake, and rollback device shall be designed such that failure of one braking system will not impair the function of the other systems. All brakes shall have the braking force applied by springs, weights, or other approved forms of stored energy.

The service brake, drive sheave brake, and rollback device shall be designed to assure operation under all anticipated conditions.

Each braking system shall be capable of operation to comply with daily inspections and periodic testing.

The manufacturer or a Qualified Engineer shall furnish a written procedure to be followed and specify the auxiliary equipment necessary for periodic testing and adjustment of the holding force of each brake, rollback, and backstop device. The procedure shall additionally specify:

e) The minimum and maximum holding force for the service brake and drive sheave brake independently, and;

f) The minimum and maximum stopping distance for the service brake and drive sheave brake independently, with a specified loading condition.

This baseline procedure shall be performed at the completion of the acceptance test and then at the frequency specified in order to demonstrate the ability of each brake to produce the required force.

Testing shall be accomplished as part of normal maintenance during the operating season, but shall not be performed when the aerial lift is open to the public. As a minimum, this testing shall be performed monthly during the operating season.

If a device is permanently installed to cause a brake, or rollback device, to be disabled for testing or reverse rotation, it shall be electronically monitored so that the aerial lift cannot be operated in its normal mode when the brake is so disabled.

Prior to May 15, 2006:

The aerial lift shall have the following friction-type brakes and other devices as specified in table 3-1:

– Service brake (see 3.1.2.6.1);

– Drive sheave brake (see 3.1.2.6.2);

– Rollback device (see 3.1.2.6.3).

All braking systems shall be designed and monitored to ensure that:

a) Once the aerial lift begins movement in the intended direction, the brakes are maintained in the open position;

b) The service brake shall not open prior to the drive system developing sufficient torque to prevent overhauling;

EXCEPTION – For an aerial lift that overhauls only in the reverse direction, a drive train backstop (3.1.2.6.4) may be used in lieu of the above.

c) Multiple brakes or brake systems shall not be simultaneously applied such that excessive deceleration is applied to the aerial lift under any anticipated conditions of loading;

d) The failure of one braking system to properly decelerate the aerial lift shall automatically initiate a second braking system, if any.

The service brake, drive sheave brake, and rollback device shall be designed such that failure of one braking system will not impair the function of the other systems, and all brakes shall have the braking force applied by springs, weights, or other approved forms of stored energy.

The service brake, drive sheave brake, and rollback device shall be designed to assure operation under all anticipated conditions.

Deceleration rates specified in 3.1.2.4 shall be achieved by each brake without the aid of other braking devices or drive regeneration.

Each braking system shall be capable of operation to comply with daily inspections and periodic testing.

A Qualified Engineer shall furnish a written procedure to be followed and specify the auxiliary equipment necessary for periodic testing and adjustment of the holding force of each brake, rollback, and backstop device. This procedure shall be performed during the

acceptance test, and then at the frequency specified, to demonstrate the ability of each brake to produce the required torque.

Such testing shall be accomplished as part of normal maintenance during the operating season, but shall be performed when the aerial lift is not open to the public.

If a device is permanently installed to cause a brake, or rollback device, to be disabled for testing or reverse rotation, it shall be electronically monitored so that the aerial lift cannot be operated in its normal mode when the brake is so disabled.

~~**3.1.2.6.1 Service brake.**~~

~~The service brake can be located at any point in the drive train such that there is no belt, friction clutch, or similar friction-type device between the brake and the drive sheave. The service brake shall not act on the same braking surface as the drive sheave brake.~~

~~The service brake shall be an automatic brake to stop and hold the aerial lift under the most unfavorable design loading condition. Deceleration rates specified in 3.1.2.5 shall be achieved by the service brake without the aid of other braking devices or drive regeneration.~~

~~The brake shall be in a normally applied position. It shall be held open for operation of the aerial lift and shall be applied when its power is removed or the aerial lift is stopped.~~

3.1.2.6.2 Bullwheel~~Drive sheave~~ brake.

Jan. 1, 1988 to April 15, 2019:

The bullwheel brake shall operate on any drive terminal bullwheel assembly that meets the requirements of 3.1.2.8.2.

The bullwheel brake shall be an automatic brake to stop and hold the aerial lift under the most unfavorable design loading condition. Deceleration rates specified in 3.1.2.5 shall be achieved by the bullwheel brake without the aid of other braking devices or drive regeneration.

Application of the bullwheel brake shall automatically disconnect the power source to the power unit in use. This brake shall act automatically when the speed of the haul rope exceeds the design value by 15% in either direction.

Prior to May 15, 2011:

The drive sheave brake shall operate on the drive sheave assembly.

The drive sheave brake shall be an automatic brake to stop and hold the aerial lift under the most unfavorable design loading condition. Deceleration rates specified in 3.1.2.5 shall be achieved by the drive sheave brake without the aid of other braking devices or drive regeneration.

Application of the drive sheave brake shall automatically disconnect the power source to the power unit in use. This brake shall act automatically when the speed of the haul rope exceeds the design value by 15% in either direction.

Commented [MD21]: Replaced by ANSI-B77.1 2022 - 3.1.2.6.1 Service brake

~~**3.1.2.6.3 Rollback device.**~~

~~The rollback device shall act directly on the drive sheave assembly or on the haul rope. Under the most unfavorable design loading condition, the rollback device shall automatically control reverse rotation of the aerial lift, as defined herein. The rollback device shall bring the aerial lift to a stop if unintentional reverse rotation occurs. The rollback device shall be activated if the haul rope travels in excess of thirty-six inches (915 mm) in the reverse direction (see 3.2.3.7 for electrical requirements).~~

Commented [MD22]: Replaced by ANSI-B77.1 2022 - 3.1.2.6.3 Rollback device

~~**3.1.2.6.4 Drive train backstop.**~~

~~A drive train backstop device may be installed on an aerial lift. If used, it shall conform to the following requirements:~~

Commented [MD23]: Replaced by ANSI-B77.1 2022 - 3.1.2.6.4 Drive train backstop

~~a) A drive train backstop device is a one-way or overrunning clutch device. The drive train shall be so arranged that there is no belt, friction clutch, or similar friction-type device between the backstop device and the drive sheave;~~

~~b) The backstop device shall be rated for the maximum design load;~~

~~c) Under the most unfavorable design loading condition, the backstop device shall automatically prevent reverse rotation of the aerial lift before the aerial lift travels in excess of thirty-six inches (915 mm) in the reverse direction.~~

3.1.2.7.~~5~~2 Other machinery locations.

Commented [MD24]: Peter Belau - 12/22/22

You may want to include the heading "replaces ANSI for specific timeframes"

Jan. 1, 1988 to May 2, 2011 ~~Present~~:

The acceleration/deceleration areas, conveyor areas, and associated access ways shall be well ventilated. These areas shall have a permanently installed lighting system which is adequate for proper machinery maintenance and safety of personnel. Access ways shall be provided for inspection and proper maintenance while the equipment is in operation. Access ways shall have:

(1) Stairs or secured ladder.

(2) Skid resistant floors, platforms, or catwalks which provide access as defined in subparagraph three herein to all manual and automatic safety devices (switches) and tensioning system components. Access to other areas shall be denied while equipment is in operation.

(3) A minimum vertical clearance of 80 inches (2 m), and a minimum horizontal clearance of 24 inches (61 cm). If a component crosses the access way, vertical clearance may be reduced as follows: a) a minimum of 60 inches (152 cm), for a maximum distance of 36 inches (92 cm); or b) a minimum of 48 inches (122 cm), for a maximum distance of 12 inches (30.5 cm). If the obstruction exceeds 15 inches (38 cm), in height, above the floor, stairs shall be provided to allow passage over the obstruction.

(4) Railings protecting floor openings and moving machine parts. Moving parts shall be considered guarded if they are located a minimum of 12 inches (30.5 cm) from the vertical plane of the railing. Railings shall consist of a top rail, located 36 42 inches (91 106 cm) from the walking surface; a mid rail, located approximately midway between top rail and walking surface; and a 4 inch high (10 cm) solid toe plate. Railings shall be designed and constructed to resist anticipated loadings.

The requirements of Rules 3.1.2.6.1 and 3.1.2.6.4, as revised, shall be in effect for all installations constructed subsequent to January 1, 1988. For all installations completed prior to January 1, 1988 reasonable compliance with Rules 3.1.2.6.1 and 3.1.2.6.4 as revised shall be accomplished prior to November 1, 1990.

Prior to Jan 1, 1988:

Not required.

REPLACES ANSI FOR SPECIFIC TIMEFRAMES

3.1.2.7 Machinery systems~~Location of machinery.~~

~~3.1.2.7.1 General.~~

~~*Prior to April 15, 2019:*~~

~~Moving machine parts that normally may be in reach of personnel shall be fitted with guards. Where breakage of a power transmission component can result in injury, provisions shall be made for appropriate containment of said components. Guards and containment shall be done in conformance to American National Standard, ANSI/ASME, B15.1-2000 (R2008), *Safety Standard for Mechanical Power Transmission Apparatus*. Protection against static electricity shall be provided. Fire-fighting device(s) shall be available (see F.6 in Annex F).~~

Commented [MD25]: Replaced by ANSI-B77.1 2022 - 3.1.2.7 Machinery systems

~~3.1.2.7.2 Machinery not housed in a machine room.~~

~~*Prior to April 15, 2019:*~~

~~Provisions shall be made to keep the public away from the machinery. All machinery and controls shall be rated for use in their intended environment.~~

Commented [MD26]: Replaced by ANSI-B77.1 2022 3.1.2.7.2 Machinery housed in a machine room

~~3.1.2.7.3 Machinery housed in a machine room.~~

~~*May 15, 2011 to April 15, 2019:*~~

~~The machine room shall be adequately ventilated. It shall have a permanently installed lighting system, adequate for proper machinery maintenance and to reduce the risk of injury to operating personnel. The arrangement of the machinery shall permit proper maintenance. A door with a suitable lock shall be provided, and the design shall keep the public away from the machinery. When a passageway is provided between machines or machinery and walls, a minimum passageway width of eighteen inches (460 mm) shall be maintained. Means shall be provided to heat the machine room unless the designer or manufacturer~~

Commented [MD27]: Replaced by ANSI-B77.1 2022 - 3.1.2.7.2 Machinery housed in a machine room

~~certifies in writing that the drive system machinery is rated for operation in an unheated room.~~

3.1.2.7.4 Entrance and e~~E~~gress.

~~*Jan. 1, 1994 to April 15, 2019:*~~

~~Permanent stairs and walkways shall be provided for egress from all machinery areas. The maximum angle of inclination for the stairs shall not exceed seventy degrees. Stairs and walkways shall have a minimum width of 18 inches. Stair treads shall have a minimum depth of four inches. Walkway surfaces and stair treads shall be constructed of non-skid bar grating or expanded metal. Handrails shall be provided.~~

~~*Prior to Jan 1, 1994:*~~

~~Not required.~~

Commented [MD28]: Replaced by ANSI-B77.1 2022 - 3.1.2.7.3 Entrance and egress

~~**3.1.2.8.2 Hall rope terminal bullwheels (Bullwheel).**~~

~~*May 15, 2006 to April 15, 2019:*~~

~~Provisions shall be incorporated in the terminal design to retain the terminal bullwheels in their approximate normal operating position in the event of failure of the bearings, shaft, or hub.~~

~~Provisions shall be incorporated in the terminal and rope retention design to control the position of the rope, including possible overhaul, to minimize the effects of its departure from its normal operating position.~~

~~The minimum diameter of terminal bullwheels shall be seventy-two times the nominal diameter of the haul rope. The bullwheel assembly shall be designed to retain the haul rope in the event of a deropement from the bullwheel. A flange extension of 1-1/2 times the rope diameter (measured radially from the bottom of the rope groove) shall be deemed adequate for retention.~~

~~Terminal bullwheels that act as driving, braking, or holding bullwheels shall be so designed that the haul rope does not slip in the bullwheel groove. The design coefficient of friction for a particular bullwheel liner shall not exceed the values shown in table 3-4.~~

Commented [MD29]: Replaced by ANSI-B77.1 2022 - 3.1.2.8.2 Haul rope terminal bullwheels

~~**Table 3-4 Design coefficient of friction for bullwheel liners**~~

~~**Bullwheel liner**~~	~~**Coefficient of friction**~~
~~Steel or cast iron grooves~~	~~0.070~~
~~Leather~~	~~0.150~~
~~Rubber, neoprene, or others~~	~~0.205~~

~~*Prior to May 15, 2006:*~~

~~Haul rope terminal sheave frames shall be designed to retain the rope in the event of the failure of the sheave, shaft, or mounting. In instances where the sheave is cantilevered, the design working stresses shall not be more than 60% of those otherwise allowable.~~

~~The minimum diameter of terminal sheaves shall be seventy-two times the nominal diameter of the haul rope. The sheave assembly shall be designed to retain the haul rope in the event of a deropement from the sheave. A flange extension of 1-½ times the rope diameter (measured from the bottom of the rope groove) shall be deemed adequate for retention.~~

~~Haul rope terminal sheaves that act as driving, braking, or holding sheaves shall be so designed tht the haul rope does not slip in the sheave groove. The design coefficient of friction for a particular sheave liner shall not exceed the following values:~~

~~Sheave Liner~~	~~Coefficient of Friction~~
~~Steel or cast iron grooves~~	~~0.070~~
~~Leather~~	~~0.150~~
~~Rubber, neoprene, or other~~	~~0.205~~

3.1.2.10 Tension systems.

Prior to May 15, 2006:

Counterweights, hydraulic and pneumatic cylinders, or other suitable devices shall be used to provide the tensioning requirements of the particular installation. All devices used to provide the tension shall have sufficient travel to adjust to all normal operating changes in loading and temperature.

The tension for haul ropes and track cables for all modes of operation shall be determined by the design engineer. Tension systems may be automatic or manual; however, all systems shall have monitoring equipment that will automatically prevent operation outside of design limits (see 3.1.2.11.2(c)).

Tension systems may be adjustable to provide proper tensions for different modes of aerial lift operation.

The tension system design shall consider changes, for each mode of operation, in tensions due to rope elongation, friction, and other forces affecting traction on driving, braking, or holding sheaves, tower and sheave loading, and maximum vertical loads on grips to assure that tensions remain within design limits.

~~**3.1.2.10.1 Hydraulic and pneumatic systems.** (Previously 3.1.2.9.1 in ANSI 1999)~~

Commented [MD30]: Replaced by ANSI-B77.1 2022 - 3.1.2.10.1 Hydraulic and pneumatic systems

~~*Prior to April 15, 2019:*~~

~~Hydraulic and pneumatic cylinders, when used, shall have sufficient ram travel to accommodate all normal operating changes in loading and temperature. Provisions shall be made to keep the cylinder free from climatic-induced conditions and contaminants that may interfere with free movement.~~

If the system fails to provide the design operating pressure, the aerial lift shall be able to be operated to unload passengers.

Cylinders and their attachments shall each have a minimum factor of safety of 5. The factor of safety is equal to the ultimate tensile strength of the cylinder divided by the maximum steady state design tension.

The systems providing operating pressure for the cylinder shall have a minimum factor of safety of 5 unless a high velocity check valve or flow control device is used where the pressure line is connected to the cylinder. The check valve shall be rated to hold twice the normal operating pressure. The remainder of the system shall not exceed the manufacturer's published working pressure. Provisions shall be made to restrict the movement of pressure lines or hoses should they become severed under pressure. When pneumatic storage cylinders, accumulators, or other similar devices are used, they shall be located so that they cannot be knocked over or damaged.

3.1.2.10.2 Counterweights. (Previously 3.1.2.9.2 in ANSI 1999)

Prior to April 15, 2019:

Counterweights, when used, shall be arranged to move freely up and down. Enclosures for counterweights shall be provided where necessary to prevent snow, ice, water, and other materials from accumulating under and around the counterweights and interfering with their free movement. Visual access shall be provided to areas beneath and above all counterweights contained in enclosures or pits. When a counterweight is contained in a structural frame, guides shall be provided to protect the frame and to ensure free movement of the counterweight. Where snow enclosures are not required, guardrails or enclosures shall be provided to prevent unauthorized persons from coming in contact with or passing under counterweights.

Commented [MD31]: Replaced by ANSI-B77.1 2022 - 3.1.2.10.2 Counterweights

3.1.2.10.3 Wire ropes in tension systems. (Previously 3.1.2.9.3 in ANSI 1999)

Prior to April 15, 2019:

Wire ropes in tension systems shall have a minimum factor of safety of 6 when new (see 7.1.3.1). On arrangements involving rope reeving, the maximum design static tension with sheave friction taken into account shall be the basis for determining the factor of safety. See 7.3 for additional requirements. No rotation-resistant ropes shall be used in tension systems (see 1.4 B *rotation-resistant rope*).

Wire ropes in tension systems shall be adjusted so that the counterweight will reach the end of its travel before the attached tension sheave carriage comes within six inches (150 mm) of the end of its travel. When wire ropes are used with pneumatic or hydraulic cylinders, they shall be adjusted so that connecting

Commented [MD32]: Replaced by ANSI-B77.1 2022 - 3.1.2.10.3 Wire ropes in tension systems

devices will not contact the reeving devices before the ram reaches the travel limits of the cylinder.

3.1.2.10.4 Chains in tension systems. (Previously 3.1.2.9.4 in ANSI 1999)

Prior to April 15, 2019:

Roller, leaf, or welded link chains may be used in tension systems (see section 7).

For chain used as a tensioning component, where the chain does not pass through or around sprockets, the minimum factor of safety shall be five (see 7.1.3.3). For applications of chain where any sprockets are used, the minimum factor of safety shall be six.

Commented [MD33]: Replaced by ANSI-B77.1 2022 - 3.1.2.10.4 Chains in tension systems

3.1.2.10.5 Cable winches or chain adjusting devices. (Previously 3.1.2.9.5 in ANSI 1999)

Winches or other mechanical devices that are used for take-up and remain part of the system shall have a minimum factor of safety of 6 against their ultimate capacity. They shall have a positive lock against release. Where this factor cannot be established by the manufacturer's endorsement, a device shall be installed on the tension system rope or chain ahead of the winch/mechanical device that will keep the tension system intact in the event of a failure or release of the device.

The diameter of the winding drum shall not be less than the specified minimum sheave diameters referenced as Condition C in 3.1.2.7.3 for rope.

Commented [MD34]: Replaced by ANSI-B77.1 2022 - 3.1.2.10.5 Cable winches or chain adjusting devices

3.1.2.11 Anchoring devices.

Prior to April 15, 2019:

All anchoring end connections shall be above finished grade. Any portion of an anchorage below ground shall be protected against loss of strength due to corrosion.

Wire ropes or strands and their connections, used to anchor, tension, or otherwise secure terminal structures, shall be designed with a minimum factor of safety of 6. Where adjusting devices are used in the arrangement, the devices shall be capable of being securely locked or removed during operation.

All connections of ropes or cables used in anchoring devices shall be in accordance with the requirements of A.3.2 in Annex A.

Commented [MD35]: Replaced by ANSI-B77.1 2022 - 3.1.2.11 Anchoring systems

3.1.2.12 Terminal entrance and exit guides.

Prior to April 15, 2019:

Commented [MD36]: Replaced by ANSI-B77.1 2022 - 3.1.2.2 Terminal entrance and exit guides

~~From the point where the grip first enters the terminal rails or guides to the point where the grip or carrier is stabilized, provisions shall be made to accept the carriers and the grips into the terminal at the maximum rope speed when the carriers are swung to the limits specified in 3.1.1.5.2.1.~~

~~**3.1.2.13 Carrier Acceleration/Deceleration/ Spacing system.**~~

Commented [MD37]: Replaced by ANSI-B77.1 2022 - 3.1.2.13 Carrier Acceleration/Deceleration/Spacing System

~~*Prior to April 15, 2019:*~~

~~Smooth acceleration and deceleration of the carrier shall be accomplished to and from the rope at any speed.~~

~~EXCEPTION – Gravity launch/retrieve or similar systems with a single operational speed.~~

~~The rate of the carrier's acceleration to, and deceleration from, the maximum rope speed shall not exceed eight feet per second squared (2.44 meters per second squared) under the most unfavorable accelerating or braking condition.~~

~~Upon clamping to the haul rope, the differential of carrier velocity and rope speed shall not unduly affect either passenger comfort or mechanical wear.~~

~~Automatic carrier spacers or other suitable systems shall control the interval between carriers. Provisions shall be made to ensure that the carrier spacing shall never be less than the distances specified in the design. Unbalanced loading shall be controlled to the extent required by the design through the use of automatic carrier counters or other suitable systems.~~

~~In the case of open carriers, or where mechanical requirements for minimum spacing in the terminals exist, a system to prevent abnormal carrier spacing throughout the terminal carrier conveying system shall be installed (see 3.2.3.9).~~

~~Open carriers shall not be allowed to come together in locations where passengers are normally present.~~

3.1.3.1 Towers.

Commented [MD38]: Peter Belau - 12/22/22

You may want to include the heading "replaces ANSI for specific timeframes"

Nov. 1, 1991 to April 15, 2019:

The design of the tower structure and foundation shall be in accordance with the requirements of 3.1.1.6. Where guyed towers are used and guys intersect the ground within or near ski runs, the guys shall be marked for visibility.

Means shall be provided for ready access from the ground to all tower tops. Permanent ladders are required for heights above those accessible by portable ladders. Portable ladders, if used, shall be in at least sufficient quantity to be available at each point where attendants are positioned. Portable ladders extending more than twenty feet (6.10 meters) shall not be used.

Permanent anchor points shall be provided on all tower tops for the attachment of fall protection devices.

Towers shall be identified with successive numbers clearly visible to passengers.

Where towers are designed to permit variations in rope height, sheave unit supports shall be guided and attached so as to prevent misalignment by rotation during normal operation.

Prior to Nov. 1, 1991:

The design of the tower structure and foundation shall be in accordance with the requirements of 3.1.1.6. Where guyed towers are used and guys intersect the ground within or near ski runs, the guys shall be marked for visibility.

Means shall be provided for ready access from the ground to all tower tops. Permanent ladders are required for heights above those accessible by portable ladders. Portable ladders, if used, shall be in at least sufficient quantity to be available at each point where attendants are positioned. Portable ladders extending more than twenty feet (6.10 meters) shall not be used.

Towers shall be identified with successive numbers clearly visible to passengers.

Where towers are designed to permit variations in rope height, sheave unit supports shall be guided and attached so as to prevent misalignment by rotation

3.1.3.3.2 Sheave and sheave unit design.

~~*May 15, 2006 to April 15, 2019:*~~

~~Sheave flanges shall be as deep as possible, considering other features of the system. At the same time, rope grips shall be designed in relation to the sheave groove so as not to contact sheave flanges during normal operations, taking into consideration the anticipated amount of wear of the sheave liner groove. Grips shall be allowed to contact sheave flanges adjacent to the haul rope when the carrier swings, provided that this is considered in the design of the grips and sheaves. Furthermore, rope grips, sheave flanges, and hanger guides shall be designed so that hangers cannot be caught behind guides, and so that haul ropes and grips cannot be deroped from sheaves if the carrier is swinging within design limits as it approaches or passes the tower.~~

~~If the gauge of the haul rope system is varied at any point along the line, the horizontal departure at any one tower shall be provided for in the design so that deropement cannot occur by virtue of such a departure.~~

~~Sheave unit design shall include the following features:~~

~~a) Suitable guards, of sufficient strength to resist the lateral forces caused by an inside deropement, shall be installed.~~

~~b) Construction of the entire sheave unit shall be such that the haul rope cannot become entangled in the sheave unit in the event the rope leaves the sheave toward the outside.~~

~~c) Sheave mounts or mounting frames shall be designed to be adjustable, allowing the sheave units to be aligned and held in the plane of the rope.~~

Commented [MD39]: Peter Belau - 12/22/22

You may want to include the heading "replaces ANSI for specified timeframes"

Commented [MD40]: Replaced by ANSI-B77.1 2022 - 3.1.3.3.2 Sheave and sheave unit design

~~d) On each sheave unit, rope-catching devices shall be installed to reduce the risk of the haul rope moving excessively in the direction of the load on the sheave unit in the event of deropement. These devices shall be located less than one-half the diameter of the sheaves from the normal operating position of the rope and shall extend a minimum of two rope diameters beyond the sheave flange.~~

~~Alternatively, when the catcher is located so that the rope cannot move in the direction of the load when it passes from the edge of the sheave to a position in the catcher, the catcher shall extend a minimum of two rope diameters beyond the center of the rope when the rope has reached the point where the deropement switch device initiates a stop.~~

~~e) Rope-catching devices shall be designed to permit the passage of the haul rope and grips after deropement. The catcher shall be independent from the sheave.~~

~~f) On each sheave unit, suitable deropement switch devices shall be installed and maintained that will stop the lift in case of deropement (see 3.2.4.3).~~

~~g) On aerial lifts where the carrier speed exceeds 600 feet per minute (3.0 meters per second), at least one device that senses the position of the rope shall be installed on each sheave unit (see 3.2.5.2).~~

~~See also 3.1.1.5 through 3.1.1.5.7 for the effect of tower height and location on sheave units~~.

May 15, 1994 to May 15, 2006:

Sheave flanges shall be as deep as possible, considering other features of the system. At the same time, rope grips shall be designed in relation to the sheave groove so as not to contact sheave flanges during normal operations, taking into consideration the anticipated amount of wear of the sheave liner groove. Grips shall be allowed to contact sheave flanges adjacent to the haul rope when the carrier swings, provided that this is considered in the design of the grips and sheaves. Furthermore, rope grips, sheave flanges, and hanger guides shall be designed so that hangers cannot be caught behind guides, and so that haul ropes and grips cannot be deroped from sheaves if the carrier is swinging within design limits as it approaches or passes the tower.

Suitable guards, of sufficient strength to resist the lateral forces caused by an inside deropement, shall be installed.

Construction of the entire sheave unit shall be such that the haul rope cannot become entangled in the sheave unit in the event the rope leaves the sheave toward the outside.

On each sheave unit, rope-catching devices shall be installed to reduce the risk of the haul rope moving excessively in the direction of the load on the sheave unit in the event of deropement. These devices shall be located less than one-half the diameter of the sheaves from the normal operating position of the rope and shall extend a minimum of two rope diameters beyond the sheave flange. Alternatively, when the catcher is located so that the rope cannot move in the direction of the load when it passes from the edge of the sheave to a position in

the catcher, the catcher shall extend a minimum of two rope diameters beyond the center of the rope when the rope has reached the point where the deropement switch device initiates a stop. Rope-catching devices shall be designed to permit the passage of the haul rope and grips after deropement. The catcher shall be independent from the sheave.

On each sheave unit, suitable deropement switch devices shall be installed and maintained that will stop the lift in case of deropement.

On lifts where the carrier speed exceeds 600 feet per minute (3.0 meters per second), at least one device that senses the position of the rope shall be installed on each sheave unit. The device shall initiate a stop before the rope leaves the sheave in the horizontal direction or when the rope is displaced in the vertical direction by one rope diameter plus the distance that the rope is displaced vertically from the sheave by the grip.

If the gage of the haul rope system is varied at any point along the line, the horizontal departure at any one tower shall be provided for in the design so that deropement cannot occur by virtue of such a departure.

Sheave mounts or mounting frames shall be designed to be adjustable, allowing the sheave units to be aligned and held in the plane of the rope.

See also 3.1.1.4 through 3.1.1.4.7 for the effect of tower height and location on sheave units.

Prior to May 15, 1994:

Sheave flanges shall be as deep as possible, considering other features of the system. At the same time, rope grips shall be designed in relation to the sheave groove so as not to contact sheave flanges during normal operations, taking into consideration the anticipated amount of wear of the sheave liner groove. Grips shall be allowed to contact sheave flanges adjacent to the haul rope when the carrier swings, provided that this is considered in the design of the grips and sheaves. Furthermore, rope grips, sheave flanges, and hanger guides shall be designed so that hangers cannot be caught behind guides, and so that haul ropes and grips cannot be deroped from sheaves if the carrier is swinging within design limits as it approaches or passes the tower.

Suitable guards, of sufficient strength to resist the lateral forces caused by an inside deropement, shall be installed to prevent the rope from falling into a dangerous position within the tower structure.

Construction of the entire sheave unit shall be such that the haul rope cannot become entangled in the sheave unit in the event the rope leaves the sheave toward the outside.

On each sheave unit, rope-catching devices shall be installed to reduce the risk of the haul rope moving excessively in the direction of the load on the sheave unit in the event of deropement. These devices shall be located less than one-half the diameter of the sheaves from the normal operating position of the rope and shall extend a minimum of two rope diameters beyond the sheave flange. They shall be designed to permit the passage of the haul rope and grips after deropement.

On each sheave unit, suitable deropement switch devices shall be installed and maintained that will stop the lift in case of deropement.

If the gage of the haul rope system is varied at any point along the line, the horizontal departure at any one tower shall be provided for in the design so that deropement cannot occur by virtue of such a departure.

Sheave mounts or mounting frames shall be designed to be adjustable, allowing the sheave units to be aligned and held in the plane of the rope.

See also 3.1.1.4 through 3.1.1.4.7 for the effect of tower height and location on sheave units.

3.1.4.3.4.3 Incorrect attachment (Previously 3.1.4.3.7 in ANSI 1992)

May 2, 2011 to Present:

The designer shall incorporate provisions to stop the grip and carrier in a controlled fashion when a grip is incorrectly attached to the rope.

a) monocable systems

The path of the rope from the terminal where passengers are loaded shall be approximately level or inclined upward for a length at least equal to:

$$L \text{ (feet)} = \frac{V^2 \text{ (ft/minute)}}{14{,}400} \quad \text{or}$$

$$L \text{ (meters)} = \frac{V^2 \text{ (meter/sec)}}{1.22}$$

L = Length of level or inclined upward rope

V = rope speed during passenger loading at that station

An incorrectly attached grip tripping the last checking switch shall cause the rope to stop in a distance not greater than the calculated length “L” or in the case where a greater length of level or inclined upward rope is provided, in a distance not greater than the length provided.

b) bicable systems

On bicable systems terminals, the designer shall incorporate provisions to stop in a controlled fashion an incorrectly attached carrier after the grip attachment point.

A sign, visible to the operating personnel in the station requiring the reduced rope speed, is required. It shall state the “maximum rope speed during loading” (see table D-1(s)) if the aerial lift must be slowed below the designed speed to comply with 3.1.4.3.4.3(a).

May 15, 2000 to May 2, 2011:

The designer shall incorporate provisions to stop the grip and carrier in a controlled fashion when a grip is incorrectly attached to the rope. The path of the rope from the terminal where passengers are loaded shall be approximately level or inclined upward for a length at least equal to:

$$L \text{ (feet)} = \frac{V^2(\text{ft/minute})}{14{,}400} \quad \text{or}$$

$$L \text{ (meters)} = \frac{V^2(\text{meter/sec})}{1.22}$$

L = Length of level or inclined upward rope
V = rope speed during passenger loading at that station

An incorrectly attached grip tripping the last checking switch shall cause the rope to stop in a distance not greater than the calculated length "L" or in the case where a greater length of level or inclined upward rope is provided, in a distance not greater than the length provided.

Nov. 1, 1991 to May 15, 2000

At each carrier launching position (any area where a grip is designed to attach to the haul rope), devices shall be installed that will stop the aerial lift if any grip incorrectly attaches to the haul rope.

When a grip is detected to be incorrectly attached to the rope, the designer shall incorporate provisions to stop the grip and carrier so that it will come to a stop in a controlled fashion, or the path of the rope from the terminal where passengers are loaded shall be approximately level or inclined upward for a length at least equal to the calculated stopping distance. The level or sloping length of rope shall be measured from the last switch where the grip is checked for attachment to the rope. Calculated stopping distance for this subsection is equal to:

$$D = \frac{V^2(\text{ft/minute})}{14{,}400} \quad \text{or} \quad D = \frac{V^2(\text{meter/sec})}{1.22}$$

D = stopping distance
V = rope speed during passenger loading at that station

Upon clamping to the haul rope or haul-carrying rope, the carrier velocity and rope speed shall not vary sufficiently to introduce unduly either passenger discomfort or mechanical wear.

3.1.4.4.2 Cabin.

~~*May 15, 2000 to May 15, 2006*:~~

~~Fully enclosed passenger cabins shall be ventilated. They shall be equipped with doors that fill the entire entrance opening. The minimum clearance width opening shall be thirty-two inches (815 mm). Each door shall be provided with a lock located in such a manner that it can be unlocked only by authorized persons or by automatic means.~~

Commented [MD41]: Peter Belau - 12/22/22

You may want to include the heading "replaces ANSI for specific timeframes"

Commented [MD42]: Replaced by ANSI-B77.1 2022 - 3.1.4.4.2 Cabin

~~The horizontal gap between the cabin door opening floor edge and platform edge shall not be greater than 1 inch (25.4 mm). The height of the cabin floor to the platform shall be within ± ½ inch (±12.7 mm). Where it is not operationally or structurally practical to meet these requirements, platform devices, vehicle devices, system devices, or bridge plates shall be provided for independent loading.~~

~~All windows shall be of shatter-resistant material.~~

~~Means of emergency evacuation of passengers shall be provided.~~

~~The maximum capacity of each cabin, both in pounds and kilograms and number of passengers, shall be posted in a conspicuous place in each cabin (see table D-1(r)).~~

~~The minimum clear floor space in accessible cabins shall be forty-eight inches by thirty inches (1220 mm x 760 mm). Where special accessible cabins are used, it is recommended the waiting interval should not exceed ten minutes.~~

~~All carriers shall be clearly identified with numbers located on each end of each carrier.~~

~~Semi-open carriers shall meet applicable requirements for enclosed cabins and open chairs.~~

Jan. 1, 1994 to May 15, 2000:

Fully enclosed passenger cabins shall be ventilated. They shall be equipped with doors that fill the entire entrance opening. Each door shall be provided with a lock located in such a manner that it can be unlocked only by authorized persons or by automatic means.

All windows shall be of shatter-resistant material.

Means of emergency evacuation of passengers shall be provided.

The maximum capacity of each cabin, both in pounds and kilograms and number of passengers, shall be posted in a conspicuous place in each cabin.

If passengers are to remain standing, floor space of 2.5 square feet (0.23 square meter) per person shall be available; the width of cabin seats shall be at least eighteen inches (46 cm) per person.

All carriers shall be clearly identified with numbers located on each end of each carrier.

Semi-open carriers shall meet applicable requirements for enclosed cabins and open chairs.

3.1.4.4.4 Chairs.

Prior to April 15, 2019:

Commented [MD43]: Peter Belau - 12/22/22

You may want to include the heading "replaces Ansi for specific timeframes"

Chair lift carriers shall be designed to support a vertical load four times the design load without permanent deformations of the assembly or component parts.

All carriers shall be uniquely identified with numbers visible to the operator and attendant.

Each chair shall be equipped with a railing at each side, to a height of not less than four inches (100 mm) above the seat for a distance of not less than twelve inches (305 mm) from the back of the seat. For aerial lifts operating primarily for skiers, the thickness of the chair seat front, including padding, shall not exceed five inches (125 mm) from the top of the seating surface to the bottom of the curl. Tilt back angle of the seat bottom should be a minimum of seven degrees when loaded. Loaded shall mean an evenly distributed load using load test criteria. Provisions shall be made to keep the tails of skis from passing through and becoming trapped in open spaces between framework, safety restraints and chair seat underside.

For aerial lifts operating primarily for foot passengers, each chair shall be equipped with a restraining device that will not open under forward pressure.

The chair shall be designed to accommodate equipment for the purpose of emergency evacuation of passengers.

~~**3.1.4.4.5 Work carrier design.**~~

~~*Prior to May 15, 2020:*~~

~~Not required.~~

~~**3.1.6.2 Maintenance manual.**~~

~~*Prior to April 15, 2019:*~~

~~The designer of each new or relocated aerial lift shall provide with delivery of the installation, a maintenance manual in English, for that installation. The manual shall describe recommended maintenance and testing procedures, including:~~

~~a) Types of lubricants required and frequency of application;~~

~~b) Definitions and measurements to determine excessive wear;~~

~~c) Recommended frequency of service to specific components;~~

~~d) Carrier inspection plan (see 3.3.4.3);~~

~~e) Brake testing and adjustment;~~

~~f) Dynamic testing procedures.~~

3.2.1.1 Applicable codes.

Commented [MD44]: Replaced by ANSI-B77.1 2022 - 3.1.4.4.5 Work carrier design

Commented [MD45]: Replaced by ANSI-B77.1 2022 - 3.1.6.2 Maintenance manual

Commented [MD46]: Peter Belau - 12/22/22

You may want to include the heading "replaces ANSI for specific timeframes"

April 15, 2019 to May 2023: ANSI 2022 ADOPTION DATE: XXXXXX – NOTE DATE REQUIRED. All electrical systems shall comply with American National Standard, ANSI/NFPA 70-2017, *National Electrical Code and the Institute of Electrical and Electronics Engineers*, IEEE C2-2017, *National Electrical Safety Code*.

Commented [MD47]: Incorporation by reference issue?

May 15.2006 to April 15, 2019:

All electrical systems shall comply with American National Standard, ANSI/NFPA 70-2011, *National Electrical Code* and the Institute of Electrical and Electronics Engineers, IEEE C2-2007, *National Electrical Safety Code*.

May 15, 2000 to May 15, 2006:

All electrical systems shall comply with 3.2.1.1 Applicable codes of the B77.1-1999 ANSI Standard.

Jan. 1, 1994 to May 15, 2000:

All electrical systems shall comply with 3.2.1.1 Applicable codes of the B77.1-1992 ANSI Standard.

Nov. 1, 1991 to Jan 1, 1994:

All electrical systems shall comply with 3.2.1.1 Applicable codes of the B77.1-1990 ANSI Standard.

Jan. 1, 1984 to Nov 1, 1991:

All electrical systems shall comply with 3.2.1.1 Applicable codes of the B77.1-1982 ANSI Standard.

Jan 1, 1977 to Jan. 1, 1984:

All electrical work shall comply with 3.2.1.1 Applicable codes of the B77.1-1976 ANSI Standard.

Jan 1, 1974 to Jan. 1, 1977:

All electrical work shall comply with 3.2.1.1 Applicable codes of the B77.1-1973 ANSI Standard.

Jan 1, 1972 to Jan 1, 1974:

All electrical work shall comply with 3.2.1.1 Applicable codes of the B77.1-1970 ANSI Standard.

Prior to Jan 1, 1972:

All electrical work shall comply with 3.2.1.1 Applicable codes of the B77.1-1960 ANSI Standard.

3.2.1.2 Location.

April 15, 2019 to May 2023: ANSI 2022 ADOPTION DATE: XXXXXX – NOTE DATE REQUIRED. All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 3.2.1.2 Location of the B77.1-2017 ANSI Standard.

May 15, 2006 to April 15, 2019:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 3.2.1.2 Location of the B77.1-2006 ANSI Standard.

May 15, 2000 to May 15, 2006:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 3.2.1.2 Location of the B77.1-1999 ANSI Standard.

Jan. 1, 1994 to May 15, 2000:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 3.2.1.2 Location of the B77.1-1992 ANSI Standard.

Nov. 1, 1991 to Jan 1, 1994:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 3.2.1.2 Location of the B77.1-1990 ANSI Standard.

Jan. 1, 1984 to Nov 1, 1991:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 3.2.1.2 Location of the B77.1-1982 ANSI Standard.

Prior to Jan. 1, 1984:

All exposed electrical power transmission wiring shall be so located that in case of collapse or breakage of the power line it will not come into contact with carriers, ropes, or passengers.

3.2.1.3 Protection.

Prior to May 15, 2006:

All transformer stations and other high voltage electrical equipment shall be marked with conspicuous warning signs and shall be protected so as to prevent unauthorized persons from entering the area or coming in contact with any portion of the equipment or wiring. All power equipment shall be protected against overloads by circuit breakers or fuses.

~~**3.2.1.4 Overhead cables.**~~

~~*May 15, 2006 to April 15, 2019:*~~

~~Only signal, communication, and control circuit cables may be supported between towers that support the aerial lift. Voltage shall be limited to low voltage, twenty-four volts nominal.~~

~~EXCEPTION – Circuits for telephone systems may exceed the low voltage requirements.~~

Commented [MD48]: Replaced by ANSI-B77.1 2022 - 3.2.1.4 Overhead cables

Overhead cables shall be securely mounted to tower and terminal structures and positioned in such a way that they do not contact the haul rope, track rope, or carriers under normal aerial lift operating conditions. If a cable parts and displaces from its normal position, the aerial lift shall stop (see 3.2.5(d)).

Prior to May 15, 2006:

Signal, communication, and control circuits may be supported between towers that support the aerial lift. Voltage on overhead or exposed circuits shall be limited to fifty volts with the exception of the intermittent ring-down circuits for telephone systems.

3.2.1.5 Wiring.

Prior to April 15, 2019:

All wiring shall be in accordance with the designer's specifications and applicable codes.

3.2.1.5.1 Control wiring classification.

Prior to April 15, 2019:

All control wiring shall be Class 1 in accordance with Article 725 of ANSI/NFPA 70-2011.

EXCEPTION – Overhead cables (see 3.2.1.4).

3.2.1.5.2 Communication wiring.

Prior to April 15, 2019:

All communication wiring and systems are exempted from the requirements in Article 800 of ANSI/NFPA 70-2011.

3.2.1.5.3 Insulation.

Prior to April 15, 2019:

All control wiring is exempted from the requirements of Article 725.49 Part B of ANSI/NFPA 70-2011. The designer shall specify conductor size, type, and insulation suitable for the electrical and mechanical requirements of the application.

3.2.1.5.4 Exterior lighting and snowmaking circuits.

Prior to April 15, 2019

All ungrounded exterior lighting and snowmaking circuits, mounted on or within 60 feet (18.3 meters) of the aerial lift centerline, shall have ground fault protection (see 1.4 – *ground fault protection*).

3.2.1.5.5 Ground fault interrupter protection.

Commented [MD49]: Replaced by ANSI-B77.1 2022 - 3.2.1.5 Wiring

Commented [MD50]: Replaced by ANSI-B77.1 2022 - 3.2.1.5.1 Control wiring classification

Commented [MD51]: Replaced by ANSI-B77.1 2022 - 3.2.1.5.2 Communication wiring

Commented [MD52]: Replaced by ANSI-B77.1 2022 - 3.2.1.5.3 Insulation

Commented [MD53]: Replaced by ANSI-B77.1 2022 - 3.2.1.5.4 Exterior lighting and snowmaking circuits

~~*May 15, 2006 to April 15, 2019:*~~

~~All 120-volt single-phase, 15-and 20-ampere receptacles in areas where electrical diagnostic equipment, electrical hand tools, or portable lighting equipment may be used shall have ground fault circuit interrupter protection for personnel (see 1.4 – *ground-fault circuit interrupter*).~~

~~EXCEPTION – Receptacles dedicated to permanently mounted devices need not comply with this requirement.~~

Prior to May 15, 2006:

Not required.

3.2.1.6 Grounding.

~~**3.2.1.6.1 Structures.**~~

~~*Prior to April 15, 2019:*~~

~~All metallic structures shall be bonded to form a grounding electrode system as defined in Article 250 of ANSI/NFPA 70-2011. Electrical continuity of all metal parts of the structures shall be assured by mechanical connection and shall be electrically bonded to the common bonding conductor.~~

~~**3.2.1.6.2 Drive terminal structure.**~~

~~*Prior to April 15, 2019:*~~

~~The drive terminal structure shall have one point referred to as the grounding electrode, as defined in ANSI/NFPA 70-2011. All dc and ac electrical systems shall be referenced to this point. If an electrical prime mover is used, the electric service grounding conductor shall terminate at this point, as well as the structure's ground referenced in 3.2.1.6.1. Under the worst-case conditions, the resistance from the grounding electrode to any grounded point within the aerial lift system shall not exceed 50 ohms, for the purpose of grounding the electrical circuit. The grounding system for the aerial lift shall not be used as a grounding system for any other system not related to the aerial lift system.~~

~~To ensure that the 50-ohm grounding requirement is met under all conditions of soil, moisture, temperature, and circulating ground and air currents, all terminals and line structures shall be bonded together with a common bonding conductor. The bonding conductor may be the support or messenger cable of an overhead~~

Commented [MD54]: Replaced by ANSI-B77.1 2022 - 3.2.1.5.5 Ground fault interrupter protection

Commented [MD55]: Replaced by ANSI-B77.1 2022 - 3.2.1.6.2 Structures

Commented [MD56]: Replaced by ANSI-B77.1 2022 - 3.2.1.6.2 Drive terminal structure

~~control cable, the ground shield for an underground control cable, or some other conductor running the full length of the aerial lift system, bonded to each of the terminals and the line structures and shall be of sufficient conductance to meet the 50 ohm requirement.~~

3.2.1.6.3 Haul rope grounding.

~~*May 15, 2011 to April 15, 2019:*~~

~~Grounding sheaves with conductive liners or equivalent means should be provided at one location for the purpose of grounding haul ropes and track cables, as applicable, for static electrical discharge. For the haul rope on bicable systems or monocable systems with an isolated or insulated haul rope incorporated in the operating circuitry, no means of grounding are required when the operating circuit takes into consideration static electrical discharge.~~

Jan 1, 1984 to May 15, 2011:

Grounding sheaves with conductive liners or equivalent means should be provided at each end of the tramway for the he purpose of grounding haul ropes and track cables, as applicable, for static electrical discharge. For the haul rope on bicable systems or monocable systems with an isolated or insulated haul rope incorporated in the operating circuitry, no means of grounding are required when the operating circuit takes into consideration static electrical discharge.

Prior to Jan 1, 1984:

Not required.

Commented [MD57]: Replaced by ANSI-B77.1 2022 - 3.2.1.6.3 Haul rope grounding

~~**3.2.1.6.4 Lightning protection.**~~

~~*Prior to April 15, 2019:*~~

~~If lightning protection is provided, it shall follow American National Standard, ANSI/NFPA 780-2008, *Standard for the Installation of Lightning Protection Systems.*~~

Commented [MD58]: Replaced by ANSI-B77.1 2022 - 3.2.1.6.4 Lightning protection

3.2.2 Electrical system circuit design and classification.

Prior to April 15, 2019:

The designer or manufacturer responsible for the design shall identify and classify any new electrical circuits not already classified as protection circuits, operation circuits, or supervision circuits.

3.2.2.1 Function~~Circuit~~ priority.

Prior to April 15, 2019:

Protection circuits shall have priority over all other circuits. Operation circuits shall have priority over supervision circuits. If any circuit's function is connected to circuits of a higher level of protection, it shall be classified at the higher level.

3.2.3 Protection circuits. (ANSI-B77.1 2022 – 3.2.3 Safety related control functions)

Prior to April 15, 2019:

Electrical circuits designed to stop the aerial lift in the event of a malfunction or failure of the aerial lift system shall be classified protection circuits. All aerial lift systems shall contain two or more protection circuit(s) at least one of which shall be designated the emergency shutdown circuit (see 3.2.3.1). Protection circuits shall be energized to permit system operation and when de-energized shall initiate a stop, or shall be of such design to provide the equivalent level of protection.

A protection circuit may include one or more non- complex elements (see 1.4 – *non-complex elements*) and/or complex electronic elements (see 1.4 – *complex electronic elements*). The designer shall make use through continuous diagnostic coverage (see 1.4 – *continuous diagnostic coverage*) that the failure of a complex electronic element will cause the aerial lift to stop unless another element in the protection circuit is performing the same function (redundancy). If functional redundancy is implemented, the failure of the first element must be annunciated, at a minimum, at the beginning of operations on a daily basis.

The designer or manufacturer shall develop procedures and frequency for testing protection circuits. As a minimum, all protection circuits shall be calibrated and tested annually.

Protection circuits include, but are not limited to:

a) Emergency shutdown (see 3.2.3.1);

b) Stop gate (see 3.2.3.2);

c) Tension system fault (see 3.2.3.3);

d) Deropement circuit(s) (see 3.2.3.4);

e) Brake system (see 3.2.3.5);

f) Overspeed (see 3.2.3.6);

g) Rollback detection device (see 3.2.3.7);

h) Anti-collision (see 3.2.3.9);

k) Grip force fault (see 3.2.3.10);

l) Improper grip attachment, detachment (see 3.2.3.11);

m) Stop cord.

3.2.3.1 Emergency shutdown circuit.

Prior to April 15, 2019:

All aerial lift systems shall include at least one protection circuit labeled emergency shutdown circuit (see 1.4 – *emergency shutdown*). The shutdown shall have priority over all other control stops or commands. If, for any reason, the operator has lost control of the aerial lift while using the operating control circuitry, the controls shall include an emergency shutdown circuit allowing the operator/attendant to stop the aerial lift. Any one of the following conditions is considered a loss of control of an aerial lift:

a) Aerial lift will not SLOW DOWN when given the command to do so;

b) Aerial lift will not STOP when given the command to do so;

c) Aerial lift OVERSPEEDS beyond control settings and/or maximum design speed;

d) Aerial lift ACCELERATES faster than normal design acceleration;

e) Aerial lift SELF-STARTS or SELF- ACCELERATES without the command to do so;

f) Aerial lift REVERSES direction unintentionally and without the command to do so.

3.2.3.2 Stop gates.

Prior to April 15, 2019:

On aerial lifts using chairs, an automatic stopping device beyond each unloading area are required where passengers wearing skis are required to disembark. The device shall automatically stop the aerial lift in the event a passenger rides beyond the intended point of unloading. The operation of the automatic stop device may be delayed or overridden momentarily by the operator or attendant.

~~**3.2.3.3 Tension system.**~~

Commented [MD59]: Replaced by ANSI-B77.1 2022 - 3.2.3.3 Tension system monitoring

~~*Prior to April 15, 2019:*~~

~~Active tension systems, (i.e. counterweight, hydraulic, etc.) shall have a protection device(s) that will stop the aerial lift when the haul rope tension carriage exceeds its range of normal operations.~~

~~**3.2.3.4 Deropement detection.**~~

Commented [MD60]: Replaced by ANSI-B77.1 2022 - 4.2.3.4 Deropement detection

~~*Prior to April 15, 2019:*~~

~~On each sheave unit, suitable deropement detection devices shall be installed and maintained that will stop the lift in case of deropement (see 3.1.3.3.2(f), 3.1.1.5.1(g)).~~

~~Bicable systems shall also have a system or device that will initiate a stop if the following is detected:~~

~~a) The haul rope comes in contact with the track cable(s), other ropes, communication lines, or grounded equipment;~~

~~b) The track cable leaves the saddle into the cable catcher.~~

~~**3.2.3.5 Braking system.**~~

Commented [MD61]: Replaced (included in) by ANSI-B77.1 2022 - 3.1.2.6 Brakes and rollback device

~~*Prior to April 15, 2019:*~~

~~All braking systems shall be designed and monitored to ensure that they meet the requirements of 3.1.2.6 (a) through 3.1.2.6 (d).~~

3.2.3.~~5~~6 Overspeed. (ANSI B77.1-2022 Overspeed monitoring)

Prior to April 15, 2019:

If the line speed exceeds the design speed by 10%, the service brake, if installed, shall slow and stop the aerial lift automatically.

A system or device shall be installed that will automatically apply the bullwheel brake when the speed of the haul rope exceeds the design value by 15% in either direction.

~~**3.2.3.7 Rollback detection device.**~~

~~*Prior to April 15, 2019:*~~

~~The rollback detection device shall activate the rollback device and bring the aerial lift to a stop if unintentional reverse rotation occurs. The rollback device shall be activated if the haul rope travels in excess of thirty-six inches (915 mm) in the reverse direction.~~

Commented [MD62]: Replaced by ANSI-B77.1 2022 - 3.2.3.6 Rollback detection

~~**3.2.3.8 Stop cord.**~~

~~*Prior to April 15, 2019, This Specific ANSI-B771-2017 Rule Number Not Required*~~

~~*Note: See CPTSB Rule 3.2.9 Manual Control Devices*~~

Commented [MD63]: Replaced by ANSI-B77.1 2022 - 3.2.3.8 Stop cord

~~**3.2.3.9 Anti-collision.**~~

~~Prior to April 15, 2019:~~

~~A system shall be provided that will prevent carrier collision in the receiving and launching mechanisms. The system shall include devices that will automatically stop the aerial lift before any carriers can come together while they are in the decelerating or accelerating process (see 3.1.2.13).~~

Commented [MD64]: Replaced by ANSI-B77.1 2022 - 3.2.3.11 Anti-collision monitoring

~~**3.2.3.10 Grip force fault.**~~

~~*Prior to April 15, 2019:*~~

~~If the gripping force of the grip falls below the minimum required, the design of the system shall include provisions to stop the aerial lift (see 3.1.4.3.4.2).~~

Commented [MD65]: Replaced by ANSI-B77.1 2022 - 3.2.3.12 Grip force monitoring

~~**3.2.3.11 Improper grip attachment, detachment.**~~

~~*Prior to April 15, 2019:*~~

~~a) Device(s) that will stop the aerial lift in the event a carrier grip does not engage properly to the haul rope at every grip attachment point (see 3.1.4.3.3.2).~~

~~b) Device(s) that will stop the aerial lift in the event a carrier does not disengage the haul rope properly at every grip disengaging point.~~

Commented [MD66]: Replaced by ANSI-B77.1 2022 - 3.2.3.13 Improper grip attachment, detachment

3.2.4 Operation circuits (ANSI B77.1-2022 Control functions)

Prior to April 15, 2019:

An operation circuit is a circuit that provides power to or controls the aerial lift machinery.

The designer or manufacturer shall identify the operation circuits that require periodic testing and develop procedures and frequency for testing. At a minimum, all operation circuits shall be tested and calibrated annually.

Operation circuits include, but are not limited to:

a) Power circuits;

b) Drive fault circuits;

c) Normal stop (see 1.4 – normal stop and 3.1.2.5);

d) Speed command circuits (i.e., fast, slow, etc.);

e) Carrier spacing system;

f) Internal combustion engine speed control;

g) Power unit interlock (see 3.1.2.1.3).

3.2.5 Supervision circuits. **(ANSI B77-01 – 2011 Numbering)**

Prior to Dec 15, 2018:

Supervision circuits include all communications systems. In addition, supervision circuits may be provided to monitor or supervise the performance of various aerial lift systems or provide the aerial lift operator with system information.

The designer or manufacturer shall identify supervision circuits that require periodic testing and develop procedures and frequency for testing supervision circuits. At a minimum, all supervision circuits shall be calibrated and tested annually.

Supervision circuits may include, but are not limited to:

a) Telephone and sound powered systems (see 3.1.1.7);

b) Information display circuits;

c) Audible warning devices (see 3.2.10);

d) Overhead cable supervision (see 3.2.1.4);

e) Wind speed and direction sensors and display units;

f) Gearbox oil pressure, oil flow and temperature;

g) Pneumatic and hydraulic tension system pressure (see 3.2.5.1);

h) Unauthorized passenger detection;

i) Rope position detectors (see 3.2.5.2);

j) Station carrier spacing system (see 3.2.5.3);

k) Acceleration/deceleration error (see 3.2.5.4).

3.2.5.1 Pneumatic and hydraulic tension systems. (ANSI B77.01 – 2011 Numbering)

Prior to April 15, 2019:

When pneumatic or hydraulic tension systems are used, pressure-sensing devices shall also be incorporated that will stop the aerial lift system in case the operating pressure goes above or below the design pressure range. Such pressure-sensing devices shall be located close to the actual tensioning device. It shall not be possible to isolate the pressure sensor from the actual tensioning device.

3.2.5.2 Rope position detection. (ANSI B77.01-2011 Numbering)

Prior to April 15, 2019:

On aerial lifts where the carrier speed exceeds 600 feet per minute (3.0 meters per second), at least one device that senses the position of the rope shall be installed on each sheave unit. The device shall initiate a stop before the rope leaves the sheave in the horizontal direction or when the rope is displaced in the vertical direction by one rope diameter plus the distance that the rope is displaced vertically from the sheave by the grip (see 3.1.3.3.2(g)).

When the device that senses the position of the rope is the only deropement switch, it shall meet the requirements of a protection circuit as described in 3.2.3. An aerial lift system may utilize a rope position detector as a supervision circuit as described in 3.2.5 only if it has another deropement detection system that meets the requirements of a protection circuit.

3.2.5.3 Carrier spacing system. (ANSI B77.01-2011 Numbering)

Prior to April 15, 2019:

Provisions shall be made to ensure that the station carrier spacing shall never be less that the distances specified by the designer (see 3.1.2.13).

Devices shall be installed that will automatically initiate a stop in the event of abnormal carrier spacing in stations.

3.2.5.4 Acceleration/deceleration monitoring. (ANSI B77.01-2011 Numbering)

May 15, 2006 to April 15, 2019:

The rate of acceleration and deceleration of the aerial lift shall be monitored. In the event that the acceleration or deceleration exceeds the provisions of 3.1.2.4, the aerial lift shall stop and annunciate the error.

EXCEPTION – Prime movers equipped with fluid couplings, centrifugal clutches, or wound rotor motors.

Prior to May15, 2006 – Not Required

~~**3.2.6 Bypass circuits.**~~

~~*Prior to April 15, 2019:*~~

Commented [MD67]: Replaced by ANSI-B77.01 2022 - 3.2.5 Bypass circuits

A temporary circuit may be installed for the purpose of bypassing failed electrical circuits. The use of these bypass circuits shall meet the requirements of 3.3.2.5.9.

3.2.7 Electrical prime mover.

Prior to April 15, 2019:

All aerial lift systems equipped with electrical prime movers (electrical motors) shall have phase-loss protection on all power phases and under-voltage protection or over-voltage protection, or both, when speed regulation can be adversely affected by such voltage variations.

3.2.8 Electronic speed-regulated drive monitoring.

Prior to April 15, 2019:

All electronic speed-regulated drives and electric motors shall shut down in the event of:

a) Field loss (dc motors);

b) Overspeed;

c) Speed feedback loss as applicable;

d) Overcurrent.

REPLACES ANSI FOR SPECIFIC TIMEFRAMES

3.2.9 Manual control devices.

May 15, 2006 to April 15, 2019:

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed in all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum, each of these control locations shall include an Emergency Shutdown device and a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

All control devices shall be conspicuously and permanently marked with the proper function and color code.

A full length stop cord or equivalent shall be provided adjacent to the terminal conveying equipment access ways provided for the inspection and maintenance while equipment is in operation.

Prior to May 15, 2006

Commented [MD68]: Replaced by ANSI-B77.01 2022 - 3.2.6 Electrical prime mover

Commented [MD69]: Replaced by ANSI-B77.01 2022 - 3.2.7 Electronic speed-regulated drive monitoring

Commented [MD70]: Replaced by ANSI-B77.01 2022 - 3.2.8 Manual control devices

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type. Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed in all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum at downhill loading stations, each of these control locations shall include an Emergency Shutdown device or a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

The devices shall be conspicuously and permanently marked with the proper function and color code.

~~**3.2.10 Safety of operating and maintenance personnel.**~~

~~*Prior to April 15, 2019*:~~

~~Provision shall be incorporated in the aerial lift design to render the system inoperable when necessary for Lock- out Tag-out protection of personnel working on the aerial lift.~~

~~The sign "Personnel Working on Aerial Lift - Do Not Start" or a similar warning sign shall be hung on the main disconnect switch or at control points for starting the power units when persons are working on the aerial lift.~~

~~The aerial lift shall incorporate an audible warning device that signals an impending start of the aerial lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds and shall continue until the aerial lift begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.~~

Commented [MD71]: Replaced by ANSI-B77.01 2022 - 3.2.9 Safety of operating and maintenance personnel

~~**3.2.11 Electrical system acceptance tests.**~~

~~*Prior to April 15, 2019*:~~

~~Upon completion of the acceptance test and before public operation of the aerial lift, the function of software and/or relay logic shall be certified by a Qualified Engineer and the certification shall be included in the acceptance test report. Any modifications made to the electrical design shall be clearly marked on the on-site documentation and signed by a Qualified Engineer (see 3.1.1.11.2).~~

Commented [MD72]: Replaced by ANSI-B77.01 2022 - 3.2.10 Electrical system acceptance tests

~~**3.2.12 Software security.**~~

~~The "as built" documents shall include a procedure, developed by the aerial lift manufacturer or a Qualified Engineer, to ensure the security of the software logic and operating parameters that will control the aerial lift. Upon completion of the acceptance testing this procedure shall be implemented in a manner that will prevent unauthorized personnel from making changes to the~~

Commented [MD73]: Replaced by ANSI-B77.01 2022 - 3.2.11 Software security

~~software logic or operating parameters. All programmable logic and parameters shall be documented.~~

~~Software programming and changes to the software logic shall be made by a qualified software programmer. Software programmers shall provide documents that include:~~

~~1. Software logic development date;~~

~~2. Software logic current revision number;~~

~~3. Software logic current revision date;~~

~~4. List of software logic changes for each revision that explain changes in detail;~~

~~5. Name of software logic programmer that made each revision;~~

~~6. Testing procedures for each change of software logic;~~

~~7. Personnel that completed the testing.~~

~~**3.2.13 Night operations.**~~

~~*Prior to April 15, 2019:*~~

~~For nighttime operation, operating aerial lifts shall be provided with lighting systems. Lighting shall be provided at loading and unloading areas.~~

~~**3.2.13.1 Illumination.**~~

~~*Prior to Dec 15, 2018:*~~

~~Lights shall be located in a manner to provide generally uniform illumination.~~

~~**3.2.13.2 Types.**~~

~~*Prior to April 15, 2019:*~~

~~Lamps shall be of a type suitable and rated for minimum temperatures of the location. Fixtures shall be designed to maintain proper lamp-operating characteristics.~~

~~**3.2.13.3 Location.**~~

~~*Prior to April 15, 2019:*~~

~~Lights shall be mounted on substantial poles or standards. Aerial lift towers and terminal structures may be used for supporting lights subject to the following requirements:~~

~~a) Approval shall be obtained from a Qualified Engineer;~~

~~b) The service conductors to each aerial lift tower or terminal structure shall be underground or in rigid raceways. No wiring shall be supported between towers and no open wiring shall pass over or under the aerial lift;~~

~~c) A separate enclosed disconnect or circuit breaker shall be required for each tower or terminal structure;~~

Commented [MD74]: Replaced by ANSI-B77.01 2022 - 3.2.12 Night operations

Commented [MD75]: Replaced by ANSI-B77.01 2022 - 3.2.12.1 Illumination

Commented [MD76]: Replaced by ANSI-B77.01 2022 - 3.2.12.2 Types

Commented [MD77]: Replaced by ANSI-B77.01 2022 - 3.2.12.3 Location of lighting

~~d) All metallic raceways on a tower or terminal structure shall be grounded;~~

~~e) The lighting installation shall not conflict with other requirements of this standard and shall not interfere with operations of the aerial lift in any manner.~~

~~**3.2.13.4 Emergency lighting.**~~

~~*Prior to April 15, 2019:*~~

~~Emergency lighting shall be provided in the event of electric power failure to permit:~~

~~a) Regular unloading of an aerial lift;~~

~~b) Emergency evacuation of carriers;~~

~~c) Operation of the evacuation power unit.~~

~~**3.3.1.2 Requirements for signs.**~~

~~*Prior to April 15, 2019:*~~

~~(a) The design of any sign as well as its support and the installation procedure of such sign shall be considered a minor modification if the sign or aggregate of signs on a given tower is greater than three feet square (nine square feet).~~

~~(b) Signs, fasteners, or supporting members shall not interfere with the operation of the tramway.~~

~~(c) The design of structural components shall be reviewed to consider the increase in loading caused by any sign.~~

~~(d) Signs shall not interfere with passenger or attendant vision.~~

IN ADDITION TO ANSI 3.3.1

3.3.1.3 Operational plan for transportation of recreational equipment. Each licensee shall have an operational plan that has procedures for transportation of sports equipment and recreational devices by foot passengers. This plan shall be consistent with the tramway manufacturer's specifications and instructions, if any.

~~**3.3.2.4.4 Work carrier.**~~

~~*Prior to April 15, 2019:*~~

~~Not required.~~

~~Operational procedures for the work carrier shall be developed to include, but not limited to the following:~~

~~a) Identification system for work carrier grips, hangers and work platform so that maintenance personnel can clearly identify which work carrier is to be installed on which ropeway;~~

Commented [MD78]: Replaced by ANSI-B77.01 2022 - 3.2.12.4 Emergency lighting

Commented [MD79]: Replaced by ANSI-B77.01 2022 - 3.3.1.2 Requirement for signs

Commented [MD80]: Replaced by ANSI-B77.01 2022 - 3.3.2.4.4 Work carrier

~~b) Proper number of carriers on line for work carrier use;~~

~~c) Procedure for installing and removing work carrier. Procedure shall include slip testing of clamping grip before use either by manual means or by the grip testing system;~~

~~d) Communications protocol between maintenance personnel and operator for starting, stopping, travel and applicable Lockout-Tagout;~~

~~e) Line speed while in use;~~

~~f) Installing and removing any additional work platforms and guard rails for travelling through terminals to include signage where needed to accomplish procedure;~~

~~g) Positioning of personnel on work platform while in motion;~~

~~h) Positioning of equipment and supplies in work carrier so that carrier hangs properly while in motion;~~

~~i) Rescue of maintenance personnel.~~

~~**3.3.2.5 Operational requirements.**~~

~~**3.3.2.5.1 General.**~~

~~The owner and supervisor of each aerial lift shall review the requirements of Section 3 and referenced Annexes of this standard to ascertain that original design and installation conditions have not been altered in a manner so as to violate the requirements of the standard.~~

IN ADDITION TO ANSI 3.3.2.5

3.3.2.5.1~~0~~2 Preoperational minimum ridership requirements.

Each licensee shall have an operational plan that identifies criteria for pre-operational tramway inspections for the transportation of personnel on aerial ropeways. Implementation of these procedures is intended for the protection of all personnel and shall be the responsibility of the area operator, supervisor, and the authorized individual.

The preoperational plan shall include, but not be limited to:

Minimum Requirements

Prior to the daily preoperational ride and the completion of X.3.2.4.2 Daily preoperational inspection, or any initial start-up of the ropeway, the following minimum steps shall be taken;

1. At least one brake and stop switch has been operated and proves to function properly, and either items 2 or 3 are performed.

Commented [MD81]: Replaced by ANSI-B77.01 2022 - 3.3.2.5 Operational requirements

Commented [MD82]: Replaced by ANSI-B77.01 2022 - 3.3.2.5.1 General

2. The ropeway is operated slowly for a minimum of three minutes, or a length of time equal to the time a carrier takes to cross the longest span on the installation.

3. The lift line is visually inspected in one of two ways:

   a) The entire lift line is visually inspected from the ground by trained personnel.

   b) The lift line inspection occurs while riding the aerial ropeway. If this method is used, the first rider shall be in constant communication with the operator.

The plan shall also include the following requirements:

i) **Evacuation of pre-ride personnel.** The number of available evacuation personnel, the method of transportation of those persons, the required evacuation equipment and the method of transport of evacuated personnel.

ii) **Trained operational and maintenance availability.** A requirement that trained operational and maintenance personnel shall be immediately available to attempt to restart the tramway if the tramway stops.

For the purpose of this Rule, "area employee" means an individual: (1) who performs services for an area operator, as that term is defined by section 12-150-103(1), C.R.S.; (2) who receives financial compensation directly from the area operator for those services; and (3) whose services only the area operator has the right to control (i.e., the area operator has the right to direct the services the individual will perform for the area operator and how the individual will perform those services).

A. For Licensed Ropeways and Unlicensed Ropeways After Initial Testing, including Expired Licenses

Commented [MD83]: Peter Belau - 12/22/22

Typo in the middle of the paragraph in 3.3.2.5.10A

An area employee that is directly related to the opening of the aerial lift (i.e. Ski Patrol, Lift Maintenance, and Lift Operators) shall conduct the pre-operational inspection ride. If any other area employee is to ride the lift prior to the completion of the pre-operational inspection, the personnel responsible for the pre-operational inspection ride shall ride in the first carriers in front of the area employee. As used in this Rule, the term "area employee" specifically excludes independent contractors, subcontractors, vendors, and their personnel.

B. Unlicensed Ropeways Prior to Testing and Licensing

Only personnel related to the completion of the construction, operation, and buildings directly related to the operation of the tramway may be transported by the tramway prior to testing and licensing.

~~3.3.2.5.3 Starting.~~

Commented [MD84]: Replaced by ANSI-B77.01 2022 - 3.3.2.5.2 Starting

Following procedural clearances, the aerial lift shall be started by the operator or at the direction of the operator. Capability for starting from other locations may be provided for maintenance or emergency operation.

3.3.2.5.4 Loading and unloading platforms.

The maze or corral, loading platform surface, breakover point, and the load/unload seat height shall be reasonably maintained according to the prevailing weather conditions and established procedures.

3.3.2.5.5 Stops.

After any stop of an aerial lift, the operator shall determine the cause of the stop, and not restart until clearance has been obtained from all attended stations.

3.3.2.5.6 Termination of daily operations.

Procedures shall be established for terminating daily operations in such a manner that passengers will not be left on the aerial lift after it has been shut down. Loading ramps, as required, shall be closed and so marked.

When either loading or unloading portions of an intermediate station are not in operation, it shall be so signed and the loading station shall be closed to public access.

3.3.2.5.7 Damage to carriers.

Should any carrier become damaged or otherwise rendered unfit for passenger transportation during normal operation, it shall be clearly and distinctively marked and not used for passengers until repaired or replaced. It shall be removed from the line as soon as feasible.

3.3.2.5.8 Hazardous conditions.

When wind or icing conditions are such that operation is hazardous to passengers or equipment, according to predetermined criteria based upon the area's operational experience and the designer's design considerations, the aerial lift shall be unloaded and the operation discontinued. If necessary under the predetermined criteria, device(s) shall be installed at appropriate location(s) to ascertain wind velocity and direction when aerial lifts are operated. No aerial lift shall operate when there is an electrical storm in the immediate vicinity. Should such conditions develop while the aerial lift is in operation, loading of passengers shall be terminated, and operation shall be continued only as long as necessary to unload all passengers. When such shutdown has been caused by an electrical storm, grounding of control circuits and haul ropes that are used as conductors in communication systems is permissible. Such grounding shall be removed prior to resumption of passenger operations.

3.3.2.5.9 Bypass requirements.

The use of temporary circuits that have been installed for the purpose of bypassing failed electrical circuit(s) (see 3.2.6) shall meet these requirements in the following order:

Commented [MD85]: Replaced by ANSI-B77.01 2022 - 3.3.2.5.3 Loading and unloading platform

Commented [MD86]: Replaced by ANSI-B77.01 2022 - 3.3.2.5.4 Operational requirements

Commented [MD87]: Replaced by ANSI-B77.01 2022 - 3.3.2.5.8 Termination of daily operations

Commented [MD88]: Replaced by ANSI-B77.01 2022 - 3.3.2.5.5 Damage to carriers

Commented [MD89]: Replaced by ANSI-B77.01 2022 - 3.3.2.5.6 Hazardous conditions

Commented [MD90]: Replaced by ANSI-B77.01 2022 - 3.3.2.5.9 Bypass requirements

~~a) The condition that the circuit indicated is in default shall be thoroughly inspected to ensure an electrical operating circuit malfunction, rather than the indicated condition, actually exists;~~

~~b) The bypass shall be authorized only by the aerial lift supervisor or his/her designated representative;~~

~~c) When a bypass is in operation, the function bypassed shall be under constant, close visual observation;~~

~~d) The use of a bypass circuit shall be logged and shall indicate when, who authorized, and for what duration a bypass was used;~~

~~e) The operator control panel shall indicate that a bypass is in use.~~

~~**3.3.2.5.10 Evacuation. (See ANSI 2017 Rule 3.3.2.5.7 for Requirements)**~~

Commented [MD91]: Replaced by ANSI-B77.01 2022 - 3.3.2.5.7 Evacuation

IN ADDITION TO ANSI 3.3.5

3.3.5.6 Software parameter log.

A software parameters log shall be maintained for each aerial lift. This log is intended for changes in software parameters that can be altered which affect the supervision circuit. The log shall include, but not be limited to:

a) Current software parameter values;

b) Changes to software parameter values;

c) Date of changes made;

d) Documentation of testing for each change of parameter values;

e) Personnel making parameter changes.

Section 4 Fixed grip aerial lifts

Note: Timeframes relate to the ropeway installation date or modification date whichever controls, unless otherwise noted.

IN ADDITION TO ANSI 4.1.1.3 Location

4.1.1.3.1 Location of power lines.

Jan, 1, 1977 to Present:

Power lines shall be located a minimum distance equal to the height of poles or support structures from any passenger tramway so that poles and electrical lines cannot touch any portion of the tramway, loading or unloading points or platforms and tow path, if applicable, upon collapse of poles or lines, unless suitable and approved precautions are taken to safeguard human lives.

4.1.1.3.2 Air space requirements.

4.1.1.3.2.1 Structures.

Note: Timeframes stated for this Rule define the air space requirements for each ropeway at the time when the encroachment was known to the area and DO NOT pertain to the installation date of the ropeway.

May 15, 2000 to Present:

No passenger tramway installation shall be permitted to operate when a structure encroaches into the air space of the passenger tramway, defined as the area bounded by vertical planes commencing at a point thirty-five feet from the intersection of the vertical planes of the ropes or cables and ground surface.

For purposes of this Rule, buildings controlled by the licensee used primarily for maintenance and operation of the lift and other tramways shall not be considered structures; however, buildings must comply with the following.

(1) No flammable liquids may be stored in the building outside of a UL listed container or storage cabinet, unless such flammable liquids are in the original containers and intended for daily usage. Quantities must be consistent with normal daily use. Class I or II flammable storage materials shall be limited to 2 gallons in a UL listed container and must be stored either in an outside storage area or in a UL listed cabinet.

(2) The building must be within the view of the attendant but not impair the sight line of the lift.

(3) Entrances to all machinery, operators', and attendants' rooms shall be locked when not in use. Unattended entrances accessible to public, which may be left open, shall be equipped with barriers to prevent entry.

Jan. 1, 1994 to May 15, 2000:

No passenger tramway installation shall be permitted to operate when a structure encroaches into the air space of the passenger tramway, defined as the area bounded by planes having an outward slope of one horizontal and two vertical and commencing at a point twenty (20) feet horizontally outside of the intersection of the vertical planes of ropes or cables and ground surface.

Dec. 30, 1977 to Jan. 1, 1994:

No passenger tramway installation shall be permitted whenever the Passenger Tramway Operator does not have permanent and irrevocable control of the following air space (except when the passenger tramway is located on Forest Service land): the area bounded by planes having an outward slope of one horizontal and two vertical and commencing at a point twenty feet horizontally outside of the intersection of the vertical planes of ropes or cables and ground surface.

Prior to Dec. 30, 1977:

None required

4.1.1.3.2.2 Cables or ropes.

Note: Timeframes stated for this Rule define the air space requirements for each ropeway at the time when the encroachment was known to the area and DO NOT pertain to the installation date of the ropeway.

May 15, 2000 to Present:

Any cable or rope installed on or near a ropeway that may represent a hazard to the ropeway shall be monitored to automatically stop the ropeway if the cable or rope fails. Failure would be defined as per Section 23.1 (g).

EXCEPTION: Track or haul ropes are excluded from this Rule.

Prior to May 15, 2000:

Not required

REPLACES ANSI FOR SPECIFIC TIMEFRAMES

4.1.1.5.2 Clearances.

Jan, 1, 1984 to Nov. 1, 1991:

Terminals and towers shall be designed and installed to provide the clearances as herein specified and to minimize surge of the line under operating conditions. Local wind conditions shall be taken into consideration.

The minimum distance between passing carriers, each swung 10 degrees inward from the vertical, shall be the greater of the following:

a) 2 feet 6 inches

b) 1/2% of the span length (applies to gondolas only).

The distance between haul ropes, (or track cables), for the purpose of these checks, shall be considered as equal to the gauge of the line.

External structures, posts, or obstructions, other than lift structural components, shall have at least 4 feet (1.22 meters) of clearance from either edge of a loaded open carrier passenger seat or open cabin body (measured from the outermost attachments on or parts of the carrier while the carrier is hanging in a vertical position).

Dec. 31, 1977 to Jan. 1, 1984:

Terminals and towers shall be designed and installed to provide the clearances as herein specified and to minimize surge of the line under operating conditions. Local wind conditions shall be taken into consideration.

The minimum distance between passing carriers, each swung 10 degrees inward from the vertical, shall be the greater of the following:

a) 2 feet 6 inches

b) 1/2% of the span length (applies to gondolas only).

The distance between haul ropes, (or track cables), for the purpose of these checks, shall be considered as equal to the gauge of the line.

Prior to Dec. 31, 1977:

All towers shall be equipped with guards to prevent contact of carriers or hangers with a tower structure or tower machinery except that such guards shall not be required if such contact does not occur when the carrier is swung freely 15 degrees from the vertical position.

In the absence of guards described herein, the following minimum clearances shall prevail when the carrier is swung inward 10 degrees from the vertical position:

(1) on chair lifts

(a) 18 inches between inside limit of passenger seat and tower clearance line or surface.

(b) 12 inches between innermost point on chair structure and tower clearance line or structure.

(2) on Gondola lifts:

a) With the windows open on the tower side, 18 inches between innermost point on carrier and tower clearance line or structure.

(b) With screened or closed windows on the tower side, 12 inches.

Guards shall be so shaped and located that a 30- degree lateral swing from vertical shall not place and part of the loaded or empty carrier on the inner side of the guard.

On all towers, with or without guards, when a carrier is swung longitudinally by 15 degrees, there shall be no contact between any obstruction and any part of the carrier.

~~**4.1.1.5.2.2 Special requirements for chair lifts.**~~

~~The following clearance requirements shall be met to prevent entanglement of skis with tower structure. Clearance is here defined to mean the distance between inner limit of passenger seat and clearance line or surface of tower.~~

~~With the chair swinging laterally 10 degrees from the vertical position, or to the limit permitted by the guards, if any, if clearance is less than 24 inches from any open frame tower or 18 inches from any closed tubular tower, guards shall be provided on the up-going side to keep skis from being caught in the structure. Such guards shall be at least 72 inches in height, extending 36 inches above and below average foot level.~~

Commented [MD92]: Replaced by ANSI-B77.01 2022 - 4.1.1.5.2.2 Special requirements for chairlifts

~~A tubular tower with permanent ladder rungs shall be considered as an open frame tower, with the following exceptions:~~

~~(1) If the ladder rungs are on the uphill side and are covered by simple fascia boards or equivalent over the previously mentioned 72-inch range, the tower may be considered as a closed tubular tower with respect to uphill skier traffic.~~

~~(2) If it can be demonstrated that ski tips can not be caught in the rungs of the ladder, the tower may be considered as a closed tubular tower.~~

4.1.1.5.3 Terminal clearances.

Prior to Nov. 1, 1991:

Not required.

~~**4.1.1.6 Structures and foundations.**~~

~~*Prior to April 15, 2019:*~~

~~All structures and foundations shall be designed and constructed in conformance with 1.3 and shall be appropriate for the site. Applied design loads shall include dead, live, snow, wind, and dynamic loads due to normal conditions and for foreseeable abnormal conditions.~~

~~Structures and foundations located in snow creep areas shall be designed for such conditions and loads, or protective structures shall be provided as required by the conditions.~~

Commented [MD93]: Replaced by ANSI-B77.01 2022 - 4.1.1.6 Structures and foundations

~~**4.1.1.11.2 Acceptance tests.**~~

~~Before an aerial lift that is new or relocated or that has not been operated for routine maintenance within the previous 2 years is opened to the public, it shall be given thorough tests by qualified personnel to verify compliance with the plans and specifications of the designer. The designer or manufacturer shall propose and submit an acceptance test procedure.~~

~~Test load per carrier shall be 110% of the design live load. Thorough load and operating tests shall be performed under full loading and any partial loadings that may provide the most adverse operating conditions. The functioning of all push-button stops, automatic stops, limit switches, deropement switches, and communications shall be checked. Acceleration and deceleration rates shall be satisfactory under all loadings (see 4.1.2.4). Motive power and all braking and rollback devices (see 4.1.2.6) shall be proved adequate under the most adverse loadings.~~

~~On systems operating at 600 feet per minute (3 meters per second) or greater, a plot of rope speed versus time shall be recorded for stops that the manufacturer or Qualified Engineer has designated in the acceptance test procedure. As a minimum, the plot shall show the rope speed every 0.2 seconds from the initiation of the stop to when the rope is stopped. The final brake system settings and brake test values shall be documented in the acceptance test results.~~

Commented [MD94]: Replaced by ANSI-B77.01 2022 - 4.1.1.11.2 Acceptance tests

ADDITION PARAGRAPH ADDED TO ANSI 4.1.11.2 Acceptance tests

Any changes to software logic that would affect a ~~Protection or Operation~~ Control Circuit after the start of initial testing shall result in a restart of testing to ensure software logic changes have not affected those systems already tested. Retesting for changes in software parameters shall be at the discretion of the Authorities Having Jurisdiction (AHJ).

REPLACES ANSI FOR SPECIFIC TIMEFRAMES

4.1.2.1.2 Evacuation power unit.

Prior to April 15, 2019:

An evacuation power unit (see 1.4 – *evacuation power unit*) with an independent power source shall be provided that can readily be used to unload the lift in the event of failure of the prime mover. The evacuation power unit shall not depend upon the mechanical integrity of any other power unit to drive the aerial lift. This unit shall be electrically wired to meet the requirements of 4.2.3.1 so that it can be stopped by the Emergency Shutdown Circuit. As a minimum, the evacuation power unit shall be capable of starting and moving a line with all carriers loaded to 110% of capacity in weight in a forward direction at not less than 100 feet per minute (0.51 meters per second).

The evacuation power unit shall be designed to become operational and move all the carriers to or through terminal areas within 1 hour from the time of initiating its connection.

4.1.2.1.3 Power unit interlock.

Prior to May 15, 2006:

Not required.

~~**4.1.2.5 Stops and shutdowns.**~~

~~*Prior to April 15, 2019:*~~

~~For all stops, the minimum average rate of the rope deceleration shall be 1.0 feet per second squared (0.30 meters per second squared) averaged from the beginning to the end of stop. The maximum rate of the rope deceleration shall be 5 feet per second squared (1.52 meters per second squared). These rates measurements shall be measured over any one second interval under any operating condition and referenced to the rope speed at the drive terminal.~~

~~See table 4-3 for minimum and maximum stopping times and distances.~~

~~*Normal stop* (see 1.4 – *normal stop*). If a service brake is required (see table 4-4), it shall have been applied by the time the aerial lift comes to a stop.~~

~~*Emergency shutdown:* (see 1.4 – *emergency shutdown*). If a service brake is required (see table 4-4), it shall have been applied by the time the aerial lift comes to a stop. The designer shall designate which control functions of the aerial lift system shall initiate an emergency shutdown.~~

Commented [MD95]: Replaced by ANSI-B77.01 2022 - 4.1.2.6 Stops and shutdowns

The designer may define other stopping modes other than normal and emergency shutdown. For other stopping modes, the designer shall specify the method of stopping, including the type and timing of brake(s) that may be applied, and the stopping criteria.

Table 4-3 Minimum and Maximum Stopping Times and Distances

Speed In Meters/Second

Speed	Time		Distance	
m/s	Seconds		Meters	
	Max.	Min.	Max.	Min.
1.2	4.00	0.79	2.40	0.47
1.3	4.33	0.86	2.82	0.56
1.4	4.67	0.92	3.27	0.64
1.5	5.00	0.99	3.75	0.74
1.6	5.33	1.05	4.27	0.84
1.7	5.67	1.12	4.82	0.95
1.8	6.00	1.18	5.40	1.07
1.9	6.33	1.25	6.02	1.19
2.0	6.67	1.32	6.67	1.32
2.1	7.00	1.38	7.35	1.45
2.2	7.33	1.45	8.07	1.59
2.3	7.67	1.51	8.82	1.74
2.4	8.00	1.58	9.60	1.89
2.5	8.33	1.64	10.42	2.06
2.6	8.67	1.71	11.27	2.22
2.7	9.00	1.78	12.15	2.40
2.8	9.33	1.84	13.07	2.58
2.9	9.67	1.91	14.02	2.77
3.0	10.00	1.97	15.00	2.96
3.1	10.33	2.04	16.02	3.16
3.2	10.67	2.11	17.07	3.37
3.3	11.00	2.17	18.15	3.58
3.4	11.33	2.24	19.27	3.80
3.5	11.67	2.30	20.42	4.03
3.6	12.00	2.37	21.60	4.26
3.7	12.33	2.43	22.82	4.50
3.8	12.67	2.50	24.07	4.75
3.9	13.00	2.57	25.35	5.00
4.0	13.33	2.63	26.67	5.26
4.1	13.67	2.70	28.02	5.53
4.2	14.00	2.76	29.40	5.80
4.3	14.33	2.83	30.82	6.08
4.4	14.67	2.89	32.27	6.37
4.5	15.00	2.96	33.75	6.66
4.6	15.33	3.03	35.27	6.96
4.7	15.67	3.09	36.82	7.27
4.8	16.00	3.16	38.40	7.58
4.9	16.33	3.22	40.02	7.90
5.0	16.67	3.29	41.67	8.22
5.1	17.00	3.36	43.35	8.56
5.2	17.33	3.42	45.07	8.89
5.3	17.67	3.49	46.82	9.24
5.4	18.00	3.55	48.60	9.59
5.5	18.33	3.62	50.42	9.95
5.6	18.67	3.68	52.27	10.32
5.7	19.00	3.75	54.15	10.69
5.8	19.33	3.82	56.07	11.07
5.9	19.67	3.88	58.02	11.45
6.0	20.00	3.95	60.00	11.84

Speed In Feet/Minute

Speed	Time		Distance	
ft/min	Seconds		Feet	
	Max.	Min.	Max.	Min.
240.0	4.00	0.80	8.00	1.60
260.0	4.33	0.87	9.39	1.88
280.0	4.67	0.93	10.89	2.18
300.0	5.00	1.00	12.50	2.50
320.0	5.33	1.07	14.22	2.84
340.0	5.67	1.13	16.06	3.21
360.0	6.00	1.20	18.00	3.60
380.0	6.33	1.27	20.06	4.01
400.0	6.67	1.33	22.22	4.44
420.0	7.00	1.40	24.50	4.90
440.0	7.33	1.47	26.89	5.38
460.0	7.67	1.53	29.39	5.88
480.0	8.00	1.60	32.00	6.40
500.0	8.33	1.67	34.72	6.94
520.0	8.67	1.73	37.56	7.51
540.0	9.00	1.80	40.50	8.10
560.0	9.33	1.87	43.56	8.71
580.0	9.67	1.93	46.72	9.34
600.0	10.00	2.00	50.00	10.00
620.0	10.33	2.07	53.39	10.68
640.0	10.67	2.13	56.89	11.38
660.0	11.00	2.20	60.50	12.10
680.0	11.33	2.27	64.22	12.84
700.0	11.67	2.33	68.06	13.61
720.0	12.00	2.40	72.00	14.40
740.0	12.33	2.47	76.06	15.21
760.0	12.67	2.53	80.22	16.04
780.0	13.00	2.60	84.50	16.90
800.0	13.33	2.67	88.89	17.78
820.0	13.67	2.73	93.39	18.68
840.0	14.00	2.80	98.00	19.60
860.0	14.33	2.87	102.72	20.54
880.0	14.67	2.93	107.56	21.51
900.0	15.00	3.00	112.50	22.50
920.0	15.33	3.07	117.56	23.51
940.0	15.67	3.13	122.72	24.54
960.0	16.00	3.20	128.00	25.60
980.0	16.33	3.27	133.39	26.68
1000.0	16.67	3.33	138.89	27.78
1020.0	17.00	3.40	144.50	28.90
1040.0	17.33	3.47	150.22	30.04
1060.0	17.67	3.53	156.06	31.21

~~1080.0~~	~~18.00~~	~~3.60~~	~~162.00~~	~~32.40~~
~~1100.0~~	~~18.33~~	~~3.67~~	~~168.06~~	~~33.61~~
~~1120.0~~	~~18.67~~	~~3.73~~	~~174.22~~	~~34.84~~
~~1140.0~~	~~19.00~~	~~3.80~~	~~180.50~~	~~36.10~~
~~1160.0~~	~~19.33~~	~~3.87~~	~~186.89~~	~~37.38~~
~~1180.0~~	~~19.67~~	~~3.93~~	~~193.39~~	~~38.68~~
~~1200.0~~	~~20.00~~	~~4.00~~	~~200.00~~	~~40.00~~

4.1.2.6 Brakes and rollback devices.

May 15, 2006 to April 15, 2019:

Commented [MD96]: Replaced by ANSI-B77.01 2022 - 4.1.2.6 Brakes and rollback devices

The aerial lift shall have the following friction-type brakes and other devices as specified in table 4-3:

– service brake (see 4.1.2.6.1);

– drive sheave brake (see 4.1.2.6.2);

– rollback device (see 4.1.2.6.3);

– drive train backstop (see 4.1.2.6.4).

All braking systems shall be designed to ensure that:

a) once the aerial lift begins movement in the intended direction, the brakes are maintained in the open position;

b) the service brake shall not open prior to the drive system developing sufficient torque to prevent overhauling.

EXCEPTION – For an aerial lift that overhauls only in the reverse direction, a drive train backstop may be used in lieu of the above.

c) multiple brakes or brake systems shall not be simultaneously applied such that excessive deceleration is applied to the aerial lift under any anticipated conditions of loading;

d) the failure of one braking system to properly decelerate the aerial lift shall automatically initiate a second braking system, on an overhauling forward direction aerial lift.

The service brake, drive sheave brake, rollback device, and drive train backstop device shall be designed such that failure of one system will not impair the function of the other systems. All brakes shall have the braking force applied by springs, weights, or other approved forms of stored energy.

The service brake, drive sheave brake, rollback, and drive train backstop devices shall be designed to assure operation under all anticipated conditions.

Each braking system shall be capable of operation to comply with daily inspections and periodic testing.

The manufacturer or a Qualified Engineer shall furnish a written procedure to be followed, and specify the auxiliary equipment necessary for periodic testing and adjustment of the holding force of each brake and backstop device. The procedure shall additionally specify:

e) the minimum and maximum holding force for the service brake and drive sheave brake independently; and

~~f) the minimum and maximum stopping distance for the service brake and drive sheave brake independently, with a specified loading condition.~~

~~This baseline procedure shall be performed at the completion of the acceptance test and then at the frequency specified in order to demonstrate the ability of each brake to produce the required force.~~

~~Testing shall be accomplished as part of normal maintenance during the operating season, but shall not be performed when the aerial lift is open to the public. As a minimum, this testing shall be performed monthly during the operating season.~~

~~If a device is permanently installed to cause a brake, rollback, or drive train backstop device to be disabled for testing, it shall be electronically monitored so that the aerial lift cannot be operated in its normal mode when the brakes are so disabled.~~

Prior to May 15, 2006:

The aerial lift shall have the following friction-type brakes and other devices as specified in table 4-3:

– service brake (see 4.1.2.6.1);

– drive sheave brake (see 4.1.2.6.2);

– rollback device (see 4.1.2.6.3);

– drive train backstop (see 4.1.2.6.4).

All braking systems shall be designed to ensure that:

a) once the aerial lift begins movement in the intended direction, the brakes are maintained in the open position;

b) the service brake shall not open prior to the drive system developing sufficient torque to prevent overhauling.

EXCEPTION – For an aerial lift that overhauls only in the reverse direction, a drive train backstop may be used in lieu of the above.

The service brake, drive sheave brake, rollback device, and drive train backstop device shall be designed such that failure of one system will not impair the function of the other systems, and all brakes shall have the braking force applied by springs, weights, or other approved forms of stored energy.

The service brake, drive sheave brake, rollback, and drive train backstop devices shall be designed to assure operation under all anticipated conditions.

Stopping distances specified in 4.1.2.5.1 shall be achieved by each brake without the aid of other braking devices or drive regeneration.

Each braking system shall be capable of operation to comply with daily inspections and periodic testing.

A Qualified Engineer shall furnish a written procedure to be followed, and specify the auxiliary equipment necessary for periodic testing and adjustment of the holding force of each brake and backstop device. This procedure shall be performed during the acceptance test, and at the frequency specified, to demonstrate the ability of each brake to produce the required torque.

Such testing shall be accomplished as part of normal maintenance during the operating season, but shall be performed when the aerial lift is not open to the public.

If a device is permanently installed to cause a brake, rollback, or drive train backstop device to be disabled for testing, it shall be electronically monitored so that the aerial lift cannot be operated in its normal mode when the brakes are so disabled.

Table 4-3 - Required stopping devices

Lift category	**Service Brake**	**Drive Sheave Brake**	**Rollback device**	**Drive train backstop**	**Retarding device** (see 4.1.2.4)
Self-braking: A lift that decelerates, stops, & remains stopped within the service brake performance requirements without a braking device	Not Required	Required	Not Required	Not Required	Not Required
Nonoverhauling: A lift that will not accelerate in either direction when it is not driven, but is not self-braking	Required*	Required	Not Required	Not Required	Not Required
Overhauling, reverse direction: A lift that will accelerate in the reverse direction when it is not driven	Required	Required	Required	Required	Not Required
Overhauling, forward direction: A lift that will accelerate in forward direction when it is not driven	Required	Required	Not Required	Not Required	Required
* A service brake is not required if the overhauling reverse direction lift will meet the service brake stopping requirements under most unfavorable design loading conditions.					

~~**4.1.2.6.1 Service brake.**~~

~~The service brake shall be located at any point in the drive train such that there is no belt, friction clutch, or similar friction-type device between the brake and the drive sheave. The service brake shall not act on the same braking surface as the drive sheave brake.~~

~~The service brake shall be an automatic brake to stop and hold the aerial lift under the most unfavorable design loading condition. The deceleration rate or stopping distance specified in 4.1.2.5 shall be achieved by the service brake without the aid of other braking devices or drive regeneration.~~

~~The brake shall be in a normally applied position. It shall be held open for operation of the aerial lift and shall be applied when the aerial lift is stopped.~~

Commented [MD97]: Replaced by ANSI-B77.01 2022 - 4.1.2.6.1 Service brake

4.1.2.6.2 Drive sheave (Bullwheel) brake.

~~*From May 15, 2006 to April 15, 2019*~~

Commented [MD98]: Replaced by ANSI-B77.01 2022 - 4.1.2.6.2 Drive sheave (Bullwheel) brake

~~The bullwheel brake shall operate on any drive terminal bullwheel assembly that meets the requirements of 4.1.2.8.2.~~

~~The bullwheel brake shall be capable of being activated both manually and automatically to stop and hold the aerial lift under the most unfavorable design loading condition. Deceleration rates or stopping distances specified in 4.1.2.5 shall be achieved by the bullwheel brake without the aid of other braking devices or drive regeneration.~~

~~On an aerial lift that is categorized as non-overhauling or self braking (see table 4-4), the bullwheel brake shall act automatically on a reverse direction rotation exceeding 36 inches (915 mm).~~

~~On an aerial lift that is categorized as overhauling reverse direction (see table 4-3), the bullwheel brake shall act automatically as follows:~~

~~a) A reverse direction rotation exceeding that which normally activates the rollback device (see 4.1.2.6.3);~~

~~b) The speed of the haul rope exceeds the maximum design rope speed by 15% in the reverse direction.~~

~~Note – Based on passenger loading, a lift can be categorized as overhauling reverse direction, overhauling forward direction, or both.~~

~~On an aerial lift that is categorized as overhauling forward direction (see table 4-4), the bullwheel brake shall act automatically when the speed of the haul rope exceeds the maximum design rope speed by 15% in the forward direction.~~

~~Application of the bullwheel brake shall automatically disconnect the power source to the power unit in use.~~

Prior to May 15, 2006

The drive sheave brake shall operate on the drive sheave assembly.

The drive sheave brake shall be capable of being activated both manually and automatically to stop and hold the aerial lift under the most unfavorable design loading condition. Deceleration rates or stopping distances specified in 4.1.2.5 shall be achieved by the drive sheave brake without the aid of other braking devices or drive regeneration.

Application of the drive sheave brake shall automatically disconnect the power source to the power unit in use. This brake shall act automatically when the speed of the haul rope exceeds the design value by 15% in either direction of an overhauling lift.

~~4.1.2.6.3 Rollback device.~~

~~The rollback device shall act directly on the drive sheave assembly or on the haul rope. When it has been determined that under the most unfavorable design loading condition, haul rope slippage will not occur, the rollback device may be located at the return sheave assembly. However, the rollback device shall not be located at other than the drive station, unless its location will not decrease the factor of safety of the haul rope below the minimum permissible value whenever the rollback device is statically engaged.~~

~~Under the most unfavorable design loading condition, the rollback device shall automatically stop reverse rotation of the aerial lift before the haul rope travels in excess of 36 inches (915 mm) in the reverse direction (see 4.2.3.7 for electrical requirements).~~

~~4.1.2.6.4 Drive train backstop.~~

~~A drive train backstop device shall conform to the following requirements:~~

~~a) A drive train backstop device is a one-way or overrunning clutch device. The drive train shall be so arranged that there is no belt, friction clutch, or similar friction-type device between the backstop device and the drive sheave;~~

~~b) The backstop device shall be rated for the maximum design load;~~

~~c) Under the most unfavorable design loading condition, the backstop device shall automatically prevent reverse rotation of the aerial lift before the aerial lift travels in excess of 36 inches (915 mm) in the reverse direction.~~

4.1.2.7 Machinery systems.~~Location of machinery.~~

~~4.1.2.7.1 General.~~

~~*Prior to April 15, 2019:*~~

~~Moving machine parts that normally may be in reach of personnel shall be fitted with guards. Where breakage of a power transmission component can result in injury, provisions shall be made for appropriate containment of said components. Guards and containment shall be done in conformance to American National Standard, ANSI/ASME, B15.1-2000 (R2008), *Safety Standard for Mechanical Power Transmission Apparatus*. Protection against static electricity shall be provided. Fire-fighting device(s) shall be available (see F.6 in Annex F).~~

~~4.1.2.7.2 Machinery not housed in a machine room.~~

~~*Prior to April 15, 2019:*~~

~~Provisions shall be made to keep the public away from the machinery. All machinery and controls shall be rated for use in their intended environment.~~

Commented [MD99]: Replaced by ANSI-B77.01 2022 - 4.1.2.6.3 Rollback device

Commented [MD100]: Replaced by ANSI-B77.01 2022 - 4.1.2.6.4 Drive train backstop

Commented [MD101]: Replaced by ANSI-B77.01 2022 - 4.1.2.7 Machinery systems

Commented [MD102]: Replaced by ANSI-B77.01 2022 - 4.1.2.7.1 Machinery not house in a machine room

~~4.1.2.7.3 Machinery housed in a machine room.~~

Commented [MD103]: Replaced by ANSI-B77.01 2022 - 4.1.2.7.2 Machinery housed in a machine room

~~*May 15, 2011 to April 15, 2019:*~~

~~The machine room shall be adequately ventilated. It shall have a permanently installed lighting system, adequate for proper machinery maintenance and to reduce the risk of injury to operating personnel. The arrangement of the machinery shall permit proper maintenance. A door with a suitable lock shall be provided, and the design shall keep the public away from the machinery. When a passageway is provided between machines or machinery and walls, a minimum passageway width of 18 inches (460 mm) shall be maintained. Means shall be provided to heat the machine room unless the designer or manufacturer certifies in writing that the drive system machinery is rated for operation in an unheated room.~~

4.1.2.7.4 Engrance and e~~E~~gress.

~~*Jan. 1, 1994 to April 15, 2019:*~~

Commented [MD104]: Replaced by ANSI-B77.01 2022 - 4.1.2.7.3 Entrance and egress

~~Permanent stairs and walkways shall be provided for egress from all machinery areas. The maximum angle of inclination for the stairs shall not exceed 70 degrees. Stairs and walkways shall have a minimum width of 18 inches. Stair treads shall have a minimum depth of 4 inches. Walkway surfaces and stair treads shall be constructed of non-skid bar grating or expanded metal. Handrails shall be provided.~~

Prior to Jan 1, 1994:

Not required.

4.1.2.8.2 Hall rope terminal bullwheels.

May 15, 2006 to April 15, 2019:

Provisions shall be incorporated in the terminal design to retain the terminal bullwheels in their approximate normal operating position in the event of failure of the bearings, shaft, or hub.

Provisions shall be incorporated in the terminal and rope retention design to control the position of the rope, including possible overhaul, to minimize the effects of its departure from its normal operating position.

The minimum diameter of terminal bullwheels shall be 80 times the nominal diameter of the haul rope. The bullwheel assembly or related structures shall be designed to minimize the probability of a deropement. A flange extension of 1-1/2 times the rope diameter (measured radially from the bottom of the rope groove) shall be one acceptable means of minimizing the probability of deropement when in full compliance with the provisions of 4.1.2.8.4.

Haul rope terminal bullwheels that act as driving, braking, or holding bullwheels shall be so designed that the haul rope does not slip in the bullwheel groove. The design coefficient of friction for a particular bullwheel liner shall not exceed the values shown in table 4-5.

Table 4-5 Design coefficient of friction for bullwheel liners

Bullwheel liner	Coefficient of friction
Steel or cast iron grooves	0.070
Leather	0.150
Rubber, neoprene, or others	0.205

Prior to May 15, 2006:

Haul rope terminal sheave frames shall be designed to retain the rope in the event of the failure of the sheave, shaft, or mounting. In instances where the sheave is cantilevered, the design working stresses shall not be more than 60% of those otherwise allowable.

The minimum diameter of terminal sheaves shall be 72 times the nominal diameter of the haul rope. The sheave assembly shall be designed to retain the haul rope in the event of a deropement from the sheave. A flange extension of 1-½ times the rope diameter (measured from the bottom of the rope groove) shall be deemed adequate for retention.

Haul rope terminal sheaves that act as driving, braking, or holding sheaves shall be so designed tht the haul rope does not slip in the sheave groove. The design coefficient of friction for a particular sheave liner shall not exceed the following values:

Sheave Liner	Coefficient of Friction
Steel or cast iron grooves	0.070
Leather	0.150
Rubber, neoprene, or other	0.205

4.1.2.10 Tension systems.

Prior to May 15, 2006:

Counterweights, hydraulic and pneumatic cylinders, or other suitable devices shall be used to provide the tensioning requirements of the particular installation. All devices used to provide the tension shall have sufficient travel to adjust to all normal operating changes in loading and temperature.

The tension for haul ropes for all modes of operation shall be determined by the design engineer. Tension systems may be automatic or manual; however, all systems shall have monitoring equipment that will automatically prevent operation outside of design limits (see 4.1.2.11.2(c)).

Tension systems may be adjustable to provide proper tensions for different modes of aerial lift operation.

The tension system design shall consider changes, for each mode of operation, in tensions due to rope elongation, friction and other forces affecting traction on driving, braking, or holding sheaves, tower and sheave loading, and maximum vertical loads on grips to assure that tensions remain within design limits.

4.1.2.10.1 Hydraulic and pneumatic systems. (Previously 4.1.2.9.1 in ANSI 1999)

Hydraulic and pneumatic cylinders, when used, shall have sufficient ram travel to accommodate all normal operating changes in loading and temperature. Provisions shall be made to keep the cylinder free from climatic-induced conditions and contaminants that may interfere with free movement.

If the system fails to provide the design operating pressure, the aerial lift shall be able to be operated to unload passengers.

Cylinders and their attachments shall each have a minimum factor of safety of 5. The factor of safety is equal to the ultimate tensile strength of the cylinder divided by the maximum steady-state design tension.

The systems providing operating pressure for the cylinder shall have a minimum factor of safety of 5 unless a high-velocity check-valve or flow-control device is used where the pressure line is connected to the cylinder. The check-valve shall be rated to hold twice the normal operating pressure. The remainder of the system shall not exceed the manufacturer's published working pressures. Provisions shall be made to restrict the movement of pressure lines or hoses should they become severed under pressure. When pneumatic storage cylinders, accumulators, or other similar devices are used, they shall be located so that they cannot be knocked over or damaged.

4.1.2.10.2 Counterweights. (Previously 4.1.2.9.2 in ANSI 1999)

Counterweights, when used, shall be arranged to move freely up and down. Enclosures for counterweights shall be provided where necessary to prevent snow, ice, water, and other materials from accumulating under and around the counterweights and interfering with their free movement. Visual access shall be provided to areas beneath and above all counterweights contained in enclosures or pits. When a counterweight is contained in a structural frame, guides shall be provided to protect the frame and to ensure free movement of the counterweight. Where snow enclosures are not required, guardrails or enclosures shall be provided to prevent unauthorized persons from coming in contact with or passing under counterweights.

4.1.2.10.3 Wire ropes in tension systems. (Previously 4.1.2.9.3 in ANSI 1999)

Wire ropes in tension systems shall have a minimum factor of safety of 6 when new (see 7.1.3.1). On arrangements involving rope reeving, the maximum design static tension with sheave friction taken into account shall be the basis for determining the factor of safety. See 7.3 for additional requirements. No rotation-resistant ropes shall be used in tension systems (see 1.4 B *rotation-resistant ropes*).

Wire ropes in tension systems shall be adjusted so that the counterweight will reach the end of its travel before the attached tension sheave carriage comes within 6 inches (150 mm) of the end of its travel. When wire ropes are used with pneumatic or hydraulic cylinders, they shall be adjusted so that connecting devices will not contact the reeving devices before the ram reaches the travel limits of the cylinder.

4.1.2.10.4 Chains in tension systems. (Previously 4.1.2.9.4 in ANSI 1999)

Roller, leaf, or welded link chains may be used in tension systems (see section 7).

For chain used as a tensioning component, where the chain does not pass through or around sprockets, the minimum factor of safety shall be 5 (see 7.1.3.3). For applications of chain where any sprockets are used, the minimum factor of safety shall be 6.

4.1.2.10.5 Cable winches or chain adjusting devices. (Previously 4.1.2.9.5 in ANSI 1999)

Winches or other mechanical devices that are used for take-up and remain part of the system shall have a minimum factor of safety of 6 against their ultimate capacity. They shall have a positive lock against release. Where this factor cannot be established by the manufacturer's endorsement, a device shall be installed on the tension system rope or chain ahead of the winch/mechanical device that will keep the tension system intact in the event of failure or release of the device.

The diameter of the winding drum shall not be less than the specified minimum sheave diameters referenced as Condition C in 4.1.2.7.3 for rope.

4.1.3.1 Towers.

Nov. 1, 1991 to April 15, 2019:

The design of the tower structure and foundation shall be in accordance with the requirements of 4.1.1.6. Where guyed towers are used and guys intersect the ground within or near ski runs, the guys shall be marked for visibility.

Means shall be provided for ready access from the ground to all tower tops. Permanent ladders are required for heights above those accessible by portable ladders. Portable ladders, if used, shall be in at least sufficient quantity to be available at each point where attendants are positioned. Portable ladders extending more than 20 feet (6.10 meters) shall not be used.

Permanent anchor points shall be provided on all tower tops for the attachment of fall protection devices.

Towers shall be identified with successive numbers clearly visible to passengers.

Where towers are designed to permit variations in rope height, sheave unit supports shall be guided and attached so as to prevent misalignment by rotation during normal operation.

Prior to Nov. 1, 1991:

The design of the tower structure and foundation shall be in accordance with the requirements of 4.1.1.6. Where guyed towers are used and guys intersect the ground within or near ski runs, the guys shall be marked for visibility.

Means shall be provided for ready access from the ground to all tower tops. Permanent ladders are required for heights above those accessible by portable ladders.

Portable ladders, if used, shall be in at least sufficient quantity to be available at each point where attendants are positioned. Portable ladders extending more than 20 feet (6.10 meters) shall not be used.

Towers shall be identified with successive numbers clearly visible to passengers.

Where towers are designed to permit variations in rope height, sheave unit supports shall be guided and attached so as to prevent misalignment by rotation

4.1.3.3.2 Sheave and sheave unit design.

~~*May 15, 1994 to April 15, 2019:*~~

~~Sheave flanges shall be as deep as possible, considering other features of the system. At the same time, rope grips shall be designed in relation to the sheave groove so as not to contact sheave flanges during normal operations, taking into consideration the anticipated amount of wear of the sheave liner groove.~~

~~Grips shall be allowed to contact sheave flanges adjacent to the haul rope when the carrier swings, provided that this is considered in the design of the grips and sheaves. Furthermore, rope grips, sheave flanges, and hanger guides shall be designed so that hangers cannot be caught behind guides, and so that haul ropes and grips cannot be deroped from sheaves if the carrier is swinging within design limits as it approaches or passes the tower.~~

~~If the gauge of the haul rope system is varied at any point along the line, the horizontal departure at any one tower shall be provided for in the design so that deropement cannot occur by virtue of such a departure.~~

~~Sheave unit design shall include the following features:~~

~~a) Suitable guards, of sufficient strength to resist the lateral forces caused by an inside deropement, shall be installed;~~

~~b) Construction of the entire sheave unit shall be such that the haul rope cannot become entangled in the sheave unit in the event the rope leaves the sheave toward the outside;~~

~~c) Sheave mounts or mounting frames shall be designed to be adjustable, allowing the sheave units to be aligned and held in the plane of the rope;~~

~~d) On each sheave unit, rope-catching devices shall be installed to reduce the risk of the haul rope moving excessively in the direction of the load on the sheave unit in the event of deropement. These devices shall be located less than one-half the diameter of the sheaves from the normal operating position of the rope and shall extend a minimum of two rope diameters beyond the sheave flange. Alternatively, when the catcher is located so that the rope cannot move in the direction of the load when it passes from the edge of the sheave to a position in the catcher, the catcher shall extend a minimum of two rope diameters beyond the center of the rope when the rope has reached the point where the deropement switch device initiates a stop;~~

Commented [MD105]: Replaced by ANSI-B77.01 2022 - 4.1.3.3.2 Sheave and sheave unit design

~~e) Rope-catching devices shall be designed to permit the passage of the haul rope and grips after deropement. The catcher shall be independent from the sheave;~~

~~f) On each sheave unit, suitable deropement switch devices shall be installed and maintained that will stop the lift in case of deropement (see 4.2.3.4);~~

~~g) On lifts where the carrier speed exceeds 600 feet per minute (3.0 meters per second), at least one device that senses the position of the rope shall be installed (see 4.2.5.2).~~

~~See also 4.1.1.5 through 4.1.1.5.3 for the effect of tower height and location on sheave units.~~

Prior to May 15, 1994:

Sheave flanges shall be as deep as possible, considering other features of the system. At the same time, rope grips shall be designed in relation to the sheave groove so as not to contact sheave flanges during normal operations, taking into consideration the anticipated amount of wear of the sheave liner groove. Grips shall be allowed to contact sheave flanges adjacent to the haul rope when the carrier swings, provided that this is considered in the design of the grips and sheaves. Furthermore, rope grips, sheave flanges, and hanger guides shall be designed so that hangers cannot be caught behind guides, and so that haul ropes and grips cannot be deroped from sheaves if the carrier is swinging within design limits as it approaches or passes the tower.

Suitable guards, of sufficient strength to resist the lateral forces caused by an inside deropement, shall be installed.

Construction of the entire sheave unit shall be such that the haul rope cannot become entangled in the sheave unit in the event the rope leaves the sheave toward the outside.

On each sheave unit, rope-catching devices shall be installed to reduce the risk of the rope moving excessively in the direction of the load on the sheave unit in the event of deropement. These devices shall be located less than one-half the diameter of the sheaves from the normal operating position of the rope and shall extend a minimum of two rope diameters beyond the sheave flange. Alternatively, when the catcher is located so that the rope cannot move in the direction of the load when it passes from the edge of the sheave to a position in the catcher, the catcher shall extend a minimum of two rope diameters beyond the center of the rope when the rope has reached the point where the deropement switch device initiates a stop. Rope-catching devices shall be designed to permit the passage of the haul rope and grips after deropement. The catcher shall be independent from the sheave.

On each sheave unit, suitable deropement switch devices shall be installed and maintained that will stop the lift in case of deropement.

On lifts where the carrier speed exceeds 600 feet per minute (3.0 meters per second), at least one device that senses the position of the rope shall be installed on each sheave unit. The device shall initiate a stop before the rope leaves the sheave in the horizontal direction or when the rope is displaced in the vertical direction by one rope diameter plus the distance that the rope is displaced vertically from the sheave by the grip.

If the gage of the haul rope system is varied at any point along the line, the horizontal departure at any one tower shall be provided for in the design so that deropement cannot occur by virtue of such a departure.

Sheave mounts or mounting frames shall be designed to be adjustable, allowing the sheave units to be aligned and held in the plane of the rope.

See also 4.1.1.4 through 4.1.1.4.3 for the effect of tower height and location on sheave units.

~~**4.1.4.4.2 Cabin.**~~

Commented [MD106]: Replaced by ANSI-B77.01 2022 - 4.1.4.4.2 Cabin

~~*May 15, 2000 to May 15, 2006:*~~

~~Fully enclosed passenger cabins shall be ventilated. They shall be equipped with doors that fill the entire entrance opening. The minimum clearance width opening shall be 32 inches (815 mm). Each door shall be provided with a lock located in such a manner that it can be unlocked only by authorized persons or by automatic means.~~

~~The horizontal gap between the cabin door opening floor edge and platform edge shall not be greater than 1 inch (25.4mm). The height of the cabin floor and the platform shall be within ± ½ inch (±12.7mm). Where it is not operationally or structurally practical to meet these requirements, platform devices, vehicle devices, system devices, or bridge plates shall be provided for independent loading.~~

~~All windows shall be of shatter-resistant material.~~

~~Means of emergency evacuation of passengers shall be provided.~~

~~The maximum capacity of each cabin, both in pounds and kilograms and number of passengers, shall be posted in a conspicuous place in each cabin (see Annex D).~~

~~The minimum clear floor space in accessible cabins shall be 48 inches by 30 inches (1220 mm X 760 mm). Where special accessible cabins are used, it is recommended the waiting interval should not exceed 10 minutes.~~

~~All carriers shall be clearly identified with numbers located on each end of each carrier.~~

~~Semi-open carriers shall meet applicable requirements for enclosed cabins and open chairs.~~

~~*Jan. 1, 1994 to May 15, 2000:*~~

~~Fully enclosed passenger cabins shall be ventilated. They shall be equipped with doors that fill the entire entrance opening. The minimum opening door width shall be 32 inches (815 mm). Each door shall be provided with a lock located in such a manner that it can be unlocked only by authorized persons or by automatic means.~~

~~The horizontal gap between the cabin door opening floor edge and platform edge shall not be greater than 1 inch (25.4mm). The height of the cabin floor and the platform shall be within 2 inch (12.7mm). Where it is not operationally or structurally practical to meet these requirements, platform devices, vehicle devices, system devices, or bridge plates shall be provided for independent loading.~~

~~All windows shall be of shatter-resistant material.~~

~~Means of emergency evacuation of passengers shall be provided.~~

~~The maximum capacity of each cabin, both in pounds and kilograms and number of passengers, shall be posted in a conspicuous place in each cabin.~~

~~The width of cabin seats shall be at least 18 inches (460 mm) per person. If passengers are to remain standing, floor space of 2.5 square feet (0.232 square meter) per person shall be available. The minimum clear floor space in accessible cabins shall be 48 inches by 30 inches (1220 mm X 760 mm). Where special accessible cabins are used, it is recommended the waiting interval should not exceed 10 minutes.~~

~~All carriers shall be clearly identified with numbers located on each end of each carrier.~~

~~Semi-open carriers shall meet applicable requirements for enclosed cabins and open chairs.~~

4.1.4.5.4 Chair safety details.

May 15, 1999 to April 15, 2019:

Each chair shall be equipped with a railing at each side, to a height of not less than 4 inches (100 mm) above the seat for a distance of not less than 12 inches (305 mm) from the back of the seat.

For aerial lifts operating primarily for skiers, the thickness of the chair seat front, including padding, shall not exceed 5 inches (125 mm) from the top of the seating surface to the bottom of the curl. Tilt back angle of the seat bottom should be a minimum of 7 degrees when loaded. Loaded shall mean an evenly distributed load using load test criteria. Provisions shall be made to keep the tails of skis from passing through and becoming trapped in open spaces between framework, safety restraints and chair seat underside.

For aerial lifts operating primarily for foot passengers, each chair shall be equipped with a restraining device that will not open under forward pressure.

Prior to May 15, 1999:

Each chair shall be equipped with a railing at each side, to a height of not less than 4 inches (10 cm) above the seat for a distance of not less than 12 inches (30 cm) from the back of the seat.

For aerial lifts operating primarily for foot passengers, each chair shall be equipped with a restraining device that will not open under forward pressure.

~~**4.1.4.5.5 Work carrier design.**~~

~~*Prior to April 15, 2019:*~~

~~A work carrier, when used, shall be of an approved type for the aerial lift on which it is used. Approval shall be by the ropeway manufacturer or a qualified engineer. Work carriers may be approved to be used on different aerial lifts.~~

~~The work carrier shall be designed by a manufacturer or qualified engineer taking into consideration, but not limited to the following:~~

~~a) Supporting a vertical load 4 times the design dead plus live loads without permanent deformations of the assembly or component parts;~~

~~b) The grip specified meets 4.1.4.3 through 4.1.4.3.4;~~

~~c) Guard rail requirements;~~

~~d) Kick plate requirements;~~

~~e) Maintenance personnel work and travel positions;~~

~~f) Fall protection provisions.~~

~~A sign with the maximum live load capacity in pounds and kilograms shall be attached to the work carrier.~~

~~NOTE – The live load capacity includes the combined weight of passenger and materials.~~

Commented [MD107]: Replaced by ANSI-B77.01 2022 - 4.1.4.5.5 Work carrier design

~~**4.1.6.2 Maintenance manual.**~~

~~*Prior to April 15, 2019:*~~

~~The designer of each new or relocated aerial lift shall provide with delivery of the installation, a maintenance manual in English for that installation. The manual shall describe recommended maintenance and testing procedures including:~~

~~a) Types of lubricants required and frequency of application;~~

~~b) Definitions and measurements to determine excessive wear;~~

~~c) Recommended frequency of service to specific components, including relocation of fixed grips;~~

~~d) Carrier Inspection Plan;~~

~~e) Brake testing and adjustment;~~

Commented [MD108]: Replaced by ANSI-B77.01 2022 - 4.1.6.2 Maintenance manual

~~f) Dynamic testing procedure.~~

4.2.1.1 Applicable codes.

April 15, 2019 to May 2023: ANSI 2022 ADOPTION DATE: XXXXXX NOTE DATE REQUIRED. All electrical systems shall comply with American National Standard, ANSI/NFPA 70-2017, *National Electrical Code* and the Institute and Electronics Engineers, IEEE C2-2017, *National Electrical Safety Code*.

May 15, 2006 to April 15, 2019:

All electrical systems shall comply with American National Standard, ANSI/NFPA 70-2011, *National Electrical Code* and the Institute of Electrical and Electronics Engineers, IEEE C2-2007, *National Electrical Safety Code*.

May 15, 2000 to May 15, 2006:

All electrical systems shall comply with 4.2.1.1 Applicable codes of the B77.1-1999 ANSI Standard.

Jan. 1, 1994 to May 15, 2000:

All electrical systems shall comply with 4.2.1.1 Applicable codes of the B77.1-1992 ANSI Standard.

Nov. 1, 1991 to Jan 1, 1994:

All electrical systems shall comply with 4.2.1.1 Applicable codes of the B77.1-1990 ANSI Standard.

Jan. 1, 1984 to Nov 1, 1991:

All electrical systems shall comply with 4.2.1.1 Applicable codes of the B77.1-1982 ANSI Standard.

Jan 1, 1977 to Jan. 1, 1984:

All electrical work shall comply with 4.2.1.1 Applicable codes of the B77.1-1976 ANSI Standard.

Jan 1, 1974 to Jan. 1, 1977:

All electrical work shall comply with 4.2.1.1 Applicable codes of the B77.1-1973 ANSI Standard.

Jan 1, 1972 to Jan 1, 1974:

All electrical work shall comply with 4.2.1.1 Applicable codes of the B77.1-1970 ANSI Standard.

Prior to Jan 1, 1972:

All electrical work shall comply with 4.2.1.1 Applicable codes of the B77.1-1960 ANSI Standard.

4.2.1.2 Location.

April 15, 2019 to May 2023: ANSI 2022 ADOPTION DATE: XXXXXX – NOTE DATE REQUIRED. All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 4.2.1.2 Location of the B77.1-2017 ANSI Standard.

May 15, 2006 to April 15, 2019:

All electrical power transmission wiring located near or proposed to cross over conveyors shall comply with the applicable requirements of IEEE C2-2007.

May 15, 2000 to May 15, 2006:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 4.2.1.2 Location of the B77.1-1999 ANSI Standard.

Jan. 1, 1994 to May 15, 2000:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 4.2.1.2 Location of the B77.1-1992 ANSI Standard.

Nov. 1, 1991 to Jan 1, 1994:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 4.2.1.2 Location of the B77.1-1990 ANSI Standard.

Jan. 1, 1984 to Nov 1, 1991:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 4.2.1.2 Location of the B77.1-1982 ANSI Standard.

Prior to Jan. 1, 1984:

All exposed electrical power transmission wiring shall be so located that in case of collapse or breakage of the power line it will not come into contact with carriers, ropes, or passengers.

4.2.1.3 Protection.

Prior to May 15, 2006:

All transformer stations and other high voltage electrical equipment shall be marked with conspicuous warning signs and shall be protected so as to prevent unauthorized persons from entering the area or coming in contact with any portion of the equipment or wiring. All power equipment shall be protected against overloads by circuit breakers or fuses.

4.2.1.4 Overhead cables.

Prior to May 15, 2006:

Signal, communication, and control circuits may be supported between towers that support the aerial lift. Voltage on overhead or exposed circuits shall be limited to 50 volts with the exception of the intermittent ring-down circuits for telephone systems.

4.2.1.5.5 Ground fault interrupter protection.

Prior to May 15, 2006:

Not required.

4.2.1.6.3 Haul rope grounding.

~~*Jan 1, 1984 to April 15, 2019:*~~

~~Grounding sheaves with conductive liners or equivalent means should be provided at each end of the tramway for the he purpose of grounding haul ropes and track cables, as applicable, for static electrical discharge. For the haul rope on bicable systems or monocable systems with an isolated or insulated haul rope incorporated in the operating circuitry, no means of grounding are required when the operating circuit takes into consideration static electrical discharge.~~

Prior to Jan 1, 1984:

Not required.

~~**4.2.1.6.4 Lightning protection.**~~

~~*Prior to April 15, 2019:*~~

~~If lightning protection is provided, it shall follow American National Standard, ANSI/NFPA 780-2008, *Standard for the Installation of Lightning Protection Systems.*~~

4.2.2 Electrical system circuit design and classification.

May 15, 2006 to April 15, 2019:

The designer or manufacturer responsible for the design shall identify and classify any new electrical circuits not already classified as Protection Circuits, Operations Circuits, or Supervision Circuits

Prior to May 15, 2006:

Not required.

4.2.2.1 Function~~Circuit~~ priority.

May 15, 2006 to April 15, 2019:

Protection circuits shall have priority over all other circuits. Operation circuits shall have priority over supervision circuits. If any circuit's function is connected to circuits of a higher level of protection, it shall be classified at the higher level.

Prior to May 15, 2006:

Commented [MD109]: Replaced by ANSI-B77.01 2022 - 4.2.1.6.3 Haul rope grounding

Commented [MD110]: Replaced by ANSI-B77.01 2022 - 4.2.1.6.4 Lightning protection

Not required.

4.2.3 Protection circuits. (ANSI-B77.1 2022 – 4.2.3 Safety related control functions)

May 15, 2006 to April 15, 2019:

Electrical circuits designed to stop the aerial lift in the event of a malfunction or failure of the aerial lift system shall be classified protection circuits. All aerial lift systems shall contain two or more protection circuit(s) at least one of which shall be designated the emergency shutdown circuit (see 4.2.3.1). Protection circuits shall be energized to permit system operation and when deenergized shall initiate a stop, or shall be of such design to provide the equivalent level of protection.

A protection circuit may include one or more noncomplex elements (see 1.4 – *non-complex element*) and/or complex electronic elements (see 1.4 – *complex electronic element*). The designer shall make use through continuous diagnostic coverage (see 1.4 – *continuous diagnostic coverage*) that the failure of a complex electronic element will cause the aerial lift to stop unless another element in the protection circuit is performing the same function (redundancy). If functional redundancy is implemented, the failure of the first element must be annunciated, at a minimum, at the beginning of operations on a daily basis.

The designer or manufacturer shall develop procedures and frequency for testing protection circuits. As a minimum, all protection circuits shall be calibrated and tested annually.

Protection circuits include, but are not limited to:

a) Emergency shutdown (see 4.2.3.1);

b) Stop gate (see 4.2.3.2);

c) Tension system fault (see 4.2.3.3);

d) Deropement circuit(s) (see 4.2.3.4);

e) Brake system (see 4.2.3.5);

f) Overspeed (see 4.2.3.6 and 4.2.8(b));

g) Rollback detection device (see 4.2.3.7);

h) Stop cord (see 4.2.9) as applicable.

Prior to May 15, 2006:

Not required.

4.2.3.1 Emergency shutdown circuit.

May 15, 2006 to April 15, 2019:

All aerial lift systems shall include at least one protection circuit labeled emergency shutdown circuit (see 1.4 – *emergency shutdown*). The shutdown shall have priority over all other control stops or commands. If, for any reason, the operator has lost control of the aerial lift while using the operating control circuitry, the controls shall include an emergency shutdown circuit allowing the operator/attendant to stop the aerial lift.

Any one of the following conditions is considered a loss of control of an aerial lift:

a) Aerial lift will not SLOW DOWN when given the command to do so;

b) Aerial lift will not STOP when given the command to do so;

c) Aerial lift OVERSPEEDS beyond control settings and/or maximum design speed;

d) Aerial lift ACCELERATES faster than normal design acceleration;

e) Aerial lift SELF-STARTS or SELFACCELERATES without the command to do so;

f) Aerial lift REVERSES direction unintentionally and without the command to do so.

Prior to May 15, 2006:

Not required.

4.2.3.3 Tension system.

Prior to April 15, 2019:

Active tension systems, (i.e. counterweight, hydraulic, etc.) shall have a protection device(s) that will stop the lift when the haul rope tension carriage exceeds its range of normal operations.

4.2.3.4 Deropement switches.

4.2.3.4.1 Sheave unit.

Prior to April 15, 2019:

On each sheave unit, suitable deropement detection devices shall be installed and maintained that will stop the lift in case of deropement (see 4.1.3.3.2(f), 4.1.1.5.1(g)).

4.2.3.4.2 Bullwheel.

Prior to April 15, 2019:

Device(s) to stop the aerial lift if the haul rope departs the bullwheel from its normal running position.

4.2.3.5 Braking system.

Commented [MD111]: Replaced by ANSI-B77.01 2022 - 4.2.3.3 Tension system monitoring

Commented [MD112]: Replaced by ANSI-B77.01 2022 - 4.2.3.4 Rope position detection

Commented [MD113]: Replaced by ANSI-B77.01 2022 - 4.2.3.4.2 Bullwheel

Commented [MD114]: Replaced by ANSI-B77.01 2022 - 4.1.2.6 Brakes and rollback device

~~*Prior to April 15, 2019:*~~

~~All braking systems shall be designed to ensure that they meet the requirements of 4.1.2.6(a) through 4.1.2.6(d).~~

4.2.3.~~5~~6 Overspeed. (ANSI B77.1-2022 Overspeed Monitoring)

Commented [MD115]: Check location

Prior to April 15, 2019:

If the line speed exceeds the design speed by 10% on an overhauling lift, the service brake, if installed, shall slow and stop the aerial lift automatically. A system or device shall be installed that will automatically apply the bullwheel brake on an overhauling lift when the speed of the haul rope exceeds the design speed by 15% in either direction.

~~**4.2.3.7 Rollback detection device.**~~

Commented [MD116]: Replaced by ANSI-B77.01 2022 - 4.2.3.6 Rollback detection

~~*Prior to April 15, 2019:*~~

~~The rollback detection device shall activate the rollback device and bring the aerial lift to a stop if unintentional reverse rotation occurs. The rollback device shall automatically stop reverse rotation of the aerial lift before the haul rope travels in excess of 36 inches (915 mm) in the reverse direction (see 4.1.2.6.3).~~

4.2.4 Operation circuits (ANSI B77.1 – 2022 Control functions)

Prior to April 15, 2019:

An operation circuit is a circuit that provides power to or controls the aerial lift machinery.

The designer or manufacturer shall identify the operation circuits that require periodic testing and develop procedures and frequency for testing. As a minimum, all operation circuits shall be tested and calibrated annually.

Operation circuits include, but are not limited to:

a) Power circuits;

b) Drive fault circuits;

c) Normal stop (see 1.4 -- normal stop and 4.1.2.5);

d) Speed command circuits (i.e., fast, slow, etc.);

e) Internal combustion engine speed control;

f) Power unit interlock (see 4.1.2.1.3);

4.2.5 Supervision circuits (ANSI B77.1-2011 Numbering)

Prior to April 15, 2019:

Supervision circuits include all communications systems. In addition, supervision circuits may be provided to monitor or supervise the performance of various aerial lift systems to provide lift operator with system information.

The designer or manufacturer shall identify supervision circuits that require periodic testing and develop procedures and frequency for testing supervision circuits. As a minimum, all supervision circuits shall be calibrated and tested annually.

Supervision circuits may include, but are not limited to:

a) telephone and sound powered systems (see 4.1.1.7)

b) information display circuits;

c) audible warming devices (see 4.2.10);

d) overhead cable supervision (4.2.1.4);

e) wind speed and direction sensors and display units;

f) gearbox oil pressure, oil flow and temperature;

g) pneumatic and hydraulic tension system pressure (see 4.2.5.1);

h) unauthorized passenger detection;

i) rope position detectors (see 4.2.5.2);

j) acceleration/deceleration error (see 4.2.5.3).

4.2.5.1 Pneumatic and hydraulic tension systems

Prior to April 15, 2019:

When pneumatic or hydraulic tension systems are used, pressure-sensing devices shall also be incorporated that will stop the aerial lift system in case the operating pressure goes above or below the design pressure range. Such pressure-sensing devices shall be located close to the actual tensioning device. It shall not be possible to isolate the pressure sensor from the actual tensioning device.

4.2.5.2 Rope Position Detection

Prior to April 15, 2019:

On lifts where the carrier speed exceeds 600 feet per minute (3.0 meters per second), at least one device that senses the position of the rope shall be installed on each sheave unit. The device shall initiate a stop before the rope leaves the sheave in the horizontal direction or when the rope is displaced in the vertical direction by one rope diameter plus the distance that the rope is displaced vertically from the sheave by the grip (see 4.1.3.3.2(g)).

When the device that senses the position of the rope is the only deropement switch, it shall meet the requirements of a protection circuit as descripted in section 4.2.3. An aerial lift system may utilize a rope position detector as a supervision circuit as described in section 4.2.5 only if it has another deropement detection system that meets the requirements of a protection circuit.

4.2.5.3 Acceleration/deceleration monitoring.

Prior to April 15, 2019:

The rate of acceleration and deceleration of the aerial lift shall be monitored. In the event that the acceleration or deceleration exceeds the provisions of 4.1.2.4, the aerial lift shall stop and annunciate the error.

EXCEPTION: Prime movers equipped with fluid couplings, centrifugal clutches, or wound rotor motors.

Prior to May 15, 2016:

Not required.

~~**4.2.8 Electronic speed-regulated drive monitoring.**~~

Commented [MD117]: Replaced by ANSI-B77.01 2022 - 4.2.7 Electronic speed-regulated drive monitoring

~~*Prior to April 15, 2019:*~~

~~All electronic speed-regulated drives and electric motors shall shut down in the event of:~~

~~a) Field loss (dc motors);~~

~~b) Overspeed;~~

~~c) Speed feedback loss as applicable;~~

~~d) Overcurrent.~~

~~**4.2.9 Manual control devices.**~~

Commented [MD118]: Replaced by ANSI-B77.01 2022 - 4.2.8 Manual control device

~~*May 15, 2006 to April 15, 2019:*~~

~~All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.~~

~~Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.~~

~~Manual control devices shall be installed in all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum, each of these control locations shall include an Emergency Shutdown device and a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.~~

~~All control devices shall be conspicuously and permanently marked with the proper function and color code.~~

~~*Prior to May 15, 2006:*~~

~~All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type. Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.~~

~~Manual control devices shall be installed in all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum at downhill loading stations, each of these control locations shall include an Emergency Shutdown device or a Normal Stop device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.~~

~~The devices shall be conspicuously and permanently marked with the proper function and color code.~~

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4.2.9~~10~~ Safety of operating and maintenance personnel.

~~*May 15, 1999 to April 15, 2019:*~~

~~Provision shall be incorporated in the aerial lift design to render the system inoperable when necessary for the Lock-out Tag-out protection of personnel working on the aerial lift.~~

~~The sign "Personnel Working on Lift - Do Not Start" or a similar warning sign shall be hung on the main disconnect switch or at control points for starting the power unit(s) when persons are working on the aerial lift.~~

~~The aerial lift shall incorporate an audible warning device that signals an impending start of the aerial lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of 2 seconds and shall continue until the aerial lift begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.~~

Prior to May 15, 1999:

The sign "Personnel Working on Lift - Do Not Start" or a similar warning sign shall be hung on the main disconnect switch or at control points for starting the power unit(s) when persons are working on the aerial lift.

Provision shall be incorporated in the ropeway design to render the system inoperable when necessary for the Lock-out Tag-out protection of personnel working on the aerial lift.

Commented [MD119]: Replaced by ANSI-B77.01 2022 - 4.2.9 Safety of operating and maintenance personnel

~~**4.2.11 Electrical system acceptance tests.**~~

~~*Prior to April 15, 2019:*~~

~~Upon completion of the acceptance test and before public operation of the aerial lift, the function of software and/or relay logic shall be certified by a Qualified Engineer. The certification shall be~~

Commented [MD120]: Replaced by ANSI-B77.01 2022 - 4.2.10 Electrical system acceptance tests

included in the acceptance test report. Any modifications made to the electrical design shall be clearly marked on the onsite documentation and signed by a Qualified Engineer (see 4.1.1.11.2).

4.2.12 Software security.

The "as built" documents shall include a procedure, developed by the aerial lift manufacturer or a Qualified Engineer, to ensure the security of the software logic and operating parameters that will control the aerial lift. Upon completion of the acceptance testing this procedure shall be implemented in a manner that will prevent unauthorized personnel from making changes to the software logic or operating parameters. All programmable logic and parameters shall be documented.

Software programming and changes to the software logic shall be made by a qualified software programmer. Software programmers shall provide documents that include:

1. Software logic development date;
2. Software logic current revision number;
3. Software logic current revision date;
4. List of software logic changes for each revision that explain changes in detail;
5. Name of software logic programmer that made each revision;
6. Testing procedures for each change of software logic;
7. Personnel that completed the testing.

4.2.13 Night operations.

Prior to April 15, 2019:

For nighttime operation, operating aerial lifts shall be provided with lighting systems. Lighting shall be provided at loading and unloading areas.

4.2.13.1 Illumination.

Prior to April 15, 2019:

Lights shall be located in a manner to provide generally uniform illumination.

4.2.13.2 Types.

Prior to April 15, 2019:

Lamps shall be of a type suitable and rated for minimum temperatures of the location. Fixtures shall be designed to maintain proper lamp-operating characteristics.

4.2.13.3 Location.

Prior to April 15, 2019:

Commented [MD121]: Replaced by ANSI-B77.01 2022 - 4.2.11 Software security

Commented [MD122]: Replaced by ANSI-B77.01 2022 - 4.3.12 Night operations

Commented [MD123]: Replaced by ANSI-B77.01 2022 - 4.2.12.1 Illumination

Commented [MD124]: Replaced by ANSI-B77.01 2022 - 4.3.12.2 Types

Commented [MD125]: Replaced by ANSI-B77.01 2022 - 4.2.12.3 Location of lighting

~~Lights shall be mounted on substantial poles or standards. Aerial lift towers and terminal structures may be used for supporting lights subject to the following requirements:~~

~~a) Approval shall be obtained from a Qualified Engineer;~~

~~b) The service conductors to each aerial lift tower or terminal structure shall be underground or in rigid raceways. No wiring shall be supported between towers and no open wiring shall pass over or under the aerial lift;~~

~~c) A separate enclosed disconnect or circuit breaker shall be required for each tower or terminal structure;~~

~~d) All metallic raceways on a tower or terminal structure shall be grounded;~~

~~e) The lighting installation shall not conflict with other requirements of this standard and shall not interfere with operations of the aerial lift in any manner.~~

~~**4.2.13.4 Emergency lighting.**~~

~~*Prior to April 15, 2019:*~~

~~Emergency lighting shall be provided in the event of electric power failure to permit:~~

~~a) Regular unloading of an aerial lift;~~

~~b) Emergency evacuation of carriers;~~

~~c) Operation of the evacuation drive.~~

Commented [MD126]: Replaced by ANSI-B77.01 2022 - 4.2.12.4 Emergency lighting

~~**4.3.1.2.1 Requirements for signs.**~~

~~(a) The design of any sign as well as its support and the installation procedure of such sign shall be considered a minor modification if the sign or aggregate of signs on a given tower is greater than three feet square (nine square feet).~~

~~(b) Signs, fasteners, or supporting members shall not interfere with the operation of the tramway.~~

~~(c) The design of structural components shall be reviewed to consider the increase in loading caused by any sign.~~

~~(d) Signs shall not interfere with passenger or attendant vision.~~

Commented [MD127]: Replaced by ANSI-B77.01 2022 - 4.3.1.2 Signs

IN ADDITION TO ANSI 4.3.1

4.3.1.3 Operational plan for transportation of recreational equipment. Each licensee shall have an operational plan that has procedures for transportation of sports equipment and recreational devices by foot passengers. This plan shall be consistent with the tramway manufacturer's specifications and instructions, if any.

~~**4.3.2.4.4 Work carrier.**~~

~~*Prior to April 15, 2019:*~~

Commented [MD128]: Replaced by ANSI-B77.01 2022 - 4.3.2.4.4 Work Carrier

~~Not required.~~

~~4.3.2.5 Operational requirements.~~

Commented [MD129]: Replaced by ANSI-B77.01 2022 - 4.3.2.5 Operational requirements

~~4.3.2.5.1 General.~~

Commented [MD130]: Replaced by ANSI-B77.01 2022 - 4.3.2.5.1 General

~~The owner and supervisor of each aerial lift shall review the requirements of Section 4 and referenced Annexes of this standard to ascertain that original design and installation conditions have not been altered in a manner so as to violate the requirements of the standard.~~

IN ADDITION TO ANSI 4.3.2.5

4.3.2.5.2 Preoperational minimum ridership requirements.

Each licensee shall have an operational plan that identifies criteria for pre-operational tramway inspections for the transportation of personnel on aerial ropeways. Implementation of these procedures is intended for the protection of all personnel and shall be the responsibility of the area operator, supervisor, and the authorized individual.

The preoperational plan shall include, but not be limited to:

Minimum Requirements

Prior to the daily preoperational ride and the completion of X.3.2.4.2 Daily preoperational inspection, or any initial start-up of the ropeway, the following minimum steps shall be taken;

1. At least one brake and stop switch has been operated and proves to function properly, and either items 2 or 3 are performed.

2. The ropeway is operated slowly for a minimum of three (3) minutes, or a length of time equal to the time a carrier takes to cross the longest span on the installation.

3. The lift line is visually inspected in one of two ways:

    a) The entire lift line is visually inspected from the ground by trained personnel.

    b) The lift line inspection occurs while riding the aerial ropeway. If this method is used, the first rider shall be in constant communication with the operator.

The plan shall also include the following requirements:

i) **Evacuation of pre-ride personnel.** The number of available evacuation personnel, the method of

transportation of those persons, the required evacuation equipment and the method of transport of evacuated personnel.

ii) **Trained operational and maintenance availability.** A requirement that trained operational and maintenance personnel shall be immediately available to attempt to restart the tramway if the tramway stops.

For the purpose of this Rule, "area employee" means an individual: (1) who performs services for an area operator, as that term is defined by section 12-50-103(1), C.R.S.; (2) who receives financial compensation directly from the area operator for those services; and (3) whose services only the area operator has the right to control (i.e., the area operator has the right to direct the services the individual will perform for the area operator and how the individual will perform those services).

A. For Licensed Ropeways and Unlicensed Ropeways After Initial Testing, including Expired Licenses

An area employee that is directly related to the opening of the aerial lift (i.e. Ski Patrol, Lift Maintenance, and Lift Operators) shall conduct the pre-operational inspection ride. If any other area employee is to ride the lift prior to the completion of the pre-operational inspection, the personnel responsible for the pre-operational inspection ride shall ride in the first carriers in front of the area employee. As used in this Rule, the term "area employee" specifically excludes independent contractors, subcontractors, vendors, and their personnel.

B. Unlicensed Ropeways Prior to Testing and Licensing

Only personnel related to the completion of the construction, operation, and buildings directly related to the operation of the tramway may be transported by the tramway prior to testing and licensing.

~~**4.3.2.5.3 Starting.**~~

~~Following procedural clearances, the aerial lift shall be started by the operator or at the direction of the operator. Capability for starting from other locations may be provided for maintenance or emergency operation.~~

Commented [MD131]: Replaced by ANSI-B77.01 2022 - 4.3.2.5.2 Starting

~~**4.3.2.5.4 Loading and unloading platforms.**~~

~~The maze or corral, loading platform surface, breakover point, and the load/unload seat height shall be reasonably maintained according to the prevailing weather conditions and established procedures.~~

Commented [MD132]: Replaced by ANSI-B77.01 2022 - 4.3.2.5.3 Loading and unloading platforms

~~**4.3.2.5.5 Stops.**~~

~~After any stop of an aerial lift, the operator shall determine the cause of the stop, and not restart until clearance has been obtained from all attended stations.~~

Commented [MD133]: Replaced by ANSI-B77.01 2022 - 4.3.2.5.4 Operational requirements

~~**4.3.2.5.6 Termination of daily operations.**~~

Commented [MD134]: Replaced by ANSI-B77.01 2022 - 4.3.2.5.8 Termination of daily operations

Procedures shall be established for terminating daily operations in such a manner that passengers will not be left on the aerial lift after it has been shut down. Loading ramps, as required, shall be closed and so marked.

When either loading or unloading portions of an intermediate station are not in operation, it shall be so signed and the loading station shall be closed to public access.

4.3.2.5.7 Damage to carriers.

Commented [MD135]: Replaced by ANSI-B77.01 2022 - 4.3.2.5.5 Damage to carriers

Should any carrier become damaged or otherwise rendered unfit for passenger transportation during normal operation, it shall be clearly and distinctively marked and not used for passengers until repaired or replaced. It shall be removed from the line as soon as feasible.

4.3.2.5.8 Hazardous conditions.

Commented [MD136]: Replaced by ANSI-B77.01 2022 - 4.3.2.5.6 Hazardous conditions

When wind or icing conditions are such that operation is hazardous to passengers or equipment, according to predetermined criteria based upon the area's operational experience and the designer's design considerations, the aerial lift shall be unloaded and the operation discontinued. If necessary under the predetermined criteria, device(s) shall be installed at appropriate location(s) to ascertain wind velocity and direction when aerial lifts are operated. No aerial lift shall operate when there is an electrical storm in the immediate vicinity. Should such conditions develop while the aerial lift is in operation, loading of passengers shall be terminated, and operation shall be continued only as long as necessary to unload all passengers. When such shutdown has been caused by an electrical storm, grounding of control circuits and haul ropes that are used as conductors in communication systems is permissible. Such grounding shall be removed prior to resumption of passenger operations.

4.3.2.5.9 Bypass requirements.

Commented [MD137]: Replaced by ANSI-B77.01 2022 - 3.3.2.5.9 Bypass requirements

The use of temporary circuits that have been installed for the purpose of bypassing failed electrical circuit(s) (see 4.2.6) shall meet these requirements in the following order:

a) The condition that the circuit indicated is in default shall be thoroughly inspected to ensure an electrical operating circuit malfunction, rather than the indicated condition, actually exists;

b) The bypass shall be authorized only by the aerial lift supervisor or his/her designated representative;

c) When a bypass is in operation, the function bypassed shall be under constant, close visual observation;

d) The use of a bypass circuit shall be logged and shall indicate when, who authorized, and for what duration a bypass was used;

e) The operator control panel shall indicate that a bypass is in use.

~~4.3.2.5.10 Evacuation. (See ANSI 2017 Rule 3.3.2.5.7 for Requirements)~~

~~4.3.4.3.1 Carrier inspection plan.~~

~~The carrier inspection plan shall include the following:~~

~~a) Sampling size and frequency – The inspection plan shall identify the components to be inspected to assure a rotating minimum test sample of 20% of each aerial lifts' carriers (to include at least 10) every year, or after a maximum of 2000 hours of operations, whichever comes first.~~

~~*EXCEPTION:* For chairlifts utilizing insert clips, the sample size shall be a minimum of 33% every two years during the relocation of clips.~~

~~b) Inspection requirements – The documented inspection criteria shall include:~~

~~1) Types and methods of inspections to be performed;~~

~~2) Inspector qualifications;~~

~~3) Identification and labeling of critical and non-critical components areas;~~

~~4) Pre-inspection preparation and post test inspection treatment of components;~~

~~5) Acceptance criteria;~~

~~6) Additional sampling and retesting requirements.~~

~~Passenger carrier grips, clips, hanger arms or other components installed in a work carrier for line maintenance purposes shall have specific inspection protocols performed and documented before returning to a passenger carrier.~~

Commented [MD138]: Replaced by ANSI-B77.01 2022 - 4.3.2.5.7 Evacuation

Commented [MD139]: Replaced by ANSI-B77.01 2022 - 4.3.4.3.1 Carrier inspection plan

IN ADDITION TO ANSI 4.3.5

4.3.5.6 Software parameter log.

A software parameters log shall be maintained for each aerial lift. This log is intended for changes in software parameters that can be altered which affect the supervision circuit. The log shall include, but not be limited to:

a) Current software parameter values;

b) Changes to software parameter values;

c) Date of changes made;

d) Documentation of testing for each change of parameter values;

e) Personnel making parameter changes.

Section 5 Surface lifts

Note: Timeframes relate to the ropeway installation date or modification date whichever controls, unless otherwise noted.

IN ADDITION TO ANSI 4.1.1.3 Location

5.1.1.3.4 Location of power lines.

Jan, 1, 1977 to Present:

Power lines shall be located a minimum distance equal to the height of poles or support structures from any passenger tramway so that poles and electrical lines cannot touch any portion of the tramway, loading or unloading points or platforms and tow path, if applicable, upon collapse of poles or lines, unless suitable and approved precautions are taken to safeguard human lives.

5.1.1.3.5 Air space requirements.

5.1.1.3.5.1 Structures.

Note: Timeframes stated for this Rule define the air space requirements for each ropeway at the time when the encroachment was known to the area and DO NOT pertain to the installation date of the ropeway.

May 15, 2000 to Present:

No passenger tramway installation shall be permitted to operate when a structure encroaches into the air space of the passenger tramway, defined as the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes or cables and ground surface.

For purposes of this Rule, buildings controlled by the licensee used primarily for maintenance and operation of the lift and other tramways shall not be considered structures; however, buildings must comply with the following.

(1) No flammable liquids may be stored in the building outside of a UL listed container or storage cabinet, unless such flammable liquids are in the original containers and intended for daily usage. Quantities must be consistent with normal daily use. Class I or II flammable storage materials shall be limited to 2 gallons in a UL listed container and must be stored either in an outside storage area or in a UL listed cabinet.

(2) The building must be within the view of the attendant but not impair the sight line of the lift.

(3) Entrances to all machinery, operators', and attendants' rooms shall be locked when not in use. Unattended entrances accessible to public, which may be left open, shall be equipped with barriers to prevent entry.

Jan. 1, 1994 to May 15, 2000:

No passenger tramway installation shall be permitted to operate when a structure encroaches into the air space of the passenger tramway, defined as the area bounded by planes having an outward slope of one horizontal and two vertical and commencing at a point twenty (20) feet horizontally outside of the intersection of the vertical planes of ropes or cables and ground surface.

Dec. 30, 1977 to Jan. 1, 1994:

No passenger tramway installation shall be permitted whenever the Passenger Tramway Operator does not have permanent and irrevocable control of the following air space (except when the passenger tramway is located on Forest Service land): the area bounded by planes having an outward slope of one horizontal and two vertical and commencing at a point twenty (20) feet horizontally outside of the intersection of the vertical planes of ropes or cables and ground surface.

Prior to Dec. 30, 1977:

Not required

5.1.1.3.5.2 Cables or ropes.

Note: Timeframes stated for this Rule define the air space requirements for each ropeway at the time when the encroachment was known to the area and DO NOT pertain to the installation date of the ropeway.

May 15, 2000 to Present:

Any cable or rope installed on or near a ropeway that may represent a hazard to the ropeway shall be monitored to automatically stop the ropeway if the cable or rope fails. Failure would be defined as per Section 23.1 (g).

EXCEPTION: Track or haul ropes are excluded from this Rule.

Prior to May 15, 2000:

Not required

REPLACES ANSI FOR SPECIFIC TIMEFRAMES

5.1.1.5.2 Clearances.

Prior to Dec. 31, 1977:

A minimum clearance of 36 inches shall be maintained between the base of the tower and the vertical plane of the upward traveling cable. With respect to the downward traveling cable, a minimum clearance of 24 inches shall be provided between towing outfit in its normal position and the tower. This paragraph is not to be construed as preventing the authority having jurisdiction from requiring larger minimum clearances, at its discretion. A definite need for additional clearances arises when it is proposed to transport more than two skiers per towing outfit.

~~**5.1.1.6 Structures and foundations.**~~

~~*Prior to April 15, 2019:*~~

~~All structures and foundations shall be designed and constructed in conformance with 1.3 and shall be appropriate for the site. Applied design loads shall include dead, live, snow, wind, and dynamic loads due to normal conditions and for foreseeable abnormal conditions. Structures and foundations located in snow creep areas shall be designed for such conditions and loads, or protective structures shall be provided as required by the conditions.~~

Commented [MD140]: Replaced by ANSI-B77.01 2022 - 5.1.1.6 Structures and foundations

~~**5.1.2.8.2 Haul rope terminal sheaves (Bullwheel and deflection sheaves):**~~

Commented [MD141]: Replaced by ANSI-B77.01 2022 - Haul rope terminal bullwheels

~~Haul rope terminal sheave frames shall be designed to retain the rope in the event of the failure of the sheave, shaft, or mounting. In instances where the sheave is cantilevered, the design working stresses shall not be more than 60% of those otherwise allowable.~~

~~The minimum diameter of terminal sheaves shall be 72 times the nominal diameter of the haul rope. The sheave assembly shall be designed to retain the haul rope in the event of a deropement from the sheave. A flange extension of 1-½ times the rope diameter (measured from the bottom of the rope groove) shall be deemed adequate for retention.~~

~~Haul rope terminal sheaves that act as driving, braking, or holding sheaves shall be so designed tht the haul rope does not slip in the sheave groove. The design coefficient of friction for a particular sheave liner shall not exceed the following values:~~

~~Sheave Liner~~	~~Coefficient of Friction~~
~~Steel or cast iron grooves~~	~~0.070~~
~~Leather~~	~~0.150~~
~~Rubber, neoprene, or other~~	~~0.205~~

5.1.2.10 Tension systems.

Prior to April 15, 2019:

Counterweights, hydraulic and pneumatic cylinders, or other suitable devices shall be used to provide the tensioning requirements of the particular installation. All devices used to provide the tension shall have sufficient travel to adjust to all normal operating changes in loading and temperature.

The tension for haul ropes for all modes of operation shall be determined by the design engineer. Tension systems may be automatic or manual; however, all systems shall have monitoring equipment that will automatically prevent operation outside of design limits (see 5.2.3.3 and 5.2.5.1 for electrical requirements).

Passive tension systems, (i.e. fixed anchorage) shall have a system or procedure to determine that the ropes and/or cables are within their operating tension range. The manufacturer or Qualified Engineer shall specify the checking procedures and intervals.

Tension systems may be adjustable to provide proper tensions for different modes of surface lift operation.

The tension system design shall consider changes, for each mode of operation, in tensions due to rope elongation, friction, and other forces affecting traction on driving, braking, or holding bullwheels, tower, and sheave loading, and maximum vertical loads on grips to assure that tensions remain within design limits.

5.1.3.1 Towers.

Prior to Nov. 1, 1991:

The design of the tower structure and foundation shall be in accordance with the requirements of 5.1.1.6. Where guyed towers are used and guys intersect the ground within or near ski runs, the guys shall be marked for visibility.

Means shall be provided for ready access from the ground to all tower tops. Permanent ladders are required for heights above those accessible by portable ladders.

Portable ladders, if used, shall be in at least sufficient quantity to be available at each point where attendants are positioned. Portable ladders extending more than 20 feet (6.10 meters) shall not be used.

Towers shall be identified with successive numbers clearly visible to passengers.

Where towers are designed to permit variations in rope height, sheave unit supports shall be guided and attached so as to prevent misalignment by rotation

5.2 Electrical design and installation.

5.2.1 General design and installation testing.

Prior to April 15, 2019:

Prior to operation of new surface lifts, or after any modification thereafter of the electrical system, the electrical system shall be tested and shown to meet the requirements of this standard and the test results shall be recorded. Design of all electronic controls and drives shall consider minimum sensitivity to electrical noise and electrical emissions, such as noise spikes from power lines and lightning, radio transmitters, thyristors (SCR),or solenoid of relay noise at levels and frequencies that could initiate loss of control.

5.2.1.1 Applicable codes.

April 15, 2019 to May 2023: ANSI 2022 ADOPTION DATE: XXXXXX – NOTE DATE REQUIRED. All electrical systems shall comply with American National Standard, ANSI/NFPA 70-2017, *National Electrical Code* and the Institute of Electrical and Electronics Engineers, IEEE C2-2017, *National Electrical Safety Code*.

May 15, 2006 to April 15, 2019:

All electrical systems shall comply with American National Standard, ANSI/NFPA 70-2011, *National Electrical Code* and the Institute of Electrical and Electronics Engineers, IEEE C2-2007, *National Electrical Safety Code*.

May 15, 2000 to May 15, 2006:

All electrical systems shall comply with 5.2.1.1 Applicable codes of the B77.1-1999 ANSI Standard.

Jan. 1, 1994 to May 15, 2000:

All electrical systems shall comply with 5.2.1.1 Applicable codes of the B77.1-1992 ANSI Standard.

Nov. 1, 1991 to Jan 1, 1994:

All electrical systems shall comply with 5.2.1.1 Applicable codes of the B77.1-1990 ANSI Standard.

Jan. 1, 1984 to Nov 1, 1991:

All electrical systems shall comply with 5.2.1.1 Applicable codes of the B77.1-1982 ANSI Standard.

Jan 1, 1977 to Jan. 1, 1984:

All electrical work shall comply with 5.2.1.1 Applicable codes of the B77.1-1976 ANSI Standard.

Jan 1, 1974 to Jan. 1, 1977:

All electrical work shall comply with 5.2.1.1 Applicable codes of the B77.1-1973 ANSI Standard.

Jan 1, 1972 to Jan 1, 1974:

All electrical work shall comply with 5.2.1.1 Applicable codes of the B77.1-1970 ANSI Standard.

Prior to Jan 1, 1972:

All electrical work shall comply with 5.2.1.1 Applicable codes of the B77.1-1960 ANSI Standard.

5.2.1.2 Location.

April 15, 2019 to May 2023: ANSI 2022 ADOPTION DATE: XXXXXX – NOTE DATE REQUIRED. All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 5.2.1.2 Location of the B77.1-2017 ANSI Standard.

May 15, 2006 to April 15, 2019:

All electrical power transmission wiring located near or proposed to cross over conveyors shall comply with the applicable requirements of IEEE C2-2007.

May 15, 2000 to May 15, 2006:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 5.2.1.2 Location of the B77.1-1999 ANSI Standard.

Jan. 1, 1994 to May 15, 2000:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 5.2.1.2 Location of the B77.1-1992 ANSI Standard.

Nov. 1, 1991 to Jan 1, 1994:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 5.2.1.2 Location of the B77.1-1990 ANSI Standard.

Jan. 1, 1984 to Nov 1, 1991:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 5.2.1.2 Location of the B77.1-1982 ANSI Standard.

Prior to Jan. 1, 1984:

All exposed electrical power transmission wiring shall be so located that in case of collapse or breakage of the power line it will not come into contact with carriers, ropes, or passengers.

5.2.1.3 Protection.

Prior to May 15, 2006:

All transformer stations and other high voltage electrical equipment shall be marked with conspicuous warning signs and shall be protected so as to prevent unauthorized persons from entering the area or coming in contact with any portion of the equipment or wiring. All power equipment shall be protected against overloads by circuit breakers or fuses.

5.2.1.4 Overhead cables.

Prior to May 15, 2006:

Signal, communication, and control circuits may be supported between towers that support the aerial lift. Voltage on overhead or exposed circuits shall be limited to 50 volts with the exception of the intermittent ring-down circuits for telephone systems.

5.2.1.5.5 Ground fault interrupter protection.

Prior to May 15, 2006:

Not required.

5.2.2 Electrical system circuit design and classification.

May 15, 2006 to April 15, 2019:

The designer or manufacturer responsible for the design shall identify and classify any new electrical circuits not already classified as Protection Circuits, Operations Circuits, or Supervision Circuits.

Prior to May 15, 2006:

Not required.

5.2.2.1 ~~Circuit~~ Function priority.

May 15, 2006 to April 15, 2019:

Protection circuits shall have priority over all other circuits. Operations circuits shall have priority over supervision circuits. If any circuit's function is connected to circuits of a higher level of protection, it shall be classified at the higher level.

Prior to May 15, 2006:

Not required.

5.2.3 Protection circuits. (ANSI-B77.1-2011 5.2.3 Safety related control functions)

May 15, 2006 to April 15, 2019:

Electrical circuits designed to stop the tow in the event of a malfunction or failure of the tow system shall be classified protection circuits. All tow systems shall contain one or more protection circuit(s) at least one of which shall be designated the emergency shutdown circuit (see 5.2.3.1). Protection circuits shall be energized to permit system operation and when deenergized shall initiate a stop, or shall be of such design to provide the equivalent level of protection.

A protection circuit may include one or more noncomplex elements (see 1.4 – *non-complex element*) and/or complex electronic elements (see 1.4 – *complex element*). The designer shall make use through continuous diagnostic coverage (see 1.4 – *continuous diagnostic coverage*) that the failure of a complex electronic element will cause the tow to stop unless another element in the protection circuit is performing the same function (redundancy). If functional redundancy is implemented, the failure of the first element must be annunciated, at a minimum, at the beginning of operations on a daily basis.

The designer or manufacturer shall develop procedures and frequency for testing protection circuits. As a minimum, all protection circuits shall be calibrated and tested annually.

Protection circuits include, but are not limited to:

a) Emergency shutdown (see 5.2.3.1);

b) Stop gate (see 5.2.3.2);

c) Tension system fault (see 5.2.3.3);

d) Deropement circuit(s) (see 5.2.3.4);

e) Brake system (if installed);

f) Overspeed (if installed)

g) Rollback detection device (if electrical).

Prior to May 15, 2006:

Not required.

5.2.3.1 Emergency shutdown circuit.

May 15, 2006 to April 15, 2019:

All surface lift systems shall include at least one protection circuit labeled emergency shutdown circuit (see 1.4 - *emergency shutdown*). The shutdown shall have priority over all other control stops or commands. If, for any reason, the operator has lost control of the surface lift while using the operating control circuitry, the controls shall include an emergency shutdown circuit allowing the operator/attendant to stop the surface lift. Any one of the following conditions is considered a loss of control of a surface lift:

a) Tow will not SLOW DOWN when given the command to do so;

b) Tow will not STOP when given the command to do so;

c) Tow OVERSPEEDS beyond control settings and/or maximum design speed;

d) Tow ACCELERATES faster than normal design acceleration;

e) Tow SELF-STARTS or SELF-ACCELERATES without the command to do so;

f) Tow REVERSES direction unintentionally and without the command to do so.

Prior to May 15, 2006:

Not required.

~~**5.2.3.3 Tension system.**~~

Commented [MD142]: Replaced by ANSI-B77.01 2022 - 5.2.3.3 Tension system monitoring

~~*Prior to April 15, 2019:*~~

~~Active tension systems, (i.e. counterweight, hydraulic, etc.) shall have a protection device(s) that will stop the lift when the haul rope tension carriage exceeds its range of normal operations.~~

~~**5.2.3.4 Deropement switches.**~~

Commented [MD143]: Replaced by ANSI-B77.01 2022 - 5.2.3.4 Rope position detection

~~*Prior to April 15, 2019:*~~

~~On each sheave unit, suitable deropement detection devices shall be installed and maintained that will stop the surface lift in case of deropement (see 5.1.3.3.2(f)).~~

5.2.4 Operation circuits. **(ANSI B77.1-2022 Control functions)**

Prior to April 15, 2019:

An operation circuit is a circuit that provides power to or controls the surface lift machinery.

The designer or manufacturer shall identify operation circuits that require periodic testing and develop procedures and frequency for testing. As a minimum, all operation circuits shall be tested and calibrated annually.

Operation circuits include, but are not limited to:

a) Power circuits;

b) Drive fault circuits;

c) Normal stop (see 1.4 – normal stop and 5.1.2.5);

d) Speed command circuits (i.e., fast, slow, etc.);

e) Internal combustion engine speed control.

5.2.5 Supervision circuits.

Prior to April 15, 2019:

Supervision circuits include all communications systems. In addition, supervision circuits may be provided to monitor or supervise the performance of various surface lift systems or provide the surface lift operator with system information.

The designer or manufacturer shall identify supervision circuits that require periodic testing and develop procedures and frequency for testing supervision circuits. As a minimum, all supervision circuits shall be calibrated and tested annually.

Supervision circuits may include, but are not limited to:

a) Telephone and sound powered systems (see 5.1.1.7);

b) Information display circuits;

c) Audible warning devices (see 5.2.10);

d) Overhead cable supervision (5.2.1.4);

e) Wind speed and direction sensors and display units;

f) Gearbox oil pressure, oil flow, and temperature;

g) Pneumatic and hydraulic tension system pressure (see 5.2.5.1).

5.2.5.1 Pneumatic and hydraulic tension systems.

Prior to April 15, 2019:

When pneumatic or hydraulic tension systems are used, pressure-sensing devices shall also be incorporated that will stop the surface lift system in case the operating pressure goes above or below the design pressure range. Such pressure-sensing devices shall be located close to the actual tensioning device. It shall not be possible to isolate the pressure sensor from the actual tensioning device.

Commented [MD144]: Replaced by ANSI-B77.01 2022 - 5.2.3.3 Tension system monitoring

5.2.6 Bypass circuits.

Prior to April 15, 2019:

A temporary circuit may be installed for the purpose of bypassing failed electrical circuits. The use of these bypass circuits shall meet the requirements of 5.3.2.5.9.

Commented [MD145]: Replaced by ANSI-B77.01 2022 - 5.2.5 Bypass circuits

5.2.7 Electrical prime mover.

Prior to April 15, 2019:

All surface lift systems equipped with electrical prime movers (electrical motors) shall have phase-loss protection on all power phases and under voltage protection or over voltage protection, or both, when speed regulation can be adversely affected by such voltage variations.

Commented [MD146]: Replaced by ANSI-B77.01 2022 - 5.2.6 Electrical prime mover

5.2.8 Electronic speed-regulated drive monitoring.

Prior to April 15, 2019:

All electronic speed-regulated drives and electric motors shall shut down in the event of:

a) Field loss (dc motors);

b) Overspeed;

c) Speed feedback loss as applicable;

d) Overcurrent.

Commented [MD147]: Replaced by ANSI-B77.01 2022 - 5.2.7 Electronic speed-regulated drive monitoring

5.2.9 Manual control devices.

Prior to April 15, 2019:

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Manual control devices shall be installed at all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum,

Commented [MD148]: Replaced by ANSI-B77.01 2022 - 5.2.8 Manual control devices

each of these control locations shall include an Emergency Shutdown device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

The devices listed in Annex E shall be conspicuously and permanently marked with the proper function and color code.

5.2.10 Safety of operating and maintenance personnel.

Prior to April 15, 2019:

Provision shall be incorporated in the surface lift design to render the system inoperable when necessary for Lock-out Tag-out protection of personnel working on the surface lift.

The sign "Personnel Working on Lift - Do Not Start" or a similar warning sign shall be hung on the main disconnect switch or at control points for starting the power unit(s) when persons are working on the surface lift.

The surface lift shall incorporate an audible warning device that signals an impending start of the surface lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of 2 seconds and shall continue until the surface lift begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.

Commented [MD149]: Replaced by ANSI-B77.01 2022 - 5.2.9 Safety of operating and maintenance personnel

5.2.11 Electrical system acceptance tests.

Prior to April 15, 2019:

Upon completion of the acceptance test and before public operation of the surface lift, the function of software and/or relay logic shall be certified by a Qualified Engineer. The certification shall be included in the acceptance test report. Any modifications made to the electrical design shall be clearly marked on the onsite documentation and signed by a Qualified Engineer (see 5.1.1.11.2).

Commented [MD150]: Replaced by ANSI-B77.01 2022 - 5.2.10 Electrical system acceptance tests

5.2.12 Software security.

Prior to April 15, 2019:

The "as built" documents shall include a procedure, developed by the lift manufacturer or a Qualified Engineer, to ensure the security of the software logic and operating parameters that will control the surface lift. Upon completion of the acceptance testing this procedure shall be implemented in a manner that will prevent unauthorized personnel from making changes to the software logic or operating parameters. All programmable logic and parameters shall be documented.

Commented [MD151]: Replaced by ANSI-B77.01 2022 - 5.2.11 Software security

5.2.13 Night operations.

Prior to April 15, 2019:

For nighttime operation, operating surface lifts shall be provided with lighting systems. The entire tow path shall be lit.

Commented [MD152]: Replaced by ANSI-B77.01 2022 - 5.2.12 Night operations

~~5.2.13.1 Illumination.~~

~~*Prior to April 15, 2019:*~~

~~Lights shall be located in a manner to provide generally uniform illumination~~.

~~5.2.13.2 Types.~~

~~*Prior to April 15, 2019:*~~

~~Lamps shall be of a type suitable and rated for minimum temperatures of the location. Fixtures shall be designed to maintain proper lamp-operating characteristics.~~

~~5.2.13.3 Location.~~

~~*Prior to April 15, 2019:*~~

~~Lights shall be mounted on substantial poles or standards. Surface lift towers and terminal structures may be used for supporting lights subject to the following requirements:~~

~~a) Approval shall be obtained from a Qualified Engineer;~~

~~b) The service conductors to each surface lift tower or terminal structure shall be underground or in rigid raceways. No wiring shall be supported between towers and no open wiring shall pass over or under the surface lift;~~

~~c) A separate enclosed disconnect or circuit breaker shall be required for each tower or terminal structure;~~

~~d) All metallic raceways on a tower or terminal structure shall be grounded;~~

~~e) The lighting installation shall not conflict with other requirements of this standard and shall not interfere with operations of the surface lift in any manner.~~

~~5.2.13.4 Emergency lighting.~~

~~*Prior to April 15, 2019:*~~

~~Emergency lighting shall be provided in the event of electric power failure to permit regular unloading of the surface lift.~~

~~5.3.1.2 Signs.~~

~~*Prior to April 15, 2019:*~~

~~See normative Annex D for public sign requirements. See 5.2.1.3 for electrical warnings.~~

~~The sign "Personnel Working on Lift - Do Not Start" or a similar warning sign shall be posted as required by 5.2.10.~~

~~See Annex E for Operator Control Device Labels~~

~~See F.1.5.1 in Annex F for signage requirements for flammable and combustible liquid cabinets.~~

Commented [MD153]: Replaced by ANSI-B77.01 2022 - 5.2.12.1 Illumination

Commented [MD154]: Replaced by ANSI-B77.01 2022 - 5.2.12.2 Types

Commented [MD155]: Replaced by ANSI-B77.01 2022 - 5.2.12.3 Location of lighting

Commented [MD156]: Replaced by ANSI-B77.01 2022 - 5.2.12.4 Emergency lighting

Commented [MD157]: Replaced by ANSI-B77.01 2022 - 5.3.1.2 Signs

~~See F.4.5.7 in Annex F for hidden fuel tank warnings.~~

~~**5.3.1.2.1 Requirements for signs.**~~

~~(a) The design of any sign as well as its support and the installation procedure of such sign shall be considered a minor modification if the sign or aggregate of signs on a given tower is greater than three feet square (nine square feet).~~

~~(b) Signs, fasteners, or supporting members shall not interfere with the operation of the tramway.~~

~~(c) The design of structural components shall be reviewed to consider the increase in loading caused by any sign.~~

~~(d) Signs shall not interfere with passenger or attendant vision.~~

IN ADDITION TO ANSI 5.3.1

5.3.1.3 Operational plan for transportation of recreational equipment. Each licensee shall have an operational plan that has procedures for transportation of sports equipment and recreational devices by foot passengers. This plan shall be consistent with the tramway manufacturer's specifications and instructions, if any.

Section 6 Tows

Note: Timeframes relate to the ropeway installation date or modification date whichever controls, unless otherwise noted.

IN ADDITION TO ANSI 6.1.1.3 Location

6.1.1.3.3 Location of power lines.

Jan, 1, 1977 to Present:

Power lines shall be located a minimum distance equal to the height of poles or support structures from any passenger tramway so that poles and electrical lines cannot touch any portion of the tramway, loading or unloading points or platforms and tow path, if applicable, upon collapse of poles or lines, unless suitable and approved precautions are taken to safeguard human lives.

6.1.1.3.4 Air space requirements.

6.1.1.3.4.1 Structures.

Note: Timeframes stated for this Rule define the air space requirements for each ropeway at the time when the encroachment was known to the area and DO NOT pertain to the installation date of the ropeway.

May 15, 2000 to Present:

No passenger tramway installation shall be permitted to operate when a structure encroaches into the air space of the passenger tramway, defined as the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes or cables and ground surface.

For purposes of this Rule, buildings controlled by the licensee used primarily for maintenance and operation of the lift and other tramways shall not be considered structures; however, buildings must comply with the following.

(1) No flammable liquids may be stored in the building outside of a UL listed container or storage cabinet, unless such flammable liquids are in the original containers and intended for daily usage. Quantities must be consistent with normal daily use. Class I or II flammable storage materials shall be limited to 2 gallons in a UL listed container and must be stored either in an outside storage area or in a UL listed cabinet.

(2) The building must be within the view of the attendant but not impair the sight line of the lift.

(3) Entrances to all machinery, operators', and attendants' rooms shall be locked when not in use. Unattended entrances accessible to public, which may be left open, shall be equipped with barriers to prevent entry.

Jan. 1, 1994 to May 15, 2000:

No passenger tramway installation shall be permitted to operate when a structure encroaches into the air space of the passenger tramway, defined as the area bounded by planes having an outward slope of one horizontal and two vertical and commencing at a point twenty (20) feet horizontally outside of the intersection of the vertical planes of ropes or cables and ground surface.

Dec. 30, 1977 to Jan. 1, 1994:

No passenger tramway installation shall be permitted whenever the Passenger Tramway Operator does not have permanent and irrevocable control of the following air space (except when the passenger tramway is located on Forest Service land): the area bounded by planes having an outward slope of one horizontal and two vertical and commencing at a point twenty (20) feet horizontally outside of the intersection of the vertical planes of ropes or cables and ground surface.

Prior to Dec. 30, 1977:

Not required

6.1.1.3.4.2 Cables or ropes.

Note: Timeframes stated for this Rule define the air space requirements for each ropeway at the time when the encroachment was known to the area and DO NOT pertain to the installation date of the ropeway.

May 15, 2000 to Present:

Any cable or rope installed on or near a ropeway that may represent a hazard to the ropeway shall be monitored to automatically stop the ropeway if the cable or rope fails. Failure would be defined as per Section 23.1 (g).

EXCEPTION: Track or haul ropes are excluded from this Rule.

Prior to May 15, 2000:

Not required

~~6.2 Electrical design and installation.~~

Commented [MD158]: Replaced by ANSI-B77.01 2022 - 6.2.1 General design and installation

~~6.2.1 General design and installation testing.~~

~~*Prior to April 15, 2019:*~~

~~Prior to operation of newly installed tows, or after any modification thereafter of the electrical system, the electrical system shall be tested and shown to meet the requirements of this standard and the test results shall be recorded. Design of all electronic controls and drives shall consider minimum sensitivity to electrical noise and electrical emissions, such as noise spikes from power lines and lightning, radio transmitters, thyristors (SCR),or solenoid of relay noise at levels and frequencies that could initiate loss of control.~~

6.2.1.1 Applicable codes.

April 15, 2019 to May 2023: ANSI 2022 ADOPTION DATE: XXXXXX—NOTE DATE REQUIRED. All electrical systems shall comply with American National Standard, ANSI/NFPA 70-2017, *National Electrical Code* and the Institute and Electronics Engineers, IEEE C2-2017, *National Electrical Safety Code*.

May 15, 2006 to April 15, 2019:

All electrical systems shall comply with American National Standard, ANSI/NFPA 70-2011, *National Electrical Code* and the Institute of Electrical and Electronics Engineers, IEEE C2-2007, *National Electrical Safety Code*.

May 15, 2000 to May 15, 2006:

All electrical systems shall comply with 6.2.1.1 Applicable codes of the B77.1-1999 ANSI Standard.

Jan. 1, 1994 to May 15, 2000:

All electrical systems shall comply with 6.2.1.1 Applicable codes of the B77.1-1992 ANSI Standard.

Nov. 1, 1991 to Jan 1, 1994:

All electrical systems shall comply with 6.2.1.1 Applicable codes of the B77.1-1990 ANSI Standard.

Jan. 1, 1984 to Nov 1, 1991:

All electrical systems shall comply with 6.2.1.1 Applicable codes of the B77.1-1982 ANSI Standard.

Jan 1, 1977 to Jan. 1, 1984:

All electrical work shall comply with 6.2.1.1 Applicable codes of the B77.1-1976 ANSI Standard.

Jan 1, 1974 to Jan. 1, 1977:

All electrical work shall comply with 6.2.1.1 Applicable codes of the B77.1-1973 ANSI Standard.

Jan 1, 1972 to Jan 1, 1974:

All electrical work shall comply with 6.2.1.1 Applicable codes of the B77.1-1970 ANSI Standard.

Prior to Jan 1, 1972:

All electrical work shall comply with 6.2.1.1 Applicable codes of the B77.1-1960 ANSI Standard.

6.2.1.2 Location.

April 15, 2019 to May 2023: ANSI 2022 ADOPTION DATE: XXXXXX—NOTE DATE REQUIRED. All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 6.2.1.2 Location of the B77.1-2017 ANSI Standard.

May 15, 2006 to April 15, 2019:

All electrical power transmission wiring located near or proposed to cross over conveyors shall comply with the applicable requirements of IEEE C2-2007.

May 15, 2000 to May 15, 2006:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 6.2.1.2 Location of the B77.1-1999 ANSI Standard.

Jan. 1, 1994 to May 15, 2000:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 6.2.1.2 Location of the B77.1-1992 ANSI Standard.

Nov. 1, 1991 to Jan 1, 1994:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 6.2.1.2 Location of the B77.1-1990 ANSI Standard.

Jan. 1, 1984 to Nov 1, 1991:

All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 6.2.1.2 Location of the B77.1-1982 ANSI Standard.

Prior to Jan. 1, 1984:

All exposed electrical power transmission wiring shall be so located that in case of collapse or breakage of the power line it will not come into contact with carriers, ropes, or passengers.

6.2.1.3 Protection.

~~*May 15, 2006 to April 15, 2019:*~~

~~All electrical equipment with operating voltages above 24 volts nominal shall be marked conspicuously with letters/numbers that are no smaller than ¼ inch (6 mm) in height designating the greatest voltage that may be in the equipment, the number of phases and whether the voltage is alternating or direct current. All electrical equipment rated over 600 volts shall be marked with conspicuous warning signs stating "Danger High Voltage".~~

~~EXCEPTION – 120 volt single phase lighting circuits and convenience outlets.~~

~~All power equipment shall be protected against overloads by circuit breakers or fuses. In locations where electrical equipment, including batteries, is likely to be exposed to physical damage, enclosures or guards shall be so arranged and of such strength as to prevent such damage.~~

Prior to May 15, 2006:

All transformer stations and other high voltage electrical equipment shall be marked with conspicuous warning signs and shall be protected so as to prevent unauthorized persons from entering the area or coming in contact with any portion of the equipment or wiring. All power equipment shall be protected against overloads by circuit breakers or fuses.

Commented [MD159]: Replaced by ANSI-B77.1 2022 - 6.2.1.3 Protection

~~**6.2.1.4 Overhead cables.**~~

~~*Prior to May 15, 2006:*~~

~~Signal, communication, and control circuits may be supported between towers that support the aerial lift. Voltage on overhead or exposed circuits shall be limited to 50 volts with the exception of the intermittent ring-dow circuits for telephone systems.~~

Commented [MD160]: Replaced by ANSI-B77.1 2022 -6.2.1.4 Overhead cables

6.2.1.5.5 Ground fault interrupter protection.

Prior to May 15, 2006:

Not required.

6.2.2 Electrical system circuit design and classification.

May 15, 2006 to April 15, 2019:

The designer or manufacturer responsible for the design shall identify and classify any new electrical circuits not already classified as Protection Circuits, Operations Circuits, or Supervision Circuits

Prior to May 15, 2006:

Not required.

6.2.2.1 Function~~Circuit~~ priority.

May 15, 2006 to April 15, 2019:

Protection circuits shall have priority over all other circuits. Operations circuits shall have priority over supervision circuits. If any circuit's function is connected to circuits of a higher level of protection, it shall be classified at the higher level.

Prior to May 15, 2006:

Not required.

6.2.3 Protection circuits.

May 15, 2006 to April 15, 2019:

Electrical circuits designed to stop the tow in the event of a malfunction or failure of the tow system shall be classified protection circuits. All tow systems shall contain one or more protection circuit(s) at least one of which shall be designated the emergency shutdown circuit (see 6.2.3.1). Protection circuits shall be energized to permit system operation and when deenergized shall initiate a stop, or shall be of such design to provide the equivalent level of protection.

A protection circuit may include one or more noncomplex elements (see 1.4 – *non-complex element*) and/or complex electronic elements (see 1.4 – *complex element*). The designer shall make use through continuous diagnostic coverage (see 1.4 – *continuous diagnostic coverage*) that the failure of a complex electronic element will cause the tow to stop unless another element in the protection circuit is performing the same function (redundancy). If functional redundancy is implemented, the failure of the first element must be annunciated, at a minimum, at the beginning of operations on a daily basis.

The designer or manufacturer shall develop procedures and frequency for testing protection circuits. As a minimum, all protection circuits shall be calibrated and tested annually.

Protection circuits include, but are not limited to:

a) Emergency shutdown (see 6.2.3.1);

b) Stop gate (6.2.3.2);

c) Tension system fault (if installed);

d) Overspeed (see 6.2.8).

All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop

devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.

Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.

Prior to May 15, 2006:

Not required.

6.2.3.1 Emergency shutdown circuit.

May 15, 2006 to April 15, 2019:

All tow systems shall include at least one protection circuit labeled emergency shutdown circuit (see 1.4 - *emergency shutdown*). The shutdown shall have priority over all other control stops or commands. If, for any reason, the operator has lost control of the tow while using the operating control circuitry, the controls shall include an emergency shutdown circuit allowing the operator/attendant to stop the tow. Any one of the following conditions is considered a loss of control of a tow:

a) Tow will not SLOW DOWN when given the command to do so;

b) Tow will not STOP when given the command to do so;

c) Tow OVERSPEEDS beyond control settings and/or maximum design speed;

d) Tow ACCELERATES faster than normal design acceleration;

e) Tow SELF-STARTS or SELF-ACCELERATES without the command to do so;

f) Tow REVERSES direction unintentionally and without the command to do so.

Prior to May 15, 2006:

Not required.

6.2.4 Operation circuits.

May 15, 2006 to April 15, 2019:

An operation circuit is a circuit that provides power to or controls the tow machinery. The designer or manufacturer shall identify operation circuits that require periodic testing and develop procedures and frequency for testing. As a minimum, all operation circuits shall be tested and calibrated annually. Operation circuits include, but are not limited to:

a) Power circuits;

b) Drive fault circuits;

c) Normal stop (see 1.4 – normal stop and 6.1.2.5);

d) Speed command circuits (i.e., fast, slow, etc.).

Prior to May 15, 2006:

Not required.

6.2.5 Supervision circuits.

May 15, 2006 to April 15, 2019:

Supervision circuits include all communications systems. In addition, supervision circuits may be provided to monitor or supervise the performance of various tow systems or provide the tow operator with system information.

The designer or manufacturer shall identify supervision circuits that require periodic testing and develop procedures and frequency for testing supervision circuits. As a minimum, all supervision circuits shall be calibrated and tested annually.

Supervision circuits may include, but are not limited to:

a) Telephone and sound powered systems (see 6.1.1.7);

b) Information display circuits;

c) Audible warning devices;

d) Overhead cable supervision (6.2.1.4).

Prior to May 15, 2006:

Not required.

~~**6.2.6 Bypass circuits.**~~

~~A temporary circuit may be installed for the purpose of bypassing failed electrical circuits. The use of these bypass circuits shall meet the requirements of 6.3.2.5.9.~~

Commented [MD161]: Replaced by ANSI-B77.1 2022 -6.2.5 Bypass circuits

~~**6.2.7 Electrical prime mover.**~~

~~All tow systems equipped with electrical prime movers (electrical motors) shall have phase-loss protection on all power phases and under-voltage protection or overvoltage protection, or both, when speed regulation can be adversely affected by such voltage variations.~~

Commented [MD162]: Replaced by ANSI-B77.1 2022 - 6.2.6 Electrical power mover

~~**6.2.8 Electronic speed-regulated drive.**~~

~~All electronic speed-regulated drives and electric motors shall shut down in the event of:~~

~~a) Field loss (dc motors);~~

~~b) Overspeed;~~

Commented [MD163]: Replaced by ANSI-B77.1 2022 - 6.2.7 Electronic speed-regulated drive monitoring

c) Speed feedback loss as applicable;

d) Overcurrent.

6.2.9 Manual control devices.

Manual control devices shall be installed at all attendants' and operators' work positions, in machine rooms, and out-of-doors in proximity to all loading and unloading areas. As a minimum, each of these control locations shall include an Emergency Shutdown device. All manual control devices located in or on a control cabinet shall be mounted so that they are in the same plane or face of the cabinet. The control devices shall not be located in a position that would require the operator or attendant to pass through the path of moving carriers in order to operate the controls.

The devices listed in Annex E shall be conspicuously and permanently marked with the proper function and color code.

Commented [MD164]: Replaced by ANSI-B77.1 2022 - 6.2.8 Manual control devices

6.2.10 Safety of operating and maintenance personnel.

Provision shall be incorporated in the tow design to render the system inoperable when necessary for Lockout Tag-out protection of personnel working on the tow.

The sign "Personnel Working on Tow - Do Not Start" or a similar warning sign shall be hung on the main disconnect switch or at control points for starting the power unit(s) when persons are working on the tow.

Commented [MD165]: Replaced by ANSI-B77.1 2022 - 6.2.9 Safety of operating and maintenance personnel

6.2.11 (Reserved)

6.2.12 (Reserved)

6.2.13 Night operations.

For night time operation, operating tows shall be provided with lighting systems. The entire tow path and operational areas shall be lighted.

Commented [MD166]: Replaced by ANSI-B77.1 2022 - 6.2.12 Night operations

6.2.13.1 Illumination.

Lights shall be located in a manner to provide generally uniform illumination.

Commented [MD167]: Replaced by ANSI-B77.1 2022 - 6.2.12.2 Illumination

6.2.13.2 Types.

Lamps shall be of a type suitable and rated for minimum temperatures of the location. Fixtures shall be designed to maintain proper lamp operating characteristics.

Commented [MD168]: Replaced by ANSI-B77.1 2022 - 6.2.12.2 Types

6.2.13.3 Location.

Lights shall be mounted on substantial poles or standards. Tow towers and terminal structures may be used for supporting lights subject to the following requirements:

Commented [MD169]: Replaced by ANSI-B77.1 2022 - 6.2.12.3 Location of lighting

a) Approval shall be obtained from a Qualified Engineer;

~~b) The service conductors to each tow tower or terminal structure shall be underground or in rigid raceways. No wiring shall be supported between towers and no open wiring shall pass over or under the tow;~~

~~c) A separate enclosed disconnect or circuit breaker shall be required for each tower or terminal structure;~~

~~d) All metallic raceways on a tower or terminal structure shall be grounded;~~

~~e) The lighting installation shall not conflict with other requirements of this standard and shall not interfere with operations of the tow in any manner.~~

~~**6.2.13.4 Emergency lighting.**~~

~~Emergency lighting shall be provided in the event of electric power failure to permit unloading of the tow.~~

Commented [MD170]: Replaced by ANSI-B77.1 2022 - 6.2.12.4 Emergency lighting

~~**6.3.1.2 Signs.**~~

Commented [MD171]: Replaced by ANSI-B77.1 2022 - 6.3.1.2 Signs

~~*Prior to April 15, 2019:*~~

~~See normative Annex D for public sign requirements. See 6.2.1.3 for electrical warnings.~~

~~The sign "Personnel Working on Lift – Do Not Start" or a similar warning sign shall be posted as required by 6.2.10.~~

~~See Annex E for Operator Control Device Labels~~

~~See F.1.5.1 in Annex F for signage requirements for flammable and combustible liquid cabinets.~~

~~See F.4.5.7 in Annex F for hidden fuel tank warnings.~~

~~**6.3.1.2.1 Requirement for signs.**~~

~~(a) The design of any sign as well as its support and the installation procedure of each sign shall be considered a minor modification if the sign or aggregate of signs on a given tower is greater than three feet square (nine square feet).~~

~~(b) Signs, fasteners, or supporting members shall not interfere with the operation of the tramway.~~

~~(c) The design of structural components shall be reviewed to consider the increase in loading caused by any sign.~~

~~(d) Signs shall not interfere with passenger or attendant vision.~~

IN ADDITION TO ANSI 6.3.1

6.3.1.3 Operational plan for transportation of recreational equipment. Each licensee shall have an operational plan that has procedures for transportation of sports equipment and recreational devices by foot passengers. This plan shall be consistent with the tramway manufacturer's specifications and instructions, if any.

Section 7 Conveyors

Note: Timeframes relate to the ropeway installation date or modification date whichever controls, unless otherwise noted.

~~**7.1.1.9.2 Unloading areas.**~~

~~*Prior to April 15, 2019:*~~

~~The transition stop device, profile, exit pathway and length of the unloading area shall be maintained in accordance with the manufacturer's recommendations. When used primarily by skiers, the exit pathway shall be inclined downward in the direction of travel and away from the line of the uphill conveyor path to provide passenger movement away from the conveyor.~~

Commented [MD172]: Replaced by ANSI-B77.1 2022 - 7.1.1.9.2 Unloading areas

~~**7.1.3 Line structure(s).**~~

~~*Prior to April 15, 2019:*~~

~~The design of structures supporting conveyor belting, the drive roller, idler roller and intermediate conveyor belt guide rollers shall be in accordance with the requirements of 7.1.1.6.~~

Commented [MD173]: Replaced by ANSI-B77.1 2022 - 7.1.3 Lind structures

~~**7.2 Electrical design and installation.**~~

~~**7.2.1 General design and installation testing.**~~

~~*Prior to April 15, 2019:*~~

~~Prior to operation of newly installed conveyors, or after any modification thereafter of the electrical system, the electrical system shall be tested and shown to meet the requirements of this standard and the test results shall be recorded. Design of all electronic controls and drives shall consider minimum sensitivity to electrical noise and electrical emissions, such as noise spikes from power lines and lightning, radio transmitters, thyristors (SCR),or solenoid of relay noise at levels and frequencies that could initiate loss of control.~~

Commented [MD174]: Replaced by ANSI-B77.1 2022 - 7.2.1 General design and installation

7.2.1.1 Applicable codes.

April 15, 2019 to May 2023: ANSI 2022 ADOPTION DATE: XXXXXX – NOTE DATE REQUIRED. All electrical systems shall comply with American National Standard, ANSI/NFPA 70-2017, *National Electrical Code* and the Institute of Electrical and Electronics Engineers, IEEE C2-2017, *National Electrical Safety Code*.

May 15, 2006 to April 15, 2019:

All electrical systems shall comply with American National Standard, ANSI/NFPA 70-2011, *National Electrical Code* and the Institute of Electrical and Electronics Engineers, IEEE C2-2007, *National Electrical Safety Code*.

May 15, 2000 to May 15, 2006:

All electrical systems shall comply with 8.2.1.1 Applicable codes of the B77.1-1999 ANSI Standard.

Jan. 1, 1994 to May 15, 2000:

All electrical systems shall comply with 6.2.1.1 Applicable codes of the B77.1-1992 ANSI Standard.

7.2.1.2 Location.

April 15, 2019 to May 2023: ANSI 2022 ADOPTION DATE: XXXXXX – NOTE DATE REQUIRED. All electrical power transmission wiring located near or proposed to cross over aerial lifts shall comply with 6.2.1.2 Location of the B77.1-2017 ANSI Standard.

May 15, 2006 to April 15, 2019:

All electrical power transmission wiring located near or proposed to cross over conveyors shall comply with the applicable requirements of IEEE C2-2007.

May 15, 2000 to May 15, 2006:

All electrical power transmission wiring located near or proposed to cross over conveyors shall comply with 8.2.1.2 Location of the B77.1-1999 ANSI Standard.

Jan. 1, 1994 to May 15, 2000:

All electrical power transmission wiring located near or proposed to cross over conveyors shall comply with 6.2.1.2 Location of the B77.1-1992 ANSI Standard.

~~**7.2.1.3 Protection.**~~

Commented [MD175]: Replaced by ANSI-B77.1 2022 - 7.2.1.3 Protection

~~*May 15, 2006 to April 15, 2019:*~~

~~All electrical equipment with operating voltages above 24 volts nominal shall be marked conspicuously with letters/numbers that are no smaller than ¼ inch (6 mm) in height designating the greatest voltage that may be in the equipment, the number of phases and whether the voltage is alternating or direct current. All electrical equipment rated over 600 volts shall be marked with conspicuous warning signs stating "Danger High Voltage".~~

~~EXCEPTION – 120 volt single phase lighting circuits and convenience outlets.~~

~~All power equipment shall be protected against overloads by circuit breakers or fuses. In locations where electrical equipment, including batteries, is likely to be exposed to physical damage, enclosures or guards shall be so arranged and of such strength as to prevent such damage.~~

~~*Prior to May 15, 2006:*~~

~~All transformer stations and other high voltage electrical equipment shall be marked with conspicuous warning signs and shall be protected so as to prevent unauthorized persons from entering the area or coming in contact with any portion of the equipment or wiring. All power equipment shall be protected against overloads by circuit breakers or fuses.~~

7.2.1.5.5 Ground fault interrupter protection.

Prior to May 15, 2006:

Not required.

7.2.2 Electrical system circuit design and classification.

May 15, 2006 to April 15, 2019:

The designer or manufacturer responsible for the design shall identify and classify any new electrical circuits not already classified as Protection Circuits, Operations Circuits, or Supervision Circuits

May 15, 2006 to April 15, 2019:

Not required.

7.2.2.1 Function ~~Circuit~~ priority.

May 15, 2006 to April 15, 2019:

Protection circuits shall have priority over all other circuits. Operations circuits shall have priority over supervision circuits. If any circuit's function is connected to circuits of a higher level of protection, it shall be classified at the higher level.

Prior to May 15, 2006:

Not required

7.2.3 Protection circuits.

May 15, 2006 to April 15, 2019:

Electrical circuits designed to stop the conveyor in the event of a malfunction or failure of the conveyor system shall be classified protection circuits. All conveyor systems shall contain one or more protection circuit(s) at least one of which shall be designated the emergency shutdown circuit (see 7.2.3.1). Protection circuits shall be energized to permit system operation and when deenergized shall initiate a stop, or shall be of such design to provide the equivalent level of protection.

A protection circuit may include one or more noncomplex elements (see 1.4 – *non-complex element*) and/or complex electronic elements (see 1.4 – *complex electronic element*). The designer shall make use through continuous diagnostic coverage (see 1.4 – *continuous diagnostic coverage*) that the failure of a complex electronic element will cause the conveyor to stop unless another element in the protection circuit is performing the same function (redundancy). If functional redundancy is implemented, the failure of the first element must be annunciated, at a minimum, at the beginning of operations on a daily basis.

The designer or manufacturer shall develop procedures and frequency for testing protection circuits. As a minimum, all protection circuits shall be calibrated and tested annually. Protection circuits include, but are not limited to:

a) Emergency shutdown (see 7.2.3.1);

b) Stop gate (if installed see 7.2.3.2);

c) Tension system fault (if installed see 7.1.2.10);

d) Belt transition stop device (see 7.2.3.3).

Prior to May 15, 2006:

Not required

7.2.3.1 Emergency shutdown circuit.

May 15, 2006 to April 15, 2019:

All conveyor systems shall include at least one protection circuit labeled emergency shutdown circuit (see 1.4 – *emergency shutdown*). The shutdown shall have priority over all other control stops or commands. If, for any reason, the operator has lost control of the conveyor while using the operating control circuitry, the controls shall include an emergency shutdown circuit allowing the operator/attendant to stop the conveyor. Any one of the following conditions is considered a loss of control of a conveyor:

a) Conveyor will not

b) Conveyor will not STOP when given the command to do so;

c) Conveyor OVERSPEEDS beyond control settings and/or maximum design speed;

d) Conveyor ACCELERATES faster than the normal design acceleration;

e) Conveyor SELF-STARTS or SELFACCELERATES without the command to do so;

f) Conveyor REVERSES direction unintentionally without the command to do so.

Prior to Dec.15, 2006:

Not required

7.2.3.3 Belt transition device.

Prior to May 15, 2006:

A belt transition stop device shall be provided. If an object continues to follow the belt past the belt transition stop device, the device shall move to relieve the pinch point and initiate the stop.

As a minimum, the belt transition stop device shall have the following features:

a) The leading edge of the device shall be marked with yellow and black warning stripes.

Exception: If the tramway utilizes rollers for the transition device, the yellow and black stripes are not required;

b) Reserved

c) A stop shall be initiated by a force on the transition device not to exceed 30 pounds (133 newtons). The activating force shall be applied tangentially to the belt surface at the leading edge of the belt transition stop device. See Figure 7-1, ANSI 2006;

d) Reserved

e) The distance between the belt surface and the belt transition device shall be minimized in the normal operating position;

f) The stop shall be initiated before the leading edge of the device moves 5/8 inch (15 mm) in the direction of its travel;

g) If the belt transition stop device is activated, the conveyor belt must stop within a belt travel distance of 12 inches (305 mm). At no time may the stopping distance be greater than ½ of the circumference of the drum;

h) If an object becomes entangled between the conveyor belt and the belt guard, the guard shall move to relieve the pinch point and initiate the stop. The guard shall be capable of moving the lesser of 5 inches (125 mm) or 150% of the distance required to stop the empty conveyor belt operating at full speed.

7.2.4 Operation circuits.

Prior to April 15, 2019:

An operation circuit is a circuit that provides power to or controls the conveyor machinery. The designer or manufacturer shall identify operation circuits that require periodic testing and develop procedures and frequency for testing. As a minimum, all operation circuits shall be tested and calibrated annually. Operation circuits include, but are not limited to:

a) Power circuits;

b) Drive fault circuits;

c) Normal stop (see 1.4 – normal stop and 7.1.2.5);

d) Speed command circuits (i.e., fast, slow, etc.).

Prior to May 15, 2006:

Not required

7.2.5 Supervision circuits.

Prior to April 15, 2019:

Supervision circuits include all communications systems. In addition, supervision circuits may be provided to monitor or supervise the performance of various conveyor systems or provide the conveyor operator with system information. The designer or manufacturer shall identify supervision circuits that require periodic testing and develop procedures and frequency for testing supervision circuits. As a minimum, all supervision circuits shall be calibrated and tested annually. Supervision circuits may include, but are not limited to:

a) Telephone and sound powered systems (see 7.1.1.7);

b) Information display circuits;

c) Audible warning devices.

Prior to May 15, 2006:

Not required

~~**7.2.6 Bypass circuits.**~~

~~*Prior to April 15, 2019:*~~

~~No temporary bypass circuit may be installed for malfunctions of operating control circuitry.~~

Commented [MD176]: Replaced by ANSI-B77.1 2022 -7.2.5 Bypass circuits

~~**7.2.7 Electrical prime mover.**~~

~~*Prior to April 15, 2019:*~~

~~All conveyor systems equipped with electrical prime movers (electrical motors) shall have phase-loss protection on all power phases and under-voltage protection or over-voltage protection, or both, when speed regulation can be adversely affected by such voltage variations.~~

Commented [MD177]: Replaced by ANSI-B77.1 2022 - 7.2.6 Electrical prime mover

~~**7.2.8 Electronic speed-regulated drive monitoring.**~~

~~*Prior to April 15, 2019:*~~

~~All electronic speed-regulated drives and electric motors shall shut down in the event of:~~

~~a) Field loss (dc motors);~~

~~b) Overspeed;~~

~~c) Speed feedback loss as applicable;~~

~~d) Overcurrent.~~

Commented [MD178]: Replaced by ANSI-B77.1 2022 - 7.2.7 Electronic speed-regulated drive monitoring

~~**7.2.9 Manual control devices.**~~

~~*Prior to April 15, 2019:*~~

~~All automatic and manual stop and shutdown devices shall be of the manually reset type. An exception to this requirement is allowed for magnetic or optically operated automatic stop devices, if the operating circuit is such that it indicates that such devices initiated the stop and the circuit is of the manually reset type.~~

~~Manual stop switches (push button) shall be positively opened mechanically and their opening shall not be dependent upon springs.~~

~~Manual control devices that will initiate a stop shall be installed at all attendants' and operators' work position, in machine rooms, machine compartments, access points to crawl spaces, and out-of-doors in proximity to all loading and unloading areas.~~

~~All control devices listed in Annex E shall be conspicuously and permanently marked with the proper function and color code.~~

Commented [MD179]: Replaced by ANSI-B77.1 2022 - 7.2.8 Manual control devices

7.2.10 Safety of operating and maintenance personnel.

Prior to April 15, 2019:

Provision shall be incorporated in the conveyor design to render the system inoperable when necessary for Lockout Tag-out protection of personnel working on the conveyor.

The sign "Personnel Working on Conveyor - Do Not Start" or a similar warning sign shall be hung on the main disconnect switch or at control points for starting the power unit(s) when persons are working on the conveyor.

7.2.11 Electrical system acceptance tests.

Prior to April 15, 2019:

Upon completion of the acceptance test and before public operation of the conveyor, the function of software and/or relay logic shall be certified by a Qualified Engineer. The certification shall be included in the acceptance test report. Any modifications made to the electrical design shall be clearly marked on the onsite documentation and signed by a Qualified Engineer (see 7.1.1.11.2).

7.2.12 Reserved.

7.2.13 Night operation.

Prior to April 15, 2019:

For nighttime operations, operating conveyors shall be provided with lighting systems. The entire conveyor belt surface including the loading and unloading areas shall be lighted.

7.2.13.1 Illumination.

Prior to April 15, 2019:

Lights shall be located in a manner to provide generally uniform illumination.

7.2.13.2 Types.

Prior to April 15, 2019:

Lamps shall be of a type suitable and rated for minimum temperatures of the location. Fixtures shall be designed to maintain proper lamp operating characteristics.

7.2.13.3 Location.

Prior to April 15, 2019:

Lights shall be mounted on substantial poles or standards.

7.2.13.4 Emergency lighting.

Prior to April 15, 2019:

Commented [MD180]: Replaced by ANSI-B77.1 2022 - 7.2.9 Safety of operating and maintenance personnel

Commented [MD181]: Replaced by ANSI-B77.1 2022 - 7.2.10 Electrical system acceptance tests

Commented [MD182]: Replaced by ANSI-B77.1 2022 - 7.2.12 Night operations

Commented [MD183]: Replaced by ANSI-B77.1 2022 - 7.2.12.1 Illumination

Commented [MD184]: Replaced by ANSI-B77.1 2022 - 7.2.12.2 Types

Commented [MD185]: Replaced by ANSI-B77.1 2022 - 7.2.12.3 Location of lighting

Commented [MD186]: Replaced by ANSI-B77.1 2022 - 6.2.12.4 Emergency lighting

~~Emergency lighting shall be provided in the event of electric power failure to permit unloading of the conveyor.~~

~~**7.3.1.2 Signs.**~~

~~*Prior to April 15, 2019:*~~

~~See normative Annex D for public sign requirements. See 7.2.1.3 for electrical warnings.~~

~~The sign "Personnel Working on Lift - Do Not Start" or a similar warning sign shall be posted as required by 7.2.10.~~

~~See Annex E for Operator Control Device Labels~~

~~See F.1.5.1 in Annex F for signage requirements for flammable and combustible liquid cabinets.~~

~~See F.4.5.7 in Annex F for hidden fuel tank warnings.~~

Commented [MD187]: Replaced by ANSI-B77.1 2022 - 7.3.1.2 Signs

Section 8 **Reserved**

Section 9 **Reserved ~~Funiculars (ANSI B77.2-2004)~~**

Commented [MD188]: Replaced by ANSI-B77.1 2022 - Replaced by ANSI-B77.2 2020 - Annex F - Combustion engine(s), fuel handling, and fire hazard reduction (Normative)

~~**2.1.1.8 Fuel tanks for combustion engines. This Rule is superceded by ANSI B77.1-2006 Annex F Combustion engine(s) and fuel handling.**~~

Section 10 **Reserved**

Section 11 **Reserved**

Section 12 **Reserved**

Section 13 **Reserved**

Section 14 **Reserved**

Section 15 **Reserved**

Section 16 **Reserved**

Section 17 **Reserved**

Section 18 **Reserved**

Section 19 **Reserved**

Section 20 Tramway Licensing

20.1 License Required.

A passenger Tramway not in compliance with these Rules and regulations may be licensed if it has been granted the necessary exceptions pursuant to Section 1.2.3. Terms, conditions or requirements limiting any license may be imposed if reasonably necessary to effect compliance with these Rules and regulations or to protect the safety of the public.

20.2 Issuance of license.

No license applied for shall be issued by the Board until it has received a letter from the area's designated agent or appointed substitute designee stating that all the deficiencies listed in the inspection report have been corrected and the authority appointed by the Board has corroborated such letter. Such corroboration may be made by review of the above verified letter; subsequent inspection; the Board's own investigation; the receipt of additional documentation requested by the Board; or any other means which the Board or appointed authority deems appropriate. Such letter shall bear a recognizable signature, printed name, and title and be submitted as an original or transmitted by electronic means. The certificate shall be issued as soon as possible, but no later than seven (7) days after receipt of such letter, unless the Board has reasonable grounds to delay issuance and has given notice of such action and its reasons to the area operator affected prior to expiration of such seven (7) day period. The license, or copy thereof, shall be displayed prominently at the place where passengers are loaded.

20.3 Expiration of licenses.

Tramways are licensed during the fall licensing period or the spring licensing period as designated by the Board for one calendar year.

1. The fall licensing period shall be prior to the winter operating season.

2. The spring licensing period shall be prior to the summer operating season.

If the Tramway is closed, the requirements of X.3.3 Maintenance must be current before the Tramway can reopen for public operation. Licenses shall expire one calendar year from the date of issue.

Section 21 New installations and modifications

21.1 Definitions.

21.1.1 New installation. "New Installation" means any passenger tramway installation not previously licensed and shall include both new and relocated passenger tramways (also reference Rules 1.2.4.2 and 1.2.4.3).

21.1.2 Major tramway modification. "Major Tramway Modification" means any modification to a passenger tramway which alters its verified design or verified construction and which results in a substantive change:

(a) In design speed of the system; or

(b) In capacity by changing the number of carriers, spacing of carriers, or load capacity of carriers; or

(c) In the path of the rope; or

(d) In the type of brakes and/or backstops or components thereof; or

(e) In structural arrangements; or

(f) In power or type of prime mover or auxiliary engine; or

(g) To control system logic.

Design and construction verifications are required. A major tramway modification may be deemed a new installation by the Board and current requirements shall be applicable (reference Rule 1.2.4.4).

21.1.3 Minor modification. "Minor Modification" means any modification, addition, or deletion to a passenger tramway which does not meet the criteria of a major modification but which results in a significant change in the tramway's verified design or verified construction and materially affects its integrity, operation or control. A design verification is required, however, no construction verification is required. A minor modification may be considered a major modification at the discretion of the Board. If the authority appointed by the Board disagrees with the classification of the modification as "minor", the matter may be referred to the Board for a final decision.

21.1.4 Minor alteration. "Minor Alteration" means any other addition or deletion to a passenger tramway which does not meet the criteria of a major or minor modification or one for one replacement, and which does not materially affect the tramway's integrity, operation or control. No design or construction verification is required. A minor alteration may be considered a minor modification or a major modification at the discretion of the Board.

21.1.5 One for one replacement. "One for One Replacement" means the replacement of a component with an equal component. A one for one replacement shall be considered as normal maintenance and not as a modification. No design or construction verification is required.

21.2 Procedures prior to public operation for new and relocated Installations.

21.2.1 Submittal of notice of new or relocated installation. Before construction of the new or relocated installation begins, the area operator shall give notice of such activity to the Board on the required forms and include the appropriate fee.

21.2.2 Acknowledgment of new or relocated installation. Upon receipt of the notice, the Board shall send an acknowledgment of such to the area operator together with the appropriate forms and requirements to complete the procedure as set forth in these Rules and regulations.

21.2.3 Submittal of request for exception. If the area operator proposes to depart from these Rules and regulations, a request for exception must be made in writing by the area operator as set forth in Rule 1.2.3.

21.2.4 Exception request procedure. Within thirty days after receipt of the request for exception as provided for in 21.2.3, the Board shall notify the area operator in writing of its action on the requested exception. If the Board denies or limits the requested exception, the Board's notification shall set forth the reasons for such action. Within sixty (60) days of the mailing of such notification, the area operator may appeal the Board's decision as provided for in Article 4 of Title 24 of the Colorado Revised Statutes.

21.2.5 Submittal of verification of design. Before construction of the new installation is begun, the Professional Engineer in responsible charge of the design shall verify to the Board on the appropriate forms that the passenger tramway design conforms to all rules and regulations of the Board. Copies of such designs, plans and specifications shall be submitted with this written verification.

21.2.6 Submittal of acceptance test request. Acceptance tests will be scheduled by the Board on a first come, first served basis. At least thirty (30) days before a requested acceptance test, the area operator shall notify the Board of a projected date for the required acceptance test. Upon receipt of such notification the Board shall establish a tentative acceptance test date for such passenger tramway and shall notify the area operator of the same. If the projected date changes the area operator shall immediately notify the Board of same, and the Board shall reschedule the acceptance test. No later than three (3) days before the date of the acceptance test, the area operator shall notify the Board that the passenger tramway is completed and ready for testing. The area operator shall verify to the Board that the required hours of continuous operation have been accomplished in accordance with 2.1.1.11.2 or 3.1.1.11.2 or 4.1.1.11.2. Upon receipt of such timely notifications, the initial inspection and acceptance test shall proceed as scheduled.

21.2.7 Submittal of acceptance test procedure. At least thirty (30) days before the scheduled acceptance test date, the area operator shall submit an acceptance test procedure which was prepared by the Professional Engineer in responsible charge of the design (see 2.1.1.11, 3.1.1.11, 4.1.1.11, 5.1.1.11, 6.1.1.11, 8.1.1.11, or 2.1.1.11 ANSI B77.2-2004) for approval by the Board or the authority appointed by the Board.

21.2.8 Submittal of verification of concrete construction. After the new installation or relocation is completed and before the initial inspection is conducted, and before the acceptance test is observed, the Professional Engineer in responsible charge of the tramway construction shall verify to the Board on the appropriate form that the foundations, soils and concrete test samples have been inspected and completed according to the design, plans and specifications for such work. This document shall be required prior to the acceptance test.

21.2.9 Submittal of verification of acceptance test. For new or modified ropeways, a qualified engineer shall witness the acceptance test and certify to the owner that the ropeway was in compliance with the CPTSB Rules and Regulations based on the successful completion of acceptance inspection (X.1.1.11.2).

Any deficiencies to the acceptance test shall be included in the acceptance test report by the Board Inspector (21.2.12).

21.2.10 Submittal of as-built drawings and additional documents. Prior to or during the acceptance test, the “As-Built” designs, plans, specifications and drawings signed and sealed by the design engineer shall be submitted to the Board.

Within thirty days after the acceptance test, the authority appointed by the Board shall notify the area operator of any additional documents which must be submitted.

21.2.11 Inspection and acceptance test. All inspections and acceptance tests shall be according to these rules and regulations. Items failing to pass the acceptance test shall be retested if so directed by the Board.

21.2.12 Submittal of verification of initial inspection and acceptance test. The Board inspector shall report to the Board the results of the Acceptance Test with a deficiency report~~and any deficiencies~~.

21.3 Procedures prior to public operation for tramways with major tramway modifications. In addition to the applicable requirements of Section 20 and Rule 1.2, the following procedure shall be completed prior to public operation of the passenger tramway.

21.3.1 Submittal of notice of modification. Before the major tramway modification commences, the area operator shall give notice of such activity to the Board on the required forms and include the appropriate fee.

21.3.2 Acknowledgment of major tramway modification. Upon receipt of the notice, the Board shall send an acknowledgment of such to the area operator together with the appropriate forms and requirements to complete the procedure as set forth in these rules and regulations.

21.3.3 Submittal of request for exception. If the area operator proposes to depart from these rules and regulations, a request for exception must be made in writing by the area operator as set forth in Rule 1.2.3.

21.3.4 Exception request procedure. Within thirty days after receipt of the request for exception as provided for in 21.3.3, the Board shall notify the area operator in writing of its action on the request. If the Board denies or limits the requested exception, the Board's notification shall set forth the reasons for such action. The area operator may appeal the Board's decision as provided for in Article 4 of Title 24 of the Colorado Revised Statutes.

21.3.5 Submittal of verification of design. Before construction of the major tramway modification is begun, the Professional Engineer in responsible charge of the design of the Tramway major modification shall verify to the Board on the appropriate forms that the design, plans and specifications for the major tramway modification conforms to all rules and regulations of the Board and is compatible with the existing Tramway design. Copies of such designs, plans and specifications shall be submitted with this written verification.

21.3.6 Submittal of acceptance test request. Acceptance tests will be scheduled by the Board on a first come, first served basis. At least thirty days before a requested acceptance test, the area operator shall notify the Board of a projected date for the acceptance test. Upon receipt of such notification, the Board shall establish a tentative acceptance test date for such passenger tramway and shall notify the area operator of the same. If the projected date changes, the area operator shall immediately notify the Board of same and the Board shall reschedule the acceptance test. No later than three days before the date of the acceptance test, the area operator shall notify the Board that the passenger tramway modification is completed and ready for testing.

21.3.7 Submittal of acceptance test procedure. At least thirty days before the scheduled acceptance test date, the area operator shall submit an acceptance test procedure which was prepared by the Professional Engineer in responsible charge of the design of the major tramway modification for approval by the Board or the authority appointed by the Board. The acceptance test procedure shall take into consideration the modification which was made to the passenger tramway and should be tailored to test the critical components of said modification.

21.3.8 Submittal of verification of concrete construction. After the major modification is completed and before the initial inspection is conducted, and before the acceptance test is observed, the Professional Engineer in responsible charge of the tramway construction shall verify to the Board on the appropriate form that the foundations, soils and concrete test samples have been inspected and completed according to the design, plans and specifications for such work. This document shall be required prior to the acceptance test.

21.3.9 Submittal of verification of acceptance test. For major modifications, a qualified engineer shall witness the acceptance test and certify to the owner that the ropeway was in compliance with the CPTSB Rules and Regulations based on the successful completion of acceptance inspection (X.1.1.11.2).

Any deficiencies to the acceptance test shall be included in the acceptance test report by the Board Inspector (21.3.12).

21.3.10 Submittal of as-built drawings and additional documents. Prior to or during the acceptance test, the "As-Built" designs, plans, specifications and drawings signed and sealed by the design engineer shall be submitted to the Board.

Within thirty days after the acceptance test, the authority appointed by the Board shall notify the area operator of any additional documents which must be submitted

21.3.11 Inspection and acceptance test. All inspections and acceptance tests shall be according to these rules and regulations. Items failing to pass the acceptance test shall be retested if so directed by the Board.

21.3.12 Submittal of verification of initial inspection and acceptance test. The Board inspector shall report to the Board the results of the Acceptance Test with a deficiency report~~and any deficiencies~~.

21.4 Procedures for tramways with minor modifications.

21.4.1 Submittal of notice of modification. Before the minor modification commences, the area operator shall give notice of such activity to the Board on the required forms.

21.4.2 Acknowledgment of minor modification. Upon receipt of the notice, the Board shall send an acknowledgment of such to the area operator together with the appropriate forms and requirements to complete the procedure as set forth in these rules and regulations.

21.4.3 Documentation of minor modifications. The area operator shall keep a log documenting all minor modifications made to each of its passenger tramways. Such log shall be readily available for inspection by the Board or designated representatives of the Board and shall contain at a minimum the following information:

(a) Tramway name or other means of identification;

(b) Name of design engineer;

(c) Verification of design engineer on form approved by the Board;

(d) Date of modification;

(e) Purpose of modification;

(f) Description of modification;

(g) Names of personnel performing such modification;

(h) Date of modification review and acceptance by area operator or its authorized agent.

Each area operator's log of minor modifications shall be readily available to the Board's inspectors during every inspection.

21.5 Documentation of Minor Alterations. The area operator shall keep a log documenting all minor alterations made to each of its passenger tramways. Such log shall be readily available for inspection by the Board or designated representatives of the Board and shall contain at a minimum the following information:

(a) Tramway name or other means of identification;

(b) Date of alteration;

(c) Purpose of alteration;

(d) Description of alteration;

(e) Names of personnel performing such alteration;

(f) Date of alteration review and acceptance by area operator or its authorized agent.

Each area operator's log of minor alterations shall be readily available to the Board's inspectors during every inspection.

Section 22 Inspections

22.1 Duty of the Area Operator. It is the primary responsibility of the area operator to perform such inspections on passenger Tramways that are necessary to protect the safety of the public.

22.2 Duty of the Board. The Board may cause to be made such inspections of passenger Tramways as it may reasonably require and may require the area operators to keep such records, make such tests, and produce such evidence as may be necessary in order to make the following determinations:

(a) Compliance with these rules and regulations and Title 12, Article 150, Part 1;

(b) Compliance with any terms, conditions and requirements of licensure;

(c) Compliance with any requirements of a granted exception (variance);

(d) Inspection disclosed no unreasonable safety hazard.

22.3 Required Inspections

22.3.1 Annual Licensing Inspection. The annual licensing inspection shall be made prior to approval of any application for licensure.

22.3.2 Annual Unannounced Inspection.

(1) In addition to the annual licensing inspection, an unannounced inspection of every passenger Tramway shall be made at least once a year during the high-use season. No passenger Tramway shall be shut down for an unannounced inspection during normal operating hours, unless sufficient daylight is not available for the inspection. Up to five Tramway stops, not to exceed three minutes in the aggregate, may be ordered by an inspector during normal operating hours. If additional stop time is required, it shall be done before or after normal operating hours.

Notwithstanding the provisions of this subsection, the Board reserves the authority to order a shutdown of a passenger Tramway for any reason set forth in these rules and regulations or in the Act.

(2) The inspector conducting the annual unannounced inspection shall take particular note of any deficiencies noted in the annual licensing inspection report. The inspector shall note any uncorrected deficiencies in the inspection report. Any uncorrected deficiencies noted in the prior inspection may be grounds for revocation or suspension of license.

22.3.3 Acceptance Test Inspection. All new Tramways, Tramways on which major Tramway modifications have been performed, and Tramways which have not been operated for routine maintenance within the previous two years shall have an acceptance test inspection in accordance with 21.2.10 and 21.3.10.

22.3.3.1 Acceptance test inspection during operating season. Tramways that require relocation or a major modification during the Tramway's operational season shall have an acceptance test inspection in accordance with 21.2.10 and 21.3.10.

22.3.4 Special inspections. In addition to the annual licensing and unannounced inspection of each passenger tramway, the Board may order such special inspections as it may require.

If events are warranted, this determination can be made for the Board by the Board Chair and the Supervisory Tramway Engineer. In the event that the Board Chair does not have technical experience with tramways, another Board member with such experience may assist the Chair in the evaluation. If the Board or its designees determine that an unreasonable hazard requiring emergency shutdown exists, procedures set forth in section 12-150-116, C.R.S. shall be followed.

Depending on the circumstances, the Board may reasonably require special procedures and conditions to be followed, including but not limited to, the following:

(a) That such special inspections be unannounced;

(b) That the inspection be conducted by a person other than a regular inspector employed by the Board when special expertise is required;

(c) That, in appropriate cases, the area operator conduct the inspection;

(d) That the inspection be completed in a time frame as specified by the Board;

(e) That the results of the inspection shall be communicated to the Board office within the time period set forth in the inspection order;

(f) That the ropeway be shut down during the inspection and that the inspection be completed before the public is allowed to ride, or continue to ride, the ropeway.

Inspection orders shall be in writing. Service of inspection orders shall be made by delivering it to the area operator or the area operator's agent by handing it to such person, leaving it at the person's office with a clerk or other person in charge, or mailing it to the person's last known address. Service by mail is complete on mailing.

22.3.5 Additional required inspection. In addition to the annual licensing and unannounced inspections for each passenger Tramway, there may be additional required inspections after each 2000 hours of operation.

22.4 Inspection Procedures for Annual Licensing and Unannounced Inspections

22.4.1 Inspection of Equipment. The inspector employed by the Board shall conduct a visual and audible inspection. The inspection shall determine whether any item of equipment does not appear to be in proper working order.

The inspector is not required to conduct specialized testing or inspection of devices which can only be accomplished by persons with special expertise, but the inspector shall recommend to the Board that further, specialized inspections be conducted if either visual and audible inspection, review of the relevant records and documents, or presentation of any other evidence reasonably indicates that such a inspection is warranted.

22.4.2 Inspection of Records and Other Documents

(1) The inspector, employed by the Board, shall reasonably review the required logs, manuals, test reports of required self inspections, and manufacturer's recommended operation and maintenance manuals.

(2) If the logs and records required by these rules and regulations or by order of the Board are not properly kept, the inspector shall so advise the Board in writing. If any of the documents to be inspected exist, but are not present for the inspection, the inspector shall not certify the passenger Tramway being inspected to the Board for licensure until he has had an opportunity to review such documents.

22.4.3 Other Areas of Inspection. The Board shall determine whether the area operator has established a reasonable training program for its operation and maintenance personnel and whether practices reasonably necessary for safe operations are being followed.

22.4.4 Inspection report. Upon completion of the inspection, the inspector shall provide the area operator of the passenger tramway(s) being inspected, or his agent, with a copy of the preliminary report of observations made during the inspection. As soon as possible, but no later than fifteen days after the completion of the inspection, the inspector shall transmit to the Board a final report. This report shall include a statement as to whether it reasonably appears to the inspector that the passenger tramway(s) inspected comply with the statutes, these rules and regulations, and any other applicable orders of the Board, and that the inspection of such passenger tramway(s) disclosed no unreasonable safety hazards.

For each passenger tramway inspected, the inspector shall list the items not in compliance with these rules and regulations. The area operator of the passenger tramway(s) inspected shall also receive a copy of the inspector's final report.

Deficiencies stated in the annual inspection report shall be remedied as set forth in section 20.2.

Deficiencies stated in the annual unannounced inspection report and in any additional required inspection report(s) shall be remedied. A letter from the area's designated agent or appointed substitute designee stating that all the deficiencies listed in the inspection report have been corrected, must be received by the Board office within twenty-eight days from the completion of the inspection. Such letter shall bear a recognizable signature, printed name, and title and be submitted as an original or transmitted by electronic means.

Deficiencies stated in an acceptance test report(s) as required in 22.3.3.1 shall be remedied. A letter from the area's designated agent or appointed substitute designee stating that all the deficiencies listed in the inspection report have been corrected, must be received and acknowledged by the Board office before the tramway can open for public operation. Such letter shall bear a recognizable signature, printed name, and title and be submitted as an original or transmitted by electronic means.

The inspection completion date shall be noted on both the preliminary and final inspection report.

22.4.5 Report of Unreasonable Hazard. If the inspector finds a condition in the passenger Tramway construction, operation or maintenance, logs, records or other documents (including the absence of these documents) exists which may endanger the safety of the public, the inspector shall immediately notify the area operator, or his agent, in writing, to this effect at the time of the inspection. The inspector shall also issue an immediate report to the Board for appropriate investigation and order. In the event that any of the documents required to be inspected or the lack thereof indicates that a violation of the Board's rules and regulations exists, or that a condition in passenger Tramway construction, operation, and maintenance exists, either of which may endanger the safety of the public, the inspector shall not certify the passenger Tramway being inspected to the Board for licensure. Additionally, an immediate report shall be made to the Board for appropriate investigation and order.

22.5 Qualified Inspectors

22.5.1 General Inspectors. All required inspections as listed in Rule 22.3 in these rules and regulations shall be conducted by qualified engineers who shall have demonstrated to the Board's satisfaction that they have a working knowledge of the Board's current rules and regulations and inspection procedures.

22.5.2 Inspector conflict of interest. No person, except a full-time employee of the Board, shall observe an acceptance test or conduct an inspection of a passenger Tramway if:

(a) During the past two years the inspector has been an employee of the owner or area operator of the Tramway; or,

(b) The inspector was involved at any level of the design, construction or modification of any Tramway at that area in the past five years; or,

(c) The inspector provided any other services to that area in the past five years.

Each year, prior to July 1st, each contract inspector shall make known all potential conflicts of interest on appropriate forms provided by the Board.

Inspectors shall disclose all known and potential conflicts of interest, business association or other circumstances that could influence their judgment or the quality of their inspections each year prior to July 1st on appropriate forms provided by the Board. Should any conflicts arise during the year, the inspector is obligated to report them to the Board staff immediately.

This policy is not intended per se to prohibit employees or members of an inspector's firm or company from doing work for an area operator, provided that disclosures of potential conflict are made and that appropriate measures are in place to ensure that the inspector is not involved in, or privy to, information concerning the work.

Section 23 Passenger Tramway Incidents

23.1 Definitions.

"Reportable passenger Tramway incident" is defined as the following.

(a) Any incident from a possible malfunction of a passenger Tramway in which a person is injured or any trauma-related fatality involving the passenger tramway that occurs between the load board and unload board of the tramway~~killed~~. The Tramway shall cease operation as defined by Section 23.3 Limitation of operation.

For the purposes of Section 23, the term "injured" is defined as bodily damage requiring immediate transport to a third-part off-site medical facility ~~medical attention~~.

(b) Any incident in which a passenger is injured falling or jumping from a chair which is outside of the load or unload zone.

For the purposes of this Rule, the "load zone" is defined as the area from the "wait here" sign to a point where the "no ski closure" ends or in the event there are no ski closures, at a point where the vertical clearance of the lift line is greater than eight feet. This is measured from the bottom of the chair seat of an open carrier to the terrain or snow surface.

For the purposes of this Rule, the "unload zone" is defined is the area approaching the unload area where the vertical clearance is less than eight feet. This is measured from the bottom of an open carrier to the terrain or snow surface.

(c) Any unintentional deropement of an aerial Tramway regardless of whether or not the Tramway is evacuated. This does not apply to Surface Lifts, Tows and Conveyors.

(d) Any unplanned evacuation other than by prime mover ~~or auxiliary power unit~~, regardless of cause. This does not apply to Surface Lifts, Tows and Conveyors.

(e) Any fire involving Tramway equipment or structures that poses a risk to passengers, operating personnel or the structural integrity of the Tramway.

(f) Failure of any electrical or mechanical component which results in the loss of control of the Tramway, unless the loss of control is a direct result of the malfunction of a single manual stop or speed control switch. Any of the following five conditions is considered a loss of control:

(1) Tramway will not slow down when given the command to do so;

(2) Tramway will not stop when given the command to do so;

(3) Tramway accelerates faster than normal design acceleration;

(4) Tramway self starts or self accelerates without the command to do so;

(5) Tramway reverses direction unintentionally and without the command to do so.

(g) The failure of the following components or their primary connections are reportable:

Failure is defined as the inability of the listed components to continue to function as designed and continued operation would represent a hazard.

(1) Terminal Structure;

(2) Bullwheel;

(3) Brake System Components;

(4) Tower Structure;

(5) Sheave, Axle or Sheave Assembly;

(6) Carrier;

(7) Grip;

(8) Haul, Track or Counterweight Cable.

23.2 Reporting to the Board

(a) All reportable passenger tramway incidents involving a fatality or injury as defined in Section 23.1(a) shall be orally reported to a Board member or the authority appointed by the Board as soon as reasonably possible, but in all events within three hours of the incident.

(b) All critical component failures requiring the closure of the passenger tramway for more than one hour shall be orally reported to a Board member or the authority appointed by the Board as soon as reasonably possible, but in all events within twenty-four hours of the incident becoming known to the area personnel. All reportable passenger Tramway incidents occurring during public operation shall be orally reported to a Board member or the authority appointed by the Board as soon as reasonably possible but no later than twenty-four hours after the time of such incident or within twenty-four hours after the incident becomes known to the area personnel. A written report shall be delivered to the Board on forms approved by the Board postmarked within five days of such incident or postmarked within five days after the incident becomes known to the area personnel.

Commented [MD189]: Currently in rule. Strike?

(c~~b~~) A reportable incident (other than 23.2(a)) discovered on dates when the lift is not open to the public shall be orally reported to a Board member or the authority appointed by the Board as soon as reasonably possible, but no later than seventy-two hours after such incident becomes known to the area personnel. A written report shall be delivered to the Board on forms approved by the Board or postmarked within fifteen days following the verbal report. However, all oral reports must be made prior to reopening a lift.

Area personnel is defined as personnel involved with the operation, supervision and maintenance of the Tramway. This includes, but is not limited to, lift maintenance, lift operations, ski patrol and all supervisory staff.

23.3 Limitation of Operation. ~~When a death or injury results from a possible malfunction of a passenger Tramway, as defined in Section 23.1 (a), the owner or area personnel of the Tramway shall immediately cease operation and notify the Supervisory Tramway Engineer or a member of the Board by telephone.~~ When a reportable tramway incident as defined in Section 23.1(a) occurs, the owner or area personnel of the tramway shall immediately cease operation and notify the Supervisory Tramway Engineer or a member of the Board by telephone. No part of the Tramway shall be removed or disturbed before permission has been given by a Board member, the Supervisory Tramway Engineer, or his designated representative, except to the extent that such action is necessary to avoid further death or serious injury.

~~An investigation of the occurrence shall then be initiated within twenty-four hours and shall precede any authorization to resume public operation of the Tramway. The report of investigation shall include a factual account of the incident, the nature and extent of injuries to persons, damage to the passenger Tramway, any witness statements, any other pertinent details, and recommendations for remedial measures to be taken prior to resuming operating.~~ An investigation of the occurrence may be initiated at the discretion of the Supervisory Tramway Engineer in agreement with the Board Chair and, if initiated, shall be initiated within twenty-four hours and shall precede any authorization to resume public operation of the passenger tramway. A summary report of such investigations may include, as appropriate to the circumstances as they are known at the time, a factual account of the incident, the nature and extent of injuries to persons, damage to the passenger tramway, pertinent observations of witnesses, any other pertinent details, and recommendations for remedial measures to be taken prior to resuming operating. Information that identifies witness names or details of injuries that would invade the privacy of the individuals involved in the incident shall not be included in summary reports. The Board shall review and approve summary reports before they are available to the public.

23.4 Logs - Components. Area operators shall maintain a log in a format approved by the Board which shall contain reports of components replaced or repaired that do not meet the definitions of CPTSB section 23.1(g) and are not part of maintenance due to normal wear. These reports shall be submitted during public operation to the Board at monthly intervals not to exceed sixty days from the date of occurrence. When the lift is not open to the public, the Component Log shall be submitted on a monthly basis when routine maintenance is being performed.

This log shall be available for inspection and, if requested by the Board or its duly authorized representative, the area operator shall make copies available of the relevant records relating to any of the components.

23.5 Logs - Stoppages. Area operators shall maintain a passenger Tramway log which shall contain reports of all passenger Tramway stoppages over ten minutes. For each such stoppage, the log shall contain the following information:

(a) Name and/or number of the passenger Tramway;

(b) Date of stoppage;

(c) Reason for stoppage;

(d) Description of any mechanical, structural, electrical, or other problem (if known);

(e) Under investigation (yes or no);

(f) Action taken, if any;

(g) Length of time the Tramway was down.

This log shall be available for inspection and, if requested by the Board or its duly authorized representative, the area operator shall make copies available of the relevant records relating to any of the stoppages.

23.6 Logs - Loading, Unloading Incidents and Passengers Falling or Jumping from Lifts

Area operators shall maintain a log which shall contain reports of all loading and unloading incidents in which injury occurs. This log shall also contain any incident in which a passenger falls or jumps from a chair with no injury, of which the area personnel has knowledge, that is outside the load or unload zone. For the purposes of this Rule, the "load zone" and "unload zone" is defined in 23.1(b).

For each such loading and unloading incident, the log shall contain the following information:

(a) Name and/or number of the passenger Tramway ;

(b) Date the incident occurred;

(c) Name, address and age of person injured;

(d) Description of the injury;

(e) Description of the incident;

(f) Under investigation (yes or no).

For each such fall or jumping incident, the log shall contain the following information:

(a) Name and/or number of the passenger Tramway ;

(b) Date the incident occurred;

(c) Age and gender of person involved, if known;

(d) Location of incident;

(e) Under investigation (yes or no).

This log shall be available for inspection and, if requested by the Board or its duly authorized representative, the area operator shall make copies available of the relevant records relating to any of the incidents.

Section 24 Rules of board procedure.

24.1 Declaratory orders.

24.1.1 Basis of declaratory orders. Any person may petition the board for a Declaratory Order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the board.

24.1.2 Board discretion in considering petitions. The board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the board determines that it will not rule upon such a petition, the board shall promptly notify the petitioner of its action and state the reasons for such action.

24.1.3 Basis of board consideration of petitions. In determining whether to rule upon a petition filed pursuant to this Rule, the board will consider the following matters, among others.

(a) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the petitioner of any statutory provision or rule or order of the board.

(b) Whether the petition involves any subject, question, or issue that is the subject of a formal or informal matter of investigation currently pending before the board or a court involving one or more of the petitioners.

(c) Whether the petition involves any subject, question, or issue that is the subject of a formal or informal matter or investigation currently pending before the board or a court but not involving any petitioner.

(d) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

(e) Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado Rules of Civil Procedure, that will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

24.1.4 Requirements of petitioner. Any petition filed pursuant to this rule shall set forth all of the following.

(a) The name and address of the petitioner and whether the petitioner is licensed pursuant to section 12-120-201 *et seq*., C.R.S., or section 12-120-301 et seq., C.R.S.

(b) The statute, rule, or order to which the petition relates.

(c) A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.

24.1.5 Applicable procedures. If the board determines that it will rule on the petition, the following procedures shall apply.

(a) The board may rule upon the petition based solely upon the facts presented in the petition. In such a case, the following applies.

(i) Any ruling of the board will apply only to the extent of the facts presented in the petition and any amendment to the petition.

(ii) The board may order the petitioner to file a written brief, memorandum, or statement of position.

(iii) The board may set the petition, upon due notice to the petitioner, for a non-evidentiary hearing.

(iv) The board may dispose of the petition on the sole basis of the matters set forth in the petition.

(v) The board may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.

(vi) The board may take administrative notice of facts pursuant to the Administrative Procedures Act (Section 24-4-105(8), C.R.S.) and may utilize its experience, technical competence, and specialized knowledge in the disposition of the petition.

(vii) If the board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

(b) The board may, in its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent necessary, that the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner, and any other facts the petitioner desires the board to consider.

24.1.6 Parties to the proceeding. The parties to any proceeding pursuant to this Rule shall be the board and the petitioner. Any other person may seek leave of the board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the board. A petition to intervene shall set forth the same matters as required by Rule 24.1.4. Any reference to a "petitioner" in this Rule also refers to any person who has been granted leave to intervene by the board.

24.1.7 Standing of declaratory orders. Any Declaratory Order or other order disposing of a petition pursuant to this Rule shall constitute an agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

Annex E Operator control devices (Normative)

Commented [MD190]: Replaced by ANSI-B77.1 2022 - Annex E

Table E-1 – Device function and characteristics

FUNCTION	COLOR	LABEL	FEATURES
Normal Stop	RED	STOP	Mushroom actuator with a minimum diameter of 1-3/8 inches (38 mm)
Emergency Shutdown	RED	EMERGENCY SHUTDOWN	Actuator must be visible but shielded to prevent inadvertent operation. *Exception: Shield is not required if the emergency shutdown stop is the only stop at the control location.*

Annex F Combustion engine(s) and fuel handling

F.3.1 (c) Evacuation power unit.

Prior to December 2, 2002:

Not required.

F.4.1 Structural members used as fuel tanks.

Prior to October 15, 2001:

Not required.

F.4.4 Outside aboveground or underground fuel supply tanks.

Prior to October 15, 2001:

Not required.

F.4.6 Provisions for internal corrosion.

Prior to October 15, 2001:

Not required.

F.4.7.3 Supply tanks.

Prior to October 15, 2001:

Not required.

F.4.10.11 Fill pipes.

Prior to October 15, 2001:

Not required.

Annex G Welded link chain

G.1.1 Chain Specifications.

Prior to May 15, 2006:

Not required.

G.1.2 Breaking strength.

Prior to May 15, 2006:

Not required.

G.1.3 Test procedures.

Prior to May 15, 2006:

Not required.

G.1.4 Chain test reports.

Prior to May 15, 2006:

Not required.

Editor's Notes

History

Sections 1, 24 eff. 05/01/2007.
Rule 24.1 eff. 05/01/2008.
Section 20, Rule 22.4 eff. 01/01/2009.
Rules 20.2, 22.4.4 eff. 07/01/2009.
Rule 22.3.4 eff. 11/01/2009.
Section 0.1, Rule 1.2.4.1, Sections 2, 3, 4, 5, 6, 7, Annexes E, F, G eff. 05/15/2010.
Rule 3.1.3.3.2 eff. 05/15/2011.
Rules 0.1, 1.5 eff. 05/15/2012.
Rules 1.4, 2.1.1.11.2, 2.2.12, 2.3.5.5, 3.1.1.11.2, 3.2.9, 3.2.12, 3.3.5.5, 4.1.1.11.2, 4.2.9, 4.2.12, 4.3.5.5 eff. 09/01/2012.
Rule 4.3.4.3.1 eff. 07/01/2013. Annex E repealed eff. 07/01/2013.
Rule 3.3.4.3.1 repealed eff. 05/15/2014.
Annex E eff. 07/01/2014.
Rule 0.1, Section 1.2.4.1 eff. 11/01/2014.
Rules 2.2.9, 3.2.9, 4.2.9, 5.2.9, 6.2.9, 7.2.9 eff. 05/01/2015.
Rules 3.2.9, 4.2.9 eff. 11/01/2015.
Section 21 eff. 01/01/2016.
Rules 2.3.2.5, 3.3.2.5, 4.3.2.5 eff. 05/15/2017.

Rule 3.1.4.3.4.3 eff. 07/01/2017.
Rules 0.1, 1.2.4.2 - 1.2.4.4, 2 - 7, 21.1.1, 21.1.2 eff. 04/15/2019.

Notice of Proposed Rulemaking

Tracking number

2022-00808

Department

700 - Department of Regulatory Agencies

Agency

723 - Public Utilities Commission

CCR number

4 CCR 723-3

Rule title

RULES REGULATING ELECTRIC UTILITIES

Rulemaking Hearing

Date

02/27/2023

Time

11:30 AM

Location

By video conference using Zoom at a link in the calendar of events on the Commissions website: https://puc.colorado.gov/

Subjects and issues involved

The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to certain of the Commissions Rules Regulating Electric Utilities, 4 Code of Colorado Regulations (CCR) 723-3 (Electric Rules), and Rules Regulating Gas Utilities, 4 CCR 723-4 (Gas Rules), in order to implement the recent statutory changes enacted in House Bill (HB) 22-1018, effective April 21, 2022, regarding a state regulated utilitys practices regarding a customers ability to pay the customers utility bill. Through this rulemaking, the Commission satisfies the legislatures requirement, codified at § 40-3-103.6(1), C.R.S., that the Commission commence a rulemaking proceeding to adopt standard practices for gas and electric utilities to use when disconnecting services due to nonpayment.

Statutory authority

The statutory authority for the proposed rules is found primarily at § 40-3-103.6, C.R.S. (requiring the Commission to promulgate certain implementing rules) and § 40-2-108, C.R.S. (requiring the Commission generally to promulgate rules necessary to administer and enforce Title 40).

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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]

3001. Definitions.

The following definitions apply throughout this Part 3, except where a specific rule or statute provides otherwise. In addition to the definitions here, the definitions found in the Public Utilities Law and Part 1 apply to these rules. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply. In the event of a conflict between these definitions and a definition in Part 1, these definitions shall apply.

(a) "Advanced metering infrastructure" means an integrated system of smart electric utility meters and communication networks that enables two-way communication between an electric utility's data systems and the meter's internet protocol address and allows the electric utility to measure electricity usage or connect or disconnect service remotely.

(ba) "Affiliate" of a utility means a subsidiary of a utility, a parent corporation of a public utility, a joint venture organized as a separate corporation or partnership to the extent of the individual utility's involvement with the joint venture, a subsidiary of a parent corporation of a utility or where the utility or the parent corporation has a controlling interest over an entity.

(cb) "Aggregated data" means customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) and/or the compilation of customer data of one or more customers from which all unique identifiers and personal information has been removed.

(dc) "Applicant for service" means a person who applies for utility service and who either has taken no previous utility service from that utility or has not taken utility service from that utility within the most recent 30 days.

(ed) "Basis point" means one-hundredth of a percentage point (100 basis points = one percent).

(fe) "Benefit of service" means the use of utility service by each person of legal age who resides at a premises to which service is delivered and who is not registered with the utility as the customer of record.

(gf) "Commission" means the Colorado Public Utilities Commission.

(hg) “Contracted agent” means any person that has contracted with a utility in compliance with rule 3030 to assist in the provision of regulated utility services (e.g., an affiliate or vendor).

(ih) "Customer" means any person who is currently receiving utility service. Any person who moves within a utility’s service territory and obtains utility service at a new location within 30 days shall be considered a "customer." Unless stated in a particular rule, "customer" applies to any class of customer as defined by the Commission or by utility tariff.

(ji) “Customer data” means customer-specific data or information, excluding personal information as defined in paragraph 1004(x), that is:

(I) collected from the electric meter by the utility and stored in its data systems (e.g., kWh, kW, voltage, VARs and power factor);

(II) combined with customer-specific energy usage information on bills issued to the customer for regulated utility service when not publicly or lawfully available to the general public; or

(III) about the customer’s participation in regulated utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs.

(kj) "Distribution facilities" are those lines designed to operate at the utility's distribution voltages in the area as defined in the utility’s tariffs including substation transformers that transform electricity to a distribution voltage and also includes other equipment within a transforming substation which is not integral to the circuitry of the utility’s transmission system.

(l) "Emergency or safety event or circumstance" means a manmade or natural emergency event or safety circumstance:

(I) that prevents utility staff from being able to safely travel to or work at a customer's residence or place of business for purposes of reconnecting utility service; or

(II) for which a utility has dispatched utility staff members to help respond to the emergency or safety event or circumstance and, due to the timing or number of utility staff dispatched, the utility lacks sufficient trained staff to reconnect utility service at a customer's residence or place of business; and

(III) includes a severe weather event that one or more reputable weather forecasting sources forecasts to occur in the following twenty-four hours and that is more likely than not to result in dangerous travel or on-site outdoor or indoor work conditions for individuals in the path of the weather event.

(mk) "Energy assistance organization" means the nonprofit corporation established for low-income energy assistance pursuant to § 40-8.5-104, C.R.S.

(nł) “Energy storage system” means a commercially available technology that is capable of retaining energy, storing the energy for a period of time, and delivering the energy as electricity after storage by chemical, thermal, mechanical, or other means.

(oṁ) “Financial security” includes any stock, bond, note, or other evidence of indebtedness.

(pṅ) “Generation facility” means a power plant that converts a primary energy resource into electricity. Primary energy resources include, but are not limited to: nuclear resources, coal, natural gas, hydro, wind, solar, biomass, and geothermal.

(qọ) "Heavy load" means not less than 60 percent, but not more than 100 percent, of the nameplate-rated capacity of a meter.

(r) "Income qualified utility customer” or “low income customer” is a customer meeting the requirements of § 40-3-106(1)(d)(II), C.R.S.

(sṗ) "Informal complaint" means an informal complaint as defined and discussed in the Commission’s Rules Regulating Practice and Procedure.

(tq̣) "Light load" means approximately five to ten percent of the nameplate-rated capacity of a meter.

(uṛ) "Load" means the power consumed by an electric utility customer over time (measured in terms of either demand or energy or both).

(vṣ) “Local government” means any Colorado county, municipality, city and county, home rule city or town, home rule city and county, or city or town operating under a territorial charter.

(wṭ) "Local office" means any Colorado office operated by a utility at which persons may make requests to establish or to discontinue utility service. If the utility does not operate an office in Colorado, "local office" means any office operated by a utility at which persons may make requests to establish or to discontinue utility service in Colorado.

(xṵ) "Main service terminal" means the point at which the utility’s metering connections terminate.

(yṿ) “Major event” means an event as defined in and consistent with IEEE Standard Number 1366-2003, Guide for Electric Power Distribution Reliability Indices.

(zẁ) "MVA" means mega-volt amperes and is the vector sum of the real power and the reactive power.

(aax́) “Non-standard customer data” means all customer data that are not standard customer data.

(bbý) "Output" means the energy and power produced by a generation system.

(ccź) "Past due" means the point at which a utility can affect a customer’s account for regulated service due to non-payment of charges for regulated service.

(ddaa) "Principal place of business" means the place, in or out of the State of Colorado, where the executive or managing principals who directly oversee the utility's operations in Colorado are located.

(eebb) “Property owner” means the legal owner of government record for a parcel of real property within the service territory of a utility. A utility may rely upon the records of a county clerk for the county within which a parcel of property is located to determine ownership of government record.

(ff) "Qualifying communication" means one of the following methods of communicating with a utility customer about a possible upcoming disconnection of service:

(I) a physical visit to the customer's premises during which a utility representative speaks with the customer and provides the customer utility assistance information or, if the customer is not available to speak, leaves utility assistance information for the customer's review; or

(II) a telephone call, text, or e-mail to the customer in which:

(A) the utility representative provides the customer with utility assistance information; and

(B) the utility representative either speaks directly with the customer over the telephone or the customer receives the utility representative's text or e-mail.

(ggcc) "Reference standard" means suitable indicating electrical equipment permanently mounted in a utility's laboratory and used for no purpose other than testing rotating standards.

(hhdd) "Regulated charges" means charges billed by a utility to a customer if such charges are approved by the Commission or contained in a tariff of the utility.

(iiee) “RFP” means request for proposals.

(jjff) "Rotating standard" means a portable meter used for testing service meters.

(kkgg) "RUS" means the Rural Utilities Service of the United States Department of Agriculture, or its successor agencies.

(llhh) "Service connection" is the location on the customer’s premises/facilities at which a point of delivery of power between the utility and the customer is established. For example, in the case of a typical residential customer served from overhead secondary supply, this is the location at which the utility’s electric service drop conductors are physically connected to the customer’s electric service entrance conductors.

(mmii) “Standard customer data” means customer data maintained by a utility in its systems in the ordinary course of business.

(nnjj) “Third-party” means a person who is not the customer, an agent of the customer who has been designated by the customer with the utility and is acting of the customer’s behalf, a regulated utility serving the customer, or a contracted agent, of the utility.

(ookk) "Transmission facilities" are those lines and related substations designed and operating at voltage levels above the utility's voltages for distribution facilities, including but not limited to

related substation facilities such as transformers, capacitor banks, or breakers that are integral to the circuitry of the utility's transmission system.

(pp~~ll~~) "Unique identifier" means a customer's name, mailing address, telephone number, or email address that is displayed on a bill.

(qq~~mm~~) "Unregulated charges" means charges that are billed by a utility to a customer and that are not regulated or approved by the Commission, are not contained in a tariff filed with the Commission, and are for service or merchandise not required as a condition of receiving regulated utility service.

(rr) "Utility assistance information" means information that a utility representative provides a customer informing the customer that the customer may contact 1-866-heat-help determine if the customer qualifies for utility bill payment assistance.

(ss~~nn~~) "Utility" means any public utility as defined in § 40-1-103, C.R.S., providing electric, steam, or associated services in the state of Colorado.

(tt~~oo~~) "Utility service" or "service" means a service offering of a utility, which service offering is regulated by the Commission.

(uu~~pp~~) "Whole building data" means the sum of the monthly electric use for either all meters at a building on a parcel or real property or all buildings on a parcel of real property.

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[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 an ~~low-~~income qualified 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~~paragraph 3001(~~rr~~n).

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[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.~~ Outside the hours of 8:00 a.m. and 4:00 p.m., Monday through Thursday.

(IV) Between the hours of 12:00 Noon on the day prior to and 8:00 a.m. on the day following any state or federal holiday or day during which the utility's local office is closed.

(V) To the greatest extent practicable, a utility shall not disconnect a customer after 11:59 a.m. on a Monday through Thursday.

(~~I~~VI) 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.

(VII) 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.

(C) A utility shall postpone service discontinuance to a residential customer during an emergency or safety event or circumstance.

(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 qualified customers, defined as customers participating in ~~low-~~income qualified 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.

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[indicates omission of unaffected rules]

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) A utility shall reconnect a customer's service on the same day as the customer requests reconnection, if the customer makes a payment or payment arrangement in accordance with the

utilities policies, requesting reconnection of service on a Monday through Friday that is not a holiday, and one of the following circumstances is met:

(I) the customer has advanced metering infrastructure and has requested reconnection of service at least one hour before the close of business for the electric utility's customer service division; except that the utility may reconnect service on the day following a disconnection of service if there are internet connectivity, technical, or mechanical problems or emergency conditions that reasonably prevent the utility from remotely reconnecting the customer's service; or

(II) the customer is without advanced metering infrastructure and has requested reconnection of service on or before 12:59 p.m.; except that, an electric utility or gas utility may reconnect the customer's service on the day following a disconnection if:

(A) prior to disconnection of the customer's service, the utility has made a qualifying communication with the customer; or

(B) an emergency or safety event or circumstance arises after disconnection of service that renders the utility's staff temporarily unavailable to safely reconnect service. If next-day reconnection of service is not possible due to the continuation of the emergency or safety event or circumstance, the utility shall reconnect the customer's service as soon as possible.

(dc) Unless prevented by an emergency of safety event or circumstance ~~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.~~

(ed) 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]

3411. Low-Income Energy Assistance Act.

(a) Scope and applicability.

(I) Rule 3411 is applicable to electric utilities, combined gas and electric utilities, and cooperative electric association except those exempted under (II) or (III). Pursuant to §§ 40-8.7-101 through 111, C.R.S., utilities are required to provide an opportunity for their customers to contribute an optional amount through the customers' monthly billing statement.

(II) Municipally owned electric utilities, combined gas and electric utilities, or cooperative electric associations are exempt if:

(A) the utility operates an alternative energy assistance program to support its ~~low-~~ income qualified customers with their energy needs and self-certifies to the organization through written statement that its program meets the following criteria:

(i) the amount and method for funding of the program has been determined by the governing body; and

(ii) the program monies will be collected and distributed in a manner and under eligibility criteria determined by the governing body for the purpose of residential energy assistance to customers who are challenged with paying energy bills for financial reasons, including seniors on fixed incomes, individuals with disabilities, and ~~low-~~income qualified individuals; or

(B) the governing body of the utility determines its service area has a limited number of people who qualify for energy assistance and self-certifies to the organization via written statement such determination.

(III) A municipally owned electric utility, combined gas and electric utility, or cooperative electric association not exempt under subparagraph (II), is exempt if:

(A) the utility designs and implements a procedure to notify all customers at least twice each year of the option to conveniently contribute to the organization by means of a monthly energy assistance charge. Such procedure shall be approved by the governing utility. The governing body of such utility shall determine the disposition and delivery of the optional energy assistance charge that it collects on the following basis:

(i) delivering the collections to the organization for distribution; or

(ii) distributing the moneys under criteria developed by the governing body for the purpose set forth in subparagraph (II)(A)(ii).

(B) Alternatively, the utility provides funding for energy assistance to the organization by using a source of funding other than the optional customer contribution on each customer bill that approximates the amount reasonably expected to be collected from an optional charge on customer's bills.

(IV) A municipally owned electric utility, combined gas and electric utility, or cooperative electric association that is exempt under subparagraph (III) shall be entitled to participate in the organization's low-income assistance program.

(V) Electric utilities, combined gas and electric utilities, and cooperative electric associations that desire a change in status must inform the organization and file a notice to the Commission within 30 days prior to expected changes.

(b) Definitions. The following definitions apply only in the context of rule 3411. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply:

(I) "Alternative energy assistance program" means a program operated by a municipally owned electric and gas utility or rural electric cooperative that is not part of the energy assistance program established pursuant to this statute.

(II) "Customer" means the named holder of an individually metered account upon which charges for electricity or gas are paid to a utility. "Customer" shall not include a customer ~~that~~who receives electricity or gas for the sole purpose of reselling the electricity or gas to others.

(III) "Energy assistance program" or "Program" means the Low Income Energy Assistance Program created by § 40-8.7-104, C.R.S., and designed to provide financial assistance, residential energy efficiency, and energy conservation assistance.

(IV) "Organization" means Energy Outreach Colorado, a Colorado nonprofit corporation, formerly known as the Colorado Energy Assistance Foundation.

(V) "Remittance device" means the section of a customer's utility bill statement that is returned to the utility company for payment. This includes but is not limited to paper payment stubs, web page files used to electronically collect payments, and electronic fund transfers.

(VI) "Utility" means a corporation, association, partnership, cooperative electric association, or municipally owned entity that provides retail electric service or retail gas service to customers in Colorado. "Utility" does not mean a propane company.

(c) Plan implementation and maintenance.

(I) Except as provided in paragraph 3411(a), each utility shall implement and maintain a customer opt-in contribution mechanism. The utility's opt-in mechanism shall include, at minimum, the following provisions:

(A) A description of the procedures the utility will use to notify its customers, including those customers that make payments electronically, about the opt-in provision prior to September 1, 2006. Utilities may combine their efforts to notify customers into a single state-wide or region-wide effort consistent with the participating utilities communication programs. Each participating utility shall clearly identify its support of the combined communications program, with its corporate name and/or logo visible to the intended audience.

(B) A description of the additional efforts the utility will use to inform its customers about the program to ensure that adequate notice of the opt-in provision is given to all customers. Notification shall include communication to all customers that the donation and related information will be passed through to the Organization.

(C) A description of the check-off mechanism that will be displayed on the monthly remittance device to solicit voluntary donations. The remittance device shall

include, at minimum, check-off categories of five dollars, ten dollars, twenty dollars, and "other amount". The remittance device must also note the name of the program as the "voluntary energy assistance program," or if the utility is unable to identify the name of the program individually, the utility shall use a general energy assistance identifier approved by the Commission.

(D) A description or an example of how the utility will display the voluntary contribution as a separate line item on the customer's monthly billing statement and how the voluntary contribution will be included in the total amount due. The line item must identify the contribution as "voluntary".

(E) A description of the notification process that the utility will use to ensure that once a utility customer opts into the program, the energy assistance contribution will be assessed on a monthly basis until the customer notifies the utility of the customer's desire to stop contributing. The utility shall describe how it will manage participation in the program when customers miss one or more voluntary payment, or pay less than the pre-selected donation amount.

(F) Identification of the procedures the utility will use to notify customers of their ability to cancel or discontinue voluntary contributions along with a description of the mechanism the utility will use to allow customers who make electronic payments to discontinue their participation in the opt-in program.

(G) A description of the procedures the utility will use, where feasible, to notify customers participating in the program about the customer's ability to continue to contribute when the customer changes their address within the utility's service territory.

(H) A description of the method the utility will use to provide clear, periodic, and cost-effective notice of the opt-in provision to its customers at least twice per year. Acceptable methods include, but are not limited to, bill inserts, statements on the bill or envelope, and other utility communication pieces.

(I) An estimate of the start-up costs that the utility expects to incur in connection with the program along with supporting detailed justification for such costs. This estimate should include the utility's initial costs of setting up the collection mechanism and reformatting its billing systems to solicit the optional contribution but shall not include the cost of any notification efforts by the utility. Utilities may elect to recover all start-up costs before the remaining moneys generated by the program are distributed to the Organization or over a period of time from the funds generated by the program, subject to Commission review and approval.

(J) An estimate of the on-going costs that the utility expects to incur in connection with the program along with supporting detailed justification for such costs. This estimate shall not include the cost of any notification efforts by the utility.

(K) A detailed justification for the costs identified in subparagraphs (I) and (J). As stated in § 40-8.7-104(3), C.R.S., the costs incurred must be reasonable in connection with the program.

(L) Utilities shall recover the startup cost and on-going cost of administration associated with the program from funds generated from the program. Insert and notification costs shall be considered in the utility's cost of service.

(M) A description of the procedures the utility will use to account for and process program donations separately from customer payments for utility services.

(II) Each utility shall participate in the energy assistance program consistent with its plan approved by the Commission and shall provide the opportunity for its customers to make an optional energy assistance contribution on the monthly remittance device on their utility billing.

(III) The utility may submit an application to the Commission no later than April 1 of each year for approval of reimbursement costs the utility incurred for the program during the previous calendar year. Such application shall include a proposed schedule for the reimbursement of these costs to the utility. The applications shall include detailed supporting justification for approval of these costs. Such detailed justification includes, but is not limited to, copies of receipts and time sheets. Such applications shall not seek reimbursement of costs related to notification efforts. Participating utilities may include reimbursement costs for such notification efforts in their periodic cost of service rate filings, subject to Commission review and approval.

(IV) A utility may seek modification of its initial plan or subsequent plans by filing an application with the Commission. Such application shall meet the requirements of (d)(I).

(d) Fund administration.

(I) At a minimum, each utility shall transfer the funds collected from its customers under the Energy assistance program to the organization under the following schedule:

(A) for the funds collected during the period of January 1 to March 31 of each year, the utility shall transfer the collected funds to the organization before May 1 of such year;

(B) for the funds collected during the period of April 1 to June 30 of each year, the utility shall transfer the collected funds to the organization before August 1 of such year;

(C) for the funds collected during the period of July 1 to September 30 of each year, the utility shall transfer the collected funds to the organization before November 1 of such year;

(D) for the funds collected during the period of October 1 to December 31 of each year, the utility shall transfer the collected funds to the organization before February 1 of the next year; and

(E) each utility shall maintain a separate accounting for all energy assistance program funds received by customers.

(II) Each utility shall provide the organization with the following information.

(A) How the funds collected for the previous calendar year were generated, including the number of customers participating in the program. Such report shall include a summary of the number of program participants and funds collected by month, and shall be provided by February 1 of each year.

(B) At each time funds are remitted, a listing of all program participants including the donor's name, billing address, and monthly donation amount. The participant information provided to the organization shall be used exclusively for complying with the requirements of § 40-8.7-101, C.R.S., et seq. and state and federal laws.

(III) The Commission shall submit, as necessary, a bill for payment to the organization for any administrative costs incurred pursuant to the program.

(IV) The organization shall provide the Office of Utility Consumer Advocate and the Commission with a copy of the written report that is described in § 40-8.7-110, C.R.S. This report shall not contain individual participant information.

(e) Prohibition of disconnection. Utilities shall not disconnect a customer's electric service for non-payment of optional contribution amounts.

3412. Electric Service Affordability Program.

(a) Scope and applicability.

(I) Electric utilities with Colorado retail customers shall provide ~~low-~~income qualified energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential ~~low-~~income qualified customers, as permitted by § 40-3-106, C.R.S. Electric utilities shall use consistent naming for assistance programs: [Utility name] Affordability Program.

(II) Rule 3412 is applicable to investor-owned electric utilities subject to rate regulation by the Commission.

(b) Definitions. The following definitions apply only in the context of rule 3412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(I) "Administrative cost" means the utility's direct cost for labor (to include the cost of benefit loadings), materials, and other verifiable expenditures directly related to the administration and operation of the program not to exceed ten percent of the total cost of program credits applied against bills for current usage and pre-existing arrearages or $10,000, whichever amount is greater.

(II) "Affordable percentage of income payment" means the amount of the participant's annual bill deemed affordable under subparagraph 3412(e)(I).

(III) "Arrearage" means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.

(IV) "Colorado Energy Office" means the Colorado Energy Office created in § 24-38.5-101, C.R.S.

(V) "Eligible ~~low-~~income qualified customer" means a residential utility customer who meets the household income thresholds pursuant to paragraph 3412(c).

(VI) "Fixed credit" means an annual bill credit established at the beginning of a participant's participation in a program each year delivered as a monthly credit on each participant's bill. The fixed credit is the participant's full annual bill minus the participant's affordable percentage of income payment obligation on the full annual bill.

(VII) "Full annual bill" means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and, (2) that portion of the bill that exceeds the affordable percentage of income payment.

(VIII) "LEAP" means Low-Income Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.

(IX) "LEAP participant" means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either: (1) the Department's current LEAP application period, if that period is open at the time the customer applies for program participation; or, (2) the Department's most recently closed LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department's next LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under part (2) of this definition, the utility customer must apply to the Department during the Department's next LEAP benefit application period and be determined eligible for such benefits.

(X) "Non-participant" means a utility customer who is not receiving ~~low-~~income qualified assistance under rule 3412.

(XI) "Participant" means an eligible ~~low-~~income qualified residential utility customer who is granted the reasonable preference or advantage through participation in an electric service low-income program.

(XII) "Percentage of Income Payment Plan" (or "PIPP") means a payment plan for participants that does not exceed an affordable percentage of their household income as set forth in subparagraph 3412(e)(I).

(XIII) "Program" means an electric service low-income program approved under rule 3412.

(XIV) "Program credits" means the amount of benefits provided to participants to offset the unaffordable portion of a participant's utility bill and /or dollar amounts credited to participants for arrearage forgiveness.

(XV) "Unaffordable portion" means the amount of the estimated full annual bill that exceeds the affordable percentage of income payment.

(c) Participant eligibility.

(I) Eligible participants are limited to those who meet one or more of the following criteria:

(A) ~~median~~ household income less than or equal to 200 percent of the federal poverty guideline;

(B) median household income less than or equal to 80 percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or

(C) qualification under income guidelines adopted by the Department of Human Services pursuant to § 40-8.5-105, C.R.S.

(II) The utility shall obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office.

(III) If a participant's household income is $0, the utility may establish a process that verifies income on a more frequent basis.

(IV) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.

(d) Enrollment. Utilities shall be responsible for the methods by which participant enrollment in their approved low-income program is obtained and sustained, however the utility should engage in enrollment processes that are efficient and attempt to maximize the potential benefits of participation in the low-income program by low-income customers.

(e) Payment plan.

(I) Participant payments for electric bills rendered to participants shall not exceed an affordable percentage of income payment. The percentage of a participant's household income for which the participant is responsible shall be determined as follows:

(A) for electric accounts for which electricity is the primary heating fuel, participant payments shall be no lower than three percent and not greater than six percent of the participant's household income; however, if the participant also has natural gas service from a regulated utility, participant payments shall not be greater than five percent of the participant's household income; and

(B) for electric accounts for which electricity is not the primary heating fuel, participant payments shall be no lower than two percent and not greater than three percent of the participant's household income.

(II) In the event that a primary heating fuel for any particular participant has been identified by LEAP, that determination shall be final.

(III) Notwithstanding the percentage of income limits established in subparagraph 3412(e)(I), a utility may establish minimum monthly payment amounts for participants with household income of $0, provided that:

(A) the participant's minimum payment for an electric heating account shall be no more than $20.00 a month; and

(B) the participant's minimum payment for an electric non-heating account shall be no more than $10.00 a month.

(IV) Full annual bill calculation. The utility shall be responsible for estimating a participant's full annual bill for the purpose of determining the unaffordable portion of the participant's full annual bill delivered as a fixed credit on the participant's monthly billing statement.

(V) Fixed credit benefit. The fixed credit shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.

(VI) Levelized budget billing participation. A utility may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility's automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their systems to facilitate opt out of levelized budget billing. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.

(VII) Arrearage credits.

(A) Arrearage credits shall be applied to pre-existing arrearages.

(B) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to $0.00 over a period not less than one month and not more than twenty-four months.

(C) Application of an arrearage credit to a participant account may be conditioned by the utility on one or more of the following:

(i) the receipt of regular participant payments toward bills for current usage; or

(ii) the payment of a participant copayment toward the arrearages so long as the participant's copayment total dollar amount does not exceed one percent of gross household income.

(D) Should the participant exit the program prior to the full forgiveness of all pre-existing arrearages, the amount of remaining pre-existing arrearages shall become due in accordance with the utility's tariff filed under rules 3401, 3407, and 3408.

(E) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the program.

(F) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills.

(VIII) Portability of benefits. A participant may continue to participate without reapplication should the participant change service addresses but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the billing amount to reflect the changed circumstances. A participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.

(IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments may result in a utility placing the participant in its regular collection cycle. Partial or late payments shall not result in the removal of a participant from the program.

(f) Program implementation.

Each utility shall maintain effective terms and conditions in its tariffs on file with the Commission containing its low-income program.

(g) Cost recovery.

(I) Each utility shall include in its ~~low-~~income qualified tariff terms and conditions how costs of the program will be recovered.

(II) Program cost recovery.

(A) Program cost recovery shall be based on a fixed monthly fee.

(B) The maximum impact on residential rates shall be no more than $1.00 per month.

(C) In order to determine monthly rates applicable to rate classes other than residential, program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement established in the utility's last Phase II rate case, or under another reasonable methodology supported by quantifiable information. The monthly rate per this subparagraph to be charged each rate schedule customer shall be clearly stated on a tariff sheet.

(D) Utilities shall separately account for the program year's program cost recovery and program and administrative costs to determine if the net of program cost recovery and program and administrative cost are in balance during the program year.

(i) No later than December 31 of each year, the utility shall file a report with the Commission in the most recent miscellaneous proceeding for annual low-income filings detailing the net difference between program cost recovery and program costs as of October 31 of each year.

(1) Should the net difference of program cost recovery over program and administrative costs be greater than 50 percent derived in (D) above, either positive or negative, and the utility is not currently at the maximum impact for non-participants, the utility shall file with the Commission an advice letter and tariff pages seeking approval for the rates determined in subparagraph 3412(g)(II)(D) in order to bring the projected recovery in balance for the ensuing 12 month period. The revised charge shall not exceed the maximum impact for non-participants in subparagraph 3412(g)(II)(C).

(III) The following costs are eligible for recovery by a utility as program costs:

(A) program credits or discounts applied against bills for current usage.

(B) program credits applied against pre-existing arrearages.

(C) program administrative costs; and

(D) Commission-sponsored program evaluation costs required under paragraph 3412(k).

(IV) The utility shall apply, as an offset to cost recovery, all program expenses attributable to the program. Program expenses include utility operating costs; changes in the return requirement on cash working capital for carrying arrearages; changes in the cost of credit and collection activities directly related to ~~low-~~income qualified participants; and changes in uncollectable account costs for these participants.

(V) LEAP grants. The utility may apply energy assistance grants provided to the participant by the LEAP program to the dollar value of credits granted to individual program participants.

(A) If applying LEAP grants first, a utility shall apply any energy assistance benefit granted to the participant by LEAP to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.

(B) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:

(i) first, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding; and

(ii) second, to the account of the program participant as a benefit to the participant.

(C) No portion of an energy assistance or LEAP grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.

(D) If an all-electric utility's ~~low-~~income qualified customers do not benefit widely from LEAP grants, the utility shall not apply the dollar value of credits granted to individual LEAP grantees to the dollar value of credits granted to individual program participants.

(h) Other programs. In addition to the utility's low-income program, with Commission approval, a utility may offer other rate relief options to eligible households.

(I) Other programs offered by the utility under rule 3412 must be intended to reach ~~low-~~income qualified households that do not substantially benefit from the provisions of the low-income program. Such programs may take the form of discount rates, tiered discount rates or other direct bill relief methods where the ~~low-~~income qualified household benefitting from the program is granted a reasonable preference in tariffed rates assessed to all residential utility customers.

(II) Cost recovery for other programs combined with the Percentage of Income Payment Plan shall not exceed the maximum impact on residential rates described in subparagraph 3412(g)(II)(C).

(i) Energy efficiency and weatherization.

(I) The utility shall provide all program participants with information on energy efficiency programs offered by the utility or other entities and existing weatherization programs offered by the state of Colorado or other entities.

(II) The utility shall provide the Colorado Energy Office with the name and service address of participant households for which annual electricity usage exceeds 10,000 kWh annually.

(j) Stakeholder engagement. A utility shall conduct annual meetings with ~~low-~~income qualified stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.

(k) Program evaluation. A triennial evaluation of the program provisions under rule 3412 beginning in 2019 shall be undertaken in order to review best practices in similar low-income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility's program for effectiveness in achieving optimum support being provided to ~~low-~~income qualified participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. The program evaluation shall include a customer needs assessment provided that adequate funds are available.

(I) Procurement of the third-party vendor that will perform the evaluation will be undertaken by the Colorado Energy Office. The CEO shall seek the involvement of interested stakeholders including, but not limited to, Commission staff, all Commission regulated electric and gas utilities, LEAP, the Office of Consumer Counsel, and Energy Outreach Colorado in the design of the requirements regarding study focus and final reporting.

(II) Approval of the third-party vendor shall be the responsibility of the Commission. The CEO shall file with the Commission in the most recent annual report proceeding, a request for approval of the contract of the vendor selected. The Commission shall review and act on the request within 30 days.

(III) $00.0013 per customer per month shall be set aside by the utility in order to fund the triennial evaluation of the program evaluation described in paragraph 3412(k).

(IV) The dollars resulting from the $00.0013 charge shall be recovered as a program cost under subparagraph 3412(f)(IV).

(V) The evaluation will be filed by Commission staff in the most recent miscellaneous proceeding for annual low-income filings.

(VI) Staff and the CEO will assess the individual utilities' deferred balances set aside for the program evaluation starting in 2019 at the conclusion of the third program year and each three years thereafter and will determine the amounts each utility is to remit to the third party evaluator based on the contractual terms approved by the Commission for the evaluation.

(l) Annual report. No later than December 31 of each year, each utility shall file a report in the most recent miscellaneous proceeding for annual low-income filings using the form available on the Commission's website based on each 12-month period ending October 31, and containing the following information:

(I) monthly information on the program including total number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant's bills, administrative costs, and revenue collection;

(II) the number of applicants for the program;

(III) the number of applicants qualified for the program;

(IV) the number of participants;

(V) the average assistance provided, both mean and median;

(VI) the maximum assistance provided to an individual participant;

(VII) the minimum assistance provided to an individual participant;

(VIII) total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;

(IX) the number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;

(X) an estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.);

(XI) the average monthly and annual total electric consumption in PIPP participants' homes;

(XII) the average monthly and annual total electric consumption in the utility's residential customer's homes;

(XIII) the number of program participants referred to the weatherization program;

(XIV) the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;

(XV) a description of the ways in which the program is being integrated with existing energy efficiency, DSM, or behavioral programs offered by the utility;

(XVI) a description of the ways in which the program is being integrated with existing weatherization programs offered by the state of Colorado;

(XVII) a description of program outreach strategies and metrics that illustrate the effectiveness of each outreach strategy;

(XVIII) a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;

(XIX) the number of participants at the start of the program year that the utility removed for any reason, the number of participants who opted out of the program after enrollment, the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible

participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year;

(XX) a narrative summary of the utility's recommended program modifications based on report findings; and

(XXI) a statement regarding whether the utility is accommodating PIPP participants' requests to opt out of levelized budget billing pursuant to subparagraph 3412(e)(VI) and, if not, an explanation of why the utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.

(m) Energy Assistance System Benefit Charge. Beginning October 1, 2021, each utility shall include on its monthly bills a flat energy assistance system benefit charge of 50 cents, with this amount rising to 75 cents on October 1, 2022, and being adjusted for inflation in accordance with changes in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2023. The disposition of money collected by the Energy Assistance System Benefit Charge is determined by § 40-8.7-108, C.R.S.

(I) Prior to October 1, 2023, and each year following, Commission staff shall compute the charge adjusted by the index and shall send a letter to each utility stating the charge to be paid by customers during the next calendar year.

* * * *

[indicates omission of unaffected rules]

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(jj). 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.

Decision No. C22-0815

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0557EG

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLOADO REGULATIONS 723-3, AND RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, PURSUANT TO HOUSE BILL 22-1018.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 21, 2022
Adopted Date: December 14, 2022

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to certain of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules), and Rules Regulating Gas Utilities, 4 CCR 723-4 (Gas Rules), in order to implement the recent statutory changes enacted in House Bill (HB) 22-1018, effective April 21, 2022, regarding a state regulated utility's practices regarding a customer's ability to pay the customer's utility bill.

2. Through this rulemaking, the Commission satisfies the legislature's requirement, codified at § 40-3-103.6(1), C.R.S., that the Commission commence a rulemaking proceeding to adopt standard practices for gas and electric utilities to use when disconnecting services due to nonpayment.

3. The statutory authority for the proposed rules is found primarily at § 40-3-103.6, C.R.S. (requiring the Commission to promulgate certain implementing rules) and § 40-2-108, C.R.S. (requiring the Commission generally to promulgate rules necessary to administer and enforce Title 40).

4. The Commission will hold a remote public comment hearing on the proposed rules at **11:30 a.m. on February 27, 2023**.

5. The proposed rule changes are set forth in legislative (*i.e.*, strikeout and underline) format in Attachment A and C to this Decision, and in final format in Attachment B and D to this Decision.

B. Senate Bill 22-1018 and Proposed Rule Overview

6. On April 21, 2022, Governor Jared Polis signed HB 22-1018, which enacts measures regarding a state regulated utility's practices regarding a customer's ability to pay the customer's utility bill.

7. As relevant here, HB 22-1018 requires that the Commission commence a rulemaking to adopt standard practices for gas and electric utilities to use when disconnecting service due to nonpayment.[1] As amended in HB 22-1018, the statutory provisions require that Commission rules must address prohibiting shut off times during weekends, holidays, certain times of day, or during emergency or safety events or circumstances.[2] The Bill further requires

[1] § 40-3-103.6 (1), C.R.S.

[2] § 40-3-103.6(1)(b)(I)(A) through (C), C.R.S.

that rules address certain mandated reconnection requirements,[3] and that the utility shall reconnect a customer's service on the same day requested in certain circumstances.[4]

8. In addition, the Bill further defines and requires terms throughout the statute, including "qualifying communications" required by the utility to inform a customer about a possible upcoming disconnection of service,[5] and "utility assistance information" for the customer to contact to determine if the customer qualifies for utility bill payment assistance.[6]

9. In addition to revisions to § 40-3-103.6, C.R.S., HB 22-1018 revises § 40-3-106, C.R.S. to revise reference to "low income" to include and define "income-qualified utility customer" when referencing that, notwithstanding any provisions of articles 1 to 7 of Title 40 to the contrary, the Commission may approve any rate, charge, service, classification, or facility of gas or electric utility that makes or grants a reasonable preference or advantage to an income-qualified utility customer. The bill adds that the reasonable preference or advantage to the income-qualified utility customer can apply "even if the reasonable preference or advantage applies on a year-round basis."

10. The definition of "income-qualified utility customer" is included through the bill to mean a utility customer who the Department of Human Services; the organization defined in § 40-8.7-103 (4), C.R.S.; or the Colorado Energy Office has determined meets certain requirements including: (1) having a household income at or below 200 percent of the current federal poverty line; (2) having a household income at or below 80 percent of the area median income, as published annually by the United States Department of Housing and Urban

[3] § 40-3-103.6(1)(b)(II), C.R.S.
[4] § 40-3-103.6 (1.5), C.R.S.
[5] § 40-3-103.6 (3)(c), C.R.S.
[6] § 40-3-103.6 (3)(d), C.R.S.

Development; or (3) otherwise meets the income eligibility criteria set forth in rules of the Department of Human Services.

11. As required by § 40-3-103.6, C.R.S., requiring that the Commission commence rulemaking and adopt rules to effectuate certain customer protections, we include proposed rules addressing disconnection of service.

12. For purposes of implementing HB 22-1018 and changes made to § 40-3-106, C.R.S., we propose limited definitional and reference changes. While the Commission continues to propose and implement rule changes regarding "income qualified" and "low income" utility customer programs and needs, adjudications – including rate case proceedings – likely remain the best forums for the Commission to consider whether to approve any rate, charge, service, classification, or facility of gas or electric utility that makes or grants a reasonable preference or advantage to an income-qualified customer.

13. We propose limited definition updates that are consistent with near-final Gas Rule considerations[7] in Proceeding No. 21R-0449G to be parallel and reference the updated statute in both Gas and Electric Rules. Determinations of eligibility for "income-qualified utility customer" in § 40-3-106, C.R.S. are made through sister-agency processes at the Department of Human Services, Energy Outreach Colorado, and the Colorado Energy Office. No further rule updates on eligibility definitions before this Commission are therefore included in the proposed rules.

[7] *See,* Proceeding No. 21R-0449G. At the time of this NOPR, rules are not yet final in Proceeding No. 21R-0449G that focuses on extensive Gas Rule updates. Definitions regarding "income-qualified utility customers" in the Gas and Electric Rules are proposed to reference the statutes, consistent with near-final Gas Rules considered in Proceeding 21R-0449G. Through this rulemaking we propose limited definition and other revisions given HB 22-1018, which are not intended to override significant policy and other considerations made in Proceeding No. 21R-0449G. While final adopted rules in Proceeding No. 21R-0449G may require necessary updates to the Gas

14. We therefore include the limited revisions for consideration below for purposes of this limited rulemaking focused on implementation of HB 22-1018, recognizing that recent, current, and future rulemakings are best suited to address income-qualified and low-income considerations pertinent to this Commission's rules and processes.

C. Proposed Rule Changes

15. An overview of the changes proposed by the Commission fall into two general categories, described below. For each category, we identify and explain the proposed rule change, provide analysis of the change, and, as applicable, pose questions for comments by rulemaking participants.

1. Definitions

16. Corresponding rule revisions are proposed in both updated revisions to Rule 3001 of the Electric Rules, and Rule 4001 of the Gas Rules to add definitions consistent with HB 22-1018, including "advanced metering infrastructure," "emergency or safety event or circumstance," "qualifying communication," and "utility assistance information."

2. Discontinuance and Reconnection of Service

17. As required in § 40-3-103.6, C.R.S., revisions are proposed to Rule 3407 of the Electric Rules, and Rule 4407 of the Gas Rules regarding discontinuance of service. Specifically proposed Rules 3407(e) and corresponding Rule 4407(e) clarify that discontinuance shall not occur outside of certain hours, or on state or federal holidays, and that a utility shall postpone service discontinuance to a residential customer during an emergency or safety event or circumstance, as defined.

Rules being considered here, this proceeding is not intended to reconsider updates to the rules considering Senate

18. The proposed rules further include provisions requiring reconnection of a customer's service, consistent with statute, if payments are made and circumstances are met in Rules 3409 of the Electric Rules, and 4409 of the Gas Rules.

3. Income Qualified Reference

19. As revised, § 40-3-106, C.R.S. changes terminology from "low income" customers and, additionally provides the following definition of "income-qualified utility customer":

> [A] utility customer who the Department of Human Services, created in section 26-1-105; the organization defined in section 40-8.7-103(4); or the Colorado Energy Office, created in section 24-38.5-101, has determined:
>
> (A) has a household income at or below two hundred percent of the current federal poverty line;
>
> (B) has a household income at or below eighty percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
>
> (C) Otherwise meets the income eligibility criteria set forth in rules of the Department of Human Resources adopted pursuant to section 40-8.5-105.

20. The organization currently defined in § 40-8.7-103(4), C.R.S. is Energy Outreach Colorado, a Colorado nonprofit corporation formerly known as the Colorado Energy Assistance Foundation.

21. Current Rules 3412(c) and 4412(c) were recently revised through rule revisions in Proceeding No. 21R-0326EG to provide eligibility requirements for individuals in utility low-income programs. Language in those rules includes consistent percentages and statements as the updated § 40-3-106, C.R.S. for household income and other determinations. Through

Bill 21-264 or HB21-1238 and other considerations reviewed at length in Proceeding No. 21R-0449G.

proposed rules in this limited rulemaking, other than definitions discussed below, we do not propose changes to current Rules 3412(c) and 4412(c).

22. Further still, we do not propose additional rules regarding other entities' criteria or determinations. For purposes of reasonable preference determinations regarding rate, charge, service, classification, or facility considerations noted in § 40-3-106, C.R.S., the statutory language recognizes that determinations by the Department of Human Services, Energy Outreach Colorado, the Colorado Energy Office necessarily implicate an income qualified customer's eligibility. Because we propose that confirmation of those entities' determinations can most efficiently and appropriately be raised in the context of adjudication when the Commission considers reasonable preferences or advantages in context, we do not propose that rules are necessary regarding this language.

23. Given revisions in § 40-3-106, C.R.S., that changes "low-income" terminology to "income qualified" eligibility criteria, we propose revisions in the Gas Rules and Electric Rules to reference "income qualified customers," including for example to reporting requirements in proposed Rules 3407(g) and 4407(g), and references regarding electric and gas affordability programs in Rules 3412 and 4412. Notably, because statutory references regarding certain low-income offerings remain unchanged, including reference to the Low-Income Energy Assistance Program (LEAP), we do not propose revisions to references in rules specific to LEAP.

D. Conclusion

24. 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. Participants are encouraged to provide redlines of any specific proposed rule changes.

25. The proposed rules in legislative (*i.e.,* strikeout/underline) format (Attachment A and C) and final format (Attachment B and D) are available through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0557EG.

26. The Commission refers this matter to an Administrative Law Judge (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 an 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.

27. Initial written comments on the proposed rule changes are requested by **January 31, 2023**. Any person wishing to file comments responding to the initial comments is requested to file such comments by **February 14, 2023**. These deadlines are set so that the comments and responses may be considered at the public hearing conducted by the ALJ, nonetheless, persons may file written comments into this Proceeding at any time.

28. The Commission prefers comments be filed using the Commission's E-Filings System at https://www.dora.state.co.us/pls/efi/EFI.homepage under this Proceeding No. 22R-0557EG. Written comments will be accepted and should be addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachments A, B, C and D) shall be filed with the Colorado Secretary of State for publication in the January 10, 2023, edition of *The Colorado Register*.

2. A remote public hearing on the proposed rules and related matters shall be held as follows:

DATE February 27, 2023

TIME: 11:30 a.m.

PLACE: By video conference using Zoom at a link in the calendar of events on the Commission's website: https://puc.colorado.gov/

3. 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.

4. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than January 31, 2023, and that any pre-filed comments responsive to the initial comments be submitted no later than February 14, 2023. The Commission will consider all submissions, whether oral or written. The Commission prefers that comments be filed into this Proceeding using the Commission's E-Filings System at: https://www.dora.state.co.us/pls/efi/EFI.homepage

5. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 14, 2022.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

Notice of Proposed Rulemaking

Tracking number

2022-00809

Department

700 - Department of Regulatory Agencies

Agency

723 - Public Utilities Commission

CCR number

4 CCR 723-4

Rule title

RULES REGULATING GAS UTILITIES

Rulemaking Hearing

Date

02/27/2023

Time

11:30 AM

Location

By video conference using Zoom at a link in the calendar of events on the Commissions website: https://puc.colorado.gov/

Subjects and issues involved

The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to certain of the Commissions Rules Regulating Electric Utilities, 4 Code of Colorado Regulations (CCR) 723-3(Electric Rules), and Rules Regulating Gas Utilities, 4 CCR 723-4 (Gas Rules), in order to implement the recent statutory changes enacted in House Bill (HB) 22-1018, effective April 21, 2022, regarding a state regulated utilitys practices regarding a customers ability to pay the customers utility bill. Through this rulemaking, the Commission satisfies the legislatures requirement, codified at §40-3-103.6(1), C.R.S., that the Commission commence a rulemaking proceeding to adopt standard practices for gas and electric utilities to use when disconnecting services due to nonpayment.

Statutory authority

The statutory authority for the proposed rules is found primarily at § 40-3-103.6,C.R.S. (requiring the Commission to promulgate certain implementing rules) and §40-2-108, C.R.S. (requiring the Commission generally to promulgate rules necessary to administer and enforce Title 40).

Contact information

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Title

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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]

4001. Definitions.

The following definitions apply throughout this Part 4, except where a specific rule or statute provides otherwise. In addition to the definitions here, the definitions found in the Public Utilities Law and Part 1 apply to these rules. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply. In the event of a conflict between these definitions and a definition in Part 1, these definitions shall apply.

(a) "Advanced metering infrastructure" means an integrated system of smart electric utility meters and communication networks that enables two-way communication between an electric utility's data systems and the meter's internet protocol address and allows the electric utility to measure electricity usage or connect or disconnect service remotely.

(ba) "Affiliate" of a utility means a subsidiary of a utility, a parent corporation of a utility, a joint venture organized as a separate corporation or partnership to the extent of the individual utility's involvement with the joint venture, a subsidiary of a parent corporation of a utility or where the utility or the parent corporation has a controlling interest over an entity.

(cb) "Aggregated data" means customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) and/or a compilation of customer data of one or more customers from which and personal information has been removed.

(dc) "Applicant for service" means a person who applies for utility service and who either has taken no previous utility service from that utility or has not taken utility service from that utility within the most recent 30 days.

(ed) "Basis Point" means one-hundredth of a percentage point (100 basis points = 1 percent).

(fe) "Benefit of service" means the use of utility service by each person of legal age who resides at a premises to which service is delivered and who is not registered with the utility as the customer of record.

(gf) "Commission" means the Colorado Public Utilities Commission.

(hg) “Contracted agent” means any person that has contracted with a utility in compliance with rule 4030 to assist in the provision of regulated utility services (e.g., an affiliate or vendor).

(ih) "Cubic foot" means, as the context requires:

(I) At Local Pressure Conditions. For the purpose of measuring gas to a customer at local pressure conditions, a cubic foot is that amount of gas which occupies a volume of one cubic foot under the conditions existing in the customer’s meter as and where installed. When gas is metered at a pressure in excess of eight inches of water column gauge pressure, a suitable correction factor shall be applied to provide for measurement of gas as if delivered and metered at a pressure of six inches of water column gauge pressure. A utility may also apply appropriate factors to correct local pressure measurement to standard conditions.

(II) At Standard Conditions. For all other purposes, including testing gas, a standard cubic foot is that amount of gas at standard conditions which occupies a volume of one cubic foot.

(ji) "Curtailment" means the inability of a transportation customer or a sales customer to receive gas due to a shortage of gas supply.

(kj) "Customer" means any person who is currently receiving utility service. Any person who moves within a utility’s service territory and obtains utility service at a new location within 30 days shall be considered a "customer." Unless stated in a particular rule, "customer" applies to any class of customer as defined by the Commission or by utility tariff.

(lk) “Customer data” means customer specific information, excluding personal information as defined in paragraph 1004(x), that is:

(I) collected from the gas meter by the utility and stored in its data systems;

(II) combined with customer-specific energy usage information on bills issued to the customer for regulated utility service when not publicly or lawfully available to the general public; or

(III) about the customer’s participation in regulated utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs.

(ml) "Dekatherm" (Dth) means a measurement of gas commodity heat content. One Dekatherm is the energy equivalent of 1,000,000 British Thermal Units (1 MMBtu).

(nm) "Distribution system" means the piping and associated facilities used to deliver gas to customers, excluding facilities owned by a utility that are classified on the books and records of the utility as production, storage, or transmission facilities.

(o) "Emergency or safety event or circumstance" means a manmade or natural emergency event or safety circumstance:

(I) that prevents utility staff from being able to safely travel to or work at a customer's residence or place of business for purposes of reconnecting utility service; or

(II) for which a utility has dispatched utility staff members to help respond to the emergency or safety event or circumstance and, due to the timing or number of utility staff dispatched, the utility lacks sufficient trained staff to reconnect utility service at a customer's residence or place of business; and

(III) includes a severe weather event that one or more reputable weather forecasting sources forecasts to occur in the following twenty-four hours and that is more likely than not to result in dangerous travel or on-site outdoor or indoor work conditions for individuals in the path of the weather event.

(pn) "Energy assistance organization" means the nonprofit corporation established for low-income energy assistance pursuant to § 40-8.5-104, C.R.S.

(qo) "Gas" means natural gas; flammable gas; manufactured gas; petroleum or other hydrocarbon gases including propane; or any mixture of gases produced, transmitted, distributed, or furnished by any utility.

(r) "Income qualified utility customer" or "low-income customer" is a customer meeting the requirements of § 40-3-106(1)(d)(II), C.R.S.

(sp) "Informal complaint" means an informal complaint as defined and discussed in the Commission's Rules Regulating Practice and Procedure.

(tq) "Interruption" means a utility's inability to provide transportation to a transportation customer, or its inability to serve a sales customer, due to constraints on the utility's pipeline system.

(ur) "Intrastate transmission pipeline" or "ITP" means generally any person that provides gas transportation service for compensation to or for another person in the State of Colorado using transmission facilities rather than distribution facilities and is exempt from FERC jurisdiction.

(vs) "Local distribution company" (LDC) means any person, other than an interstate pipeline or an intrastate transmission pipeline, engaged in the sale and distribution of gas for end-user consumption. A LDC may also perform transportation services for its end-use customers, for another LDC and/or its end-use customers, as authorized under its effective Colorado jurisdictional tariffs.

(wt) "Local government" means any Colorado county, municipality, city and county, home rule city or town, home rule city and county, or city or town operating under a territorial charter.

(xu) "Local office" means any Colorado office operated by a utility at which persons may make requests to establish or to discontinue utility service. If the utility does not operate an office in Colorado, "local office" means any office operated by a utility at which persons may make requests to establish or to discontinue utility service in Colorado.

(yv) "Main" means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service lateral.

(zw) "Mcf" means 1,000 standard cubic feet.

(aax) "MMBtu" means 1,000,000 British Thermal Units, or one Dekatherm.

(bby) “Non-standard customer data” means all customer data that are not standard customer data.

(ccz) "Past due" means the point at which a utility can affect a customer’s account for regulated service due to non-payment of charges for regulated service.

(ddaa) "Pipeline system" means the piping and associated facilities used in the transmission and/or distribution of gas.

(eebb) "Principal place of business" means the place, in or out of the State of Colorado, where the executive or managing principals who directly oversee the utility's operations in Colorado are located.

(ffcc) “Property owner” means the legal owner of government record for a parcel of real property within the service territory of a utility. A utility may rely upon the records of a county clerk for the county within which a parcel of real property is located to determine ownership of government record.

(gg) "Qualifying communication" means one of the following methods of communicating with a utility customer about a possible upcoming disconnection of service:

(I) a physical visit to the customer's premises during which a utility representative speaks with the customer and provides the customer utility assistance information or, if the customer is not available to speak, leaves utility assistance information for the customer's review; or

(II) a telephone call, text, or e-mail to the customer in which:

(A) the utility representative provides the customer with utility assistance information; and

(B) the utility representative either speaks directly with the customer over the telephone or the customer receives the utility representative's text or e-mail.

(hhdd) "Regulated charges" means charges billed by a utility to a customer if such charges are approved by the Commission, presented on a tariff sheet, and/or contained in a tariff of the utility.

(iiee) "Sales customer" means a person who receives sales service from a utility.

(jjff) "Sales service" means a bundled gas utility service in which the utility both purchases gas commodity for resale to the customer and delivers the gas to the customer.

(kkgg) "Security" includes any stock, bond, note, or other evidence of indebtedness.

(llhh) "Service lateral" means that part of a distribution system from the utility’s main to the entrance to a customer’s physical location.

(mm~~ii~~) "Standard conditions" means gas at a temperature of 60 degrees Fahrenheit and subject to an absolute pressure equal to 14.73 pounds per square inch absolute.

(nnjj) “Standard customer data” means customer data maintained by a utility in its systems in the ordinary course of business.

(oo~~kk~~) "Standby capacity" means the maximum daily volumetric amount of capacity reserved in the utility's system for use by a transportation customer, if the customer purchased optional standby service.

(pp~~ll~~) "Standby supply" means the daily volumetric amount of gas reserved by a utility for the use by a transportation customer should that customer's supply fail, if the customer purchased optional standby service.

(qq~~mm~~) “Third party” means a person who is not the customer, an agent of the customer who has been designated by the customer with the utility and is acting on the customer’s behalf, a regulated utility serving the customer, or a contracted agent of the utility.

(rr~~nn~~) "Transportation" means the exchange, forward-haul, backhaul, flow reversal, or displacement of gas between a utility and a transportation customer through a pipeline system.

(ss~~oo~~) "Transportation customer" means a person who, by signing a gas transportation agreement, elects to subscribe to gas transportation service offered by a utility.

(tt~~pp~~) “Unique identifier” means customer’s name, mailing address, telephone number, or email address that is displayed on a bill.

(uu~~qq~~) "Unregulated charges" means charges that are billed by a utility to a customer and that are not regulated or approved by the Commission, are not contained in a tariff, and are for service or merchandise not required as a condition of receiving regulated utility service.

(vv~~rr~~) “Upstream pipeline” means either a natural gas pipeline or a LDC that provides gas to a LDC.

(ww) "Utility assistance information" means information that a utility representative provides a customer informing the customer that the customer may contact 1-866-heat-help determine if the customer qualifies for utility bill payment assistance.

(xx~~ss~~) "Utility" means a public utility as defined in § 40-1-103, C.R.S., providing sales service or transportation service (or both) in Colorado. This term includes both an ITP and a LDC.

(yy~~tt~~) "Utility service" or "service" means a service offering of a utility, which service offering is regulated by the Commission.

(zz~~uu~~) “Whole building data” means the sum of the monthly gas use for either all service connections at a building on a parcel of real property or all buildings on a parcel of real property.

* * * *

[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 an ~~low-~~income qualified 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.

*** * * ***

[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.~~Outside the hours of 8:00 a.m. and 4:00 p.m., Monday through Thursday

(IV) Between the hours of 12:00 Noon on the day prior to and 8:00 a.m. on the day following any state or federal holiday or day during which the utility's local office is closed.

(V) To the greatest extent practicable, a utility shall not disconnect a customer after 11:59 a.m. on a Monday through Thursday.

(~~I~~VI) 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~~I~~II) 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 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.

(B) A utility shall postpone service discontinuance to a residential customer during an emergency or safety event or circumstance.

(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 qualified customers, defined as customers participating in ~~low-~~income qualified 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.

* * * *

[indicates omission of unaffected rules]

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) A utility shall reconnect a customer's service on the same day as the customer requests reconnection, if the customer makes a payment or payment arrangement in accordance with the utility's policies, requesting reconnection of service on a Monday through Friday that is not a holiday and one of the following circumstances is met:

(I) the customer has advanced metering infrastructure and has requested reconnection of service at least one hour before the close of business for the electric utility's customer service division; except that the electric utility may reconnect service on the day following a disconnection of service if there are internet connectivity, technical, or mechanical problems or emergency conditions that reasonably prevent the utility from remotely reconnecting the customer's service; or,

(II) the customer is without advanced metering infrastructure or a gas utility customer and has requested reconnection of service on or before 12:59 p.m.; except that, an electric utility or gas utility may reconnect the customer's service on the day following a disconnection if:

(A) prior to disconnection of the customer's service, the utility has made a qualifying communication with the customer; or

(B) an emergency or safety event or circumstance arises after disconnection of service that renders the utility's staff temporarily unavailable to safely reconnect service. if next-day reconnection of service is not possible due to the continuation of the emergency or safety event or circumstance, the utility shall reconnect the customer's service as soon as possible.

(~~c~~d) Unless prevented by an emergency or safety event or circumstance~~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~~e) 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]

4411. Low-Income Energy Assistance Act.

(a) Scope and applicability.

(I) Rule 4411 is applicable to gas and combined gas and electric utility providers except those exempted under (II) or (III). Pursuant to §§ 40-8.7-101 through 111, C.R.S., utilities are required to provide an opportunity for their customers to contribute an optional amount through the customers' monthly billing statement.

(II) Municipally owned gas or gas and electric utilities are exempt if:

(A) the utility operates an alternative energy assistance program to support its ~~low-~~ income qualified customers with their energy needs and self-certifies to the Organization through written statement that its program meets the following criteria:

(i) the amount and method for funding of the program has been determined by the governing body; and

(ii) the program monies will be collected and distributed in a manner and under eligibility criteria determined by the governing body for the purpose of residential energy assistance to customers who are challenged with paying energy bills for financial reasons, including seniors on fixed incomes, individuals with disabilities, and ~~low-~~ income qualified individuals, or,

(B) the governing body of the utility determines its service area has a limited number of people who qualify for energy assistance and self-certifies to the Organization via written statement such determination.

(III) A municipally owned gas or gas and electric utility not exempt under subparagraph (a)(II) of this rule, is exempt if:

(A) the utility designs and implements a procedure to notify all customers at least twice each year of the option to conveniently contribute to the Organization by means of a monthly energy assistance charge. Such procedure shall be approved by the governing utility. The governing body of such utility shall determine the disposition and delivery of the optional energy assistance charge that it collects on the following basis:

(i) delivering the collections to the organization for distribution; or

(ii) distributing the moneys under criteria developed by the governing body for the purpose set forth in subparagraph (a)(II)(A)(ii) of this rule;

(B) alternatively, the utility provides funding for energy assistance to the Organization by using a source of funding other than the optional customer contribution on each customer bill that approximates the amount reasonably expected to be collected from an optional charge on customer's bills.

(IV) A municipally gas or gas and electric utility that is exempt under subparagraph (a)(III) of this rule shall be entitled to participate in the Organization's low-income assistance program.

(V) Gas or gas and electric utilities that desire a change in status must inform the Organization and file a notice to the Commission within 30 days prior to expected changes.

(b) Definitions. The following definitions apply only in the context of rule 4411. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(I) "Alternative energy assistance program" means a program operated by a municipally owned electric and gas utility or rural electric cooperative that is not part of the energy assistance program established pursuant to this statute.

(II) "Customer" means the named holder of an individually metered account upon which charges for electricity or gas are paid to a utility. "Customer" shall not include a customer ~~that~~ who receives electricity or gas for the sole purpose of reselling the electricity or gas to others.

(III) "Energy assistance program" or "Program" means the Low Income Energy Assistance Program created by § 40-8.7-104, C.R.S., and designed to provide financial assistance, residential energy efficiency, and energy conservation assistance.

(IV) "Organization" means Energy Outreach Colorado, a Colorado nonprofit corporation.

(V) "Remittance device" means the section of a customer's utility bill statement that is returned to the utility company for payment. This includes but is not limited to paper payment stubs, web page files used to electronically collect payments, and electronic fund transfers.

(VI) "Utility" means a corporation, association, partnership, cooperative electric association, or municipally owned entity that provides retail electric service or retail gas service to customers in Colorado. "Utility" does not mean a propane company.

(c) Plan implementation and maintenance.

(I) Except as provided in paragraph 4411(a), each utility shall implement and maintain a customer opt-in contribution mechanism. The utility's opt-in mechanism shall include, at minimum, the following provisions.

(A) A description of the procedures the utility will use to notify its customers, including those customers that make payments electronically, about the opt-in provision. Utilities may combine their efforts to notify customers into a single state-wide or region-wide effort consistent with the participating utilities communication programs. Each participating utility shall clearly identify its support of the combined communications program, with its corporate name and/or logo visible to the intended audience.

(B) A description of the additional efforts the utility will use to inform its customers about the program to ensure that adequate notice of the opt-in provision is given to all customers. Notification shall include communication to all customers that the donation and related information will be passed through to the Organization.

(C) A description of the check-off mechanism that will be displayed on the monthly remittance device to solicit voluntary donations. The remittance device shall include, at minimum, check-off categories of five dollars, ten dollars, twenty dollars, and "other amount". The remittance device must also note the name of the program as the "voluntary energy assistance program," or if the utility is unable to identify the name of the program individually, the utility shall use a general energy assistance identifier approved by the Commission.

(D) A description or an example of how the utility will display the voluntary contribution as a separate line item on the customer's monthly billing statement and how the voluntary contribution will be included in the total amount due. The line item must identify the contribution as "voluntary".

(E) A description of the notification process that the utility will use to ensure that once a utility customer opts into the program, the energy assistance contribution will be assessed on a monthly basis until the customer notifies the utility of the customer's desire to stop contributing. The utility shall describe how it will manage participation in the program when customers miss one or more voluntary payment, or pay less than the pre-selected donation amount.

(F) Identification of the procedures the utility will use to notify customers of their ability to cancel or discontinue voluntary contributions along with a description of the mechanism the utility will use to allow customers who make electronic payments to discontinue their participation in the opt-in program.

(G) A description of the procedures the utility will use, where feasible, to notify customers participating in the program about the customer's ability to continue to contribute when the customer changes their address within the utility's service territory.

(H) A description of the method the utility will use to provide clear, periodic, and cost-effective notice of the opt-in provision to its customers at least twice per year. Acceptable methods include, but are not limited to, bill inserts, statements on the bill or envelope, and other utility communication pieces.

(I) A description of the start-up costs that the utility incurred in connection with the program along with supporting detailed justification for such costs. The description should include the utility's initial costs of setting up the collection mechanism and reformatting its billing systems to solicit the optional contribution but shall not include the cost of any notification efforts by the utility. Utilities may elect to recover all start-up costs before the remaining moneys generated by the program are distributed to the Organization or over a period of time from the funds generated by the program, subject to Commission review and approval.

(J) An estimate of the on-going costs that the utility expects to incur in connection with the program along with supporting detailed justification for such costs. This estimate shall not include the cost of any notification efforts by the utility.

(K) A detailed justification for the costs identified in subparagraphs (I) and (J). As stated in § 40-8.7-104(3), C.R.S., the costs incurred must be reasonable in connection with the program.

(L) Utilities shall recover the start up cost and on-going cost of administration associated with the program from funds generated from the program. Insert and notification costs shall be considered in the utility's cost of service.

(M) A description of the procedures the utility will use to account for and process program donations separately from customer payments for utility services.

(II) Each utility shall participate in the energy assistance program consistent with its plan approved by the Commission and shall provide the opportunity for its customers to make an optional energy assistance contribution on the monthly remittance device on their utility bill.

(III) The utility may submit an application to the Commission no later than April 1 of each year for approval of reimbursement costs the utility incurred for the program during the previous calendar year. Such application shall include a proposed schedule for the reimbursement of these costs to the utility. The applications shall include detailed supporting justification for approval of these costs. Such detailed justification includes, but is not limited to, copies of invoices and time sheets. Such applications shall not seek reimbursement of costs related to notification efforts. Participating utilities may request reimbursement costs for such notification efforts in base rate filings, subject to Commission review and approval.

(IV) A utility may seek modification of its initial plan or subsequent plans by filing an application with the Commission.

(d) Fund administration.

(I) At a minimum, each utility shall transfer the funds collected from its customers under the energy assistance program to the organization under the following schedule:

(A) for the funds collected during the period of January 1 to March 31 of each year, the utility shall transfer the collected funds to the Organization before May 1 of such year;

(B) for the funds collected during the period of April 1 to June 30 of each year, the utility shall transfer the collected funds to the Organization before August 1 of such year;

(C) for the funds collected during the period of July 1 to September 30 of each year, the utility shall transfer the collected funds to the Organization before November 1 of such year;

(D) for the funds collected during the period of October 1 to December 31 of each year, the utility shall transfer the collected funds to the Organization before February 1 of the next year; and

(E) each utility shall maintain a separate accounting for all energy assistance program funds received by customers.

(II) Each utility shall provide the organization with the following information.

(A) How the funds collected for the previous calendar year were generated, including the number of customers participating in the program. Such report shall include a summary of the number of program participants and funds collected by month, and shall be provided by February 1 of each year.

(B) At each time funds are remitted, a listing of all program participants including the donor's name, billing address, and monthly donation amount. The participant information provided to the organization shall be used exclusively for complying with the requirements of § 40-8.7-101, C.R.S., et seq. and state and federal laws.

(III) The Public Utilities Commission shall submit, as necessary, a bill for payment to the Organization for any administrative costs incurred pursuant to the program.

(IV) The organization shall provide the Office of Utility Consumer Advocate and the Public Utilities Commission with a copy of the written report that is described in § 40-8.7-110, C.R.S. This report shall not contain individual participant information.

(e) Prohibition of disconnection. Utilities shall not disconnect a customer's gas service for non-payment of optional contribution amounts.

4412. Gas Service Affordability Program.

(a) Scope and applicability.

(I) Gas utilities with Colorado retail customers shall provide ~~low-~~income qualified energy assistance by offering rates, charges, and services that grant a reasonable preference or advantage to residential ~~low-~~income qualified customers, as permitted by § 40-3-106, C.R.S.

(II) Rule 4412 is applicable to investor-owned gas utilities subject to rate regulation by the Commission.

(b) Definitions. The following definitions apply only in the context of rule 4412. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

(I) "Administrative cost" means the utility's direct cost for labor (to include the cost of benefit loadings), materials, and other verifiable expenditures directly related to the administration and operation of the program not to exceed ten percent of the total cost of program credits applied against bills for current usage and pre-existing arrearages or $10,000, whichever amount is greater.

(II) "Affordable percentage of income payment" means the amount of the participant's annual bill deemed affordable under subparagraph 4412(e)(I).

(III) "Arrearage" means the past-due amount appearing, as of the date on which a participant newly enters the program, on the then most recent prior bill rendered to a participant for which they received the benefit of service.

(IV) "Colorado Energy Office" (CEO) means the Colorado Energy Office created in § 24-38.5-101, C.R.S.

(V) "Eligible ~~low-~~income qualified customer" means a residential utility customer who meets the household income thresholds pursuant to paragraph 4412(c).

(VI) "Fixed credit" means an annual bill credit established at the beginning of a participant's participation in a program each year delivered as a monthly credit on each participant's bill. The fixed credit is the participant's full annual bill minus the participant's affordable percentage of income payment obligation on the full annual bill.

(VII) "Full annual bill" means the current consumption of a participant billed at standard residential rates. The full annual bill of a participant is comprised of two parts: (1) that portion of the bill that is equal to the affordable percentage of income payment; and (2) that portion of the bill that exceeds the affordable percentage of income payment.

(VIII) "LEAP" means Low-Income Energy Assistance Program, a county-run, federally-funded, program supervised by the Colorado Department of Human Services, Division of Low-Income Energy Assistance.

(IX) "LEAP participant" means a utility customer who at the time of applying to participate in a program has been determined to be eligible for LEAP benefits by the Department during either the Department's current LEAP application period, if that period is open at the time the customer applies for program participation; or (the Department's most recently closed LEAP application period, if that period is closed at the time the customer applies to participate in the program and the Department's next LEAP application period has not yet opened, provided, however, that in order to retain status as a LEAP participant under this definition, the utility customer must apply to the Department during the Department's next LEAP benefit application period and be determined eligible for such benefits.

(X) "Non-participant" means a utility customer who is not receiving ~~low-~~income qualified assistance under rule 4412.

(XI) "Participant" means an eligible ~~low-~~income qualified residential utility customer who is granted the reasonable preference or advantage through participation in a gas service low-income program.

(XII) "Percentage of Income Payment Plan" (PIPP) means a payment plan for participants that does not exceed an affordable percentage of their household income as set forth in subparagraph 4412(e)(I).

(XIII) "Program" means a gas service low-income program approved under rule 4412.

(XIV) "Program credits" means the amount of benefits provided to participants to offset the unaffordable portion of a participant's utility bill and /or dollar amounts credited to participants for arrearage forgiveness.

(XV) "Unaffordable portion" means the amount of the estimated full annual bill that exceeds the affordable percentage of income payment.

(c) Participant eligibility.

(I) Eligible participants are limited to those who meet one or more of the following criteria:

(A) ~~median~~ household income less than or equal to 200 percent of the federal poverty guideline;

(B) median household income less than or equal to 80 percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or

(C) qualification under income guidelines adopted by the Department of Human Services pursuant to § 40-8.5-105, C.R.S.

(II) The utility shall obtain the determination of a participant's eligibility from the Department of Human Services, Energy Outreach Colorado, or the Colorado Energy Office.

(III) If a participant's household income is $0, the utility may establish a process that verifies income on a more frequent basis.

(IV) Program participants shall not be required to make payment on their utility account as a condition of entering into the program.

(d) Enrollment. Utilities shall be responsible for the methods by which participant enrollment in their approved low-income program is obtained and sustained, however the utility should engage in enrollment processes that are efficient and attempt to maximize the potential benefits of participation in the low-income program by low-income customers.

(e) Payment plan.

(I) Participant payments for natural gas bills rendered to participants shall not exceed an affordable percentage of income payment. For accounts for which natural gas is the primary heating fuel, participant payments shall be no lower than two percent and not greater than three percent of the participant's household income. For accounts for which electricity is the primary heating fuel but the participant also has natural gas service, utility participant payments for gas service shall not be greater than one percent of the participant's household income.

(II) In the event that a primary heating fuel for any particular participant has been identified by LEAP, that determination shall be final.

(III) Notwithstanding the percentage of income limits established in subparagraph 4412(e)(I), a utility may establish minimum monthly payment amounts for participants with household income of $0, provided that the participant's minimum payment for a natural gas account shall be no more than $10.00 a month.

(IV) Full annual bill calculation. The utility shall be responsible for estimating a participant's full annual bill for the purpose of determining the unaffordable portion of the participant's full annual bill delivered as a fixed credit on the participant's monthly billing statement.

(V) Fixed credit benefit. The fixed credit shall be adjusted during a program year in the event that standard residential rates, including commodity or fuel charges change to the extent that the full annual bill at the new rates would differ from the full annual bill upon which the fixed credits are currently based by 25 percent or more.

(VI) Levelized budget billing participation. A utility may enroll participants in its levelized budget billing program as a condition of participation in the program, though the utility shall also allow participants the option to opt out of levelized budget billing if they so choose without losing PIPP benefits, which option shall be available to the participants where the utility's automated billing system is capable. Utilities without automated billing systems capable of permitting opt out of levelized budget billing shall reasonably and prudently modify their systems to facilitate opt out of levelized budget billing. Should a participant fail to meet monthly bill obligations and be placed by a utility in its regular delinquent collection cycle, the utility may remove the participant from levelized budget billing in accordance with the utility's levelized budget billing tariff.

(VII) Arrearage credits.

(A) Arrearage credits shall be applied to pre-existing arrearages.

(B) Arrearage credits shall be sufficient to reduce, when combined with participant copayments, if any, the pre-existing arrearages to $0.00 over a period not less than one month and not more than twenty-four months.

(C) Application of an arrearage credit to a participant account may be conditioned by the utility on one or more of the following:

(i) the receipt of regular participant payments toward bills for current usage; or

(ii) the payment of a participant copayment toward the arrearages so long as the participant's copayment total dollar amount does not exceed one percent of gross household income.

(D) Should the participant exit the program prior to the full forgiveness of all pre-existing arrearages, the amount of remaining pre-existing arrearages shall become due in accordance with the utility's tariff filed under rules 4401, 4407, and 4408.

(E) Pre-existing arrears under this subparagraph shall not serve as the basis for the termination of service for nonpayment or as the basis for any other utility collection activity while the customer is participating in the program.

(F) A participant may receive arrearage credits under this section even if that participant does not receive a credit toward current bills.

(VIII) Portability of benefits. A participant may continue to participate without reapplication should the participant change service addresses but remain within the service territory of the utility providing the benefit, provided that the utility may make necessary adjustments in the billing amount to reflect the changed circumstances. A participant who changes service addresses and does not remain within the service territory of the utility providing the benefit must reapply to become a participant at the participant's new service address.

(IX) Payment default provisions. Failure of a participant to make his or her monthly bill payments may result in a utility placing the participant in its regular collection cycle. Partial or late payments shall not result in the removal of a participant from the program.

(f) Program implementation.

Each utility shall maintain effective terms and conditions in its tariffs on file with the Commission describing its low-income program.

(g) Cost recovery.

(I) Each utility shall include in its ~~low-~~income qualified tariff terms and conditions how costs of the program will be recovered.

(II) Program cost recovery.

(A) Program cost recovery shall be based on a fixed monthly fee.

(B) The maximum impact on residential rates shall be no more than $1.00 per month.

(C) In order to determine monthly rates applicable to rate classes other than residential, program costs shall be allocated to each retail rate based on each rate class's share of the test year revenue requirement established in the utility's last Phase II rate case, or under another reasonable methodology supported by quantifiable information. The monthly rate per this subparagraph to be charged each rate schedule customer shall be clearly stated on a tariff sheet.

(D) Utilities shall separately account for the program year's program cost recovery and program and administrative costs to determine if the net of program cost recovery and program and administrative cost are in balance during the program year.

(i) No later than December 31 of each year, the utility shall file a report with the Commission in the most recent miscellaneous proceeding for annual

low-income filings detailing the net difference between program cost recovery and program costs as of October 31 of each year.

(1) Should the net difference of program cost recovery over program and administrative costs be greater than 50 percent derived in D) above, either positive or negative, and the utility is not currently at the maximum impact for non-participants, the utility shall file with the Commission an advice letter and tariff pages seeking approval for the rates determined in subparagraph 4412(g)(II)(D) in order to bring the projected recovery in balance for the ensuing 12 month period. The revised Residential charge shall not exceed the maximum impact for non-participants in subparagraph 4412(g)(II)(C).

(III) The following costs are eligible for recovery by a utility as program costs:

(A) program credits or discounts applied against bills for current usage;

(B) program credits applied against pre-existing arrearages;

(C) program administrative costs; and

(D) Commission-sponsored program evaluation costs required under paragraph 4412(k).

(IV) The utility shall apply, as an offset to cost recovery, all program expenses attributable to the program. Program expenses include utility operating costs; changes in the return requirement on cash working capital for carrying arrearages; changes in the cost of credit and collection activities directly related to ~~low-~~income qualified participants; and changes in uncollectable account costs for these participants.

(V) LEAP grants.

(A) The utility may apply energy assistance grants provided to the participant by the LEAP program to the dollar value of credits granted to individual program participants.

(B) If applying LEAP grants first, a utility shall apply any energy assistance benefit granted to the participant by LEAP to that portion of the program participant's full annual bill that exceeds the participant's affordable percentage of income payment.

(C) If the dollar value of the energy assistance grant is greater than the dollar value of the difference between the program participant's full annual bill and the participant's affordable percentage of income payment, the dollar amount by which the energy assistance grant exceeds the difference will be applied:

(i) first, to any pre-existing arrearages that at the time of the energy assistance grant continues to be outstanding; and

(ii) second, to the account of the program participant as a benefit to the participant.

(D) No portion of an energy assistance or LEAP grant provided to a program participant may be applied to the account of a participant other than the participant to whom the energy assistance grant was rendered.

(h) Other programs. In addition to the utility's low-income program, with Commission approval, a utility may offer other rate relief options to eligible households.

(I) Other programs offered by the utility under rule 4412 must be intended to reach ~~low-~~income qualified households that do not substantially benefit from the provisions of the low-income program. Such programs may take the form of discount rates, tiered discount rates or other direct bill relief methods where the ~~low-~~income qualified household benefitting from the program is granted a reasonable preference in tariffed rates assessed to all residential utility customers.

(II) Cost recovery for other programs combined with the Percentage of Income Payment Plan shall not exceed the maximum impact on residential rates described in subparagraph 4412(g)(II)(C).

(i) Energy efficiency and weatherization.

(I) The utility shall provide all program participants with information on energy efficiency programs offered by the utility or other entities and existing weatherization programs offered by the state of Colorado or other entities.

(II) The utility shall provide the Colorado Energy Office with the name and service address of participant households for which annual natural gas usage exceeds 600 therms annually.

(j) Stakeholder engagement. A utility shall conduct annual meetings with ~~low-~~income qualified stakeholders for the purpose of seeking solutions to issues of mutual concern and aligning program practices with the needs of customers and other stakeholders.

(k) Program evaluation. A triennial evaluation of the program provisions under rule 4412 beginning in 2019 shall be undertaken in order to review best practices in similar low-income assistance programs in existence in other regulatory jurisdictions, as well as evaluate operation of each utility's program for effectiveness in achieving optimum support being provided to ~~low-~~income qualified participants. The evaluation shall also recommend modifications if available that improve the delivery of benefits to participants and increase the efficiency and effectiveness of each program as they exist at the point of evaluation. The program evaluation shall include a customer needs assessment provided that adequate funds are available.

(I) Procurement of the third-party vendor that will perform the evaluation will be undertaken by the Colorado Energy Office. The CEO shall seek the involvement of interested stakeholders including, but not limited to, Commission staff, all Commission regulated electric and gas utilities, LEAP, the Office of Consumer Counsel, and Energy Outreach Colorado in the design of the requirements regarding study focus and final reporting.

(II) Approval of the third-party vendor shall be the responsibility of the Commission. The CEO shall file with the Commission in the most recent annual report proceeding, a request for approval of the contract of the vendor selected. The Commission shall review and act on the request within 30 days.

(III) $00.0013 per customer per month shall be set aside by the utility in order to cover the cost of the program evaluation described in paragraph 4412(k).

(IV) The dollars resulting from the $00.0013 charge shall be recovered as a program cost under subparagraph 4412(g)(III).

(V) The evaluation will be filed by Commission staff in the most recent miscellaneous proceeding for annual low-income filings.

(VI) Staff and the CEO will assess the individual utilities' deferred balances set aside for the program evaluation starting in 2019 at the conclusion of the third program year and each three years thereafter and will determine the amounts each utility is to remit to the third party evaluator based on the contractual terms approved by the Commission for the evaluation.

(l) Annual report. No later than December 31 of each year, each utility shall file a report in the most recent miscellaneous proceeding established by the Commission to receive annual low-income filings using the form available on the Commission's website, based on the 12-month period ending October 31 and containing the following information below:

(I) monthly information on the program including number of participants, amount of benefit disbursement, type of benefit disbursement, LEAP benefits applied to the unaffordable portion of participant's bills, administrative costs, and revenue collection;

(II) the number of applicants for the program;

(III) the number of applicants qualified for the program;

(IV) the number of participants;

(V) the average assistance provided, both mean and median;

(VI) the maximum assistance provided to an individual participant;

(VII) the minimum assistance provided to an individual participant;

(VIII) total cost of the program and the average rate impact on non-participants by rate class, including impact based on typical monthly consumption of both its residential and small business customers;

(IX) the number of participants that had service discontinued as a result of late payment or non-payment, and the amount of uncollectable revenue from participants;

(X) an estimate of utility savings as a result of the implementation of the program (e.g., reduction in trips related to discontinuance of service, reduction in uncollectable revenue, etc.);

(XI) the average monthly and annual total natural gas consumption in PIPP participants' homes;

(XII) the average monthly and annual total natural gas consumption in the utility's residential customer's homes;

(XIII) the number of program participants referred to the weatherization program;

(XIV) the total dollar value of participant arrearages forgiven, the number of customers who had arrearage balances forgiven, and the maximum and minimum dollar value of arrears forgiven;

(XV) a description of the ways in which the program is being integrated with existing energy efficiency, DSM, or behavioral programs offered by the utility;

(XVI) a description of the ways in which the program is being integrated with existing weatherization programs offered by the state of Colorado;

(XVII) a description of program outreach strategies and metrics that illustrate the effectiveness of each outreach strategy;

(XVIII) a description of participant outreach, education, and engagement efforts, including descriptions of communications and materials, and key findings from those efforts;

(XIX) the number of participants at the start of the program year that the utility removed for any reason, the number of participants who opted out of the program after enrollment, the number of potential participants rejected because of the existence of a cap on the program, the period of arrearage time from date participants became eligible and were granted arrearage forgiveness, and the number of participants who came back as eligible participants in the program year after being eligible in a prior program year and were provided arrearage credits in the program year;

(XX) a narrative summary of the utility's recommended program modifications based on report findings; and

(XXI) a statement regarding whether the utility is accommodating PIPP participants' requests to opt out of levelized budget billing pursuant to subparagraph 4412(e)(VI) and, if not, an explanation of why the utility believes it is not reasonable and prudent to modify its automated billing system to accommodate such requests. If the utility plans to accommodate such requests at any point in the upcoming year, a description of the plan, including the anticipated cost of the plan and the date that the functionality in its automated billing system will go online, must be included.

(m) Energy Assistance System Benefit Charge. Beginning October 1, 2021, each utility shall include on its monthly bills a flat energy assistance system benefit charge of 50 cents, with this amount

rising to 75 cents on October 1, 2022, and being adjusted for inflation in accordance with changes in the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for Denver-Aurora-Lakewood beginning on October 1, 2023. The disposition of money collected by the Energy Assistance System Benefit Charge is determined by § 40-8.7-108, C.R.S.

(I) Prior to October 1, 2023, and each year following, Commission staff shall compute the charge adjusted by the index and shall send a letter to each utility stating the charge to be paid by customers during the next calendar year.

* * * *

[indicates omission of unaffected rules]

4753. Periodic DSM Plan Filing.

Each utility shall periodically file, in accordance with paragraph 4752(e), a prospective natural gas DSM plan that covers a DSM period of three years, unless otherwise ordered by the Commission. The plan shall include the following information:

(a) the utility's proposed expenditures by year for each DSM program, by budget category; the sum of these expenditures represents the utility's proposed expenditure target as required by § 40-3.2-103(2)(a), C.R.S.;

(b) the utility's estimated natural gas energy savings over the lifetimes of the measures implemented in a given annual DSM program period, expressed in dekatherms per dollar of expenditure, and presented for each DSM program proposed for Commission approval; this represents the utility's proposed savings target required by § 40-3.2-103(2)(b), C.R.S.;

(c) the anticipated units of energy to be saved annually by a given annual DSM program, which equals the product of the proposed expenditure target and proposed savings target; this product is referred to herein as the energy target;

(d) the estimated dollar per therm value that represents the utility's annual fixed costs that are recovered through commodity sales on a per therm basis;

(e) the utility shall include in its DSM plan application data and information sufficient to describe the design, implementation, oversight and cost effectiveness of the DSM programs. Such data and information shall include, at a minimum, program budgets delineated by year, estimated participation rates and program savings (in therms);

(f) in the information and data provided in a proposed DSM plan, the utility shall reflect consideration of the factors set forth in the Overview and Purpose, rule 4750. At a minimum the utility shall provide the following information detailing how it developed its proposed DSM program:

(I) descriptions of identifiable market segments, with respect to gas usage and unique characteristics;

(II) a comprehensive list of DSM measures that the utility is proposing for inclusion in its DSM plan;

(III) a detailed analysis of proposed DSM programs for a utility's service territory in terms of markets, customer classes, anticipated participation rates (as a number and a percent of the market), estimated energy savings and cost effectiveness;

(IV) a ranking of proposed DSM programs, from greatest value and potential to least, based upon the data required in subparagraph (f)(III);

(V) proposed marketing strategies to promote participation based on industry best practices;

(VI) calculation of cost effectiveness of the proposed DSM programs using a modified TRC test. Each proposed DSM program is to have a projected value greater than or equal to 1.0 using a modified TRC test, except as provided for in paragraph 4753 (g); and

(VII) an analysis of the impact of the proposed DSM program expenditures on utility rates, assuming a 12-month cost recovery period.

(g) In its DSM plan, the utility shall address how it proposes to target DSM services to ~~low-~~income qualified customers. The utility shall also address whether it proposes to provide DSM services directly or indirectly through financial support of conservation programs for ~~low-~~income qualified households administered by the State of Colorado, as authorized by § 40-3.2-103(3)(a), C.R.S. The utility may propose one or more ~~low-income~~ DSM programs for income qualified customers or customers in disproportionately impacted communities that yield a modified TRC test value below 1.0.

(h) In proposing an expenditure target for Commission approval, pursuant to § 40-3.2-103 (2)(a), C.R.S., the utility shall comply with the following:

(I) the utility's annual expenditure target for DSM programs shall be, at a minimum, two percent of a natural gas utility's base rate revenues, (exclusive of commodity costs), from its sales customers in the 12-month calendar period prior to setting the targets, or one-half of one percent of total revenues from its sales customers in the 12-month calendar period prior to setting the targets, whichever is greater;

(II) the utility may propose an expenditure target in excess of two percent of base rate revenues; and

(III) funds spent for education programs, market transformation programs and impact and process evaluations and program planning related to natural gas DSM programs may be recovered without having to show that such expenditures, on an independent basis, are cost-effective; such costs shall be included in the overall benefit/cost ratio analysis.

(i) The utility shall propose a budget to achieve the expenditure target proposed in paragraph 4753 (a). The budget shall be detailed for the overall DSM plan and for each program for each year and shall be categorized into:

(I) planning and design costs;

(II) administrative and DSM program delivery costs;

(III) advertising and promotional costs, including DSM education;

(IV) customer incentive costs;

(V) equipment and installation costs;

(VI) measurement and verification costs; and

(VII) miscellaneous costs.

(j) The budget shall explain anticipated increases/decreases in financial resources and human resources from year to year.

(k) A utility may spend more than the annual expenditure target established by the Commission up to 25 percent over the target, without being required to submit a proposed DSM plan amendment. A utility may submit a proposed DSM plan amendment for approval when expenditures are in excess of 25 percent over the expenditure target.

(l) As a part of its DSM plan, each utility shall propose a DSM plan with a benefit/cost value of unity (1) or greater, using a modified TRC test.

(m) For the purposes of calculating a modified TRC, the non-energy benefits of avoided emissions and societal impacts shall be incorporated as follows.

(I) The initial TRC ratio, which excludes consideration of avoided emissions and other societal benefits, shall be multiplied by 1.05 to reflect the value of the avoided emissions and other societal benefits. The result shall be the modified TRC. A utility may propose for approval a different factor for avoided emissions and societal impacts, but must submit documentation substantiating the proposed value.

(n) Measurement and verification (M & V) plan. The utility shall describe in complete detail how it proposes to monitor and evaluate the implementation of its proposed programs. The utility shall explain how it will accumulate and validate the information needed to measure the plan's performance against the standards, pursuant to rule 4755. The utility shall propose measurement and verification reporting sufficient to communicate results to the commission in a detailed, accurate and timely basis.

Decision No. C22-0815

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0557EG

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLOADO REGULATIONS 723-3, AND RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, PURSUANT TO HOUSE BILL 22-1018.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: December 21, 2022
Adopted Date: December 14, 2022

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to consider amendments to certain of the Commission's Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules), and Rules Regulating Gas Utilities, 4 CCR 723-4 (Gas Rules), in order to implement the recent statutory changes enacted in House Bill (HB) 22-1018, effective April 21, 2022, regarding a state regulated utility's practices regarding a customer's ability to pay the customer's utility bill.

2. Through this rulemaking, the Commission satisfies the legislature's requirement, codified at § 40-3-103.6(1), C.R.S., that the Commission commence a rulemaking proceeding to adopt standard practices for gas and electric utilities to use when disconnecting services due to nonpayment.

3. The statutory authority for the proposed rules is found primarily at § 40-3-103.6, C.R.S. (requiring the Commission to promulgate certain implementing rules) and § 40-2-108, C.R.S. (requiring the Commission generally to promulgate rules necessary to administer and enforce Title 40).

4. The Commission will hold a remote public comment hearing on the proposed rules at **11:30 a.m. on February 27, 2023**.

5. The proposed rule changes are set forth in legislative (*i.e.*, strikeout and underline) format in Attachment A and C to this Decision, and in final format in Attachment B and D to this Decision.

B. Senate Bill 22-1018 and Proposed Rule Overview

6. On April 21, 2022, Governor Jared Polis signed HB 22-1018, which enacts measures regarding a state regulated utility's practices regarding a customer's ability to pay the customer's utility bill.

7. As relevant here, HB 22-1018 requires that the Commission commence a rulemaking to adopt standard practices for gas and electric utilities to use when disconnecting service due to nonpayment.[1] As amended in HB 22-1018, the statutory provisions require that Commission rules must address prohibiting shut off times during weekends, holidays, certain times of day, or during emergency or safety events or circumstances.[2] The Bill further requires

[1] § 40-3-103.6 (1), C.R.S.

[2] § 40-3-103.6(1)(b)(I)(A) through (C), C.R.S.

that rules address certain mandated reconnection requirements,[3] and that the utility shall reconnect a customer's service on the same day requested in certain circumstances.[4]

8. In addition, the Bill further defines and requires terms throughout the statute, including "qualifying communications" required by the utility to inform a customer about a possible upcoming disconnection of service,[5] and "utility assistance information" for the customer to contact to determine if the customer qualifies for utility bill payment assistance.[6]

9. In addition to revisions to § 40-3-103.6, C.R.S., HB 22-1018 revises § 40-3-106, C.R.S. to revise reference to "low income" to include and define "income-qualified utility customer" when referencing that, notwithstanding any provisions of articles 1 to 7 of Title 40 to the contrary, the Commission may approve any rate, charge, service, classification, or facility of gas or electric utility that makes or grants a reasonable preference or advantage to an income-qualified utility customer. The bill adds that the reasonable preference or advantage to the income-qualified utility customer can apply "even if the reasonable preference or advantage applies on a year-round basis."

10. The definition of "income-qualified utility customer" is included through the bill to mean a utility customer who the Department of Human Services; the organization defined in § 40-8.7-103 (4), C.R.S.; or the Colorado Energy Office has determined meets certain requirements including: (1) having a household income at or below 200 percent of the current federal poverty line; (2) having a household income at or below 80 percent of the area median income, as published annually by the United States Department of Housing and Urban

[3] § 40-3-103.6(1)(b)(II), C.R.S.
[4] § 40-3-103.6 (1.5), C.R.S.
[5] § 40-3-103.6 (3)(c), C.R.S.
[6] § 40-3-103.6 (3)(d), C.R.S.

Development; or (3) otherwise meets the income eligibility criteria set forth in rules of the Department of Human Services.

11. As required by § 40-3-103.6, C.R.S., requiring that the Commission commence rulemaking and adopt rules to effectuate certain customer protections, we include proposed rules addressing disconnection of service.

12. For purposes of implementing HB 22-1018 and changes made to § 40-3-106, C.R.S., we propose limited definitional and reference changes. While the Commission continues to propose and implement rule changes regarding "income qualified" and "low income" utility customer programs and needs, adjudications – including rate case proceedings – likely remain the best forums for the Commission to consider whether to approve any rate, charge, service, classification, or facility of gas or electric utility that makes or grants a reasonable preference or advantage to an income-qualified customer.

13. We propose limited definition updates that are consistent with near-final Gas Rule considerations[7] in Proceeding No. 21R-0449G to be parallel and reference the updated statute in both Gas and Electric Rules. Determinations of eligibility for "income-qualified utility customer" in § 40-3-106, C.R.S. are made through sister-agency processes at the Department of Human Services, Energy Outreach Colorado, and the Colorado Energy Office. No further rule updates on eligibility definitions before this Commission are therefore included in the proposed rules.

[7] *See,* Proceeding No. 21R-0449G. At the time of this NOPR, rules are not yet final in Proceeding No. 21R-0449G that focuses on extensive Gas Rule updates. Definitions regarding "income-qualified utility customers" in the Gas and Electric Rules are proposed to reference the statutes, consistent with near-final Gas Rules considered in Proceeding 21R-0449G. Through this rulemaking we propose limited definition and other revisions given HB 22-1018, which are not intended to override significant policy and other considerations made in Proceeding No. 21R-0449G. While final adopted rules in Proceeding No. 21R-0449G may require necessary updates to the Gas

14. We therefore include the limited revisions for consideration below for purposes of this limited rulemaking focused on implementation of HB 22-1018, recognizing that recent, current, and future rulemakings are best suited to address income-qualified and low-income considerations pertinent to this Commission's rules and processes.

C. Proposed Rule Changes

15. An overview of the changes proposed by the Commission fall into two general categories, described below. For each category, we identify and explain the proposed rule change, provide analysis of the change, and, as applicable, pose questions for comments by rulemaking participants.

1. Definitions

16. Corresponding rule revisions are proposed in both updated revisions to Rule 3001 of the Electric Rules, and Rule 4001 of the Gas Rules to add definitions consistent with HB 22-1018, including "advanced metering infrastructure," "emergency or safety event or circumstance," "qualifying communication," and "utility assistance information."

2. Discontinuance and Reconnection of Service

17. As required in § 40-3-103.6, C.R.S., revisions are proposed to Rule 3407 of the Electric Rules, and Rule 4407 of the Gas Rules regarding discontinuance of service. Specifically proposed Rules 3407(e) and corresponding Rule 4407(e) clarify that discontinuance shall not occur outside of certain hours, or on state or federal holidays, and that a utility shall postpone service discontinuance to a residential customer during an emergency or safety event or circumstance, as defined.

Rules being considered here, this proceeding is not intended to reconsider updates to the rules considering Senate

18. The proposed rules further include provisions requiring reconnection of a customer's service, consistent with statute, if payments are made and circumstances are met in Rules 3409 of the Electric Rules, and 4409 of the Gas Rules.

3. Income Qualified Reference

19. As revised, § 40-3-106, C.R.S. changes terminology from "low income" customers and, additionally provides the following definition of "income-qualified utility customer":

> [A] utility customer who the Department of Human Services, created in section 26-1-105; the organization defined in section 40-8.7-103(4); or the Colorado Energy Office, created in section 24-38.5-101, has determined:
>
> (A) has a household income at or below two hundred percent of the current federal poverty line;
>
> (B) has a household income at or below eighty percent of the area median income, as published annually by the United States Department of Housing and Urban Development; or
>
> (C) Otherwise meets the income eligibility criteria set forth in rules of the Department of Human Resources adopted pursuant to section 40-8.5-105.

20. The organization currently defined in § 40-8.7-103(4), C.R.S. is Energy Outreach Colorado, a Colorado nonprofit corporation formerly known as the Colorado Energy Assistance Foundation.

21. Current Rules 3412(c) and 4412(c) were recently revised through rule revisions in Proceeding No. 21R-0326EG to provide eligibility requirements for individuals in utility low-income programs. Language in those rules includes consistent percentages and statements as the updated § 40-3-106, C.R.S. for household income and other determinations. Through

Bill 21-264 or HB21-1238 and other considerations reviewed at length in Proceeding No. 21R-0449G.

proposed rules in this limited rulemaking, other than definitions discussed below, we do not propose changes to current Rules 3412(c) and 4412(c).

22. Further still, we do not propose additional rules regarding other entities' criteria or determinations. For purposes of reasonable preference determinations regarding rate, charge, service, classification, or facility considerations noted in § 40-3-106, C.R.S., the statutory language recognizes that determinations by the Department of Human Services, Energy Outreach Colorado, the Colorado Energy Office necessarily implicate an income qualified customer's eligibility. Because we propose that confirmation of those entities' determinations can most efficiently and appropriately be raised in the context of adjudication when the Commission considers reasonable preferences or advantages in context, we do not propose that rules are necessary regarding this language.

23. Given revisions in § 40-3-106, C.R.S., that changes "low-income" terminology to "income qualified" eligibility criteria, we propose revisions in the Gas Rules and Electric Rules to reference "income qualified customers," including for example to reporting requirements in proposed Rules 3407(g) and 4407(g), and references regarding electric and gas affordability programs in Rules 3412 and 4412. Notably, because statutory references regarding certain low-income offerings remain unchanged, including reference to the Low-Income Energy Assistance Program (LEAP), we do not propose revisions to references in rules specific to LEAP.

D. Conclusion

24. 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. Participants are encouraged to provide redlines of any specific proposed rule changes.

25. The proposed rules in legislative (*i.e.,* strikeout/underline) format (Attachment A and C) and final format (Attachment B and D) are available through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0557EG.

26. The Commission refers this matter to an Administrative Law Judge (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 an 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.

27. Initial written comments on the proposed rule changes are requested by **January 31, 2023**. Any person wishing to file comments responding to the initial comments is requested to file such comments by **February 14, 2023**. These deadlines are set so that the comments and responses may be considered at the public hearing conducted by the ALJ, nonetheless, persons may file written comments into this Proceeding at any time.

28. The Commission prefers comments be filed using the Commission's E-Filings System at https://www.dora.state.co.us/pls/efi/EFI.homepage under this Proceeding No. 22R-0557EG. Written comments will be accepted and should be addressed to the Public Utilities Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachments A, B, C and D) shall be filed with the Colorado Secretary of State for publication in the January 10, 2023, edition of *The Colorado Register*.

2. A remote public hearing on the proposed rules and related matters shall be held as follows:

DATE February 27, 2023

TIME: 11:30 a.m.

PLACE: By video conference using Zoom at a link in the calendar of events on the Commission's website: https://puc.colorado.gov/

3. 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.

4. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than January 31, 2023, and that any pre-filed comments responsive to the initial comments be submitted no later than February 14, 2023. The Commission will consider all submissions, whether oral or written. The Commission prefers that comments be filed into this Proceeding using the Commission's E-Filings System at: https://www.dora.state.co.us/pls/efi/EFI.homepage

5. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 14, 2022.

(S E A L)

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

Notice of Proposed Rulemaking

Tracking number

2022-00822

Department

700 - Department of Regulatory Agencies

Agency

727 - Division of Professions and Occupations - Board of Veterinary Medicine

CCR number

4 CCR 727-1

Rule title

VETERINARIAN AND VETERINARY TECHNICIAN RULES AND REGULATIONS

Rulemaking Hearing

Date

02/09/2023

Time

08:45 AM

Location

Webinar Only: https://us06web.zoom.us/webinar/register/WN_APLcPjWWTzedFLfhuyzBaQ

Subjects and issues involved

The purpose of this Permanent Rulemaking Hearing is for the Board to consider adopting a proposed new Rule 1.11 regarding Recordkeeping Requirements.

Statutory authority

Sections 12-20-204(1), 12-315-106(5)(g), and 24-4-103, C.R.S.

Contact information

Name

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DEPARTMENT OF REGULATORY AGENCIES

State Board of Veterinary Medicine

VETERINARIAN & VETERINARY TECHNICIAN RULES AND REGULATIONS

4 CCR 727-1

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

…

1.11 RECORD KEEPING REQUIREMENTS

This Rule is promulgated pursuant to sections 12-20-204 and 12-315-119 3(b)(I), C.R.S.

A. Practice types for record keeping

Records are required for practice types that includinge small animal, exotic animal, equine, shelter medicine, food animals, spay/neuter clinics, vaccination clinics, and high volume/low-cost facilities.

B. Core Components of Required Records

1. Responsible professional: Name or initials of the veterinarian responsible for the animal.

2. Owner information: Contact information of the animal's owner or person.

3. Patient identification: Name, age, species, breed color, and any additional identification or markings of animal.

4. Dates of interaction: Dates of consultation, examination, treatment and custody of the animal.

5. Medical information: Medical history information, including vaccinations and any complications with vaccinations, anesthesia and/or surgeries.

6. Presentation: How the issue/complaint was presented.

7. Examination Findings: Physical assessment information.

8. Diagnostic Workup: All clinical laboratory reports, imaging records, or consultation.

9. Final Diagnosis: Differential diagnosis and final diagnosis if available.

10. Treatment Plan: Treatment and intended treatment plan including all medications and treatments recommended, prescribed and dispensed, including strength, quantity, and frequency.

11. Surgery and Anesthesia (if applicable): Surgical procedures completed, including name of surgeon, summary of procedure noting abnormalities/complications, anesthesia/sedative agents used, route of administration, strength, monitoring record including name of anesthetist.

12. Progress Notes: Case progress notes including status, assessment, treatments, and, initials of the veterinarian, veterinary technician, or staff responsible for entries.

13. Consent Forms: Signed consent forms (if applicable).

14. Communications: Documentation of all forms of communication including services declined.

15. Animal Identification: Species, breed type or flock identification and number of animals seen.

16. Treatments: Number of animals treated and dates. Identify any anomalies with specific issues.

…

Editor's Notes

History

Rules 1.00, 4.00 eff. 09/30/2007.
Rule 4.00 eff. 01/30/2008.
Entire rule eff. 12/30/2011.
Rule I.B eff. 08/30/2012.
Rule I.B emer. rule eff. 02/08/2013.
Rules I.A, 1.B, 1.E eff. 05/30/2013.
Rule I.A eff. 06/14/2013.
Rules I.B, II.A.17 eff. 09/30/2013.
Rule I eff. 08/14/2014.
Rules 1.2 A.8-18, 1.2 E.4, 1.2 G eff. 11/30/2019.
Rule 1.23 emer. rule eff. 05/01/2020; expired 08/29/2020.
Rule 1.24 emer. rule eff. 05/11/2020; expired 09/08/2020.
Rule 1.23 emer. rule eff. 08/30/2020; expired 12/28/2020.
Rule 1.24 emer. rule eff. 09/09/2020.
Entire rule eff. 10/15/2020.
Rule 1.10 B eff. 12/15/2020.
Rules 1.24, 1.25 emer. rules eff. 12/28/2020.
Rule 1.25 emer. rule eff. 01/11/2021.
Rules 1.4 E-F, 1.12 C eff. 04/14/2021.
Rules 1.24, 1.25 emer. rules eff. 04/27/2021.
Rule 1.25 emer. rule eff. 05/11/2021.
Rules 1.24, 1.25 emer. rules eff. 07/12/2021.
Rule 1.26 emer. rule eff. 11/01/2021.
Rules 1.24, 1.25 emer. rules eff. 11/02/2021.
Rules 1.17 C.1, 1.26 eff. 11/30/2021.
Rules 1.24, 1.25 emer. rules eff. 03/02/2022.
Rules 1.24, 1.25 emer. rules eff. 06/28/2022.

Notice of Proposed Rulemaking

Tracking number

2022-00823

Department

500,1008,2500 - Department of Human Services

Agency

502 - Behavioral Health

CCR number

2 CCR 502-6

Rule title

Behavioral Health Administrative Rules

Rulemaking Hearing

Date

02/03/2023

Time

08:30 AM

Location

1575 Sherman Street, Denver, CO 80203

Subjects and issues involved

HB 22-1278 establishes that the BHA Commissioner selects and contracts with regionally based behavioral health organizations to establish, administer, and maintain adequate networks of behavioral health safety net services and care coordination. Prior to selecting and contracting with the regionally based behavioral health administrative service organizations (BHASO), the BHA is required to determine, through rule, the form and manner for how an organization applies to be a BHASO [27-50-402(1), C.R.S.].

Statutory authority

26-1-107, C.R.S. 27-50-107, C.R.S.

Contact information

Name

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Title

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Title of Proposed Rule:	Form and Manner to Apply to Become a BHASO	
CDHS Tracking #:	22-10-21-01	
Office, Division, & Program: BHA - Policy & External Affairs	Rule Author: Ryan Templeton	Phone: 720-765-7957 E-Mail: ryan.templeton@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [X] Board [ ] Executive Director

b. [X] Regular [ ] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[X] AG Initial Review [X] Initial Board Reading [ ] AG 2nd Review [ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
0	Amended Rules
3	New Rules
0	Repealed Rules
0	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	February 2023

What date is being requested for this rule to be effective?	May 1, 2023
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates: 1st Board _____ 2nd Board _____ Effective Date _____

Title of Proposed Rule:	Form and Manner to Apply to Become a BHASO	
CDHS Tracking #:	22-10-21-01	
Office, Division, & Program: BHA - Policy & External Affairs	Rule Author: Ryan Templeton	Phone: 720-765-7957 E-Mail: ryan.templeton@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

HB 22-1278 establishes that the BHA Commissioner selects and contracts with regionally based behavioral health organizations to establish, administer, and maintain adequate networks of behavioral health safety net services and care coordination. Prior to selecting and contracting with the regionally based behavioral health administrative service organizations (BHASO), the BHA is required to determine, through rule, the form and manner for how an organization applies to be a BHASO [27-50-402(1), C.R.S.].

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- [ ] to comply with state/federal law and/or
- [ ] to preserve public health, safety and welfare

Justification for emergency:

Not applicable

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2022)	State Board to promulgate rules
27-50-107, C.R.S. (2022)	State Board is the Type 1 board for promulgating, revising and repealing BHA rules.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
27-50-402, C.R.S. (2022)	Any qualified public or private corporation; for-profit or not-for-profit organization; or public or private agency, organization, or institution may apply in the form and manner determined by the BHA's rules.

Does the rule incorporate material by reference?	[ ]	Yes	[X]	No
Does this rule repeat language found in statute?	[ ]	Yes	[X]	No

If yes, please explain. Not applicable

Title of Proposed Rule:	Form and Manner to Apply to Become a BHASO	
CDHS Tracking #:	22-10-21-01	
Office, Division, & Program: BHA - Policy & External Affairs	Rule Author: Ryan Templeton	Phone: 720-765-7957 E-Mail: ryan.templeton@state.co.us

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Any qualified public or private corporation; for-profit or not-for-profit organization; or public or private agency, organization, or institution that may apply to be a Behavioral Health Administrative Services Organization (BHASO).

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

Pursuant to C.R.S. 27-50-401(2) the BHA Commissioner shall designate regions of the state for Behavioral Health Administrative Service Organizations to operate.

3. Fiscal Impact

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. ***Answer should NEVER be just "no impact" answer should include "no impact because…."***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

These rules are not expected to have a fiscal impact. These rules will establish how organizations apply to become a BHASO in alignment with the statutory requirements that the BHA shall use a competitive bid process.

County Fiscal Impact

These rules are not expected to drive a direct fiscal impact to Counties because Counties are not eligible to apply to become a BHASO.

Federal Fiscal Impact

These rules are not expected to drive a federal fiscal impact because these rules clarify that Colorado's competitive bid process will be used for selecting BHASOs.

Other Fiscal Impact *(such as providers, local governments, etc.)*

These rules are not expected to drive any other fiscal impact, because these rules clarify that Colorado's competitive bid process will be used for selecting BHASOs.

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

Title of Proposed Rule:	Form and Manner to Apply to Become a BHASO		
CDHS Tracking #:	22-10-21-01		
Office, Division, & Program: BHA - Policy & External Affairs	Rule Author: Ryan Templeton	Phone: 720-765-7957 E-Mail: ryan.templeton@state.co.us	

C.R.S. 27-50-402(1) requires the BHA to utilize a competitive bid process to solicit applications for organizations to apply to be a BHASO. These rules will clarify that the BHA is statutorily required to follow Colorado Procurement Code, pursuant C.R.S. Articles 101 to 112 of Title 24.

5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**

No alternatives to rule-making were considered because C.R.S. 27-50-402(1) requires that BHA to determine, by rule, the form and manner for how organizations apply to be a BHASOs.

OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	*Incorrect Statutory Reference*	*Section 26.5.103 C.R.S.*	*Section 26.5-101(3) C.R.S.*		
2 CCR 502-6 Chapter 1	Establish statutory authority and definitions for rule volume	n/a	CHAPTER 1: STATUTORY AUTHORITY AND DEFINITIONS 1.1 Behavioral Health System Statutory Authority A. Pursuant to C.R.S. 27-50-107 the State Board of Human Services, created pursuant to C.R.S.. 26-1-107, is the Type 1 board for promulgating, revising and repealing BHA rules. B. Pursuant to C.R.S. 27-50-405(4), the BHA may promulgate rules as necessary to implement behavioral health administrative service organizations and care coordination services. 1.2 Definitions A. "Behavioral Health Administration" or "BHA" shall have the same definition as C.R.S. 27-50-101(2), meaning the behavioral health administration established in C.R.S. 27-50-102. B. "Behavioral Health Administrative Services Organization" or "BHASO" means a regionally based behavioral health organization that administers and maintains adequate networks of behavioral health safety-net services and care coordination as described in Colorado Revised Statutes Part 3 of Article 50 of Title 27.	Creates definitions for terms used throughout the rule volume and establishes the authority for the BHA to create these rules.	No
2 CCR 502-6 Chapter 2	Establish rules for how to apply to be a BHASO	n/a	CHAPTER 2:BHA-ADMINISTERED PROGRAMS 2.1 Form and Manner to Apply to be a Behavioral Health Administrative Services Organization (BHASO) A. Pursuant to C.R.S. 27-50-402(2), the BHA	Reiterates the statutory requirement that the BHA shall follow a competitive bid process when soliciting applications to be a BHASO.	No

			shall determine, by rule, the form and manner a qualified public or private corporation; for-profit or not-for-profit organization; or public or private agency, organization, or institution may apply to be a Behavioral Health Administrative Services Organizations (BHASO). B. At least once every five (5) years any qualified public or private corporation; for-profit or not-for-profit organization; or public or private agency, organization, or institution shall apply through a competitive bid process pursuant to the Colorado Procurement Code, Colorado Revised Statutes, Articles 101 to 112 of Title 24, to apply to be a behavioral health administrative services organization.		

STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

The BHA has been working with a contractor (Health Management Associates or HMA) to plan and implement the BHASO structure. Between October 3, 2022, and October 19, 2022, 26 stakeholder engagement interviews were scheduled and held. To maximize attendance, and to allow for varying availability, stakeholder engagement Interviews were scheduled across morning, afternoon, and evening weekday sessions.

Each stakeholder interview was conducted by multiple members of the HMA project team. The Disabilities session and Community Forum sessions included two certified American Sign Language (ASL) interpreters. The Spanish Speaking session and the Community Forum sessions also included a bilingual Spanish-English HMA Senior Associate.

The following stakeholder engagement interviews were held via Zoom videoconferencing technology:

RAE	Mon. 10/3/2022	11:00 am - 12:30 pm	11 participants
RAE	Mon. 10/3/2022	12:30 pm - 2:00 pm	6 participants
MSO/ASO	Tues. 10/4/2022	11:00 am - 12:30 pm	2 participants
RAE	Thur. 10/6/2022	1:30 pm - 3:00 pm	1 participant
Southern Ute Indian Tribe	Fri. 10/7/2022	8:30 am - 10:00 am	3 participants
CMHC	Fri. 10/7/2022	11:00 am - 12:30 pm	17 participants
Hospital/Primary Care	Fri. 10/7/2022	1:00 pm - 2:30 pm	18 participants
Behavioral Health Providers	Mon. 10/10/2022	11:00 am - 12:30 pm	30 participants
Law Enforcement	Mon. 10/10/2022	11:00 am - 12:30 pm	30 participants
MSO/ASO	Mon. 10/10/2022	12:30 pm - 2:00 pm	6 participants
Counties	Mon. 10/10/2022	1:00 pm - 2:30 pm	20 participants
Children's Providers	Tues. 10/11/2022	11:00 am - 12:30 pm	16 participants
IDD	Tues. 10/11/2022	11:00 am - 12:30 pm	8 participants
Schools	Tues. 10/11/2022	4:00 pm - 5:30 pm	10 participants

Office, Division, & Program: BHA - Policy & External Affairs
Rule Author: Ryan Templeton
Phone: 720-765-7957
E-Mail: ryan.templeton@state.co.us

LGBTQ+	Wed. 10/12/2022	11:00 am - 12:30 pm	1 participant
Counties	Wed. 10/12/2022	11:00 am - 12:30 pm	10 participants
Disabilities	Wed. 10/12/2022	1:30 pm - 3:00 pm	6 participants
BIPOC	Wed. 10/12/2022	5:00 pm - 6:30 pm	1 participant
Lived Experience	Wed. 10/12/2022	5:00 pm - 6:30 pm	5 participants
Providers	Thur. 10/13/2022	1:30 pm - 3:00 pm	8 participants
Advocacy	Fri. 10/14/2022	9:00 am - 10:30 am	14 participants
Spanish Speaking	Fri. 10/14/2022	12:00 pm - 1:30 pm	4 participants
General Alternative	Fri. 10/14/2022	1:30 pm - 3:00 pm	1 participant
Persons with SMI	Fri. 10/14/2022	1:30 pm - 3:00 pm	11 participants
Community Forum	Tues. 10/18/2022	6:00 pm - 8:00 pm	4 participants
Community Forum	Wed. 10/19/2022	10:00 am - 12:00 pm	25 participants

A total of approximately 270 people participated in interviews, with a mean average of 10.6 attendees per session. Although a few participants joined more than one session, most attendees were unique individuals.

Each session began with a review of a PowerPoint presentation that was jointly developed with HMA and the Colorado Behavioral Health Administration. The agenda consisted of host introductions, an overview of the Behavioral Health Administrative Services Organization (BHASO), breakout room discussions, and a review of the BHASO implementation timeline and next steps.

Within each session, participants were informed of the availability of closed captioning and Spanish interpretation, and guidance on how to use the Chat function was offered. Participants were notified that sessions, breakout groups and chats would be recorded. One of the sessions was held with ASL interpreters with participants who were deaf or hard of hearing.

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

See list above for individuals, entities, and communities that participated in the stakeholder engagement that created this rule-making packet. These rules, required by statute, reiterates the statutory requirement that the BHA shall follow a competitive bid process when soliciting applications to be a BHASO.

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[ ] Yes [X] No

If yes, who was contacted and what was their input?

n/a

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[ ] Yes [X] No

Name of Sub-PAC: Not applicable

Title of Proposed Rule:	Form and Manner to Apply to Become a BHASO	
CDHS Tracking #:	22-10-21-01	
Office, Division, & Program: BHA - Policy & External Affairs	Rule Author: Ryan Templeton	Phone: 720-765-7957 E-Mail: ryan.templeton@state.co.us

Date presented	Not applicable		
What issues were raised?	Not applicable		
Vote Count	*For*	*Against*	*Abstain*
	n/a	n/a	n/a
If not presented, explain why.	There is not a Behavioral Health Sub-PAC		

PAC

Have these rules been approved by PAC?

[ ] Yes [X] No

Date presented	Not applicable		
What issues were raised?	Not applicable		
Vote Count	*For*	*Against*	*Abstain*
	n/a	n/a	n/a
If not presented, explain why.	Pursuant to PAC Bylaws, BHA's rules are not required to go through PAC.		

Other Comments

Comments were received from stakeholders on the proposed rules:

[ ] Yes [X] No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

There were no comments received specifically related to these rules, required by statute, reiterating the statutory requirement that the BHA shall follow a competitive bid process when soliciting applications to be a BHASO.

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Between October 3, 2022, and October 19, 2022, 26 stakeholder engagement interviews were scheduled and held, with a total of approximately 270 people participating in interviews, with a mean average of 10.6 attendees per session.

While questions were tailored to specific subgroups, participants were introduced to breakout groups with an overview of the key topics for breakout groups included the following:

- Population Goals
- Quality
- Accountability
- Provider Standards
- Payment

Across the stakeholder groups, the most frequent themes centered on the following sentiments and recommendations:

Population Goals

- Need to ensure care during transitions, including transitions between levels of service, providers/provider organizations, and insurance plans

- Important to consider continuity of care for individuals who move in and out of Medicaid
- Align BHASO to RAE regions for consistency
- Consider the impact of geography and travel time on access to services
- Make regions smaller and localized (in relation to network development, measuring access, and care coordination)
- Align crisis services, law enforcement, corrections settings, forensic behavioral health services, and hospitals across a continuum
- Reinforce competency among providers serving children and Include schools in the design of the BHASO
- Standardize deliverables and requirements across the MCOs, RAEs and BHASO
- Need to build out a strong care coordination system to support individuals in the community across setting
- Communication and training across a variety of member facing settings is essential

Quality Framework

- Look at outcomes data, not just claims data
- Outcomes should include recipient and family satisfaction and experiences
- Rather than measuring the timeliness of the first visit, look at the timeliness and availability of ongoing care
- Streamline outcome measures and make data actionable
- When considering network adequacy in each region, consider the distance required to access care
- Look at data on who is denied services
- Review data and measures on the effectiveness of care coordination

Accountability

- The BHASO framework should be clearly defined and equally known by providers, consumer and administration alike; need consistent terms and definitions
- Embrace the four pillars – “Accessibility, Acceptability, Impact and Value” *
- Can they get into care?
- Does the service meet the needs of the member?
- Does it make a difference in member’s life?
- Does the member find it of value?

Provider Standards

- Reinforce use and measurement of Evidence Based Practices (EBPs)
- Invest in workforce development, including peer support specialists
- Reduce administrative burden
- Embed peer support specialists across clinical settings
- Support and increase the use of telehealth practices
- Provide more training to care coordinators to ensure competency
- Improve access to care for youth, tribal members, Spanish speaking, BIPOC and LGBTQ individuals
- Increase the number and presence of community-based care coordinators

Payment Model

- Reimburse peer support services
- Increase Value Based Payments (VBPs) and eliminate Fee for Service (FFS) payments

- Offer incentive payments to providers for people coming out of hospital and jails
- Offer incentive payments to providers for prevention and early treatment of symptoms
- Expand provider enrollment in Medicaid plans; ease Medicaid billing and credentialing processes
- Create clear incentives, outcome targets, and KPIs
- Pay providers enough to live in their communities, particularly in rural and frontier communities
- Align incentives between BHASOs and RAEs
- Include SDoH in payment models

(2 CCR 502-6)

BEHAVIORAL HEALTH ADMINISTRATION

Behavioral Health

BEHAVIORAL HEALTH ADMINISTRATIVE RULES

2 CCR 502-6

CHAPTER 1: STATUTORY AUTHORITY AND DEFINITIONS

1.1 BEHAVIORAL HEALTH SYSTEM STATUTORY AUTHORITY

A. PURSUANT TO C.R.S. 27-50-107 THE STATE BOARD OF HUMAN SERVICES, CREATED PURSUANT TO C.R.S. 26-1-107, IS THE TYPE 1 BOARD FOR PROMULGATING, REVISING AND REPEALING BHA RULES.

B. PURSUANT TO C.R.S. 27-50-405(4), THE BHA MAY PROMULGATE RULES AS NECESSARY TO IMPLEMENT BEHAVIORAL HEALTH ADMINISTRATIVE SERVICE ORGANIZATIONS AND CARE COORDINATION SERVICES.

1.2 DEFINITIONS

A. “BEHAVIORAL HEALTH ADMINISTRATION” OR “BHA” SHALL HAVE THE SAME DEFINITION AS C.R.S. 27-50-101(2), MEANING THE BEHAVIORAL HEALTH ADMINISTRATION ESTABLISHED IN C.R.S. 27-50-102.

B. “BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES ORGANIZATION” OR “BHASO” MEANS A REGIONALLY BASED BEHAVIORAL HEALTH ORGANIZATION THAT ADMINISTERS AND MAINTAINS ADEQUATE NETWORKS OF BEHAVIORAL HEALTH SAFETY-NET SERVICES AND CARE COORDINATION AS DESCRIBED IN COLORADO REVISED STATUTES PART 3 OF ARTICLE 50 OF TITLE 27.

CHAPTER 2: BHA-ADMINISTERED PROGRAMS

2.1 FORM AND MANNER TO APPLY TO BE A BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES ORGANIZATION (BHASO)

A. PURSUANT TO C.R.S. 27-50-402(2), THE BHA SHALL DETERMINE, BY RULE, THE FORM AND MANNER A QUALIFIED PUBLIC OR PRIVATE CORPORATION; FOR-PROFIT OR NOT-FOR-PROFIT ORGANIZATION; OR PUBLIC OR PRIVATE AGENCY, ORGANIZATION, OR INSTITUTION MAY APPLY TO BE A BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES ORGANIZATIONS (BHASO).

B. AT LEAST ONCE EVERY FIVE (5) YEARS ANY QUALIFIED PUBLIC OR PRIVATE CORPORATION; FOR-PROFIT OR NOT-FOR-PROFIT ORGANIZATION; OR PUBLIC OR PRIVATE AGENCY, ORGANIZATION, OR INSTITUTION SHALL APPLY THROUGH A COMPETITIVE BID PROCESS PURSUANT TO THE COLORADO

PROCUREMENT CODE, COLORADO REVISED STATUTES, ARTICLES 101 TO 112 OF TITLE 24, TO APPLY TO BE A BEHAVIORAL HEALTH ADMINISTRATIVE SERVICES ORGANIZATION.

Notice of Proposed Rulemaking

Tracking number

2022-00825

Department

500,1008,2500 - Department of Human Services

Agency

2503 - Income Maintenance (Volume 3)

CCR number

9 CCR 2503-3

Rule title

COLORADO REFUGEE SERVICES PROGRAM (CRSP)

Rulemaking Hearing

Date

02/03/2023

Time

08:30 AM

Location

1575 Sherman Street, Denver, CO 80203

Subjects and issues involved

Colorado Refugee Services Programs (CRSP) FFY23 Colorado state plan was approved by the Office of Refugee Resettlement (ORR) on September 27th, 2022, that incorporated the expansion of Refugee Medical Assistance (RMA) eligibility period. The Director of ORR expanded Refugee Medical Assistance eligibility from eight months to twelve months, on March 28, 2022, as stated on the ORR DCL 22-12 and Federal Register (87 FR 17312). Thus, the rule change will align with the new federal regulation. The ORR letter accentuated ORR Directors authorization to determine RMA eligibility period pursuant to 45 C.F.R. § 400.211. The expanded eligibility will therefore bring positive impact to refugees, by allowing additional time to address medical needs and to become self-sufficient, thereby leading to more effective resettlement of refugees in Colorado. Current rules for Refugee Medical Assistance do not allow eligibility beyond 8 months for ORR eligible-population and are out of alignment with the new federal regulation. Thus, ensuring the inclusion of the expanded RMA eligibility to 12 months will bring uniform knowledge of this change to all the parties involved.

Statutory authority

26-1-107(5)(a)(I), (b); C.R.S.; 26-1-111(2)(a), C.R.S.

Contact information

Name

Bidur Dahal

Title

Stabilization Coordinator

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303.489.5084

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Title of Proposed Rule:	**Expansion of Refugee Medical Assistance (RMA) eligibility period**	
CDHS Tracking #:	**22-12-07-01**	
Office, Division, & Program: Office of Economic Security, Division of Economic and Workforce Support Colorado Refugee Services Program	Rule Author: Bidur Dahal	Phone: 303-489-5084 E-Mail: bidur.dahal@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [x] Board [ ] Executive Director

b. [ ] Regular [X] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[x] AG Initial Review [x] Initial Board Reading [ ] AG 2nd Review [ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
x	Amended Rules
	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	January

What date is being requested for this rule to be effective?	01/06/2023
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION
Comments:

Estimated Dates:	1st Board	01/06/23	2nd Board	02/03/23	Effective Date	01/06/23 (Emer) 3/30/23 (Perm)

DOCUMENT 7

Title of Proposed Rule:	**Expansion of Refugee Medical Assistance (RMA) eligibility period**	
CDHS Tracking #:	**22-12-07-01**	
Office, Division, & Program: Office of Economic Security, Division of Economic and Workforce Support Colorado Refugee Services Program	Rule Author: Bidur Dahal	Phone: 303-489-5084 E-Mail: bidur.dahal@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

Colorado Refugee Services Program's (CRSP) FFY23 Colorado state plan was approved by the Office of Refugee Resettlement (ORR) on September 27th, 2022, that incorporated the expansion of Refugee Medical Assistance (RMA) eligibility period. The Director of ORR expanded Refugee Medical Assistance eligibility from eight months to twelve months, on March 28, 2022, as stated on the ORR DCL 22-12 and Federal Register (87 FR 17312). Thus, the rule change will align with the new federal regulation.

The ORR letter accentuated ORR Director's authorization to determine RMA eligibility period pursuant to 45 C.F.R. § 400.211. The expanded eligibility will therefore bring positive impact to refugees, by allowing additional time to address medical needs and to become self-sufficient, thereby leading to more effective resettlement of refugees in Colorado.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

x	to comply with state/federal law and/or
x	to preserve public health, safety and welfare

Justification for emergency:

Current rules for Refugee Medical Assistance do not allow eligibility beyond 8 months for ORR eligible-population and are out of alignment with the new federal regulation. Thus, ensuring the inclusion of the expanded RMA eligibility to 12 months will bring uniform knowledge of this change to all the parties involved.

Title of Proposed Rule:	**Expansion of Refugee Medical Assistance (RMA) eligibility period**	
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State Board Authority for Rule:

Code	Description
26-1-107(5)(a)(I), (b), C.R.S. (2022)	State Board to promulgate rules that govern program scope and content for all programs administered and services provided by the state department under Titles 26 and 27 of the C.R.S. CRSP is administered by the state department under section 26-2-138, C.R.S. (2022). The program must provide the following, in accordance with the federal act and the state plan: (b) Refugee medical assistance 26-2-138 (3) (b) C.R. S
26-1-111(2)(a), C.R.S. (2022)	State department must administer or supervise all forms of public assistance and welfare that are vested in the state department pursuant to law. CRSP is a public assistance and welfare program administered by the state department under section 26-2-138, C.R.S.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making <u>function</u> AND <u>authority.</u>*

Code	Description
26-2-137(1)(b), C.R.S. (2022)	The state department shall promulgate rules for the delivery of emergency services to legal immigrants and non-citizens
26-2-138(3)-(5), C.R.S. (2022)	The state department must adopt rules to provide benefits and services to refugees that are consistent with the Immigration and Nationality Act and Colorado's state plan.
8 U.S.C. §§ 1522(a)(2), (6)	Authorizing programs for domestic resettlement and assistance to refugees. The ORR must regularly consult state and local governments and in order for states to receive ORR funding, states must submit a state plan that includes benefits and services offered to refugees, meet standards, and report to ORR the use of funds that the state is responsible for administering

Does the rule incorporate material by reference?	[x]	Yes	[ ]	No
Does this rule repeat language found in statute?	[ ]	Yes	[x]	No

If yes, please explain. Policy guidance from ORR is incorporated by reference for further guidance.

Title of Proposed Rule:	**Expansion of Refugee Medical Assistance (RMA) eligibility period**	
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REGULATORY ANALYSIS

1. List of groups impacted by this rule.
Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Colorado Department of Human Services and individual county human services departments will benefit from this rule change because this change will clarify the expanded eligibility of the Refugee Medical Assistance (RMA) program.

Colorado refugee resettlement agencies and other CRSP contactors will benefit by having state rules that match federal program rules regarding expanded RMA program eligibility for all ORR eligible population group.

2. Describe the qualitative and quantitative impact.
How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

This rule change will bring clarity to the CRSP rules that are essential for the efficient and effective provision of benefits and services, to ORR eligible populations in Colorado. This rule would be of benefit to any county worker, supervisor, or director who works with these populations and who are responsible for processing these new case types for RMA, in the respective counties.

3. Fiscal Impact
For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. ***Answer should NEVER be just "no impact" answer should include "no impact because…."***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

The increased eligibility period by four months may result in additional costs as more individuals may be eligible. This is a federally funded program, any additional costs incurred will be reimbursed through federal funding. HCPF is working on a CBMS build to reflect the changes, and is at rudimentary stages, thus the change costs cannot be predicated at this time.

County Fiscal Impact

Counties may experience a slight workload increase if clients have questions about the new eligibility period. This is a federally funded program, any additional costs incurred will be reimbursed through federal funding.

Federal Fiscal Impact

Federal Fiscal impact cannot be predicted as cost incurred is proportional to the number of cases that will be eligible for RMA. Additional costs incurred will be reimbursed through federal funding.

Other Fiscal Impact *(such as providers, local governments, etc.)*
There are no other fiscal impacts.

4. Data Description
List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

There are no studies or data needed for these new rules.

5. Alternatives to this Rule-making
Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**

There were no alternatives considered for the revised rule because these rules are required to comply with new federal regulations, that will lead to more effective resettlement of refugees in Colorado.

Title of Proposed Rule:	**Expansion of Refugee Medical Assistance (RMA) eligibility period**
CDHS Tracking #:	**22-12-07-01**

Office, Division, & Program: Office of Economic Security, Division of Economic and Workforce Support Colorado Refugee Services Program

Rule Author: Bidur Dahal

Phone: 303-489-5084

E-Mail: bidur.dahal@state.co.us

OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
3.310	CRSP address update on program summary	The Colorado Department of Human Services, through the Colorado Refugee Services Program (CRSP), is the single State agency with responsibility for the overall supervision and coordination of this program in Colorado, and for the development and supervision of the annual state plan for Colorado. CRSP operates under the Refugee Act of 1980 and Title IV of the Immigration and Naturalization Act (INA), as amended. Copies of the Immigration and Naturalization Act are available for public inspection by contacting the Colorado State Refugee Coordinator during regular	THE COLORADO DEPARTMENT OF HUMAN SERVICES, THROUGH THE COLORADO REFUGEE SERVICES PROGRAM (CRSP), IS THE SINGLE STATE AGENCY WITH RESPONSIBILITY FOR THE OVERALL SUPERVISION AND COORDINATION OF THIS PROGRAM IN COLORADO, AND FOR THE DEVELOPMENT AND SUPERVISION OF THE ANNUAL STATE PLAN FOR COLORADO. CRSP OPERATES UNDER THE REFUGEE ACT OF 1980 AND TITLE IV OF THE IMMIGRATION AND NATURALIZATION ACT (INA), AS AMENDED. COPIES OF THE IMMIGRATION AND NATURALIZATION ACT ARE AVAILABLE FOR PUBLIC INSPECTION BY CONTACTING THE COLORADO STATE REFUGEE COORDINATOR DURING REGULAR BUSINESS HOURS AT THE COLORADO DEPARTMENT OF HUMAN SERVICES, COLORADO REFUGEE	To ensure accuracy of CRSP's physical address in the state rules.	No

		business hours at the Colorado Department of Human Services, Colorado Refugee Services Program, 1120 Lincoln Street, Suite 1007, Denver, Colorado 80203; or at a state publications depository library. No later editions or amendments are incorporated.	SERVICES PROGRAM, 1575 SHERMAN STREET, DENVER, COLORADO 80203; OR AT A STATE PUBLICATIONS DEPOSITORY LIBRARY. NO LATER EDITIONS OR AMENDMENTS ARE INCORPORATED.		

3. 341	Clarity on expanded RMA eligibility	Each individual member of a household that applies for medical assistance must first be screened for eligibility under the State Medicaid Program. If the individual is determined ineligible for Medicaid, then a determination of eligibility under the Refugee Medical Assistance (RMA) Program must be made. A "household" is defined as a single adult with no children, a married	EACH INDIVIDUAL MEMBER OF A HOUSEHOLD THAT APPLIES FOR MEDICAL ASSISTANCE MUST FIRST BE SCREENED FOR ELIGIBILITY UNDER THE STATE MEDICAID/HEALTH FIRST COLORADO PROGRAM. IF THE INDIVIDUAL IS DETERMINED INELIGIBLE FOR MEDICAID/HEALTH FIRST COLORADO, THEN A DETERMINATION OF ELIGIBILITY UNDER THE REFUGEE MEDICAL ASSISTANCE (RMA) PROGRAM MUST BE MADE. A "HOUSEHOLD" IS DEFINED AS A	To ensure the expanded RMA eligibility is clearly reflected in the state rules and to reflect Colorado Medicaid's new name "Health First Colorado".	No

		couple, a single parent with minor children, or a married couple with their minor children. Any individual of a household who is not eligible for Medicaid shall be considered for Refugee Medical Assistance (RMA). RMA is limited to the time period of eight months after receiving a status that is eligible for CRSP services and benefits (refer to section 3.330 for verification of status for program eligibility). Persons applying for Refugee Medical Assistance will use the State prescribed application for Medicaid. Applicants will first be screened for State Medicaid programs in accordance with the Colorado Department of Health Care Policy and Financing's Medical Assistance Manual (10 CCR 2505-10). In accordance with federal law, in providing Refugee Medical Assistance to refugees, Colorado will provide at least the same	SINGLE ADULT WITH NO CHILDREN, A MARRIED COUPLE, A SINGLE PARENT WITH MINOR CHILDREN, OR A MARRIED COUPLE WITH THEIR MINOR CHILDREN. ANY INDIVIDUAL OF A HOUSEHOLD WHO IS NOT ELIGIBLE FOR MEDICAID/HEALTH FIRST COLORADO SHALL BE CONSIDERED FOR REFUGEE MEDICAL ASSISTANCE (RMA). RMA IS LIMITED TO THE TIME PERIOD OF TWELVE MONTHS AFTER RECEIVING A STATUS THAT IS ELIGIBLE FOR CRSP SERVICES AND BENEFITS (REFER TO SECTION 3.330 FOR VERIFICATION OF STATUS FOR PROGRAM ELIGIBILITY). PERSONS APPLYING FOR REFUGEE MEDICAL ASSISTANCE WILL USE THE STATE PRESCRIBED APPLICATION FOR MEDICAID/HEALTH FIRST COLORADO. APPLICANTS WILL FIRST BE SCREENED FOR STATE MEDICAID/HEALTH FIRST COLORADO PROGRAMS IN ACCORDANCE WITH THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING'S MEDICAL ASSISTANCE MANUAL (10 CCR 2505-10). IN ACCORDANCE WITH FEDERAL LAW, IN PROVIDING REFUGEE MEDICAL		

		services in the same manner and to the same extent as under the state's Medicaid program.	ASSISTANCE TO REFUGEES, COLORADO WILL PROVIDE AT LEAST THE SAME SERVICES IN THE SAME MANNER AND TO THE SAME EXTENT AS UNDER THE STATE'S MEDICAID/HEALTH FIRST COLORADO PROGRAM.		
3.342		Refugees residing in the U.S. fewer than eight months after arrival into the United States, as well as asylees, Cuban/Haitian Entrants/parolees, certain Amerasisans, victims of severe forms of trafficking, and Iraqi and Afghani special immigrant visa holders who are within eight months of being granted status who lose their eligibility for Medicaid because of earnings from employment, will be transferred to RMA without an eligibility determination and the two hundred percent (200%) of poverty rule shall not be applied. The increased earnings from employment shall not affect the refugee's continued medical assistance (RMA) eligibility while within the person's eight months	REFUGEES RESIDING IN THE U.S. FEWER THAN TWELVE MONTHS AFTER ARRIVAL INTO THE UNITED STATES, AS WELL AS ASYLEES, CUBAN/HAITIAN ENTRANTS/PAROLEES, CERTAIN AMERASISANS, VICTIMS OF SEVERE FORMS OF TRAFFICKING, IRAQI AND AFGHANI SPECIAL IMMIGRANT VISA HOLDERS , AND CERTAIN HUMANATARIAN PAROLEES WHO ARE WITHIN TWELVE MONTHS OF BEING GRANTED STATUS WHO LOSE THEIR ELIGIBILITY FOR MEDICAID/HEALTH FIRST COLORADO BECAUSE OF EARNINGS FROM EMPLOYMENT, WILL BE TRANSFERRED TO RMA WITHOUT AN ELIGIBILITY DETERMINATION AND THE TWO HUNDRED PERCENT (200%) OF POVERTY RULE SHALL NOT BE APPLIED. THE INCREASED EARNINGS FROM EMPLOYMENT SHALL NOT AFFECT THE REFUGEE'S CONTINUED MEDICAL ASSISTANCE (RMA) ELIGIBILITY WHILE WITHIN THE PERSON'S TWELVE	To add "certain humanitarian parolees" to 3.342	

		of the RMA eligibility period. A. RMA shall continue until the individual eligible for refugee services reaches the end of his or her eight (8) month eligibility period. B. Initial RMA eligibility determination (where the applicant was not previously eligible for Medicaid) is based on two hundred percent (200%) of the federal poverty level. 1. In determining eligibility for and receipt of RMA, the following are not considered: in-kind services and shelter provided to an applicant by a sponsor or local resettlement agency. Payments, such as refugee cash assistance, matching grant, or reception and placement, received from the refugee resettlement agency are exempt from RMA income determinations. 2. Determination of RMA eligibility will be based on an applicant's income on the date of application. 3. Denial or termination of Refugee Cash Assistance does not cause denial or termination of	MONTHS OF THE RMA ELIGIBILITY PERIOD. A. RMA SHALL CONTINUE UNTIL THE INDIVIDUAL ELIGIBLE FOR REFUGEE SERVICES REACHES THE END OF HIS OR HER TWELVE (12) MONTH ELIGIBILITY PERIOD. B. INITIAL RMA ELIGIBILITY DETERMINATION (WHERE THE APPLICANT WAS NOT PREVIOUSLY ELIGIBLE FOR MEDICAID/HEALTH FIRST COLORADO) IS BASED ON TWO HUNDRED PERCENT (200%) OF THE FEDERAL POVERTY LEVEL. 1. IN DETERMINING ELIGIBILITY FOR AND RECEIPT OF RMA, THE FOLLOWING ARE NOT CONSIDERED: IN-KIND SERVICES AND SHELTER PROVIDED TO AN APPLICANT BY A SPONSOR OR LOCAL RESETTLEMENT AGENCY. PAYMENTS, SUCH AS REFUGEE CASH ASSISTANCE, MATCHING GRANT, OR RECEPTION AND PLACEMENT, RECEIVED FROM THE REFUGEE RESETTLEMENT AGENCY ARE EXEMPT FROM RMA INCOME DETERMINATIONS. 2. DETERMINATION OF RMA ELIGIBILITY WILL BE BASED ON AN APPLICANT'S INCOME ON THE DATE OF APPLICATION. 3. DENIAL OR TERMINATION OF REFUGEE CASH ASSISTANCE DOES NOT CAUSE		

		RMA benefits.	DENIAL OR TERMINATION OF RMA BENEFITS.		

Title of Proposed Rule:	**Expansion of Refugee Medical Assistance (RMA) eligibility period**	
CDHS Tracking #:	**22-12-07-01**	
Office, Division, & Program: Office of Economic Security, Division of Economic and Workforce Support Colorado Refugee Services Program	Rule Author: Bidur Dahal	Phone: 303-489-5084 E-Mail: bidur.dahal@state.co.us

STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

CDHS Division of Economic and Workforce Support

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

CDHS Division of Economic and Workforce Support; Food and Energy Assistance Division; Colorado Department of Local Affairs; Colorado Department of Labor and Employment; Colorado Department of Public Health and Environment; Colorado Department of Health Care Policy and Financing; Refugee Resettlement Agencies (Volags): specifically Lutheran Family Services Rocky Mountains, African Community Center, International Rescue Committee, Jewish Family Services and Project Worthmore; Colorado Alliance for Refugee Empowerment and Success (CARES) contractors; Counties serving CRSP eligible populations.

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[X] Yes [ ] No

If yes, who was contacted and what was their input?

All other state agencies as stated above were contacted and informed.

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[ ] Yes [x] No

Name of Sub-PAC	Economic Security		
Date presented	01/05/2023		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Title of Proposed Rule:	**Expansion of Refugee Medical Assistance (RMA) eligibility period**	
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PAC

Have these rules been approved by PAC?

[ ] Yes [x] No

Date presented	01/05/2023		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[ ] Yes [x] No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

3.310 PROGRAM SUMMARY

~~The Colorado Department of Human Services, through the Colorado Refugee Services Program (CRSP), is the single State agency with responsibility for the overall supervision and coordination of this program in Colorado, and for the development and supervision of the annual state plan for Colorado. CRSP operates under the Refugee Act of 1980 and Title IV of the Immigration and Naturalization Act (INA), as amended. Copies of the Immigration and Naturalization Act are available for public inspection by contacting the Colorado State Refugee Coordinator during regular business hours at the Colorado Department of Human Services, Colorado Refugee Services Program, 1120 Lincoln Street, Suite 1007, Denver, Colorado 80203; or at a state publications depository library. No later editions or amendments are incorporated.~~

THE COLORADO DEPARTMENT OF HUMAN SERVICES, THROUGH THE COLORADO REFUGEE SERVICES PROGRAM (CRSP), IS THE SINGLE STATE AGENCY WITH RESPONSIBILITY FOR THE OVERALL SUPERVISION AND COORDINATION OF THIS PROGRAM IN COLORADO, AND FOR THE DEVELOPMENT AND SUPERVISION OF THE ANNUAL STATE PLAN FOR COLORADO. CRSP OPERATES UNDER THE REFUGEE ACT OF 1980 AND TITLE IV OF THE IMMIGRATION AND NATURALIZATION ACT (INA), AS AMENDED. COPIES OF THE IMMIGRATION AND NATURALIZATION ACT ARE AVAILABLE FOR PUBLIC INSPECTION BY CONTACTING THE COLORADO STATE REFUGEE COORDINATOR DURING REGULAR BUSINESS HOURS AT THE COLORADO DEPARTMENT OF HUMAN SERVICES, COLORADO REFUGEE SERVICES PROGRAM, 1575 SHERMAN STREET, DENVER, COLORADO 80203; OR AT A STATE PUBLICATIONS DEPOSITORY LIBRARY. NO LATER EDITIONS OR AMENDMENTS ARE INCORPORATED.

3.340 REFUGEE MEDICAL ASSISTANCE (RMA)

3.341 OVERVIEW

EACH INDIVIDUAL MEMBER OF A HOUSEHOLD THAT APPLIES FOR MEDICAL ASSISTANCE MUST FIRST BE SCREENED FOR ELIGIBILITY UNDER THE STATE MEDICAID/HEALTH FIRST COLORADO PROGRAM. IF THE INDIVIDUAL IS DETERMINED INELIGIBLE FOR MEDICAID/HEALTH FIRST COLORADO, THEN A DETERMINATION OF ELIGIBILITY UNDER THE REFUGEE MEDICAL ASSISTANCE (RMA) PROGRAM MUST BE MADE. A “HOUSEHOLD” IS DEFINED AS A SINGLE ADULT WITH NO CHILDREN, A MARRIED COUPLE, A SINGLE PARENT WITH MINOR CHILDREN, OR A MARRIED COUPLE WITH THEIR MINOR CHILDREN.

ANY INDIVIDUAL OF A HOUSEHOLD WHO IS NOT ELIGIBLE FOR MEDICAID/HEALTH FIRST COLORADO SHALL BE CONSIDERED FOR REFUGEE MEDICAL ASSISTANCE (RMA). RMA IS LIMITED TO THE TIME PERIOD OF TWELVE MONTHS AFTER RECEIVING A STATUS THAT IS ELIGIBLE FOR CRSP SERVICES AND BENEFITS (REFER TO SECTION 3.330 FOR VERIFICATION OF STATUS FOR PROGRAM ELIGIBILITY).

PERSONS APPLYING FOR REFUGEE MEDICAL ASSISTANCE WILL USE THE STATE PRESCRIBED APPLICATION FOR MEDICAID/HEALTH FIRST COLORADO. APPLICANTS WILL FIRST BE SCREENED FOR STATE MEDICAID/HEALTH FIRST COLORADO PROGRAMS IN ACCORDANCE WITH THE COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING'S MEDICAL ASSISTANCE MANUAL (10 CCR 2505-10).

IN ACCORDANCE WITH FEDERAL LAW, IN PROVIDING REFUGEE MEDICAL ASSISTANCE TO REFUGEES, COLORADO WILL PROVIDE AT LEAST THE SAME SERVICES IN THE SAME MANNER AND TO THE SAME EXTENT AS UNDER THE STATE'S MEDICAID/HEALTH FIRST COLORADO PROGRAM.

~~Each individual member of a household that applies for medical assistance must first be screened for eligibility under the State Medicaid Program. If the individual is determined ineligible for Medicaid, then a determination of eligibility under the Refugee Medical Assistance (RMA) Program must be made. A "household" is defined as a single adult with no children, a married couple, a single parent with minor children, or a married couple with their minor children.~~

~~Any individual of a household who is not eligible for Medicaid shall be considered for Refugee Medical Assistance (RMA). RMA is limited to the time period of eight months after receiving a status that is eligible for CRSP services and benefits (refer to section 3.330 for verification of status for program eligibility).~~

~~Persons applying for Refugee Medical Assistance will use the State prescribed application for Medicaid. Applicants will first be screened for State Medicaid programs in accordance with the Colorado Department of Health Care Policy and Financing's Medical Assistance Manual (10 CCR 2505-10).~~

~~In accordance with federal law, in providing Refugee Medical Assistance to refugees, Colorado will provide at least the same services in the same manner and to the same extent as under the state's Medicaid program.~~

3.342 Initial Refugee Medical Assistance Determination, Eligibility, and Definitions

REFUGEES RESIDING IN THE U.S. FEWER THAN TWELVE MONTHS AFTER ARRIVAL INTO THE UNITED STATES, AS WELL AS ASYLEES, CUBAN/HAITIAN ENTRANTS/PAROLEES, CERTAIN AMERASISANS, VICTIMS OF SEVERE FORMS OF TRAFFICKING, IRAQI AND AFGHANI SPECIAL IMMIGRANT VISA HOLDERS , AND CERTAIN HUMANITARIAN PAROLEES WHO ARE WITHIN TWELVE MONTHS OF BEING GRANTED STATUS WHO LOSE THEIR ELIGIBILITY FOR MEDICAID/HEALTH FIRST COLORADO BECAUSE OF EARNINGS FROM EMPLOYMENT, WILL BE TRANSFERRED TO RMA WITHOUT AN ELIGIBILITY DETERMINATION AND THE TWO HUNDRED PERCENT (200%) OF POVERTY RULE SHALL NOT BE APPLIED. THE INCREASED EARNINGS FROM EMPLOYMENT SHALL NOT AFFECT THE REFUGEE'S CONTINUED MEDICAL ASSISTANCE (RMA) ELIGIBILITY WHILE WITHIN THE PERSON'S TWELVE MONTHS OF THE RMA ELIGIBILITY PERIOD.

A. RMA SHALL CONTINUE UNTIL THE INDIVIDUAL ELIGIBLE FOR REFUGEE SERVICES REACHES THE END OF HIS OR HER TWELVE (12) MONTH ELIGIBILITY PERIOD.

B. INITIAL RMA ELIGIBILITY DETERMINATION (WHERE THE APPLICANT WAS NOT PREVIOUSLY ELIGIBLE FOR MEDICAID/HEALTH FIRST COLORADO) IS BASED ON TWO HUNDRED PERCENT (200%) OF THE FEDERAL POVERTY LEVEL.

1. IN DETERMINING ELIGIBILITY FOR AND RECEIPT OF RMA, THE FOLLOWING ARE NOT CONSIDERED: IN-KIND SERVICES AND SHELTER PROVIDED TO AN APPLICANT BY A SPONSOR OR LOCAL RESETTLEMENT AGENCY. PAYMENTS, SUCH AS REFUGEE CASH ASSISTANCE, MATCHING GRANT, OR RECEPTION AND PLACEMENT, RECEIVED FROM THE REFUGEE RESETTLEMENT AGENCY ARE EXEMPT FROM RMA INCOME DETERMINATIONS.

2. DETERMINATION OF RMA ELIGIBILITY WILL BE BASED ON AN APPLICANT'S INCOME ON THE DATE OF APPLICATION.

3. DENIAL OR TERMINATION OF REFUGEE CASH ASSISTANCE DOES NOT CAUSE DENIAL OR TERMINATION OF RMA BENEFITS.

~~Refugees residing in the U.S. fewer than eight months after arrival into the United States, as well as asylees, Cuban/Haitian Entrants/parolees, certain Amerasisans, victims of severe forms of trafficking, and Iraqi and Afghani special immigrant visa holders who are within eight months of being granted status who lose their eligibility for Medicaid because of earnings from employment, will be transferred to RMA without an eligibility determination and the two hundred percent (200%) of poverty rule shall not be applied. The increased earnings from employment shall not affect the refugee's continued medical assistance (RMA) eligibility while within the person's eight months of the RMA eligibility period.~~

~~A. RMA shall continue until the individual eligible for refugee services reaches the end of his or her eight (8) month eligibility period.~~

~~B. Initial RMA eligibility determination (where the applicant was not previously eligible for Medicaid) is based on two hundred percent (200%) of the federal poverty level.~~

~~1. In determining eligibility for and receipt of RMA, the following are not considered: in-kind services and shelter provided to an applicant by a sponsor or local resettlement agency. Payments, such as refugee cash assistance, matching grant, or reception and placement, received from the refugee resettlement agency are exempt from RMA income determinations.~~

~~2. Determination of RMA eligibility will be based on an applicant's income on the date of application.~~

~~3. Denial or termination of Refugee Cash Assistance does not cause denial or termination of RMA benefits.~~

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Notice of Proposed Rulemaking

Tracking number

2022-00821

Department

2505,1305 - Department of Health Care Policy and Financing

Agency

2505 - Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY

Rulemaking Hearing

Date

02/10/2023

Time

09:00 AM

Location

303 East 17th Avenue, 11th Floor, Denver, CO 80203

Subjects and issues involved

See attachment

Statutory authority

Sections 25.5-1-301 through 25.5-1-303 (2022)

Contact information

Name

Chris Sykes

Title

Medical Services Board Administrator

Telephone

3038664416

Email

chris.sykes@state.co.us

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

NOTICE OF PROPOSED RULES

The Medical Services Board of the Colorado Department of Health Care Policy and Financing will hold a public meeting on Friday, February 10, 2023, beginning at 9:00 a.m., in the eleventh floor conference room at 303 E 17th Avenue, Denver, CO 80203. Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Board Coordinator 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 Medical Services Board Office, 1570 Grant Street, Denver, Colorado 80203, (303) 866-4416, fax (303) 866-4411. Written comments may be submitted to the Medical Services Board Office on or before close of business the Wednesday prior to the meeting. Additionally, the full text of all proposed changes will be available approximately one week prior to the meeting on the Department's website at www.colorado.gov/hcpf/medical-services-board.

This notice is submitted pursuant to § 24-4-103(3)(a) and (11)(a), C.R.S.

MSB 22-10-04-A, Revision to the Medical Assistance Act Rule concerning the Supports Intensity Scale Assessment, Section 8.612.

Medical Assistance. The Supports Intensity Scale and Support Level Algorithm rule change is necessary to improve on the equity, transparency and person-centeredness of SIS-related processes and address stakeholder concerns.

The amendments to this rule include adding clarification to the algorithm table to better articulate the "floors/ceilings" of the formula for each Support Level, additional requirements for CMAs to provide the SIS assessment results to Members following their assessment, along with requiring CMAs to review these results at the Member's initial and annual person-centered support planning meeting. There is also language added for the provision of a "transition/step down" process by way of the Support Level Review when a Member has an additional Safety Risk, so that Members and their providers do not experience a "cliff" in funding and service provision when a Member no longer meets the Safety Risk definitions.

The authority for this rule is contained in Sections 25.5-1-301 through 25.5-1-303 (2022).

MSB 22-07-19-A, Revision to the Medical Assistance Long-Term Services and Supports HCBS Benefit Rule concerning Life Skills Training, Home Delivered Meals, Peer Mentorship, & Transition Setup Services, Section 8.553

Medical Assistance. The Department is revising this section of the rule, 10 CCR 2505-10 8.553 to include the Home Delivered Meals expanded benefit for eligible waiver members who have been discharged from the hospital. These changes include eligibility criteria and utilization parameters for the new benefit.

Additional changes in this section of the rule include updating references of the Spinal Cord Injury (SCI) waiver to the Complementary and Integrative Health (CIH) waiver, clarifying eligibility criteria for the transition services benefits, and updating provider requirements for Peer Mentorship.

The authority for this rule is contained in Sections 25.5-6-1501 C.R.S. (2021) and Sections 25.5-1-301 through 25.5-1-303 (2022).

MSB 22-12-28-A, Revision to the Medical Assistance Rule Concerning the Rural Provider Access and Affordability Stimulus Grant Program, Section 8.8000

Medical Assistance. Create rules to administer the Rural Provider Access and Affordability Stimulus Grant Program established through the enactment of Senate Bill 22-200 including a methodology to determine which rural providers are qualified for grant funds, permissible uses of grant money, and reporting requirements for grant recipients.

The authority for this rule is contained in the American Rescue Plan Act of 2021 (ARPA), Public Law 117-2; Section 25.5-1-207 (5), C.R.S. (2022) and Sections 25.5-1-301 through 25.5-1-303 (2022).

MSB 22-12-28-B, Revision to the Medical Assistance Rule Concerning Medicare-Only Provider Types, Section 8.125 & 8.126

Medical Assistance. This rule clarifies that Medicare-Only Providers means a provider enrolled in the Medical Assistance Program for purposes of Medicare cost-sharing only, pursuant to 42 CFR §455.410(d).

The authority for this rule is contained in the 42 CFR Parts 412, 413, 425, 455, and 495 and Sections 25.5-1-301 through 25.5-1-303 (2022).

MSB 22-12-28-C, Revision to the Medical Assistance Act Rule Concerning Inpatient Payment Rates for Opioid Antagonist, Section 8.300.5.D

Medical Assistance. House Bill 22-1326 appropriates funding allowing the Department of Health Care Policy and Financing to reimburse opioid antagonist drugs outside of its current reimbursement methodology. Currently, there is not distinct reimbursement for the opioid antagonist drug Naloxone in the payment bundles used for outpatient hospital payment calculation. This rule change will allow the Department to make payment outside of the payment bundles, creating greater incentive to inpatient hospitals to provide take-home Naloxone to patients at-risk for opioid overdoses.

The authority for this rule is contained in HB 22-1326 and Sections 25.5-1-301 through 25.5-1-303 (2022).

Notice of Proposed Rulemaking

Tracking number

2022-00824

Department

500,1008,2500 - Department of Human Services

Agency

2509 - Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-8

Rule title

CHILD CARE FACILITY LICENSING

Rulemaking Hearing

Date

02/03/2023

Time

08:30 AM

Location

1575 Sherman Street, Denver, CO 80203

Subjects and issues involved

Colorados most vulnerable population is that of children under the age of 6 months old who are removed from their home of origin. In 2018 the Administration for Children and Families, HHS recommended that Model Family Foster home licensing standards be set in each state. These standards included recommendations for immunizations requirements for those caring for foster children and youth and standards for others who also reside in the home. CDHS created a foster parent stakeholder committee to look at the needs of foster parents as well as how Colorado will incorporate these new recommendations for Colorado Child Welfare practice. A separate rule packet will be done that updates all of the Volume 7 requirements for county and child placement agencies in licensing foster homes. Due to rules around immunization requirements being very concerning and needed individual conversations with stakeholders these rules were specifically taken out to be a separate rule packet.

Statutory authority

26-1-107, C.R.S.; 26-1-109, C.R.S.; 26-1-111, C.R.S.

Contact information

Name

Korey Elger

Title

Permanancy Manager

Telephone

303.249.5662

Email

korey.elger@state.co.us

Title of Proposed Rule:	**Immunizations rules for foster parents**	
CDHS Tracking #:	**20-12-14-01**	
Office, Division, & Program: OCYF/ DCW/ Permanency	Rule Author: Korey.elger@state.co.us	Phone: 303-249-5662
		E-Mail: Korey.Elger@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a.___ [x] Board [ ] Executive Director

b. [ ] Regular [ ] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

[x] AG Initial Review [ ] Initial Board Reading [ ] AG 2nd Review [ ] Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
1	Amended Rules
	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	February 2023

What date is being requested for this rule to be effective?	June 2023
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION
Comments:

Estimated Dates:	1st Board	February 2023	2nd Board	March 2023	Effective Date	June 2023	

Title of Proposed Rule:	**Immunizations rules for foster parents**	
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Office, Division, & Program: OCYF/ DCW/ Permanency	Rule Author: Korey.elger@state.co.us	Phone: 303-249-5662 E-Mail: Korey.Elger@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

Colorado's most vulnerable population is that of children under the age of 6 months old who are removed from their home of origin. In 2018 the Administration for Children and Families, HHS recommended that Model Family Foster home licensing standards be set in each state. These standards included recommendations for immunizations requirements for those caring for foster children and youth and standards for others who also reside in the home. CDHS created a foster parent stakeholder committee to look at the needs of foster parents as well as how Colorado will incorporate these new recommendations for Colorado Child Welfare practice. A separate rule packet will be done that updates all of the Volume 7 requirements for county and child placement agencies in licensing foster homes. Due to rules around immunization requirements being very concerning and needed individual conversations with stakeholders these rules were specifically taken out to be a separate rule packet.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

	to comply with state/federal law and/or
x	to preserve public health, safety and welfare

Justification for emergency:

Not Applicable

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2015)	State Board to promulgate rules
26-1-109, C.R.S. (2015)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2015)	State department to promulgate rules for public assistance and welfare activities.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-1-111(2), C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities.

Does the rule incorporate material by reference?		Yes	x	No
Does this rule repeat language found in statute?		Yes	x	No

If yes, please explain.

Title of Proposed Rule:	**Immunizations rules for foster parents**	
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		E-Mail: Korey.Elger@state.co.us

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

Child welfare sub-Pac, PAC Perm Task Group, Child Placement Agencies, Stakeholder meetings, Office of Child Representative, Office of Respondent parent counsel, children, youth, professionals, and families involved in the child welfare system that have been removed from their home and placed in foster care.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

Counties and Child Placement agencies will need to inquire when they are licensing foster homes as to the caretakers and others in the home if they have received their influenza and pertussis vaccinations if the home requests a medical or personal reason for exemption the county or CPA will need to have this in writing.

3. Fiscal Impact

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. ***Answer should NEVER be just "no impact" answer should include "no impact because…."***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

There is no state fiscal impact as this would not require additional state resources and the Administrative Review Division would need to determine if they would review to this.

County Fiscal Impact

The counties have reported that these standards may cause those interested in being foster parents to not become foster parents and therefore could have concerns about the need to recruit and retain foster parents.

Federal Fiscal Impact

There is no Federal Impact as they had given states the guidance to have standards around immunizations for foster parents and others who reside in the foster home.

Other Fiscal Impact *(such as providers, local governments, etc.)*

There is not that have been identified.

Title of Proposed Rule:	**Immunizations rules for foster parents**	
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		E-Mail: Korey.Elger@state.co.us

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

The Center for Disease Control (CDC) has reported that caregivers can provide indirect protection to your babies by making sure that everyone who is around the baby is up to date with the whooping cough vaccination. Specifically citing from the CDC Website: "Researchers investigate reported cases of whooping cough to better understand the disease, including how it spreads. In some studies, they have been able to identify how a baby caught whooping cough. They determined that in most cases, someone in the baby's household, including parents and siblings, got the child sick. These studies also show that there are many other people that could get babies sick, including grandparents and caregivers." CITE Pregnancy and Whooping Couch Center for disease control and prevention. Source: National Center for Immunization and Respiratory Diseases, Division of Bacterial Diseases Last Reviewed June 29, 2017 As well the Center for disease control (CDC) has research regarding Protection against the Flu: Caregivers of Infants and Young Children. "Children younger than 5 years old– especially those younger than 2– are at higher risk of developing serious flu-related complications. CDC estimates that from 2010 to 2020, flu-related hospitalizations among children younger than 5 years ranged from between 6,000 to 27,000 per year in the United States. Many more have to go to a doctor, an urgent care center, or the emergency room because of flu. Children younger than 6 months old have the highest risk for being hospitalized from flu compared to children of other ages but are too young to get a flu vaccine. Because flu vaccines are not approved for use in children younger than 6 months old, protecting them from flu is especially important. CITE Protection against the Flu: Caregivers of Infants and Young Children. Content source: Centers for Disease Control and Prevention, National Center for Immunization and Respiratory Diseases (NCIRD) Last reviewed September 21, 2022

5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**

This rule has been reviewed and talked through stakeholders' groups since 2018 in Colorado and based on information from the Center for Disease Control and Prevention and the presentations from Pediatrician from Denver Health and CDHS's own medical team this has been determined to be the best way to move forward that based on stakeholder feedback and information from the medical community.

Title of Proposed Rule: **Immunizations rules for foster parents**

CDHS Tracking #: **20-12-14-01**

Office, Division, & Program: OCYF/ DCW/ Permanency

Rule Author: Korey.elger@state.co.us

Phone: 303-249-5662

E-Mail: Korey.Elger@state.co.us

OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	*Incorrect Statutory Reference*	*Section 26.5.103 C.R.S.*	*Section 26.5-101(3) C.R.S.*		
7.708.2 REQUIREMENTS FOR CERTIFICATION OF FAMILY FOSTER CARE HOMES 7.708.21 Character, Suitability, and Qualifications of Family Foster Parents		Each foster parent shall have a health assessment within one year prior to certification or within 30 calendar days after certification and thereafter as required, in writing, by a licensed health care professional. The reports of the medical examinations shall be dated and signed by the examining physician or nurse practitioner and shall be provided to the certifying authority. Reports shall include a statement of the evaluation of the person's physical ability to care for foster children. If, in the opinion of the licensed health care professional or the assessment worker, an emotional or psychological condition exists which would have a negative impact on the care of foster children, the issuance of a license shall be conditioned upon the satisfactory report of a licensed mental health practitioner.	(L) EACH FOSTER PARENT MUST HAVE A HEALTH ASSESSMENT, TO INCLUDE A CURREN VACCINATION RECORD, WITHIN ONE YEAR PRIOR TO CERTIFICATION OR WITHIN 30 CALENDA DAYS AFTER CERTIFICATION AND THEREAFTER AS REQUIRED, IN WRITING, BY A LICENSED HEALTH CARE PROFESSIONAL. THE REPORTS OF THE MEDICAL EXAMINATIONS SHALL BE DATED AND SIGNED BY THE EXAMINING PHYSICIAN OR NURSE PRACTITIONER AND SHALL BE PROVIDED TO THE CERTIFYING AUTHORITY. REPORTS SHALL INCLUDE A STATEMENT OF THE EVALUATION OF THE PERSON'S PHYSICAL ABILITY TO CARE FOR FOSTER CHILDREN AND A COPY OF THEIR CURRENT VACCINATION RECORD. IF THE PROVIDER IS PROVIDING CARE FOR INFANT(S) UNDER 6 MONTHS OF AGE, THE PROVIDER MUST BE CURRENT ON THE INFLUENZA AND PERTUSSIS VACCINATIONS. A MEDICAL EXEMPTION IS ALLOWED WHEN AN INDIVIDUAL HAS A MEDICAL CONDITION THAT PREVENTS THEM FROM RECEIVING A VACCINE. A NON-MEDICAL EXEMPTION IS ALLOWED WHEN AN INDIVIDUAL HAS RELIGIOUS BELIEFS WHOSE TEACHINGS ARE OPPOSED TO IMMUNIZATIONS OR A PERSONAL BELIEF THAT IS OPPOSED TO IMMUNIZATIONS.	Best practice for young children to be protected when removed from their home of origin and placed in a licensed placement	

			R. IF IN THE OPINION OF THE LICENSED HEALTH CARE PROFESSIONAL OR THE ASSESSMENT WORKER, AN EMOTIONAL OR PSYCHOLOGICAL CONDITION EXISTS WHICH WOULD HAVE A NEGATIVE IMPACT ON THE CARE OF FOSTER CHILDREN, THE ISSUANCE OF A LICENSE MUST BE CONDITIONED UPON THE SATISFACTORY REPORT OF A LICENSED MENTAL HEALTH PRACTITIONER.		

Title of Proposed Rule:	**Immunizations rules for foster parents**	
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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

Child welfare sub-Pac, PAC Perm Task Group, Child Placement Agencies, Stakeholder meetings, Office of Child Representative, Office of Respondent parent counsel, children, youth, professionals, and families involved in the child welfare system that have been removed from their home and placed in foster care. CHAMPS (foster parent support organization)

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

Child welfare sub-Pac, PAC Perm Task Group, Child Placement Agencies, Stakeholder meetings, Office of Child Representative, Office of Respondent parent counsel, children, youth, professionals, and families involved in the child welfare system that have been removed from their home and placed in foster care.

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[x] Yes [ ] No

If yes, who was contacted and what was their input?

John Laukkanen is a voting member of the child welfare sub Pac and abstained from the vote, HCPF has a new voting member who is the HCPF IZ benefits manager

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[ ] Yes [x] No

Name of Sub-PAC	Child Welfare		
Date presented	June 2022		
What issues were raised?	Yes		
Vote Count	*For*	*Against*	*Abstain*
	10	10	3
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[x] Yes [ ] No

Date presented	December 2022
What issues were raised?	Yes

Title of Proposed Rule:	**Immunizations rules for foster parents**	
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Vote Count	*For*	*Against*	*Abstain*
	9	5	None
If not presented, explain why.			

Other Comments
Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

Email from Martha Johnson LaPlata County:
Hi, all – After PAC yesterday, I took a more focused look at the proposed immunization rule wording. While I am still opposed to required immunizations because I don't want to lose any foster parents while we are in such a crisis point of lacking placement resources, I do understand and support the science. The wording that got added yesterday went into the wrong place to address exemptions. See attached for my suggestion, based on wording from CDPHE. Consider this as a starting point, if it is helpful.
Martha

DCW staff met with Ms. Johnson and added language that was suggested to come to a compromise

Email received from Office Of Respondent parent counsel:
Hi Minna and Korey,

I just wanted to thank you both so much for your advocacy in the meetings that I observed yesterday, particularly in the vaccine conversation that I know has been a difficult one. I sometimes feel really frustrated when it seems like there is not a parent voice or perspective when these important decisions are being made, and both of you really made sure to hold space for that perspective. I really appreciated Korey's clear explanation of why it is not the same to ask a foster parent to be vaccinated as asking a parent to be vaccinated, and I really appreciated Minna's passion around why this is necessary to keep babies safe. Thank you for having the courage to continue to move this conversation forward in difficult times.

Email from Lindsay Gilcrest from CHAMPS a foster parent support organization
Hi Joe and Korey,
We did some additional outreach to get more feedback from foster parents on the proposed rule. I have attached a summary of that feedback as well as the full responses. As you can see the feedback is split. After this outreach, I think I would still support moving forward with the rule. I am happy to explain this at subpac, but I think given that at least two counties have implemented this with no issues is telling. I wonder if there are others who have done the same? We hope this is helpful to the subpac members. I will see you both tomorrow.
Lindsay

Email from Brian Brant from Lutheran Family Services:

Title of Proposed Rule:	**Immunizations rules for foster parents**	
CDHS Tracking #:	**20-12-14-01**	
Office, Division, & Program: OCYF/ DCW/ Permanency	Rule Author: Korey.elger@state.co.us	Phone: 303-249-5662 E-Mail: Korey.Elger@state.co.us

M

Griffin - CDHS, Mary <mary.griffin@state.co.us>

to Brian, Laurie, Toilynn, me

Good morning Brian. Thank you for your questions about immunizations and the National Model FC Standards. The operation memo was put in place until rules are promulgated as part of the overall State IV-E Plan elements required for FFPSA. The operation memo does allow for religious reasons, health concerns, and allows some discretion on the part of the certifying agency. I wonder if recent significant outbreaks of infectious diseases that at one time were nearly eradicated, raised concern at the federal level. In addition, as you are aware, kids coming into the foster care system often already have compromised immune systems, putting them at risk. Members on the task group have voiced a belief that kids in foster care are not the foster parents' children and with removal and placement in foster care, comes the inherent responsibility for the well-being of these children/youth, including health.

Lee Oesterle from Kids Crossing is representing Fostering Colorado's interests in the task group that is reviewing administrative rules revisions. The group is looking at both recommendations from the FP Steering Committee and also for alignment with the National Model FC Standards. The task group is taking a thoughtful approach. We all agree, that for some people, immunization is a sensitive issue and the group is working to develop the most reasonable solution. Have a good day. Let me know if you have further questions.

On Wed, Aug 7, 2019 at 8:05 AM Brian Brant <Brian.Brant@lfsrm.org> wrote:
Hi Mary,

I hope all is well at DCW and that you've gotten some time away to enjoy your summer.

Several Fostering Colorado members have recently expressed more concern over the immunization requirements under the model Foster Parent Licensing Standards.

I have a few questions for clarification.

ACYF-CB-IM-19-01 says that Title IV-E agencies must develop standards that are "reasonably in accord" with the national standards but it also says that "there is no federal requirement for title IV-E agencies to adhere to the final model standards" and that "title IV-E agencies may design licensing standards to meet the unique geographical, cultural, community, legal, and other needs of the state or tribe"

I know that there were many concerns expressed about the immunization requirements and decision to not allow exemptions except where the immunizations are contrary to the health of the individual as documented by a health professional. Other states are reporting loss of foster homes as a result of this strict interpretation. (https://www.seattletimes.com/seattle-news/foster-parents-to-forgo-licenses-over-forced-flu-shots/). It appears that states have discretion to waive non-safety related rules so I'm wondering how the decision was made to adhere to the strictest interpretation in regard to immunizations?

Thanks for any clarification you can give. I am copying Laurie Burney on this email because she is coming to tomorrow's fostering Colorado meeting and I suspect some folks may throw this question out.

All The Best,

Brian Brant
Vice President, Child and Family Services
Lutheran Family Services Rocky Mountains
303-217-5862 – Work
303-525-9879 - Cell
Internal: 5062
http://www.lfsrm.org

--
Mary Griffin, MSW
Program Administrator Foster Care and Relative Guardianship Assistance

COLORADO
Office of Children, Youth & Families
Division of Child Welfare

P 303.866.3546 I C 303-396-3979 I F 303-866-5563
1575 Sherman Street, 2nd floor, Denver CO 80203
mary.griffin@state.co.us I colorado.gov/CDHS/CW

Personal Pronouns - She, Her, Hers

B

Brian Brant <Brian.Brant@lfsrm.org>

to Mary, Laurie, Toilynn, me

Thank you Mary for your work on this. Lee did update us at the last meeting and the work is clearly very thoughtful. Some of our member agencies are very much in support of the Federal guidelines while

others are struggling. Fostering Colorado is asking member agencies to quantify the numbers of parents who have stated that they will not follow immunization requirements for non-health related reasons. We will share that information as I think it may be helpful for those making decisions to understand the impact. In the meantime, I know that several agencies, including LFS have made the decision not to license new homes that have concerns about the Federal standard.

EXAMPLE OF RULES WITH
SECRETARY OF STATE'S STYLE CODING
REPLACE WITH YOUR OWN RULES

(12 CCR 2509-8)

<Title2>

********** (BREAK BETWEEN SECTIONS)

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "All Caps", and changes made between initial review and final adoption are in [brackets] or highlighted yellow]

7.708.2 REQUIREMENTS FOR CERTIFICATION OF FAMILY FOSTER CARE HOMES
7.708.21 Character, Suitability, and Qualifications of Family Foster Parents

(L) Each foster parent MUST have a health assessment, TO INCLUDE A CURRENT VACCINATION RECORD, within one year prior to certification or within 30 calendar days after certification and thereafter as required, in writing, by a licensed health care professional. The reports of the medical examinations shall be dated and signed by the examining physician or nurse practitioner and shall be provided to the certifying authority. Reports shall include a statement of the evaluation of the person's physical ability to care for foster children AND A COPY OF THEIR CURRENT VACCINATION RECORD.
IF THE PROVIDER IS PROVIDING CARE FOR INFANT(S) UNDER 6 MONTHS OF AGE, THE PROVIDER MUST BE CURRENT ON THE INFLUENZA AND PERTUSSIS VACCINATIONS. A MEDICAL EXEMPTION IS ALLOWED WHEN AN INDIVIDUAL HAS A MEDICAL CONDITION THAT PREVENTS THEM FROM RECEIVING A VACCINE.
A NON-MEDICAL EXEMPTION IS ALLOWED WHEN AN INDIVIDUAL HAS RELIGIOUS BELIEFS WHOSE TEACHINGS ARE OPPOSED TO IMMUNIZATIONS OR A PERSONAL BELIEF THAT IS OPPOSED TO IMMUNIZATIONS.

R.
If in the opinion of the licensed health care professional or the assessment worker, an emotional or psychological condition exists which would have a negative impact on the care of foster children, the issuance of a license MUST be conditioned upon the satisfactory report of a licensed mental health practitioner.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Liquor and Tobacco Enforcement Division

CCR number

1 CCR 203-2

Rule title

1 CCR 203-2 COLORADO LIQUOR RULES 1 - eff 02/14/2023

Effective date

02/14/2023

DEPARTMENT OF REVENUE

Liquor Enforcement Division

COLORADO LIQUOR RULES

1 CCR 203-2

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

Regulation 47-302. Changing, Altering, or Modifying Licensed Premises.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-202(1)(b), 44- 3-202(2)(a)(I)(A), and 44-3-202(2)(a)(I)(D), C.R.S. The purpose of this regulation is to establish procedures for a licensee seeking to make material or substantial alterations to the licensed premises, and provide factors the licensing authority must consider when evaluating such alterations for approval or rejection.

A. After issuance of a license, the licensee shall make no physical change, alteration or modification of the licensed premises that materially or substantially alters the licensed premises or the usage of the licensed premises from the latest approved plans and specifications on file with the state and local licensing authorities without application to, and the approval of, the respective licensing authorities. For purposes of this regulation, physical changes, alterations or modifications of the licensed premises, or in the usage of the premises requiring prior approval, shall include, but not be limited to, the following:

1. Any increase or decrease in the total size or capacity of the licensed premises.

2. The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage alters or changes the sale or distribution of alcohol beverages within the licensed premises.

3. Any substantial or material enlargement of a bar, relocation of a bar, or addition of a separate bar. However, the temporary addition of bars or service areas to accommodate seasonal operations shall not require prior approval unless the additional service areas are accompanied by an enlargement of the licensed premises.

4. An outside service area located on a property owned by a municipality, a city and county, or the unincorporated area of a county, and that the licensee possesses in accordance with subsection (B)(2) of this regulation, may be approved by the state and local licensing authorities upon the annual filing of a modification of premises application, due at the time of initial application or at the time of renewal, on a form approved by the State Licensing Authority, and payment of the associated modification of licensed premises fee as set forth in Regulation 47-506, provided that:

   a. The proposed outside service area located on property owned by the municipality, city and county, or unincorporated areas of a county, is immediately adjacent to the licensed premises;

   b. The licensed premises, as modified, will comprise a definite contiguous area;

   c. Plans and specifications identifying the outside service area, including dates of seasonal operation (if applicable), accompany the form and fee;

   d. Licensees shall maintain records of the dates alcohol service occurs on the outside service area if such space is used seasonally or sporadically, and must provide records to the Division upon request; and

e. All outside service areas are closed to motor vehicle traffic by physical barriers during all times that alcohol service occurs.

5. Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure detailed in the latest approved plans and specifications on file with the state and local licensing authorities. However, the following types of modifications will not require prior approval, even if a local building permit is required: painting and redecorating of premises; the installation or replacement of electric fixtures or equipment, plumbing, refrigeration, air conditioning or heating fixtures and equipment; the lowering of ceilings; the installation and replacement of floor coverings; the replacement of furniture and equipment; and any non-structural remodeling where the remodel does not expand or reduce the existing area designed for the display or sale of alcohol beverage products.

6. The destruction or demolition, and subsequent reconstruction, of a building that contained the retailer's licensed premises shall require the filing of new building plans with the local licensing authority, or in the case of manufacturers and wholesalers, with the state licensing authority. However, reconstruction shall not require an application to modify the premises unless the proposed plan for the newly-constructed premises materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications detailed in the latest approved plans and specifications on file with the state and local licensing authorities.

7. Nothing herein shall prohibit a licensee from modifying its licensed premises to include in the licensed premises a public thoroughfare, if the following conditions are met:

   a. The licensee has been granted an easement for the public thoroughfare for the purpose of transporting alcohol beverages;

   b. The public thoroughfare is authorized solely for pedestrian and non-motorized traffic;

   c. The inclusion of the public thoroughfare is solely for the purpose of transporting alcohol beverages between licensed areas, and no sale or consumption will occur on or within the public thoroughfare; and

   d. Any other conditions as established by the local licensing authority.

8. The addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S.

9. Modification of the licensed premises to include a communal outdoor dining area, subject to the requirements of section 44-3-912, C.R.S., and Regulation 47-1103.

B. In making its decision with respect to any proposed changes, alterations or modifications, the licensing authority must consider whether the premises, as changed, altered or modified, will meet all of the pertinent requirements of the Colorado Liquor or Beer Codes and related regulations. Factors to be taken into account by the licensing authority shall include, but not be limited to, the following:

1. The reasonable requirements of the neighborhood and the desires of the adult inhabitants.

2. The possession, by the licensee, of the changed premises by ownership, lease, rental or other arrangement.

3. Compliance with the applicable zoning laws of the municipality, city and county or county.

4. Compliance with the distance prohibition in regard to any public or parochial school or the principal campus of any college, university, or seminary.

5. The legislative declaration that the Colorado Liquor and Beer Codes are an exercise of the police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.

C. If permission to change, alter or modify the licensed premises is denied, the licensing authority shall give notice in writing and shall state grounds upon which the application was denied. The licensee shall be entitled to a hearing on the denial if a request in writing is made to the licensing authority within fifteen (15) days after the date of notice.

D. This regulation shall be applicable to the holder of a manufacturer's license as specifically defined in Section 44-3-402, C.R.S., or a limited winery defined in section 44-3-403, C.R.S., only if the physical change, alteration, or modification involves any increase or decrease in the total size of the licensed premises, including the addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S. Except, any change, alteration, or modification of a sales room, shall be reported in accordance with subsection (A).

E. The state licensing authority shall not impose any additional fees for the processing or review of an application for a modification of premises for the holder of a manufacturer's license, except for applications to modify the premises through the addition of a noncontiguous location to the licensed premises of a winery licensed pursuant to sections 44-3-402 or 44-3-403, C.R.S. -

Regulation 47-312. Change of Location.

Basis and Purpose. The statutory authority for this regulation includes, but is not limited to, subsections 44-3-103, 44-3-202(1)(b), 44-3-202(2)(a)(I)(A), 44-3-202(2)(a)(I)(D), 44-3-202(2)(a)(I)(R), 44-3-301(9), 443-309, and 44-3-410, C.R.S. The purpose of this regulation is to establish procedures for a licensee requesting to change the location of the licensed premises, and provide factors the licensing authority must consider when evaluating a change for approval or rejection.

A. When a licensee desires to change the location of its licensed premises from the location named in an existing license, it shall make application to the applicable licensing authorities for permission to change location of its licensed premises, except that an application for change of location shall not be required for the demolition and reconstruction of the building in which the original licensed premises was located.

B. Applications to change location shall be made upon forms prepared by the state licensing authority and shall be complete in every detail. Each such application shall state the reason for such change, and in case of a retail license, shall be supported by evidence that the proposed change will not conflict with the desires of the adult inhabitants and the reasonable requirements of the neighborhood in the vicinity of the new location.

1. An application to change the location of a retail license shall contain a report of the local licensing authority of the town, city, county, or city and county in which the license is to be exercised. Such report shall describe the findings of the local licensing authority concerning the reasonable requirements of the neighborhood and the desires of the adult inhabitants with respect to the new location, except that pursuant to section 44-3-312(2)(a), C.R.S., the needs of the neighborhood shall not be considered for a change of location for a club license.

2. When a licensee is required by lease, lease renewal, condemnation, or reconstruction to move its licensed premises to a new address that is located within the same shopping center, campus, fairground, or similar retail center, the local or state licensing authority may, at its discretion, waive the neighborhood needs and desires assessment requirements should it determine that the new location remains within the same neighborhood as the old location.

C. For retail licenses, no change of location shall be permitted until the state licensing authority has, after approval of the local licensing authority, considered the application and such additional information as it may require, and approved of such change. The licensee shall, within sixty (60) days of approval, change the location of its licensed premises to the place specified therein. Once at the new location, the licensee shall no longer conduct the manufacture or sale of alcohol beverages at the former location. A local licensing authority may, at its discretion, extend the time to change the location of the licensed premises, for good cause shown. However, no extension that is beyond twelve (12) months from the original date of approval shall be granted.

D. For those licensees not subject to approval by the local licensing authority, no change of location shall be permitted until the state licensing authority has considered the application and such additional information as it may require, and approved of such change. The licensee shall, within sixty (60) days of approval, change the location of its licensed premises to the place specified therein. Once at the new location, the licensee shall no longer conduct the manufacture or sale of alcohol beverages at the former location. The state licensing authority may, at its discretion, extend the time to change the location, for good cause shown. However, no extension that is beyond twelve months from the original date of approval shall be granted.

E. Once the licensee has changed the location of its licensed premises, the permit to change location shall be conspicuously displayed at the new location, immediately adjacent to the license to which it pertains until the license is renewed.

F. For retail licenses no change of location shall be allowed except to another location within the same city, town, county, or city and county in which the license was originally issued. Except, a retail liquor store licensed on or before January 1, 2016, may apply to move its permanent location to another place within or outside the municipality or county in which the license was originally granted. Once approved, the retail liquor store licensee shall change the location of its premises within three (3) years after such approval.

1. A change of location for a fermented malt beverage retailer or retail liquor store will be approved only if the new location satisfies the distance requirements in section 44-3301(9)(a)(I)(B)-(C), C.R.S.

2. It is unlawful for a licensee to sell any alcohol beverage at a new location until permission is granted by the state licensing and local licensing authorities.

G. Upon application for change of location, public notice shall be required by the local licensing authority in accordance with Section 44-3-311, C.R.S.

H. A licensee located within 500 feet from any public or parochial school or principal campus of any college, university or seminary may apply for a change of location within the same prohibited area in accordance with the requirements of section 44-3-301(9), C.R.S., but may not apply for a change of location within any other prohibited area as defined within section 44-3-313, C.R.S.

I. A licensee that is in lawful possession of its alcohol beverage inventory at the time it receives approval from the local and state licensing authorities to change the location of its licensed premises, may continue to possess its alcohol beverage inventory for sale at the new location.

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Office of the Attorney General

Tracking number: 2022-00714

Opinion of the Attorney General rendered in connection with the rules adopted by the

Liquor and Tobacco Enforcement Division

on 12/21/2022

1 CCR 203-2

COLORADO LIQUOR RULES

The above-referenced rules were submitted to this office on 12/21/2022 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 28, 2022 15:57:26

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 01/30/2023

Effective date

01/30/2023

RULE 7 - RULES AND REGULATIONS FOR THE COMMERCIAL DRIVER'S LICENSE (CDL) PROGRAM

A. BASIS, PURPOSE, AND STATUTORY AUTHORITY

1) The Department is authorized to adopt rules and regulations as necessary for the Commercial Driver's License Program in accordance with sections 24-4-103, 42-2-111(1)(b), 42-2-114.5, 42-2-403, 42-2-406 (3 through 7), and 42-2-407(8), C.R.S.

2) The purpose of these rules is to promote the safety and welfare of the citizens of Colorado by establishing standards and requirements for licensing commercial driver's license testing units and testers, to establish fees for such licensing and maximum fees that may be charged by such testing units, to establish certain procedures and standards for issuing and possessing commercial driver's licenses, and to ensure compliance with state and federal requirements.

B. INCORPORATION BY REFERENCE OF FEDERAL LAW AND OTHER RULES

1) Adoption: The Department incorporates by reference the Federal Motor Carrier Safety Regulations ("FMCSR"), 49 CFR parts 171, 172, and 300-399, Qualifications and Disqualification of Drivers, 42 CFR part 73, 49 U.S.C. Section 5103, 49 U.S.C. Section 31310, and the Colorado Department of Public Safety, Colorado State Patrol, Rules and Regulations Concerning Minimum Standards for the Operation of Commercial Vehicles at 8 CCR 1507.1. Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material.

2) "49 CFR", when referenced in this rule, means the Federal Regulations published in the Code of Federal Regulations ("CFR"), Title 49, parts 171, 172, and 300-399 (February, 2022) by the National Archives and Records Administration's Office of the Federal Register and Government Publishing Office, and available at the original issuing agencies the Federal Motor Carrier Safety Administration and Pipeline and Hazardous Materials Safety Administration, both located at 1200 New Jersey Avenue SE, Washington, D.C., 20590. "42 CFR", when referenced in this rule, means the Federal Regulations published in the Code of Federal Regulations ("CFR"), Title 42, part 73 by the National Archives and Records Administration's Office of the Federal Register and Government Publishing Office, and available at the original issuing agencies the Federal Motor Carrier Safety Administration and Pipeline and Hazardous Materials Safety Administration, both located at 1200 New Jersey Avenue SE, Washington, D.C., 20590. 49 U.S.C. Sections 5103 and 31310, when referenced in this rule, means the United States Code, and are available at the U.S. Department of Transportation, located at 1200 New Jersey Avenue, SE, Washington, DC 20590. Rules and Regulations referenced or incorporated in this rule concerning minimum standards for the operation of commercial vehicles, 8 CCR 1507.1, are available at the original issuing agency headquarters, Colorado Department of Public Safety, Colorado State Patrol, Central Records Unit, 700 Kipling Street, Lakewood, CO 80214. The Federal statutes and State and Federal regulations referenced or incorporated in this rule are on file and available for inspection by contacting the Driver License Section of the Department of Revenue in person at, 1881 Pierce Street, Room 128, Lakewood, Colorado, 80214, or by telephone at 303-205-5600, and copies of the materials may be examined at any state publication depository library.

C. DEFINITIONS

1) AAMVA: American Association of Motor Vehicle Administrators is a voluntary, nonprofit, tax exempt, educational unit that represents state and provincial officials in the United States and Canada who administer and enforce motor vehicle laws CODE OF COLORADO REGULATIONS 1 CCR 204-30 Division of Motor Vehicles.

2) CDL: “Commercial Driver’s License” as defined in section 42-2-402(1), C.R.S.

3) CDL Compliance Unit: The administrative unit contained within the Department charged with the oversight and regulation of CDL third party testing units and testers on AAMVA's CDL skills testing.

4) CDL Passenger Vehicle: A passenger vehicle designed to transport 16 or more passengers, including the driver.

5) CDL Skills Test: “Driving tests” as referenced in section 42-2-402, C.R.S. and consists of the Vehicle Inspection, Basic Control Skills, and the Road Test.

6) CDL Vehicle Class: A group or type of vehicle with certain operating characteristics.

    a) Class A: Any combination of vehicles which has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more) whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,001 pounds) whichever is greater.

    b) Class B: Any single vehicle which has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), or any such vehicle towing a vehicle with a gross vehicle weight rating or gross vehicle weight that does not exceed 4,536 kilograms (10,001 pounds).

    c) Class C: Any single vehicle, or combination of vehicles, that does not meet the definition of Class A or Class B, but is either designed to transport 16 or more passengers, including the driver, or is transporting material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or is transporting any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

7) CLP – Commercial Learner's Permit: The permit issued by the Department entitling the driver, while having such permit in his/her immediate possession, to drive a commercial motor vehicle of certain classes and/or endorsement(s), and/or restriction(s) upon the highways with a driver that possesses a CDL with the same class and/or endorsements or higher, as the CLP holder.

8) CMV: “Commercial Motor Vehicle” as defined in section 42-2-402(4), C.R.S.

9) C.R.S.: Colorado Revised Statutes.

10) CSTIMS - Commercial Skills Test Information Management System: Web-based system used by states to manage the CDL Skills Test portion of the CDL licensing process.

11) Disqualifications: The suspension, revocation, cancellation, or any other withdrawal by the Department of a person's privilege to drive a CMV or a determination by the FMCSA under the rules of practice for motor carrier safety contained in 49 CFR, that a person is no longer qualified to operate a CMV under 49 CFR; or the loss of qualification that automatically follows conviction of an offense listed in 49 CFR.

12) Designed to Transport: The manufacturer's original rated capacity for the vehicle.

13) ELDT: Entry Level Driver Training - FMCSA's Entry Level Driver Training (ELDT) regulations set the baseline for training requirements for entry-level drivers. This includes those applying to obtain a Class A or Class B CDL for the first time, upgrade an existing Class B CDL to a Class A CDL or obtain a school bus (S), passenger (P), or hazardous materials (H) endorsement for the first time.

14) Endorsements: The letter indicators below added to a CDL and/or CLP indicate successful completion of the appropriate knowledge, and if applicable, the CDL Skills Test, and allow the operation of a special configuration of vehicle(s):

    a) 3 = Three wheel motorcycle (not allowed on a CLP per 49 CFR)

    b) H = Hazardous materials (Not allowed on a CLP per 49 CFR)

    c) M = Motorcycle (not allowed on a CLP per 49 CFR)

    d) N = Tank vehicles

    e) P = CDL Passenger vehicle

    f) S = School buses

    g) T = Double/triple trailers (not allowed on a CLP per 49 CFR)

    h) X = Combination of tank vehicle and hazardous materials (Not allowed on a CLP per 49 CFR)

15) Exemptions: Regulatory relief given to a person or class of persons normally subject to regulations.

16) FMCSA: Federal Motor Carrier Safety Administration is an agency within the USDOT.

17) FMCSR: Federal Motor Carrier Safety Regulations (49 CFR).

18) GCWR: Gross Combination Weight Rating is the value specified by the manufacturer as the maximum loaded weight of the combination vehicle.

19) Government agency: A state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

20) Intrastate Driver: A driver with a CDL restricted to operating a CMV within the boundaries of Colorado, and not authorized to transport items of interstate commerce or hazardous materials.

21) Interstate Commerce: Trade, traffic, or transportation in the United States between a place in a state and a place outside of such state (including a place outside of the United States), or between two places in a state through another state or a place outside of the United States, or between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States.

22) Interstate Driver: A CDL holder authorized to cross state lines and transport interstate commerce while operating a CMV.

23) Intrastate Commerce: Trade, traffic, or transportation in any state that is not described in the term “interstate commerce”.

24) Knowledge Test: A written test that meets the federal standards contained in 49 CFR.

25) Non-Profit: An organization filing with the United States Code 26 USC Section 501(c).

26) Paved Area: A paved area is a surface made up of materials and adhesive compounds of a sufficient depth and strength that the area provides a durable, solid, smooth surface upon which an applicant may demonstrate basic vehicle control skills.

27) Public Transportation Entity: A mass transit district or mass transit authority authorized under the laws of this state to provide transportation services to the general public.

28) Restrictions: Prohibits the operation of certain types of vehicles or restricts operating a CMV to within designated boundaries:

    a) E = No Manual Transmission

    b) K = Intrastate only

    c) L = No Air Brake equipped CMV

    d) M = No Class A Passenger Vehicle

    e) N = No Class A and B Passenger Vehicle

f) O = No Tractor-Trailer

g) P = No Passenger

h) X = No Liquid in Tank

i) V = Medical Variance (49 CFR)

j) Z = Restricted from operating a CMV with full air brakes

29) Self Certification Choice:

a) Non-excepted interstate. A person's certification that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR, and is required to be medically examined and certified pursuant to 49 CFR.

b) Excepted interstate. A person's certification must certify that he or she operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR from all or parts of the qualification requirements of 49 CFR, and is therefore not required to be medically examined and certified pursuant to 49 CFR.

c) Non-excepted intrastate. A person's certification that he or she operates only in intrastate commerce and therefore is subject to Colorado driver qualification requirements.

d) Excepted intrastate. A person's certification must certify that he or she operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the Colorado driver qualification.

30) Shadow Skills Test: Administered skills tests required of the new examiner candidate.

31) TPR: Training Provider Registry - The Training Provider Registry supports FMCSA's goal of ensuring that only qualified drivers are behind the wheel of commercial motor vehicles (CMVs). The Registry will connect entry-level drivers with training providers who can equip them with the knowledge to safely operate CMVs for which a commercial learner's permit (CLP) or commercial driver's license (CDL) is required.

32) USDOT: United States Department of Transportation.

D. DRIVER LICENSING REQUIREMENTS

1) Each applicant applying for a CDL or CLP must be a resident of Colorado, at least 18 years of age, and comply with the testing and licensing requirements of the Department.

a) The CDL and CLP will indicate the class of license, any endorsements, and any restrictions for that individual. The CDL is valid for the operation of a non-CMV including a motorcycle with the appropriate motorcycle endorsement on the license.

b) A Colorado CDL may be issued upon surrender of a valid CDL from another state without additional testing except that an applicant must test for a hazardous material endorsement.

c) An applicant with an out-of-state CLP cannot transfer that CLP to Colorado but must apply for a Colorado CLP and take all applicable CDL knowledge tests (49 CFR).

2) Each applicant applying is required to make one of the following applicable self-certifications for the type of commercial driving the individual intends to do (49 CFR):

a) Non-excepted interstate.

b) Excepted interstate.

c) Non-excepted intrastate.

d) Excepted intrastate.

3) Each applicant must meet the medical and physical qualifications under 49 CFR. Each applicant must submit their medical examiner's certificate and, if applicable, any federal variance or state medical waiver or skills performance evaluation to a driver license office (49 CFR).

4) Each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division of the Department of Higher Education must affirm on an affidavit provided by the Department, to the testing unit that the initial applicant successfully passed training on the recognition, prevention, and reporting of human trafficking prior to taking the CDL skills test.

5) Effective February 7, 2022, each applicant must complete ELDT prior to taking any applicable skills or knowledge tests including those applying to:

a) Obtain a Class A or Class B CDL for the first time;

b) Upgrade an existing Class B CDL to a Class A CDL; or
c) Obtain a school bus (S), passenger (P), or hazardous materials (H) endorsement for the first time.

The ELDT regulations are not retroactive; the entry-level driver training requirements do not apply to individuals holding a valid CDL or an S, P, or H endorsement issued prior to February 7, 2022. If an applicant who obtains a CLP prior to February 7, 2022, obtains a CDL before the CLP or renewed CLP expires, the applicant is not subject to the ELDT requirements. Any individual who meets one of the exceptions for taking a skills test in 49 CFR part 383 is also exempt from the ELDT requirements.

E. ENDORSEMENTS

1) T-Double/Triple Trailers: Required to operate a CMV used for drawing two or more vehicles or trailers with a GCWR that is 26,001 lbs. or more and combined GVWR of the vehicles being towed is more than 10,001 lbs.

2) P-Passenger: Required to operate a vehicle designed by the manufacturer to transport 16 or more passengers, including the driver.

3) N-Tank Vehicles: Required to operate a vehicle that hauls liquid or liquid gas in a permanently mounted cargo tank rated at 119 gallons or more or a portable tank rated at 1,000 gallons or more.

4) H-Hazardous Materials: Required to transport materials that require the motor vehicle to display a placard pursuant to the hazardous materials regulations.

5) S-School Buses: Required to operate a school bus as defined in section 42-1-102(88), C.R.S.

6) X-Combination Tank/Hazmat: Required to operate vehicles that meet the definition of (3) and (4) above.

F. RESTRICTIONS

1) Intrastate: The letter "K" is added to the CDL of a driver between the ages of 18 through 20, to an individual who has been issued a valid medical waiver from the Colorado State Patrol (8 CCR 1507-1) or who self- certifies to excepted or not excepted intrastate driving (49 CFR). Under this CDL restriction, the driver must not:

    a) Operate a CMV outside Colorado state boundaries; or

    b) Transport interstate commerce as defined in 49 CFR.

    The waiver from Colorado State Patrol is valid only while the driver is transporting commodities other than bulk hazardous materials, as defined in 49 CFR or commodities with a hazard class identified in 49 CFR, or commodities subject to the "Poison by Inhalation Hazard" shipping description in 49 CFR.

2) Air brake: The letter "L" is added to the CDL/CLP of an individual restricted from operating vehicles equipped with air brakes.

    a) An individual may apply for removal of the "L" restriction after having successfully completed the air brake knowledge test and the CDL Skills Test in a vehicle equipped with air brakes that is representative of the CDL vehicle class.

    b) When taking the CDL Skills Test in a vehicle equipped with air brakes, the applicant must have in his/her immediate possession a CLP without the "L" restriction.

3) Transmission: The letter “E” is added to the CDL of an individual restricted from operating vehicles equipped with a standard transmission.

    a) An individual may apply for removal of the “E” restriction after having successfully completed the CDL Skills Test in a vehicle equipped with a standard transmission that is representative of the CDL vehicle class.

    b) When taking the CDL Skills Test in a vehicle equipped with a standard transmission, the applicant must have in his/her immediate possession a CLP without the “E” restriction.

4) Class B Bus: The letter “M” is added to the CDL of an individual restricted from operating a Class A Passenger vehicle (49 CFR).

    a) An individual may apply for removal of the “M” restriction after having successfully completed the CDL Skills Test in a Class A Passenger vehicle.

    b) Before taking the CDL Skills Test in a Class A Passenger vehicle, the applicant must have in his/her immediate possession a CLP without the “M” restriction.

5) Class C Bus: The letter “N” is added to the CDL of an individual restricted from operating a Class B Passenger vehicle (49 CFR).

    a) An individual may apply for removal of the “N” restriction after having successfully completed the CDL Skills Test in a Class B Passenger vehicle.

    b) Before taking the CDL Skills Test in a Class B Passenger vehicle, the applicant must have in his/her immediate possession a CLP without the “N” restriction.

6) No Tractor-Trailer: The letter “O” is added to the CDL of an individual restricted from operating a vehicle equipped with a 5th wheel type coupling system (49 CFR).

    a) An individual may apply for removal of the “O” restriction after having completed the CDL Skills Test in a tractor/semi-trailer combination vehicle equipped with a 5th wheel type coupling system.

    b) When taking the CDL Skills Test in a tractor/semi-trailer combination vehicle equipped with a 5th wheel type coupling system, the applicant must have in his/her immediate possession a CLP without the “O” restriction.

7) No Passengers: The letter “P” is added to the CLP of an individual restricted from operating a Passenger vehicle with passengers.

    a) The “P” restriction is removed by successfully completing the CDL Skills Test in a Passenger vehicle.

8) No Cargo in a Tank Vehicle: The letter “X” is added to the CLP of an individual restricted from operating a Tank vehicle containing liquid or gas.

a) An individual may apply to have the "X" restriction removed after having successfully completed the CDL Skills Test.

9) Medical, Variance/Skills Performance Evaluation: The letter "V" will be added to any CLP or CDL for individuals who have been issued a federal medical variance (49 CFR).

10) Air brake: The letter "Z" is added to the CDL/CLP of an individual restricted from operating vehicles equipped with full air brakes.

a) The "Z" restriction is removed by successfully completing the air brake knowledge test and the CDL Skills Test in a vehicle equipped with air brakes that is representative of the CDL vehicle class.

b) When taking the CDL Skills Test in a vehicle equipped with air brakes, the applicant must have in his/her immediate possession a CLP without the "Z" restriction.

G. EXEMPTIONS

1) FMCSR 49 CFR Applicability: Authorizes the state to grant certain groups exceptions from the CDL requirements.

a) FMCSR – 49 CFR: Exception for individuals who operate CMVs for military purposes.

b) FMCSR – 49 CFR: Exception for operators of farm vehicles, as defined at section 42-2-402(4)(b)(III), C.R.S. and firefighters and other persons who operate CMVs that are necessary to the preservation of life or property, or the execution of emergency governmental functions, or that are equipped with audible and visual signals and are not subject to normal traffic regulation.

c) FMCSR – 49 CFR: Exception for drivers employed by an eligible unit of local government, operating a commercial motor vehicle within the boundaries of that unit for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, if the properly licensed employee who ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle or if the employing governmental entity determines that a snow or ice emergency exists that requires additional assistance.

d) FMCSR – 49 CFR: Restricted CDL for certain drivers in farm-related service industries.

2) FMCSR 49 CFR specifies the exceptions to the physical qualifications for individuals engaged in custom harvesting operations.

H. ENTITY ELIGIBLE TO APPLY FOR A CDL TESTING UNIT LICENSE

1) The Department may authorize a testing unit to administer the CDL Skills Test on behalf of the Department if such training and testing is equal to the training and testing of the Department.

2) A CDL Testing Unit must enter into a written contract with the Department and agree to:

    a) Maintain an established place of business in Colorado and ensure all CMVs used for testing are properly registered, inspected for safe operating conditions at the time of exam and insured;

    b) Maintain an adult education occupational business license with the Division of Private Occupational Schools, a division of the Colorado Department of Higher Education and be listed in the TPR; or

    c) Be a government agency, public school district, private or parochial school, or other type of pre- primary, primary, or secondary school transporting students from home to school or from school to home.

I. CDL TESTING UNIT REQUIREMENTS

1) An entity must apply for and receive a CDL testing unit license from the Department in order to administer CDL Skills Tests. The CDL testing unit and each driving tester license expires on June 30th of each year. The licenses for both the testing unit and driving tester(s) must be displayed in the place of business.

    a) Testing unit and driving tester license fees are waived for non-commercial testing units and driving testers that only provide public transportation, and that do not test outside of their unit.

    b) Public transportation entities that test outside of their unit or that do not provide public transportation only, must submit the appropriate fees.

    c) If a license is not renewed on or before June 30th, the initial fees will apply. Testing unit and driving tester license(s) may be suspended or inactivated until appropriate fees and documentation are submitted.

    d) Licenses can be renewed up to 60 days prior to June 30th of each year.

2) The testing unit is not permitted to guarantee issuance of a Commercial Driver's License or to suggest that training will guarantee issuance of a Commercial Driver's License.

3) Testing units must only test if they have a current testing unit license issued by the Department.

4) Testing units must ensure that each driving tester has a valid tester license issued by the Department when he or she administers a CDL Skills Test.

5) The testing unit must notify the Department in writing within 3 business days of the termination or departure from the testing unit of any driving tester.

6) A testing unit's place of business must be a separate establishment and may not be part of a home. The unit's physical address must not be a post office box.

7) The testing unit must have written permission from the landowner to administer the CDL vehicle basic control skills exercises on areas not owned by the testing unit. This written permission must be submitted to the Department for approval prior to testing and renewed annually.

8) The testing unit must maintain at least one employee who is licensed as a CDL driving tester or contract with at least one person who is licensed as a CDL driving tester.

9) The testing unit must ensure that the unit's driving tester(s) follow the Department's standards for administering the CDL Skills Test.

10) The testing unit must ensure that the unit's driving tester(s) complete all CDL third party testing forms correctly.

11) The testing unit must ensure that the unit's driving tester(s) administer the CDL Skills Test to applicants in a vehicle equal to or lower than the class and/or endorsement, and/or restriction on applicant's CDL instruction permit or CDL.

12) Once a new driving tester candidate has passed the required 8 day new CDL third party tester's training course, the testing unit must ensure that within thirty (30) days the new tester candidate:

    a) Applies for his/her third party testers license;

    b) Administers two (2) shadow skills tests while accompanied by a licensed driving tester who shall monitor the test and compare pass-fail results with those of the new driving tester candidate; and

    c) Completes an application for the fingerprint/background check.

13) The testing unit is responsible for ensuring that driving testers attend all mandated training provided by the CDL Compliance Unit. Failure of driving testers to attend scheduled training may result in the suspension of testing privileges for the testing unit and the tester.

14) The testing unit must schedule all tests utilizing CSTIMS. The testing unit or driving tester must notify the CDL Compliance Unit of all canceled tests via CSTIMS as soon as the testing unit or driving tester is aware of the cancellation. The testing unit or driving tester must notify the Department of all tests scheduled or schedule changes via CSTIMS at least three (3) days in advance of the test. Tests not administered due to weather conditions or a vehicle failure may be rescheduled with approval from a CDL Compliance Unit.

    a) The testing unit is not permitted to schedule an applicant more than once within any two (2) day period.

b) Testing units must identify the applicant in Scheduled Comments in CSTIMS as public, employee, or student.

c) The test must begin within 15 minutes before and no later than 15 minutes after its scheduled time. The test begins when the driving tester reads the vehicle inspection overview to the applicant.

15) The testing unit must ensure that:

a) The driving tester enters into CSTIMS all test results immediately after the completion of the test;

b) The test results entered into CSTIMS match the Class, Endorsements, and Restrictions of the vehicle in which the applicant has successfully completed the CDL Skills Test; and

c) The driving tester uploads the correct score forms into CSTIMS.

d) The driving tester obtains a copy of the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking from each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education, and that the driving tester uploads a copy of the completed affidavit into CSTIMS.

16) The testing unit must administer CDL Skills Tests only on Department approved testing areas and routes.

17) The testing unit must ensure all three portions of the CDL Skills Test are conducted during daylight.

18) The testing unit must ensure the vehicle being used for testing does not have any labels or markings that indicate which components are to be inspected by an applicant during the vehicle inspection portion of the CDL Skills Test. Manufacturer labels and/or markings are permitted.

19) The testing unit must enter into an agreement with the Department containing, at a minimum, provisions that:

a) allow the FMCSA, the Department, and their representatives to conduct random inspections and audits without prior notice;

b) allow the Department to conduct on-site inspections at least annually and as needed;

c) require all driving testers to meet the same training and qualifications as state examiners, to the extent necessary to conduct CDL Skills Tests in compliance with these rules and regulations;

d) at least annually, allow the Department at its discretion to take the tests administered by the testing unit as if the Department employee was an applicant, or test an applicant who was tested by the testing unit to compare pass-fail results; and

e) reserve to the Department the right to take prompt and appropriate action against any testing unit or driving tester when they fails to comply with Department or federal standards or any other provisions in the contract or the rules and regulations.

20) A driving tester and a testing unit shall charge fees only in accordance with section 42-2-406, C.R.S. and this rule. A driving tester and a testing unit shall only charge for tests administered.

a) Except as otherwise provided in paragraph (b) of this subsection (20), the maximum total fee, including but not limited to any administrative fee, for administering a CDL Skills Test or retest to an applicant is two hundred seventy-five dollars ($275.00).

b) The maximum total fee, including but not limited to any administrative fee, for administering a CDL Skills Test or retest to an employee or volunteer of a nonprofit organization that provides specialized transportation services for the elderly and for persons with disabilities, to any individual employed by a school district, or to any individual employed by a board of cooperative services is one hundred twenty-five dollars ($125.00).

21) The testing unit must make all CDL testing records available for inspection during normal business hours.

22) The testing unit must hold the state harmless from liability resulting from the administration of the CDL program.

23) The testing unit must make an annual application for renewal of the unit's testing license and individual driving tester license(s) before the license expires on June 30th of each year.

24) The Testing Unit must ensure that each driver to be tested has met all applicable requirements with regard to ELDT.

J. DRIVING TESTER REQUIREMENTS

1) The driving tester must possess a valid USDOT medical card and a valid CDL with the appropriate class and endorsement(s) to operate the vehicle(s) in which the CDL Skills Test is administered.

2) The driving tester must conduct the full CDL Skills Test in accordance with Department procedures and must use the Colorado CDL Skill Test Score Form.

3) The driving tester must complete all CDL third party testing forms correctly.

4) The driving tester must administer all portions of the CDL Skills Test in English.

5) Interpreters are not allowed for any portion of the CDL Skills Test.

6) The driving tester agrees to hold the State harmless from any liability arising from or in connection with a CDL Skills Test.

7) The driving tester must only test if the driving tester has a valid tester license issued by the Department.

8) The driving tester must test in the CDL class of vehicle or endorsement(s) group authorized by the Department.

9) Prior to administering the CDL Skills Test, the driving tester must ensure that the driver has in his/her immediate possession, a valid USDOT medical card, and a valid CLP for operating the class and endorsement(s), and/or restriction(s) of the vehicle being used for testing.

    a) The driving tester must ensure that the instruction permit has been held by the applicant for at least fourteen (14) days prior to taking the skills test.

    b) The driving tester must also ensure the applicant has in his/her immediate possession a valid driver's license and must compare the photo on the license to the applicant to verify identity.

    c) The driving tester must obtain a copy of the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking from each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education.

10) The driving tester must administer the CDL Skills Test to applicants in a vehicle equal to or lower in class and/or endorsement(s), and/or restriction(s) than the applicant has on his or her CLP.

11) The driving tester must administer the CDL Skills Test only on Department approved testing areas and routes.

12) The driving tester must administer all three portions of the CDL Skills Test during daylight.

13) The driving tester must ensure that the vehicle in which the CDL Skills Test will be administered is in proper working and mechanical order.

14) The vehicle inspection, the basic vehicle control skills, and the on-road driving test must be administered by the same driving tester in sequential order with no more than a 15-minute break between each portion of the CDL Skills Test. CDL Skills Test must be scheduled to avoid a lunch break.

15) The Department may issue a driving tester license to a driving tester candidate upon the successful completion of the following requirements:

a) A testing unit must submit an application requesting that the driving tester candidate be granted a driving tester license;

b) The driving tester candidate must be an employee of the testing unit submitting the application or under contract with the testing unit submitting the application.

c) The driving tester candidate must successfully complete the 8 day new CDL third party tester's training course;

d) Within 30 days following the date the driving tester candidate completes the 8 day new CDL third party tester's training course, the driving tester candidate must:

i. Administer two (2) shadow skills tests while accompanied by a licensed driving tester who shall monitor the test and compare pass-fail results with those of the new driving tester candidate; and

ii. Complete the application for the fingerprint/background check.

e) All licensing fees must be received by the Department.

16) The driving tester must inform the applicant that he/she may be randomly selected for a retest as mandated by 49 CFR.

17) A driving tester may administer a CDL Skills Test on behalf of any licensed testing unit. The driving tester may administer tests for more than one unit. However, for a driving tester to conduct testing on the unit's behalf, the driving tester must be an employee of the testing unit submitting the application or under contract with the testing unit submitting the application. The driving tester must keep all CDL records separate for each testing unit.

18) If an applicant fails any portion(s) of the CDL Skills Test, he or she must return on a different day and perform all three (3) portions of the CDL Skills Test over again.

19) In order to qualify for renewal, the driving tester must administer a minimum of ten (10) CDL Skills Tests with different applicants within the twelve-month period preceding the application for renewal from the Department.

20) The driving tester must:

a) Enter into CSTIMS all test results immediately after the completion of the test;

b) Ensure that the test results entered into CSTIMS match the Class, Endorsements, and Restrictions of vehicle in which the applicant has successfully completed the CDL Skills Test; and

c) Upload the original correct score forms into CSTIMS.

d) Upload into CSTIMS the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking from each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education.

21) Upon leaving a testing unit, the driving tester's license may be transferred to another testing unit within three (3) months. If, within three (3) months, the driving tester is not employed as a driving tester at a licensed testing unit or contracted as a driving tester with a licensed testing unit, the tester will be required to attend a new tester training class in order to be licensed by the Department. All training and license fees will apply and are the responsibility of the tester.

22) The driving tester cannot administer the CDL Skills Test to an applicant with whom he/she has conducted in- vehicle skills training.

23) The driving tester must ensure that each driver to be tested has met all applicable requirements with regard to ELDT.

K. COURSE AND ROUTE REQUIREMENTS

1) A testing unit should have a paved area or a flat hard surface for the CDL vehicle inspection and for the entire basic control skills exercise area that contain:

    a) Solid painted lines that are at least 4 inches in width and traffic cones marking the testing boundaries in accordance with Department standards.

        i. Traffic cones, used to mark the painted testing boundaries, must be a minimum of eighteen inches in height, and the same size traffic cones must be used for each exercise. Traffic cones must be replaced when they no longer retain their original shape and color.

    b) Boundary lines and cones clearly visible in the basic control skill exercise testing area.

        i. The testing area boundaries must be cleared of snow, debris, and vehicles that would obstruct the applicant's view during the basic control skill exercise.

2) The testing unit must request and receive approval from the Department for any change(s) to the approved road test route prior to administering a CDL road test.

L. RIGHTS

1) The driving tester or testing unit may refuse to test an applicant. The driving tester or testing unit contact person must notify the CDL Compliance Unit if an applicant is refused a test and must refer that driver to the CDL Compliance Unit.

2) Government driving testers who want to test outside of their governmental testing unit may make a written request to the CDL Compliance Unit, and must receive approval from the CDL

Compliance Unit prior to administering CDL Skills Tests outside of their governmental testing unit.

M. RECORDING AND AUDITING REQUIREMENTS

1) The testing unit must maintain all pass/fail records for three years. These must include the CDL Skills Testing records for each applicant tested, the dates of the testing, the applicant's identification information, a copy of the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking from each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education, the vehicle information and the name and state assigned driving tester number for the driving tester who administered the test, and documentation that each driver subject to ELDT requirements has met those requirements. If a testing unit is no longer licensed, the unit must return all testing records to the Department within 30 days.

    a) After three years, testing units must destroy all pass/fail records (shred, burn).

2) A testing unit must enter all (pass and fail) CDL Skills Test results into CSTIMS immediately after the test including the upload of the score form and, for each initial applicant for a Class A CDL who has attended a commercial driving school certified for approval by the Private Occupational Schools Division in the Department of Higher Education, a copy of the completed affidavit reflecting successful completion of training on the recognition, prevention, and reporting of human trafficking.

3) During CDL compliance audits and/or inspections, driving testers must cooperate with the Department and/or FMCSA by allowing access to testing areas and routes, furnishing CDL Skills Testing records and results, and providing other items pertinent to the mandated audit and/or inspection. The driving tester must surrender testing records upon request. The driving tester may make copies and retain copies of such records.

4) If the testing unit provided the vehicle for the CDL Skills Test, the testing unit will furnish the vehicle for an applicant driver selected for a retest. No fees, including any vehicle rental fees required for testing, will be collected for this mandatory evaluation. The Department is not liable during retests for any damage, injury, or expense incurred.

5) If the applicant tested in his/her own vehicle, the applicant will supply the vehicle for any CDL Skills Retest.

N. BOND

1) A testing unit that is not an agency of government, or a Colorado school district, must maintain a bond in the amount of $20,000.00 with the Department pursuant 49 CFR. A surety company authorized to do business within the State of Colorado must execute the bond.

    a) The bond must be for the use and benefit of the Department in the event of a monetary loss suffered by the Department that falls within the limitations of the bond,

attributable to the willful, intentional, or negligent conduct of the testing unit or its agent(s) or employee(s).

b) If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the testing unit cannot test outside their unit.

c) The Department must be named on the bond as the beneficiary or the bond must be held in the name of the Department.

2) A testing unit that is an agency of government, or any Colorado school district, that will administer CDL driving tests outside of their unit, must maintain a bond in the amount of $5,000.00 with the Department. A surety company authorized to do business within the State of Colorado must execute the bond.

a) The bond must be for the use and benefit of the Department in the event of a monetary loss within the limitations of the bond, attributable to the willful, intentional or negligent conduct of the testing unit or its agent(s) or employee(s).

b) If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the testing unit cannot test outside their unit.

c) The Department must be named on the bond as the beneficiary or the bond must be held in the name of the Department.

O. REVOCATION, CANCELLATION, OR SUSPENSION OF TESTING UNITS AND TESTERS

1) The license of a testing unit or driving tester may be suspended or revoked for willful or negligent actions that may include but are not limited to any of the following:

a) Misrepresentations on the application to be a testing unit or a driving tester;

b) Improper testing and/or certification of an applicant driver who has applied for a CDL;

c) Falsification of test documents or results;

d) Violations of CDL rules for testing units or driving testers;

e) Failure to employ a minimum of at least one licensed CDL driving tester or contract with a minimum of one licensed CDL driving tester;

f) Failure to comply or cooperate in a CDL Compliance audit and record review;

g) Violations of the contract terms and conditions;

h) For any other violation of this rule or applicable state statute or federal regulation.

2) A testing unit or driving tester that is suspended must not perform any duties related to CDL third party testing.

3) Summary Suspension: Where the Department has objective and reasonable grounds to believe and finds that a testing unit or driving tester has been guilty of a deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which will be promptly instituted and determined. Testing is not permitted while the license is suspended.

4) Appeal Process: Any person aggrieved by the denial of issuance, denial of renewal, suspension, or revocation of a testing unit license or driving tester license is entitled to a hearing pursuant to section 42-2- 407(7), C.R.S. Except as otherwise provided in paragraph (3) of this subsection O, the request for hearing must be submitted in writing and appropriately labeled, such as “CDL Cease Testing Appeal,” to the Department of Revenue, Hearings Division, 1881 Pierce Street, Room 106, Lakewood, Colorado, 80214. Subsequent appeals may be had as provided by law.

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Office of the Attorney General

Tracking number: 2022-00627

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Motor Vehicles

on 12/07/2022

1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 12/15/2022 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 22, 2022 17:04:40

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 02/14/2023

Effective date

02/14/2023

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Regulation 4-2-91

CONCERNING THE METHODOLOGY FOR CALCULATING REIMBURSEMENT RATES TO SUPPORT PREMIUM RATE REDUCTIONS FOR COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLANS

Section 1 Authority
Section 2 Scope and Purpose
Section 3 Applicability
Section 4 Definitions
Section 5 Hospital Reimbursement Floor Methodology
Section 6 Health-care Provider Reimbursement Floor
Section 7 Commissioner Established Reimbursement Rate
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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, 10-16-1306, 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish a hospital and health-care provider reimbursement rate setting methodology that may be applied by the Commissioner of Insurance as part of a public hearing for the Colorado Option premium rate reduction requirements on standardized health benefits plans.

Section 3 Applicability

This regulation applies to contracted reimbursement rates for standardized plans between carriers and hospitals or health-care providers in Colorado.

Section 4 Definitions

A. “Adjusted Discharges” shall mean, for the purposes of this regulation, a measure of the overall volume of services provided by a hospital inpatient and outpatient departments. Adjusted discharges are calculated as

(Total Revenue/Total Inpatient Revenue) * Inpatient Discharges

Where Total Revenue is found in Worksheet G-2, Column 3, Line 28 of 2552-10 Medicare Cost Reports; Total Inpatient Revenue is found in Worksheet G-2, Column 1, Line 28 of 2552-10 Medicare Cost Reports; Inpatient Discharges are found in Worksheet S-3 Part 1, Column 15, Lines 14 and 16 through 18 in 2552-10 Medicare Cost Reports.

B. “All-Payer Health Claims Database” or “APCD” shall have the same meaning as found at § 25.5-1-204.7(1)(b), C.R.S.

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

D “Colorado Option Standardized Plan” or “Standardized Plan” shall have the same meaning as found at § 10-16-1303(14), C.R.S.

E. “Commercial Utilization Weighted Average” shall mean, for the purposes of this regulation, the mix of the services used weighted by utilization of the commercially insured population available in the APCD.

F. “Critical Access Hospital” shall have the same meaning found at § 10-16-1303(2), C.R.S.

G. “Equivalent Rate” shall have the same meaning found at § 10-16-1303(3), C.R.S.

H. “Essential Access Hospital” shall have the same meaning found at § 10-16-1303(4), C.R.S.

I. “General Hospital” or “Hospital” shall have the same meaning found at § 10-16-1303(6), C.R.S.

J. “Health-care Provider” shall have the same meaning found at § 10-16-1303(8), C.R.S.

K. “Health-care Provider Reimbursement Floor” shall mean the lowest Medicare Benchmark reimbursement rate the Commissioner may set for a specific health-care provider.

L. “Health System” shall have the same meaning found at § 10-16-1303(9), C.R.S.

M. “Hospital Operating Expenses” shall mean, for the purposes of this regulation, the total cost associated with hospital-related services and patient care, which is Operating Expenses for Reimbursable Departments plus Reasonable Compensation Equivalent disallowance. Operating Expenses for Reimbursable Departments are found in Worksheet B Part I, Column 26, Line 118 of 2552-10 Medicare Cost Reports. An average of the hospital’s three most recent Medicare Cost Reports will be used as of each October prior to the year in which a public hearing may be held.

N. “Hospital Net Income” shall mean, for the purposes of this regulation, the excess or net patient revenue and other income over total operating and other expenses. Net Income is found in Worksheet G-3, Column 1, Line 29 in 2552-20 Medicare Cost Reports. The hospital’s three most recent Medicare Cost Reports will be used as of each October prior to the year in which a public hearing may be held.

O. “Hospital Net Patient Revenue” shall mean, for the purposes of this regulation, the revenue from providing services to patients and is found in Worksheet G-3, Column 1, Line 3 from Medicare Cost Reports 2552-10. An average of the hospital’s three most recent Medicare Cost Reports will be used as of each October prior to the year in which a public hearing may be held.

P. “Hospital Medicare/Medicaid Payer Mix” shall mean, for the purposes of this regulation, the proportion of total charges represented in the Medicare Cost Report in the previous three years that were for Medicaid or Medicare patients. An average of the hospital’s three most recent Medicare Cost Reports will be used as of each October prior to the year in which a public hearing may be held. If an included hospital does not have this information reported, inpatient bed days or a payer mix from the APCD will be used.

Q. “Hospital reimbursement floor” shall mean the lowest Medicare Benchmark reimbursement rate the Commissioner may set for a specific hospital. This floor will be calculated as outlined in § 10-16-1306 and detailed in Section 5 of this regulation below.

R. “Independent Hospital” shall mean, for the purposes of this regulation, any hospital that is not a part of a larger health system with more than two hospitals as of January 1 of the year under review.

S. “Low Volume Medicare services” shall mean any service that is low volume statewide relative to other Medicare services. The Division will publish a list of low volume services and their equivalent rates by January 31 of each year preceding the applicable plan year.

T. “Medicare Benchmark Reimbursement Rate” shall mean, for the purposes of this regulation, the carrier’s payment rates as an aggregate percent of Medicare Reimbursement Rates, weighted based on historical, projected, and reasonable utilization of the members enrolled in the plan.

U. “Medicare Reimbursement Rate” shall have the same meaning found at § 10-16-1303(11) and § 10-16-1303(3), C.R.S. Specifically:

1. For hospitals that Medicare reimburses under its Hospital Inpatient Prospective Payment System (IPPS) and the Hospital Outpatient Prospective Payment System (OPPS), the Medicare Reimbursement Rate will be the commercial utilization weighted average of the hospital specific rates for services effective as of each October prior to the year in which a public hearing may be held.

2. Long-term Care, Psychiatric, and rehabilitation hospitals Medicare Reimbursement Rates will be determined using the commercial utilization weighted average of payment rates for services from the appropriate Medicare Prospective Payment System rates for each hospital.

3. For Critical Access Hospitals, the Medicare Reimbursement Rate will be 101 percent of allowable costs, as determined using the cost-to-charge ratio, for hospital based services as reported in an average of the hospital’s three most recent Medicare Cost Reports as of each October prior to the year in which a public hearing may be held. The Commissioner may also consider additional information provided by a Critical Access Hospital to determine if further adjustments are required, such as, but not limited to, unreimbursed cost items.

4. For Pediatric Hospitals, as detailed in § 10-16-1303(3), the Medicare Reimbursement Rate shall be calculated using the commercial utilization weighted average of the Medicaid fee schedule from 2019 multiplied by 1.52, adjusted annually for cumulative inflation by a factor equal to the average percentage increase of the inpatient and outpatient prospective payment systems over the previous three years.

5. For Health-care providers, the Medicare Reimbursement Rate shall equal the commercial utilization weighted average of the payment rates for appropriate Medicare fee schedule.

6. For any health-care service without an existing Medicare Reimbursement Rate and for any low volume Medicare services an equivalent rate will be determined utilizing the ratio of Medicaid Payment Rates to existing Medicare Payment Rates, whenever possible.

7. For Sole Community Hospitals, the Medicare Reimbursement Rate will be the higher of the Prospective Payment Rate outlined in subsection U.1 or the Sole Community Hospital Rate outlined in 42 CFR § 412.92(d)(1) and (2).

V. “Medicare Inpatient and Outpatient Prospective Payment Systems” shall mean, for the purposes of this regulation, a method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount for a particular inpatient or outpatient service based on a classification system of that service.

W. “Pediatric Hospital” shall mean, for the purposes of this regulation, a pediatric specialty hospital with a Level One Trauma Center.

X. “Premium” shall have the same meaning as found at § 10-16-102(51), C.R.S.

Y. “Sole Community Hospital” shall have the same meaning as found at 42 CFR § 412.92(a).

Z. “State Average Net Income” shall mean, for the purposes of this regulation, the average Net Income per Adjusted Discharge across all hospitals in the state that filed a Medicare Cost Report in the previous three years, as of each October prior to the year in which a public hearing may be held, excluding psychiatric, long-term care, and rehabilitation hospitals weighted by adjusted discharges.

AA. “State Average Net Patient Revenue” shall mean, for the purposes of this regulation, the average Net Patient Revenue per Adjusted Discharge across all hospitals in the state that filed a Medicare Cost Report in the previous three years, as of each October prior to the year in which a public hearing may be held, excluding psychiatric, long-term care, and rehabilitation hospitals weighted by adjusted discharges.

AB. “State Average Operating Expenses” shall mean, for the purposes of this regulation, the average Operating Expenses per Adjusted Discharge across all hospitals in the state that filed a Medicare Cost Report in the previous three years, as of each October prior to the year in which a public hearing may be held, excluding psychiatric, long-term care, and rehabilitation hospitals weighted by adjusted discharges.

AC. “Statewide Average Medicare/Medicaid Payer Mix” shall mean, for the purposes of this regulation, the proportion of total charges across all hospitals in the state that filed a Medicare Cost Report in the previous three years, as of each October prior to the year in which a public hearing may be held, that were for Medicaid or Medicare patients, excluding psychiatric, long-term care, and rehabilitation hospitals weighted by total charges.

Section 5 Hospital Reimbursement Floor Methodology

A. The Commissioner will calculate a hospital reimbursement floor using the following methodology.

1. The hospital reimbursement floor will be equal to 155% of the Medicare Benchmark Reimbursement rate for that specific hospital with additional percentage points added as detailed below.

2. Percentage-points will be added to the hospital reimbursement floor based on the following hospital-specific characteristics:

    a. Independent Hospitals will receive a twenty-percentage-point increase.

    b. Essential Access Hospitals will receive a twenty-percentage-point increase.

    c. Hospitals with a combined percentage of patients who receive services through programs established through the “Colorado Medical Assistance Act,” Articles 4 to 6 of Title 25.5, or Medicare, Title XVIII of the Federal “Social Security Act,” as amended, that exceeds the statewide average will receive up to a thirty-percentage-point increase. The actual percentage point increase, not to be less than zero, is determined based on the hospital’s percentage share of such patients using the following formula:

$$Payer\ Mix\ Add\ On\ = \frac{(Hospital\ Payer\ Mix)\ -\ (Statewide\ Average\ Payer\ Mix)}{0.99\ -\ (Statewide\ Average\ Payer\ Mix)}\ X\ 30$$

d. Hospitals efficient in managing the underlying cost of care as determined by the hospital's net patient revenue, operating expenses, and total margins will receive up to a forty-percentage point increase. The actual percentage point increase, not to be less than zero, is determined based on the following:

i. A ten-percentage-point increase may be received to account for a hospital's net patient revenue (NPR) using this formula:

$$NPR\ Add\ On\ = \frac{(State\ Average\ NPR\ Per\ Adj.Discharge)\ -\ (Hospital\ NPR\ Per\ Adj.Discharge)}{(State\ Average\ NPR\ Per\ Adj.Discharge)}\ X\ 10$$

ii. A ten-percentage-point increase may be received to account for a hospital's operating expenses (OE) using this formula:

$$OE\ Add\ On\ = \frac{(State\ Average\ OE\ Per\ Adj.Discharge) - (Hospital\ OE\ Per\ Adj.Discharge)}{(State\ Average\ OE\ Per\ Adj.Discharge)}\ X\ 10$$

iii. A twenty-percentage-point increase may be received to account for a hospital's net income using this formula:

$$Net\ Income\ Add\ On\ = \frac{(State\ Average\ Net\ Income\ Per\ Adj.Discharge) - (Hospital\ Net\ Income\ Per\ Adj.Discharge)}{(State\ Average\ Net\ Income\ Per\ Adj.Discharge)}\ X\ 20$$

B. If using the formula detailed in A above would yield a hospital reimbursement floor less than 165% of the Medicare Benchmark Reimbursement Rate for a specific hospital, the hospital reimbursement floor shall be equal to 165% of the Medicare Benchmark Reimbursement Rate.

C. The pediatric hospital reimbursement floor may not be less than 210% of the Medicare Benchmark Reimbursement Rate.

Section 6 Health-care Provider Reimbursement Floor

The health-care provider reimbursement floor may not be less than 135% of the Medicare Benchmark Reimbursement Rate.

Section 7 Commissioner Established Reimbursement Rate

A. Based on evidence presented at a hearing held pursuant to § 10-16-1306, C.R.S., the Commissioner may establish reimbursement rates between a carrier and a hospital or health-care provider.

1. The Commissioner will only set reimbursement rates for hospitals or health-care providers that:

a. In whole or in part, prevented a carrier from meeting the premium rate reduction requirement for a Standardized Plan being offered in a specific county and who

have met the threshold set forth in Section 7(A)(2) of Colorado Insurance Regulation 4-2-92; or

b. Caused the carrier to fail to meet network adequacy requirements.

2. In determining the hospital's reimbursement rate, the Commissioner may:

a. Consult with employee membership organizations representing health-care providers' employees in Colorado and with hospital-based health-care providers in Colorado.

b. Take into account the cost of adequate wages, benefits, staffing, and training for health-care employees to provide continuous quality care.

c. Take into account the most current Medicare prospective or cost-based payment rates available, or any rate modifications published by the Centers for Medicare and Medicaid Services that may be applicable to the plan year.

d. Utilize any publicly available hospital and provider data and cost tools.

B. The Commissioner may not set a reimbursement rate for a hospital or health-care provider that is lower than the hospital or health-care provider reimbursement floor specific to that hospital or health care provider.

C. The Commissioner cannot set the reimbursement rate for any hospital for any plan year at an amount that is more than twenty percent lower than the rate negotiated between the carrier and the hospital for the previous plan year.

D. For a hospital with a commercial utilization weighted average commercial reimbursement rate that is lower than ten percent of the statewide hospital median reimbursement rate measured as percentage of Medicare Benchmark Reimbursement Rate for the 2021 plan year using data from the All-Payer Health Claims Database, the Commissioner will set the Medicare Benchmark Reimbursement Rate for that hospital no less than the greater of:

1. The hospital's commercial utilization weighted average commercial reimbursement rate as a percentage of Medicare Benchmark Reimbursement rate minus one-third of the difference between the hospital's commercial reimbursement rate as a percentage of Medicare Benchmark Reimbursement rate and the floor established by Section 5.

2. One hundred sixty-five percent of the hospital's Medicare Benchmark Reimbursement rate.

3. The rate established by Sections 5.

Section 8 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 9 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes.

Section 10 Effective Date

This regulation shall be effective February 14, 2023.

Section 11 History

New regulation effective February 14, 2023.

PHILIP J. WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

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Tracking number: 2022-00653

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Insurance

on 12/13/2022

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 12/13/2022 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 28, 2022 13:04:56

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 02/14/2023

Effective date

02/14/2023

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Regulation 4-2-92

CONCERNING COLORADO OPTION PUBLIC HEARINGS

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Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-16-107, 10-16-109, 10-16-1304, 10-16-1305, 10-16-1306, and 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish the procedures for noticing and conducting public hearings on proposed Colorado Option Standardized Plans that fail to meet the premium rate reduction or network adequacy requirements, beginning with the 2024 plan year, as required by § 10-16-1306, C.R.S.

Section 3 Applicability

This regulation applies to carriers offering individual and small group Colorado Option Standardized Plans on or after January 1, 2024. This regulation further applies to hospitals and health-care providers subject to the requirements in § 10-16-1306, C.R.S.

Section 4 Definitions

A. "Aggrieved" shall have the same meaning as found at § 24-4-102(3.5), C.R.S.

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

C. "Commissioner" shall have the same meaning as found at § 10-16-102(13), C.R.S.

D. "Colorado Open Records Act" means the Colorado Open Records Act, §§ 24-72-201, et seq., C.R.S.

E. "Covered person" shall have the same meaning as found at § 10-16-102(15), C.R.S.

F. "Day" shall mean calendar day.

G. "Division" shall have the same meaning as found at § 10-1-102(7), C.R.S.

H. "Health-care Provider" shall have the same meaning found at § 10-16-1303(8), C.R.S.

I. "Insurance Ombudsperson" means the Office of the Insurance Ombudsman established in § 25.5-1-131, C.R.S

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

K. "Person" shall have the same meaning as found at § 10-16-102(48), C.R.S.

L. "Premium Rate Reduction Requirements" shall mean the rates set forth in § 10-16-1305 C.R.S and calculated pursuant to Colorado Division of Insurance Regulation 4-2-85.

M. "SERFF" means the System for Electronic Rates and Forms Filing.

N. "Standardized Plan" or "Colorado Option Standardized Plan" shall have the same meaning as found at § 10-16-1303(14), C.R.S.

Section 5 Setting of Public Hearings and Notification of Parties

A. The Commissioner shall provide notice no later than January 15 of the year in which the hearings will be held on the proposed dates for public hearings pursuant to Section 10-16-1306, C.R.S. The notice shall be posted on the Division's website, emailed to all individuals on the Division's email list, and sent directly to the carrier, Insurance Ombudsperson, the Division, and all hospitals within each county. The notice shall include:

   1. Relevant contact information;

   2. A brief description of the purpose and scope of the proceeding, including the legal authority for jurisdiction and potential outcome; and

   3. The date, time, location, and estimated duration for the public hearing.

B. If additional Parties are identified in the carrier's submittal to the Commissioner as set forth in Section 9, or additional Parties are identified pursuant to a Party's Complaint, Cross-Complaint,

or Answer, the Commissioner shall provide a copy of the setting of public hearing as timely as possible to those Parties, but no later than thirty (30) days prior to the hearing.

Section 6 Applicable Federal and State Regulations

Federal and state laws and regulations in effect on March 1st of the year preceding the applicable plan year will be used to determine whether a carrier has met the required premium rate reductions and network adequacy requirements required by Sections 10-16-1304 and 10-16-1305, C.R.S. Any changes in federal or state law between March 1 and the issuance of a final agency order pursuant to Section 21 will not be considered in determining how the carrier must meet the premium rate reduction requirements when issuing the final agency order.

Section 7 Public Hearing Participants

A. The Parties to the public hearing before the Commissioner shall include the following entities:

1. A carrier that fails to meet the premium rate reduction requirement or network adequacy requirements or is alleged to have failed to meet the premium rate reduction requirements or network adequacy requirements.

2. Any hospital or health-care provider identified by the carrier, the Division, or another provider, as a potential cause for the carrier's failure to meet the premium rate reduction requirement except that any hospital or health-care provider that has less than 0.15% impact on a carrier's premium rate in a particular county shall not be required to participate in the public hearing and the Commissioner shall not set rates for such hospital or provider as part of the public hearing.

3. The Insurance Ombudsperson to represent the interests of consumers.

4. The Division of Insurance.

5. A person who demonstrates to the Commissioner that the person will be affected or aggrieved by agency action and the person's interests are not adequately represented.

   a. Such person must request admission as a Party within seven (7) days from the Division posting any Complaint on its website.

   b. An application for Party status must identify the person making the request, including an address, email address, and telephone number. The application must also contain a statement of the reasons for seeking party status, the manner in which the matter affects the person's interests, an explanation as to why the existing parties do not adequately represent the person's interests, a description of the legal and/or factual issues which the prospective party intends to raise, any responsive pleadings the person intends to file, and potential witnesses the prospective party intends to call at the hearing. In addition, the application must describe the evidence the applicant intends to present at the hearing.

B. Consistent with Section 19, interested persons, including consumer advocacy organizations, may be given the opportunity to testify during the public hearing.

Section 8 Service of Documents

A. A Party filing any pleading or other document shall serve a copy, including all supporting attachments or exhibits, on the individual or the registered agent for every other Party in the

proceeding. Such service shall include service upon the Commissioner and their assigned staff and attorneys.

B. Service of the Complaint and Answer shall be by hand or through first class mailing. After the initial filing of the Complaint and Answer, all Parties shall consent to service by email and shall provide an email address for each subsequent service.

C. Proof of service of a filing shall be demonstrated through a certificate of service identifying the document served, the method of service, and the time of service.

Section 9 Carrier Notification Requirements

A. Pursuant to Section 10-16-1306(2), C.R.S. a carrier shall notify the Commissioner of the reasons why the carrier is unable to meet the premium rate reduction or network adequacy requirements, as provided in Sections 10-16-1304 and 10-16-1305, C.R.S., and submit the notification and related documents identified in Section 9.C, via SERFF to the Commissioner, and to the other Parties as required by Section 8, no later than March 1 of the year preceding the year in which the premium rates go into effect.

B. When the Division has alleged that a carrier has failed to meet the premium rate reduction or network adequacy requirements through a Complaint filed by the Division pursuant to Section 10.C, the carrier shall submit to the Commissioner the notification and related documents identified in Section 9.C within seven (7) days of receipt of the Complaint from the Division.

C. Notification and Related Documents

1. The Notice shall include the following information:

a. The reasons the carrier failed to meet the premium rate reduction requirements, and the proposed steps required by the carrier to come into compliance with the requirements. If the carrier claims that a hospital and/or provider is a cause for the carrier's failure to meet the premium rate reduction requirements, the carrier must also include:

i. The names and contact information of the hospital(s) and/or health-care provider(s) who are at or above the threshold set forth in Section 7.A.2. and that the carrier claims were the cause of the carrier's failure to meet the premium rate reduction requirements. Contact information shall include email address, physical and mailing address, and the registered agent;

ii. A statement outlining the analysis and conclusions to support why the hospital or provider caused the carrier to fail to meet the premium rate reduction requirements and the percentage amount by which the identified hospital or provider impacted the carrier's premium rates and thereby caused the carrier to fail meet the premium rate reduction requirements;

iii. The current reimbursement rate with the hospital and/or health-care provider, if applicable, the attempted negotiated rate, and the reimbursement rate that would allow the carrier to meet the premium rate reduction requirement if different than the attempted negotiated rate; and

iv. Information as to whether the carrier and the hospital or health-care provider engaged in nonbinding arbitration as allowed under Section 10-

16-1306(1)(b) or consent to participate in the opportunity for negotiations and settlement afforded by Section 12.

b. A completed template, developed by the Division, summarizing the carrier's premium rate, trend and enrollment assumptions, claims experience, and cost of providing care.

c. An attestation regarding the carrier's ability to meet network adequacy requirements for the upcoming plan year.

2. The carrier shall include with its notice:

a. An actuarial analysis to support the reasons a carrier failed to meet the premium rate reduction requirements. If a carrier claims that a hospital and/or provider caused the carrier to fail to meet the premium rate reduction requirements, the analysis should include information on the percentage amount by which the identified hospital or provider caused the carrier to fail to meet the premium rate reduction requirements; the carrier's health care costs, trends and assumptions; and the reimbursement rate pursuant to Sections 10-16-1306(4), (5) and (7), C.R.S., applicable to such hospital(s) or health-care provider(s) that would allow the carrier to meet the premium rate reduction requirements; and an analysis that the resulting premium would be actuarially sound.

b. A statement outlining the good faith efforts the carrier made with the hospital and/or provider to negotiate a reimbursement rate that would support the carrier in meeting the premium rate reduction requirements.

c. A completed Premium Rate Reduction Notification template as required in Regulation 4-2-85.

3. Documents provided as part of the filing must be bates numbered and clearly identify the Party submitting the documentary evidence.

D. The Commissioner shall post on the Division's website the information provided by the carrier pursuant to the Section 9, including the contract reimbursement rates except as provided in Section 14 relating to Confidential Information. If the carrier's submission is incomplete, the Commissioner shall notify the carrier and allow the carrier up to seven (7) days to submit complete information.

Section 10 Complaint

A. Simultaneous with the filing of the carrier's notification detailed in Section 9, the carrier shall file a Complaint identifying the hospital(s) or health-care provider(s) that they claim were the cause of the carrier's failure to meet the premium rate reduction requirements alleging:

1. The inability of the carrier to meet the premium rate reduction or network adequacy requirements;

2. The reasons the carrier failed to meet the premium rate reduction requirements including any reasons not tied to the identified hospital(s) or health-care provider(s); and

3. The hospital(s) or health-care provider(s) that were a cause of the carrier's failure to meet the premium rate reduction requirements.

B. The Complaint shall also:

1. Include references to the actuarial analysis previously provided to the Division pursuant to Section 9 to support the carrier's identification of a particular hospital or provider as the reason the carrier claims it failed to meet the premium rate reduction requirements;

2. Request a reimbursement rate pursuant to Sections 10-16-1306(4), (5) and (7), C.R.S., applicable to such hospital(s) or health-care provider(s) that would allow the carrier to meet the premium rate reduction requirements; and

3. Include any legal authority supporting the complaint.

C. If the Division contends that a carrier has failed to meet the premium rate reduction requirements or network adequacy requirements, but a Complaint has not been filed by the carrier, the Division may file a Complaint alleging the failure of the carrier to meet the premium rate reduction requirements or the network adequacy requirements.

D. The Complaint shall be served on all Parties consistent with the requirements set forth in Section 8.

Section 11 Answer to Complaint of Failure to Meet the Premium or Network Adequacy Requirements

A. A carrier alleged by the Division to have failed to meet the premium rate reduction requirement or network adequacy requirements pursuant to Section 10.C shall file an Answer within thirty (30) days from the date of service of the Complaint. Simultaneously with the Answer, the carrier shall also file a Cross-Complaint alternately or hypothetically that identifies the hospital(s) or health-care provider(s) that the carrier alleges were the cause of the carrier's failure to meet the requirements. The Cross-Complaint shall contain all of the information required of a Complaint in Sections 10.A and 10.B.

B. Any hospital or health-care provider identified by the carrier, the Division, or another provider as the reason a carrier was unable to meet the premium requirements shall file an Answer within thirty (30) days from the date of service of the Complaint or Cross-Complaint, as applicable. The Answer shall:

1. Respond to all allegations in the Complaint or Cross-Complaint;

2 Identify whether the carrier could have met the premium rate reduction requirements, and if so, attach any analysis supporting this allegation;

3. Provide a substantive response as to why the provider contends the reimbursement rates offered by the carrier are insufficient, including any potential effects of the requested reimbursement rates on the provider's operations;

4. Identify any additional providers or factors that contributed to the carrier's inability to meet the premium rate reduction requirements, if this data is available to the provider; and

5. Information as to whether the carrier and the hospital or health-care provider engaged in nonbinding arbitration as allowed under Section 10-16-1306(1)(b), C.R.S., or consent to participate in the opportunity for negotiations and settlement afforded by Section 12.

C. Documents provided as exhibits to the Answer must be bates numbered and clearly identify the Party submitting the documentary evidence.

D. The Insurance Ombudsperson and the Division may, but are not required to, file a response to the carrier's Complaint or Cross-Complaint within thirty (30) days of receipt of the notice from the carrier or the Division.

Section 12 Opportunity for Negotiation and Settlement

A. If either the carrier or the Division claim that the premium rate reduction requirements are not met for a Standardized Plan in a particular county, the Commissioner shall provide an opportunity for the carrier, the identified provider(s), and the Division to negotiate a settlement. The Commissioner shall enter a final agency order approving or disapproving the settlement or recommend a modification as a condition for approval.

If the Commissioner does not approve the negotiated settlement or a settlement is not reached, the Commissioner shall issue a Final Notice of Hearing to the Parties and post it on the Division's website. All negotiations during the settlement period are considered confidential and shall not be introduced into the hearing.

B. If the carrier and identified providers refuse the opportunity to negotiate, the Commissioner shall issue a Final Notice of Hearing to the Parties and shall post the notice on the Division's website.

Section 13 Public Availability of Documents

A. In accordance with the Colorado Open Records Act and Section 10-16-1306(3)(b), C.R.S., information submitted to the Commissioner as part of the public hearing is presumed to be a public record and open for inspection, subject to restrictions specifically provided by law.

B. The Commissioner shall post all pleadings, documents submitted by the Parties, and orders of the Commissioner on the Division's website except as provided in Section 14 relating to Confidential Information.

Section 14 Confidential Information

A. Procedures for requesting confidentiality.

1. Any Party may make a claim of confidentiality as to information or documents submitted to the Commissioner.

2. A claim of confidentiality constitutes a representation to the Commissioner that the Party has a reasonable and good faith belief that the subject document or information is, in fact, confidential under applicable state and federal law, including the Colorado Open Records Act. If a claim of confidentiality is made in violation of this subparagraph, the Commissioner may impose an appropriate sanction upon the claiming party, including an order to pay the amount of reasonable expenses incurred because of the claim of confidentiality and, reasonable attorney's fees.

3. Any Party submitting documents or information under a claim of confidentiality shall file, as part of the public record (i.e., not confidential), a notice of confidentiality specifying each document, the nature of the document on which confidential information is found, and the basis(es) for the claim of confidentiality as to the information. The notice of confidentiality shall be served upon the Parties. Failure to file a notice of confidentiality will result in administrative rejection of the filing of the confidential information.

4. Each page of each document on which confidential information is contained shall clearly be marked as "CONFIDENTIAL." Confidential documents will be maintained in the record by the Commissioner separately from other public documents.

5. The Commissioner's acceptance of information or documents under a claim of confidentiality is not, and shall not be construed to be, an agreement or determination by the Commissioner that the subject information or document is, in fact, confidential.

6. The Commissioner may, at any time, issue a decision as to whether the subject information or documents submitted under a claim of confidentiality is confidential.

7. In the event the Commissioner rules that information submitted under a claim of confidentiality is not confidential, any person with access to the information shall not disclose the information or use it in the public record for seven (7) days. During this time period, the Party making a claim of confidentiality may seek a stay or other relief permitted by law.

B. Protection of Confidential Information

1. Information or documents ruled by the Commissioner as confidential, or information or documents submitted under a claim of confidentiality for which no ruling has been made by the Commissioner shall be treated as confidential ("Confidential Information").

2. Confidential Information will only be made available to the Commissioner, the Commissioner's staff, and Parties. Confidential Information will not be made available to the public.

3. The Office of the Insurance Ombudsperson as a Party to the public hearing will be provided access to Confidential Information, but may not provide Confidential Information to consumers, advocacy organizations, or the public.

   The Office of the Insurance Ombudsperson shall immediately notify the Commissioner and the Parties of any requests under the Colorado Open Records Act for Confidential Information.

4. Confidential Information may only be used for purposes of the public hearing and may not be shared with other persons or entities.

5. Confidential lnformation may be disclosed to experts or advisors for the Parties only for the purposes of the public hearing.

6. Confidential Information shall not be used or disclosed for purposes of business or competition.

7. The Parties shall take all reasonable precautions to keep Confidential Information secure.

8. When reference is made to Confidential Information in exhibits, testimony, or pleadings, it shall be by citation to the title or nature of the document, or by some other description that will not disclose the Confidential Information.

9. Failure by any person to comply with the requirements of this Section regarding Confidential Information, or disclosure of Confidential Information to any person or entity who is not a Party to the public hearing, may result in sanctions as set forth in C.R.C.P. 37(b)(2) and may result in monetary penalties up to $750,000 pursuant to Sections 10-3-1107 and 10-3-1108(1)(a), C.R.S., for violating a rule or order of the Commissioner.

10. Within thirty (30) days of the conclusion of the proceedings, including any appeal of the final agency order, the Confidential information retained by the Parties shall be destroyed.

C. Public Hearing

1. Upon a showing that it is necessary for a Party to refer to Confidential Information during testimony at the public hearing, the Commissioner may convene the public hearing with only the Parties present to hear such testimony. A recording of this portion of the public hearing will be maintained by the Commissioner and will be treated as Confidential Information. Other Parties may cross-examine the witness as to the Confidential Information during this confidential portion of the public hearing.

2. Time devoted to the closed portion of the public hearing shall count against the time allotted to the Party requesting the closed hearing. Where multiple Parties request a closed hearing, the time allotted to the closed portion of the hearing shall be equally divided amongst the parties that made such request.

D. Appeal

In the event the Commissioner's final agency order from the public hearing is appealed or otherwise subject to judicial review, the Commissioner will file all Confidential Information under seal with the court of competent jurisdiction in accordance with applicable rules and regulations.

Section 15 Conflicts of Interest Screen

A. Where the carrier and identified hospitals and/or health-care providers elect to participate in the Opportunity for Negotiation and Settlement afforded under Section 12, any Division representatives that participate in the negotiations shall be screened from the Commissioner for the entirety of the applicable public hearing process. Additionally, the Division representative that participate in the negotiations shall not disclose any information from the negotiations to the Commissioner.

B. The Division's representatives and staff supporting those representatives, shall be screened from the Commissioner, and their representatives and staff, for the entirety of the applicable public hearing.

C. "Screened" as used in this Section includes, specific to the matter that is the subject of the screen, remaining as separate entities for the public hearing, being restricted from ex parte communications, and prohibiting access to non-public filings and documents in the possession of Division staff and representatives on the opposite side of the screen from the Commissioner. It does not include restrictions on communications when all parties and the Commissioner are included in the communication or communications.

Section 16 Discovery

A. Within ten (10) days of issuance of the Final Notice of Hearing, each Party shall serve upon the Commissioner and all Parties:

1. A proposed witness list including the name, address, and telephone number of any witness or Party whom the Party may call to provide testimony at the public hearing, together with a detailed statement of the content of that person's testimony.

2. The Commissioner shall limit evidence presented at the hearing to information that is related to the reason the carrier failed to meet the network adequacy requirements or the premium rate reduction requirements for the Standardized Plan in any single county. Any of the following additional documentary evidence a Party may wish to include in the record at the public hearing related to a carrier's failure to meet the premium requirements in the county at issue may be submitted for the Commissioner's review:

a. An actuarial analysis demonstrating why the premium rate reduction requirements were not met.

b. Negotiated rates with other providers in the same county.

c. Enrollee and utilization data for the county.

d. Provider financial data, including but not limited to, profit and loss statements and balance sheets. Providers may also submit other data to demonstrate unique circumstances that may not be represented in the rate setting process.

e. Provider rates with other carriers.

f. Carrier initiatives and assumptions to reduce health care costs for the county.

g. Demographics and acuity of covered populations within the county.

3. All documents submitted to the Commissioner and the Parties pursuant to this Section will be included in the record for the public hearing.

4. Additional discovery shall be at the discretion of the Commissioner.

B. The Colorado Rules of Civil Procedure (C.R.C.P.) 26 through 37 do not apply to the public hearing proceedings.

Section 17 Consolidation of Proceedings

The Commissioner has the discretion to consolidate proceedings involving the same carrier and providers in counties in the same rating area as defined in Colorado Insurance Regulation 4-2-39.

Section 18 Burden of Proof

A. The burden of proof shall be on the Party that is the proponent of a decision.

1. If a carrier has notified the Commissioner pursuant to the carrier's Notice and Complaint pursuant to Sections 9 and 10 that it is unable to meet the premium rate reductions requirements, and a Party alleges that the carrier is able to meet the premium rate reduction requirements, the burden of proof is on the Party seeking to prove the carrier is able to meet the premium rate reduction requirements.

2. When the Division alleges that a carrier has not met the premium rate reductions requirements, the burden of proof is on the Division to prove the carrier has failed to meet the requirements.

3. If a Party alleges a particular hospital or health-care provider is the reason a carrier failed to meet the premium rate requirements for the Standardized Plan at issue, the burden of proof shall be on that Party to demonstrate that the hospital or health-care provider prevented the carrier from meeting the premium rate requirements and to justify the appropriateness of the reimbursement rate sought by the Party through the public hearing.

B. Nothing in this Section 18 shall preclude a hospital or health-care provider from presenting evidence that the carrier's proposed reimbursement rate is insufficient.

Section 19 Public Hearing Proceedings

A. No later than ten (10) days before the hearing, the Commissioner shall issue an order setting forth the allotted time for the Parties to present evidence and testimony at the hearing.

B. Public Testimony by Interested Persons

In addition to the Parties identified in Section 7, consumer advocacy organizations and individuals shall be given the opportunity to present evidence regarding the carrier's failure to meet the premium rate or network adequacy requirements during the public hearing. Members of the public, consumer advocacy organizations, and other interested persons who seek to testify at the hearing shall sign up at least three (3) days in advance of the hearing on the Division's website. The Commissioner shall have the authority to set time limits on public testimony.

C. Presentation of Evidence

1. Evidence shall be limited to information that is relevant to the Commissioner's determination pursuant to Sections 10-16-1306(3) to (11), C.R.S.

2. The Colorado Rules of Evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts. However, when necessary to ascertain facts affecting substantial rights of the Parties to the proceeding, the Commissioner may receive and consider evidence not admissible under the Colorado Rules of Evidence, if the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Informality in any proceeding or in the manner of taking testimony shall not invalidate any order, decision, rule, or regulation. The Commissioner may exclude incompetent and unduly repetitious evidence.

3. Exhibits

a. Documentary evidence shall be admitted into the record, except as follows:

i. Any Party may object under the Colorado Rules of Evidence to inclusion of documentary evidence in the record at the public hearing, provided the objection is made in writing to the Commissioner at least three (3) days prior to the public hearing. The Commissioner may rule on these objections in writing or on the record during the public hearing.

ii. At the Commissioner's discretion, the Commissioner may require the Party presenting a document in the record to present testimony or evidence as to the authenticity of that document.

b. The Commissioner encourages Parties to offer written stipulations resolving any evidentiary dispute, fact, or matter of substance or procedure at issue. Oral stipulations may be made on the record at the public hearing, but the Commissioner may require that the stipulation be reduced to writing, signed by the Parties or their counsel, and filed with the Commissioner. Any stipulation must be approved by the Commissioner, and the Commissioner may modify a stipulation as a condition of approval.

4. Witness Testimony

a. A Party may present the testimony of its witnesses through written testimony provided the Party has identified that the witness' testimony will be presented in writing in their witness list submitted pursuant to Section 16. Written testimony

must be submitted to the Commissioner and the Parties no later than seven (7) days before the hearing.

b. All Parties may make objections to witness testimony, and all witnesses are subject to cross-examination by or on behalf of Parties to the hearing. Any witness whose oral and/or written testimony a Party wishes to have as part of the record shall be available for cross-examination at the hearing.

5. Where lengthy cross-examination would use undue time, the Commissioner may require each Party to estimate the amount of time necessary for cross-examination. To promote an efficient hearing, the Commissioner may limit each Party's time for cross-examination. Time devoted to cross-examination shall count against the time allotted to the Party conducting the cross-examination.

Section 20 Recording of Hearing

The public hearing shall be recorded and posted on the Division's website.

Section 21 Issuance of Final Agency Order

A. The Commissioner shall issue a final agency order which shall include the Commissioner's determination of the reimbursement rate, by hospital and/or provider, that must be accepted by the identified hospital and/or provider and must be used by the carrier in its rate filings to achieve the premium rate reduction requirements. The reimbursement rate shall be set in accordance with the methodology in Regulation 4-2-91.

B. The decision of the Commissioner is a final agency order subject to judicial review pursuant to § 24-4-106(6) C.R.S.

Section 22 Modifications to Public Hearing Process

The Commissioner may issue appropriate orders to control the course and outcome of the public hearing including, but not limited to, dismissal.

Section 23 Computation and Modification of Time

A. In computing any time period pursuant to this regulation, the day of the event from which the time period begins shall not be included. If the due date falls on a weekend or state holiday, the due date will be the next business day.

B. At the Commissioner's discretion, a due date may be extended for good cause.

Section 24 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 25 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 26 Effective Date

This new regulation shall be effective on February 14, 2023.

Section 27 History

New regulation effective February 14, 2023.

PHILIP J. WEISER
Attorney General

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Tracking number: 2022-00654

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Insurance

on 12/13/2022

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 12/13/2022 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 28, 2022 12:50:41

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 Podiatry Board

CCR number

3 CCR 712-1

Rule title

3 CCR 712-1 PODIATRY RULES AND REGULATIONS 1 - eff 01/30/2023

Effective date

01/30/2023

DEPARTMENT OF REGULATORY AGENCIES

Colorado Podiatry Board

PODIATRY RULES AND REGULATIONS

3 CCR 712-1

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

…

1.6 PODIATRY LICENSURE

This Rule is promulgated pursuant to sections 12-20-202, 12-20-204, 12-290-106(1)(a), 12-290-107, and 12-290-112, C.R.S.

…

B. LICENSURE BY ENDORSEMENT

In lieu of applying for an initial license to practice podiatry in Colorado, applicants who are licensed to practice podiatry in another jurisdiction, through the federal government, or who holds a military occupational specialty, as defined in section 24-4-201, C.R.S., may apply for licensure by endorsement pursuant to section 12-20-202(3), C.R.S. An applicant for licensure by endorsement must timely complete a Board approved application form establishing compliance with the following requirements:

…

7. Submission of satisfactory proof that the applicant has held for at least one year a current and valid license to practice podiatry in another jurisdiction with a scope of practice that is substantially similar to the scope of practice for podiatrists as specified in Article 290 of Title 12, C.R.S., and these Rules.

8. As used in this Section (B) of this Rule, "active practice of podiatry" means the applicant has engaged in the practice of podiatry at least twenty hours per week during the preceding two years with no more than a six month continuous absence from the practice of podiatry; except that where appropriate for applicants for licensure by endorsement the Board may allow the applicant to fulfill the "active practice of podiatry" requirement by other means. It is anticipated that such exceptions shall be rare, and the decision as to what constitutes the active practice of podiatry shall be in the discretion of the Board.

9. An applicant who cannot demonstrate continued competency by compliance with the above criteria may demonstrate competence by complying with other evaluation, education, training and/or monitoring the Board may require to establish continued competence. Such requirements shall be at the discretion of the Board.

…

1.11 SUPERVISION OF AND PRACTICE BY PHYSICIAN ASSISTANTS (PAs)

This Rule is promulgated pursuant to sections 12-20-204, 12-290-106(1)(a), and 12-290-117(1) and (2), C.R.S. This rule governs the licensure and conduct of licensed physician assistants and not persons performing delegated podiatric tasks pursuant to section 12-290-116(6)(c), C.R.S.

A. REQUIREMENTS

In order to engage in practice as a physician assistant under the personal and responsible direction of a licensed podiatrist pursuant to the provisions of section 12-290-117, C.R.S., a physician assistant must hold a current license to practice issued by the Colorado Medical Board.

B. EXTENT AND MANNER IN WHICH A PA MAY PERFORM DELEGATED TASKS CONSTITUTING THE PRACTICE OF PODIATRY UNDER PERSONAL AND RESPONSIBLE DIRECTION AND SUPERVISION

1. Mandatory standards to be applied in the direction and supervision of (PAs):

…

c. The licensed podiatrist must provide direction to PAs in order to specify what podiatric services should be provided under the circumstances of each case. … The licensed podiatrist shall provide appropriate directions and confirm such directions are reasonably understood by the supervised person.

d. The licensed podiatrist must provide adequate supervision of the performance of delegated podiatric services. …

…

C. PRESCRIPTION AND DISPENSING OF DRUGS

2. A licensed physician assistant may issue a prescription order:

a. The supervising podiatrist has issued written protocols which may be prescribed by the PA on both a case-by-case and per patient visit basis. For purposes of this rule, “written protocol on a case-by-case basis” means instructions for prescribing by a PA for a new patient or a returning patient who presents new, different or additional signs or symptoms from those previously diagnosed and treated. For purposes of this rule, “written protocol on a per patient visit basis” means instructions for prescribing or refilling a prescription by a PA when a patient returns with recurrent signs or symptoms which have been previously diagnosed; and

…

c. Each and every prescription and refill order is entered on the patient’s chart; and

…

5. No drug which a PA is authorized to prescribe, dispense, administer or deliver shall be obtained by said PA from a source other than a supervising podiatrist, pharmacist, or pharmaceutical representative.

…

1.18 RULES REGARDING THE USE OF BENZODIAZEPINE

This Rule is promulgated pursuant to sections 12-20-204, 12-290-106(1)(a), and 12-30-109(6), C.R.S.

A. Licensees must limit any prescription for a continuous benzodiazepine to a 30-day supply, for any patient who has not been prescribed a benzodiazepine in the last 12 months.

Prior to prescribing the second fill of a benzodiazepine for a condition that is not exempt under section 12-280-404(4)(a.5) C.R.S., a licensee must comply with the requirements of section 12-280-404(4), C.R.S.

B. 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.

C. These rules do not require or encourage abrupt discontinuation, limitation, or withdrawal of benzodiazepines. Licensees are expected to follow generally accepted standards of podiatry practice, based on an individual patient's needs, in tapering benzodiazepine prescriptions.

…

1.20 PROVISION OF REPRODUCTIVE HEALTH CARE IN COLORADO

This Rule is promulgated pursuant to Executive Order D 2022 032, and sections 25-6-401, *et seq.*, 12-290-106(1)(a), and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Assisting in the provision reproductive health care" means aiding, abetting or complicity in the provision of reproductive health care.

3. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

4. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

5. "Licensee" means as defined in section 12-20-102(10), C.R.S.

6. "Provision of reproductive health care," includes but is not limited to, transportation for reproductive health care, referrals for reproductive health care and related services, funding or assisting with payment of reproductive health care, prescribing, shipping or dispensing medications for reproductive health care in accordance with state and federal law, all options and mental health counseling and treatment related to reproductive health care. The "provision of reproductive health care" also includes all treatment contemplated in the definition of section 25-6-402(4), C.R.S.

7. "Regulator" means as defined in section 12-20-102(14), C.R.S.

8. "Reproductive health care" means as defined in section 25-6-402(4), C.R.S.

B. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on the applicant or licensee's provision of or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice as defined in Colorado law and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee arising from the provision of, or assistance in the provision of reproductive health care in this state or any other state or U.S. territory, so long as the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

D. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action or any other sanction against the applicant's or licensee's professional licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant or licensee's provision of, or assistance in the provision of, reproductive health care and the care provided was consistent with generally accepted standards of practice and did not otherwise violate Colorado law.

E. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on the licensee's own personal effort to seek or obtain reproductive health care for themselves. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee arising from the individual's own personal receipt of reproductive health care in this state or any other state or U.S. territory.

1.21 PROTECTING COLORADO'S WORKFORCE AND EXPANDING LICENSING OPPORTUNITIES

This Rule is promulgated pursuant to Executive Order D 2022 034, and sections 12-290-106(1)(a) and 12-20-204, C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Applicant" means as defined in section 12-20-102(2), C.R.S.

2. "Civil judgment" means a final court decision and order resulting from a civil lawsuit.

3. "Criminal judgment" means a guilty verdict, a plea of guilty, a plea of nolo contendere, *or* a deferred judgment or sentence.

4. "Licensee" means as defined in section 12-20-102(10), C.R.S.

5. "Regulator" means as defined in section 12-20-102(14), C.R.S.

B. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a civil or criminal judgment against the applicant or licensee regarding the consumption, possession, cultivation, or processing of marijuana so long as the actions are lawful and consistent with professional conduct and standards of care within Colorado and did not otherwise violate Colorado law.

C. The regulator shall not deny licensure to an applicant or impose disciplinary action against an individual's license based solely on a professional disciplinary action against the applicant's or licensee's professional licensure in this, or any other state or U.S. territory so long as the professional disciplinary action is based solely on the applicant's or licensee's consumption, possession, cultivation, or processing of marijuana and did not otherwise violate Colorado law.

1.22 CONCERNING HEALTH CARE PROVIDER DISCLOSURES TO CONSUMERS ABOUT THE POTENTIAL EFFECTS OF RECEIVING EMERGENCY OR NONEMERGENCY SERVICES FROM AN OUT-OF-NETWORK PROVIDER

This Rule is promulgated pursuant to sections 12-20-204, 12-30-112, and 12-290-106(1)(a), C.R.S., in consultation with the Commissioner of Insurance and the State Board of Health.

The purpose of this Rule is to establish requirements for health care providers to provide disclosures to consumers about the potential effects of receiving emergency or non-emergency services from an out-of-network provider.

This Rule applies to health care providers as defined in section 10-16-102(56), C.R.S.

A. Definitions, for purposes of this Rule, are as follows:

1. "Publicly available" means, for the purposes of this regulation, searchable on the health care provider's public website, displayed in a manner that is easily accessible, without barriers, and that ensures that the information is accessible to the general public, including that it is findable through public search engines. The health care provider's public website must be accessible free of charge, without having to establish a user account, password, or other credentials, accept any terms or conditions, and without having to submit any personal identifying information.

B. Disclosure requirements.

1. An out of network provider may balance bill a covered person for post-stabilization services in accordance with section 10-16-704, C.R.S., and covered nonemergency services in an in-network facility that are not ancillary services if the provider meets the requirements set forth in section 12-30-112(3.5), C.R.S. If a consumer has incurred a claim for emergency or nonemergency health care services from an out-of-network provider, the health care provider shall provide the disclosures contained in Appendix B in compliance with section 12-30-112(3.5), C.R.S.

2. The health care provider shall provide the disclosure contained in Appendix B as set forth in section 12-30-112(3.5), C.R.S.

C. Noncompliance with this Rule may result in the imposition of any of discipline made available by section 12-290-108(3)(g), C.R.S.

…

APPENDIX B

Your Rights and Protections Against Surprise Medical Bills

When you get emergency care or get treated by an out-of-network provider at an in-network hospital or ambulatory surgical center, you are protected from surprise billing or balance billing.

What is “balance billing” (sometimes called “surprise billing”)?

When you see a doctor or other health care provider, you may owe certain out-of-pocket costs, like a copayment, coinsurance, or deductible. You may have additional costs or have to pay the entire bill if you see a provider or visit a health care facility that isn’t in your health plan’s network.

“Out-of-network” means providers and facilities that haven’t signed a contract with your health plan to provide services. Out-of-network providers may be allowed to bill you for the difference between what your plan pays and the full amount charged for a service. This is called “balance billing.” This amount is likely more than in-network costs for the same service and might not count toward your plan’s deductible or annual out-of-pocket limit.

“Surprise billing” is an unexpected balance bill. This can happen when you can’t control who is involved in your care—like when you have an emergency or when you schedule a visit at an in-network facility but are unexpectedly treated by an out-of-network provider. Surprise medical bills could cost thousands of dollars depending on the procedure or service.

You’re protected from balance billing for:

Emergency services

If you have an emergency medical condition and get emergency services from an out-of-network provider or facility, the most they can bill you is your plan’s in-network cost-sharing amount (such as copayments, coinsurance, and deductibles). You can’t be balance billed for these emergency services. This includes services you may get after you’re in stable condition, unless you give written consent and give up your protections not to be balanced billed for these post-stabilization services.

If you believe you’ve been wrongly billed by a healthcare provider, please contact the Colorado Podiatry Board at dora_podiatryboard@state.co.us or at 303-894-7800. Visit the CMS No Surprises Act website (https://www.cms.gov/nosurprises/consumers) for more information about your rights under federal law. Visit section 12-30-112, C.R.S., for more information about your rights under state law.

Certain services at an in-network hospital or ambulatory surgical center

When you get services from an in-network hospital or ambulatory surgical center, certain providers there may be out-of-network. In these cases, the most those providers can bill you is your plan’s in-network cost-sharing amount. This applies to emergency medicine, anesthesia, pathology, radiology, laboratory, neonatology, assistant surgeon, hospitalist, or intensivist services. These providers **can’t** balance bill you and may **not** ask you to give up your protections not to be balance billed.

If you get other types of services at these in-network facilities, out-of-network providers can’t balance bill you, unless you give written consent and give up your protections.

You’re never required to give up your protections from balance billing. You also aren’t required to get out-of-network care. You can choose a provider or facility in your plan’s network.

When balance billing isn't allowed, you also have these protections:

- You're only responsible for paying your share of the cost (like the copayments, coinsurance, and deductible that you would pay if the provider or facility was in-network). Your health plan will pay any additional costs to out-of-network providers and facilities directly.

- Generally, your health plan must:

    - Cover emergency services without requiring you to get approval for services in advance (also known as "prior authorization").

    - Cover emergency services by out-of-network providers.

    - Base what you owe the provider or facility (cost-sharing) on what it would pay an in-network provider or facility and show that amount in your explanation of benefits.

    - Count any amount you pay for emergency services or out-of-network services toward your in-network deductible and out-of-pocket limit.

If you believe you've been wrongly billed by a healthcare provider, please contact the Colorado Podiatry Board at dora_podiatryboard@state.co.us or at 303-894-7800. Visit the CMS No Surprises Act website (https://www.cms.gov/nosurprises/consumers) for more information about your rights under federal law. The federal phone number for information and complaints is: 1-800-985-3059.

Visit the CMS No Surprises Act website (https://www.cms.gov/nosurprises/consumers) for more information about your rights under federal law.

Visit the Colorado Podiatry Board website (https://dpo.colorado.gov/Podiatry) for more information about your rights under section 12-30-112, C.R.S.

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Office of the Attorney General

Tracking number: 2022-00735

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Podiatry Board

on 12/16/2022

3 CCR 712-1

PODIATRY RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 12/16/2022 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 28, 2022 16:02:45

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Law

Agency

Peace Officer Standards and Training Board

CCR number

4 CCR 901-1

Rule title

4 CCR 901-1 PEACE OFFICER TRAINING PROGRAMS AND PEACE OFFICER CERTIFICATION 1 - eff 01/30/2023

Effective date

01/30/2023

Rule 1 – Definitions

Effective January 30, 2023

As used in these rules

(a) "Academy director" means that person responsible for the administration and operation of a POST-approved academy.

(b) "Applicant" means any person formally seeking approval by the Board.

(c) "Appointed" means sworn in and serving as a peace officer or reserve peace officer, but does not include rehiring by the same law enforcement agency if the separation is for less than six (6) months, for the purposes of Rule 29.

(d) "Approved" means formally accepted or authorized by the Board.

(e) "ACT" means Arrest Control Tactics, one of the skills training programs required for the basic, refresher and reserve training academies.

(f) "Assistant skills instructor" means an individual who has successfully completed a relevant approved skills instructor training program and who may instruct the corresponding skills training program in arrest control, law enforcement driving, or firearms under the direction and in the presence of a full skills instructor, and assist in evaluating and coaching trainees at an approved basic, refresher or reserve training academy.

(g) "Authorized emergency vehicle" means such vehicles as further defined in § 42-1-102(6), C.R.S.

(h) "Board" means the Colorado Peace Officer Standards and Training Board.

(i) "Bodily injury" means physical pain, illness, or any impairment of physical or mental condition, per § 18-1-901(3)(c), C.R.S.

(j) "Certification examination" means the written test required, per § 24-31-305(1)(a)(III), C.R.S.

(k) "Certified peace officer" means any person who has successfully attained POST Certification, as further described in §§ 24-31-305 and 24-31-308, C.R.S.

(l) “Course” means a formal unit of instruction relating to a particular subject.

(m) "C.R.S." means Colorado Revised Statutes, codified laws of the State of Colorado.

(n) "Director" means the director of the POST Board staff.

(o) “Disqualifying incident” means:

(I) A finding of guilt following either a verdict of guilty by the court or jury, or a plea of guilty, or a plea of nolo contendere., per § 24-31-305(1.5)(a), C.R.S. Any Colorado juvenile adjudication is not a conviction.

(II) Entering into a deferred judgment and sentencing agreement, a deferred prosecution agreement, or a pretrial diversion agreement of any disqualifying incident, whether pending or successfully completed, per §§ 24-31-305(1.5)(b) and 24-31-904(4), C.R.S.

(III) A finding of untruthfulness pursuant to § 24-31-305(2.5), C.R.S.

(IV) Convicted of or pleads guilty or nolo contendere to a crime involving unlawful use of physical force, per § 24-31-904, C.R.S., or a crime involving the failure to intervene in the use of unlawful force, per § 24-31-904, C.R.S. and § 18-8-802(1.5)(a) and (d), C.R.S.

(V) Found civilly liable for the use of unlawful physical force or the failure to intervene in the use of unlawful force, per § 24-31-904, C.R.S.

(VI) An administrative law judge, hearing officer, or internal investigation finds that a peace officer used unlawful physical force, failed to intervene, or violated section 18-1-707, C.R.S. as described in §24-31-904, C.R.S.

(VII) A court, administrative law judge, hearing officer, or a final decision in an internal investigation finds that a peace officer intentionally failed to activate a body-worn camera or dash camera or tampered with any body-worn or dash camera with the intent to conceal unlawful or inappropriate actions or obstruct justice, as described in § 24-31-902(1)(a)(IV), C.R.S.

(VIII) Failure to satisfactorily complete peace officer training required by the POST Board, per § 24-31-305(2.7), C.R.S.

(IX) Making materially false or misleading statements of omissions in the application for certification.

(X) Knowingly or intentionally providing inaccurate data for the database created per § 24-31-303(1)(r), C.R.S.

(XI) Otherwise failing to meet the certification requirements established by the Board.

(XII) A finding by an administrative law judge, hearing officer, or internal investigation of a law enforcement agency that a peace officer violated section 18-8-805, C.R.S. regarding the prohibited use or direction of administration of ketamine.

(p) "Enroll" means that a person has applied to and been accepted for admission into an academy and is physically present at the academy to receive instruction.

(q) "Enrollment date" means the first day of instruction at an approved basic, refresher or reserve training academy, and shall be synonymous with the first day of instruction as reflected on the approved academy schedule.

(r) Fingerprint-based criminal history record check: a search of a person's fingerprints, provided on a POST applicant fingerprint card or a Colorado bureau of investigation (CBI) authorized vendor, and processed by CBI and federal bureau of investigation (FBI) for the purpose of determining a person's eligibility for certification as a peace officer in the state of Colorado.

(s) "Found Civilly Liable" as used in §24-31-904, C.R.S. means, a final judgment of civil liability is entered against a certificate holder, or a judge or jury makes a finding of fact that the certificate holder is civilly liable, in a court of competent jurisdiction, for an event occurring after July 6, 2021.

(t) "Full skills instructor" means an individual who has successfully completed the minimum qualifications required by these Rules and who may develop, implement and evaluate a skills training program at an approved basic, refresher or reserve training academy.

(u) "Incident" means a single, distinct event as determined by the POST Director or designee.

(v) "Lead skills instructor" means a full skills instructor at a basic, refresher or reserve training academy who may be designated by the academy director to oversee or coordinate the administration of a specific skills program for a particular academy class.

(w) "Lesson plan" means a document that specifically describes the material presented during a course of instruction, as further described in POST RULE 21.

(x) "Moving training" means training where the academy students are involved in movement with a loaded weapon. It is recognized that during square range drills, academy students may move 1-2 steps laterally or forward/backward. The 1:1 ratio is not required for this drill. For all other drills/exercises involving movement a 1:1 ratio is required.

(y) "Operable firearm" means a firearm that is capable of discharging a bullet if loaded. This does not include firearms designed or modified to discharge marking cartridges or airsoft projectiles during academy scenario/reality-based training.

(z) "Peace officer" means any person, AS recognized in § 16-2.5-102, C.R.S.

(aa) "POST certified" means any person possessing a valid, numbered certificate issued by the Board authorizing such person to serve as a peace officer or reserve peace officer.

(bb) "POST fingerprint card" means a fingerprint card provided by POST.

(cc) "POST Identification" (PID) means a number assigned and unique to each active peace officer's certification record. All inquiries and correspondence to POST should contain this number.

(dd) “Practical Exercise” means role playing, table top exercises, or other scenario/reality-based training.

(ee) "Program director" means the person responsible for the administration and operation of a POST-approved training program.

(ff) "Provisional certification" means a signed instrument issued by the POST Board that grants interim certification for qualified out-of-state peace officers seeking Colorado certification that enables the provisional applicant to obtain appointment as a peace officer in Colorado while fulfilling the requirements for basic certification.

(gg) "Recognized disciplines for arrest control training" mean those arrest control/defensive tactics systems that have been reviewed and approved by the Board, or it’s designee, in consultation with the Arrest Control Subject Matter Expert Committee for use in an approved law enforcement academy. Such systems may include, but are not limited to, Federal Bureau of Investigation (FBI) system, Koga system and Pressure Point Control Tactics (PPCT) system.

(hh) “Records management system” is an agency-wide system that provides for the storage, retrieval, retention, archiving, and viewing of information, records, documents, or files pertaining to POST operations.

(ii) "Refresher academy" means an approved training program that consists of a minimum of 96 hours of instruction and includes POST Board approved academics, arrest control, law enforcement driving and firearms.

(jj) "Relevant approved skills instructor training program" means a basic, not advanced, instructor training program that contains a minimum of forty (40) hours of instruction with instructional content that meets or exceeds the content of the respective instructor training programs for arrest control, law enforcement driving, or firearms, and has been formally accepted or authorized by the Board.

(kk) "Renewal applicant" means an applicant whose Colorado peace officer certificate has expired per § 24-31-305(1.7)(b), C.R.S., and who has applied to renew his/her Colorado peace officer certificate in accordance with § 24-31-305(1.7)(c), C.R.S. and POST Rule 13.

(ll) "Reserve peace officer" means any person described in § 16-2.5-110, C.R.S., and who has not been convicted of a felony or convicted on or after July 1, 2001, of any misdemeanor as described in section 24-31-305 (1.5), or released or discharged from the armed forces of the United States under dishonorable conditions.

(mm) "Serious bodily injury" means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree, per § 18-1-901(3)(p), C.R.S.

(nn) "Skills examination" means the approved practical test of an applicant's proficiency in arrest control, law enforcement driving, or firearms.

(oo) "Skills training" means the required approved arrest control, law enforcement driving, and firearms courses.

(pp) "State" means any State in the United States, the District of Columbia, and any territory or possession of the United States.

(qq) "Subject Matter Expert" (SME) means an individual formally recognized by the chair of the Board for his or her extensive knowledge, expertise and/or experience in one of the skills areas or in academics.

(rr) "Successful completion" means a score of seventy (70) percent or greater, or a grade of "C" or better, or a rating of pass, if offered as pass/fail, in a POST approved academy or program. For the certification examination passing score, see Rule 15.

(ss) "Termination for cause" means the certificate holder was terminated from a peace officer position for intentional wrongdoing or misconduct.

(tt) "Test out" means a POST-scheduled skills examination where proficiency is assessed by ~~a~~ POST Subject Matter Experts (SMEs) in all three perishable skills (Arrest Control, Law Enforcement Driving, and Firearms) and the written POST certification exam is administered.

(uu) "Training academy" means a POST-approved school, agency or other entity that provides POST-approved training programs.

(vv) "Training program" means a POST-approved course of instruction required by statute, or Rule, or for peace officer certification and other peace officer training programs as otherwise recognized and approved by the Board.

(ww) “Unlawful Use of Physical Force” as used in §24-31-904, C.R.S. means the use of physical force that violates title 18, C.R.S.

Rule 3 – Director's Authority

Effective January 30, 2023

a) The Director's authority shall include:

(I) Making the initial determination as to whether an applicant has met the requirements to sit for the certification examination, or to be certified;

(II) Approving or disapproving program applications;

(III) Issuing remedial action and compliance orders for non-compliance with POST rule;

(IV) Determining the equivalency of first aid and cardiopulmonary resuscitation training;

(V) At the Director's, or the Director's designee's, discretion, selecting qualified evaluators to administer the skills examinations described in Rule 16;

(VI) Determining the merit of challenges relating to the administration of examinations pursuant to Rules 15 and 16;

(VII) Determining the merits of variance requests, consistent with the basic purposes and policies of § 24-31-301, et seq., C.R.S., and of the Board, in accordance with Rule 7 and Rule 8;

(VIII) The Director, or their designee, may approve eyewitness identification training per § 16-1-109, C.R.S., or other statutorily mandated training on behalf of the POST Board.

(IX) Discharging such other powers or duties as the Board or the Attorney General may direct.

(A) Issuing summary suspensions in situations where the board has delegated authority to the director, including:

1) Where a certificate holder has failed to meet in-service training requirements;

2) Where a specific law enforcement training academy class was found to be substantially deficient, such that the certificate holders of that class would pose a danger to the public health, safety and welfare.

b) If any action or determination made by the Director, or their designee, pursuant to this rule is not appealed by the applicant within thirty (30) days as provided in Rule 5(d), the Director's, or their designee's, action or determination shall become final agency action.

Rule 5 – Hearings

Effective January 30, 2023

a) Show Cause Hearings for revocation or suspension of certification for criminal disqualifying incidents

(I) At any time, the Director or the Director's designee may direct a respondent to appear at a hearing and show cause why the Board should not take disciplinary action of certification for criminal convictions, deferred judgment and sentence agreements, deferred prosecution agreements, or pretrial diversion agreements. Disciplinary action may include revoking, suspending, or voluntary surrender of the certification of a peace officer for a qualifying criminal act.

(A) Not less than forty (40) days prior to the date set for such hearing, the Director or the Director's designee shall transmit to the respondent written notice of the hearing, which must include:

1) The date, time and place of the hearing;

2) An advisement that the respondent has the right to appear and be heard at such hearing, either in person or through legal counsel;

3) An advisement that the respondent has the burden of going forward, and the burden of proving all facts relevant to their position;

4) A concise statement setting forth the subject of the hearing, facts relevant to the matter, and the statute, rule, or order, to which the matter relates;

5) Copies of all documents considered by the Board in setting the hearing; and

6) The nature of the proposed disciplinary action.

(B) Not less than ten (10) days prior to the date set for a hearing pursuant to section (a) of this rule, the respondent shall file a response, including:

1) A concise statement setting forth the respondent's position;

2) All facts relevant to the matter; and

3) Copies of all documents the respondent wishes the Director or the Director's designee to consider in the matter;

4) If applicable, a list of witnesses from whom respondent intends to elicit a statement relevant to the matters at issue; and

5) Notification of the respondent's intent to appear at the hearing. If no such notification is received, the hearing will be cancelled, and the Director or the Director's designee will make a finding on the basis of documents presented.

(C) Actions against certifications may be based upon criminal disqualifying incidents, as defined in Rule 1, of certain offenses as identified or referenced in §§ 24-31-305(1.5), 24-31-904(1)(a)(I), (2)(a)(I).

(D) When the Director receives notice or otherwise learns that a certificate holder was engaged in a criminal disqualifying incident of the enumerated offenses listed in §§ 24-31-305(1.5), 24-31-904(1)(a)(I), (2)(a)(I), the Director shall issue an Order to Show Cause for why the officer's certification should not be revoked.

1) At the show cause hearing, the court record of the conviction or agreement shall constitute prima facie evidence of the conviction or agreement.

2) The certificate holder may be represented by counsel.

3) The certificate holder bears the burden of proving that an exemption from revocation would meet the requirements articulated in Rule 8.

(E) The Director will consider all information provided at the show cause hearing. If the Director determines by a preponderance of the evidence that disciplinary action is not appropriate, no further action will be taken. If the Director determines by a preponderance of the evidence that the disciplinary action is appropriate, the Director will make a recommendation to the Board regarding appropriate disciplinary action or actions.

(II) Any certificate holder or chief law enforcement officer of the employing law enforcement agency ("petitioner") may request a hearing before the Director to address matters of this section (a), through the filing of a petition.

(A) The petition supporting such request must include:

1) The name and address of the petitioner and whether the petitioner currently possesses Colorado POST certification;

2) A concise statement setting forth the subject of the hearing, all facts necessary to the matter, and the statute, rule, or order to which the petition relates;

3) A list of witnesses from whom petitioner intends to elicit a statement relevant to the matters at issue;

4) Copies of all documents the petitioner wishes the Director to consider in the matter; and

5) The action the petitioner wishes the Director to take.

(B) No less than thirty (30) days prior to the date set for a hearing on a petition, the Director shall provide a written response to the petitioner, including:

1) The date, time and place of such hearing;

2) An advisement that the petitioner has the right to appear and be heard at such hearing, either in person or through legal counsel;

3) An advisement that the petitioner has the burden of going forward, and the burden of proving all facts relevant to their petition; and

(III) The parties may mutually agree to shorten or lengthen any of the time frames set forth in these sections a) and b).

b) Administrative Hearings for Disqualifying Incidents Other Than Those Addressed in Subsection (a)(I)(C) of This Rule 5 (not criminal disqualifying incidents)

(I) When POST Staff receives appropriate written notification that a peace officer is subject to action against the peace officer's POST certificate pursuant to disqualifying incidents not related to criminal conduct, POST Staff shall take the following actions:

(A) The Director shall review the written notification to determine whether the information provided complies with the statutory requirements.

1) If the Director determines that the information provided in the written notification does not comply with statutory

requirements, the Director shall advise the notifying party that determination, and POST will take no further action.

2) If the certificate holder is subject to board action under § 24-31-305(2.5) or for a finding in an internal investigation as outlined in § 24-31-904(1)(a)(III)-(V) or (2)(a)(III)-(IV), C.R.S., and the Director determines that the information provided in the written notification does comply with the statutory requirements, the Director shall notify the peace officer of the right to request a hearing before a hearing officer to determine whether the peace officer certification should be revoked or suspended. The notice must also inform the peace officer that the peace officer must request the hearing within thirty (30) days of the date of the notice, which may be extended for good cause shown.

a. If the peace officer does not request a hearing within the required time frame, the Director will recommend revocation or suspension and the Board will vote on revoking or suspending the certification at its next regular meeting.

b. If the peace officer requests a hearing, the Director will request the law enforcement agency to provide documentation relevant to the information provided in the written notification. The Director will review the documentation provided by the law enforcement agency and conduct additional investigation, if necessary and appropriate. Upon the conclusion of the Director's review and investigation, the Director will either recommend no action or refer the matter for hearing.

(B) If the certificate holder is subject to board action for any other disqualifying incidents not addressed in (a) or (b)(1)(A)(2) of this rule, and the director determines that the information provided in the written notification does comply with the statutory requirements, the director shall review the documentation provided by the notifying party and conduct additional investigation if necessary and appropriate. Upon the conclusion of the director's review and investigation, the director will either recommend no action or refer the matter for hearing.

(C) If the matter is referred for hearing, the Director shall appoint a hearing officer to conduct the hearing in accordance with §§ 24-4-104 and 105, C.R.S.

1) The Director shall advise the notifying party in writing that the matter will be set for hearing and that the law enforcement agency may submit any documentary evidence or argument that it wishes to provide to the hearing officer, and must serve any documentary evidence or argument on all parties. The law enforcement agency may not intervene or participate as a party to the hearing. Documentary evidence or argument must be submitted within fifteen (15) days of notification.

2) The hearing shall be conducted in accordance with § 24-4-105, C.R.S. upon filing of a notice of hearing, the hearing officer shall issue a protective order maintaining confidentiality of internal affairs investigation records, if any.

3) POST will appear at the hearing through its counsel, and will bear the burden of proving grounds for revocation or suspension of the certification by a preponderance of the evidence. The peace officer may be represented by counsel of their choice.

4) At a minimum, the hearing will be audio recorded.

5) Within forty-two (42) days of the conclusion of the hearing, the hearing officer shall prepare and file an initial decision, which the agency shall serve upon the parties. Each decision and initial decision must include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record and the appropriate order, sanction, relief, or denial. A notice of appeal rights shall be attached to the initial decision.

6) Either party may file an appeal of the initial decision with the POST Board pursuant to § 24-4-105(14), C.R.S. by filing written exceptions within thirty (30) days of the date of service of the initial decision. Any party who seeks to reverse or modify the initial decision shall file a designation of the relevant parts of the record described in § 24-4-105(14), C.R.S. within twenty (20) days of the initial decision. Within ten (10) days thereafter, any other party or the law enforcement agency may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost thereof. All deadlines are jurisdictional and will not be extended. Timely filing is determined by the date the POST Board receives the

appeal. Any appeal must be filed with the POST Board and not the hearing officer.

7) If a party appeals the initial decision of the hearing officer, the appeal must describe in detail the basis for the appeal, the specific findings of fact and/or conclusions of law to be reviewed, and the remedy being sought.

8) The record shall be certified within 60 days of the appeal. Any party that designates a transcript as part of the record is responsible for obtaining and paying a certified court reporter who shall prepare the transcript and file it with the Board no more than 59 days after the designation of record. If no transcript has been filed within the time limit, the record will be certified and the transcript will not be included in the record or considered on appeal. In the absence of a transcript, the POST Board is bound by the hearing officer's findings of fact. No transcript is required if the review is limited to a pure question of law.

9) The POST Board will notify the parties when the record is certified. Opening briefs are due ten (10) days after the notice is served. Answer briefs are due ten (10) days after the opening brief is filed. Reply briefs are due ten (10) days after the answer brief is filed. These deadlines may be extended by the Director or Director's designee upon motion filed before the deadline upon good cause shown. No brief may exceed ten (10) pages without leave of the Director or Director's designee, which must be requested before the due date for the brief.

10) In general, no oral argument will be heard and the POST Board will decide the appeal based upon the briefs. A party may request an oral argument and if requested must be made no later than the date the requesting party's brief is due. If oral argument is granted, the parties will be given notice of the time and place. If granted, oral argument will be limited to no more than ten (10) minutes per side. The moving party may reserve part of its time for rebuttal.

11) If neither party appeals, the initial decision of the hearing officer becomes the final decision of the POST Board thirty (30) days after the date of the initial decision.

c) Appeals of fines or other administrative sanctions issued by the Attorney General:

(I) The administration of a fine or other administrative sanction by the Attorney General for violations of part 3, article 31, title 24 of the Colorado Revised Statutes or any rule promulgated under such authority is final unless appealed to the Director within thirty (30) days of such decision.

(II) Appeals of fines or other administrative sanctions shall be referred to a hearing officer, per § 24-4-105, C.R.S.

(A) The initial decision of the hearing officer, including the hearing officer's recommendations and any exceptions by the parties, shall be reviewed by the Board, which will adopt or reject the initial decision in whole or in part upon the issuance of a final agency order.

d) Appeals of Decisions of the Director or their designee relating to Show Cause Hearings, Variance Decisions, or Other Decisions:

(I) A decision by the Director or their designee is final unless appealed to the Board within thirty (30) days of the date of such decisions.

(II) If a decision by the Director or their designee is appealed to the Board, the Board will decide whether to hear the appeal. An appeal of the Director's, or their designee's, decision in the form of a notice of appeal must be made in writing and submitted to the POST Director. A notice of appeal will be brought before the board at the next scheduled meeting date. If a majority of the POST Board members agree to hear the appeal, a five-member panel of Board members shall proceed to hear the Board appeal. The appeal hearing must commence within forty-five (45) days from the date the Board agreed to hear the appeal. The certificate holder will be notified of the Board's action. This decision, whether summarily affirmed or decided by the board subcommittee, shall constitute Final Agency Action. The appellant will be notified of the Board's action.

e) Final Agency Action relating to the application of this Rule 5 is subject to judicial review under § 24-4-106, C.R.S.

Rule 7 – Variances

Effective January 30, 2023

(a) The Board may, upon sufficient cause shown, authorize variances to persons who are otherwise required to meet the requirements of these rules.

(b) To request a variance, an applicant must submit a written petition to the Director or the Director's designee, fully explaining all relevant facts. Any person seeking a temporary or permanent variance has the burden of establishing that:

(I) The variance is consistent with the basic purposes and policies of § 24-31-301, et seq., C.R.S.; and

(II) Strict application of the statutes and rules pertaining to the certification process would present a practical difficulty or unnecessary hardship. Mere inconvenience or expense does not suffice.

(c) The Director or the director's designee, in their discretion, may determine the merits of the request based upon the applicant's written submissions, or may request additional information, or may hold a meeting.

(d) Any variance granted under this rule shall be subject to such limitations or conditions as the Director, Director's designee, or Board deems necessary in order to conform to the basic purposes and policies of applicable law.

(I) A temporary variance is valid for six (6) months from the date of issue. One variance may be granted at the discretion of the Director or the Director's designee per incident.

(e) If any determination made by the Director or the Director's designee pursuant to this rule is not appealed by the applicant within thirty (30) days pursuant to Rule 5(d), such determination shall become final.

(f) Pursuant to § 24-31-303(5)(a) and § 24-31-305(1)(a)(III), C.R.S., no person may, through a variance or otherwise, serve as a certified peace officer, as defined in § 16-2.5-102, C.R.S., without having first passed the required certification examination and become certified.

(g) Pursuant to § 24-31-303(1)(r), C.R.S., the process outlined in subsection (b) of this Rule 7 applies to a peace officer seeking review of a peace officer's status in the database created per §24-31-303(1)(r), C.R.S.

Rule 8 – Process for Seeking Exemption from Statutory Certification Restrictions

Effective January 30, 2023

(a) The Board has promulgated these rules to ensure orderly and fair treatment of all POST approved training academy, renewal and provisional peace officer applicants. § 24-31-305, C.R.S., requires the POST Board to deny or revoke certification of any person with a disqualifying incident.

(b) If an applicant anticipates prior to the denial of certification that they will be denied certification on the ground that the applicant has a disqualifying incident, the applicant must provide a fingerprint-based criminal history record check, by submitting fingerprints to the Colorado Bureau of Investigation and the U.S. Federal Bureau of Investigation, and request an exemption from denial of certification. When POST receives the criminal history and exemption request, it will process the exemption request using the process described in section (c) of this Rule 8.

(c) To seek an exemption of a certification denial, or to request a reinstatement following a certification revocation or suspension, the applicant or the chief law enforcement officer, if any, of the potential employing agency, or the effected certificate holder, must submit a written petition to the Director or their designee, notifying of such disqualifying incident, and requesting that the Director or their designee to grant the applicant an exemption from certification denial, or to the affected certificate holder certificate reinstatement of the certificate. The petition must fully explain all relevant facts. Any person seeking an exemption from certificate denial or reinstatement of a certificate due to a disqualifying incident has the burden to establish:

(I) The exemption or reinstatement is consistent with the basic purposes and policies of § 24-31-305, et seq., C.R.S., including § 24-31-305(1.5)(b), if applicable;

(II) Mitigating circumstances exist that warrant exemption or reinstatement;

(III) Certification would be in the public interest; and

(IV) A true and accurate copy of the court record with disposition, law enforcement offense/case report from the disqualifying incident, and/or any other relevant documentation of a disqualifying incident, is attached to the petition. If the charging agency no longer has a copy of the report, a letter from the agency verifying that fact should be attached.

(d) The Director or their designee, at their discretion, may determine the merits of the request based upon the petitioner's written submissions, may request additional information, or may hold a meeting.

(e) Any exemption granted under this rule shall be subject to such limitations or conditions as the Director, or their designee, or Board deems necessary in order to conform to the basic purposes and policies of applicable law.

(f) The Director's, or their designee's, decision may be appealed by following the process outlined in Rule 5 – Hearings.

(g) In accordance with § 24-31-303(5)(a) and § 24-31-305(1.6)(a)(b), C.R.S., no person may, through an exemption or otherwise, serve as a certified peace officer, as defined in § 16-2.5-102 or § 16-2.5-110, C.R.S., without having first passed the required certification requirements and become certified.

(h) No person convicted of a felony may request an exemption from denial of enrollment.

Rule 11 – Provisional Certification

Effective January 30, 2023

(a) The Board is authorized to issue a provisional certification letter to any applicant who is authorized to serve as a certified peace officer by any other state or federal jurisdiction, excluding the armed forces, which has established minimum law enforcement training standards that are substantially equivalent to the standards established by Colorado as determined by the Director. The provisional applicant must be fully certified within the preceding three years and have served as a certified law enforcement officer in a full or part-time status in good standing in such other state or federal jurisdiction for more than one year, per § 24-31-308 (1)(a), C.R.S. The applicant must additionally meet all of the following requirements:

(I) Possess and submit a copy of their high school diploma, or high school equivalency certificate, or other evidence of successful completion of high school, including official college transcripts or degree,

(II) Possess and submit a copy of their current first aid and cardiopulmonary resuscitation certification, or equivalents;

(III) Truthfully complete and submit the POST Form 3 – Application for Provisional Certification and a notarized copy of the Release of Information Form;

(IV) Is in good standing with Colorado POST as determined by the director;

(V) Successfully completes the fingerprint-based criminal history record check required under Rule 14;

(VI) If applicable, submits a copy of their official military discharge documents showing character of service and discharge under other than dishonorable conditions; and

(VII) Pass the certification examination or, if leaving active out-of-state (the state in which the individual is certified) or federal peace officer employment, pass the certification exam within six (6) months from the date of issuance of the provisional certification.

(VIII) Provisional certification applications are valid for one year from date of submission.

(b) If an applicant becomes ineligible prior to receiving their provisional certification letter due to time-in-service requirements, the applicant must request and be granted a Rule 7 variance in order to move forward in the provisional process.

A provisional certification letter authorizes the holder to serve as a certified Colorado peace officer for not more than six (6) months.

(c) At the discretion of the Director or their designee, a variance may grant a single six (6) month extension to the Provisional certification, upon the showing of good cause.

(d) The Board shall issue a basic certificate to the holder of a provisional certification letter if such person satisfies one or any acceptable combination of the following skills proficiency requirements, or, if leaving active out-of-state (the state in which the individual is certified) or recognized federal peace officer employment, satisfies one or any acceptable combination of the following skills proficiency requirements within six (6) months from the date of issuance of the rovisional certification:

(I) Successfully completes skills training at a POST-approved basic peace officer training academy;

(II) Successfully completes a POST-approved refresher academy, including the arrest control, law enforcement driving, and firearms skills training;

(III) Passes a test out pursuant to Rule 16 with SME committee members or POST-approved designees who are not members of the applicant's employing agency.

(e) Upon issuance of a provisional certification and appointment to an agency the individual must comply with the training requirements outlined in § 24-31-315, C.R.S., within six months of date of appointment.

(I) Complete 2 hours of training in each of the following areas: anti- bias, community policing, situational de-escalation, and proper holds and restraints.

(f) The POST-approved skills instructor must submit the completed *POST Skills Testing Grade Sheet* to POST.

(g) Persons desiring additional time to complete the basic certification requirements beyond the initial six (6) months provided by the provisional certification letter must submit a variance request to the Director or their designee and demonstrate good cause why such additional time should be granted.

(h) An applicant may complete the provisional certification process while their application is valid, regardless if their provisional certification letter has expired. however, the applicant may not work as a certified peace officer if their provisional certification letter is not valid or has expired.

Rule 14 – Fingerprint-Based Criminal History Record Check

Effective January 30, 2023

a) No person shall be eligible for certification as a Colorado peace officer if they have a disqualifying incident.

b) Per § 24-31-304, C.R.S. and POST Rules, all persons seeking to enroll in a training academy shall submit their fingerprints to CBI no more than 60 days prior and at least one week before enrolling in the training academy. The academy must notify POST when fingerprints are submitted.

(I) All fingerprint results must be received by post no later than two weeks after enrollment date.

c) All persons seeking to apply for provisional or renewal certification must submit fingerprints to CBI as part of the application process pursuant to Rule 11 and 13.

d) POST Applicant Fingerprint results.

(I) The Board recommends that an applicant's fingerprints be submitted electronically by a CBI-authorized vendor or a LEA authorized by CBI to submit fingerprints for POST. When this is not possible, the applicant can submit fingerprints using the POST Applicant Fingerprint Card, obtained directly from POST. Any fees associated with this service are the responsibility of the applicant.

(II) Provisional and renewal applicants may request the POST Applicant Fingerprint Card when they are unable to submit fingerprints electronically. The applicant is responsible for having their fingerprints taken prior to the applicant's participation in the testing process as a provisional or renewal applicant.

(III) Applicants enrolling in a basic or reserve training academy fingerprinted in accordance with the academy's policies and procedures. The academy is responsible for ensuring that fingerprints are submitted to CBI by a CBI-authorized vendor or that the completed POST Applicant Fingerprint Card and fee are submitted to CBI prior to the applicant's enrollment in the academy.

(IV) Fingerprint results are valid throughout the certification process and through the life of certification. If certification expires or is revoked they become invalid. Applicants renewing their certification must submit new fingerprints.

e) Results from completed criminal history record checks.

(I) The Board shall be the authorized agency to receive the results from all POST Applicant Fingerprint submissions that have been processed for the state and national fingerprint-based criminal history record checks.

(II) All results from the completed criminal history record checks will be provided to the POST Director or their designee. Notice of subsequent arrests and convictions resulting in denial of certification will be provided to the Board.

f) Basic and reserve training academies.

(I) A training academy shall not enroll any person who has been convicted of an offense that would result in the denial of certification pursuant to § 24-31-305(1.5), C.R.S. The only exception shall be if the Board has granted the person an exemption from denial of enrollment pursuant to § 24-31-304(4)(a), C.R.S. and POST Rule 7, *Variances*.

(II) No person shall be enrolled in a training academy unless the person has been fingerprinted on a POST Applicant Fingerprint Card and an academy has submitted the person's completed POST Applicant Fingerprint Card and fee to CBI, or fingerprints have been submitted by a CBI-authorized vendor, prior to enrolling the person in the academy.

(III) A POST Form 11-E, *Enrollment Advisory Form*, shall be completed on the first day of the academy by both the person enrolled in the academy and the academy director or designee. The completed *Enrollment Advisory Form* shall be maintained at the academy.

(IV) The academy director shall ensure that an accurate and complete enrollment roster for each academy class is received at POST electronically by the day after the academy commences. The enrollment roster will be completed on the template provided by POST to the academy director.

(A) The enrollment roster must be fully completed with all personal information, education, military service, etc. and returned to POST staff. After entry, the roster will be returned to the academy director with assigned PID numbers.

(V) If the results of a criminal history record check reveal that a person currently enrolled in an academy is prohibited from enrolling pursuant to § 24-31-304(2), C.R.S., the Board or its designated representative(s) shall notify the academy. The academy shall take appropriate measures to immediately dismiss the person from the academy.

g) Exemption from denial of enrollment.

(I) If a person anticipates that he or she will be prohibited from either enrolling in a training academy or participating in the testing process as a provisional or renewal applicant because he or she has been convicted of any misdemeanor described in § 24-31-305(1.5), C.R.S., the person may submit a request for exemption from denial of enrollment under POST Rule 8, process for seeking exemption from statutory certification restrictions.

(II) Only if the person has, in fact, submitted a request for exemption from denial of enrollment under POST Rule 8, *Appeal Process for Peace Officer Applicants - Certification Denial as a Result of a Misdemeanor Conviction*, and the request has been granted by the Board, will the person be permitted to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant.

(III) No person convicted of a felony may request an exemption from denial of enrollment.

Rule 15 – Certification Examination
Basic, Provisional, Renewal

Effective January 30, 2023

(a) To be eligible to take the certification examination, an applicant must have completed and submitted to POST, as applicable:

(I) Form 1 - Application for Basic Peace Officer Certification; or
Form 3 - Application for Provisional Certification; or
Form 4 - Application for Renewal of Basic Certification; and

(II) A copy of their approved basic training academy diploma, or other evidence of successful completion; and

(III) A copy of their high school diploma, high school equivalency certificate or other evidence of successful completion of high school, including official college transcripts or college degree as evidence that the applicant has met the high school completion requirement; and

(IV) A copy of their current first aid and cardiopulmonary resuscitation certification, or equivalents; and

(V) A copy of their current driver's license or state-issued identification card; and

(VI) If applicable, a copy of their official military discharge documents showing character of service other than dishonorable conditions per § 24-31-301(5), C.R.S.

(VII) A law enforcement agency check, certified check, money order, or electronic payment in the prescribed amount.

(b) Certification examinations will be conducted by POST staff or POST approved designated proctor at academy locations. However, if the number of students sitting for the examination is four (4) or fewer, the students shall be required to take the examination at a location designated by POST. Additional exam dates will be offered periodically at POST for individuals.

(c) Refunds of certification examination fees shall not be provided unless the examination is postponed or canceled or under such other exceptional circumstances as determined by the Director, or their designee. Otherwise, non-refunded fees may be credited to allow the applicant to take the next administration of the certification examination. Further credits or extensions shall not be permitted.

(d) An applicant has a maximum of three attempts to pass the POST certification examination within two years of graduating the academy, or within one year of beginning the provisional or renewal process. Applicants taking the examination for a second or third time must pay the fee for the additional examination, and such examination shall not be comprised of the same questions that comprised the prior examinations. If an applicant cannot pass the certification examination after three attempts, the applicant must retake and successfully complete the academic portion of a basic academy in accordance with Rule 10 at the discretion of the academy director and in coordination with POST.

(e) Any protest or challenge to an examination or its administration must be made in writing within ten (10) days of the examination. The Director, or their designee, shall issue his decision in writing within twenty (20) working days. The decisions of the Director, or their designee, shall be final, unless appealed to the Board in accordance with Rule 5(d).

(f) POST sets a passing score that reflects the level of knowledge and skills required for minimally competent performance as an entry-level Peace Officer in the State of Colorado. POST uses national testing standards in setting the passing score which falls on a test score scale that ranges from 0 to 100.

Rule 16 – Skills Examinations for Provisional and Renewal Applicants

Effective January 30, 2023

(a) To be eligible to take any of the skills examinations, an applicant must complete and submit all applicable POST form(s) as set forth in POST Rule, including POST Form 3 – *Application for Provisional Certification* and/or POST Form 4 – *Application for Renewal of Basic Certification* along with a law enforcement agency check, certified check, money order, or electronic payment in the prescribed amount for each examination to be taken (prior to the day of the exam).

(b) Refunds of skills examination fees shall be provided only if requested more than twenty (20) days prior to the scheduled examination, unless the examination is postponed or canceled, or under such other exceptional circumstances as may be determined by the Director, or their designee.

(c) Only SME members, or the Director's designee, may conduct skills examinations.

(d) An applicant will be permitted three formal attempts to successfully complete each skills exam.

(I) Starting any skills exam is considered one attempt.

(II) An applicant may only coordinate additional attempts with POST staff in advance.

(III) Payment for each attempt must be submitted prior to the exam.

(IV) Multiple attempts may be permitted at the discretion of the SME member administering the test out. POST may or may not assess an additional exam fee.

(e) If an applicant has failed a skills examination on three (3) formal attempts, the applicant then has two (2) years to complete the basic academy training program for that skill at a Colorado POST-approved basic or reserve academy at the discretion of the academy director and in coordination with POST. If the applicant does not complete the required training within the two (2) years following their last skills examination attempt, they must complete a full basic academy.

(f) Skills examination scores are valid for two (2) years from the date of the last registered score with POST. All skills exams must be taken and successfully completed within two years of the initial application date.

(g) Any protest or challenge to an examination or its administration must be made in writing within ten (10) days of the examination. The Director, or their designee, shall issue a decision in writing within twenty (20) working days. The decision of the Director, or their designee, shall be final, unless appealed to the Board in accordance with Rule 5(d).

Rule 21 – Basic, Refresher and Reserve Training Academies

Effective January 30, 2023

a) Academy approval.

(I) All aspects of an academy must be in compliance with POST Rules and Program requirements before academy approval will be considered.

(II) Only an academy that is approved by POST may provide training required for certified peace officer status; and

(III) Each scheduled academy class of an approved training academy must be approved prior to the start of instruction.

b) Continuing academies.

(I) A continuing academy is an approved Basic, Refresher or Reserve academy that conducts and completes at least one approved academy class every three (3) years and operates in compliance with these rules. Three (3) years is defined by the enrollment date of the last academy completed.

(II) If a continuing academy does not complete at least one approved academy class in any consecutive three (3) year period, approval of the academy shall expire. An expired academy must reapply for approval as a new academy and must be approved by POST prior to providing any academy instruction.

(III) Other than as referenced in the preceding paragraph (II), a continuing academy may remain approved unless its status is surrendered, suspended or revoked.

(IV) The academy director must ensure that the following items are submitted electronically to POST at the same time and are received by POST at least thirty (30) days**,** but no more than sixty (60) days, prior to the start of instruction for each scheduled academy class of the approved training academy:

(A) A completed POST Form 7, *Application for Academy Approval*;

(B) A completed "*Scheduling Request for POST Exam*" form (Basic and Refresher academies only); and

(C) A complete and accurate academy schedule with the following information clearly noted on the schedule:

1) Name of the academy and academy class number as listed on the POST Form 7, *Application for Academy Approval*; and

2) All courses, dates and times in chronological order for each course, major exams and the name of the primary instructor for each course;

3) All dates and times when arrest control drill training, night driving and dim light shooting will be instructed;

4) For arrest control and firearms training, if the schedule shows more than eight (8) hours of instruction in any one day, then the schedule must denote lab or lecture hours, as appropriate; and

5) If multiple courses are listed within the same block of time on the schedule, then either the schedule itself or accompanying documents must specify the amount of time that will be instructed for each course.

6) All courses required by the basic academic training program must be scheduled and completed prior to administration of the POST certification examination.

(V) The academy director shall ensure that an accurate and complete enrollment roster for each academy class, along with the required enrollment documents, are received at POST electronically by the day after the academy commences. The enrollment roster will be completed on the template provided by POST to the academy director. See the enrollment checklist and POST Rule 14, *Fingerprint-Based Criminal History Record Check*.

(VI) The academy director shall notify POST prior to the occurrence of any change of the academy's approved schedule, to include cancellation of the academy, as submitted to POST on the Form 7, *Application for Academy Approval*.

(VII) All academies not based at a law enforcement agency shall establish an advisory committee that consists of law enforcement officials, administrators and community members to assist with providing logistical support and validation of training.

(VIII) Existing academies must petition the POST Board every five (5) years to renew their authority to operate a law enforcement training academy.

c) New academies.

(I) A new academy is either a Basic, Refresher or Reserve academy that has never conducted approved training, or a Basic, Refresher or Reserve academy that has not conducted approved training within the previous three (3) years.

(II) Entities interested in creating a new POST Approved Law Enforcement Training Academy must receive approval from the POST Board prior to application. The entity must present a feasibility study to demonstrate the academy could be successful, demonstrate the need for a new academy, as well as mitigation of workload on POST staff and SME's.

(III) The academy director of a proposed new academy shall contact POST at least Twelve (12) months prior to the anticipated start date of the new academy to ascertain application procedures and deadlines for submitting documents for new academy approval.

(IV) The following types of academies are considered separate academies that must be individually approved:

(A) Basic, Refresher and Reserve academies even if operated by the same agency, organization, or academic institution.

(B) Academies located either on a satellite campus, or at a different physical location than the primary academy.

(V) The proposed formal name of an academy must neither misrepresent the status of the academy, nor mislead law enforcement or the public.

(VI) Required documentation that must be submitted for new academy

approval includes, but is not limited to, a video in a digital media format approved by POST of all proposed sites where academic instruction and skills training will take place, site safety plans, lesson plans for all academic courses and all skills training programs for the Basic, Refresher or Reserve Academic Training Program, resumes for all academic instructors, and documentation of qualifications for all skills instructors.

(VII) Once a proposed new academy begins the approval process by submitting any of the required documentation listed in the preceding paragraph (VI) to POST, the proposed new academy shall have a maximum of twelve (12) months to complete the new academy approval process, including approval of all site safety plans, lesson plans, and other associated documents.

(VIII) The director of a proposed new academy shall also ensure that the documents required to be submitted by continuing academies, as listed in paragraph (b)(IV) of this Rule, are received at POST at least thirty (30) days, but no more than sixty (60) days, prior to the start of instruction.

(IX) Prior to approval, the proposed new academy must pass an on-site pre-approval inspection conducted by the Director or the Director's designated representative(s).

d) Training sites, site safety plans and equipment.

(I) An academy shall have the following training sites and facilities:

(A) For academics: A classroom with adequate heating, cooling, ventilation, lighting, acoustics and space, reasonable access to restroom facilities and a sufficient number of desks or tables and chairs in the classroom for each trainee;

(B) For firearms: A firing range with adequate backstop and berms to ensure the safety of all persons at or near the range, and some type of visual notification (range flag, signs, lights, or other) whenever the range is being utilized for live fire;

(C) For driving: A safe driving track for conducting law enforcement driving;

(D) For arrest control: An indoor site for instructing arrest control

training with sufficient space and mats to ensure trainee safety;

(E) For practical exercises and wellness training: Appropriate and safe locations for conducting all practical exercises and wellness lab training**;**

(F) Where practicable, all training sites should be clearly marked denoting that law enforcement training is in progress; and

(G) Online/remote training is not allowed without expressed written permission from POST.

(II) Approval of training sites.

(A) All new training sites for academic classroom instruction and skills training must be approved by POST in consultation with the appropriate subject matter expert committee prior to conducting any training at the site.

(B) Each academy is responsible for obtaining approval for all of its training sites of academic instruction and skills training.

(C) Academy directors shall ensure that all sites for practical exercises and wellness lab training are safe and that appropriate training can be accomplished at the site to achieve the course objectives or performance outcomes.

(D) Presumed approval or use of a specific site by one academy does not extend to automatic approval of the site for use by other academies.

(E) If an approved site is not utilized during any consecutive three (3) year period by any academy for the type of training for which the site was initially approved, then site approval expires. In order to resume training at an expired site, the site must be resubmitted for approval and approved.

(F) The following items must be submitted to POST in order for approval of a new or expired training site to be considered:

1) Video in a digital media format approved by POST that accurately depicts the site where instruction is to take place;

2) A detailed description of the site must be included, either as verbal narrative on the video or as a written supplement; and

3) An up-to-date written site safety plan.

(G) If an approved site has been in continuous use by at least one approved academy for at least the previous three (3) consecutive years and an additional academy seeks approval of the same site:

1) The director of the additional academy may submit a written request to POST that includes the location and/or description of the site, in lieu of the video; and

2) An up-to-date written site safety plan must be submitted to POST that is specific to the site and to the additional academy; and

3) Both the site and the safety plan must be approved by POST in consultation with the appropriate subject matter expert committee prior to conducting any training at the site.

(H) Academy Directors have discretion to utilize other classroom facilities as necessary for academic programs, provided those facilities are appropriate, safe and adhere substantially to the statements set forth in this part (d). This section is intended to allow such use of other facilities due to a facility emergency or for unique situations where a primary facility is not available or it is not desirable for the intended academic class.

1) In such cases where a primary classroom facility is rendered unusable for a period reasonably anticipated to exceed 21 continuous days, the Academy Director shall notify POST and submit an alternative training site plan for approval.

(III) Site safety plans.

(A) Each site of skills training and academic or classroom instruction must have an up-to-date and approved written site safety plan posted on site during any academy training at the site, or issued to, and present on the person of, each recruit and instructor.

(B) Copies of all site safety plans must also be on file at the academy at all times.

(C) Each site safety plan shall include procedures for managing medical emergencies, injuries, or accidents that are probable or likely to occur at the site.

(D) All site safety plans must include the information contained in POST Rule 21 (h), Duty to Report.

(E) All academy staff members, instructors and trainees shall be familiar with the content of each site safety plan as it pertains to the nature and scope of their involvement with the academy.

(IV) Equipment.

(A) An academy shall have and maintain the necessary equipment and instructional aids in sufficient quantities for conducting all aspects of the required academy training program; and

(B) All training sites and facilities, equipment, books, supplies, materials and the like shall be updated and maintained in good condition.

(C) The following items shall be present at each training site during any academy training at the site:

1) An effective means of summoning emergency medical assistance; and

2) A first aid kit that contains appropriate supplies to treat medical emergencies or injuries that are likely to be sustained at the site.

e) Academy directors.

(I) Qualifications. Each academy shall designate an on-site academy director whose qualifications, based upon education, experience and training, demonstrate his or her ability to properly manage the academy.

(II) Compliance. The academy director shall ensure that the academy operates in compliance with all POST Rules.

(III) Records. The academy director shall be responsible for establishing and maintaining a records management system that includes, but is not limited to, enrollment rosters, POST Form 11-E's, trainee files, trainee manuals, attendance records, lesson plans, source material, instructor files, instructor/course evaluations and site safety plans.

(IV) Change of director. The academy director or authorized representative of an academy shall notify POST as soon as practicable of any change of academy director or any change of the academy director's electronic mailing address.

f) Curriculum requirements.

(I) Academic standards.

(A) All training academies shall meet or exceed the required course content and minimum number of hours for each academic course of instruction and for each of the skills programs as required by the Basic, Refresher or Reserve Academic Training Programs.

(B) Successful completion required.

1) Trainees must successfully complete the Basic, Refresher or Reserve Academic Training Programs with a minimum score of seventy percent (70%); and

2) Trainees must successfully complete all skills training as required by the Arrest Control Training Program, Law Enforcement Driving Program and Firearms Training Program.

3) If an academy applies a higher standard than what is required by the preceding paragraphs (1) and (2), the higher standard must be described in the Trainee Manual and in the respective skills lesson plans or course materials, as applicable.

(II) Attendance.

(A) Skills training. For all hours of all skills training programs, 100 percent attendance and participation are required.

1) Skills training classes missed due to circumstances beyond the student's control shall be completed in person and before the end of the academy session.

(B) Academic training. For all hours of academic training, 100 percent attendance and participation are required.

1) Academic classes missed due to circumstances beyond the student's control may be made up in a virtual format. These virtual make up courses may not exceed ten percent of the academy session's total hours and must be completed before the end of the academy session.

(C) Written attendance records are required.

1) For trainees: Written daily attendance records that are accurate and up to date shall be kept for all trainees enrolled in all academic classes and all skills training programs.

2) For instructors: Written attendance records that are accurate and up to date shall be kept for all instructors who teach any portion of a training program.

3) For skills training, the format of the attendance records must clearly substantiate that the minimum ratios required by Rule 24, *Skills Training Safety and Skills Program Requirements for Basic, Refresher and Reserve Academies*, have been met.

(III) Lesson plans.

(A) All Basic, Refresher and Reserve training academies shall develop and maintain up-to-date lesson plans for each academic course of

instruction and for each of the skills training programs.

(B) Academic lesson plans shall be organized and readily accessible and may be maintained either electronically or as physical copies.

(C) Each academic and skills lesson plan must include at least the following information, as applicable:

1) Course title as specified in the POST Academic Training Program (Basic, Refresher or Reserve) or the POST skills training program; and

2) Date the lesson plan was prepared and date of last revision, if applicable; and

3) Name and title of author of lesson plan and name and title of the person who approved the lesson plan; and

4) Number of hours for the course required by the POST Academic Training Program and the number of actual course hours that will be instructed; and

5) Learning goals, course objectives and/or performance outcomes for the course as specified in the POST academic training program (basic, refresher or reserve) or the POST skills training programs. Additional outcomes may be added as long as such outcomes are supported in the content and are consistent with generally accepted academic practices. Any additional learning goals, course objectives, and/or performance outcomes must not conflict with those listed in the applicable POST basic training or skills training programs; and

6) Methods of instruction; and

7) A copy of the handouts, multimedia and/or PowerPoint presentations referenced in the lesson plan that will be used during the instruction; and

8) A list of all source materials used to develop the course, including internet links. In matters of law, primary authority, such as case law, regulations and statutes, shall provide the foundation for source material used in the lesson plan along with any additional secondary

authority, i.e., articles and other references, subject to that primary authority; and

9) Testing and/or assessment methods, such as test questions and answers, performance rubrics, or other assessment tools, that are appropriate to measure the learning goal, performance outcomes and/or objectives; and

10) Safety plan control measures specific to any practical exercise, role-play, scenario or other reality-based classroom and outside the classroom; and

11) Comprehensive content information that must be delivered to teach the subject matter to a level of proficiency that allows the student to perform the tasks on the job and that satisfies the required course objectives.

a) The required material can reasonably be taught given the time constraints using appropriate instructional methodologies.

b) Written content must be supported by currently accepted laws, policies, rules, regulations, and generally accepted law enforcement practices if challenged.

(D) All lesson plans must be written to ensure consistency between instructors and between all sessions of the academy over time. Content must be sufficient in scope and specificity to allow an instructor who did not author the lesson plan or develop the supporting materials to effectively teach the course.

(E) The curriculum SME committee may create guidelines to clarify expectations from time to time. These guidelines must be published on the POST website.

(F) Skills lesson plans must additionally include the program-specific documentation referenced within the applicable POST skills training program.

(IV) Daily schedules.

(A) For all skills training programs, daily schedules are required

that contain the information referenced in each of the skills training programs, as referenced in Rule 21(b)(IV)(C).

(B) Daily schedules will be submitted on the form provided by POST.

(V) Source material.

(A) For source material identified as required source material in the current POST Curriculum Bibliography, at least one (1) copy of each of the publications or sources must be maintained at the place of academic instruction. For those sources that are referenced with a website address, providing the trainees with readily available Internet access is acceptable in lieu of maintaining at least one (1) copy of each of the publications or sources.

(VI) Academy examinations.

(A) All academies shall administer written, oral or practical examinations periodically during each academy in order to measure the attainment of course objectives or performance outcomes as specified in the Basic, Refresher or Reserve Academic Training Programs.

(B) The academy director shall prescribe the manner, method of administration, frequency and length of academy examinations.

(C) For academic courses, the time allotted for examinations shall be in addition to the number of Required Minimum Hours for each course as specified in the Basic, Refresher or Reserve Academic Training Programs.

(D) For skills training programs, the time allotted for examinations or testing is included within the total program hours of each program.

(VII) Academy certificates of completion.

(A) The academy director shall immediately issue a certificate of completion to each trainee who successfully completes all requirements of the approved academy.

(B) Only a trainee who has attended and successfully completed all

academic classes and all required skills training programs shall be issued an academy certificate of completion.

(C) Each academy certificate of completion shall contain the following information:

1) Trainee's name; and

2) Name of the approved academy; and

3) Type of academy (Basic, Refresher or reserve); and

4) Date of academy completion (month, day, year); and

5) Total number of hours of the completed academy; and

6) Signature of the academy director and/or agency or academic representative; and

7) Reserve academy certificates of completion shall additionally state whether the total number of academy hours does or does not include the approved law enforcement driving program.

g) Instructors

(I) Minimum qualifications.

(A) Academic instructors shall possess the requisite education, experience and/or training necessary, as determined by the academy director, to competently instruct specific academic courses or blocks of instruction.

(B) Skills instructors shall meet the minimum qualifications as described in Rule 23, *Academy Skills Instructors*.

(II) Instructor files.

(A) A file (electronic or hard copy) shall be maintained for each instructor who teaches any portion of an academic class or skills training class.

1) For academic instructors, the file must contain a current resume and/or other documentation that

substantiates the instructor's qualifications.

2) For skills instructors, the file must contain copies of the relevant certificates of completion referenced in Rule 23, *Academy Skills Instructors*, and/or a copy of the applicable skills instructor approval letter issued by POST.

(B) The academy shall maintain current contact information for each instructor.

(C) Exception. Licensed attorneys from the same office or firm may be included in one instructor file, as long as the file contains the names of all attorneys from that office or firm who provide instruction at the academy.

(III) Instructor/course evaluations.

(A) Trainees shall complete written evaluations for each instructor and/or course of instruction for all academic courses and skills training programs of the approved academy.

(B) Either the POST Form 10, *Instructor/Course Evaluation*, or comparable academy forms and/or documents may be used for this purpose.

(C) The academy director shall determine the most meaningful format and method of administration of the instructor/course evaluations in order to monitor instructor quality and course content and to meet the needs of the individual academy.

h) Duty to report.

(I) In addition to any notifications that may be required administratively or under federal, state or local law, it shall be the duty of every academy director or the academy director's designee to report the following events to POST immediately or as soon as practicable after the event**,** in a manner designated by POST:

(A) Any death, gunshot wound or serious bodily injury that occurs to any person whose death, gunshot wound, or serious bodily injury was either caused by, or may have been caused by, any training or activity associated with the academy; or

(B) Any bodily injury that occurs to any person who is not affiliated with the academy, i.e., an innocent bystander, whose bodily

injury was either caused by, or may have been caused by, any training or activity associated with the academy.

(C) Academies are encouraged to report any other injuries in order to allow POST to track injury trends statewide in an effort to ensure safe training environments.

(II) Training to cease.

(A) In the event of any death or gunshot wound as described in paragraph (h)(I)(A) of this section, all training shall immediately cease at the training site where the death or gunshot wound occurred.

(B) Training may resume only after the Board or its designated representative(s) have ensured that the program is operating in compliance with POST Rules.

(III) Serious bodily injury means those injuries as defined in § 18-1-901(3)(p), C.R.S.

(IV) Bodily injury means those injuries as defined in § 18-1-901(3)(c), C.R.S.

(V) All instructors shall be familiar with the information contained in this Section (h) as it pertains to the nature and scope of their involvement with the academy.

i) Academy records requirements.

(I) Trainee files. During the academy, a file shall be maintained for each trainee or a systematic filing system must exist that contains at least the following records:

(A) Trainee's full legal name and date of birth; and

(B) Photocopy of the trainee's high school diploma, high school equivalency certificate or other evidence of successful completion of high school; and

(C) Photocopy of the trainee's valid driver's license; and

(D) Form 11-E, *Enrollment Advisory Form;* and

(E) Current contact information; and

(F) Signed and dated acknowledgment of privacy and appeal rights forms.

(II) Trainee manual.

(A) Each academy shall maintain an up-to-date trainee manual that contains relevant and accurate information. At a minimum, the trainee manual shall contain the academy's rules and regulations, academic requirements, attendance policies and site safety plans.

(B) Upon entry into the academy, each trainee should be issued a copy of the trainee manual and acknowledge receipt of the manual in writing.

(III) The following records shall be maintained at the academy and shall be readily available for inspection at any reasonable time by the Board or its designated representative(s).

(A) A completed Form 11-E, *Enrollment Advisory Form*, for each trainee enrolled in the academy in progress; and

(B) Current trainee manual; and

(C) Current lesson plans; and

(D) Current source material; and

(E) Instructor files for current instructors; and

(F) Copies of all site safety plans; and

(G) Trainee files; and

(H) Tests, including a record of written test results and copies of associated rubrics; and

(I) Attendance records; and

(J) Instructor/course evaluations.

(IV) Academy records must be retained for at least the three (3) year period as referenced in the Uniform Records Retention Act, § 6-17-101, et seq., C.R.S.

Rule 26 – Academy and Academy Instructor Training Program Inspections

Effective January 30, 2023

(a) Members of the Board, or its designated representative(s) may at any reasonable time inspect any approved academy or academy Instructor Training Program (Instructor Program), or any Academy or Instructor Program believed to be operating contrary to these Rules.

(b) An academy or Instructor Program inspection may include, but is not limited to, a review of any records required to be maintained under these Rules, examination of the academy's facilities, training sites, and equipment, observation of classroom instruction and skills training, and interviews with trainees, staff and instructors.

(c) Training that is not required by POST but is incorporated within the approved academy or Instructor Program *may* be inspected to the extent necessary to ensure it is legitimate (i.e., in accordance with established or accepted patterns and standards) and safe (i.e., secure from danger, harm or injury).

(d) The POST Director or the Director's designee shall be informed of all inspection results.

(e) Should the POST Director or the Director's designee determine, in consultation with the appropriate Subject Matter Expert committee(s), as applicable, that an academy or Instructor Program is not in compliance with POST Rules or is providing training that is not legitimate or safe, he/she shall notify the academy director or program director in writing of the specific deficiencies or findings and order remedial action.

(f) The academy director or program director may appeal the POST Director's, or their designee's, order to the Board within thirty (30) days in accordance with Rule 5(d).

(g) Failure to comply with the POST Director's, or their designee's, order shall result in the immediate suspension of the academy or Instructor Program, pending review by the Board at its next regular meeting.

Rule 28 – In-Service Training Program

Effective January 30, 2023

The purpose of in-service training is to provide continuing education to certified peace officers to develop their knowledge and/or skills. The POST Board's duties relating to annual in-service training are addressed in Colorado Revised Statutes § 24-31-303(1). The POST Board can "promulgate rules deemed necessary by the Board concerning annual in-service training requirements for certified peace officers, including but not limited to evaluation of the training program and processes to ensure substantial compliance by law enforcement agencies and departments." In-service training is mandatory for all certified peace officers who are currently employed. This includes certified fulltime, part-time and reserve peace officers. Failure to satisfactorily complete training may result in suspension or revocation of an individual's POST certification, or other administrative sanction in accordance with Rule 31.

a) Annual Hour Requirement

The in-service training program requires certified peace officers to complete a minimum of 24 hours of in-service training annually. Of the 24 hours, a minimum of 12 hours shall be perishable skills training as specified below.

b) Training Period

(I) The training period shall be the calendar year, from January 1 to December 31, of each year. In-service training in excess of 24 hours each year shall not be credited towards any future or prior training period.

(II) Remedial training hours completed after January 1 to gain compliance for a prior calendar year shall not count towards the current year requirement.

c) Approved Training for POST Credit

The authority and responsibility for training shall be with the chief executive of each law enforcement agency. The chief executive accepts responsibility and liability for the course content and instructor qualification. Legislatively mandated training may also be used for credit towards the training requirement.

The following are examples of training that would qualify for in-service credit:

(I) Training received during the Basic Academic Training Program (Basic Academy).

(II) Computer or web-based courses that have been approved by the chief executive may be used for in-service credit.

(III) The viewing of law enforcement related audiovisual material (DVD, video, etc.) or material related to the viewer's position or rank can be used in conjunction with a facilitated discussion or other presentation. This could include roll call or lineup briefings where the session is dedicated to training and not for the purpose of information exchange.

(IV) For each class hour attended at an accredited college or university in any course related to law enforcement or criminal justice that is required to earn a degree, one hour of in-service credit may be awarded.

d) Perishable Skills Training

Perishable skills training shall consist of a minimum of 12 hours. The required 12 hours must include a minimum of one hour of training in each of the three perishable skills (Arrest Control, Driving, and Firearms) each calendar year. Examples of perishable skills training could include:

(I) Arrest Control-live or simulator exercises and scenarios, classroom discussion followed by interactive scenario events. Arrest control fundamentals, agency policies and/or legal issues.

(II) Driving-behind-the-wheel or simulator training, classroom discussion regarding judgment/decision making in driving, agency policies and/or legal issues.

(III) Firearms-live or simulator exercises and scenarios, firearms fundamentals, use of force training or discussions, classroom training requiring student interaction and/or decision making, classroom discussion on agency policies and/or legal issue. Firearms qualification alone is insufficient to meet this mandate.

e) Agency Maintenance of Training Records

The chief executive of each agency is responsible for the true, accurate and verifiable entry of training records into the POST database.

Agencies are encouraged to enter training as it occurs, but shall enter training no later than the end of each calendar year for the certified peace officers employed at any time during that year, regardless of current employment status. This information shall be entered into the POST database. For in-person courses, agencies are required to keep records of sign-in sheets, topics covered, and lesson plans (if they exist).

(I) Waiver of In-Service Requirements

All certified peace officers shall meet the minimum annual hours. However, under the circumstances listed below, an agency may request a waiver for a portion of the annual in-service training requirement. Any waiver of the annual training request must be made in writing to the POST Director or their designee by January 31st of the following year.

(A) Perishable Skills Waiver
Agency executives may request an exemption from the perishable skills training requirement. This request shall be in writing to the POST Director or their designee. This request shall state that either their certified peace officers do not carry firearms, or they infrequently interact with or effect physical arrests, or they do not utilize marked or unmarked emergency vehicles as part of their normal duties.

(B) Partial Year Employment Waiver
The 24 hours of in-service training is required if a certified peace officer is employed for the entire calendar year. Certified peace officers who are employed after the start of the calendar year only need to complete a prorated number of training hours. Therefore, two hours of training per month, with a minimum of one hour of perishable skills training shall be required. (Example: If a certified peace officer is hired in July, 12 hours of training with a minimum of six hours of perishable skills training must be completed for that calendar year).

(C) Long Term Disability, Medical Leave or Restricted Duty
If a certified peace officer is unable to complete the in-service annual hours due to long term disability, medical leave or restricted duty, the agency must obtain a letter from a physician

stating that participation in any type of training including audiovisual or online training would be detrimental to the officer's health. The letter should define the time that the officer is unable to attend any training. Those granted a waiver will be on a prorated basis for the time stated in the physician's letter. The agency does not need to forward the physician's letter to POST but only reference it in a waiver request.

(D) Military Leave
Those certified peace officers deployed in military service only need to complete a prorated number of training hours.

(E) Administrative Leave
If a certified peace officer is unable to complete the in-service annual hours due to placement on administrative leave, the officer must complete a prorated number of training hours.

(II) Compliance

(A) Agencies and individual peace officers shall comply with the in-service training requirements.

1) Agencies

a) POST will send out a preliminary compliance report following each training period. The report will provide the compliance status of each agency and its certified peace officers. Agencies shall have thirty (30) days from the date of the preliminary report to dispute the POST data and provide additional training information. Following the thirty-day period, POST will distribute the final compliance reports to all agencies.

b) POST may declare an agency noncompliant after the final compliance report has been issued if new information is discovered.

c) Once the final compliance report has been sent to all agencies; an agency seeking to appeal the POST data must do so within thirty (30) days of being notified of failure to comply with Rule 28. Agencies

may appeal this by following the process outlined in Rule 5, *Hearings*. Upon conclusion of all appeal hearings POST will issue a final report indicating whether the agency was found in compliance.

d) If POST finds that the agency failed to comply, such finding shall constitute a basis for the Board to impose an administrative sanction pursuant to Rule 31.

2) Individual peace officers

a) POST will send out a preliminary compliance report following each training period. The report will provide an individual peace officer's compliance status. Individuals shall have thirty (30) days from the date of the preliminary report to dispute the POST data and/or complete the training requirements.

b) Individual peace officers failing to satisfactorily complete the training requirements within the 30 day period may have their POST certification suspended by the POST Director pursuant to Rule 3, until such time as they come into compliance. If an individual peace officer is suspended, the peace officer may appeal the suspension within thirty (30) days, as provided in rule 5(d).

c) Failure to satisfactorily complete POST training requirements may result in a recommendation by the Director or their designee to the Board for revocation of the individual's POST certification, or other administrative sanction pursuant to Rule 31.

(III) The POST Board shall evaluate the program annually following the release of the final compliance reports. Such evaluation will include a review and evaluation of the program. The evaluation may be based on the compliance rate, agency survey and other performance metrics.

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Office of the Attorney General

Tracking number: 2022-00686

Opinion of the Attorney General rendered in connection with the rules adopted by the

Peace Officer Standards and Training Board

on 12/02/2022

4 CCR 901-1

PEACE OFFICER TRAINING PROGRAMS AND PEACE OFFICER CERTIFICATION

The above-referenced rules were submitted to this office on 12/02/2022 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 19, 2022 10:33:25

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

CCR number

5 CCR 1002-55

Rule title

5 CCR 1002-55 REGULATION NO. 55 - STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS 1 - eff 01/30/2023

Effective date

01/30/2023

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water Quality Control Commission

REGULATION NO. 55 – STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS

5 CCR 1002-55

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

55.1 AUTHORITY, SCOPE AND PURPOSE

(1) Water Quality Improvement Fund

House Bill 06-1337 created the Water Quality Improvement Fund codified in section 25-8-608, C.R.S., of the Colorado Water Quality Control Act. House Bill 11-1026 amended the statute to authorize grants for stormwater management training and best practices training to prevent or reduce the pollution of state waters. Section 25-8-608(1.7)(c), C.R.S. provides the Water Quality Control Commission ("commission") with the authority to promulgate, implement and administer this regulation.

Funding is dependent upon annual appropriations by the Colorado General Assembly and is based on violations that were committed on or after May 26, 2006. The resulting penalties collected by the Water Quality Control Division ("division") are transmitted to the state treasurer for deposit to the credit of the fund.

The purpose of the fund is to improve water quality in Colorado by providing grant funds for water quality improvement projects and stormwater management training and best practices using civil penalties from water quality violations.

(2) Natural Disaster Grant Fund

House Bill 14-1002 created the Natural Disaster Grant Fund to be codified in section 25-8-608.7, C.R.S. – concerning the establishment of a grant program under the Colorado Water Quality Control Act to repair water infrastructure impacted by a natural disaster. The purpose of the fund is to award grants to local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit public water systems, under rules promulgated by the commission for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works and public drinking water systems that have been impacted, damaged or destroyed in connection with a natural disaster. The division may only award grants to be used in counties for which the governor has declared a disaster emergency by executive order or proclamation under section 24-33.5-704, C.R.S.

Section 25-8-608.7(3), C.R.S. provides the Water Quality Control Commission with the authority to promulgate rules necessary to implement and administer the Natural Disaster Grant Fund.

(3) Small Communities Water and Wastewater Grant Fund

Senate Bill 14-025 revised and consolidated the Small Communities Water and Wastewater Grant Fund to be codified in section 25-1.5-208, C.R.S. – concerning the establishment of a grant program under the Colorado Water Quality Control Act to assist suppliers of water and domestic

wastewater treatment works that serve a population of not more than five thousand people with meeting their responsibilities with respect to the protection of public health and water quality.

Continuous funding for the Small Communities Water and Wastewater Grant Fund is provided in section 39-29-109(2)(a)(III) C.R.S., through money transferred to the fund pursuant to section 39-29-109(2)(a)(II) C.R.S. and any other moneys transferred to the fund by the General Assembly. Moneys for the fund originate from the severance tax perpetual base fund, up to $10 million, and will be applied to both drinking water projects and wastewater projects.

Section 25-1.5-208(2), C.R.S. provides the commission with the authority to promulgate rules necessary to implement and administer the Small Communities Water and Wastewater Grant Program.

55.2 DEFINITIONS

(1) "Beneficial Use" - means the use of water treatment plant sludge in conjunction with wastewater treatment plant sludge to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land and that meets the requirements of the state Biosolids Regulations.

(2) Best Management Practices" - means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state waters". Best Management Practices also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(3) "Consolidation" - means a proposed new construction or expansion of a drinking water supply system that will eliminate one or more existing water supply or treatment works. A letter of intent or a resolution adopted by the project participants must be provided to the division to guarantee the facilities will consolidate.

(4) "Governmental Agency" – means any municipality, regional commission, county (or county on behalf of unincorporated areas), metropolitan district offering sanitation service, sanitation district used for funding a domestic wastewater treatment works project, water and sanitation district, water conservancy district, metropolitan sewage disposal district, other special district used for funding a project under this regulation.

(5) "Impacted Water Body" – means a water body in which the designated use(s) of recreation, aquatic life, water supply, agriculture, and/or wetlands have been affected by pollutants associated with a violation of the Act, permit, control regulation, or final cease and desist order or clean-up order.

(6) "Nonpoint source" – means a diffused pollution source that is not regulated as a point source, including, but not limited to, sources that are often associated with agriculture, inactive or abandoned mining, silviculture, urban runoff, or runoff from construction activities. Nonpoint source pollution does not emanate from a discernible, confined, and discrete conveyance (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation.

(7) "Pollution" – means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

(8) "Public water system" - a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. A public water system is either a community water system or a non-community water

system. Such term does not include any special irrigation district. Such term includes: (a) Any collection, treatment, storage, and distribution facilities under control of the supplier of such system and used primarily in connection with such system. (b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.

(9) "Waterborne Disease Outbreak" – means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

55.3 WATER QUALITY IMPROVEMENT FUND CRITERIA

(1) Entity Eligibility

Entities eligible for grants in Categories 1 thru 4 include: 1) governmental agencies; 2) publicly owned water systems; 3) private not- for- profit public water systems; 4) not- for- profit watershed groups; 5) not- for- profit stormwater program administrator in accordance with 25-8-802 C.R.S.; 6) not- for- profit training provider; and 7) private landowners impacted by a water quality violation.

Entities who pay a Colorado Water Quality Control Act civil penalty are prohibited from receiving a grant from this fund for a period of 5 years from the date of the payment of the penalty.

(2) Project Eligibility

As provided for under section 25-8-608 (1.7) (a), C.R.S., the fund will provide grants to the following project categories:

Category 1 – Stormwater management training and best management practices training to reduce the pollution of state waters.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation that resulted in a penalty being imposed.

Category 3 – Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

Category 4 - Nonfederal match funding for the current fiscal year's nonpoint source projects as approved by the commission.

(3) Funding Allocation

All civil penalties collected by the division shall be transmitted to the state treasurer for deposit to the credit of the fund created by section 25-8-502, C.R.S., for violations committed on or after May 26, 2006 and shall be subject to annual appropriations by the Colorado General Assembly. The division will post on its web page a list of violators that have paid into the Water Quality Improvement Fund. The following allocations from the fund will be made:

Category 1 –The division will allocate up to $300,000 of available funds with no one project initially receiving more than $100,000. If the entire $300,000 has not been fully utilized, the division will allocate the remaining Category 1 funds within the year per its prioritization procedures to eligible Category 1 project(s) which may result in certain projects ultimately receiving more than $300,000.

Category 2 – 10% of available funds following allocations to Category 1 projects.

Category 3 – 60% of available funds following allocations to Category 1 projects; no one project can receive more than 25% of the available funds allocated to this category.

Category 4 – 30% of available funds following allocations to Category 1 projects.

For Categories 1 thru 4, any funds not utilized in one category will be redistributed among the remaining categories based on their relative percentage of funding.

The division will retain five percent (5%) of the moneys allocated annually to the fund to cover the cost of administering Categories 1 thru 4.

Funds may be carried over from previous years' appropriations and reallocated based upon the above distribution on an annual basis.

(4) Project Prioritization Criteria

If the fund lacks sufficient funds to cover all requests within each category, Priority 1 projects will be funded prior to Priority 2 projects, which will be funded prior to Priority 3 projects, which will be funded prior to Priority 4 projects. If it is determined that there are insufficient funds, further prioritization criteria will be applied as identified under each category in this section. The division may reallocate funding among categories based upon lack of requests or eligible projects within any category.

Criteria for funding project proposals within each category as described in Section 55.3 are as follows:

Category 1 – stormwater management training and best management practices training to reduce the pollution of state waters.

Priority 1 – Projects that implement stormwater management and best management practices training not previously available in Colorado, or previously limited in accessibility.

Priority 2 – Projects that will expand the content or availability of existing stormwater management and best management practices training.

Priority will be given to training providers that can demonstrate that training content will be relevant to implementation in Colorado with regard to Colorado's hydrology, climate and water rights, as applicable.

Priority will also be given to training providers that provide no– or low-cost training.

Additional prioritization criteria will include the expected water quality benefits, total population receiving training, availability of match, and readiness to proceed. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the request for application.

Category 2 - Projects that improve the water quality in the community or water body which has been impacted by a water quality violation.

Priority 1 – Projects that address impacts to a water supply designated use.

Priority 2 – Projects that address impacts to a recreation designated use.

Priority 3 – Projects that address impacts to an aquatic life designated use.

Priority 4 – Projects that address impacts to an agricultural or wetlands designated use.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the request for application.

Category 3 - Planning, design, construction, or repair of stormwater projects and domestic wastewater treatment facilities identified on the current fiscal year's Water Pollution Control Revolving Fund Intended Use Plan.

Priority 1 – Projects that improve water quality in the community or water body impacted by a violation.

Priority 2 – Planning, design, construction, or repair of stormwater projects.

Priority 3 – Projects identified on the current Water Pollution Control Revolving Fund Intended Use Plan.

Additional prioritization criteria will include financial/affordability, water quality benefits, permit compliance, readiness to proceed, and availability of match. Specific points available in each of these categories and tie breaking criteria will be included as an attachment to the request for application.

Category 4 - Nonfederal match funding for nonpoint source projects.

Priority 1 – Projects that reduce or eliminate water quality impairments identified in Regulation #93 (5 CCR 1002-93), Colorado's Section 303(d) List.

Priority 2 – Projects that protect any established designated water quality use.

(5) Notification and Reporting

Applications for all of the Categories will be noticed and accepted by the division after the division determines availability of appropriation. For Categories 1 thru 3, applicants will be responsible for demonstrating the impacts of the violation on the affected water body or community, and the related water quality improvement project benefits. The division will accept applications for Category 4 projects in accordance with the annual nonpoint source project schedule. The division will evaluate all applications and determine the grant award(s) for each category based on the criteria in the Entity Eligibility Section, Project Eligibility Section, Funding Allocation Section and Project Prioritization Section.

Grant recipients for Categories 1 thru 4 will provide a final project report within 60 days of completion of the project. Final project reports shall include a detailed description of the project as implemented, all problems encountered and the solutions thereto, itemized project costs, a declaration that the project has been fully implemented as approved, and a description of the environmental and public health benefits resulting from implementation of the project. Information on the grant recipients, including project description and grant award, will be reported in the division's Annual Report to the commission, in accordance with section 25-8-305, C.R.S.

55.4 NATURAL DISASTER GRANT FUND CRITERIA

(1) Entity Eligibility

(a) Local governments defined as governmental agencies in section 55.2 that own and operate domestic wastewater treatment works and public drinking water systems in a designated disaster emergency county by an executive order or proclamation under section 24-33.5-704, C.R.S.

(b) Local governments accepting grants on behalf of and in coordination with not-for-profit public drinking water systems.

(c) Local governments assisting with the repair and restoration of on-site wastewater treatment systems as defined in section 25-10-103(12), C.R.S.

(2) Project Eligibility

(a) Domestic wastewater treatment works, public drinking water systems and on-site wastewater treatment systems that have been impacted, damaged or destroyed in connection with the September 2013 flood, or future declared disaster emergencies.

(b) Projects for the planning, design, construction, improvement, renovation or reconstruction of domestic wastewater treatment works or public drinking water systems that have been impacted, damaged or destroyed in connection with the September 2013 flood.

(c) Grant moneys under this section may be used as matching funds required to secure any other state and federal funding for the planning, design, construction, improvement, renovation or reconstruction of drinking water and wastewater infrastructure.

(3) Award Process and Funding Allocation

(a) Appropriations are subject to approval by the Colorado General Assembly, and funding is contingent upon such final appropriation. Pending appropriation, the division will administer the funds per the Natural Disaster Grant Fund rules identified in this section and prioritize projects based upon the criteria in section 55.5(4) below. The division will notify all applicants of their funding status after the establishment of a fundable list. The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.

(b) A portion of the Natural Disaster Grant Fund will be set-aside to assist local governments with grants for on-site wastewater treatment systems that have been impacted as a result of the September 2013 flood. To sufficiently meet the demand indicated by the number of applications received and project type, the division has the authority to transfer funds between the set-aside for on-site wastewater treatment systems and the Natural Disaster Grant Fund. If a transfer occurs and project prioritization is required, the division will prioritize per section 55.5(4).

(c) In the event that funds remain unallocated subsequent to a transfer of funds between the Natural Disaster Grant Fund and the on-site wastewater set-aside, the division has the authority to increase the amount of grant awards in priority order, highest to lowest, until all of the funds have been allocated or the application demand has been met.

(4) Project Prioritization

(a) If the demand for funding in the Natural Disaster Grant Fund exceeds the available funds, the division shall rank each project based on population criteria, financial affordability factors, regionalization, utilization of multiple funding sources, readiness to proceed and impacts as a result of the September 2013 flood. The division will give priority to the applicants that have the lowest financial ability to pay. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.

(b) Local governments receiving funds from the set-aside portion for the rehabilitation for on-site wastewater treatment systems impacted by the September 2013 flood will receive an equitable percentage of the funds requested. For example, if $1 million is allocated to the set-aside portion and $2 million is requested, each valid applicant will receive 50% of its application request.

55.5 SMALL COMMUNITIES WATER AND WASTEWATER GRANT FUND CRITERIA

(1) Entity Eligibility

(a) Suppliers of water that serve a population of not more than five thousand people.

The department, in the name of the state and to the extent that state funds are appropriated therefor, may enter into contracts with both governmental agencies and not-for-profit public water systems, as defined in section 25-1.5-201(1), or with counties representing unincorporated areas that serve a population of not more than five thousand people, to grant moneys for the planning, design, and construction of public water systems.

(b) Domestic waste water treatment works that serve a population of not more than five thousand people.

The department, in the name of the state and to the extent that state funds are appropriated therefor, may enter into contracts with governmental agencies, or counties representing unincorporated areas that serve a population of not more than five thousand people, for domestic wastewater treatment works as defined in section 25-8-103(5) to grant moneys for eligible projects as defined in section 25-8-701(2)..

(c) During the grant application process, the department shall seek from the division of local government in the department of local affairs a fiscal analysis of the applying entity to determine financial need. Based upon its fiscal analysis, the division of local government shall issue or deny a certificate of financial need. If a certificate of financial need is issued, the department may authorize a state grant to the project in accordance with the project prioritization adopted by the department.

(2) Project Eligibility

(a) Projects for the planning, design, and construction of public water systems or domestic wastewater treatment works that serve a population of not more than five thousand people and which are necessary for the protection of public health and water quality.

(3) Award Process and Funding Allocation

(a) The division will administer the funds per the Small Communities Water and Wastewater Grant Fund rules identified in this section. The available funds will be allocated approximately 50/50 between water and wastewater projects. The division will adjust the 50/50 allocation if necessary depending upon the quantity and composition of the application requests. No more than 10% of the total available funds will be distributed to any single water and/or wastewater eligible project. The division will notify all applicants of their funding status after the establishment of a fundable list.

The fundable list will be posted on the division website to identify the recipients of funds and the amount of each award.

(4) Project Prioritization

(a) Drinking Water

i) If the demand for funding in the Small Communities Water and Wastewater Grant Fund exceeds the available funds, the division shall rank each project based on financial/affordability, drinking water quality and public health, Colorado Primary Drinking Water Regulation compliance, and readiness to proceed. The division will give priority to the applicants that have the lowest financial ability to pay based upon project ranking criteria. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.

ii) Additional points will be awarded if the need for the project is a result of a natural disaster in a county where the Governor has declared a disaster emergency by Executive Order or proclamation under section 24-33.5-704, C.R.S.

(b) Wastewater

i) If the demand for funding in the Small Communities Water and Wastewater Grant Fund exceeds the available funds, the division shall rank each project based on financial/affordability, water quality improvement, permit compliance, and readiness to proceed. The division will give priority to the applicants that have the lowest financial ability to pay based upon project ranking criteria. Specific point ranking criteria and associated points under each of the above factors will be included in the request for application. Projects will be funded in priority order from highest to lowest until all funds have been allocated.

ii) Additional points will be awarded if the need for the project is a result of a natural disaster in a county where the Governor has declared a disaster emergency by Executive Order or proclamation under section 24-33.5-704, C.R.S.

55.6-10 RESERVED

. . .

55.33 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE REGARDING STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS, DECEMBER 12, 2022 RULEMAKING, EFFECTIVE JANUARY 31, 2023

The provisions of Sections 25-8-202, 25-8-308, and 25-8-608, C.R.S. provide the specific statutory authority for adoption and implementation of the attached regulations. The Commission, in compliance with section 24-4-103(4), C.R.S., has adopted the following statement of basis and purpose.

BASIS AND PURPOSE

The following changes were made to the regulation to reflect the sunsetting of funding authorizations for specific grant funds that were previously authorized by the state legislature, and increased spending levels authorized for Category 1 funds adopted during the 2022 legislative session through the appropriations process. Additional changes were made to improve clarity and organization of the regulation.

Water Quality Improvement Fund

- Stormwater Management Training, Section 55.1(1); Section 55.3(3)
  Clarified that the purpose of the fund also includes stormwater management training and best practices. During the 2022 legislative session, the General Assembly increased the spending authority for the Water Quality Improvement Fund by $300,000 to continue to support Category 1 projects (stormwater management training and best management practices training to reduce the pollution of state waters). Accordingly, the commission took action to revise section 55.3(3) to remove the $100,000 allocation for Category 1 projects and replaced it with a $300,000 allocation.

- Public School Lead Testing, Section 55.1(1); Section 55.2(2) and (9); Section 55.3
  The public school lead testing grant and all associated references to category 5 have been removed from these sections in the regulation since the grant was repealed effective September 1, 2021.

Nutrient Management Grant Fund

- Section 55.1(2); Section 55.4; Section 55.5(3)(d)
  These sections were edited to remove all associated references to the nutrient management grant fund from the regulation since the fund was repealed effective September 1, 2016.

Small Communities Water and Wastewater Grant Fund

- Section 55.6(1)
  Entity Eligibility was revised to align with the eligibility requirements included in C.R.S. 25-1.5-208, including the addition of the division of local government requiring a certificate of financial need.

Editor's Notes

History

Entire rule eff. 07/30/2007.

Entire rule eff. 03/30/2012.

Entire rule eff. 07/30/2012.

Sections 55.8, 55.14 eff. 06/30/2013.

Sections 55.9, 55.15 eff. 06/30/2014.

Entire rule eff. 09/30/2014.

Sections 55.1-55.3, 55.32 eff. 12/31/2017.

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Office of the Attorney General

Tracking number: 2022-00562

Opinion of the Attorney General rendered in connection with the rules adopted by the

Water Quality Control Commission (1002 Series)

on 12/12/2022

5 CCR 1002-55

REGULATION NO. 55 - STATE FUNDED WATER AND WASTEWATER INFRASTRUCTURE PROGRAMS

The above-referenced rules were submitted to this office on 12/19/2022 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 28, 2022 13:19:38

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 1 - eff 01/30/2023

Effective date

01/30/2023

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Out of State Former Foster Care members for Sections 8.100.4.H.2.
Rule Number: MSB 22-09-22-A
Division / Contact / Phone: Office of Medicaid Operations / Melissa Torres-Murillo / 4416

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 22-09-22-A, Revision to the Medical Assistance Act Rule concerning Out of State Former Foster Care members for Sections 8.100.4.H.2.2.

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.100.4.H.2, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? No
   If yes, state effective date:
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.100.4.H with the proposed text beginning at 8.100.4.H.2 through the end of 8.100.4.H.2.c. This rule is effective January 30, 2022.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Out of State Former Foster Care members for Sections 8.100.4.H.2.
Rule Number: MSB 22-09-22-A
Division / Contact / Phone: Office of Medicaid Operations / Melissa Torres-Murillo / 4416

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   The proposed rule change will amend 10 CCR 2505-10 Section 8.100.4.H.2, to include requirements to expand Former Foster Care Medicaid to members who were in foster care at the age of 18 on or after January 1, 2023, were on Medicaid, and who have become residents of Colorado from another state. These requirements are to expand coverage according to Section 1002 of the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018 (SUPPORT Act), signed into law on October 24, 2018, which amends Medicaid coverage requirements for the Former Foster Care eligibility category that provides youth who aged out of foster care with Medicaid eligibility up to the age 26. The out-of-state former foster care coverage will be available to all Medicaid members enrolled in the Former Foster Care Medicaid defined under 42 C.F.R. § 435.150. The Department will be updating the Colorado Benefits Management System (CBMS) to reflect these changes.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety, and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   42 C.F.R. § 435.150.

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2022);
   C.R.S. 25.5-5-101.(1)(e)

Initial Review **11/18/22** Final Adoption **12/09/22**
Proposed Effective Date **01/30/22** Emergency Adoption

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule concerning Out of State Former Foster Care members for Sections 8.100.4.H.2.
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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   The rule update will benefit all members who were in foster care at the age of 18 on or after January 1, 2023, were on Medicaid, and who have become residents of Colorado from another state. These members will receive Former Foster care Medicaid up until the age of 26. Former foster care youth who qualify will also be exempt from paying most co-pays for services. There are no projected negative impacts to any classes of persons with these proposed rule changes.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The proposed rule to extend Former Foster Care Medicaid to qualifying individuals who become Colorado residents from another state has the potential to improve former foster care members' access to care, and, advance equity in health outcomes for our Medicaid-eligible members.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The Department anticipates that this policy would increase the Medicaid caseload by up to 50 members. The Department anticipates that the total impact of coverage of Medicaid programs for these members will be $155,856 in FY 2022-23.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The probable costs of this policy include potentially paying up to $155,856 for Medicaid services attributable to new members.

The probable benefits of the policy include staying in compliance with federal laws and providing medical care to individuals in need.

The probable costs of inaction will be that the Department will be out of compliance with federal laws. This could cause the Department to pay a disallowance to CMS or forfeit the Federal Match the Department receives from the Federal Government.
There are no benefits to inaction

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   The Department does not have any less costly method of allowing qualifying former foster youth from out of state to have access to Former Foster Care Medicaid in accordance with federal statute.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   There were no alternative methods considered for the proposed rule.

8.100 MEDICAL ASSISTANCE ELIGIBILITY

8.100.4 MAGI Medical Assistance Eligibility [Eff. 01/01/2014]

8.100.4.H. Needy Persons

1. Medical Assistance shall be provided to certain needy persons under 21 years of age, including the following:

    a. Those receiving care in a Long Term Care Institution eligible for Medical Assistance reimbursement or receiving active treatment as inpatients in a psychiatric facility eligible for Medical Assistance reimbursement and whose household income is less than the MAGI needs standard for his/her family size when the client applies for assistance. Clients that are receiving benefits under this category and are still receiving active inpatient treatment in the facility at age 21 shall be eligible to age 22. This population is referenced as Psych <21.

    b. Those for whom the Department of Human Services is assuming full or partial financial responsibility and who are in foster care, in homes or private institutions or in subsidized adoptive homes. A child shall be the responsibility of the county, even if the child may be in a medical institution at that time. See Colorado Department of Human Services "Social Services Staff Manual" section 7 for specific eligibility requirements (12 CCR § 2509-1). 12 CCR § 2509-1 (2013) is hereby incorporated by reference. The incorporation of 12 CCR § 2509-1 excludes later amendments to, or editions of, the referenced material. Pursuant to § 24-4-103(12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at: Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver CO 80203. Certified copies of incorporated materials are provided at cost upon request.

    c. Those for whom the Department of Human Services is assuming full or partial financial responsibility and who are in independent living situations subsequent to being in foster care.

    d. Those for whom the Department of Human Services is assuming full or partial responsibility and who are receiving services under the state's Alternatives to Foster Care Program and would be in foster care except for this program and whose household income is less than the MAGI needs standard for his/her family size.

    e. Those for whom the Department of Human Services is assuming full or partial responsibility and who are removed from their home either with or without (court ordered) parental consent, placed in the custody of the county and residing in a county approved foster home.

    f. Those for whom the Department of Human Services is assuming full or partial responsibility and who are receiving services under the state's subsidized adoption program, including a clause in the subsidized adoption agreement to provide Medical Assistance for the child.

g. Those for whom the Department of Human Services is assuming full or partial financial responsibility on their 18th birthday or at the time of emancipation. These individuals also must have received foster care maintenance payments or subsidized adoption payments from the State of Colorado pursuant to article 7 of title 26, C.R.S. immediately prior to the date the individual attained 18 years of age or was emancipated. Eligibility shall be extended until the individual's 21st birthday for these individuals with the exception of those receiving subsidized adoption payments.

2. Medical Assistance shall be extended to certain needy persons until the end of the month of the individual's 26th birthday, including the following:

a. Those individuals that were formerly in foster care under the responsibility of Colorado or Tribe on their 18th, 19th, 20th or up to their 21st birthday and were receiving Medical Assistance.

i) This extension does not apply to youth that are receiving subsidized adoption payments or

ii) To youth that are enrolled in mandatory Medical Assistance.

iii) This extension applies to Individuals who were in foster care at the age 18 on or after January 1, 2023, and were enrolled in Medicaid in another state, and who have become a resident of Colorado.

b) Former Foster Care youth are not subject to either an income or resource test.

c) Former Foster Care youth's newborn shall be considered a needy newborn.

PHILIP J. WEISER
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Office of the Attorney General

Tracking number: 2022-00684

Opinion of the Attorney General rendered in connection with the rules adopted by the

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 12/09/2022

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY

The above-referenced rules were submitted to this office on 12/09/2022 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 23, 2022 10:03:54

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Permanent Rules Adopted

Department

Department of Human Services

Agency

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

CCR number

12 CCR 2509-3

Rule title

12 CCR 2509-3 PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS 1 - eff 01/30/2023

Effective date

01/30/2023

(12 CCR 2509-3)

7.203.41 Eligibility

An eligible youth is an individual who:

A. Is at least eighteen but less than twenty-one years of age or such greater age of foster care eligibility as required by federal law;

B. Has a current dependency and neglect case pursuant to Article 3 of Title 19, C.R.S. or has had prior foster care or kinship care involvement in at least one of the following ways:

1. The youth was in foster care, as defined in 19-1-103, C.R.S., on or after the youth's sixteenth birthday; or

2. The youth was in non-certified kinship care, as defined in 19-1-103, C.R.S., on or after the youth's sixteenth birthday and was adjudicated dependent and neglected pursuant to Article 3 of Title 19, C.R.S; ~~or~~

3. The youth turned eighteen years of age when the youth was a named child or youth in a dependency and neglect case open through Article 3 of Title 19, C.R.S.

C. Are engaged in, or intends to engage in, at least one of the following, unless an exception applies or are waived by federal law:

1. Completing secondary education or an educational program leading to an equivalent credential;

2. Attending an institution that provides post secondary or vocational education;

3. Working part- or full-time for at least eighty hours per month; or

4. Participating in a program or activity designed to promote employment or remove barriers to employment.

5. The requirement described in 7.203.41(C) does not apply to a youth who is incapable of engaging in any of the activities as a result of a medical condition that is supported by regularly updated documentation in the 90 day supervisory review; and

D. Seeks to enter into a voluntary services agreement, or the youth has entered into and is substantially fulfilling the youth's obligations pursuant to a voluntary services agreement with the appropriate county department.

****

7.203.43 Foster Youth in Transition Program services and procedures

A. Procedures

1. When a youth enters the Foster Youth in Transition Program the program area is program area 6.

2. The participating youth shall have a new case opened in the child welfare information system as follows:

    a. The new case shall be opened effective either:

        i. The day the youth and county execute the voluntary services agreement if a youth is reentering; or

        ii. The day the court terminates any existing custody order, in either a dependency and neglect case or a juvenile delinquency case, if the youth is transitioning from an open program area 4 or 5 child welfare case; and

    b. Prior to opening a new case or creating a new client ID, the caseworker or supervisor shall complete a search in the comprehensive child welfare information system for any existing open cases or clients and ensure that only one program area 4 or 5 case is open that includes the youth as participating as a child; and

    c. For youth entering the program directly from an open case under program area 4, 5, or 6, there shall be no resulting interruption in case management services, housing, Medicaid coverage, or in foster care maintenance payments.

3. The county department shall ensure the family services plan contains an updated roadmap to success as described in 7.305.2 (12 CCR 2509-04). The family services plan in Foster Youth in Transition Program cases does not require treatment plan or visitation sections for the youth's parents or caregivers. Updates to the family services plan shall be entered into the comprehensive child welfare information system within sixty (60) days of the youth entering into a voluntary services agreement. The youth shall be provided a copy of the family services plan.

4. When a youth is entering the Foster Youth in Transition Program directly from another Program Area 4, 5, or 6 case, the youth shall be given the option to continue with the county who is currently serving the youth, or transition to the county in which the youth self-attests to residing in at the time the youth enters the foster youth in transition program.

5. When the youth's residence has changed after jurisdiction has been established, county departments shall work cooperatively to:

    a. Ensure services are provided by the appropriate county;

    b. Petitions are filed in the court of the appropriate county;

    c. Take into consideration the youth's preference. If the youth does not have a preference, then the county shall consider the following, in no particular order or prioritization:

        i. Which county is currently working with the youth;

ii. The county in which the youth self-attests to reside;

iii. Indications the youth intends to stay in the self- attested county;

iv. Access to services, supports, and/or relationships the youth needs in order to successfully transition to adulthood.

B. Services

Each county department shall offer, at a minimum, the following services and supports to participating youth in the transition program. All services shall be provided by the county in a manner that is consistent with the youth's developmental needs, culture, and supports the youths successful transition to adulthood.

1. Assistance with enrolling in the appropriate category of Medicaid for which the participating youth is eligible;

2. Assistance with securing safe, affordable, and stable housing in the following ways:

a. The participating youth's living expenses are fully or partially funded through foster care maintenance payments, in addition to any other housing assistance the youth is eligible to receive. Any expectations for the youth to contribute to the youth's own expenses must be based upon the youth's ability to pay.

b. With the participating youth's consent, the participating youth's housing may be in any placement approved by the county department or the court for which the participating youth is otherwise eligible, including a licensed host family home, as defined in Section 26-5.7-102 (3.5), C.R.S. or a supervised independent living placement, and that is the least restrictive option to meet the participating youth's needs; or

c. If the participating youth needs placement in a qualified residential treatment program, then such placement must follow all relevant procedures pursuant to section 19-1-115, C.R.S., concerning the placement of a child or youth in a qualified residential treatment program.

3. Case management services, including the development of a case plan with a roadmap to success for the participating youth, as well as assistance in the following areas, as appropriate, and with the agreement of the participating youth:

a. Provision of appropriate community resources and public benefits to assist the participating youth in the transition to adulthood as documented by the roadmap to success;

b. Obtaining employment or other financial support and enhancing financial literacy;

c. Obtaining a driver's license or other government-issued identification card;

4. Upon request, and if services are available, support the youth with complying with any juvenile or criminal justice system requirements which may include

referrals to assist with expunging the participating youth's court records, as appropriate, pursuant to section 19-1-306, C.R.S.;

5. Pursuing educational goals and applying for financial aid, if necessary;

6. Upon request, and if services are available, referral to services for obtaining the necessary state court findings and applying for special immigrant juvenile status pursuant to federal law, as applicable, or applying for other immigration relief for which the participating youth may be qualified;

7. Obtaining copies of health and education records;

8. Maintaining and building relationships with individuals who are important to the participating youth, including searching for individuals with whom the participating youth has lost contact. These services may be offered using family search and engagement as described in 7.304.52 (12 CCR 2509-04); and

9. Accessing information about maternal and paternal relatives, including any siblings.

C. Court procedures when youth transition from a Program Area 4 or 5 case into the Foster Youth in Transition Program

1. For a youth approaching their 18th birthday who is currently in foster care, or who is in non-certified kinship care and there is an open dependency and neglect case, the county shall partner with the youth to support the youth in making informed decisions about what the youth needs to emancipate successfully and whether to enter the Foster Youth in Transition Program. The county shall partner with the youth in preparing for the transition hearing described below:

a. The county shall request that a transition hearing be held within 35 days of the youth's 18th birthday pursuant to 19-3-705, C.R.S.

b. At least seven (7) days prior to the transition hearing the county shall submit a report to the court that includes:

i. A description of the county's reasonable efforts toward achieving the youth's permanency goals and a successful transition to adulthood;

ii. An affirmation that the county has provided the youth with all of the records and documents the youth needs to successfully transition to adulthood, including the documents required by 7.305.5, written information concerning the youth's family history, and contact information for siblings if available and appropriate;

iii. an affirmation that the county has informed the youth, in a developmentally appropriate manner, of the benefits and options available to the youth by the Foster Youth in Transition Program as described in 7.203.4 (12 CCR 2509-3) and the voluntary nature of the program;

iv. A statement of whether the youth has made a preliminary decision whether to emancipate or to enter into the Foster Youth in Transition Program and either or both of the following:

A. If it is anticipated that the youth will choose to emancipate, the report must include a copy of the youth's emancipation transition plan as described in 7.305.2(F);

B. If it is anticipated that the youth will choose to enter the Foster Youth in Transition Program, the county shall file a petition pursuant to 19-7-307 at the same time as the report described in this section.

D. Permanency planning requirements described in 7.304.54 (12 CCR 2509-4) are required in all Foster Youth in Transition cases.

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DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2022-00607

Opinion of the Attorney General rendered in connection with the rules adopted by the

Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)

on 12/09/2022

12 CCR 2509-3

PROGRAM AREAS, CASE CONTACTS, AND ONGOING CASE REQUIREMENTS

The above-referenced rules were submitted to this office on 12/13/2022 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 23, 2022 09:47:23

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 713-46

Rule title

3 CCR 713-46 RULE 160 - EMERGENCY RULES AND REGULATIONS REGARDING EXPANDED DELEGATION FOR PHYSICIANS AND PHYSICIAN ASSISTANTS AND EXPANDED SCOPE OF PRACTICE FOR PHYSICIANS, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANT 1 - eff 12/10/2022

Effective date

12/10/2022

Expiration date

04/09/2023

Colorado Medical Board

RULE 160 – EMERGENCY RULES AND REGULATIONS REGARDING EXPANDED DELEGATION FOR PHYSICIANS AND PHYSICIAN ASSISTANTS AND EXPANDED SCOPE OF PRACTICE FOR PHYSICIANS, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANT

3 CCR 713-46

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

46.1 INTRODUCTION

A. Basis: Through Executive Order D 2022 045, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, and D 2022 044, Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Colorado Medical Board ("Board") set forth in section 24-1-122(3)(m)(I), C.R.S,, and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 44 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2022 045, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 040, D 2022 043 and 2022 044 and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic, Respiratory Syncytial Virus (RSV), influenza and other respiratory illnesses in Colorado.

46.2 EXPANDED DELEGATION

A. In addition to any delegation authorized by the Medical Practice Act including, but not limited to, section 12-240-107(3)(l), C.R.S., or Colorado Medical Board Rule 800 3 CCR 713-30, physicians are authorized to delegate services in hospitals and inpatient settings as follows:

1. Physicians may delegate medical services within their scope of practice to the following Colorado Licensed Professionals working in a hospital or inpatient facility:

    a. Podiatrists

    b. Optometrists

    c. Chiropractors

    d. Veterinarians

    e. Dentists

f. Physical Therapists

g. Physical Therapy Assistants

h. Occupational Therapists

i. Occupational Therapy Assistants

j. Speech-Language Pathologists

k. Surgical Assistants

l. Surgical Technologists

m. Volunteer Retired Nurses

n. Nurse Aides

o. Temporary IMG Licensees

2. Physicians may delegate services within their scope of practice to the following unlicensed persons working in a hospital or inpatient facility:

a. Volunteer Nursing Students

b. Medical Assistants

3. Physicians are authorized to provide training to the Colorado licensed professionals and unlicensed persons set forth in this Rule, section 46.2(A)(1) and (2).

4. In order to delegate services pursuant to this Rule, section 46.2(A)(1) and (2), the physician shall ensure, prior to the delegation, that the delegated service is within the knowledge, skill and training of the delegatee.

5. The physician shall ensure on-premises availability to provide direction and supervision of the delegatee.

6. The delegated services shall be routine, technical services, the performance of which do not require the special skill or decision making ability of a physician.

7. The prescription or selection of medications, performance of surgical or other invasive procedures and anesthesia services may not be delegated pursuant to this Rule 160.

B. In addition to any delegation authorized by the Medical Practice Act and section 25-3.5-207, C.R.S., and notwithstanding any limitations set forth in Colorado Medical Board Rules 400 3 CCR 713-7 or 800 3 CCR 713-30, physician assistants are authorized to delegate services in hospitals and inpatient settings as follows:

1. Physician assistants may delegate services within their scope of practice to the following Colorado Licensed Professionals working in a hospital or inpatient facility:

a. Podiatrists

b. Optometrists

c. Chiropractors

d. Veterinarians

e. Dentists

f. Physical Therapists

g. Physical Therapy Assistants

h. Occupational Therapists

i. Occupational Therapy Assistants

j. Speech-Language Pathologists

k. Surgical Assistants

l. Surgical Technologists

m. Volunteer Retired Nurses

n. Nurse Aides

2. Physician assistants may delegate services within their scope of practice to the following unlicensed persons working in a hospital or inpatient facility:

a. Volunteer Nursing Students

b. Medical Assistants

3. Physician assistants are authorized to provide training to the Colorado licensed professionals and unlicensed persons set forth in Rule 1.27(C)(1) and (2).

4. In order to delegate services pursuant to this Rule, section 46.2(B)(1) and (2), the physician assistant shall ensure, prior to the delegation, that the delegated service is within the knowledge, skill and training of the delegatee.

5. The physician assistant shall ensure on-premises availability to provide direction and supervision of the delegatee.

6. The delegated services shall be routine, technical services, the performance of which do not require the special skill or decision-making ability of a physician assistant.

7. The prescription or selection of medications, performance of surgical or other invasive procedures and anesthesia services may not be delegated pursuant to this Rule 160.

46.3 EXPANDED SCOPE OF PRACTICE

A. Physicians are authorized to engage in inpatient care to evaluate and treat patients regardless of American Board of Medical Specialties (ABMS) Board certifications, national certifications, national specialty certificates of added qualifications, or current scope of specialty or subspecialty practice, if appropriate based on the physicians' education, training, and experience.

B. Physician assistants are authorized to engage in inpatient care to evaluate and treat patients regardless of National Commission on Certification for Physician Assistants (NCCPA), national certifications, national specialty certificates of added qualifications, or current scope of specialty or subspecialty practice, if appropriate based on the physician assistants' education, training, and experience.

C. Anesthesiologist Assistants may expand their scope of practice while working in a hospital or inpatient facility as needed to perform airway management outside of the operative setting.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040 , D 2022 043, D 2022 044 and D 2022 045, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic and incorporates Respiratory Syncytial Virus (RSV), influenza, and other respiratory illnesses in Colorado.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, , D 2022 040 , D 2022 043, D 2022 044 and D 2022 045, the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, , D 2022 040 , D 2022 043, D 2022 044 and D 2022 045 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040 , D 2022 043, D 2022 044 and D 2022 045 and directing the

Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic, RSV, influenza, and other respiratory illnesses in Colorado.
Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel and through expanded licensure.

Justification
As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040 , D 2022 043, D 2022 044 and D 2022 045 the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel and through expanded temporary licensure.

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 Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040 , D 2022 043, D 2022 044 and D 2022 045 and, that due to threat posed by the COVID-19 pandemic, RSV, influenza and other respiratory illnesses, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect December 10, 2022, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Adopted this 10th day of December 2022.

_____

Karen McGovern, Deputy Division Director of Legal Affairs,
for Ronne Hines, Director Division of Professions and Occupations

PHILIP J. WEISER
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Office of the Attorney General

Tracking number: 2022-00782

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - Colorado Medical Board

on 12/10/2022

3 CCR 713-46

RULE 160 - EMERGENCY RULES AND REGULATIONS REGARDING EXPANDED DELEGATION FOR PHYSICIANS AND PHYSICIAN ASSISTANTS AND EXPANDED SCOPE OF PRACTICE FOR PHYSICIANS, PHYSICIAN ASSISTANTS AND ANESTHESIOLOGIST ASSISTANT

The above-referenced rules were submitted to this office on 12/10/2022 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 19, 2022 10:21:46

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 Nursing

CCR number

3 CCR 716-1

Rule title

3 CCR 716-1 NURSING RULES AND REGULATIONS 1 - eff 12/10/2022

Effective date

12/10/2022

Expiration date

04/09/2023

DEPARTMENT OF REGULATORY AGENCIES

Division of Professions and Occupations - Board of Nursing

NURSING RULES AND REGULATIONS

3 CCR 716-1

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

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1.26 TEMPORARY LICENSURE OF PRACTICAL NURSES, PROFESSIONAL NURSES, ADVANCED PRACTICE NURSES, AND CERTIFIED NURSE ASSISTANTS AND TEMPORARY SUSPENSION OF CERTAIN NURSE AND NURSE AIDE EDUCATION REQUIREMENTS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2022 044

A. Basis. Through Executive Order D 2022 045, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, and D 2022 044 Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Nursing ("Board") set forth in section 24-1- 122(3)(gg), C.R.S, and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 044 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2022 045, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043 and D 2022 044 directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic, Respiratory Syncytial Virus (RSV), influenza, and other respiratory illnesses in Colorado.

C. TEMPORARY LICENSURE

1. The Board may issue a temporary license to a professional nurse or a practical nurse that holds an active, unrestricted professional or practical nurse licensed in good standing in a non-compact state.

a. Professional or practical nurses holding an active, unrestricted license in good standing in a non-compact state must submit an application for temporary licensure.

(1) The applicant must submit evidence of an active, unrestricted license, in good standing, to practice professional or practical nursing in a non-compact state.

b. A temporary license issued, pursuant to this Section (C)(1) of this Rule on or after November 2, 2021, is effective from the date of issuance through June 30, 2023.

(1) On July 1, 2023, if a full license to practice nursing in Colorado has not been issued, the temporary licensee shall cease practice immediately and until such time as full licensure to practice nursing in Colorado has been granted.

c. This temporary license is not renewable and does not create a property interest for the holder of the temporary license.

d. The temporary licensee may be subject to discipline by the Board as defined in section 12-255-101, *et seq.*, C.R.S.

D. TEMPORARY EMERGENCY NURSE AIDE CERTIFICATION

1. In order to allow nurse aides to enter the workforce between graduation and the taking of the required examination, the Board may issue a temporary emergency certification to an applicant that is a new graduate of an approved nurse aide training program who meets all qualifications for certification with the exception of successful completion of the required examinations as set forth in section 12-255-205, C.R.S.

a. Nurse aide new graduates must submit an application for temporary certification.

b. Nurse aide graduates holding a temporary certificate that expires on December 31, 2022, must reapply for a new certificate and shall not practice after December 31, 2022, until such time as a new temporary certificate is issued or full certification has been granted.

c. Nurse aide graduates that have not previously held a temporary certificate and have taken and failed either of the required examinations set forth in section 12-255-205 are not eligible for a temporary certification and may not practice as a nurse aide until such time as full certification has been granted.

d. Nurse aide graduates that previously held a temporary certificate or are holding a temporary certificate that expires on December 31, 2022, and have taken and failed either of the required examinations set forth in section 12-255-205 are not eligible for a temporary certification and may not practice as a nurse aide until such time as full certification has been granted.

e. A temporary certificate issued to a new graduate on or after December 9, 2022, is effective for ninety (90) days from the date of issuance.

(1) Upon the expiration of ninety days from the date of the temporary certificate issuance, if a full certificate to practice as a certified nurse aide in Colorado has not been issued the temporary certificate holder shall cease practice immediately and until such time as full certification to practice as a nurse aide in Colorado has been granted.

f. Nurse aide applicants granted this temporary emergency certification shall practice under the direct supervision of a Colorado licensed professional nurse in good standing during the entire term of the temporary emergency certification.

(1) For the purpose of this emergency Rule, “premises” means within the same building, office or facility and within the physical proximity to establish direct contact with the patient should the need arise.

(2) For the purpose of this emergency Rule, “direct supervision” means the Colorado licensed professional nurse must be on the premises, in-person, with the temporary emergency certified nurse aide and immediately available to respond to an emergency or provide assistance with the following exception:

(a) For home-health or home-hospice settings, “direct supervision” of the temporary emergency certified nurse may include video telesupervision by a professional nurse, provided the nurse supervises the entire visit via video telesupervision and the professional nurse is within proximity of the home site to promptly respond to provide non-emergent assistance and immediately available to respond to an emergency by activating emergency medical services to respond to the home site.

g. Once the temporary emergency certificate holder successfully completes the statutorily required examinations, the temporary emergency certificate must immediately submit an application and the required fee for full certification.

h. This temporary emergency certificate is not renewable and does not create a property interest for the holder of the temporary emergency certificate.

i. The temporary emergency certificate holder may be subject to discipline by the Board as defined in section 12-255-101, *et seq.,* C.R.S.

2. The Board may issue a temporary emergency certification to a reinstatement applicant who meets all qualifications for certification with the exception of successful completion of the required skills examinations as set forth in Rule 1.10(F).

a. Nurse aide reinstatement applicants holding a current temporary certificate that expires on December 31, 2022, must reapply for a new certificate and shall not practice after December 31, 2022, until such time as a new temporary certificate is issued or full certification has been granted.

b. Nurse aide reinstatement applicants graduates that have not previously held a temporary certificate and have taken and failed either of the required examinations set forth in section 12-255-205 are not eligible for a temporary certification and may not practice as a nurse aide until such time as full certification has been granted.

d. Nurse aide resinstate4men applicants that previously held a temporary certificate or are holding a temporary certificate that expires on December 31, 2022, and have taken and failed either of the required examinations set forth in section 12-255-205 are not eligible for a temporary certification and may not practice as a nurse aide until such time as full certification has been granted.

e. A temporary certificate issued to a new graduate on or after December 9, 2022, is effective for ninety (90) days from the date of issuance.

(1) Upon the expiration of ninety days from the date of the temporary certificate issuance, if a full certificate to practice as a certified nurse aide

in Colorado has not been issued the temporary certificate holder shall cease practice immediately and until such time as full certification to practice as a nurse aide in Colorado has been granted.

f. Nurse aide applicants granted this temporary emergency certification shall practice under the direct supervision of a Colorado licensed professional nurse in good standing during the entire term of the temporary emergency certification.

(1) For the purpose of this emergency Rule, “premises” means within the same building, office or facility and within the physical proximity to establish direct contact with the patient should the need arise.

(2) For the purpose of this emergency Rule, “direct supervision” means the Colorado licensed professional nurse must be on the premises, in-person, with the temporary emergency certified nurse aide and immediately available to respond to an emergency or provide assistance with the following exception:

(a) For home-health or home-hospice settings, “direct supervision” of the temporary emergency certified nurse may include video telesupervision by a professional nurse, provided the nurse supervises the entire visit via video telesupervision and the professional nurse is within proximity of the home site to promptly respond to provide non-emergent assistance and immediately available to respond to an emergency by activating emergency medical services to respond to the home site.

g. Once the temporary emergency certificate holder successfully completes the statutorily required examinations, the temporary emergency certificate must immediately submit an application and the required fee for full certification.

h. This temporary emergency certificate is not renewable and does not create a property interest for the holder of the temporary emergency certificate.

i. The temporary emergency certificate holder may be subject to discipline by the Board as defined in section 12-255-101, *et seq.,* C.R.S.

E. TEMPORARY SUSPENSION OF CERTAIN NURSE AND NURSE AIDE EDUCATION REQUIREMENTS RELATED TO COVID-19

1. Pursuant to this emergency Rule, promulgated in compliance with Executive Order D 2022 045, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, 2022 044 the following State Board of Nursing Rules are temporarily suspended effective, November 11, 2022, for a period of no longer than 120 days:

a. Rule 1.2(C)(11) (requiring concurrent clinical and theory experiences to allow clinical hours to be completed beyond six (6) months of relevant theory content);

b. Rule 1.2(E)(15)(c)(4)(a) (requiring a minimum of four hundred (400) clinical hours graduation from a practical nursing education program);

c. Rule 1.2(E)(15)(c)(4)(b) (requiring a minimum of seven hundred fifty (750) clinical hours for graduation from a professional nursing education program);

d. Rule 1.2(E)(15)(c)(4)(c) (requiring fifty percent of clinical hours in the Medical Surgical Nursing II, Community Health and Capstone (practicum) courses, pediatrics, obstetrics, psychiatric and medical surgical nursing, including those clinical hours required for nurse refresher courses, be completed in a clinical setting);

e. Rule 1.2(E)(15)(c)(13)(d) (requiring faculty supervision for healthcare related volunteer experiences);

f. Rule 1.10 (D)(12)(a) (requiring successful completion of a written and skills-based examination prior to certification); and,

g. Rule 1.11 (E)(2)(a) (requiring a minimum of sixteen (16) hours of clinical instruction be performed in a clinical setting).

1.27 EXPANDED DELEGATION FOR ADVANCED PRACTICE REGISTERED NURSES, CERTIFIED REGISTERED NURSE ANESTHETISTS, AND PROFESSIONAL NURSES AND EXPANDED SCOPE OF PRACTICE FOR CERTIFIED REGISTERED NURSE ANESTHETISTS, VOLUNTEER RETIRED NURSES, VOLUNTEER NURSING STUDENTS AND NURSE AIDES PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2022 045

A. Basis. Through Executive Order D 2022 045, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, and 2022 044 Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the State Board of Nursing ("Board") set forth in section 24-1-122(3)(gg), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 044 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of the Department of Regulatory Agencies, through the Division Director, to effectuate Executive Order D 2022 045, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, and D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043 and 2022 044 and directing the immediate expansion of the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic, Respiratory Syncytial Virus (RSV), influenza, and other respiratory illnesses in Colorado.

C. EXPANDED DELEGATION OF SERVICES

1. In addition to any delegation authorized by the Nurse Practice Act, advanced practice registered nurses, including certified registered nurse anesthetists, and professional nurses are authorized to delegate services within their scope of practice to the following Colorado licensed professionals working in a hospital or inpatient facility:

a. Podiatrists

b. Optometrists

c. Chiropractors

d. Veterinarians

e. Dentists

f. Physical Therapists

g. Physical Therapy Assistants

h. Occupational Therapists

i. Occupational Therapy Assistants

j. Speech-Language Pathologists

k. Surgical Assistants

l. Surgical Technologists

m. Volunteer Retired Nurses

n. Nurse Aides

2. Advanced practice registered nurses, including certified registered nurse anesthetists, and professional nurses may delegate services within their scope of practice to the following unlicensed persons working in a hospital or inpatient facility:

   a. Volunteer Nursing Students

   b. Medical Assistants

3. Advanced practice registered nurses, including certified registered nurse anesthetists, and professional nurses are authorized to provide training to the Colorado licensed professionals and unlicensed persons set forth in Rule 1.27(C)(1) and (2).

4. In order to delegate services pursuant to Rule 1.27(c)(1) and (2), the advanced practice registered nurse, including certified registered nurse anesthetists, and professional nurse shall ensure, prior to the delegation, that the delegated service is within the knowledge, skill and training of the delegatee.

5. The advanced practice registered nurse, including certified registered nurse anesthetists, and professional nurse shall ensure on-premises availability to provide direction and supervision of the delegatee.

6. The delegated services shall be routine, technical services, the performance of which do not require the special skill or decision-making ability of an advanced practice nurse, certified registered nurse anesthetist or professional nurse.

7. The prescription or selection of medications, performance of surgical or other invasive procedures and anesthesia services may not be delegated.

D. EXPANDED SCOPE OF PRACTICE

1. Certified registered nurse anesthetists may expand their scope of practice while working in a hospital or inpatient facility as needed to perform airway management outside of the operative setting.

2. Notwithstanding section 12-255-111(2), C.R.S., and 3 CCR 716-1 Rules 1.14(C) and (D), which were suspended pursuant to Executive Order D 2021 080, advanced practice registered nurses are authorized to evaluate and treat patients in in-patient settings regardless of national certification or designated population focus.

3. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides may perform services while working in a hospital or inpatient facility as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, professional nurses and respiratory therapists.

a. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides are authorized to perform delegated services upon adequate cross-training as determined necessary by the hospital or inpatient facility.

b. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides shall not accept delegation of a service for which the licensee or student does not possess the knowledge, skill or training to perform.

3. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides shall not perform a delegated service for which the licensee or student does not possess the knowledge, skill or training to perform.

4. Delegated services shall not be re-delegated to another person or licensee by the delegatee

5. Volunteer retired nurses, volunteer nursing students in the last semester of an educational program and nurse aides shall not prescribe or select medications, perform surgical or other invasive procedures or perform anesthesia services regardless of delegation.

1.28 EXPANDED SCOPE OF PRACTICE FOR CERTIFIED NURSE ASSISTANTS AND PRACTICAL NURSES IN ORDER TO ADMINISTER VACCINATIONS PURSUANT TO THE GOVERNOR'S EXECUTIVE ORDER D 2022 045

A. Basis. Through Executive Order D 2022 045, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, , D 2022 038, D 2022 040, D 2022 043, and D 202 044 Governor Jared Polis temporarily suspended the emergency rulemaking authorities for the Board of Nursing ("Board") set forth in section 24-1-122(3)(k), C.R.S., and directed the Executive Director of DORA, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules consistent with the Executive Order. The basis for these emergency rules is Executive Order D 2022 044 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order and Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq*., C.R.S.

B. Purpose. These Emergency Rules are adopted by the Executive Director of DORA, through the Division Director, to effectuate Executive Order D 2022 045, amending and extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D

2022 035, D 2022 037 , D 2022 038, D 2022 040, D 2022 043 and D 2022 044 and directing the immediate expansion of the workforce of trained medical personnel available to administer the coronavirus disease 2019 (COVID-19) vaccinations within inpatient facilities and outpatient settings due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

C. Expanded Scope of Practice in Order to Administer the COVID-19 Vaccination.

1. Practical nurses and certified nurse assistants may administer the COVID-19 vaccination while working in a hospital, inpatient facility or outpatient setting as delegated by physicians, physician assistants, advanced practice registered nurses, certified registered nurse anesthetists, or professional nurses.

a. Practical nurses and certified nurse assistants are authorized to perform this delegated service upon adequate cross-training as determined necessary by the hospital, inpatient facility, or outpatient setting.

b. Practical nurses and certified nurse assistants shall not accept delegation of this service if the licensee does not possess the knowledge, skill or training to perform.

c. Practical nurses and certified nurse assistants shall not perform this delegated service if the licensee does not possess the knowledge, skill or training to perform.

d. This delegated service shall not be re-delegated to another person or licensee by the delegatee.

e. Practical nurses and certified nurse assistants shall not prescribe, order, or select the COVID-19 vaccination regardless of delegation.

COLORADO
Department of Regulatory Agencies
Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis ("Governor") declared a state of disaster recovery on July 8, 2021, through Executive Order D 2021 122, to focus the State's efforts on recovery from the COVID-19 pandemic. Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040 , D 2022 043, D 2022 044 and D 2022 045, addresses the immediate need for trained medical personnel available to provide healthcare services during the recovery from COVID-19 pandemic and incorporates Respiratory Syncytial Virus (RSV), influenza, and other respiratory illnesses in Colorado.

Basis

Through Executive Order D 2021 122, which was amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, , D 2022 040 , D 2022 043, D 2022 044 and D 2022 045, the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1- 122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, , D 2022 040 , D 2022 043, D 2022 044 and D 2022 045 issued by Governor Jared Polis pursuant to the Colorado COVID-19 Disaster Recovery Order issued on July 8, 2021, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040 , D 2022 043, D 2022 044 and D 2022 045 and directing the

Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic, RSV, influenza, and other respiratory illnesses in Colorado.
Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is promulgating these emergency rules expanding delegation in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel and through expanded licensure.

Justification
As set forth in Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040 , D 2022 043, D 2022 044 and D 2022 045 the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules expanding scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel and through expanded temporary licensure.

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 Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040 , D 2022 043, D 2022 044 and D 2022 045 and, that due to threat posed by the COVID-19 pandemic, RSV, influenza and other respiratory illnesses, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare, and cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect December 10, 2022, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Adopted this 10th day of December 2022.

_____

Karen McGovern, Deputy Division Director of Legal Affairs,
for Ronne Hines, Director Division of Professions and Occupations

PHILIP J. WEISER
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DEPARTMENT OF LAW

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Office of the Attorney General

Tracking number: 2022-00783

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Professions and Occupations - State Board of Nursing

on 12/10/2022

3 CCR 716-1

NURSING RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 12/10/2022 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 19, 2022 10:04:17

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Labor and Employment

Agency

Division of Workers' Compensation

CCR number

7 CCR 1101-3

Rule title

7 CCR 1101-3 WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES 1 - eff 12/06/2022

Effective date

12/06/2022

Expiration date

04/05/2023

DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation
7 CCR 1101-3
WORKERS' COMPENSATION RULES OF PROCEDURE

Rule 5 Claims Adjusting Requirements

5-1 COMPLETION OF DIVISION FORMS

(A) Information required on Division forms shall be typed or legibly written in black or blue ink, completed in full and in accordance with Division requirements as to form and content. Forms that do not comply with this rule may not be accepted for filing. Position statements relative to liability which do not meet Division requirements will be returned to the insurer.

(B) Insurers may transmit data in an electronic format only as directed by the Division.

(C) All first reports of injury and notices of contest filed with the Division shall be transmitted electronically via electronic data interchange (EDI) or via the Division's internet filing process. First Reports of Injury and Notices of Contest cannot be submitted via electronic mail.

(D) All filings shall be sent via electronic submission to the Division.

(a) Only one file per submission is permitted. All exhibits shall be combined into one file with the filing or form. Multiple attachments will not be accepted.

(b) The attached file name must be named in this order: wc#, claimant first and last name, and type of document (fa, ga, petition, ls request, mtc).

(c) The certificate of service should reflect the date it was submitted to the division of workers' compensation.

(d) All admissions; petitions to modify, terminate, or suspend (wc54); request for lump sum payments (wc62); and motions to close for lack of prosecution(wc192) must be sent to: cdle_dowc_filings@state.co.us

(i) In order to electronically submit a motion to close, all parties must have an electronic mail address

(ii) If electronic mail addresses are not available, these forms will be accepted via regular mail.

(e) All other motions (other than motions to close which are addressed under rule 7) and submissions for prehearings and settlement unit must be addressed to:

cdle_dowc_prehearings@state.co.us. Motions must be accompanied by a proposed order.

(f) All other communications not specifically addressed in this rule, including but not limited to objections to final admissions, entries of appearance, and workers' claims for compensation must be addressed to: cdle_workers_compensation@state.co.us

(E) The Director may grant an exemption to an insurer from filing electronically because of a small number of filings or financial hardship. Any insurer requesting an exemption from electronic filing may do so in letter form addressed to the Director. The request should provide specific justification(s) for the requested exemption. The letter should address whether an exemption is sought for only EDI or also for internet filing.

(F) In the event compliance with 5-1(C) is prevented by technological errors beyond the control of the filing party, a waiver may be requested by submitting the division-issued paper form along with a cover letter addressed to the Director identifying the reason for the request. Upon receipt of a request the Division will either accept the paper form or notify the filing party that electronic submission will be required.

5-2 FILING OF EMPLOYERS' FIRST REPORTS OF INJURY

(A) Within ten days of notice or knowledge an employer shall report any work-related injury, illness or exposure to an injurious substance as described in subsection (F), to the employer's insurer. An employer who does not provide the required notice may be subject to penalties or other sanctions.

(B) A First Report of Injury shall be filed with the Division in a timely manner whenever any of the following apply. The insurer or third-party administrator may file the First Report of Injury on behalf of the employer.

(1) If an injury results in a fatality, or three or more employees are injured in the same accident, a first report of injury shall be filed with the division within 3 days of notice to the insurance carrier or self-insured.

(2) A first report of injury must be filed within ten days of an employer receiving notice or knowledge of any of the following events:

(A) An injury or occupational disease has resulted in lost time from work for the injured employee in excess of three shifts or calendar days;

(B) The occurrence of a permanently physically impairing injury;

(C) For claims with dates of injury on and after August 10, 2022, when medical treatment supervised by an authorized treating physician and intended to cure or relieve the injury is provided for more than 180 days after the date of injury;

(D) An employee has contracted an occupational disease listedin any of the following categories:

(i) Chronic respiratory disease;

(ii) Cancer;

(iii) Pneumoconiosis, including but not limited to coal worker's lung, asbestosis, silicosis, and berylliosis;

(iv) Nervous system diseases;

(v) Blood borne infectious, contagious diseases.

(3) Within ten days after notice or knowledge of any claim for benefits, including medical treatment only, that is denied for any reason.

(C) The insurer shall state whether liability is admitted or contested within 20 days after the date the employer's First Report of Injury is filed with the Division. If an Employer's First Report of Injury should have been filed with the Division, but wasn't, the insurer's statement concerning liability is considered to be due within 20 days from the date the Employer's First Report of Injury should have been filed. The date a First Report of Injury should have been filed with the Division is the last day it could have been timely filed in compliance with paragraph (B) above.

(D) The insurer shall state whether liability is admitted or contested within 20 days after the date the Division mails to the insurer a Worker's Claim for Compensation or Dependent's Notice and Claim for Compensation.

(E) No statement regarding liability may be filed until a workers' compensation claim number is assigned. A separate and distinct statement regarding liability is required for each claim in which a workers' compensation claim number is assigned.

(F) In the format required by the Director, each insurer shall submit a monthly summary report to the Division containing the following:

(1) Injuries to employees that result in no more than three days' or three shifts' loss of time from work, no permanent physical impairment, no fatality, active medical treatment less than 180 days, or contraction of an occupational disease not listed in subsection (B) of this rule; and

(2) Exposures by employees to injurious substances, energy levels, or atmospheric conditions when the employer requires the use of methods or equipment designed to prevent such exposures and where such methods or equipment failed, was not properly used, or was not used at all.

At the time an insurer notifies the Division of its position on a claim, the insurer shall notify the claimant, in writing, of the insurer's claim number, the name and address of the individual assigned to the adjustment of the claim, a telephone number, and email address of the adjuster.

5-4 MEDICAL REPORTS AND RECORDS

(A) Medical reports on claims that have been reported to the Division shall be filed with the Division under the following circumstances:

(1) When attached to an admission of liability form, or a petition to suspend benefits, or

(2) In connection with a request to the Division to determine the claimant's eligibility for vocational rehabilitation benefits or to review a vocational rehabilitation plan, or to review requests regarding the provision of vocational rehabilitation services, or

(3) When otherwise required by any other rule or the Act, or

(4) At the request of the Director.

(5) A copy of every medical report not filed with the Division shall be exchanged with all parties within fifteen (15) business days of receipt. A claimant may opt to not receive copies of medical reports from the insurer under this section by providing written notice to the insurer. Such notice may be revoked by the claimant in writing at any time.

(B) For claims which are not required to be reported to the Division, the parties shall exchange medical reports within five (5) business days of a request for such information by a party to the claim.

(C) A party shall have 15 days from the date of mailing to complete, sign, and return a release of medical and/or other relevant information. If a written request for names and addresses of health care providers accompanies the medical release(s), a claimant shall also provide a list of names and addresses of health care providers reasonably necessary to evaluate/adjust the claim along with the completed and signed release(s). Medical information from health care providers who have treated the part(s) of the body or conditions(s) alleged by the claimant to be related to the claim, during the period five years before the date of injury and thereafter through the date of the request, will be presumed reasonable. Any request for information in excess of the presumption contained in this rule shall include a notice that the insurer is requesting information in excess of what is presumed reasonable and that providing the information is not required. If a party disputes that a request within the presumption is reasonable or that information sought is reasonably necessary, that party may file a motion with the Office of Administrative Courts or schedule a prehearing conference. Requests for release of medical information as well as informal disclosures necessary to evaluate/adjust the claim are not considered discovery.

(D) A party shall have 15 days from the date of mailing to respond to a reasonable request for information regarding wages paid at the time of injury and for a reasonable time prior to the date of injury, and other relevant information necessary to determine the average weekly wage. Any dispute regarding such a request may be resolved by the Director or an Administrative Law Judge. The request for an exchange of information under this Rule 5-4(D) is not considered discovery.

(E) Mental health records in the possession of an insurer or self-insured employer or any agent thereof shall not be exchanged with any party other than claimant or claimant's counsel unless necessary for medical evaluation, adjustment or adjudication of the claim or otherwise approved by the Director or an Administrative Law Judge.

An insurer may release mental health records concerning work restrictions to the employer but shall not disclose the actual mental health records to any third party unless necessary for medical evaluation, adjustment or adjudication of the claim or otherwise approved by the Director or an Administrative Law Judge.

5-5 ADMISSIONS OF LIABILITY

(A) When the final admission is predicated upon medical reports, a narrative report and appropriate worksheets MUST accompany the admission. The attachment of the physician's report of workers' compensation injury form is required in cases where such document is supplied by the physician concurrently with the narrative report. Attached documentation must provide a statement from an authorized treating physician regarding the date of maximum medical improvement, permanent impairment, and maintenance medical benefits.

(1) The physician's report of workers' compensation injury or narrative report shall reflect the recommendation of the physician completing the form with regard to the provision of medical benefits after maximum medical improvement, as may be reasonable and necessary within the meaning of the act. The admission shall state the insurer's position on the provision of medical benefits after maximum medical improvement. If maintenance medical benefits are being denied, the admission shall make specific reference to the medical report by listing the physician's name and the date of the report in the remarks section of the admission.

(2) The objection form prescribed by the Division as part of the final admission form shall precede any attachment.

(3) For claims reported to the Division in which only medical benefits have been paid and no permanent impairment has been assigned, either the narrative report or the physician's report of workers' compensation injury form shall be attached as support.

(4) For claims reported to the Division in which only medical benefits have been paid and no permanent impairment has been assigned, a narrative report completed after the final admission of liability has been filed must be exchanged within

fifteen (15) days of receipt.

(B) An admission filed for medical benefits only shall state the basis for denial of temporary and permanent disability benefits within the remarks section of the admission.

(C) Upon termination or reduction in the amount of compensation, a new admission shall be filed with supporting documentation on or prior to the next scheduled date of payment, regardless of the reason for the termination or reduction. An admission shall be filed within 30 days of any resumption or increase of benefits.

(1) Following any order (except for orders which only involve disfigurement) becoming final which alters or awards benefits, an admission consistent with the order shall be timely filed.

(2) The filing of an admission consistent with this section shall not be construed as a reopening of any issues closed by a prior admission or resolved by order.

(D) For all injuries required to be filed with the Division with dates of injury on or after July 1, 1991:

(1) Where the claimant is a state resident at the time of MMI:

(a) When an authorized treating physician providing primary care is not Level II accredited and has determined the claimant has reached MMI and has sustained any permanent impairment, such physician shall, within 20 days after the determination of MMI, refer the claimant to a Level II accredited physician for a medical impairment rating. If the referral is not timely made, the insurer shall refer the claimant to a Level II accredited physician for a medical impairment rating within 40 days after the determination of MMI.

(b) If the authorized treating physician determining MMI is Level II accredited, within 20 days after the determination of MMI, such physician shall determine the claimant's permanent impairment, if any.

(2) Where the claimant is not a state resident at the time of MMI:

(a) When an authorized treating physician providing primary care is not Level II accredited and has determined the claimant has reached MMI and has sustained any permanent impairment, within 20 days after the determination of MMI, such physician shall conduct tests to evaluate impairment and shall transmit to the insurer all test results and relevant medical information. Within 20 days of receipt of the medical information, the insurer shall appoint a Level II accredited physician to determine the claimant's medical impairment rating from the information that was transmitted.

(b) When the claimant chooses not to have the treating physician providing primary care conduct tests to evaluate impairment, or if the information is not transmitted in a timely manner, the insurer shall arrange and pay for the claimant to return to Colorado for examination, testing, and rating, at the expense of the insurer. The insurer shall provide to the claimant at least 20 days advance written notice of the date and time of the impairment rating examination, and a warning that refusal to return for examination may result in the loss of benefits. Such notification shall also include information identifying travel and accommodation arrangements.

(E) For those injuries required to be filed with the Division with dates of injury on or after July 1, 1991:

(1) Within 30 days after the date of mailing or delivery of a determination of impairment by an authorized Level II accredited physician, or within 30 days after the date of mailing or delivery of a determination by the authorized treating physician providing primary care that there is no impairment, the insurer shall either:

(a) File an admission of liability consistent with the physician's opinion, or

(b) Request a Division Independent Medical Examination (DIME) in accordance with Rule 11-3 and §8-42-107.2, C.R.S.,

(c) In cases involving only a scheduled impairment, an application for hearing or final admission may be filed without a Division Independent Medical Examination.

i) the filing of an application for hearing by the insurer under this provision shall not prevent the claimant from seeking a Division Independent Medical Exam on the issues of MMI and/or conversion to whole person impairment. The claimant shall have thirty (30) days from the filing of the application for hearing to request an independent medical exam.

ii) at the time the insurer files an application for hearing under this provision it shall concurrently provide a notification to the claimant that the claimant may request a DIME on the issues of MMI and/or conversion to whole person impairment, as well as a copy of the Division's notice and proposal form.

(F) Within 20 days after the date of mailing of the Division's notice of receipt of the Division Independent Medical Examiner's report, the insurer shall either admit liability consistent with such report or file an application for hearing. This section does not pertain to IMEs rendered under § 8-43-502, C.R.S.

(G) The insurer may modify an existing admission regarding medical impairment,

whenever the medical impairment rating is changed pursuant to a Division Independent Medical Exam, a Division Independent Medical Examiner selected in accordance with Rule 5- 5(E); or an order. Any such modifications shall not affect an earlier award or admission as to monies previously paid.

(H) When an insurer files an admission admitting for a medical impairment, the insurer shall admit for the impairment rating in a whole number. If the impairment rating is reported with a decimal percentage, the insurer shall round up to the nearest whole number.

(I) An admission of liability which includes a reduction in benefits for a safety rule violation must include a statement of the specific facts on which the reduction is asserted attached as a separate document to the initial admission.

5-6 TIMELY PAYMENT OF COMPENSATION BENEFITS

(A) Benefits and penalties awarded by order are due three (3) business days after the order becomes final. Any ongoing benefits shall be paid consistent with statute and rule.

(B) Initial payment of temporary disability benefits awarded by admission shall be paid no later than the date the admission awarding benefits is filed and are considered due three (3) business days after the date of the admission. Temporary disability benefits are due at least once every two weeks thereafter from the date of the admission. Payment mailed via the United States Postal Service will be considered timely if postmarked at least three (3) business days prior to the due date and must include all benefits owed through the due date. In some instances, an employer's first report of injury and admission can be timely filed, but the first installment of compensation benefits will be paid more than 20 days after the insurer has notice or knowledge of the injury. Provided the filings are timely and that benefits are timely paid for the entire period owed as of the date of the admission, the insurer will be considered in compliance.

(C) Permanent impairment benefits awarded by admission are retroactive to the date of maximum medical improvement and shall be paid so that the claimant receives the benefits not later than three (3) business days after the date of the admission. Subsequent permanent disability benefits are due at least once every two weeks from the date of the admission. When benefits are continuing, the payment shall include all benefits which are due. Payment mailed via the United States Postal Service will be considered timely if postmarked at least three (3) business days prior to the due date.

(D) An insurer shall receive credit against permanent disability benefits for any temporary disability benefits paid beyond the date of maximum medical improvement.

(E) Benefits shall be calculated based on a seven (7) day calendar week.

5-7 PERMANENT PARTIAL DISABILITY BENEFIT RATES

(A) Permanent partial disability benefits paid as compensation for a non-scheduled injury or illness which occurred on or after July 1, 1991, shall be paid at the temporary total disability rate, but not less than one hundred fifty dollars per week and not more than fifty

percent of the state average weekly wage at the time of the injury.

(B) Scheduled impairment benefits shall be paid at the calculated rate pursuant to § 8-42-107 (6) C.R.S.

(1) For injuries resulting in a scheduled impairment, the permanent partial disability amount must be determined utilizing the scheduled rating calculation if it is higher than the nonscheduled rating calculation.

(C) Where scheduled and non-scheduled injuries occurred resulting in impairment, the scheduled and non-scheduled impairment benefits shall be paid concurrently.

5-8 ADMISSION FOR PERMANENT TOTAL DISABILITY BENEFITS

(A) An insurer shall file an admission of liability for permanent total disability benefits on a final admission of liability form prescribed by the Division.

(B) An insurer may terminate permanent total disability benefits without a hearing by filing an admission of liability form with all of the following attachments:

(1) A death certificate or written notice advising of the death of a claimant; and

(2) A statement by the insurer as to its liability for payment of:

(a) Death benefits; and

(b) If there are dependents, the unpaid portion, if any, of permanent total disability benefits the claimant would have received had s/he lived until receiving compensation at the regular rate for a period of six years.

5-9 REVISING FINAL ADMISSIONS

(A) Within the time limits for objecting to the final admission of liability pursuant to § 8-43-203, C.R.S., the Director may allow an insurer to amend the admission for permanency, by notifying the parties that an error exists due to a miscalculation, omission, or clerical error.

(B) The period for objecting to a final admission begins on the mailing date of the last final admission.

5-10 LUMP SUM PAYMENT OF AN AWARD

(A) For lump sum requests less than or equal to $10,000.00 for permanent partial disability awards for whole person or scheduled impairment, and where the injury or illness occurred on or after July 1, 1991, the following applies per § 8-42-107.2 C.R.S:

(1) Lump sum payment of $10,000.00, or the remainder of the award, if less, shall automatically be paid, less discount, on the claimant's written request to the

insurer. The insurer shall calculate the sum certain and issue payment taking applicable offsets (i.e., disability benefits, incarceration, garnishments) within ten (10) business days from the date of mailing of the request by the claimant.

(B) For lump sum requests greater than $10,000.00 for permanent partial awards, or for any permanent total, or dependents' benefits, the following applies per § 8-43-406 C.R.S.:

(1) If the claimant is represented by counsel, a request for a lump sum payment of a portion or remaining benefits shall be made by submitting a Request for Lump Sum Payment form to the insurer and the Division, if the claimant has indicated that the admission will be accepted as filed, relative to permanent partial disability and maximum medical improvement. The claimant is not required to waive the right to pursue permanent total disability benefits as a condition to receiving the lump sum. Within ten (10) days of the date the Request for Lump Sum Payment form was mailed, the insurer shall issue the payment and file the required benefit payment information with the Division, the claimant and the claimant's attorney.

(a) The insurer shall have ten days from the claimant's request to object to the payment of the lump sum. Prior to payment and within the same ten (10) day time-period, the insurer shall submit the lump sum calculations to claimant, claimant's attorney and the Division providing the reason for the objection. Claimant shall have ten days from the insurer’s objection to file a response. Upon receipt of the form the Director shall make a determination on the lump sum request.

(b) The claimant shall have ten days from the date the payment or payment information was mailed to object to the accuracy of the payment by stating the basis for the objection, in writing, to the Division and insurer. Insurer shall have ten days from the claimant’s objection to file a response. Following receipt of the objection, the Director shall make a determination on the lump sum payment.

(c) The total of all lump sums issued per claim may not exceed the amount set forth in the Director’s annual maximum benefit order in effect on the date the lump sum is requested.

(2) If the claimant is not represented by counsel, a request for a lump sum payment of benefits shall be made by submitting a Request for Lump Sum Payment to the insurer and the Division if the claimant has indicated that the admission will be accepted as filed, relative to permanent partial disability and maximum medical improvement. The claimant is not required to waive the right to pursue permanent total disability benefits as a condition to receiving the lump sum. Within ten (10) days of the date the Request for Lump Sum Payment form was mailed, the insurer shall file the required lump sum calculation information with the Division and the claimant.

(a) The claimant shall have ten (10) days from the date of mailing of the benefit payment information provided by the insurer to object to the accuracy of this information. In the absence of an objection, a lump sum order issued by the Director will be based upon the information submitted.

(b) The total of all lump sums issued per claim may not exceed the amount set forth in the director's annual maximum benefit order in effect on the date the lump sum is requested.

(C) The insurer shall issue payment within ten (10) days of the date of mailing of the order by the Director.

5-11 DOCUMENTATION OF APPORTIONMENT

(1) For all claims with a date of injury on or after July 1, 2008 a carrier may not reduce a claimant's temporary total disability, temporary partial disability or medical benefits because of any prior injury, whether work-related or non work-related.

(2) If a permanent impairment rating is reduced on an admission based on a prior work-related injury, a copy of the previous award or settlement shall be attached to the admission and must establish that the award or settlement was for the same body part. If a permanent impairment rating is reduced on an admission based on non-work-related injury, documentation shall be attached to the admission establishing prior impairment to the same body part that was identified, treated and independently disabling at the time of the work-related injury.

5-12 RECEIPTS

Upon demand of the Director, an insurer shall produce to the Division a receipt, canceled check, or other proof substantiating payment of any amount due to the claimant or to a provider.

5-13 INFORMATION ON CLAIMS ADJUSTING

(A) Every insurer, or its designated claims adjusting administrator; shall provide the following information on claims adjusting practices to the Division:

(1) The name, address, telephone number and e-mail address of the administrator(s) responsible for its claims adjusting.

(2) Within 30 days of any change in administrator(s) responsible for claims adjusting, the insurer or self-insured employer shall complete a "notice of change of carrier or adjusting firm" on the Division provided form.

(3) Upon request of the Director, any or all records, including any insurer administrative policies or procedures, pertaining to the adjusting of Colorado Workers' Compensation claims. This authority shall not extend to personnel

records of claims personnel. All documents shall remain confidential.

(B) Within 30 days of any change in the administrator(s)**,** notice of such change shall be provided in writing to the claimant. Notice shall include the name, address, a telephone number, and email address of the claims administrator(s).

5-13 CORRESPONDENCE FROM THE DIVISION

(A) Every insurer and self-insured employer shall provide a mailing address for the receipt of communication from the Division. All correspondence from the Division regarding the claim will be sent to the address provided by the insurer or self-insured employer. Mailing to the address provided is deemed good service.

(B) An insurer or self-insured employer may designate a third party administrator (TPA) to handle specific claims by noting the designation on the first report of injury or an admission of liability. No correspondence will be sent to the TPA unless such a designation is made.

(1) In claims initiated by a workers' claim for compensation, the Division will forward the claim to the insurer or self-insured employer with a request for a position statement. The insurer or self-insured employer shall be responsible for forwarding the claim to the third party administrator (if any).

(2) The insurer or self-insured employer remains responsible for ensuring compliance with these rules of procedure as well as the workers' compensation act regardless of any designation of a third party administrator.

5-14 SURVEYS

(A) Within 30 days following closure of each claim that was reported to the Division, the insurer shall survey the claimant. If the claimant is deceased the survey shall be presented to the claimant's dependents, if there are such dependents. If two or more claims have been merged or consolidated, one survey may be presented.

(B) If the claimant has previously authorized the insurer to communicate through electronic transmission, the survey may be sent to the claimant electronically. Otherwise, the survey shall be mailed to the claimant. If mailed, along with the survey, the insurer shall provide a return postage prepaid envelope for the claimant to use when returning the survey.

(C) The survey shall include the name of the insurer. The survey shall also have a space for the claimant to sign if communicated by mail. The survey shall include the following language: "This survey relates to your recent workers' compensation claim. We would like to find out how satisfied you are with the way your claim was handled." The survey shall include instructions as to how to return the completed survey to the insurer, and the sentence "Insurers and employers are prohibited by law from taking any disciplinary action or otherwise retaliating against those who respond to this survey." In addition, the survey shall set forth only the following questions:

(1) On a scale from 1 to 5, with 1 being the least satisfied and 5 being the most satisfied, please describe your satisfaction with the level of courtesy shown to you in relation to your workers' compensation claim.

1 2 3 4 5

(2) On a scale from 1 to 5, with 1 being the least satisfied and 5 being the most satisfied, please describe your satisfaction with how promptly you received medical care.

1 2 3 4 5

(3) On a scale from 1 to 5, with 1 being the least satisfied and 5 being the most satisfied, please describe your satisfaction with how promptly your claim was handled.

1 2 3 4 5

(4) On a scale from 1 to 5, with 1 being the least satisfied and 5 being the most satisfied, please describe your satisfaction with how quickly any disputes in your claim were resolved. If you did not have any disputes, please mark NA.

1 2 3 4 5

(5) On a scale from 1 to 5, with 1 being the least satisfied and 5 being the most satisfied, please describe your overall satisfaction with the way your claim was handled.

1 2 3 4 5

(6) The name of the adjuster handling your claim, if known.

(D) On or before the last day of January in each year, the insurer shall report the survey results to the Division. The report shall include the total number of surveys presented to claimants during the preceding calendar year but shall be based on all survey results actually received by the insurer during that time. For the questions set out in (C)(1), (C)(2), (C)(3) and (C)(5) above, the insurer shall report the number of responses to the question and the average score based on those responses. For question (C)(4), the insurer shall report the number of responses to the question, the number of responses that indicated NA, and the average of those responses that provided a numerical response. There shall be only one report per insurer per year. The insurer shall maintain the actual survey responses for a minimum of six months after providing the results to the Division and shall provide the survey results to the Division upon request.

STATEMENT OF EMERGENCY BASIS AND PURPOSE FOR AMENDMENT TO THE WORKERS' COMPENSATION RULES OF PROCEDURE 7 CCR 1101-3

House Bill 22-1347 introduced new requirements for the reporting of work-related injuries and for the calculation of certain impairment benefits. Workers' Compensation Rule of Procedure 5 sets forth an exclusive list of requirements for reporting claims to the Division which does not include the new requirements established in the bill. The rule also provides guidance for admitting to benefits which does not include the new requirements.

HB22-1347 was signed on June 8, 2022, and an emergency rule 5 was adopted on August 9, 2022. While a permanent rule making process took place, an administrative error required termination of that rule, thus a second emergency rule is required.

Accordingly, I find that immediate adoption of this rule amendment is imperatively necessary to comply with state law, and compliance with §24-4-103 would be contrary to the public interest. This emergency rule will become effective on December 6, 2022 and be in effect for 120 days unless suspended or superseded.

Paul Tauriello
Director

December 6, 2022
Date

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Office of the Attorney General

Tracking number: 2022-00771

Opinion of the Attorney General rendered in connection with the rules adopted by the

Division of Workers' Compensation

on 12/06/2022

7 CCR 1101-3

WORKERS' COMPENSATION RULES OF PROCEDURE WITH TREATMENT GUIDELINES

The above-referenced rules were submitted to this office on 12/06/2022 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 22, 2022 16:20:00

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Early Childhood

Agency

Early Intervention Colorado Program

CCR number

8 CCR 1405-1

Rule title

8 CCR 1405-1 Early Intervention Colorado Program 1 - eff 01/01/2023

Effective date

01/01/2023

Expiration date

04/15/2023

COLORADO DEPARTMENT OF EARLY CHILDHOOD

Early Intervention Colorado Program

EARLY INTERVENTION RULES AND REGULATIONS

8 CCR 1405-1

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

5.100 EARLY INTERVENTION PROGRAM

The Early Intervention Program shall provide services for an infant or toddler, birth through two (2) years of age, with a developmental delay or disability and his or her family through a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services.

A. The Early Intervention Program shall provide services consistent with the following requirements:

1. Sections 26.5-3-401 through 26.5-3-410 of the Colorado Revised Statutes (C.R.S.);

2. Sections 10-16-102(46) and 10-16-104(1.3), C.R.S.;

3. Section 22-20-103, C.R.S.;

4. The following portions of the United States Code (U.S.C.), as amended:

   a. 20 U.S.C. Section 1232g, (the Family Education Rights and Privacy Act (FERPA);

   b. The Individuals with Disabilities Education Act of 2004 (IDEA) - 20 U.S.C. Sections:

      1. 1401 (referred to as Section 601),

      2. 1412 (referred to as Section 612),

      3. 1415 (referred to as Section 615),

      4. 1416 (referred to as Section 616),

      5. 1418 (referred to as Section 618),

      6. 1419 (referred to as Section 619),

      7. 1431-1442 (referred to as Sections 631 – 642),

   c. 42 U.S.C. Section 1320, (the Public Health Service Act);

   d. 42 U.S.C. Section 9801 (the Head Start Act);

   e. 42 U.S.C. Section 11431(McKinney-Vento Homeless Assistance Act); and

f. The General Education Provisions Act (GEPA) at 20 U.S.C. Sections 1221 through 1235 applies to applicants for new grant awards under the federal Department of Education.

5. 34 C.F.R. Parts 99 and 303 (2021), which are incorporated herein by reference; no later amendments or editions are incorporated. These regulations are available for public inspection at the Colorado Department of Early Childhood, Office of Program Delivery, 710 S. Ash St., Denver, CO 80246 or at www.ecfr.gov. Copies of these regulations are available for reasonable cost during normal business hours at the U.S. Department of Education, Office of Special Education and Rehabilitation Services, 400 Maryland Avenue SW, Washington, D.C. 20202; and

6. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rule, located at 45 C.F.R. Parts 160, 162, and 164 (2019), herein incorporated by reference; no later amendments or editions are incorporated by reference. These regulations are available for public inspection at the Colorado Department of Early Childhood, Office of Program Delivery, 710 S. Ash St., Denver, CO 80246 or at www.ecfr.gov. Copies of these regulations are available for reasonable cost during normal business hours at the U.S. Department of Health and Human Services, 200 Independence Avenue, SW, Washington, D.C. 20201.

B. The Early Intervention Program shall design services to meet the developmental needs of an eligible infant or toddler and the needs of his or her family related to functional outcomes to enhance the child's development in the domains of adaptive development, cognitive development, communication development, physical development (including vision and hearing), and, social and emotional development.

C. Based on the unique needs of each child, early intervention services shall be delivered through a combination of individualized intervention methods and strategies designed to:

1. Enhance the capacity of a parent or other caregiver to support a child's well-being, development, and learning;

2. Support full participation of a child in his or her community; and

3. Meet a child's developmental needs within the context of the concerns and priorities of his or her family.

D. All available resources that pay for early intervention services shall be identified and coordinated, including, but not limited to, federal, state, local, and private sources.

E. A system for the resolution of intra- and inter-agency disputes shall be used.

F. Formal interagency operating agreements, as needed, shall be developed to facilitate the development and implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services.

G. A statewide system for compiling data on the early intervention services shall be used to comply with state and federal reporting requirements.

5.101 EARLY INTERVENTION PROGRAM DEFINITIONS

As used in these rules and regulations, unless the context requires otherwise: "Abuse or child abuse and/or neglect" is defined in section 19-1-103(1)(a), C.R.S.

"Access to records" means the right for a parent to have the opportunity to inspect, review and obtain copies of records related to evaluation, assessment, eligibility determination, development and implementation of an Individualized Family Service Plan, individual complaints pertaining to the child, and any other relevant information regarding his or her child and family, unless restricted under authority of applicable state law governing such matters of guardianship, separation, or divorce.

"Administrative unit" as defined in section 26.5-3-402(1), C.R.S., means a school district, board of cooperative services, multi-district administrative unit, or the State Charter School Institute, that is providing educational services to exceptional children.

"Assessment" means the ongoing procedures used throughout the period of eligibility of a child for early intervention services to identify:

A. The unique strengths and needs of the child and the early intervention services appropriate to meet those needs; and,

B. The resources, priorities, and concerns of a parent and the early intervention services necessary to enhance the capacity of a parent or other caregiver to meet the developmental needs of the eligible child within everyday routines, activities and places.

"Atypical Development" means development or behaviors that fall outside the expected range of development in one or more of the five (5) domains referenced in Rule 5.108(G)(7)(c), and emerge in a way that is different from same age peers. They are not attributable to culture or personality and are different in quality, form and function. This can be determined through informed opinion of delay, even when evaluation tools do not establish a twenty-five percent (25%) delay in two (2) or more domains or a thirty-three percent (33%) delay in one (1) domain.

"Certified Early Intervention Service Broker" is defined in section 26.5-3-402(3), C.R.S.

"Child Abuse Prevention and Treatment Act" (CAPTA) means the CAPTA state grant program at 42 U.S.C. Section 5106A that provides states with flexible funds to improve their child protective service systems. Last reauthorized by the CAPTA Reauthorization Act of 2010, the program requires states to provide assurances in their five (5) year child and family services plan that the state is operating a statewide child abuse and neglect program. This program includes policies and procedures that address the needs of drug-exposed infants and provisions for referral of children under age three (3) who are involved in a substantiated case of abuse and neglect to early intervention services under Part C.

"Child Find" is defined in section 26.5-3-402(4), C.R.S., ensures that infants and toddlers in the state who are eligible for services under Part C, are identified, located and evaluated.

"Child Find program" means the multidisciplinary team within an administrative unit that conducts screening and/or evaluation activities for young children.

"Children experiencing homelessness" means children who lack a fixed, regular, and adequate nighttime residence, in accordance with the McKinney-Vento Homeless Assistance Act, which is defined in Rule 5.100(A)(4), and 34 C.F.R. Section 303.17, which is incorporated by reference in Rule 5.100(A)(5).

"Coaching" means a relationship-based strategy used by trained personnel with a family member, other caregiver, or another provider to support what is already working to help a child develop and to increase their knowledge and use of new ideas to achieve child or family outcomes.

"Consent" means that the parent has been fully informed of all information relevant to the activity for which consent is sought in the parent's native language and the parent understands and agrees in writing to the carrying out of the activity.

“Co-payment” means a specified dollar amount that an insured person must pay for covered health care services. The insured person pays this amount to the provider at the time of service.

“Criteria” means standards on which a judgment or decision may be based. “Days” means calendar days unless otherwise indicated.

“Deductible” means the amount that must be paid out-of-pocket before a health insurance company pays its share.

“Developmental delay”, when referenced in these regulations, means a significant delay, defined as the: equivalence of a twenty-five percent (25%) delay in two (2) or more domains, or a thirty-three percent (33%) or greater delay in one (1) or more of the five (5) domains of development as defined in Rule 5.108(G)(7)(c), when compared with chronological age; or, presence of atypical development or behavior, as defined in Rule 5.101.

“Developmental disability” is defined in section 27-10.5-102(11), C.R.S.

“Due process procedures” means formal procedures used to resolve a dispute involving an individual child or parent related to any matter described in 34 C.F.R., Sections 303.435-438, which are incorporated by reference in Rule 5.100(A)(5).

“Duration” means the specific and measurable period of time a service is provided, specifying the start and end date.

“Early Intervention early start program” means a program separate from early intervention services provided in accordance with Part C that, if the department determines appropriations are adequate, may provide services to children who meet the definition of risk factor and do not meet eligibility criteria as defined in Rule 5.108(C).

“Early Head Start” means a program funded under the Head Start Act, pursuant to 42 U.S.C. Section 9801, *et. seq.*, Rule 5.100(A)(4), and carried out by a local agency or grantee that provides ongoing comprehensive child development services for pregnant women, infants, toddlers, and their families.

“Early Intervention Provider Database” means the state database located at www.eicolorado.org that contains information, and Certified Early Intervention Service Broker affiliation, about all early intervention providers, including personnel qualifications.

“Established condition” for an infant or toddler means a diagnosed physical or mental condition that has a high probability of resulting in significant delays in development and is listed in the Established Conditions Database.

“Established Conditions Database” means the state database located at www.eicolorado.org that includes the state approved list of established conditions.

“Evaluation” for early intervention services means the procedures used to determine initial and continuing eligibility. Evaluation includes administration of an evaluation tool(s), observation of the child, parent report and a review of pertinent medical records.

“Everyday routines, activities and places” means routines that are customarily a part of a family’s typical day including, but not limited to: meal time; bath time; shopping; play time; outdoor play; activities a family does with its infant or toddler on a regular basis; and, places where the family participates on a regular basis, such as, but not limited to, home, place of worship, store, and child care.

“Evidence-based practices” mean practices that integrate research that has demonstrated efficacy and with consideration of the situation, goals, and values of the child, family and professionals.

“Evidence-informed strategies” mean methods that use nationally recognized recommended practices to inform the effective delivery of early intervention services.

“Family assessment” means a process using a Department-approved assessment tool and parent interview prior to the development of an initial Individualized Family Service Plan.

“Family Educational Rights and Privacy Act (FERPA)” means the federal law that protects the privacy of students’ education records under 20 U.S.C. Section 1232g and 34 C.F.R. Part 99, which is incorporated by reference in Rule 5.100(A)(4). FERPA requirements apply to educational agencies and institutions that receive funds under any program administered by the United States Department of Education.

“Frequency” means how often an early intervention service is provided.

“Guardian” means a person appointed by the court or named in a will and charged with limited, temporary, or full guardian's power and duties, pursuant to section 15-14-312, C.R.S.

“Individualized Family Service Plan (IFSP)” means a written plan for providing early intervention services to eligible children and their families, in accordance with 34 C.F.R. Section 303.340, et seq., which is incorporated by reference in Rule 5.100(A)(5).

“Informed opinion of delay” means the knowledgeable opinion of the evaluation team who use professional expertise and experience to determine the presence of a significant delay in one or more of the five (5) domains of development referenced in Rule 5.108(G)(7)(c). Informed opinion of delay may be used as an independent basis to establish a child’s eligibility and may be especially useful in situations where a clear developmental level cannot be gained through the typical evaluation process. Informed opinion may not be used to negate the results of evaluation instruments used to establish eligibility.

“Initial assessment” means the assessment of the child and the family conducted before a child’s first IFSP meeting.

“Intensity” means the length of time that a service is provided each session.

“Method” means how an early intervention service is provided. The type of method may be one of the following:

A. Individual service provided to a child and family;

B. Co-visit during which services are provided by two professionals during a session;

C. Teaming through regularly scheduled meetings as the formal time for provider-to-provider information sharing and support in order to develop strategies designed to build the capacity of parents and other caregivers to meet child and family outcomes; or

D. Supervision by a qualified provider who oversees the work of a student or paraprofessional through observation and guidance, including direction and evaluation of the activities performed by the supervisee.

“Model” means one of the following constructs in which a child’s and family’s early intervention services shall be provided:

A. Primary service provider;

B. Multidisciplinary service providers;

C. Single provider; or

D. Other model approved by the state.

"Multidisciplinary evaluation team" means a group that is made up of two (2) or more qualified personnel who have different training and experience.

"Multidisciplinary Service Providers Model" means a model in which two (2) or more qualified providers who have different training and experience provide ongoing services as identified in an IFSP. In this model the providers work independently of each other with minimal interaction with other team members, and perform interventions separately from others while working on discipline-specific goals.

"Native language" means:

A. When used with respect to an individual who has limited English proficiency:

1. The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided below in subsection B; and

2. For evaluations and assessments conducted pursuant to Rules 5.108(G)-(H), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation and assessment.

B. When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language:

1. The mode of communication that is normally used by the individual, such as sign language, Braille or oral communication.

"Natural environments" means the day-to-day routines, activities and places that promote learning opportunities for an individual child and family, in settings such as the family's home and community that are natural or typical for the child's peer who have no disabilities.

"Neglect" means an act or failure to act by a person who is responsible for another's well-being so that inadequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is provided. This may include, but is not limited to, denial of meals, medication, habilitation, or other treatment necessities and which is not otherwise within the scope of Article 10.5 of Title 27, C.R.S., or these rules and regulations.

"Parent", within early intervention services, means:

A. The biological or adoptive parent;

B. A guardian in a parental relation to the child authorized to act as the child's parent or authorized to make early intervention, educational, health or developmental decisions, but not the State if the child is under the jurisdiction of a court;

C. A foster parent;

D. An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or

E. A surrogate parent who has been appointed in accordance with 34 CFR Section 303.422, incorporated by reference in Rule 5.100(A)(5).

"Part C" means Part C of the IDEA that addresses infants and toddlers, birth through two (2) years of age, with developmental delays or disabilities, or physical or mental conditions with a high probability of resulting in significant delays in development, in accordance with 34 C.F.R. Part 303, which is incorporated by reference in Rule 5.100(A)(5).

"Participating agency" means, as used in early intervention services, any individual, agency, program or entity that collects, maintains, or uses personally identifiable information to implement the requirements and regulations of Part C with respect to a particular child.

A. This includes:

1. The Colorado Department of Early Childhood;

2. The Colorado Department of Human Services;

3. Certified Early Intervention Service Brokers; and

4. Any individual or entity that provides any Part C services, including service coordination, evaluations and assessments, and other Part C services.

B. This does not include:

1. Primary referral sources; or

2. Public agencies, such as the Medicaid program, private entities, or private health insurance carriers, that act solely as funding sources for early intervention services.

"Personally Identifiable Information (PII)" as used in early intervention services means, but is not limited to:

A. The infant or toddler's name;

B. The name of the infant or toddler's parent or other family member;

C. The address of the infant or toddler, or their family;

D. A personal identifier, such as a Social Security Number or other biometric record;

E. Other indirect identifiers such as the child's date of birth, place of birth, or mother's maiden name;

F. Other information that, alone or in combination, is linkable to a specific infant or toddler by a person in the early intervention community, who does not have personal knowledge of the relevant circumstances, to identify the infant or toddler with reasonable certainty; or

G. Information about a child whose identity is believed by the Early Intervention Program to be known by the requester of that information.

"Physician" means a person licensed to practice medicine under section 12-240-101, C.R.S., et seq., the Colorado Medical Practice Act.

"Post-referral screening" means the early intervention activities that take place after a child is referred to the Early Intervention Program to identify infants and toddlers who are in need of more intensive evaluation and assessment in order to determine eligibility due to a developmental delay.

"Primary Service Provider Model" means a model of service delivery that utilizes one main qualified provider from any discipline that is the best fit to address the child and family outcomes as identified in an IFSP. Other team members support the primary service provider through teaming and may provide co-visits under this model.

"Prior written notice" for early intervention services means written notice that is given to parents a reasonable time before the Early Intervention Colorado Program or a Certified Early Intervention Service Broker proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of appropriate early intervention services to the child and family.

"Qualified personnel" means personnel who have met the state approved or recognized certification, licensing, registration, or other comparable requirements, to provide evaluations, assessments or early intervention services.

"Referral" for early intervention services means a verbal or written notification from a referral source to the Early Intervention Colorado Program referral line or a Certified Early Intervention Service Broker for the provision of information regarding an infant or toddler, birth through two (2) years of age, in order to identify those who are in need of early intervention services.

"Risk factor" means if sufficient appropriations are available, a 25% delay in one domain, or other factors determined by the department to have research that supports the potential for impact on development at a later age such as, but not limited to, a substantiated case of abuse or neglect, neonatal abstinence syndrome (NAS), fetal alcohol spectrum disorders (FASD), lead poisoning, global developmental delays and perinatal mood and anxiety disorders.

"Service coordination" means the activities carried out by a service coordinator to assist and enable a child eligible for early intervention services, and the child's family, to receive the rights, procedural safeguards, and services that are authorized to be provided under Rule 5.100, *et. seq.*

"Single Provider Model" means a model of early intervention service provision in which one provider is utilized to meet the child's and family's needs as identified in an IFSP.

"State complaint procedures" mean actions taken by the Department to resolve a complaint lodged by an individual or organization regarding any agency or local service provider participating in the delivery of early intervention services that is violating a state or federal requirement.

"Surrogate parent" means an individual appointed by the local Early Intervention Services Program to act in the place of a parent in safeguarding an infant's or toddler's rights in the decision-making process regarding screening, evaluation, assessment, development of the IFSP, delivery of early intervention services and transition planning.

"Targeted case management services" means those case management services which are provided as a Medicaid benefit for a specific target group of Medicaid recipients who have a developmental disability and who meet the program eligibility criteria identified in the Medical Assistance rules at 10 CCR 2505-10 Section 8.761.2 (May 30, 2020) published by the Colorado Department of Health Care Policy and Financing. These Department of Health Care Policy and Financing Rules are herein incorporated by reference and do not include any later amendments or editions of these rules. These rules are available for public inspection at the Colorado Department of Early Childhood, Office of Program Delivery, 710 S. Ash St., Denver, CO 80246 or at www.sos.state.co.us. Copies of these rules are available for reasonable cost during normal business hours at the Colorado Department of Early Childhood, Office of Program Delivery, 710 S. Ash St., Denver, CO 80246 or the Colorado Department of Health Care Policy and Financing, 1570 Grant St., Denver, CO 80203.

"Telehealth" means a method of service provision that utilizes secure interactive videoconferencing to deliver early intervention services.

"Waiver Services" means those optional Medicaid services defined in the current federally approved Home and Community Based Services (HCBS) waiver document and do not include Medicaid State Plan services.

5.102 SYSTEM COORDINATION

A. Local Interagency Coordinating Council

1. Each Certified Early Intervention Service Broker shall have a Local Interagency Coordinating Council that meets at least quarterly to assure that federal, state, local and private resources are well-coordinated in local communities to assist families to meet the needs of their infants or toddlers with developmental delays or disabilities.

2. Membership of a Local Interagency Coordinating Council shall include, at a minimum:

a. At least one (1) member who is a parent with a child twelve (12) years of age or younger and at least one (1) member who is a parent of a child six (6) years of age or younger, both of whom have knowledge of, or experience with, early intervention services; and,

b. A representative of an administrative unit; and,

c. A representative of a county department of public health; and,

d. A representative of a county department of social/human services; and,

e. Members who are public or private providers of early intervention services; and,

f. Other members of the community at large who are interested in early intervention services or are involved in the provision of, or payment for, early intervention services.

3. The purpose of a Local Interagency Coordinating Council is to advise a Certified Early Intervention Service Broker regarding:

a. The planning, delivery, and evaluation of early intervention services, including methods to identify and correct gaps in services; and,

b. The coordination of services and funding resources; and,

c. The collection and use of child and family outcomes and program data to inform early intervention policies and practices within the designated service area.

B. Interagency Operating Agreements

1. Each Certified Early Intervention Service Broker, as defined in Rule 5.101, shall, at a minimum, establish and maintain the following interagency operating agreements:

a. Administrative unit agreements that include responsibilities for Child Find and transition activities, and assisting in the development and implementation of the statewide plan in accordance with section 26.5-3-404, C.R.S., and defined in Rule 5.100(A)(1);

b. County departments of social/human services agreements that include responsibilities for referrals under the Child Abuse Prevention and Treatment Act,

as amended by P.L. 111-320, for a child who is less than three (3) years of age who is involved in a substantiated case of child abuse or neglect or is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

c. Early Head Start Program agreements that include responsibilities for the coordination of available services and avoidance of duplication of effort for children enrolled in Early Head Start and early intervention services; and

d. Other local agency agreements, as needed, that are involved with early intervention services that specify the responsibilities of each agency.

2. A Certified Early Intervention Service Broker shall ensure that interagency operating agreements are signed by parties with the authority to carry out the responsibilities of the specific agencies or programs and are reviewed annually and updated as needed.

5.103 FISCAL MANAGEMENT

A. A Certified Early Intervention Service Broker, as defined in Rule 5.101 shall:

1. Only purchase early intervention services from providers that meet the qualifications as defined by the Department;

2. Establish and maintain necessary cost accounting systems according to general accounting principles to properly record, and allocate separately, the revenue and expenses for federal Part C of the Individuals with Disabilities Education funds, state-funded early intervention services, Medicaid funds and private health insurance funds that are billed through the Community Centered Board, local funds, and other funds used for the purchase of early intervention services;

3. Ensure that Part C of the Individuals with Disabilities Education Act funds are:

a. Used only as payor of last resort;

b. May be used to reimburse a parent for copayments and deductibles for early intervention services documented on his or her child's IFSP; and

c. For purposes of accounting, not commingled with any other funds received.

4. Track expenditures for each funding source for service coordination, direct services, management fee and any other expense line item as defined by the Department; and

5. Notify the Department of any proposed change of reimbursement rates for any early intervention service at least fifteen (15) calendar days prior to the use of such rates. All rates must be computed using the methodology determined by the department.

B. The maximum reimbursement rate for any early intervention service shall be subject to restriction by the Department.

5.104 COORDINATED SYSTEM OF PAYMENT

A. Early intervention services are provided to an eligible child and family at no out-of-pocket costs to a parent, such that the parent is not responsible for a sliding fee for services or payment of deductibles and co-payments for any early intervention service on a child's Individualized Family Service Plan, but is responsible for payment of insurance premiums when:

1. Private or public health insurance is used to pay for early intervention services;

2. Medicaid or Child Health Plan Plus is used to pay for early intervention services; or

3. Use of private health insurance is required prior to the use of public insurance or benefits.

B. The Certified Early Intervention Service Broker shall ensure:

1. That the availability of public or private health insurance to pay for services shall not result in the delay or denial of early intervention services to a child or a child's family;

2. No early intervention service documented in an Individualized Family Service Plan shall be delayed or denied because of a dispute between agencies regarding financial or other responsibilities required under 34 C.F.R. Section 303.510, which is incorporated by reference as defined in Rule 5.100(A)(5);

3. All early intervention services on a child's Individualized Family Service Plan shall be made available to the child and family whether or not consent to use insurance or Medicaid is required or provided; and

4. Each parent of a child receiving early intervention services shall be provided with the written policies that inform the parent of rights to mediation, due process, and the state complaint process under Rule 5.116, if the parent is charged for an early intervention service by a provider when the parent should not be.

C. Funding Hierarchy

1. The following order of funding sources shall be used when an Individualized Family Service Plan team determines the appropriate funding source(s) to pay for needed early intervention services and, where required, parental consent is provided to use the available funding source:

a. Use of private pay at the discretion of the parent; then,

b. Private health insurance; then,

c. TRICARE, a military health system; then,

d. Medicaid/Title XIX or Home and Community Based Services waivers, and Child Health Plan Plus; then,

e. Child Welfare and Temporary Assistance to Needy Families; then,

f. Other local, state or federal funds, including mill levy funds, as may be made available; then,

g. State General Fund early intervention services; then,

h. Federal Part C of the Individuals with Disabilities Education Act funds.

2. Implementation of the funding hierarchy shall be in accordance with 34 C.F.R. Section 303.520, which is incorporated by reference as defined in Rule 5.100(A)(5).

3. State and federal funds may be used in combination with other funding sources as necessary and appropriate, and within state and federal defined parameters, to ensure the provision of early intervention services.

4. Private health insurance, with written parental consent, shall be accessed prior to accessing public benefits or insurance.

5. The appropriate Medicaid billing codes for early intervention services shall be used for any service on an Individualized Family Service Plan that has Medicaid as the funding source and the early intervention services provider bills Medicaid.

D. In order to use public health insurance or benefits, the Certified Early Intervention Service Broker shall:

1. Provide written notification of the intent to use public benefits or insurance for payment of early intervention services to a parent or child who has public health insurance or benefits;

2. Obtain written parental consent to disclose a child's personally identifiable information to the public insurance agency for billing purposes;

3. Not require a parent to enroll him or herself or the parent's infant or toddler in a public benefits or insurance program as a condition of receiving early intervention services;

4. Obtain written parental consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program; and

5. Obtain written parental consent to use a child's or parent's public benefits or insurance to pay for early intervention services if that use would result in:

a. A decrease in the available lifetime coverage or any other insured benefit for a child or parent;

b. Payment for services that would otherwise be covered by the public benefits or insurance program;

c. Increases in premiums or discontinuation of public benefits or insurance for that child or parent as a result of such use; or

d. A risk of loss of eligibility for the child or the parent for Medicaid Home and Community- Based waivers based on aggregate health expenses.

E. In order to use private health insurance, the Certified Early Intervention Service Broker shall:

1. Provide prior written notice of the intent to use the private health insurance for payment of early intervention services to a parent who has or whose child has private health insurance or benefits.

2. Obtain written parental consent:

a. To disclose a child's personally identifiable information to the private health insurance company for billing purposes, including the use of private health insurance when such use is a prerequisite for the use of public insurance or benefits; and

b. For a child whose private health coverage plan is not covered under section 10-16-104(1.3), C.R.S., at the initiation of billing for early intervention services and any time there is an increase in frequency, duration or intensity of a service on the child's Individualized Family Service Plan.

3. Provide the written coordinated system of payment and procedural safeguard policies each time consent is required that informs the parent there are no out-of-pocket costs associated with the use of private health insurance, except for:

a. Premiums which are the responsibility of the parent; and

b. For any child who has a private health coverage plan not covered under section 10-16-104(1.3), C.R.S., when there may be long-term costs such as the loss of benefits for the child or family because of annual or lifetime health coverage caps under the insurance policy.

F. Payment from Early Intervention Services Trust Qualified Private Health Insurance Carriers

1. Subject to section 10-16-104(1.3), C.R.S., qualified private health insurance carriers who are required to cover early intervention services for an eligible dependent child shall provide early intervention services. Non-emergency medical transportation and assistive technology, as defined in Rule 5.110(B)(1), shall be excluded, unless assistive technology is covered under an applicable insurance policy or service or indemnity contract as durable medical equipment benefit provisions.

2. Coverage required by private health insurance carriers shall be available annually to an eligible infant or toddler from birth up to the third (3rd) birthday. As of January 1, 2013, the maximum annual benefit payable for early intervention services and service coordination for each dependent infant or toddler, per benefit plan year, shall be limited as required by sections 10-16-104(1.3) and 26.5-3-409, C.R.S.

a. For policies or contracts issued or renewed on or after January 1, 2015, and on or after each January 1 thereafter, the limit shall be adjusted by the Department. This adjustment is based upon the consumer price index for the Denver – Boulder - Greeley metropolitan statistical area for the State Fiscal Year which ends in the preceding calendar year or by such additional amount to be equal to the increase by the General Assembly to the annual appropriated rate. This rate is based on service to one (1) child for one (1) fiscal year in the state-funded Early Intervention Program if that increase is more than the consumer price index increase.

b. The limit on the annual amount of coverage for early intervention services shall not apply to:

1) Rehabilitation or therapeutic services that are necessary as the result of an acute medical condition or post surgical rehabilitation;

2) Services provided to a child who is not participating in early intervention services that are not provided pursuant to an Individualized Family Service Plan; however, such services shall be covered at the level specified in section 10-16-104(1.3), C.R.S., which is incorporated by reference as defined in Rule 5.100(A)(2); or

3) Assistive technology that is covered by the policy's durable medical equipment benefit provisions.

3. Any benefits paid under the coverage required by section 10-16-104(1.3), C.R.S., as defined in Rule 5.100(A)(2), shall not be applied to an annual or lifetime maximum benefit contained in the policy or contract, except as provided for high deductible plans in section 10-16-104(1.3)(d), C.R.S.

4. A qualified early intervention services provider that receives reimbursement for services funded by the trust fund shall accept such reimbursement as payment in full for services under section 10-16-104(1.3), C.R.S., as defined in Rule 5.100(A)(2), and shall not seek additional reimbursement from either the eligible infant's or toddler's family or the carrier.

5. If funds deposited into the trust are fully expended prior to the end of the insurance plan year, the Certified Early Intervention Service Broker, as defined in Rule 5.101, shall coordinate with the Department to ensure that services continue as designated in the Individualized Family Service Plan. At the beginning of the new plan year, the private health insurance carrier shall be required to deposit additional funds into the Early Intervention Services Trust as established by Rule 5.104(G)(1).

6. Private health insurance carriers shall be notified within ninety (90) calendar days if an infant or toddler is no longer eligible for early intervention services.

G. Use of Early Intervention Services Trust

1. A trust fund shall be established in accordance with section 26.5-3-409, C.R.S., and defined in Rule 5.100(A)(1), for the purpose of accepting deposits from a participating public health insurance or benefits program, or from the required private health insurance carriers for early intervention services provided to infants and toddlers under a participating insurance plan.

2. Funds deposited in the trust fund shall be only utilized on behalf of each infant and toddler for whom funds have been placed into the trust fund for the following:

   a. Early intervention services, with the exclusion of assistive technology services and transportation, as described in Rule 5.110(B);

   b. Monthly case management (service coordination) fee as determined by the Department;

   c. Monthly Certified Early Intervention Service Broker fee as defined by the Department; and

   d. Monthly fee to administer the Early Intervention Services Trust to each child covered by a qualifying plan as determined by the Department.

3. Upon exit from early intervention services or discontinuation of coverage by the private health insurance carrier, a private health insurance carrier shall be notified of monies deposited in the Early Intervention Services Trust on behalf of an eligible dependent infant or toddler that are not expended and the funds shall be returned within ninety (90) calendar days.

4. No later than April 1 of each year, private health insurance carriers shall be provided with a report specifying the amount of benefits paid to each Certified Early Intervention Service Broker for services provided to eligible infants or toddlers during the prior calendar year.

5.105 CERTIFIED EARLY INTERVENTION SERVICE BROKERS

A. Designation of Roles and Responsibilities

1. One entity per designated service area shall be designated in writing by the Department as the Certified Early Intervention Service Broker for that region and shall provide early intervention services and service coordination to any eligible child who resides in that region.

2. A Community Centered Board or other interested agency shall submit a Department approved application for designation as a Certified Early Intervention Service Broker.

3. Designation as a Certified Early Intervention Service Broker shall be based on the following criteria:

   a. Agency background and expertise in early intervention services; and,

   b. Agency policies and procedures that ensure accurate data entry as required by the Department; and,

   c. Demonstrated ability to conform with generally accepted accounting and contracting practices; and,

   d. Assurance to comply with state and federal laws and regulations regarding early intervention services as described in Rule 5.100, *et. seq.*

4. Failure to maintain ongoing compliance with the above criteria may result in revocation of designation as a Certified Early Intervention Service Broker.

5. If the Department determines that a Community Centered Board or other entity does not meet the criteria to be designated as a Certified Early Intervention Service Broker or is de-designated as the certified early intervention service broker, the Community Centered Board or other entity may dispute the decision in accordance with provisions of section 24-4-105, C.R.S.

6. If a Community Centered Board is unwilling to be the Certified Early Intervention Service Broker for its service area, or the Community Centered Board does not meet the criteria established in Rule 5.105(A)(3), then applications from other entities shall be solicited and accepted and another entity shall be designated as the Certified Early Intervention Service Broker.

7. If no Certified Early Intervention Service Broker can be found, the Department may act as the Early Intervention Service Broker until such time as a Certified Early Intervention Service Broker can be found.

8. Upon designation, a Certified Early Intervention Service Broker shall:

   a. Ensure payment for early intervention services are rendered pursuant to an Individualized Family Service Plan;

   b. Ensure that the funding hierarchy in Rule 5.104(C)(1), is followed;

   c. Ensure that federal funds for early intervention services are utilized as payor of last resort;

   d. Use procedures and forms as defined by the Department to document the provision or purchase of early intervention services;

e. Negotiate, within state and federally-defined parameters and Rule 5.104(B), for payment of early intervention services;

f. With written parental consent, notify the appropriate public or private health insurance plan within ten (10) working days that a covered infant or toddler has been determined eligible for early intervention services. At a minimum, the notification shall include:

1) The child's name;

2) The child's date of birth;

3) The name of the public or private health insurance carrier;

4) The policy/group number and subscriber number or Social Security Number;

5) The name of the primary policy holder;

6) The customer service telephone number for the insurance carrier;

7) The initial Individualized Family Service Plan date; and

8) The contact person and telephone number for the Early Intervention Service Broker.

g. Establish a registry of qualified early intervention service providers who have active records in the Early Intervention Provider Database from which early intervention services for eligible infants and toddlers in the designated service area shall be purchased;

h. Accept and process insurance claims in accordance with state and federal law for those families with health insurance coverage for early intervention services;

i. Ensure that all required demographic and billing information is entered into the statewide data system as defined by the Department, for each child who is eligible for early intervention services, as defined in Rule 5.108(D);

j. Participate in ongoing reviews of the use of the funding hierarchy; and

k. Provide the Department with accurate data for reporting purposes for the legislature or other funding sources.

9. Certified Early Intervention Service Brokers may provide early intervention services directly or may subcontract the provision of services to other qualified providers.

10. Invoices or insurance claims for early intervention services shall be submitted based on the available funding source for each eligible child and the reimbursement rate for the appropriate federal, state, local, or private funding sources, including public health insurance and benefits, and private health insurance.

11. Reimbursement rates for Early Intervention Service Broker functions shall be established with input from Certified Early Intervention Service Brokers.

12. Use of a Certified Early Intervention Service Broker for billing non-qualifying plans on behalf of a contractor shall be voluntary. Qualified early intervention service providers may directly bill the appropriate program of a public health insurance plan or benefits, or a participating private health insurance carrier, for services rendered, in accordance with section 10-16-104(1.3), C.R.S., and defined in Rule 5.100(A)(2).

B. Purchase of Service Rates

1. The Certified Early Intervention Service Broker shall adopt and implement sufficient policies and procedures to ensure:

   a. The qualified provider or employee meets minimum provider qualifications as set forth in Rule 5.111;

   b. Services are delivered in accordance with Rule 5.110 and as identified in the Individualized Family Service Plan; and

   c. The qualified provider maintains sufficient documentation to support the claims submitted.

2. The process and methodology the Certified Early Intervention Service Broker implements to determine the rates to be paid to the qualified contracted provider or for services provided directly by the Certified Early Intervention Service Broker employed providers shall be based on the usual and customary practices of the local community, be documented in the policies and procedures of the Certified Early Intervention Service Broker, and shall be made available to the Department upon request.

3. The Certified Early Intervention Service Broker is the provider of record for all of the services for which it contracts through qualified providers.

4. The Certified Early Intervention Service Broker's purchase of service rates shall comply with the following:

   a. Rates shall be consistent with efficiency, economy and quality of care;

   b. The policy and methods used in setting payment rates shall be in writing and consistently applied to all qualified providers, including the Certified Early Intervention Service Broker employed providers; and

   c. Documentation of payment rates shall be maintained and kept on file with the Department.

5. A qualified provider shall be given sufficient information concerning the service obligations to assist them in developing cost effective and efficient rate proposals.

6. The Certified Early Intervention Service Broker shall maintain written documentation for an audit trail on how rates were established and paid, and provider expenses to support payments.

7. When a Certified Early Intervention Service Broker proposes to charge fees to a contracted service agency for managing the billing process for early intervention direct services, the following shall be complied with:

   a. The board of directors shall approve all plans to charge a qualified provider;

b. The Certified Early Intervention Service Broker shall provide the qualified provider with a written description for each service provided and the amount of the proposed fee for each service;

c. The proposed fee to a qualified provider cannot be established to pay for services otherwise reimbursed, as determined by the Department;

d. Any proposed fee by a Certified Early Intervention Service Broker related to managing the billing process shall meet the following criteria:

1) The fee shall relate to the cost of processing billings and other administrative functions defined in the contract between the Certified Early Intervention Service Broker and the contracted service provider; and

2) The fee shall not be dependent upon the collection of payment.

e. The Certified Early Intervention Service Broker shall provide the qualified contracted provider with statements for services delivered;

f. The Certified Early Intervention Service Broker shall establish procedures and time frames that provide the opportunity for a qualified contracted provider to protest the proposed fee charges to the Certified Early Intervention Service Broker, and for a timely written response within ten (10) days of receipt;

g. The Certified Early Intervention Service Broker shall inform the qualified contracted provider of the opportunities to dispute the decision to the Department, as defined in Rule 5.105(C); and

h. The Certified Early Intervention Service Broker shall submit a copy of all disputes and subsequent proceedings to the Department within ten (10) days of completion of the proceedings.

C. The following shall apply in the event of a contractual dispute between a qualified contracted provider and a Certified Early Intervention Service Broker:

1. The dispute shall be submitted in writing by the contracted early intervention provider to the Certified Early Intervention Service Broker and shall:

a. State the specific grounds for the dispute and the relief requested; and

b. The contracted early intervention provider shall provide all available exhibits, evidence, arguments and documents believed to substantiate the dispute.

2. The Certified Early Intervention Service Broker may request, within fifteen (15) working days following the postmarked date of the written dispute, additional information deemed necessary to resolve the matters of the dispute.

3. Within fifteen (15) working days following the receipt of written documentation and additional requested information, if applicable, the Certified Early Intervention Service Broker shall respond to the dispute by issuing a written decision, which shall include:

a. The reason(s) for the decision; and

b. The right of the provider to seek departmental review of the decision.

4. If a contracted early intervention provider disagrees with the decision of the Certified Early Intervention Service Broker, within ten (10) working days of the decision, the provider may request that the Executive Director of the Department or designee review the decision.

    a. Upon a request for review, the protesting party shall submit all relevant documents related to the dispute;

    b. The Executive Director or designee shall review the dispute and determine if the issue in dispute is within the jurisdiction of the Department to resolve or if court action is necessary;

    c. If the Executive Director or designee determines that Department review is appropriate, the Certified Early Intervention Service Broker shall negotiate with the Department a reasonable period of time, not to exceed ten (10) working days, in which to respond to the submitted information;

    d. The Department shall have the right to additional information it deems necessary and may request oral argument from the parties involved in the dispute; and

    e. The Executive Director or designee shall render a final binding decision within fifteen (15) working days of receiving all relevant information. The determination shall set forth a course of action for resolution of the contract dispute.

5.106 DATA COLLECTION

A. A Certified Early Intervention Service Broker shall ensure that policies and procedures are developed and maintained, and that information regarding early intervention services is collected and documented as defined by the Department.

B. A Certified Early Intervention Service Broker shall have an Early Intervention Data Coordinator who shall:

1. Be knowledgeable of the statewide data system, data entry requirements and timelines, and report information; and,

2. Ensure that each staff who enters data into the statewide data system completes the department-approved data training; and,

3. Ensure that all data is entered into the statewide data system as defined by the Department.

C. A Certified Early Intervention Service Broker shall ensure that for each child who is referred for early intervention services:

1. Electronic Case is established and maintained in the statewide data system; and,

2. All required data from a child’s record is entered into the statewide data system within fifteen (15) days from the date of the referral and tracked through eligibility or ineligibility and exit from early intervention services.

D. A Certified Early Intervention Service Broker shall ensure that accurate child outcomes data are entered into the statewide data system for measuring outcomes.

5.107 GENERAL SUPERVISION AND MONITORING

A. Monitoring activities shall ensure compliance with Part C of the Individuals with Disabilities Education Act as well as with state statutes and rules and shall include the following:

1. Self-assessment procedures;

2. Examination of program data;

3. Special analysis;

4. On-site reviews; and

5. Any other methods as determined by the Department.

B. The results of monitoring shall be publicly reported on the Early Intervention Colorado website and submitted to state and federal entities, as needed.

C. A Certified Early Intervention Service Broker shall have an Early Intervention Coordinator who shall complete required training, as defined by the department and is:

1. Knowledgeable of early intervention services and federal and state requirements;

2. The liaison to the Department regarding the Early Intervention Program;

3. Responsible for the local implementation of a comprehensive and coordinated system of early intervention services; and

4. The contact for families regarding procedural safeguards.

D. A Certified Early Intervention Service Broker shall maintain:

1. A complete file of all early intervention records, documents, communications, and other written and/or electronic materials which pertain to the operation of an Early Intervention Program or the delivery of early intervention services; and

2. Such records for a period of six (6) years after the date of closure of the record or for such further periods as may be necessary to resolve any matters that may be pending.

E. The following information shall be maintained for each child's record:

1. Log of access;

2. Referral information;

3. Parent consent to evaluate;

4. Parent consent to use private health insurance or Medicaid;

5. Prior notice documentation;

6. Parent consent to share information;

7. Individualized Family Service Plans;

8. Progress and assessment reports, including child outcomes measurement information;

9. Case notes;

10. All correspondence related to a child and family;

11. Fiscal records, including documentation of early intervention service provision by qualified providers; and

12. Any medical documentation related to the diagnosis or medical condition of the referred child, including history and services.

F. A Certified Early Intervention Service Broker shall permit the state, federal government, or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy, and/or transcribe records during the term of a contract for early intervention services and for a period of six (6) years following termination of the contract or final payment hereunder, whichever is later, to assure compliance with federal regulations and/or state statutes and rules or to evaluate an Early Intervention Program's performance.

5.108 CHILD IDENTIFICATION

The Early Intervention Program shall have a comprehensive Child Find system, pursuant to 34 C.F.R. Section 303.302, as defined in Rule 5.100(A)(5), that focuses on the early identification of infants and toddlers who have developmental delays or disabilities, including a system for making referrals so that timely and rigorous identification in accordance with Rules 5.108(A)-(D), shall occur.

A. Referral

1. The Early Intervention Colorado Program or a Certified Early Intervention Service Broker shall work collaboratively with community partners and primary referral sources to develop effective procedures for referral of children, birth through two (2) years of age, to the Early Intervention Program, in order to identify infants and toddlers who are in need of early intervention services.

2. Referral of a child, birth through two (2) years of age, means a verbal or written notification from a referral source to the Early Intervention Colorado Program or a Certified Early Intervention Service Broker about a child who:

a. Is known to have or suspected of having a developmental delay;

b. Has an established condition, as defined in Rule 5.108(E);

c. Lives with a parent with a developmental disability;

d. Has been identified as the subject of a substantiated case of child abuse or neglect; or

e. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

B. Post-Referral Process

1. The Early Intervention Colorado Program or a Certified Early Intervention Service Broker shall accept a referral from community sources, including, but not limited to, a family, health provider, child care provider, Administrative Unit, county department of social/human services, county department of health, and others.

2. A service coordinator will be assigned within three (3) working days from the date of a referral by the Early Intervention Colorado Program or an authorized Certified Early Intervention Service Broker.

3. The family shall be contacted as soon as possible after being assigned a service coordinator, but no longer than seven (7) calendar days from the date of the referral, to provide the service coordinator's contact information and inform the family of their procedural safeguards.

4. The Early Intervention Colorado Program or a Certified Early Intervention Service Broker shall:

a. Notify the referral source of the receipt of the referral using the state referral form;

b. Provide the contact information for the assigned service coordinator; and

c. With written parent consent, notify the referral source and the child's primary health provider of the results of the evaluation and/or assessment using the state referral form.

D. Eligibility Criteria

An infant or toddler, birth through two (2) years of age, shall be eligible for early intervention services if he or she has a developmental delay or atypical development as defined in Rule 5.101, an established diagnosed physical or mental condition as defined in Rule 5.101, or lives with a parent who has a developmental disability as defined in Rule 5.108(F).

E. Eligibility Determination for Developmental Delay and Atypical Development

1. Eligibility shall be based on a developmental delay and atypical development as defined in Rule 5.101.

2. Results derived solely from a single procedure shall not be used to determine eligibility or ineligibility.

3. The following shall be documented in an Individualized Family Service Plan:

a. Name and discipline of each team member who participated in the evaluation and assessment;

b. Evaluation instrument(s), child assessment tool(s), and methods and procedures used to conduct the evaluation and assessment;

c. The measurable results of the multidisciplinary evaluation and/or assessment in each of the developmental domains;

d. Eligibility or ineligibility determination;

e. Name and signature of the Evaluation Entity representative that conducts an evaluation as defined in Rule 5.101, who verifies that the evaluation and assessment team gathered and provided diagnostic information to establish eligibility or ineligibility; and

f. Signature of a parent acknowledging that he or she has been informed of his or her child's eligibility determination.

4. If a child is determined ineligible for early intervention services based on evaluation procedures identified in Rule 5.108, the family shall be provided prior written notice to inform them of:

    a. The right to dispute resolution procedures as defined in Rule 5.116;

    B. If sufficient appropriations are available, and with written parent consent, a referral to the Early Intervention early start program if the child has an identified risk factor as defined in Rule 5.101; and

    C. Other community resources that may assist his or her child.

F. Eligibility Determination Based on an Established Condition

1. There shall be supporting documentation from a qualified health professional maintained in the child's record for a diagnosed physical or mental condition.

2. The diagnosis or condition shall be included in the Established Conditions Database.

3. There shall be documentation in the Individualized Family Service Plan regarding the name of the diagnosed condition on which eligibility is based.

4. A child with an established condition does not have to be exhibiting delays in development at the time of diagnosis to be eligible for early intervention services.

G. An infant or toddler who lives with a parent who has been determined by a Community Centered Board to have a developmental disability is eligible to receive early intervention services using any funding source other than the federal Part C funds. Such services may include, but are not limited to, developmental intervention for parent education and monitoring child development.

H. Evaluation to Determine Extent of Child's Delay

1. Written notice shall be provided to the parent prior to the scheduling of an evaluation and a copy of the notice shall be maintained in the child's record.

2. Written parental consent shall be obtained prior to any evaluation being conducted and a copy of the consent shall be maintained in the child's record.

3. An evaluation shall include a multidisciplinary process by a team comprised of a minimum of two (2) appropriately licensed/qualified professionals, at least one (1) of whom is qualified in the primary area of developmental concern.

4. Child evaluation shall be conducted in the native language of the child, unless clearly not feasible to do so.

5. An evaluation shall be based on an informed opinion of delay and shall be administered so that it is not racially or culturally discriminatory.

6. Procedures for the evaluation to determine if infant or toddler has a developmental delay shall include:

    a. Administering an evaluation instrument;

    b. Documenting the child's history, including interviewing the parent;

c. Identifying the child's level of functioning in each of the following developmental domains:

1) Adaptive development;

2) Cognitive development;

3) Communication development;

4) Physical development, including vision and hearing; and

5) Social or emotional development.

d. Gathering information from other sources such as family member, other caregivers, medical providers and other professionals working with the child and family.

I. Assessment

If a child is determined to be eligible for early intervention services because of a developmental delay, atypical development, or an established condition, a Certified Early Intervention Service Broker shall ensure that the following occurs:

1. Prior to conducting a child assessment, written notice shall be provided to the parent and parental consent for the assessment obtained. A copy of the notice and the consent shall be maintained in the child's record. For a child determined eligible due to a developmental delay, this notice may have been provided at the time of evaluation.

2. A child assessment, conducted by qualified personnel, shall be conducted in the native language of the child, unless clearly not feasible to do so, and may include the following:

a. A review of the results of the multidisciplinary evaluation, informed opinion of delay, and medical and other records used to establish eligibility, including the results of hearing and vision screening;

b. Personal observations of the child;

c. The identification of the child's strengths and needs in each developmental area; and

d. The identification of early intervention services that would meet the child's needs.

3. A family assessment is made available to any parent or other family member of an eligible child.

a. A family assessment is voluntary on the part of each family member participating in the assessment.

b. A family assessment shall be family-directed and designed to determine the resources, priorities and concerns of a parent or other family member related to the enhancement of his or her child's development.

c. A family assessment shall be conducted in the native language of the family member(s) participating in the family assessment, unless clearly not feasible to do so.

d. When completed, the family assessment shall be:

1) Conducted by qualified personnel trained to utilize a department-approved family assessment tool, that is available on the early intervention Colorado website at www.eicolorado.org;

2) Based on information provided by the parent or other family member through a personal interview and through a family assessment tool;

3) Inclusive of a parent or other family member's description of his or her resources, priorities and concerns related to enhancing his or her child's development; and

4) Completed prior to the development of the initial individualized family service plan.

4. If an Individualized Family Service Plan is developed at the same meeting as the evaluation and assessment, the service coordinator shall ensure that prior written notice about the development of the Individualized Family Service Plan is provided to the parent.

5. If a second meeting is required, notification of the date, time, and location of that meeting needs to be received by the parent far enough in advance of the meeting date so that the parent will be able to attend the meeting. A copy of the notice shall be maintained in the child's record.

J. Eligibility for Early Intervention Early Start Program

1. Services under the Early Intervention early start program are only available if there are sufficient appropriations after funding early intervention services to children with a developmental delay or atypical development as defined in Rule 5.101.

2. When sufficient appropriations for the Early Intervention early start program exist, if a child does not meet the definition of developmental delay or atypical development and is, therefore, ineligible for early intervention services in accordance with Part C, he or she shall be evaluated for eligibility for the Early Intervention early start program.

3. To be eligible for the Early Intervention early start program, the child must meet the definition of risk factor in Rule 5.101.

4. If the child does not meet the definition of risk factor in Rule 5.101, and is, therefore, ineligible for the Early Intervention early start program, the family shall be provided written notice of:

A. The right to dispute resolution procedures as defined in Rule 5.116; and

B. Other community resources that may assist his or her child.

5.109 INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

A. An IFSP shall serve as the Individualized Plan for a child, from birth through two (2) years of age, receiving early intervention services in accordance with Part C. Children receiving services through the Early Intervention early start program will not have an IFSP.

B. A service coordinator shall ensure that an IFSP is:

1. With prior written notice given to the parent, developed within a reasonable time after an eligibility determination has been made, but no later than forty-five (45) calendar days from the date of the referral, unless a delay is due to documented exceptional family circumstances;

2. Developed with all required participants ad defined in Rule 5.109(E);

3. Based on, and contains the results of, the Evaluation and Assessment, and the family's concerns and priorities;

4. Inclusive of early intervention services to be provided in natural environments that are necessary to meet the unique needs of the child and the parent or other caregiver, and implement the strategies to achieve the developmental outcomes of the child; and,

5. Culturally sensitive;

6. With prior written notice given to the parent, reviewed every six (6) months, or more frequently if necessary or if requested by the parent, in order to:

    a. Determine progress toward achieving the identified outcomes;

    b. Revise or add an outcome, if needed; and

    c. Determine if a change in early intervention services is necessary to meet the identified outcomes.

7. With prior written notice given to the parent, updated annually through a meeting of the IFSP team and the parent to:

    a. Discuss and document the child's current developmental levels in all developmental domains gathered through assessment methods as defined by the Department;

    b. Determine progress towards achieving the identified outcomes;

    c. Determine the child's ongoing need for early intervention services;

    d. Revise or add an outcome, if needed; and

    e. Determine the early intervention services necessary to meet the identified outcomes.

C. If it is determined during an IFSP annual review that a child is functioning at age-expected levels when compared with chronological age, as documented in current assessment results, the following shall occur:

1. The IFSP team shall determine whether one (1) or more early intervention services are no longer needed for the child to continue to progress; and

2. If the IFSP team determines that early intervention services are no longer needed and the child is no longer eligible to receive services the following shall occur:

    a. The service coordinator shall explain to the parent the dispute resolution procedures, as defined in Rule 5.116;

b. The service coordinator shall provide prior written notice to the parent that the members of the IFSP team have determined the child no longer has any identified need for early intervention services, and the child has completed the IFSP;

c. The child's record shall remain open for ten (10) calendar days from the prior written notice date; and

d. Following the ten (10) calendar day period from the prior written notice date, if there is no dispute resolution request from the parent, the early intervention services shall cease, and the child's record shall be closed.

D. Completion of an IFSP

1. If future concerns arise about the child's development and the child is still less than three (3) years of age, the family shall contact the Certified Early Intervention Service Broker to conduct an evaluation and determine whether the child meets the eligibility criteria. If the child meets the eligibility criteria, the Community Centered Board shall re-initiate an IFSP.

2. An infant or toddler found eligible due to an established condition, as defined in Rules 5.101 and 5.108(F), shall not have his/her early intervention services ended unless the parent chooses to withdraw from services.

E. An initial, annual or periodic review meeting to evaluate an IFSP shall include the following participants:

1. Parent of a child;

2. Service coordinator;

3. Persons directly involved in conducting the evaluations and assessments;

4. As appropriate, a person or persons who will be providing early intervention services to a child or family; and

5. Additional participants may include, but are not limited to, the following:

a. Other family members, as requested by a parent; and

b. An advocate or person outside of a family, as requested by a parent.

F. If any person who conducted an evaluation and/or assessment is unable to participate in person, he or she shall participate by:

1. Telephone or Internet web conference;

2. A knowledgeable authorized representative attending the meeting in his or her place; or

3. The provision of appropriate reports for use at the meeting.

G. If the evaluation and assessment report is provided and there is no authorized representative at the meeting, the Certified Early Intervention Service Broker shall ensure that at least one qualified early intervention professional reviews and interprets the developmental information in the report in order to inform the team completing the IFSP.

H. An IFSP shall be conducted in accordance with 34 C.F.R. Sections 303.340 - 303.345, which are incorporated by reference in Rule 5.100 (A)(5):

1. In a setting and at a time that is convenient to the parent; and

2. In the language or mode of communication normally used by the parent, unless clearly not feasible to do so.

I. The content of an IFSP shall, at a minimum, meet the requirements of 34 C.F.R. Section 303.344, which is incorporated by reference in Rule 5.100(A)(5), and be completed using the department required form available at the Early Intervention Program website at www.eicolorado.org, and shall include the following:

1. The type of model for each service shall be one of the following, as defined in Rule 5.101:

a. Primary service provider;

b. Multidisciplinary service providers;

c. Single provider; or

d. Other model approved by the state.

2. The type of method for each service shall be one of the following, as defined in Rule 5.101:

a. Individual;

b. Co-visit;

c. Teaming;

d. Supervision; or

e. Telehealth, with parental consent.

J. A parent may withhold consent for an early intervention service without jeopardizing the delivery of any other early intervention service for which consent is given.

K. If a parent and an IFSP team member(s) do not agree on an aspect of an early intervention service, a service coordinator shall implement the sections of the plan that are not in dispute.

L. A parent may exercise his or her rights, as defined in Rule 5.116, to resolve a dispute while continuing to receive those services in an IFSP that are not subject to a dispute.

M. An interim IFSP shall be developed to provide a temporary early intervention service prior to completion of an evaluation and assessment, only when the service is determined by qualified professionals to be immediately necessary and when the following conditions are met:

1. A child has been determined to be eligible for early intervention services; and,

2. Written parental consent is obtained; and,

3. An evaluation and assessment are completed within forty-five (45) calendar days of the date of the referral.

5.110 EARLY INTERVENTION SERVICES

A. Early intervention services shall be:

1. Provided only after the development of an Individualized Family Service Plan and written parental consent is obtained for those services identified in the Individualized Family Service Plan;

2. Provided to meet the developmental needs of an eligible infant or toddler, and the needs of a parent or other caregivers, to achieve the outcomes identified in the Individualized Family Service Plan;

3. Based on appropriate peer-reviewed, evidence-based practices, to the extent which is practical;

4. Related to functional outcomes and developmentally appropriate practices to support participation in everyday routines, activities and places;

5. Provided by qualified providers who meet the state personnel standards for each Early Intervention Service;

6. Provided in a culturally relevant manner, including use of an interpreter, if needed;

7. Provided in the natural environments of the child and family to the maximum extent appropriate. If there is a determination that an Early Intervention Service cannot be provided in a natural environment, written justification shall be provided in the Individualized Family Service Plan; and

8. Provided in physical settings where community-based early intervention services are accessed that meet all fire, building, licensing and health regulations, as applicable.

B. Early intervention services shall include the following:

1. “Assistive Technology Services”:

a. Means the direct selection, acquisition or use of assistive technology devices and includes:

1) Functional evaluation of the developmental needs of the infant or toddler in his or her usual environments;

2) Selection, acquisition, modification or customization and maintenance of assistive technology devices;

3) Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing intervention plans and programs;

4) Training or technical assistance for professionals providing early intervention services or other individuals identified as providing early intervention services to, or are otherwise substantially involved in the major life functions of, an infant or toddler on the use of assistive technology devices;

5) Training or technical assistance for an infant or toddler receiving early intervention services or, if appropriate, the child's family; and

6) Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve the functional, developmental capabilities of an infant or toddler in his or her usual environments.

a) The device must be identified in the Individualized Family Service Plan; and

b) Prior to purchase or lease of an assistive technology device, an assessment shall be conducted by a qualified early intervention provider to assure that the device is appropriate for the child and family's needs.

b. Does not mean, a device that is primarily intended to treat a medical condition, to meet life-sustaining needs, or a medical device that is surgically implanted, including a cochlear implant. It also does not mean the optimization, maintenance or the replacement of such a device.

2. "Audiology Services":

a. Means, services for the identification of an infant or toddler with an auditory impairment, using at-risk criteria and appropriate audiologic screening techniques, and includes:

1) Loss and communication functions, by use of audiological evaluation procedures;

2) Auditory training, aural rehabilitation, speech reading and listening devices, orientation, and other training to increase functional communication skills;

3) The determination of the need for individual amplification, including selecting, fitting and dispensing an appropriate listening and vibrotactile device, and evaluating the effectiveness of the device;

4) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability which is an auditory impairment;

5) Family training, education, and support provided to assist a parent or other caregivers of a child eligible for services in understanding the special needs of the infant or toddler as related to audiology and aural rehabilitation services; and

6) The provision of services for prevention of hearing loss.

b. Does not mean, therapeutic services required for an infant or toddler to recover from medical procedures such as surgery, etc., or pre-surgery therapeutic services required by a physician to prepare a child for surgery and that are beyond the scope of the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.

3. "Developmental Intervention Services":

    a. Means developmental assessment and special instruction to address the functional developmental needs of an infant or toddler and includes:

        1) The design or adaptation of learning environments, activities and materials to enhance developmental and learning opportunities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

        2) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's Individualized Family Service Plan;

        3) Working with the child to enhance the child's development; and

        4) Family training, education and support provided to assist a parent or other caregivers in understanding the special needs of the child related to enhancing the skill development of the child.

4. "Health Services":

    a. Means services by a licensed health care professional that enable an eligible infant or toddler to benefit from other allowable early intervention services and includes:

        1) Assessment to determine the health status and special health care needs that will impact the provision of other early intervention services;

        2) Services such as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy bags, and other health services; and

        3) Consultation by a health care professional with a parent or other service provider regarding the impact of the infant or toddler's health status on the provision of other early intervention services.

    b. Does not mean:

        1) Services that are:

            a) Purely medical in nature, such as hospitalization, or the prescribing of medicine or other drugs for any purpose;

            b) Surgical in nature, such as cleft palate surgery or shunting for hydrocephalus;

            c) Medical diagnostic procedures, services that are primarily intended to treat a medical condition; or

            d) Related to the implementation, optimization, maintenance, or replacement of a medical device that is surgically implanted.

2) Devices necessary to control or treat a medical condition, or that are medical or health services routinely recommended for all infants and toddlers.

c. Nothing in this section of the rules limits the rights of an infant or toddler with a disability, that has a surgically implanted device, to receive the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.

d. Nothing in this section of the rules prevents the early intervention services provider from routinely checking that either the hearing aid or the external components of a surgically implanted device, such as a cochlear implant, used by an infant or toddler with a disability are functioning properly.

5. "Medical services" means services provided by a licensed physician for diagnostic or evaluation purposes, to determine a child's developmental status and need for early intervention services.

6. "Nursing Services":

a. Means assessment of health status for the purpose of providing:

1) Nursing care, including the identification of patterns of human response to actual or potential health problems;

2) Nursing care to prevent health problems, restore or improve functioning, and promote health and development; and

3) The administration of medications, treatments, and regimens prescribed by a licensed physician.

7. "Nutrition Services":

a. Means development of a plan to address the nutritional and feeding needs of an infant or toddler related to his or her development, and includes:

1) The assessment of the nutritional history, dietary intake, body measurements such as height and weight, and feeding status;

2) Consultation to develop, implement and monitor appropriate plans to address the nutritional needs;

3) Referral to appropriate community resources to carry out nutritional plans; and

4) Family training, education and support provided to assist a parent or other caregivers in understanding the special needs of the child related to nutrition and feeding and enhancing the child's development.

8. "Occupational Therapy Services":

a. Means assessment and intervention services with an emphasis on adaptive skills, motor and sensory development, mobility, play and oral-motor functioning and includes:

1) Intervention strategies to address the functional developmental needs, including oral motor functioning of an infant or toddler, minimizing the impact of initial or future impairment, and delay in development or loss of functional ability;

2) Consultation to adapt the environment to promote development, access and participation in everyday routines, activities and places;

3) The selection, design or fabrication of assistive and orthotic devices to promote mobility or participation in everyday routines, activities and places; and

4) Family training, education, and support provided to assist a parent or other caregivers in understanding the special needs of the child as related to occupational therapy strategies and enhancing the child's motor development.

b. Does not include therapeutic services required due to, or as part of, a medical procedure, a medical intervention or an injury that is expected to heal without a long-term impact to child development and that are beyond the scope of the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child' developmental outcomes.

9. "Physical Therapy Services":

a. Means assessment and intervention services with an emphasis on mobility, positioning, motor development, and both strength and endurance and includes:

1) Intervention strategies to address the functional developmental needs of an infant or toddler;

2) Through individual or group services, to obtain, interpret and integrate information for program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems;

3) The design or acquisition of assistive and orthotic devices and effective adaptation of the child's environment to promote mobility and participation in everyday routines, activities and places, and minimize the impact of initial or future impairment, delay in development or loss of functional ability; and

4) Family training, education, and support provided to assist a parent or other caregivers in understanding the special needs of the child as related to physical therapy strategies and enhancing the child's motor development.

b. Does not include therapeutic services required due to, or as part of, a medical procedure, a medical intervention or an injury that is expected to heal without a long-term impact to child development and that are beyond the scope of the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.

10. "Psychological Services":

a. Means assessment and intervention services that address the development, cognition, behavior and social or emotional development of an infant or toddler and includes:

1) The administration of psychological and developmental tests and other assessment procedures to identify the developmental, cognitive, behavioral and social emotional status;

2) The acquisition, integration and interpretation of test results, other information about development and behavior and the family and living situation related to learning, social or emotional development and behavior;

3) The provision of individual or parent counseling, activities;

4) Planning and managing a child's program of psychological services;

5) Consultation on child behavior, child and family conditions related to learning, mental health, and development to a parent, other caregivers and other service providers; and

6) Family training, education, and support provided to assist a parent or other caregivers in understanding the special needs of the child as related to psychological strategies and enhancing the child's psychological and cognitive development.

11. "Sign language and cued language services" means instruction that includes sign language, cued language, auditory or oral language, providing oral transliteration services, and providing sign and cued language interpretation for an infant or toddler.

12. "Social and Emotional Services":

a. Means assessment and intervention services that address social and emotional development in the context of a family and parent-child interaction and includes:

1) Home visits to evaluate an infant's or toddler's living conditions and patterns of parent-child interaction;

2) The completion of social or emotional developmental assessment;

3) The provision of individual or group counseling to an infant or toddler or a parent in order to understand the parental needs related to his or her child's development and how to enhance the development of the child;

4) The provision of social skill building activities with the child and parent;

5) Intervention strategies to address issues in the living or caregiving situation that may affect the child's development and/or utilization of other allowable early intervention services;

6) The identification, mobilization and coordination of community resources and services to enable an infant or toddler and his or her parent to receive maximum benefit from other early intervention services; and

7) Family training, education, and support provided to assist a parent or other caregivers in understanding the special needs of the child as related to strategies for enhancing the child's social or emotional development. "Social and emotional services" means assessment and intervention services that address social emotional development in the context of a family and parent-child interaction and includes:

a. Home visits to evaluate an infant's or toddler's living conditions and patterns of parent-child interaction;

b. The completion of social or emotional developmental assessment;

c. The provision of individual or group counseling to an infant or toddler or a parent in order to understand the parental needs related to his or her child's development and how to enhance the development of the child;

d. The provision of social skill building activities with the child and parent;

e. Intervention strategies to address issues in the living or caregiving situation that may affect the child's development and/or utilization of other allowable early intervention services;

f. The identification, mobilization and coordination of community resources and services to enable an infant or toddler and his or her parent to receive maximum benefit from other early intervention services; and

g. Family training, education, and support provided to assist a parent or other caregivers in understanding the special needs of the child as related to strategies for enhancing the child's social or emotional development.

13. "Speech Language Pathology Services":

a. Means assessment and intervention services to address the functional and communication needs of an infant or toddler, and includes:

1) Language and speech development;

2) Oral motor functioning, including the identification of specific communication disorders;

3) Consultation to adapt an environment and activities to promote speech and language development and participation in everyday routines, activities and places;

4) Habilitation, rehabilitation or prevention of communication disorders, and delays in language and speed development;

5) Referral for medical or other professional services necessary for the habilitation or rehabilitation of an infant or toddler with communication disorders or delays; and

6) Family training, education and support provided to assist a parent or other caregivers in understanding the special needs of the child as related to speech language pathology strategies and enhancing the child's communication development.

b. Does not include therapeutic services required due to, or as part of, a medical procedure, a medical intervention or an injury that is expected to heal without a long-term impact to child development and that are beyond the scope of the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.

14. "Transportation services" means reimbursement for the cost of travel, including mileage, taxis, common carriers, and tolls or parking, that are necessary to enable an infant or toddler and his or her parent to receive another Early Intervention Service identified in the Individualized Family Service Plan.

15. "Vision Services":

a. Means evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders and delays that affect child development, and the intervention services to address the functional visual needs of an infant or toddler with significant vision impairment and includes:

1) Communication skills training;

2) Orientation and mobility training for all environments;

3) Visual and other training necessary to activate visual motor abilities;

4) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both;

5) Consultation to adapt an environment and activities for a child with a visual impairment to promote development, access and participation in everyday routines, activities and places; and

6) Family training, education and support provided to assist a parent or other caregivers in understanding the special needs of the child as related to vision strategies and enhancing the child's overall development.

b. Does not mean therapeutic services required due to, or as part of, a medical procedure, a medical intervention or an injury and that are beyond the scope of the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.

5.111 EARLY INTERVENTION PROVIDER QUALIFICATIONS

A. Early intervention services shall be provided by qualified providers who meet the Early Intervention Colorado Program state personnel standards for each early intervention service.

B. Early Intervention providers shall maintain current and accurate documentation, including certifications, licensing, endorsements, and registrations and shall register, and update his or her information at least annually, in the statewide data system provider portal.

C. Early intervention providers shall complete all required training, as determined by the Department and listed on the Early Intervention Colorado Program website at www.EIColorado.org.

5.112 CHILD OUTCOMES MEASURES

The Early Intervention Program, pursuant to 20 U.S.C. 1416(a) and 1442, which is incorporated by reference as defined in Rule 5.100(A)(4), shall collect and report data on the progress made by children and families receiving early intervention services.

A. A Certified Early Intervention Service Broker shall participate in the state program to measure child outcomes and shall ensure that each eligible child who receives early intervention services for six (6) months or longer receives a child outcomes rating that is determined utilizing information gathered through:

1. Family interview;

2. Professional observation; and

3. Utilization of an appropriate assessment instrument to measure child outcomes as defined by the Department.

B. Required Timelines

1. An entry rating shall be determined as soon as a baseline can be accurately established, but no later than sixteen (16) weeks from the date of referral for early intervention services for an eligible child, unless a child is younger than six (6) months of age. If the child is less than six (6) months of age at the time of referral, the first measurement shall occur once a child has reached the age of six (6) months; and

2. An exit rating shall be finalized no more than ninety (90) calendar days prior to the child's exit from early intervention services or the child's third (3rd) birthday, whichever occurs first. An exit rating is not required for a child who has been in early intervention services for less than six (6) months.

C. A Certified Early Intervention Service Broker shall ensure that all staff and contractors who are responsible for documenting and reporting child outcomes progress data are trained in the methods required by the Department and participate in required technical assistance activities.

D. Child outcomes shall measure the percent of infants and toddlers with an Individualized Family Service Plan, who:

1. Have positive social emotional skills (including social relationships);

2. Acquire and use knowledge and skills (including early language/communication); and

3. Use appropriate behaviors to meet their needs.

5.113 FAMILY OUTCOMES MEASUREMENTS

A. A Certified Early Intervention Service Broker shall participate in statewide distribution and collection of family outcomes measurements.

B. A family outcomes survey shall be distributed to each parent who has a child participating in early intervention services for at least six (6) months.

C. Family outcomes shall measure the percent of families who have a child participating in early intervention services for at least six (6) months who report that early intervention services have helped the family:

1. Know their rights;

2. Effectively communicate their child's needs; and

3. Help their child develop and learn.

5.114 TRANSITION STEPS AND SERVICES

A. The service coordinator shall, prior to notifying the Special Education Administrative Unit in which a child who is potentially eligible for preschool special education services resides and the Department of Education, inform the parent of the opt-out policy, as defined in Rule 5.114(B).

1. If a parent chooses to opt out of having his or her child's information sent to the Administrative Unit and the Department of Education for notification, the following shall occur:

a. The state form shall be completed to indicate that the parent has signed a written request to withhold notification and is submitted by the parent to the Certified Early Intervention Service Broker within ten (10) calendar days of the date delineated on the form; and

b. The state form shall become part of the child's record.

2. A parent may revoke his or her choice to opt out at any time by providing written notice to the Certified Early Intervention Service Broker.

B. For the purpose of transition planning, the opt-out policy refers to the procedural safeguard provided to a parent to prevent, through written request, the transmittal of personally identifiable information about his or her child and family, as defined in Rules 5.101 and 5.114(D), to the Administrative Unit and the Department of Education, at the time that a child is approaching three (3) years of age.

C. For the purpose of transition planning, a child who is potentially eligible for preschool special education services is defined as a child who is enrolled in early intervention services, and who:

1. Has not met all outcomes on his or her Individualized Family Service Plan; and/or

2. Is demonstrating a delay in any developmental domain, based on the expertise of a member of the Individualized Family Service Plan team.

D. A Certified Early Intervention Service Broker service coordinator shall notify, using the state form, the Administrative Unit of a child who is potentially eligible, unless a parent has signed the opt-out policy statement. The following information will be provided:

1. For a child who is potentially eligible and whose parent has not chosen to opt out of notification to the Administrative Unit, the child's first, middle and last name, date of birth, parent contact information including name(s), address(es) and telephone number(s), will be provided:

a. Not fewer than ninety (90) days and not more than nine (9) months prior to the child's third (3rd) birthday for any child with an active Individualized Family Service Plan; or

b. As soon as possible for a child determined eligible fewer than ninety (90) days and more than forty-five (45) days prior to the child's third (3rd) birthday.

2. If a child is referred to the Certified Early Intervention Service Broker fewer than forty-five (45) days prior to the child's third (3rd) birthday and the child may be eligible for preschool special education services, the Certified Early Intervention Service Broker, with written parental consent, shall refer the child to the administrative unit in which the child resides.

E. A Certified Early Intervention Service Broker service coordinator shall provide the Administrative Unit, with written parental consent, current information for a child who is potentially eligible regarding the child's early intervention services, including assessment information, and a copy of the most current Individualized Family Service Plan.

F. A Certified Early Intervention Service Broker service coordinator shall establish a transition plan within an Individualized Family Service Plan to support a smooth transition:

1. Not fewer than ninety (90) days, and at the discretion of all parties, not more than nine (9) months prior to the child's third (3rd) birthday; or

2. As soon as possible for a child referred at a later age whose eligibility was established and an Individualized Family Service Plan was developed fewer than ninety (90) days and more than forty-five (45) days prior to the child's third (3rd) birthday.

G. The transition plan shall be developed with the family and shall include, at a minimum, the following:

1. A description of transition steps and services the Individualized Family Service team determines necessary to support a smooth transition from early intervention services to preschool special education services, under Part B of the Individuals with Disabilities Education Act, which is discussed in Rule 5.100(A)(4), or other appropriate services; and

2. A description of transition steps includes:

a. As appropriate, how the child and his or her family will exit from early intervention services;

b. How a parent shall be informed of and included in the transition process, including a review of the future placements and the program options for the child from the child's third (3rd) birthday through the remainder of the school year;

c. Confirmation by the Certified Early Intervention Service Broker that the basic personally identifiable information, discussed in Rule 5.114(D)(1), has been transmitted to the administrative unit;

d. With parental consent, confirmation of the transmission of additional information needed by the administrative unit to ensure continuity of services from early intervention services to Part B preschool special education services, including a copy of the most recent evaluation and assessments of the child and the family, and the most recent Individualized Family Service Plan;

e. Procedures to prepare a child for changes in service delivery and strategies to help a child adjust to and function in a new setting; and

f. Any transition services and other activities that the Individualized Family Service Plan team identifies as needed by the child, or his or her family, to support the transition of the child.

H. With documented verbal or written parental approval, a transition conference shall be convened no later than ninety (90) days and, at the discretion of all participants, no earlier than nine (9) months prior to a child's third (3rd) birthday.

1. For a child who is potentially eligible, the participants at a transition conference shall include:

a. A parent of a child who is approaching three (3) years of age;

b. The service coordinator; and

c. Representative(s) from the administrative unit.

2. In the event that a representative of the Administrative Unit does not attend the transition conference for a child who is potentially eligible, the Certified Early Intervention Service Broker service coordinator shall conduct a transition conference as scheduled.

3. A Certified Early Intervention Service Broker service coordinator shall make reasonable efforts to convene a transition conference for a child who is not potentially eligible for preschool special education services to discuss appropriate services that the child may receive, with the documented verbal or written approval of the parent. The following participants shall attend the conference:

a. Parent of a child who is approaching three (3) years of age;

b. Service coordinator; and

c. Providers of other appropriate services.

I. If the transition conference is held in combination with the Individualized Family Service Plan meeting to develop the transition plan, the requirements of Rules 5.114(F)-(H), shall be met.

J. A Certified Early Intervention Service Broker shall terminate early intervention services for a child whose parent elects to begin IDEA Part B preschool special education services provided through an Individualized Education Program prior to the child’s third (3rd) birthday in lieu of receiving IDEA Part C early intervention services.

K. Extended Part C Option

Definitions: For purposes of this Extended Part C Option, Part C Entity references early intervention services (EIS) provider and Special Education Administrative Unit represents the local education agency (LEA).

1. The Extended Part C Option under IDEA Section 635(c) and 34 C.F.R § 303.211 applies to children who:

a. Are eligible for Early Intervention Part C;

b. Are eligible for Part B preschool special education services under section 619 of the Individuals with Disabilities Education Act; and

c. Turn age three (3) between May 1 and the beginning of the school year for the first year of implementation. The eligible birth date range may be reconsidered on an annual basis to include earlier birthdates (with a range between January 1st and May 1st), based on available funding, and will be communicated to stakeholders, on the early intervention website, by August 1st for the following calendar year. (For example, if the eligible birth date range for 2023 would be April 1, 2023 until the school year begins in 2023, the Department will post on its website no later than August 1, 2022).

d. For parents who elect this option, the Extended Part C Option will be available from the eligible birth date until the beginning of the school year after the child's third (3rd) birthday.

2. The Department is implementing the Extended Part C Option in collaboration with the Colorado Department of Education for those children and their families who meet the criteria for Extended Part C and ensures that:

a. The requirements under IDEA sections 612(a)(7) (State eligibility), 616 and 642 (Monitoring, technical assistance, and enforcement), 618 (Program information), 632(5)(b) (Definitions) and 635(c) (Requirements for statewide system) as well as implementing regulations in 34 C.F.R § 303.21(c) (Definition of infant or toddlers with a disability), § 303.209 (Transition to preschool and other programs), § 303.211 (State option to make services under this part available to children ages three (3) and older), § 303.340-344 (Individualized family service plan), will remain in effect for all children over age three (3) when a parent consents to the Extended Part C Option. The right of any child to receive a free appropriate public education under Part B is not affected by this policy.

b. All early intervention services outlined in the child's Individualized Family Service Plan will continue while any eligibility determination is being made for Part B preschool special education services.

c. Parents receive a written explanation of:

i. The rights of parents to elect to receive early intervention services pursuant to section 635(c) and 34 C.F.R. § 303.211 under the Part C Extended Option or to receive free and appropriate public education under Part B;

ii. The differences between the supports provided pursuant to Section 635(c) and 34 C.F.R § 303.211 and services provided under Section 619 (Preschool special education), including: (1) types of services and the locations at which the services are provided; (2) applicable procedural safeguards; and (3) possible costs, if any, to parents of children eligible under Part C (including any fees to be charged to families as described in Section 632(4)(b)), 34 C.F.R §303.209(f)(2);

iii. During transition planning and while enrolled in the Extended Part C Option, Part C procedural safeguards will apply. For disputes regarding Part B eligibility, Part B procedural safeguards will apply; and

iv. IDEA Part C services such as service coordination and the differences between IDEA Part B (free and appropriate public education in the least restrictive environment) and IDEA Part C early intervention services in natural environments which include the home and community settings with nondisabled peers.

3. The Extended Part C Option will be provided at no cost to families and will be funded using the following as available: IDEA Part C funds, public benefits and/or insurance, and private insurance.

4. For children determined to be eligible for Part B preschool special education services, an Individualized Education Program has been developed to ensure that an offer for a free and appropriate public education under Part B is available to begin at age three (3).

5. Before a child reaches three (3) years of age, the local Part C entity will obtain signed informed written consent from the parent indicating their choice to continue early intervention services pursuant to Sections 635(c) and 34 CFR § 303.211 and:

   a. The Special Education Administrative Unit will obtain written consent from the parent for the initial provision of special education services as written in the Individualized Education Program as beginning at the start of the school year following their child's third birthday; and

   b. The local Part C entity will ensure that the Special Education Administrative Unit has a copy of the parent's consent to remain in Part C services as soon as possible and not later than ten (10) calendar days after receipt of the consent.

6. Individualized Family Service Plan services provided pursuant to Section 635(c) and 34 C.F.R. § 303.211 will include an educational component that promotes school readiness and incorporates pre-literacy, language and numeracy skills.

7. When early intervention services are provided in accordance with Part C and 34 C.F.R. § 303.211 to a child who is eligible for services under section 619, the Special Education Administrative Unit is not required to provide such child with a free and appropriate public education during the time period of the extension of Part C services. [section 612(a)(1)(c)]

8. Children served pursuant to this section have the right, at any time, to receive a free and appropriate public education (as that term is defined at 34 C.F.R. § 303.15) under Part B of the Act instead of early intervention services under Part C of the Act. A parent may elect to exit Part C at any time but if they elect to exit Part C, there will not be the option to re-enter services at a later date.

9. The Department shall submit to the U.S. Department of Education, data and reports as required, including under IDEA Section 618 a report on the number and percentage of children with disabilities who are eligible for extending Part C based on their birth date, and who are eligible for services under Section 619 but whose parents choose for such children to continue to receive early intervention services under Part C until the subsequent school year following the child's third birthday.

5.115 PROCEDURAL SAFEGUARDS

A. A Certified Early Intervention Service Broker shall have policies and procedures that are consistent with 34 C.F.R. Sections 303.400, 303.401 - 303.417, 303.420 - 303.422, and 303.430 - 303.438 as defined in Rule 5.100(A)(5).

B. A parent shall be given written information and a verbal explanation of the procedural safeguards from the date of the referral through the determination of eligibility or ineligibility, delivery of early intervention services, and exit from early intervention services at or before his or her child's third (3rd) birthday.

C. A Community Centered Board shall ensure that all service coordinators demonstrate competence in the following:

1. Procedural safeguards;

2. How and when those procedural safeguards are to be explained and provided to a parent; and

3. What documentation shall be maintained to demonstrate this information has been appropriately provided to each parent.

D. Parental rights include:

1. Confidentiality

a. Personally identifiable data, information, or records pertaining to a referred child shall not be disclosed by a Certified Early Intervention Service Broker, any early intervention service provider, or any personnel involved in dispute resolution to any person other than his or her parent, except as provided in the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 U.S.C. Section 1320, as amended, and the federal Family Educational Rights and Privacy Act (FERPA) of 1974, 20 U.S.C. Section 1232g, as amended, as defined in Rule 5.100(A)(4).

b. A parent may voluntarily give written parental consent for the exchange of confidential information to other parties.

c. A Certified Early Intervention Service Broker shall ensure that all persons collecting, maintaining, and using personally identifiable information receive training to comply with state and federal confidentiality policies and procedures.

2. Regarding access to records, a Certified Early Intervention Service Broker shall:

a. Provide a parent, at no cost, a copy of each evaluation, assessment of the child, family assessment and Individualized Family Service Plan. Copies must be provided to a parent without unnecessary delay after each Individualized Family Service Plan meeting, and in no case more than ten (10) days after parental request; and,

b. Allow parents to inspect and review any early intervention records related to the child that are collected, maintained, or used by the agency for the purposes of providing early intervention services; and,

c. Comply with the request from a parent for access to records without unnecessary delay, and in no case more than ten (10) days after the parent makes the request to inspect and review records; and,

d. Make available to a parent an initial copy of the child's early intervention record, at no cost to the parent without unnecessary delay and in no case more than ten (10) days after the parent makes the request for a copy; and,

e. If any record includes information on more than one child, provide to the parent the opportunity to inspect and review only the information relating to his or her child; and,

f. Be allowed to charge a reasonable fee for providing additional copies of records, provided the fee does not prevent a parent from exercising his or her right to inspect and review the child's early intervention record; however the Certified Early Intervention Service Broker shall not charge a fee to search for or to retrieve information for the parent; and,

g. Upon a parent's request, provide a response to the parent for explanations and interpretations of his or her child's records without unnecessary delay, and in no case more than ten (10) days after the request has been made; and,

h. Provide a parent the right to have a representative, with written consent by the parent, to inspect and review the records; and,

i. Maintain a log of anyone obtaining access to records, including the name of the individual, the date access was given, and the purpose for the access.

3. Prior Written Notice

a. Using the state form, prior written notice shall be provided to a parent within a reasonable time before proposing or refusing to initiate or change the identification, eligibility, evaluation, early intervention service setting, the provision of appropriate early intervention services to his or her child and family, or the sharing of personally identifiable information.

b. The prior written notice form shall contain sufficient detail to inform a parent about:

1) The action that is being proposed or denied;

2) The reasons for taking such action;

3) All procedural safeguards available; and

4) State complaint procedures including a description of how to file a due process complaint and the timelines for those procedures.

c. Prior written notice, in accordance with 34 C.F.R. Section 303.421, as defined in Rule 5.100(A)(5), shall be documented using the state form:

1) Written in language understandable to the general public;

2) Provided in the native language of the parent; and

3) If the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so; and, is not a written language, a Certified Early Intervention Service Broker shall take steps to ensure that:

a) The prior written notice is translated orally by an interpreter or by other means to the parent in the parent's native language or other mode of communication;

b) A parent understands the written prior notice;

c) There is prior written evidence that the requirements for written prior notice are met; and

d) Information shall be provided in the mode of communication used by a parent, such as sign language, Braille, or oral communication.

d. A copy of the written prior notice shall be maintained in the child's record.

4. Written Parental Consent shall be obtained before:

a. Initiating a referral that contains more than the basic information of a child's name, date of birth, gender, parent contact information and the name of the assigned service coordinator;

b. Conducting an initial evaluation and assessment of a child;

c. Providing any early intervention services;

d. Changing early intervention services or eligibility;

e. Billing of Medicaid or a private health insurance plan, if consent is required under state coordinated system of payment procedures; and

f. Sharing any personally identifiable information about a child or parent with another agency or program, other than authorized representatives, officials, or employees of participating agencies, as defined in Rule 5.101, or the required transition information given to the Administrative Unit and the State Education Agency.

5. If written parental consent is not provided, the Certified Early Intervention Service Broker shall make reasonable efforts to ensure that a parent:

a. Is fully aware of the evaluation, and assessment or early intervention services that would be available; and

b. Understands that his or her child will not be able to receive the evaluation, assessment or early intervention services unless consent is given.

6. The right to decline an early intervention service without jeopardizing the provision of other early intervention services shall be provided to a parent.

7. A surrogate parent, who meets state required procedures and requirements and who has been appointed in accordance with 34 C.F.R. Section 303.422, which is incorporated by reference in Rule 5.100(A)(5), shall be designated to ensure that the rights of a child are protected, if:

a. No parent, as defined in 34 C.F.R. Section 303.27, and Rules 5.100(A)(5) and 5.101, can be identified;

b. A Certified Early Intervention Service Broker, in partnership with other involved public agencies, after reasonable efforts cannot locate a parent; or

c. A child is placed in the legal custody of the county department of human/social services.

5.116 DISPUTE RESOLUTION PROCESS

A. A Certified Early Intervention Service Broker shall have dispute policies and procedures, in accordance with 34 C.F.R. Sections 303.430 - 303.434 and 303.435 - 303.438, as defined in Rule 5.100(A)(5), to ensure that parents and service providers are informed of the process for resolution of disputes. These policies and procedures shall include:

1. A process for local level informal resolution of complaints; and,

2. Formal dispute resolution processes as defined within Rules 5.105(C) and 5.116.

B. A parent of a child who is referred for services shall have the right to access mediation, state complaint procedures and/or a due process hearing at no cost for the resolution of an individual dispute regarding identification, eligibility determination, early intervention service setting, or the provision of appropriate early intervention services for the child and the child's family.

C. Families shall have access to mediation and due process procedures for the resolution of a dispute. The Department shall ensure:

1. The availability of a mediator and hearing officer; and,

2. A mediator and hearing officer is impartial and knowledgeable of the federal and state laws pertinent to early intervention services; and,

3. There is no cost to the parties involved in the mediation or due process hearing.

D. If the dispute involves an application for initial early intervention services, the child shall receive those services that are not in dispute.

E. During the pendency of any proceeding involving a under this section of these rules, unless the public agency and parent of a child otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided.

5.117 MEDIATION

A. A statewide mediation system shall be available to ensure that:

1. Any individual may voluntarily access a non-adversarial process for the resolution of disputes;

2. Is at no cost to the parties involved in the mediation;

3. It shall not be used to deny or delay a parent the right to a due process hearing, or to deny any other rights, in accordance with 20 U.S.C. 1439, and defined in Rule 5.100(A)(4); and

4. It shall be scheduled and held in a location that is convenient to the parties involved in the mediation.

B. A request for mediation by a parent or an early intervention services provider shall be submitted to the Department using either the state form or another signed written request.

C. A mediation agreement reached by the parties to the dispute in the mediation process shall be set forth in a legally binding written mediation agreement that sets forth that resolution and that:

1. States that all discussions that occurred during the mediation process shall remain confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding; and,

2. Is signed by a parent and a representative of the agency who has the authority to bind such agency.

D. A written, signed mediation agreement shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

5.118 STATE COMPLAINT PROCEDURES

A. A Certified Early Intervention Service Broker shall ensure that state procedures for filing a complaint are widely disseminated to parents and other interested individuals within its designated service area, including parent training centers, protection and advocacy agencies and other appropriate entities.

B. In resolving a complaint in which there is a finding of a failure to provide appropriate early intervention services to an eligible child, the following shall be addressed:

1. The remediation of the denial of an Early Intervention Service, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and

2. The provision of appropriate future early intervention services for all eligible infants and toddlers and their families.

C. An organization or individual may file a written signed complaint using the state form or in another written format that includes the following information:

1. A statement of the alleged violation of rules or statutes;

2. The facts on which the complaint is based;

3. The signature and contact information for the complainant and, if alleging violations with respect to a specific child, the name and address of the residence of the child;

4. The name of the provider serving the child;

5. A description of the nature of the problem regarding the child, including facts relating to the problem; and

6. A proposed resolution of the problem to the extent known.

D. An alleged violation shall have occurred not more than one (1) year before the date that the complaint is received by the Department.

E. The party filing the complaint shall forward a copy of the complaint to the public agency or provider serving the child at the same time the party files the complaint with the Department.

F. A complaint shall be reviewed within sixty (60) calendar days after a complaint is filed under this process in order to:

1. Carry out an independent on-site investigation, if the Department determines that such an investigation is necessary;

2. Provide the complainant with the opportunity to submit additional information, either orally or in writing, about the allegation(s) included in the complaint;

3. Provide the public agency or provider with an opportunity to respond to the complaint, including a proposal to resolve the complaint;

4. Provide an opportunity for the parent who has filed a complaint and for the agency or provider to voluntarily engage in mediation;

5. Review all relevant information and make an independent determination as to whether the agency, is violating a requirement under Rules 5.100-5.120; and

6. Issue a written decision to the complainant within sixty (60) calendar days that addresses each allegation within the complaint and contains the following:

   a. Findings of fact and conclusions; and

   b. Reasons for the final decision made by the Department.

G. An extension of the sixty (60) calendar day time limit may be granted if determined necessary by the Department.

H. The following activities may be imposed by the Department on a Certified Early Intervention Service Broker:

1. Technical assistance activities;

2. Negotiations; and

3. Corrective actions to achieve compliance.

I. If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the following shall apply:

1. Any part of the complaint that is being addressed in the due process hearing procedures as defined in Rule 5.116 may be set aside until the conclusion of the hearing;

2. Any issue of the complaint that is not a part of the due process hearing procedures may be resolved within sixty (60) calendar days using the complaint procedures described in Rule 5.116; or

3. The complaint alleging that a public agency or private service provider failed to implement a due process decision may be resolved by the Lead Agency.

5.119 DUE PROCESS PROCEDURES

A. A due process hearing officer shall be appointed to implement the due process procedures described in this Section or the rules, and shall:

1. Have knowledge about the provision of early intervention services in accordance with Rules 5.100-5.120;

2. Listen to the presentation of relevant viewpoints about a complaint, examine all information relevant to the issues and seek to reach a timely resolution of the due process complaint; and

3. Provide a record of the proceedings, including a written decision.

B. In the context of Rule 5.116, "impartial", under this section of the rules, means that a person appointed to implement a complaint resolution process:

1. Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and,

2. Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process; and,

3. Is not an employee of an agency solely because the person is paid by the agency to implement the due process proceeding.

C. Any parent of a child referred for services under Rules 5.100-5.120 may submit a written request for a due process proceeding to the Department using the State form or another signed written request, and has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services, at the parent's expense; and,

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses that are either employed by or under contract with the Certified Early Intervention Service Broker; and,

3. Prohibit the introduction of any evidence at the proceeding that has not been disclosed to a parent at least five (5) calendar days before the proceeding; and,

4. Obtain a written or electronic verbatim transcription of the proceeding; and,

5. Receive written findings of fact and decisions at no cost to the parent.

D. Any proceeding for implementing the due process hearing shall be carried out at a time and place that is reasonably convenient to the parent.

E. No later than thirty (30) calendar days after receipt of a parent's written complaint, the proceeding shall be completed and a written decision mailed to each of the parties.

5.120 CIVIL ACTION

Any party aggrieved by a finding and decision regarding a due process complaint has the right to bring a civil action in state or federal court.

Title of Proposed Rule: **Early Intervention Eligibility**

CDEC Tracking #: 2022-12-004-E

Office, Division, & Program: Office of Program Delivery, Division of Community and Family Support, Early Intervention

Rule Author: Christy Scott

Phone: 720-595-8903

E-Mail: christy.scott@state.co.us

RULEMAKING PACKET

Type of Rule:

[ ] Regular [X] Emergency [ ] Regular following Emergency SoS#____

This package is submitted for: *(check all that apply)*

[ ] County Subcommittee Review (if needed)

[X] Rules Advisory Council Review

[X] Review by Attorney General's Office

[ ] Final Public Rulemaking Hearing by the Executive Director

Estimated Dates – What dates are you hoping to have this reviewed by the following groups?

County Subcommittee (if required)	
Rules Advisory Council	December 8, 2022
Public Rulemaking Hearing	December 16, 2022
Effective Date	January 1, 2023
If emergency rule – effective date of permanent rule?	TBD
Is this date legislatively required?	No

What other state departments, offices, and/or divisions have been consulted in the creation or revision of this rule package? (examples could include: Colorado Department of Human Services; Colorado Department of Education; Office of Information Technology; CDEC Legislative and Policy Division; etc):

Health Care Policy and Financing, Colorado Department of Education

Comments / Notes from Review by Rules Advisory Council Manager:

Title of Proposed Rule:	**Early Intervention Eligibility**	
CDEC Tracking #:	2022-12-004-E	
Office, Division, & Program: Office of Program Delivery, Division of Community and Family Support, Early Intervention	Rule Author: Christy Scott	Phone: 720-595-8903 E-Mail: christy.scott@state.co.us

Title of Proposed Rule:	**Early Intervention Eligibility**
CDEC Tracking #:	2022-12-004-E

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Rule Author: Christy Scott

Phone: 720-595-8903

E-Mail: christy.scott@state.co.us

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Character max***

The rule changes the definition of developmental delay from 33% or greater delay in one or more of the five domains of development to 25% or greater delay in two or more areas or 33% or greater delay in one or more of the five domains of development.

This change broadens the criteria to be eligible for the Early Intervention (EI) program. This means that more children will be eligible for the program, increasing the number of children and families served.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

	to comply with state/federal law and/or
X	to preserve public health, safety and welfare

Justification for emergency:

This change in eligibility criteria will allow the Early Intervention Program to serve more children and families. The rule should go into effect as quickly as possible in order to serve as many additional children as possible.

Executive Director Authority for Rule:

Code	Description
26.5-1-105(1) C.R.S. (2022)	The executive director is authorized to promulgate all rules for the administration of the department and for the execution and administration of the functions specified in section 26.5-1-109 and for the programs and services specified in this title 26.5.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
34 C.F.R. Section 303.102	Each state that receives funds for EI under 34 C.F.R. Part 303 must ensure that State rules, regulations, and policies conform to Part 303.

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Does the rule incorporate material by reference?	[X] Yes	[ ] No
Does this rule repeat language found in statute?	[ ] Yes	[X] No

If yes, please explain.

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		E-Mail: christy.scott@state.co.us

REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule? How will the rule impact particular populations, such as populations experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

Infants and toddlers who currently have mild developmental delays are not eligible for the EI program. Expanding the eligibility criteria to twenty five percent in two or more developmental domains will allow more children to receive early intervention services.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

Broadening the eligibility criteria will mean that an additional 1,100 children will be eligible to receive early intervention services. The long-term consequences of this rule will be more children and families served.

3. Alignment and Coordination.

Do the proposed rules or rule revisions (indicate all that apply):

	Reduce the administrative burden on families and providers of accessing programs and services, implementing programs, and providing services
	Decrease duplication and conflicts in implementing programs and providing services
X	Increase equity in access to programs and services and in child and family outcomes
	Increase administrative efficiencies among the programs and services provided by the department
	Ensure that the rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family and provider experience, and ease of implementation by state, local, and tribal agencies

4. Fiscal Impact

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. ***Answer should NEVER be just "no impact" answer should include "no impact because…."***

Title of Proposed Rule:	**Early Intervention Eligibility**	
CDEC Tracking #:	2022-12-004-E	
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State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

None, the department received additional funding to make this change.

County Fiscal Impact

None, EI services are funded by the CDEC.

Federal Fiscal Impact

None, the federal Part C grant amount remains the same.

Other Fiscal Impact *(such as providers, local governments, etc.)*

None, EI services are funded by the CDEC

5. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

Research on other states' eligibility criteria
Budget forecasting to determine sustainability by the program

6. Describe the monitoring and evaluation.

How will implementation of this proposed rule or rule revision be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

The Early Intervention Program collects data on numbers of children referred, evaluated and found eligible, including percentage of delay. Caseload numbers will be tracked to determine the increase in caseload as a result of this eligibility change.

7. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**

There is no alternative to this rule-making because the definition of developmental delay exists in rule and must be revised in order to implement any change in eligibility criteria.

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	*Incorrect Statutory Reference*	*Section 26.5.103 C.R.S.*	*Section 26.5-101(3) C.R.S.*		
Entire Rule	New CCR and C.R.S. references	A technical change to update references and citations	This change was made to allow CDEC the ability to promulgate rules under the new CDEC since CDEC can no longer promulgate rules under CDHS.	CDEC was created as of 7/1/2022	
5.101	Changes definition of developmental delay	"Developmental delay", when referenced in these regulations, means a significant delay, defined as the: equivalence of thirty-three percent (33%) or greater delay in one (1) or more of the five (5) domains of development as defined in Section 5.108, H, 6, c, when compared with chronological age; or, presence of atypical development or behavior, as defined in section 5.101.	"Developmental delay", when referenced in these regulations, means a significant delay, defined as the: equivalence of A TWENTY-FIVE PERCENT (25%) DELAY IN TWO (2) OR MORE DOMAINS OR A thirty-three percent (33%) or greater delay in one (1) or more of the five (5) domains of development as defined in Section ~~7.920, I, 7, c,~~5.108, H, 6, c when compared with chronological age; or, presence of atypical development or behavior, as defined in section ~~7.9015~~.101.	Revising definition of developmental delay to be broader and provide services for additional children and families	
5.101	Changes definition of risk factor	"Risk factor" means a 25% delay in two or more domains and, if sufficient appropriations are available, a 25% delay in one domain, or other factors determined by the department to have research that supports the potential for impact on	"Risk factor" means ~~a 25% delay in two or more domains and~~, if sufficient appropriations are available, a 25% delay in one domain, or other factors determined by the department to have research that supports the potential for impact on development at a later age such		

		development at a later age such as, but not limited to, a substantiated case of abuse or neglect, neonatal abstinence syndrome (NAS), fetal alcohol spectrum disorders (FASD), lead poisoning, global developmental delays and perinatal mood and anxiety disorders.	as, but not limited to, a substantiated case of abuse or neglect, neonatal abstinence syndrome (NAS), fetal alcohol spectrum disorders (FASD), lead poisoning, global developmental delays and perinatal mood and anxiety disorders.		
5.101	Clarifies that referrals are made the centralized El Colorado Referral line or Certified Early Intervention Service Broker to align with the newly developed referral and evaluation system as a result of SB 21-275	"Referral" for early intervention services means a verbal or written notification from a referral source to the Community Centered Board or administrative unit for the provision of information regarding an infant or toddler, birth through two (2) years of age, in order to identify those who are in need of early intervention services.	"Referral" for early intervention services means a verbal or written notification from a referral source to the ~~Community Centered Board or administrative unit~~ EARLY INTERVENTION COLORADO REFERRAL LINE OR A CERTIFIED EARLY INTERVENTION SERVICE BROKER for the provision of information regarding an infant or toddler, birth through two (2) years of age, in order to identify those who are in need of early intervention services.	Align with activities resulting from SB 21-275	
Entire Rule	Changes reference to Community Centered Board to read Certified Early Intervention Service Broker. This has already been done in several sections of the rule so making the entire rule consistent.	Community Centered Board	~~Community Centered Board~~CERTIFIED EARLY INTERVENTION SERVICE BROKER	Consistency throughout rules	
5.108	Strikes the requirement for Community Centered Boards and	A. Pre-Referral Public Awareness 1. A Community Centered Board	B. ~~Pre-Referral Public Awareness~~ 1. ~~A Community Centered Board shall~~	Align with activities resulting from SB 21-275	

	Administrative units to provide public awareness and clarifies responsibilities for referral and intake in alignment with the newly designed evaluation system as a result of SB 21-275	shall work with special education Administrative units, the Local Interagency Coordinating Council, and other community members, as necessary in order to develop a coordinated program of public awareness that identifies infants and toddlers with disabilities who may be eligible for early intervention services. 2. A Community Centered Board shall ensure that it has an Internet link on its website to the Early Intervention Colorado website at www.eicolorado.org and that families are informed of the website and the statewide toll free number 1-888-777-4041. 3. A Community Centered Board shall ensure that information on the Early Intervention Colorado Program is available via an Internet website, and in a written format, upon request of a family. 4. A Community Centered Board shall ensure that printed materials from the Department and other products are made available to families and the general public, as well as through state and local interagency efforts for outreach to primary referral sources, including hospitals, physicians, other health providers, child care providers and other public and	~~work with special education Administrative units, the Local Interagency Coordinating Council, and other community members, as necessary in order to develop a coordinated program of public awareness that identifies infants and toddlers with disabilities who may be eligible for early intervention services.~~ 2. ~~A Community Centered Board shall ensure that it has an Internet link on its website to the Early Intervention Colorado website at www.eicolorado.org and that families are informed of the website and the statewide toll free number 1-888-777-4041.~~ 3. ~~A Community Centered Board shall ensure that information on the Early Intervention Colorado Program is available via an Internet website, and in a written format, upon request of a family.~~ 4. ~~A Community Centered Board shall ensure that printed materials from the Department and other products are made available to families and the general public, as well as through state and local interagency efforts for outreach to primary referral sources, including hospitals, physicians, other health providers, child care providers and other public and non-profit agencies.~~ A. Referral		

		non-profit agencies. Referral 1. A Community Centered Board shall work collaboratively with community partners and primary referral sources to develop effective procedures for referral of children, birth through two (2) years of age, to the Early Intervention Program, in order to identify infants and toddlers who are in need of early intervention services. 2. Referral of a child, birth through two (2) years of age, means a verbal or written notification from a referral source to the Community Centered Board or Administrative Unit-about a child who: a. Is known to have or suspected of having a developmental delay; or, b. Has an established condition, as defined in Section 5.108, E; or, c. Lives with a parent with a developmental disability; or, d. Has been identified as the subject of a substantiated case of child abuse or neglect; or,	3. THE EARLY INTERVENTION COLORADO PROGRAM OR ~~A Community Centered Board~~CERTIFIED EARLY INTERVENTION SERVICE BROKER shall work collaboratively with community partners and primary referral sources to develop effective procedures for referral of children, birth through two (2) years of age, to the Early Intervention Program, in order to identify infants and toddlers who are in need of early intervention services. 4. Referral of a child, birth through two (2) years of age, means a verbal or written notification from a referral source to the EARLY INTERVENTION PROGRAM OR ~~Community Centered Board~~CERTIFIED EARLY INTERVENTION SERVICE BROKER ~~or Administrative Unit~~ about a child who: a. Is known to have or suspected of having a developmental delay; or, b. Has an established condition, as defined in Section ~~7.920, H~~5.108, E; or, c. Lives with a parent with a developmental disability; or, d. Has been identified as the subject of a substantiated case of child		

		e. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. Post-Referral Process 1. A Community Centered shall accept a referral from community sources, including, but not limited to, a family, health provider, child care provider, Administrative Unit, county department of social/human services, county department of health, and others. A Community Centered Board shall use the state referral form found at http://coloradoofficeofearlychildhood.force.com/eicolorado/ei_quicklinks?p=home&s=mak e-a-referral&lang=en, procedures as defined by the Department, and shall facilitate, to the extent possible, the use of the early intervention referral form by other referral sources in its designated service area. 2. A Community Centered Board shall assign a service coordinator within three (3) working days from the date of a referral.	abuse or neglect; or, e. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. B. Post-Referral Process 1. THE EARLY INTERVENTION COLORADO PROGRAM OR ~~A Community Centered~~ CERTIFIED EARLY INTERVENTION SERVICE BROKER shall accept a referral from community sources, including, but not limited to, a family, health provider, child care provider, Administrative Unit, county department of social/human services, county department of health, and others. ~~A Community Centered BoardCERTIFIED EARLY INTERVENTION SERVICE BROKER shall use the state referral form found at http://coloradoofficeofearlychildhood.force.com/eicolorado/ei_quicklinks?p=home&s=make-a-referral&lang=en, HTTPS://COLORADOOFFICEOFEARLYCHILDHOOD.SECURE.FORCE.COM/EICOLORADO/EI_QUICKLINKS?P=HOME&S=MAKE-A-REFERRAL&LANG=ENand FOLLOW procedures as defined by the Department,~~		

		3. The family shall be contacted as soon as possible after being assigned a service coordinator, but no longer than seven (7) calendar days from the date of the referral, to provide the service coordinator's contact information and inform the family of their procedural safeguards. 4. A Community Centered Board shall notify the appropriate Administrative Unit within three (3) working days of a child being referred for early intervention services for whom a Child Find evaluation needs to be conducted. 5. A Community Centered Board shall: a. Notify the referral source of the receipt of the referral using the state referral form; and, b. Provide the contact information for the assigned service coordinator; and, c. With written parent consent, notify the referral source and the child's primary health provider of the results of the evaluation and/or assessment using the state referral form.	~~and shall facilitate, to the extent possible, the use of the early intervention referral form by other referral sources in its designated service area.~~ 2. THE EARLY INTERVENTION COLORADO PROGRAM OR ~~A Community Centered Board shall assign a~~ service coordinator WILL BE ASSIGNED within three (3) working days from the date of a referral. 3. The family shall be contacted as soon as possible after being assigned a service coordinator, but no longer than seven (7) calendar days from the date of the referral, to provide the service coordinator's contact information and inform the family of their procedural safeguards. 4. ~~A Community Centered Board shall notify the appropriate Administrative Unit within three (3) working days of a child being referred for early intervention services for whom a Child Find evaluation needs to be conducted~~. 5. ~~A Community Centered Board~~THE EARLY INTERVENTION COLORADO PROGRAM OR CERTIFIED EARLY INTERVENTION SERVICE BROKER shall:		

		6. Referral information sent to an Administrative Unit by a Community Centered Board shall contain at least the following: d. The first, middle, and last name of the child; and, e. Date of birth of the child; and, f. Gender of the child; and, g. Primary language spoken; and, h. Name and telephone number of an assigned service coordinator; and, i. Date of the referral. C. Post-Referral Screening 1. A Community Centered Board shall work with the Administrative Unit(s) to identify in the interagency agreement if the Child Find process will include post-referral screening. 2. If post-referral screening is used, the Community Centered Board shall	.Notify the referral source of the receipt of the referral using the state referral form; and, .Provide the contact information for the assigned service coordinator; and, .With written parent consent, notify the referral source and the child's primary health provider of the results of the evaluation and/or assessment using the state referral form. 6. ~~Referral information sent to an Administrative Unit by a Community Centered Board shall contain at least the following:~~ .~~The first, middle, and last name of the child; and,~~ .~~Date of birth of the child; and,~~ .~~Gender of the child; and,~~ .~~Primary language spoken; and,~~ .~~Name and telephone number of an assigned service coordinator; and,~~ .~~Date of the referral.~~ C. ~~Post-Referral Screening~~		

		assure the following requirements are met: a. A parent shall receive prior written notice of, and provide written consent to, the post-referral screening, and be informed of the right to request evaluation in place of or in addition to post-referral screening; and, b. Appropriate instruments shall be used by personnel trained to administer those instruments; and, c. Written screening results are provided to a parent; and, d. A parent shall receive prior written notice of the action that is being proposed or refused as a result of the post-referral screening, and the reasons for taking the action. e. If the results of a post-referral screening reveal that the child is developing at age expected levels in the five (5) domains referenced in 7.920, I, 7, c, the parent may request and is entitled to a timely, comprehensive, multidisciplinary evaluation under Part C of the Individuals with Disabilities Education Act. Evaluation to Determine Extent of Child's	1. ~~A Community Centered Board shall work with the Administrative Unit(s) to identify in the interagency agreement if the Child Find process will include post-referral screening.~~ 2. ~~If post-referral screening is used, the Community Centered Board shall assure the following requirements are met:~~ .~~A parent shall receive prior written notice of, and provide written consent to, the post-referral screening, and be informed of the right to request evaluation in place of or in addition to post-referral screening; and,~~ .~~Appropriate instruments shall be used by personnel trained to administer those instruments; and,~~ .~~Written screening results are provided to a parent; and,~~ .~~A parent shall receive prior written notice of the action that is being proposed or refused as a result of the post-referral screening, and the reasons for taking the action.~~ .~~If the results of a post-referral screening~~ .~~If the results of a post-referral screening~~		

		Delay 1. A Community Centered Board shall work with the Administrative Unit(s), the Local Interagency Coordinating Council, and other community members, as necessary, to develop a local child identification process to ensure that: a. Evaluation procedures, as identified in Section 7.920, are adhered to; and, For each child, where parental consent for evaluation has been given, an evaluation	~~reveal that the child is developing at age expected levels in the five (5) domains referenced in 7.920, I, 7, c, the parent may request and is entitled to a timely, comprehensive, multidisciplinary evaluation under Part C of the Individuals with Disabilities Education Act.~~ .Name and signature of the ~~Community Centered Board~~ EVALUATION ENTITY representative who verifies that the evaluation and assessment team gathered and provided diagnostic information to establish eligibility or ineligibility; and, G. Evaluation to Determine Extent of Child's Delay a. ~~A Community Centered Board shall work with the Administrative Unit(s), the Local Interagency Coordinating Council, and other community members, as necessary, to develop a local child identification process to ensure that:~~ .~~Evaluation procedures, as identified in Section 7.920, are adhered to; and,~~ ~~For each child, where parental consent for evaluation has been given, an evaluation~~		

Title of Proposed Rule:	**Early Intervention Eligibility**	
CDEC Tracking #:	2022-12-004-E	
Office, Division, & Program: Office of Program Delivery, Division of Community and Family Support, Early Intervention	Rule Author: Christy Scott	Phone: 720-595-8903 E-Mail: christy.scott@state.co.us

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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and RAC Subcommittee):

A broad group of stakeholders convened as an EI Eligibility Definition Workgroup and met three times representing families. The following stakeholder groups have been informed of the proposed rule changes and provided the opportunity for questions and clarification: Families, Community Centered Boards, Evaluation Entities, EI direct service providers, the Colorado Interagency Coordinating Council, the Colorado Department of Education, the Department of Health Care Policy and Financing, the Special Education Consortium, philanthropic organizations and any other interested parties. Additionally, two broadly advertised town halls were held to share results of Workgroup recommendations and provide additional input.

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the Rule Advisory Council / CDEC:

Families, Community Centered Boards, Evaluation Entities, EI direct service providers, the Colorado Interagency Coordinating Council, the Colorado Department of Education, the Department of Health Care Policy and Financing, the Special Education Consortium, philanthropic organizations, the Alliance of Colorado.

Other State Agencies

Are other State Agencies (such as CDHS, CDE, HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[ ] Yes [X] No

If yes, who was contacted and what was their input?

RAC County Subcommittee Review (if applicable)

Do the proposed rules have an impact on the functions, programs or services delivered by counties?

[ ] Yes [X] No

If yes, have these rules been reviewed by the County Subcommittee?

[ ] Yes [X] No

Date presented			
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

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Rules Advisory Council Review

Date presented	December 8, 2022		
What issues were raised?			
Recommendation from RAC to Approve, Approve with Changes, or Not Approve			
Vote Count	*For*	*Against*	*Abstain*
Any additional notes.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

If "yes," summarize and/or attach the feedback received, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

Comments were received through three, facilitated Eligibility Definition Workgroup meetings which were open to the public. Approximately 60 stakeholders participated in each Workgroup meeting. The meetings were also recorded and the link provided publicly. The Workgroup developed a recommendation for the eligibility change.

Two public Town Halls were held to discuss the recommendation of the Workgroup and garner additional input. The final Workgroup meeting was held to review the input of the Town Halls.

The final recommendation of this broad stakeholder engagement resulted in the proposed rule change to the definition of Developmental Delay.

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: 2022-00807

Opinion of the Attorney General rendered in connection with the rules adopted by the

Early Intervention Colorado Program

on 12/16/2022

8 CCR 1405-1

EARLY INTERVENTION RULES AND REGULATIONS

The above-referenced rules were submitted to this office on 12/20/2022 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 29, 2022 09:43:01

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Human Services

Agency

Income Maintenance (Volume 3)

CCR number

9 CCR 2503-5

Rule title

9 CCR 2503-5 ADULT FINANCIAL PROGRAMS 1 - eff 12/10/2022

Effective date

12/10/2022

Expiration date

04/08/2023

9 CCR 2503-5

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3.510 DEFINITIONS

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“Non-citizen” means any person who i snot a “citizen of the United States”.

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3.520.5 INTERFACE VERIFICATIONS

Interfaces are acceptable verification sources for the Adult Financial programs. Appropriate interfaces for verification purposes are described below.

****

D. For AND only the county department shall query the Systematic Alien Verification for Entitlements (SAVE) at initial application and at redetermination. Information obtained through SAVE is considered verified upon receipt. The purpose of the save query is to:

****

3.520.61 NON-FINANCIAL ELIGIBILITY REQUIREMENTS

To be eligible for Adult Financial programs, a client shall:

****

C. For AND only, be a citizen of the United States or be a qualified non-citizen or legal immigrant as outlined in Sections 3.520.67; and,

D. For AND only, have a valid SSN, as outlined in Section 3.520.65; and,

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3.520.65 SOCIAL SECURITY NUMBERS (SSN)

A. Each Adult Financial program client who has a social security number (SSN) or is eligible to obtain a SSN shall provide his or her SSN to the county department.

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2. If a client is unable to provide their SSN, the client shall be required to apply for a SSN at the local Social Security office and provide the county department with verification of application for an SSN. This requirement does not apply to OAP clients who are non-citizens or qualified non-citizens.

3. When a client is eligible for a SSN, refusal or failure to apply for or provide their SSN shall result in denial for Adult Financial programs.

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B. The county department shall verify the client's SSN with the SSA in accordance with procedures established by the State Department for the SVES.

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3. For clients eligible to receive a SSN, if the client is unable to provide his or her valid SSN, the application shall be denied or the case terminated following the policies outlined in Section 3.554.

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3.520.66 IDENTITY

In order to verify clients identity, the client shall produce and provide to the county department:

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3.520.67 CITIZENSHIP, AND QUALIFIED NON-CITIZENS, AND NON-CITIZENS

****

A. The following are citizens of the United States and are eligible to apply for AND.

****

B. The county department shall verify citizenship for AND when:

****

E. Qualified non-citizens who are considered legal immigrants by USCIS are eligible to apply for Adult Financial programs and all non-citizens are eligible to apply for OAP.

****

F. Qualified non-citizens applying for AND shall present documentation from USCIS showing the client's non-citizen status. All documents shall be verified through SAVE (Systematic Alien Verification for Entitlements) to determine the validity of the document.

G. The following non-citizens and temporary residents shall not be eligible for AND.

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3.520.68 FIVE YEAR BAR FROM ELIGIBILITY

A. Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are

barred from receiving AND for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent residence, as verified through SAVE.

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3.520.69 SPONSORSHIP OF QUALIFIED NON-CITIZENS

This section shall apply to qualified non-citizens who entered the country on or after August 22, 1996.

****

D. Income and resources of the sponsor(s) shall be deemed to the client, as follows:

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5. Because the sponsor, not the non-citizen, is solely liable for repayment, the sponsor cannot use the sponsored non-citizen's grant payments to repay the payments.

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3.520.7 FINANCIAL ELIGIBILITY REQUIREMENTS

3.520.71 FINANCIAL ELIGIBILITY REQUIREMENTS

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D. For OAP, if the client has or is eligible to obtain a SSN they shall apply for SSI, unless the client is a non-citizen or qualified non-citizen that does not qualify to receive a SSN. A client with a SSN and shall timely schedule and complete any and all scheduled interviews with the SSA, and in the event of a denial by SSA, the OAP client shall continue to appeal all negative decisions from the SSA until a final resolution is reached and no further right to appeal exists. However, the requirement to continue to appeal all negative decisions may be excused if any of the following apply:

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Title of Proposed Rule:	Elimination of Lawful Presence for Old Age Pension
CDHS Tracking #:	**22-08-02-02**
CCR #:	9 CCR 2503-5
Office, Division, & Program:	Office of Economic Support, Division of Economic and Workforce Support, Adult Financial
Phone:	303-866-2751
Rule Author:	Laura Sartor
EMail:	laura.sartor@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [x] Board [ ] Executive Director

b. [ ] Regular [x] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

	AG Initial Review		X	Initial Board Reading			AG 2nd Review		Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
x	Amended Rules
x	New Rules
	Repealed Rules
x	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	December 2022

What date is being requested for this rule to be effective?	December 10, 2022
Is this date legislatively required?	Yes

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION
Comments:

Estimated Dates: 1st Board 12/09/2022 2nd Board 01/06/2023 Effective Date 12/10/2022

Summary of the basis and purpose for new rule or rule change.

Title of Proposed Rule:	Elimination of Lawful Presence for Old Age Pension		
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Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. ***1500 Char max***

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

x	to comply with state/federal law and/or
	to preserve public health, safety and welfare

Justification for emergency: Senate Bill 21-199 eliminated lawful presence as a requirement for state funded programs. An initial rule was passed updating Adult Financial Programs that was effective July 1, 2022. However, upon further review, additional rule updates are needed to fully comply with the legislation.

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2022)	State Board to promulgate rules

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
26-1-109, C.R.S. (2022)	State department to coordinate with federal programs
26-1-111, C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities
24-76.5-103, C.R.S. (2022)	Verification of lawful presence is prohibited as an eligibility requirement for State benefits

Does the rule incorporate material by reference?		Yes		x	No
Does this rule repeat language found in statute?		Yes		x	No
If yes, please explain.					

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

This rule change impacts all applicants for the Old Age Pension in the Adult Financial programs. Additionally, this rule change affects all county departments of human services that process applications for Adult Financial programs.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

This rule will eliminate the need for an applicant to be lawfully present in order to be eligible for the Old Age Pension in the Adult Financial programs. This change will substantially alter the eligible populations for these programs. We estimate this change will increase the number of people eligible for the Old Age Pension between 3,000 and 32,833 people. The possible increase is wide because, based on 2019 census data, 32,833 additional non-citizens are potentially eligible for OAP based on their reported income; however, no information is known about individual liquid assets, which are also considered in determining eligibility. We are estimating that about 10% of the individuals identified in census data would qualify and apply for OAP benefits.

3. Fiscal Impact

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. ***Answer should NEVER be just "no impact" answer should include "no impact because…."***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

The cost to update CBMS is approximately $45,172, these updates will be made within the existing pool hours.

The anticipated increase to the caseload is 3,000. Assuming these clients qualify for the full Old Age Pension, this is an increased cost of $31,644,000. The funding for the Old Age Pension is continually appropriated. In SFY 2022-23, $78,905,051 was formally appropriated for OAP cash assistance. Our most recent projects indicate that we think we'll spend about $56.4 million in SFY 2022-23 based on current trends. This leaves about $22.5 million remaining from the appropriation. Accordingly, the added costs associated with expanded eligibility could result in a possible deficit of approximately $9.1 million. A request for additional funding may be made if the spending matches these projections.

County Fiscal Impact

Old Age Pension is a 100% State funded program and counties do not contribute to the Old Age Pension payments. There is an administrative impact on counties based on the anticipated increase of 3,000

cases statewide for the OAP caseload for individuals that previously did not qualify for OAP due to citizenship requirements. Specific data or estimates of the administrative impacts on counties are not available. The State will monitor the impacts to the counties and the fiscal implications.

Federal Fiscal Impact
There is no federal fiscal impact as the Old Age Pension is entirely State funded.

Other Fiscal Impact *(such as providers, local governments, etc.)*
There are no additional fiscal impacts identified.

4. Data Description
List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?
Ad hoc caseload and demographic data from the statewide automated system was used. In addition, information available in the Census American Community Survey (ACS) was used to gather information on the general population.

5. Alternatives to this Rule-making
Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**
There is no alternative because, as of 07/01/2022, section 24-76.5-103, C.R.S. (2022) prohibits lawful presence as a requirement for State or local benefits programs. State rules for Adult Financial which currently require lawful presence, need to be updated in order to comply with the law.

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
3.510 DEFINITIONS	No definition for non-citizen	N/A	"NON-CITIZEN' MEANS ANY PERSON WHO IS NOT A "CITIZEN OF THE UNITED STATES".	Adding definition	
3.520.5 INTERFACE VERIFICATIONS	Includes SAVE query for OAP	Interfaces are acceptable verification sources for the Adult Financial programs. Appropriate interfaces for verification purposes are described below. D. The county department shall query the Systematic Alien Verification for Entitlements (SAVE) at initial application and at redetermination. Information obtained through SAVE is considered verified upon receipt. The purpose of the save query is to:	Interfaces are acceptable verification sources for the Adult Financial programs. Appropriate interfaces for verification purposes are described below. D. FOR AND ONLY ~~T~~ithe county department shall query the Systematic Alien Verification for Entitlements (SAVE) at initial application and at redetermination. Information obtained through SAVE is considered verified upon receipt. The purpose of the save query is to:	Removed SAVE query requirement for OAP	
3.520.61 NON-FINANCIAL ELIGIBILITY REQUIREMENTS	Includes lawful presence as a requirement for OAP	To be eligible for Adult Financial programs, a client shall: C. Be a citizen of the United States or be a qualified non-citizen or legal immigrant as outlined in Sections 3.520.67; and, D. Have a valid SSN, as outlined in Section 3.520.65; and	To be eligible for Adult Financial programs, a client shall: C. FOR AND ONLY, B~~B~~e a citizen of the United States or be a qualified non-citizen or legal immigrant as outlined in Sections 3.520.67; and, D. FOR AND ONLY, ~~H~~Have a valid SSN, as outlined in Section 3.520.65; and,	Eliminates lawful presence as a requirement for OAP	
3.520.65 SOCIAL SECURITY NUMBERS	Includes valid social security number	A. Each Adult Financial program client shall provide his or her SSN to the county department. 2. If a client is unable to provide their SSN, the client shall be required to apply for an SSN at the local Social Security office and provide the county department with verification of application for an SSN. 3. Refusal or failure to apply for or provide their SSN shall result in denial for Adult Financial programs. B. The county department shall verity the client's SSN with the SSA in accordance with procedures	A. Each Adult Financial program client WHO HAS A SOCIAL SECURITY NUMBER OR IS ELIGIBLE TO OBTAIN A (SSN) shall provide his or her SSN to the county department. 2. If a client is unable to provide their SSN, the client shall be required to apply for an SSN at the local Social Security office and provide the	Eliminates social security number requirement for OAP	

		established by the State Department for the SVES. 3. If the client is unable to provide his or her valid SSN, the application shall be denied or the case terminated following the policies outlined in Section 3.554.	county department with verification of application for an SSN. THIS REQUIREMENT DOES NOT APPLY TO OAP CLIENTS WHO ARE NON-CITIZENS OR QUALIFIED NON-CITIZENS. 3. WHEN A CLIENT IS ELIGIBLE FOR A SSN, ~~R~~Refusal or failure to apply for or provide their SSN shall result in denial for Adult Financial programs. B. The county department shall verify the client's SSN with the SSA in accordance with procedures established by the State Department for the SVES. 3. FOR CLIENTS ELIGIBLE TO RECEIVE A SSN, if the client is unable to provide his or her valid SSN, the application shall be denied or the case terminated following the policies outlined in Section 3.554.		
3.520.66 IDENTITY	Identity requirements	IDENTITY	IDENTITY IN ORDER TO VERIFY CLIENTS IDENTITY, THE CLIENT SHALL PRODUCE AND PROVIDE TO THE COUNTY DEPARTMENT:	Adding an explanation of identity	
3.520.67 CITIZENSHIP AND QUALIFIED NON-CITIZENS	Citizenship requirements for Adult Financial programs	3.520.67 CITIZENSHIP AND QUALIFIED NON-CITIZENS A. The following are citizens of the United States and are eligible to apply for Adult Financial programs: B. The county department shall verify citizenship when: E. Qualified non-citizens who are considered legal immigrants by USCIS are eligible to apply for Adult Financial programs.	3.520.67 CITIZENSHIP, ~~AND~~ QUALIFIED NON-CITIZENS, AND NON-CITIZENS A. The following are citizens of the United States and are eligible to apply for AND ~~Adult Financial programs~~: B. The county department shall verify citizenship FOR AND when:	Eliminates citizenship requirements for OAP	

		F. Qualified non-citizens applying for Adult Financial programs shall present documentation from USCIS showing the client's non-citizen status. All documents shall be verified through SAVE (Systematic Alien Verification for Entitlements) to determine the validity of the document. G. The following non-citizens and temporary residents shall not be eligible for Adult Financial programs:	E. Qualified non-citizens who are considered legal immigrants by USCIS are eligible to apply for Adult Financial programs AND ALL NON-CITIZENS ARE ELIGIBLE TO APPLY FOR OAP. F. Qualified non-citizens applying for ~~Adult Financial programs~~ AND shall present documentation from USCIS showing the client's non-citizen status. All documents shall be verified through SAVE (Systematic Alien Verification for Entitlements) to determine the validity of the document. G. The following non-citizens and temporary residents shall not be eligible for AND~~Adult Financial programs~~:		
3.520.68 FIVE YEAR BAR FROM ELIGIBILITY	Five-year bar is required for OAP	A. Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are generally barred from receiving Adult Financial programs for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent residence, as verified through SAVE, unless they meet one of the exceptions consistent with the provisions of 8 USC § 1613(b) as in effect January 24, 2020. B. For OAP only, a client that has a documented hardship, as follows, shall not be subject to a five-year bar from benefits: 1. Abuse or mistreatment by the sponsor(s). Suspension of five-year bar from benefits is permitted if there is credible evidence that the qualified non-citizen client has been physically abused, battered, or subjected to extreme cruelty by his or her sponsor(s) in the United States, and meets the following requirements: a. The qualified non-citizen client subject to such physical abuse, battery, or extreme cruelty does not live in the same household with the individual responsible for the physical abuse, battery, or extreme cruelty; and,	A. Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are ~~generally~~ barred from receiving ~~Adult Financial programs~~ AND for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent residence, as verified through SAVE ~~unless they meet one of the exceptions consistent with the provisions of 8 USC § 1613(b) as in effect January 24, 2020~~. ~~B. For OAP only, a client that has a documented hardship, as follows, shall not be subject to a five-year bar from benefits:~~ ~~1. Abuse or mistreatment by the sponsor(s). Suspension of five-year bar from benefits is~~	Eliminates five-year bar for OAP	

		b. There is a substantial connection between the physical abuse, battery, or extreme cruelty and the need for benefits; and, c. There is documented credible evidence of physical abuse, battery, or extreme cruelty, including, but not limited to: 1) A copy of the protection order issued against the abuser or batterer of the qualified non-citizen client; or, 2) A copy of the verdict and the judgment or sentence against the abuser or batterer committing the act of violence against the qualified non-citizen client; or, 3) Reports or affidavits from police, judges, or other court officials; or, 4) Written statements from medical/health professionals treating the client; or, 5) Verification from the USCIS or the Executive Office for Immigration Review (EOIR) that a petition to qualify under this category has been approved. 2. Indigence: Suspension of the five-year bar from benefits is permitted if the qualified noncitizen's income and resources, and income and resources of the qualified non-citizen's sponsor(s) are inadequate. If the qualified non-citizen does not have a sponsor, then their own income and resources would be considered. a. It is the responsibility of the qualified non-citizen to obtain all required information and documentation from the sponsor(s). b. The county department shall determine if the total household income available exceeds 125% of the Federal poverty guidelines as defined in 3.510 for the household size. 1) For purposes of this section, the household includes the qualified noncitizen, the qualified non-citizen's spouse, the qualified non-citizen's dependent children, the sponsor(s), the spouse of the sponsor(s), and the sponsor(s)' dependent children, i.e., the children the sponsor(s) claim on his or her income tax. 2) The county department shall total the countable income of the household by adding together income of the non-citizen, and that of his or her spouse, and the sponsor(s) and the sponsor(s) spouse(s).	~~permitted if there is credible evidence that the qualified non-citizen client has been physically abused, battered, or subjected to extreme cruelty by his or her sponsor(s) in the United States, and meets the following requirements:~~ ~~a. The qualified non-citizen client subject to such physical abuse, battery, or extreme cruelty does not live in the same household with the individual responsible for the physical abuse, battery, or extreme cruelty; and,~~ ~~b. There is a substantial connection between the physical abuse, battery, or extreme cruelty and the need for benefits; and,~~ ~~c. There is documented credible evidence of physical abuse, battery, or extreme cruelty, including, but not limited to:~~ ~~1) A copy of the protection order issued against the abuser or batterer of the qualified non-citizen client; or,~~ ~~2) A copy of the verdict and the judgment or sentence against the abuser or batterer committing the act of violence against the qualified non-citizen client; or,~~ ~~3) Reports or affidavits from police, judges, or other court officials; or,~~ ~~4) Written statements from medical/health professionals treating the client; or,~~		

		3) If the total household income available exceeds the monthly amount of 125% of the Federal poverty guidelines, as defined in 3.510, for the household size, the indigence exception does not apply. If the total household income is less than 125% of the monthly Federal poverty guidelines as defined in 3.510 for the household size, then, a) Determine the sponsor(s) countable resources. Resources are attributed to the sponsor in the same manner as the non-citizen, as outlined throughout 3.520.72. b) All countable resources over the sponsor(s) resource limit, as outlined in Section 3.520.72, are then applied to the non-citizen. c) This is added to the non-citizen's countable resources and compared to the non-citizen's resource limit, as outlined in Section 3.520.72. d) If the non-citizen is under the resource limit, the indigence hardship exception applies. c. The county department shall determine if the non-citizen is receiving free room and board from another source, such as a family member, friend, or a non-profit agency. If yes, the indigence exception does not apply. 3. Abandonment by the sponsor(s): suspension of the five-year bar from benefits may be applicable when the qualified non-citizen is abandoned by his or her sponsor(s) and the qualified non-citizen's income and resources are so inadequate that the qualified noncitizen is unable to obtain food and shelter. a. The county department shall contact the sponsor to confirm the non-citizen's allegations regarding amounts of income and resources the sponsor provides or makes available to the non-citizen. If the non-citizen does not know the sponsor's whereabouts, the county department shall obtain this information if available through SAVE. b. If the county cannot locate the sponsor of the sponsored non-citizen, or no support is being provided, a signed allegation from the non-citizen (if the allegation is credible and does not conflict with other information in the file) shall be utilized to determine abandonment. If the allegations are not credible or conflict with other information in file, the county department shall weigh all information and use the prudent person principle to make a decision regarding the applicability of the abandonment hardship based on all the information obtained. If support is being provided,	~~5) Verification from the USCIS or the Executive Office for Immigration Review (EOIR) that a petition to qualify under this category has been approved.~~ ~~2. Indigence: Suspension of the five-year bar from benefits is permitted if the qualified noncitizen's income and resources, and income and resources of the qualified non-citizen's sponsor(s) are inadequate. If the qualified non-citizen does not have a sponsor, then their own income and resources would be considered.~~ ~~a. It is the responsibility of the qualified non-citizen to obtain all required information and documentation from the sponsor(s).~~ ~~b. The county department shall determine if the total household income available exceeds 125% of the Federal poverty guidelines as defined in 3.510 for the household size.~~ ~~1) For purposes of this section, the household includes the qualified noncitizen, the qualified non-citizen's spouse, the qualified non-citizen's dependent children, the sponsor(s), the spouse of the sponsor(s), and the sponsor(s)' dependent children, i.e., the children the sponsor(s) claim on his or her income tax.~~ ~~2) The county department shall total the countable income of the household by adding together income of the~~		

		the abandonment hardship exception shall not apply. c. When a determination of abandonment is made, the county department shall notify the United States Department of Homeland Security. C. For OAP only, if approved for a hardship exception to the five-year bar, the county department shall process the application or redetermination to determine whether the qualified non-citizen meets the eligibility criteria for OAP. Requirements for the hardship exception shall be reassessed at each redetermination or when circumstances change. D. For OAP only, the county department shall pursue recovery of OAP grant payments from the sponsor(s). 1. The qualified non-citizen shall be notified of the recovery requirement at the time of request for a hardship exception from the five year bar from benefits; and, 2. If granted a hardship, the client shall be notified during the interview of each redetermination of the requirement to recover funds from the sponsor(s).	~~non-citizen, and that of his or her spouse, and the sponsor(s) and the sponsor(s) spouse(s).~~ ~~3) If the total household income available exceeds the monthly amount of 125% of the Federal poverty guidelines, as defined in 3.510, for the household size, the indigence exception does not apply. If the total household income is less than 125% of the monthly Federal poverty guidelines as defined in 3.510 for the household size, then,~~ ~~a) Determine the sponsor(s) countable resources. Resources are attributed to the sponsor in the same manner as the non-citizen, as outlined throughout 3.520.72.~~ ~~b) All countable resources over the sponsor(s) resource limit, as outlined in Section 3.520.72, are then applied to the non-citizen.~~ ~~c) This is added to the non-citizen's countable resources and compared to the non-citizen's resource limit, as outlined in Section 3.520.72.~~ ~~d) If the non-citizen is under the resource limit, the indigence hardship exception applies.~~ ~~c. The county department shall determine if the non-citizen is receiving free room and board from another source, such as a family member, friend, or a non-profit agency. If~~		

			~~yes, the indigence exception does not apply.~~ ~~3. Abandonment by the sponsor(s): suspension of the five-year bar from benefits may be applicable when the qualified non-citizen is abandoned by his or her sponsor(s) and the qualified non-citizen's income and resources are so inadequate that the qualified noncitizen is unable to obtain food and shelter.~~ ~~a. The county department shall contact the sponsor to confirm the non-citizen's allegations regarding amounts of income and resources the sponsor provides or makes available to the non-citizen. If the non-citizen does not know the sponsor's whereabouts, the county department shall obtain this information if available through SAVE.~~ ~~b. If the county cannot locate the sponsor of the sponsored non-citizen, or no support is being provided, a signed allegation from the non-citizen (if the allegation is credible and does not conflict with other information in the file) shall be utilized to determine abandonment. If the allegations are not credible or conflict with other information in file, the county department shall weigh all information and use the prudent person principle to make a decision regarding the applicability of the abandonment hardship based on all the		

			~~information obtained. If support is being provided, the abandonment hardship exception shall not apply.~~ ~~c. When a determination of abandonment is made, the county department shall notify the United States Department of Homeland Security.~~ ~~C. For OAP only, if approved for a hardship exception to the five-year bar, the county department shall process the application or redetermination to determine whether the qualified non-citizen meets the eligibility criteria for OAP. Requirements for the hardship exception shall be reassessed at each redetermination or when circumstances change.~~ ~~D. For OAP only, the county department shall pursue recovery of OAP grant payments from the sponsor(s).~~ ~~1. The qualified non-citizen shall be notified of the recovery requirement at the time of request for a hardship exception from the five year bar from benefits; and,~~ ~~2. If granted a hardship, the client shall be notified during the interview of each redetermination of the requirement to recover funds from the sponsor(s).~~		
3.520.69 SPONSORSHIP OF QUALIFIED NON-CITIZENS	Income and resources of the sponsor(s) are deemed to the OAP client	This section shall apply to qualified non-citizens who entered the country on or after August 22, 1996. D. Income and resources of the sponsor(s) shall be deemed to the client, as follows:	This section shall apply to qualified non-citizens who entered the country on or after August 22,1996.	Eliminates Income and resources of the sponsor(s) deeming to the OAP client	

		5. For OAP only, the hardship exceptions as described in Section 3.520.68.B-D, shall also be evaluated in relation to sponsor deeming. If it is determined that hardship has been established, sponsor deeming shall not be applied to the non-citizen. a. Upon determination that a non-citizen is granted a hardship exception, the county department will notify the sponsor of its determination and requirement of repayment of the full amount of the grant payments made to the non-citizen. This requirement may be waived by the county department in cases utilizing the hardship exceptions. Such waiver must be documented in the case record. b. If the sponsor fails to comply with the repayment terms established by the county department, the county department will pursue other remedies for repayment, which shall include but are not limited to: 1) Income assignments; 2) State income tax refund offset; 3) State lottery winnings offset; and, 4) Administrative lien and attachment	D. Income and resources of the sponsor(s) shall be deemed to the client, as follows: ~~5. For OAP only, the hardship exceptions as described in Section 3.520.68.B-D, shall also be evaluated in relation to sponsor deeming. If it is determined that hardship has been established, sponsor deeming shall not be applied to the non-citizen.~~ ~~a. Upon determination that a non-citizen is granted a hardship exception, the county department will notify the sponsor of its determination and requirement of repayment of the full amount of the grant payments made to the non-citizen. This requirement may be waived by the county department in cases utilizing the hardship exceptions. Such waiver must be documented in the case record.~~ ~~b. If the sponsor fails to comply with the repayment terms established by the county department, the county department will pursue other remedies for repayment, which shall include but are not limited to:~~ ~~1) Income assignments;~~ ~~2) State income tax refund offset;~~ ~~3) State lottery winnings offset; and,~~		

			~~4) Administrative lien and attachment.~~ ~~6~~ 5. Because the sponsor, not the non-citizen, is solely liable for repayment, the sponsor cannot use the sponsored non-citizen's grant payments to repay the payments.		
3.520.71 FINANCIAL ELIGIBILITY REQUIREMENTS	OAP clients are required to apply for SSI	FINANCIAL ELIGIBILITY REQUIREMENTS D. For OAP, the client shall apply for SSI, and shall timely schedule and complete any and all scheduled interviews with the SSA, and in the event of a denial by SSA, the OAP client shall continue to appeal all negative decisions from the SSA until a final resolution is reached and no further right to appeal exists. However, the requirement to continue to appeal all negative decisions may be excused if any of the following apply:	FINANCIAL ELIGIBILITY REQUIREMENTS D. For OAP, IF the client HAS OR IS ELIGIBLE TO OBTAIN A SSN, THEY shall apply for SSI, UNLESS THE CLIENT IS A NON-CITIZEN OR QUALIFIED NON-CITIZEN THAT DOES NOT QUALIFY TO RECEIVE A SSN. A CLIENT WITH A SSN ~~and~~ shall timely schedule and complete any and all scheduled interviews with the SSA, and in the event of a denial by SSA, the OAP client shall continue to appeal all negative decisions from the SSA until a final resolution is reached and no further right to appeal exists. However, the requirement to continue to appeal all negative decisions may be excused if any of the following apply:	Eliminate the requirement for OAP clients to apply for SSI	

STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC): The Food and Energy Assistance Division and Economic Security Sub-PAC.

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services: County Human Services Directors Association; Colorado Commission on Aging; Colorado Legal Services; Disability Law Colorado; Colorado Senior Lobby; PAC & Economic Security Sub-PAC; Colorado Gerontological Society; Area Agencies on Aging; Colorado Center on Law and Policy; Colorado Department of Human Services Food & Energy Assistance Division; and, Colorado Department of Health Care Policy and Financing.

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[ ] Yes [x] No

If yes, who was contacted and what was their input?

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[X] Yes [ ] No

Name of Sub-PAC	Economic Security Sub-PAC		
Date presented	12/08/2022		
What issues were raised?	Administration fiscal implications for counties		
Vote Count	*For - 15*	*Against -1*	*Abstain - 0*
	Absent - 1		
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[X] Yes [ ] No

Date presented	12/08/2022		
What issues were raised?	Administration fiscal implications for counties		
Vote Count	*For -14*	*Against - 1*	*Abstain - 0*
	Absent - 1		
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

A letter of support for the rule package was received from Colorado Center for Law and Policy (CCLP) was received on 12/08/22.

ADULT FINANCIAL PROGRAMS

9 CCR 2503-5

3.510 "NON-CITIZEN' MEANS ANY PERSON WHO IS NOT A "CITIZEN OF THE UNITED STATES".

****

3.520.5 INTERFACE VERIFICATIONS

Interfaces are acceptable verification sources for the Adult Financial programs. Appropriate interfaces for verification purposes are described below.

****

D. FOR AND ONLY ~~I~~The county department shall query the Systematic Alien Verification for Entitlements (SAVE) at initial application and at redetermination. Information obtained through SAVE is considered verified upon receipt. The purpose of the save query is to:

****

3.520.61 NON-FINANCIAL ELIGIBILITY REQUIREMENTS

To be eligible for Adult Financial programs, a client shall:

****

C. FOR AND ONLY, B~~B~~e a citizen of the United States or be a qualified non-citizen or legal immigrant as outlined in Sections 3.520.67; and,

D. FOR AND ONLY, H~~H~~ave a valid SSN, as outlined in Section 3.520.65; and,

****

3.520.65 SOCIAL SECURITY NUMBERS (SSN)

A. Each Adult Financial program client WHO HAS A SOCIAL SECURITY NUMBER (SSN) OR IS ELIGIBLE TO OBTAIN A SSN shall provide his or her SSN to the county department.

****

2. If a client is unable to provide their SSN, the client shall be required to apply for a SSN at the local Social Security office and provide the county department with verification of application for an SSN. THIS REQUIREMENT DOES NOT APPLY TO OAP CLIENTS WHO ARE NON-CITIZENS OR QUALIFIED NON-CITIZENS.

3. WHEN A CLIENT IS ELIGIBLE FOR A SSN, R~~R~~efusal or failure to apply for or provide their SSN shall result in denial for Adult Financial programs.

****

B. The county department shall verify the client's SSN with the SSA in accordance with procedures established by the State Department for the SVES

****

3. FOR CLIENTS ELIGIBLE TO RECEIVE A SSN, if the client is unable to provide his or her valid SSN, the application shall be denied or the case terminated following the policies outlined in Section 3.554.

****

3.520.66 IDENTITY

IN ORDER TO VERIFY CLIENTS IDENTITY, THE CLIENT SHALL PRODUCE AND PROVIDE TO THE COUNTY DEPARTMENT:

****

3.520.67 CITIZENSHIP, ~~AND~~ QUALIFIED NON-CITIZENS, AND NON-CITIZENS

****

A. The following are citizens of the United States and are eligible to apply for AND ~~Adult Financial programs~~:

****

B. The county department shall verify citizenship FOR AND when:

****

E. Qualified non-citizens who are considered legal immigrants by USCIS are eligible to apply for Adult Financial programs AND ALL NON-CITIZENS ARE ELIGIBLE TO APPLY FOR OAP.

****

F. Qualified non-citizens applying for ~~Adult Financial programs~~ AND shall present documentation from USCIS showing the client's non-citizen status. All documents shall be verified through SAVE (Systematic Alien Verification for Entitlements) to determine the validity of the document.

G. The following non-citizens and temporary residents shall not be eligible for AND~~Adult Financial programs~~:

****

3.520.68 FIVE YEAR BAR FROM ELIGIBILITY

A. Qualified non-citizens arriving in the U.S. on or after August 22, 1996, are ~~generally~~ barred from receiving ~~Adult Financial programs~~ AND for five years beginning on the qualified non-citizen's date of admission into the United States for legal permanent

residence, as verified through SAVE ~~unless they meet one of the exceptions consistent with the provisions of 8 USC § 1613(b) as in effect January 24, 2020~~.

~~B. For OAP only, a client that has a documented hardship, as follows, shall not be subject to a five-year bar from benefits:~~

~~1. Abuse or mistreatment by the sponsor(s). Suspension of five-year bar from benefits is permitted if there is credible evidence that the qualified non-citizen client has been physically abused, battered, or subjected to extreme cruelty by his or her sponsor(s) in the United States, and meets the following requirements:~~

~~a. The qualified non-citizen client subject to such physical abuse, battery, or extreme cruelty does not live in the same household with the individual responsible for the physical abuse, battery, or extreme cruelty; and,~~

~~b. There is a substantial connection between the physical abuse, battery, or extreme cruelty and the need for benefits; and,~~

~~c. There is documented credible evidence of physical abuse, battery, or extreme cruelty, including, but not limited to:~~

~~1) A copy of the protection order issued against the abuser or batterer of the qualified non-citizen client; or,~~

~~2) A copy of the verdict and the judgment or sentence against the abuser or batterer committing the act of violence against the qualified non-citizen client; or,~~

~~3) Reports or affidavits from police, judges, or other court officials; or,~~

~~4) Written statements from medical/health professionals treating the client; or,~~

~~5) Verification from the USCIS or the Executive Office for Immigration Review (EOIR) that a petition to qualify under this category has been approved.~~

~~2. Indigence: Suspension of the five-year bar from benefits is permitted if the qualified noncitizen's income and resources, and income and resources of the qualified non-citizen's sponsor(s) are inadequate. If the qualified non-citizen does not have a sponsor, then their own income and resources would be considered.~~

~~a. It is the responsibility of the qualified non-citizen to obtain all required information and documentation from the sponsor(s).~~

~~b. The county department shall determine if the total household income available exceeds 125% of the Federal poverty guidelines as defined in 3.510 for the household size.~~

~~1) For purposes of this section, the household includes the qualified noncitizen, the qualified non-citizen's spouse, the qualified non-citizen's dependent children, the sponsor(s), the spouse of the~~

sponsor(s), and the sponsor(s)' dependent children, i.e., the children the sponsor(s) claim on his or her income tax.

2) The county department shall total the countable income of the household by adding together income of the non-citizen, and that of his or her spouse, and the sponsor(s) and the sponsor(s) spouse(s).

3) If the total household income available exceeds the monthly amount of 125% of the Federal poverty guidelines, as defined in 3.510, for the household size, the indigence exception does not apply. If the total household income is less than 125% of the monthly Federal poverty guidelines as defined in 3.510 for the household size, then,

a) Determine the sponsor(s) countable resources. Resources are attributed to the sponsor in the same manner as the non-citizen, as outlined throughout 3.520.72.

b) All countable resources over the sponsor(s) resource limit, as outlined in Section 3.520.72, are then applied to the non-citizen.

c) This is added to the non-citizen's countable resources and compared to the non-citizen's resource limit, as outlined in Section 3.520.72.

d) If the non-citizen is under the resource limit, the indigence hardship exception applies.

c. The county department shall determine if the non-citizen is receiving free room and board from another source, such as a family member, friend, or a non-profit agency. If yes, the indigence exception does not apply

3. Abandonment by the sponsor(s): suspension of the five-year bar from benefits may be applicable when the qualified non-citizen is abandoned by his or her sponsor(s) and the qualified non-citizen's income and resources are so inadequate that the qualified noncitizen is unable to obtain food and shelter.

a. The county department shall contact the sponsor to confirm the non-citizen's allegations regarding amounts of income and resources the sponsor provides or makes available to the non-citizen. If the non-citizen does not know the sponsor's whereabouts, the county department shall obtain this information if available through SAVE.

b. If the county cannot locate the sponsor of the sponsored non-citizen, or no support is being provided, a signed allegation from the non-citizen (if the allegation is credible and does not conflict with other information in the file) shall be utilized to determine abandonment. If the allegations are not credible or conflict with other information in file, the county department shall weigh all information and use the prudent person principle to make a decision regarding the applicability of the abandonment hardship based

~~on all the information obtained. If support is being provided, the abandonment hardship exception shall not apply.~~

~~c. When a determination of abandonment is made, the county department shall notify the United States Department of Homeland Security.~~

~~C. For OAP only, if approved for a hardship exception to the five-year bar, the county department shall process the application or redetermination to determine whether the qualified non-citizen meets the eligibility criteria for OAP. Requirements for the hardship exception shall be reassessed at each redetermination or when circumstances change.~~

~~D. For OAP only, the county department shall pursue recovery of OAP grant payments from the sponsor(s).~~

~~1. The qualified non-citizen shall be notified of the recovery requirement at the time of request for a hardship exception from the five year bar from benefits; and,~~

~~2. If granted a hardship, the client shall be notified during the interview of each redetermination of the requirement to recover funds from the sponsor(s).~~

****

3.520.69 SPONSORSHIP OF QUALIFIED NON-CITIZENS

This section shall apply to qualified non-citizens who entered the country on or after August 22, 1996.

****

D. Income and resources of the sponsor(s) shall be deemed to the client, as follows:

****

~~5. For OAP only, the hardship exceptions as described in Section 3.520.68.B-D, shall also be evaluated in relation to sponsor deeming. If it is determined that hardship has been established, sponsor deeming shall not be applied to the non-citizen.~~

~~a. Upon determination that a non-citizen is granted a hardship exception, the county department will notify the sponsor of its determination and requirement of repayment of the full amount of the grant payments made to the non-citizen. This requirement may be waived by the county department in cases utilizing the hardship exceptions. Such waiver must be documented in the case record.~~

~~b. If the sponsor fails to comply with the repayment terms established by the county department, the county department will pursue other remedies for repayment, which shall include but are not limited to:~~

~~1) Income assignments;~~

~~2) State income tax refund offset;~~

~~3) State lottery winnings offset; and,~~

~~4) Administrative lien and attachment.~~

~~6~~5. Because the sponsor, not the non-citizen, is solely liable for repayment, the sponsor cannot use the sponsored non-citizen's grant payments to repay the payments.

****

3.520.71 FINANCIAL ELIGIBILITY REQUIREMENTS

****

D. For OAP, IF the client HAS OR IS ELIGIBLE TO OBTAIN A SSN THEY shall apply for SSI, UNLESS THE CLIENT IS A NON-CITIZEN OR QUALIFIED NON-CITIZEN THAT DOES NOT QUALIFY TO RECEIVE A SSN. A CLIENT WITH A SSN ~~and~~ shall timely schedule and complete any and all scheduled interviews with the SSA, and in the event of a denial by SSA, the OAP client shall continue to appeal all negative decisions from the SSA until a final resolution is reached and no further right to appeal exists. However, the requirement to continue to appeal all negative decisions may be excused if any of the following apply:

****

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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COLORADO JUDICIAL CENTER
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Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

Tracking number: 2022-00785

Opinion of the Attorney General rendered in connection with the rules adopted by the

Income Maintenance (Volume 3)

on 12/09/2022

9 CCR 2503-5

ADULT FINANCIAL PROGRAMS

The above-referenced rules were submitted to this office on 12/13/2022 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 23, 2022 09:49:51

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Human Services

Agency

Income Maintenance (Volume 3)

CCR number

9 CCR 2503-5

Rule title

9 CCR 2503-5 ADULT FINANCIAL PROGRAMS 1 - eff 01/01/2023

Effective date

01/01/2023

Expiration date

04/08/2023

9 CCR 2503-5

****

3.510 DEFINITIONS

****

“Federal Poverty Guidelines” also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register 87 FR 3315, as of January 12, 2022. This rule does not contain any later amendments or editions. These guidelines are available for no cost at https://www.federalregister.gov/. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

****

3.530 OLD AGE PENSION (OAP) PROGRAM

The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements.

A. The total monthly OAP grant standard, as set by the State Board of Human Services, is $952.00, effective January 1, 2023.

B. Effective January 1, 2023, the maximum monthly In-Kind Support and Maintenance ISM) deduction amount for shelter costs is $325.00.

****

3.546 AID TO THE NEEDY DISABLED-COLORADO SUPPLEMENT (AND-CS) PROGRAM

The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for clients age zero (0) to fifty-nine (59) who are receiving SSI due to a disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510.

A. The total AND-CS grant standard is $914.00, effective January 1, 2023.

****

D. Effective January 1, 2023, the maximum ISM amount for shelter costs is $325.00

****

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2023
CDHS Tracking #:	22-10-12-01
CCR #:	9 CCR 2503-5
Office, Division, & Program:	Office of Economic Support, Division of Economic and Workforce Support, Adult Financial — Phone: 303-905-7601
Rule Author:	Sara Peters — E-Mail: sara.peters@state.co.us

RULEMAKING PACKET

Type of Rule: *(complete a and b, below)*

a. [x] Board [ ] Executive Director

b. [ ] Regular [X] Emergency

This package is submitted to State Board Administration as: *(check all that apply)*

	AG Initial Review		x	Initial Board Reading			AG 2nd Review		Second Board Reading / Adoption

This package contains the following types of rules: *(check all that apply)*

Number	
3	Amended Rules
	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	December 2022

What date is being requested for this rule to be effective?	January 1, 2023
Is this date legislatively required?	No

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

Office Director Approval: _____ Date: _____

REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Comments:

Estimated Dates:	1st Board	December 9, 2022	2nd Board	January 6, 2023	Effective Date: January 1, 2023 (Emer) March 2, 2023 (Perm)

DOCUMENT 3

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2023		
CDHS Tracking #:	22-10-12-01		
CCR #:	9 CCR 2503-5		
Office, Division, & Program:	Office of Economic Support, Division of Economic and Workforce Support, Adult Financial	Phone:	303-905-7601
Rule Author:	Sara Peters	E-Mail:	sara.peters@state.co.us

Summary of the basis and purpose for new rule or rule change.
Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.

On October 13, 2022, the Social Security Administration (SSA) announced a 8.7% Cost of Living Adjustment (COLA) for all Social Security and Supplemental Security Income (SSI) recipients effective January 1, 2023. Colorado has a Maintenance of Effort (MOE) requirement with the SSA that requires the State to "pass through" the COLA increase to recipients in order to spend at least the same amount on these Adult Financial benefits in the current year as in the year prior. This means an increase is required in the Adult Financial grant payments for those receiving Old Age Pension (OAP) and Aid to the Needy Disabled - Colorado Supplement (AND-CS) assistance.

These rules react to the increase to the SSI maximum payment by seventy three dollars ($73) ($841 x 8.7% = $73.16; (SSAround down to the whole dollar $73.00). This rule will increase the AND-CS grant standard to ($841 + $73 = $914) $914 per month, and the OAP grant standard to ($879 +73 = $952) $952 per month.

The SSA COLA also changes the maximum In-Kind Support and Maintenance (ISM) applied to some Adult Financial clients to align with the federal increase to that maximum unearned income type.

The Federal Poverty Guidelines also known as the Federal Poverty Level (FPL) changes yearly. The FPL is mentioned in the Adult Financial rule and must be updated when these changes are made; the most current version will be added with this rule package.

1500 Char max

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

x	to comply with state/federal law and/or
x	to preserve public health, safety and welfare

Justification for emergency:

20 CFR 416 et seq. requires a Maintenance of Effort (MOE) between the State of Colorado and the Social Security Administration (SSA). This MOE requires that Colorado spend at least the same amount in the current year as they did in the previous year for specific categories of assistance, which includes OAP and AND-CS recipients who receive SSI. Failure to pass along the COLA could impact the MOE agreement with the SSA. Failure to comply with the terms of the MOE could jeopardize Medicaid Federal Financial Participation (FFP) funds as the SSA could impose a sanction of no less than one full quarter FFP match (approximately $300-350 million) for every month Colorado does not meet the MOE requirement.

DOCUMENT 3

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2023		
CDHS Tracking #:	22-10-12-01		
CCR #:	9 CCR 2503-5		
Office, Division, & Program:	Office of Economic Support, Division of Economic and Workforce Support, Adult Financial	Phone:	303-905-7601
Rule Author:	Sara Peters	E-Mail:	sara.peters@state.co.us

State Board Authority for Rule:

Code	Description
26-1-107, C.R.S. (2022)	State Board to promulgate rules
26-1-109, C.R.S. (2022)	State department rules to coordinate with federal programs
26-1-111, C.R.S. (2022)	State department to promulgate rules for public assistance and welfare activities.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
24-4-103, C.R.S. (2022)	Provides for emergency adoption of rules
26-2-111, C.R.S. (2022)	Describes eligibility for Old Age Pension and Aid to the Needy Disabled
26-2-114, C.R.S. (2022)	Provides state board authority to adjust the minimum award of Old Age Pension if living costs have changed sufficiently to justify such adjustment
Colorado Constitution, Article XXIV, Section 6	Provides the state board of public welfare, or such other agency as may be authorized by law power to adjust the basic minimum award for Old Age Pensions if living costs have changed sufficiently to justify that action

Does the rule incorporate material by reference?		Yes		x	No
Does this rule repeat language found in statute?		Yes		x	No
If yes, please explain.						

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2023		
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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

This rule change will impact all OAP and AND-CS recipients. OAP and AND-CS recipients will receive a maximum of seventy three dollar ($73) increase to their monthly grant payment. OAP recipients maximum monthly grant payment will increase to $952 ($879 + $73 = $952). AND-CS recipients maximum monthly grant amount will increase to $914 ($841 + $73 = $914).

This rule change will also impact OAP and AND-CS recipients that have an In-kind Support Maintenance (ISM) calculation because they are not paying their fair share of shelter and utility costs. The ISM is applied as in-kind income in the calculation of benefits. The new maximum ISM amount is $325 ($914 x 33.33% = $304.63 + $20 = $324.63).

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

The rule will result in an increase of $73 to the OAP Grant Standard $952 ($879 + $73 = $952) and will impact all OAP recipients, approximately 15,462 individuals. The rule will result in an increase of $73 to the AND-CS Grant Standard to $914 ($841 + $73= $914) and will impact all AND-CS recipients, approximately 354 individuals.

This increase will provide these clients with increased means to meet their basic living needs. This change may impact the food assistance benefits received by these clients. As an approximation, for every three dollars ($3) additional cash assistance received, clients may experience a decrease of their Supplemental Nutrition Assistance Program (SNAP) benefits by one dollar ($1). If an individual receives the full increase of seventy four dollars ($74), their SNAP benefits may decrease by twenty five dollars ($25).

Long-term, increasing the grant standard will assist the State in meeting the SSA MOE. If the State fails to meet the provisions of the MOE, Medicaid Federal Financial Participation (FFP) funds will be placed in jeopardy.

The ISM adjustment only impacts those individuals who are not currently paying their fair share of shelter costs. Approximately 2% of the combined OAP and AND-CS caseload has any type of in-kind income, and not all of those will have the ISM deduction. In simplified terms, we will assume that the client has no income or resources and, up to this point, would qualify for the full OAP or AND-CS grant. However, the county then looks to see if the client is paying their fair share for shelter, which includes utilities. The total shelter cost is then divided by the number of people living in the home to determine each person's fair share for shelter costs. If the client is not paying a fair share, the ISM deduction may apply. The amount the client is charged as income for unpaid shelter costs is never more than the ISM amount set in rule.

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2023		
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Rule Author:	Sara Peters	E-Mail:	sara.peters@state.co.us

3. Fiscal Impact

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. ***Answer should NEVER be just "no impact" answer should include "no impact because…."***

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

The cost to the State for the increase for non-SSI OAP recipients (approximately 5,950) will be a maximum of $73 per client per month. This cost will be paid using 100% OAP cash funds. The increase results in total expenditures by the State to non-SSI OAP clients of an estimated $5,212,200 for 2023.

The cost to the State for the increase to OAP clients that are also receiving SSI (approximately 9,513) is estimated to increase the expenditures to $8,333,388 for 2023.

The total estimated increased expenditures to the State through the OAP cash fund for SSI and non-SSI OAP recipients is estimated at $13,545,588 for 2023.

The cost to the State for the increase for AND-CS recipients (approximately 354) will be a maximum of $73 per client per month. The increase results in total expenditures by the State to AND-CS clients of an estimated $310,104 for 2023.

The cost to the State will not increase as a result of changing the ISM calculation. The maximum ISM amount is tied directly to the SSI grant.

County Fiscal Impact

OAP will require no additional appropriation as it is included within existing appropriations for this grant increase.The Aid to the Needy Disabled program has a county contribution of 20%.The $73 grant increase means that counties will contribute a maximum additional $14.80 per month per client.The anticipated county contribution is much lower since all clients on AND-CS receive at least a portion of their income in SSI.The AND-CS grant is reduced based on the SSI amount.

Federal Fiscal Impact

No impact because there are no federal funds utilized.

Other Fiscal Impact *(such as providers, local governments, etc.)*

No impact because there are no other providers or local governments involved.

Title of Proposed Rule:	Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2023		
CDHS Tracking #:	22-10-12-01		
CCR #:	9 CCR 2503-5		
Office, Division, & Program:	Office of Economic Support, Division of Economic and Workforce Support, Adult Financial	Phone:	303-905-7601
Rule Author:	Sara Peters	E-Mail:	sara.peters@state.co.us

4. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

The SSA issued a press release on October 13th, 2022, announcing the 8.7% cost of living adjustment (COLA). This information can be found at https://www.ssa.gov/news/press/releases/2022/#10-2022-2

5. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. **Answer should NEVER be just "no alternative" answer should include "no alternative because…"**

Taking no action could adversely impact the health, safety, and welfare of OAP and AND-CS recipients. This could also potentially cause the State to be unable to meet the MOE requirements with the Social Security Administration. Because of the penalties associated with not meeting the MOE, there are no other viable options.

Title of Proposed Rule: Old Age Pension and Aid to the Needy Disabled Colorado Supplement Cost of Living Adjustment (COLA) Increase for 2023

CDHS Tracking #: 22-10-12-01

CCR #: 9 CCR 2503-5

Office, Division, & Program: Office of Economic Support, Division of Economic and Workforce Support, Adult Financial

Phone: 303-905-7601

Rule Author: Sara Peters

E-Mail: sara.peters@state.co.us

OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	*Incorrect Statutory Reference*	*Section 26.5.103 C.R.S.*	*Section 26.5-101(3) C.R.S.*		
3.530 OLD AGE PENSION (OAP) PROGRAM	Update amounts of components to reflect the increased grant standard and ISM amount effective January 1, 2023	The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements. A. The total monthly OAP grant standard, as set by the State Board of Human Services, is $879.00 effective January 1, 2022. B. Effective January 1, 2022, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter costs is $300.00	The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements. A. The total monthly OAP grant standard, as set by the State Board of Human Services, is ~~$879.00~~952.00, effective January 1, 202~~2~~3. B. Effective January 1, 202~~2~~3, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter costs is ~~$300.00~~325.00	To implement the $73 COLA increase and adjust the ISM amount.	
3.546 AID TO THE NEEDY DISABLED - COLORADO SUPPLEM	Update amounts of components to reflect the increased grant standard and ISM amount effective January 1, 2023	The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for	The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for client's age zero (0) to fifty-nine (59) who are receiving SSI due to a	To implement the $73 COLA increase and adjust the ISM amount.	

ENT (AND-CS) PROGRAM		client's age zero (0) to fifty-nine (59) who are receiving SSI due to a disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510. A. The total AND-CS grant standard is $841 effective January 1, 2022. B. The grant standard for AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations. C. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the Federal MOE requirements, as incorporated by reference in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not	disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510. A. The total AND-CS grant standard is ~~$841.00~~914.00, effective January 1, 202~~2~~3. B. The grant standard for AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations. C. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the Federal MOE requirements, as incorporated by reference in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments. D. Effective January 1, 202~~2~~3, the maximum ISM amount for shelter costs is ~~$300.00~~325.00.		

		be allowed for MOE payment adjustments. D. Effective January 1, 2022, the maximum ISM amount for shelter costs is $300.00.			
3.510 DEFINITIONS	To update the date of the most current FPL adjustment.	"Federal Poverty Guidelines" also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register 86 FR 7732, as of January 13, 2021. This rule does not contain any later amendments or editions. These guidelines are available for no cost at https://www.federalregister.gov/. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.	"Federal Poverty Guidelines" also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register ~~86 FR 7732~~, 87 FR 3315 as of ~~January 13, 2021~~ January 12, 2022. This rule does not contain any later amendments or editions. These guidelines are available for no cost at https://www.federalregister.gov/. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.	To update the date of the most current FPL adjustment.	

STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

None

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

County Human Services Directors Association; Colorado Commission on Aging; Colorado Legal Services; Disability Law Colorado; Colorado Senior Lobby; Single Entry Point agencies; PAC & Economic Security Sub-PAC; Colorado Gerontological Society; Area Agencies on Aging; Colorado Center on Law and Policy; Colorado Department of Human Services Food & Energy Assistance Division; and, Colorado Department of Health Care Policy and Financing.

Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

[ ] Yes [x] No

If yes, who was contacted and what was their input?

Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

[ ] Yes [x] No

Name of Sub-PAC	Economic Security		
Date presented	November 2022		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

PAC

Have these rules been approved by PAC?

[ ] Yes [x] No

Date presented	December 2022		
What issues were raised?			
Vote Count	*For*	*Against*	*Abstain*
If not presented, explain why.			

Other Comments

Comments were received from stakeholders on the proposed rules:

[X] Yes [ ] No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

9 CCR 2503-5

****

3.510 DEFINITIONS

"Federal Poverty Guidelines" also called Federal Poverty Level (FPL) means the income level for a household as set forth in the Federal Register ~~86 FR 7732~~, 87 FR 3315 as of ~~January 13, 2021~~ January 12, 2022. This rule does not contain any later amendments or editions. These guidelines are available for no cost at https://www.federalregister.gov/. These guidelines are also available for public inspection and copying at the Colorado Department of Human Services, Director of the Employment and Benefits Division, 1575 Sherman Street, Denver, Colorado, 80203, or at any State publications library during regular business hours.

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3.530 OLD AGE PENSION (OAP) PROGRAM

The Old Age Pension (OAP) program provides financial assistance and may provide health care benefits for low-income Colorado residents who are sixty (60) years of age or older who meet all financial and non-financial eligibility requirements.
A. The total monthly OAP grant standard, as set by the State Board of Human Services, is ~~$879.00~~ $952.00, effective January 1, 202~~2~~3.
B. Effective January 1, 202~~2~~3, the maximum monthly In-Kind Support and Maintenance (ISM) deduction amount for shelter costs is ~~$300.00~~ $325.00.

****

3.546 AID TO THE NEEDY DISABLED-COLORADO SUPPLEMENT (AND-CS) PROGRAM
The Aid to the Needy Disabled-Colorado Supplement (AND-CS) program provides a supplemental payment for clients age zero (0) to fifty-nine (59) who are receiving SSI due to a disability or blindness, but are not receiving the full SSI benefit standard, as defined in Section 3.510.
A. The total AND-CS grant standard is ~~$841.00~~914.00, effective January 1, 202~~2~~3.
B. The grant standard for AND-CS shall be adjusted as needed to remain within available appropriations. Appeals shall not be allowed for grant standard adjustments necessary to stay within available appropriations.
C. In addition to the regular monthly AND-CS grant payments, supplemental payments necessary to comply with the Federal MOE requirements, as incorporated by reference in Section 3.531.D, may be provided. These payments are supplements to regular grant payments, are not entitlements, and do not affect grant standards. Appeals shall not be allowed for MOE payment adjustments.
D. Effective January 1, 202~~2~~3, the maximum ISM amount for shelter costs is ~~$300.00~~$325.00

****

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DOCUMENT 3

PHILIP J. WEISER
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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: 2022-00786

Opinion of the Attorney General rendered in connection with the rules adopted by the

Income Maintenance (Volume 3)

on 12/09/2022

9 CCR 2503-5

ADULT FINANCIAL PROGRAMS

The above-referenced rules were submitted to this office on 12/13/2022 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 23, 2022 09:44:51

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Emergency Rules Adopted

Department

Department of Health Care Policy and Financing

Agency

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

CCR number

10 CCR 2505-10

Rule title

10 CCR 2505-10 MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY 1 - eff 12/09/2022

Effective date

12/09/2022

Expiration date

04/08/2023

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning the Rural Provider Access and Affordability Stimulus Grant Program, Section 8.8000
Rule Number: MSB 22-11-08-A
Division / Contact / Phone:Special Financing / Nancy Dolson / 303-866-3698

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 22-11-08-A, Revision to the Medical Assistance Rule Concerning the Rural Provider Access and Affordability Stimulus Grant Program, Section 8.8000.

3. This action is an adoption of: new rules

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) OP Pages, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 12/9/2022
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Insert the newly proposed text at 8.8000. This rule is effective December 9, 2022.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning the Rural Provider Access and Affordability Stimulus Grant Program, Section 8.8000
Rule Number: MSB 22-11-08-A
Division / Contact / Phone: Special Financing / Nancy Dolson / 303-866-3698

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   Create rules to administer the Rural Provider Access and Affordability Stimulus Grant Program established through the enactment of Senate Bill 22-200 including a methodology to determine which rural providers are qualified for grant funds, permissible uses of grant money, and reporting requirements for grant recipients.

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

   The enabling legislation, Senate Bill 22-200, requires that the Medical Services Board promulgate rules for the administration of the Rural Provider Access and Affordability Stimulus Grant Program on or before December 31, 2022. The legislation also created the Rural Provider Access and Affordability Advisory Committee to begin meeting in September 2022 and charged the committee with making formal recommendations to the Department on the administration of the grant program including the proposed rule. The timeline for the advisory committee's work necessitates emergency rule-making to meet the December 2022 rule deadline established by the legislation in law at Section 25.5-1-207 (5), C.R.S.

3. Federal authority for the Rule, if any:

   American Rescue Plan Act of 2021 (ARPA), Public Law 117-2

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2022);
   Section 25.5-1-207 (5), C.R.S. (2022)

Initial Review — Final Adoption
Proposed Effective Date **12/09/22** — Emergency Adoption
12/09/22

DOCUMENT #03

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning the Rural Provider Access and Affordability Stimulus Grant Program, Section 8.8000
Rule Number: MSB 22-11-08-A
Division / Contact / Phone:Special Financing / Nancy Dolson / 303-866-3698

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Colorado hospitals in rural communities and their associated clinics will benefit from the proposed rule by helping these providers modernize their information technology systems which tend to lag behind their urban and suburban counterparts. Residents of rural Colorado will benefit as the program will support reducing health care costs in communities, add jobs, stimulate the economy, improve access to care, and mitigate rural health disparities.

   The funding for the Rural Provider Access and Affordability Stimulus Grant Program comes from federal funds with no cost to the state or local communities.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The Rural Provider Access and Affordability Stimulus Grant Program will drive financial sustainability for hospitals and clinics in rural areas of Colorado by investing $9.6 million in health care affordability and health care access related projects:

   - $4.8 million in health care affordability projects, such as shared analytics platforms, telehealth supports, and enabling shared care management between rural providers

   - $4.8 million in health care access projects, such as extending hours for primary and behavioral health care, telemedicine including remote monitoring supports, new or expanded access sites including surgery, chemotherapy, and advanced imaging

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The General Assembly appropriated $400,000 to the Department to administer the Rural Provider Access and Affordability Stimulus Grant Program when it enacted Senate Bill 22-200. These funds are sufficient to administer the program and no costs to other agencies are expected. The funds for the Rural Provider Access and Affordability Stimulus Grant Program are federal funds from the American Rescue Plan Act of 2021 (ARPA) and there is no impact on state revenues.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   Adopting the proposed rules to administer the Rural Provider Access and Affordability Stimulus Grant Program will allow the Department to grant $9.6 million of federal funds to rural providers as directed by the General Assembly to improve health care affordability and access and stimulate the economies in rural Colorado.

   Because the legislation directs the Medical Services Board to promulgate rules so the Department can administer the grant program, there are no benefits to inaction.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   Because the legislation directs the Medical Services Board to promulgate rules so the Department can administer the grant program, there are no less costly or intrusive methods for achieving the purpose of the proposed rule.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   Because the legislation directs the Medical Services Board to promulgate rules so the Department can administer the grant program, there are no alternatives to rule making than the proposed rule. The proposed rule includes those elements necessary to administer the grant program and were developed and supported by the Rural Provider Access and Affordability Advisory Committee established by the legislation.

8.8000 Rural Provider Access and Affordability Stimulus Grant Program

8.8001 PURPOSE AND LEGAL BASIS

Pursuant to C.R.S. § 25.5-1-207, the Rural Provider Access and Affordability Stimulus Grant Program provides grants to qualified providers to improve health care affordability and access to health care services in rural communities and to drive financial sustainability for rural hospitals and clinics.

8.8002 DEFINITIONS

A. Advisory Committee means the rural provider access and affordability advisory committee as defined in section 25.5-1-207 (3), C.R.S.

B. Department means the Colorado Department of Health Care Policy and Financing.

C. Health Care Access Project means a project that expands access to health care in Rural Communities including but not limited to:

1. Extending hours for access to primary care or behavioral health services,

2. Investing in dual track emergency department management,

3. Expanding access to Telemedicine including remote monitoring support,

4. Providing new or replacement Hospital beds,

5. Expanding access to long term care and recovery care in skilled nursing facilities, and

6. Creating or expanding sites that provide surgical care, chemotherapy, imaging, and advanced imagining including computerized tomography scans.

D. Health Care Affordability Project means a project that modernizes the information technology infrastructure of Qualified Rural Providers including but not limited to:

1. Creating a shared analytics platform and care coordination platforms among Qualified Rural Providers, and

2. Enabling technologies, including telehealth and e-consult systems, that allow Qualified Rural Providers to communicate, share clinical information, and consult electronically to manage patient care.

E. Hospital means a hospital licensed or certified pursuant to section 25-1.5-103 (1)(a), C.R.S. or an affiliate owned or controlled as defined in section 25.5-4-402.8 (1)(b), C.R.S., by the hospital.

F. Qualified Rural Provider means a Hospital located in a Rural Community in Colorado that has a lower net patient revenue or fund balance compared with other Rural Hospitals.

G. Rural Community means a county with a population of fewer than fifty thousand residents; or a municipality with a population of fewer than twenty-five thousand residents if the municipality is not contiguous to a municipality with a population of twenty-five thousand or more residents.

H. Rural Stimulus Grant means funding received from the rural provider access and affordability grant program established in section 25.5.1-207, C.R.S.

I. Telemedicine means the delivery of medical services as defined at section 12-240-104 (6), C.R.S.

8.8003 GRANT AWARD PROCEDURES

A. Rural Stimulus Grants will be awarded through an application process.

1. A request for grant application form shall be issued by the Department and posted for public access on the Department's website at https://hcpf.colorado.gov/research-data at least 30 days prior to the application due date.

2. A Qualified Rural Provider may submit applications for more than one project or may submit a joint application with another Qualified Rural Provider.

3. The application will include:

a. Project overview.

b. Proposed budget including:

i. Total funds requested not to exceed $650,000 per project per applicant,

ii. Itemized direct expenses,

iii. Indirect expenses limited to federal Negotiated Indirect Costs Rate Agreement (NICRA) or de minimis rate of 10 percent if the applicant does not have an NICRA,

iv. If applicable, documentation of quotes or estimates for construction, equipment, or other expenditures, and

v. If applicable other sources of funding that will be utilized to complete the proposed project.

c. Project timeline to commence no earlier than July 1, 2023 and to conclude no later than December 31, 2026.

d. Description of Qualified Rural Provider's diversity, equity, and inclusion strategy and how diverse community needs are met by the project.

e. Demonstration of financial need.

i. Qualified Rural Providers in the bottom 40% of net patient revenues for the three-year average of 2016, 2017, and 2018 or the bottom 6% fund balance for 2019 as determined by the Department's review of CMS 2552-10 Medicare Cost Reports are considered to meet the financial health requirement.

ii. Other Qualified Rural Providers may submit additional financial supporting information to support their financial need.

f. For capital investment projects, facility or equipment age.

g. Impact to health care affordability or access to care.

i. Statement of need outlying underlying problem the funding will address.

ii. Description of how the project's goals and objectives will be sustained after the Rural Stimulus Grant funds have been expended.

iii. Description of how the project will increase access to specialty care, if applicable.

iv. Description of how project will improve care coordination, if applicable.

v. Description of partner engagement, if applicable.

B. The Advisory Committee will review Rural Stimulus Grant applications and recommend Rural Stimulus Grant awards to the Department's executive director based on the following criteria:

1. Budget and financial need.

2. Partner collaboration, support, or engagement.

3. Completeness of response.

4. Ability to execute and complete project.

5. Reasonableness of timeline.

6. Diversity, equity and inclusion and how diverse communities will be impacted by the project.

7. County Medicare and Medicaid caseload percentage of population.

8. Statement of need.

9. Sustainability of project.

10. Impact to health care affordability or access to care.

C. The Department's executive director or his or her designee shall make the final Rural Stimulus Grant awards to Qualified Rural Providers.

1. The total funding for Rural Stimulus Grants is limited to no more than $9.6 million with no more than $4.8 million for Health Care Access Projects and no more than $4.8 million for Health Care Affordability Projects.

2. The Department may change Rural Stimulus Grant amounts depending on the final number of Rural Stimulus Grants awarded, the availability of Rural Stimulus Grant funds, or the goals stated in the Rural Stimulus Grant application.

3. Rural Stimulus Grant applicants may request reconsideration of Rural Stimulus Grant awards within 5 business days of award notification in writing to the Department's executive director. The executive director will respond to the request for reconsideration within 10 business days of receipt.

4. The Department will execute a grant agreement with each Rural Stimulus Grant recipient.

D. The Department will disburse Rural Stimulus Grant funds no earlier than July 1, 2023 and no later than July 1, 2024. Any money not disbursed by July 1, 2024 will revert to the Economic Recovery and Relief Cash Fund created pursuant section 24-75-228 (2)(a), C.R.S.

E. Rural Stimulus Grant recipients will expend Rural Stimulus Grant funds by the timeline in their grant agreement and no later than December 31, 2026. Any Rural Stimulus Grant funds not expended by Rural Stimulus Grant recipients by December 31, 2026 will be recovered by the Department to be returned to the U.S. Department of the Treasury.

8.8004 PERMISSIBLE USES OF GRANT AWARDS

A. Rural Stimulus Grant funds must be used for Health Care Affordability Projects or Health Care Access Projects to improve health care affordability and access in Rural Communities.

B. Rural Stimulus Grant funds may not be deposited into a pension fund and may not be used to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund.

8.8005 REPORTING REQUIREMENTS FOR GRANT RECIPIENTS

A. Recipients of Rural Stimulus Grant funds for capital expenditures must submit a written justification as set forth in 31 Code of Federal Regulations 35.6 (b)(4) to the Department.

B. For the duration of the grant agreement, Rural Stimulus Grant recipients must submit a quarterly report to the Department no later than the 10th day of the month following the end of each quarter including but not limited to a brief narrative and itemized expenditure and performance metric data.

C. Rural Stimulus Grant recipients will submit a final report to the Department within 30 calendar days following the end of the grant agreement including an overall narrative and itemization of all expenditures and performance metric data for the total Rural Stimulus Grant award.

8.8006 RECORD RETENTION AND ACCESS

A. Rural Stimulus Grant recipients must maintain records of expenditures for a minimum of five years after funds have been expended or returned to the Department, whichever is later.

B. Rural Stimulus Grant recipients must allow the Department and state and federal auditors access to records related to the expenditure of Rural Stimulus Grant funds.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Medicare-Only Provider Types, Section 8.125 & 8.126.

Rule Number: MSB 22-10-26-A

Division / Contact / Phone: Operations Section / Alex Lyons / 303-866-2865

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 22-10-26-A, Rule Concerning Medicare-Only Provider Types

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected): 8.125, 8.126

   Pages 142-145, pg. 152, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? yes
   If yes, state effective date: 1/1/2023
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.125 with the proposed text beginning at 8.125 through the end of 8.125.15.F. Replace the current text at 8.126 with the proposed text beginning at 8.126 through the end of 8.126.7.A. This rule is effective January 1, 2023.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Medicare-Only Provider Types, Section 8.125 & 8.126.

Rule Number: MSB 22-10-26-A

Division / Contact / Phone: Operations Section / Alex Lyons / 303-866-2865

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   This rule clarifies that Medicare-Only Providers means a provider enrolled in the Medical Assistance Program for purposes of Medicare cost-sharing only, pursuant to 42 CFR §455.410(d).

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain: An emergency rulemaking is necessary to comply with federal law, pursuant to 42 CFR §455.410(d).

3. Federal authority for the Rule, if any:

   42 CFR Parts 412, 413, 425, 455, and 495.

4. State Authority for the Rule:

Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2022)

Initial Review
Proposed Effective Date **01/01/23**
12/09/22

Final Adoption
Emergency Adoption

DOCUMENT #04

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Rule Concerning Medicare-Only Provider Types, Section 8.125 & 8.126.

Rule Number: MSB 22-10-26-A

Division / Contact / Phone: Operations Section / Alex Lyons / 303-866-2865

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   This rule does not create any new benefit or cost. Its purpose is to clarify that “Medicare-Only Providers” means a provider enrolled in the Medical Assistance Program for purposes of Medicare cost-sharing only, pursuant to 42 CFR §455.410(d).

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   There will be minimal quantitative or qualitative impact upon affected classes of persons because this proposed rule merely clarifies existing provider regulations and does not create or eliminate any benefit or tangible cost.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The costs of both implementation and enforcement of the proposed rule are likely to be negligible.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The probable cost of the proposed rule would be the costs associated with updating our regulatory language and making affected parties aware of the change. The benefit of taking action would be complying with federal law, and the cost of inaction would be violating federal law, potentially exposing the Department to legal liability.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There is likely no less-costly way to change the Department's rules to align with federal regulatory requirements other than to adopt the language that specifies the regulatory clarification required by federal statute.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   No alternatives were seriously considered because this rule implements federal law in the manner prescribed by 42 CFR §455.410(d) and to do otherwise would risk legal exposure for the Department.

8.125 PROVIDER SCREENING

8.125.1 DEFINITIONS.

Managed Care Entity is defined at 42 CFR § 455.101.

Ownership interest is defined at 42 CFR § 455.101.

Person with an ownership or control interest is defined at 42 CFR § 455.101.

Enrollment is defined as the process by which an individual or entity not currently enrolled as a Colorado Medicaid provider submits a provider application, undergoes any applicable screening, pays an application fee, as appropriate for the provider type, and is approved by the Department for participation in the Medicaid program. Entities that have never previously enrolled as Medicaid providers or whose enrollment was previously terminated and are not currently enrolled are required to enroll. The date of enrollment shall be considered the date that is communicated to the provider in communication from the Department or its fiscal agent verifying the provider's enrollment in Medicaid.

Revalidation is defined as the process by which an individual or entity actively enrolled as a Colorado Medicaid provider resubmits a provider application, undergoes a state-defined screening process, pays an application fee, as appropriate for the provider type, and is approved by the Department to continue participation in the Medicaid program.

Disclosing Entity and Other Disclosing Entity are defined at 42 CFR § 455.101.

8.125.2 PROVIDERS DESIGNATED AS LIMITED CATEGORICAL RISK AND NEW PROVIDER TYPES

8.125.2.A. Except as provided for in Section 8.125.2.B, provider types not designated as moderate or high categorical risk at Sections 8.125.3 or 8.125.4 shall be considered limited risk.

8.125.2.B. The risk category for each provider type designated by CMS shall be the risk category for purposes of this rule regardless of whether a provider type may be listed in Sections 8.125.3 or 8.125.4.

8.125.3 PROVIDERS DESIGNATED AS MODERATE CATEGORICAL RISK

8.125.3.A. Emergency Transportation including ambulance service suppliers

8.125.3.B. Non-Emergency Medical Transportation

8.125.3.C. Community Mental Health Center

8.125.3.D. Hospice

8.125.3.E. Independent Laboratory

8.125.3.F. Comprehensive Outpatient Rehabilitation Facility

8.125.3.G. Physical Therapists, both individuals and group practices

8.125.3.H X-Ray Facilities

8.125.3.I. Revalidating Home Health agencies

8.125.3.J. Revalidating Durable Medical equipment suppliers, including revalidating pharmacies that supply Durable Medical Equipment

8.125.3.K. Revalidating Personal Care Agencies under the state plan

8.125.3.L. Providers of the following services for HCBS waiver members:

1. Alternative Care Facility
2. Adult Day Services
3. Assistive Technology, if the provider is revalidating
4. Behavioral Programing
5. Behavioral Therapies
6. Behavioral Health Supports
7. Behavioral Services
8. Care Giver Education
9. Children's Case Management
10. Children's Habilitation Residential Program (CHRP)
11. Community Connector
12. Community Mental Health Services
13. Community Transition Services
14. Complementary and Integrative Health
15. Day Habilitation
16. Day Treatment
17. Expressive Therapy
18. Home Delivered Meals
19. Home Modifications/Adaptations/Accessibility
20. Independent Living Skills Training
21. In-Home Support Services, if the provider is revalidating
22. Intensive Case Management
23. Massage Therapy
24. Mentorship

25. Non-Medical Transportation

26. Palliative/Supportive Care Skilled

27. Peer Mentorship

28. Personal Care/Homemaker Services, if the provider is revalidating

29. Personal Emergency Response System/Medication Reminder/Electronic Monitoring

30. Prevocational Services

31. Professional Services

32. Residential Habilitation Services

33. Respite

34. Specialized Day Rehabilitation Services

35. Specialized Medical Equipment and Supplies, if the provider is revalidating

36. Substance Abuse Counseling

37. Supported Employment

38. Supported Living Program

39. Therapy and Counseling

40. Transitional Living Program

41. Youth Day Services

8.125.3.M. Medicare Only Providers

1. Independent Diagnostic Testing Facility

2. Revalidating Medicare Diabetes Prevention Program Supplier

3. Newly enrolling Opioid Treatment Program that has been fully and continuously certified by SAMHSA since October 24, 2018.

4. Revalidating Opioid Treatment Program

8.125.4 PROVIDERS DESIGNATED AS HIGH CATEGORICAL RISK

8.125.4.A. Enrolling DME Suppliers

8.125.4.B. Enrolling Home Health Agencies

8.125.4.C. Enrolling Personal Care Agencies providing services under the state plan

8.125.4.D. Enrolling providers of the following services for HCBS waiver members:

1. Assistive Technology

2. Personal Care/Homemaker Services

3 Specialized Medical Equipment and Supplies

4 In-Home Support Services

8.125.4.E. Medicare Only Providers

1. Enrolling Medicare Diabetes Prevention Program Supplier

2. Enrolling Opioid Treatment Program that has not been fully and continuously certified by SAMHSA since October 24, 2018.

8.125.4.F. Enrolling and revalidating providers for which the Department has suspended payments during an investigation of a credible allegation of fraud, for the duration of the suspension of payments.

8.125.4.G. Enrolling and revalidating providers which have a delinquent debt owed to the State arising out of Medicare, Colorado Medical Assistance or other programs administered by the Department, not including providers which are current under a settlement or repayment agreement with the State.

8.125.4.H. Providers that were excluded by the HHS Office of Inspector General or had their provider agreement terminated for cause by the Department, its contractors or agents or another State's Medicaid program at any time within the previous 10 years.

8.125.4 .I. Providers applying for enrollment within six (6) months from the time that the Department or CMS lifts a temporary enrollment moratorium on the provider's enrollment type.

8.125.5 PROVIDERS WITH MULTIPLE RISK LEVELS

8.125.5.A Providers shall be screened at the highest applicable risk level for which a provider meets the criteria. Providers shall only pay one application fee per location.

8.125.6 PROVIDERS WITH MULTIPLE LOCATIONS

8.125.6.A. Providers must enroll separately each location from which they provide services. Only claims for services provided at locations that are enrolled are eligible for reimbursement.

8.125.6.B. Each provider site will be screened separately and must pay a separate application fee. Providers shall only pay one application fee per location.

8.125.7 ENROLLMENT AND SCREENING OF PROVIDERS

8.125.7.A. All enrolling and revalidating providers must be screened in accordance with requirements appropriate to their categorical risk level.

8.125.7.B. Notwithstanding any other provision of the Colorado Code of Regulations, providers who provide services to Medicaid members as part of a managed care entity's provider network who would have to enroll in order to participate in fee-for-service Medicaid must enroll with the Department and be screened as Medicaid providers.

8.125.7.C. Nothing in Section 8.125.7.B shall require a provider who provides services to Medicaid members as part of a managed care entity's provider network to participate in fee-for-service Medicaid.

8.125.7.D. All physicians or other professionals who order, prescribe, or refer services or items for Medicaid members, whether as part of fee-for-service Medicaid or as part of a managed care entity's provider network under either the state plan, the Children's Health Insurance Program, or a waiver, must be enrolled in order for claims submitted for those ordered, referred, or prescribed services or items to be reimbursed or accepted for the calculation of managed care rates by the Department.

8.125.7.E. The Department may exempt certain providers from all or part of the screening requirements when certain providers have been screened, approved and enrolled or revalidated:

1. By Medicare within the last 5 years, or

2. By another state's Medicaid program within the last 5 years, provided the Department has determined that the state in which the provider was enrolled or revalidated has screening requirements at least as comprehensive and stringent as those for Colorado Medicaid.

8.125.7.F. The Department may deny a Provider's enrollment or terminate a Provider agreement for failure to comply with screening requirements.

8.125.7.G. The Department may terminate a Provider agreement or deny the Provider's enrollment if CMS or the Department determines that the provider has falsified any information provided on the application or cannot verify the identity of any provider applicant.

8.125.8 NATIONAL PROVIDER IDENTIFIER FOR ORDERING, PRESCRIBING, REFERRING

8.125.8.A. As a condition of reimbursement, any claim submitted for a service or item that was ordered, referred, or prescribed for a Medicaid member must contain the National Provider Identifier (NPI) of the ordering, prescribing or referring physician or other professional.

8.125.9 VERIFICATION OF PROVIDER LICENSES

8.125.9.A. If a provider is required to possess a license or certification in order to provide services or supplies in the State of Colorado, then that provider must be so licensed as a condition of enrollment as a Medicaid provider.

8.125.9.B. Required licenses must be kept current and active without any current limitations throughout the term of the agreement.

8.125.10 REVALIDATION

8.125.10.A. Actively enrolled providers must complete all requirements for revalidation at least every 5 years as established by the Department, or upon request from the Department for an off cycle review.

8.125.10.B. The date of revalidation shall be considered the date that the provider's application was initially approved plus 5 years, or by an off-cycle request from the Department.

8.125.10.C. If a provider fails to comply with any requirement for revalidation by the deadlines established by Sections 8.125.10.A. or 8.125.10.B., the provider agreement may be terminated. In the event that the provider agreement is terminated pursuant to this section, any claims for

dates of service submitted after deadlines established by Sections 8.125.10.A. or 8.125.10.B., are not reimbursable beginning on the day after the date indicated by Section 8.125.10.B.

8.125.11 - 8.125.13 Repealed [Emergency rules eff. 07/08/2022]

8.125.14 TEMPORARY MORATORIA

8.125.14.A. In consultation with CMS and HHS, the Department may impose temporary moratoria on the enrollment of new providers or provider types, or impose numerical caps or other limits on providers that the Department and the Secretary of HHS identify as being a significant potential risk for fraud, waste, or abuse, unless the Department determines that such an action would adversely impact Medicaid members' access to medical assistance.

8.125.14.B. Before imposing any moratoria, caps, or other limits on provider enrollment, the Department shall notify the Secretary of HHS in writing and include all details of the moratoria.

8.125.14.C. The Department shall obtain the Secretary of HHS's concurrence with imposition of the moratoria, caps, or other limits on provider enrollment, before such limits shall take effect.

8.125.15 DISCLOSURES BY MEDICAID PROVIDERS, MANAGED CARE ENTITIES, MEDICARE PROVIDERS AND FISCAL AGENTS

8.125.15.A. All providers, disclosing entities, fiscal agents, and managed care entities must provide the following federally required disclosures to the Department:

1. The name and address of any entity (individual or corporation) with an ownership or control interest in the disclosing entity, fiscal agent, or managed care entity having direct or indirect ownership of 5 percent or more. The address for corporate entities must include, as applicable, primary business address, every business location, and P.O. Box address.

2. For individuals: Date of birth and Social Security number

3. For business entities: Other tax identification number for any entity with an ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) or in any subcontractor in which the disclosing entity (or fiscal agent or managed care entity) has a 5 percent or more interest.

4. Whether the entity (individual or corporation) with an ownership or control interest in the disclosing entity (or fiscal agent or managed care entity) is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the entity (individual or corporation) with an ownership or control interest in any subcontractor in which the disclosing entity (or fiscal agent or managed care entity) has a 5 percent or more interest is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling.

5. The name of any other disclosing entity (or fiscal agent or managed care entity) in which an owner of the disclosing entity (or fiscal agent or managed care entity) has an ownership or control interest.

6. The name, address, date of birth, and Social Security Number of any managing employee of the disclosing entity (or fiscal agent or managed care entity).

7. The identity of any person who has an ownership or control interest in the provider, or is an agent or managing employee of the provider who has been convicted of a criminal

offense related to that person's involvement in any program under Medicare, Medicaid, Children's Health Insurance Program or the Title XX services since the inception of these programs.

8. Full and complete information about the ownership of any subcontractor with whom the provider has had business transactions totaling more than $25,000 during the 12 month period ending on the date of the request; and any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the 5-year period ending on the date of the request.

8.125.15.B. Disclosures from any provider or disclosing entity are due at any of the following times:

1. Upon the provider or disclosing entity submitting the provider application.

2. Upon the provider or disclosing entity executing the provider agreement.

3. Upon request of the Department during revalidation.

4. Within 35 days after any change in ownership of the disclosing entity.

8.125.15.C. Disclosures from fiscal agents are due at any of the following times:

1. Upon the fiscal agent submitting its proposal in accordance with the State's procurement process.

2. Upon the fiscal agent executing a contract with the State.

3. Upon renewal or extension of the contract.

4. Within 35 days after any change in ownership of the fiscal agent.

8.125.15.D. Disclosures from managed care entities are due at any of the following times:

1. Upon the managed care entity submitting its proposal in accordance with the State's procurement process.

2. Upon the managed care entity executing a contract with the State.

3. Upon renewal or extension of the contract.

4. Within 35 days after any change in ownership of the managed care entity.

8.125.15.E. The Department will not reimburse any claim from any provider or entity or make any payment to an entity that fails to disclose ownership or control information as required by 42 CFR § 455.104. The Department will not reimburse any claim from any provider or entity or make any payment to an entity that fails to disclose information related to business transactions as required by 42 CFR § 455.105 beginning on the day following the date the information was due and ending on the day before the date on which the information was supplied. Any payment made to a provider or entity that is not reimbursable in accordance with this section shall be considered an overpayment.

8.125.15.F. The Department may terminate the agreement of any provider or entity or deny enrollment of any provider that fails to disclose information when requested or required by 42 CFR § 455.100-106.

8.126 COLORADO NPI RULE

8.126.1 Definitions

A. Billing Provider Field means the data field on a Claim that reflects the Health Care Provider to which the payer issues payment.

B. Campus means the physical area immediately adjacent to the Hospital's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other areas determined on an individual case basis by the Centers of Medicare and Medicaid Services to be part of the provider's campus.

C. Claim means a request for payment for the delivery of medical care, services, or goods authorized under the Medical Assistance Program, submitted to the Department through its fiscal agent by a Health Care Provider. Claim includes the transmission of encounter information for the purpose of reporting the delivery of medical care, services, or goods.

D. Health Care Provider means any person or organization that furnishes, bills for, or is paid for medical care, services, or goods to one or more Medical Assistance Program members.

1. A Health Care Provider includes an Organization Health Care Provider, Subpart of an Organization Health Care Provider, Off Campus Location, and a Site of an Organization Health Care Provider.

2. Unless specified otherwise in Subsection 8.126.1, a Health Care Provider may include a Health Care Provider located outside the state of Colorado (out-of-state provider) that is licensed and/or certified pursuant to their state laws.

E. Hospital means an Organization Health Care Provider that is enrolled in the Medical Assistance Program under the Provider Type of "Hospital - General" as defined in this Subsection 8.126.1.

F. Medical Assistance Program means the programs authorized under Articles 4, 5, 6, 8, and 10 of Title 25.5.

G. National Provider Identifier (NPI) means the standard, unique health identifier for Health Care Providers or Organization Health Care Providers that is used by the National Plan and Provider Enumeration System (NPPES) in accordance with 45 C.F.R. pt. 162.

H. Off-Campus Location means a facility that:

1. Has operations that are directly or indirectly owned or controlled by, in whole or in part, or affiliated with, a Hospital, regardless of whether the operations are under the same governing body as the Hospital;

2. Is not on the Hospital's Campus;

3. Provides services that are organizationally and functionally integrated with the Hospital;

4. Is an outpatient facility providing preventive, diagnostic, treatment, or emergency services; and

5. Is identified on the Hospital's State License Addendum issued by the Colorado Department of Public Health and Environment or, for Hospitals licensed outside of Colorado, documentation demonstrating direct or indirect ownership or control of the Off-Campus Location.

I. Organization Health Care Provider means a Health Care Provider that is not an individual.

J. Provider Type means a classification of Health Care Provider or Organization Health Care Provider to which the payer issues payment for services provided to individuals enrolled in the Medical Assistance Program, according to the Provider Type license, accreditation, certification, and/or service provided. The Provider Types recognized by the Department are as follows:

1. Administrative Services Organization (ASO) is an entity that has entered into a valid, active contract to provide ASO services with the Colorado Department of Health Care Policy and Financing.

2. Ambulatory Surgical Center (ASC) means a health care entity that is:

   a. Licensed by the Colorado Department of Public Health and Environment as an Ambulatory Surgical Center; and

   b. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program as an Ambulatory Surgical Center.

3. Audiologist means an individual licensed as an audiologist by the Division of Professions and Occupations within the Colorado Department of Regulatory Agencies.

4. Behavioral Therapy Clinic means any group practice that has at least one affiliated Behavioral Therapy Individual. The affiliated Behavioral Therapy Individual must be enrolled in the Colorado Medical Assistance Program.

5. Behavioral Therapy Individual means an individual that:

   a. Is nationally certified as a Board-Certified Behavioral Analyst (BCBA); or

   b. Meets one of the following:

      (1) Has a doctoral degree with a specialty in psychiatry, medicine, or clinical psychology and is actively licensed by the State Board of Examiners; and has completed 400 hours of training; and/or has direct supervised experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities; or

      (2) Has a doctoral degree in one of the behavioral or health sciences; and has completed 800 hours of specific training; and/or has experience in behavioral therapies that are consistent with best practice and research on effectiveness for people with autism or other developmental disabilities; or

      (3) Is nationally certified as a BCBA; or

      (4) Has a master's degree or higher in behavioral or health sciences; and is a licensed teacher with an endorsement of school psychologist; or is a licensed teacher with an endorsement of special education or early childhood special education; or is credentialed as a related services provider (Physical Therapist, Occupational Therapist, or Speech Therapist); and has completed 1,000 hours of direct supervised training or has experience in behavioral therapies that are consistent with best

practice and research on effectiveness for people with autism or other developmental disabilities.

6. Birthing Center means a health care entity licensed as a Birth Center by the Colorado Department of Public Health and Environment. Out-of-state providers are not eligible for enrollment.

7. Case Management Agency (CMA) means a public or private not-for-profit or for-profit agency that meets all applicable state and federal requirements and is certified by the Department to provide case management services for Home and Community Based Services waivers.

8. Certified Registered Nurse Anesthetist (CRNA) means an individual who is:

   a. Licensed as a registered nurse by the State Board of Nursing within the Colorado Department of Regulatory Agencies; and

   b. Included within the advanced practice registry as a CRNA.

9. Clinic – Dental means any group practice that has at least one affiliated, licensed dentist or dental hygienist.

   a. The affiliated dentist or dental hygienist must be enrolled in the Colorado Medical Assistance Program; and

   b. A dental practice or clinic must be owned by a licensed dentist except if the dental practice or clinic is a non-profit organization defined as a community health center (also known as an FQHC) or having 50% or more patients determined as low income, or a political subdivision (i.e. city, county, state, etc.); and

   c. A dental hygiene practice or clinic must be owned by a licensed dentist or licensed dental hygienist except if the dental hygiene practice or clinic is a non-profit organization defined as a community health center (also known as an FQHC) or having 50% or more patients determined as low income, or a political subdivision (i.e. city, county, state, etc.)

10. Clinic – Practitioner means any group practice that has at least one affiliated, licensed physician, osteopath, or podiatrist. The affiliated practitioner must be enrolled in the Colorado Medical Assistance Program.

11. Community Clinic means a health care entity that is:

   a. Licensed as a Community Clinic or Freestanding Emergency Department (FSED) by the Colorado Department of Public Health and Environment;

   b. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program; and

   c. Owned by a Medicare participating hospital.

12. Community Mental Health Center (CMHC) means a health care entity that:

   a. Is licensed as a Community Mental Health Center by the Colorado Department of Public Health and Environment;

b. Has program approval to operate as a CMHC from the Colorado Department of Human Services; and

c. If the CMHC delivers substance use disorder services, shall have Substance Use Disorder program approval from Colorado Department of Human Services.

13. Dental Hygienist means an individual who is licensed as a Dental Hygienist by the Colorado Dental Board within the Colorado Department of Regulatory Agencies.

14. Dentist means an individual who is licensed as a Dentist by the Colorado Dental Board within the Colorado Department of Regulatory Agencies.

15. Dialysis Treatment Clinic [Formerly Known as Dialysis Center] means a health care entity that is:

a. Licensed as a Dialysis Treatment Clinic by the Colorado Department of Public Health and Environment; and

b. Certified by Centers for Medicare and Medicaid Services to participate in the Medicare program as an End-Stage Renal Dialysis Facility (ESRD).

16. Federally Qualified Health Center (FQHC) means a health care entity that has been awarded a Section 330 Grant from the Health Resources and Services Administration. A health care entity that has been designated as a “look-alike” is also eligible to be enrolled as an FQHC.

17. Foreign Teaching Physician means an individual who is licensed as a distinguished foreign teaching physician by the Colorado Medical Board within the Colorado Department of Regulatory Agencies.

18. Home and Community Based Services (HCBS) means Health First Colorado (Colorado’s Medicaid Program)’s community-based care alternatives to institutional, Long-Term care. Providers enrolling as an HCBS provider shall meet all applicable state and federal requirements to provide HCBS by waiver and specialty type.

19. Home Health Agency means a health care entity that:

a. Has a Class A Home Care Agency license from the Colorado Department of Public Health and Environment; and

b. Is certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program as Home Health Agency.

20. Hospice means a health care entity that is:

a. Licensed as a Hospice by the Colorado Department of Public Health and Environment; and

b. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program as a Hospice.

21. Hospital – General means a health care entity that is:

a. Licensed as a General Hospital by the Colorado Department of Public Health and Environment; and

b. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program as a Hospital.

22. Hospital – Psychiatric [Formerly Known as Hospital - Mental] means a health care entity that is:

    a. Licensed as a Psychiatric Hospital by the Colorado Department of Public Health and Environment; and

    b. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare program as a Psychiatric Hospital.

23. Independent Laboratory means a laboratory that:

    a. Has a current and valid Clinical Laboratory Improvement Amendments (CLIA) certification; and

    b. Is certified through the Centers for Medicare and Medicaid Services as a laboratory.

24. Indian Health Service – Federally Qualified Health Center (FQHC) means a health care entity that:

    a. Is treated by the Centers for Medicare and Medicaid Services as a comprehensive Federally funded health center; and

    b. Includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an urban Indian organization receiving funds under Title V of the Indian Health Care Improvement Act for the provision of primary health services.

25. Indian Health Service – Pharmacy means a health care entity that has evidence of participation in the Indian Health Service.

26. Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) [Formerly Known as Nursing Facility – ICF/IID] means a health care entity that is:

    a. Licensed as an Intermediate Care Facility for Individuals with Intellectual Disabilities through the Colorado Department of Public Health and Environment; and

    b. Certified by the Centers for Medicare and Medicaid Services or the Colorado Department of Health Care Policy and Financing to participate in the Medicaid program as an ICF/IID.

27. Licensed Behavioral Health Clinician means an individual that is licensed by the Colorado Department of Regulatory Agencies as either:

    a. A Licensed Clinical Social Worker;

    b. A Licensed Professional Counselor;

    c. A Licensed Marriage and Family Therapist; or

    d. A Licensed Addiction Counselor.

28. Licensed Psychologist means an individual who is licensed as a psychologist by the State Board of Psychologist Examiners within the Colorado Department of Regulatory Agencies.

29. Managed Care Entity [Formerly Known as Health Maintenance Organization (HMO)] means an entity that has a valid and comprehensive or all-inclusive risk contract with the Colorado Department of Health Care Policy and Financing.

30. Medicare Only Providers means a provider enrolled in the Medical Assistance Program for purposes of Medicare cost-sharing only, pursuant to 42 CFR §455.410(d).

31. Non-Physician Practitioner Group means any group practice consisting of any of the following:

    a. Licensed Nurse Practitioners;

    b. Licensed Audiologists;

    c. Licensed Occupational Therapists;

    d. Licensed Behavioral Health Clinicians;

    e. Licensed Psychologists;

    f. Licensed Speech Therapists; and/or

    g. Licensed Physical Therapists.

    h. Beginning on the effective date of this amended rule, and for the remainder of the COVID-19 Public Health Emergency (PHE), providers that have enrolled as a Mass Immunizer Roster Biller (provider specialty type 73) with Medicare may temporarily enroll in the medical assistance program as a Non-Physician Practitioner Group for the purpose of billing for the administration of COVID-19 vaccinations for medical assistance clients.

32. Non-Physician Practitioner Individual means a registered nurse, which means an individual licensed as a Registered Nurse by the State Board of Nursing within the Colorado Department of Regulatory Agencies.

33. Nurse Midwife means an individual who is:

    a. Licensed as a registered nurse by the State Board of Nursing within the Colorado Department of Regulatory Agencies; and

    b. Included within the advanced practice registry as a Nurse Midwife.

34. Nurse Practitioner means an individual who is:

    a. Licensed as a registered nurse by the State Board of Nursing within the Colorado Department of Regulatory Agencies; and

    b. Included within the advanced practice registry as a Nurse Practitioner.

35. Nursing Facility means a health care entity that is:

a. Licensed as a Nursing Care Facility through the Colorado Department of Public Health and Environment; and

b. Certified by the Centers for Medicare and Medicaid Services or the Colorado Department of Health Care Policy and Financing to participate in the Medicaid program as a Skilled Nursing Care Facility.

36. Occupational Therapist means an individual who is licensed as an Occupational Therapist by the Director of the Division of Professions and Occupations within the Colorado Department of Regulatory Agencies.

37. Optical Outlet means a health care supplier that is qualified to make and supply eyeglasses and contact lenses for the correction of vision. If, in the performance of its duties, the Optical Outlet requires laboratory services, the laboratory is required to have a current and valid CLIA certification.

38. Optometrist means an individual who is licensed as an Optometrist by the State Board of Optometry within the Colorado Department of Regulatory Agencies.

39. Osteopath means an individual who holds a degree of “doctor of osteopathy,” and who is licensed as a physician by the Colorado Medical Board within the Colorado Department of Regulatory Agencies.

40. Personal Care Agency means a health care entity that has a Class A or Class B Home Care Agency license from the Colorado Department of Public Health and Environment.

41. Pharmacist means an individual who is licensed as a Pharmacist by the State Board of Pharmacy within the Colorado Department of Regulatory Agencies.

42. Pharmacy means a pharmacy, pharmacy outlet, or prescription drug outlet registered by the Board of Pharmacy within the Colorado Department of Regulatory Agencies.

43. Physical Therapist means an individual who is licensed as a Physical Therapist by the Physical Therapy Board within the Colorado Department of Regulatory Agencies.

44. Physician means an individual who is licensed as a physician by the Colorado Medical Board within the Colorado Department of Regulatory Agencies.

45. Physician Assistant means an individual who is licensed as a physician assistant by the Colorado Medical Board within the Colorado Department of Regulatory Agencies.

46. Podiatrist means an individual licensed as a podiatrist by the Colorado Podiatry Board within the Colorado Department of Regulatory Agencies.

47. Psychiatric Residential Treatment Facility (PRTF) means a health care entity that:

a. Is licensed by the Colorado Department of Human Services as a Residential Child Care Facility and a PRTF; and

b. Is certified as a qualified residential provider by the Department of Public Health and Environment; and

c. Is accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation of Services for Families and Children; and

d. Has provided an attestation to the Department that the PRTF is in compliance with the conditions of participation as required by Colorado Department of Human Services and the Centers for Medicare and Medicaid Services.

48. Qualified Medicare Beneficiary (QMB) Benefits Only means the provider type designation used for Chiropractors who participate under the QMB Program. Chiropractor means an individual licensed as a chiropractor by the Board of Chiropractic Examiners within the Colorado Department of Regulatory Agencies. QMB Benefits Only providers must also be certified as QMB Benefits Only providers through the Centers for Medicare and Medicaid Services.

49. Regional Accountable Entity (RAE) means an entity that has entered into a valid, existing contract with the Colorado Department of Health Care Policy and Financing to be a Regional Accountable Entity.

50. Rehabilitation Agency means a group practice that requires at least one affiliated and licensed professional enrolled in the Colorado Medical Assistance Program.

51. Residential Child Care Facility (RCCF) means a health care entity that is:

a. Designated by the Colorado Department of Human Services to provide Medicaid-reimbursable mental health services as an RCCF; and

b. Licensed by Colorado Department of Human Services as an RCCF.

52. Rural Health Clinic (RHC) means a clinic that is certified by the Centers for Medicare and Medicaid Services as a Rural Health Clinic.

53. School Health Services means a school district or Board of Cooperative Educational Services that has a valid, active contract with the Colorado Department of Health Care Policy and Financing to participate in the Colorado School Health Services Program.

a. The Site at which an Organization Health Care Provider delivers medical care, services, or goods authorized under the Medical Assistance Program enrolled under the Provider Type of School Health Services is a school district.

54. Speech Therapist is an individual certified as a Speech Language Pathologist by the Director of the Divisions of Professions and Occupations within the Colorado Department of Regulatory Agencies.

55. Substance Use Disorder (SUD) – Clinic means a health care entity that:

a. Is licensed as a SUD Provider by the Colorado Department of Human Services;

b. Has program approval to operate as a SUD – Clinic from Colorado Department of Human Services; and

c. Has at least one affiliated advanced practice nurse, physician/psychiatrist, physician assistant, or behavioral health clinician who is certified in addiction medicine.

56. Supply means a Durable Medical Equipment, Prosthetic, Orthotic and Supplies (DMEPOS) provider that meets one or both of the following definitions:

a. Complex Rehabilitation Technology (CRT) Supplier means a health care supplier that meets all the requirements of Section 8.590.5.D, and that:

(1) Has a Sales Tax Certificate or Tax-Exempt Certificate;

(2) Has CRT Professional Certification; and

(3) Is accredited by the Centers for Medicare and Medicaid Services to provide DMEPOS and CRT.

b. Durable Medical Equipment (DME) means a health care supplier that meets the requirements of Sections 8.590.5.A and B, and that:

(1) Has a Sales Tax Certificate or Tax-Exempt Certificate; and

(2) Is accredited by the Centers for Medicare and Medicaid Services to provide DMEPOS.

57. Transportation means a provider that meets one or both of the following definitions:

a. Emergency Medical Transportation (EMT) [Formerly Known as Emergency Medical Transportation and Air Ambulance] means providers that:

(1) Meet all provider screening requirements in Section 8.125.

(2) Comply with commercial liability insurance requirements.

(3) Maintain the appropriate licensure for:

(a) Ground ambulance license as required by Colorado Department of Public Health and Environment; and

(b) Air ambulance license as required by Colorado Department of Public Health and Environment.

(4) License, operate, and equip ground and air ambulances in accordance with federal and state regulations.

b. Non-Emergent Medical Transportation (NEMT) means a provider that:

(1) Has a Public Utilities Commission (PUC) common carrier certificate as a taxicab; or

(2) Has a PUC Medicaid Client Transport (MCT) Permit as required by the PUC; or

(3) Has a ground ambulance license as required by Department of Public Health and Environment; or

(4) Has an Air Ambulance license as required by Colorado Department of Public Health and Environment; or

(5) Is exempt from licensure requirements in accordance with the PUC.

58. X-Ray Facility means an imaging center that:

a. Has an X-Ray Facility and Machine Registration Report certified by the Colorado Department of Public Health and Environment; and

b. Is certified by the Centers for Medicare and Medicaid Services to participate in Medicare as an X-Ray facility.

K. Service Facility Location Field means the physical location specifically where services were rendered as identified on the Claim.

L. Site means the physical location by street address, including suite number, where goods and/or services are provided. The term Site when involving a Health Care Provider that voluntarily contracts with a RAE as a Primary Care Medical Provider (PCMP) to participate in the Department's Accountable Care Collaborative (ACC) as a medical home, also includes the following requirements:

1. PCMP services must be identifiable from other goods and/or services, including services provided by specialists provided by the Health Care Provider in the same physical location through a separate and unique NPI.

2. PCMP services provided at a Campus or Off-Campus Location must be identifiable from other goods and/or services, including services provided by specialists, provided by the Health Care Provider on the same Campus or Off-Campus Location through a separate and unique NPI.

M. Subpart means a component or separate physical location of an Organization Health Care Provider that may be separately licensed or certified. This definition is intended to be consistent with the use of the term "Subpart" as defined in 45 C.F.R. pt. 162.

N. The definitions in Subsection 8.126.1 apply only to Section 8.126.

8.126.2 Enrollment of Health Care Providers

A. Health Care Providers must enroll in the Medical Assistance Program through the Department's Fiscal Agent, if they:

1. deliver medical care, services, or goods authorized under the Medical Assistance Program; and

2. are required to submit a Claim.

8.126.3 Health Care Provider Requirements to Obtain and Use an NPI

A. A Health Care Provider that is required or eligible to obtain an NPI pursuant to 45 C.F.R. § 162.410 must:

1. Enroll with a unique NPI that identifies the Health Care Provider that delivers medical care, services, or goods authorized under the Medical Assistance Program; and

2. Utilize the Health Care Provider's unique NPI for all Claims.

a. A Health Care Provider that is not enrolled as of January 1, 2020, must submit every Claim using the unique NPI used for enrollment that identifies both the Provider Type and Site effective for date-of-services on or after January 1, 2020.

b. All Off Campus Locations must submit every Claim using the unique NPI used for enrollment that identifies both the Provider Type and Site effective for date-of-services on or after January 1, 2020.

c. All Health Care Providers must submit every Claim using the unique NPI used for enrollment that identifies both the Provider Type and Site effective for date-of-services on or after January 1, 2021.

d. On every Claim, including Coordination of Benefits Agreement (COBA) automatic crossover Claims, the Organization Health Care Provider shall use the Service Facility Location Field to represent the most specific Site with an NPI where the services are rendered unless the Billing Provider Field represents the most specific Site with an NPI where the services are rendered.

8.126.4 Organization Health Care Provider Requirements to Obtain and Use an NPI

A. Each Organization Health Care Provider and each Subpart of an Organization Health Care Provider that is required or eligible to obtain an NPI pursuant to 45 C.F.R. § 162.410 must enroll using a unique NPI.

1. Each Organization Health Care Provider must enroll using its unique NPI for each Site at which the Organization Health Care Provider delivers medical care, services, or goods authorized under the Medical Assistance Program.

a. A Hospital must enroll in the Medical Assistance Program with a unique NPI for:

(1) Its Campus; and

(2) Each Off-Campus Location.

2. Each Organization Health Care Provider must enroll in the Medical Assistance Program using a unique NPI for each Provider Type at each Site from which the Organization Health Care Provider delivers medical care, services, or goods authorized under the Medical Assistance Program.

a. A Hospital must enroll with a unique NPI for each Provider Type at each Site at its Campus and at each Off-Campus Location at which it delivers medical care, services, or goods authorized under the Medical Assistance Program.

3. An Organization Health Care Provider that is a School Health Services provider type must enroll once per School District and not each individual Site.

8.126.5 Health Care Provider Requirements Not Eligible to Receive an NPI

A. A Health Care Provider that is not eligible pursuant to 45 C.F.R. § 162.410 to receive an NPI shall:

1. Enroll without submitting an NPI. The Health Care Provider must obtain a unique identification number assigned by the Department through its Fiscal Agent, that identifies both the unique Provider Type at each Site at which the Health Care Provider delivers medical care, services or goods authorized under the Medical Assistance Program; and

2. Use the unique identification number assigned by the Department through its Fiscal Agent on every Claim.

a. A Health Care Provider that is not eligible to obtain an NPI that is not enrolled as of January 1, 2020, must submit every Claim using the unique identification number used for enrollment that identifies both the Provider Type and Site, effective January 1, 2020.

b. All Health Care Providers that are not eligible to obtain an NPI must submit every Claim using the unique identification number used for enrollment that identifies both the Provider Type and Site, effective January 1, 2021.

8.126.6 New Providers as of January 1, 2020

A. A Health Care Provider that is not enrolled as of January 1, 2020, shall not apply to be enrolled to deliver medical care, services, or goods authorized under the Medical Assistance Program unless the Health Care Provider complies with Section 8.126.

8.126.7 Existing Providers as of January 1, 2021

A. A Health Care Provider that is enrolled as of January 1, 2021, shall not apply to have their enrollment revalidated to deliver medical care, services, or goods authorized under the Medical Assistance Program, as required under 42 C.F.R. § 455.414, unless the Health Care Provider complies with Section 8.126.

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule Concerning Inpatient Payment Rates for Opioid Antagonist, Section 8.300.5.D.
Rule Number: MSB 22-11-17-A
Division / Contact / Phone: Fee for Service Rates / Andrew Abalos / 2130

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name: Health Care Policy and Financing / Medical Services Board

2. Title of Rule: MSB 22-11-17-A, Revision to the Medical Assistance Act Rule Concerning Inpatient Payment Rates for Opioid Antagonist, Section 8.300.5.D.

3. This action is an adoption of: an amendment

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) OP Pages, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)? Yes
   If yes, state effective date: 1/1/2023
   Is rule to be made permanent? (If yes, please attach notice of hearing). Yes

PUBLICATION INSTRUCTIONS*

Replace the current text at 8.300.5.D with the proposed text beginning at 8.300.5.D through the end of 8.300.5.D.2. This rule is effective January 1, 2023.

*to be completed by MSB Board Coordinator

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule Concerning Inpatient Payment Rates for Opioid Antagonist, Section 8.300.5.D.
Rule Number: MSB 22-11-17-A
Division / Contact / Phone: Fee for Service Rates / Andrew Abalos / 2130

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   House Bill 22-1326 appropriates funding allowing the Department of Health Care Policy and Financing to reimburse opioid antagonist drugs outside of its current reimbursement methodology. Currently, there is not distinct reimbursement for the opioid antagonist drug Naloxone in the payment bundles used for outpatient hospital payment calculation. This rule change will allow the Department to make payment outside of the payment bundles, creating greater incentive to inpatient hospitals to provide take-home Naloxone to patients at-risk for opioid overdoses.

2. An emergency rule-making is imperatively necessary

   ☒ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

   House Bill 22-1326 appropriates funding allowing the Department of Health Care Policy and Financing to reimburse opioid antagonist drugs outside of its current reimbursement methodology and assumes implementation within the 2023 state fiscal year.

3. Federal authority for the Rule, if any:

4. State Authority for the Rule:

   Sections 25.5-1-301 through 25.5-1-303, C.R.S. (2022);
   HB 22-1326

Initial Review — Final Adoption
Proposed Effective Date **01/01/23** — Emergency Adoption
12/09/22

DOCUMENT #05

DO NOT PUBLISH THIS PAGE

Title of Rule: Revision to the Medical Assistance Act Rule Concerning Inpatient Payment Rates for Opioid Antagonist, Section 8.300.5.D.
Rule Number: MSB 22-11-17-A
Division / Contact / Phone:Fee for Service Rates / Andrew Abalos / 2130

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Persons benefiting from the proposed rule are Health First Colorado patients at-risk for opioid overdoses, as the rule will increase access to an opioid antagonist drug. Inpatient hospitals may bear the cost of the proposed rule when providing Naloxone if the payment rate is less than the acquisition cost of the drug, but in general this will increase the reimbursement rates associated with this drug compared to inaction.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   Inpatient hospitals may bear the cost of the proposed rule when providing Naloxone if the payment rate is less than the acquisition cost of the drug, but in general this will increase reimbursement rates associated with this drug compared to inaction. The benefits of this rule are a probable reduction in deaths relating to opioid overdoses within the Health First Colorado population.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   The probable costs to the Department were considered in HB 22-1326. However, the Department is also seeking State Plan authority from Centers for Medicare and Medicaid Services for this modified payment method. This authority will allow for federal funding, thereby reducing the cost of this change to the State of Colorado.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   A probable benefit to the rule is wider distribution of a life-saving drug to the portion of the Health First Colorado population at-risk for opioid

overdoses, in comparison to our current authority, which does not provide additional payment for take-home Naloxone.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less or intrusive methods for achieving the purpose of the proposed rule.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   The Department considered modification of its DRG payment bundles in order to better accommodate the cost

8.300 HOSPITAL SERVICES

8.300.5 Payment for Inpatient Hospital Services

8.300.5.D APR-DRG Payment Methodology Exclusions

1. Long-acting reversible contraceptives (LARC) devices, inserted following a delivery, are excluded from the DRG Relative Weight calculation and are paid according to the Department's fee schedule.

2. Pursuant to § 25.5-5-509, C.R.S. opiate antagonists identified by the Department shall be paid according to the Department's fee schedule when dispensed to a medical assistance recipient upon discharge.

COLORADO
Department of Health Care Policy & Financing
Medical Services Board

DECEMBER 2022 EMERGENCY JUSTIFICATION FOR MEDICAL ASSISTANCE RULES ADOPTED AT THE DECEMBER 9, 2022 EMERGENCY MEDICAL SERVICES BOARD MEETING

MSB 22-11-08-A, Revision to the Medical Assistance Rule Concerning the Rural Provider Access and Affordability Stimulus Grant Program, Section 8.8000

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. The enabling legislation, Senate Bill 22-200, requires that the Medical Services Board promulgate rules for the administration of the Rural Provider Access and Affordability Stimulus Grant Program on or before December 31, 2022. The legislation also created the Rural Provider Access and Affordability Advisory Committee to begin meeting in September 2022 and charged the committee with making formal recommendations to the Department on the administration of the grant program including the proposed rule. The timeline for the advisory committee's work necessitates emergency rule-making to meet the December 2022 rule deadline established by the legislation in law at Section 25.5-1-207 (5), C.R.S.

MSB 22-10-26-A, Revision to the Medical Assistance Rule Concerning Medicare-Only Provider Types, Section 8.125 & 8.126

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. An emergency rulemaking is necessary to comply with federal law, pursuant to 42 CFR §455.410(d). This rule clarifies that Medicare-Only Providers means a provider enrolled in the Medical Assistance Program for purposes of Medicare cost-sharing only, pursuant to 42 CFR §455.410(d).

MSB 22-11-17-A, Revision to the Medical Assistance Act Rule Concerning Inpatient Payment Rates for Opioid Antagonist, Section 8.300.5.D

For the preservation of public health, safety and welfare

Emergency rule-making is imperatively necessary. House Bill 22-1326 appropriates funding allowing the Department of Health Care Policy and Financing to reimburse opioid antagonist

drugs outside of its current reimbursement methodology and assumes implementation within the 2023 state fiscal year.

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: 2022-00780

Opinion of the Attorney General rendered in connection with the rules adopted by the

Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)

on 12/09/2022

10 CCR 2505-10

MEDICAL ASSISTANCE - STATEMENTS OF BASIS AND PURPOSE AND RULE HISTORY

The above-referenced rules were submitted to this office on 12/09/2022 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 23, 2022 10:10:21

Philip J. Weiser
Attorney General
by Eric R. Olson
Solicitor General

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/27/2022

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC ADMINISTRATIVE ACTION HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

At the date, time and location listed below, the Water Quality Control Commission will hold a public Administrative Action Hearing to consider approval of the Water Quality Control Division's proposed submittal of projects for FY23-24 Section 319 nonpoint source funds.

SCHEDULE OF IMPORTANT DATES:

Initial list of recommended projects available	2/3/2023	On commission's web at https://cdphe.colorado.gov/wqcc-administrative-action-hearings
Written comments due	2/15/2023	Additional submittal information below
Final list of recommended projects available	3/1/2023	On commission's web at https://cdphe.colorado.gov/wqcc-administrative-action-hearings
Administrative Action Hearing	**3/13/2023 9:00 a.m.**	**Remote Via Zoom** **Or** **Sabin Cleere Conference Room** **Department of Public Health and Environment** **4300 Cherry Creek Drive South** **Denver, CO 80246**

PROCEDURAL MATTERS:

The commission encourages input from interested persons, either in writing prior to the hearing or orally at the hearing. Interested persons should provide their opinions or recommendations as to whether the foregoing regulation should be continued in its current form, repealed, or changed, and if so, in what respect.

The commission will receive all written submittals electronically. Submittals must be provided as PDF documents and may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, or otherwise conveyed to the commission office so as to be received no later than the date shown above. Written comments will be available to the public on the commission's web site.

AUTHORITY FOR PUBLIC HEARING:

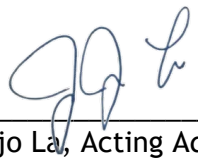
The provisions of 25-8-202(1)(f) C.R.S. and section 21.5 B of the "Procedural Rules" (5 CCR 1002-21) provide the authority for this hearing.

PARTY STATUS:

This is not a rulemaking hearing; therefore, party status provisions of 25-8-101 et. seq., and 24-4-101 et. seq., C.R.S. do not apply. Party status requests shall not be considered by the commission.

Dated this 12th day of December 2022 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION



Jojo La, Acting Administrator

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 12/27/2022

Department

Department of Public Health and Environment

Agency

Water Quality Control Commission (1002 Series)

COLORADO
Water Quality
Control Commission
Department of Public Health & Environment

NOTICE OF PUBLIC INFORMATIONAL HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

Routine review of the commission's current regulation titled:

"On-Site Wastewater Treatment System Regulation", Regulation #43 (5 CCR 1002-21).

PURPOSE OF HEARING:

This hearing is to fulfill State statutory requirements for routine review of regulations.

SCHEDULE OF IMPORTANT DATES:

Water Quality Control Division memo due	2/13/2023	Additional information below
Written comments due	2/27/2023	Additional submittal information below
Public Hearing	**3/13/2022 9:00 a.m.**	**Remote Via Zoom** **Or** **Sabin Cleere Conference Room** **Department of Public Health and Environment** **4300 Cherry Creek Drive South** **Denver, CO 80246**

PROCEDURAL MATTERS:

By February 13, 2023, the Water Quality Control Commission will post a memo to its website outlining the scope of revisions it plans to address in a future rulemaking hearing. The commission encourages input from interested persons, either in writing prior to the hearing or orally at the hearing. Interested persons should provide their opinions or recommendations regarding the memo and as to whether the foregoing regulation should be continued in its current form, repealed, or changed, and if so, in what respect.

The commission will receive all written submittals electronically. Submittals must be provided as PDF documents and may be emailed to cdphe.wqcc@state.co.us, provided via an FTP site, or otherwise conveyed to the commission office so as to be received no later than the date shown above. Written comments will be available to the public on the commission's web site.

Any suggested changes deemed by the commission to require further action will be proposed as regulatory changes for subsequent public rulemaking. Recommendations for changes should be concise and supported by reference to the evidence that would be offered if the commission moved forward to formally consider the recommended regulatory amendments. At this informational hearing, the commission does not desire to hear the full evidence that would be presented at a rulemaking hearing that would follow. The commission requests only the information needed to determine whether or not to propose a regulatory change. Oral public comment will be accepted at the hearing.

AUTHORITY FOR PUBLIC HEARING:

The provisions of 25-8-202(1)(f) C.R.S. and section 21.5 B of the "Procedural Rules" (5 CCR 1002-21) provide the authority for this hearing.

PARTY STATUS:

This is not a rulemaking hearing; therefore, party status provisions of 25-8-101 et. seq., and 24-4-101 et. seq., C.R.S. do not apply. Party status requests shall not be considered by the commission.

Dated this 12th day of December 2023 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Jojo La, Acting Administrator

Nonrulemaking Public Notices and other Miscellaneous Rulemaking Notices

Filed on 01/05/2023

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

January 10, 2023

Inpatient Hospital Base Rate Methodology

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 change the inpatient base rate methodology to create base rates that promotes increased transparency as to how base rates are created along with adjusting various portions of the Medicare rate building blocks to include non-PPS hospitals. Add-ons have been created to support Pediatric, Critical Access Hospitals, Sole Community & Medicare Dependent hospitals, low discharge hospitals, hospitals who serve larger portions of the Medicaid population and those hospitals whose Operating Cash Flow Margin indicates solvency problems. Rate rebasing will now occur every other year to allow for updating the APR-DRG version in off years which is the other portion of the payment calculation.

There is no annual aggregate increase in inpatient hospital expenditures (including state funds and federal funds) in FFY 2023 and in FFY 2024, these changes are budget neutral.

General Information

A link to this notice will be posted on the Department's website starting on January 10, 2023. 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
02/16/2023 09:15 AM	Division of Gaming - Rules promulgated by Gaming Commission	1707 Cole Blvd, Redrocks Conference Room, Lakewood, CO 80401, and virtually
01/30/2023 10:00 AM	Division of Securities	1560 Broadway, DORA Conference Center, Denver, Colorado
02/01/2023 09:15 AM	Passenger Tramway Safety Board	Webinar Only: https://us06web.zoom.us/webinar/register/WN_q2vRH63ZQcqO4m4W-FDMWw
02/27/2023 11:30 AM	Public Utilities Commission	By video conference using Zoom at a link in the calendar of events on the Commissions website: https://puc.colorado.gov/
02/27/2023 11:30 AM	Public Utilities Commission	By video conference using Zoom at a link in the calendar of events on the Commissions website: https://puc.colorado.gov/
02/09/2023 08:45 AM	Division of Professions and Occupations - Board of Veterinary Medicine	Webinar Only: https://us06web.zoom.us/webinar/register/WN_APLcPjWWTzedFLfhuyzBaQ
02/03/2023 08:30 AM	Behavioral Health	1575 Sherman Street, Denver, CO 80203
02/03/2023 08:30 AM	Income Maintenance (Volume 3)	1575 Sherman Street, Denver, CO 80203
02/10/2023 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Avenue, 11th Floor, Denver, CO 80203
02/03/2023 08:30 AM	Social Services Rules (Volume 7; Child Welfare, Child Care Facilities)	1575 Sherman Street, Denver, CO 80203