

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

Statement of Emergency Justification and Adoption

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

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

The Board hereby finds the following:

- The Board is authorized under section 44-20-404(1)(a), C.R.S. to promulgate rules necessary to implement under part 4 of Article 20 of Title 44, C.R.S., including the administration and enforcement of licenses issued to wholesalers, powersports vehicle dealers, powersports vehicle salespersons, and used powersports vehicle dealers.
- Due to the unprecedented and extraordinary impact of the COVID-19 emergency pandemic, Governor Jared Polis has issued a number of executive orders and the Colorado Department of Public Health and Environment (“CDPHE”) has issued a number of public health orders since March 2020, including in relevant part, but not limited to:
 - Executive Order D 2020 017, *Ordering Coloradans to Stay at Home Due to the Presence of COVID-19 in the State*, dated March 25, 2020, which was subsequently amended and extended;
 - Executive Order D 2020 044, *Safer at Home*, dated April 26, 2020, which was subsequently amended and extended;
 - Executive Order D 2020 091, *Safer at Home and in the Vast, Great Outdoors*, dated June 1, 2020, which was subsequently amended and extended before being superseded and replaced by Executive Order D 2020 235;
 - Executive Order D 2020 127, *Protect Our Neighbors*, dated July 9, 2020, which was subsequently amended and extended before being superseded and replaced by Executive Order D 2020 235;
 - Executive Order D 2020 138, *Amending and Extending Executive Orders D 2020 039, D 2020 067, D 2020 092, and D 2020 110 Ordering Individuals in Colorado to Wear Non-Medical Face Coverings*, dated July 16, 2020;
 - Public Health Order 20-28, *Safer at Home*, first issued on April 26, 2020 and subsequently amended before being superseded by Public Health Order 20-35;
 - Public Health Order 20-32, *Protect Our Neighbors*, first issued on July 10, 2020 and subsequently amended before being superseded by Public Health Order 20-36; and
 - Public Health Order 20-35, *Safer at Home Dial*, first issued on September 15, 2020 and subsequently amended before being superseded by Public Health Order 20-36.

- On October 30, 2020, Governor Polis issued Executive Order D 2020 235, *Superseding and Replacing Executive Orders Concerning Protect Our Neighbors and Safer at Home in the Vast, Great Outdoors and Establishing Directives for the COVID-19 Dial Framework*, which combined *Protect Our Neighbors, Safer at Home and in the Vast, Great Outdoors*, and *Stay at Home* (“EO D 2020 235”) into a single “Dial framework”. EO D 2020 235 requires each county or region to adhere to corresponding directives based on the county’s or region’s level on the Dial framework.
- Pursuant to EO D 2020 235, there are five levels represented by colors on the Dial, which range from least restrictive to most restrictive, including: Green - Protect Our Neighbors; Blue - Safer at Home, Cautious; Yellow - Safer at Home, Concern; Orange - Safer at Home, High Risk; and Red - Stay at Home.
- EO D 2020 235 specifically permits a county or municipality to adopt more protective standards than those contained in that Executive Order as necessary.
- Pursuant to Governor Polis’ directive in EO D 2020 235, CDPHE issued the Public Health Order 20-36 (“PHO 20-36”) on November 2, 2020. PHO 20-36 supersedes and replaces previously issued Public Health Orders 20-32 and 20-35, as amended.
- Section V and Appendix M to the PHO 20-36 authorizes a county to apply for a variance from CDPHE in order to implement different restrictions than what is required by PHO 20-36.
- Pursuant to PHO 20-36, automobile rental, automobile sales with no touch delivery services, auto supply and repair are considered “critical services,” which included retail dealerships that include repair and maintenance, but not in-person retail sales. According to Appendix A of PHO 20-36, “critical services” are included in the meaning of “critical businesses,” which is defined under Section IV(C) of PHO 20-36.
- Pursuant to PHO 20-36, critical businesses, at any of the five Dial levels, may continue to operate without capacity limitations, but must follow the requirements in sections III(B) and III(C) of PHO 20-36.
- Pursuant to PHO 20-36, non-critical retail, which includes in-person powersports vehicle retail sales, may operate in accordance with the requirements one of the five the Dial levels (Green - Protect Our Neighbors; Blue - Safer at Home, Cautious; Yellow - Safer at Home, Concern; Orange - Safer at Home, High Risk; and Red - Stay at Home) described in section II of PHO 20-36, depending on which Dial level the specific county in which the retail business operates is approved.
- On November 9, 2020, Governor Polis issued Executive Order D 2020 245, *Extending Executive Orders D 2020 039, D 2020 067, D 2020 092, D 2020_110, D 2020 138, D 2020 164, D 2020 190, D 2020 219, and D 2020 237 Ordering Individuals in Colorado to Wear Non-Medical Face Coverings* (“EO D 2020 245”) requiring individuals in Colorado to wear a non-medical face covering over their nose and mouth, subject to several exceptions.
- A number of counties and municipalities throughout the State have issued public health orders/protective standards and/or have obtained variances from CDPHE.

- In an effort to ensure powersports vehicle dealers and used powersports vehicle dealers continue retail sales to the citizens of Colorado and operations during the pendency of the COVID-19 emergency in accordance with EO D 2020 235, EO D 2020 245, and CDPHE's PHO 20-36, and other guidance issued by CDPHE, the Centers for Disease Control (CDC) and local counties and municipalities, the Board finds it imperatively necessary to adopt Emergency Regulation 44-20-402(17)-COVID DIAL under 1 Code of Colorado Regulations (C.C.R.) 205-2.
- The Board finds that its promulgation of Emergency Regulation 44-20-402(17)-COVID DIAL will enable powersports vehicle dealers and used powersports vehicle dealers to conduct sales transactions and operate in accordance with the requirements and restrictions detailed in PHO 20-36.
- Pursuant to section 24-4-103(6)(a), C.R.S., the Board finds that the immediate promulgation and adoption of Emergency Regulation 44-20-402(17)-COVID DIAL is imperatively necessary for the preservation of public health, safety, or welfare.
- The Board finds that the immediate promulgation and adoption of Emergency Regulation 44-20-402(17)-COVID DIAL is necessary to carry out the purposes under part 1 of Article 20 of Title 44, C.R.S.

Statutory Authority

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

Basis and Purpose

The basis and purpose of Emergency Regulation 44-20-402(17)-COVID DIAL is to provide the ability to conduct powersports vehicle sales and operations during the COVID-19 pandemic while complying with Executive Order D 2020 235 dated October 30, 2020, Executive Order D 2020 245 dated November 9, 2020, Colorado Department of Public Health and Environment's Public Health Order 20-36 dated November 2, 2020, and other guidance issued by the Colorado Department of Public Health and Environment, the Centers for Disease Control (CDC) and local counties and municipalities.

Adoption

For the reasons set forth above, the Board hereby adopts the attached Emergency Regulation 44-20-402(17)-COVID DIAL under 1 C.C.R. 205-2. This emergency regulation shall be effective on the date of adoption. This emergency regulation shall be in force and effect for a period of one hundred and twenty days from November 17, 2020, unless sooner terminated or replaced by permanent rules adopted in accordance with section 24-4-103, C.R.S.

Adopted this 17 day of November, 2020.



 John Linton, President
 Colorado Motor Vehicle Dealer Board

11/17/2020

 Date