

DEFINITIONS (100) SERIES

AFFECTED PERSON means any Relevant or Proximate Local Government, any public agency with legal authority over issues contemplated by an application, or any person who has a personal justiciable interest related to a legal right, duty, privilege, or power affected by an application pending before the Commission. An interest common to members of the general public does not qualify as a personal justiciable interest. The determination of whether a person is an Affected Person is set forth in Rule 507.

GOVERNMENTAL AGENCY means any federal, state, tribal or local governmental entity.

RULES OF PRACTICE AND PROCEDURE

501. APPLICABILITY OF RULES OF PRACTICE AND PROCEDURE

- a. **General.** These rules will be known and designated as “Rules of Practice and Procedure before the Oil and Gas Conservation Commission of the State of Colorado,” and will apply to all proceedings before the Commission. These rules will be liberally construed to secure just, speedy, and inexpensive determination of all issues presented to the Commission, Administrative Law Judges, and Hearing Officers.
- b. **Prohibition of abuse.** Notwithstanding any provision of these rules, the Commission, Director, or Administrative Law Judge, or Hearing Officer will, upon its own motion or upon the motion of a party to a proceeding, act to prohibit or terminate any abuse of process by an applicant, petitioner, witness, or party offering a statement pursuant to Rule 512 in a proceeding. Such action may include, but is not limited to; summary dismissal of the application, petition, or other pleading; limitation or prohibition of harassing or abusive testimony; limitation or prohibition of excessive motion filing; restricted discovery; and finding a party in contempt. Grounds for such action may include, but are not limited to, the use of the Commission's procedures for reasons of obstruction and delay; misrepresentation in pleadings or testimony; or, other inappropriate or outrageous conduct that is deemed by the Commission, Director, Administrative Law Judge, or Hearing Officer to be an abuse of process.
- c. Before the Commission adopts any rule or regulation, or enters any order, or amendment thereof or grants any variance pursuant to Rule 502., the Commission, Administrative Law Judge, or Hearing Officer will hold a public hearing at such time and place as may be prescribed by the Commission, Administrative Law Judge, or Hearing Officer. Any party will be entitled to be heard as provided in these rules and regulations. The foregoing will not apply to recommended orders of uncontested matters, the issuance of an emergency order, Notice of Alleged Violation, or Cease and Desist Order.
- d. **Judicial review.** Any rule, regulation, final order of the Commission, including an approved Oil and Gas Development Plan, whether approved by the Director or the Commission, is subject to judicial review in accordance with the provisions of the Administrative Procedure Act, §§24-4-101 to -108, C.R.S. The statutory time period for filing a notice of appeal from any Commission decision commences pursuant to § 24-4-106(4), C.R.S.

502. VARIANCES

- a. **Variations Sought from Director.** Variations to any Commission Rule, regulation, or order may be granted in writing by the Director without a hearing upon written request by an operator to the Director, or by the Commission after hearing upon application. The operator or the applicant requesting the variance will make a showing that it has made a good faith effort to comply, or is unable to comply with the specific requirements contained in the Commission Rule, regulation, or order, from which it seeks a variance, including, without limitation, securing a waiver or an exception, if any, and that the requested variance will not violate the basic intent of the Act, minimizes adverse

impacts to public health, safety, welfare, the environment, and wildlife resources, and protects against adverse environmental impacts on any air, water, soil, or biological resource.

b. Variances Sought from Commission. For purposes of seeking a variance from the Commission, only the operator or an applicant authorized by the Commission's Rules, may file an application seeking the Commission's approval of a variance.

c. No variance to the Commission's Rules and regulations applicable to the Underground Injection Control Program will be granted by the Director without consultation with the U.S. Environmental Protection Agency, Region VIII, Waste Water Management Division Director.

d. All granted variances will be reported to the Commission at its next scheduled hearing following the date that the variance was granted.

503. APPLICATIONS FILED WITH THE COMMISSION

a. Commission's own motion. The Commission may, on its own motion, initiate proceedings upon any question relating to oil and gas operations in the State of Colorado, or to the administration of the Act, by notice of hearing or by issuance of an emergency order without notice of hearing. Such emergency order will be effective upon issuance and will remain effective for a period not to exceed 14 days. Notice of an emergency order will be given as soon as practicable after issuance.

b. All proceedings that require a Commission decision, other than those initiated by the Commission, must be commenced by filing an application with the Commission.

c. All applications will include at a minimum:

- (1) the applicant's name and email address;
- (2) if the applicant is an operator registered with the Commission, the operator's Commission identification number;
- (3) identify the type of application submitted;
- (4) all geologic formations, if necessary for adjudication of the application;
- (5) location of applicable lands (including county, field name, Township / Range / Section, and nearby public crossroads) and map of the same;
- (6) the name and contact information (including email) for an operator representative designated to receive questions, and petitions;
- (7) a description of the relief requested, set forth in reasonable detail;
- (8) the legal and factual grounds for the requested relief;
- (9) a prayer for relief;
- (10) if applicable, the name, mailing address, phone number, and email address of the applicant's legal counsel;
- (11) the name of each interested party, but not the interested party's mailing address; and
- (12) any information required by the Commission's rules that is specific to the application.

- d. All applications will be executed by a person with authority to do so on behalf of the applicant, and the contents thereof will be verified by a party with sufficient knowledge to confirm the facts contained therein.
- e. The originally signed application will be maintained by the filing party. The electronically submitted application, and all subsequent documents submitted, are Commission public records.
- f. Each application, except those filed by a Governmental Agency, or the Commission, will be accompanied by a docket fee established by the Commission (see Appendix III).
- g. **Commission Application Types.** The following applications may be filed with the Commission for adjudication:
 - (1) **Oil and Gas Development Plan.** An Oil and Gas Development Plan application must satisfy the requirements set forth in Rule 302.
 - (2) **Drilling Units.** For purposes of applications for the creation of drilling units, additional wells within existing drilling units, other applications for modifications to existing drilling unit orders, or applications for exceptions to Rule 304.
 - (3) **Pooling and Unitization Applications.** A statutory pooling application filed pursuant to § 34-60-116, C.R.S., or a unitization application filed pursuant to § 34-60-118, C.R.S., must satisfy the information requirements set forth in Rule 506.
 - (4) **Order Finding Violation.** An Order Finding Violation (OFV) application must include the Notice of Alleged Violation. Only the Director may be the applicant for an order finding violation.
 - (5) **Payment of Proceeds.** A payment of proceeds application must satisfy the information requirements set forth in Rule 421 or Rule 422.
 - (6) **Surface Density Limits in Wildlife Habitat Areas.** A surface density limitation application must satisfy the information requirements set forth in Rule 1202.d.(5).
 - (7) **School and Child Care Center Setbacks.** A school and child care center setback application must satisfy the information requirements set forth in Rule 604.a.(6)B.
 - (8) **Petition for Review.** A complainant's Petition for Review must satisfy the requirements of Rule 524.f.
 - (9) **Comprehensive Area Plan.** A Comprehensive Area Plan must satisfy the requirements of Rule 314.
 - (10) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (9) above, only Affected Persons may be an applicant. Rulemaking petitions are not relief or rulings covered by this Rule, and may be filed by any person consistent with Rule 529.b.
- h. Unless the Commission otherwise orders, all matters submitted to the Commission for adjudication will automatically be assigned to an Administrative Law Judge, or Hearing Officer. An assignment to an Administrative Law Judge, or Hearing Officer will encompass all issues of fact and law concerning the matter unless the Commission specifies otherwise in a written order. Notwithstanding the foregoing, the following will be considered by the Commission:
 - (1) Approval of Comprehensive Area Plans filed pursuant to Rule 314;
 - (2) Applications seeking a hearing pursuant to 604.a.(6);

- (3) Variance requests to the Commission filed pursuant to Rule 502.b.; and
 - (4) Rulemaking proceedings held in accordance with Rule 529.
- i. The Commission, Director, Administrative Law Judge, or Hearing Officer may require any additional information necessary to ensure the application is complete. The Commission, Administrative Law Judge, or Hearing Officer may issue an order rejecting an application if the application is found to be without merit or is incomplete. The rejection of an application will be in writing and constitute a final agency order that is subject to judicial review.
 - j. A party filing an application may amend its application at any time prior to notice being sent consistent with Rule 504. A material amendment is a change that alters the requested relief of the original application, requires notice to additional persons, or as otherwise determined by the Commission, Administrative Law Judge, or Hearing Officer. If the application requires a material amendment, the Commission, Administrative Law Judge, or Hearing Officer may in its discretion dismiss the application.
 - k. Upon the acceptance of an application:
 - (1) The Commission will assign the application a docket number.
 - (2) The matter will be set for hearing and notice of that hearing will be given in accordance with Rule 504.
 - l. The Commission, Administrative Law Judge, or Hearing Officer will grant the first request by an applicant for a continuance of any uncontested application. The Commission, Administrative Law Judge, or Hearing Officer has the discretion to grant or deny subsequent requests for a continuance of an uncontested application.
 - m. As necessary, or if required by the Commission's Rules, Commission staff will evaluate all applications and prepare an evaluation, which may include a recommendation on the merits of the application. Any such evaluation or recommendation will be part of the administrative record to be considered by the Commission, Administrative Law Judge, or Hearing Officer.
 - n. Subsequent to the initiation of a proceeding, all pleadings filed by any party will reference the docket number assigned to such proceeding. Each pleading will include a certificate of service identifying the document served and filed with the Commission and that the pleading was served on all parties, by mailing a copy thereof, first-class postage prepaid, to the last known mailing address of the person to be served in accordance with Rule 522.

504. NOTICE FOR HEARING

a. General notice provisions.

- (1) When any proceeding has been initiated, the Commission will require a copy of the application, together with a notice of such proceeding, to be provided to all persons specified in the relevant sections of Rules 504.b., 504.c., and 504.d. at least 60 days in advance of the noticed hearing date. Notice will be provided in accordance with the requirements of § 34-60-108(4), C.R.S., and will be drafted by the Secretary. A signed, electronic copy will be provided to the applicant in sufficient time for delivery to those who require notice. The application and notice will be provided directly by the applicant, using the applicant's return address. The applicant is responsible for service and publication of required notices, including any related costs.
- A.** If the application is for an Oil and Gas Development Plan, the operator must comply with the notice provisions of Rule 302.e. prior to noticing the Plan for hearing.

- (2) No later than 30 days before the noticed hearing date, the applicant will submit to the Secretary:
 - A. a certificate of service demonstrating that the applicant served a copy of the application and notice on all persons entitled to notice pursuant to the Commission's Rules. The certificate of service will include a list of all persons who received a copy of the application and notice.
 - B. a notarized affidavit providing assurance that the applicant published a copy of the notice in relevant newspapers, and the date of publication for each newspaper used. The applicant is not required to submit a notarized proof of publication from the newspapers, or copies of the publications, unless a concern with publication is raised. Service of process by publication to unknown addresses will occur through five weeks of publication ending at the petition deadline, at least 30 days prior to the noticed hearing date.
- (3) Notice by publication or notice by electronic mail provided pursuant to this subsection does not confer Affected Person status on any person.

b. Notice for specific applications.

- (1) **Applications for Oil and Gas Development Plans.** Oil and Gas Development Plan applications will be served on all persons identified in Rule 302.d.(2) and 302.e.(1).
- (2) **Applications related to drilling units.** For purposes of applications for drilling units, additional wells within existing drilling units or other applications for modifications of, or exceptions to, existing drilling unit orders (except for applications for well exception locations to existing orders which are addressed in subsection (6) of this Rule) the application and notice will be served on the mineral owners within the proposed drilling unit or within the existing drilling unit to be affected by the applications. The persons identified in Rule 302.d.(2) must also receive notice of such an application.
- (3) **Applications for involuntary pooling.** For purposes of applications for involuntary pooling orders made pursuant to § 34-60-116, C.R.S., the application and notice will be served on those persons who own any interest in the mineral estate, whether leased or unleased, of the tracts to be pooled, except owners of an overriding royalty interest.
- (4) **Applications for unitization.** For purposes of applications for unitization made pursuant to § 34-60-118, C.R.S., the application and notice will be served on those persons who own any interest in the mineral estate underlying the tract or tracts to be unitized and the owners within one-half (1/2) mile of the tract or tracts to be unitized. The relevant local governmental designee, the Colorado Department of Public Health and Environment, and the Colorado Division of Parks and Wildlife must also receive notice of this application.
- (5) **Applications changing certain well location setbacks.** For purposes of applications that change the permitted minimum setbacks for drilling and spacing units, the application and notice will be served on those owners of contiguous or cornering tracts who may be affected by such change.
- (6) **Applications for well location exception.** For purposes of applications made for exceptions to Rule 401.c., exceptions to legal locations within drilling and spacing units, or for an exception location to an existing order, the application and notice will be served on the owners of any contiguous or cornering tract toward which the well location is proposed to be moved, provided that when the applicant owns any interest covering such tract, the person who owns the mineral estate underlying the tract covered by such lease will also be notified. If there is more than one owner within a single drilling unit and the owners have designated a party as the operator on their behalf, notice will be presumed sufficient if served upon the designated operator of the affected formation.

- (7) **All other applications.** For any application not specified above, the Secretary has discretion to determine who is entitled to receive the application and notice, based on legal interest and potential impact.
- (8) **Orders related to violations.** With respect to the resolution of a Notice of Alleged Violation (NOAV) the application and notice will be provided to a relevant complainant (if any), to the violator, responsible party, or operator, as applicable; and by publication in accordance with § 34-60-108(4), C.R.S.

c. **Notice to the Colorado State Board of Land Commissioners.** The application and notice will also be given to the Colorado State Board of Land Commissioners for all applications where the Colorado State Board of Land Commissioners maintains a mineral ownership included in the application lands. This requirement does not apply to enforcement applications.

d. **Notice to Tribal Governments.** The application and notice will also be given to the Southern Ute Indian Tribe or the Ute Mountain Ute Tribe for all applications involving minerals within the exterior boundary of either tribe's reservation where both the surface and oil and gas estates are owned in fee by persons or entities other than the Tribe.

505. EVIDENCE IN SUPPORT OF AN APPLICATION

a. Applicants seeking relief under Rule 503.g.(1), (2), (3), and (6) will submit the documents described in (1) through (6) below to the Commission with its application. The Commission, Administrative Law Judge, or Hearing Officer will determine if additional evidence is needed on a case-by-case basis. If the application lacks sufficient information or evidence, the application may be continued at the Commission, Administrative Law Judge, or Hearing Officer's discretion.

(1) Sworn written testimony, of relevant witnesses verifying land, geologic, engineering, public health, safety, welfare, environment and wildlife facts, or such other facts and testimony as may be required by the Commission's Rules. Such testimony will be accompanied by attachments or exhibits that adequately support and is specific to the relief requested in the application, along with resumes/curricula vitae for each witness;

(2) A statement, signed under oath, from a person having knowledge of the stated facts, attesting to the facts stated in the written testimony and any attachments or exhibits. The sworn statement need not be notarized, but it will contain language indicating that the signatory is affirming that submitted testimony and supporting documents are true and correct to the best of the signatory's knowledge and belief and, if applicable, that they were prepared by the signatory or under the signatory's supervision;

(3) A sworn statement that is a summary of the testimony to support the relief requested in the application, including a request to take administrative notice of repetitive general, technical, or scientific evidence, where appropriate;

(4) 1 set of exhibits which will contain relevant highlights in bullet-point format on each exhibit; and

(5) A draft proposed order, if requested by the Administrative Law Judge, or Hearing Officer, with findings of fact and conclusions of law related to land, geology, engineering, public health, safety, welfare, environment and wildlife and other appropriate subjects to support the relief requested in the application. Reference to testimony, exhibits, and previous Commission orders will be included as findings in the draft proposed order.

b. Applications for exception locations will include the information required in Rule 401.c.

506. INVOLUNTARY POOLING APPLICATIONS

- a. An application for involuntary pooling pursuant to § 34-60-116, C.R.S., may be filed at any time by an owner who owns, or has secured the consent of the owners of, more than 45 percent of the mineral interests to be pooled within a drilling and spacing unit established by Commission order, prior to or after drilling of a well, but no later than 90 days in advance of the date the matter is to be heard by the Commission, as per Rule 510.a. Mineral interests that are owned by a person who cannot be located by the applicant through reasonable diligence are not included for purposes of determining whether the 45 percent mineral interests threshold is met.
- b. The Commission must receive evidence that owners were tendered a good faith, reasonable offer to lease or participate no less than 90 days prior to an involuntary pooling hearing. An application for involuntary pooling may be filed concurrently with the sending of a good faith, reasonable offer to lease or participate. While an application for involuntary pooling may be filed at any time prior to or after the drilling of a well, any involuntary pooling order issued will be retroactive to the date the application is filed with the Commission unless the payor agrees otherwise.
 - (1) For purposes of this Rule 506, "good faith" means a state of mind consisting in observance of reasonable commercial standards of fair dealing in oil and gas operations, and absence of intent to defraud or seek unconscionable advantage.
- c. Upon a showing by the applicant that it has complied with the Commission's Rules, the Commission may deem an owner to be a nonconsenting owner in the area to be pooled if:
 - (1) After receiving an offer to participate and given at least 60 days to review the offer, the owner does not elect in writing to consent to participate in the cost of the well concerning which the pooling order is sought. The offer to participate must include the following information, at a minimum:
 - A. The location and objective depth of the well.
 - i. Directional wells will include the estimated Measured Depth and True Vertical Depth (MD, TVD), and
 - ii. Horizontal wells will include the estimated Measured Depth, True Vertical Depth, and Lateral Length (MD, TVD, LL);
 - B. The estimated drilling and completion cost in dollars of the well (both the total cost and the owner's share);
 - C. The estimated spud date for the well or range of time within which spudding is to occur; and
 - D. Contact information for an operator representative who will be available to answer owner questions.
 - (2) An authority for expenditure prepared by the operator and containing the information required above, together with additional information deemed appropriate by the operator may satisfy these obligations.
 - (3) After receiving a good faith offer to lease and given at least 60 days to review the offer, the unleased owner has failed to accept or refused a reasonable offer to lease. In determining whether a good faith, reasonable offer to lease has been tendered under § 34-60-116(7)(d), C.R.S., the Commission will consider the lease terms listed below for the drilling and spacing unit in the application and for all cornering and contiguous units, and additional leases where necessary to obtain a representative sample of the lease market:

- A. Date of lease and primary term or offer with acreage in lease;
 - B. Annual rental per acre;
 - C. Bonus payment or evidence of its non-availability;
 - D. Mineral interest royalty; and
 - E. Such other lease terms as may be relevant.
- (4) for an offer to lease to be considered reasonable and have been made in good faith, the offer must be written in clear and neutral language and include information on which the offered price can be determined to be fair.
- d. A nonconsenting owner will be subject to cost recovery pursuant to § 34-60-116(7)(b), C.R.S.
 - e. All offers to lease or participate must include contact information for a representative of the applicant to answer questions and the Commission's brochure describing its pooling procedures and the owner's options related to pooling.

507. CONTESTED HEARING APPLICATIONS

- a. Any Affected Person may petition the Commission to participate formally as a party in any adjudicatory proceeding.
 - (1) Governmental entities, including Relevant and Proximate Local Governments and public agencies with legal authority over issues contemplated by the application, are Affected Persons.
 - (2) When determining if a person is an Affected Person all relevant factors will be considered, including, but not limited to, the following:
 - A. whether the interest claimed is one protected or affected by the application;
 - B. whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - C. likely impacts of the regulated activity on the health, safety, or use of property of the person;
 - D. likely impacts of the regulated activity on use of the impacted natural resource or wildlife by the person; or
 - E. for Government Agencies not identified in 507.a.(1), its legal authority over or interest in the issues relevant to the application.
- b. For purposes of an application filed pursuant to Rule 503.g.(2), only a mineral owner within the unit, Relevant Local Government, Proximate Local Government, Colorado Department of Public Health and Environment or Colorado Division of Parks and Wildlife may file a petition.
- c. A petition filed by the Relevant Local Government, Colorado Department of Public Health and Environment or Colorado Division of Parks and Wildlife will be granted.
- d. The petition will be filed with the Commission, and served on the applicant's counsel, if the applicant is represented by counsel, at least 30 days before the hearing. If the applicant is not represented by counsel, service will be made on the applicant.
- e. As per Rule 510.k., any continuance of a hearing will not extend the filing deadline for the filing of petitions.

- f. All petitions will include:
- (1) The application docket number;
 - (2) A general statement of the factual or legal basis for the petition based on the application;
 - (3) A statement and support for why the person filing the petition meets the definition of an Affected Person including how the petitioner satisfies one or more of the relevant factors set forth in Rule 507.a., b, or c.;
 - (4) A statement of the relief requested;
 - (5) What case the Affected Person plans to present to the Commission including a list of proposed witnesses;
 - (6) A time estimate to hear the petition; and
 - (7) A certificate of service attesting that the pleading has been served on the applicant and any other party in the proceeding.
- g. The Commission, Administrative Law Judge, or Hearing Officer may require any additional information necessary pursuant to the Commission's Rules to ensure the petition is complete. The Commission, Administrative Law Judge, or Hearing Officer has the discretion to summarily dismiss without prejudice any petition that does not meet the informational requirements set forth in this Rule.

508. UNCONTESTED HEARING APPLICATIONS

- a. If a matter is uncontested, the applicant may request approval without a hearing based on an Administrative Law Judge's or Hearing Officer's review of the merits of the verified application and the supporting exhibits. If the Director does not recommend approval of the application without hearing, the applicant may request an administrative hearing before an Administrative Law Judge, or Hearing Officer on the application. For purposes of this Rule an uncontested matter will mean any application that is not subject to a petition objecting to the relief requested in the application and will include matters in which all interested parties have consented in writing to the granting of the application without a hearing.
- b. From time to time, uncontested applications recommended for approval by an Administrative Law Judge, or Hearing Officer may be of special interest to the Commission and may be recommended by the Director for presentation to the Commission.

509. PREHEARING PROCEDURES FOR CONTESTED APPLICATIONS

- a. The Commission encourages the use of prehearing conferences between parties to a contested matter in order to facilitate settlement, narrow the issues, identify any stipulated facts, resolve any other pertinent issues, and reduce the hearing time. A prehearing conference will be conducted at the direction of the Commission, an Administrative Law Judge, or Hearing Officer upon receipt of a petition, an enforcement matter, or upon the request of the applicant or any person who has filed a petition. For matters in which a staff analysis has been prepared, the Director will participate in the prehearing conference to advise the parties of the content of staff's analysis. The prehearing conference will be conducted under the following general guidelines.
- b. The Commission, Administrative Law Judge, or Hearing Officer will enter a case management order that establishes:
 - (1) The hearing schedule;

- (2) The filing deadlines;
 - (3) Whether discovery is permitted; and
 - (4) Any other procedural matters.
- c. An Administrative Law Judge, or Hearing Officer will preside over any prehearing conference and rule on preliminary matters.
- d. The Secretary, Administrative Law Judge, or Hearing Officer will notify the applicant and any person who has filed a petition of the prehearing conference, and will direct the attorneys for the parties, and pro se parties, to appear in order to expedite the hearing or settle issues, or both.
- e. All parties will be prepared to discuss all procedural and substantive issues and will be authorized to make binding commitments.
- f. Preparation should include advance study of all materials filed and materials obtained through discovery.
- g. Failure of a party to attend any hearing other than a rulemaking hearing, after being notified of the date, time, and place, will be a waiver of any objection and will be deemed to be a concurrence to any agreement reached, or to any order or ruling made at the hearing, including the entry of a default judgment or the dismissal of a petition.
- h. A prehearing statement may be required of any party.
- i. At any prehearing conference, the following matters may be considered:
 - (1) Offers of settlement or designation of issues;
 - (2) Simplification of and establishment of a list or summary of the issues;
 - (3) Bifurcation of issues for hearing purposes;
 - (4) Admissions as to, or stipulations of facts not remaining in dispute or the authenticity of documents;
 - (5) Limitation of the number of fact and expert witnesses;
 - (6) Limitation on methods and extent of discovery, and a discovery schedule;
 - (7) Disposition of procedural motions; and
 - (8) Other matters raised by the parties, the Commission, Administrative Law Judge, or Hearing Officer.
- j. At any prehearing conference, the following information may be required:
 - (1) An exchange and acceptance of service of exhibits proposed to be offered in evidence, and establishment of a list of exhibits to be offered;
 - (2) Establishment of a list of witnesses to be called and anticipated testimony times; and
 - (3) A timetable for the completion of discovery, if discovery is allowed.
- k. The Administrative Law Judge, or Hearing Officer will reduce to writing any agreement reached or orders issued at a prehearing conference. The Administrative Law Judge, or Hearing Officer may require parties to submit proposed findings or orders.

- I. It is the intent of this Rule 509 that a prehearing order will be binding upon the participating parties.
- m. Subsequent to the prehearing conference and prior to the hearing on a contested matter, the parties may be asked to each prepare and submit to the Administrative Law Judge, or Hearing Officer a recommended order to consider for adoption at the time of hearing.

510. HEARINGS

- a. No application may be heard until the applicant has complied with all notice, evidentiary and other application requirements set forth in the Commission's Rules.
- b. A case management order, issued by the Commission, Administrative Law Judge, or Hearing Officer, will govern all hearings, including rulemaking hearings. The Commission, Administrative Law Judge, or Hearing Officer will establish in the case management order:
 - (1) the hearing schedule;
 - (2) the filing deadlines;
 - (3) whether discovery is permitted; any
 - (4) any additional procedural matters
- c. **Administrative hearings in uncontested applications.**
 - (1) As to applications where there has been no petition filed with the Commission in accordance with Rule 507., and where the Administrative Law Judge, or Hearing Officer has not issued a written recommended order approving the application, the application may be heard administratively. The date and time of the administrative hearing will be scheduled for the mutual convenience of the applicant and the Administrative Law Judge, or Hearing Officer. The administrative hearing may be conducted prior to the petition due date, but no recommended order will issue until the Administrative Law Judge, or Hearing Officer has fully considered any timely and properly filed petition.
 - (2) An Administrative Law Judge, or Hearing Officer may hear the application at the administrative hearing. Administrative hearings will proceed informally in a meeting format. The applicant may present its case using exhibits and witnesses. All witnesses will be sworn. At the conclusion of the administrative hearing, the Administrative Law Judge, or Hearing Officer will make a decision concerning approval or denial of the application and so inform the applicant. The Administrative Law Judge, or Hearing Officer will put such decision in a written report to the Commission containing findings of fact, conclusions of law, if any, and a recommended order. If the Administrative Law Judge, or Hearing Officer's recommended order is a denial or qualified approval of the application, the applicant will be entitled to file an exception.
- d. **Hearings in contested applications.** Every party will have the right to present its case at hearing by oral and documentary evidence. A case management order, issued by the Commission, Administrative Law Judge, or Hearing Officer, will govern the hearing of a contested application.
- e. **OFV hearing.**
 - (1) An OFV hearing will be held before the Commission, Administrative Law Judge, or Hearing Officer when:
 - A. The enforcement matter cannot be resolved through an AOC;

- B.** For any enforcement actions governed by Rule 525.d. (1)
- (2) OFV hearings for enforcement actions not governed by Rule 525.d.(1). are commenced by service of the NOAV and Notice and Application for Hearing. The Director is not required to file a separate application for an OFV hearing. An OFV hearing will commence on the date stated in the Notice and Application for Hearing, unless continued by the Commission, Administrative Law Judge, or Hearing Officer.
- (3) The Commission may commence an OFV hearing on its own motion, with notice pursuant to Rule 504., if it believes the Director has failed to enforce a provision of the Act, or a Commission Rule, order, or permit.
- (4) OFV hearings are *de novo* proceedings.
- f. Hearing on Complainant's Petition for Review.**
- (1) The Commission's hearing on a complainant's Petition for Review will be limited to evidence and information entered into the record prior to the Director's contested decision, and any evidence or information received and considered by the Director following an order from the Commission, Administrative Law Judge, or Hearing Officer. No party to the Petition for Review hearing may present evidence or information that was not previously presented to the Director.
- (2) It is the complainant's burden to show the Director's action was clearly erroneous.
- A.** If the Commission, Administrative Law Judge, or Hearing Officer finds that the Director's action was clearly erroneous, they may remand the matter to the Director for further proceedings, set the matter for an OFV Hearing, or order other such relief deemed just and reasonable.
- B.** If the complainant fails to meet its burden, the Commission, Administrative Law Judge, or Hearing Officer will deny the Petition for Review, and act on the final proposed AOC pursuant to Rule 523.d.(1)C.
- g. Rulemaking Hearings.** All rulemaking proceedings will be held in accordance with Rule 529.
- h. Witnesses.** Any witness at a hearing will take an oath or affirmation before testifying. After a witness has testified, the applicant, the petitioner, and any Commissioner may cross-examine that witness in the order established by the chairperson of the Commission. If the hearing is before an Administrative Law Judge, or Hearing Officer, the Administrative Law Judge, or Hearing Officer may ask questions during or after witness testimony or, cross-examine the witness.
- i. Limitations of testimony.**
- (1) Testimony and cross-examination by a petitioner will be limited to those issues that reasonably relate to the interests that the petitioner seeks to protect, and which may be adversely affected by an order of the Commission, as determined by the Commission, Administrative Law Judge, or Hearing Officer.
- (2) Where two or more petitioners have substantially similar interests and positions, the Commission, Administrative Law Judge, or Hearing Officer may limit cross-examination or argument on motions and objections to fewer than all petitioners. The Commission may also limit testimony to avoid undue delay, waste of time or needless presentation of cumulative evidence.
- j. Closing of record.** At the conclusion of closing statements, the record will be closed to the presentation of any further evidence, testimony, or statements, except as such may occur in response to questions from the Commission, Administrative Law Judge, or Hearing Officer.

- k. The Commission, Secretary, Administrative Law Judge, or Hearing Officer may for good cause cancel, stay, or continue any hearing to another date. Any continuance of a hearing will not extend the filing deadline for the filing of petition to contest an application under Rule 507., or any other required deadline under the Commission's Rules, unless otherwise ordered by the Commission, Administrative Law Judge, or Hearing Officer.
- l. When a Commission hearing is scheduled for multiple days the Secretary may estimate the time and date that a given matter may be heard by the Commission. The Commission may, in its discretion, change the proposed hearing docket, including the time or date of any scheduled hearing. It will be the responsibility of the participating parties and attorneys to be present when the Commission hears the matter.

511. LOCAL PUBLIC HEARING.

- a. A Relevant Local Government, Proximate Local Government or tribal authority may request the Commission hold a local public hearing to gather feedback from the local community, including elected officials and local government officials, on a proposed Oil and Gas Development Plan. The Commission will entertain all requests for a local public hearing. The Commission has discretion to decline a request for a local public hearing, or in the alternative hold the local public hearing at the Commission's offices.
- b. A request for a local public hearing must be in writing, and must include the docket number for the relevant Oil and Gas Development Plan. The request for a local public hearing must state with reasonable specificity the reasons why the Commission should hold a local public hearing.
- c. The conduct of a local public hearing will be informal, and participants will not be required to be sworn in prior to making a statement, represented by attorneys, or subjected to cross examination.
- d. The applicant may participate in the local public hearing and present information related to the application.
- e. The Director will create a record of the local public hearing by video-tape, audio-tape, or court reporter. Such record will be available to all Commissioners for review prior to the hearing on the Oil and Gas Development Plan application.
- f. Issues raised in a local public hearing may include any topic relevant to the Oil and Gas Development Plan.

512. PUBLIC COMMENT

- a. The Commission may accept oral or written comments from the public concerning an adjudicatory proceeding to be heard by the Commission. Public comments will be included in the administrative record for the adjudicatory proceeding.
- b. Parties to a proceeding may not provide public comment in that proceeding; they are not considered part of the public for comment purposes.

513. COMMISSION MEMBERS REQUIRED FOR HEARINGS AND/OR DECISIONS

A quorum of the voting members of the Commission is required for the transaction of business. Testimony may be taken and oath or affirmation administered by any member of the Commission, or by counsel to the Commission if the Commission Chair so delegates.

514. STANDARDS OF CONDUCT

- a. The purpose of this Rule 514. is to ensure that the Commission's decisions are free from personal bias and that its decision-making processes are consistent with the concept of fundamental fairness. The provisions of this Rule 514 are in addition to the requirements for Commission members set forth in §

24-18-108.5, C.R.S. This Rule 514 should be construed and applied to further the objectives of fair and impartial decision making. To achieve these standards Commissioners, Administrative Law Judges, and Hearing Officers should:

- (1) Discharge their responsibilities with high integrity.
- (2) Respect and comply with the law. Their conduct, at all times, should promote public confidence in the integrity and impartiality of the Commission.
- (3) Not lend the prestige of the office to advance their own private interests, or the private interests of others, nor should they convey, or permit others to convey, the impression that special influence can be brought to bear on them.

b. Conflicts of interest. A conflict of interest exists in circumstances where a Commissioner, Administrative Law Judge, or Hearing Officer has a personal or financial interest that prejudices that person's ability to participate objectively in an official act.

- (1) A Commissioner, Administrative Law Judge, or a Hearing Officer will disclose the basis for a potential conflict of interest to the Commission and others in attendance at the hearing before any discussion begins or as soon thereafter as the conflict is perceived. A conflict of interest may also be raised by other Commissioners, the applicant, any petitioner, or any member of the public.
- (2) In response to an assertion of a conflict of interest, a Commissioner may withdraw or the Director may designate an alternate Administrative Law Judge, or Hearing Officer. If the Commissioner does not agree to withdraw, the other Commissioners will vote on whether a conflict of interest exists. Such vote will be binding on the Commissioner disclosing the conflict.
- (3) In determining whether there is a conflict of interest that warrants withdrawal, the Commission members, Administrative Law Judge, or Hearing Officer will take the following into consideration:
 - A. Whether the official act will have a direct economic benefit on a business or other undertaking in which the Commissioner, Administrative Law Judge, or Hearing Officer has a direct or substantial financial interest.
 - B. Whether the potential conflict will result in the Commissioner, Administrative Law Judge, or Hearing Officer not being capable of judging a particular controversy fairly on the basis of its own circumstances.
 - C. Whether the potential conflict will result in the Commissioner, Administrative Law Judge, or Hearing Officer having an unalterably closed mind on matters critical to the disposition of the proceeding.

c. Discharge of duties. In the performance of their official duties, the Commission will apply the following standards:

- (1) To be faithful to and constantly strive to improve their competence in regulatory principles, and to be unswayed by partisan interests, public clamor, or fear of criticism.
- (2) To maintain order and decorum in the proceedings before them.
- (3) To be patient, dignified and courteous and to require similar conduct of attorneys, staff, and others subject to their direction and control.
- (4) To afford to every person who is legally interested in a proceeding full right to be heard according to law.

- (5) To diligently discharge their administrative responsibilities, maintain professional confidence in Commission administration, and facilitate the performance of the administrative responsibilities of other staff officials.

515. REPRESENTATION AT ADMINISTRATIVE AND COMMISSION HEARINGS

- a. Natural persons may appear on their own behalf and represent themselves at hearings before the Commission, and persons allowed to make oral or written statements may do so without counsel. Participants who are not represented by legal counsel are subject to the Commission's Rules.
- b. Except as provided in subsections a. and c. of this Rule 515., representation at hearings before the Commission will be by attorneys licensed to practice law in the State of Colorado. Any attorney duly admitted to practice law in a court of record of any state or territory of the United States or in the District of Columbia, but not admitted to practice in Colorado, who appears at a hearing before the Commission may, upon motion, be admitted for the purpose of that hearing only, if that attorney has associated for purposes of that hearing with any attorney who:
 - (1) Is admitted to practice law in Colorado; and
 - (2) Is a resident or maintains a law office within Colorado.;
- c. The Commission has the discretion to allow representation by a corporate officer or director of a community organization, a closely held entity, a citizens' group duly authorized under Colorado law, or if a limited liability corporation, the member/manager in the following circumstances:
 - (1) Rulemakings;
 - (2) Local public hearings; or
 - (3) When an individual is appearing on behalf of a closely held corporation as provided in § 13-1-127, C.R.S.
- d. Unless a non-attorney is appearing pro se or pursuant to § 13-1-127, C.R.S., or the Director is participating pursuant to Rule 510.e. or 510.f., a non-attorney will not be permitted to examine or cross-examine witnesses, make objections or resist objections to the introduction of testimony, or make legal arguments.

516. SUBPOENAS

- a. The Commission, Administrative Law Judge, or a Hearing Officer may issue subpoenas requiring attendance of witnesses and the production of books, papers, and other instruments to the same extent and in the same manner and in accordance with the Colorado Rules of Civil Procedure. A party seeking a subpoena will submit the form of the subpoena for execution. Upon execution, the party requesting the subpoena has the responsibility to serve the subpoena in accordance with the Rules of Civil Procedure.

517. APPLICABILITY OF COLORADO COURT RULES AND ADMINISTRATIVE NOTICE

- a. The Colorado Rules of Civil Procedure apply to Commission proceedings unless they are inconsistent with Commission Rules or the Act, or as the Administrative Law Judge, or Hearing Officer may otherwise direct on the record during prehearing proceedings or by written order.
- b. In general, the rules of evidence applicable before a trial court without a jury will be applicable in matters before the Commission, providing that such rules may be relaxed, where, by so doing, the ends of justice will be better served.

- (1) To promote uniformity in the admission of evidence, the Commission, Administrative Law Judge, or Hearing Officer to the extent practical, will observe and conform to the Colorado Rules of Evidence applicable in civil non-jury cases in the district courts of Colorado.
- (2) When necessary to ascertain facts affecting substantial rights of the parties to a proceeding, the Commission, Administrative Law Judge, or Hearing Officer may receive and consider evidence not admissible under the Rules of Evidence, if the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.
- (3) Informality in any proceeding or in the manner of taking testimony will not invalidate any Commission order, decision, rule, or regulation.

c. **Administrative notice.** The Commission, Administrative Law Judge, or Hearing Officer may take administrative notice of:

- (1) Constitutions and statutes of any state, tribe, and of the United States;
- (2) Rules, regulations, official reports, decisions, and orders of local, state and federal administrative agencies;
- (3) Decisions and orders of federal and state courts;
- (4) Commission reports, data, files, documents, and records;
- (5) Matters of common knowledge and undisputed technical or scientific fact;
- (6) Matters that may be judicially noticed by a Colorado district court in a civil non-jury case; and
- (7) Matters within the expertise of the Commission.

d. Upon receipt of an objection to any discovery issued under this Rule 517.d., the Commission, Administrative Law Judge, or a Hearing Officer has the discretion to limit the scope of the discovery sought to matters that are within the scope of the Commission's jurisdiction under the Act, or otherwise

518. ELECTRONIC FILING

- a. All applications, pleadings, petitions or documents filed pursuant to the Commission's Rules will be submitted electronically in a manner determined by the Director.
- b. All applications, pleadings, petitions or documents filed pursuant to the Commission's Rules will be accompanied by a docket fee established by the Commission (see Appendix III). No docket fees will be assessed on filings made by Commission staff, or governmental agencies. The docket fee will be refunded if a petition is denied. In cases of hardship, the docket fee may be waived at the discretion of the Director or the Commission.

519. CONSENT AGENDA

- a. Regular hearings will be held before the Commission on such days as may be set by the Commission.
- b. The Secretary may place on the consent agenda those uncontested matters recommended by an Administrative Law Judge, or Hearing Officer for approval if a recommended order has not become the final agency action pursuant to Rule 520.b.
 - (1) All matters on the consent agenda may be presented individually or in groups. All matters within a group will be voted on together, without deliberation and without the necessity of reading into the

record the individual items. However, any Commissioner may request clarification from the Director or from the attorney or other representative of the applicant for any matter on the consent agenda.

- (2) Any Commissioner may remove a matter from the consent agenda prior to voting thereon.
- (3) Any matter removed from the consent agenda will be heard at the end of the remaining agenda, if practicable and agreeable to the applicant, or, if not, scheduled for hearing at the next regularly scheduled meeting of the Commission.

520. DECISIONS, ORDERS AND EXCEPTIONS

a. Interim Decisions.

- (1) Interim decisions are issued after an application is set for hearing, but are not recommended orders that may become a final decision of the Commission. A Hearing Officer or Administrative Law Judge's decision on a motion to dismiss or petition to be a party is an interim decision unless an application is dismissed in its entirety.
- (2) Interim decisions will not be subject to exceptions. However, any aggrieved party or rulemaking participant may challenge the matters determined in an interim decision in exceptions to a recommended order.
- (3) Nothing in this Rule 520.a. prohibits a motion for clarification of an interim decision set forth in an interim decision.

b. **Recommended Orders.** After due consideration of written statements, oral statements, the testimony, the evidence, and the arguments presented at hearing, the Administrative Law Judge, or Hearing Officer will make a written recommended order based upon evidence in the record, consistent with the Act and any Commission Rule, permit, or order made pursuant thereto. The Administrative Law Judge, or Hearing Officer will promptly transmit electronically to the Commission and the parties the record and exhibits of the proceeding and a written recommended order. The recommended order becomes a final agency action if no exceptions are filed within 20 days after service upon the parties and the Commission does not stay the recommended order on its own motion. The recommended order will also be served on any persons whose petition to participate in the matter was denied.

c. **Exceptions.** As per § 34-60-108(9), C.R.S., a recommended order becomes the Commission's final order unless, within 20 days or such additional time as the Commission may allow, any party or person whose petition to participate in the matter was denied files exceptions to the recommended order or the Commission orders the recommended order to be stayed. A stay of a recommended order does not automatically extend the period for filing exceptions or a motion for an extension of time to file exceptions. If exceptions are timely filed, the recommended order is stayed until the Commission Rules upon them. Parties may file responses to exceptions within 14 days following service of the exceptions.

- (1) The Commission will conduct a review upon the same record before the Administrative Law Judge, or Hearing Officer, and a de novo review of the law.
- (2) The Commission may, upon its own motion or upon the motion of a party, order oral argument regarding exceptions. The Secretary will set the time allotted for argument. The Commission may terminate argument whenever, in its judgment, further argument is unnecessary. The party filing exceptions is entitled to open and conclude the argument. Arguments will be limited to issues raised in the exceptions, unless the Commission orders otherwise.

- d. An Administrative Law Judge's or Hearing Officer's recommended order will be an initial decision for purposes of filing an exception pursuant to the state Administrative Procedure Act.

521. COMMISSION FINDINGS AND ORDER

- a. After due consideration of written statements, oral statements, the testimony, and the arguments presented at hearing before the Commission, the Commission will make its findings and written order, based upon evidence in the record and, as appropriate, consistent with the Act and any Commission Rule, permit, or order made pursuant thereto.
- b. Commission orders will be entered within 30 days after the hearing, as per § 34-60-108(7), C.R.S. Orders will be final upon Commission approval, and effective for purposes of judicial review on the date of electronic delivery or mailing.

522. SERVICE

- a. A person filing any application, petition, pleading or other document will serve a copy, including all supporting attachments or exhibits, on every other party in the docket. Service of all pleadings or other documents will be accomplished electronically in a manner determined by the Director.
- b. **Enforcement Documents.** The Director will serve a Notice of Alleged Violation, a Notice of Hearing of an enforcement action or an OFV on the operator or the operator's designated agent and other parties as necessary by personal delivery or by certified mail, return receipt requested, to the address the operator has on file with the Commission pursuant to Rule 447. All other documents in enforcement cases will be served electronically in a manner determined by the Director.
- c. Notice to a complainant may be served by confirmed electronic mail (unless previously objected to by a party) or by first class mail to the address provided. Where notice is sent electronically, notice is perfected when sent. Where notice is sent by first class mail, notice is perfected 5 days after mailing.
- d. **Petitions for Review.** A Petition for Review by a complainant will be served on the operator or the operator's designated agent to the address on file with the Commission electronically in a manner as determined by the Director. If the complainant is unable to serve the Petition for Review electronically, the complainant will serve it by certified mail, return receipt requested. A complainant must serve its Petition for Review on the operator within 7 days following filing of the Petition. All other documents in a Petition for Review proceeding will be served on all parties electronically (unless previously objected to by a party).
- e. **Cease and Desist Orders.** In emergency situations, a Cease and Desist Order may be served electronically in a manner as determined by the Director, followed by a copy served on the operator or the operator's designated agent by personal delivery or by certified mail, return receipt requested, to the address the operator has on file with the Commission pursuant to Rule 447. In non-emergency situations, a Cease and Desist Order may be served by certified mail.
- f. **Service by Certified Mail.** When service is accomplished through certified mail it will be perfected at the earliest of:
 - (1) The date of receipt;
 - (2) The date shown on the return receipt; or
 - (3) 5 days after mailing.
- g. **Service by First Class Mail.** If a party or person lacks access to file or receive documents electronically in a manner as determined by the Director, service will be made by first class mail. When service is

accomplished through first class mail it is perfected 5 days after mailing. Service by first class mail may not be substituted for service by certified mail when service by certified mail is required by Commission Rule or the Act.

523. ENFORCEMENT

- a. **Identification of Alleged Violations.** If, on the Director's own initiative or based on a complaint, reasonable cause exists to believe that a violation of the Act, any Commission Rule, order, or permit has occurred, the Director will require the operator to remedy the violation and may commence an enforcement action seeking penalties by issuing a Notice of Alleged Violation (NOAV). Reasonable cause requires, at least, evidence of the alleged violation, as verified by the Director.
- b. **Resolution of Alleged Violations without Penalties.**
 - (1) When the Director has reasonable cause to believe a violation of the Act, any Commission Rule, order, or permit has occurred, the Director may resolve the alleged violation without seeking a penalty if all of the following apply:
 - A. The Commission Rule allegedly violated is not a Class 3 rule and the degree of actual or threatened impact is minor or moderate under the Commission's Penalty Schedule, Rule 525.c.(1);
 - B. The operator has not received a previous Warning Letter or Corrective Action Required Inspection Report regarding the same violation;
 - C. The Director determines the alleged violation can be corrected without undue delay; and
 - D. The operator timely performs all corrective actions required by the Director and takes any other actions necessary to promptly return to compliance.
 - (2) The Director retains discretion to seek penalties for any violation of the Act, or a Commission Rule, order, or permit, even if all of the factors in subpart 523.b. apply.
- c. **Enforcement Actions Seeking Penalties for Alleged Violations.** When the Director determines subpart 523.c.(1) does not apply or otherwise elects to seek penalties for an alleged violation, the Director will commence an enforcement action by issuing a Notice of Alleged Violation (NOAV).
 - (1) **Content of an NOAV.** An NOAV will identify the provisions of the Act, or Commission Rules, orders, or permits allegedly violated and will contain a short and plain statement of the facts alleged to constitute each alleged violation. The NOAV may propose appropriate corrective action and an abatement schedule required by the Director to correct the alleged violation.
 - (2) **Answer.** An answer to an NOAV must be filed within 28 days of the operator's receipt of an NOAV, unless an exception or extension is granted by the Director. An answer will, at a minimum, discuss the allegations contained in the NOAV, responding to each; identify corrective actions taken in response to the NOAV, if any; and identify facts known to the operator at the time that are relevant to the operator's response to the alleged violations. If the operator fails to file an answer within 28 days, the Director may request the Commission, Administrative Law Judge, or Hearing Officer enter a default judgment.
 - (3) **Procedural matters.**
 - A. Service of an NOAV constitutes commencement of an enforcement action or other proceeding for purposes of § 34-60-115, C.R.S.
 - B. Issuance of an NOAV does not constitute final agency action for purposes of judicial review.

C. A monetary penalty for a violation may only be imposed by Commission order.

d. **Resolution of Enforcement Actions.**

(1) **Administrative Order by Consent.** Except as provided in subpart 523.e.(2), an enforcement action is resolved upon the Commission's entry of an order approving an agreement between the operator and the Director.

A. A proposed agreement to resolve an enforcement action will be memorialized in an AOC executed by the Director and the operator.

B. A complainant who has filed a written complaint on a Complaint Report, Form 18, will be informed of the terms of a draft proposed AOC resolving alleged violations arising directly out of their written complaint and will be given 14 days to comment on the draft settlement terms before the AOC is finalized and presented to an Administrative Law Judge, or Hearing Officer for a recommended order approving it. The Director will provide a copy of the final proposed AOC to the complainant. A complainant who objects to the final proposed AOC may file a Petition for Review pursuant to Rule 524.e.

C. AOCs that are not subject to a pending complainant's Petition for Review will be reviewed by an Administrative Law Judge, or Hearing Officer to issue a recommended order. A recommended AOC becomes the decision of the Commission within 20 days after service upon the parties, unless the Commission stays the recommended order on the AOC within that time.

D. If the Commission stays the recommended AOC, the Commission may

- i. remand the matter to the Director for further proceedings; or
- ii. direct the parties to appear before the Commission for hearing.

(2) **Orders Finding Violation.**

A. An enforcement action may not be resolved by the Director and must be heard by an Administrative Law Judge, or Hearing Officer, unless the Commission directs otherwise, when:

- i. The Director alleges the operator is responsible for gross negligence or knowing and willful misconduct that resulted in an egregious violation;
- ii. The Director alleges the violation resulted in the death or serious injury of a person;
- iii. The Director alleges the operator has engaged in a pattern of violations; or
- iv. The Commission sets an OFV hearing pursuant to Rule 510.e (3).

e. **Rescinding an NOAV.** If, after issuance of an NOAV the Director no longer has reasonable cause to believe a violation of the Act, or of any Commission Rule, order, or permit occurred, the Director will rescind the NOAV in writing.

f. **Failure to Comply with Commission Orders.** An operator's failure to diligently implement corrective action pursuant to an AOC, OFV, or other Commission order constitutes an independent violation which may result in an NOAV, additional penalties or corrective action requirements.

524. COMPLAINANT ENFORCEMENT MATTERS.

- a. Any person may make a complaint using the Complaint Report, Form 18, to the Director alleging that a violation of the Act, any Commission Rule, order, or permit has occurred. . The Director will investigate all complaints made pursuant to this Rule to the extent the Director believes sufficient grounds exist to warrant an investigation.
- b. The Director will notify the complainant of whether an investigation will be conducted.
 - (1) If the Director determines no violation occurred, the Director will notify the operator and the complainant, and no further action will be taken.
 - (2) If the Director determines a violation may have occurred, the Director may initiate and resolve the enforcement action in accordance with Rule 523.
 - (3) If a complaint specifically results in the issuance of an NOAV, a complainant who has filed a written complaint on a Complaint Report, Form 18, will be given 14 days to comment on the terms of a draft proposed settlement of the NOAV, if any, before the AOC is signed and presented to an Administrative Law Judge, or Hearing Officer for a recommended order approving it.
- c. A complainant who has filed a written complaint on a Complaint Report, Form 18 may file a Petition for Review requesting the Commission hear the complainant's objections to:
 - (1) The Director's decision not to issue an NOAV for an alleged violation specifically identified in the written complaint; or
 - (2) The settlement terms of a final proposed AOC that settles an alleged violation arising directly from the Complaint Report, Form 18.
- d. Complainants must file a Petition for Review application with the Commission within 28 days of receiving the Director's decision. .
- e. A Petition for Review will set forth in reasonable detail the legal arguments and facts the complainant contends demonstrate that the Director's decision was clearly erroneous.
 - (1) A Petition for Review may include a request for a continuance of the enforcement hearing on the AOC based on actual, compelling evidence, which has been gathered by the complainant after the Director's contested decision, that the Director should further investigate the circumstances surrounding the alleged violation. The Commission, an Administrative Law Judge, or Hearing Officer will determine whether a continuance is warranted, and whether to direct staff to conduct additional investigation or receive and consider additional information.
 - (2) An Administrative Law Judge, or Hearing Officer will issue a case management order that establishes the deadlines for filing responses to the Petition for Review.
 - (3) Discovery will not be permitted prior to the Petition for Review hearing.
- f. Unless otherwise continued, a Petition for Review will be heard within 42 days following filing of the Petition for Review.

525. ASSESSING PENALTIES IN ENFORCEMENT MATTERS

- a. **General.** An operator who violates the Act, or a Commission Rule, order, or permit may be subject to a penalty imposed by Commission order. Penalties will be calculated based on the Act and this Rule

525. The Commission's Enforcement Guidance and Penalty Policy also provides non-binding guidance to the Commission and interested persons evaluating a penalty for an alleged violation.

b. Days of Violation. The duration of a violation will be calculated as follows:

- (1) A reporting or other minor violation not involving actual or threatened significant adverse impacts begins on the day that the report should have been made or other required action should have been taken, and continues until the report is filed or the required action is commenced to the Director's satisfaction.
- (2) All other violations begin on the date the violation was discovered or should have been discovered through the exercise of reasonable care and continue until the appropriate corrective action is commenced to the Director's satisfaction.
- (3) With respect to violations that result in actual or threatened adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, commencing appropriate corrective action includes, at a minimum:
 - A. Performing immediate actions necessary to assess and evaluate the actual or threatened adverse impacts; and
 - B. Performing all other near-term actions necessary to stop, contain, or control actual or threatened adverse impacts in order to prevent, minimize, or mitigate damage to public health, safety, and welfare, including the environment and wildlife resources. Such actions may include, without limitation, stopping or containing a spill or release of E&P Waste; establishing well control after a loss of control event; removing E&P Waste resulting from surface spills or releases; installing fencing or other security measures to limit access (including wildlife access) to affected areas; providing alternative water supplies; notifying affected landowners, local governments, and other persons or businesses; and, in cases of actual adverse impacts, mobilizing all resources necessary to fully and completely remediate the affected environment.
- (4) A penalty will be assessed for each day the evidence shows a violation continued.
- (5) The number of days of violation does not include any period necessary to allow the operator to engage in good faith negotiation with the Commission regarding an alleged violation if the operator demonstrates a prompt, effective, and prudent response to the violation.

c. Penalty Calculation. The base penalty for each violation will be calculated based on the Commission's Penalty Schedule which considers the severity of the potential consequences of a violation of a specific rule combined with an assessment of the degree of actual or threatened adverse impacts to public health, safety, and welfare, including the environment and wildlife resources. Pursuant to § 34-60-121(1)(a), the maximum daily penalty cannot exceed \$15,000 per day per violation.

- (1) **Penalty Schedule.** The Commission's Penalty Schedule is set forth in the following matrix. The matrix establishes a daily penalty based on the classification of the rule violation (Class 1, 2, or 3) and the degree of actual or threatened adverse impact resulting from the violation (minor, moderate, or major).

		Rule Classification		
		Class 1: Paperwork or other ministerial rules, a violation of which presents no direct risk or threat of harm to public health, safety, and welfare, including the environment and wildlife resources.	Class 2: Rules related at least indirectly to protecting public health, safety, and welfare, including the environment and wildlife resources, a violation of which presents a possibility of distinct, identifiable actual or threatened adverse impacts to those interests.	Class 3: Rules directly related to protecting public health, safety, and welfare, including the environment and wildlife resources, a violation of which presents a significant probability of actual or threatened adverse impacts to those interests.
Degree of threatened or actual impact to public health, safety, welfare, the environment, or wildlife	Major: Actual significant adverse impacts	\$5,000	\$10,000	\$15,000
	Moderate: Threat of significant adverse impacts, or moderate actual adverse impacts	\$1,500	\$5,000	\$10,000
	Minor: No actual adverse impact and little or no threat of adverse impacts	\$200	\$2,500	\$5,000

- (2) **Degree of actual or threatened adverse impact.** The base penalty for a violation may be increased based on the degree of actual or threatened adverse impact to public health, safety, and welfare, including the environment and wildlife resources resulting from the violation. The Commission, Administrative Law Judge, or Hearing Officer will determine the degree of actual or threatened adverse impact to public health, safety, and welfare, including the environment and wildlife resources, based on the totality of circumstances in each case. The Commission,

Administrative Law Judge, or Hearing Officer will consider the following, non-exclusive, list of factors in making its determination:

- A. Whether and to what degree the environment and wildlife resources were adversely affected or threatened by the violation. This factor considers the existence, size, and proximity of potentially impacted livestock, wildlife, soil, water, air, and all other natural resources.
 - B. Whether and to what degree Waters of the State were adversely affected or threatened by the violation.
 - C. Whether and to what degree drinking water was adversely affected or threatened by the violation.
 - D. Whether and to what degree public or private property was adversely affected or threatened by the violation.
 - E. The quantity and character of any E&P waste or non-E&P waste that was actually or threatened to be spilled or released.
 - F. Whether any persons were harmed or whether there was a threat to the health, safety, and welfare of any persons.
 - G. Any other facts relevant to an objective assessment of the degree of adverse impact to public health, safety, or welfare, including the environment and wildlife resources.
- (3) **Penalty Adjustments for Aggravating and Mitigating Factors.** The Commission, Administrative Law Judge, or Hearing Officer may increase a penalty up to the statutory daily maximum amount if it finds any of the aggravating factors listed in subpart A., below, exist. The Commission, Administrative Law Judge, or Hearing Officer may decrease a penalty if it finds that the violator cooperated with the Commission and other agencies with respect to the violation and that any of the mitigating factors listed in subpart B., below, exist.
- A. Aggravating factors:
 - i. The violator acted with gross negligence or knowing and willful misconduct.
 - ii. The violation resulted in significant waste of oil and gas resources.
 - iii. The violation had a significant negative impact on correlative rights of other parties.
 - iv. The violator was recalcitrant or uncooperative with the Commission or other agencies in correcting or responding to the violation.
 - v. The violator falsified reports or records.
 - vi. The violator benefited economically from the violation, in which case the amount of such benefit will be taken into consideration.
 - vii. The violator has engaged in a pattern of violations.
 - viii. The violation led to death or serious injury.

- B.** Mitigating factors:
- i. The violator self-reported the violation.
 - ii. The violator demonstrated prompt, effective and prudent response to the violation, including assistance to any impacted parties.
 - iii. The cause of the violation was outside of the violator's reasonable control and responsibility, or is customarily considered to be force majeure.
 - iv. The violator made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation.
 - v. The cost of correcting the violation reduced or eliminated any economic benefit to the violator, excluding circumstances in which increased costs stemmed from non-compliance.
 - vi. The violator has demonstrated a history of compliance with the Act, and Commission Rules, orders, and permits.
- (4) Penalty adjustments based on duration of violation.** In its discretion, the Commission, an Administrative Law Judge, or Hearing Officer may decrease the daily penalty amounts for violations of long duration to ensure the total penalty is appropriate to the nature of the violation.
- d. Pattern of Violations, Gross Negligence, or Knowing and Willful Misconduct.**
- (1)** The Director will apply for an OFV hearing when the Director determines an operator has:
 - A.** Engaged in a pattern of violations;
 - B.** Acted with gross negligence or knowing and willful misconduct that resulted in an egregious violation; or
 - C.** Engaged in an activity that resulted in death or serious injury.
 - (2)** If the Commission, Administrative Law Judge, or Hearing Officer finds after hearing that an operator is responsible for the conduct described in subparagraph d.(1), the Commission, Administrative Law Judge, or Hearing Officer may suspend an operator's Certification of Clearance, withhold new drilling or oil and gas location permits, or both. Such suspension will last until such time as the violator demonstrates to the satisfaction of the Commission that the operator has brought each violation into compliance and that any penalty assessed, which is not subject to judicial review, has been paid at which time the Commission may vacate the order.
 - (3)** The Commission, Administrative Law Judge, or Hearing Officer will consider an operator's history of violations of the Act, or Commission Rules, orders, or permits, and any other factors relevant to objectively determining whether an operator has engaged in a pattern of violations. For an operator's history of violations, the Commission, Administrative Law Judge, or Hearing Officer may only consider violations confirmed by Commission order through an AOC or OFV.

e. Voluntary disclosure.

- (1) The Director may consider a penalty reduction of 35% for a violation of the Act, or any Commission Rule, order, or permit voluntarily disclosed by an operator if:
 - A. The disclosure is made promptly after the operator discovers the violation;
 - B. The operator discovered the violation independent of, and unrelated to a COGCC inspection or an NOAV;
 - C. The operator cooperates with the Director regarding investigation of the disclosed violation; and
 - D. The operator has achieved or commits to achieve compliance within a reasonable time and pursues compliance with due diligence.
- (2) The Director may not consider a penalty reduction if:
 - A. The disclosure is made for fraudulent purposes;
 - B. The disclosed violation is part of a pattern of violations;
 - C. The violation is not of a Class 3 rule, or categorized as a “major” violation; or
 - D. The disclosed violation was egregious and the result of the operator’s gross negligence or knowing and willful misconduct.
- (3) If the Director determines that any of the factors in subpart (1) are not met or that the factors in subpart (2) are met, the Director may consider the fact that the operator self-reported the violation as a mitigating factor under Rule 525.c.(3)B.(i).

f. Public Projects. In its discretion, the Commission, Administrative Law Judge, or Hearing Officer may allow an operator to satisfy a penalty in whole or in part by a Public Project that the operator is not otherwise legally required to undertake. The costs of the Public Project may offset the penalty amount dollar for dollar, or by some other ratio determined by the Commission. A Public Project must provide tangible benefit to public health, safety and welfare, or the environment or wildlife resources. The Commission favors Public Projects that benefit the persons or communities most directly affected by a violation, or that provide education or training to local government entities, first responders, the public, or the regulated community related to the violation.

g. Payment of penalties. An operator will pay a penalty imposed by Commission order, by certified funds unless otherwise agreed to, within 30 days of the effective date of the order, unless the Commission grants a longer period or unless the operator files for judicial appeal, in which event payment of the penalty will be stayed pending resolution of such appeal. An operator's obligations to comply with the provisions of a Commission order requiring compliance with the Act, or Commission Rules, orders, or permits will not be stayed pending resolution of an appeal, except by court order.

526. DETERMINATION OF RESPONSIBLE PARTY. An alleged responsible party will have the burden to present sufficient evidence to the Commission, Administrative Law Judge, or Hearing Officer to determine responsible party status.

- a. A hearing may be initiated on the Commission's own motion, upon application, or at the request of the Director to decide responsible party status upon at least 21 days' notice to the potentially responsible parties.
- b. Potentially responsible parties will be those persons that have or should have submitted Registration for Oil and Gas Operation, Form 1, or that have or should have submitted financial assurance for oil and gas operations pursuant to requirements of the 700-Series Rules.
- c. Potentially responsible parties will provide to the Commission, Director, Administrative Law Judge, or Hearing Officer such information as the Commission, Director, Administrative Law Judge, or Hearing Officer may reasonably require in making such determination.
- d. The Commission, Administrative Law Judge, or Hearing Officer will make the determination under this section without regard to any contractual assignments of liability or other legal defenses between parties.
- e. Where multiple persons are determined to be responsible parties, they will share in the mitigation liability in proportion to their respective shares of production, respective periods of ownership or respective contributions to the subject impacts problem, or any other factors as may serve the interests of fairness as determined by the Director, the Commission, Administrative Law Judge, or Hearing Officer.
- f. The Commission, Administrative Law Judge, or Hearing Officer will find responsible party status and mitigation liability if the responsible party conducted operations that resulted in or threatened to cause an adverse impact to public health, safety, welfare, the environment or wildlife resources or an adverse environmental impact to any air, water, soil, or biological resource based on the conduct of oil or gas operations in contravention of any then applicable provision of the Act or Commission Rule, or order of the Commission, or of any permit that threatens to cause, or actually causes, a significant adverse environmental impact to any air, water, soil, or biological resource.

527. PERMIT-RELATED PENALTIES

- a. If the Commission determines, after a hearing, that an operator failed to perform any required corrective action, or failed to comply with a Cease and Desist Order issued by the Commission or the Director with regard to violation of a permit provision, the Commission may issue an order suspending, modifying, or revoking a permit or permits authorizing the operation. The order will provide the condition(s) which must be met by the operator for reinstatement of the permit(s). An operator which is subject to an order that suspends, modifies, or revokes a permit or permits will continue the affected operations only for the purpose of bringing them into compliance with the permit(s) or modified permit(s), and will do so under the supervision of the Director. Once the condition for reinstatement has been met to the satisfaction of the Director and any fine not subject to judicial review or appeal has been paid, the Director will inform the Commission, and the Commission, if in agreement, will reinstate the permit(s).
- b. Whenever the Commission or the Director has evidence that an operator is responsible for a pattern of violation of any provision of the Act, or of any rule, permit, or order of the Commission, the Commission or the Director will issue a notice to such operator to appear for a hearing before the Commission. If the Commission finds, after such hearing, that a knowing and willful pattern of violation exists, it may issue an order which will prohibit the issuance of any new permits to such operator. When such operator demonstrates to the satisfaction of the Commission that it has brought each of the violations into

compliance and that any fine not subject to judicial review or appeal has been paid, such order denying new permits will be vacated.

528. CEASE AND DESIST ORDERS.

- a. The Commission or the Director, may issue a Cease and Desist Order when an operator's alleged violation of the Act, Commission Rule, order, or permit, or failure to take required corrective action or other authorized activity that creates an emergency situation. If the Cease and Desist Order is entered by the Director, it will be reported to the Commission not later than the next regularly scheduled Commission hearing, unless the matter is heard pursuant to the expedited procedure under § 34-60-121(5)(b), C.R.S.
- b. The Cease and Desist Order will be served pursuant to Rule 522. within 7 days after it is issued.
- c. The Cease and Desist Order will state the provisions of the Act, or Commission Rules, orders, or permits alleged to have been violated, and will contain a short and plain statement of the facts alleged to constitute the violation, the time by which the acts or practices cited are required to cease, and any corrective action the Commission or the Director elects to require of the operator.
- d. Any objection by an operator of a Cease and Desist Order will be heard by the Commission pursuant to § 34-60-121(5)(b), C.R.S. An operator's objection to a Cease and Desist Order will not stay the order pending a Commission hearing on the matter, unless the operator obtains an injunction enjoining enforcement of the Cease and Desist Order.
- e. After the issuance of a Cease and Desist Order, the Director may amend or suspend a permit associated with the Cease and Desist Order if necessary to protect public health, safety, welfare, the environment, and wildlife resources.
- f. If an operator fails to comply with a Cease and Desist Order, the Commission may request the attorney general to bring suit pursuant to § 34-60-109, C.R.S.

529. RULEMAKING PROCEEDINGS

- a. **Initiation of rulemaking.** The Commission may initiate rulemaking on its motion or in response to an application filed by any person, including the Director. Whether to conduct a rulemaking lies within the discretion of the Commission. A rulemaking may address regulations statewide, or in a more limited geographic area such as a specific geologic basin or field.
- b. **Applications for rulemaking.** Any person may petition the Commission to initiate rulemaking. All applications for rulemaking will contain the following information:
 - (1) The name, address, and telephone number of the person requesting the rulemaking;
 - (2) A copy of the rule proposed in the application and a general statement of the reasons for the requested rule; and
 - (3) A proposed statement of the basis and purpose for the rule.
- c. **Notice of proposed rulemaking.** All rulemaking hearings of the Commission will be noticed by publication in the Colorado Register not less than 20 days prior to the hearing and as otherwise specified in the Administrative Procedure Act, § 24-4-103, C.R.S.
- d. **Development of proposed rules.** Prior to the notice of proposed rulemaking, the Commission or Director will establish a representative group of participants with an interest in the subject of the rulemaking as provided by § 24-4-103(2), C.R.S. The Commission or Director may also use other

means to gather information, including, but not limited to public forums, investigation by Commission staff, and formation of rulemaking teams. Commissioners may participate in such informal proceedings.

- e. **Content of notice.** The notice will state the time, date, place, and general subject matter of the hearing to be held. It may include a statement indicating whether an informal public meeting will be held, the time, date, place, and general purpose of the meeting, any special procedures the Commission deems appropriate for the particular rulemaking proceeding and a statement encouraging public participation. The notice will state that the proposed regulations will be available upon request from the office of the Commission, and the date of availability. The notice will include a short and plain statement which summarizes the intended action and states generally the basis and purpose of the rules.
- f. **The rulemaking hearing.** The Commission will hold a formal public hearing before promulgating any rules or regulations. At that hearing, the Commission will afford any person an opportunity to submit data, views or arguments. The Commission may limit such testimony or presentation of evidence, including oral testimony or presentations, at its discretion and may prohibit repetitive, irrelevant, or harassing testimony.
- g. **Conduct of rulemaking hearings.**
 - (1) The Commission encourages any person to participate at rulemaking hearings. The times at which the public may participate will be determined at the discretion of the Commission. The Commission may, at its discretion, limit the amount of time a person may use to comment or make public statements. Oaths will not be required for public participation.
 - (2) The Commission encourages witnesses to make plain, brief, and simple statements of their positions. It also encourages submittal of written statements prior to hearing, with only an oral summary of such a statement at the hearing. In its discretion, the Commission may allow only prefiled written testimony and oral testimony or presentations at a rulemaking hearing.
 - (3) The order of presentation at a rulemaking hearing will be as established by the Commission at the hearing.
 - (4) The Commission has the discretion to continue rulemaking hearings by announcement at the rulemaking hearing without republishing the proposed rules.