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Introduction

The *Colorado Register* is published pursuant to C.R.S. 24-4-103(11) and is the sole official publication for state agency notices of rule-making, proposed rules, attorney general's opinions relating to such rules, and adopted rules. The register may also include other public notices including annual departmental regulatory agendas submitted by principal departments to the secretary of state.

"Rule" means the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of any agency. "Rule" includes "regulation". C.R.S. 24-4-102(15). Adopted rules are effective twenty days after the publication date of this issue unless otherwise specified.

The *Colorado Register* is published by the office of the Colorado Secretary of State twice monthly on the tenth and the twenty-fifth. Notices of rule-making and adopted rules that are filed from the first through the fifteenth are published on the twenty-fifth of the same month, and those that are filed from the sixteenth through the last day of the month are published on the tenth of the following month. All filings are submitted through the secretary of state's electronic filing system.

For questions regarding the content and application of a particular rule, please contact the state agency responsible for promulgating the rule. For questions about this publication, please contact the Administrative Rules Program at rules@sos.state.co.us.

Notice of Rulemaking Hearing

Tracking number

2014-01079

Department

200 - Department of Revenue

Agency

206 - Lottery Commission

CCR number

1 CCR 206-1

Rule title

LOTTERY RULES AND REGULATIONS

Rulemaking Hearing

Date

11/19/2014

Time

08:00 AM

Location

Colorado Lottery Office

Subjects and issues involved

Colorado Lottery Multi-State Jackpot Games Powerball and Power Up

Statutory authority

24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212 and 24-35-212.5

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DEPARTMENT OF REVENUE

Lottery Commission

LOTTERY RULES AND REGULATIONS

1 CCR 206-1

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

AMENDED RULE 1 - DEFINITIONS

BASIS AND PURPOSE FOR AMENDED RULE 1

The purpose of Amended Rule 1 of the Colorado Lottery Commission is to present definitions of various terms used throughout Colorado Lottery rules, so that said rules can be uniformly applied and understood. The statutory basis for Rule 1 is found in C.R.S. 24-35-208 (1) (a) and (2) and 24-35-201 (5).

1.1 GENERAL RULES AND REGULATIONS

These Rules and Regulations are adopted by the Colorado Lottery Commission governing the establishment and operation of the Colorado Lottery pursuant to the authority provided by Part 2, Article 35, Title 24, C.R.S.

1.2 Definitions

Unless the context in these Rules and Regulations otherwise requires:

A. "Act" or "Law" means Part 2, Article 35, Title 24, C.R.S.

B. "Activation" means the process used by retailers to make a book of bar coded Scratch tickets active or available for sale on the Lottery's computer.

C. "Advance Play" means the ability to purchase tickets for more than one drawing with the first draw of the purchase being the current open draw.

D. "Bar Code Reader" means the computer hardware used by retailers to read bar coded information on scratch tickets.

E. "Certified Drawing" means a drawing which complies with all requirements of C.R.S. 24-35-208(2)(d).

F. "Claims Center" means any location designated by the Director where a person may file a claim for any Lottery game prize.

G. "Commission" means the Colorado Lottery Commission established under the Act.

H. "Director" means the Director of the State Lottery Division.

I. "Division" means the State Lottery Division and any employee thereof, including the Director.

J. "Draw Break" means the period of time sales activity is suppressed and during which no Jackpot tickets may be sold or purchased or validated for the suppressed game(s).

K. "Drawing" means the procedure by which a random selection process, such as a selection of digits, numbers or symbols, is conducted in accordance with the rules of the game as set forth in Specific Game Playing Rules.

L. "Drawing Sales Period" means the period of time between ticket sales activation (during which Jackpot tickets may be sold, purchased and validated) and the draw break.

M. "Duplicate Ticket" means a ticket produced by photograph, xerography or any other method other than generation by a Jackpot terminal.

N. "Executive Director" means the Executive Director of the Colorado Department of Revenue.

O. "Game Prize Fund" means the projected prize payout percentage as approved by the Colorado Lottery Commission for each Lottery game.

P. "Jackpot Game" means a lottery game which utilizes a computer system to administer plays and in which a player selects a combination of numbers, the type of game and amount of play, for a specific drawing.

Q "Jackpot System" means the computer system(s) consisting of Jackpot terminals, central processing equipment and a communication network utilized to conduct Jackpot games.

R. "Jackpot Terminal" means the computer hardware through which the Jackpot licensee enters the combination(s) selected by a player and by which Jackpot tickets are generated and claims are validated.

S. "Licensee" means any business licensed as a lottery sales agent pursuant to the Act to sell Lottery tickets.

T. "Lottery" or "Colorado Lottery" means any lottery created and operated pursuant to the Act.

U. "Lottery Sales Representative" means the employee of the Division whose duties include the marketing, selling, handling, and distribution of Lottery tickets to licensees.

V. "Net Sales" means gross sales less cancellations or returns.

W. "Person" means and includes any individual; association, corporation, club, trust, estate, receiver, trustee, guardian, custodian, personal representative or any other person acting in a representative capacity who is appointed by a court, charitable institution, or fraternal organization. "Person" shall also mean and include all departments, agencies, commissions, instrumentalities and political subdivisions of the State of Colorado, as well as any city, county and city and county within the State of Colorado

X. "Play Slip" means a mark-sense game card used by players of Jackpot games to select plays. A play slip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

Y. "Player-Selected Item" means a number or item or group of numbers or items selected by a player in connection with a multi-state and in-state Jackpot game. Player-selected numbers or items shall include selections generated randomly by the Jackpot computer system. Such computer-generated numbers or items are also known as "Quick-Picks".

Z. "Prize" means the award, financial or otherwise, awarded by the State Lottery.

AA. "Prize Amounts" means the amount of money payable in each prize category or to each share or the annuitized future value of each share in a prize category for each drawing.

BB. "Prize Category" means the matching combinations as described in Specific Game Playing Rules.

CC. "Prize Expense" means the accrued portion of net sales from all Lottery products that has been paid or obligated for the payment of prizes.

DD. "Prize Expense Minimum" means the total amount of prize expense must be a minimum of fifty percent (50%) of the annual aggregate net Lottery ticket sales from all games, including Scratch, Jackpot, and multi-state Jackpot.

EE. "Product" means the specific game type produced by the Colorado Lottery i.e. Scratch, Jackpot or Multi-State.

FF. "Provisional License" means a license issued by the Director which temporarily authorizes a licensee to conduct the sale of lottery tickets pending processing of the license application or renewal.

GG. "Quick Pick" means a computer generated selection of a number, item or group of numbers in connection with a multi-state or in-state Jackpot game.

HH. "Scratch Game" means a lottery game which utilizes a Lottery ticket with preprinted play symbols or characters.

II. "Settlement" means the time at which a pack of bar coded Scratch tickets is determined to be billable pursuant to Lottery policy.

JJ. "Specific Game Playing Rules" means where the term "Playing Rules" and/or "Specific Game Playing Rules" is used it shall, as though set forth verbatim, include the term "Specific Game Playing Rules which are incorporated by reference as though fully set forth herein."

KK. "Ticket" means any Lottery ticket approved by the Commission for sale to the general public.

LL. "Ticket Bearer" means the person who has signed the Jackpot or Scratch ticket or who has possession of an unsigned Jackpot or Scratch ticket.

MM. "Validation" means the process of determining whether a Jackpot or Scratch ticket presented for payment is a winning ticket.

NN. "Validation Number" means the number printed on the front of each Jackpot ticket that is used for validation.

OO. "Winning Combination" means one or more digits, numbers or symbols randomly selected during a Certified Drawing.

Amended Rule 2 - Licensing General Rules and Regulations

BASIS AND PURPOSE FOR AMENDED RULE 2

The purpose of Rule 2 is to establish and provide the specific factors required for determining eligibility of an applicant desiring to obtain a license for the sale of Lottery products to the public; to specify certain duties of the licensees; to authorize the Director to establish bonding protection for the State of Colorado; to describe the types of limitations which may be placed upon licenses issued by the Director; to provide for the circumstances upon which the Director may terminate licenses and issue duplicate licenses; to specify certain terms, conditions and duties required of licensees authorized to sell Lottery game

products; to specify the rights of the licensee, as well as the detailed operation of the Lottery at the retail sales level. The provisions of Rule 2 are necessary in order to promote the public interest, as well as the security and efficient operation of the Lottery. The statutory basis for Rule 2 is found in C.R.S. 24-35-206 and 24-35-208(1)(a) and (2).

2.1 Application for License to Sell Lottery Products

a. Any person may apply to the Lottery for a license to sell Lottery products as a licensee by filing an "Application for Lottery Retail License." Such application shall be completed under penalty of perjury on a form approved by the Director.

b. A fee in an amount to be determined by the Director shall be paid by the applicant to the Lottery. This fee shall be paid at the time of the issuance of the license.

2.2 Licensee's Commission

Each licensee shall be entitled to receive a payment for the sale or authorized disbursement of Lottery products by said licensee as provided for in Rules 5.10, 10.14, 10.A.15, 10.D.9 and 14.11.

2.3 Eligibility for License

a. The Director shall issue licenses for the sale of Lottery products in accordance with the provisions of C.R.S. 24-35-206 and these Rules and Regulations. The Director shall license only such persons who, in the Director's opinion, will best serve the public interest and trust in the Lottery and promote the sale of Lottery products. Prior to issuing any license, the Director shall consider the following factors:

    1. The moral character and reputation of the applicant per C.R.S. 24-35-206 (4) (e).

    2. The financial responsibility and security of the applicant and its business or activity.

    3. The accessibility of the public to the licensed premises proposed by applicant.

    4. The number and sufficiency of existing licenses to serve the public interest.

    5. The volume of applicant's expected Lottery ticket sales.

    6. The security and efficient operation of the Lottery.

    7. Whether the applicant is ineligible under the provisions of C.R.S. 24-35-206(4).

b. In addition, the Director shall consider the following factors:

    1. Business and security considerations which include but are not limited to:

        i.) Past security problems;

        ii.) Credit history of owners, officers and the business entity;

        iii.) History of administrative or regulatory actions.

    2. Marketing considerations which include but are not limited to:

        i.) Projected sales of Lottery products

ii.) Willingness to promote lottery products.

2.4 Duties of Licensees

In order to promote the public interest and the security and efficient operation of the Lottery, each applicant shall agree, if granted a license, to perform the following terms, conditions and duties:

a. To be bound by and comply with all lawful provisions of Part 2, Article 35, Title 24, C.R.S. and the Rules and Regulations adopted pursuant thereto; as well as with any lawful instructions or directives issued by the Director.

b. To actively promote the sale of Colorado Lottery products and make them available for sale at all times the system is available and at the times that are consistent with the business hours of operation.

c. To pay prizes up to and including $599.00 to the ticket bearer for any scratch and/or online products validated by the retailer. All products validated by a retailer must be paid by that retailer.

1. The retailer must maintain sufficient funds to pay all scratch and/or online product claims of $150 or less by cash, check, or money order.

2. The retailer will be prompted at the time of validation whether to accept the validation for prizes greater than $150 but less than $600. If a retailer accepts and validates the ticket, the prize must be paid.

3. Prizes shall be paid during the normal business hours of the licensee provided the validation system is operational and claims can be validated. The licensee shall not charge the claimant a fee for payment of a prize or for cashing a business check drawn on the licensee's account.

d. To maintain authorized displays, notices, and other materials used in connection with the sale of Lottery products in accordance with reasonable instructions or directives issued by the Director.

e. To maintain a complete and accurate set of books of account, correspondence and records of all Lottery transactions and operations, including but not limited to the receipt, sale, handling, inventory, and returns for credit for all Lottery game products received by licensee, and any books of account, correspondence, reports and records that may be required for Lottery game products. Books, correspondence and records referencing the Lottery account must be made available during normal business hours, with or without prior notice, to any duly authorized representative of the Lottery for inspection and audit by an auditor selected by the Commission or Director.

f. To allow inspections of the licensed premises by duly authorized representatives of the Division during normal business hours, to determine compliance with the provisions of the Act, Rules and Regulations, instructions and directives of the Lottery Director.

g. To indemnify and hold the State of Colorado, the Colorado Lottery and the Colorado Lottery Commission harmless from any and all liabilities, claims, actions, and judgments of any kind or nature arising from or relating to the licensee's acts or omissions in the operation and conducting of the sale of Lottery products.

h. To pay an administrative fee, to be determined by the Lottery Director, to reimburse the Colorado Lottery for inactive scratch tickets that are lost due to negligence or misconduct of the licensee.

i. To provide confirmation that the licensee is not a member of the Lottery Commission, employee of the Lottery or current Lottery contractor.

j. To agree that all Lottery products shall be deemed to have been purchased by the licensee as of the date each book of Instant/Scratch products is activated, at the price, less applicable commission, established by the Commission; and that the licensee shall make payment to the Colorado Lottery in a timely manner as established by the Lottery's electronic funds transfer (EFT) policy for any and all Lottery Instant/Scratch products which are activated and offered for sale to the public including products that have been sold, but not activated.

k. To pay a communication and/or administrative fee at the discretion of the Director in an amount to be determined by the Director to cover operational costs to the Lottery in servicing said retailer account.

l. To maintain a secure place for unsold Lottery products upon instruction or directive by the Director or designee.

m To prominently display the Colorado Lottery license in an area visible to the general public.

n. To agree that all unclaimed prizes from all Lottery products remain the property of the State of Colorado as set forth in C.R.S. 25-35-212.2.

o. To pay, without reimbursement, all electricity charges in conjunction with the operation of the terminal equipment related to the sale of Lottery products.

p. To participate in Lottery training sessions and provide staff training.

q. To use signage identifying the location as a Lottery retailer. Nothing herein shall require retailer to install signage which is in violation of any state, local, or municipal code.

r. To provide authorization for an account with EFT (Electronic Funds Transfer) capability to be used for weekly billing of all Lottery products;

s. To maintain a balance in the account sufficient to cover payment due the Lottery for the established billing period. The Lottery shall utilize EFT to withdraw the amount due the Lottery on the day specified by the Director. In the event the day specified for withdrawal occurs on a legal holiday, withdrawal shall occur on the following business day.

t. To sell Scratch products in consecutive, numerical order.

u. To sell Lottery products for cash only, inclusive of checks, money orders and debit cards, and shall not sell Lottery products on a credit or any other non-cash basis. Licensee shall not exchange Lottery products and/or books with any other person, including other licensees.

v. To play Lottery games, if so desired, in a responsible and fair manner. Licensees are prohibited from playing Lottery games by using any method other than random, fair chance, or by any method contrary to the principle that every Lottery ticket has an equal and random chance of winning.

w. In addition to the requirements listed in the previous sub-paragraphs of 2.4, a licensee authorized to sell online game products shall agree to the following terms, conditions and duties:

1. To print online products only on the specific ticket stock issued by the Lottery to the specific retail outlet and not transfer ticket stock to any other outlet;

2. To acknowledge that the online terminal and supplies issued by the Lottery or the online vendor remain the property of Lottery or online vendor. The licensee shall exercise due diligence in the operation of the online terminal and immediately notify the Lottery and the central computer facility of any equipment, communications line or online systems

malfunction, such as the issuance of an invalid online ticket, or the inability to generate or redeem an online ticket. The licensee shall not perform any mechanical or electrical maintenance on the online terminal. The licensee shall not move, alter or tamper with the terminal except as required by the Lottery or its agent.

3. To provide without reimbursement the full cost of terminal installation and hookup charges any and all charges related to the sale of Lottery products, as specified by the Lottery.

4. To provide, without reimbursement, any requirement the Lottery deems necessary for terminal installation and maintenance of equipment related to the sale of Lottery products;

5. To pay, without reimbursement, all communication charges in conjunction with the operation of the terminal equipment related to the sale of Lottery products, unless otherwise specified by the Director.

2.5 ADA - American's with Disabilities Act

To prohibit discrimination, no Lottery retailer shall discriminate against any individual on the basis of disability in the full and equal enjoyment of Lottery-related goods, services, facilities, privileges, advantages or accommodations of any Lottery Licensed Facility.

a. Each applicant for a Lottery license shall review his/her retail facility for compliance with the Federal ADA (American's with Disabilities Act) as it pertains to the sale of Colorado Lottery products.

b. To assist applicants with this inspection, the Lottery will include a list of compliance requirements with the retailer application paperwork.

c. The facility analysis shall begin where the customer parks, moves through the path of travel to the Lottery sales area of the store.

d. The applicant is required to correct any ADA noncompliant areas prior to applying for a Colorado Lottery sales license.

e. The applicant must complete the Lottery license application form pertaining to ADA status.

f. Any physical modifications or changes to a licensed location must be in compliance with the ADA requirements for Colorado Lottery licensed retailers.

g. The Colorado Lottery allows for alternatives to barrier removal at retail locations. Such alternatives may include, but are not limited to:

1. Providing curb service; and/or

2. Drive thru; and/or

3. Relocating activities to accessible licensed locations

h. The Colorado Lottery will actively pursue any complaint it receives regarding the inaccessibility of Lottery products at any of its licensed locations. If a location is found to be noncompliant, the retailer is required to correct the area(s) of noncompliance. Noncompliance of Colorado Lottery ADA requirements may result in license suspension or revocation proceedings.

The ADA guidelines listed for potential retail outlets were written following the directives enacted by the Federal ADA Act of 1990. The requirements listed in the Federal ADA Act of 1990 are not solely specific

to the Colorado Lottery and its retailers. The Federal ADA Act of 1990 is enforced by the United States Department of Justice.

2.6 Licensing Disqualifications

A license shall not be granted to:

a. Any person who will engage in business exclusively as a Lottery sales agent, unrelated to any other commercial business activity.

b. Any person who has provided false or misleading information to the Lottery.

c. Any person who is deemed not financially responsible to operate a business.

d. Any person whose proposed licensed premises is a residence or, by reason of its location is not accessible to a sufficient number of persons so as to reasonably justify the Lottery's expenditure of public monies to provide and deliver Lottery products, services, and supplies to such a location. In making such a determination, the Director shall consider the possible economic benefit to the State and the convenience to the public to be gained from licensing such person.

e. Any person whose volume of Lottery ticket sales projected or anticipated is such as not to reasonably justify the Lottery's expenditure of public monies to provide and deliver Lottery products, services, and supplies to such a location, when considering the possible economic benefit and convenience to the public to be gained there from. For the purpose of initial licensing, a projected or anticipated volume of instant game Lottery ticket sales must meet the current minimum sales requirement as determined by the Lottery Director.

f. Any sole proprietor who is not a resident of the State of Colorado.

g. Any corporation that is neither incorporated in, nor authorized to do business in, the State of Colorado.

h. Any Limited Liability Company (L.L.C.), that is not incorporated in or authorized to do business in the State of Colorado.

i. Any partnership, or association, or other type of business entity, none of whose general partner(s), member(s), or representative(s) is a resident of the State of Colorado.

j. Any person who has been convicted, within ten years of an application, of a felony crime, including but not limited to, robbery, burglary, theft, trespass, criminal mischief, forgery, computer crime, bribery, perjury, offenses related to judicial and other proceedings, telecommunications crimes, racketeering, or the distribution, sale, manufacturing, dispensation or possession of drugs or drug paraphernalia. Other convictions, whether felony or misdemeanor, may relate to a determination that the person is not of good character and reputation and may lead to the denial of a license.

k. Any business entity member that has an outstanding liability with the Colorado Lottery including amounts transferred to Central Collection Services or has been written off by the Colorado Lottery due to bankruptcy or for non-payment.

2.7 License Suspension/Revocation

a. The Director may order the removal of such terminal from a location after considering factors which include but are not limited to:

    1. Sales volume which does not meet established standards;

2. Failure to generate sufficient sales volume to cover the Lottery's administrative costs.

b. The Director may immediately suspend a retailer's Lottery operation, order removal of an online terminal from a retail location, or take any other action necessary in the event the licensee:

1. Fails to comply with any rule established by the Commission or any instruction issued by the Director.

2. Tampers with or attempts to tamper with the online terminal or system.

3. Fails to make payment of a validated prize or makes payment and the payment is dishonored for any reason.

4. Fails to make payment to the Lottery or makes payment to the Lottery and the payment is dishonored for any reason.

2.8 Bonding Requirement

No license shall be issued or renewed by the Director, unless the applicant or licensee is first bonded in such an amount and type as may be required by the Director to protect the State against any monetary loss that may arise from the licensee's purchase and sale of Lottery products.

Such bonding may take the form of any instrument that is determined by the Director to satisfy the requirements of C.R.S. 24-35-206(1) and C.R.S. 24-35-219.

2.9 Limitations on Licenses

a. Unless otherwise limited or conditioned pursuant to the provisions contained in subparagraph 2.9 c) hereof, each license issued by the Director for the sale of Lottery products shall limit the sale thereof solely to the licensed premises; and shall terminate unless timely renewed. The Director may limit a licensee to a particular type of Lottery game.

b. A license may be renewed upon the timely payment of a renewal fee to be determined by the Director.

c. In order to protect the public interest and trust in the Lottery and to further the sale of Lottery products, the Director may, but shall not be required to, issue a license for special events containing reasonable limitations or conditions. Such limitations and conditions may include any one or all of the following:

1. The length of license period;

2. The hours and days of Lottery ticket sales;

3. The location of sale;

4. The specific person who may be allowed to sell Lottery products;

5. The specific sporting, charitable, social, or other special event where Lottery products may be sold;

6. Such other limitations or conditions of licensing as determined by the Director to best serve the public convenience; to promote the sale of Lottery products; to protect the security and integrity of the Lottery games; or as may be otherwise necessary or desirable for the efficient and economical operation and administration of the Lottery.

d. For the purpose of 2.9 c), a special event shall mean a specific sporting, charitable, social event, or other specific location or activity, such as a fair, which, by reason of its limited duration or other special character requires the issuance of a license containing such limitations or conditions as described above in order to protect the security and integrity of Lottery games.

2.10 Provisional License

a. The Director may issue a provisional license to an applicant pending the completion of the processing required under Paragraph 2.3, after receipt of the person's fully completed application and completion of a preliminary background check. The provisional license shall expire at the time of issuance of the general license or ninety (90) days from the date the provisional license is issued, whichever occurs first. The provisional license may be extended by the Director for one additional ninety (90) day period of time.

b. The Director may issue a provisional license to an applicant for renewal of a general license when a determination has been made and it becomes necessary to authorize a licensee to sell products pending approval of the application for general license renewal. The provisional license shall expire at the time of the issuance of the general license renewal or ninety (90) days from the date the provisional license is issued, whichever occurs first.

2.11 Non-Transferability of License

A license issued pursuant to these Rules and Regulations shall not be assignable or transferable. If either the person who has signed the application for licensure is no longer employed by the licensee in the capacity stated on the application or if the ownership of the licensee substantially changes, the Director reserves the right to terminate the license. The licensee shall notify the Director in writing at least thirty (30) days prior to any such proposed change. A substantial change in ownership shall mean a transfer of ten percent (10%) or more of either the equity of such business, or the decision-making authority thereof.

2.12 Duplicate Licenses

Upon the loss, mutilation or destruction of any license issued by the Director, a duplicate license can be issued. A mutilated license shall be surrendered to the Director upon issuance or denial of a duplicate license. A lost license, when found, must be immediately surrendered to the Director.

RULE 2.A – LICENSING – AMERICANS WITH DISABILITY ACT COMPLIANCE [Repealed Eff. 09/30/2008]

RULE 4 - SUSPENSION, REVOCATION, OR NON-RENEWAL OF LICENSE

BASIS AND PURPOSE FOR AMENDED RULE 4

The purpose of Rule 4 is to provide specific notice of the causes for and procedures regarding denial, suspension, revocation, or non-renewal of a license to sell Lottery tickets. The statutory basis for Rule 4 is found in C.R.S. 24-35-206 and 208.

4.1 Mandatory Revocation of License

A license shall be revoked upon a finding by the Lottery Director that the licensee:

a. Has provided false or misleading information to the Lottery;

b. Has been convicted of any gambling-related offense;

c. Has endangered the security of the Lottery;

d. Has been a person whose character is no longer consistent with the protection of the public interest; or

e. Has intentionally refused to pay a prize in his possession to a person entitled to receive the prize.

4.2 Discretionary Suspension, Revocation or Non-Renewal of License

A license may be suspended, revoked or not renewed upon a finding by the Lottery Director that the licensee:

a. Has changed its business location by the licensee without properly notifying the Lottery;

b. Has insufficient sales volume;

c. Has failed to remit or has been delinquent remitting money owed to the Lottery;

d. Has endangered the efficient operation of the Lottery;

e. Has been convicted of a felony, including but not limited to, robbery, burglary, theft, trespass, criminal mischief, forgery, computer crime, bribery, perjury, offenses related to judicial or other proceedings, telecommunications crimes, racketeering, accounting fraud, or the distribution, sale, manufacturing, dispensation or possession of drugs or drug paraphernalia. Other convictions, whether felony or misdemeanor, may relate to a determination that the licensee is a person whose character is no longer consistent with the protection of the public interest and trust in the Lottery and may lead to the suspension or revocation of a license.

f. Has sold a Lottery ticket at a price greater or less than that fixed by the Commission except as provided in Section 24-35-214(1), C.R.S.;

g. Has sold a Lottery ticket when not authorized to do so;

h. Has sold a Lottery ticket to any person under the age of eighteen (18) years of age;

i. Has sold a Lottery ticket at any place other than the place authorized and specified on the license;

j. Has any violation of Part 2, Article 35, Title 24, C.R.S. or any Rule or Regulation adopted pursuant thereto;

k. Has not reported a change in ownership to the Lottery.

4.3 Procedure for Issuance, Renewal, Denial, Revocation, Suspension, Limitation and Modification of License

The procedures contained in Article 4 of Title 24, C.R.S. shall apply to the issuance, renewal, denial, revocation, suspension, limitation and modification of licenses for the sale of Lottery tickets. The Lottery Director may designate an administrative law judge to take evidence and make findings and report them to the Lottery Director.

a. Any person entitled to a notice of hearing shall be given timely notice of the time, place, and nature thereof, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Such notice shall be served personally or by mailing by first-class mail to the last address furnished by the licensee, in accordance with the notice requirement set for in C.R.S., section 24-4-105(2)(a).

b. The proponent of an order shall have the burden of proof and every party to the proceeding shall have the right to present its case or defense by oral and documentary evidence, to submit rebuttal

evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, the person conducting the hearing may receive all or part of the evidence in written form. The rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil non-jury cases in the district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person so conducting the hearing may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The person conducting the hearing shall give effect to the rules of privilege recognized by law and may exclude incompetent and unduly repetitious evidence. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available; but, upon request, the party shall be given an opportunity to compare the copy with the original. An agency may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

c. Any party, or the agent, servant, or employee of any party, permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of his own choosing and at his own expense, but a person may appear for himself. An attorney who is witness may not act as counsel for the party calling him as a witness. Any party, upon payment of a reasonable charge therefore, shall be entitled to procure a copy of the transcript of his testimony if it is recorded.

4.4 Felony Review Panel

In any proceeding for the issuance, denial, suspension, or revocation of a Lottery retailer license in which a felony conviction or a conviction involving fraud is in issue, the following procedure shall follow the Lottery Director's entry of a final order granting, denying, suspending, or revoking the Lottery retailer license:

a. If the matter has been heard by an Administrative Law Judge, the Lottery Director's order adopting or modifying the initial decision of the Administrative Law Judge shall be deemed the Lottery Director's final order, unless the Lottery Director orders the Administrative Law Judge to conduct additional proceedings.

b. The licensee and the Lottery Division may, within fifteen(15) days of the date on which the Lottery Director signs the final order, file with the Lottery Director and serve upon the opposing party a motion directed to the Felony Review Panel to modify the Lottery Director's final order. The opposing party may, within fifteen (15) days of receipt of the motion, file with the Lottery Director and serve upon the moving party a brief opposing the motion. Within ten (10) days of receipt of the brief opposing the motion, the moving party may file with the Lottery Director and serve upon the opposing party a reply brief in support of the motion. Each party shall file with the Lottery Director the original and three (3) copies of each motion or brief filed by the party. The Lottery Director shall cause any initial decision, the Lottery Director's final order, and any motions and briefs to be delivered to the Felony Review Panel. The Lottery Director shall notify the parties of the date on which he forwarded the final order and any other material to the Felony Review Panel.

c. The Executive Director of the Department of Revenue shall be the Chairman of the Felony Review Panel.

d. Each member of the Felony Review Panel shall notify the Executive Director of the Department of Revenue in writing of the panel member's decision whether to accept or reject the Lottery Director's final order within thirty (30) days of the date on which the Lottery Director forwarded the final order and any other materials to the Felony Review Panel. If the panel member fails to notify

the Executive Director of the Department of Revenue of the panel member's decision within thirty (30) days of the date on which the Lottery Director forwarded the final order to the panel, the panel member shall be deemed to have accepted the Lottery Director's final order.

e. If two or more members of the Felony Review Panel accept the Lottery Director's final order, the final order shall become the order of the Felony Review Panel. The Executive Director of the Department of Revenue shall notify the Lottery Director and the licensee of such acceptance in writing, and the order of the Felony Review Panel shall be deemed final on the date of such written notice.

f. If two or more members of the Felony Review Panel reject the Lottery Director's final order, the Executive Director of the Department of Revenue shall notify the Lottery Director and the licensee of such rejection in writing and shall state the reasons for such rejection. The Lottery Director shall modify his final order, conduct additional proceedings, or dismiss the proceeding in accordance with the order of the Felony Review Panel. The Executive Director of the Department of Revenue shall notify the licensee and the Lottery Division of such modification, additional proceeding, or dismissal in writing. A modified final order shall be subject to the procedure set forth in Rule 4.5 b).

g. The order of the Felony Review Panel shall be considered final agency action for the purposes of Section 24-4-106, C.R.S., unless the order remands the matter to the Lottery Director for further action.

RULE 5 LOTTERY SCRATCH GAMES

BASIS AND PURPOSE OF AMENDED RULE 5

The purpose for Amended Rule 5 is to provide general rules for all Colorado Lottery Scratch games, which shall govern the sale of tickets, payment of prizes, method for selecting and validating winning tickets, as well as to establish the amount of commission for the licensee. The statutory basis for Amended Rule 5 is found in C.R.S. 24-35-208(1), (2) and (3) and24-35-212 and 24-35-212.5.

5.1 Commission to Adopt Specific Rules, Regulations and Guidelines for Lottery Scratch Games

Scratch games are authorized to be conducted under the following Rules, Regulations and Guidelines and such further instructions and directives the Lottery Director may issue. The Commission shall adopt specific Guidelines designating among other things the number and sizes of prizes, the manner of selecting winning tickets, and the allocation of total revenues among prizes and costs.

To the extent not inconsistent with such specific Guidelines as may be adopted, the following general provisions under this Rule 5 shall apply to each Scratch game conducted. If a conflict arises between Rule 5 and the game guideline, the game guideline shall apply.

5.2 Definitions

The following definitions shall provide clarification to various terms used by the Lottery in conjunction with the definitions provided in Rule 1 and as set forth in each specific Scratch game guideline.

a. "Bar Code" means the unique bar coded representation normally found on the back of the scratch ticket.

b. "Book" means a pack of Scratch game tickets. Books are also commonly called packs.

c. "Book-Ticket Number" means the number printed on the back of each Colorado Lottery Scratch game ticket.

d. "Caption" means the code appearing beneath the computer-generated images.

e. "Drawing Guidelines" means the additional guidelines that are promulgated to address second-chance or promotional drawings that are associated with a specific Scratch game.

f. “Force Majeure” means an unexpected event (i.e. a natural disaster) that prevents the scheduled completion of an activity

g. "Game Guideline" means the specific Scratch game guideline that includes all the detail related to an individual Scratch game.

h. "Life" means the specific lifetime of a natural person.

i. "Play Area" means the portion of a Scratch ticket that is covered with a latex coating that the player removes.

j. "Play Spot" means a component of the Play Area.

k. "Play Symbols" mean the computer-generated images that appear within the Play Area of a ticket.

l. "Prize Expense" means the accrued portion of net sales from all Lottery products that has been paid or obligated for the payment of prizes.

m. "Prize Expense Minimum" refers to C.R.S. 24-35-210(9)

n. "Prize Pool" means the amount of money allocated for prizes as defined in the Prize Structure.

o. "Prize Structure" means the number and amount of available prizes within a specific scratch game.

p. "Prize Symbol" means a component of the Play Area that represents a unique prize amount on the ticket play area.

q. "Retailer Validation Code" means the computer-generated images on the ticket play area used to sight validate a specific prize amount.

r. “Scratch Game" means an individual Lottery game as described in the individual game guideline.

s. "UPC Bar Code" means the machine readable representation of the Universal Product Code number on the back of each ticket.

t. "UPC Code" means the unique number Universal Product Code number that is used to identify each Colorado Lottery Scratch game.

u. "Validation Number" means the unique number identified within the VIRN, used to validate the Scratch ticket.

v. "Void If Removed Number" also known as “VIRN” means the unique number on the front of the ticket under the latex cover within the play area.

5.3 Price of Tickets

The purchase price of each ticket for Colorado Lottery Scratch Games shall be set per the Game Guideline. The licensee may be permitted to make gifts of Scratch tickets as a means of promoting the sale of goods or services to the public upon receipt of prior approval by the Lottery Director.

5.4 Sale of Tickets

a. Licensees shall make Scratch tickets available for sale to the public during normal business hours.

b. A licensee shall sell Scratch tickets only at the premises specified in the license issued to licensee by the Colorado Lottery unless otherwise allowed by special permission from the Lottery Director.

c. All retail ticket sales are final and the licensee shall not accept the return of a Scratch ticket after sale, unless otherwise directed by the Lottery Director.

d. The Lottery may sell Scratch tickets.

e. Upon prior approval of the Lottery Director, notwithstanding any provision contained in these Rules, Regulations and Guidelines to the contrary, a licensee may be permitted to make gifts of Scratch tickets as a means of promoting the sale of goods and services to the public.

5.5 Ownership of Tickets

a. A Scratch ticket is a bearer instrument.

b. Each winning ticket must contain the signature of the owner and should include the name and address of the owner or holder of the Scratch ticket where indicated. This information may be submitted by affidavit upon request to the Lottery by the claimant. The Lottery may make payment based upon the information submitted on the claim form or affidavit proving ownership.

c. The Lottery Director shall only recognize one (1) person whose signature appears upon the winning Scratch ticket, in the designated area, as the true owner of the ticket.

1. A claim may be made in the name of an organization only if the organization possesses a Federal Employer Identification Number (FEIN) issued by the Internal Revenue Service and such number is shown on the claim form. Groups, family units, clubs, or organizations without an FEIN shall designate one individual in whose name the claim is to be filed.

2. If a claim is erroneously entered with multiple claimants, the claimants shall designate one of them as the individual recipient of the prize, or, if they fail to designate an individual recipient, the Lottery Director may designate any one of the claimants as the sole recipient. In either case, the claim shall then be considered as if it were originally entered in the name of the designated individual and payment of any prizes won shall be made to that single individual.

3. In the event of an inconsistency in the information submitted on the claim form when compared to the winning ticket being claimed the Lottery Director, or designee, may request an investigation and withhold all winnings associated with the winning ticket.

d. Once a ticket is validated it will be held by the Lottery along with the completed claim form and will not be returned to the winner. In the event the claimed ticket is a non-winning ticket it may be returned to the claimant at the discretion of the Director or designee.

5.6 Purchaser's Obligation

By purchasing a Scratch ticket, the purchaser agrees to comply with all provisions of §24-35-201, C.R.S., et seq, these Rules and Regulations, the Game Guideline, and all instructions and directives established by the Lottery Director for Scratch games.

5.7 Persons Ineligible to Purchase Tickets

a. No person under the age of eighteen (18) may purchase Colorado Lottery Scratch tickets.

b. Colorado Lottery Scratch tickets may not be purchased by any of the following as set forth in C.R.S. 24-35-209:

1. Any member of the Lottery Commission;

2. Any employee of the Lottery, except when authorized by the Lottery Director for investigative purposes. In no event shall such employee be entitled to payment of any prize;

3. Any officer, director, or employee of any supplier of Colorado Lottery Scratch ticket materials or equipment, or the subcontractors thereof that have participated, in any manner, in the supplying of Colorado Lottery Scratch ticket materials or equipment, except when authorized by the Lottery Director;

4. Any vendor precluded by its contract with the Lottery;

5. Any person who operates drawing equipment during a drawing or officially witnesses a drawing;

6. Any immediate family member living at the same residence, as defined in Rule 1-Definitions, of items 1., 2., 3., 4. and 5. above.

5.8 Ticket Validation Requirements for Colorado Lottery Scratch Games

a. Scratch Game ticket validation requirements shall be set forth in the Game Guideline and shall meet the requirements set forth below:

1. The ticket shall be intact.

2. The ticket must not be mutilated, altered, unreadable, reconstituted, or tampered with in any manner.

3. The ticket must not be counterfeit in whole or in part.

4. The Retailer Validation Code shall appear in the play area of the ticket and shall be printed as described and as set forth in the Game Guideline.

5. The ticket must have been issued by the Lottery in an authorized manner.

6. The ticket must not be stolen nor appear on any list of omitted tickets on file at the Lottery.

7. The ticket must be completed as specified in the associated Game Guideline “Ticket Validation Requirements” section.

8. The Validation Number of an apparent winning ticket shall appear on the Lottery’s validation file and the ticket with that Validation Number shall not have been previously paid.

9. The ticket must not be blank or partially blank, mis-registered, defective, or printed or produced in error.

10. The ticket must pass the provisions of Rule 5, the associated Game Guideline and all of the additional confidential validation tests performed by the Colorado Lottery.

b. Any Scratch tickets not passing all of the required validation checks as designated by the Colorado Lottery are void and ineligible for any prize and shall not be paid. In the event a defective ticket is purchased, the Colorado Lottery shall be responsible for the replacement of the defective ticket with a ticket of equivalent sales price from any current Colorado Lottery Scratch game at the discretion of the Lottery Director or designee. No prizes will be awarded to the owner of a defective ticket.

5.9 Payment of Prizes

a. The holder of a winning scratch ticket in the amount of $150.00 or less may take the ticket to any licensee location during the licensee's normal business hours for validation and payment. The holder of a winning scratch ticket in the amount of $151.00 to $599.00 may take the ticket to any licensee location during the licensee's normal business hours where licensees have the option of validating the ticket. All prizes shall be paid by the licensee upon presentation and validation of the ticket pursuant to instructions on the back of the Scratch ticket and/or pursuant to instructions specified in the Game Guideline.

b. Any winning scratch ticket in any amount may be mailed or presented to a Lottery claims center for payment. The prizes shall be paid by the Lottery upon presentation and validation of the ticket pursuant to instructions on the back of the Scratch ticket and/or pursuant to instructions specified in the game Guideline.

c. The holder of a prize-winning ticket of $600.00 or more shall complete all of the information detailed on the Colorado Lottery claim form and submit the completed form and ticket by mail or in person to the Lottery. The Colorado Lottery shall pay the prize to the owner of the ticket upon validation.

1. A prizewinner, or a prizewinner's legally authorized representative, shall sign the winning Scratch ticket and complete a claim form that is available from any licensee, Lottery Claim Center or the Colorado Lottery website. The claim form shall incorporate the following information:

    i. Verification that the prizewinner is not a person disqualified by law or by these Rules and Regulations to claim or otherwise accept a prize from the Lottery;

    ii. Notification that the prizewinner's name, city of residence and prize amount are public information. This same notification is given to one signing on behalf of a Scratch ticket owner under a disability that prevents the prizewinner from signing in his/her own behalf;

    iii. The Lottery is not liable for any loss caused by a misrepresentation by the Scratch ticket owner or the person claiming the prize on the winner's behalf.

2. The claim form may contain any other provision that the Lottery Director may deem necessary and proper to promote the public interest and trust or security and efficient operation of the Lottery.

3. Payment for a winning ticket will not occur unless all of the requirements on the claim form and winning ticket have been met or an acknowledgement that the information is unknown or unavailable. There is no obligation or duty of the Lottery, its employees or licensees, to make any inquiry of the truthfulness of information that appears on the claim form before payment to the claimant.

d. Payment of prizes shall be made to the claimant in person or by mail to the address provided by the claimant.

e. All prizes shall be paid within a reasonable time after they are awarded and after the claims are validated by the Lottery. Any prize requiring annuitized or installment payments shall be paid as specified in the Game Guideline.

f. The Lottery Director may delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim, or any other matter that may have come to their attention. All delayed payments will be paid to date immediately upon the Lottery Director's confirmation that the payee is entitled to such payment; any remaining payments shall be paid per the Game Guideline.

g. The Lottery Director's decision shall be final and binding upon all participants in the game with respect to the payment of all prizes.

h. The Lottery Director reserves the right to require a claimant to disclose the location or person from whom the claimant purchased the ticket.

i. Payment of any prize shall be made to the owner of the Scratch ticket or their designee. All liability of the State, its officers and employees, and the Commission shall terminate upon payment.

j. In the event that a claim is filed on behalf of a legal entity other than the owner of the ticket for a prize payable for life, the legal entity shall designate an officer or director of that legal entity as the person on whose life such prize is to be paid and shall execute an agreement evidencing such designation. The specific requirements for payment will be detailed in the Game Guideline and/or Specific Drawing Guidelines.

k. In the event that the intercept program reveals an outstanding obligation for a winner of a prize, the prize will not be awarded until the intercept obligation is paid as set forth in 24-35-212(5) and 24-35-212.5.

5.10 Assignment of Prizes

a. The winner of an annuitized or installment payment prize in any Scratch game being paid in annuitized or installment payments who desires to assign the right to unpaid future annuitized or installment payments must comply with C.R.S. 24-35-212(1)(b) and (1.5). Pursuant to C.R.S. 24-35-212 (1.5)(f), reasonable fees to defray administrative expenses shall be reviewed and approved by the Colorado Lottery Director on an annual basis.

b. Payment of a prize upon death of a prize winner will not be accelerated before its normal date of payments due to the death of the prizewinner. The remaining portion of the prize shall be paid to the estate in accordance with the last will and testament of the deceased prizewinner, unless overruled by a court of law. If the prizewinner dies without a will, the payment will be made in accordance with the applicable state laws of the deceased prizewinner, unless overruled by a court of law. Once payment is made in accordance with this rule the Lottery will hold no further liability.

5.11 Numbers and Sizes of Prizes

a. The number and sizes of scratch cash and non-cash-winning prizes in Colorado Lottery Scratch Games shall be as set forth in the Game Guideline and/or Specific Game Drawing Guidelines.

b. Entry into drawings shall be as set forth in the Game Guideline and/or Specific Game Drawing Guidelines and shall include the number and sizes of prizes available in those drawings.

5.12 Determination of Scratch Prizewinners

a. Scratch prizewinners for Colorado Lottery Scratch Games shall be determined as set forth in the Game Guideline and Specific Game Drawing Guidelines.

b. The number of times a person may win on a single ticket shall be set forth in the Game Guideline.

c. The determination of prizewinners shall be subject to the general ticket validation requirements set forth on the back of each Scratch ticket and as set forth in the Game Guideline and/or the specific game drawing guidelines.

5.13 Termination Date and Claims Period

a. The Lottery Director will announce a termination date for each Colorado Lottery Scratch Game, after which date no further tickets for that game shall be activated. All Scratch Game cash prizes must be claimed within one hundred eighty (180) days after the announced end of the game. In the event of force majeure the claim period will be extended at the Director's, or the Director's designee, discretion.

b. Any prize not claimed within the period specified in the Game Guideline and/or in the manner specified on the back of each ticket shall remain the property of the Lottery.

5.14 Mutilated, Erroneous or Defective Tickets

No credit or prize will be issued to the holder of a ticket that is mutilated, erroneous or defective unless the Lottery Director is satisfied that the ticket is genuine. Tickets printed in error shall be returned to the Lottery and licensees will be reimbursed for the purchase price of said tickets, less the commission.

5.15 Lost or Stolen Tickets

The Lottery Director reserves the right to withhold payment, pending the findings of an investigation, when the claimed ticket for the prize has been reported stolen or lost by a licensee.

5.16 Use of Coupons, Lottery Bucks, and Free Tickets

a. Coupons, Lottery Bucks, and free tickets (hereafter referred to as "coupons") are marketing tools used by the Lottery for promotions.

b. In the event the Lottery uses a promotional partner to distribute coupons, the promotional partner must ensure all coupons are issued to the consumer or public and any unused coupons are returned to the Lottery.

c. At no time may coupons be sold, used to purchase goods or services, pay-off Lottery debts, reimburse a licensee(s) for any loss or used for licensee compensation. Coupons may be used for prizes and/or promotion gifts to consumers and retail employees to promote the Lottery as long as the expense of these are debited to the appropriate budget line.

d. The Lottery Director may deem it proper to authorize the use of bar coded coupons to promote Lottery products. In the event such use is authorized, licensees shall comply with all requirements and restrictions specified on the coupon and shall redeem and exchange said bar coded coupons for Lottery tickets only and not for cash.

5.17 Retailer Licensee Commission, Cashing Bonus and Marketing Performance Bonus

a. Each licensee shall be entitled to receive a commission of seven percent (7%) of sales from Scratch tickets lawfully sold or disbursed by said licensee.

b. Each licensee shall be entitled to receive a cashing bonus of one percent (1%) of each prize paid by the licensee up to and including $599.

c. A Marketing Performance Bonus up to five-tenths of one percent (0.5%) may be earned by licensees that meet the criteria set forth by the Lottery Director or their designee.

d. The requirements of the marketing performance bonus plan to be met by licensees shall be established by the Lottery Director or his or her designee.

e. In order to receive a marketing performance bonus, each Scratch licensee must meet the following criteria:

1. A licensee must be licensed on the date the marketing performance bonus is declared;

2. A licensee must sell Scratch tickets up to and including the final sales day in which the marketing performance bonus is declared;

3. A licensee must meet or exceed the requirements of the marketing performance bonus plan for the period for which the marketing performance bonus is declared.

f. In the event there is a residual resulting from the accrual of the one percent (1%) cashing bonus (5.17.b) and/or the five-tenths of one percent (.5%) marketing bonus (5.17.c) have been expensed, the Lottery Director may provide additional compensation to licensees as described in 5.17.c or may revert the excess amount thereby decreasing the bonus expense.

RULE 7 General Rules and Regulations

Basis and Purpose for Restated Rule 7

The purpose of Rule 7 is to provide specific guidelines in compliance with C.R.S. 24-35-209(1)(g) regarding ethics. The statutory basis for Rule 7 is found in C.R.S. 24-35-207 and 24-35-208.

7.1 Purpose

Public confidence in the integrity of state government demands that public officials demonstrate the highest ethical standards at all times. Those who serve the people of the State of Colorado as public officials should do so with integrity and honesty, and should discharge their duties in an independent and impartial manner. At the same time, qualified individuals should be encouraged to serve in state government and have reasonable opportunities with all citizens to develop private economic and social interests. This Code strives to accomplish these ends by providing standards by which the conduct of all who serve on the Colorado Lottery Commission for the Colorado Department of Revenue can be measured.

7.2 Code of Ethics

All appointees of the Colorado Lottery Commission:

a. Shall serve the public with respect, concern, courtesy and responsiveness;

b. Shall demonstrate the highest standards of personal integrity, truthfulness and honesty and shall through personal conduct inspire public confidence and trust in government;

c. Shall not use public office to bestow any preferential benefit on anyone related to the officer, appointee or employee by family, business or social relationship;

d. Shall not disclose or use or allow others to use confidential information acquired by virtue of state employment.

e. Shall not accept any compensation, gift, payment of expenses, or any other thing of value offered, except as permitted by statute.

f. Shall not use state time, property, equipment or supplies for private gain;

g. Shall not knowingly engage in any activity or business which creates a conflict of interest or has an adverse effect on the confidence of the public in the integrity of government;

h. Shall carry out all duties as a public servant by exposing corruption or impropriety in government whenever discovered;

i. Shall comply at all times with the standards of conduct set forth in title 24, article 18 of the Colorado Revised Statutes.

7.3 Certification of Review and Compliance

a. All members of the Colorado Lottery Commission shall submit to the Executive Director's Office within 30 days of initial appointment to the Commission, a signed form verifying that they have read and intend to abide by this Code of Ethics.

b. All members of the Colorado Lottery Commission shall submit to the Executive Director's Office within 30 days of initial appointment, and on or before January 30 of each year, a form disclosing any potential conflict of interest. Additionally, members of the Colorado Lottery Commission shall amend their annual statement not more than 30 days after any conflict of interest arises.

RULE 9 – GENERAL RULES AND REGULATIONS [Repealed Eff. 09/30/2008]

RULE 10 - IN-STATE JACKPOT LOTTERY GAMES

Amended Rule 10 General Rules and regulations

BASIS AND PURPOSE OF AMENDED AND RESTATED RULE 10

The purpose for Amended Rule 10 is to provide details and requirements for all Colorado Lottery In-State Jackpot games such as the sale of tickets, payment of prizes, method for selecting and validating winning tickets, as well as to establish the amount of commission for the licensee. The statutory basis for Amended Rule 10 is found in C.R.S. 24-35-201(5), 24-35-208(1)(a) and (2), and 24-35-212.

10.1 Commission to Adopt Specific Rules and Regulations for In-State Jackpot Lottery Games.

In-State Jackpot Lottery games are authorized to be conducted under the following Rules and Regulations and such further instructions and directives as the Director may issue in furtherance thereof. For the purposes of this Amended Rule 10 "Jackpot Game" shall mean "In-State Jackpot Lottery Games".

To the extent not inconsistent with such specific Rules and Regulations as may be adopted, the following general provisions under this Amended Rule 10 shall apply to each Lottery Jackpot game conducted.

10.2 Definitions

In addition to the definitions provided in Paragraph 1.2 of Rule 1, and unless the context in these Rules and Regulations otherwise requires:

a. "Additional Lottery Prizes" may include cash, merchandise, and/or services as determined by the Director.

b. "Advance Play" means the ability to purchase tickets for more than one consecutive draw with the first draw in the purchase being the current open draw.

c. "Aggregate Limit" means the maximum prize liability established for each drawing for a specified matching combination.

d. "Aggregate Prize Fund" means the maximum percentage of sales for each Jackpot Lottery game approved by the Lottery Commission that may be used to pay prizes in the game.

e. "Automated Draw Machine" (ADM) means the computer operating the certified random number generator software used to select the Jackpot game winning combination.

f. "Certified Drawing" means a drawing which complies with all requirements of C.R.S. 24-35-208(2)(d).

g. "Draw Break" means the period of time sales activity is suppressed and during which no Jackpot Game tickets may be sold, purchased or validated for the suppressed game(s).

h. "Drawing" means the procedure by which a random selection process of a winning combination of, but not limited to, digits, numbers or symbols, is conducted in accordance with the rules of the game as set forth in Specific Game Playing Rules.

i. "Drawing Guidelines" means the document that outlines the procedure and eligibility requirements for game or promotional drawing.

j. "Drawing Sales Period" means the period of time between ticket sales activation (during which Jackpot Game tickets may be sold, purchased or validated) and the draw break.

k. "Duplicate Ticket" means a ticket produced by any unauthorized method.

l. "Force Majeure" means an unexpected event (i.e. a natural disaster) that prevents the scheduled completion of an activity..m.

m. "Indirect Prize Category Contribution" means the difference between the "Aggregate Prize Fund" and actual prize expense that the Director, at his discretion, ay authorize to be used to increase prizes or pay additional prizes.

n. "Jackpot Game" means an individual Lottery game as described in specific game playing rules that utilizes a computer system to administer plays and in which a player or the computer system selects a combination of digits, numbers, or symbols. The Lottery will conduct periodic drawings to determine the winning combination(s) in accordance with the Specific Game Playing Rules for each Jackpot game.

o. "Jackpot Game Licensee" means a Lottery Licensee authorized by the Lottery to sell Jackpot Game tickets. Jackpot Game Licensees shall sell all Lottery games including, but not limited to, instant game tickets offered by the Lottery.

p. "Jackpot Game System" means the computer system(s) consisting of Retailer terminals, central processing equipment, and a communication network utilized to conduct Jackpot games.

q. "Net Sales" means gross sales less cancellations.

r. "Retailer Terminal" means the computer hardware through which Jackpot Game tickets are generated.

s. "Jackpot Game Ticket" means a computer-generated ticket issued by an Jackpot Game Licensee to a player as a receipt for the combination of digits, numbers, or symbols selected. That ticket shall be the only acceptable evidence of the combination of digits, numbers, or symbols selected. Jackpot Game tickets may be purchased only from Jackpot Game Licensees.

t. "Player-Selected Item" means a number or item or group of numbers or items selected by a player in connection with an Jackpot game. The number or group of numbers can be selected by a player using a Play Slip or on the behalf of the player by the Licensee manually using the Jackpot Game terminal.

u. "Prize Amounts" means the amount of money payable in each prize category to each share or the annuitized future value of each share in a prize category for each drawing.

v. "Prize Category" means the matching combinations as described in Specific Game Playing Rules.

w. "Prize Expense" means the accrued portion of net sales from all Lottery products that has been paid or obligated for the payment of prizes.

x. "Prize Expense Minimum" refers to C.R.S. 24-35-210 (9) and means the total amount of prize expense must be a minimum of fifty percent (50%) of the annual aggregate net Lottery ticket sales from all games, including instant, Jackpot Game and multi-state games.

y. "Quick Pick" means a number or item or group of numbers or items random selected by the Jackpot Game vendor system in connection with an Jackpot game.

z. "Shares" means the total number of matching combinations within each prize category as determined for each draw.

aa. "Specific Game Playing Rules" means the rules that are promulgated to govern separate Jackpot games and shall include, as though set forth verbatim, the term "Specific Game Playing Rules that are incorporated by reference as though fully set forth herein."

bb. "Ticket Bearer" means the person who has signed the Jackpot Game ticket or who has possession of an unsigned ticket.

cc. "Validation" means the process of determining whether an Jackpot Game ticket presented for payment is a winning ticket.

dd. "Validation Number" means the number printed on the front of each Jackpot Game ticket that is used for validation.

ee. "Winning Combination" means one or more digits, numbers, or symbols randomly selected by the Lottery in a drawing that has been certified.

10.3 Sale of Tickets

a. Licensees shall make Lottery Jackpot Game tickets available for sale to the public between the hours of 4:30 a.m. and 11:59 p.m. Monday through Saturday and 8:00 a.m. and 11:59 p.m. Sunday if those hours are included in the licensee’s normal business hours and if the Jackpot Game system is available.

b. A licensee shall sell Lottery Jackpot Game tickets only at the premises specified in the license.

c. All retail Jackpot Game ticket sales are final and the return of a Lottery Jackpot Game ticket after sale shall not be accepted by the licensee, unless otherwise directed by the Director or as set forth in Paragraph 10.9 and Paragraph 10.17.d. or as may be set forth in Specific Game Playing Rules.

d. The Division itself may sell Lottery Jackpot Game tickets.

e. Notwithstanding any provision contained in these Rules and Regulations to the contrary, a licensee may be permitted, upon prior approval of the Director or his/her designee, to make gifts of Lottery tickets as a means of promoting the sale of goods and services to the public.

10.4 Payment of Prizes

a. The holder of a winning Jackpot Game ticket in the amount of $150.00 or less may take the ticket to any licensee location during the licensee's normal business hours for validation and payment. The holder of a winning Jackpot Game ticket in the amount of $151.00 to $599.00 may take the ticket to any licensee location during the licensee's normal business hours where licensees have the option of validating the ticket. All prizes shall be paid by the licensee upon presentation and validation of the ticket pursuant to instructions on the back of the Jackpot Game ticket and/or pursuant to instructions specified in the Game Guideline.

b. Any winning Jackpot Game ticket in any amount may be mailed or presented to a Lottery claims center for payment. The prizes shall be paid by the Lottery upon presentation and validation of the ticket pursuant to instructions on the back of the Jackpot Game ticket and/or pursuant to instructions specified in the game Guideline.

c. The holder of a prize-winning ticket of $600.00 or more shall complete all of the information detailed on the Colorado Lottery claim form and submit the completed form and ticket by mail or in person to the Lottery. The Colorado Lottery shall pay the prize to the owner of the ticket upon validation.

1. A prizewinner, or a prizewinner's legally authorized representative, shall sign the winning Jackpot Game ticket and complete a claim form that is available from any licensee, Lottery Claim Center or the Colorado Lottery website. The claim form shall incorporate the following information:

    i. Verification that the prizewinner is not a person disqualified by law or by these Rules and Regulations to claim or otherwise accept a prize from the Lottery;

    ii. Notification that the prizewinner's name, city of residence and prize amount are public information. This same notification is given to one signing on behalf of a Jackpot Game ticket owner under a disability that prevents the prizewinner from signing in his/her own behalf;

    iii. The Lottery is not liable for any loss caused by a misrepresentation by the Jackpot Game ticket owner or the person claiming the prize on the winner's behalf.

2. The claim form may contain any other provision that the Lottery Director may deem necessary and proper to promote the public interest and trust or security and efficient operation of the Lottery.

3. Payment for a winning ticket will not occur unless all of the requirements on the claim form and winning ticket have been met or an acknowledgement that the information is unknown or unavailable. There is no obligation or duty of the Lottery, its employees or licensees, to make any inquiry of the truthfulness of information that appears on the claim form before payment to the claimant.

d. Payment of prizes shall be made to the claimant in person or by mail to the address provided by the claimant.

e. All prizes shall be paid within a reasonable time after they are awarded and after the claims are validated by the Lottery. Any prize requiring annuitized or installment payments shall be paid as specified in the Game Guideline.

f. The Lottery Director may delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim, or any other matter that may have come to their attention. All delayed payments will be paid to date immediately upon the Lottery Director's confirmation that the payee is entitled to such payment; any remaining payments shall be paid per the Game Guideline.

g. The Lottery Director's decision shall be final and binding upon all participants in the game with respect to the payment of all prizes.

h. The Lottery Director reserves the right to require a claimant to disclose the location or person from whom the claimant purchased the ticket.

i. Payment of any prize shall be made to the owner of the Jackpot Game ticket or their designee. All liability of the State, its officers and employees, and the Commission shall terminate upon payment.

j. In the event that a claim is filed on behalf of a legal entity other than the owner of the ticket for a prize payable for life, the legal entity shall designate an officer or director of that legal entity as the person on whose life such prize is to be paid and shall execute an agreement evidencing such designation. The specific requirements for payment will be detailed in the Game Guideline and/or Specific Drawing Guidelines.

k. In the event that the intercept program reveals an outstanding obligation for a winner of a prize, the prize will not be awarded until the intercept obligation is paid as set forth in 24-35-212(5) and 24-35-212.5.

l. A prize must be claimed no later than one hundred eighty (180) days after the drawing for which the in-state Jackpot Game ticket was purchased. Any person who fails to claim a prize which is held by the Lottery or its designee during the one hundred eighty (180) day claim period shall forfeit all rights to the prize and the amount of the prize shall remain in the Lottery Fund. Prizes claimed by mail must be documented as received at Lottery Headquarters by the 180th day after the announced end of game date.

10.5 Redemption of Bar-Coded Coupons

The Director, at his discretion, may from time to time deem it proper to authorize the use of bar-coded coupons to promote Lottery products. In the event such use is authorized by the Director, Licensees shall comply with all requirements and restrictions specified on the coupon and shall redeem and exchange bar-coded coupons for Lottery tickets only and not for cash.

10.6 Use of Coupons, Lottery Bucks, and Free Tickets

a. Coupons, Lottery Bucks and free tickets (hereafter referred to as "coupons") are marketing tools used by the Lottery for promotions.

b. All coupons, when used for promotions, must be given to the consumer or public. In the event the Lottery uses a promotional partner to distribute coupons, the promotional partner must ensure all

coupons are issued to the consumer or public and any unused coupons are returned to the Lottery.

c. At no time may coupons be sold, used to purchase goods or services, pay off Lottery debts or reimburse a Licensee(s) for any loss.

d. At no time may a co-promoter, who has received a cash payment from the Lottery or a Lottery contractor as part of a promotional agreement, use the cash payment to purchase Lottery tickets for the promotion that the payment funded.

10.7 Payment of Prizes Upon the Death of the Prize Winner

Under no circumstances will the payment of a prize requiring annuitized or installment payments be accelerated before its normal date of payments because of the death of the prize winner. All prizes, or any portion thereof, that shall remain payable at the time of death of the prize winner shall be paid to the estate of such deceased prize winner (in accordance with the last will and testament of the deceased prize winner), unless the Director is directed otherwise pursuant to an appropriate judicial order. If the deceased prize winner died intestate, the payment will be made in accordance with the laws of descent and distribution of intestate property of the jurisdiction of domicile of the deceased prize winner, unless the Director is directed otherwise pursuant to an appropriate judicial order. Upon payment as provided by this Rule, the Division shall be discharged of any further liability.

10.8 Ownership of Tickets

a. Until such time as the Jackpot Game ticket is signed in the area designated, a Lottery Jackpot Game ticket shall be a bearer instrument, owned by the physical possessor of such ticket.

b. The Director shall only recognize as the true owner of a winning Lottery Jackpot Game ticket the person whose signature appears upon the ticket in the area designated for said purpose.

c. Jackpot Game tickets are bearer instruments; therefore, ownership of the ticket is established once a signature is placed on the back of the ticket where indicated. If ownership is questioned, the Division may make payment based upon information submitted to it on an affidavit proving ownership.

d. In the event there is an inconsistency in the information submitted on a claim form and as shown on the winning Jackpot Game ticket, the Director shall make an investigation and withhold all winnings awarded to the ticket owner or holder until such time as the Director is satisfied that the proper person is being paid.

e. The Director shall recognize only one (1) person as claimant on an Jackpot Game ticket. A claim may be made in the name of an organization only if the organization possesses a Federal Employer Identification Number (FEIN) issued by the Internal Revenue Service and such number is shown on the claim form. Groups, family units, clubs, or organizations without an FEIN shall designate one individual in whose name the claim is to be filed. If a claim is erroneously entered with multiple claimants, the claimants shall designate one of them as the individual recipient of the prize, or, if they fail to designate an individual recipient, the Director may designate any one of the claimants as the sole recipient. In either case, the claim shall then be considered as if it were originally entered in the name of the designated individual and payment of any prizes won shall be made to that single individual. Once an Jackpot Game ticket is validated, it will not be returned to the winner, but remains the property of the Lottery.

10.9 Mutilated or Erroneous Tickets

Unless the Director is satisfied that a mutilated Lottery Jackpot Game ticket is genuine, no credit will be issued to the holder of said ticket. If the Jackpot Game ticket is mutilated at the time of purchase, it must be returned to the licensee by the ticket holder within one (1) hour of purchase provided that the licensee is open, the Jackpot Game system is available for wagering and the Jackpot Game system has not converted to the next drawing period. In the event that the ticket cannot be cancelled at the terminal, the ticket must be submitted to the Lottery for investigation to determine if credit should be issued. A ticket submitted to the Lottery by the licensee for credit becomes the property of the Lottery, is invalid and ineligible for a prize. All credits for tickets must be approved by the Lottery Director or designee.

10.10 Lost or Stolen Tickets

The Director reserves the right to hold any prize, pending the findings of an investigation, when the Jackpot Game ticket presented for validation has been reported stolen or lost. At the Director's discretion, Jackpot Game tickets that are determined to be stolen will not be paid.

10.11 Purchaser's Obligations

In purchasing an Jackpot Game ticket, the purchaser agrees to comply with all provisions of the §24-35-201, C.R.S., et seq, these Rules and Regulations, all final decisions of the Director, and all instructions and directives established by the Director for the conduct of Jackpot games.

10.12 Persons Ineligible to Purchase Tickets

a. No person under the age of eighteen (18) may purchase Lottery Jackpot Game tickets.

b. No Jackpot Game ticket shall be purchased by and no prize shall be paid to any of the following:

    1. Any member of the Commission;

    2. Any employee of the Division, except when authorized by the Director for investigative purposes. But, in no event shall such employee be entitled to payment of any prize;

    3. Any officer, director, or employee of any supplier of Colorado Lottery Jackpot Game ticket materials or equipment, or the subcontractors thereof that have participated, in any manner, in the supplying of Colorado Lottery Jackpot Game ticket materials or equipment, except when authorized by the Director for investigative purposes. But, in no event shall any of such persons be entitled to payment of any prize;

    4. Any vendor precluded by its contract with the Lottery;

    5. Any member of the immediate family of 1., 2., 3. and 4. above.

c. No person who operates drawing equipment during a drawing or officially witnesses a drawing, and no member of the person's immediate family, shall purchase a ticket or receive a prize for the drawing in which said person operates drawing equipment or witnesses a drawing.

d. For the purposes of this Rule, "immediate family" shall include any spouse, child, brother, sister, and/or parent residing in the same household of any of the persons specified in Paragraph 10.12.b.

10.13 Licensee Commission, Cashing Bonus and Marketing Performance Bonus

a. Each licensee shall be entitled to receive a commission of six percent (6%) of sales from Jackpot Game tickets lawfully sold or disbursed by said licensee.

b. Each licensee shall be entitled to receive a cashing bonus of one percent (1%) of each prize paid by the licensee up to and including $599.

c. A Marketing Performance Bonus up to five-tenths of one percent (0.5%) may be earned by licensees that meet the criteria set forth by the Lottery Director or their designee.

d. The requirements of the marketing performance bonus plan to be met by licensees shall be established by the Lottery Director or his/her designee on an annual basis.

e. In order to receive a marketing performance bonus, each licensee must meet the following criteria:

1. A licensee must be licensed on the date the marketing performance bonus is declared;

2. A licensee must sell Jackpot Game tickets up to and including the final sales day in which the marketing performance bonus is declared;

3. A licensee must meet or exceed the requirements of the marketing performance bonus plan for the period for which the marketing performance bonus is declared.

f. In the event there is a residual resulting from the accrual of the one percent (1%) cashing bonus (10.13.b) and/or the five-tenths of one percent (.5%) marketing bonus (10.13.c) have been expensed, the Lottery Director may provide additional compensation to licensees as described in 10.13.c or may revert the excess amount thereby decreasing the bonus expense.

10.14 Price of Tickets and Prizes

a. The purchase price of each ticket for Colorado Lottery Jackpot Games shall be set per the Game Guideline. The licensee may be permitted to make gifts of Jackpot Game tickets as a means of promoting the sale of goods or services to the public upon receipt of prior approval by the Lottery Director.

b. The prize amounts or total amount of prize money allocated to the prize categories for Jackpot games shall be set forth in Specific Game Playing Rules.

In the event the prize expense is less than the Lottery Commission approved "Aggregate Prize Fund" for a specific game, the Director, in his discretion, may authorize the difference to be used to increase Lottery prize amounts or pay additional prizes for that game.

10.15 Drawings and End of Sales Prior To Drawings

a. Drawings shall be conducted at a location and on days and at times indicated in the individual game drawing guidelines. Drawing results are not official until verified.

b. The Director shall determine for each type of Jackpot game the draw break or time for the end of sales prior to the drawings. Jackpot Game Terminals will not process orders for Jackpot Game tickets for that drawing after the time established by the Director.

c. The Director shall designate the type of equipment to be used and shall establish procedures to randomly select the winning combination for each type of Jackpot game.

10.16 Number and Size of Prizes

The number and sizes of Jackpot Game cash and non-cash-winning prizes shall be as set forth in the specific game rule and/or specific game drawing guidelines.

10.17 Validation Requirements

a. To be a valid winning Jackpot Game ticket, all of the following conditions must be met:

1. All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and date printed on the ticket.

2. The ticket shall be intact.

3. The ticket shall not be mutilated, altered, or tampered with in any manner.

4. The ticket shall not be counterfeit or an exact duplicate of another winning ticket.

5. The ticket must have been issued by an authorized Jackpot Game Licensee in an authorized manner.

6. The ticket must not have been stolen.

7. The ticket must not have been canceled or previously paid.

8. The ticket shall pass all other confidential security checks of the Lottery.

b. Any ticket failing any validation requirement listed in subsection 10.17.a is invalid and ineligible for a prize. If a court of competent jurisdiction determines that a claim based on a ticket that has failed to validate solely because of subsection 10.17.a. 7. of this section is valid, the claim shall be paid as a prize pursuant to Section 10.4 and Specific Game Playing Rules. The Licensee that canceled or paid such ticket shall indemnify the Lottery for payment of the prize and shall also indemnify the Lottery from any other claim, suit, or action based on that ticket.

c. The Director may require the payment of the prize for a ticket that is partially mutilated or is not intact if the Jackpot Game ticket can still be validated by other validation methods and requirements.

d. In the event a defective Jackpot Game ticket is purchased, the only responsibility or liability of the Lottery or the Jackpot Game Licensee shall be the replacement of the defective Jackpot Game ticket with another Jackpot Game ticket (or a ticket of equivalent sales price from any other current Lottery game).

10.18 Assignment of Prizes

a. The winner of an annuitized or installment payment prize in any Jackpot game being paid in annuitized or installment payments who desires to assign the right to unpaid future annuitized or installment payments must comply with C.R.S. 24-35-212(1)(b) and (1.5). Pursuant to C.R.S. 24-35-212 (1.5) (f), reasonable fees to defray administrative expenses shall be reviewed and approved by the Colorado Lottery Director on an annual basis.

b. Payment of a prize upon death of a prize winner will not be accelerated before its normal date of payments due to the death of the prizewinner. The remaining portion of the prize shall be paid to the estate in accordance with the last will and testament of the deceased prizewinner, unless overruled by a court of law. If the prizewinner dies without a will, the payment will be made in accordance with the applicable state laws of the deceased prizewinner, unless overruled by a court of law. Once payment is made in accordance with this rule the Lottery will hold no further liability.

AMENDED RULE 10.A - COLORADO LOTTERY JACKPOT GAME "LOTTO"

BASIS AND PURPOSE FOR AMENDED RULE 10.A

The purpose of Amended Rule 10.A is to provide specific game details and requirements for the Colorado Lottery Jackpot Game "LOTTO" such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. The statutory basis for Rule 10.A is found in C.R.S. 24-35-208 (1) (a) and (2), 24-35-212 and 24-35-212.5.

10.A.1

A Colorado Lottery Jackpot game to be known as "Lotto" is authorized to be conducted by the Director under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 10 and this Amended Rule 10.A, Amended Rule 10.A shall apply.

10.A.2 Definitions

In addition to the definitions provided in Paragraph 1.2 of Rule 1 and Rule 10, and unless the context in this Amended Rule 10.A otherwise requires:

A. "Base contribution" means an amount contributed to the Jackpot prize category in order to fund the initial drawing.

B. "Board" means a field of the 42 numbers found on the play slip.

C. "Direct Prize Category Contribution" means a percentage of net sales allocated to the prize categories as described in Paragraph 10.A.5.c.

D. "Indirect Prize Category Contribution" means a discretionary contribution authorized by the Director allocated to the prize categories as described in Paragraph 10.A.5.c. However, the total discretionary indirect prize category contributions shall not allow the game to pay out more than an additional 5.0% of sales in prizes in any single fiscal year. Unclaimed prizes will not be considered in this calculation.

E. "Jackpot Prize" means a pari-mutuel prize that is advertised to be paid with per-winner annuities or as a lump sum cash payment, unless otherwise specified by the Lottery.

F. "Jackpot Game Shares" means the total number of matching combinations within each prize category as determined for each drawing.

G. "Number" means any play integer from 1 through 42 inclusive.

H. "Play" means the six numbers selected on each Board and printed on the ticket.

I. "Play slip" means a mark-sense game card used by players of Lotto to select plays. There shall be ten game grids, or boards, on each play slip identified as A, B, C, D, E, F, G, H, I, and J. A play slip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

J. "Roll-over" means the amount from the direct prize category contribution from previous drawing(s) in the first prize (Jackpot) category that is carried forward to the first prize category (Jackpot) for the next drawing.

10.A.3 Price of Lotto Ticket

The price of each Lotto play shall be $1.00 but may be adjusted at the Director, or designee's, discretion.

10.A.4 Play for Lotto

A. Type of play:

A Lotto player must select six numbers in each play. A winning play is achieved only when 3, 4, 5, or 6 of the numbers selected by the player match, in any order, the six winning numbers drawn by the Lottery.

B. Method of play:

1. Manual – The Jackpot Game retailer may enter the player's selected numbers via the keyboard on the Jackpot Game terminal.

2. Play Slip - The player may use an original play slip provided by the Lottery to make number selections. The Jackpot Game terminal will read the play slip and issue a ticket with corresponding plays.

    a. Facsimiles of play slips, copies of play slips, or other materials that have not been printed or approved by the Lottery shall not be used to enter a play.

    b. No device shall be connected to a Jackpot Game terminal to enter plays, except as may be approved by the Lottery.

    c. Unapproved play slips or other devices may be seized by the Lottery.

    d. The play slip must be marked by hand. Machine-printed play slips used to enter plays must be approved by the Director. Unapproved machine-printed play slips may be seized by the Lottery.

    e. Nothing in this regulation shall be deemed to prevent a person with a physical disability who would otherwise be unable to mark a play slip manually from using any device intended to permit such person to make such a mark (for his/her sole personal use or benefit).

3. Quick Pick – The Jackpot Game retailer can create ticket(s) using the Jackpot Game terminal where the play has been created using a random number generator operated by the Jackpot Game terminal.

4. Partial Quick Pick - A player may leave a portion of his/her play selections to a random number generator operated by the Jackpot Game terminal. The partial quick pick option can be used with a play slip or manual entry by the retailer.

10.A.5 Prizes For Lotto

A. The prize amounts for each drawing paid to each Lotto player who selects a matching combination of numbers will vary due to a pari-mutuel calculation. The prize amounts are based on the total amount in the prize category for that Lotto drawing distributed equally over the number of matching combinations in each prize category.

MATCHING COMBINATIONS	PRIZE CATEGORY	ODDS OF WINNING (ONE PLAY)
All six matching numbers in one play	First Prize (Jackpot)	1: 5,245,785
Any five but not six matching numbers in one play	Second Prize	1: 24,286
Any four but not five or six matching numbers in one play	Third Prize	1:555
Any three but not four, five, or six matching numbers in one play	Fourth Prize	1: 36

B. The projected aggregate prizes as a percentage of sales for Lotto is Fifty-two and Seven-tenths Percent (52.7%). This projection does not include unclaimed prizes.

C. Prize Categories

1. First Prize (Jackpot) – The Jackpot will start each time at an annuitized future value of at least $1 million for the first drawing after it is won. The total prize category contribution for a drawing may include the following:

   a. A direct prize category contribution of twenty-five percent (25%) of net sales for the drawing, which may be adjusted as authorized by the director.

   b. A base contribution of $500,000. The Lotto base contribution may be adjusted as authorized by the Director if increased sales warrant a higher starting jackpot.

   c. A roll-over contribution as defined in Paragraph 10.A.2.j of this Rule 10.A.

   d. An indirect prize category contribution authorized by the Director.

2. Second Prize – The second prize category may include the following:

   a. A direct prize category contribution of two percent (2%) of the net sales for the drawing.

   b. An indirect prize category contribution as authorized by the Director.

   A prize amount shall be calculated by dividing the prize category contribution by the number of shares for the prize category. A share is the matching combination, in one play, of any five of the six numbers drawn (in any sequence).

3. Third Prize – The third prize category may include the following:

   a. A direct prize category contribution of seven and one-half percent (7.5%) of the net sales for the drawing.

   b. An indirect prize category contribution as authorized by the Director.

A prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any four of the six numbers drawn (in any sequence).

4. Fourth Prize – The fourth prize category may include the following:

   a. A direct prize category contribution of ten percent (10%) of the net sales for the drawing.

   b. An indirect prize category contribution as authorized by the Director.

   A prize amount shall be calculated by dividing the prize category contributions by the number of shares for the prize category. A share is the matching combination, in one play, of any three of the six numbers drawn (in any sequence).

5. Additional Lottery Prizes may be awarded as authorized by the Director from the Indirect Prize Category contribution.

6. All prize amounts will be rounded down to the nearest dollar except that no prize amount shall be less than one dollar ($1).

10.A.6 Payment of Prizes

A. The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

B. Players will be given the option of receiving their share of the first prize (Jackpot) over a period of 25 years through a fixed progressive 25-year annuity with the initial payment made by the Lottery on the date of claim and 24 additional payments made yearly on the anniversary of the first payment, or a one-time lump sum payment equal to fifty percent (50%) of their share of the annuitized jackpot amount.

C. The annuitized future value of the first (Jackpot) prize category shall be twice the cash value of the total Jackpot prize category contribution as defined in Paragraph 10.A.5.c.1.

D. To determine the annuitized future value of each jackpot share (prize amount), the annuitized future value of the prize category is divided by the shares. A share is the matching combination, in one play, of all six numbers drawn (in any sequence).

E. If the annuitized future value of each jackpot share (prize amount) results in an initial or first payment of ten thousand dollars ($10,000) or more and the annuity option has been selected, the prize amount shall be a fixed progressive 25-year annuity. The initial annuity payment shall be paid by the Lottery at the time of claim and be 2.5% of the future value of the annuity. Each subsequent annual payment (#2 through #25) shall increase by 3.7% of the previous annual payment.

F. Players who select the annuitized payment shall have the ability to change their prize payment selection from annuitized payment to lump sum payment for up to ninety days from the original date of claim. This period may be extended at the discretion of the Director or the Director's designee. If a player chooses the lump sum payment after the initial annuitized payment is made to the player by the Lottery, the player will receive the remaining amount of the original cash value prize, less taxes, in a single second payment.

G. If the annuitized future value of each jackpot share (prize amount) results in an initial or first payment of less than ten thousand dollars ($10,000) the annuity option will not be allowed and the prize amount will be paid in one payment.

10.A.7 Ticket Purchases

A. Lotto tickets may be purchased only from a Lottery retailer authorized by the Director to sell Jackpot Game tickets.

B. Lotto tickets shall show, at a minimum, the numbers selected, the boards played, drawing date and validation and reference numbers.

C. The Lottery shall not directly and knowingly sell a combination of tickets to any person or entity that would guarantee such purchaser a win.

D. A player may cancel a ticket and receive a refund of the purchase price for any draw provided the following criteria are met:

1. The legible ticket is returned to the Jackpot Game retailer from whom the player purchased;

2. It is returned within one (1) hour of purchase;

3. The retailer is open;

4. The Jackpot Game system is available for wagering; and

5. The Jackpot Game system has not converted to the next drawing period.

10.A.8 Drawings

A. The Lotto drawings shall be held as scheduled by the Director and as indicated in the Drawing Guidelines. In the event of an act of Force Majeure the drawing shall be rescheduled at the Director's, or the Director's designee, discretion.

B. The drawings will be conducted by Lottery officials and comply with Colorado Revised Statutes.

C. Each drawing shall determine, at random, six winning numbers in accordance with Drawing Guidelines. Any numbers drawn are not declared winning numbers until the drawing is certified by the Lottery in accordance with paragraph 10.A.8d. The winning numbers shall be used in determining all Lotto winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

D. The drawing shall not be invalidated based on the liability of the Lottery.

10.A.9 Advance Play

Advance play provides the opportunity to purchase Lotto tickets for more than one drawing. Advance play tickets shall be available for purchase in variable increments. The Advance Play feature shall be available at the discretion of the Lottery Director.

10.A.10 Licensee Commission

A. In addition to the six percent (6%) Commission set forth in Paragraph 10.14 of Rule 10, the Director may provide such additional compensation to the licensees as is deemed appropriate by the Director to further the sale of Lotto tickets, so long as such additional compensation is made equally available to all licensees and does not exceed a total of seven-tenths of one percent (0.7%) of the total amount received by the Division from all Lotto tickets sold or disbursed as of the date the Director determines to provide such additional compensation. The seven-tenths of one percent (0.7%) described above shall consist of the following:

1. Two-tenths of one percent (0.2%) of sales from Lotto tickets lawfully sold or disbursed by a Jackpot Game retailer shall be accrued to pay Jackpot Game retailers a one percent (1%) cashing bonus for each Lotto prize redeemed by retailers up to and including $599.99.

2. Up to one-half of one percent (0.5%) of sales from Lotto tickets lawfully sold or disbursed by a Jackpot Game retailer shall be accrued to pay Jackpot Game retailers a marketing performance bonus.

B. In order to receive the marketing performance bonus, each Jackpot Game retailer must meet the following criteria:

1. A retailer must be a licensed retailer on the date the marketing performance bonus is declared;

2. A retailer must meet or exceed the requirements of the Marketing Performance Bonus Plan for the period for which the marketing performance bonus is declared; and

3. The requirements of the Marketing Performance Bonus Plan to be met by Jackpot Game retailers shall be established by the Lottery Director or his/her designee.

C. In the event there is a residual resulting from the accrual of the seven-tenths of one percent (0.7%) of sales after the bonuses described in 10.A.10.a.1 and 2 have been expensed, the Director may provide additional compensation to licensees as described in 10.A.10.a or may revert the excess amount thereby decreasing the bonus expense.

RULE 10.B - COLORADO LOTTERY JACKPOT GAME "PICK 3"

BASIS AND PURPOSE FOR RULE 10.B

The purpose of Rule 10.B is to provide specific game details and requirements for the Colorado Lottery Jackpot Game "Pick 3" such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. The statutory basis for Rule 10.B is found in C.R.S. 24-35-208 (1) (a) and (2), 24-35-212 and 24-35-212.5.

10.B.1

A Colorado Lottery Jackpot game to be known as "Pick 3" is authorized to be conducted by the Director under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 10 and this Rule 10.B, Rule 10.B shall apply.

10.B.2 Definitions

In addition to the definitions provided in Paragraph 1.2 of Rule 1 and Rule 10, and unless the context in this Rule 10.B otherwise requires:

A. "Board" means a field of three (3) matrixes of ten (10) numbers found on the play slip.

B. "Matrix" means the grid of numbers comprised of ten (10) numbers (0 - 9) from which Pick 3 game numbers are selected.

C. "Maximum Liability" means a combination of numbers will be considered sold out when the liability for the combination in exact play style reaches one thousand (1,000) combinations sold.

D. "Number" means any play integer from 0 through 9 inclusive.

E. A "Play" shall consist of three (3) numbers selected by the player or Quick Pick.

F. "Play Slip" means a mark-sense game card used by players of Pick 3 to select Plays. There shall be five (5) game boards on each Play Slip identified as A, B, C, D and E. A Play Slip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

G. "Prize Category Contribution" means and refers to contributions for each drawing to the prize categories from the prize pool.

H. "Quick Pick" means a computer generated selection of one (1), two (2), or three (3) numbers.

I. "Ticket" contains one (1) to five (5) play(s).

10.B.3 Price of Pick 3 Ticket

The price of each Pick 3 play shall be fifty cents ($0.50). Tickets may be purchased in fifty cent ($0.50) increments and beginning April 27, 2014, may be purchased in any of the following combinations:

A.	Exact Order 1 Play	Base price $0.50	Optional prices $1.00, $2.00, $5.00
B.	Any Order (6-way) 1 Play	Base price $0.50	Optional prices $1.00, $2.00, $5.00
C.	Any Order (3-way) 1 Play	Base price $0.50	Optional prices $1.00, $2.00, $5.00
D.	Exact/Any Order 2 Plays	Base Price $1.00	Optional prices $2.00, $5.00
	1. Exact Order (6-way)		
	2. Any Order (6-way)		
E.	Exact/Any Order 2 Plays	Base Price $1.00	Optional prices $2.00, $5.00
	1. Exact Order (3-way)		
	2. Any Order (3-way)		
F.	Front Pair 1 Play	Base price $0.50	Optional prices $1.00, $2.00, $5.00
G.	Back Pair 1 Play	Base price $0.50	Optional prices $1.00, $2.00, $5.00

10.B.4 Play for Pick 3

A. Type of play:

A Pick 3 play shall consist of three (3) numbers.

B. Method of play:

1. The player may select three (3) numbers from a field of numbers, 0 – 9 inclusive. The selected numbers may be three (3) separate individual numbers or an individual number may be repeated two (2) or three (3) times in a single play. Examples of single plays are:

a. Individual numbers selected - (1, 3, 5)

b. Two numbers repeated – (1,1,5) (1,5,1) (5,1,1)

c. Three numbers repeated (1,1,1)

2. The player will select a bet type:

a. Exact Order - Equals one (1) play. Player selects either three (3) unique numbers, one (1) unique number and two (2) numbers repeated, or three (3) numbers repeated from the field of zero through nine (0-9), inclusive.

b. Any Order (6-way) – Equals one (1) play. Player selects three (3) unique numbers from the field of zero through nine (0-9), inclusive.

c. Any Order (3-way) – Equals one (1) play. Player selects one (1) unique number and two (2) numbers repeated from the field of zero through nine (0-9), inclusive.

d. Exact Order/Any Order (6-way) - Equals two (2) plays. Player selects three (3) unique numbers from the field of zero through nine (0-9), inclusive.

f. Exact Order/Any Order (3-way) - Equals two (2) plays. Player selects one (1) unique number and two (2) repeated numbers from the field of zero through nine (0-9), inclusive.

g. Front Pair - Equals one (1) play. Player selects either three (3) unique numbers, one (1) unique number and two (2) repeated numbers, or three (3) repeated numbers from the field of zero through nine (0-9), inclusive.

h. Back Pair - Equals one (1) play. Player selects either three (3) unique numbers, one (1) unique number and two (2) repeated numbers, or three (3) repeated numbers from the field of zero through nine (0-9), inclusive.

3. The player may use Play Slips to make number selections. The Jackpot Game terminal will read the Play Slip and issue ticket(s) with corresponding Plays. If a Play Slip is not available, the Jackpot Game retailer may enter the selected numbers via the keyboard. A player may leave all or a portion of his/her play selections to a random number generator operated by the computer, commonly referred to as "Quick Pick" or "partial Quick Pick."

C. Methods of winning

1. Exact Order – The player selected three (3) numbers match the Lottery numbers drawn in the exact same order

2. Any Order – The player selected three (3) numbers match the Lottery numbers drawn in any order

3. Exact Order/Any Order – The player selected three (3) numbers match the Lottery numbers drawn in exact order or any order

4. Front Pair - The first two (2) player selected numbers match the first two (2) Lottery numbers drawn in exact order

5. Back Pair - The last two (2) player selected numbers match the last two (2) Lottery numbers drawn in exact order

10.B.5 Prizes For Pick 3

A. Pick 3 prize amounts, for each drawing, are paid to those players who select a matching combination of numbers from the three (3) numbers selected by the Lottery in a random drawing. The prize amounts for each prize category and odds of winning are as follows:

TYPE	Odds	If You Play	Winning Combinations	$0.50	$1.00	$2.00	$5.00
Exact Order	1:1000	567	567	$250	$500	$1,000	$2,500
Any Order (6-way) 3 unique numbers	1:167	567	567 576 657 675 756 765	$40	$80	$160	$400
Any Order (3-way) 2 of the same number	1:333	566	566 656 665	$80	$160	$320	$800
Exact Order/Any Order (6-way exact order)	1:1000	567	567	N/A	$250	$500	$1250
Exact Order/Any Order (6-way any order)	1:167	567	567 576 657 675 756 765	N/A	$40	$80	$200
Exact Order/Any Order (3-way exact order)	1:1000	566	566	N/A	$250	$500	$1250
Exact Order/Any Order (3-way any order)	1:333	566	566 656 665	N/A	$80	$160	$400
Front Pair	1:100	56x	560 561 562 563 564 565 566 567 568 569	$30	$60	$120	$300
Back Pair	1:100	X65	065 165 265 365 465 565 665 765 865 965	$30	$60	$120	$300

B. The maximum total liability for exact play style match is reached when a single combination is purchased one thousand (1,000) times. No additional exact combinations may be sold once the one thousand (1,000) limit is reached (i.e. 1,2,3 is sold 1,000 times, no additional bets of 1,2,3 are allowed in the Exact Order or Exact/Any Order betting options).

C. All prizes levels are fixed as indicated in 10.B.5.A.

D. The prize fund for Pick 3 is fifty and twenty-nine one hundredths percent (50.29%).

10.B.6 Payment of Prizes

The holder of a winning ticket shall be entitled to the highest prize amount based on the play selection and bet amount as indicated in section 10.B.5 A.

10.B.7 Ticket Purchases

A. Pick 3 tickets may be purchased only from a Lottery retailer authorized by the Director to sell Jackpot Game tickets.

B. Pick 3 tickets shall show, at a minimum, the numbers selected, the bet type, the bet amount, drawing date, validation and reference numbers.

C. Plays may be entered manually using the Jackpot Game terminal keypad or by means of an original Play Slip provided by the Lottery. Facsimiles of Play Slips, copies of Play Slips, or other materials that are inserted into the Jackpot Game terminal's Play Slip reader and that have not been printed or approved by the Lottery shall not be used to enter a Play. No device shall be connected to a Jackpot Game terminal to enter Plays, except as may be approved by the Lottery. Unapproved Play Slips or other devices may be seized by the Lottery.

D. A player may cancel a ticket and receive a refund of the purchase price for any draw provided the following criteria are met:

1. The legible ticket is returned to the Jackpot Game retailer from whom the player purchased;

2. It is returned within one (1) hour of purchase;

3. The retailer is open;

4. The Jackpot Game system is available for wagering; and

5. The Jackpot Game system has not converted to the next drawing period

10.B.8 Drawings

A. Pick 3 drawings shall be held as schedule by the Director, and as indicated in the Drawing Guidelines. In the event of force majeure the drawing shall be rescheduled at the Director's, or the Director's designee, discretion.

B. The drawings will be conducted by Lottery officials and comply with Colorado Revised Statutes.

C. Each drawing shall determine, at random, three (3) winning numbers in accordance with Drawing Guidelines. Any numbers drawn are not declared winning numbers until the drawing is certified by the Lottery in accordance with paragraph 10.B.8 B. The winning numbers shall be used in determining all Pick 3 winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

D. The drawing shall not be invalidated based on the liability of the Lottery.

10.B.9 Licensee Commission

A. In addition to the six percent (6%) Commission set forth in Paragraph 10.13 of Rule 10, the Director may provide such additional compensation to licensees as is deemed appropriate by the Director to further the sale of Pick 3 tickets, so long as such additional compensation is made equally available to all licensees and does not exceed a total of ninety-six hundredths of one percent (0.96%) of the total amount received by the Division from all Pick 3 tickets sold or disbursed as of the date the Director determines to provide such additional compensation. The ninety-six hundredths of one percent (0.96%) described above shall consist of the following:

1. Forty-six hundredths of one percent (0.46%) of sales from all Pick 3 tickets lawfully sold or disbursed by an Jackpot Game retailer shall be accrued to pay Jackpot Game retailers a one percent (1%) cashing bonus for each Pick 3 prize redeemed by Jackpot Game retailers up to and including $599.99.

2. One-half of one percent (0.5)% of sales from all Pick 3 tickets lawfully sold or disbursed by a Jackpot Game retailer shall be accrued to pay Jackpot Game retailers a performance bonus as detailed in the current program for Colorado Lottery retailers.

B. In the event there is a residual resulting from the accrual of the ninety-six hundredths of one percent (0.96%) of sales after the bonuses described in 10.B.9.a. 1. and 2. has been expensed, the Director may provide additional compensation to licensees as described in 10.B.9 A or may revert the excess amount thereby decreasing the bonus expense.

10.B.10 Advance Play

Advance Play provides the opportunity to purchase Pick 3 tickets for more than one consecutive drawing. Advance Play tickets shall be available for purchase in variable increments. The Advance Play feature shall be available at the discretion of the Lottery Director.

RULE 10.D - CASH 5

BASIS AND PURPOSE OF AMENDED RULE 10.D

The purpose of Rule 10.D is to provide specific game details and requirements for the Colorado Lottery Jackpot Game "CASH 5" such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. The statutory basis for Rule 10.D is found in C.R.S. 24-35-208 (1) (a) and (2), 24-35-212 and 24-35-212.5.

10.D.1

A Colorado Lottery Jackpot game to be known as "Cash 5" is authorized to be conducted by the Director under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 10 and this Rule 10.D, Rule 10.D shall apply.

10.D.2 Definitions

In addition to the definitions provided in Paragraph 1.2 of Rule 1 and Rule 10, and unless the context in this Rule 10.D otherwise requires:

a. "Board" means a field of the 32 numbers found on the play slip.

b. "Number" means any play integer from 1 through 32 inclusive.

c. "Play" means the five numbers selected on each Board and printed on the ticket.

d. "Play slip" means a mark-sense game card used by players of Cash 5 to select plays. There shall be ten game grids, or boards, on each play slip identified as A, B, C, D, E, F, G, H, I, and J. A play slip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

10.D.3 Price Of Cash 5 Tickets

The price of each Cash 5 play shall be $1.00 but may be adjusted at the Director, or designee’s, discretion.

10.D.4 Play For Cash 5

a. Type of play:

A Cash 5 player must select five numbers in each play. A winning play is achieved only when 2, 3, 4, or 5 of the numbers selected by the player match, in any order, the five winning numbers drawn by the Lottery.

b. Method of play:

1. Manual - The Jackpot Game retailer may enter the player's selected numbers via the keyboard on the Jackpot Game terminal.

2. Play Slip - The player may use an original play slip provided by the Lottery to make number selections. The Jackpot Game terminal will read the play slip and issue a ticket with corresponding plays.

i. Facsimiles of play slips, copies of play slips, or other materials that have not been printed or approved by the Lottery shall not be used to enter a play.

ii. No device shall be connected to an Jackpot Game terminal to enter plays, except as may be approved by the Lottery.

iii. Unapproved play slips or other devices may be seized by the Lottery.

iv. The play slip must be marked by hand. Machine-printed play slips used to enter plays must be approved by the Director. Unapproved machine-printed play slips may be seized by the Lottery.

v. Nothing in this regulation shall be deemed to prevent a person with a physical disability who would otherwise be unable to mark a play slip manually from using any device intended to permit such person to make such a mark (for his/her sole personal use or benefit).

3. Quick Pick - The Jackpot Game retailer can create ticket(s) using the Jackpot Game terminal where the play has been created using a random number generator operated by the Jackpot Game terminal.

4. Partial Quick Pick - A player may leave a portion of his/her play selections to a random number generator operated by the Jackpot Game terminal. The partial quick pick option can be used with a play slip or manual entry by the retailer.

10.D.5 Prizes For Cash 5

a. Cash 5 prize amounts, for each drawing, are paid to those players who select a matching combination of numbers from the five (5) numbers selected by the Lottery in a random drawing. The prize amounts for each prize category and odds of winning are as follows:

MATCHING COMBINATIONS	PRIZE CATEGORY	ODDS OF WINNING (ONE PLAY)
All five matching numbers in one play	$20,000.00	1:201,375
Any four but not five matching numbers in one play	$200,00	1:1,491

Any three but no four or five matching numbers in one play	$10,00	1:57
Any two but not three, four or five matching numbers in one play	$1.00	1:6

b. Aggregate Limit - In the event more than ten (10) tickets win the top prize in any one drawing (correctly match five numbers in any one play), all top prize winning tickets will receive an equal share of Two Hundred Thousand Dollars ($200,000.00).

c. The projected aggregate prize fund for Cash 5 is Fifty-five and Twenty-nine One Hundredths Percent (55.29%).

d. Additional Lottery prizes may be awarded as authorized by the Director from the Indirect Prize Category Contribution as specified in Specific Game Playing Rules.

e. The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn and shall be entitled only to the highest prize category won by those numbers.

10.D.6 Ticket Purchases

a. Cash 5 tickets may be purchased only from a Lottery retailer authorized by the Director to sell Jackpot Game tickets.

b. Cash 5 tickets shall show at a minimum, the numbers selected, boards played, drawing date and validation and reference numbers.

c. The Lottery shall not directly and knowingly sell a combination of tickets to any person or entity which would guarantee such purchaser a win.

d. A player may cancel a ticket and receive a refund of the purchase price for any draw provided the following criteria are met:

1. The legible ticket is returned to the Jackpot Game retailer from whom the player purchased;

2. It is returned within one (1) hours of purchase;

3. The retailer is open;

4. The Jackpot Game system is available for wagering; and

5. The Jackpot Game system has not converted to the next drawing period.

10.D.7 Drawings

a. Cash 5 drawings shall be held as scheduled by the Director and as indicated in the Drawing Guidelines. In the event of an act of Force Majeure the drawing shall be rescheduled at the Director's, or the Director's designee, discretion.

b. The drawings will be conducted by Lottery officials and comply with Colorado Revised Statutes.

c. Each drawing shall determine, at random, five winning numbers in accordance with Drawing Guidelines. Any numbers drawn are not declared winning numbers until the drawing is certified by the Lottery in accordance with paragraph 10.D.7 d). The winning numbers shall be used in

determining all Cash 5 winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

d. The drawing shall not be invalidated based on the liability of the Lottery.

10.D.8 Advance Play

Advance play provides the opportunity to purchase Cash 5 tickets for more than one drawing. Advance play tickets shall be available for purchase in variable increments. The Advance Play feature shall be available at the discretion of the Lottery Director.

10.D.9 Licensee Commission

a. In addition to the six percent (6%) Commission set forth in Paragraph 10.14 of Rule 10, the Director may provide such additional compensation to licensees as is deemed appropriate by the Director to further the sale of Cash 5 tickets, so long as such additional compensation is made equally available to all licensees and does not exceed a total of ninety-five and twenty-nine hundredths of one percent (0.9529%) of the total amount received by the Division from all Cash 5 tickets sold or disbursed as of the date the Director determines to provide such additional compensation. The ninety-five and twenty-nine hundredths of one percent (0.9529%) described above shall consist of the following:

1. Forty-five and twenty-nine hundredths of one percent (0.4529%) of sales from all Cash 5 tickets lawfully sold or disbursed by an Jackpot Game retailer shall be accrued to pay Jackpot Game retailers a one percent (1%) cashing bonus for each Cash 5 prize redeemed by Jackpot Game retailers up to and including $599.99.

2. Up to one-half of one percent (0.5)% of sales from all Cash 5 tickets lawfully sold or disbursed by an Jackpot Game retailer shall be accrued to pay Jackpot Game retailers a marketing performance bonus.

b. In order to receive the marketing performance bonus each Jackpot Game retailer must meet the following criteria:

1. A retailer must be a licensed retailer on the date additional compensation is declared;

2. A retailer must meet or exceed the requirements of the Marketing Performance Bonus Plan for the period in which additional compensation is declared; and

3. The requirements of the Marketing Performance Bonus Plan to be met by Jackpot Game retailers shall be established by the Lottery Director or his designee.

c. In the event there is a residual resulting from the accrual of the ninety-five and twenty-nine hundredths of one percent (0.9529%) of sales after the bonuses described in 10.D.9 a.1. and 2. have been expensed, the Director may provide additional compensation to licensees as described in 10.D.9 a. or may revert the excess amount thereby decreasing the bonus expense.

RULE 10.E - COLORADO LOTTERY JACKPOT GAME "MATCHPLAY" [Repealed eff. 06/30/2013]

RULE 10.F - COLORADO LOTTERY JACKPOT GAME "RAFFLE 3" [Repealed eff. 01/30/2014]

RULE 10.G - COLORADO LOTTERY JACKPOT GAME "RAFFLE" DRAWING 2 [Repealed Eff. 08/30/2012]

RULE 11 [Repealed eff. 10/30/2013.]

RULE 12 REPEALED [Eff. 07/30/2012]

RULE 13 REPEALED [Eff. 07/30/2012]

RULE 14 - MULTISTATE JACKPOT GAME LOTTERY GAMES

BASIS AND PURPOSE OF AMENDED RULE 14

The purpose of amended RULE 14 is to provide details and requirements for all Colorado Lottery multistate Jackpot games conducted as a member of a multistate group, such as the sale of tickets, payment of prizes, method for selecting and validating winning tickets. The statutory basis for RULE 14 is found in C.R.S. 24-35-201(5) and (6), 24-35-204(3)(a) and (i), 24-35-208 (1)(a) and (i), and (2), 24-35-212 and 24-35-212.5.

14.1 Commission to Adopt Specific Guidelines for Multistate Jackpot Lottery Games

Multistate Jackpot lottery games are authorized to be conducted under the following Rules and Regulations and such further instructions and directives the Director may issue in furtherance thereof.

a. All multistate guidelines and board decisions must be approved by the Colorado Lottery (hereafter referred to as Lottery) and the Lottery Commission, prior to implementation within Colorado.

b. The Director will be a voting member of the multistate board during the timeframe in which the Lottery shall be a member of the multistate group.

c. If at any time the Lottery Director determines that any provisions of the multistate governing rules or of the multistate specific game playing rules do not sufficiently provide for the security and integrity necessary to protect the Lottery, the Director shall recommend to the Lottery Commission that the Lottery end its membership with the specified multistate group or game. Upon concurrence by the Lottery Commission, membership can end at any time.

d. To the extent not inconsistent with such specific Rules and Regulations as may be adopted, the following general provisions under this Rule 14 shall apply to each Lottery Jackpot game conducted as a member of a multistate group.

14.2 Definitions

In addition to the definitions provided in Paragraph 1.2 of Rule 1, and unless the context in these Rules and Regulations otherwise requires:

a. “MULTISTATE AGREEMENT” means the document made and entered into by the Party Lotteries, containing the mutual covenants agreed to by the Party Lotteries.

b. “MULTISTATE JACKPOT GAME” means an individual lottery game as described in specific game playing rules which utilizes a computer system to administer plays and in which a player or the computer system selects a combination of digits, numbers, or symbols. The Lottery, in conjunction with all other participating multistate game members, will either conduct or oversee a drawing to determine the winning combination(s), used by all multistate game members, in accordance with the Specific Game Playing Rules for each multistate Jackpot game.

c. “MULTISTATE JACKPOT GAME PRIZE” means an award for matching combinations as described in Specific Game Playing Rules. These awards are valid only for those multistate Jackpot Game tickets purchased at an authorized Lottery licensee.

d. “MULTISTATE JACKPOT GAME TICKET” means a computer-generated ticket issued by an Jackpot Game licensee to a player as a receipt for the combination of digits, numbers or symbols selected in a multistate Jackpot game. That ticket shall be the only acceptable evidence of the combination of digits, numbers or symbols selected. Multistate Jackpot Game tickets may be purchased only from Lottery authorized Jackpot Game licensees.

e. “MULTISTATE BOARD” means the governing body of a specific multistate Jackpot game, which is comprised of the chief executive officer of each Party Lottery.

f. “MULTISTATE GUIDELINES” means the statements of policy having authority over an activity in an individual multistate game.

g. “PARTY LOTTERY” means a state lottery or lottery of a political subdivision or entity which has joined a multistate game and, in the context of the Product Group Rules, has joined in selling the specified multistate Jackpot game.

h. “PRODUCT” means any multistate Jackpot game.

i. “PRODUCT GROUP” means a group of lotteries which have joined together to offer a product pursuant to the terms of the Multistate Agreement and the Group’s own rules.

14.3 Price of Tickets

The purchase price of each multistate Jackpot Game ticket shall be set forth in Specific Game Playing Rules.

14.4 Sale of Tickets

a. Jackpot Game licensees shall make Lottery multistate Jackpot Game tickets available for sale to the public during Lottery normal hours of operation of the Jackpot Game gaming system that are within the licensee’s normal business hours.

b. An Jackpot Game licensee shall sell Lottery multistate Jackpot Game tickets only at the premises specified in the license.

c. All retail multistate Jackpot Game ticket sales are final and the return of a Lottery Multistate Jackpot Game ticket after sale shall not be accepted by the Jackpot Game licensee, unless otherwise directed by the Director or as set forth in Paragraphs 14.5 of this Rule 14 or as may be set forth in Specific Game Playing Rules.

d. The Lottery itself may sell Lottery multistate Jackpot Game tickets.

14.5 Cancellation of Tickets

A multistate Jackpot Game ticket cannot be cancelled in any way. Unless the Director is satisfied that a mutilated Lottery Jackpot Game ticket is genuine, no credit will be issued to the holder.

a. If the Jackpot Game ticket is mutilated at the time of purchase, it must be returned to the licensee by the ticket holder within one (1) hour of purchase provided that the licensee is open, the Jackpot Game system is available for wagering and the Jackpot Game system has not converted to the next drawing period.

b. Licensees must submit evidence of machine-damaged or non-printed ticket(s) to the Lottery for investigation to determine if credit should be issued. A ticket submitted to the Lottery by the licensee for credit becomes the property of the Lottery and the ticket is invalid and ineligible for a

prize. Following an investigation of circumstances, the Director may issue a credit in the amount of the purchase price to the Licensee should the claim be deemed genuine.

14.6 Ownership of Tickets

a. Until such time as the multistate Jackpot Game ticket is signed in the area designated, a Lottery multistate Jackpot Game ticket shall be a bearer instrument, owned by the physical possessor of such ticket.

b. The Director shall only recognize as the true owner of a winning Lottery multistate Jackpot Game ticket the person whose signature appears upon the ticket in the area designated for said purpose.

c. Each winning multistate Jackpot Game ticket must have placed thereon the signature of the owner in the area designated for such purpose. The Division may make payment based upon information submitted to it on an affidavit proving ownership.

d. In the event there is an inconsistency in the information submitted on a claim form and as shown on the winning multistate Jackpot Game ticket, the Director shall request an investigation and withhold all winnings awarded to the ticket owner or holder until such time as the Director is satisfied that the proper person is being paid.

e. The Director shall recognize only one (1) person as claimant of a multistate Jackpot Game ticket. A claim may be made in the name of an organization only if the organization possesses a Federal Employer Identification Number (FEIN) issued by the Internal Revenue Service and such number is shown on the claim form. Groups, family units, clubs or organizations without an FEIN shall designate one individual in whose name the claim is to be filed. If a claim is erroneously entered with multiple claimants, the claimants shall designate one of them as the individual recipient of the prize, or, if they fail to designate an individual recipient, the Director may designate any one of the claimants as the sole recipient. In either case, the claim shall then be considered as if it were originally entered in the name of the designated individual and payment of any prizes won shall be made to the single individual. Once a multistate Jackpot Game ticket is validated, it will not be returned to the winner, but remain the property of the Lottery.

14.7 Purchaser's Obligations

a. In purchasing a multistate Jackpot Game ticket, the purchaser agrees to comply with all provisions of part 2 of article 35 of title 24, these Rules and Regulations, all final decisions of the Director, all instructions and directives established by the Director, all multistate group guidelines, which have been approved by the Lottery, and all multistate group Board decisions for the conduct of the multistate Jackpot games.

b. It shall be the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket. The placing of plays is done at the player's own risk through the Jackpot Game licensee, who is acting on behalf of the player in entering the play or plays.

14.8 Persons Ineligible to Purchase Tickets

a. No person under the age of eighteen (18) may purchase Lottery multistate Jackpot Game tickets.

b. No Lottery multistate Jackpot Game ticket may be purchased by, and no prize shall be paid to, any of the following as set forth in C.R.S. 24-35-209:

    1. Any member of the Commission;

2. Any employee of the Lottery, except when authorized by the Lottery Director for investigative purposes. In no event shall such employee be entitled to payment of any prize;

3. Any officer, director or employee of any supplier of Colorado Lottery multistate Jackpot Game ticket materials or equipment, or the subcontractors thereof which have participated, in any manner, in the supplying of Colorado Lottery multistate Jackpot Game ticket materials or equipment, except when authorized by the Director for investigative purposes. But, in no event shall any such persons be entitled to payment of any prize;

4. Any vendor precluded by its contract with the Lottery;

5. Any person who operates drawing equipment during a multistate lottery drawing or officially witnesses a drawing;

6. Any member of the immediate family as defined in Rule 1-Definitions, of items 1., 2., 3., 4. and 5. above.

14.9 Drawings and End of Sales Prior to Drawings

a. The manner and frequency of drawings shall be as set forth in Specific Game Playing Rules. In the event of force majeure the drawing shall be rescheduled at the Director's, or the Director's designee, discretion.

b. Drawings shall be conducted at a location and on days and at times to be announced.

c. The Director shall determine for each type of multistate Jackpot game the draw break or time for the end of sales prior to the drawings in accordance with the multistate guidelines. Jackpot Game terminals will not process orders for multistate Jackpot Game tickets for that drawing after the time established by the Director.

d. An auditor, as required in C.R.S 24-35-208 (2)(d), will observe each multistate drawing and document compliance or non-compliance to drawing procedures required by the multistate group Board and the Lottery as described in the Lottery's drawing guidelines.

e. The auditor must submit a report after each drawing that documents compliance or non-compliance to established drawing procedures as described in the drawing guidelines. The report must include each discrepancy detected, if any, during the drawing procedure and recommendations, if any that may strengthen the integrity of the drawings. The report will become a part of the Lottery's drawing work papers. Reports that include a discrepancy and/or a recommendation must be distributed to the Lottery Commission, the Director, the Lottery Security Director and the Lottery Controller.

f. All drawing equipment used shall be examined by the auditor located at the multistate drawing site immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing.

14.10 Validation Requirements

a. To be a valid winning multistate Jackpot Game ticket, all of the following conditions must be met:

1. All printing on the ticket shall be present in its entirety, be legible and correspond, using the computer validation file, to the combination and date printed on the ticket.

2. The ticket shall be intact.

3. The ticket shall not be mutilated, altered or tampered with in any manner.

4. The ticket shall not be counterfeit or an exact duplicate of another winning ticket.

5. The ticket must have been issued by a Colorado authorized Jackpot Game licensee in an authorized manner.

6. The ticket must not have been stolen.

7. The ticket must not have been previously paid.

8. The ticket shall pass all other confidential security checks of the Lottery.

b. Any ticket failing any validation requirement listed in Section (a) above is invalid and ineligible for a prize. If a court of competent jurisdiction determines that a claim based on a ticket which has failed to validate solely because of subsection (a) (7) of this section is valid, the claim shall be paid as a prize pursuant to Paragraphs 14.11 of this Rule 14 and Specific Game Playing Rules. The licensee that paid such ticket erroneously shall indemnify the Lottery for payment of the prize and from any other claim, suit or action based on that ticket.

c. The Director may pay the prize for a multistate Jackpot Game ticket that is partially mutilated or is not intact if the multistate Jackpot Game ticket can still be validated by the other validation methods and requirements.

d. In the event a defective multistate Jackpot Game ticket, pursuant to paragraph 14.5 of this rule 14, is purchased, the only responsibility or liability of the Lottery or the Jackpot Game licensee shall be the replacement of the defective multistate Jackpot Game ticket with another multistate Jackpot Game ticket (or a ticket of equivalent sales price from any other current Lottery game) or refund of the purchase price.

14.11 Payment of Prizes

a. The prize amounts or total amount of prize money allocated to the prize categories for multistate Jackpot games shall be set forth in Specific Game Playing Rules.

1. In the event the prize expense is less than the Lottery Commission approved “Aggregate Prize Fund” for a specific game, the Director or designee may authorize the difference to be used to increase Lottery prize amounts or pay additional prizes for that game within the current fiscal year, within the multistate guidelines.

b. The holder of a winning multistate Jackpot Game ticket in the amount of $150.00 or less may take the ticket to any licensee location during the licensee’s normal business hours and game operation hours for validation and payment.

c. The holder of a winning multistate Jackpot Game ticket in the amount of $151.00 to $599.00 may take the ticket to any licensee location during the licensee’s normal business hours and game operation hours. Licensees have the option of validating winning tickets in the amount of $151.00 to $599.00. All prizes shall be paid by the licensee upon presentation and validation of the ticket pursuant to instructions on the back of the multistate Jackpot Game ticket.

d. Any winning multistate ticket in any amount may be mailed or presented to a Lottery claims center for payment. The prizes shall be paid by the Lottery upon presentation and validation of the ticket pursuant to instructions on the back of the multistate ticket.

e. The holder of a prize-winning ticket of $600.00 or more shall complete all of the information detailed on the Colorado Lottery claim form and submit the completed form and ticket by mail or in person to the Lottery. The Colorado Lottery shall pay the prize to the owner of the ticket upon validation. In the event that the intercept program reveals an outstanding obligation for a winner of a prize, the prize will not be awarded until the intercept obligation is paid as set forth in 24-35-212.5.

1. A prizewinner, or a prizewinner's legally authorized representative, shall sign the winning multistate ticket and complete a claim form that is available from any licensee, Lottery Claim Center or the Colorado Lottery website. The claim form shall incorporate the following information:

i. Verification that the prizewinner is not a person disqualified by law or by these Rules and Regulations to claim or otherwise accept a prize from the Lottery;

ii. Notification that the prizewinner's name, city of residence and prize amount are public information. This same notification is given to one signing on behalf of an multistate ticket owner under a disability that prevents the prizewinner from signing in his/her own behalf;

iii. The Lottery is not liable for any loss caused by a misrepresentation by the multistate ticket owner or the person claiming the prize on the winner's behalf.

2. The claim form may contain any other provision that the Lottery Director may deem necessary and proper to promote the public interest and trust or security and efficient operation of the Lottery.

3. Payment for a winning ticket will not occur unless all of the requirements on the claim form and winning ticket have been met or an acknowledgement that the information is unknown or unavailable. There is no obligation or duty of the Lottery, its employees or licensees, to make any inquiry of the truthfulness of information that appears on the claim form before payment to the claimant.

f. Payment of prizes shall be made to the claimant in person or by mail to the address provided by the claimant.

g. All prizes shall be paid within a reasonable time after they are awarded and after the claims are validated by the Lottery.

h. The Lottery Director may delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim, or any other matter that may have come to their attention. All delayed payments will be paid to date immediately upon the Lottery Director's confirmation that the payee is entitled to such payment.

i. The Lottery Director's decision shall be final and binding upon all participants in the game with respect to the payment of all prizes.

j. The Lottery Director reserves the right to require a claimant to disclose the location or person from whom the claimant purchased the ticket.

k. A prize must be claimed no later than 180 days after the drawing for which the multistate Jackpot Game ticket was purchased. Any person who fails to claim a prize which is held by the Lottery or its designee during the one hundred eighty (180) day claim period shall forfeit all rights to the prize and the amount of the prize shall remain in the Lottery Fund. Prizes claimed by mail must be documented as received at Lottery Headquarters by the 180th day after the announced end of game date.

l. Payment of any prize shall be made to the owner of the multistate ticket or their designee. All liability of the State, its officers and employees, and the Commission shall terminate upon payment.

m. In the event that a claim is filed on behalf of a legal entity other than the owner of the ticket for a prize payable for life, the legal entity shall designate an officer or director of that legal entity as the person on whose life such prize is to be paid and shall execute an agreement evidencing such designation. The specific requirements for payment will be detailed in the game rule and/or Specific Drawing Guidelines.

n. In the event that the intercept program reveals an outstanding obligation for a winner of a prize, the prize will be awarded based upon C.S.R. 24-35-212(5) and 24-35-212.5.

14.12 Lost or Stolen Tickets

The Director reserves the right to hold any prize, pending the findings of an investigation, when the multistate Jackpot Game ticket presented for validation has been reported stolen or lost. At the Director's discretion, multistate Jackpot Game tickets, which are determined to be stolen, will not be paid.

14.13 Payment of Annuity Prizes upon the Death of the Prize Winner

In the event of the death of a Lottery winner during the payment period, the multistate group's Finance & Audit Committee, in its sole discretion, upon the petition of the estate of the Lottery winner (the "Estate") to the Lottery, and subject to federal, state, or district applicable laws, may accelerate the payment of all of the remaining lottery proceeds to the Estate. If the Finance & Audit committee makes such a determination, then securities and/or cash held to fund the deceased Lottery winner's annuitized prize may be distributed to the Estate. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the Finance & Audit Committee.

14.14 Assignment of Prizes

The winner of an annuitized or installment payment prize in any multistate Jackpot game being paid in annuitized or installment payments who desires to assign the right to unpaid future annuitized or installment payments must comply with C.R.S 24-35-212 (1) (b) and (1.5).

14.15 Annuity Payments

The multistate group shall act as an agent for the Party Lotteries jointly operating games requiring annuitized payments and shall purchase investments for the benefit of the Party Lotteries who receive valid claims for each prize paid as an annuity. The investment purchase process shall be handled according to the multistate group's guidelines (solicitation of bids, selection of investment, premium payment, etc.). The investment so purchased shall be held in the trust account for the benefit of each Party Lottery for eventual distribution to a prizewinner.

14.16 Audit of Lottery Contributions To The Multistate Group

The Lottery is responsible for verifying all multistate group prize fund and reserve allocations, interest earnings and expenditures received or paid on behalf of the Lottery. The Lottery's fiscal department will perform analytical procedures on the multistate group's audited financial statements annually as set forth in recommendation #2 of the June 30, 2003 financial audit. If anything of concern surfaces by applying these procedures, the Lottery Director and the Lottery Controller will be notified.

14.17 Interest Earnings

a. The Director shall request the multistate group to distribute all interest earned on the unreserved account on a quarterly basis. If the interest earned on the unreserved account is immaterial, the Director may postpone the distribution request until the end of the fiscal year.

b. At the end of each fiscal year, the multistate group shall prepare a schedule of revenues and expenses resulting in the multistate group's net income for the fiscal year. The revenues will include all investment earnings, except the interest earned on the unreserved account. The net income will be available to be distributed to each Party Lottery in accordance with procedures as set forth by the multistate group. The Director of each Party Lottery shall request the remittance of their proportionate share of net income following the close of the fiscal year.

14.18 Use of Coupons, Lottery Bucks and Free Tickets

a. Coupons, Lottery Bucks, and free tickets (hereafter referred to as "coupons") are marketing tools used by the Lottery for promotions.

b. In the event the Lottery uses a promotional partner to distribute coupons, the promotional partner must ensure all coupons are issued to the consumer or public and any unused coupons are returned to the Lottery.

c. At no time may coupons be sold, used to purchase goods or services, pay-off Lottery debts, reimburse a licensee(s) for any loss or used for licensee compensation. Coupons may be used for prizes and/or promotion gifts to consumers and retail employees to promote the Lottery as long as the expense of these are debited to the appropriate budget line.

d. The Lottery Director may deem it proper to authorize the use of bar coded coupons to promote Lottery products. In the event such use is authorized, licensees shall comply with all requirements and restrictions specified on the coupon and shall redeem and exchange said bar coded coupons for Lottery tickets only and not for cash.

14.19 Jackpot Game Licensee Commission

Each licensee shall be entitled to receive a commission of Six Percent (6%) for each Jackpot Game Lottery ticket lawfully sold or disbursed by said licensee. In addition to said commission, the Director may provide such additional compensation to licensees as is set forth in Specific Game Playing Rules.

14.A COLORADO LOTTERY MULTI-STATE JACKPOT GAME, "POWERBALL®"

BASIS AND PURPOSE FOR AMENDED RULE 14.A

The purpose of Amended Rule 14.A is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game "POWERBALL®" such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. The statutory basis for Rule 14.A is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212 and 24-35-212.5.

14.A.1 General Provisions

Amended Rule 14. A, Colorado Lottery Multi-State Jackpot Game, "Powerball", will be effective beginning April 12, 2015 with the first drawing April 15, 2015.

A. A Colorado Lottery multi-state Jackpot game to be known as "POWERBALL®" is authorized to be conducted by the Director under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.A, Rule 14.A shall apply.

B. All MUSL (Multi-State Lottery Association) guidelines and MUSL Board decisions must be approved by the Colorado Lottery (hereafter referred to as Lottery) and the Lottery Commission, prior to implementation.

C. The Director will be a voting member of the MUSL Board during the timeframe in which the Lottery shall be a member of MUSL. The Director will also be a voting member of any MUSL Specific Product Group the Lottery joins.

D. At any time the Lottery Director determines that any provisions of MUSL or of MUSL's Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Colorado Lottery, he/she shall recommend to the Lottery Commission that the Lottery end its membership with MUSL or with the specific Product Group. Upon concurrence by the Lottery Commission, membership can end at any time.

14.A.2 Definitions

In addition to the definitions provided in Paragraph 1.2 of Rule 1 and Rule 14, and unless the context in this Rule 14.A otherwise requires:

A. "Advance Play" means the ability to purchase tickets for more than one drawing.

B. "Breakage" means the results of rounding prize amounts down to the nearest whole dollar.

C. "Drawing" means the event that occurs wherein the official "POWERBALL®" numbers are drawn.

D. "Game Board(s)" or "Board(s)" means that area of the play slip that contains a set of two (2) grids. The first grid containing sixty-six (66) squares numbered one (1) through - sixty-six (66) and the second grid containing thirty-two (32) squares, numbered one (1) through thirty-two (32).

E. "Grand Prize" means a pari-mutuel prize that is advertised to be paid with per-winner annuities or as a lump sum cash payment, unless otherwise specified by the Lottery.

F. "Grid" means the area of a play slip that contains a set of numbered squares to be marked by the player.

G. "Matching Combinations" means the numbers on a play that coincide with the numbers randomly selected at a drawing for which that play was purchased.

H. "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the Party Lotteries.

I. "MUSL Board" means the governing body of MUSL, which is comprised of the chief executive officer of each Party Lottery.

J. "Number" means any play integer from one (1) through sixty-six (66) inclusive.

K. "Play" means the six (6) numbers selected on each Board and printed on the ticket.

L. "Play slip" means a mark-sense game card used by players of "POWERBALL®" to select plays. A play slip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

M. "Prize Amount" means the pari-mutuel and/or set prize values established for a game.

N. "Prize Category" means and refers to a specific prize within the prize pool.

O. "Prize Pool" means a defined percentage of sales as specified in this rule.

P. "Quick Pick" or "Partial Quick Pick" means a number or numbers that are randomly generated by the computer when all or a portion of the player's selections have been left blank.

Q. "Roll-over" means the amount from the direct prize category contribution from previous drawing(s) in the Grand Prize category, that is not won, that is carried forward to the Grand Prize category for the next drawing.

R. "Set Prize" means all other prizes except the Grand Prize that are advertised to be paid by a single cash payment and, except in instances outlined in these rules, will be equal to the prize amount established within the Specific Game Playing Rules.

S. "Set Prize Payout Variance" means an account held by MUSL that holds the temporary balances, transferred to MUSL from party lotteries, which results from having fewer-than-expected winners in the set prize categories. This money is paid out to party lotteries in subsequent drawings that have more winners than are statistically expected in the set prize categories.

T. "Share(s)" means the total number of matching combinations within each prize category as determined for each drawing.

U. "Winning Numbers" means the six (6) numbers, the first five (5) from a field of sixty-six (66) numbers and the last one (1) from a separate field of thirty-two (32) numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a multi-state Jackpot Game ticket.

V. “Multiplier” means the random value which will increase the set prize. Multipliers are weighted and include two times (2X), three times (3X), four times (4X), five times (5X), and ten times (10X).

W. “Multiplier Distribution” means the random assignment of weighted multiplier values to the multiplier key.

X. “Multiplier Key” means the P O W E R designation of the multiplier values.

14.A.3 Price of "POWERBALL®" Play/Board

The price of each "POWERBALL®" play/board shall be $2.00.

14.A.4 Ticket Purchases

A. "POWERBALL®" tickets may be purchased only from a Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

B. "POWERBALL®" tickets shall show, at a minimum, the player’s selection of numbers in the boards played, drawing date, multiplier key, validation and reference numbers. The Lottery shall not directly and knowingly sell a combination of tickets to any person or entity that would guarantee such purchaser a winning ticket.

C. Plays may be entered manually using the Jackpot Game terminal keypad or by means of a play slip provided by the Lottery. Facsimiles of play slips, copies of play slips, or other materials which are inserted into the terminal’s play slip reader and which are not printed or approved by the Lottery shall not be used to enter a play. No device shall be connected to a Jackpot Game

terminal to enter plays, except as may be approved by the Lottery. Unapproved play slips or other devices may be seized by the Lottery.

D. All plays made in the game using a play slip shall be marked on the play slip by hand. No machine-printed play slips shall be used to enter plays. Machine-printed play slips may be seized by the Lottery. Nothing in this regulation shall be deemed to prevent a person with a physical handicap who would otherwise be unable to mark a play slip manually from using any device intended to permit such person to make such a mark (for his/her sole personal use or benefit).

14.A.5 Play for "POWERBALL®"

A. Type of play:

1. A "POWERBALL®" player must select six numbers in each play, five (5) numbers out of sixty-six (66) plus one (1) out of thirty-two (32). A winning play is achieved only when the following combinations of numbers selected by the player match, in any order, the five plus one winning numbers drawn by the MUSL. Those combinations are 5+1, 5+0, 4+1, 4+0, 3+1, 3+0, 2+1, 1+1 and 0+1.

2. A Multiplier Key is included on each Powerball ticket generated. The multiplier distribution in the multiplier key of two times (2X), three times (3X), four times (4X), five times (5X), or ten times (10X) associated with each letter in the word POWER is random and weighted.

a. Examples of multiplier distribution are:

P O W E R

2X 5X 10X 2X 3X

P O W E R

3X 4X 2X 2X 3X

b. The Multiplier is weighted as follows:

	"10"	"5"	"4"	"3"	"2"	TOTAL
Percentage	2.5641%	2.5641%	7.6923%	25.6410%	61.5385%	100%

B. Method of play:

The player will use play slips, as provided in Paragraph 14.A.4 of this Rule 14.A, to make number selections. The Jackpot Game terminal will read the play slip and issue a ticket with corresponding play(s). If a play slip is not available, the Jackpot Game licensee may enter the selected numbers via the keyboard. If offered by the Lottery, a player may leave all or a portion of his/her play selections to a random number generator operated by the computer, commonly referred to as "QUICK PICK" or "PARTIAL QUICK PICK."

14.A.6 Prizes for "POWERBALL®"

A. Odds of winning are displayed in the table below.

MATCHING COMBINATIONS	PRIZE CATEGORY	ODDS OF WINNING (ONE PLAY)
All five (5) of first set plus one (1) of second set	Grand Prize	1:285,981,696.00
All five (5) of first set plus none of second set	Second Prize	1:9,225,216.00
Any four (4) of first set, but not five, plus one (1) of second set	Third Prize	1:937,644.9049
Any four (4) of first set, but not five, plus none of second set	Fourth Prize	1:30,246.6098
Any three (3) of first set, but not four or five, plus one (1) of second set	Fifth Prize	1:15,627.4151
Any three (3) of first set, but not four or five, plus none of second set	Sixth Prize	1:504.1102
Any two (2) of first set, but not three, four or five, plus one (1) of second set	Seventh Prize	1:794.6143
Any one (1) of first set, but not two, three, four or five, plus one (1) of second set	Eighth Prize	1:109.6020
None of first set plus one (1) of second set	Ninth Prize	1:48.0710
Overall odds of winning any prize		1:30.0599

B. The prize pool contribution for all prize categories shall consist of fifty percent (50%) of each drawing period's sales unless, as described in Paragraph 14.A.7 c) of this Rule 14.A, the prize reserve accounts are not funded at the balances set by the "POWERBALL® " Product Group. Any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

PRIZE POOL

Prize Category	Prize Amounts	Allocation of Prize Pool	Prize Pool

			Percentage of Sales
Grand Prize	Announced Jackpot	61.4514%	30.7257%
Second Prize	$1,000,000	10.8398%	5.4199%
Third Prize	$10,000	2.8713%	1.4357%
Fourth Prize	$100	0.8901%	0.4451%
Fifth Prize	$100	1.7228%	0.8614%
Sixth Prize	$7	3.7384%	1.8692 %
Seventh Prize	$7	2.3717%	1.1859%
Eighth Prize	$2	4.9129%	2.4564%
Ninth Prize	$2	11.2014%	5.6007%
TOTAL		100.00%	50.00%

C. Prize Categories are based on the base prize times the multiplier selected during the MUSL drawing.

PRIZE CATEGORIES

POWERBALL Prize	Base Prize	Multiplier "2" (minimal payout)	Multiplier "3"	Multiplier "4"	Multiplier "5"	Multiplier "10"
Grand Prize	Jackpot	Jackpot	Jackpot	Jackpot	Jackpot	Jackpot
Second Prize	$1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$1,000,000
Third Prize	$10,000	$20,000	$30,000	$40,000	$50,000	$100,000
Fourth Prize	$100	$200	$300	$400	$500	$1,000
Fifth Prize	$100	$200	$300	$400	$500	$1,000
Sixth Prize	$7	$14	$21	$28	$35	$70
Seventh Prize	$7	$14	$21	$28	$35	$70
Eighth Prize	$2	$4	$6	$8	$10	$20
Ninth Prize	$2	$4	$6	$8	$10	$20

D. The Grand Prize shall be determined on a pari-mutuel basis. Except as provided in 2.c below, all other prizes awarded shall be paid as set prizes with the foregoing expected prize payout percentages:

1. The prize money allocated to the Grand Prize category shall be divided equally by the number of game boards matching all five (5) of the first set plus one (1) of the second set.

2. The prize pool percentage allocated to the set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of all party lotteries' set prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded shall be drawn from the following sources, in the following order:

a. The amount available in the set prize payout variance account.

b. If the set prize payout variance account is not sufficient to pay the set prizes awarded, an amount from the set prize reserve account is used, if available, not to exceed an amount established by MUSL.

c. If after these sources are depleted, sufficient funds do not exist to pay the set prizes awarded, then the highest set prize shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize shall become a pari-mutuel prize. This procedure shall continue down through all set prize levels, if necessary, until all set prize levels become pari-mutuel prize levels.

14.A.7 Prize Reserve Accounts

A. The MUSL Board manages three (3) prize reserve accounts (pools) associated with "POWERBALL®". The MUSL Board holds these reserves in trust on behalf of the Lottery, and interest is earned by the Lottery. All deposits will be reported on Lottery records as "Cash Held by MUSL".

1. Set-Aside Pool (Grand Prize Base Reserve) is used to guarantee payment of the minimum or starting grand prize as established by the Product Group.

2. Prize Reserve Trust (Grand Prize Reserve) is used to guarantee payment of valid, but unanticipated, grand prize claims that may result from a system error or for any other reason the normal contributions from sales are not adequate.

3. Set-Prize Reserve Pool is used to guarantee the payment of the set cash prizes.

B. When the Lottery becomes a member of the POWERBALL® product group, the MUSL Board determines an initial contribution to be made by the Lottery to the foregoing reserves. In accordance with the payment plan established between the Lottery and MUSL, the Lottery must deposit with the MUSL board the specified amounts.

C. In the event any reserve balance(s), specified above, falls below the balance established by the MUSL Board, a portion of the prize pool contribution shall be used to replenish the reserve(s). Should any reserve(s) require replenishment, the contribution from sales to the Grand Prize shall be reduced from 31.9756% of sales to no less than 29.9756% of sales (up to two percent (2%) of sales). Replenishment of the Grand Prize Base Reserve (Set-Aside Pool) shall have priority over the Prize Reserve Trust and the Set-Prize Reserve Pool.

D. In the event the Lottery decides to withdraw from the Product Group, the remaining balances of the Lottery's contribution will be refunded to the Lottery.

14.A.8 Prize Payment

A. The Grand Prize is paid by the Lottery upon receipt of funds from MUSL no earlier than fifteen (15) calendar days of validation of the Grand Prize ticket; and when the player makes their final selection of cash or annuity no later than sixty (60) days after validation of the Grand Prize ticket.

1. Grand Prizes shall be paid, at the election of the ticket bearer by a single cash payment or in a series of annuity payments. The ticket bearer becomes entitled to the prize at the time the prize is validated as a winner. The election to take the cash payment or annuity payments may be made at the time the prize is validated or within 60 days after the ticket bearer becomes entitled to the prize. An election made after the ticket bearer becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed. If the ticket bearer does not make the election at the time the prize is validated and requests the 60-day election period, the Lottery will cancel the prize warrant that was generated during validation. The validation record will be kept secured and on file at the Lottery office until the ticket bearer makes an election. If the ticket bearer does not make the payment election within 60 days after validation, then the prize shall be paid as an annuity prize.

2. Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize pool equally among all boards matching all five (5) of the first set plus one (1) of the second set of drawn numbers. Winner(s) who elect a cash payment shall be paid their share(s) in a single cash payment. The annuitized option prize shall be determined by multiplying a winner's share of the Grand Prize pool by the MUSL annuity factor. Neither MUSL nor the party lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL. In certain instances announced by the Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to Paragraph 14.A (8)(e) of this Rule 14.A. If individual shares of the cash held to fund an annuity are less than $250,000, the Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize pool.

3. All annuitized prizes shall be paid annually in thirty (30) graduated payments with the initial payment being made in cash, to be followed by twenty-nine (29) payments funded by the annuity.

4. Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available by MUSL for payment by the Lottery no earlier than the fifteenth calendar day (or the next banking day if the fifteenth day is a holiday) following the drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the party lotteries. The Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

5. The Grand Prize amount held by MUSL for subsequent payment to an annuity winner shall be transferred to the Lottery and the Lottery shall have payment to the annuity winner on the anniversary date, or if such date falls on a non-business day the first day following the anniversary date, of the selection of the jackpot winning numbers.

6. In the event of the death of a lottery winner during the annuity payment period, the "POWERBALL®" Product Group, in its sole discretion, upon the petition of the estate of

the lottery winner (the "Estate") to the Lottery, and subject to federal, state, or district applicable laws, may accelerate the payment of all of the remaining lottery proceeds to the Estate. If the Product Group makes such a determination, then securities and/or cash held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the Product Group.

B. The Director's decision with respect to the validation and payment of set prizes, whether during a "POWERBALL®" game or any drawing related thereto, shall be final and binding upon all participants in the Lottery.

All set prizes (all prizes except the Grand Prize) shall be paid by the Lottery. The Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.

C. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners.

Set Prizes, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

D. If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall rollover and be added to the Grand Prize pool for the following drawing.

E. The "POWERBALL®" Product Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between drawings or make other changes in the allocation of prize money where the "POWERBALL®" Product Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand Prize amount between drawings is offered by the "POWERBALL®" Product Group, then the Grand Prize shares shall be determined as follows:

1. If there are multiple Grand Prize winners during a single drawing, each selecting the annuitized option prize, then a winner's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winners.

2. If there are multiple Grand Prize winners during a single drawing and at least one of the Grand Prize winners has elected the annuitized option prize, then the best bid submitted by MUSL's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize.

3. If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, then the amount of cash in the Grand Prize pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three best quotes provided by MUSL's pre-approved qualified brokers submitting quotes.

F. In no case shall quotes be used which are more than two weeks old and if less than three quotes are submitted, then MUSL shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in these rules.

14.A.9 Prize Accounts

A. The Lottery shall transfer to the MUSL in trust an amount as determined to be its total proportionate share of the prize account less actual set prize liability. If this results in a negative amount, the MUSL central office shall transfer funds to the Lottery.

B. Grand Prize amounts held by MUSL shall be transferred to the Lottery immediately after the Lottery validates the Grand Prize claim and after MUSL has collected the prize pool shares from all member lotteries.

C. All funds to pay a grand prize that go unclaimed shall be returned to the Lottery by MUSL in proportion to sales by the Lottery for the grand prize in question after the claiming period set by the Lottery selling the winning ticket expires.

14.A.10 Funds Transfer

A. Funds shall be collected by MUSL from each Party Lottery weekly by wire transfer or other means acceptable to the POWERBALL® Product Group. The POWERBALL® Product Group shall determine collection days. The amount to be transferred shall be calculated in accordance with game rules. The draw reports determine whether the member lotteries owe funds to MUSL or MUSL needs to transfer money to the member lotteries. Each Party Lottery shall transfer to MUSL an amount as determined by MUSL and the Product Group to be its total proportionate share of the prize account less actual set prize liability. If this results in a negative amount, the MUSL central office shall transfer funds to the Party Lottery.

B. The Grand Prize amount held by MUSL shall be transferred to the Lottery after the Lottery validates the Grand Prize claim and after MUSL has collected the prize pool shares from all member lotteries.

C. The Grand Prize amount held by MUSL for subsequent payment to annuity winners shall be transferred to the Lottery within seven days preceding the anniversary date of the selection of the jackpot winning numbers. The Lottery will then make payment to the annuity winner.

14.A.11 Drawings

A. The "POWERBALL®" drawings shall be held twice each week on Wednesday and Saturday evenings, except that the drawing schedule may be changed by the MUSL Board. In the event of an act of Force Majeure the drawing shall be rescheduled at the discretion of the MUSL Board.

B. Each drawing shall determine, at random, six winning numbers in accordance with drawing guidelines. The Lottery Commission shall review and approve drawing guidelines. Any numbers drawn are not declared winning numbers until the drawing is certified by MUSL in accordance with the "POWERBALL®" drawing guidelines. The winning numbers shall be used in determining all "POWERBALL®" winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

C. Each drawing shall be witnessed by an auditor as required in C.R.S. 24-35-208 (2)(d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing. All drawings, inspections and tests shall be recorded on videotape.

D. The drawing shall not be invalidated based on the liability of the Lottery.

E. The drawing procedures shall provide that a minimum of fifty-nine (59) minutes elapse between the close of the game ticket sales and the time of the drawing for those tickets sold. All drawings shall be open to the public.

14.A.12 Advance Play

Advance play provides the opportunity to purchase "POWERBALL®" tickets for more than one drawing. Advance play tickets shall be available for purchase in variable increments. The Advance Play feature shall be available at the discretion of the Lottery Director.

14.A.13 MUSL Accounting and Finance

A. At the time a Lottery joins the "POWERBALL®" Product Group, MUSL revises the existing budget and assesses the Lottery for the additional costs. Each July, thereafter, MUSL sets the budget for the impending year and assesses each Lottery their proportionate share. The Lottery receives a copy of these costs and an election form.

B. Each September and March, MUSL re-evaluates the amounts that each Lottery must contribute to any Prize Reserves. Any additional contributions to the Prize Reserves are funded by reducing the contribution from sales to the Grand Prize by up to 2% as referred to in14.A.7.

C. The draw reports determine whether the Lottery owes and needs to transfer funds to MUSL, or MUSL owes and needs to transfer funds to the Lottery. (The procedures and corresponding time lines documenting the timely and effective transfer of funds between the Lottery and MUSL can be found in the Lottery's financial procedures.) Three different transfers are made on a continual basis:

1. Draw receivables transferred from the Lottery to MUSL,

2. Set prize payments and initial Grand Prize payments transferred from MUSL to the Lottery, and

3. Subsequent Grand Prize annuity payments from MUSL to the Lottery.

14.A.14 Jackpot Game Licensee Commission, Cashing Bonus, Selling Bonus, and Marketing Performance Bonus

A. In addition to the Six Percent (6%) Commission set forth in Rule 14.19, retailers can earn a Cashing Bonus, Selling Bonus and Marketing Performance Bonus.

1. Each retailer will receive a cashing bonus of one percent (1%) of each prize paid by the licensee up to and including $599.

2. In order to receive a Selling Bonus, the following criteria must be met:

a. A licensee must have sold a grand-prize-winning or second prize winning multi-state Jackpot game ticket for a drawing for which the announced jackpot prize is at least forty million dollars ($40,000,000) or more;

b. Payment of the jackpot-selling bonus will occur once Lottery security has confirmed the selling licensee.

c. A licensee must be selling multi-state Jackpot Game tickets up to and including the day that the ticket is validated by the Lottery and must be the same licensed licensee who sold the winning ticket.

d. The Director or designee shall determine the amount of the jackpot-selling bonus for each qualified-prize-winning ticket sold.

3. In order to receive a five-tenths of one percent (.5%) Marketing Performance Bonus the following criteria must be met:

a. A licensee must be licensed on the date the marketing performance bonus is declared;

b. A licensee must sell Lottery products up to and including on the final sales day in which the marketing performance bonus is declared;

c. A licensee must meet or exceed the requirements of the marketing performance bonus plan for the period for which the marketing performance bonus is declared.

B. In the event there is a residual resulting from the accrual of the one percent (1%) cashing bonus (14.A.14.A.1) and/or the five-tenths of one percent (.5%) marketing bonus (14.A.14.A.3) have been expensed, the Lottery Director may provide additional compensation to licensees as described in 14.A.14.A.2 or may revert the excess amount thereby decreasing the bonus expense.

~~Funds shall be collected by MUSL from each Party Lottery weekly by wire transfer or other means acceptable to the POWERBALL® Product Group. The POWERBALL® Product Group shall determine collection days. The amount to be transferred shall be calculated in accordance with game rules. The draw reports determine whether the member lotteries owe funds to MUSL or MUSL needs to transfer money Amended Rule 14. A, Colorado Lottery Multi-State Jackpot Game, "Powerball", will be effective beginning January 15, 2012.~~

~~A Colorado Lottery multi-state Jackpot game to be known as "POWERBALL®" is authorized to be conducted by the Director under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.A, Rule 14.A shall apply.~~

~~All MUSL (Multi-State Lottery Association) guidelines and MUSL Board decisions must be approved by the Colorado Lottery (hereafter referred to as Lottery) and the Lottery Commission, prior to implementation.~~

~~The Director will be a voting member of the MUSL Board during the timeframe in which the Lottery shall be a member of MUSL. The Director will also be a voting member of any MUSL Specific Product Group the Lottery joins.~~

~~At any time the Lottery Director determines that any provisions of MUSL or of MUSL's Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Colorado Lottery, he/she shall recommend to the Lottery Commission that the Lottery end its membership with MUSL or with the specific Product Group. Upon concurrence by the Lottery Commission, membership can end at any time.~~

~~**14.A.2 Definitions**~~

~~In addition to the definitions provided in Paragraph 1.2 of Rule 1 and Rule 14, and unless the context in this Rule 14.A otherwise requires:~~

~~a. "Advance Play" means the ability to purchase tickets for more than one drawing.~~

~~b. "Breakage" means the results of rounding prize amounts down to the nearest whole dollar.~~

c. "Drawing" means the event that occurs wherein the official "POWERBALL®" numbers are drawn.

d. "Game Board(s)" or "Board(s)" means that area of the play slip that contains a set of two (2) grids. The first grid containing fifty-nine (59) squares numbered one (1) through fifty-nine (59) and the second grid containing thirty-five (35) squares, numbered one (1) through thirty-five (35).

e. "Grand Prize" means a pari-mutuel prize that is advertised to be paid with per-winner annuities or as a lump sum cash payment, unless otherwise specified by the Lottery.

f. "Grid" means the area of a play slip that contains a set of numbered squares to be marked by the player.

g. "Matching Combinations" means the numbers on a play that coincide with the numbers randomly selected at a drawing for which that play was purchased.

h. "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the Party Lotteries.

i. "MUSL Board" means the governing body of MUSL, which is comprised of the chief executive officer of each Party Lottery.

j. "Number" means any play integer from one (1) through fifty-nine (59) inclusive.

k. "Play" means the six (6) numbers selected on each Board and printed on the ticket.

l. "Play slip" means a mark-sense game card used by players of "POWERBALL®" to select plays. A play slip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

m. "Prize Amount" means the pari-mutuel and/or set prize values established for a game.

n. "Prize Category" means and refers to a specific prize within the prize pool.

o. "Prize Pool" means a defined percentage of sales as specified in this rule.

p. "Quick Pick" or "Partial Quick Pick" means a number or numbers that are randomly generated by the computer when all or a portion of the player's selections have been left blank.

q. "Roll-over" means the amount from the direct prize category contribution from previous drawing(s) in the Grand Prize category, that is not won, that is carried forward to the Grand Prize category for the next drawing.

r. "Set Prize" means all other prizes except the Grand Prize that are advertised to be paid by a single cash payment and, except in instances outlined in these rules, will be equal to the prize amount established within the Specific Game Playing Rules.

s. "Set Prize Payout Variance" means an account held by MUSL that holds the temporary balances, transferred to MUSL from party lotteries, which results from having fewer-than-expected winners in the set prize categories. This money is paid out to party lotteries in subsequent drawings that have more winners than are statistically expected in the set prize categories.

t. "Share(s)" means the total number of matching combinations within each prize category as determined for each drawing.

u. "Winning Numbers" means the six (6) numbers, the first five (5) from a field of fifty-nine (59) numbers and the last one (1) from a separate field of thirty-five (35) numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a multi-state Jackpot Game ticket.

14.A.3 Price of "POWERBALL®" Play/Board

The price of each "POWERBALL®" play/board shall be $2.00.

14.A.4 Ticket Purchases

a. "POWERBALL®" tickets may be purchased only from a Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

b. "POWERBALL®" tickets shall show, at a minimum, the player's selection of numbers, the boards played, drawing date and validation and reference numbers. The Lottery shall not directly and knowingly sell a combination of tickets to any person or entity that would guarantee such purchaser a winning ticket.

c. Plays may be entered manually using the Jackpot Game terminal keypad or by means of a play slip provided by the Lottery. Facsimiles of play slips, copies of play slips, or other materials which are inserted into the terminal's play slip reader and which are not printed or approved by the Lottery shall not be used to enter a play. No device shall be connected to a Jackpot Game terminal to enter plays, except as may be approved by the Lottery. Unapproved play slips or other devices may be seized by the Lottery.

d. All plays made in the game shall be marked on the play slip by hand. No machine-printed play slips shall be used to enter plays. Machine-printed play slips may be seized by the Lottery. Nothing in this regulation shall be deemed to prevent a person with a physical handicap who would otherwise be unable to mark a play slip manually from using any device intended to permit such person to make such a mark (for his/her sole personal use or benefit).

14.A.5 Play for "POWERBALL®"

a. Type of play:

A "POWERBALL®" player must select six numbers in each play, five (5) numbers out of fifty-nine (59) plus one (1) out of thirty-five (35). A winning play is achieved only when the following combinations of numbers selected by the player match, in any order, the five plus one winning numbers drawn by the Lottery. Those combinations are 5+1, 5+0, 4+1, 4+0, 3+1, 3+0, 2+1, 1+1 and 0+1.

b. Method of play:

The player will use play slips, as provided in Paragraph 14.A.4 of this Rule 14.A, to make number selections. The Jackpot Game terminal will read the play slip and issue a ticket with corresponding play(s). If a play slip is not available, the Jackpot Game licensee may enter the selected numbers via the keyboard. If offered by the Lottery, a player may leave all or a portion of his/her play selections to a random number generator operated by the computer, commonly referred to as "QUICK PICK" or "PARTIAL QUICK PICK."

14.A.6 Prizes For "POWERBALL®"

MATCHING COMBINATIONS	PRIZE CATEGORY	ODDS OF WINNING (ONE PLAY)
All five (5) of first set plus one (1) of	Grand Prize	1:175,223,510.0000

second set		
All five (5) of first set plus none of second set	Second Prize	1:5,153,632.6471
Any four (4) of first set, but not five, plus one (1) of second set	Third Prize	1:648,975.9630
Any four (4) of first set, but not five, plus none of second set	Fourth Prize	1:19,078.5283
Any three (3) of first set, but not four or five, plus one (1) of second set	Fifth Prize	1:12,244.8295
Any three (3) of first set, but not four or five, plus none of second set	Sixth Prize	1:360.1420
Any two (2) of first set, but not three, four or five, plus one (1) of second set	Seventh Prize	1:706.4325
Any one (1) of first set, but not two, three, four or five, plus one (1) of second set	Eighth Prize	1:110.8129
None of first set plus one (1) of second set	Ninth Prize	1:55.4065
Overall odds of winning any prize		1:31.8464

a. The prize pool contribution for all prize categories shall consist of fifty percent (50%) of each drawing period's sales unless, as described in Paragraph 14.A.7 c) of this Rule 14.A, the prize reserve accounts are not funded at the balances set by the "POWERBALL®" Product Group. Any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

PRIZE POOL

Prize Category	Prize Amounts	Allocation of Prize Pool	Prize Pool Percentage of Sales
Grand Prize	Announced Jackpot	63.512%	31.9756%
Second Prize	$1,000,000	19.4038%	9.7019%
Third Prize	$10,000	1.5408%	0.7704%
Fourth Prize	$100	0.524%	0.2620%
Fifth Prize	$100	0.8166%	0.4083%
Sixth Prize	$7	1.9436%	0.9718%
Seventh Prize	$7	0.9908%	0.4954%
Eighth Prize	$4	3.6096%	1.8048%
Ninth Prize	$4	7.2194%	3.6097%
TOTAL		100.00%	50.00%

b. Prize Categories - The Grand Prize shall be determined on a pari-mutuel basis. Except as provided in 3) below, all other prizes awarded shall be paid as set prizes with the foregoing expected prize payout percentages:

1. The prize money allocated to the Grand Prize category shall be divided equally by the number of game boards matching all five (5) of the first set plus one (1) of the second set.

2. The prize pool percentage allocated to the set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw. If the total of all party lotteries' set prizes awarded in a drawing exceeds the percentage of the prize pool allocated to the set prizes, then the amount needed to fund the set prizes awarded shall be drawn from the following sources, in the following order:

i. The amount available in the set prize payout variance account.

ii. If the set prize payout variance account is not sufficient to pay the set prizes awarded, an amount from the set prize reserve account is used, if available, not to exceed an amount established by MUSL.

iii. If after these sources are depleted, sufficient funds do not exist to pay the set prizes awarded, then the highest set prize shall become a pari-mutuel prize. If the amount of the highest set prize, when paid on a pari-mutuel basis, drops to or below the next highest set prize and there are still not sufficient funds to pay the remaining set prizes awarded, then the next highest set prize shall become a pari-mutuel prize. This procedure shall continue down through all set prize levels, if necessary, until all set prize levels become pari-mutuel prize levels.

14.A.7 Prize Reserve Accounts

a. The MUSL Board manages three (3) prize reserve accounts (pools) associated with "POWERBALL®". The MUSL Board holds these reserves in trust on behalf of the Lottery, and interest is earned by the Lottery. All deposits will be reported on Lottery records as "Cash Held by MUSL".

1. Set-Aside Pool (Grand Prize Base Reserve) is used to guarantee payment of the minimum or starting grand prize as established by the Product Group.

2. Prize Reserve Trust (Grand Prize Reserve) is used to guarantee payment of valid, but unanticipated, grand prize claims that may result from a system error or for any other reason the normal contributions from sales are not adequate.

3. Set-Prize Reserve Pool is used to guarantee the payment of the set cash prizes.

b. Initial Contributions to the Reserves

When the Lottery becomes a member of the POWERBALL® product group, the MUSL Board determines an initial contribution to be made by the Lottery to the foregoing reserves. In accordance with the payment plan established between the Lottery and MUSL, the Lottery must deposit with the MUSL board the specified amounts.

c. Subsequent Contributions to the Reserves

In the event any reserve balance(s), specified above, falls below the balance established by the MUSL Board, a portion of the prize pool contribution shall be used to replenish the reserve(s). Should any reserve(s) require replenishment, the contribution from sales to the Grand Prize shall be reduced from 31.9756% of sales to no less than 29.9756% of sales (up to two percent (2%) of sales). Replenishment of the Grand Prize Base Reserve (Set-Aside Pool) shall have priority over the Prize Reserve Trust and the Set-Prize Reserve Pool.

d. In the event the Lottery decides to withdraw from the Product Group, the remaining balances of the Lottery's contribution will be refunded to the Lottery.

14.A.8 Prize Payment

a. Grand Prizes

1. Grand Prizes shall be paid, at the election of the ticket bearer by a single cash payment or in a series of annuity payments. The ticket bearer becomes entitled to the prize at the time the prize is validated as a winner. The election to take the cash payment or annuity payments may be made at the time the prize is validated or within 60 days after the ticket bearer becomes entitled to the prize. An election made after the ticket bearer becomes

entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed. If the ticket bearer does not make the election at the time the prize is validated and requests the 60-day election period, the Lottery will cancel the prize warrant that was generated during validation. The validation record will be kept secured and on file at the Lottery office until the ticket bearer makes an election. If the ticket bearer does not make the payment election within 60 days after validation, then the prize shall be paid as an annuity prize.

2. Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize pool equally among all boards matching all five (5) of the first set plus one (1) of the second set of drawn numbers. Winner(s) who elect a cash payment shall be paid their share(s) in a single cash payment. The annuitized option prize shall be determined by multiplying a winner's share of the Grand Prize pool by the MUSL annuity factor. Neither MUSL nor the party lotteries shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL. In certain instances announced by the Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to Paragraph 14.A (8)(e) of this Rule 14.A. If individual shares of the cash held to fund an annuity are less than $250,000, the Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize pool.

3. All annuitized prizes shall be paid annually in thirty (30) graduated payments with the initial payment being made in cash, to be followed by twenty-nine (29) payments funded by the annuity.

4. Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available by MUSL for payment by the Lottery no earlier than the fifteenth calendar day (or the next banking day if the fifteenth day is a holiday) following the drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the party lotteries. The Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

5. The Grand Prize amount held by MUSL for subsequent payment to an annuity winner shall be transferred to the Lottery and the Lottery shall have payment to the annuity winner on the anniversary date, or if such date falls on a non-business day the first day following the anniversary date, of the selection of the jackpot winning numbers.

6. In the event of the death of a lottery winner during the annuity payment period, the "POWERBALL®" Product Group, in its sole discretion, upon the petition of the estate of the lottery winner (the "Estate") to the Lottery, and subject to federal, state, or district applicable laws, may accelerate the payment of all of the remaining lottery proceeds to the Estate. If the Product Group makes such a determination, then securities and/or cash held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the Product Group.

b. Set Prizes

The Director's decision with respect to the validation and payment of set prizes, whether during a "POWERBALL®" game or any drawing related thereto, shall be final and binding upon all participants in the Lottery.

All set prizes (all prizes except the Grand Prize) shall be paid by the Lottery. The Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.

c. Prizes Rounded

Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners.

Set Prizes, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

d. Roll-over

If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall rollover and be added to the Grand Prize pool for the following drawing.

e. Funding of Guaranteed Prizes

The "POWERBALL®" Product Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between drawings or make other changes in the allocation of prize money where the "POWERBALL®" Product Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand Prize amount between drawings is offered by the "POWERBALL®" Product Group, then the Grand Prize shares shall be determined as follows:

If there are multiple Grand Prize winners during a single drawing, each selecting the annuitized option prize, then a winner's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winners.

If there are multiple Grand Prize winners during a single drawing and at least one of the Grand Prize winners has elected the annuitized option prize, then the best bid submitted by MUSL's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize.

If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, then the amount of cash in the Grand Prize pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three best quotes provided by MUSL's pre-approved qualified brokers submitting quotes.

In no case shall quotes be used which are more than two weeks old and if less than three quotes are submitted, then MUSL shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in these rules.

14.A.9 Prize Accounts

a. Prize Funds Transferred to MUSL

The Lottery shall transfer to the MUSL in trust an amount as determined to be its total proportionate share of the prize account less actual set prize liability. If this results in a negative amount, the MUSL central office shall transfer funds to the Lottery.

b. Grand Prize Funds Transferred to Lottery

Grand Prize amounts held by MUSL shall be transferred to the Lottery immediately after the Lottery validates the Grand Prize claim and after MUSL has collected the prize pool shares from all member lotteries.

c. Unclaimed Grand Prizes

All funds to pay a grand prize that go unclaimed shall be returned to the Lottery by MUSL in proportion to sales by the Lottery for the grand prize in question after the claiming period set by the Lottery selling the winning ticket expires.

14.A.10 Funds Transfer

a. Draw Receivables from Member Lotteries

to the member lotteries. Each Party Lottery shall transfer to MUSL an amount as determined by MUSL and the Product Group to be its total proportionate share of the prize account less actual set prize liability. If this results in a negative amount, the MUSL central office shall transfer funds to the Party Lottery.

b. Initial Grand Prize Funds Transferred to Lottery

The Grand Prize amount held by MUSL shall be transferred to the Lottery after the Lottery validates the Grand Prize claim and after MUSL has collected the prize pool shares from all member lotteries.

c. Subsequent Grand Prize Payments from MUSL to Member Lotteries.

The Grand Prize amount held by MUSL for subsequent payment to annuity winners shall be transferred to the Lottery within seven days proceeding the anniversary date of the selection of the jackpot winning numbers. The Lottery will then make payment to the annuity winner.

14.A.11 Drawings

a. The "POWERBALL®" drawings shall be held twice each week on Wednesday and Saturday evenings, except that the drawing schedule may be changed by the MUSL Board. In the event of and act of Force Majeure the drawing shall be rescheduled at the discretion of the MUSL Board.

b. Each drawing shall determine, at random, six winning numbers in accordance with drawing guidelines. The Lottery Commission shall review and approve drawing guidelines. Any numbers drawn are not declared winning numbers until the drawing is certified by MUSL in accordance with the "POWERBALL®" drawing guidelines. The winning numbers shall be used in determining all "POWERBALL®" winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

c. Each drawing shall be witnessed by an auditor as required in C.R.S. 24-35-208 (2)(d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing. All drawings, inspections and tests shall be recorded on videotape.

d. The drawing shall not be invalidated based on the liability of the Lottery.

e. The drawing procedures shall provide that a minimum of fifty-nine (59) minutes elapse between the close of the game ticket sales and the time of the drawing for those tickets sold. All drawings shall be open to the public.

14.A.12 Advance Play

Advance play provides the opportunity to purchase "POWERBALL®" tickets for more than one drawing. Advance play tickets shall be available for purchase in variable increments. The Advance Play feature shall be available at the discretion of the Lottery Director.

14.A.13 MUSL Accounting and Finance

a. Prize Reserve and Set Prize Reserve contributions from member lotteries

At the time a Lottery joins the "POWERBALL®" Product Group, MUSL revises the existing budget and assesses the Lottery for the additional costs. Each July, thereafter, MUSL sets the budget for the impending year and assesses each Lottery their proportionate share. The Lottery receives a copy of these costs and an election form.

b. Each September and March, MUSL re-evaluates the amounts that each Lottery must contribute to any Prize Reserves. Any additional contributions to the Prize Reserves are funded by reducing the contribution from sales to the Grand Prize by up to 2% as referred to in14.A.7.

c. Draw receivables from member lotteries

The draw reports determine whether the Lottery owes and needs to transfer funds to MUSL, or MUSL owes and needs to transfer funds to the Lottery. (The procedures and corresponding time lines documenting the timely and effective transfer of funds between the Lottery and MUSL can be found in the Lottery's financial procedures.) Three different transfers are made on a continual basis:

1. Draw receivables transferred from the Lottery to MUSL,

2. Set prize payments and initial Grand Prize payments transferred from MUSL to the Lottery, and

3. Subsequent Grand Prize annuity payments from MUSL to the Lottery.

14.A.14 Jackpot Game Licensee Commission, Cashing Bonus, Selling Bonus, and Marketing Performance Bonus

a. In addition to the Six Percent (6%) Commission set forth in Rule 14.19, retailers can earn a Cashing Bonus, Selling Bonus and Marketing Performance Bonus.

1. Each retailer will receive a cashing bonus of one percent (1%) of each prize paid by the licensee up to and including $599.

2. In order to receive a Selling Bonus, the following criteria must be met:

i. A licensee must have sold a grand-prize-winning, 5 of 5 with Power Play or a 5 of 5 without Power Play, multi-state Jackpot game ticket for a drawing for which the announced jackpot prize is at least forty million dollars ($40,000,000) or more;

ii. Payment of the jackpot-selling bonus will occur once Lottery security has confirmed the selling licensee.

iii. A licensee must be selling multi-state Jackpot Game tickets up to and including the day that the ticket is validated by the Lottery and must be the same licensed licensee who sold the winning ticket.

~~iv. The Director or designee shall determine the amount of the jackpot-selling bonus for each qualified-prize-winning ticket sold.~~

~~3. In order to receive a five-tenths of one percent (.5%) Marketing Performance Bonus the following criteria must be met:~~

~~i. A licensee must be licensed on the date the marketing performance bonus is declared;~~

~~ii. A licensee must sell Scratch tickets up to and including the final sales day in which the marketing performance bonus is declared;~~

~~iii. A licensee must meet or exceed the requirements of the marketing performance bonus plan for the period for which the marketing performance bonus is declared.~~

~~b. In the event there is a residual resulting from the accrual of the one percent (1%) cashing bonus (14.A(14)(a)(1)) and/or the five-tenths of one percent (.5%) marketing bonus (14.A(14)(a)(2)) have been expensed, the Lottery Director may provide additional compensation to licensees as described in 14.A(14)(a)(2) or may revert the excess amount thereby decreasing the bonus expense.~~

RULE 14.B COLORADO LOTTERY MULTI-STATE JACKPOT GAME, "POWERBALL®" - "POWER ~~PLAY~~ UP" OPTION~~"~~

BASIS AND PURPOSE OF AMENDED RULE 14.B

The purpose of Amended Rule 14.B is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game "POWERBALL®" "POWER UP" option such as type of play, prizes, method of selecting winning numbers and drawings. The statutory basis for Amended Rule 14.B is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212.

14.B.1 General Provisions

Amended Rule 14.B, Colorado Lottery Multi-State Jackpot Game, "Powerball" – "Power Up" option, will be effective with sales beginning April 12, 2015 with the first Power Up drawing April 15, 2015.

A. A Colorado Lottery (Lottery) multi-state Jackpot game known as "POWERBALL®" shall have a game option known as "POWER UP", which allows players the option to pay an additional one dollar ($1) for a chance to win in the subsequent drawing held specifically for "Power Up". The original boards purchased for "Powerball®" will be used to determine winning boards in the "Power Up" option. This game option is authorized to be conducted by the Colorado Lottery Director (Director) under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.B, Rule 14.B shall apply.

B. The Lottery and the Lottery Commission, prior to implementation, must approve all the Multi-State Lottery Association (MUSL) guidelines and the MUSL Board decisions associated with this "POWER UP" option.

C. The Director is a voting member of the MUSL Board during the timeframe in which the Lottery is a member of the MUSL. The Director is also be a voting member of any MUSL Specific Product Group the Lottery joins.

D. At any time the Director determines that any provisions of the MUSL or of the MUSL's Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Lottery, the Director shall recommend to the Lottery Commission that the Lottery end its

membership with the MUSL or with the Specific Product Group. Upon concurrence by the Lottery Commission, membership can end at any time.

14.B.2 Definitions

Refer to the definitions provided in Paragraph 1.2 of Rule 1, Paragraph 14.2 of Rule 14, and Paragraph 14.A.2 of Rule 14.A.

14.B.3 Price of "POWER UP" Option

The price of each "POWER UP" option play selected shall be $1.00. A player will have the licensee manually enter the "POWER UP" option into the Jackpot Game terminal to purchase up to ten POWERBALL® plays with ten "POWER UP" options for a single draw as follows:

Number of Powerball® plays	Number of Powerball® boards	Cost of Powerball® boards	Number of "POWER UP " boards	Cost of "POWER UP " boards	Total cost Powerball® boards with "POWER UP " option
1	One Board	$2.00	One Board	$1.00	$3.00
2	Two Boards	$4.00	Two Boards	$2.00	$6.00
3	Three Boards	$6.00	Three Boards	$3.00	$9.00
4	Four Boards	$8.00	Four Boards	$4.00	$12.00
5	Five Boards	$10.00	Five Boards	$5.00	$15.00
6	Six Boards	$12.00	Six Boards	$6.00	$18.00
7	Seven Boards	$14.00	Seven Boards	$7.00	$21.00
8	Eight Boards	$16.00	Eight Boards	$8.00	$24.00
9	Nine Boards	$18.00	Nine Boards	$9.00	$27.00
10	Ten Boards	$20.00	Ten Boards	$10.00	$30.00

14.B.4 Ticket Purchases

POWERBALL® tickets with the "POWER UP" option may be purchased only from a Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

A. POWERBALL® tickets with the "POWER UP" option shall show, at a minimum, the player's selection of numbers, the boards played, drawing date, multiplier key, "POWER UP" option chosen and validation and reference numbers.

B. A purchaser of a POWERBALL® ticket must choose, at the time of purchase, whether or not he/she wants the "POWER UP" option. If the purchaser chooses the "POWER UP" option for the

ticket, the cost of the "POWER UP" option will be $1.00 per board. (See Paragraph 14.B.3 of this Rule 14.B for detailed "Power Up" costs.) The option applies to all boards on a single ticket and cannot be purchased on a board-by-board basis.

14.B.5 Method of play

A. A "Power Up" player must have a "Powerball®" ticket where they have select six numbers in each play, five (5) numbers out of sixty-six (66) plus one (1) out of thirty-two (32) and purchased the "Power Up" option. Winning "Power Up" is achieved only when the following combinations of numbers selected by the player match, in any order, the five plus one winning numbers drawn in the "Power Up" drawing conducted by MUSL. Those combinations are 5+1, 5+0, 4+1, 4+0, 3+1, 3+0, 2+1, 1+1 and 0+1.

B. When a "Powerball®" ticket is generated player will have the option to select the "Power Up" option.

C. A Multiplier Key is included on each "Powerball®" ticket generated. The multiplier key on the "Powerball®" ticket applies to the "Power Up" wager.

D. The multipliers are weighted as follows:

	"10"	"5"	"4"	"3"	"2"	TOTAL
Percentage	2.5641%	2.5641%	7.6923%	25.6410%	61.5385%	100%

E Each "POWER UP" drawing shall be witnessed by an auditor, as required in C.R.S 24-35-208 (2) (d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing.

F. The drawing shall not be invalidated based on the liability of a Party Lottery.

G. All "POWER UP" drawings shall be open to the public.

H. All drawings, inspections and tests shall be recorded on videotape.

14.B.6 Prizes for POWERBALL® with "POWER UP" Option Selected

A. Odds of winning a "Power Up" Prize are displayed in the chart below.

MATCHING COMBINATIONS	PRIZE CATEGORY	ODDS OF WINNING (ONE PLAY)
All five (5) of first set plus one (1) of second set	First Prize	1:285,981,696.0000
All five (5) of first set plus none of second set	Second Prize	1:9,225,216.0000
Any four (4) of first set, but not five, plus one (1) of	Third Prize	1:937,644.9049

second set		
Any four (4) of first set, but not five, plus none of second set	Fourth Prize	1:30,246.6098
Any three (3) of first set, but not four or five, plus one (1) of second set	Fifth Prize	1:15,627.4151
Any three (3) of first set, but not four or five, plus none of second set	Sixth Prize	1:504.1102
Any two (2) of first set, but not three, four or five, plus one (1) of second set	Seventh Prize	1:794.6143
Any one (1) of first set, but not two, three, four or five, plus one (1) of second set	Eighth Prize	1:109.6020
None of first set plus one (1) of second set	Ninth Prize	1:48.0710
Overall odds of winning any prize		1:30.0599

B. The prize pool contribution for all prize categories shall consist of fifty percent (50%) of each drawing period's sales unless, as described in Paragraph 14.B.7.D) of this Rule 14.B, the prize reserve accounts are not funded at the balances set by the "POWERBALL®" Product Group. Any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the Product Group in accordance with state law.

PRIZE POOL

Prize Category	Prize Amounts	Allocation of Prize Pool	Prize Pool Percentage of Sales
First Prize	$10,000,000	6.9873%	3.4939%
Second Prize	$500,000	10.8364%	5.4199%
Third Prize	$15,000	8.6065%	4.3028%
Fourth Prize	$150	2.6680%	1.3339%
Fifth Prize	$150	5.1639%	2.5817%
Sixth Prize	$10	10.6721%	5.3355 %

Seventh Prize	$10	6.7705%	3.3849%
Eighth Prize	$3	14.7258%	7.3621%
Ninth Prize	$3	33.5749%	16.7855%
TOTAL		100.00%	50.00%

C. Prize Categories are based on the base prize times the multiplier selected during the MUSL "POWER UP" drawing.

PRIZE CATEGORIES

POWERBALL Prize	Base Prize	Multiplier "2" (minimal payout)	Multiplier "3"	Multiplier "4"	Multiplier "5"	Multiplier "10"
First Prize	$10,000,000	$10,000,000	$10,000,000	$10,000,000	$10,000,000	$10,000,000
Second Prize	$500,000	$500,000	$500,000	$500,000	$500,000	$500,000
Third Prize	$15,000	$30,000	$45,000	$60,000	$75,000	$150,000
Fourth Prize	$150	$300	$450	$600	$750	$1,500
Fifth Prize	$150	$300	$450	$600	$750	$1,500
Sixth Prize	$10	$20	$30	$40	$50	$100
Seventh Prize	$10	$20	$30	$40	$50	$100
Eighth Prize	$3	$6	$9	$12	$15	$30
Ninth Prize	$3	$6	$9	$12	$15	$30

14.B.7 Prize Payment

A. All set prizes in the "POWER UP" option shall be paid by the Lottery. The Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.

B. The "Power Up" first prize will not have an annuity payment option. The "Power Up" first prize will be paid in a single cash payment of ten million dollars ($10,000,000) less taxes and any deductions required by C.R.S. 24-35-212 and C.R.S 24-35-212.5.

C. The First prize is a cash only prize; no annuity option will be available. Funds for the payment of the First prize shall be made available by MUSL for payment by the Lottery no earlier than the fifteenth calendar day (or the next banking day if the fifteenth day is a holiday) following the drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash amount may be delayed pending receipt of funds from the party lotteries. The Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

D. All prizes under these rules may become pari-mutuel prizes and may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.E. A person winning a prize under the “POWER UP” drawing will have the prize added to any prize won with the same ticket on the associated “POWERBALL®” drawing added together for tax reporting and withholding purposes.

14.B.8 Drawings

A. The "Power Up" drawings shall be held twice each week on Wednesday and Saturday evenings immediately following the "POWERBALL®" drawing, except that the drawing schedule may be changed by the MUSL Board. In the event of an act of Force Majeure the drawing shall be rescheduled at the discretion of the MUSL Board.

B. Each drawing shall determine, at random, six winning numbers in accordance with drawing guidelines. Any numbers drawn are not declared winning numbers until the drawing is certified by MUSL in accordance with the "Power Up" drawing guidelines. The winning numbers shall be used in determining all "Power Up" winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

C. Each drawing shall be witnessed by an auditor as required in C.R.S. 24-32-208 (2)(d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing. All drawings, inspections and tests shall be recorded on videotape.

D. The drawing shall not be invalidated based on the liability of the Lottery.

E. The drawing procedures shall provide that a minimum of fifty-nine (59) minutes elapse between the close of the game ticket sales and the time of the drawing for those tickets sold. All drawings shall be open to the public.

14.B.9 Advance Play

Advance play provides the facility to purchase POWERBALL® tickets for more than one drawing. A purchaser of POWERBALL® tickets may also purchase the "POWER UP” option for all Advance Play plays. At the discretion of the Director advance play tickets shall be available for purchase in increments up to and including 26 drawings. The cost of each “POWER UP” ticket shall be an additional $1.00 per board per drawing. E.g.: one POWERBALL® play for two drawings with "POWER UP” option, $6.00, one POWERBALL® play for four drawings with "POWER UP” option, $12.00. The “POWER UP” option applies to all drawings for which the ticket is purchased and the "POWER UP” option is selected. Players cannot elect the option on a drawing-by-drawing basis when purchasing Advance Play tickets.

~~The purpose of Amended Rule 14.B is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game "POWERBALL®" "POWER PLAY OPTION" such as type of play, prizes, method of selecting winning numbers and drawings. The statutory basis for Amended Rule 14.B is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212.~~

~~**14.B.1 General Provisions**~~

~~Amended Rule 14. B, Colorado Lottery Multi-State Jackpot Game, "Powerball" – "Power Play Option", will be effective with sales beginning January 19, 2014 with the first Power Play drawing January 22, 2014.~~

~~A. A Colorado Lottery (Lottery) multi-state Jackpot game known as "POWERBALL®" shall have a game option known as "POWER PLAY", which allows players the option to pay an additional one dollar~~

($1) for a chance to increase any Set Prize they may win on that purchase. This game option is authorized to be conducted by the Colorado Lottery Director (Director) under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.B, Rule 14.B shall apply.

B. The Lottery and the Lottery Commission, prior to implementation, must approve all the Multi-State Lottery Association (MUSL) guidelines and the MUSL Board decisions associated with this "POWER PLAY OPTION".

C. The Director will be a voting member of the MUSL Board during the timeframe in which the Lottery shall be a member of the MUSL. The Director will also be a voting member of any MUSL Specific Product Group the Lottery joins.

D. At any time the Director determines that any provisions of the MUSL or of the MUSL's Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Lottery, the Director shall recommend to the Lottery Commission that the Lottery end its membership with the MUSL or with the Specific Product Group. Upon concurrence by the Lottery Commission, membership can end at any time.

14.B.2 Definitions

Refer to the definitions provided in Paragraph 1.2 of Rule 1, Paragraph 14.2 of Rule 14, and Paragraph 14.A.2 of Rule 14.A.

14.B.3 Price of "POWER PLAY OPTION"

The price of each "POWER PLAY OPTION"" play selected shall be $1.00. A player will have the licensee manually enter the "POWER PLAY OPTION" into the Jackpot Game terminal to purchase up to ten POWERBALL® plays with ten "POWER PLAY OPTIONS" for a single draw as follows:

Number of Powerball® plays	Number of Powerball® boards	Cost of Powerball® boards	Number of "POWER PLAY OPTION" boards	Cost of "POWER PLAY OPTION" boards	Total cost Powerball® boards with "POWER PLAY OPTION"
1	One Board	$2.00	One Board	$1.00	$3.00
2	Two Boards	$4.00	Two Boards	$2.00	$6.00
3	Three Boards	$6.00	Three Boards	$3.00	$9.00
4	Four Boards	$8.00	Four Boards	$4.00	$12.00
5	Five Boards	$10.00	Five Boards	$5.00	$15.00
6	Six Boards	$12.00	Six Boards	$6.00	$18.00
7	Seven Boards	$14.00	Seven Boards	$7.00	$21.00
8	Eight Boards	$16.00	Eight Boards	$8.00	$24.00
9	Nine Boards	$18.00	Nine Boards	$9.00	$27.00
10	Ten Boards	$20.00	Ten Boards	$10.00	$30.00

The "POWER PLAY OPTION" is an add-on to the POWERBALL 5/59 + 1/35 game. Players who elect to pay an extra $1 per POWERBALL® play will have the opportunity to increase their set prizes (all prizes except the Grand Prize).

14.B.4 Ticket Purchases

POWERBALL® tickets with the "POWER PLAY OPTION" may be purchased only from a Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

A. POWERBALL® tickets with the "POWER PLAY OPTION" shall show, at a minimum, the player's selection of numbers, the boards played, drawing date, "POWER PLAY OPTION" chosen and validation and reference numbers.

B. A purchaser of a POWERBALL® ticket must choose, at the time of purchase, whether or not he/she wants the "POWER PLAY OPTION". If the purchaser chooses the "POWER PLAY OPTION" for the ticket, the cost of the "POWER PLAY OPTION" will be $1.00 per board. (See Paragraph 14.B.3 of this Rule 14.B for detailed Power Play costs.) The Option applies to all boards on a single ticket and cannot be purchased on a board-by-board basis.

14.B.5 Method of play

There will be no change in play for the POWERBALL® 5/59 + 1/35 game. The "POWER PLAY OPTION" is effective only for players who choose the "POWER PLAY OPTION" at time of purchase and pay an additional $1.00 per board.

A. The POWERBALL® "POWER PLAY" drawings shall be held twice each week on Wednesday and Saturday.

B. Each "POWER PLAY" drawing shall determine, at random, a single number in accordance with drawing guidelines. Any number drawn is not declared a winning number until the drawing is certified in accordance with the POWERBALL® drawing guidelines. The number drawn shall be used to determine all POWERBALL® "POWER PLAY" prize amounts for that drawing. If a POWERBALL® drawing is not certified, the "POWER PLAY" number for the drawing defaults to "5".

C. "POWER PLAY" multipliers are weighted as follows:

	POWER PLAY "5"	POWER PLAY "4"	POWER PLAY "3"	POWER PLAY "2"	TOTAL
Frequency	2	3	5	7	17
Percentage	11.76%	17.65%	29.41%	41.18%	100%

D Each "POWER PLAY" drawing shall be witnessed by an auditor, as required in C.R.S 24-35-208 (2) (d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing.

E. The drawing shall not be invalidated based on the liability of a Party Lottery.

F. All "POWER PLAY" drawings shall be open to the public.

G. All drawings, inspections and tests shall be recorded on videotape.

14.B.6 Prizes For POWERBALL® with "POWER PLAY OPTION" Selected

A. Players who choose the "POWER PLAY OPTION" and pay the extra $1.00 per board will have their set prizes multiplied. The Second set prize will be multiplied by two (2X) and the Third through Ninth set prize will receive an amount equal to the set prize multiplied by a drawn POWER PLAY multiplier. See the following table for prizes won if "POWER PLAY OPTION" is chosen and the set prizes are not pari-mutuel as defined in Paragraph 14.A.6 b) of Rule 14.A.

POWERBALL Prize Category	POWERBALL Prize Amounts	POWER PLAY® "2" Drawn	POWER PLAY® "3" Drawn	POWER PLAY® "4" Drawn	POWER PLAY® "5" Drawn

Grand Prize	Jackpot	Jackpot	Jackpot	Jackpot	Jackpot
Second Prize	$1,000,000	$2,000,000	$2,000,000	$2,000,000	$2,000,000
Third Prize	$10,000	$20,000	$30,000	$40,000	$50,000
Fourth Prize	$100	$200	$300	$400	$500
Fifth Prize	$100	$200	$300	$400	$500
Sixth Prize	$7	$14	$21	$28	$32
Seventh Prize	$7	$14	$21	$28	$32
Eighth Prize	$4	$8	$12	$16	$20
Ninth Prize	$4	$8	$12	$16	$20

B. If the set prizes are pari-mutuel as defined in Paragraph 14.A.6 d) of Rule 14.A, and the player has selected and paid for the "POWER PLAY OPTION", the amount of the pari-mutuel set prize will become pari-mutuel for that drawing.

C. The prize pool contribution for all "POWER PLAY OPTION" prize categories shall consist of a percent of sales to be determined by the MUSL Board.

14.B.7 Prize Payment

A. Set Prizes

All set prizes (all prizes except the Grand Prize) with the "POWER PLAY OPTION" shall be paid by the Lottery. The Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.

B. Prizes Rounded

All prizes, including those with the "POWER PLAY OPTION", other than the Grand Prize, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

14.B.8 Advance Play

Advance play provides the facility to purchase POWERBALL® tickets for more than one drawing. A purchaser of POWERBALL® tickets may also purchase the "POWER PLAY OPTION" for all Advance Play plays. At the discretion of the Director advance play tickets shall be available for purchase in increments up to and including 26 drawings. The cost of each Power Play ticket shall be an additional $1.00 per board per drawing. E.g.: one POWERBALL® play for two drawings with "POWER PLAY OPTION", $6.00, one POWERBALL® play for four drawings with "POWER PLAY OPTION", $12.00. The Option applies to all drawings for which the ticket is purchased and the "POWER PLAY OPTION" is selected. Players cannot elect the option on a drawing-by-drawing basis when purchasing Advance Play tickets.

14.B.9 Powerball® Power Play Promotion

With the Lottery Commission's and Director's approval, the Lottery will from time to time participate in a POWERBALL® Power Play promotion (i.e. a ten times (10X) multiplier for a limited promotion). The times and dates of the POWERBALL® Power Play promotion will be announced by the MUSL board in conjunction with existing rules and regulations pertaining to POWERBALL®.

RULE 14.C COLORADO LOTTERY MULTI-STATE JACKPOT GAME, "MEGA MILLIONS GAME®"

BASIS AND PURPOSE FOR AMENDED RULE 14.C

The purpose of Amended Rule 14.C is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game "MEGA MILLIONS GAME®" such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. The statutory basis for Amended Rule 14.C is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212 and 24-35-212.5.

14.C.1 General Provisions

A Colorado Lottery multi-state Jackpot game to be known as "MEGA MILLIONS GAME®" is authorized to be conducted by the Colorado Lottery Director (Director) under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.C, Rule 14.C shall apply.

The MEGA MILLIONS GROUP consists of 12 party lotteries and the Multi-State Lottery Association (MUSL) as representation for participating MUSL party lotteries.

At any time the Director determines that any provisions of MEGA MILLIONS GROUP or MUSL MEGA MILLIONS PRODUCT GROUP's Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Colorado Lottery, the Director shall recommend to the Lottery Commission that the Lottery end its association with MEGA MILLIONS GROUP and with the MUSL MEGA MILLIONS PRODUCT GROUP. Upon concurrence by the Lottery Commission, association with the MEGA MILLIONS GROUP will be terminated upon six (6) months prior written notice to the MUSL MEGA MILLION PRODUCT GROUP.

14.C.2 Definitions

In addition to the definitions provided in Paragraph 1.2 of Rule 1 and Rule 14, and unless the context in this Rule 14.C otherwise requires:

A. "Advance Play" means the ability to purchase tickets for more than one drawing beginning with the current open draw.

B. "Breakage" means the results of rounding prize amounts down to the nearest whole dollar.

C. "Drawing" means formal process of selecting winning numbers which determine the number of winners for each prize level of the game

D. "Game Board(s)" or "Board(s)" means that area of the play slip, also known as a "panel", which contains two sets of numbered squares to be marked by the player, the first set containing seventy-five (75) squares, number one (1) through seventy-five (75) and the second set containing fifteen (15) squares , number one (1) through fifteen (15).

E. "Grand Prize" or "Jackpot" means the top prize of the MEGA MILLIONS GAME®. The annuity Grand Prize is an amount that would be paid in twenty-six (26) annual installments.

F. "Grid" means the area of a play slip that contains a set of numbered squares to be marked by the player.

G. "Matching Combinations" means the numbers on a play that coincide with the numbers randomly selected at a drawing for which that play was purchased.

H. "MEGA MILLIONS GROUP" means those lotteries which have joined under the MEGA MILLIONS Lottery Agreement; the group of lotteries that has reached a Cross-Selling Agreement with the MUSL for the selling of the MEGA MILLIONS GAME®.

I. "MUSL MEGA MILLIONS PRODUCT GROUP" or "PRODUCT GROUP" means the Party Lotteries participating in the MEGA MILLIONS GAME®"

J. "MUSL MEGA MILLIONS GROUP BOARD" means the governing body of the MUSL MEGA MILLIONS PRODUCT GROUP, which is comprised of the chief executive officer of each Party Lottery.

K. "Number" means any play integer from one (1) through seventy-five (75) inclusive.

L. "Party Lottery" means a state lottery or lottery of a political subdivision or entity which has joined the and, in the context of the specific PRODUCT GROUP Rules, has joined in selling the game offered by the MUSL MEGA MILLIONS PRODUCT GROUP.

M. "Play" means the six (6) numbers selected on each Board and printed on the ticket.

N. "Play slip" means a mark-sense game card used by players of "MEGA MILLIONS GAME®" to select plays. A play slip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers

O. "Prize Pool" means a defined percentage of sales as specified in this rule.

P. "Quick Pick" or "Partial Quick Pick" means the random selection of numbers by the computer system, which appears on a ticket and are played by a player in a the game.

Q. "Roll-over" means the amount from the direct prize category contribution from previous drawing(s) in the Grand Prize category, that is not won, that is carried forward to the Grand Prize category for the next drawing.

R. "Set Prize" means all other prizes except the Grand Prize that are advertised to be paid by a single cash payment and, except in instances outlined in these rules, will be equal to the prize amount established within the Specific Game Playing Rules.

S. "Set Prize Payout Variance" means an account held by the MUSL that holds the temporary balances, transferred to the MUSL from party lotteries, which results from having fewer-than-expected winners in the set prize categories. This money is paid out to party lotteries in subsequent drawings that have more winners than are statistically expected in the set prize categories.

T. "Share(s)" means the total number of matching combinations within each prize category as determined for each drawing.

U. "Winning Numbers" means the six (6) numbers, the first five (5) from a field of seventy-five (75) numbers and the last one (1) from a separate field of fifteen (15) numbers, randomly selected at each drawing, which shall be used to determine winning plays contained on a multi-state Jackpot Game ticket.

14.C.3 Price of "MEGA MILLIONS GAME®" Play/Board

The price of each "MEGA MILLIONS GAME®" play/board shall be set by the MEGA MILLIONS GROUP. A Jackpot Game licensee may be permitted to make gifts of "MEGA MILLIONS GAME®" tickets as a means of promoting the sale of goods or services to the public upon receipt of prior approval by the Party Lottery Director and notice to the PRODUCT GROUP members.

14.C.4 Ticket Purchases

A. "MEGA MILLIONS GAME®" tickets may be purchased only from a Party Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

B. "MEGA MILLIONS GAME®" tickets shall show, at a minimum, the player's selection of numbers, the boards played, drawing date and validation and reference numbers.

C. The Party Lottery shall not directly and knowingly sell a combination of tickets to any person or entity that would guarantee such purchaser a winning ticket.

D. Plays may be entered manually using the Jackpot Game terminal keypad or by means of a play slip provided by the Colorado Lottery. Facsimiles of play slips, copies of play slips, or other materials which are inserted into the terminal's play slip reader and which are not printed or approved by the Lottery shall not be used to enter a play. No device shall be connected to a Jackpot Game terminal to enter plays, except as may be approved by the Colorado Lottery. Unapproved play slips or other devices may be seized by the Colorado Lottery.

E. All plays made in the game shall be marked on the play slip by hand. No machine-printed play slips shall be used to enter plays. Machine-printed play slips may be seized by the Party Lottery. Nothing in this regulation shall be deemed to prevent a person with a physical handicap who would otherwise be unable to mark a play slip manually from using any device intended to permit such person to make such a mark (for his/her sole personal use or benefit).

14.C.5 Play for "MEGA MILLIONS GAME®"

A. Type of play:

A "MEGA MILLIONS GAME®" player must select six numbers in each play, five (5) numbers out of seventy-five (75) plus one (1) out of fifteen (15). A winning play is achieved only when the following combinations of numbers selected by the player match, in any order, the five plus one winning numbers drawn by the MEGA MILLIONS GROUP. Those combinations are 5+1, 5+0, 4+1, 4+0, 3+1, 3+0, 2+1, 1+1 and 0+1.

B. Method of play:

1. Manual Plays include player use of play slips, as provided in Paragraph 14.C.4 of this Rule 14.C, to make number selections. The Jackpot Game terminal will read the play slip and issue a ticket with corresponding play(s). The Jackpot Game licensee may also enter the selected numbers via the keyboard.

2. Computer Generated Plays include Quick Pick and Partial Quick Pick. Quick Picks and Partial Quick Pick can be generated using a play slip or by the Jackpot Game licensee. The Jackpot Game licensee may select Quick Pick via the keyboard at the beginning of the transaction for full Quick Pick or the Jackpot Game licensee may enter the player selected numbers via the keyboard then select the Quick Pick function to complete the number selection.

14.C.6 Prizes For "MEGA MILLIONS GAME®"

A. Odds of winning

MATCHING COMBINATIONS	PRIZE CATEGORY	ODDS OF WINNING (ONE PLAY)
All five (5) of first set plus one (1) of second set	Grand Prize	1:258,890,850
All five (5) of first set plus none of second	Second Prize	1:18,492,204

set		
Any four (4) of first set, but not five, plus one (1) of second set	Third Prize	1:739,688
Any four (4) of first set, but not five, plus none of second set	Fourth Prize	1:52,835
Any three (3) of first set, but not four or five, plus one (1) of second set	Fifth Prize	1:10,720
Any three (3) of first set, but not four or five, plus none of second set	Sixth Prize	1:766
Any two (2) of first set, but not three, four or five, plus one (1) of second set	Seventh Prize	1:473
Any one (1) of first set, but not two, three, four or five, plus one (1) of second set	Eighth Prize	1:56
None of first set plus one (1) of second set	Ninth Prize	1:21
Overall odds of winning any prize		1:14.7

B. The prize pool contribution for all prize categories shall consist of up to fifty-five percent (55%) of each drawing period's sales. An amount up to five percent (5%) of sales may be held from the Grand Prize category, as described in Paragraph 14.C.7 of this Rule 14.C if the prize reserve accounts are not funded at the balances set by the PRODUCT GROUP. Any amount remaining in the prize pool at the end of this game shall be carried forward to a replacement game or expended in a manner as directed by the PRODUCT GROUP in accordance with state law.

PRIZE POOL

Prize Category	Prize Amounts	Allocation of Prize Pool	Prize Pool Percentage of Sales
Grand Prize	Announced Jackpot	63.60%	32.577%
Second Prize	$1,000,000	12.80%	5.408%
Third Prize	$5,000	2.90%	0.676%
Fourth Prize	$500	1.96%	0.946%
Fifth Prize	$50	2.18%	0.466%
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Sixth Prize	$5	4.58%	0.653%
Seventh Prize	$5	2.38%	1.057%
Eighth Prize	$2	4.26%	3.542%
Ninth Prize	$1	5.34%	4.675%
TOTAL		100.00%	50.00%

C. Prize Categories - The Grand Prize shall be determined on a pari-mutuel basis. All other prizes awarded shall be paid as set prizes with the foregoing expected prize payout percentages:

1. The prize money allocated to the Grand Prize category shall be divided equally by the number of game boards matching all five (5) of the first set plus one (1) of the second set.

2. A liability cap of three hundred percent (300%) of draw sales or fifty percent (50%) of draw sales plus fifty million dollars ($50,000,000), whichever is less, shall apply to total prize payout of all levels. If the liability cap is met the second through fifth (2-5) prize levels will become pari-mutuel.

   a. Prize level two (2) shall be an amount equal to 64.53% of the Liability Cap Balance divided by the number of winners in Prize level two (2),

   b. Prize level three (3) shall be an amount equal to 14.63% of the Liability Cap Balance divided by the number of winners in Prize level three (3),

c. Prize level four (4) and five (5) shall be an amount equal to 20.84% of the Liability Cap Balance divided by the number of combined winners in Prize levels four (4) and five (5).

14.C.7 Prize Reserve Accounts

A. An amount up to five percent (5%) of a Party Lottery's Mega Millions sales and an amount up to five percent (5%) of Megaplier sales may be collected by the PRODUCT GROUP and held in trust in one or more prize reserve accounts until the prize reserve accounts reach the amounts designated by the PRODUCT GROUP.

B. At the Party Lottery Directors' or Director's designee's request, the PRODUCT GROUP may determine to expend all or a portion of the funds in the accounts for the payment of prizes or special prizes in the game.

C. The shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and shares of the Party Lotteries.

D. Any amount remaining in a prize reserve account at the end of this game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the PRODUCT GROUP on behalf of the Lottery Director, or the Director's designee, in accordance with jurisdiction law.

14.C.8 Prize Payment

A. Grand Prizes

1. Grand Prizes shall be paid, at the election of the ticket bearer by a single cash payment or in a series of annuity payments. The ticket bearer becomes entitled to the prize at the time the prize is validated as a winner. The election to take the cash payment or annuity payments may be made at the time the prize is validated or within 60 days after the ticket bearer becomes entitled to the prize. If no election is made within 60 days after the ticket bearer becomes entitled to the prize, the prize shall be paid as an annuity prize. The election is final and cannot be revoked, withdrawn or otherwise changed.

2. Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize pool equally among all boards matching all five (5) of the first set plus one (1) of the second set of drawn numbers. Winner(s) who elect a cash payment shall be paid their share(s) in a single cash payment.

   a. The starting guaranteed annuity Grand Prize value is fifteen million dollars ($15,000,000).

   b. The Grand Prize will grow at a minimum of five million dollars ($5,000,000) with each successive drawing without a winning jackpot winner.

   c. The cash option prize shall be determined by dividing the Grand Prize amount that would be paid over thirty (30) annual installments by a rate established by the Mega Millions Finance Committee prior to each drawing divided by the number of total jackpot winners.

3. Where there is only one (1) winning MEGA MILLIONS GAME Grand Prize ticket, no Grand Prize paid in thirty (30) annual installments shall be less than fifteen millions dollars ($15,000,000).

4. All annuitized prizes shall be paid annually in thirty (30) graduated payments with the initial payment being made in cash, to be followed by twenty-nine (29) payments funded by the annuity.

5. Funds for the initial payment of an annuitized prize or the lump sum cash prize shall be made available to the Party Lottery within 15 calendar days following the date of the winning draw. If funds are unavailable to cover the full lump sum cash amount, payment may be delayed.

6. In the event of the death of a lottery winner during the annuity payment period, the MUSL Finance & Audit Committee, in its sole discretion, upon the petition of the estate of the lottery winner (the "Estate") to the Party Lottery, and subject to federal, state, or district applicable laws, may accelerate the payment of all of the remaining lottery proceeds to the Estate. If such a determination is made, then securities and/or cash held to fund the deceased lottery winner's annuitized prize may be distributed to the Estate. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the Finance & Audit Committee or PRODUCT GROUP.

B. Set Prizes

1. The Director’s decision with respect to the validation and payment of set prizes, whether during a "MEGA MILLIONS GAME®" game or any drawing related thereto, shall be final and binding upon all participants in the Party Lottery.

2. All set prizes (all prizes except the Grand Prize) shall be paid by the Party Lottery which sold the winning ticket. The Party Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.

C. Prizes Rounded

1. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners.

2. Set Prizes, which under these rules may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

D. Roll-over

If the Grand Prize is not won in a drawing, the prize money allocated for the Grand Prize shall rollover and be added to the Grand Prize pool for the following drawing.

E. Funding of Guaranteed Prizes

1. The PRODUCT GROUP may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between drawings or make other changes in the allocation of prize money where the PRODUCT GROUP finds that it would be in the best interest of the game. If a minimum Grand Prize amount, or a minimum increase in the Grand Prize amount between drawings, is offered by the PRODUCT GROUP, then the Grand Prize shares shall be determined as follows:

    a. If there are multiple Grand Prize winners during a single drawing, each selecting the annuitized option prize, then a winner's share of the guaranteed annuitized

Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of winners.

b. If there are multiple Grand Prize winners during a single drawing and at least one of the Grand Prize winners has elected the annuitized option prize, then the best bid submitted by MEGA MILLIONS GROUP's pre-approved qualified brokers shall determine the cash pool needed to fund the guaranteed annuitized Grand Prize.

c. If no winner of the Grand Prize during a single drawing has elected the annuitized option prize, then the amount of cash in the Grand Prize pool shall be an amount equal to the guaranteed annuitized amount divided by the average annuity factor of the most recent three best quotes provided by MEGA MILLIONS GROUP's pre-approved qualified brokers submitting quotes.

2. In no case shall quotes be used which are more than two weeks old and if less than three quotes are submitted, then MEGA MILLIONS GROUP shall use the average of all quotes submitted. Changes in the allocation of prize money shall be designed to retain approximately the same prize allocation percentages, over a year's time, set out in these rules. Minimum guaranteed prizes or increases may be waived if the alternate funding mechanism set out in Paragraph 14.C.6.B. of this Rule 14.C becomes necessary.

14.C.9 Grand Prize Account

A. The draw reports determine whether the member lotteries owe funds to the MUSL or the MUSL needs to transfer money to the member lotteries. The Party Lottery shall transfer to the MUSL in trust an amount as determined to be its total proportionate share of the prize account less actual set prize liability. If this results in a negative amount, the MUSL central office shall transfer funds to the Party Lottery.

B. All funds to pay a grand prize that go unclaimed shall be returned to the Lottery by the MUSL in proportion to sales by the Lottery for the grand prize in question after the claiming period set by the Lottery selling the winning ticket expires.

14.C.10 Funds Transfer

A. Draw Receivables from Member Lotteries

Funds shall be collected by the MUSL from each MUSL Party Lottery weekly by wire transfer or other means acceptable to the MUSL. The MUSL shall determine collection days. The amount to be transferred shall be calculated in accordance with the "MEGA MILLIONS GAME®" rules.

B. Initial Grand Prize Funds Transferred to Party Lottery

The Grand Prize amount held by MEGA MILLIONS GROUP shall be transferred to the MUSL within fifteen (15) calendar days of a winning draw by a Party Lottery.

C. Subsequent Grand Prize Payments from the PRODUCT GROUP to Party Lotteries.

The Grand Prize amount held by the PRODUCT GROUP for subsequent payment to annuity winners shall be transferred to the Party Lottery seven days preceding the first working day preceding the anniversary of the awarded grand prize. The Party Lottery will then make payment to the annuity winner.

14.C.11 Drawings

A. The "MEGA MILLIONS GAME®" drawings shall be held twice each week on Tuesday and Friday evenings, except that the drawing schedule may be changed by the MEGA MILLIONS GROUP Board. In the event of an act of Force Majeure the drawing shall be rescheduled at the discretion of the MEGA MILLIONS GROUP and the MUSL MEGA MILLIONS GROUP BOARD.

B. Each drawing shall determine, at random, six winning numbers in accordance with drawing guidelines. The Lottery Commission shall review and approve drawing guidelines. Any numbers drawn are not declared winning numbers until the drawing is certified by MEGA MILLIONS GROUP in accordance with the "MEGA MILLIONS GAME®" drawing guidelines. The winning numbers shall be used in determining all "MEGA MILLIONS GAME®" winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

C. Each drawing shall be witnessed by an auditor as required in C.R.S. 24-35-208 (2)(d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing. All drawings, inspections and tests shall be recorded on videotape.

D. The drawing shall not be invalidated based on the liability of the Lottery.

E. The drawing procedures shall provide that a minimum of fifty-nine (59) minutes elapse between the close of the game ticket sales and the time of the drawing for those tickets sold. All drawings shall be open to the public.

14.C.12 Advance Play

Advance play provides the opportunity to purchase "MEGA MILLIONS GAME®" tickets for more than one drawing. Advance play tickets shall be available for purchase in variable increments. The Advance Play feature shall be available at the discretion of the Director.

14.C.13 MUSL MEGA MILLIONS PRODUCT GROUP Accounting and Finance

A. Prize Reserve and Set Prize Reserve contributions from Party Lotteries shall be one percent (1%) of sales. The PRODUCT GROUP may establish a maximum balance for the prize reserve account(s). The shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve accounts(s) as may be needed to maintain the approved maximum balance and shares of the Party Lotteries. Any amount remaining at the end of this game shall be carried forward to a replacement prize reserve account or expended in a manner as directed by the PRODUCT GROUP in accordance with jurisdictional law.

B. Draw receivables from Party Lotteries

The draw reports determine whether the Party Lottery owes and needs to transfer funds to the MUSL, or the MUSL owes and needs to transfer funds to the Party Lottery. (The procedures and corresponding time lines documenting the timely and effective transfer of funds between the Party Lottery and the MUSL can be found in the Party Lottery’s financial procedures.) Four different transfers are made on a continual basis:

1. Draw receivables transferred from the Party Lottery to the MUSL,

2. Set prize payments transferred from the MUSL to the Party Lottery,

3. Grand Prize payments from the Party Lottery to the MUSL; and

4. Subsequent Grand Prize annuity payments from the MUSL to the Party Lottery.

14.C.14 Jackpot Game Licensee Commission, Cashing Bonus, Selling Bonus, and Marketing Performance Bonus

A. In addition to the Six Percent (6%) Commission set forth in Rule 14.19, retailers can earn a Cashing Bonus, Selling Bonus and Marketing Performance Bonus.

1. Each retailer will receive a cashing bonus of one percent (1%) of each prize paid by the licensee up to and including $599.

2. In order to receive a Selling Bonus, the following criteria must be met:

a. A licensee must have sold a Grand Prize or a Second Prize Category winning multi-state Jackpot game ticket.

b. Payment of the jackpot-selling bonus will occur once Lottery security has confirmed the selling licensee.

c. A licensee must be selling multi-state Jackpot Game tickets up to and including the day that the ticket is validated by the Lottery and must be the same licensed licensee who sold the winning ticket.

d. The Director or designee shall determine the amount of the jackpot-selling bonus for each qualified-prize-winning ticket sold.

3. In order to receive a five-tenths of one percent (.5%) Marketing Performance Bonus the following criteria must be met:

a. A licensee must be licensed on the date the marketing performance bonus is declared;

b. A licensee must sell Scratch tickets up to and including the final sales day in which the marketing performance bonus is declared;

c. A licensee must meet or exceed the requirements of the marketing performance bonus plan for the period for which the marketing performance bonus is declared.

B. In the event there is a residual resulting from the accrual of the one percent (1%) cashing bonus (14.C(13)(1)1) and/or the five-tenths of one percent (.5%) marketing bonus (14.C.13(3)) have been expensed, the Director may provide additional compensation to licensees as described in 14.C.13(2)(d) or may revert the excess amount thereby decreasing the bonus expense.

RULE 14.D COLORADO LOTTERY MULTI-STATE JACKPOT GAME, "MEGA MILLIONS" - "MEGAPLIER®"

BASIS AND PURPOSE OF AMENDED RULE 14.D

The purpose of Amended Rule 14.D is to provide specific game details and requirements for the Colorado Lottery Multi-State Jackpot Game "MEGA MILLIONS GAME® " "MEGAPLIER®" such as type of play, prizes, method of selecting winning numbers and drawings. The statutory basis for Amended Rule 14.D is found in C.R.S. 24-35-201, 24-35-208 (1) (a) and (2), and 24-35-212.

14.D.1 General Provisions

A. A Colorado Lottery multi-state Jackpot game known as "MEGA MILLIONS GAME®" shall have a game option known as "MEGAPLIER®", which allows players the option to pay an additional one

dollar ($1) for a chance to increase any Set Prize they may win on that purchase. This game option is authorized to be conducted by the Colorado Lottery Director (Director) under the following Rules and Regulations and under such further instructions and directives as the Director may issue in furtherance thereof. If a conflict arises between Rule 14 and this Rule 14.D, Rule 14.D shall apply.

B. The Party Lottery and the Lottery Commission, prior to implementation, must approve all MUSL MEGA MILLIONS GROUP guidelines and MUSL MEGA MILLIONS GROUP BOARD decisions associated with this "MEGAPLIER®".

C. The Director will be a voting member of the MUSL Board during the timeframe in which the Lottery shall be a member of MUSL. The Director will also be a voting member of any MUSL Specific Product Group the Lottery joins.

D. At any time the Director determines that any provisions of the MUSL or of MUSL's Specific Game Playing Rules do not sufficiently provide for the security and integrity necessary to protect the Colorado Lottery, he/she shall recommend to the Lottery Commission that the Lottery end its membership with MUSL or with the Specific Product Group. Upon concurrence by the Lottery Commission, membership can end at any time.

14.D.2 Definitions

Refer to the definitions provided in Paragraph 1.2 of Rule 1, Paragraph 13.2 of Rule 13, Paragraph 14.2 of Rule 14, and Paragraph 14.C.2 of Rule 14.C.

14.D.3 Price of "MEGAPLIER®"

A. The price of each "MEGAPLIER®" play selected shall be $1.00. A player will have the Party Lottery licensee manually enter the "MEGAPLIER®" into the Jackpot Game terminal to purchase up to ten MEGA MILLIONS GAME®" plays with ten "MEGAPLIER®" for a single draw as follows:

Number of MEGA MILLIONS plays	Number of MEGA MILLIONS boards	Cost of MEGA MILLIONS boards	Number of "MEGAPLIER®" boards	Cost of "MEGAPLIER®" boards	Total cost MEGA MILLIONS boards with "MEGAPLIER®"
1	One Board	$1.00	One Board	$1.00	$2.00
2	Two Boards	$2.00	Two Boards	$2.00	$4.00
3	Three Boards	$3.00	Three Boards	$3.00	$6.00
4	Four Boards	$4.00	Four Boards	$4.00	$8.00
5	Five Boards	$5.00	Five Boards	$5.00	$10.00
6	Six Boards	$6.00	Six Boards	$6.00	$12.00
7	Seven Boards	$7.00	Seven Boards	$7.00	$14.00
8	Eight Boards	$8.00	Eight Boards	$8.00	$16.00
9	Nine Boards	$9.00	Nine Boards	$9.00	$18.00
10	Ten Boards	$10.00	Ten Boards	$10.00	$20.00

B. "MEGAPLIER®" is an add-on to the MEGA MILLIONS GAME® 5/75 + 1/15 game. Players who elect to pay an extra $1 per MEGA MILLIONS play will have the opportunity to multiply their set prizes (all prizes except the Grand Prize) by the MEGAPLIER® number that is randomly selected at draw time.

14.D.4 Ticket Purchases

MEGA MILLIONS GAME® tickets with "MEGAPLIER®" may be purchased only from a Party Lottery licensee authorized by the Director to sell multi-state Jackpot Game tickets.

A. MEGA MILLIONS GAME® tickets with "MEGAPLIER®" shall show, at a minimum, the player's selection of numbers, the boards played, drawing date, "MEGAPLIER®" chosen and validation and reference numbers.

B. A purchaser of a MEGA MILLIONS GAME® ticket must choose, at the time of purchase, whether or not he/she wants the "MEGAPLIER®". If the purchaser chooses the "MEGAPLIER®" for the ticket, the cost of the "MEGAPLIER®" will be $1.00 per board. (See Paragraph 14.D.3 of this Rule 14.D for detailed MEGAPLIER® costs.) "MEGAPLIER" applies to all boards on a single ticket and cannot be purchased on a board-by-board basis.

14.D.5 Method of play

There will be no change in play for the MEGA MILLIONS GAME® 5/75 + 1/15 game. "MEGAPLIER®" is effective only for players who choose "MEGAPLIER®" at time of purchase and pay an additional $1.00 per board.

A. The MEGA MILLIONS GAME® "MEGAPLIER®" drawings shall be held twice each week on Tuesday and Friday. The MEGA MILLIONS GAME® "MEGAPLIER®" drawing is conducted by the Texas Lottery draw staff after all participating state's draw sales are closed and prior to the MEGA MILLIONS drawing.

B. Each "MEGAPLIER®" drawing shall determine, at random, a single number in accordance with drawing guidelines. Any number drawn is not declared a winning number until the drawing is certified in accordance with the MEGAPLIER® drawing guidelines. The number drawn shall be used to determine all MEGA MILLIONS GAME® "MEGAPLIER®" prize amounts for that drawing. If a MEGAPLIER® drawing is not certified, the MEGAPLIER® number for the drawing defaults to "4".

C. "MEGAPLIER®" multipliers are weighted as follows:

	MEGAPLIER® "5"	MEGAPLIER® "4"	MEGAPLIER® "4"	MEGAPLIER® "2"	TOTAL
Frequency	6	3	4	2	15
Percentage	40%	20%	26.66%	13.33%	99.99%

D. Each "MEGAPLIER®" drawing shall be witnessed by an auditor, as required in C.R.S 24-35-208 (2) (d). All drawing equipment used shall be examined by the auditor immediately prior to, but no sooner than thirty (30) minutes before, a drawing and immediately after, but no later than thirty (30) minutes following the drawing.

E. The drawing shall not be invalidated based on the liability of a Party Lottery.

F. All "MEGAPLIER®" drawings shall be open to the public.

G. All drawings, inspections and tests shall be recorded on videotape.

14.D.6 Prizes For MEGA MILLIONS GAME® with "MEGAPLIER®" Selected

A. Players who choose the "MEGAPLIER®" and pay the extra $1.00 per board and who win the Second through Eighth set prize (any prize except the Grand Prize) will receive an amount equal to the set prize multiplied by the "MEGAPLIER®" number selected at the drawing. See the following table for prizes won if "MEGAPLIER®" is chosen and the set prizes are not pari-mutuel as defined in Paragraph 14.C.6.C. of Rule 14.C.

MEGA MILLIONS Prize Category	MEGA MILLIONS Prize Amounts	MEGAPLIER® "2" Drawn	MEGAPLIER® "3" Drawn	MEGAPLIER® "4" Drawn	MEGAPLIER® "5" Drawn
Grand Prize	Jackpot	Jackpot	Jackpot	Jackpot	Jackpot
Second Prize	$1,000,000	$ 2,000,000	$ 3,000,000	$ 4,000,000	$ 5,000,000
Third Prize	$5,000	$10,000	$15,000	$20,000	$25,000
Fourth Prize	$500	$1,000	$1,500	$2,000	$2,500
Fifth Prize	$50	$100	$150	$200	$250
Sixth Prize	$5	$10	$15	$20	$25
Seventh Prize	$5	$10	$15	$20	$25
Eighth Prize	$2	$4	$6	$8	$10
Ninth Prize	$1	$2	$3	$4	$5

B. If the set prizes are pari-mutuel as defined in Paragraph 14.C.6.C. of Rule 14.C, and the player has selected and paid for the "MEGAPLIER®", the amount of the pari-mutuel set prize will be multiplied by the "MEGAPLIER®" number drawn for that drawing.

C. The prize pool contribution for all "MEGAPLIER®" prize categories shall consist of a percent of "MEGAPLIER®" sales as shown in Section 14.D.5 plus approximately five percent (5%) of "MEGAPLIER®" sales collected as a prize reserve.

14.D.7 Prize Payment

A. Set Prizes

All set prizes (all prizes except the Grand Prize) with the "MEGAPLIER®" shall be paid by the Party Lottery. The Party Lottery may begin paying set prizes after receiving authorization to pay from the MUSL central office.

B. Prizes Rounded

All prizes that include "MEGAPLIER®" may become pari-mutuel prizes. These prizes may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next drawing.

14.D.8 Advance Play

Advance play provides the facility to purchase MEGA MILLIONS GAME® tickets for more than one drawing. A purchaser of MEGA MILLIONS GAME® tickets may also purchase "MEGAPLIER®" for all Advance Play plays. The Advance Play feature shall be available at the discretion of the Director.

The cost of each MEGAPLIER® ticket shall be an additional $1.00 per board per drawing. E.g.: one MEGA MILLIONS GAME® play for two drawings with "MEGAPLIER®", $4.00, one MEGA MILLIONS GAME® play for four drawings with "MEGAPLIER®", $8.00. MEGAPLIER applies to all drawings for which the ticket is purchased and "MEGAPLIER®" is selected. Players cannot elect the option on a drawing-by-drawing basis when purchasing Advance Play tickets.

14.D.9 MEGA MILLIONS GAME® MEGAPLIER® Promotion

The Colorado Lottery will participate in any announced MEGA MILLIONS GAME® MEGAPLIER® promotions. The times and dates of any MEGA MILLIONS GAME® MEGAPLIER® promotion will be announced by the MUSL MEGA MILLIONS GAME® board and will be offered in conjunction with existing rules and regulations pertaining to the MEGA MILLIONS game

RULE 15 REPEALED [Eff. 04/30/2009]

RULE 16 REPEALED [Eff. 04/30/2009]

Editor's Notes

History

Rule 6.UF eff. 04/30/2007; Rules 6.NU, 6.PB, 6.PC, 6.QM, 6.QU, 6.QX, 6.QY, 6.RA, 6.RD, 6.RF, 6.RG, 6.RK repealed eff. 4/30/2007.

Rule 12 emer. rule eff. 05/09/2007.

Rule 6.UG eff. 05/30/2007; Rules 6.RN, 6.RP, 6.RS, 6.RT, 6.RV, 6.SE, 6.SI repealed eff. 05/30/2007.

Rules 6.UH, 6.UI, 6.UJ, 6.UK, 6.UL eff. 07/01/2007.

Rules 2, 6.UM, 6.UN; 12 eff. 07/30/2007.

Rules 6.UO; 6.UP; 6.UQ; 6.UR; 6.US; 6.UT eff. 08/30/2007.

Rule 6.UY emer. rule eff. 08/31/2007.

Rules 6.UU; 6.UV; 6.UW; 6.UX; 6.UY; 6.UZ eff. 09/30/2007.

Rules 6.VA, 6.VB eff. 10/30/2007.

Rules 6.UY, 6.VC, 6.VD, 6.VE eff. 11/30/2007.

Rules 6.VF - 6.VK eff. 12/30/2007.

Rules 6.VL, 6.VM, 6.VN, 6.VO eff. 01/30/2008; Rules 6.QH, 6.QN, 6.RQ, 6.RU, 6.SD, 6.SF, 6.SH, 6.SN, 6.SS, 6.SU, 6.TM, 6.TO repealed eff. 01/30/2008.

Rule 6.VP eff. 03/01/2008.

Rules 6.VQ, 6.VR, 6.VS, 6.VT eff. 03/30/2008.

Rule 6.VY emer. rule eff. 04/16/2008.

Rules 6.VU, 6.VV eff. 04/30/2008.

Rules 6.VF, 6.VZ emer. rule eff. 05/14/2008.

Rules 6.SP, 6.VW, 6.VX, 6.VY eff. 05/30/2008; Rules 6.PG, 6.PZ, 6.RJ, 6.RX, 6.SC, 6.SJ, 6.SK, 6.SL, 6.SM, 6.SQ, 6.SR, 6.TA, 6.TB, 6.TE repealed eff. 05/30/2008.

Rule 6.VZ eff. 06/30/2008; Rules 6.ST, 6.SV, 6.SZ, 6.TC, 6.TD, 6.TF, 6.TI, 6.TK, 6.TU, 6.TV, 6.UC, 6.UG repealed eff. 06/30/2008.

Rules 6.VF, 6.WA, 6.WB, 6.WC, 6.WD, 6.WE, 6.WF, 6.WG eff. 07/30/2008.

Rules 6.WH, 6.WI, 6.WJ, 6.WK, 6.WL eff. 08/30/2008.

Rules 2, 4, 6.WM, 6.WN, 6.WO, 6.WP, eff. 09/30/2008; Rules 2A, 9 repealed eff. 09/30/2008.

Rules 6.WQ - 6.WZ eff. 10/30/2008.

Rules 5; 6.XA; 6.XB; 6.XC; 6.XD; 6.XE; 6.XF; 14.A, 14.B eff. 11/30/2008.

Rules 6.XG - 6.XL eff. 12/30/2008; Rules 6.RL, 6.TS, 6.UF, 6.UL, 6.UN repealed eff. 12/30/2008.

Rules 6.XM, 6.XN, 6.XO, 6.XP, 6.XQ, 14 eff. 01/30/2009; Rules 6.SX, 6.UA, 6.UD, 6.UH, 6.UI, 6.UJ, 6.UK, 6.UU, 6.UV, 6.UW, 6.UY repealed eff. 01/30/2009.

Rules 6.XR, 6.XS, 6.XT, 6.XU eff. 03/02/2009.

Rules 6.XV, 6.XW, 6.XX, 6.XY eff. 03/30/2009.

Rules 10.A, 10.B eff. 04/30/2009; Rules 15, 16 repealed eff. 04/30/2009.

Rules 6.XZ, 6.YA, 6.YB, 6.YC eff. 05/30/2009.

Rules 6.YD, 6.YE, 6.YF eff. 06/30/2009. Rules 6.RB, 6.SG, 6.TG, 6.TJ, 6.TL, 6.TN, 6.TP, 6.TQ, 6.TX, 6.TY, 6.UO, 6.UP, 6.VH, 6.VL, 6.VV repealed eff. 06/30/2009.

Rules 5, 6.YH, 6.YI, 6.YJ, 6.YK, 6.YL, 6.YM, 6.YN; 14; Rules 6.SO, 6.TZ, 6.VA, 6.VU repeal eff. 07/30/2009.

Rule 10.F eff. 09/30/2009; Rules 6.RI, 6.RW, 6.SP, 6.VB, 6.VY repealed eff. 09/30/2009.

Rule 6.WV emer. rule eff. 10/14/2009; expired eff. 01/14/2010.

Rules 6.WR, 6.XT repealed eff. 10/30/2009.

Rules 6.VK, 6.VO, 6.VR, 6.VZ, 6.WI repealed eff. 10/31/2009.

Rule 10 eff. 11/30/2009; Rules 6.TT, 6.UR, 6.UZ, 6.VQ, 6.VW, 6.WA, 6.WB, 6.WG, 6.WG, 6.WH repealed eff. 11/30/2009.

Rules 5, 10 eff. 01/30/2010; Rule 6.WN repealed eff. 01/30/2010.

Rules 1, 6.WV, eff. 02/03/2010; Rules 6.VX, 6.WU repealed eff. 02/03/2010.

Rules 14.C, 14.D emer. rule eff. 02/10/2010.

Rules 6VI, 6VT, 6WL, 6WS, 6XB, 6XK repealed eff. 03/30/2010.

Rules 14.C, 14.D eff. 04/30/2010.

Rule 10.E eff. 05/30/2010.

Repealed Rules 6.VD, 6.VF, 6.WC, 6.WD, 6.WF, 6.WT, 6.WX, 6.XA, 6.XD, 6.XL eff. 05/30/2010.

Rule 10.F eff. 06/30/2010.

Rule 5 emer. rule eff. 07/14/2010.

Rule 6.XQ repealed eff. 07/30/2010.

Rule 14.B emer. rule eff. 08/18/2010.

Rules 10, 10.A, 10.D, 10.E, 10.F, 14, 14.A, 14.B, 14.C, 14.D; eff. 08/30/2010. Repealed Rule 6.XW eff. 08/30/2010.

Rule 14.C emer. rule eff. 08/31/2010.

Rule 14.D emer. rule eff. 09/14/2010.

Rules 6.VS, 6.WY, 6.XM, 6.YA Repealed eff. 09/30/2010.

Rule 14.D emer. rule eff. 10/13/2010; per the agency, this emergency rulemaking (Adopted 10/13/2010) superseded the permanent rulemaking for Rule 14.D (Adopted 09/08/2010) before it became effective 10/30/2010.

Rules 5, 14.C eff. 10/30/2010; Repealed Rules 6.WO, 6.XE, 6.YM eff. 10/30/2010.

Rules 10.F, 14.C emer. rule eff. 11/10/2010.

Rule 14.B eff. 11/30/2010; Repealed rules 6.VJ, 6.WK, 6.XC, 6.XR, 6.XY, 6.YC, 6.YL eff.. 11/30/2010.

Repealed rules 6.XG, 6.YK eff. 12/30/2010.

Rules 14.C, 14.D eff. 01/30/2011.

Rule 10.G emer. rule eff. 02/09/2011.

Rule 10.F eff. 03/02/2011; Rules 6.TR, 6.WP, 6.WQ, 6.WV, 6.WW, 6.XJ, 6.XO, 6.YB, 6.YJ repealed eff. 03/02/2011.

Repealed rules 6.WZ, 6.XH eff. 04/30/2011.

Rule 10.G; Repealed rules 6.WM, 6.XZ, 6.YD, 6.YH eff. 05/30/2011.

Repealed rules 6.XI, 6.XN, 6.XS, 6.YN eff. 07/30/2011.

Rules 14.A, 14.B eff. 09/30/2011.

Repealed rules 6.EU, 6.YE, eff. 11/14/2011.

Repealed rules 6.XF, 6.XX, eff. 11/30/2011.

Rule 10 eff. 12/30/2011.

Rule 10.E.5 eff. 01/30/2012; rule 10.F repealed eff. 01/30/2012.

Rules 6.UB, 6.VN, 6.VP, 6.WE, 6.XP, 6.XV, 6.YF, 6.YI repealed eff. 06/30/2012.

Rules 12, 13 repealed eff. 07/30/2012.

Rule 10.G repealed eff. 08/30/2012.

Rule 4 eff. 08/30/2012.

Rule 10.F eff. 09/30/2012.

Rule 10.B eff. 12/30/2012.

Rules 10.A, 10.D eff. 06/30/2013; rule 10.E repealed eff. 06/30/2013.

Rules 14.C – 14.D eff. 07/30/2013.

Rules 1, 10.A eff. 10/30/2013; rule 11 repealed eff. 10/30/2013.

Rules 10.B, 14.B eff. 12/30/2013.

Rule 10.F repealed eff. 01/30/2014.

Annotations

Rule 12.2 (adopted 06/13/2007) was not extended by Senate Bill 08-075 and therefore expired 05/15/2008.

Notice of Rulemaking Hearing

Tracking number

2014-01093

Department

200 - Department of Revenue

Agency

207 - Division of Gaming - Rules promulgated by Gaming Commission

CCR number

1 CCR 207-1

Rule title

GAMING REGULATIONS

Rulemaking Hearing

Date

11/20/2014

Time

09:30 AM

Location

17301 W Colfax Ave., Suite 135, Golden, CO 80401

Subjects and issues involved

Amendments to Rules 1, 2, and 3 for the purpose of correction, and clarification as a result of required rule review, and amendments to Rules 8, 10, 21, and 22, to update several game rules and to promulgate rules for new games of black jack, poker, and roulette.

Statutory authority

Sections 12-47.1-102, 12-47.1-103, 12-47.1-104, 12-47.1-201, 12-47.1-203, 12-47.1-301, 12-47.1-302, 12-47.1-501, 12-47.1-503, 12-47.1-508 C.R.S.

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Note to publisher: Proposed changes have been highlighted in yellow to make them easier to identify. The highlighting is not intended to appear in the final permanent rules.

BASIS AND PURPOSE FOR RULE 1

The purpose of Rule 1 is to present definitions of various terms used throughout the rules of the Colorado Limited Gaming Control Commission so that the rules can be uniformly applied and understood. The statutory basis for Rule 1 is found in sections 12-47.1-102 C.R.S., 12-47.1-103, C.R.S., 12-47.1-104, C.R.S., 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., and 12-47.1-302, C.R.S. *Amended 2/14/14*

RULE 1 GENERAL RULES AND REGULATIONS

47.1-101 Purpose and ~~S~~statutory ~~A~~Authority.

These Rules and Regulations are adopted by the Colorado Limited Gaming Control Commission governing the establishment and operation of limited gaming in Colorado pursuant to the authority provided by article 47.1, title 12, C.R.S. The Commission will, from time to time, promulgate, amend and repeal such regulations, consistent with the policy, objects and purposes of the Colorado Limited Gaming Act, as it may deem necessary or desirable in carrying out the policy an~~Big Raidd~~ provisions of that Act.

47.1-105 Unauthorized ~~G~~Gambling.

47.1-106 Definitions.

(1) "Agent or Employee of the Commission" shall include all employees of the Division~~:~~;.

(2) "Association" means two or more persons united and acting together without a corporate charter~~:~~;.

(3) "Background investigation" means the ~~security~~ PERSONAL HISTORY, CHARACTER, REPUTATION, ASSOCIATIONS, RECORD, criminal history, and financial check of an applicant for a license to establish the suitability of such applicant to become a licensee~~:~~;.

(4) "Building" means a common structure that is built or constructed or any piece of constructed work artificially built up or composed of parts joined together in some definite manner~~:~~;.

(5) ~~"Burn" means the dealer's act of removing the first card after the shuffle and placing it in the discards; also, the act of placing an active card in the discards;~~

(6) "Chip" means a nonmetal or partly metal representative of value issued and/or sold by a licensee for use at gaming. *Amended 11/30/2012*

(a~~.~~) Cashable chips are issued and/or sold by the licensee for gaming and are redeemable for cash.

(b~~.~~) Non-cashable chips are issued by the licensee for gaming and are not redeemable for cash.

(7) "Convicted of a Crime" shall include any ultimate finding of fact in a criminal proceeding that an individual is guilty of a crime, whether the judgment rests on a verdict of guilty, a plea of guilty, or of nolo contendere, and irrespective of whether entry of judgment or imposition of sentence is suspended or deferred by the court~~:~~;.

(8) "Costs" means sums of money to be paid to the Commission~~for testing of slot machines, devices, and equipment;~~.

(8.5)

(a) "Credit" means allowing any person any length of time in which to make payment or otherwise honor a financial obligation, whether express or implied ~~in any particular~~ and includes lending of cash or cash equivalent.

(c) "Credit" does not include:

~~(1.I)~~ Ttransactions in the ordinary course of business which are both disclosed to the Division and approved by the Commission as authorized interests, pursuant to sections 12-47.1-808, 835, C.R.S, or regulations 47.1-308, 309, 310, 405, 420;

~~(2.II)~~ Llawful transactions in the ordinary course of business in which licensees share resources with each other for business purposes and in which licensees have no ability to attempt to exert control over the affairs of other licensees; and

~~(3.III)~~ Pre-paid magnetized strip cards used in lieu of cash, chips, or tokens.

(9) "Drop" means the total amount of money, chips, tickets, coupons, Mobile ATM Receipts and tokens removed from the drop boxes~~;~~. *Amended 7/1/13*

(10) "Drop box" means a locked container permanently marked with the game and a number corresponding to a permanent number on the table for blackjack, poker, craps, and roulette tables. For slot machines, a container in a locked portion of the machine or its cabinet used to collect the money and tokens retained by the machine that is not used to make automatic payouts from the machine~~;~~.

(11) "Financial institution" means a bank, savings and loan association, credit union, trust company, or other similar entity chartered by the United States, a state, or a territory or commonwealth of the United States~~;~~.

(12) [FREE PLAY - Repealed eff. 05/15/2014]

(13) "Gaming contract" means an agreement in which a person does business with or on the premises of an entity licensed under article 47.1 of title 12, C.R.S.~~;~~.

(13.5) "Gaming device" or "gaming equipment" includes, in addition to the definition set forth in section 12-47.1-103(10), C.R.S., any progressive system, slot monitoring or control system, ticket redemption kiosk, or cashless system, and also includes any "physical or electronic versions," pursuant to section 12-47.1-103(10), (19), C.R.S., to the extent such physical or electronic versions function in the manner of: *Eff 04/30/2007, Amended 2/14/14*

(a) Sslot machines;

(b) Tthe games of blackjack, craps, poker, or roulette as defined in section 12-47.1-103(4), (5.7), (22), (25.5), (26), C.R.S.;

(c) Ttables used for blackjack, craps, poker, and roulette;

(d) Ceards used to play blackjack or poker; or

(e) Ddice used to play craps.

(14) "Gaming employee" means, in addition to the definition set forth in section 12-47.1-103(11)~~;~~.

(15) "Imprest bank" means a predetermined dollar amount of chips, tokens, or cash kept by the licensee;

(16) "Jackpot verification mode" means the period of time between the progressive jackpot activation of a progressive slot machine and the resetting of the device which caused its activation;

(17) "Lammer" or "lammer button" means a chip-like implement with a numeral;

(19) "Link" means one or more progressive slot machines that are connected to a progressive controller and that may be played in order to achieve the stated progressive amount;

(20) "Matched play" means the use of a coupon at table games that is issued to a patron by an establishment for play that must be accompanied by a bet; *Eff 11/30/2006*

(21) "Moral turpitude" means an act done contrary to honesty and good morals; it is an act of baseness, vileness, or depravity in the private and social duties which a person owes to a fellowperson or to society in general;

(22) "Normal mode" means the mode of a progressive slot machine at all times other than when it is in the jackpot verification mode;

(22.2) "Physical skill" means an individual's physical coordination, agility, or nimbleness, or lack thereof; *Eff 11/30/2007*

(24) "Proposition player" means a person in a poker game paid a fixed sum by the licensee for the specific purpose of playing in a card game, who uses personal funds and who retains the winnings and absorbs the losses;

(24.7) "Slot Coupon" means an encoded credit certificate which, when inserted into a slot machine, is validated by a computerized system which causes redeemable credits on the face amount to be placed on the machine. A slot coupon has no value unless inserted into a slot machine or redeemed by the casino in another approved manner;

(26) "Substantial interest" means the lesser of: as large an interest in a corporation, partnership, or association as that of any other shareholder, partner, or principal; or any financial or equity interest equal to or greater than ~~5%~~FIVE PERCENT.~~;~~

(27) "Support licensee" means a gaming employee licensed by the Commission, but does not include licensed key employees;

(27.3) "Ticket" means an encoded credit ticket produced by a slot machine ticket printer system when cashing out redeemable credits; (47.1-106(8.3) added perm. 10/30/99)

(30) "Wireless" means a wireless handheld validation unit used with a supporting Wireless Local Area Network (WLAN) as part of an approved ~~automated slot monitoring~~GAMING system.

BASIS AND PURPOSE FOR RULE 2

The purpose of Rule 2 is to delegate certain authority to the Director or other Division agent; provide for the review of any action taken pursuant to such authority; provide for the reference by the Director of matters delegated to the Director back to the Commission; and to establish procedures for Commission actions and hearings. Rule 2 also empowers the Commission to contract for legal counsel, and directs the Licensee to obtain moneys owed to a deceased patron and properly distribute such moneys. The statutory basis for Rule 2 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-301,

C.R.S., 12-47.1-302, C.R.S., 12-47.1-501, C.R.S., 12-47.1-503, C.R.S., 12-47.1-508, C.R.S., 12-47.1-1103, C.R.S., and 24-4-105, C.R.S.

RULE 2 ~~COLORADO GAMING REGULATIONS~~ POWERS AND DUTIES OF COMMISSION AND DIRECTOR

47.1-201 Commission action.

In addition to meeting in person, the Commission may take action by ~~a~~ telephone OR VIDEO CONFERENCING~~conference call~~. If ~~a~~ telephone OR VIDEO CONFERENCING~~conference call~~ is used, the Director must participate in the MEETING~~call~~ and take minutes of the Commission's action. ~~A conference~~ TELEPHONE OR VIDEO CONFERENCING~~call~~ is a meeting of the Commission.

47.1-205 Right of reference.

The Director, with approval of the Commission, may refer any matters delegated to the Director back to the Commission for its decision.

47.1-207 Authority of Director.

(4) The director may approve the suitability of officers and directors of a licensee, without necessity for commission approval, provided such officers or directors have less than ~~5%~~FIVE PERCENT ownership equity in the licensee.

(6) The director may approve ownership changes in a licensee, without necessity for commission approval, when:

(b) When no person will attain a total effective ownership equity of ~~5%~~FIVE PERCENT or greater, when such person previously held less than ~~5%~~FIVE PERCENT equity.

(8) THE DIRECTOR MAY AUTHORIZE A RETAIL GAMING LICENSE APPLICANT TO OWN, POSSESS, OR OWN AND POSSESS SLOT MACHINES IN THIS STATE BEFORE OBTAINING A RETAIL GAMING LICENSE. IN ORDER FOR A RETAIL APPLICANT TO OWN, POSSESS, OR OWN AND POSSESS SLOT MACHINES BEFORE LICENSURE, THE FOLLOWING CONDITIONS MUST BE MET:

(A) THE RETAIL GAMING LICENSE APPLICANT WILL SUBMIT A REQUEST TO OWN, POSSESS, OR OWN AND POSSESS SLOT MACHINES TO THE DIRECTOR; AND

(B) THE DIRECTOR DETERMINES IF SIGNIFICANT PROGRESS HAS BEEN MADE IN THE BACKGROUND INVESTIGATION, AND IS SATISFIED THAT THE INVESTIGATION OF THE APPLICANT CONDUCTED THUS FAR, AND THE APPLICATION IN ITS ENTIRETY, INDICATE THAT THE APPLICANT AND ITS GAMING BUSINESS: MEET ALL THE REQUIREMENTS OF ARTICLE 47.1 OF TITLE 12, C.R.S.; DO NOT PRESENT ANY DANGER TO THE PUBLIC OR TO THE REPUTATION OF LIMITED GAMING IN THIS STATE; AND THAT FURTHER INVESTIGATION MOST LIKELY WILL NOT UNCOVER ANY DEROGATORY INFORMATION ABOUT THE APPLICANT; AND

(C) ALL OTHER REQUIREMENTS TO POSSESS SLOT MACHINES HAVE BEEN MET.

47.1-210 Enforcement powers.

(3) At any time when business is being conducted, inspect, examine and photocopy, or remove and impound all ~~papers, books, and~~ records of applicants and licensees;

(4) Investigate the conduct of all licensees, their employees, and other persons having any involvement with a licensee or licensed establishment, to assist in the enforcement of article 47.1

of title 12, C.R.S., and to ~~i~~Ensure that there is no involvement in or with a licensee or a licensed establishment by unqualified or unsuitable persons.

47.1-211 Filing or ~~N~~Notice.

47.1-214 Death of a gaming patron.

All coins, chips, tokens, gaming coupons, or tickets in the possession of a gaming patron who dies before such coins, chips, tokens, gaming coupons, or tickets are surrendered by such patron, shall be paid by the licensee by check drawn upon a bank, or ANY other financial institution ~~in Colorado~~, chartered by the State of Colorado ~~or any other state or the United States Government~~, to the estate of the deceased patron unless the ~~L~~Licensee is directed otherwise pursuant to an appropriate judicial order.

BASIS AND PURPOSE FOR RULE 3

The purpose of Rule 3 is to establish and provide the specific information required on license applications; to establish yearly license fees for each type of license; to establish nonrefundable application fees; to establish investigation fees for certain applicants and deposit procedures for investigation fees; to establish procedures for conducting background checks on applicants and other interested persons and assessing the costs of such background checks; to require certain information regarding the premises the applicant wishes to be licensed, and to provide a procedure for approval of modifications of such premises; and to provide for the issuance of conditional, temporary, and duplicate licenses. The statutory basis for Rule 3 is found in sections 12-47.1-102 C.R.S., 12-47.1-103, C.R.S., 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., and part 5 of article 47.1 of title 12, C.R.S.

RULE 3 APPLICATIONS, INVESTIGATIONS AND LICENSURE

47.1-301 Qualifications for licensure.

(4) Comply with all specific laws, rules and regulations regulating limited gaming in Colorado, AND ANY OTHER REGULATORY OR TAXING AUTHORITY.

47.1-302 Applications.

(2) Renewal applications for manufacturer-distributor, associated equipment supplier, operator, and retail license must be received by the Division 120 days before the expiration of the current license. Renewal applications for support employee and key employee licenses must be received by the Division 30 days before the expiration of the current license. Renewal applicants who fail to submit their completed applications when due shall not be considered to have made a timely and sufficient application for renewal, as such term is used in 24-4-104(7) C.R.S. (47.1-302(2) Perm. 10/30/96~~.~~) *Amended 2/14/14*

47.1-303 License ~~F~~Fees.

47.1-305 Investigation fees.

(2) Before any such investigations are conducted, each applicant shall pay a deposit by check made out to the Colorado Division of Gaming to the gaming fund as follows: *Eff 04/01/2007*

(a) For each Type 1 original applicant, the deposit shall be $5,000.00. For purposes of the deposit requirement, a Type 1 Applicant consists of either a single person, or an organization where the total number of all officers, directors, general partners, and ~~5%~~FIVE PERCENT or more stockholders or equity owners totals 6 or less. In addition, all the aforementioned persons must reside in Colorado. *Eff 04/01/2007*

(c) For each person who applies for a key employee license, and who is not an officer, director, general partner or ~~5%~~FIVE PERCENT equity owner of an applicant, the deposit shall be $1,000.00. *Eff 04/01/2007*

(d) For each officer, director, general partner or ~~5%~~FIVE PERCENT equity owner of an applicant who applies for suitability separate from the original application or a change of ownership application, the deposit shall be $1,000.00. *Eff 04/01/2007*

(e) For each change of ownership application involving more than an aggregate ~~5%~~FIVE PERCENT effective ownership change, the deposit shall be $2,500.00. (47.1-305 amended perm. 10/30/99) *Eff 04/01/2007*

(F) FOR EACH VARIATION GAME APPLICANT AND TABLE GAME WITH ELECTRONIC BETTING TERMINAL (EBT) APPLICANT, THE DEPOSIT SHALL BE $2000.00. THE DIRECTOR MAY WAIVE THE BACKGROUND INVESTIGATION AND ACCOMPANYING DEPOSIT FOR AN APPLICANT WHO HAS ALREADY BEEN FOUND SUITABLE BY THE COMMISSION OR BY THE DIVISION.

(6) No license, FINDING OF SUITABILITY , OR OTHER APPROVALS SOUGHT, shall be issued until payment for the full amount of any negative deposit balance has been received from the applicant. *Eff 04/01/2007*

47.1-305.5 Table ~~G~~Game ~~R~~Review ~~F~~Fees

Note to publisher: The following paragraphs are being relocated to 47.1-325 and renumbered as follows:

(1) Persons ~~seeking~~REQUESTING approval of variation games of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with ~~electronic betting terminals~~EBTS, shall pay a fee of $2,000.00 for costs of inspection, examination, and evaluation of the game and for drafting regulations and ~~i~~internal C~~c~~ontrol M~~m~~inimum P~~p~~rocedures governing play and control of such game. *Amended 3/16/2012*

(~~2~~4) The Director may authorize a brief review of each application for approval of a variation game of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with ~~electronic betting terminals~~EBTS to be conducted, at no cost to the applicant, to determine whether or not it is likely that the proposed game could lawfully be played in this state. After such determination has been made, the applicant shall be advised of the finding, which shall not be binding on the Director or the Commission. The applicant shall then be required to submit the required fee to the Division before the Division conducts any further review of the application. *Amended 11/30/2012*

(~~3~~2) ~~If the Director determines that it is necessary to~~THE DIVISION WILL conduct an investigation into the background and suitability of a person seeking approval of a variation game of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with ~~electronic betting terminals~~EBTS~~,~~. S~~s~~uch person shall be required to pay the fees specified by Rule 47.1-305.

(A) THE DIRECTOR MAY REQUIRE A PERIODIC RE-INVESTIGATION.

(B) None of these games shall be approved until payment for the full amount of any negative deposit balance has been received from the person seeking approval of the variation game. (47.1-305.5 perm 10/30/97) *Amended 11/30/2012*

(PARAGRAPHS 47.1-305.5 (1), (2), AND (3) RELOCATED TO 47.1-325 AND RENUMBERED TO PARAGRAPHS (1), (2), AND (4).)

47.1-306 Background checks.

Applicants for licenses, FINDING OF SUITABILITY , OR OTHER APPROVALS SOUGHT, shall provide all information requested by their application forms and all other information which the Division may deem necessary. The Division shall examine the backgrounds, personal history, financial associations, character, record, and reputation of applicants, and persons associated with applicants, to the extent the Division in its discretion determines is necessary to evaluate the qualifications and suitability of applicants for licensure.

47.1-307 Waiver of privilege.

An applicant may claim any privilege afforded by the Constitution of the United States, or of the State of Colorado in refusing to answer questions by the Division and the Commission. However, a claim of privilege with respect to any testimony or evidence pertaining to an application may constitute sufficient grounds for denial OF AN APPLICATION OR REVOCATION OF A LICENSE.

47.1-309 Property report.

(2) The applicant or licensee shall report to the Division or Commission all leases to which it is a party not later than 30 days after the effective date of the lease and shall include the following information:

(a) The name, address, and a brief statement of the nature of the business of the lessor.;

(b) A brief description of the material terms of the lease.;

(c) A brief description of any business relationships between the operating licensee and the lessor other than by the lease.; AND

47.1-313 Licensed Ppremises - Llocation.

(2) Each application shall include a diagram, outlined in red, of the proposed licensed premises on each floor within the building. No limited gaming shall be conducted or permitted outside of the licensed premises. All persons participating in limited gaming must stand or sit within the licensed premises; and no licensee shall permit any person to conduct or participate in limited gaming who is not within the licensed premises. All slot machines, poker tables, blackjack tables, craps tables and roulette tables offered for use by the public, and all dealers and patrons playing such devices, must be located within the licensed premises. The total square footage comprising the licensed premises:

(a) Sshall not exceed 35% PERCENT of the total square footage of the building as determined in subparagraph (1) above; and

(b) Sshall not exceed 50% PERCENT of the square footage of any one floor; and

(c) Aall square footage utilized in the computation of these percentages must be confined to the commercial districts of Central City, Black Hawk or Cripple Creek as defined in Article XVIII, Section 9 (3)(a) of the Colorado Constitution.

47.1-314 Licensed Ppremises - Ssafety Rrequirements.

47.1-316 Notice of ~~hearing~~MEETING.

Notice ~~by letter~~ will be given by the Division to all applicants for slot machine manufacturer or distributor licenses, associated equipment supplier licenses, operator licenses, or retail gaming licenses of the time and place when their applications for gaming licenses will come before the Commission for consideration. Such applicants may attend the meetings of the Commission. The Commission will notify each applicant of the disposition of the application. (47.1-316 temp. 9/30/91, perm. 11/30/91) *Amended 2/14/14*

47.1-318 Licenses ~~P~~Premises-~~M~~Modification.

47.1-325 ~~Approval and field trial of~~ VARIATION games of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with electronic betting terminals. *Amended 3/16/2012*

Note to publisher: Paragraph 47.1-305.5 (1) will be relocated here to become paragraph 47.1-325 (1).

Note to publisher: Paragraph 47.1-305.5 (3) will be relocated here to become paragraph 47.1-325 (2) with subparagraphs (a) and (b).

~~(~~3~~)~~ Requests for approval of new variation games of poker, blackjack, craps, roulette, blackjack-poker combination games and table games with ~~electronic betting terminals (~~EBTs~~)~~ shall be made on such forms and processed in such manner as the Director shall prescribe. *Amended 3/16/2012*

~~(~~1~~)~~ The application must be in writing and must include, in addition to such other information as the Director may require:

Note to publisher: Paragraph 47.1-305.5 (2) will be relocated here to become paragraph 47.1-325 (4).

(~~2~~5) The Director may approve temporary rules of play and a temporary formula for calculation of adjusted gross proceeds received from the game, and may authorize the proposed game to be field tested by at least one retail licensee. (amended perm. 04/30/04)

(~~3~~6) The test period for new variation games shall not exceed 180 days, from the date offered for public play, during which time the Director or designee may amend the rules of play and may make minor modifications to the trial game. The Director may order termination of the test period at any time prior to the end of 180 days if, in the Director's or designee's discretion, the Director or designee determines: *Amended 11/30/2012*

(~~3.5~~6.5) EBTs, when utilized with approved games, are deemed in a field trial status for 90 days from the date offered for public play. Unless the Director or designee terminates the field trial of such equipment for cause, authorization and approval for use of EBTs shall become effective at the conclusion of field trial. The Division shall determine field trial testing criteria specific to various EBTs or equipment. Where applicable, Colorado Gaming Regulations 47.1-1202 and 47.1-1203 shall apply to EBTs. *Eff/ 3/16/2012, Amended 11/30/2012*

(~~4~~7) Retail licensees offering a proposed game during a test period shall be responsible for calculation of adjusted gross proceeds from the game, and shall include such adjusted gross proceeds in their calculation of gaming tax liability.

(~~5~~8)

(b) In the event the applicant disagrees with any determination of the Director pursuant to this paragraph (~~5~~8), the applicant may petition for review before the Commission pursuant to Rule 47.1-208.

(~~6~~9) While a new variation game is in field trial testing, the Division's table games committee shall make a preliminary determination as to the legality of the game, no later than 90 days from when the game is offered for public play. If in the Division's determination the game is lawful, the Division will notice and post rules for a rule making hearing. Any licensee, who agreed to field trial the game, may retain and play the game throughout the rule making hearing and final approval process, not to exceed 180 days. When rules are approved by the Commission and become

effective, only then shall the game become available to all retail licensees to pursue acquisition of rights to offer the game. *Eff. 3/16/2012, Amended 11/30/2012*

~~(7)~~

~~(a) Persons requesting approval of new games shall be required to pay the costs of inspection, examination, and evaluation of the games and for drafting regulations and internal control minimum procedures governing play and control of such games. The fee shall be in an amount specified in Rule 47.1-305.5. Such fee shall be paid, in advance, before the Division begins its formal review process.~~

~~(b) If the Director determines that it is necessary to conduct a background investigation to determine the suitability of the applicant or of any of the persons named in paragraph (1)(b), the applicant shall be required to pay the costs of such investigation and shall make an additional deposit in the amount required by Rule 47.1-305.~~

~~(c) If, at the time of acceptance of the application, the Director elects not to require a background investigation of the applicant or of any of the persons named in paragraph (1)(b), the Director may at any later date require that such an investigation be conducted. The Director may require a periodic re-investigation, but no more often than once each year, except for good cause shown.~~

(8<u>10</u>) If the proposed game is in the public domain, the Director may waive the requirements of paragraphs (1) and (~~7~~<u>9</u>) above, either in whole or in part. (47.1-325 perm. 10/30/97, amended perm. 4/30/04)

BASIS AND PURPOSE FOR RULE 8

The purpose of Rule 8 is to establish playing rules for blackjack and procedures for conducting blackjack games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 8 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., 12-47.1-816, C.R.S., and 12-47.1-818, C.R.S.

RULE 8 RULES OF BLACKJACK

47.1-834.11 The ~~P~~<u>p</u>lay – Royal Match 21.

Royal Match 21 is a copyrighted and trademarked blackjack variation game the rights to which are owned by ~~SHFL entertainment~~<u>Bally Technologies</u> of Las Vegas, Nevada and which may be transferred or assigned.

Royal Match 21 is an optional bonus bet for blackjack that considers the first two cards a player receives. If the player's first two cards are suited or a suited Royal Match (King-Queen suited), the player wins. This optional bet also includes a Crown Treasure bonus payout. If the player places a Royal Match bet and both the player and the dealer have a Royal Match, then the player wins a Crown Treasure bonus payout in addition to the Royal Match payout. Operators can also offer the optional Royal Match 21 Progressive wager. Unlike most ~~SHFL entertainment~~<u>Bally Technologies</u> progressives, Royal Match 21 Progressive offers some progressive pay tables with odds pay for the progressive wager amount PLUS a possible progressive meter pay (see below approved pay tables). Royal Match 21 uses a standard 52-card deck. Follow standard house procedures for the total number of decks to be used. Royal Match 21 must be played according to the following rules:

47.1-834.13 The ~~P~~<u>p</u>lay – Bet the Set 21 and Progressive<u>.</u>

Bet the Set 21 and Bet the Set 21 Progressive are copyrighted and patent-protected blackjack variation games, the rights to which ~~on August 22, 2013 were~~are owned by ~~SHFL entertainment~~Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Bet the Set 21 and Bet the Set 21 Progressive must be played according to the following rules:

47.1-834.14 The ~~P~~play – Hit and Run. ***Eff 4/14/2014***

Hit and Run is a copyrighted and patent-protected blackjack variation game, the rights to which are owned by ~~SHFL entertainment~~Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Hit and Run Blackjack must be played according to the following rules:

47.1-834.17 The play – War Blackjack.

War Blackjack is a trademarked and patent-pending blackjack variation game, the rights to which to distribute are owned by Aces Up Gaming, Inc. of Wheat Ridge, Colorado and which may be transferred or assigned. War Blackjack shall be dealt and played following the standard rules of blackjack, except as follows:

(1) War Blackjack is an optional wager for blackjack.

(2) War Blackjack must be played only on tables displaying the War Blackjack styled table layout. The game shall be played using six or more decks of standard 52 playing cards and is dealt from a dealing shoe.

(3) At the same time a player makes his/her standard blackjack wager, the player has an opportunity to make an additional optional wager in an even dollar amount, known as the War Blackjack bet. All bets will be in an amount between the table minimum and the table maximum, as posted at the table, up to the $100 maximum wager limit determined by the house and in accordance with applicable law.

(4) At the discretion of the retail licensee, players may also place dealer tip bets on their blackjack and/or War Blackjack bets by placing the dealer tip bets in front of their blackjack and/or War Blackjack bets. If such tip bets are accepted, winning tip bets must be paid at the same odds as the player's winning bets. The retail licensee may require tip bets to be in an even dollar amount, and may limit the maximum amount of such tip bets.

(5) Card values are as follows: Aces are either 1 or 11; cards from 2 through 9 are counted at the respective face value; the 10, Jack, Queen, and King are each valued at 10. However, in the play of the War Blackjack hand, an Ace is counted as a 1 only.

(6) After all bets have been placed, the dealer will deal each player one (1) card face up, beginning with the player on the dealer's left and lastly one (1) card face up to the dealer. This card will act as the card for the player's War Blackjack hand and will also count as the first card for the player's blackjack hand.

(7) A player who has placed the War Blackjack bet will win if his/her card is of a higher value. A winning War Blackjack wager pays 1 to 1.

(8) Players that have won their War Blackjack wager will be given the following options:

(a) Player may collect his/her winnings;

(b) Player may collect the amount he/she wagered and choose to have dealer place the amount won on top of his/her pending blackjack bet; and

(c) Players may only have the dealer place that amount won on their Blackjack bet that brings the total amount of his/her pending Blackjack bet to the table maximum, as posted at the table, up to the $100 maximum wager limit determined by the house and in accordance with applicable law.

(9) Once all War Blackjack bets have been settled, the dealer will deal a second card to each player and finally one card face down for the dealer. At the discretion of the licensee, this second card to each player may be dealt either face up or face down. The dealer will then complete the game by following house procedures for dealing Blackjack.

47.1-834.18 The play – Lucky Lucky.

Lucky Lucky is a trademarked and patent-pending blackjack variation game, the rights to which to distribute are owned by Aces Up Gaming, Inc. of Wheat Ridge, Colorado and which may be transferred or assigned. Lucky Lucky shall be dealt and played following the standard rules of Blackjack, except as follows:

(1) Lucky Lucky is an optional wager for Blackjack.

(2) Lucky Lucky must be played only on tables displaying the Lucky Lucky styled table layout. At the discretion of the retail licensee, the game shall be played using one to eight decks of standard 52 playing cards.

(3) At the same time a player makes his/her standard Blackjack wager, the player has an opportunity to make an additional optional wager in an even dollar amount, known as the Lucky Lucky bet. All bets will be in an amount between the table minimum and the table maximum, as posted at the table, up to the $100 maximum wager limit determined by the house and in accordance with applicable law.

(4) At the discretion of the retail licensee, players may also place dealer tip bets on their Blackjack and/or Lucky Lucky bets by placing the dealer tip bets in front of their Blackjack and/or Lucky Lucky bets. If such tip bets are accepted, winning tip bets must be paid at the same odds as the player's winning bets. The retail licensee may require tip bets to be in an even dollar amount, and may limit the maximum amount of such tip bets.

(5) The dealer will follow standard house procedures for dealing Blackjack.

(6) After each player has received two cards, the dealer settles the Lucky Lucky bet. The combination of the player's two cards and the dealer's up card will determine whether the player has won this bet. Winning Lucky Lucky bets will be paid according to the posted pay table.

(i) Player hands that qualify for more than one Lucky Lucky payout will only be paid the highest payout as determined by the posted pay table.

	Table 1	Table 2	Table 3
Hand	Pays	Pays	Pays
Suited 777	200 to 1	200 to 1	200 to 1
Suited 678	100 to 1	100 to 1	100 to 1
777	50 to 1	50 to 1	50 to 1
678	30 to 1	30 to 1	30 to 1

SUITED 21	10 TO 1	15 TO 1	10 TO 1
TOTAL OF 21	3 TO 1	3 TO 1	3 TO 1
TOTAL OF 20	2 TO 1	2 TO 1	2 TO 1
TOTAL OF 19	2 TO 1	1 TO 1	1 TO 1

(7) AFTER ALL LUCKY LUCKY BETS HAVE BEEN SETTLED, THE DEALER WILL THEN COMPLETE THE GAME BY FOLLOWING HOUSE PROCEDURES FOR THE GAME OF BLACKJACK.

BASIS AND PURPOSE FOR RULE 10

The purpose of Rule 10 is to establish playing rules for authorized types of poker and management procedures for conducting poker games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 10 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., 12-47.1-302, C.R.S., and 12-47.1-818, C.R.S

RULE 10 RULES FOR POKER

47.1-1002 Definitions for ~~P~~Poker.

The following definitions apply to all the rules of poker and to all games of poker conducted by licensees:

(4.75) "BURN" MEANS TO REMOVE ONE OR MORE CARDS FROM THE TOP OF THE DECK OR THE FRONT OF A SHOE AND PLACE IT, OR THEM, IN THE DISCARD RACK.

47.1-1003 Types of poker authorized.

(48) Double Draw Poker; ~~and~~

(49) Six Card Poker~~.~~;AND

(50) HIGH CARD FLUSH POKER.

47.1-1017.10 The play ~~---~~ Caribbean Stud Poker.

Caribbean Stud Poker is the copyrighted, trademarked, and patented poker variation game, the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada, and which may be transferred or assigned. Caribbean Stud Poker must be played according to the following rules:

47.1-1017.14 The ~~P~~play ~~---~~ Let it Ride and Let it Ride Bonus with the option of a 3 Card Bonus and Progressive Bet.

Let it Ride and Let it Ride Bonus ~~and~~WITH THE OPTION OF A 3 Card Bonus are ~~the~~ copyrighted, trademarked, and patented poker variation games, the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada and which may be transferred or assigned. Let it Ride and Let it Ride Bonus with the option of 3 Card Bonus and Progressive bets must be played according to the following rules:

47.1-1017.24 The play ~~---~~ Three Card Poker.

Three Card Poker is ~~the~~A copyrighted, trademarked, and patented poker variation game, the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada, and which may be transferred or assigned. Three Card Poker must be played according to the following rules:

(17) The retail licensee may offer the game using any one of the following seventeen pairs of pay schedules along with either Progressive pay schedule. Pay schedules 5 through 17, when used with their respective table layouts, are to be used only as per written agreement between each licensee and ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada. The pay schedules in use, or payouts derived from the pay schedules, must be displayed on the table layout or on signage at the table:

47.1-1017.39 THE PLAY – Texas Hold'Em Bonus Poker.

Texas Hold'Em Bonus Poker is ~~the~~A trademarked poker variation game, the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada and which may be transferred or assigned. Texas Hold'Em Bonus Poker must be played according to the following rules:

47.1-1017.44 The play ~~--~~– Crazy 4 Poker.

Crazy 4 Poker is A copyrighted and patented poker variation game, the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada and which may be transferred or assigned. Crazy 4 Poker must be played according to the following rules~~.~~:

(16) The retail licensee may offer either of the below "Nexus" pay tables if ~~they~~IT wishES to connect other ~~SHFL entertainment~~BALLY TECHNOLOGIES progressive games that also have these pay schedules approved.

47.1-1017.45 The play ~~--~~– High Five Poker and High Five Poker Progressive.

High Five Poker and High Five Poker Progressive ~~is~~ aRE copyrighted, patent pending poker variation games, the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada and which may be transferred or assigned. High Five Poker and High Five Poker Progressive must be played according to the following rules:

47.1-1017.46 The play ~~--~~– Mississippi Stud.

Mississippi Stud is a copyrighted and trademarked poker variation game the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada and which may be transferred or assigned.

(13) The retail licensee may offer either of the below "Nexus" pay tables if ~~they~~IT wishES to connect other ~~SHFL entertainment~~BALLY TECHNOLOGIES progressive games that also have these pay schedules approved.

47.1-1017.47 The play – Ultimate Texas Hold 'Em.

Ultimate Texas ~~h~~Hold 'Em is A copyrighted and patented poker variation game, the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada and which may be transferred or assigned. Ultimate Texas Hold 'Em must be played according to the following rules~~.~~:

(1) Ultimate Texas Hold 'Em may be played only on tables displaying the ~~u~~Ultimate Texas Hold 'Em layout. A single deck of cards will be used. Each player may play only one hand following each shuffle of the deck. The rank of hands in Ultimate Texas Hold 'Em, from highest to lowest, is: royal flush, straight flush, four of a kind, full house, flush, straight, and three of a kind.

(2) Each player will make initial bets in the amount specified at the table by the retail licensee, and will place the bets in the "ante" and the "blind" with an optional "trips" AND AN OPTIONAL "ULTIMATE PAIRS BONUS" bet in the wagering areas in front of the player's position. The player may also place an optional progressive wager as long as the ante and blind wagers are in place. The trips and blind bets are placed to play for hand value only and the blind bet hands must beat the dealer; the ante bet is placed to play against the dealer. Once all players place their bets, the dealer will press the appropriate button on the keypad to indicate a progressive wager. The sensors will light up. The dealer will then remove all progressive bets from the table and place them in the tray. The dealer then follows house procedures for dealing the regular game.

(13) THE ULTIMATE PAIRS BONUS WAGER WINS IF THE PLAYER'S TWO HOLE CARDS MATCH ONE OF THE HANDS LISTED ON THE POSTED PAY TABLE AND THE DEALER WILL PAY THE PLAYER ACCORDINGLY. IF A PLAYER FOLDS HIS/HER HAND, THE ULTIMATE PAIRS BONUS WAGER (IF PLAYED) REMAINS IN ACTION. THE DEALER WILL REMOVE THE LOSING WAGERS AND TUCK THE PLAYER'S TWO HOLE CARDS UNDER THE ULTIMATE PAIRS BONUS WAGER.

(~~13~~14) Progressive Winners:

(~~14~~15) The retail licensee may offer the game using any one of the following ~~four pairs of~~ pay schedules. The pay schedules in use, or payouts derived from the pay schedules, must be displayed on the table layout or on signage at the table:

Note to publisher: Add the following new pay tables after existing pay table in 47.1-1017.47 (15).

ULTIMATE PAIRS BONUS PAY TABLES	1	2
A-A (PLAYER) / A-A (DEALER)	N/A	1000 TO 1
A-A	30 TO 1	30 TO 1
A-K (SUITED)	25 TO 1	25 TO 1
A-Q OR A-J (SUITED)	20 TO 1	20 TO 1
A-K (UNSUITED)	15 TO 1	15 TO 1
K-K OR Q-Q OR J-J (HIGH PAIRS)	10 TO 1	10 TO 1
A-Q OR A-J (UNSUITED)	5 TO 1	5 TO 1
10-10 THROUGH 2-2 (LOW PAIRS)	3 TO 1	3 TO 1

ULTIMATE PAIRS BONUS PAY TABLES	3	4	5	6
ACE HEARTS / ACE DIAMONDS	N/A	100 TO 1	50 TO 1	N/A
PAIR OF ACES	30 TO 1	30 TO 1	25 TO 1	25 TO 1
ACE / FACE SUITED	20 TO 1	20 TO 1	20 TO 1	20 TO 1
ACE / FACE	10 TO 1	10 TO 1	10 TO 1	10 TO 1
PAIR	5 TO 1	4 TO 1	5 TO 1	5 TO 1

(~~15~~16) The retail licensee may offer either of the below "Nexus" pay tables if ~~they~~IT wishES to connect other ~~SHFL entertainment~~BALLY TECHNOLOGIES progressive games that also have these pay schedules approved.

47.1-1017.50 The play – Fortune Pai Gow Poker.

Fortune Pai Gow Poker is ~~the~~A patented and trademarked poker variation game, the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada and which may be transferred or assigned. Fortune Pai Gow Poker must be played according to the following rules:

Note to publisher: Add the following pay table after existing pay tables in 47.1-1017.50 (14)

HAND	3-LEVEL PROGRESSIVE	2-LEVEL PROGRESSIVE
7 CARD STRAIGHT FLUSH	100% OF MEGA PROGRESSIVE METER	100% OF MAJOR PROGRESSIVE METER
5 ACES	100% OF MAJOR PROGRESSIVE METER	100% OF MINOR PROGRESSIVE METER
ROYAL FLUSH	100% OF MINOR PROGRESSIVE METER	500 FOR 1
5 CARD STRAIGHT FLUSH	100 FOR 1	100 FOR 1
FOUR OF A KIND	75 FOR 1	75 FOR 1
FULL HOUSE	4 FOR 1	4 FOR 1

47.1-1017.52 The ~~P~~Play ~~-~~– Straight Edge Poker. ***Eff 4/14/14***

Straight Edge Poker ~~and Progressive~~ is a copyrighted and patent-protected poker variation game, the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada, and which may be transferred or assigned. Straight Edge Poker must be played according to the following rules:

47.1-1017.53 The ~~P~~Play ~~-~~– Big Raise Stud Poker.

Big Raise Stud Poker is a copyrighted and patent-protected poker variation game, the rights to which are owned by ~~SHFL entertainment~~BALLY TECHNOLOGIES of Las Vegas, Nevada, and which may be transferred or assigned. Big Raise Stud Poker must be played according to the following rules:

(23) The retail licensee may offer either of the below "Nexus" Multi-Game Link Pay tables if ~~they~~IT wishES to connect other ~~SHFL entertainment~~ BALLY TECHNOLOGIES progressive games that also have these pay schedules approved.

47.1-1017.54 The ~~P~~Play – Double Draw Poker.

Double Draw Poker is a copyrightED and patent-protected poker variation game, the rights to which are owned by ~~SHFL entertainment dba~~Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Double Draw Poker must be played according to the following rules:

47.1-1017.55 The ~~P~~Play – Six Card Poker.

Six Card Poker is a copyrightED and patent-protected poker variation game, the rights to which are owned by ~~SHFL entertainment dba~~ Bally Technologies of Las Vegas, Nevada, and which may be transferred or assigned. Six Card Poker must be played according to the following rules:

47.1-1017.56 THE PLAY – HIGH CARD FLUSH.

HIGH CARD FLUSH IS A PATENT-PENDING POKER VARIATION GAME, THE RIGHTS TO WHICH ARE OWNED BY GALAXY GAMING, INC., OF LAS VEGAS, NEVADA, AND WHICH MAY BE TRANSFERRED OR ASSIGNED. HIGH CARD FLUSH MUST BE PLAYED ACCORDING TO THE FOLLOWING RULES:

(1) High Card Flush may be played only on tables displaying the High Card Flush layout. A single deck of 52 cards will be used. At the discretion of the licensee, each player may play up to two hands following each shuffle of the deck.

(2) Before receiving cards, each player must place a wager in the designated "ante" wagering area in front of the player's position. The amount of each Ante shall be within the table minimum and maximum, as posted at the table, up to the $100 maximum wager limit determined by the house and in accordance with applicable law.

(3) At the discretion of the retail licensee, players may also place a dealer tip bet on their Ante bet by placing the dealer tip bet next to their Ante bet. If such tip bets are accepted, winning tip bets must be paid at the same odds as the player's winning Ante bet. The retail licensee may require tip bets to be in an even dollar amount, and may limit the maximum amount of such tip bets.

(4) Immediately prior to each round of play, the dealer shall shuffle the cards. Following the shuffle and cut, the dealer will deal seven cards to each player and to the dealer, one at a time face down, starting with the player to his/her left, or in a seven card group dispensed by a mechanical shuffling device.

(5) An incorrect number of cards dealt to a player constitutes a misdeal to that player only and that player retains his/her Ante and any other bets. An incorrect number of cards dealt to the dealer constitutes a misdeal for the hand, and all players retain their Antes and any other bets.

(6) Players will then examine their cards. Each player who wants to remain in the hand must place a Raise wager. The Raise wager must be equal to the Ante wager unless the player's hand consists of five (5) or more cards of the same suit. Players with five (5) or more cards of the same suit may place a Raise wager that is up to double their Ante wager. players with six (6) or seven (7) cards of the same suit may increase their Raise wager up to three times their Ante wager. Players also have the option of folding their hand and surrendering their ante wager.

(7) The object is for the player to have more cards of the same suit (a "flush") than the dealer, regardless of suit.

(8) Once all players have acted on their hands, the dealer will turn over the dealer cards. The dealer's hand must qualify by having at least a three card, 9-high flush:

(a) If the dealer does not possess a qualifying hand, all players with an active Ante wager will be paid even money on their Ante Wager and their Raise wagers will be a push.

(b) If the dealer does possess a qualifying hand, the dealer's hand is compared to each player's hand, and;

(i) If the player's hand ranks higher than the dealer's hand, the player's Ante and Raise wagers win and are paid even money.

(ii) If the player's hand ranks lower than the dealer's hand, the player's Ante and Raise wagers lose and are collected.

(iii) If the player's and dealer's hand tie, the Ante and Raise wagers push.

(C) In the event both the player and the dealer have the same number of cards in their flush, the winning hand is determined by the highest ranking card (Ace – 2) of the flush in each hand. If the highest ranking card is the same in both hands, the second highest card is used, then the third, etc. If both the player's and the dealer's number of cards and values are identical, the ante wager and Raise wagers are a push.

(9) At the same time that the Ante wager is placed, each player may also place two additional optional wagers, the Flush Bonus wager and the Straight Flush Bonus wager.

(A) Players win the Flush Bonus wager if their hand contains a four (4) card flush or better. See posted pay table.

(B) Players win the Straight Flush Bonus wager if their hand contains a three (3) card straight flush or better. See posted pay table.

(I) If a player has made the Straight Flush Bonus wager and his/her hand contains at least a three (3) card straight flush but he/she wishes to fold his/her hand for consideration in the Ante and/or Raise wagers, player should turn his/her straight flush cards face up on top of the remaining cards in his/her hand and place all seven (7) cards in the discard area. Dealer should verify the hand qualifies for a Straight Flush Bonus wager payout, pay the player according to the posted Straight Flush Bonus wager pay table and then place all seven cards in the discard rack. This should be completed before picking up the discards of players who are remaining in the hand.

(II) If the licensee chooses pay table 5 (see below), a patron will also win this wager if they hold a "4 of a kind."

(10) Pay tables:

(A) Flush Bonus Wager

Result	Pay tables						
	V01	V02	V03	V04	V05	V06	V07
7 Card	300 to 1	100 to 1	200 to 1	300 to 1	200 to 1	500 to 1	400 to 1
6 Card	100 to 1	20 to 1	20 to 1	75 to 1	60 to 1	50 to 1	60 to 1
5 Card	10 to 1	10 to 1	10 to 1	5 to 1	12 to 1	12 to 1	12 to 1
4 Card	1 to 1	2 to 1	2 to 1	2 to 1	1 to 1	1 to 1	1 to 1

Result	Pay tables							
	V08	V09	V10	V11	V12	V13	V14	V15
7 Card	1000 to 1	150 to 1	150 to 1	400 to 1	300 to 1	500 to 1	500 to 1	250 to 1
6 Card	50 to 1	20 to 1	25 to 1	100 to 1	80 to 1	80 to 1	100 to 1	100 to 1
5 Card	10 to 1	10 to 1	10 to 1	10 to 1	11 to 1	11 to 1	10 to 1	10 to 1
4 Card	1 to 1	2 to 1	2 to 1	1 to 1	1 to 1	1 to 1	1 to 1	1 to 1

(B) Straight Flush Bonus Wager

Result	Pay tables					
	V01	V02	V03	V04	V06	V07
7 Card Straight Flush	8000 to 1	500 to 1	500 to 1	1000 to 1	500 to 1	1000 to 1
6 Card Straight Flush	1000 to 1	200 to 1	200 to 1	500 to 1	200 to 1	500 to 1
5 Card Straight Flush	100 to 1	100 to 1	100 to 1	100 to 1	100 to 1	100 to 1
4 Card Straight Flush	60 to 1	50 to 1	75 to 1	75 to 1	60 to 1	60 to 1
3 Card Straight Flush	7 to 1	9 to 1	7 to 1	7 to 1	8 to 1	8 to 1

Pay Table 5	
Result	Pay
7 Card Straight Flush	500 to 1
6 Card Straight Flush	200 to 1
5 Card Straight Flush	100 to 1
4 Card Straight Flush	50 to 1
4 of a Kind	25 to 1
3 Card Straight Flush	8 to 1

BASIS AND PURPOSE FOR RULE 21

The purpose of Rule 21 is to establish playing rules for authorized types of games which combine the play of blackjack with the play of poker, and management procedures for conducting blackjack-poker combination games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 21 is found in sections 12-47.1-201, C.R.S., 12-47.1-302, C.R.S, and 12-47.1-818, C.R.S.

RULE 21 RULES FOR BLACKJACK-POKER COMBINATION GAMES Effective 9/14/2012

47.1-2109 The ~~P~~play – Straight Jack.

Straight Jack is a trademarked, copyrighted blackjack/poker variation game, the rights to which to distribute are owned by ~~SHFL entertainment~~Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. Straight Jack must be played according to the following rules:

47.1-2110 The ~~P~~play – Straight Jack Progressive.

Straight Jack Progressive is a trademarked and copyrighted blackjack/poker variation game the rights to which to distribute ~~on December 20, 2012 were~~are owned by ~~SHFL entertainment~~Bally Technologies of Las Vegas, Nevada and which may be transferred or assigned. Straight Jack Progressive must be played according to the following rules:

(4) Unlike most ~~SHFL entertainment~~BALLY TECHNOLOGIES progressive wagers, Straight Jack Progressive offers Odds Pays for the progressive wager amount, PLUS a possible progressive meter pay as reflected in the pay tables shown below.

BASIS AND PURPOSE FOR RULE 22

The purpose of Rule 22 is to establish playing rules for authorized types of roulette and management procedures for conducting roulette games in compliance with section 12-47.1-302 (2). The statutory basis for Rule 22 is found in sections 12-47.1-201, C.R.S., 12-47.1-203, C.R.S., and 12-47.1-302, C.R.S., and 12-47.1-818, C.R.S.

RULE 22 RULES OF ROULETTE

47.1-2215.01 THE PLAY – ROULETTE WITH BACK2BACK.

BACK2BACK IS A TRADEMARKED AND PATENT-PENDING ROULETTE VARIATION GAME, THE RIGHTS TO WHICH ARE OWNED BY BALLY TECHNOLOGIES OF LAS VEGAS, NEVADA AND WHICH MAY BE TRANSFERRED OR ASSIGNED. BACK2BACK SHALL BE PLAYED ACCORDING TO THE FOLLOWING RULES:

(1) PLAYERS MAY PLACE AN OPTIONAL WAGER IN THE BACK2BACK WAGER AREA.

(2) THE BACK2BACK WAGER WILL BE PLACED AT THE SAME TIME AS OTHER ROULETTE WAGERS ARE BEING PLACED.

(3) THE DEALER WILL SPIN THE BALL AND WAVE FOR NO MORE BETS.

(4) THE BACK2BACK WAGER WILL WIN IF THE NUMBER THAT HIT ON THE PREVIOUS SPIN HITS AGAIN. IF THE PREVIOUS NUMBER DOES NOT HIT, THE BACK2BACK WAGER WILL LOSE.

(5) THE AMOUNT THE WAGER WILL WIN IS DETERMINED RANDOMLY AND WILL BE DISPLAYED ON THE READER BOARD. THE PAYOUT ON THIS WAGER WILL BE BETWEEN 10X AND 1000X TIMES THE PLAYER WAGER.

(6) WINNING BACK2BACK WAGERS WILL BE PAID AT THE SAME TIME THE DEALER IS PAYING ALL OTHER WINNING ROULETTE WAGERS.

Notice of Rulemaking Hearing

Tracking number

2014-01070

Department

400 - Department of Natural Resources

Agency

404 - Oil and Gas Conservation Commission

CCR number

2 CCR 404-1

Rule title

PRACTICE AND PROCEDURE

Rulemaking Hearing

Date

12/15/2014

Time

09:00 AM

Location

1120 Lincoln Street, Suite 801, Denver, CO 80203

Subjects and issues involved

The Oil and Gas Conservation Commission of the State of Colorado on its own motion, will consider additions and amendments to Rule 100 Series and Rules 205, 303, 308A, 309, 311, 316A, 316B, 317, 318A, 319, 321, 325, 326, 327, 330, 506, 507, 521, 522, 523, 603, 710, 901, 904, 905, 907, 909, 910, and 1100.

Statutory authority

§§ 34-60-105, 34-60-106(2)(a), 34-60-106(2)(d), amended 34-60-121, and 34-60-130, C.R.S.

Contact information

Name

Robert Frick

Title

Hearings Manager

Telephone

303-894-2100

Email

DNR_COGCC.Rulemaking@state.co.us

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF CHANGES TO THE RULES OF PRACTICE AND PROCEDURE OF THE OIL & GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO	))))	CAUSE NO. 1R DOCKET NO. **1412-RM-02**

NOTICE OF RULEMAKING HEARING

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

The Oil and Gas Conservation Commission of the State of Colorado ("Commission"), on its own motion, will consider additions and amendments to Rule 100 Series (Definitions for "Bradenhead", "Container", "Produced Water Pits", "Regulatory Compliance Program", "Suspended Operations Wells", "Tank", "Temporarily Abandoned Well", and "Waiting on Completion Well") and Rules 205, 303, 308A, 309, 311, 316A, 316B, 317, 318A, 319, 321, 325, 326, 327, 330, 506, 507, 521, 522, 523, 603, 710, 901, 904, 905, 907, 909, 910, and 1100 of the Commission's Rules of Practice and Procedure, 2 C.C.R. 404-1 ("Rules"), in a "Enforcement and Penalty Rulemaking." Draft proposed new and amended rules are attached as **Appendix A**.

On May 8, 2013, Executive Order D 2013-004 directed the Colorado Oil and Gas Conservation Commission ("Commission") to undertake a review of its enforcement program, penalty structure, and imposition of fines. The Commission provided its Enforcement and Penalty Policy Review to the Governor's Office on December 10, 2013. On June 6, 2014, House Bill 14-1356 amended the Colorado Oil and Gas Conservation Act to strengthen the penalty authority of the Commission. This "Enforcement and Penalty Rulemaking" is part of that review and will implement House Bill 14-1356. As well, the Enforcement and Penalty Rulemaking includes changes that will make certain Commission rules more consistent, effective, and efficient pursuant to Executive Order D 2012-002 and thereby clarify the rules the Commission will be enforcing.

The Commission has the authority to conduct this rulemaking pursuant to §§ 34-60-105, 34-60-106(2)(a), 34-60-106(2)(d), amended 34-60-121, and 34-60-130, C.R.S.

NOTICE IS HEREBY GIVEN that the Commission has scheduled the above entitled matter for a rulemaking hearing commencing on:

Date:	Monday, December 15, 2014 Tuesday, December 16, 2014
Time:	9:00 a.m.
Place:	Colorado Oil and Gas Conservation Commission

1120 Lincoln Street, Suite 801
Denver, CO 80203

Public Participation. The Commission encourages the public to participate in the rulemaking by commenting on the proposed rules in advance of or during the rulemaking hearing. Any person may submit written comments in advance of the hearing pursuant to the procedures described below. In addition, any person may participate in the stakeholder meetings described below and offer oral testimony during the public comment period at the hearing. The Commission may place a time limit on public comments during the hearing depending on the number of people who wish to comment. Speakers are asked to be concise, and avoid repeating comments made by others or reading previously submitted written comments.

Persons or groups who know in advance they would like to address the Commission during the rulemaking hearing should notify the Hearing Manager via email to ***DNR_COGCC.Rulemaking@state.co.us*** by **December 5, 2014.** An estimate of the time needed for comments must be included with the notice. Persons who sign up in advance will be given priority both in the order and length of comments during the rulemaking hearing. Groups with common interests are encouraged to consolidate their comments through a single spokesperson.

Prehearing Statements and Comments. Prehearing statements, comments, and response documents are limited to 5 single spaced pages, excluding exhibits. Prehearing statements should summarize pertinent factual and legal issues and the submitting party's position on each issue. Copies of all potential exhibits to be introduced and a list of all potential witnesses, including name, occupation, address, and telephone number for each, must be attached to the statement.

The deadline for prehearing statements or comments is **October 31, 2014**. Responses to prehearing statements or comments are due **November 14, 2014.**

Filing and service. All written comments or prehearing statements must be served via first class mail on the Commission in hard copy and electronic copy as follows: 1) hard copies for the Commission - the original and 2 copies delivered to Robert J. Frick, Hearings Manager, Docket No. 1412-RM-02, Oil and Gas Conservation Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado, 80203; and 2) an electronic copy emailed, preferably in portable document format (*pdf*), to ***DNR_COGCC.Rulemaking@state.co.us*** for posting to the Commission website.

The Commission may modify or amend the rules described or proposed herein, and make conforming modifications to other rules, as it determines reasonably necessary through the course of the stakeholder process, comment period, and rulemaking hearing.

In accordance with the Americans with Disabilities Act, if any person requires special accommodations as a result of a disability for this hearing, please contact

Margaret Humecki at (303) 894-2100 ext. 5139, prior to the hearing and arrangements will be made.

Copies of the current and proposed Rules are available on the Commission's internet homepage at ***http://cogcc.state.co.us*** or available upon request at the Commission.

OIL AND GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO

By _____
Robert J. Frick, Secretary

Dated: October 7, 2014

APPENDIX A

RULES AND REGULATIONS

DEFINITIONS
(100 Series)

ACT shall mean the Oil and Gas Conservation Act of the State of Colorado.

APPLICANT shall mean the person who institutes a proceeding before the Commission which it has standing to institute under these rules.

AQUIFER shall mean a geologic formation, group of formations or part of a formation that can both store and transmit ground water. It includes both the saturated and unsaturated zone but does not include the confining layer which separates two (2) adjacent aquifers.

AUTHORIZED DEPUTY shall mean a representative of the Director as authorized by the Commission.

AVAILABLE WATER SOURCE shall mean a water source for which the water well owner, owner of a spring, or a land owner, as applicable, has given consent for sampling and testing and has consented to having the sample data obtained made available to the public, including without limitation, being posted on the COGCC website.

BARREL shall mean 42 (U.S.) gallons at 60° F. at atmospheric pressure.

BATTERY shall mean the point of collection (tanks) and disbursement (tank, meter, LACT unit) of oil or gas from producing well(s).

BASE FLUID shall mean the continuous phase fluid type, such as water, used in a hydraulic fracturing treatment.

BEST MANAGEMENT PRACTICES (BMPs) are practices that are designed to prevent or reduce impacts caused by oil and gas operations to air, water, soil, or biological resources, and to minimize adverse impacts to public health, safety and welfare, including the environment and wildlife resources.

BRADENHEAD shall mean the annular space between the surface casing and the next smaller diameter casing string that extends up to the wellhead.

BRADENHEAD TEST AREA shall mean any area designated as a bradenhead test area by the Commission under Rule 207.b.

BUILDING UNIT shall mean a Residential Building Unit; and every five thousand (5,000) square feet of building floor area in commercial facilities or every fifteen thousand (15,000) square feet of building floor area in warehouses that are operating and normally occupied during working hours.

CEASE AND DESIST ORDER shall mean an order issued by the Commission or the Director pursuant to C.R.S. §34-60-121(5).

CEMENT shall be measured in 94-pound sacks.

CENTRALIZED E&P WASTE MANAGEMENT FACILITY shall mean a facility, other than a commercial disposal facility regulated by the Colorado Department of Public Health and Environment, that (1) is either used exclusively by one owner or operator or used by more than one operator under an operating agreement; and (2) is operated for a period greater than three (3) years; and (3) receives for collection, treatment, temporary storage, and/or disposal produced water, drilling fluids, completion fluids, and any other exempt E&P wastes that are generated from two or more production units or areas or from a set of commonly owned or operated leases. This definition includes oil-field naturally occurring radioactive

materials (NORM) related storage, decontamination, treatment, or disposal. This definition excludes a facility that is permitted in accordance with Rule 903 pursuant to Rule 902.e.

CHEMICAL ABSTRACTS SERVICE shall mean the division of the American Chemical Society that is the globally recognized authority for information on chemical substances.

CHEMICAL ABSTRACTS SERVICE NUMBER OR CAS NUMBER shall mean the unique identification number assigned to a chemical by the chemical abstracts service.

CHEMICAL(S) shall mean any element, chemical compound, or mixture of elements or compounds that has its own specific name or identity such as a chemical abstract service number, whether or not such chemical is subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2) (2011).

CHEMICAL DISCLOSURE REGISTRY shall mean the chemical registry website known as fracfocus.org developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. If such website becomes permanently inoperable, then chemical disclosure registry shall mean another publicly accessible information website that is designated by the Commission.

CHEMICAL FAMILY shall mean a group of chemicals that share similar chemical properties and have a common general name.

CHEMICAL INVENTORY shall mean a list of the Chemical Products (including Material Safety Data Sheets) brought to a well site for use downhole during drilling, completion, and workover operations, including fracture stimulations, and the maximum capacity of fuel stored on the oil and gas location during those operations. The Chemical Inventory shall include how much of the Chemical Product was used, how it was used, and when it was used.

CHEMICAL PRODUCT shall mean any substance consisting of one or more constituent chemicals that is marketed or sold as a commodity. Chemical Products shall not include substances that are known to be entirely benign, innocuous, or otherwise harmless, such as sand, walnut shells, and similar natural substances.

CLASSIFIED WATER SUPPLY SEGMENT shall mean perennial or intermittent streams, which are surface waters classified as being suitable or intended to become suitable for potable water supplies by the Colorado Water Quality Control Commission, pursuant to the Basic Standards and Methodologies for Surface Water Regulations (5 C.C.R. 1002-31).

COMMERCIAL DISPOSAL WELL FACILITY shall mean a facility whose primary objective is disposal of Class II waste from a third party for financial profit.

COMMISSION shall mean the Oil and Gas Conservation Commission of the State of Colorado.

COMPLETION. An oil well shall be considered completed when the first new oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging are complied with as set out in these rules. Any well not previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the Director, a well that requires extensive testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

COMPREHENSIVE DRILLING PLAN shall mean a plan created by one or more operator(s) covering future oil and gas operations in a defined geographic area within a geologic basin. The Plan may (a) identify natural features of the geographic area, including vegetation, wildlife resources, and other

attributes of the physical environment; (b) describe the operator's future oil and gas operations in the area; (c) identify potential impacts from such operations; (d) develop agreed-upon measures to avoid, minimize, and mitigate the identified potential impacts; and (e) include other relevant information.

CONTAINER shall mean any portable device in which a hazardous material is stored, transported, treated, disposed of, or otherwise handled. Examples include, but are not limited to, drums, barrels, totes, carboys, and bottles.

CORNERING AND CONTIGUOUS UNITS when used in reference to an exception location shall mean those lands which make up the unit(s) immediately adjacent to and toward which a well is encroaching upon established setbacks.

CROP LAND shall mean lands which are cultivated, mechanically or manually harvested, or irrigated for vegetative agricultural production.

CUBIC FOOT of gas shall mean the volume of gas contained in one cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be 14.73 psia, and the standard temperature base shall be 60° Fahrenheit.

D–J BASIN FOX HILLS PROTECTION AREA shall mean that area of the State consisting of Townships 5 South through Townships 5 North, Ranges 58 West through 70 West, and Township 6 South, Ranges 65 West through 70 West.

DAY shall mean calendar days.

DEDICATED INJECTION WELL shall mean any Class II wells used for the exclusive purpose of injecting fluids or gas from the surface for enhanced oil recovery or the disposal of E&P wastes. A gas storage well is not a dedicated injection well.

DESIGNATED AGENT, when used herein shall mean the designated representative of any producer, operator, transporter, refiner, gasoline or other extraction plant operator, or initial purchaser.

DESIGNATED SETBACK LOCATION shall mean any Oil and Gas Location upon which any Well or Production Facility is or will be situated within, a Buffer Zone Setback (1,000 feet), or an Exception Zone Setback (500 feet), or within one thousand (1,000) feet of a High Occupancy Building Unit or a Designated Outside Activity Area, as referenced in Rule 604. The measurement for determining any Designated Setback Location shall be the shortest distance between any existing or proposed Well or Production Facility on the Oil and Gas Location and the nearest edge or corner of any Building Unit, nearest edge or corner of any High Occupancy Building Unit, or nearest boundary of any Designated Outside Activity Area.

DESIGNATED OUTSIDE ACTIVITY AREA: Upon Application and Hearing, the Commission, in its discretion, may establish a Designated Outside Activity Area (DOAA) for:

(i) an outdoor venue or recreation area, such as a playground, permanent sports field, amphitheater, or other similar place of public assembly owned or operated by a local government, which the local government seeks to have established as a Designated Outside Activity Area; or

(ii) an outdoor venue or recreation area, such as a playground, permanent sports field, amphitheater, or other similar place of public assembly where ingress to, or egress from the venue could be impeded in the event of an emergency condition at an Oil and Gas Location less than three hundred and fifty (350) feet from the venue due to the configuration of the venue and the number of persons known or expected to simultaneously occupy the venue on a regular basis.

The Commission shall determine whether to establish a Designated Outside Activity Area and, if so, the appropriate boundaries for the DOAA based on the totality of circumstances and consistent with the purposes of the Oil and Gas Conservation Act.

DIRECTOR shall mean the Director of the Oil and Gas Conservation Commission of the State of Colorado or any member of the Director's staff authorized to represent the Director.

DOMESTIC GAS WELL shall mean a gas well that produces solely for the use of the surface owner. The gas produced cannot be sold, traded or bartered.

DRILLING PITS shall mean those pits used during drilling operations and initial completion of a well, and include:

> **ANCILLARY PITS** used to contain fluids during drilling operations and initial completion procedures, such as circulation pits and water storage pits.
>
> **COMPLETION PITS** used to contain fluids and solids produced during initial completion procedures, and not originally constructed for use in drilling operations.
>
> **FLOWBACK PITS** used to contain fluids and solids produced during initial completion procedures.
>
> **RESERVE PITS** used to store drilling fluids for use in drilling operations or to contain E&P waste generated during drilling operations and initial completion procedures.

EMERGENCY ORDER shall mean an order issued by the Commission pursuant to C.R.S. §34-60-108(3).

EMERGENCY SITUATION for purposes of C.R.S. §34-60-121(5) and the rules promulgated thereunder shall mean a fact situation which presents an immediate danger to public health, safety or welfare.

EXPLORATION AND PRODUCTION WASTE (E&P WASTE) shall mean those wastes associated with operations to locate or remove oil or gas from the ground or to remove impurities from such substances and which are uniquely associated with and intrinsic to oil and gas exploration, development, or production operations that are exempt from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 USC Sections 6921, et seq. For natural gas, primary field operations include those production-related activities at or near the wellhead and at the gas plant (regardless of whether or not the gas plant is at or near the wellhead), but prior to transport of the natural gas from the gas plant to market. In addition, uniquely associated wastes derived from the production stream along the gas plant feeder pipelines are considered E&P wastes, even if a change of custody in the natural gas has occurred between the wellhead and the gas plant. In addition, wastes uniquely associated with the operations to recover natural gas from underground storage fields are considered to be E&P waste.

FIELD shall mean the general area which is underlaid or appears to be underlaid by at least one pool; and “field” shall include the underground reservoir or reservoirs containing oil or gas or both. The words “field” and “pool” mean the same thing when only one underground reservoir is involved; however, “field”, unlike “pool”, may relate to two or more pools.

FINANCIAL ASSURANCE shall mean a surety bond, cash collateral, certificate of deposit, letter of credit, sinking fund, escrow account, lien on property, security interest, guarantee, or other instrument or method in favor of and acceptable to the Commission. With regard to third party liability concerns related to public health, safety and welfare, the term encompasses general liability insurance.

FIRST AID TREATMENT shall mean using a non-prescription medication at non-prescription strength; administering tetanus immunizations; cleaning, flushing, or soaking wounds on the surface of the skin; using wound coverings such as bandages, gauze pads, or butterfly bandages; using hot or cold therapy;

using any non-rigid means of support such as elastic bandages; using temporary immobilization devices when transporting an accident victim; drilling of a fingernail or toenail to relieve pressure or draining fluid from a blister; using eye patches; removing foreign bodies from the eye using only irrigation or a cotton swab; removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means; using finger guards; using massages; or drinking fluids for the relief of heat stress.

FLOWLINES shall mean those segments of pipe from the wellhead downstream through the production facilities ending at: in the case of gas lines, the gas metering equipment; or in the case of oil lines the oil loading point or LACT unit; or in the case of water lines, the water loading point, the point of discharge to a pit, the injection wellhead, or the permitted surface water discharge point.

GAS FACILITY shall mean those facilities that process or compress natural gas after production-related activities which are conducted at or near the wellhead and prior to a point where the gas is transferred to a carrier for transport.

GAS STORAGE WELL means any well drilled for the injection, withdrawal, production, observation, or monitoring of natural gas stored in underground formations. The fact that any such well is used incidentally for the production of native gas or the enhanced recovery of native hydrocarbons shall not affect its status as a gas storage well.

GAS WELL shall mean a well, the principal production of which at the mouth of the well is gas, as defined by the Act.

GATHERING LINE shall mean a pipeline and equipment described below that transports gas from a production facility (ordinarily commencing downstream of the final production separator at the inlet flange of the custody transfer meter) to a natural gas processing plant or transmission line or main. The term "gathering line" includes valves, metering equipment, communication equipment, cathodic protection facilities, and pig launchers and receivers, but does not include dehydrators, treaters, tanks, separators, or compressors located downstream of the final production facilities and upstream of the natural gas processing plants, transmission lines, or main lines.

GREEN COMPLETION PRACTICES shall mean those practices intended to reduce emissions of salable gas and condensate vapors during cleanout and flowback operations prior to the well being placed on production.

GROUNDWATER means subsurface waters in a zone of saturation.

HEALTH PROFESSIONAL shall mean a physician, physician assistant, nurse practitioner, registered nurse, or emergency medical technician licensed by the State of Colorado.

HIGH OCCUPANCY BUILDING UNIT shall mean:

- any operating Public School as defined in § 22-7-703(4), C.R.S., Nonpublic School as defined in § 22-30.5-103.6(6.5), C.R.S., Nursing Facility as defined in § 25.5-4-103(14), C.R.S., Hospital, Life Care Institutions as defined in § 12-13-101, C.R.S., or Correctional Facility as defined in § 17-1-102(1.7), C.R.S., provided the facility or institution regularly serves 50 or more persons; or

- an operating Child Care Center as defined in § 26-6-102(1.5), C.R.S.

HORIZONTAL WELL shall mean a well which is drilled in such a way that the wellbore deviates laterally to an approximate horizontal orientation within the target formation with the length of the horizontal component of the wellbore extending at least one hundred feet (100') in the target formation, measured

from the initial point of penetration into the target formation through the terminus of the horizontal component of the wellbore in the same common source of hydrocarbon supply.

HYDRAULIC FRACTURING ADDITIVE shall mean any chemical substance or combination of substances, including any chemicals and proppants, that is intentionally added to a base fluid for purposes of preparing a hydraulic fracturing fluid for treatment of a well.

HYDRAULIC FRACTURING FLUID shall mean the fluid, including the applicable base fluid and all hydraulic fracturing additives, used to perform a hydraulic fracturing treatment.

HYDRAULIC FRACTURING TREATMENT shall mean all stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geologic formation to enhance production of oil and natural gas.

INACTIVE WELL shall mean any shut-in well from which no production has been sold for a period of twelve (12) consecutive months; any well which has been temporarily abandoned for a period of six (6) consecutive months; or, any injection well which has not been utilized for a period of twelve (12) consecutive months.

INDIAN LANDS shall mean those lands located within the exterior boundaries of a defined Indian reservation, including allotted Indian lands, in which the legal, beneficial, or restricted ownership of the underlying oil, gas, or coal bed methane or of the right to explore for and develop the oil, gas, or coal bed methane belongs to or is leased from an Indian tribe.

INTERVENOR shall mean a local government, or the Colorado Department of Public Health and Environment intervening solely to raise environmental or public health, safety and welfare concerns, or the Colorado Parks and Wildlife intervening solely to raise wildlife resource concerns, in which case the intervention shall be granted of right, or a person who has timely filed an intervention in a relevant proceeding and has demonstrated to the satisfaction of the Commission that the intervention will serve the public interest, in which case the person may be recognized as a permissive intervenor at the Commission's discretion.

LACT ("Lease Automated Custody Transfer") shall mean the transfer of produced crude oil or condensate, after processing or treating in the producing operations, from storage vessels or automated transfer facilities to pipelines or any other form of transportation.

LAND APPLICATION shall mean the disposal method by which E&P waste is spread upon or sometimes mixed into soils.

LAND TREATMENT shall mean the treatment method by which E&P waste is applied to soils and treated to result in a reduction of hydrocarbon concentration by biodegradation and other natural attenuation processes. Land treatment may be enhanced by tilling, disking, aerating, composting and the addition of nutrients or microbes.

LOCAL GOVERNMENT means a county, home rule or statutory city, town, territorial charter city or city and county, or any special district established pursuant to the Special District Act, C.R.S. §32-1-101 to 32-1-1807 (2013).

LOCAL GOVERNMENTAL DESIGNEE means the office designated to receive, on behalf of the local government, copies of all documents required to be filed with the local governmental designee pursuant to these rules.

LOG or WELL LOG shall mean a systematic detailed record of formations encountered in the drilling of a well.

MATERIAL SAFETY DATA SHEET (MSDS) shall mean the most current version of written or printed material concerning a hazardous chemical.

MEDICAL TREATMENT shall mean the management and care of a patient to combat a disease or disorder. An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. “Medical treatment” includes situations where a physician or other licensed health care professional recommends medical treatment but the employee does not follow the recommendation. “Medical treatment” does not include first aid treatment, as defined herein, visits to a physician or other licensed health care professional solely for observation or counseling, or the conduct of diagnostic procedures such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes.

MINIMIZE ADVERSE IMPACTS shall mean, wherever reasonably practicable, to avoid adverse impacts to wildlife resources or significant adverse impacts to the environment from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided, mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

MINIMIZE EROSION shall mean implementing best management practices that are selected based on site-specific conditions and maintained to reduce erosion. Representative erosion control practices include, but are not limited to, revegetation of disturbed areas, mulching, berms, diversion dikes, surface roughening, slope drains, check dams, and other comparable measures.

MITIGATION with respect to wildlife resources shall mean measures that compensate for adverse impacts to such resources, including, as appropriate, habitat enhancement, on-site habitat mitigation, off-site habitat mitigation, or mitigation banking.

MULTI-WELL PITS shall mean pits used for treatment, storage, recycling, reuse, or disposal of E&P wastes generated from more than one (1) well that do not constitute a centralized E&P waste management facility and that will be in use for no more than three (3) years.

MULTI-WELL SITE shall mean a common well pad from which multiple wells may be drilled to various bottomhole locations.

NON-CROP LAND shall mean all lands which are not defined as crop land, including range land.

OIL AND GAS FACILITY shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment, or processing of oil or natural gas.

OIL AND GAS LOCATION shall mean a definable area where an operator has disturbed or intends to disturb the land surface in order to locate an oil and gas facility.

OIL AND GAS OPERATIONS means exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and gas well, underground injection well, or gas storage well; production operations related to any such well including the installation of flowlines and gathering systems; the generation, transportation, storage, treatment, or disposal of exploration and production wastes; and any construction, site preparation, or reclamation activities associated with such operations.

OIL WELL shall mean a well, the principal production of which at the mouth of the well is oil, as defined by the Act.

OPERATOR shall mean any person who exercises the right to control the conduct of oil and gas operations.

ORDINARY HIGH-WATER LINE shall mean the line that water impresses on the land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' ordinary high-water line.

ORPHAN WELL shall mean a well for which no owner or operator can be found, or where such owner or operator is unwilling or unable to plug and abandon such well.

ORPHANED SITE shall mean a site, where a significant adverse environmental impact may be or has been caused by oil and gas operations for which no responsible party can be found, or where such responsible party is unwilling or unable to mitigate such impact.

OWNER shall mean the person who has the right to drill into and produce from a pool and to appropriate the oil or gas produced therefrom either for such owner or others or for such owner and others, including owners of a well capable of producing oil or gas, or both.

PIT shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. Pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils.

PLUGGING AND ABANDONMENT shall mean the cementing of a well, the removal of its associated production facilities, the removal or abandonment in-place of its flowline, and the remediation and reclamation of the wellsite.

POINT OF COMPLIANCE means one or more points or locations at which compliance with applicable groundwater standards established under Water Quality Control Commission Basic Standards for Groundwater, Section 3.11.4, must be achieved.

POLLUTION means man-made or man-induced contamination or other degradation of the physical, chemical, biological, or radiological integrity of air, water, soil, or biological resource.

The words **POOL, PERSON, OWNER, PRODUCER, OIL, GAS, WASTE, CORRELATIVE RIGHTS and COMMON SOURCE OF SUPPLY** are defined by the Act, and said definitions are hereby adopted in these Rules and Regulations. The word "operator" is used in these rules and regulations and accompanying forms interchangeably with the same meaning as the term "owner" except in Rules 301, 323, 401 and 530 where the word "operator" is used to identify the persons designated by the owner or owners to perform the functions covered by those rules.

PRODUCED AND MARKETED. These words, as used in the Act, shall mean, when oil shall have left the lease tank battery or when natural gas shall have passed the metering point and entered into the stream of commerce as its first step toward the ultimate consumer.

PRODUCTION FACILITY shall mean any storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with oil wells, gas wells, or injection wells.

PRODUCTION PITS shall mean those pits used after drilling operations and initial completion of a well, including pits at natural gas gathering, processing and storage facilities, which constitute:

SKIMMING/SETTLING PITS used to provide retention time for settling of solids and separation of residual oil for the purposes of recovering the oil or fluid.

PRODUCED WATER PITS used to temporarily store produced water prior to injection for enhanced recovery or disposal, off-site transport, or surface-water discharge including pits that service multiple wells on an Oil and Gas Location.

PERCOLATION PITS used to dispose of produced water by percolation and evaporation through the bottom or sides of the pits into surrounding soils.

EVAPORATION PITS used to contain produced waters which evaporate into the atmosphere by natural thermal forces.

PROPPANT shall mean sand or any natural or man-made material that is used in a hydraulic fracturing treatment to prop open the artificially created or enhanced fractures once the treatment is completed.

PROTESTANT shall mean a person who has timely filed a protest in a relevant proceeding and has demonstrated to the Commission's satisfaction that the person filing the protest would be directly and adversely affected or aggrieved by the Commission's ruling in the proceeding, and that any injury or threat of injury sustained would be entitled to legal protection under the act.

PUBLIC WATER SYSTEM shall mean those systems listed in Appendix VI to these Rules. These systems provide to the public water for human consumption through pipes or other constructed conveyances, if such systems have at least fifteen (15) service connections or regularly serve an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such definition includes:

(i) Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system.

(ii) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.

The definition of “Public Water System” for purposes of Rule 317B does not include any “special irrigation district,” as defined in Colorado Primary Drinking Water Regulations (5 C.C.R. 1003.1).

RECLAMATION shall mean the process of returning or restoring the surface of disturbed land as nearly as practicable to its condition prior to the commencement of oil and gas operations or to landowner specifications with an approved variance under Rule 502.b.

REFERENCE AREA shall mean an area either (1) on a portion of the site that will not be disturbed by oil and gas operations, if that is the desired final reclamation; or (2) another location that is undisturbed by oil and gas operations and proximate and similar to a proposed oil and gas location in terms of vegetative potential and management, owned by a person who agrees to allow periodic access to it by the Director and the operator for the purpose of providing baseline information for reclamation standards, and intended to reflect the desired final reclamation.

REGULATORY COMPLIANCE PROGRAM shall mean a documented program that evaluates an operator’s operations on a scheduled basis to determine compliance with regulatory requirements, especially those required by the Act, or Commission rules, orders, or permits. Such a program should include documentation of results, written procedures, a recognized authority within the organization, and designated personnel whose purpose is monitoring and maintaining compliance with applicable regulatory requirements.

RELEASE shall mean any unauthorized discharge of E&P waste to the environment over time.

REMEDIATION shall mean the process of reducing the concentration of a contaminant or contaminants in water or soil to the extent necessary to ensure compliance with the concentration levels in Table 910-1 and other applicable ground water standards and classifications.

RESERVE PITS shall mean those pits used to store drilling fluids for use in drilling operations or to contain E&P waste generated during drilling operations and initial completion procedures.

RESIDENTIAL BUILDING UNIT means a building or structure designed for use as a place of residency by a person, a family, or families. The term includes manufactured, mobile, and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes.

RESPONDENT shall mean a party against whom a proceeding is instituted, or a protestant who protests the granting of the relief sought in the application as provided in Rule 509.

RESPONSIBLE PARTY shall mean an owner or operator who conducts an oil and gas operation in a manner which is in contravention of any then-applicable provision of the Act, or of any rule, regulation, 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. RESPONSIBLE PARTY includes any person who disposes of any other waste by mixing it with exploration and production waste so as to threaten to cause, or actually cause, a significant adverse environmental impact to any air, water, soil, or biological resource.

RESTRICTED SURFACE OCCUPANCY AREA shall mean the following:

- rocky mountain bighorn sheep production areas;

- desert bighorn sheep production areas;

- areas within 0.6 miles of any greater sage-grouse, Gunnison sage-grouse, and lesser prairie chicken leks (strutting and booming grounds);

- areas within 0.4 miles of any Columbian sharp-tailed grouse or plains sharp-tailed grouse leks (strutting grounds);

- areas within 1/4 mile of active Bald Eagle nest sites, Golden Eagle nest sites, or Osprey nest sites;

- areas within 1/2 mile of active Ferruginous Hawk nest sites, Northern Goshawk nest sites, Peregrine Falcon nest sites, or Prairie Falcon nest sites;

- areas located within 300 feet of the ordinary high-water mark of any stream segment located within designated Cutthroat Trout habitat; and

- areas within 300 feet of the ordinary high-water mark of a stream or lake designated by the Colorado Parks and Wildlife as “Gold Medal.”

Maps showing and spatial data identifying the individual and combined extents of the above habitat areas shall be maintained by the Commission and made available on the Commission website, and copies of the maps shall be attached as Appendix VII. The extent of restricted surface occupancy areas is subject to update on a periodic but no more frequent than annual basis and may be modified only through the Commission’s rulemaking process, as provided in Rule 529. Any changes to restricted surface occupancy areas shall not affect Form 2As or Comprehensive Drilling Plans approved prior to the effective date of such changes.

SEISMIC OPERATIONS shall mean all activities associated with acquisition of seismic data including but not limited to surveying, shothole drilling, recording, shothole plugging and reclamation.

SENSITIVE AREA is an area vulnerable to potential significant adverse groundwater impacts, due to factors such as the presence of shallow groundwater or pathways for communication with deeper groundwater; proximity to surface water, including lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, and wetlands. Additionally, areas classified for domestic use by the Water Quality Control Commission, local (water supply) wellhead protection areas, areas within 1/8 mile of a domestic water well, areas within 1/4 mile of a public water supply well, ground water basins designated by the Colorado Ground Water Commission, and surface water supply areas are sensitive areas.

SENSITIVE WILDLIFE HABITAT shall mean:

- mule deer critical winter range (being both mule deer winter concentration areas (that part of the winter range where densities are at least 200% of the surrounding winter range density during the same period used to define winter range in 5 out of 10 winters), and mule deer severe winter range (that part of the winter range where 90% of the individuals are located during the average 5 winters out of 10 from the first heavy snowfall to spring green-up)) (west of Interstate 25 and excluding Las Animas County);

- elk winter concentration areas (west of Interstate 25 and excluding Las Animas County);

- pronghorn antelope winter concentration areas (west of Interstate 25);

- bighorn sheep winter range;

- elk production areas (being that part of the overall range occupied by the females for calving) (west of Interstate 25 and excluding Las Animas County);

- Columbian sharp-tailed grouse and plains sharp-tailed grouse production areas (being an area that contains 80% of nesting and brood rearing habitat for any identified population);

- greater sage-grouse and Gunnison sage-grouse production areas (being an area that contains 80% of nesting and brood rearing habitat for any population identified in the Colorado Greater Sage-Grouse Conservation Plan (CPW, 2008) or the Gunnison Sage-Grouse Range-Wide Conservation Plan (May 2005), respectively);

- lesser prairie chicken production areas (being an area that includes 80% of nesting and brood rearing habitat);

- black-footed ferret release areas;

- Bald Eagle nest sites and winter night roost sites; and

- Golden Eagle nest sites.

Maps showing and spatial data identifying the individual and combined extents of the above habitat areas shall be maintained by the Commission and made available on the Commission website, and copies of the maps shall be attached as Appendix VIII. The extent of sensitive wildlife habitat is subject to update on a periodic but no more frequent than biennial basis and may be modified only through the Commission's rulemaking procedures, as provided in Rule 529. Any modifications to sensitive wildlife habitat shall not affect Form 2As or Comprehensive Drilling Plans approved prior to the effective date of such changes.

SHUT-IN WELL shall mean a well which is capable of production or injection by opening valves, activating existing equipment or supplying a power source.

SIMULTANEOUS INJECTION WELL shall mean any well in which water produced from oil and gas producing zones is injected into a lower injection zone and such water production is not brought to the surface.

SOLID WASTE shall mean any garbage, refuse, sludge from a waste treatment plant, water supply plant, air pollution control facility, or other discarded material; including solid, liquid, semisolid, or contained gaseous material resulting from industrial operations, commercial operations, or community activities. Solid waste does not include any solid or dissolved materials in domestic sewage, or agricultural wastes, or solid or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to permits under the provisions of the Colorado Water Quality Control Act, Title 25, Article 8, C.R.S. or materials handled at facilities licensed pursuant to the provisions on radiation control in Title 25, Article 11, C.R.S. Solid waste does not include: (a) materials handled at facilities licensed pursuant to the provisions on radiation control in Title 25, Article 11, C.R.S.; (b) excluded scrap metal that is being recycled; or (c) shredded circuit boards that are being recycled.

SOLID WASTE DISPOSAL shall mean the storage, treatment, utilization, processing, or final disposal of solid wastes.

SPECIAL FIELD RULES shall mean those rules promulgated for and which are limited in their application to individual pools or fields within the State of Colorado.

SPECIAL PURPOSE PITS shall mean those pits used in oil and gas operations, including pits at natural gas gathering, processing and storage facilities, which constitute:

> **BLOWDOWN PITS** used to collect material resulting from, including but not limited to, the emptying or depressurizing of wells, vessels, or gas gathering systems.
>
> **FLARE PITS** used exclusively for flaring gas.
>
> **EMERGENCY PITS** used to contain liquids during an initial phase of emergency response operations related to a spill/release or process upset conditions.
>
> **BASIC SEDIMENT/TANK BOTTOM PITS** used to temporarily store or treat the extraneous materials in crude oil which may settle to the bottoms of tanks or production vessels and which may contain residual oil.
>
> **WORKOVER PITS** used to contain liquids during the performance of remedial operations on a producing well in an effort to increase production.
>
> **PLUGGING PITS** used for containment of fluids encountered during the plugging process.

SPILL shall mean any unauthorized sudden discharge of E&P waste to the environment.

STORMWATER RUNOFF shall mean rain or snowmelt that flows over land and does not percolate into soil and includes stormwater that flows onto and off of an oil and gas location or facility.

STRATIGRAPHIC WELL means a well drilled for stratigraphic information only. Wells drilled in a delineated field to known productive horizons shall not be classified as “stratigraphic.” Neither the term “well” nor “stratigraphic well” shall include seismic holes drilled for the purpose of obtaining geophysical information only.

SURFACE OWNER shall mean any person owning all or part of the surface of land upon which oil and gas operations are conducted, as shown by the tax records of the county in which the tract of land is situated, or any person with such rights under a recorded contract to purchase.

SURFACE USE AGREEMENT shall mean any agreement in the nature of a contract or other form of document binding on the Operator, including any lease, damage agreement, waiver, local government approval or permit, or other form of agreement, which governs the operator's activities on the surface in relation to locating a Well, Multi-Well Site, Production Facility, pipeline or any other Oil and Gas Facility that supports oil and gas development located on the Surface Owner's property.

SURFACE WATER INTAKE shall mean the works or structures at the head of a conduit through which water is diverted from a classified water supply segment and/or source (e.g., river or lake) into the treatment plant.

SURFACE WATER SUPPLY AREA shall mean the classified water supply segments within five (5) stream miles upstream of a surface water intake on a classified water supply segment. Surface Water Supply Areas shall be identified on the Public Water System Surface Water Supply Area Map or through use of the Public Water System Surface Water Supply Area Applicability Determination Tool described in Rule 317B.b.

SUSPENDED OPERATIONS WELL shall mean a well in which drilling operations have been suspended prior to reaching total depth and at least one casing string (the surface casing) has been set and cemented in the wellbore. This definition does not include wells in which only conductor pipe has been set, and the surface hole has not been spud.

TANK shall mean a stationary vessel constructed of non-earthen materials (e.g concrete, steel, plastic) that provides structural support and is designed and operated to store produced fluids or E&P waste. Examples include, but are not limited to, condensate tanks, crude oil tanks, produced water tanks, and gun barrels. Exclusions include Containers and process vessels such as separators, heater treaters, free water knockouts, and slug catchers.

TEMPORARILY ABANDONED WELL shall mean a well that has all downhole completed intervals isolated with a plug set above the highest perforation such that the well cannot produce without removing a plug or a well which is incapable of production or injection without the addition of one or more pieces of wellhead or other equipment, including valves, tubing, rods, pumps, heater-treaters, separators, dehydrators, compressors, piping or tanks.

TIER 1 OIL AND GAS LOCATION shall mean an oil and gas location where the slope is less than five percent (5%), the soil has low erosion potential, vegetative cover or permanent erosion resistance cover is greater than seventy-five percent (75%), the distance from a perennial stream or Classified Water Supply Segment is greater than five hundred (500) feet, and the oil and gas location size is less than one (1) acre, measured by the amount of surface disturbance at the time of the termination of a construction stormwater permit issued by the Colorado Department of Public Health and Environment.

TOTAL WATER VOLUME shall mean the total quantity of water from all sources used in the hydraulic fracturing treatment, including surface water, ground water, produced water or recycled water.

TRADE SECRET shall have the meaning set forth in § 7-74-102(4) (2011) of the Colorado Uniform Trade Secrets Act.

TRADE SECRET CHEMICAL PRODUCT shall mean a Chemical Product the composition of which is a Trade Secret.

URBAN MITIGATION AREA shall mean an area where: (A) At least twenty-two (22) Building Units or one (1) High Occupancy Building Unit (existing or under construction) are located within a 1,000' radius of the

proposed Oil and Gas Location; or (B) At least eleven (11) Building Units or one (1) High Occupancy Building Unit (existing or under construction) are located within any semi-circle of the 1,000 radius mentioned in section (A) above.

WAITING ON COMPLETION WELL shall mean a well which has been drilled, cased, and cemented but the objective hydrocarbon formation has not yet been completed or stimulated using an open-hole, a liner, or a perforated casing completion.

WATER SOURCE shall mean water wells that are registered with Colorado Division of Water Resources, including household, domestic, livestock, irrigation, municipal/public, and commercial wells, permitted or adjudicated springs, or monitoring wells installed for the purpose of complying with groundwater baseline sampling and monitoring requirements under Rules 318A.e.(4), 608, or 609.

WATERS OF THE STATE mean any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, water in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed. Waters of the state include, but are not limited to, all streams, lakes, ponds, impounding reservoirs, wetlands , watercourses, waterways, wells, springs, irrigation ditches or canals, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the State.

WELL when used alone in these Rules and Regulations, shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

WELL SITE shall mean the areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection well and its associated well pad.

WILDCAT (EXPLORATORY) WELL means any well drilled beyond the known producing limits of a pool.

WILDLIFE RESOURCES shall mean fish, wildlife, and their aquatic and terrestrial habitats.

ZONE OF INCORPORATION shall mean the soil layer from the soil surface to a depth of twelve (12) inches below the surface.

ALL OTHER WORDS used herein shall be given their usual customary and accepted meaning, and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry.

GENERAL RULES

201. EFFECTIVE SCOPE OF RULES AND REGULATIONS

All rules and regulations of a general nature herein promulgated to prevent waste and to conserve oil and gas in the State of Colorado while protecting public health, safety, and welfare, including the environment and wildlife resources, shall be effective throughout the State of Colorado and be in force in all pools and fields except as may be amended, modified, altered or enlarged generally or in specific individual pools or fields by orders heretofore or hereafter issued by the Commission, and except where special field rules apply, in which case the special field rules shall govern to the extent of any conflict.

Nothing in these rules shall establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations, so long as such local regulation is not in operational conflict with the Act or regulations promulgated thereunder.

These rules shall not apply to: (i) Indian trust lands and minerals; or (ii) the Southern Ute Indian Tribe within the exterior boundaries of the Southern Ute Indian Reservation. These rules shall apply to non-Indians conducting oil and gas operations on lands within the exterior boundaries of the Southern Ute Indian Reservation where both the surface and oil and gas estates are owned in fee by persons or entities other than the Southern Ute Indian Tribe, regardless of whether such lands are communitized or pooled. Additionally, the State of Colorado shall exercise criminal and civil jurisdiction within the Town of Ignacio, Colorado or within any other municipality within the Southern Ute Indian Reservation incorporated under the laws of Colorado, as provided by Sec. 5, Public Law No. 98-290 (1984).

If any portion of these Rules is found to be invalid, the remaining portion of the Rules shall remain in force and effect.

202. OFFICE AND DUTIES OF DIRECTOR

The office of Director of the Commission is hereby created. It shall be the duty of the Director to aid the Commission in the administration of the Act, as may be required of the Director from time to time and to act as hearing officer when so directed by the Commission.

203. OFFICE AND DUTIES OF SECRETARY

The office of Secretary to the Commission is hereby created. The duties of the Secretary shall be as determined from time to time by the Commission.

204. RIGHT OF ENTRY AND INSPECTION

The Director and the authorized deputies shall also have the right at all reasonable times to go upon and inspect any oil or gas properties, disposal facilities, or transporters facilities and wells for the purpose of making any investigation or tests to ascertain whether the provisions of the Act or these rules or any special field rules are being complied with, and shall report any violation thereof to the Commission.

205. ACCESS TO RECORDS

a. All producers, operators, transporters, refiners, gasoline or other extraction plant operators and initial purchasers of oil and gas within this State, shall make and keep appropriate books and records covering their operations in the State, including natural gas meter calibration

reports, from which they may be able to make and substantiate the reports required by the Commission or the Director or otherwise demonstrate compliance with these Rules.

b. Beginning May 1, 2009 on federal land and April 1, 2009 on all other land, operators shall maintain MSDS sheets for any Chemical Products brought to a well site for use downhole during drilling, completion, and workover operations, excluding hydraulic fracturing treatments. With the exception of fuel as provided for in Rule 205.c., the reporting and disclosure of hydraulic fracturing additives and chemicals brought to a well site for use in connection with hydraulic fracturing treatments is governed by Rule 205A.

c. Beginning June 1, 2009, operators shall maintain a Chemical Inventory by well site for each Chemical Product used downhole during drilling, completion, and workover operations, excluding hydraulic fracturing treatments, in an amount exceeding five hundred (500) pounds during any quarterly reporting period. Operators shall also maintain a chemical inventory by well site for non-vehicular fuel stored at the well site during drilling, completion, and workover operations, including hydraulic fracturing treatments, in an amount exceeding five hundred (500) pounds during any quarterly reporting period.

The five hundred (500) pound reporting threshold shall be based on the cumulative maximum amount of a Chemical Product present at the well site during the quarterly reporting period. Entities maintaining Chemical Inventories under this section shall update these inventories quarterly throughout the life of the well site. These records must be maintained in a readily retrievable format at the operator's local field office. The Colorado Department of Public Health and Environment may obtain information provided to the Commission or Director in a Chemical Inventory upon written request to the Commission or the Director.

d. Where the composition of a Chemical Product is considered a Trade Secret by the vendor or service provider, Operators shall only be required to maintain the identity of the Trade Secret Chemical Product and shall not be required to maintain information concerning the identity of chemical constituents in a Trade Secret Chemical Product or the amounts of such constituents. The vendor or service provider shall provide to the Commission a list of the chemical constituents contained in a Trade Secret Chemical Product upon receipt of a letter from the Director stating that such information is necessary to respond to a spill or release of a Trade Secret Chemical Product or a complaint from a potentially adversely affected landowner regarding impacts to public health, safety, welfare, or the environment. Upon receipt of a written statement of necessity, information regarding the chemical constituents contained in a Trade Secret Chemical Product shall be disclosed by the vendor or service provider directly to the Director or his or her designee.

The Director or designee may disclose information regarding those chemical constituents to additional Commission staff members to the extent that such disclosure is necessary to allow the Commission staff member receiving the information to assist in responding to the spill, release, or complaint, provided that such individuals shall not disseminate the information further. In addition, the Director may disclose information regarding those chemical constituents to any Commissioner, the relevant County Public Health Director or Emergency Manager, or to the Colorado Department of Public Health and Environment's Director of Environmental Programs upon request by that individual. Any information so disclosed to the Director, a Commission staff member, a Commissioner, a County Public Health Director or Emergency Manager, or to the Colorado Department of Public Health and Environment's Director of Environmental Programs shall at all times be considered confidential and shall not become part of the Chemical Inventory, nor shall it be construed as publicly available. The Colorado Department of Public Health and Environment's Director of Environmental Programs, or his or her designee, may disclose information regarding the chemical constituents contained in a Trade Secret Chemical

Product to Colorado Department of Public Health and Environment staff members under the same terms and conditions as apply to the Director.

e. The vendor or service provider shall also provide the chemical constituents of a Trade Secret Chemical Product to any health professional who requests such information in writing if the health professional provides a written statement of need for the information and executes a Confidentiality Agreement, Form 35. The written statement of need shall be a statement that the health professional has a reasonable basis to believe that (1) the information is needed for purposes of diagnosis or treatment of an individual, (2) the individual being diagnosed or treated may have been exposed to the chemical concerned, and (3) knowledge of the chemical constituents of such Trade Secret Chemical Product will assist in such diagnosis or treatment. The Confidentiality Agreement, Form 35, shall state that the health professional shall not use the information for purposes other than the health needs asserted in the statement of need, and that the health professional shall otherwise maintain the information as confidential. Where a health professional determines that a medical emergency exists and the chemical constituents of a Trade Secret Chemical Product are necessary for emergency treatment, the vendor or service provider shall immediately disclose the chemical constituents of a Trade Secret Chemical Product to that health professional upon a verbal acknowledgement by the health professional that such information shall not be used for purposes other than the health needs asserted and that the health professional shall otherwise maintain the information as confidential. The vendor or service provider may request a written statement of need, and a Confidentiality Agreement, Form 35, from all health professionals to whom information regarding the chemical constituents was disclosed, as soon as circumstances permit. Information so disclosed to a health professional shall not become part of the Chemical Inventory and shall in no way be construed as publicly available.

f. Such books, records, inventories, and copies of said reports required by the Commission or the Director shall be kept on file and available for inspection by the Commission for a period of at least five years except for the Chemical Inventory, which shall be kept on file and available for inspection by the Commission for the life of the applicable oil and gas well or oil and gas location and for five (5) years after plugging and abandonment. Upon the written request of the Commission or the Director for information required to be maintained or provided under this section, the record-keeping entity or third-party vendor shall supply the Commission or the Director with the requested information within three (3) business days in a format readily-reviewable by the Commission or the Director, except in the instance where such information is necessary to administer emergency medical treatment in which case such information shall be provided as soon as possible. Information provided to the Commission or the Director under this section that is entitled to protection under state or federal law, including C.R.S. § 24-72-204, as a trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data shall be kept confidential and protected against public disclosure unless otherwise required, permitted, or authorized by other state or federal law. Any disclosure of information entitled to protection under any state or federal law made pursuant to this section shall be made only to the persons required, permitted, or authorized to receive such information under state or federal law in order to assist in the response to a spill, release, or complaint and shall be subject to a requirement that the person receiving such information maintain the confidentiality of said information. The Commission or the Director shall notify the owner, holder, or beneficiary of any such protected information at least one (1) business day prior to any required, permitted, or authorized disclosure. This notification shall include the name and contact information of the intended recipient of such protected information, the reason for the disclosure, and the state or federal law authorizing the disclosure. Information so disclosed shall not become part of the Chemical Inventory and shall in no way be construed as publicly available. 200-4 As of May 30, 2009

g. The Director and the authorized deputies shall have access to all well records wherever located. All operators, drilling contractors, drillers, service companies, or other persons engaged in drilling or servicing wells, shall permit the Director, or authorized deputy, at the Director's or their risk, in the absence of negligence on the part of the owner, to come upon any lease, property, or well operated or controlled by them, and to inspect the record and operation of such wells and to have access at all times to any and all records of wells; provided, that information so obtained shall be kept confidential and shall be reported only to the Commission or its authorized agents.

h. In the event that the vendor or service provider does not provide the information required by Rules 205.d, 205.e, or 205.f directly to the Commission or a health professional, the operator is responsible for providing the required information.

i. In the event the operator establishes to the satisfaction of the Director that it lacks the right to obtain the information required by Rules 205.d, 205.e, or 205.f and to provide it directly to the Commission or a health professional, the operator shall receive a variance from these rule provisions from the Director.

205A. HYDRAULIC FRACTURING CHEMICAL DISCLOSURE.

a. **Applicability**. This Commission Rule 205a applies to hydraulic fracturing treatments performed on or after April 1, 2012.

b. **Required disclosures**.

(1) Vendor and service provider disclosures. A service provider who performs any part of a hydraulic fracturing treatment and a vendor who provides hydraulic fracturing additives directly to the operator for a hydraulic fracturing treatment shall, with the exception of information claimed to be a trade secret, furnish the operator with the information required by subsection 205A.b.(2)(A)(viii) – (xii) and subsection 205A.b.(2)(B), as applicable, and with any other information needed for the operator to comply with subsection 205A.b.(2). Such information shall be provided as soon as possible within 30 days following the conclusion of the hydraulic fracturing treatment and in no case later than 90 days after the commencement of such hydraulic fracturing treatment.

(2) Operator disclosures.

A. Within 60 days following the conclusion of a hydraulic fracturing treatment, and in no case later than 120 days after the commencement of such hydraulic fracturing treatment, the operator of the well must complete the chemical disclosure registry form and post the form on the chemical disclosure registry, including:

i. the operator name;

ii. the date of the hydraulic fracturing treatment;

iii. the county in which the well is located;

iv. the API number for the well;

v. the well name and number;

vi. the longitude and latitude of the wellhead;

vii. the true vertical depth of the well;

viii. the total volume of water used in the hydraulic fracturing treatment of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment, if something other than water;

ix. each hydraulic fracturing additive used in the hydraulic fracturing fluid and the trade name, vendor, and a brief descriptor of the intended use or function of each hydraulic fracturing additive in the hydraulic fracturing fluid;

x. each chemical intentionally added to the base fluid;

xi. the maximum concentration, in percent by mass, of each chemical intentionally added to the base fluid; and

xii. the chemical abstract service number for each chemical intentionally added to the base fluid, if applicable.

B. If the vendor, service provider, or operator claim that the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical is/are claimed to be a trade secret, the operator of the well must so indicate on the chemical disclosure registry form and, as applicable, the vendor, service provider, or operator shall submit to the Director a Form 41 claim of entitlement to have the specific identity of a chemical, the concentration of a chemical, or both withheld as a trade secret. The operator must nonetheless disclose all information required under subsection 205A.b.(2)(A) that is not claimed to be a trade secret. If a chemical is claimed to be a trade secret, the operator must also include in the chemical registry form the chemical family or other similar descriptor associated with such chemical.

C. At the time of claiming that a hydraulic fracturing chemical, concentration, or both is entitled to trade secret protection, a vendor, service provider or operator shall file with the commission claim of entitlement, Form 41, containing contact information. Such contact information shall include the claimant's name, authorized representative, mailing address, and phone number with respect to trade secret claims. If such contact information changes, the claimant shall immediately submit a new Form 41 to the Commission with updated information.

D. Unless the information is entitled to protection as a trade secret, information submitted to the Commission or posted to the chemical disclosure registry is public information.

(3) Ability to search for information. The chemical disclosure registry shall allow the Commission staff and the public to search and sort the registry for Colorado information by geographic area, ingredient, chemical abstract service number, time period, and operator.

(4) Inaccuracies in information. A vendor is not responsible for any inaccuracy in information that is provided to the vendor by a third party manufacturer of the hydraulic fracturing additives. A service provider is not responsible for any inaccuracy in information that is provided to the service provider by the vendor. An operator is not responsible for any inaccuracy in information provided to the operator by the vendor or service provider.

(5) Disclosure to health professionals. Vendors, service companies, and operators shall identify the specific identity and amount of any chemicals claimed to be a trade secret to any health professional who requests such information in writing if the health professional provides a written statement of need for the information and executes a confidentiality agreement, Form 35. The written statement of need shall be a statement that the health professional has a reasonable basis to believe that (1) the information is needed for purposes of diagnosis or treatment of an individual, (2) the individual being diagnosed or treated may have been exposed to the chemical concerned, and (3) knowledge of the information will assist in such diagnosis or treatment. The confidentiality agreement, Form 35, shall state that the health professional shall not use the information for purposes other than the health needs asserted in the statement of need, and that the health professional shall otherwise maintain the information as confidential. Where a health professional determines that a medical emergency exists and the specific identity and amount of any chemicals claimed to be a trade secret are necessary for emergency treatment, the vendor, service provider, or operator, as applicable, shall immediately disclose the information to that health professional upon a verbal acknowledgement by the health professional that such information shall not be used for purposes other than the health needs asserted and that the health professional shall otherwise maintain the information as confidential. The vendor, service provider, or operator, as applicable, may request a written statement of need, and a confidentiality agreement, Form 35, from all health professionals to whom information regarding the specific identity and amount of any chemicals claimed to be a trade secret was disclosed, as soon as circumstances permit. Information so disclosed to a health professional shall in no way be construed as publicly available.

c. Disclosures not required. A vendor, service provider, or operator is not required to:

(1) disclose chemicals that are not disclosed to it by the manufacturer, vendor, or service provider;

(2) disclose chemicals that were not intentionally added to the hydraulic fracturing fluid; or

(3) disclose chemicals that occur incidentally or are otherwise unintentionally present in trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid.

d. Trade secret protection.

(1) Vendors, service companies, and operators are not required to disclose trade secrets to the chemical disclosure registry.

(2) If the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical are claimed to be entitled to

protection as a trade secret, the vendor, service provider or operator may withhold the specific identity, the concentration, or both the specific identity and concentration, of the chemical, as the case may be, from the information provided to the chemical disclosure registry. Provided, however, operators must provide the information required by Rule 205A.b.(2)(B) & (C).

The vendor, service provider, or operator, as applicable, shall provide the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a trade secret to the Commission upon receipt of a letter from the Director stating that such information is necessary to respond to a spill or release or a complaint from a person who may have been directly and adversely affected or aggrieved by such spill or release. Upon receipt of a written statement of necessity, such information shall be disclosed by the vendor, service provider, or operator, as applicable, directly to the Director or his or her designee and shall in no way be construed as publicly available.

The Director or designee may disclose information regarding the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a trade secret to additional Commission staff members to the extent that such disclosure is necessary to allow the Commission staff member receiving the information to assist in responding to the spill, release, or complaint, provided that such individuals shall not disseminate the information further. In addition, the Director may disclose such information to any Commissioner, the relevant county public health director or emergency manager, or to the Colorado Department of Public Health and Environment's director of environmental programs upon request by that individual. Any information so disclosed to the Director, a Commission staff member, a Commissioner, a county public health director or emergency manager, or to the Colorado Department of Public Health and Environment's director of environmental programs shall at all times be considered confidential and shall not be construed as publicly available. The Colorado Department of Public Health and Environment's director of environmental programs, or his or her designee, may disclose such information to Colorado Department of Public Health and Environment staff members under the same terms and conditions as apply to the director.

e. Incorporated materials. Where referenced herein, these regulations incorporate by reference material originally published elsewhere. Such incorporation does not include later amendments to or editions of the referenced material. Pursuant to section 24-4-103 (12.5) C.R.S., the Commission maintains copies of the complete text of the incorporated materials for public inspection during regular business hours. Information regarding how the incorporated material may be obtained or examined is available at the Commission's office located at 1120 Lincoln Street, Suite 801, Denver, Colorado 80203.

206. REPORTS

All producers, operators, transporters, refiners, gasoline and other extraction plant operators, and initial purchasers of oil and gas within the State shall from time to time file accurate and complete reports containing such information and covering such geographic areas or periods as the Commission or Director shall require.

207. TESTS AND SURVEYS

a. **Tests and surveys.** When deemed necessary or advisable, the Commission is authorized to require that tests or surveys be made to determine the presence of waste or occurrence of pollution. The Commission, in calling for reports under Rule 206 and tests or surveys to be made as provided in this rule, shall designate the time allowed to the operator for compliance, which provisions as to time shall prevail over any other time provisions in these rules.

b. **Bradenhead monitoring.**

(1) The Director shall have authority to designate specific fields or portions of fields as bradenhead test areas. At all wells within the bradenhead test area, the bradenhead access to the annulus between the production and surface casing, as well as any intermediate casing, shall be equipped with fittings to allow safe and convenient determinations of pressure and fluid flow. All valves used for annular pressure monitoring shall remain exposed and not buried to allow for COGCC visual inspection at all times. A rigid housing may be used to protect the valves, provided that the housing can be easily opened or removed by the operator upon request of COGCC staff. Any such proposed bradenhead test area shall be designated by notice to all operators on record within the area and by publication. The proposed designation, if no protests are timely filed, shall be placed upon the Commission consent agenda for the regular monthly meeting of the Commission following the month in which such notice is given, and shall be approved or heard by the Commission in accordance with Rule 520. Such designation shall be effective immediately, upon approval by the Commission.

(2) All operators within any bradenhead test area shall have thirty (30) days after the effective date of the designation to commence the taking of bradenhead pressure readings in all wells located therein which are equipped for such readings. The operator shall equip any well which is not so equipped within ninety (90) days of the effective date, and within thirty (30) days thereafter the operator shall take the required reading. Such readings shall include the date, time and pressure of each reading, and the type of fluid reported. Such readings shall be taken in bradenhead test areas annually, maintained at the operator's office for a period of five (5) years, and shall be reported to the Director upon written request.

208. CORRECTIVE ACTION

The Commission shall require correction, in a manner to be prescribed or approved by it, of any condition which is causing or is likely to cause waste or pollution; and require the proper plugging and abandonment of any well or wells no longer used or useful in accordance with such reasonable plan as may be prescribed by it.

209. PROTECTION OF COAL SEAMS AND WATER-BEARING FORMATIONS

In the conduct of oil and gas operations each owner shall exercise due care in the protection of coal seams and water-bearing formations as required by the applicable statutes of the State of Colorado.

Special precautions shall be taken in drilling and abandoning wells to guard against any loss of artesian water from the stratum in which it occurs and the contamination of fresh water by objectionable water, oil, or gas. Before any oil or gas well is completed as a producer, all oil, gas and water strata above and below the producing horizon shall be sealed or separated in order to prevent the intermingling of their contents.

210. SIGNS AND MARKERS

The operator shall mark each and every well in a conspicuous place, from the time of initial drilling until final abandonment, as follows:

a. **Drilling and Recompletion Operations.** Directional signs, no less than three (3) and no more than six (6) square feet in size, shall be provided during any drilling or recompletion operation, by the operator or drilling contractor. Such signs shall be at locations sufficient to advise emergency crews where drilling is taking place; at a minimum, such locations shall include (i) the first point of intersection of a public road and the rig access road and (ii) thereafter at each intersection of the rig access route, except where the route to the rig is clearly obvious to uninformed third parties. Signs not necessary to meet other obligations under these rules shall be removed as soon as practicable after the operation is complete.

b. **Permanent Designations.**

(1) **Wells**. Within sixty (60) days after the completion of a well, a permanent sign shall be located at the wellhead which shall identify the well and provide its legal location, including the quarter quarter section. When no associated battery is present, the additional information required under Rule 210.b.(2) shall be required on the sign.

(2) **Batteries**. Within sixty (60) days after the installation of a battery, a permanent sign shall be located at the battery. At the option of the operator, or at the request of local emergency response authorities, the sign may be placed at the intersection of the lease access road with a public, farm or ranch road if the referenced battery is readily apparent from such location. Such sign, which shall be no less than three (3) square feet and no more than six (6) square feet, shall provide: the name of the operator; a phone number at which the operator can be reached at all times; a phone number for local emergency services (911 where available); the lease name or well name(s) associated with the battery; the public road used to access the site; and the legal location, including the quarter quarter section. In lieu of providing the legal location on the permanent sign, it may be stenciled on a tank in characters visible from one-hundred (100) feet.

c. **Centralized E&P Waste Management Facilities**. The main point of access to a centralized E&P waste management facility shall be marked by a sign captioned "(operator name) E&P Waste Management Facility." Such sign, which shall be no less than three (3) square feet and no more than six (6) square feet shall provide: a phone number at which the operator can be reached at all times; a phone number for local emergency services (911 where available); the public road used to access the facility; and the legal location, including quarter quarter section, of the facility.

d. **Tanks and Containers.**

(1) All tanks with a capacity of ten (10) barrels or greater shall by September 1, 2009 be labeled or posted with the following information:

A. Name of operator;

B. Operator's emergency contact telephone number;

C. Tank capacity;

D. Tank contents; and

E. National Fire Protection Association (NFPA) Label.

(2) Containers that are used to store, treat, or otherwise handle a hazardous material and which are required to be marked, placarded, or labeled in accordance with the U.S. Department of Transportation's Hazardous Materials Regulations, shall retain the markings, placards, and labels on the container. Such markings, placards, and labels must be retained on the container until it is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

e. **General sign requirements**. No sign required under this Rule 210. shall be installed at a height exceeding six (6) feet. Operators shall maintain signs in a legible condition, and shall replace damaged or vandalized signs within sixty (60) days. New operators shall update signs within sixty (60) days after change of operator approval is received from the Commission.

211. NAMING OF FIELDS

All oil and gas fields discovered in the State subsequent to the adoption of these rules and regulations shall be named by the Director or at the Director's direction.

212. SAFETY

For safety regulations regarding industry personnel, contact the U.S. Department of Labor, Occupational Safety and Health Administration, Regional Administrator, Colorado Region VIII, 1244 Speer Blvd Suite 551 Denver, CO, 80204, (720)-264-6550. For State Safety regulations regarding public safety see Rules 601-608.

213. FORMS UPON REQUEST

Forms required by the Commission will be furnished upon request. (Please see Procedures and Forms Guidelines)

214. LOCAL GOVERNMENTAL DESIGNEE

Each local government which designates an office for the purposes set forth in the 100 Series shall provide the Commission written notice of such designation, including the name, address and telephone number, facsimile number, electronic mail address, local emergency dispatch and other emergency numbers of the local governmental designee. It shall be the responsibility of such local governmental designee to ensure that all documents provided to the local governmental designee by oil and gas operators and the Commission or the Director are distributed to the appropriate persons and offices.

215. GLOBAL POSITIONING SYSTEMS

Global Positioning Systems (GPS) may be used to locate facilities used in oil and gas operations provided they meet the following minimum standards of the Commission:

a. Instruments rated as Differential Global Positioning System (DGPS) shall be used.

b. Instruments shall be capable of one (1) meter accuracy after differential correction.

c. All GPS data shall be differentially corrected by post processing prior to data submission.

d. Position dilution of precision (PDOP) values shall not be higher than six (6) and shall be included with location data.

e. Elevation mask (lowest acceptable height above the horizon) shall be no less than fifteen degrees (15^{o})

f. Latitude and longitude coordinates shall be provided in decimal degrees with an accuracy and precision of five (5) decimals of a degree using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345 N, longitude 104.45632 W).

g. Raw and corrected data files shall be held for a period of three (3) years.

h. Measurements shall be made by a trained GPS operator familiar with the theory of GPS, the use of GPS instrumentation, and typical constraints encountered during field activities.

216. COMPREHENSIVE DRILLING PLANS

a. **Purpose.** Comprehensive Drilling Plans are intended to identify foreseeable oil and gas activities in a defined geographic area, facilitate discussions about potential impacts, and identify measures to minimize adverse impacts to public health, safety, welfare, and the environment, including wildlife resources, from such activities. An operator's decisions to initiate and enter into a Comprehensive Drilling Plan are voluntary.

b. **Scope.** A Comprehensive Drilling Plan shall cover more than one (1) proposed oil and gas location within a geologic basin, but its scope may otherwise be customized by the operator to address specific issues in particular areas. Although operators are encouraged to develop joint Comprehensive Drilling Plans covering the proposed activities of multiple operators where appropriate, Comprehensive Drilling Plans will typically cover the activities of one operator.

c. **Information requirements.** Operators are encouraged to submit the most detailed information practicable about the future activities in the geographic area covered by the Comprehensive Drilling Plan. Detailed information is more likely to lead to identification of specific impacts and agreement regarding measures to minimize adverse impacts. The information included in the Comprehensive Drilling Plan shall be decided upon by the operator, in consultation with other participants. Information provided by operators to federal agencies to obtain approvals for surface disturbing activities on federal land may be submitted in support of a Comprehensive Drilling Plan. The following information may be included as part of a Comprehensive Drilling Plan, depending on the circumstances:

(1) A U.S. Geological Survey 1:24,000 topographic map showing the proposed oil and gas locations, including proposed access roads and gathering systems reasonably known to the operator(s);

(2) A current aerial photo showing the proposed oil and gas locations displayed at the same scale as the topographic map to facilitate use as an overlay;

(3) Overlay maps showing the proposed oil and gas locations, including all proposed access roads and gathering systems, drainages and stream crossings, and existing and proposed buildings, roads, utility lines, pipelines, known mines, oil or gas wells, water wells known to the operator(s) and those registered with the State Engineer's Office, and riparian areas;

(4) A list of all proposed oil and gas facilities to be installed within the area covered by the Comprehensive Drilling Plan over the time of the Plan and the anticipated timing of the installation;

(5) A plan for the management of exploration and production waste;

(6) A description of the wildlife resources at each oil and gas location;

(7) Wildlife information that is determined necessary after consultation with the Colorado Parks and Wildlife;

(8) Locations of all proposed reference areas to be used as guides for interim and final reclamation;

(9) Past economic uses to which the land has been put in the previous ten (10) years reasonably known to the operator(s);

(10) Any planned variance requests that are reasonably known to the operator;

(11) Proposed best management practices or mitigation to minimize adverse impacts to resources such as air, water, or wildlife resources; and

(12) A list of all parties that participated in creating the Comprehensive Drilling Plan pursuant to Rule 216.d.(2).

d. **Procedure.**

(1) One or more operator(s) may submit a proposed Comprehensive Drilling Plan to the Commission, describing the operator's reasonably foreseeable oil and gas development activities in a specified geographic area within a geologic basin. The Director may request an operator to initiate a Comprehensive Drilling Plan, but the decision to do so rests solely with the operator.

(2) The operator(s) shall invite the Colorado Department of Public Health and Environment, the Colorado Parks and Wildlife, local governmental designee(s), and all surface owners to participate in the development of the Comprehensive Drilling Plan. In many cases, participation by these agencies and individuals will facilitate identification of potential impacts and development of conditions of approval to minimize adverse impacts.

(3) The operator(s), the Director, and participants involved in the Comprehensive Drilling Plan process shall review the proposal, identify information needs, discuss operations and potential impacts, and establish measures to minimize adverse impacts resulting from oil and gas development activities covered by the Plan.

(4) The Director shall place on the Commission's hearing agenda in a timely manner a Comprehensive Drilling Plan that has been agreed to in writing by the operator(s) and that the Director considers suitable after consultation with the Colorado Department of Public Health and Environment and the Colorado Parks and Wildlife, as applicable, and consideration of any other comments.

(5) The Director shall identify and document the agreed-upon conditions of approval for activities within the geographic area covered by the accepted Comprehensive Drilling Plan.

(6) Comprehensive Drilling Plans that have been accepted by the Commission shall be posted on the COGCC website, subject to any confidential or proprietary information belonging to the operator or other parties being withheld. Written information obtained or compiled from landowners and operators in conjunction with development of a Comprehensive Drilling Plan is exempt from disclosure to the public, provided that any page containing information subject to withholding under the Colorado Open Records Act is clearly labeled with the words "Confidential Information." The Commission, the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife will keep all such data and information confidential to the extent allowed by the Colorado Open Records Act.

(7) Before initiating a Comprehensive Drilling Plan, operators are encouraged to discuss with the Director and, as appropriate, the Colorado Department of Public Health and Environment and the Colorado Parks and Wildlife, the scope of the Plan, the schedule for its preparation, the information to be included, any public participation opportunities, and whether the Plan is intended to satisfy Form 2A requirements.

e. **Variances and site-specific approvals.**

(1) A Comprehensive Drilling Plan may incorporate variances to any of these rules, provided that all of the requirements for granting variances are met.

(2) Practices and conditions agreed to in an accepted Comprehensive Drilling Plan shall be:

A. Included as conditions of approval in any Form 2 or other permit for individual wells or other ground-disturbing activity covered by the Plan, where no Form 2A is required under Rule 303.d.(2).B.

B. Included as conditions of approval in any Form 2, Form 2A, or other permit for individual wells or other ground-disturbing activity covered by the Plan, where a Form 2A is required under Rule 303.d.(1).

Any permit-specific condition of approval for wildlife habitat protection will be included only with the consent of the surface owner.

f. **Incentives.** The following incentives shall apply as a means to facilitate and encourage the development of Comprehensive Drilling Plans by operators:

(1) Where the Comprehensive Drilling Plan contains information substantially equivalent to that which would be required in a Form 2A for the proposed oil and gas location and the Comprehensive Drilling Plan has been subject to procedures substantially equivalent to those required for a Form 2A, then a Form 2A shall not be required for a proposed oil and gas location that was included in the Comprehensive Drilling Plan and does not involve a variance from the Plan or a variance from these rules not addressed in the Comprehensive Drilling Plan.

(2) Where the Comprehensive Drilling Plan does not contain information substantially equivalent to that which would be required in a Form 2A for the proposed oil and gas location or the Comprehensive Drilling Plan has not been subject to procedures substantially equivalent to those required for a Form 2A or the operator seeks a variance from the Comprehensive Drilling Plans or a provision of these rules that is not addressed in the Plan, then a Form 2A shall be required

for a proposed oil and gas location included in the Comprehensive Drilling Plan. However, the Director shall modify the informational and procedural requirements for such Form 2A to reflect the information included in and procedures used to approve the Comprehensive Drilling Plan and with input, where appropriate, from the Colorado Department of Public Health and Environment and the Colorado Parks and Wildlife.

(3) Where a proposed oil and gas location is covered by an approved Comprehensive Drilling Plan and no variance is sought from such Plan or these rules not addressed in the Comprehensive Drilling Plan, then the Director shall give priority to and approve or deny an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, within thirty (30) days of a determination that such application is complete pursuant to Rule 303.h unless significant new information is brought to the attention of the Director.

(4) Where the Director does not issue a decision on an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, for an oil and gas location as described in Rule 216.f.(3) above within thirty (30) days, then within five (5) days the Director shall provide the operator with a written explanation for the delay and the anticipated decision date, and the operator may request a hearing before the Commission. Such a hearing shall be expedited but will be held only after both the 20 days' notice and the newspaper notice are given as required by Section 34-60-108, C.R.S. However, the hearing may be held after the newspaper notice if all of the entities listed under Rule 503.b waive the 20-day notice requirement.

(5) Any party requesting a hearing pursuant to Rule 503.b.(7) on the Director's approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, for an oil and gas location that includes conditions of approval arrived at as part of an accepted Comprehensive Drilling Plan shall bear the burden of establishing that the conditions of approval are insufficient to protect public health, safety, welfare, the environment, and wildlife resources due to new information or changed circumstances occurring since the Comprehensive Drilling Plan was accepted by the Commission.

g. **Duration.** Once accepted by the Commission, a Comprehensive Drilling Plan shall be valid for a period of six (6) years.

h. **Modification.** An accepted Comprehensive Drilling Plan may be modified using the same process as that leading to acceptance of the original Plan either upon the initiative of the operator or upon the initiative of the Director and upon a showing that there has been a change in an applicable provision in these rules or a significant change to the basis upon which the Plan was developed. The review and approval of the modification shall focus only on the proposed modification(s).

SERIES DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT

301. RECORDS, REPORTS, NOTICES-GENERAL

Any written notice of intention to do work or to change plans previously approved must be filed with the Director, and must reach the Director and receive approval before the work is begun, or such approval may be given orally and, if so given, shall thereafter be confirmed to the Director in writing.

In case of emergency, or any situation where operations might be unduly delayed, any notice or information required by these rules and regulations to be given to the Director may be given orally or by wire, and if approval is obtained the transaction shall be promptly confirmed in writing to the Director, as a matter of record.

Immediate notice shall be given to the Director when public health or safety is in jeopardy. Notice shall also be given to the Director of any other significant downhole problem or mechanical failure in any well within ten (10) days.

The owner shall keep on the leased premises, or at the owner's headquarters in the field, or otherwise conveniently available to the Director, accurate and complete records of the drilling, redrilling, deepening, repairing, plugging or abandoning of all wells, and of all other well operations, and of all alterations to casing. These records shall show all the formations penetrated, the content and quality of oil, gas or water in each formation tested, and the grade, weight and size, and landed depth of casing used in drilling each well on the leased premises, and any other information obtained in the course of well operation. Such records on each well shall be maintained by any subsequent owner.

Whenever a person has been designated as an operator by an owner or owners of the lease or well, such an operator may submit the reports as herein required by the Commission.

302. COGCC Form 1. REGISTRATION FOR OIL AND GAS OPERATIONS

a. Prior to the commencement of its operations, all producers, operators, transporters, refiners, gasoline or other extraction plant operators, and initial purchasers who are conducting operations subject to this Act in the State of Colorado, shall, for purposes of the Act, file a Registration For Oil and Gas Operations, Form 1, with the Director in the manner and form approved by the Commission. Any producer, operator, transporter, refiner, gasoline or other extraction plant operator, and initial purchaser conducting operations subject to the Act who has not previously filed a Registration For Oil and Gas Operations, Form 1, shall do so. Any person providing financial assurance for oil and gas operators in Colorado shall file a Form 1 with the Director. All changes of address of the parties required to file a Form 1 shall be immediately reported by submitting a new Form 1.

b. **Designation of Agent, Form 1A.** Operator employees approved to submit documents shall be listed on a completed Designation of Agent, Form 1A. A company/individual other than the operator may be designated as an agent, and its representatives shall be listed on a completed Designation of Agent, Form 1A. This agency shall remain in effect until it is terminated in writing by submitting a new Designation of Agent, Form 1A. All changes to reported agent information shall be immediately reported by submitting a new Designation of Agent, Form 1A.

303. REQUIREMENTS FOR FORM 2, APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE; FORM 2A, OIL AND GAS LOCATION ASSESSMENT.

a. FORM 2. APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE.

(1) **Approval by Director.** A complete Form 2, Application for Permit-to-Drill, Deepen, Re-enter or Recomplete and Operate (Application for Permit-to-Drill) must be approved by the Director before commencement of operations with heavy equipment for the following operations:

A. Drilling any well;

B. Deepening any existing well;

C. Re-entering any plugged well (except for re-entry to re-plug shall require a Well Abandonment Report, Form 6, per Rule 311);

D. Recompleting and operating any existing well; or

E. Drilling a sidetrack from any well.

(2) **Approved Location.** An approved Form 2A, Oil and Gas Location Assessment, is required for the well location per Rule 303.b.

(3) **Operational Conflicts.** The Permit to Drill shall be binding with respect to any provision of a local governmental permit or land use approval that is in operational conflict with the Permit to Drill.

(4) **Filing Fees.** A Form 2, Application for Permit-to-Drill, shall be submitted with a filing and service fee established by the Commission (see Appendix III). Wells drilled for stratigraphic information only shall be exempt from paying the filing and service fee.

(5) **Information Requirements.**

The Form 2 requires the following information:

A. Every Form 2, Application for Permit-to-Drill, shall specify the distance between the well and wall or corner of the nearest building, Building Unit, High Occupancy Building Unit, Designated Outside Activity Area, public road, above ground utility, railroad, and property line.

B. **Wellbore Diagram.** A Form 2 to deepen, to re-enter, to recomplete to a different reservoir, or to drill a sidetrack of an existing well shall have a wellbore diagram attached.

C. A Form 2 to deepen, to re-enter, to recomplete to a different reservoir, or to drill a sidetrack of an existing well shall include the details of the proposed work.

D. **Well Location Plat.** A Form 2 to drill a new well or a new wellbore shall have a well location plat attached. The plat shall be a current scaled drawing(s) of

the entire section(s) penetrated by the proposed well with the following minimum information:

i. Dimensions on adjacent exterior section lines sufficient to completely describe the quarter section(s) containing the proposed well surface location, top of productive zone, wellbore, and bottom hole location shall be indicated. If dimensions are not field measured, state how the dimensions were determined.

ii. For irregular, partial or truncated sections, dimensions will be furnished to completely describe the entire section(s) containing the proposed well.

iii. The field-measured distances from the nearer north/south and nearer east/west section lines shall be measured at 90 degrees from said section lines to the well surface location and referenced on the plat. For unsurveyed land grants and other areas where an official public land survey system does not exist, the well locations shall be spotted as footages on a protracted section plat using Global Positioning System (GPS) technology and reported as latitude and longitude in accordance with Rule 215.

iv. The latitude and longitude of the proposed surface location shall be provided on the drawing with a minimum of five (5) decimal places of accuracy and precision using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345 N, longitude 104.45632 W). If GPS technology is utilized to determine the latitude and longitude, all GPS data shall meet the requirements set forth in Rule 215. a. through h.

v. The well location plat for deviated wellbore (directional, highly deviated, or horizontal) to be drilled utilizing controlled directional drilling methods shall meet the requirements set forth in Rule 321.

vi. A map legend.

vii. A north arrow.

viii. A scale expressed as an equivalent (e.g. - 1" = 1000').

ix. A bar scale.

x. The ground elevation.

xi. The basis of the elevation (how it was calculated or its source).

xii. The basis of bearing or interior angles used.

xiii. Complete description of monuments and/or collateral evidence found; all aliquot corners used shall be described.

xiv. The legal land description by section, township, range, principal meridian, baseline and county.

xv. Operator name.

xvi. Well name and well number.

xvii. Date of completion of scaled drawing.

E. **Deviated Drilling Plan.** A Form 2 to drill a deviated wellbore (directional, highly deviated, or horizontal) utilizing controlled directional drilling methods shall have the deviated drilling plan attached. The deviated drilling plan shall meet the requirements set forth in Rule 321.

303.b. **FORM 2A, OIL AND GAS LOCATION ASSESSMENT.**

(1) Unless exempted under subsection 2, below, a completed Form 2A, Oil and Gas Location Assessment, approved by the Director or the Commission is required for:

A. Any new Oil and Gas Location. For purposes of this section, "new Oil and Gas Location" shall mean surface disturbance at a previously undisturbed site;

B. Surface disturbance for purposes of modifying or expanding an existing Oil and Gas Location; or

C. The addition of a well or a pit, except an Emergency Pit or a Flare Pit where there is no risk of condensate accumulation, to any existing Oil and Gas Location.

(2) **Exemptions.** A new Form 2A shall not be required for the following:

A. Surface disturbance, other than for purposes described in subsections 303.b.(1) B and C. above, at an existing Oil and Gas Location within the originally disturbed area, even if interim reclamation has been performed;

B. For an Oil and Gas Location covered by an approved Comprehensive Drilling Plan and where such Comprehensive Drilling Plan contains information substantially equivalent to that which would be required for a Form 2A for the proposed Oil and Gas Location and the Comprehensive Drilling Plan has been subject to procedures substantially equivalent to those required for a Form 2A, including but not limited to consultation with Surface Owners, local governments, the Colorado Department of Public Health and Environment or Colorado Parks and Wildlife, where applicable, and public notice and opportunity to comment, and where the operator does not seek a variance from the Comprehensive Drilling Plan or a provision of these rules that is not addressed in the Plan;

C. Gathering lines;

D. Seismic operations;

E. Pipelines for oil, gas, or water; or

F. Roads.

(3) **Information Requirements.**

The Form 2A requires the following information:

A. A Form 2A shall specify the shortest distance between any Well or Production Facility proposed or existing on the Oil and Gas Location and the edge or corner of the nearest building, Building Unit, High Occupancy Building Unit, the nearest boundary of a Designated Outside Activity Area, and the nearest public road, above ground utility, railroad, and property line.

B. **Location Pictures.** A minimum of four (4) color photographs, one (1) of the staked location from each cardinal direction shall be attached. Each photograph shall be identified by: date taken, well or location name, and direction of view.

C. A list of major equipment components to be used in conjunction with drilling and operating the well(s), including all tanks, pits, flares, combustion equipment, separators, and other ancillary equipment and a description of any pipelines for oil, gas, or water.

D. **Location Drawing.** A scaled drawing, or scaled aerial photograph showing the approximate outline of the Oil and Gas Location and all wells and/or Production Facilities used for measuring distances shall be attached. The drawing shall include all visible improvements within five hundred (500) feet of the proposed Oil and Gas Location (as measured from the proposed edge of disturbance), with a horizontal distance and approximate bearing from the oil and gas facilities. Visible improvements shall include, but not be limited to, all buildings and Building Units, publicly maintained roads and trails, fences, above-ground utility lines, railroads, pipelines or pipeline markers, mines, oil wells, gas wells, injection wells, water wells known to the operator and those registered with the Colorado State Engineer, known springs, plugged wells, known sewers with manholes, standing bodies of water, and natural channels including permanent canals and ditches through which water may flow. If there are no visible improvements within five hundred (500) feet of a proposed Oil and Gas Location, it shall be so noted on the Form 2A.

E. **Hydrology Map.** A topographic map showing all surface waters and riparian areas within one thousand (1,000) feet of the proposed Oil and Gas Location, with a horizontal distance and approximate bearing from the Oil and Gas Location shall be attached.

F. **Access Road Map.** An 8 1/2” by 11” vicinity map, U.S. Geological Survey topographic map, or scaled aerial photograph showing the access route from the highway or county road to the proposed Oil and Gas Location shall be attached.

G. Designation of the current land use(s) and landowner’s designated final land use(s) and basis for setting reclamation standards.

i. If the final land use includes residential, industrial/commercial, or cropland and does not include any other uses, the land use should be indicated and no further information is needed.

ii. If the final land use includes rangeland, forestry, recreation, or wildlife habitat, then a reference area shall be selected and the following information shall be attached:

aa. **Reference Area Map.** A topographic map showing the location of the site, and the location of the reference area; and

bb. **Reference Area Pictures.** Four (4) color photographs of the reference area, taken during the growing season of vegetation and facing each cardinal direction. Each photograph shall be identified by date taken, well or Oil and Gas Location name, and direction of view. Provided that these photographs may be submitted at any time up to twelve (12) months after the Form 2A.

H. **NRCS Map Unit Description.** Natural Resources Conservation Service (NRCS) soil map unit description shall be attached.

I. **Construction Layout Drawing.** If the Oil and Gas Location disturbance is to occur on lands with a slope ten percent (10%) or greater, or one (1) foot of elevation gain or more in ten (10) foot distance, then the following information shall be attached:

i. Construction layout drawing (construction and operation); and

ii. Location cross-section plot (construction and operation).

J. If the proposed Oil and Gas Location is within one thousand (1,000) feet of a Building Unit, the following information shall be attached:

i. **Facility Layout Drawing**. A scaled facility layout drawing depicting the location of all existing and proposed new Oil and Gas Facilities listed on the Form 2A;

ii. **Waste Management Plan**. A Waste Management Plan describing how the Operator intends to satisfy the general requirements of Rule 907.a.; and

iii. **Rule 305.a.(2) Certification**. Evidence that Building Unit owners within the Buffer Zone received the pre-application notice required by Rule 305.a.(2).

K. **Rule 305.a.(1) Certification.** If the proposed Oil and Gas Location is within an Urban Mitigation Area, evidence that the local government received the pre-application notice required by Rule 305.a.(1) shall be attached.

L. **Multi-Well Plan.** Where the proposed Oil and Gas Location is for multiple wells on a single pad, a drawing showing proposed wellbore trajectory with bottom-hole locations shall be attached.

M. A description of any applicant-proposed Best Management Practices or, where a variance from a provision of these rules is sought, any applicant-proposed measures to meet the standards for such a variance. With the consent of the Surface Owner, this may include mitigation measures contained in a relevant Surface Use Agreement.

N. If the proposed Oil and Gas Location is covered by an approved Comprehensive Drilling Plan pursuant to Rule 216, a list of any conditions of approval.

O. Contact information for the Surface Owner(s) and an indication as to whether there is a Surface Use Agreement(s) or any other agreement(s) between the applicant and the Surface Owner(s) for the proposed Oil and Gas Location.

P. Designation of whether the proposed Oil and Gas Location is within sensitive wildlife habitat or a restricted surface occupancy area.

Q. If the proposed Oil and Gas Location is within a zone defined in Rule 317B, Table 1, documentation that the applicant has provided notification of the application submittal to potentially impacted public water systems within fifteen (15) stream miles downstream.

R. Any additional data as reasonably required by the Commission as a result of consultation with the Colorado Department of Public Health and Environment or Colorado Parks and Wildlife.

S. Oil and Gas Locations in wetlands. The Form 2A shall also indicate if an Army Corps of Engineers permit pursuant to 33 U.S.C.A. §1342 and 1344 of the Water Pollution and Control Act (Section 404 of the federal "Clean Water Act") is required for the construction of an Oil and Gas Location.

T. The Operator shall indicate on the Form 2A whether it intends to seek a location exception under Rules 604.b(2) or b(3), and, if so, the relevant Surface Use Agreement(s) shall be attached.

(4) Where the information required under subsection (3) has been included in a federal Surface Use Plan of Operations meeting the requirements of Onshore Oil and Gas Order Number 1 (72 Fed. Reg. 10308 (March 7, 2007)), or for a federal Right of Way, Form 299, then the operator may attach the completed pertinent information and identify on the Form 2A where the information required under this section may be found therein.

303.c. **PROCESSING TIME FOR APPROVALS UNDER THIS SECTION.**

(1) In accordance with Rule 216.f.(3), where a proposed Oil and Gas Location is covered by an approved Comprehensive Drilling Plan and no variance is sought from such Plan or these rules not addressed in the Comprehensive Drilling Plan, the Director shall give priority to and approve or deny an Application for Permit-to-Drill, Form 2, or, where applicable, Oil and Gas Location Assessment, Form 2A, within thirty (30) days of a determination that such application is complete pursuant to Rule 303.h, unless significant new information is brought to the attention of the Director.

(2) If the Director has not issued a decision on an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, within seventy-five (75) days of a determination that such application is complete, the operator may request a hearing before the Commission on the permit application. Such a hearing shall be expedited but will be held only after both the 20 days' notice and the newspaper notice are given as required by Section 34-60-108, C.R.S. However, the hearing can be held after the newspaper notice if all of the entities listed under Rule 503.b waive the 20-day notice requirement.

303.d. **Revisions to Form 2 or Form 2A.** Prior to approval of the Form 2 or Form 2A permit application, minor revisions or requested information may be provided by contacting the COGCC staff. After approval, any substantive changes shall be submitted for approval on a Form 2 or Form 2A. A Sundry Notice, Form 4, shall be submitted, along with supplemental information requested by the Director, when non-substantive revisions are made after approval, and no additional fee shall be imposed.

303.e. **Incomplete applications.** Applications for Permit-to-Drill, Form 2, or Oil and Gas Location Assessments, Form 2A, which are submitted without the required attachments, the proper signature, or the required information, shall be considered incomplete and shall not be reviewed or approved. The COGCC staff shall notify the applicant in not more than ten (10) days of its receipt of the application of such inadequacies, except that the Director shall notify the applicant of inadequacies within three (3) business days of its receipt where the proposed Oil and Gas Location is covered by an accepted Comprehensive Drilling Plan. The applicant shall then have thirty (30) days from the date that it was contacted to correct or provide requested information, otherwise the application shall be considered withdrawn and the fee shall not be refunded.

303.f. **Information requests after completeness determination.** Subsequent to deeming an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, complete, the Director may request from the operator additional information needed to complete review of and make a decision on such an application. Such an information request shall not affect an operator's ability to request a hearing pursuant to Rule 303.e seventy-five (75) days from the date the Form 2 or Form 2A was originally determined to be complete pursuant to Rule 303.h.

303.g. **Permit expiration.**

(1) Applications for Permit-to-Drill, Form 2. Approval of a Form 2 shall become null and void if drilling operations on the permitted well are not commenced within two (2) years after the date of approval. The Director shall not approve extensions to Applications for Permit-to-Drill, Form 2.

(2) Oil and Gas Location Assessments, Form 2A. If construction operations are not commenced on an approved Oil and Gas Location within three (3) years after the date of approval, then the approval shall become null and void. The Director shall not approve extensions to Oil and Gas Location Assessments, Form 2A.

303.h. **Permits in areas pending Commission hearing.** The Director may withhold the issuance of any Applications for Permit-to-Drill, Form 2, for any well or proposed well that is located in an area for which an application has been filed, or which the Commission has sought, by its own motion, to establish drilling units, in which case the hearing thereon shall be held at the next meeting of the Commission at which time the matter can be legally heard.

303.i. **Special circumstances for permit issuance without notice or consultation.** The Director may issue a permit at any time in the event that an operator files a sworn statement and demonstrates therein to the Director's satisfaction that:

(1) The operator had the right or obligation under the terms of an existing contract to drill a well; and the owner or operator has a leasehold estate or a right to acquire a leasehold estate under said contract which will be terminated unless the operator is permitted to immediately commence the drilling of said well; or

(2) Due to exigent circumstances (including a recent change in geological interpretation), significant economic hardship to a drilling contractor will result or significant economic hardship to an operator in the form of drilling stand by charges will result.

In the event the Director issues a permit under this rule, the operator shall not be required to meet obligations to Surface Owners, local governmental designees, the Colorado Department of Public Health and Environment, or Colorado Parks and Wildlife under Rule 305 (except Rules 305.f.(4) and 305.f.(6), for which compliance will still be required) and 306. The Director shall report permits granted in such manner to the Commission at regularly scheduled monthly hearings.

303.j. **Special circumstances for withholding approval of Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A.**

(1) The Director may withhold approval of any Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, for any proposed well or Oil and Gas Location when, based on information supplied in a written complaint submitted by any party with standing under Rule 522.a.(1), other than a local governmental designee, or by staff analysis, the Director has reasonable cause to believe the proposed well or Oil and Gas Location is in material violation of the Commission's rules, regulations, orders or statutes, or otherwise presents an imminent threat to public health, safety and welfare, including the environment, or a material threat to wildlife resources. Any such withholding of approval shall be limited to the minimum period of time necessary to investigate and dismiss the complaint, or to resolve the alleged violation or issue. If the complaint is dismissed or the matter resolved to the dissatisfaction of the complainant, such person may consult with the parties identified in Rule 503.b.(7).

(2) In the event the Director withholds approval of any Application for Permit-To-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, under this Rule 303.j., an operator may ask the Commission to issue an emergency order rescinding the Director's decision.

303.k. **Suspending approved Application for Permit-To-Drill, Form 2.** Prior to the spudding of the well, the Director shall suspend an approved Application for Permit-to-Drill, Form 2, if the Director has reasonable cause to believe that information submitted on the Application for Permit-to-Drill, Form 2 was materially incorrect. Under the circumstances described in Rule 303.i.(1) or (2), an operator may ask the Commission to issue an emergency order rescinding the Director's decision.

303.l. **Reclassification of stratigraphic well.** If a test for productivity is made in a stratigraphic well, the well must be reclassified as a well drilled for oil or gas and is subject to all of the rules and regulations for well drilled for oil or gas, including filing of reports and mechanical logs.

303.m. **Provisions for avoiding mine sites.** Any person holding, or who has applied for, a permit issued or to be issued under §34-33-101 to 137, C.R.S., may at their election, notify the Director of such permit or application. Such notice shall include the name, mailing address and facsimile number of such person and designate by legal description the life-of-mine area permitted, or applied for, with the Division of Reclamation, Mining, and Safety. As soon as practicable after receiving such notice and designation, the Director shall inform the party designated therein each time that an Application for Permit-to-Drill, Form 2, is filed with the Director which pertains to a well or wells located or to be located within said life-of-mine area as designated. The provisions of Rule 303.i.(1) and (2) will not be applicable to this rule.

304. FINANCIAL ASSURANCE REQUIREMENTS

Prior to drilling or assuming the operations for a well an operator shall provide financial assurance in accordance with the 700 Series rules. When an operator's existing wells are not in compliance with the 700 Series, the Director may withhold action on an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, until such time as a hearing on the permit application is held by the Commission. Such hearing shall be held at the next regularly scheduled Commission hearing at which time the matter can be legally heard.

305. FORM 2 AND 2A APPLICATION PROCEDURES

a. **Pre-application notifications.** For Oil and Gas Locations proposed within an Urban Mitigation Area or within the Buffer Zone Setback, an Operator shall provide a "Notice of Intent to Conduct Oil and Gas Operations" to the persons specified herein not less than thirty (30) days prior to submitting a Form 2A, Oil and Gas Location Assessment, to the Director.

(1) Urban Mitigation Area Notice to Local Government. For Oil and Gas Locations within an Urban Mitigation Area, an Operator shall notify the local government in writing that it intends to apply for an Oil and Gas Location Assessment. Such notice shall be provided to the Local Governmental Designee in those jurisdictions that have designated an LGD, and to the planning department in jurisdictions that have no LGD. The notice shall include a general description of the proposed Oil and Gas Facilities, the location of the proposed Oil and Gas Facilities, the anticipated date operations (by calendar quarter and year) will commence, and that an additional notice pursuant to Rule 305.c. will be sent by the Operator. This notice shall serve as an invitation to the local government to engage in discussions with the Operator regarding proposed operations and timing, local government jurisdictional requirements, and opportunities to collaborate regarding site development. A local government may waive its right to notice under this provision at any time by providing written notice to an Operator and the Director.

(2) Exception Zone and Buffer Zone Setback Notice to the Surface Owner and Building Unit Owners. For Oil and Gas Locations proposed within the Exception Zone or Buffer Zone Setback, Operators shall notify the Surface Owner and the owners of all Building Units that a permit to conduct Oil and Gas Operations is being sought. The Operator may rely on the county assessor tax records to identify the persons entitled to receive the Notice. Notice shall include the following:

A. The Operator's contact information;

B. The location and a general description of the proposed Well or Oil and Gas Facilities;

C. The anticipated date operations will commence (by calendar quarter and year);

D. The Local Governmental Designee's (LGD) contact information;

E. Notice that the Building Unit owner may request a meeting to discuss the proposed operations by contacting the LGD or the Operator; and

F. A "Notice of Comment Period" will be sent pursuant to Rule 305.c. when the public comment period commences.

b. Posting Form 2A and Form 2.

(1) **Form 2A.** Upon receipt of an Oil and Gas Location Assessment, Form 2A, the Director shall, as provided by Rule 303, determine if the application is complete and, if so, post such Form 2A on the Commission's website. The Commission shall provide concurrent electronic notice of such posting to the relevant Local Governmental Designee (LGD) and the Colorado Parks and Wildlife (where consultation is triggered pursuant to Rule 306.c) and the Colorado Department of Public Health and Environment (where consultation is triggered pursuant to Rule 306.d). The website posting shall clearly indicate:

A. The date on which the Form 2A was posted;

B. The date by which public comments must be received to be considered;

C. The address(es) to which the public may direct comments; and

D. Where the proposed Oil and Gas Location is covered by an accepted Comprehensive Drilling Plan, directions for review of the Plan.

(2) **Form 2.** If an Application for Permit-to-Drill, Form 2, is concurrently filed with a Form 2A, that fact shall be noted in the posting provided herein. If a Form 2 is subsequently filed, only a summary notice of such filing, indicating that a Form 2A covering the well has been previously accepted or approved, shall be posted, with concurrent notice to the local governmental designee and, where consultation with one of those agencies is triggered, the Colorado Parks and Wildlife or Colorado Department of Public Health and Environment.

305.c. **Completeness determination and comment period notifications.** Upon receipt of a completeness determination from the Director, an Operator shall notify the persons specified herein of their opportunity to meet with the Operator pursuant to Rule 306 and submit written comments about the proposed Oil and Gas Location to the Director, the LGD, and the Operator, and shall provide information about the Oil and Gas Location as follows:

(1) **Oil and Gas Location Assessment Notice ("OGLA Notice").**

A. Parties to be noticed:

i. Surface Owners;

ii. Owners of all Building Units within the Exception Zone Setback; and

iii. Owners of surface property within five hundred (500) feet of the proposed Oil and Gas Location, for proposed Oil and Gas Locations not subject to Rule 318A or 318B.

The operator may rely on the tax records of the assessor for the county in which the affected lands are located to identify the persons entitled to receive the OGLA Notice.

B. The OGLA Notice shall be delivered by hand; certified mail, return-receipt requested; electronic mail, return receipt requested; or by other delivery service with receipt confirmation unless an alternative method of notice is pre-approved by the Director.

C. The OGLA Notice shall include:

i. The Form 2A itself (without attachments);

ii. A copy of the information required under Rule 303.b.(3).C, 303.b.(3).D, 303.b.(3).F, and 303.b(3).J.i.;

iii. The COGCC's information sheet on hydraulic fracturing treatments except where hydraulic fracturing treatments are not going to be applied to the well in question;

iv. Instructions on how Building Unit owners can contact their Local Governmental Designee;

v. An invitation to meet with the Operator before Oil and Gas Operations commence on the proposed Oil and Gas Location;

vi. An invitation to provide written comments to the LGD, the Operator and to the Director regarding the proposed Oil and Gas Operations, including comments regarding the mitigation measures or Best Management Practices to be used at the Oil and Gas Location.

(2) **Buffer Zone Notice.** A "Notice of Comment Period" shall be provided by postcard to owners of Building Units within the Buffer Zone. The operator may rely on the county assessor tax records to identify the persons entitled to receive the Buffer Zone Notice. Notice shall include the following information:

A. The Operator's contact information;

B. The Local Governmental Designee's contact information;

C. The COGCC's website address and telephone number;

D. The location of the proposed Oil and Gas Facilities and the anticipated date operations will commence (by month and year);

E. An invitation to meet with the Operator before Oil and Gas Operations commence on the proposed Oil and Gas Location;

F. An invitation to provide written comments to the LGD, the Operator and to the Director regarding the proposed Oil and Gas Operations,

including comments regarding the mitigation measures or Best Management Practices to be used at the Oil and Gas Location.

(3) **Appointment of agent.** The Surface Owner or Building Unit owner may appoint an agent, including its tenant, for purposes of subsequent notice and for consultation or meetings under Rule 306. Such appointment shall be made in writing to the operator and must provide the agent's name, address, and telephone number.

(4) **Tenants.** With respect to notices given under this Rule 305, it shall be the responsibility of the notified Surface Owner or Building Unit owner to give notice of the proposed operation to the tenant farmer, lessee, or other party that may own or have an interest in any crops or surface improvements that could be affected by such proposed operation.

(5) **Waiver.** Any of the notices required herein may be waived in writing by the Surface Owner, its agent, or the Local Governmental Designee, provided that a waiver by a Surface Owner or its agent shall not prevent the Surface Owner or any successor-in-interest to the Surface Owner from rescinding that waiver if such rescission is in accordance with applicable law.

305.d. **Comment period.** The Director shall not approve a Form 2A, or any associated Form 2, for a proposed Well or Production Facility for twenty (20) days from posting pursuant to Rule 305.b, and shall accept and immediately post on the Commission's website any comments received from the public, the Local Governmental Designee, the Colorado Department of Public Health and Environment, or Colorado Parks and Wildlife regarding the proposed Oil and Gas Location.

(1) The Director shall extend the comment period to thirty (30) days upon the written request during the twenty (20) day comment period by the Local Governmental Designee, the Colorado Department of Public Health and Environment, Colorado Parks and Wildlife, the Surface Owner, or an owner of surface property who receives notice under Rule 305.c.(1)(A).iii.

(2) For Oil and Gas Locations proposed within an Urban Mitigation Area or within five hundred (500) feet of a Building Unit, the Director shall extend the comment period to not more than forty (40) days upon the written request of the Local Governmental Designee received within the original 20 day comment period.

The Director shall post notice of an extension granted under this provision on the COGCC website within twenty-four (24) hours of receipt of the extension request.

305.e. **Permit approval.** Upon the conclusion of the comment period and, where applicable, consultation with the Local Governmental Designee, Colorado Parks and Wildlife or Colorado Department of Public Health and Environment pursuant to Rules 306.b, 306.c. or 306.d, respectively, the Director may attach technically feasible and economically practicable conditions of approval to the Form 2 or Form 2A as the Director deems necessary to implement the provisions of the Act or these rules pursuant to Commission staff analysis or to respond to legitimate public health, safety, or welfare concerns expressed during the comment period. Provided, that an applicant under Rule 503 who claims that such a condition is not technically feasible, economically practicable, or necessary to implement the provisions of the Act or these rules, or to respond to legitimate public health, safety, or welfare concerns shall have the burden of proof on that issue before the Commission.

(1) **Notice of decision.** Upon making a decision on an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, the Director shall promptly provide notification of the decision and any conditions of approval to the operator and to any party with standing to request a hearing before the Commission pursuant to Rule 503.b, unless such a party has waived in writing its right to such notice and the Director has been provided a copy of such waiver.

(2) **Suspension of approval.** If a party, Surface Owner or local government requests a hearing before the Commission pursuant to Rule 503.b on an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, then it shall notify the Director in writing within ten (10) days after the issuance of the decision, setting forth the basis for the objection. Upon receipt of such an objection, the Director shall suspend the approval of the Form 2 or Form 2A and set the matter for an expedited adjudicatory hearing. Such a hearing shall be expedited but will only be held after both the 20 days' notice and the newspaper notice are given as required by Section 34-60-108, C.R.S. However, the hearing can be held after the newspaper notice if all of the entities listed under Rule 503.b waive the 20-day notice requirement. If such an objection is not received, the permit shall issue as proposed by the Director.

(3) **Appeal.** If the approval of a Form 2 or Form 2A is not suspended as provided for herein, the issuance of the approved Form 2 or Form 2A by the Director shall be deemed a final decision of the Commission, subject to judicial appeal.

305.f. **Statutory Notice to Surface Owners.** Not less than thirty (30) days in advance of commencement of operations with heavy equipment for the drilling of a well, operators shall provide the statutorily required notice to the well site Surface Owner(s) as described below and the Local Governmental Designee in whose jurisdiction the well is to be drilled. Notice to the Surface Owner may be waived in writing by the Surface Owner.

(1) Surface Owner Notice is not required on federal- or Indian-owned surface lands.

(2) Surface Owner Notice shall be delivered by hand; certified mail, return-receipt requested; or by other delivery service with receipt confirmation. Electronic mail may be used if the Surface Owner has approved such use in writing.

(3) The Surface Owner Notice must provide:

A. The operator's name and contact information for the operator or its agent;

B. A site diagram or plat of the proposed well location and any associated roads and production facilities;

C. The date operations with heavy equipment are expected to commence;

D. A copy of the COGCC Informational Brochure for Surface Owners;

E. A postage-paid, return-addressed post card whereby the Surface Owner may request consultation pursuant to Rule 306; and,

F. A copy of the COGCC Onsite Inspection Policy (See Appendix or COGCC website), where the Oil and Gas Location is not subject to a Surface-Use Agreement.

(4) **Notice of subsequent well operations.** An operator shall provide to the surface owner or agent at least seven (7) days advance notice of subsequent well operations with heavy equipment that will materially impact surface areas beyond the existing access road or well site, such as recompleting or stimulating the well.

(5) **Notice during irrigation season.** If a well is to be drilled on irrigated crop lands between March 1 and October 31, the operator shall contact the Surface Owner or agent at least fourteen (14) days prior to commencement of operations with heavy equipment to coordinate drilling operations to avoid unreasonable interference with irrigation plans and activities.

(6) **Final reclamation notice.** Not less than thirty (30) days before any final reclamation operations are to take place pursuant to Rule 1004, the operator shall notify the Surface Owner. Final reclamation operations shall mean those reclamation operations to be undertaken when a well is to be plugged and abandoned or when production facilities are to be permanently removed. Such notice is required only where final reclamation operations commence more than thirty (30) days after the completion of a well.

305.g. **Location Signage.** The Operator shall, concurrent with the Surface Owner Notice, post a sign not less than two feet by two feet at the intersection of the lease road and the public road providing access to the well site, with the name of the proposed well, the legal location thereof, and the estimated date of commencement. Such sign shall be maintained until completion operations at the well are concluded.

305.h. **Buffer Zone Move-In, Rig-Up Notice.** At least 30 days, but no more than 90 days, before the Move-In, Rig-Up of a drilling rig, the operator shall provide Move-In, Rig-Up ("MIRU") Notice to all Building Unit owners within the Buffer Zone if: (i) it has been more than one year since the previous notice or since drilling activity last occurred, or (ii) notice was not previously required.

(1) The operator may rely on the county assessor tax records to identify the persons entitled to MIRU Notice. MIRU Notice shall be delivered by hand; certified mail, with return-receipt requested; electronic mail, with return receipt requested; or by other delivery service with receipt confirmation.

(2) The MIRU Notice must include:

A. A statement informing the Building Unit owner that the operator intends to Move-In and Rig-Up a drilling rig to drill wells within 1000 feet of their Building Unit;

B. The operator's contact information;

C. The legal location of the proposed wells (Quarter-Quarter, Section, Township, Range, County);

D. The approximate street address of the proposed well locations (Street Number, Name, City);

E. The name and number of the proposed wells, including the API Number if the APD has been approved or the eForm Document Number if the APD is pending approval;

F. The anticipated date (Day, Month, Year) the drilling rig will move in and rig up; and

G. The COGCC's website address and telephone number.

(3) A Building Unit owner entitled to receive MIRU Notice may waive their right in writing at any time.

(4) An operator may request an exception to this Rule and provide MIRU Notice less than 30 days prior to Move-In, Rig-Up of the drilling rig for good cause.

306. CONSULTATION AND MEETING PROCEDURES. Following the notifications provided for in Rule 305.c, an Operator shall comply with the following consultation and meeting procedures:

a. **Surface owners**. The Operator shall consult in good faith with the Surface Owner, or the Surface Owner's appointed agent as provided for in Rule 305 in locating roads, production facilities, and well sites, or other oil and gas operations, and in preparation for reclamation and abandonment. Such consultation shall occur at a time mutually agreed to by the parties prior to the commencement of operations with heavy equipment upon the lands of the Surface Owner. The Surface Owner or appointed agent may comment on preferred locations for wells and associated production facilities, the preferred timing of oil and gas operations, and mitigation measures or Best Management Practices to be used during Oil and Gas Operations.

(1) **Information provided by operator**. When consulting with the Surface Owner or appointed agent, the operator shall furnish a description or diagram of the proposed drilling location; dimensions of the drill site; topsoil management practices to be employed; and, if known, the location of associated production or injection facilities, pipelines, roads and any other areas to be used for oil and gas operations (if not previously furnished to such Surface Owner or if different from what was previously furnished).

(2) **Waiver.** The Surface Owner or the Surface Owner's appointed agent may waive, permanently or otherwise, their right to consult with the operator at any time. Such waiver must be in writing, signed by the Surface Owner, and submitted to the operator.

306.b. **Local governments**.

(1) Local governments that have appointed a Local Governmental Designee and have indicated to the Director a desire for consultation shall be given an opportunity to consult with the Applicant and the Director on an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, for the location of roads, Production Facilities and Well sites, and mitigation measures or Best Management Practices during the comment period under Rule 305.d.

(2) Within fourteen (14) days of being notified of a Form 2 or a Form 2A completeness determination pursuant to Rule 305.c, the Local Governmental Designee may notify the Commission and the Colorado Department of Public Health and Environment by electronic mail of its desire to have the Colorado Department of Public Health and Environment consult on a proposed Oil and Gas Location, based on concerns regarding public health, safety, welfare, or impacts to the environment.

(3) For proposed Oil and Gas Locations within Exception Zone Setback or Urban Mitigation Areas, the Operator shall attend an informational meeting with Building Unit owners within the Exception Zone Setback or Urban Mitigation Area if the LGD requests such a meeting. Such informational meetings may be held on an individual basis, in small groups, or in larger community meetings and shall be held at a convenient place and time.

306.c. **Colorado Parks and Wildlife.**

(1) **Consultation to occur.**

A. Subject to the provisions of Rule 1202.d, Colorado Parks and Wildlife shall consult with the Commission, the Surface Owner, and the Operator on an Oil and Gas Location Assessment, Form 2A, where:

i. Consultation is required pursuant to a provision in the 1200-Series of these rules;

ii. The operator seeks a variance from a provision in the 1200-Series of these rules; or

iii. Colorado Parks and Wildlife requests consultation because the proposed Oil and Gas Location would be within areas of known occurrence or habitat of a federally threatened or endangered species, as shown on the Colorado Parks and Wildlife Species Activity Mapping (SAM) system.

B. The Commission shall consult with Colorado Parks and Wildlife when an operator requests a modification of an existing Commission order to increase well density or otherwise proposes to increase well density to more than one (1) well per forty (40) acres, or the Commission develops a basin-wide order involving wildlife or wildlife-related environmental concerns or protections.

C. Notwithstanding the foregoing, the requirement to consult with Colorado Parks and Wildlife may be waived by Colorado Parks and Wildlife at any time.

(2) **Procedure.**

A. The operator shall provide:

i. A description of the oil and gas operation to be considered, including location;

ii. Any other relevant available information on the oil and gas operation, the affected wildlife resource, or the provision(s) of the 1200-Series Rules upon which the consultation is based; and

iii. Proposed mitigation for the affected wildlife resource.

B. The Commission shall take into account the information submitted by the operator consistent with Rule 1202.c.

C. The operator, the Commission, the Surface Owner, and Colorado Parks and Wildlife shall have forty (40) days to conduct the consultation called for in this section. Such consultation shall begin concurrent with the start of the public comment period. If no consultation occurs within such 40-day period, the requirement to consult shall be deemed waived, and the Director shall consider the operator's application on the basis of the materials submitted by the operator.

(3) **Result of consultation under Rule 306.c.**

A. As a result of consultation called for in this subsection, Colorado Parks and Wildlife may make written recommendations to the Commission on conditions of approval necessary to minimize adverse impacts to wildlife resources. Where applicable, Colorado Parks and Wildlife may also make written recommendations on whether a variance request should be granted, under what conditions, and the reasons for any such recommendations.

B. **Agreed-upon conditions of approval.** Where the operator, the Director, Colorado Parks and Wildlife, and the Surface Owner agree to conditions of approval for Oil and Gas Locations as a result of consultation, these conditions of approval shall be incorporated into approvals of an Oil and Gas Location Assessment, Form 2A, or an Application for Permit-to-Drill, Form 2, where applicable.

C. **Permit-specific conditions.** Where the consultation called for in this subsection results in permit-specific conditions of approval to minimize adverse impacts to wildlife resources, the Director shall attach such permit-specific conditions only with the consent of the affected Surface Owner.

D. **Standards for consultation and initial decision.** Following consultation and subject to subsection C above and Rule 1202.c, the Director shall decide whether to attach conditions of approval to a Form 2A or Form 2, where applicable. In making this decision, the Director shall apply the criteria of Rule 1202.

E. **Notification of decision to consulting agency.** Where consultation occurs under Rule 306.c, the Director shall provide to Colorado Parks and Wildlife the conditions of approval for the Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, on the same day that he or she announces a decision to approve the application.

306.d. **Colorado Department of Public Health and Environment.**

(1) **Consultation to occur.**

A. The Commission shall consult with the Colorado Department of Public Health and Environment on an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, where:

i. Within fourteen (14) days of notification pursuant to Rule 305, the Local Governmental Designee requests the participation of the Colorado Department of Public Health and Environment in the Commission's consideration of an Application for Permit-to-Drill,

Form 2, or Oil and Gas Location Assessment, Form 2A, based on concerns regarding public health, safety, welfare, or impacts to the environment;

ii. The operator seeks from the Director a variance from, or consultation is otherwise required or permitted under, a provision of one of the following rules intended for the protection of public health, safety, welfare, or the environment:

aa. Rule 317B. Public Water System Protection;

bb. Rule 325. Underground Disposal of Water;

cc. Rule 603. Statewide Location Requirements for Oil and Gas Facilities, Drilling, and Well Servicing Operations;

dd. Rule 604. Setback and Mitigation Measures for Oil and Gas Facilities, Drilling, and Well Servicing Operations;

ee. Rule 608. Coalbed Methane Wells;

ff. Rule 805. Odors and Dust;

gg. 900-Series E&P Waste Management; or

hh. Rule 1002.f. Stormwater Management.

All requests for variances from these rules must be made at the time an operator submits a Form 2A.

B. The Commission shall consult with the Colorado Department of Public Health and Environment when an operator requests a modification of an existing Commission order to increase well density or otherwise proposes to increase well density to more than one (1) well per forty (40) acres, or the Commission develops a basin-wide order that can reasonably be anticipated to have impacts on public health, welfare, safety, or environmental concerns or protections.

C. Notwithstanding the foregoing, the requirement to consult with the Colorado Department of Public Health and Environment may be waived by the Colorado Department of Public Health and Environment at any time.

(2) **Procedure.**

A. Where required, the Commission and the Colorado Department of Public Health and Environment shall have forty (40) days to conduct the consultation called for in this section. Such consultation shall begin concurrent with the start of the public comment period. If no consultation occurs within such 40-day period, the requirement to consult shall be waived, and the Director shall consider the operator's application on the basis of the materials submitted by the operator.

B. The consultation called for in this section shall focus on identifying potential impacts to public health, safety, welfare, or the environment from activities associated with the proposed Oil and Gas Location, and

development of conditions of approval or other measures to minimize adverse impacts.

C. Where consultation occurs pursuant to Rule 306.d.(1).A, it may include:

i. Review of the permit application;

ii. Discussions with the local governmental designee to better understand local government's concerns;

iii. Discussions with the Commission, operator, Surface Owner, or those potentially affected; and

iv. Review of public comments.

D. Where consultation occurs pursuant to Rule 306.d.(1).A.ii, the Colorado Department of Public Health and Environment shall have the opportunity to:

i. Review the permit application, the request for variance, and the basis for the request; and

ii. Discuss the request with the operator, the surface owner, and the Commission.

E. Where consultation occurs pursuant to Rule 306.d.(1).B, the Colorado Department of Public Health and Environment shall have the opportunity to:

i. Review the well-density increase application or draft Commission order; and

ii. Discuss the request with the operator or proponent, the Commission, and the local governmental designee.

(3) **Results of consultation under Rule 306.d.**

A. As a result of consultation called for in this subsection, the Colorado Department of Public Health and Environment may make written recommendations to the Commission on conditions of approval necessary to protect public health, safety, and welfare or the environment. Such recommendations may include, but are not limited to, monitoring requirements or best management practices. Where applicable, the Colorado Department of Public Health and Environment may also make written recommendations on whether a variance request should be granted, under what conditions, and the reasons for any such recommendations.

B. **Agreed-upon conditions of approval.** Where the operator, the Director, the Colorado Department of Public Health and Environment, and the Surface Owner agree to conditions of approval for Oil and Gas Locations as a result of consultation, these conditions of approval shall be incorporated into approvals of an Oil and Gas Location Assessment, Form 2A, or Applications for Permit-to-Drill, Form 2, where applicable.

C. **Standards for consultation and Director decision.** Following consultation, the Director shall decide whether to attach conditions of approval recommended by the Colorado Department of Public Health and Environment to a Form 2A or Form 2, where applicable. This decision shall minimize significant adverse impacts to public health, safety, and welfare, including the environment, consistent with other statutory obligations.

D. **Notification of decision to consulting agency.** Where consultation occurs under Rule 306.d, the Director shall provide to the Colorado Department of Public Health and Environment the conditions of approval for the Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, on the same day that he or she announces a decision to approve the application.

306.e. **Meetings with Building Unit Owners Within a Buffer Zone Setback.**

(1) **Meetings with Building Unit Owners**. An Operator shall be available to meet with Building Unit owners who received an OGLA Notice or a Buffer Zone Notice pursuant to Rule 305.c. and requested a meeting regarding the proposed Oil and Gas Location. Operators shall also be available to meet with such Building Unit owners if requested to do so by the Local Governmental Designee and such meetings shall comply with Rule 306.b.(3). Such informational meetings may be held on an individual basis, in small groups, or in larger community meetings.

(2) **Information provided by operator**. When meeting with Building Unit owners or their appointed agent(s) pursuant to subsection (1), above, the Operator shall provide the following information: the date construction is anticipated to begin; the anticipated duration of pad construction, drilling and completion activities; the types of equipment anticipated to be present on the Location; and the operator's interim and final reclamation obligation. In addition, the Operator shall present a description and diagram of the proposed Oil and Gas Location that includes the dimensions of the Location and the anticipated layout of production or injection facilities, pipelines, roads and any other areas to be used for oil and gas operations. The Operator and Building Unit owners shall be encouraged to discuss potential concerns associated with Oil and Gas Operations, such as security, noise, light, odors, dust, and traffic, and shall provide information on proposed or recommended Best Management Practices or mitigation measures to eliminate, minimize or mitigate those issues.

(3) **Waiver.** The Building Unit owner or agent may waive, permanently or otherwise, the foregoing meeting requirements. Any such waiver shall be in writing, signed by the owner or agent, and shall be submitted by the Building Unit owner or agent to the operator and the Director.

(4) **Mitigation Measures.** Operators will consider all legitimate concerns related to public health, safety, and welfare raised during informational meetings or in written comments and, in consultation with the Director and Local Governmental Designee if the LGD so requests, will add relevant and appropriate Best Management Practices or mitigation measures as Conditions of Approval into the Form 2A and any associated Form 2s.

(5) **Operator Certification.** The Director shall not approve a Form 2A, Oil and Gas Location Assessment, until the operator certifies it has complied with the meeting requirements of this Rule 306.e.

f. **Final reclamation consultation.** In preparing for final reclamation and plugging and abandonment, the operator shall use its best efforts to consult in good faith with the affected Surface Owner (or the tenant when the Surface Owner has requested that such consultation be made with the tenant). Such good faith consultation shall allow the Surface Owner (or appointed agent) the opportunity to provide comments concerning preference for timing of such operations and all aspects of final reclamation, including, but not limited to, the desired final land use and seed mix to be applied.

g. **Tenants.** Operators shall have no obligation to consult with tenant farmers, lessees, or any other party that may own or have an interest in any crops or surface improvements that could be affected by the proposed operation unless the Surface Owner appoints such person as its agent for such purposes. Nothing shall prevent the Surface Owner from including a tenant in any consultation, whether or not appointed as the Surface Owner's agent.

307. COGCC Form 4. SUNDRY NOTICES

The Sundry Notice, Form 4, is a multipurpose form which shall be used by an operator to request approval from or provide notice to the Director as required by rule or when no other specific form exists, i.e., well name or number change. The rules requiring the use of the Sundry Notice, Form 4, are listed in Appendix I.

308A. COGCC Form 5. DRILLING COMPLETION REPORT

a. Preliminary Drilling Completion Report, Form 5

(1) If drilling is suspended prior to reaching total depth and does not recommence within 90 days, an operator shall submit a "Preliminary" Drilling Completion Report, Form 5 within the next 10 days.

(2) **Information Requirements.** The "Preliminary" Drilling Completion Report, Form 5 shall include the following information:

A. The date drilling activity was suspended

B. The reason for the suspension

C. The anticipated date and method of resumption of drilling

D. The details of all work performed to date, including all the information required in Rule 308A.b.(2) that has been obtained

(3) A "Final" Form 5 shall be submitted after reaching total depth as required by Rule 308A.b.

b. Final Drilling Completion Report, Form 5

(1) A "Final" Drilling Completion Report, Form 5, shall be submitted within 60 days of rig release after drilling, sidetracking, or deepening a well to total depth. In the case of continuous, sequential drilling of multiple wells on a pad, the Final Form 5 shall be submitted for all the wells within 60 days of rig release for the last well drilled on the pad.

(2) **Information Requirements.** The "Final" Drilling Completion Report, Form 5 shall include the following information:

A. A cement job summary for every casing string set, except for those with verification by a cement bond log as required by Rule 317.p. or by permit conditions, shall be attached to the form.

B. All logs run, open-hole and cased-hole, electric, mechanical, mud, or other, shall be reported and copies submitted as specified here:

i. A digital image file (PDF, TIFF, PDS, or other format approved by the Director) of every log run shall be attached to the form. A paper copy may be submitted in lieu of the digital image file and shall be so noted on the form.

ii. A digital data file (LAS, DLIS, or other format approved by the Director) of every log run, with the exception of mud logs and cement bond logs, shall be attached to the form.

C. All drill stem tests shall be reported and test results shall be attached to the form.

D. All cores shall be reported and the core analyses attached to the form. If core analyses are not yet available, the Operator shall note this on the Form 5 and provide a copy of the analyses as soon as it is available, via a Sundry Notice, Form 4.

E. Any directional survey shall be attached to the form and shall meet the requirements set forth in Rule 321.

F. The latitude and longitude coordinates of the "as drilled" well location shall be reported on the form. The latitude and longitude coordinates shall be in decimal degrees to an accuracy and precision of five decimals of a degree using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345, longitude -104.45632). If GPS technology is utilized to determine the latitude and longitude, all GPS data shall meet the requirements set forth in Rule 215 and the Position Dilution of Precision (PDOP) reading, the GPS instrument operator's name and the date of the GPS measurement shall also be reported on the form.

(3) A Drilling Completion Report, Form 5, shall be submitted within 30 days of the completion of well operations in which the casing or cement in the wellbore is changed. Changes to the wellbore casing or cement configuration include, but shall not be limited to, the operations listed in Rule 317.e.(1). The form shall include the following attachments:

A. Daily operations summary

B. Cement verification reports from the contractor

C. Cement bond log(s) if run by choice or as a required condition of the repair approval, submitted per Rule 308A.b.(2).B.

308B. COGCC Form 5A. COMPLETED INTERVAL REPORT

The Completed Interval Report, Form 5A, shall be submitted within 30 days after a formation is completed (successful or not); after a formation is temporarily abandoned or permanently abandoned; after a formation is recompleted, reperforated or restimulated; and after a formation is commingled. The details of fracturing, acidizing, or other similar treatment, including the volumes of all fluids involved, shall be reported on the Form 5A.

In order to resolve completed interval information uncertainties, the Director may require an operator to submit further information in an additional Completed Interval Report, Form 5A.

308C. CONFIDENTIALITY

Upon submittal of a Sundry Notice, Form 4, request by the operator, completion reports, including Drilling Completion Reports, Form 5 and Completed Interval Reports, Form 5A, and mechanical logs of exploratory or wildcat wells shall be marked "confidential" by the Director and kept confidential for six (6) months after the date of completion, unless the operator gives written permission to release such logs at an earlier date.

309. COGCC Form 7. OPERATOR'S MONTHLY REPORT OF OPERATIONS

a. Operators shall report all existing oil and gas wells that are not plugged and abandoned on the Operator's Monthly Report of Operations, Form 7, within 45 days after the end of each month. A well must be reported every month from the month that it is spud until it has been reported for one month as abandoned. Each formation that is completed in a well shall be reported every month from the time that it is completed until it has been abandoned and reported for one month as abandoned. The reported volumes shall include all fluids produced during flowback, initial testing, and completion of the well.

b. The volume of specific fluids injected into a Class II Underground Injection Control well shall be reported on an Operator's Monthly Report of Operations, Form 7, within 45 days after the end of each month. The specific Class II fluids reported on Form 7 are produced fluids and any gas or fluids used during enhanced recovery unit operations. Produced fluids include, but are not limited to, produced water and fluids recovered during drilling, casing cementing, pressure testing, completion, flowback, workover, and formation stimulation of all oil and gas wells including production, exploration, injection, service and monitoring wells.

   Injection of any other Class II fluids requires separate volume reporting on a Form 14, as described in Rule 316A.

310. COGCC Form 8. OIL AND GAS CONSERVATION LEVY

On or before March 1, June 1, September 1 and December 1 of each year, every producer or purchaser, whichever disburses funds directly to each and every person owning a working interest, a royalty interest, an overriding royalty interest, a production payment and other similar interests from the sale of oil or natural gas subject to the charge imposed by §34-60-122(1) (a) C.R.S., 1973, as amended, shall file a return with the Director showing by operator, the volume of oil, gas or condensate produced or purchased during the preceding calendar quarter, including the total consideration due or received at the point of delivery. No filing shall be required when the charge imposed is zero mill ($0.0000) per dollar value.

The levy shall be an amount fixed by order of the Commission. The levy amount may, from time to time, be reduced or increased to meet the expenses chargeable against the oil and gas conservation and environmental response fund. The present charge imposed, as of July 1, 2007, is seven tenths of a mill ($0.0007) per dollar value.

311. COGCC Form 6. WELL ABANDONMENT REPORT

a. **Notice of Intent to Abandon, Form 6.** Prior to the abandonment of a well, a Well Abandonment Report, Form 6 – Notice of Intent to Abandon, shall be submitted to, and approved by, the Director. The Form 6 - Notice of Intent to Abandon shall be completed and attachments included to fully describe the proposed abandonment operations. This includes the proposed depths of mechanical plugs and casing cuts; the proposed depths and volumes of all cement plugs; the amount, size and depth of casing and junk to be left in the well; the volume, weight, and type of fluid to be left in the wellbore between cement or mechanical plugs; and the nature and quantities of any other materials to be used in the plugging. The operator shall provide a current wellbore diagram and a wellbore diagram showing the proposed plugging procedure with the Form 6. If the well is not plugged within six months of approval a new Form 6 – Notice of Intent to Abandon shall be filed.

b. **Subsequent Report of Abandonment, Form, 6.** Within 30 days after abandonment, the Well Abandonment Report, Form 6 - Subsequent Report of Abandonment, shall be filed with the Director. The abandonment details shall include an account of the manner in

which the abandonment or plugging work was performed. Copies of any casing pressure test results and downhole logs run during plugging and abandonment shall be submitted with Form 6. Additionally, plugging verification reports detailing all procedures are required. A Plugging Verification Report shall be submitted for each person or contractor actually setting the plugs. The Form 6 - Subsequent Report of Abandonment, and the Plugging Verification Reports shall detail the depths of mechanical plugs and casing cuts, the depths and volumes of all cement plugs, the amount, size and depth of casing and junk left in the well, the volume and weight of fluid left in the wellbore and the nature and quantities of any other materials used in the plugging. Plugging Verification Reports shall conform with the operator's report and both shall show that plugging procedures are at least as extensive as those approved by the Director.

c. **Re-Plugging.** A Well Abandonment Report, Form 6 – Notice of Intent to Abandon, shall be submitted to, and approved by, the Director prior to the re-entry of a plugged and abandoned well for the purpose of re-plugging the well. A Well Abandonment Report, Form 6 - Subsequent Report of Abandonment shall be filed with the Director within 30 days of the completion of the re-plugging operations. These forms shall be submitted with all the information required above and any additional information required by current policy.

d. **As-Drilled Location.** For all wells being plugged, the latitude and longitude coordinates of the "as drilled" well location shall be reported on the Form 6. When plugging a well for which this data has been obtained and submitted to the Commission previously, the operator shall submit this data on the Form 6 – Notice of Intent to Abandon. When plugging a well for which this data has not yet been obtained and submitted to the Commission, the operator shall determine the "as drilled" location prior to plugging and submit the location on the Form 6 – Subsequent Report of Abandonment. The latitude and longitude coordinates shall be in decimal degrees to an accuracy and precision of five decimals of a degree using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345, longitude -104.45632). If GPS technology is utilized to determine the latitude and longitude, all GPS data shall meet the requirements set forth in Rule 215 and the Position Dilution of Precision (PDOP) reading, the GPS instrument operator's name and the date of the GPS measurement shall also be reported on the Form 6.

312. COGCC Form 10. CERTIFICATE OF CLEARANCE AND/OR CHANGE OF OPERATOR

a. Each operator of any oil or gas well completed after April 30, 1956, shall file with the Director, within thirty (30) days after initial sale of oil or gas a Certificate of Clearance and/or Change of Operator, Form 10, in accordance with the instructions appearing on such form, for each well producing oil or gas or both oil and gas. A Form 10 shall be filed for any well from which oil, gas or other hydrocarbon is being produced.

   A Form 10 shall be filed within thirty (30) days should the oil transporter (first purchaser) and/or the gas gatherer (first purchaser) change. In addition, within fifteen (15) days of an operator change for any well, a Form 10 shall be filed with a filing and service fee as set by the Commission. (See Appendix III)

b. Each operator of a Class II injection well shall file a new Form 10 with the Director within 30 days of the transfer of ownership.

c. Whenever there shall occur a change in the producer or operator filing the certificate under Rule 312.a. hereof, or whenever there shall occur a change of transporter from any well within the State, a new Form 10 shall be executed and filed within fifteen (15) days in accordance with the instructions appearing on such form. In the case of temporary use of

oil for well treating or stimulating purposes, no new form need be executed. In the case of other temporary change in transporter involving the production of less than one (1) month, the producer or operator may, in lieu of filing a new certificate, notify the Commission and the transporter authorized by the certificate on file with the Commission by letter of the estimated amount to be moved by the temporary transporter and the name of such temporary transporter. A copy of such notice shall also be furnished such temporary transporter.

d. In no instance shall the temporary transporter move any quantity greater than the estimated amount shown in said notice.

e. The certificate, when properly executed and approved by the Commission, shall constitute authorization to the pipeline or other transporter to transport the authorized volume from the well named therein; provided that this section shall not prevent the production or transportation in order to prevent waste, pending execution and approval of said certificate. Permission for the transportation of such production shall be granted in writing to the producer and transporter.

f. The certificate shall remain in force and effect until:

(1) The producer or operator filing the certificate is changed; or

(2) The transporter is changed; or

(3) The certificate is canceled by the Commission.

g. A copy of each Form 10 to be filed hereunder shall be sent by the Director to those local governmental designees who so request.

h. It is the operator's responsibility to mail approved copies of the Certificate of Clearance and/or Change of Operator, Form 10, to the transporter and/or gatherer for each well listed.

i. A completed Form 10 shall be required for any change of operator for all oil and gas facilities, excluding gathering systems, gas-processing plants, and gas storage facilities as those shall be changed with a Form 12, Gas Facility Registration/Change of Operator.

313. COGCC Form 11. MONTHLY REPORT OF GASOLINE OR OTHER EXTRACTION PLANT

All operators of gasoline or other extraction plants shall make monthly reports to the Director on Form 11 Such forms shall contain all information required thereon and shall be filed with the Director on or before the twenty-fifth (25th) day of each month covering the preceding month.

314. COGCC Form 17. BRADENHEAD TEST REPORT

Results of bradenhead tests, as required by Rule 207.b., shall be submitted to the Director within ten (10) days of completion by filing a Form 17. A wellbore diagram shall be submitted if not previously submitted or if the wellbore configuration has changed. If sampled, then the results of any gas and liquid analysis shall be submitted.

315. REPORT OF RESERVOIR PRESSURE TEST

Where the Director believes it is necessary to prevent waste, protect correlative rights, or prevent a significant adverse impact, the Director may require subsurface pressure measurements. Whenever such measurements are made, results shall be reported on a Sundry Notice, Form 4,

within twenty (20) days after completion of tests, or submitted on any company form approved by the Director containing the same information.

316A. COGCC Form 14. NON-PRODUCED WATER INJECTION

a. Form 14A. AUTHORIZATION OF SOURCE OF CLASS II WASTE FOR DISPOSAL

Prior approval of a Form 14A, Authorization of Source of Class II Waste for Disposal, is required for the injection of Class II waste (other than the fluids specifically described in Rules 308B and 309) into any formation in a dedicated Class II Underground Injection Control well. Examples include, but are not limited to, ground water recovered during a remediation project or chemical treatments. The Form 14A shall include a description of the nature and source of the injected fluids, the types of chemicals used to treat the injected fluids, and the date of initial fluid injection for new injection wells. The Form 14A must be submitted and approved for a new disposal facility and for any changes in the source of Class II waste for an existing facility.

b. Form 14. MONTHLY REPORT OF NON-PRODUCED WATER INJECTED

i. Operators engaged in the injection of Class II waste (other than the fluids specifically described in Rules 308B and 309) into any formation in a dedicated Class II Underground Injection Control well shall submit a Form 14, Monthly Report of Non-Produced Water Injected within 45 days after the end of each month. This report shall include the type and amount of waste received from transporters.

ii. Operators of simultaneous injection wells shall, by March 1 of each year, report to the Director the calculated injected volume for the previous year by month on a Form 14.

iii. Operators of gas storage projects shall, by March 1 of each year, report to the Director the amount of gas injected and withdrawn for the previous year and the amount of gas remaining in the reservoir as of December 31 of that year.

316B. COGCC Form 21. MECHANICAL INTEGRITY TEST

Not less than 10 days prior to the performance of a mechanical integrity test, the Director shall be notified with a Field Operations Notice, Form 42 – Mechanical Integrity Test, of the scheduled date on which the test will be performed. Results of any mechanical integrity test shall be submitted on Form 21, Mechanical Integrity Test, within 30 days after the test. The Form 21 shall be completely filled out except for Part II, which is required only for injection wells. An original copy of the pressure chart shall be submitted with every Form 21.

316C. COGCC Form 42. FIELD OPERATIONS NOTICE

Operators shall submit a Form 42, Field Operations Notice, as designated below and in accordance with a Condition of Approval on any Form 2, Application for Permit to Drill; Form 2A, Oil and Gas Location Assessment; Form 4, Sundry Notice; Form 6, Well Abandonment Report; or any other approved form.

a. **Notice of Intent to Conduct Hydraulic Fracturing Treatment.** Operators shall give at least 48 hours advance written notice of intent to the Commission of a hydraulic fracturing treatment at any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Hydraulic Fracturing Treatment. The Commission shall provide prompt electronic notice of such intention to the relevant local governmental designee (LGD).

b. **Notice of Spud.** Operators shall give at least 48 hours advance written notice of intent to the Commission of a surface hole spud on any well. Such notice shall be

provided on a Field Operations Notice, Form 42 - Notice of Spud. The Commission shall provide prompt electronic notice of such intention to the relevant local governmental designee (LGD).

c. **Notice of Construction or Major Change.** Operators shall give at least 48 hours advance written notice of intent to the Commission of a construction or major change at any Well, Oil and Gas Locations, or Oil and Gas Facility. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Construction or Major Change.

d. **Notice to Run and Cement Casing.** If required by policy or condition of approval, Operators shall give at least 24 hours advance written notice of intent to the Commission to run and cement casing on any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice to Run and Cement Casing.

e. **Notice of Formation Integrity Test.** If required by policy or condition of approval, Operators shall give at least 24 hours advance written notice intent to the Commission of a formation integrity test on any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Formation Integrity Test.

f. **Notice of Mechanical Integrity Test.** Operators shall give at least 10 day advance written notice of intent to the Commission of a mechanical integrity test on any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Mechanical Integrity Test.

g. **Notice of Bradenhead Test.** Operators shall give at least 48 hours advance written notice to the Commission of a bradenhead test at any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Bradenhead Test.

h. **Notice of Blow Out Preventer Test.** If required by policy or condition of approval, Operators shall give at least 24 hours advance written notice of intent to the Commission of a blow out preventer test at any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Blow Out Preventer Test.

i. **Notice of Site Ready for Reclamation Inspection.** Operators shall give written notice to the Commission of a site ready for reclamation inspection at any well, well pad or production facility. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Site Ready for Reclamation Inspection.

j. **Notice of Pit Liner Installation.** Operators shall give at least 48 hours advance written notice of intent to the Commission of a pit liner installation at any facility. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Pit Liner Installation.

k. **Notice of Significant Lost Circulation.** Operators shall give written notice to the Commission of significant lost circulation at any well within 24 hours. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Significant Lost Circulation.

l. **Notice of High Bradenhead Pressure During Stimulation.** Operators shall give at least 24 hours advance written notice to the Commission of high bradenhead pressure during stimulation at any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of High Bradenhead Pressure During Stimulation.

m. **Notice of Completion of Form 2/2A Permit Conditions.** If required by policy or condition of approval, Operators shall give written notice to the Commission of

completion of Form 2 or 2A permit conditions at any well, Oil and Gas Location, or Oil and Gas facility. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Completion of Form 2/2A Permit Conditions.

n. **Notice of Inspection Corrective Actions Performed.** Operators shall give written notice to the Commission of inspection corrective actions performed at any well, Oil and Gas Location, or Oil and Gas facility. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Inspection Corrective Actions Performed.

317. GENERAL DRILLING RULES

Unless altered, modified, or changed for a particular field or formation upon hearing before the Commission the following shall apply to the drilling or deepening of all wells.

a. **Blowout prevention equipment ("BOPE").** The operator shall take all necessary precautions for keeping a well under control while being drilled or deepened. BOPE, if any, shall be indicated on the Application for Permit to Drill, Deepen, Re-enter, or Recomplete and Operate (Form 2), as well as any known subsurface conditions (e.g. under or over-pressured formations). The working pressure of any BOPE shall exceed the anticipated surface pressure to which it may be subjected, assuming a partially evacuated hole with a pressure gradient of 0.22 psi/ft. [For BOPE requirements in Designated Setback Locations see Rule 604.c.(2). For statewide BOPE specification, inspection, operation and testing requirements see Rule 603.e.]

(1) The Director shall have the authority to designate specific areas, fields or formations as requiring certain BOPE. Any such proposed designation shall occur by notice describing the area, field or formation in question and shall be given to all operators of record within such area or field and by publication. The proposed designation, if no protest is timely filed, shall be placed on the Commission consent agenda for its next regularly scheduled meeting following the month in which such notice was given. The matter shall be approved or heard by the Commission in accordance with Rule 520. Such designation shall be effective immediately upon approval by the Commission, except as to any previously-approved Form 2.

(2) The Director shall have the authority, outside areas designated pursuant to Rule 317.a.(1), to condition approval of any application for permit to drill by requiring BOPE which the Director determines to be necessary for keeping the well under control. Should the operator object to such condition of approval, the matter shall be heard at the next regularly scheduled meeting of the Commission, subject to the notice requirements of Rule 507.

b. **Bottom hole location.** Unless authorized by the provisions of Rule 321., all wells shall be so drilled that the horizontal distance between the bottom of the hole and the location at the top of the hole shall be at all times a practical minimum.

c. **Requirement to post permit at the rig..** A copy of the approved Application for Permit-to-Drill, Form 2, shall be posted in a conspicuous place on the drilling rig or workover rig.

d. **Requirement to provide spud notice.** An advance notice shall be provided to the Director on a Field Operations Notice, Form 42, no less than 48 hours prior to spudding a well.

e.

e. **Casing program to protect hydrocarbon horizons and ground water.** The casing in every well must prevent water from infiltrating into any potential hydrocarbon horizons penetrated during drilling and must prevent oil, gas, and water from migrating from one horizon to another.

(1) Prior written approval from the Director on a Form 4, Sundry Notice, is required before commencing any of the following operations:
   A. Pumping cement down the Bradenhead access to the annulus between the production casing (or intermediate casing, if present) and surface casing
   B. All routine or planned casing repair operations
   C. Any other changes to the casing or cement in the wellbore

(2) In the case of unforeseen casing repairs during well operations, verbal approval shall be obtained, and shall be followed immediately by a Form 4, Sundry Notice.

(3) A Drilling Completion Report, Form 5 shall be submitted within 30 days of the completion of the operations listed above, per Rule 308A.b.(3).

(4) Prior written approval from the Director on a Form 4, Sundry Notice, is required before changing the gross interval of perforations in a completed formation, including into a formation designated as a common source of supply. A Completed Interval Report, Form 5A shall be submitted within 30 days of the Gross Interval Change, per Rule 308B.

f. **Surface casing where subsurface conditions are unknown.** In areas where pressure and formations are unknown, sufficient surface casing shall be run to reach a depth below all known or reasonably estimated utilizable domestic fresh water levels and to prevent blowouts or uncontrolled flows, and shall be of sufficient size to permit the use of an intermediate string or strings of casings. Surface casing shall be set in or through an impervious formation and shall be cemented by pump and plug or displacement or other approved method with sufficient cement to fill the annulus to the top of the hole, all in accordance with reasonable requirements of the Director. In the D–J Basin Fox Hills Protection Area surface casing will be set in accordance with Rule 317A. (See also subparagraph g.).

g. **Surface casing where subsurface conditions are known.** For wells drilled in areas where subsurface conditions have been established by drilling experience, surface casing, size at the owner's option, shall be set and cemented to the surface by the pump and plug or displacement or other approved method at a depth and in a manner sufficient to protect all fresh water and to ensure against blowouts or uncontrolled flows. In the D–J Basin Fox Hills Protection Area surface casing shall be set in accordance with Rule 317A. (See also subparagraph g.).

h. **Alternate aquifer protection by stage cementing.** In areas where fresh water aquifers are of such depth as to make it impractical or uneconomical to set the full amount of surface casing necessary to comply fully with the requirement to cover or isolate all fresh water aquifers as required in subparagraph e. and f., the owner may, at its option, comply with this requirement by stage cementing the intermediate and/or production string so as to accomplish the required result. If unanticipated fresh water aquifers are encountered after setting the surface pipe they shall be protected or isolated by stage cementing the intermediate and/or production string with a solid cement plug extending from fifty (50) feet below each fresh water aquifer to fifty (50) feet above said fresh water aquifer or by other methods approved by the Director in each case. In the D–J Basin Fox Hills Protection Area any stage cementing shall occur only in accordance with Rule 317A. If the stage cement is not circulated to surface, a temperature log or cement bond log shall be run to determine the top of the stage cement to ensure aquifers are protected.

i. **Surface and intermediate casing cementing.** The operator shall ensure that all surface and intermediate casing cement required under this rule shall be of adequate quality to achieve a minimum compressive strength of three hundred (300) psi after twenty-four (24) hours and eight hundred (800) psi after seventy-two (72) hours measured at ninety-five degrees Fahrenheit (95 °F) and at eight hundred (800) psi confining pressure. All surface casing shall be cemented with a continuous column from the bottom of the casing to the surface. After thorough circulation of the wellbore, cement shall be pumped behind the intermediate casing to at least two hundred (200) feet above the top of the shallowest known production horizon and as required in 317.g. Cement placed behind the surface and intermediate casing shall be allowed to set a minimum of eight (8) hours, or until three hundred (300) psi calculated compressive strength is developed, whichever occurs first, prior to commencing drilling operations. If the surface casing cement level falls below the surface, to the extent safety or aquifer protection is compromised, remedial cementing operations shall be performed.

j. **Production casing cementing.** The operator shall ensure that all cement required under this rule placed behind production casing shall be of adequate quality to achieve a minimum compressive strength of at least three hundred (300) psi after twenty-four (24) hours and of at least eight hundred (800) psi after seventy-two (72) hours both measured at eight hundred (800) psi at either ninety-five degrees Fahrenheit (95 °F) or at the minimum expected downhole temperature. After thorough circulation of a wellbore, cement shall be pumped behind the production casing (200) feet above the top of the shallowest uncovered known producing horizon. All fresh water aquifers which are exposed below the surface casing shall be cemented behind the production casing. All such cementing around an aquifer shall consist of a continuous cement column extending from at least fifty (50) feet below the bottom of the fresh water aquifer which is being protected to at least fifty (50) feet above the top of said fresh water aquifer. Cement placed behind the production casing shall be allowed to set seventy-two (72) hours, or until eight hundred (800) psi calculated compressive strength is developed, whichever occurs first, prior to the undertaking of any completion operation.

k. **Production and intermediate casing pressure testing.** The installed production casing or, in the case of a production liner, the intermediate casing, shall be adequately pressure tested for the conditions anticipated to be encountered during completion and production operations.

l. **Protection of aquifers and production stratum and suspension of drilling operations before running production casing**. In the event drilling operations are suspended before production string is run, the Director shall be notified immediately and the operator shall take adequate and proper precautions to assure that no alien water enters oil or gas strata, nor potential fresh water aquifers during such suspension period or periods. If alien water is found to be entering the production stratum or to be causing significant adverse environmental impact to fresh water aquifers during completion testing or after the well has been put on production, the condition shall be promptly remedied.

m. **Flaring of gas during drilling and notice to local emergency dispatch.** Any gas escaping from the well during drilling operations shall be, so far as practicable, conducted to a safe distance from the well site and burned. The operator shall notify the local emergency dispatch as provided by the local governmental designee of any such flaring. Such notice shall be given prior to the flaring if the flaring can be reasonably anticipated, and in all other cases as soon as possible but in no event more than two (2) hours after the flaring occurs.

n. **Protection of productive strata during deepening operations.** If a well is deepened for the purpose of producing oil and gas from a lower stratum, such deepening to and

completion in the lower stratum shall be conducted in such a manner as to protect all upper productive strata.

o. **Requirement to evaluate disposal zones for hydrocarbon potential.** If a well is drilled as a disposal well then the disposal zone shall be evaluated for hydrocarbon potential. The proposed hydrocarbon evaluation method shall be submitted in writing and approved by the Director prior to implementation. The productivity results shall be submitted to the Director upon completion of the well.

p. **Requirement to log well.** For all new drilling operations, the operator shall be required to run a minimum of a resistivity log with gamma-ray or other petrophysical log(s) approved by the Director that adequately describe the stratigraphy of the wellbore. A cement bond log shall be run on all production casing or, in the case of a production liner, the intermediate casing, when these casing strings are run. These logs and all other logs run shall be submitted with the Drilling Completion Report, Form 5. Open-hole logs or equivalent cased-hole logs shall be run at depths that adequately verify the setting depth of surface casing and any aquifer coverage. These requirements shall not apply to unlogged open-hole completion intervals.

q. **Remedial cementing during recompletion.** The Director may apply a condition of approval for Application for Permit-to-Drill, Form 2, to require remedial cementing during recompletion operations consistent with the provisions for protecting aquifers and hydrocarbon bearing zones in this Rule 317.

r. Statewide Wellbore Collision Prevention

(1) An operator will perform an anti-collision evaluation of all active offset wellbores that have the potential of being within 150 feet of a proposed well prior to drilling operations for the proposed well. This anti-collision scan will include a downhole directional survey (gyro survey, measurement while drilling survey, or equivalent survey) of the offset wells with included error of uncertainty per survey instrument, and compared against the proposed well path with its respective error of uncertainty. If current downhole directional surveys do not exist for the offset wells, the operator of the proposed well will ensure such surveys are conducted to verify wellbore location. For the proposed well, upon conclusion of drilling operations an as-constructed downhole directional survey shall be attached to the Drilling Completion Report, Form 5.

s. Statewide Fracture Stimulation Setback

(1) No portion of a proposed wellbore's treated interval shall be located within 150 feet of an existing (producing, shut-in, or temporarily abandoned) or permitted oil and gas wellbore's treated interval belonging to another operator without the signed written consent of the operator of the encroached upon wellbore. The signed written consent shall be attached to the Application for Permit-to-Drill, Form 2 for the proposed wellbore.

(2) The distance between wellbores measurement shall be based upon the directional survey for drilled wellbores and the deviated drilling plan for permitted wellbores, or as otherwise reflected in the COGCC well records. The distance shall be measured from the perforation or mechanical isolation device.

317A. SPECIAL DRILLING RULES - D–J BASIN FOX HILLS PROTECTION AREA

The following special drilling rules shall apply to wells in the D–J Basin Fox Hills Protection Area as defined in the 100 Series of the Rules and Regulations:

a. **Surface Casing - Minimum Requirements for Well Control.** In all wells drilled within the D–J Basin Fox Hills Protection Area, surface casing shall be run to a minimum depth of five percent (5%) of the projected total depth to which the well is to be drilled, provided that in no event shall the surface casing be run to a depth less than two hundred (200) feet. The Director may, on a case-by-case basis, grant variances in this five percent (5%) requirement where the Director finds that the well is a development well in which pressures can be accurately predicted and finds that, based upon those predictions, the five percent (5%) requirement should be varied to achieve effective well control. In all cases, however, the actual depth at which the surface casing is set shall be calculated to position the casing seat to a depth within a competent formation (preferably shale) which will contain the maximum pressure to which the casing will be exposed during normal drilling operations.

b. **Surface Casing - Aquifer Protection.** For purposes of aquifer protection, surface casing must be set as follows in wells which are not exploratory wells:

(1) Surface casing shall be run to a depth at least fifty (50) feet below the Fox Hills transition zone in wells drilled within Townships 5 South through 5 North, Ranges 65 West through 70 West or within Townships 3 North through 5 North, Range 64 West.

(2) With respect to Townships 5 South through 5 North, Ranges 58 West through 63 West, Townships 5 South through 2 North, Range 64 West; and Township 6 South, Ranges 65 West through 70 West, in all wells located within one (1) mile of a permitted producing water well, surface casing shall be set to a depth sufficient to protect the deepest permitted producing water well within such one mile area. Said depth shall be at least fifty (50) feet below the depth of the base of the aquifer from which said deepest water well is producing, or fifty (50) feet below the base of the Fox Hills Transition Zone if such deepest water well produces from the Fox Hills Aquifer.

Upon the request of the operator, the Director (or the Commission upon appeal) may grant a variance to the requirements of this subparagraph b. upon a showing to the Director, or the Commission upon appeal, that the variance does not violate the basic intent of said requirements. For such variance purpose, the basic intent of said requirements is stated to be to provide reasonable aquifer protection for the water well(s) which are permitted by the State of Colorado Division of Water Resources and are currently producing in the area potentially affected by the oil or gas well to be drilled.

c. **Exploratory Wells.** For purposes of the D–J Basin Fox Hills Protection Area only, the term exploratory well means any well:

(1) Which targets the classically demonstrated zones with limited geographic extent such as channel, bar, valley fill and levee type sandstones that were deposited prior to the x-bentonite time stratigraphic event; or

(2) Which can be demonstrated to be separated from a known producing horizon by a dry hole; or

(3) Which can be demonstrated to be targeted to a horizon which is geologically separate from the producing horizon in an offsetting producing well, or

(4) Which the Director, or the Commission upon appeal, may define as an exploratory well by variance, it being the basic intent of this definition that the requirements of subparagraph b. not operate to discourage the drilling of high risk wells.

317B. PUBLIC WATER SYSTEM PROTECTION

a. **Definitions.** For purposes of this Rule 317B:

(1) **Drilling, Completion, Production and Storage ("DCPS") Operations** shall mean operations at (i) well sites for the drilling, completion, recompletion, workover, or stimulation of wells or chemical and production fluid storage, and (ii) any other oil and gas location at which production facilities are operated. DCPS Operations shall exclude roads, gathering lines, pipelines, and routine operations and maintenance.

(2) **Existing Oil and Gas Location** shall mean an oil and gas location, excluding roads, pipelines, and gathering lines, permitted or constructed prior to the later of May 1, 2009 for federal land or April 1, 2009 for all other land or the date that the oil and gas location becomes subject to Rule 317B by virtue of its proximity to a Classified Water Supply Segment.

(3) **New Oil and Gas Location** shall mean an oil and gas location, excluding roads, pipelines, and gathering lines, that is not an existing oil and gas location.

(4) **New Surface Disturbance** shall mean surface disturbance that expands the area of surface covered by an oil and gas location beyond that initially disturbed in the construction of the oil and gas location.

(5) **Non-Exempt Linear Feature** shall mean a road, gathering line, or pipeline that is not necessary to cross a stream or connect or access a well or a gathering line.

b. **Applicability Determination.**

(1) Rule 317B is applicable to DCPS Operations within Surface Water Supply Areas. The applicability of Rule 317B will be determined by reviewing the Public Water System Surface Water Supply Area Map, attached as part of Appendix VI, or by entering information into the Public Water System Surface Water Supply Area Applicability Determination Tool, also located on the Commission website.

(2) The Public Water Systems subject to the protections of this Rule 317B are those listed in Appendix VI. Any additions or deletions to the Public Water Systems listed in Appendix VI or the Public Water System Surface Water Supply Area Map, also located in Appendix VI, shall be by Commission rulemaking, as provided in Rule 529.

(3) DCPS Operations at New Oil and Gas Locations within a Surface Water Supply Area will be subject to the requirements in Rules 317B.c, 317B.d, or 317B.e based on the buffer zones defined in Table 1, below. DCPS Operations at Existing Oil and Gas Locations within a Surface Water Supply Area at which no new surface disturbance has occurred after the date Rule 317B became applicable to that oil and gas location will be subject to the requirements in Rule 317B.f.(1) based on the buffer zones defined in Table 1. DCPS Operations at Existing Oil and Gas Locations within a Surface Water Supply Area at which new surface disturbance has occurred after the date Rule 317B became applicable to that oil and gas location will be subject to the requirements in Rule 317B.f.(2) based on the buffer zones defined in Table 1.

(4) For Classified Water Supply Segments that are perennial and intermittent streams, buffer zones shall be determined by measuring from the ordinary high water line

of each bank to the near edge of the disturbed area at the oil and gas location at which the DCPS Operations will occur.

(5) The buffer zones shall apply only to DCPS Operations located on the surface. The buffer zones shall not apply to subsurface boreholes and equipment or materials contained therein. The buffer zones shall not apply to DCPS Operations located in an area that does not drain to a classified water supply segment protected by this Rule 317B.

TABLE 1. Buffer Zones Associated with DCPS Operations.

Zone	Classified Water Supply Segments (ft)
Internal Buffer	0 - 300
Intermediate Buffer	301 - 500
External Buffer	501 - 2,640

c. **Requirements for DCPS Operations Conducted at New Oil and Gas Locations in the Internal Buffer Zone.**

DCPS Operations conducted and Non-Exempt Linear Features located at New Oil and Gas Locations within a Surface Water Supply Area may not occur in whole or in part within the Internal Buffer Zone identified in Table 1 unless a variance is granted pursuant to Rule 502.b and consultation with the Colorado Department of Public Health and Environment occurs pursuant to Rule 306.d and a Form 2A or Form 2 with appropriate conditions of approval has been approved, or the Director has approved a Comprehensive Drilling Plan pursuant to Rule 216 that covers the operation. In determining appropriate conditions of approval for such operations, the Director shall consider the extent to which the conditions of approval are required to prevent impacts to the Public Water System.

(1) The Commission shall grant a variance if the operator demonstrates that:

A. The proposed DCPS Operations and applicable best management practices and operating procedures will result in substantially equivalent protection of drinking water quality in the Surface Water Supply area; and

B. Either:

i. Conducting the DCPS Operation outside the Internal Buffer Zone would pose a greater risk to public health, safety, or welfare, including the environment and wildlife resources, such as may be the case where conducting the DCPS Operations outside the Internal Buffer Zone would require construction in steep or erosion-prone terrain or result in greater surface disturbance due to an inability to use infrastructure already constructed such as roads, well sites, or pipelines; or

ii. Conducting DCPS Operations beyond the Internal Buffer Zone is technically infeasible and prevents the operator from exercising its mineral rights.

(2) At a minimum, for any DCPS Operation at a New Oil and Gas Location within the Internal Buffer Zone, the Director shall include as conditions of approval in the Form 2A, Form 2, or Comprehensive Drilling Plan, the requirements of Rule 317B.d.

d. **Requirements for DCPS Operations at New Oil and Gas Locations in the Intermediate Buffer Zone.**

The following shall be required for all DCPS Operations at New Oil and Gas Locations within a Surface Water Supply Area and in the Intermediate Buffer Zone as defined in Table 1.

(1) Pitless drilling systems;

(2) Flowback and stimulation fluids contained within tanks that are placed on a well pad or in an area with downgradient perimeter berming;

(3) Berms or other containment devices shall be constructed in compliance with Rule 604.c.(2)G around crude oil, condensate, and produced water storage tanks; and

(4) When sufficient water exists in the Classified Water Supply Segment, collection of baseline surface water data consisting of a pre-drilling surface water sample collected immediately downgradient of the oil and gas location and follow-up surface water data consisting of a sample collected at the same location three (3) months after the conclusion of any drilling activities and operations or completion. The sample parameters shall include:

A. pH;

B. Alkalinity;

C. Specific conductance;

D. Major cations/anions (chloride, fluoride, sulfate, sodium);

E. Total dissolved solids;

F. BTEX/GRO/DRO;

G. TPH;

H. PAH's (including benzo(a)pyrene); and

I. Metals (arsenic, barium, calcium, chromium, iron, magnesium, selenium).

Current applicable EPA-approved analytical methods for drinking water must be used and analyses must be performed by laboratories that maintain state or nationally accredited programs.

Copies of all test results described above shall be provided to the Commission and the potentially impacted Public Water System(s) within three (3) months of collecting the samples. In addition, the analytical results and surveyed sample

locations shall be submitted to the Commission in an electronic data deliverable format.

(5) Notification of potentially impacted Public Water Systems within fifteen (15) stream miles downstream of the DCPS Operation prior to commencement of new surface disturbing activities at the site.

(6) An emergency spill response program that includes employee training, safety, and maintenance provisions and current contact information for downstream Public Water System(s) located within fifteen (15) stream miles of the DCPS Operation, as well as the ability to notify any such downstream Public Water System(s) with intake(s) within fifteen (15) stream miles downstream of the DCPS operations.

In the event of a spill or release, the operator shall immediately implement the emergency response procedures in the above-described emergency response program.

If a spill or release impacts or threatens to impact a Public Water System, the operator shall notify the affected or potentially affected Public Water System(s) immediately following discovery of the release, and the spill or release shall be reported to the Commission in accordance with Rule 906.b.(3), and to the Environmental Release/Incident Report Hotline (1-877-518-5608) in accordance with Rule 906.b.(4).

e. **Requirements for DCPS Operations at New Oil and Gas Locations within the External Buffer Zone.**

The following shall be required when DCPS Operations are conducted at New Oil and Gas Locations within a Surface Water Supply Area and in the External Buffer Zone as defined in Table 1.

(1) Pitless drilling systems or containment of all drilling flowback and stimulation fluids pursuant to Rule 904; and

(2) When sufficient water exists in the Classified Water Supply Segment, collection of baseline surface water data consisting of a pre-drilling surface water sample collected immediately downgradient of the oil and gas location and follow-up surface water data consisting of a sample collected at the same location three (3) months after the conclusion of any drilling activities and operations or completion. The sample parameters shall include:

A. pH;

B. Alkalinity;

C. Specific conductance;

D. Major cations/anions (chloride, fluoride, sulfate, sodium);

E. Total dissolved solids;

F. BTEX/GRO/DRO;

G. TPH;

H. PAH's (including benzo(a)pyrene); and

I. Metals (arsenic, barium, calcium, chromium, iron, magnesium, selenium).

Current applicable EPA-approved analytical methods for drinking water must be used and analyses must be performed by laboratories that maintain state or nationally accredited programs.

Copies of all test results described above shall be provided to the Commission and the potentially impacted Public Water System(s) within three (3) months of collecting the samples. In addition, the analytical results and surveyed sample locations shall be submitted to the Commission in an electronic data deliverable format.

(3) Notification of potentially impacted Public Water Systems within fifteen (15) stream miles downstream of the DCPS Operation prior to commencement of new surface disturbing activities at the site.

(4) An emergency spill response program that includes employee training, safety, and maintenance provisions and current contact information for downstream Public Water System(s) located within fifteen (15) stream miles of the DCPS Operation, as well as the ability to notify any such downstream Public Water System(s) with intake(s) within fifteen (15) stream miles downstream of the DCPS operations.

In the event of a spill or release, the operator shall immediately implement the emergency response procedures in the above-described emergency response program.

If a spill or release impacts or threatens to impact a Public Water System, the operator shall notify the affected or potentially affected Public Water System(s) immediately following discovery of the release, and the spill or release shall be reported to the Commission in accordance with Rule 906.b.(3), and to the Environmental Release/Incident Report Hotline (1-877-518-5608) in accordance with Rule 906.b.(4).

f. **Requirements for DCPS Operations at Existing Oil and Gas Locations.**

(1) Existing Oil and Gas Locations and DCPS Operations at Existing Oil and Gas Locations within a Surface Water Supply Area and within zones specified in Table 1 shall be subject to the following requirements instead of the requirements of Rules 317B.c, 317B.d, or 317B.e provided that no new surface disturbance at the Existing Oil and Gas Location occurs after the later of May 1, 2009 for federal land or April 1, 2009 for all other land or the date Rule 317B became applicable to the oil and gas location:

A. Collection of surface water data from a Classified Water Supply Segment consisting of a sample collected immediately downgradient of the oil and gas operation will occur by the latest of June 1, 2009, within six (6) months after the date Rule 317B became applicable to the oil and gas location, or when sufficient water exists in the stream:

i. pH;

ii. Alkalinity;

iii. Specific conductance;

iv. Major cations/anions (chloride, fluoride, sulfate, sodium);

v. Total dissolved solids;

vi. BTEX/GRO/DRO;

vii. TPH;

viii. PAH's (including benzo(a)pyrene); and

ix. Metals (arsenic, barium, calcium, chromium, iron, magnesium, selenium).

Current applicable EPA-approved analytical methods for drinking water must be used and analyses must be performed by laboratories that maintain state or nationally accredited programs.

Copies of all test results described above shall be provided to the Commission and the potentially impacted Public Water System(s) within three (3) months of collecting the samples. In addition, the analytical results and surveyed sample locations shall be submitted to the Commission in an electronic data deliverable format.

B. An emergency spill response program that includes employee training, safety, and maintenance provisions and current contact information for downstream Public Water System(s) located within fifteen (15) stream miles of the DCPS Operation, as well as the ability to notify any such downstream Public Water System(s) with intake(s) within fifteen (15) stream miles downstream of the DCPS Operations.

In the event of a spill or release, the operator shall immediately implement the emergency response procedures in the above-described emergency response program.

If a spill or release impacts or threatens to impact a Public Water System, the operator shall notify the affected or potentially affected Public Water System(s) immediately following discovery of the release, and the spill or release shall be reported to the Commission in accordance with Rule 906.b.(3), and to the Environmental Release/Incident Report Hotline (1-877-518-5608) in accordance with Rule 906.b.(4).

C. Operators shall employ and maintain Best Management Practices, as necessary, to comply with this rule.

(2) Existing Oil and Gas Locations and DCPS Operations at Existing Oil and Gas Locations within a Surface Water Supply Area and within zones specified in Table 1 for which new surface disturbance occurs on or after the later of May 1, 2009 for federal land or on or after April 1, 2009 for all other land or the date Rule 317B became applicable to the oil and gas location shall be subject to the requirements of Rule 317B.f.(3) instead of the requirements of Rules 317B.c, 317B.d, or 317B.e where the additional new surface disturbance is addressed in a Comprehensive Drilling Plan accepted pursuant to Rule 216, or if:

A. The new disturbance from the DCPS Operation will not increase the existing disturbed area prior to interim reclamation by more than one hundred (100) percent up to a maximum of three (3) acres, and

B. The new surface disturbance occurs in a direction away from the stream or no closer to the stream if moving away from the stream would result in more damaging surface disturbance such as location on a steep slope, in an area of high soil erosion potential, or in a wetland.

(3) Where the provisions of Rule 317B.f.(2) apply, the following zone requirements shall apply:

A. For all zones, the requirements of Rule 317B.f.(1), except that the sampling parameters in Rule 317B.f.(1).A shall occur no later than six (6) months after commencing the DCPS Operations at the Existing Oil and Gas Location.

B. For External and Intermediate Buffer Zones: pitless drilling systems or containment of drilling, flowback, and stimulation fluids with impervious liners, as provided in Rule 904.

C. For Internal Buffer Zones:

i. Pitless drilling systems;

ii. Flowback and stimulation fluids contained within tanks and placed on a well pad or in an area with downgradient perimeter berming;

iii. Berms constructed in compliance with Rule 604.c.(2)G around all crude oil, condensate, and produced water tanks; and

iv. Notification of potentially impacted Public Water Systems within fifteen (15) stream miles downstream of the DCPS Operation prior to commencement of new surface disturbing activities at the site.

318. LOCATION OF WELLS

All wells drilled for oil or gas to a common source of supply shall have the following setbacks:

a. **Wells 2,500 feet or greater in depth.** A well to be drilled two thousand five hundred (2,500) feet or greater shall be located not less than six hundred (600) feet from any lease line, and shall be located not less than one thousand two hundred (1,200) feet from any other producible or drilling oil or gas well when drilling to the same common source of supply, unless authorized by order of the Commission upon hearing.

b. **Wells less than 2,500 feet in depth.** A well to be drilled to less than a depth of two thousand five hundred (2,500) feet below the surface shall be located not less than two hundred (200) feet from any lease line, and not less than three hundred (300) feet from any other producible oil or gas well, or drilling well, in said source of supply, except that only one producible oil or gas well in each such source of supply shall be allowed in each governmental quarter-quarter section unless an exception under Rule 318.c. is obtained.

c. **Exception locations.** The Director may grant an operator's request for a well location exception to the requirements of this rule or any order because of geologic,

environmental, topographic or archaeological conditions, irregular sections, a surface owner request, or for other good cause shown provided that a waiver or consent signed by the lease owner toward whom the well location is proposed to be moved, agreeing that said well may be located at the point at which the operator proposes to drill the well and where correlative rights are protected. If the operator of the proposed well is also the operator of the drilling unit or unspaced offset lease toward which the well is proposed to be moved, waivers shall be obtained from the mineral interest owners under such lands. If waivers cannot be obtained from all parties and no party objects to the location, the operator may apply for a variance under Rule 502.b. If a party or parties object to a location and cannot reach an agreement, the operator may apply for a Commission hearing on the exception location.

d. **Exemptions to Rule 318.**

(1) This rule shall not apply to authorized secondary recovery projects.

(2) This rule shall apply to fracture or crevice production found in shale, except from fields previously exempted from this rule.

(3) In a unit operation, approved by federal or state authorities, the rules herein set forth shall not apply except that no well in excess of two thousand five hundred (2,500) feet in depth shall be located less than six hundred (600) feet from the exterior or interior (if there be one) boundary of the unit area and no well less than two thousand five hundred (2,500) feet in depth below the surface shall be located less than two hundred (200) feet from the exterior or interior (if there be one) boundary of the unit area unless otherwise authorized by the order of the Commission after proper notice to owners outside the unit area.

e. **Wells located near a mine.** No well drilled for oil or gas shall be located within two hundred (200) feet of a shaft or entrance to a coal mine not definitely abandoned or sealed, nor shall such well be located within one hundred (100) feet of any mine shaft house, mine boiler house, mine engine house, or mine fan; and the location of any proposed well shall insure that when drilled it will be at least fifteen (15) feet from any mine haulage or airway.

318A. GREATER WATTENBERG AREA SPECIAL WELL LOCATION, SPACING AND UNIT DESIGNATION RULE

a. **GWA, GWA wells, GWA windows and unit designations.** The Greater Wattenberg Area ("GWA") is defined to include those lands from and including Townships 2 South to 7 North and Ranges 61 West to 69 West, 6th P.M. In the GWA, operators may utilize the following described surface drilling locations (“GWA windows”) to drill, twin, deepen, or recomplete a well ("GWA well") and to commingle any or all of the Cretaceous Age formations from the base of the Dakota Formation to the surface:

(1) A square with sides four hundred (400) feet in length, the center of which is the center of any governmental quarter-quarter section (“400’ window”); and,

(2) A square with sides eight hundred (800) feet in length, the center of which is the center of any governmental quarter section (“800’ window”).

(3) Absent a showing of good cause, which shall include the existence of a surface use or other agreement with the surface owner authorizing a surface well location outside of a GWA window, all surface wellsites shall be located within a GWA window.

(4) Unit designations.

A. 400' window. When completing a GWA well in a 400' window to a spaced formation, the operator shall designate drilling and spacing units in accordance with existing spacing orders.

B. 800' window. When completing a GWA well in an 800' window, whether in spaced or unspaced formations, the operator shall: (i) designate drilling and spacing units in accordance with existing spacing orders where units are not smaller than a governmental quarter section; or (ii) form a voluntary drilling and spacing unit consisting of a governmental quarter section; or (iii) where designating a drilling and spacing unit smaller than a governmental quarter section, secure waiver(s) from the operator or from the mineral owners (if the operator is also the holder of the mineral lease) of the lands in the governmental quarter section that are not to be included in the spacing unit; or (iv) apply to the Commission to form an alternate unit or to respace the area.

C. Unspaced areas and wellbore spacing units. When completing a GWA well to an unspaced formation, the operator shall designate a drilling and spacing unit not smaller than a governmental quarter-quarter section if such well is proposed to be located greater than four hundred sixty (460) feet from the quarter-quarter section boundary in which it is located. If a well is proposed to be located less than four hundred sixty (460) feet from the governmental quarter-quarter section boundary, a wellbore spacing unit ("wellbore spacing unit") for such well shall be comprised of the governmental quarter-quarter sections that are located less than four hundred sixty (460) feet from the wellbore regardless of section or quarter section lines.

D. Horizontal GWA well. Where a drilling and spacing unit does not exist for a horizontal well, a horizontal wellbore spacing unit shall be designated by the operator for each proposed horizontal well. The horizontal wellbore spacing unit may be of different sizes and configurations depending on lateral length and orientation but shall be comprised of the governmental quarter-quarter sections in which the wellbore lateral penetrates the productive formation as well as any governmental quarter-quarter sections that are located less than four hundred sixty (460) feet from the completed interval of the wellbore lateral regardless of section or quarter section lines. However, if the horizontal component of the horizontal wellbore is located entirely within a GWA window, the operator shall designate a drilling and spacing unit in accordance with subsections a.(4)A. and a.(4)B. of this rule. A horizontal wellbore spacing unit may overlap portions of another horizontal wellbore spacing unit or other wellbore spacing unit designated in accordance with subsection a.(4)C. GWA horizontal wells and horizontal wellbore spacing units shall be subject to the notice and hearing procedures as provided for in Rule 318A.e.(6).

b. **Recompletion/commingling of existing wells.** Any GWA well in existence prior to the effective date of this rule, which is not located as described above, may also be utilized for deepening to or recompletion in any Cretaceous Age formation and for the commingling of production therefrom.

c. **Surface locations**. Prior to the approval of any Application for Permit-to-Drill submitted for a GWA well, the proposed surface well location shall be reviewed in accordance with the following criteria:

(1) A new surface well location shall be approved in accordance with Commission rules when it is less than fifty (50) feet from an existing surface well location.

(2) When the operator is requesting a surface well location greater than fifty (50) feet from a well (unless safety or mechanical considerations of the well to be twinned or topographical or surface constraints justify a location greater than fifty (50) feet), the operator shall provide a consent to the exception signed by the surface owner on which the well is proposed to be located in order for the Director to approve the well location administratively.

(3) If there is no well located within a GWA window but there is an approved exception location well located outside of a GWA window that is attributed to such window, the provisions of subsections (1) and (2) of this subsection c. shall be applicable to such location.

d. **Prior wells excepted.** This rule does not alter the size or configuration of drilling units for GWA wells in existence prior to the effective date of this rule. Where deemed necessary by an operator for purposes of allocating production, such operator may allocate production to any drilling and spacing unit with respect to a particular Cretaceous Age formation consistent with the provisions of this rule.

e. **GWA infill.**

(1) **Interior infill wells.** Additional bottom hole locations for the "J" Sand, Codell and Niobrara Formations are hereby established greater than four hundred sixty (460) feet from the outer boundary of any existing 320-acre drilling and spacing unit ("interior infill wells"). Pursuant to the well location provisions of subsection a., above, interior infill well locations shall be reached by utilizing directional drilling techniques from the GWA windows.

A. If a bottom hole location for an interior infill well is proposed to be located less than four hundred sixty (460) feet from the outer boundary of an existing drilling and spacing unit, a wellbore spacing unit as defined in a.(4)C., above, shall be designated by the operator for such well.

B. If a bottom hole location for an interior infill well is proposed to be located greater than four hundred sixty (460) feet from an existing 80-acre or existing 320-acre drilling and spacing unit, the spacing unit for such well shall conform to the existing 80-acre or existing 320-acre drilling and spacing unit.

(2) **Boundary wells.** Additional bottom hole locations for the "J" Sand, Codell and Niobrara Formations are hereby established less than four hundred sixty (460) feet from the outer boundary of a 320-acre governmental half section or from the outer boundary of any existing 320-acre drilling and spacing unit ("boundary wells"). A wellbore spacing unit as defined in a.(4)C., above, shall be designated by the operator for such well.

(3) **Additional producing formations.** An operator wanting to complete an interior infill well or boundary well in a formation other than the "J" Sand, Codell, or Niobrara Formations ("additional producing formation") must request an exception location prior to completing the additional producing formation. The

spacing unit dedicated to the exception location shall comply with subsections (1) or (2), above, as appropriate.

(4) Existing production facilities. To the extent reasonably practicable, operators shall utilize existing roads, pipelines, tank batteries and related surface facilities for all interior infill wells and boundary wells.

(5) Notice and hearing procedures. For proposed boundary wells, wellbore spacing units, and additional producing formations provided by this subsection e., and for proposed horizontal wells and horizontal wellbore spacing units as provided by 318A.a.(4)D., the following process shall apply:

A. Notice shall be given by certified mail by the operator of a proposed boundary well, wellbore spacing unit, horizontal well or horizontal wellbore spacing unit to all Owners in the proposed wellbore spacing unit. Notice shall be given by certified mail by the operator of a proposed additional producing formation to all Owners in cornering and contiguous spacing units of the requested completion and the proposed spacing unit; if the additional producing formation is unspaced only the Owner in the proposed spacing unit needs to be notified. Notice for a boundary well, wellbore spacing unit, horizontal well or horizontal wellbore spacing unit shall include a description of the wellbore orientation, the anticipated spud date, the size and shape of the proposed wellbore spacing unit (with depiction attached), the proposed surface and bottom hole locations, identified by footage descriptions, and the survey plat. For proposed horizontal wells and horizontal wellbore spacing units, the operator shall also identify by footage descriptions, the location at which the wellbore penetrates the target formation.

B. Each owner shall have a 30 day period after receipt of such notice to object in writing to the operator. The written objection must be based upon a claim that the notice provided by the operator does not comply with the informational requirements of subsection A., above, and/or a technical objection that either waste will be caused, correlative rights will be adversely affected, or that the operator is not an “owner”, as defined in the Act, of the mineral estate(s) through which the wellbore penetrates within the target formation. Specific facts must form the basis for such objection. The objecting party shall provide a copy of the written objection to the Director.

C. If an objection pursuant to subsection B. is timely received, the operator may seek a hearing before the Commission on the objection. The objecting party will bear the burden of proving that the notice provided by the operator does not comply with the informational requirements of subsection A., above, that the operator is not an owner, as defined by the Act, and/or the approval of the boundary well location, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation would either create waste or adversely affect the objecting party’s correlative rights. The objection may be first presented to the hearing officer of the Commission and such hearing officer, based on the facts, may recommend to the Commission that such objection shall stand or be dismissed.

D. If the objection stands, the Commission may either enter an order approving or denying the proposed boundary well location, wellbore spacing unit, horizontal well location, horizontal wellbore spacing unit or additional producing formation, with or without conditions. Such conditions may be requisites for the Application for Permit-to-Drill, Form 2, if the operator chooses to proceed with an Application for Permit-to-Drill, Form 2, relative to

the proposed boundary well, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation. If the objection is dismissed, the operator shall treat the objection as withdrawn and otherwise proceed with subsection E. below.

E. Absent receipt of a timely objection pursuant to subsections A. and B., above, the Director may administratively approve the boundary well, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation. A location plat evidencing the well location, wellbore spacing unit, or additional producing formation and applicable spacing unit shall be submitted to the Director together with copies of any surface waivers and a certification that no timely objections were received. An Application for Permit-to-Drill, Form 2, specifically identifying that a boundary well, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation is proposed, shall also be filed with the Director in accordance with Rule 303 within 90 days of the expiration of the 30 day notice period or such notice shall be deemed withdrawn. Should such notice be withdrawn or deemed withdrawn, the proposed operator shall not submit another notice for the same well or wellbore spacing unit within 45 days of the date the original notice is withdrawn or deemed withdrawn.

f. Groundwater baseline sampling and monitoring.

(1) Applicability and effective date.

A. This Rule 318A.f. applies to Oil Wells, Gas Wells (hereinafter, Oil and Gas Wells), Multi-Well Sites, and Dedicated Injection Wells as defined in the 100-Series Rules, for which a Form 2 Application for Permit to Drill is submitted on or after May 1, 2013.

B. This Rule 318A.f. does not apply to an existing Oil or Gas Well that is re-permitted for use as a Dedicated Injection Well.

C. Nothing in this Rule is intended, and shall not be construed, to preclude or limit the Director from requiring groundwater sampling or monitoring at other Production Facilities consistent with other applicable Rules, including but not limited to the Oil and Gas Location Assessment process, and other processes in place under 900-series E&P Waste Management Rules (Form 15, Form 27, Form 28).

(2) Sampling Locations.

A. Initial baseline samples and a subsequent monitoring sample shall be collected from one (1) Available Water Source in the governmental quarter section in which a new Oil and Gas Well, the first well on a Multi-Well Site, or a Dedicated Injection Well is located. If a sampling location has previously been established within the governmental quarter section, and sampled within the prior sixty (60) months before spudding, no initial baseline sample is required.

B. If there is no Available Water Source within the governmental quarter section where a proposed new Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well is located, then an Available Water Source from a previously unsampled governmental quarter section within a 1/2 mile radius of the Oil and Gas well, Multi-Well Site, or Dedicated Injection Well, if any, shall be sampled. Once a sample location is established in a governmental quarter section, no additional sample locations are required for that governmental quarter section.

C. If there is more than one Available Water Source in the governmental quarter section or, if applicable, within the half-mile radius around the Oil and Gas Well, the first well on a Multi-Well Site, or a Dedicated Injection Well, the sample location shall be selected based on the following criteria:

i. Proximity. Available Water Sources closest to the proposed Oil or Gas Well, a Multi-Well Site, or a Dedicated Injection Well are preferred.

ii. Type of Water Source. Well maintained domestic water wells are preferred over other Available Water Sources.

iii. Multiple identified aquifers available. Where multiple defined aquifers are present, sampling the deepest identified aquifer is preferred.

iv. Condition of Water Source. An operator is not required to sample Water Sources that are determined to be improperly maintained, nonoperational, or have other physical impediments to sampling that would not allow for a representative sample to be safely collected or would require specialized sampling equipment (e.g. shut-in wells, wells with confined space issues, wells with no tap or pump, non-functioning wells, intermittent springs).

(3) Exceptions. Prior to spudding, an operator may request an exception from the requirements of this Rule 318.A.f. by filing a Sundry Notice (Form 4) for the Director's review and approval if:

A. No Available Water Sources are located within the governmental quarter section or a previously unsampled quarter section within a 1/2 mile radius of a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well;

B. The only Available Water Sources are determined to be unsuitable pursuant to subpart (4)B.ii.dd, above. An operator seeking an exception on this ground shall document the condition of the Available Water Sources it has deemed unsuitable; or

C. The owners of all Water Sources suitable for testing under this Rule refuse to grant access despite an operator's reasonable good faith efforts to obtain consent to conduct sampling. An operator seeking an exception on this ground shall document the efforts used to obtain access from the owners of suitable Water Sources.

D. If the Director takes no action on the Sundry Notice within ten (10) business days of receipt, the requested exception from the requirements of this Rule 318A.e.(4) shall be deemed approved.

(4) Timing of Sampling.

A. Except as provided in subpart (4)B.i, above, initial sampling shall be conducted within 12 months prior to setting conductor pipe in an Oil and Gas Well or the first well on a Multi-Well Site, or commencement of drilling a Dedicated Injection Well.

B. One subsequent sampling event shall be conducted at the initial (or previously established) sample location between six (6) and twelve (12) months following completion of the Well or Dedicated Injection Well, or the last Well on a Multi-Well Site. Wells that are drilled and abandoned without ever producing hydrocarbons are exempt from subsequent monitoring sampling under this subpart (4)D.ii.

(5) Sampling and analysis shall be conducted in conformance with an accepted industry standard as described in Rule 910.b.(2). A model Sampling and Analysis Plan ("COGCC Model SAP") shall be posted on the COGCC website, and shall be updated periodically to remain current with evolving industry standards. Sampling and analysis conducted in conformance with the COGCC Model SAP shall be deemed to satisfy the requirements of this subsection. Upon request, an operator shall provide its sampling protocol to the Director.

(6) Initial Baseline Sampling Analysis. The initial baseline sampling required pursuant to subpart (4)D.i shall include pH, specific conductance, total dissolved solids (TDS), dissolved gases (methane, ethane, propane), alkalinity (total bicarbonate and carbonate as CaCO3), major anions (bromide, chloride, fluoride, sulfate, nitrate and nitrite as N, phosphorus), major cations (calcium, iron, magnesium, manganese, potassium, sodium), other elements (barium, boron, selenium and strontium), presence of bacteria (iron related, sulfate reducing, slime forming), total petroleum hydrocarbons (TPH) and BTEX compounds (benzene, toluene, ethylbenzene and xylenes). Field observations such as odor, water color, sediment, bubbles, and effervescence shall also be documented. The location of the sampled Water Source shall be surveyed in accordance with Rule 215.

(7) Subsequent Sampling Analysis. Subsequent sampling to meet the requirements of subpart (4)D.ii shall include total dissolved solids (TDS), dissolved gases (methane, ethane, propane), major anions (bromide, chloride, sulfate, and fluoride), major cations (potassium, sodium, magnesium, and calcium), alkalinity (total bicarbonate and carbonate as CaCO3), BTEX compounds (benzene, toluene, ethylbenzene and xylenes), and TPH.

(8) Methane Detections. If free gas or a dissolved methane concentration greater than 1.0 milligram per liter (mg/l) is detected in a water sample, gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen – 12C, 13C, 1H and 2H) shall be performed to determine gas type. The operator shall notify the Director and the owner of the water well immediately if:

A. the test results indicated thermogenic or a mixture of thermogenic and biogenic gas;

B. the methane concentration increases by more than 5.0 mg/l between sampling periods; or

C. the methane concentration is detected at or above 10 mg/l.

(9) BTEX or TPH Detections. The Operator shall notify the Director immediately if BTEX compounds or TPH are detected in a water sample.

(10) Sampling Results. Copies of all final laboratory analytical results shall be provided to the Director and the water well owner or landowner within three (3) months of collecting the samples. The analytical results, the surveyed sample Water Source location, and the field observations shall be submitted to the Director in an electronic data deliverable format.

A. The Director shall make such analytical results available publicly by posting on the Commission's web site or through another means announced to the public.

B. Upon request, the Director shall also make the analytical results and surveyed Water Source location available to the Local Governmental Designee from the jurisdiction in which the groundwater samples were collected, in the same electronic data deliverable format in which the data was provided to the Director.

(11) Liability. The sampling results obtained to satisfy the requirements of this Rule 318A.f., including any changes in the constituents or concentrations of constituents present in the samples, shall not create a presumption of liability, fault, or causation against the owner or operator of a Well, Multi-Well Site, or Dedicated Injection Well who conducted the sampling, or on whose behalf sampling was conducted by a third-party. The admissibility and probity of any such sampling results in an administrative or judicial proceeding shall be determined by the presiding body according to applicable administrative, civil, or evidentiary rules.

g. **Limit on locations**. This rule does not limit the number of formations that may be completed in any GWA drilling and spacing unit nor, subject to subsection c., above, does it limit the number of wells that may be located within the GWA windows.

h. **GWA water sampling**. The Director may apply appropriate drilling permit conditions to require water well sampling near any proposed GWA wells in accordance with the guidelines set forth in subsection f., above.

i. **Waste Management**. In conjunction with filing an Oil and Gas Location Assessment, Form 2A, the operator shall include a waste management plan meeting the general requirements of Rule 907.a.

j. **Exception locations**. The provisions of Rule 318.c. respecting exception locations shall be applicable to GWA wells, however, absent timely objection, boundary wells, wellbore spacing units, and additional producing formations shall be administratively approved as provided in subsection e.(6) above.

k. **Correlative rights.** This rule shall not serve to bar the granting of relief to owners who file an application alleging abuse of their correlative rights to the extent that such owners can demonstrate that their opportunity to produce Cretaceous Age formations from the drilling locations herein authorized does not provide an equal opportunity to obtain their just and equitable share of oil and gas from such formations.

l. **Supersedes orders and policy**. Subject to paragraph d. above, this rule supersedes all prior Commission drilling and spacing orders affecting well location and density requirements of GWA wells. Where the Commission has issued a specific order limiting the number of horizontal wells permitted in a drilling and spacing unit, the well density in such unit shall be governed by that order.

m The landowner notice provision for the owner(s) of surface property within five hundred (500) feet of the proposed oil and gas location under Rule 305.e. shall not apply to any such locations that are subject to the provisions of this subsection 318A.

318B. Yuma/Phillips County Special Well Location Rule

a. This Special Well Location Rule ("WLR") governs wells drilled to and completed in the Niobrara Formation for the following lands:

Township 1 North Range 44 West: Sections 7, 18, 19, 30 through 33 Range 45 West: Sections 7 through 36 Range 46 West: Sections 4 through 9 Range 47 West: All Range 48 West: All

Township 2 North Range 46 West: All Range 47 West: All Range 48 West: All

Township 3 North Range 45 West: Sections 1 through 18 Range 46 West: All Range 47 West: All Range 48 West: All

Township 4 North Range 45 West: All Range 46 West: All Range 47 West: All Range 48 West: All

Township 5 North Range 45 West: All Range 46 West: All Range 47 West: All Range 48 West: All

Township 6 North Range 45 West: All Range 46 West: All Range 47 West: All Range 48 West: All

Township 7 North Range 45 West: All Range 46 West: All Range 47 West: All

Township 8 North Range 45 West: All Range 46 West: All Range 47 West: All

Township 9 North Range 45 West: Sections 19 through 36 Range 46 West: Sections 19 through 36 Range 47 West: Sections 19 through 36

Township 1 South Range 44 West: Sections 3 through 10, 16 through 21, 27 through 34 Range 45 West: Sections 3 through 5 Range 46 West: Sections 4 through 9, 16 through 36 Range 47 West: All Range 48 West: All

Township 2 South Range 44 West: Sections 3 through 6 Range 45 West: Section 7: W½, Section 18: W½, Section 19: All Range 46 West: Sections 1 through 24 Range 47 West: All Range 48 West: All

Township 3 South Range 48 West: All

Township 4 South Range 48 West: All

Within the WLR Area, operators may conduct drilling operations to the Niobrara Formation as follows:

(1) Four (4) Niobrara Formation wells may be drilled in any quarter section.

(2) No more than one (1) well may be located in any quarter quarter section.

(3) No minimum distance shall be required between wells producing from the Niobrara Formation in any quarter section

(4) Wells shall be located at least three hundred (300) feet from the boundary of said quarter section, and wells located outside any drilling units already established by the Commission in the WLR Area prior to this WLR's effective date (July 30, 2006) shall, in addition, be located at least three hundred (300) feet from any lease line. Further, wells shall be located not less than nine hundred (900) feet from any producible well drilled to the Niobrara Formation prior to this WLR's effective date (July 30, 2006) located in a contiguous or cornering quarter section unless exception is approved by the Director.

b. Any well drilled to the Niobrara Formation in the WLR Area prior to the effective date (July 30, 2006) of this WLR which is legally located when this WLR becomes effective but is not located as listed above shall be treated as properly located for purposes of this WLR.

c. This WLR does not alter the size or configuration of any drilling units already established by the Commission in the WLR Area prior to this WLR's effective date (July 30, 2006).

d. This WLR shall not serve to bar the granting of relief to owners who file an application alleging abuse of their correlative rights to the extent that such owners can demonstrate that their opportunity to produce from the Niobrara Formation at locations herein authorized does not provide an equal opportunity to obtain their just and equitable share of oil and gas from such formation.

e. Well exception locations to this WLR shall be subject to the provisions of Rule 318.c.

f. This WLR is a well location rule and supersedes existing Commission orders in effect at the time of its adoption only to the extent that the existing orders relate to permissible well locations and the number of wells that may be drilled in a quarter section. Commission orders in effect when this Rule 318B. is adopted nonetheless apply with respect to the size of drilling units already established by the Commission in the WLR Area. This WLR is not intended to establish well spacing. Accordingly, when an area subject to Rule 318B. is otherwise unspaced, it does not act to space the area but instead provides the permissible locations for any new Niobrara Formation wells. Similarly, Rule 318B. does not affect production allocation for existing or future wells. An operator may allocate production in accordance with the applicable lease, contract terms or established drilling and spacing units recognizing the owner's right to apply to the COGCC to resolve any outstanding correlative rights issues.

g. The landowner notice provisions for owner(s) of surface property within five hundred (500) feet of the proposed oil and gas location under Rule 305.e shall not apply to any such locations that are subject to the provisions of this Rule 318B.

319. ABANDONMENT

The requirements for abandoning a well shall be as follows:

a. **Plugging**

(1) A dry or abandoned well, seismic, core, or other exploratory hole, must be plugged in such a manner that oil, gas, water, or other substance shall be confined to the reservoir in which it originally occurred. If the wellbore is not static before setting a plug in an open hole or after casing is removed from the wellbore, then any Produced Fluids must be circulated from the wellbore and the wellbore shall be filled with wellbore fluids sufficient to maintain a balance or overbalance of the producing formation. Wellbore fluids shall be in a static state prior to pumping balanced cement plugs, unless the cement plug is being placed as a preliminary step to counteract a high pressure or a lost circulation zone before establishing a static state. Intervals between plugs shall be filled with wellbore fluids of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling such interval. If mud is necessary to maintain wellbore fluids in a static state prior to setting plugs, a minimum mud weight of 9 pounds per gallon shall be used. Water spacers shall be used both ahead of and behind balanced plug cement slurry to minimize cement contamination by any wellbore fluids that are incompatible with the cement slurry. Any cement plug shall be a minimum of 100 feet in length and shall extend a minimum of 100 feet above each zone to be protected. The material used in plugging, whether cement, mechanical plug, or some other equivalent method approved in writing by the Director, must be placed in the well in a manner to permanently prevent migration of oil, gas, water, or other substance from the formation or horizon in which it originally occurred. The preferred plugging cement slurry is that recommended by the American Petroleum Institute (API) Environmental Guidance Document: Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, i.e., a neat cement slurry mixed to API standards. However, pozzolan, salt-compatible cements, gel, high-temperature additives, extenders, accelerators, retarders, dispersants, water loss control additives, lost circulation material, and other additives may be used, as appropriate for the well being plugged, if the operator can document to the

Director's satisfaction that the slurry design will achieve a minimum compressive strength of 300 psi after 24 hours and 800 psi after 72 hours measured at 95 degrees Fahrenheit (95 °F) and at 800 psi confining pressure.

(2) The operator shall have the option as to the method of placing cement in the hole by (a) dump bailer, (b) pumping a balanced cement plug through tubing or drill pipe, (c) pump and plug, or (d) equivalent method approved by the Director prior to plugging. Unless prior approval is given, all wellbores shall have water, mud or other approved fluid between all plugs.

(3) No substance of any nature or description other than normally used in plugging operations shall be placed in any well at any time during plugging operations. All final reports of plugging and abandonment shall be submitted on a Well Abandonment Report, Form 6, and accompanied by a job log or cement verification report from the plugging contractor specifying the type of fluid used to fill the wellbore, type and slurry volume of API Class cement used, date of work, and depth the plugs were placed.

(4) In order to protect the fresh water strata, no surface casing shall be pulled from any well unless authorized by the Director.

(5) All abandoned wells shall have a plug or seal placed in the casing and all open annuli from a depth of 50 feet to the surface of the ground or the bottom of the cellar in the hole in such manner as not to interfere with soil cultivation or other surface use. For below-grade markers, the top of the casing must be fitted with a screw cap or a steel plate welded in place with a weep hole. For above-grade markers, the top of the casing must be fitted with a screw cap or a steel plate welded in place with a weep hole, and a permanent monument shall be a pipe not less than four inches in diameter and not less than 10 feet in length, of which four feet shall be above ground level and the remainder embedded in cement or welded to the surface casing. Whether a below-grade or an above-grade marker is used, the marker shall be inscribed with the well's legal location, well name and number, and API Number.

(6) The operator must obtain approval from the Director of the plugging method prior to plugging, and shall notify the Director of the estimated time and date the plugging operation of any well is to commence, and identify the depth and thickness of all known sources of groundwater. For good cause shown, the Director may require that a cement plug be tagged if a cement retainer or bridge plug is not used. If requested by the operator, the Director shall furnish written follow-up documentation for a requirement to tag cement plugs.

(7) **Wells Used for Fresh Water.** When the well, seismic, core, or other exploratory hole to be plugged may safely be used as a fresh water well, and such utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water; provided that written authority for such use is secured from the landowner and, in such written authority, the landowner assumes the responsibility to plug the well upon its abandonment as a water well in accordance with these rules. Such written authority and assumption of responsibility shall be filed with the Commission, provided further that the landowner furnish a copy of the permit for a water well approved by the Division of Water Resources.

b. **Temporary Abandonment.**

(1) A well may be temporarily abandoned after passing a successful mechanical integrity test per Rule 326upon approval of the Director, for a period not to exceed six months provided the hole is cased or left in such a manner as to prevent migration of oil, gas, water or other substance from the formation or horizon in which it originally occurred. All temporarily abandoned wells shall be closed to the atmosphere with a swedge and valve or packer, or other approved method. The well sign shall remain in place. If an operator requests temporary abandonment status in excess of six months the operator shall state the reason for requesting such extension and state plans for future operation. A Sundry Notice, Form 4, or other form approved by the Director, shall be submitted annually stating the method the well is closed to the atmosphere and plans for future operation. Subsequent mechanical integrity tests will be required at the frequency specified in Rule 326.

(2) The manner in which the well is to be maintained should be reported to the Commission, and bonding requirements, as provided for in Rule 304, kept in force until such time as the well is permanently abandoned.

(3) A well which has ceased production or injection and is incapable of production or injection shall be abandoned within six months thereafter unless the well passes a successful mechanical integrity test per Rule 326, and the time is extended by the Director upon application by the owner. The application shall indicate why the well is temporarily abandoned and future plans for utilization. In the event the well is covered by a blanket bond, the Director may require an individual plugging bond on the temporarily abandoned well. Subsequent mechanical integrity tests will be required at the frequency specified in Rule 326. Gas storage wells are to be considered active at all times unless physically plugged.

320. LIABILITY

The owner and operator of any well drilled for oil or gas production or injection purposes, or any seismic, core, or other exploratory holes, whether cased or uncased, shall be liable and responsible for the plugging thereof in accordance with the rules and regulations of the Commission regardless of whether the cost of such plugging and abandonment exceeds the amount of security as set forth in Rule 304.

321. DIRECTIONAL DRILLING

a. **Deviated Drilling Plan.** If an operator intends to drill a deviated wellbore (directional, highly deviated, or horizontal) utilizing controlled directional drilling methods, the deviated drilling plan shall be attached to the Application for Permit-to-Drill, Form 2. The deviated drilling plan shall include a listing of coordinate data sufficient to describe the location of the wellbore from the base of the surface casing to the kick off point and from that point to total depth. The plan shall also include two wellbore deviation plots, one depicting the map view and one depicting the side view.

b. **Well Location Plat**. If an operator intends to drill a deviated wellbore (directional, highly deviated, or horizontal) utilizing controlled directional drilling methods, the well location plat attached to the Application for Permit-to-Drill, Form 2 shall include (in addition to the information required in Rule 303.a) the proposed top of the productive zone and the bottom hole location. If the wellbore penetrates multiple sections, the well location plat shall depict every section penetrated by the wellbore.

c.

c. **Directional Survey.** If an operator has drilled a deviated wellbore, either intentionally or unintentionally, the directional survey shall be attached to the Drilling Completion Report, Form 5. The directional survey shall include a listing of coordinate data sufficient to describe the location of the wellbore from the base of the surface casing to the kick off point and from that point to total depth. The survey shall also include two wellbore deviation plots, one depicting the map view and one depicting the side view.

d. **Wellbore Setback Compliance.** It shall be the operator's responsibility to ensure that the wellbore complies with the setback requirements in Commission orders or rules prior to producing the well.

322. COMMINGLING

The commingling of production from multiple formations or wells is encouraged in order to maximize the efficient use of wellbores and to minimize the surface disturbance from oil and gas operations. Commingling may be conducted at the discretion of an operator, unless the Commission has issued an order or promulgated a rule excluding specific wells, geologic formations, geographic areas, or field from commingling in response to an application filed by a directly and adversely affected or aggrieved party or on the Commission's own motion.

This rule supercedes the procedural requirements to establish commingling and allocation contained in any Commission order as of the effective date of this rule, but does not supersede any allocation made under such order.

323. OPEN PIT STORAGE OF OIL OR HYDROCARBON SUBSTANCES

Storage of oil or any other produced liquid hydrocarbon substance in earthen pits or reservoirs is considered to constitute waste, except in emergencies where such substances cannot be otherwise contained. In such cases, these substances must be reclaimed and such storage eliminated as soon as practicable after the emergency is controlled, unless special permission to delay or continue is obtained from the Director.

324A. POLLUTION

a. The operator shall take precautions to prevent significant adverse environmental impacts to air, water, soil, or biological resources to the extent necessary to protect public health, safety and welfare, including the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility to prevent the unauthorized discharge or disposal of oil, gas, E&P waste, chemical substances, trash, discarded equipment or other oil field waste.

b. No operator, in the conduct of any oil or gas operation shall perform any act or practice which shall constitute a violation of water quality standards or classifications established by the Water Quality Control Commission for waters of the state, or any point of compliance established by the Director pursuant to Rule 324D. The Director may establish one or more points of compliance for any event of pollution, which shall be complied with by all parties determined to be a responsible party for such pollution.

c. No owner, in the conduct of any oil or gas operation, shall perform any act or practice which shall constitute a violation of any applicable air quality laws, regulations, and permits as administered by the Air Quality Control Commission or any other local or federal agency with authority for regulating air quality associated with such activities.

d. No injection shall be authorized pursuant to Rule 325 or Rule 401 unless the person applying for authorization to conduct the injection activities demonstrates that those activities will not result in the presence in an underground source of drinking water of any physical, chemical, biological or radiological substance or matter which may cause a violation of any primary drinking water regulation in effect as of July 12, 1982 and found at 40 C.F.R. Part 141, or may otherwise adversely affect the health of persons. An underground source of drinking water is an aquifer or its portion:

(1) A which supplies any public water system; or

B which contains a sufficient quantity of ground water to supply a public water system; and

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 milligrams per liter total dissolved solids; and

(2) which is not an exempted aquifer.

e. No person shall accept water produced from oil and gas operations, or other oil field waste for disposal in a commercial disposal facility, without first obtaining a Certificate of Designation from the County in which such facility is located, in accord with the regulations pertaining to solid waste disposal sites and facilities as promulgated by the Colorado Department of Public Health and Environment.

324B . EXEMPT AQUIFERS

a. **Criteria for aquifer exemption.** An aquifer or a portion thereof may be designated by the Director or the Commission as an exempted aquifer, in connection with the filing of an application pursuant to Rule 325, or Rule 401, and after notification to the Colorado Department of Public Health and Environment, Water Quality Control Division, if it meets the following criteria

(1) It does not currently serve as a source of drinking water, and either subparagraph (2) or (3) below apply;

(2) It cannot now and will not in the future serve as a source of drinking water because:

A. It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a person filing an application pursuant to Rule 325, or Rule 401, to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible; or

B. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or

C. It is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption;

(3) The total dissolved solids content of the ground water is more than three thousand (3,000) and less than ten thousand (10,000) milligrams per liter and it is not reasonably expected to supply a public water system.

b. **Aquifer exemption public notice.** If an aquifer exemption is required as part of an injection permit process, the injection well applicant shall apply for an aquifer exemption. This application shall contain data and information which show that applicable aquifer exemption criteria set forth in Rule 324B.a. are met. After evaluation of the application and prior to designating an aquifer or a portion thereof as an exempted aquifer, the Director shall publish a notice of proposed designation in a newspaper of general circulation serving the area where the aquifer is located. The notice shall identify such aquifer or portion thereof which the Director proposes to designate as exempted, and shall state that any person who can make a showing to the Director that the requested designation does not meet the criteria set forth in Rule 324B.a. may request the Commission to hold a hearing thereon.

c. **Evaluation of written requests for public hearing.** Written requests for a public hearing before the Commission shall be reviewed and evaluated by the Director in consultation with the applicant to determine if the criteria set forth in Rule 324B.a. have been met. If, within thirty (30) days after publication of the notice, the Commission receives a hearing request for which the Director determines the criteria set forth in Rule 324B.a. have not been met, the Commission shall hold such a hearing in accordance with the provisions of §34-60-108, C.R.S., 1973, as amended, and shall make a final determination regarding designation.

d. **Aquifer exemption designation.** If, within thirty (30) days after publication of the notice described in subparagraph b. above, the Commission does not receive a hearing request or receives a hearing request for which the Director determines the criteria set forth in Rule 324B.a. have been met, said aquifer or portion thereof shall be considered exempted thirty (30) days after publication of the notice.

324C. QUALITY ASSURANCE FOR CHEMICAL ANALYSIS

For the purpose of application for a permit for all wells authorized under Rule 325 and Rule 401, collection and analysis of water samples must comply with the Commission's approved quality assurance project plan.

324D. CRITERIA TO ESTABLISH POINTS OF COMPLIANCE

In determining a point of compliance, the Director shall take into consideration recommendations of the operator or any responsible party or parties, if applicable, including technical and economic feasibility, together with the following factors:

a. The classified use established by the Water Quality Control Commission, for any groundwater or surface water which will be impacted by contamination. If not so classified, the Director shall consider the quality, quantity, potential economic use and accessibility of such water;

b. The geologic and hydrologic characteristics of the site, such as depth to groundwater, groundwater flow, direction and velocity, soil types, surface water impacts, and climate;

c. The toxicity, mobility, and persistence in the environment of contaminants released or discharged from the site;

d. Established wellhead protection areas;

e. The potential of the site as an aquifer recharge area; and

f. The distance to the nearest permitted domestic water well or public water supply well completed in the same aquifer affected by the event.

g. The distance to the nearest permitted livestock or irrigation water well completed in the same aquifer affected by the event.

325. UNDERGROUND DISPOSAL OF WATER

a. No person shall commence operations for the underground disposal of water, or any other fluids, into a Class II well, or any well regulated by the Commission, nor shall any person commence construction of such a well, without having first obtained written authorization for such operations from the Director. Persons wishing to obtain authorization to conduct underground disposal activities shall file with the Director an Underground Injection Formation Permit Application, Form 31 and an Injection Well Permit Application, Form 33. If the disposal well is to be drilled, this application shall be submitted concurrently with the Application for Permit-to-Drill, Form 2, along with a service and filing fee to be determined by the Commission. (See Appendix III)

b. **Withholding approval of underground disposal of water.** The Director may withhold the issuance of a permit and the granting of approval of any Underground Injection Formation Permit Application, Form 31 and any Injection Well Permit Application, Form 33 for any proposed disposal well when the Director has reasonable cause to believe that the proposed disposal well could result in a significant adverse impact on the environment or public health, safety and welfare. In the event such approval is not granted, the Director shall immediately advise the operator and bring the matter to the Commission at its next regularly scheduled hearing.

c. The application for a dedicated injection well shall include the following information:

(1) The name, description and depth of the formation into which water is to be injected, and all underground sources of drinking water which may be affected by the proposed operation. A water analysis of the injection formation (if the total dissolved solids of the injection formation is determined to less than ten thousand (10,000) milligrams per liter, the aquifer must be exempted in accordance with Rule 322B.). The fracture pressure or fracture gradient of the injection formation.

(2) A base plat covering the area within one-quarter (1/4) mile of the proposed disposal well showing location of the proposed disposal well or wells and the location of all oil and gas wells, domestic and irrigation wells of public record and the identification of all oil and gas wells currently producing from the proposed injection zone within one-half (1/2) mile of the disposal zone. The names, addresses and holdings of all surface and mineral owners as defined in C.R.S. 34-60-103 (7), within one-quarter (1/4) mile of the proposed disposal well or wells, or all owners of record in the field if a field-wide system is proposed. These owners shall be specifically outlined and identified on the base plat. A list of all domestic and irrigation wells of public record, within one-quarter (1/4) mile of the proposed disposal well or wells, including their location and depth. (This information may be obtained at the Colorado Division of Water Resources.) Remedial action shall be required for any well within one-quarter (1/4) mile of the proposed disposal well or wells in which the injection zone is not adequately confined. The applicant shall include information regarding the need for remedial action on any well(s) penetrating the injection zone within one-quarter (1/4) mile of the proposed disposal well or wells, which the applicant may or may not operate and a plan for the performance of any such remedial work. A copy of all plans and specifications for the system and its appurtenances.

(3) A resistivity log, run from the bottom of the surface casing to total depth of the disposal well or wells or any well within one (1) mile together with a log from that well that can be correlated with the injection well. If the disposal well is to be drilled, a description of the typical stratigraphic level of the disposal formation in the disposal well or wells, and any other available logging or testing data, on the disposal well or wells.

(4) A full description of the casing in the disposal well or wells. This shall include any information available on any remedial cement work performed to any casing string. This shall also include a schematic drawing showing all casing strings with cement volumes and tops, existing or as proposed, plug back total depth, depth of any existing open or squeezed perforations, setting depths of any bridge plugs existing or proposed, planned perforations in the injection zone, tubing and packer size and setting depth. A diagram of the surface facility showing all pipelines and tanks associated with the system. A listing of all leases connected directly by pipelines to the system.

(5) A listing of all sources of water, by lease and well, to be injected shall be submitted on a Source of Produced Water for Disposal, Form 26.

(6) Any proposed stimulation program.

(7) The minimum and maximum amount of water to be injected daily with anticipated injection pressures. Maximum injection pressure will be set by the Director upon approval.

(8) The names and addresses of those persons notified by the applicant, as required by subparagraph i. of this rule.

d. The application for a simultaneous injection well shall include the following:

(1) The name, description and depth of the formation into which water is to be injected, and all underground sources of drinking water which may be affected by the proposed operation. A water analysis of the injection formation (if the total dissolved solids of the injection formation is determined to be less than ten thousand (10,000) milligrams per liter, the aquifer must be exempted in accordance with Rule 324B.); a water analysis from the producing formation; and go fracture pressure or fracture gradient of the injection formation.

(2) A base plat covering the area within one-quarter (1/4) mile of the proposed well showing the location of the proposed well or wells and the location of all oil and gas wells, domestic and irrigation wells of public record and the identification of all oil and gas wells currently producing from the proposed injection zone within one-half (1/2) mile of the disposal zone and the names, addresses and holdings of all mineral owners as defined in §34-60-103 (7), C.R.S., within one-quarter (1/4) mile of the proposed disposal well or wells, or all owners of record in the field if a field-wide system is proposed. These owners shall be specifically outlined and identified on the base plat. Remedial action shall be required for any well within one-quarter (1/4) mile of the proposed well or wells in which the injection zone is not adequately confined. The applicant shall include information regarding the need for remedial action on any well(s) penetrating the injection zone within one-quarter (1/4) mile of the proposed disposal well or wells, which the applicant may or may not operate and a plan for the performance of any such remedial work and a copy of all plans and specifications for the system and its appurtenances.

(3) A resistivity log, run from the bottom of the surface casing to total depth of the disposal zone or such log from a well within one (1) mile together with a log from that well that can be correlated with the simultaneous injection well. If the simultaneous injection well is to be drilled, a description of the typical stratigraphic level of the injection formation in the simultaneous injection well or wells, and any other available logging or testing data, on the simultaneous injection well or wells.

(4) A full description of the casing in the simultaneous injection well or wells. This shall include any information available on any remedial cement work performed to any casing string. This shall also include a schematic drawing showing all casing strings with cement volumes and tops, existing or as proposed, plug back total depth, depth of any existing open or squeezed perforations, setting depths of any bridge plugs existing or proposed, planned perforations in the injection zone, downhole pump setting depth and any tubing and or packer size and setting depth.

(5) Any proposed stimulation program.

(6) The amount of water to be injected daily.

(7) Downhole pump specifications, together with a calculation of maximum discharge pressure created under proposed wellbore configuration. Downhole pump configurations shall be designed to inject below the injection zone fracture gradient.

(8) The names and addresses of those persons notified by the applicant, as required by subparagraph j. of this rule.

The following rules shall apply to both dedicated injection well and simultaneous injection well applications.

e. **Mechanical integrity testing requirement.** Prior to application approval, the proposed disposal well must satisfactorily pass a mechanical integrity test in accordance with Rule 326.

f. **Commercial disposal well requirements.** Prior to application approval, the appurtenant commercial disposal well operations shall comply with the requirements of Rules 706, 707, and 712.

g. **Multiple well applications.** Application may be made to include the use of more than one (1) disposal well on the same lease, or on more than one (1) lease. Wherever feasible and applicable, the application shall contemplate a coordinated plan for the entire field.

h. The designated operator of a unitized or cooperative project shall execute the application.

i. Notice of the application for a dedicated injection well shall be given by the applicant by registered or certified mail or by personal delivery, to each surface owner and owner as defined in §34-60-103(7), C.R.S., within one-quarter (1/4) mile of the proposed well or wells and to owners and operators of oil and gas wells producing from the injection zone within one-half (1/2) mile of the disposal well or to owners of cornering and contiguous units where injection will occur into the producing zones, whichever is the greater distance.

j. Notice of the application for a simultaneous injection well shall be given by the applicant by registered or certified mail or by personal delivery, to each owner as defined in §34-60-103(7), C.R.S., within one-quarter (1/4) mile of the proposed well or wells and to owners and operators of oil and gas wells producing from the injection zone within one-half (1/2) mile of the disposal well or to owners of cornering and contiguous units where injection will occur into the producing zones, whichever is the greater distance.

k. A copy of the notice of application shall be included with the disposal application filed with the Commission, and the applicant shall certify that notice by registered or certified mail or by personal delivery, to each of the owners specified in subparagraphs i. and j., has been accomplished.

l. **Notice of application requirements.** The notice shall briefly describe the disposal application and include legal location, proposed injection zone, depth of injection, and other relevant information. The notice shall state that any person who would be directly and adversely affected or aggrieved by the authorization of the underground disposal into the propose injection zone may file, within 15 days of notification, a written request for a public hearing before the Commission, provided such request meets the protest requirements specified in subparagraph m. of this rule. The notice shall also state that additional information on the operation of the proposed disposal well may be obtained at the Commission office.

m. **Evaluation of written requests for public hearing.** Written requests for public hearing before the Commission by a person, notified in accordance with subparagraphs i. and j. of this rule, who may be directly and adversely affected or aggrieved by the authorization of the underground disposal into the proposed injection zone, shall be reviewed and evaluated by the Director in consultation with the applicant. Written protests shall specifically provide information on:

(1) Possible conflicts between the injection zone's proposed disposal use and present or future use as a source of drinking water or present or future use as a source of hydrocarbons, or

(2) Operations at the well site which may affect potential and current sources of drinking water.

n. **Dedicated injection well public notice.** The Director shall publish a notice of the proposed disposal permit for dedicated injection wells in a newspaper of general circulation serving the area where the well(s) is (are) located. The notice shall briefly describe the disposal application and include legal location, proposed injection zone, depth of injection and other relevant information. Comment period on the proposed disposal application shall end thirty (30) days after date of publication. If any data, information, or arguments submitted during the public comment period appear to raise substantial questions concerning potential impacts to the environment, public health, safety and welfare raised by the proposed disposal well permit the Director may request that the Commission hold a hearing.

o. **Injection application deadlines.** If all of the data or information necessary to approve the disposal application has not been received within six (6) months of the date of receipt, the application will be withdrawn from consideration. However, for good cause shown, a ninety (90) day extension may be granted, if requested prior to the date of expiration.

326. MECHANICAL INTEGRITY TESTING

For the purpose of this rule, a mechanical integrity test of a well is a test to determine if there is a significant leak in the well's casing, tubing, or mechanical isolation device, or if there is significant fluid movement into an underground source of drinking water through vertical channels adjacent to the wellbore.

a. **Injection Wells** - A mechanical integrity test shall be performed on all injection wells.

(1) The mechanical integrity test shall include one of the following tests to determine whether significant leaks are present in the casing, tubing, or mechanical isolation device:

A. Isolation of the tubing-casing annulus with a packer set at 100 feet or less above the highest open injection zone perforation, unless an alternate isolation distance is approved in writing by the Director. The pressure test shall be with liquid or gas at a pressure of not less than 300 psi or the average injection pressure, whichever is greater, and not more than the maximum permitted injection pressure; or

B. The monitoring and reporting to the Director, on a monthly basis for 60 consecutive months, of the average casing-tubing annulus pressure, following an initial pressure test; or

C. Any equivalent test or combination of tests approved by the Director.

(2) The mechanical integrity test shall include one of the following tests to determine whether there are significant fluid movements in vertical channels adjacent to the well bore:

A. Cementing records which shall only be valid for injection wells in existence prior to July 1, 1986;

B. Tracer surveys;

C. Cement bond log or other acceptable cement evaluation log;

D. Temperature surveys; or

E. Any other equivalent test or combination of tests approved by the Director.

(3) No person shall inject fluids via a new injection well unless a mechanical integrity test on the well has been performed and supporting documents including Mechanical Integrity Test, Form 21, submitted and approved by the Director. Verbal approval may be granted for continuous injection following a successful test.

(4) Following the performance of the initial mechanical integrity test required by subparagraph (3), additional mechanical integrity tests shall be performed on each type of injection well as follows:

A. Dedicated injection well. As long as it is used for the injection of fluids, mechanical integrity tests shall be performed at the rate of not less than one test every five years, except as specified by subparagraph C below. Five year periods shall commence on the date the initial mechanical integrity test is performed or the date any mechanical integrity test specified in subparagraph C below.

B. Simultaneous injection well. No additional tests will be required after the initial mechanical integrity test.

C. All injection wells. A new mechanical integrity test shall be performed after any casing repairs, after resetting the tubing or mechanical isolation device, or whenever the tubing and/or mechanical isolation device is moved during workover operations.

b. **Shut-in Wells** - All shut-in wells shall pass a mechanical integrity test.

(1) A mechanical integrity test shall be performed on each shut-in well within two years of the initial shut-in date.

(2) Subsequently, a mechanical integrity test shall be performed on each shut-in well on 5 year intervals from the date the initial mechanical integrity test was performed, as long as the well remains shut-in.

(3) The mechanical integrity test for a shut-in well shall be performed after: isolating the wellbore with a bridge plug or similar approved isolating device set 100 feet or less above the highest open perforation. The pressure test shall be with liquid or gas at an initial, stabilized surface pressure of not less than 300 psi surface pressure or any equivalent test or combination of tests approved by the Director.

c. **Temporarily Abandoned Wells** – All temporarily abandoned wells shall pass a mechanical integrity test.

(1) A mechanical integrity test shall be performed on each temporarily abandoned well within 30 days of temporarily abandoning the well.

(2) Subsequently, a mechanical integrity test shall be performed on each temporarily abandoned well on five year intervals from the date of the initial mechanical integrity test was performed, as long as the well remained temporarily abandoned.

(3) The mechanical integrity test for a temporarily abandoned well shall be performed after isolating the wellbore with a bridge plug or similar approved isolating device set 100 feet or less above the highest open perforation. The pressure test shall be liquid or gas at an initial, stabilized surface pressure of not less than 300 psi surface pressure or any equivalent test or combination of tests approved by the Director.

d. **Waiting-on-completion and Suspended Operations Wells** – A mechanical integrity test shall be performed on each waiting-on-completion well within two years of setting the production casing. A mechanical integrity test shall be performed on each suspended operations well within two years of setting any casing string and suspending operations prior to reaching permitted total depth.

e. Not less than 10 days prior to the performance of any mechanical integrity test required by this rule, any person required to perform the test shall notify the Director with a Form 42, Field Operations Notice, Mechanical Integrity Test, of the scheduled date and time when the test will be performed.

f. All wells shall maintain mechanical integrity.

(1) All non-injection wells which lack mechanical integrity, as determined through a mechanical integrity test or other means, shall be repaired or plugged and abandoned within six months. If an operator has performed a mechanical integrity test within the two years required for shut-in wells or the 30 days required for temporarily abandoned wells by this Rule, they will have six months from the date of the unsuccessful test to make repairs or plug and abandon the well. If the operator has not performed a mechanical integrity test within the required time frames in Rule 326.b.(1) and 326.c.(1), they will not be given an additional six months in the event of an unsuccessful test.

(2) All injection wells which fail a mechanical integrity test, or which are determined through any other means to lack mechanical integrity, shall be shut-in immediately.

g. Mechanical integrity test pressure loss or gain must not exceed 10% of the initial stabilized surface pressure over a test period of 15 minutes. The test may be repeated if the pressure loss or gain is determined to be the result of compression related to gas dissolution from the fluid column or temperature effects related to the fluid used to load the column. Wells that do not satisfy this test requirement are considered to lack mechanical integrity and are subject to the requirements of Rule 326.d.

327. WELL CONTROL

The operator shall take all reasonable precautions, in addition to fully complying with Rule 317 to prevent any oil, gas or water well from flowing uncontrolled and shall take immediate steps and exercise due diligence to bring under control any such well. For controlled events, a "significant" well control event is an unanticipated influx of formation fluids into the wellbore which requires increasing the pre-existing mud weight by 4% or more.

The operator shall notify the Director of all uncontrolled events as soon as practicable, but no later than 24 hours following the incident. Within 15 days after these occurrences the operator shall submit a Spill Report, Form 19, and/or a Well Control Report, Form 23, as appropriate, for reportable spills/releases or kicks while drilling, providing all details required on the forms. The Director shall maintain these written reports in a central file.

328. MEASUREMENT OF OIL

The volume of all oil production from a lease or a production unit shall be measured and recorded prior to removal from the lease or production unit. The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of properly calibrated meter measurements or tank measurements of oil-level differences, made and recorded to the nearest one-quarter (1/4) inch of one hundred percent (100%) capacity tables, subject to the following corrections in items a., b., and c. below. This rule shall be used consistently with standards established by the American Society for Testing and Materials (ASTM), the American Petroleum Institute (API) Manual of Petroleum Measurement Standards, the American Gas Association (AGA), the Gas Processors Association (GPA), or other applicable standards-setting organizations, and pursuant to contractual rights or obligations. Only those editions of standards cited within this rule shall apply to this rule; later amendments do not apply. The material cited in this rule is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, these materials may be examined at any state publication depository library.

a. **Correction for Impurities.** The percentage of impurities (water, sand and other foreign substances not constituting a natural component part of the oil) shall be determined to the satisfaction of the Director, and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities.

b. **Temperature Correction.** The observed volume of oil corrected for impurities shall be further corrected to the standard volume of sixty degrees Fahrenheit (60° F) in accordance with ASTM D-1250 Table 7, or any close approximation thereof approved by the Director.

c. **Gravity Determination.** The gravity of oil at sixty degrees Fahrenheit (60° F). shall be determined in accordance with ASTM D-1250 Table 5, or any close approximation thereof approved by the Director.

d. **Tank Gauging.** Measurement by tank gauging shall be completed in accordance with industry standards as specified in API CH. 3 Gauging of Tanks (Section 3.1a Second Edition August 2005 and Section 3.1b Second Edition June 2001) and the API CH. 18.1, Measure Procedures for Crude Oil Gathered from Small Tanks by Truck (Second Edition April 1997).

e. **Metering Station.** Measurement shall be completed in accordance with industry standards as specified in API CH. 4 Proving Systems (Section 2, Third Edition September 2003 and Section 8, First Edition November 1995), API CH. 5 Metering (CH. 5.1 Fourth Edition October 2005, CH. 5.2 Third Edition October 2005, CH. 5.3 Fifth Edition September 2005, CH. 5.4 Second Edition July 2005, CH. 5.5 Second Edition July 2005, and CH. 5.6 First Edition October 2002), API CH. 7 Temperature Determination (First Edition June 2001), API CH. 8 Sampling (CH. 8.1 Third Edition October 1995 and CH. 8.2 Second Edition October 1995), and the API CH. 12, Calculation of Quantities (CH. 12.1 Part 1 Second Edition November 2001).

f. **LACT Meters.** Measurement utilizing LACT units shall be in accordance with industry specifications or standards as specified in API SPEC. 6.1, Lease Automatic Custody Transfer Systems (Second Edition May 1991).

g. **Sales Reconciliation.** In order to facilitate the resolution of questions regarding the payment of proceeds or sales reconciliation from a well, a payee may submit a Form 37 to the payor requesting additional information concerning the payee's interest in the well, price of the oil sold, taxes applied to the sale of oil, differences in well production and well sales, and other information as described in § 34-60-118.5, C.R.S. The payor shall return the completed form to the payee within sixty (60) days of receipt. Submittal of this form to the payor shall fulfill the requirement for "written request" described in § 34-60-118.5(2.5), C.R.S., and is a prerequisite to filing a complaint with the Commission. The payor shall use its best efforts to consult in good faith with the payee to resolve disputes regarding payment of proceeds or sales reconciliation.

A Form 37 requesting information concerning payment of proceeds may be submitted by the payee at any time. A Form 37 requesting information concerning sales volume reconciliation shall be submitted by the payee within one year of receipt of payment or the notification of a revised payment. The Commission may act to prohibit or terminate any abuse of the reconciliation process, such as the submittal by a payee of multiple repeated requests for sales volume reconciliation regarding the same well. Such action by the Commission may include, but is not limited to, relieving the payor from its obligation to answer the request and limiting or prohibiting the payee's submittal of additional requests.

329. MEASUREMENT OF GAS

The volume of all gas produced from a lease or a production unit shall be measured and recorded prior to removal from the lease or production unit. Production of gas of all kinds shall be measured by meter unless otherwise agreed to by the Director. For computing volume of gas to be reported to the Commission, the standard pressure base shall be fourteen point seventy-three (14.73) psia, regardless of atmospheric pressure at the point of measurement, and the standard

temperature base shall be sixty degrees Fahrenheit (60° F). All volumes of gas to be reported to the Commission shall be adjusted by computation to these standards, regardless of pressures and temperatures at which the gas was actually measured, unless otherwise authorized by the Director. This rule shall be used consistently with standards established by the American Society for Testing and Materials (ASTM), the American petroleum Institute (API) Manual of Petroleum Measurement Standards, the American Gas Association (AGA), the Gas Processors Association (GPA), or other applicable standards-setting organizations, and pursuant to contractual rights and obligations. Only those editions of standards cited within this rule shall apply to this rule; later amendments do not apply. The material cited in this rule is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, these materials may be examined at any state publication depository library.

a. **Metering Station.** Installation and operation of gas measurement stations shall be in accordance with industry standards as specified in API CH. 14.3, Orifice Measurement (Part 2, Fourth Edition April 2000 and Part 3, Third Edition August 1992 and Part 4, Third Edition November 1992); API CH. 21.1, Electronic Measurement (gas) (First Edition September 1993); AGA Report #7, Turbine Measurement (January 2006); AGA Report #9, Ultrasonic Measurement (April 2007); and AGA Report #11, Coriolis Measurement (January 2003).

b. **Metering Equipment.** The devices used to measure the differential, line pressure, and temperature shall have accepted accuracy ratings established in industry standards as specified in API CH. 22, Testing Protocol Standards (CH. 22.1 First Edition November 2006 and CH. 22.2 First Edition August 2005).

c. **Meter Calibration.** Meters shall be calibrated annually unless more frequent calibration is required by contractual obligations or by the Director. All calibration reports shall be created, maintained, and made available as operation records pursuant to Rule 205. In the event two consecutive meter calibrations exceed a 2% error, the operator shall report the test results to the Director who may require the operator to show cause why the meter should not be replaced.

d. **Gas Quality.** The heating value of produced natural gas shall be representative of the flowing gas stream at the lease or unit boundary, as determined by chromatographic analysis of a sample obtained in close proximity to the volume measurement device and shall be reported on an Operator's Monthly Report of Operations, Form 7. Gas sampling and analysis shall occur annually unless more frequent sampling is required by contractual obligations or by the Director. Gas sampling, gas chromatography, and the resulting analysis data shall be in accordance with industry standards as specified in API CH. 14.1, Gas Sampling (Fifth Edition February 2006); GPA 2166, Gas Sampling (Revised 2005); GPA 2261, Gas Analysis (Revised 2000); GPA 2286, Extended Analysis; GPA 2145, Gas Physical Properties (Revised 2003); and GPA 2172, Gas Heating Value (Revised 1996).

e. **Sales Reconciliation.** In order to facilitate the resolution of questions regarding the payment of proceeds or sales reconciliation from a well, a payee may submit a Form 37 to the payer requesting additional information concerning the payee's interest in the well, price of the gas sold, taxes applied to the sale of gas, differences in well production and well sales, and other information as described in § 34-60-118.5, C.R.S. The payer shall return the completed form to the payee within sixty (60) days of receipt. Submittal of this form to the payer shall fulfill the requirement for "written request" described in § 34-60-118.5(2.5), C.R.S., and is a prerequisite to filing a complaint with the Commission. The payer shall use its best efforts to consult in good faith with the payee to resolve disputes regarding payment of proceeds or sales reconciliation.

A Form 37 requesting information concerning payment of proceeds may be submitted by the payee at any time. A Form 37 requesting information concerning sales volume reconciliation shall be submitted by the payee within one year of receipt of payment or the notification of a revised payment. The Commission may act to prohibit or terminate any abuse of the reconciliation process, such as the submittal by a payee of multiple repeated requests for sales volume reconciliation regarding the same well. Such action by the Commission may include, but is not limited to, relieving the payer from its obligation to answer the request and limiting or prohibiting the payee's submittal of additional requests.

330. MEASUREMENT OF PRODUCED AND INJECTED WATER

a. The volume of produced water shall be computed and reported in terms of barrels on the basis of properly calibrated meter measurements or tank measurements of water-level differences, made and recorded to the nearest one-quarter (1/4) inch of one hundred (100%) percent capacity tables. If measurements are based on oil/water ratios, the oil/water ratio must be based on a production test performed during the last calendar year. Other equivalent methods for measurement of produced water may be approved by the Director.

b. The volume of water injected into a Class II dedicated injection well shall be computed and reported in term of barrels on the basis of properly calibrated meter measurements or tank measurements of water-level differences made and recorded to the nearest one-quarter (1/4) inch of one hundred percent (100%) capacity tables. If water is transported to an injection facility by means other than direct pipeline, measurement of water is required by a properly calibrated meter

c. The volume of water injected and produced in simultaneous injection wells shall be computed and reported in terms of barrels on the basis of calculated pump volumes, on the basis of property calibrated meter measurements, or on the basis of a produced gas to water ratio based on an annual production test.

331. VACUUM PUMPS ON WELLS

The installation of vacuum pumps or other devices for the purpose of imposing a vacuum at the wellhead or on any oil or gas bearing reservoir may be approved by the Director upon application therefore, except as herein provided. The application shall be accompanied by an exhibit showing the location of all wells on adjacent premises and all offset wells on adjacent lands, and shall set forth all material facts involved and the manner and method of installation proposed. Notice of the application shall be given by the applicant by registered or certified mail, or by delivering a copy of the application to each producer within one-half (1/2) mile of the installation.

In the event no producer within one-half (1/2) mile of the installation or the Commission itself files written objection or complaint to the application within fifteen (15) days of the date of application, then the application shall be approved, but if any producer within one-half (1/2) mile of said installation or the Commission itself files written objection within fifteen (15) days of the date of application, then a hearing shall be held as soon as practicable.

332. USE OF GAS FOR ARTIFICIAL GAS LIFTING

Gas may be used for artificial gas lifting of oil where all such gas returned to the surface with the oil is used without waste. Where the returned gas is not to be so used, the use of gas for artificial

gas lifting of oil is prohibited unless otherwise specifically ordered and authorized by the Commission upon hearing.

333. SEISMIC OPERATIONS

a. **COGCC Form 20, Notice of Intent to Conduct Seismic Operations.** Seismic operations require an approved Form 20 which shall be submitted to the Director prior to commencement of shothole drilling or recording operations. An informational copy of the Form 20 shall be filed by the operator with the local governmental designee at or before the time of filing with the Director. Any change of plans or line locations may be implemented without Director approval provided that after such change is performed, the Director shall receive written notice of the change within five (5) days.

A map shall be included with the notice. This map shall be at a scale of at least 1:48,000 showing sections, townships and ranges and providing the location of the proposed seismic lines, including source and receiver line locations.

The Notice of Intent to Conduct Seismic Operations, Form 20, shall be in effect for six (6) months from the date of approval. An extension of time may be granted upon written request submitted prior to the expiration date.

b. **Surface owner consultation**. Prior to the commencement of any seismic operation, a good faith effort shall be made to consult with all surface owners of the lands included in the seismic project area.

c. **Exploration requiring the drilling of shotholes:**

(1) **Explosive storage**. All explosives shall be legally and safely stored and accounted for in magazines when not in use in accordance with relevant regulations of the Alcohol, Tobacco and Firearms Division of the Federal Department of the Treasury.

(2) **Blasting safety setbacks**. Blasting shall be kept a safe distance from a building, water well or spring, unless by special written permission of the surface owner or lessee, according to the following minimum setback distances:

CHARGES IN LBS. GREATER THAN	CHARGES IN LBS. UP TO AND INCLUDING	MINIMUM SETBACK DISTANCE IN FEET
0	2	200
2	5	300
5	6	360
6	7	420
7	8	480
8	9	540
9	10	600
10	11	649
11	12	696
12	13	741
13	14	784
14	15	825
15	16	864

CHARGES IN LBS. GREATER THAN	CHARGES IN LBS. UP TO AND INCLUDING	MINIMUM SETBACK DISTANCE IN FEET
16	17	901
17	18	936
18	19	969
19	20	1000
20		1320

(3) Prior to any shothole drilling, the operator shall contact the Utility Notification Center of Colorado at 1-800-922-1987.

(4) **Drilling and plugging**. The following guidelines shall be used to plug shotholes unless the operator can demonstrate that another method will provide adequate protection to ground water quality and movement and long-term land stability:

A. Any slurry, drilling fluids, or cuttings which are deposited on the surface around the seismic hole shall be raked or otherwise spread out to at least within one (1) inch of the surface, such that the growth of the natural grasses or foliage shall not be impaired.

B. All shotholes shall be preplugged or anchored to prevent public access if not immediately shot. In the event the preplug does not hold, seismic holes shall be properly plugged and abandoned as soon as practical after the shot has been fired. However, a fired hole shall not be left unplugged for more than thirty (30) days without approval of the Director. In no event shall shotholes be left open, but shall be covered with a tin hat or other similar cover until they are properly plugged. The hats shall be imprinted with the seismic contractor's name or identification number or mark.

C. The hole shall be filled to a depth of approximately three (3) feet below ground level by returning the cuttings to the hole and tamping the returned cuttings to ensure the hole is not bridged. A non-metallic perma-plug either imprinted or tagged with the operator name or the identification number or mark described in the notice of intent shall be set at a depth of three (3) feet, and the remaining hole shall be filled and tamped to the surface with cuttings and native soil. A sufficient mound of native soil shall be left over the hole to allow for settling.

D. When non-artesian water is encountered while drilling seismic shotholes, the holes shall be filled from the bottom up with a high grade coarse ground bentonite to ten (10) feet above the static water level or to a depth of three (3) feet from the surface; the remaining hole shall be filled and tamped to the surface with cuttings and native soil, unless the operator otherwise demonstrates that use of another suitable plugging material may be substituted for bentonite without harm to ground water resources.

E. If artesian flow (water rising above the depth at which encountered) is encountered in the drilling of any seismic hole, cement or high grade coarse ground bentonite shall be used to seal off the water flow with the selected material placed from the bottom of the hole to the surface or at least fifty (50) feet above the top of the water-bearing material, thereby

preventing cross-flow between aquifers, erosion or contamination of fresh water supplies. Said holes shall be plugged immediately.

d. **COGCC Form 20A, Completion Report for Seismic Operations.** A Form 20A shall be submitted to the Director within sixty (60) days after completion of the project. The report shall include: maps (with a scale not less than 1:48,000) showing the location of all receiver lines, energy source lines and any shotholes. Shotholes encountering artesian flow shall be indicated on the map.

If the program included any shotholes, then the completion report shall be accompanied by the following:

(1) a certification by the party responsible for plugging the holes that all shotholes are plugged as prescribed by these rules and approved by the Director, and

(2) the latitude and longitude of each shothole location. The latitude and longitude coordinates shall be referenced in decimal degrees to an accuracy and precision of five decimals of a degree using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345 N, longitude 104.45632 W) or reported in other form as approved by the Director. If GPS technology is utilized to determine the latitude and longitude, all GPS data shall meet the requirements set forth in Rule 215. a. through h.

e. **Bonding Requirements**. The company submitting the Notice of Intent to Conduct Seismic Operations, Form 20, shall file financial assurance in accordance with Rule 705. prior to the commencement of operations. The bond shall remain in effect until a request is made by the company to release the bond for the following reasons:

(1) The shotholes have been properly plugged and abandoned, and source and receiver lines have been reclaimed in accordance with this Rule 333., and

(2) There are no outstanding complaints received from surface owners that have not been investigated by the Director and addressed as provided for in Rule 522.

f. **Reclamation requirements**. Upon completion of seismic operations the surface of the land shall be restored as nearly as practicable to its original condition at the commencement of seismic operations. Appropriate reclamation of disturbed areas will vary depending upon site specific conditions and may include compaction alleviation and revegetation. All flagging, stakes, cables, cement, mud sacks or other materials associated with seismic operations shall be removed.

334. PUBLIC HIGHWAYS AND ROADS

All persons subject to the act and these rules and regulations while using public highways or roads shall be subject to the State Vehicles and Traffic Laws pursuant to Title 42, C.R.S. and the State Highway and Roads Laws, Title 43, C.R.S., pertaining to the use of public highways or roads within the state.

335. COGCC Form 15. EARTHEN PIT REPORT/PERMIT

An Earthen Pit Report/Permit, Form 15, shall be submitted for approval by the Director in accordance with Rule 903.

336. COGCC Form 18. COMPLAINT REPORT

Any party who wishes to file a complaint regarding oil and gas operations is encouraged to submit a Form 18. The Director shall investigate any complaint and determine what, if any, action shall be taken in accordance with Rule 522.

337. COGCC Form 19. SPILL/RELEASE REPORT

A spill or release of E&P waste or produced fluids shall be reported to the Director on a Spill/Release Report, Form 19 pursuant to the reporting requirements in Rule 906.

338. COGCC Form 27. SITE INVESTIGATION AND REMEDIATION WORKPLAN

Site Investigation and Remediation Workplan, Form 27, shall be submitted when required in accordance with Rule 909.

339. BRADENHEAD MONITORING DURING WELL STIMULATION OPERATIONS

The placement of all stimulation fluids shall be confined to the objective formations during treatment to the extent practicable.

During stimulation operations, bradenhead annulus pressure shall be continuously monitored and recorded on all wells being stimulated.

If at any time during stimulation operations the bradenhead annulus pressure increases more than 200 psig, the operator shall verbally notify the Director as soon as practicable, but no longer than 24 hours following the incident. A Form 42, Field Operations Notice, Notice of High Bradenhead Pressure During Stimulation shall be submitted by the end of the first business day following the event. Within fifteen (15) days after the occurrence, the operator shall submit a Sundry Notice, Form 4, giving all details, including corrective actions taken.

If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded.

The operator shall keep all well stimulation records and pressure charts on file and available for inspection by the Commission for a period of at least five (5) years. Under Rule 502.b.(1), an operator may seek a variance from these bradenhead monitoring, recording, and reporting requirements under appropriate circumstances.

RULES OF PRACTICE AND PROCEDURE

501. APPLICABILITY OF RULES OF PRACTICE AND PROCEDURE

a. **General.** These rules shall be known and designated as "Rules of Practice and Procedure before the Oil and Gas Conservation Commission of the State of Colorado," and shall apply to all proceedings before the Commission. These rules shall be liberally construed to secure just, speedy, and inexpensive determination of all issues presented to the Commission.

b. **Prohibition of abuse.** Notwithstanding any provision of these rules, the Commission shall, 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, protestant, intervenor, witness or party offering a statement pursuant to Rule 510. in a proceeding. Such action may include, but is not limited to, summary dismissal of an application, protest, intervention or other pleading; limitation or prohibition of harassing or abusive testimony; and finding a party in contempt. Grounds for such action 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.

c. **Judicial review.** Any rule, regulation, or final order of the Commission, or any approval of an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, by the Director for which a hearing is not requested within ten (10) days pursuant to Rule 305.e.(2), shall be subject to judicial review in accordance with the provisions of the Administrative Procedure Act, §24-4-101 to -108, C.R.S., and any other applicable provisions of law. The statutory time period for filing a notice of appeal from any Commission decision shall commence on the date the order is served or that is three (3) business days after the date the order is mailed.

502. PROCEEDINGS NOT REQUIRING THE FILING OF AN APPLICATION

a. **Commission's own motion.** The Commission may, on its own motion, initiate proceedings upon any questions relating to conservation of oil and gas or the conduct of 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 shall be effective upon issuance and shall remain effective for a period not to exceed 14 days. Notice of an emergency order shall be given as soon as possible after issuance.

b. **Variances.**

(1) Variances to any Commission rules, regulations, or orders 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 shall 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 rules, regulations, or orders, 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 Oil and Gas Conservation Act.

(2) No variance to the rules and regulations applicable to the Underground Injection Control Program shall be granted by the Director without consultation with the U.S. Environmental Protection Agency, Region VIII, Waste Water Management Division Director.

(3) The Director shall report any variances granted at the monthly Commission hearing following the date on which such variance was granted.

503. ALL OTHER PROCEEDINGS COMMENCED BY FILING AN APPLICATION

a. All proceedings other than those initiated by the Commission or variance requests submitted for Director approval shall be commenced by filing with the Commission the original, two hard copies, and an electronic copy of a typewritten or printed petition which shall be titled "application." The application shall also be submitted on compatible electronic media. All operators' applications should include the operator's identification number. The application shall set forth in reasonable detail the relief requested and the legal and factual grounds for such relief. The original of the application shall be executed by a person with authority to do so on behalf of the applicant, and the contents thereof shall be verified by a party with sufficient knowledge to confirm the facts contained therein. With the exception of those from state and local government agencies, each application shall be accompanied by a docket fee established by the Commission (see Appendix III), except applications seeking an order finding violation or an emergency order.

b. Applications to the Commission may be filed by the following applicants:

(1) For purposes of applications for the creation of drilling units, applications for additional wells within existing drilling units, other applications for modifications to existing drilling unit orders, or applications for exceptions to Rule 318., only those owners within the proposed drilling unit, or within the existing drilling unit to be affected by the application, may be applicants.

(2) For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., only those persons who own an interest in the mineral estate of the tracts to be pooled may be applicants.

(3) For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., only those persons who own an interest in the mineral estate underlying the tract or tracts to be unitized may be applicants.

(4) For purposes of seeking an order finding violation, only the Director or a party who made a complaint under Rule 522. may be an applicant.

(5) For purposes of seeking a variance from the Commission, only the operator, mineral owner, surface owner or tenant of the lands which will be affected by such variance, other state agencies, any local government within whose jurisdiction the affected operation is located, or any person who may be directly and adversely affected or aggrieved if such variance is not granted, may be an applicant.

(6) For purposes of seeking a hearing pursuant to Rules 216.f.(4), 303.c.(2), or 303.j.(2), the operator seeking approval of the Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, may be the applicant.

(7) For purposes of seeking a hearing on approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, under Rule 305.e.(2), any of the following may be the applicant:

A. The operator;

B. The surface owner, solely to raise alleged noncompliance with Commission rules or statute, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and

C. The relevant local government, provided that the hearing shall be conducted in similar fashion as is specified in Rules 508.j, 508.k, and 508.l with respect to a public issues hearing. It shall be the burden of the local government to bring forward evidence sufficient for the Commission to make the preliminary findings specified in Rule 508.j at the outset of such hearing.

(8) For purposes of seeking a hearing on provisions related to measurement pursuant to Rule 328 or 329, the mineral interest owner may be the applicant.

(9) For purposes of seeking a hearing for an order limiting surface density pursuant to Rule 1202.d.(5), the operator shall be the applicant.

(10) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (9) above, only persons who can demonstrate that they are directly and adversely affected or aggrieved by the conduct of oil and gas operations or an order of the Commission and that their interest is entitled to legal protection under the Act may be an applicant.

c. Applications subject to the requirements for local public forums under Rule 508.a. shall be accompanied by a proposed plan (the "Proposed Plan") to address protection of public health, safety, and welfare, including the environment and wildlife resources, and a description of the current surface occupancy/use. The Proposed Plan shall include the rules and regulations of the Commission as they are applied to oil and gas operations in the application lands along with any procedures or conditions the applicant will voluntarily follow to address the protection of public health, safety, and welfare, including the environment and wildlife resources.

d. Upon the filing of an application, the Secretary shall set the matter for hearing and ensure that notice is given.

e. No later than seven days after the application is filed, the applicant shall submit to the Commission a certificate of service demonstrating that the applicant served a copy of the application on all persons entitled to notice pursuant to these rules by mailing a copy thereof, first-class postage prepaid, to the last known mailing address of the person to be served, or by personal delivery. The applicant shall at the same time submit to the Commission a list of all persons entitled to notice pursuant to these rules on compatible electronic media.

f. The applicant shall enjoy a rebuttable presumption that it has properly served notice on persons entitled to notice of the proceeding by demonstrating through certification or testimony that notice was provided pursuant to Rules 507. and 508.

g. In order to continue to receive copies of the pleadings filed in a specific proceeding a party who receives notice of the application shall file with the Secretary a protest or intervention in accordance with these rules.

h. Subsequent to the initiation of a proceeding, all pleadings filed by any party shall be offered by filing with the Secretary the original, two hard copies, and an electronic copy bearing the docket number assigned to such proceeding. Each pleading shall include the certificate of the party filing the pleading that the pleading has been served on all persons who have filed a protest or intervention in accordance with these rules, by mailing a copy thereof, first-class postage prepaid, to the last known mailing address of the person to be served, or by personal delivery.

504. DOCKET NUMBER OF PROCEEDINGS

When a proceeding is initiated the Secretary of the Commission shall assign it a new docket number and enter on a separate page of a docket provided for such purpose, the proceeding with the date of the filing

of the application, or the date of the entry of the Commission order, initiating such proceeding. All subsequent pleadings shall be assigned the same docket number and shall be noted with the date of filing upon the docket page or continued docket page, for such proceeding, as the case may be.

505. REQUIREMENT OF PUBLIC HEARING

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 shall hold a public hearing, scheduled in accordance with Rule 506. at such time and place as may be prescribed by the Commission. Any party shall be entitled to be heard as provided in these rules and regulations. The foregoing shall not apply to the issuance of an emergency order, notice of alleged violation, or cease and desist order.

506. HEARING DATE/CONTINUANCE

a. All applications shall be filed no later than 70 days in advance of the hearing date for which the applicant proposes the matter be docketed provided the docket has not been filled by the Secretary. The Secretary shall have the discretion to accept applications later than 70 days prior to the hearing date, subject to docket availability and the notice requirements of Rules 507. and 508. The Secretary shall grant the first request by an applicant for a continuance of any matter three business days before the scheduled hearing, provided that a protest has not been filed. The Secretary or a Hearing Officer shall have the discretion to grant any motion for continuance. The Commission may at any time direct the Secretary to discontinue granting continuances.

b. In all rulemaking proceedings, hearings shall be held in accordance with Rule 529.

c. The Commission, Secretary, or Hearing Officer may for good cause cancel or continue any hearing to another date. Any continuance of a hearing shall not extend the filing deadline for the filing of protests or interventions in accordance with Rule 509, unless the application is amended, or as otherwise allowed by the Commission.

d. 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 change at its discretion the proposed hearing docket, including the time or date of any scheduled hearing. It shall be the responsibility of the participating party and its attorney to be present when the Commission hears the matter.

507. NOTICE FOR HEARING

a. **General notice provisions.**

(1) When any proceeding has been initiated, the Commission shall require notice of such proceeding to be given to all persons specified in the relevant sections of Rules 507.b. and 507.c. at least 35 days in advance of any Commission hearing at which the matter will first be heard. Notice shall be provided in accordance with the requirements of §34-60-108(4), C.R.S.

(2) The applicant is responsible for service and publication of required notices, including any related costs.

(3) The Secretary shall give notice to any person who has filed a request to be placed on the Commission hearing notice list, and paid the annual fee therefor. Notice by publication or notice provided pursuant to the hearing notice list shall not confer interested party status on any person.

b. **Notice for specific applications.**

(1) **Applications affecting drilling units.** For purposes of applications for the creation of drilling units, applications for 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 5 of this rule) notice of the application shall be served on the owners within the proposed drilling unit or within the existing drilling unit to be affected by the applications.

(2) **Applications for involuntary pooling.** For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S. notice of the application shall be served on those persons who own any interest in the mineral estate of the tracts to be pooled, except owners of an overriding royalty interest.

(3) **Applications for unitization.** For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., notice of the application shall 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.

(4) **Applications changing certain well location setbacks.** For purposes of applications that change the permitted minimum setbacks for established drilling and spacing units, notice of the application shall be served on those owners of contiguous or cornering tracts who may be affected by such change.

(5) **Applications for well location exception.** For purposes of applications made for exceptions to Rule 318, exceptions to legal locations within drilling and spacing units, or for an exception location to an existing order, notice of the application shall 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 shall 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 shall be presumed sufficient if served upon the designated operator of the affected formation.

(6) **Orders related to violations.** With respect to the resolution of a Notice of Alleged Violation (NOAV) through an Administrative Order by Consent (AOC), and to applications for an Order Finding Violation (OFV), notice shall be provided to the complainant, 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 local government, Colorado Department of Public Health and Environment, and Colorado Parks and Wildlife.** For purposes of intervention pursuant to Rule 509 notice shall also be given to the local governmental designee, the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife of applications made under subsections b.(1) and (3) of this rule at the same time that notice is provided to the Commission.

508. LOCAL PUBLIC FORUMS, HEARINGS ON APPLICATIONS FOR INCREASED WELL DENSITY AND PUBLIC ISSUES HEARINGS.

a. **Applicability of rule.** The provisions of this Rule 508 only apply to applications that would result in more than one (1) well site or multi-well site per forty (40) acre nominal governmental quarter-quarter section or that request approval for additional wells that would result in more than one (1) well site or multi-well site per forty (40) acre nominal governmental quarter-quarter section, within existing drilling units, not previously authorized by Commission order (together, for purposes of this rule, an “application for increased well density” or “application”).

b. **Local public forum.**

(1) The rules and regulations of the Commission as they are applied to oil and gas operations are expected to adequately address impacts to public health, safety and welfare, including the environment and wildlife resources, which may be raised by an application for increased well density.

(2) A local public forum may, however, be convened to consider potential issues related to public health, safety, and welfare, including the environment and wildlife resources, that may be raised by an application for increased well density that may not be completely addressed by these rules or the Proposed Plan submitted pursuant to Rule 503.c.

A. A local public forum shall be convened on the Commission's own motion, or upon request from the local governmental designee or the applicant.

B. A local public forum may be convened at the Director's discretion, or upon receipt of a request for a local public forum from a citizen of the county(ies) in which the application area is situated, after the Director's consideration of the following factors:

(i) The size of the application area and the number and density of surface location requested;

(ii) The population density of the application area;

(iii) The distribution of Indian, federal and fee lands within the application area;

(iv) The level of current or past public interest in increased well density in the vicinity of the application area;

(v) Whether the application is limited to the deepening or recompletion of existing wells, or directional drilling from existing surface locations; or

(vi) Whether the application is limited to an exploratory unit formed for involuntary pooling purposes.

(3) The Director shall notify the local governmental designee, the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife of any application for increased well density no later than seven days after receipt of such application. If the local governmental designee elects to require a local public forum it shall notify the Director of its decision within seven days of receipt of notice of the application.

(4) The Director shall notify the applicant of any decision to convene a local public forum no later than 14 days after receipt of the application.

c. **Local public forums on federal and Indian lands.**

(1) If the surface and the minerals of the application area are comprised in their entirety of federal or Indian lands no local public forum shall be convened because potential impacts to the environment or public health, safety, and welfare on such lands are subject to federal or tribal requirements. All proceedings on any application for increased well density on federal or Indian lands shall be conducted to comply with the obligations contained in any intergovernmental or tribal memoranda of understanding governing the conduct of oil and gas operations on federal or Indian lands.

(2) If the application area is comprised in part of federal or Indian lands, the Director shall consult with the appropriate federal or Indian authorities before scheduling any public forum on

the application. Insofar as the application includes federal or Indian lands, proceedings thereon shall be conducted in accordance with this rule and any obligations contained in any intergovernmental or tribal memoranda of understanding governing the conduct of oil and gas operations on federal or Indian lands.

(3) The Director shall notify the appropriate federal and Indian authorities of any local public forum to be convened to evaluate an application area that includes federal or Indian lands. Federal or Indian participation in the local public forum may include, without limitation, presentation of the most recent applicable resource management plan(s) and any environmental assessment(s) or environmental impact statement(s) that cover or include all or any portion of the application area.

d. **Notice of the local public forum.**

(1) Within seven days from the date the applicant receives notice from the Director that a local public forum shall be convened, the applicant shall submit to the Director a list of the surface owners within the application area. In determining the identity and address of a surface owner for the purpose of giving all notices under this rule the records of the assessor for the county in which the lands are situated may be relied upon.

(2) At least 21 days before the date of the local public forum the Director shall mail to the listed surface owners notice thereof.

(3) Within 14 days of receipt of an application for increased well density the Director shall, by regular or electronic mail or by facsimile copy, provide to the local governmental designee(s), the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife notice of the local public forum or notice that based on the factors in Rule 508.b.(2).B above, the Director will not conduct a local public forum

(4) At least 14 days before the date of the local public forum the Director shall publish notice thereof in a newspaper of general circulation in the county or counties where the application lands are located.

(5) The notice for the local public forum shall state that the forum is being conducted to consider any issues raised by the application that may affect public health, safety, and welfare, including the environment and wildlife resources that are not addressed by the rules or the Proposed Plan.

(6) Within seven days of receipt of an application for increased well density, the Director shall post a description of such application on the Commission website.

e. **Timing and location of the local public forum.**

(1) As soon as practicable after publication of notice, but at least 14 days prior to the scheduled Commission hearing on the application, the Director shall conduct the local public forum at a location reasonably proximate to the lands affected by the application. In the alternative, if the hearing is to be held at a location reasonably proximate to the lands affected by the application, the local public forum shall be replaced by the presentation of statements in accordance with Rule 510. during the hearing on the application.

(2) The Director shall immediately notify the applicant of the scheduled time and location of the local public forum.

(3) To the extent practicable, the local public forum shall be scheduled to accommodate the Director or the Director's designee, the participants, and the applicant.

(4) If the application area is comprised of lands located in more than one jurisdiction the Director shall coordinate the local public forum to provide for a single forum at a location reasonably proximate to the lands affected by the application.

f. **Conduct of the local public forum.**

(1) A Hearing Officer shall preside over the local public forum. The Hearing Officer shall provide to the participants an explanation of the purpose of the local public forum and how the Commission may use the information obtained from the local public forum. The purpose of the local public forum is to address the sufficiency of the rules or the Proposed Plan with respect to protection of public health, safety, and welfare, including the environment and wildlife resources.

(2) The conduct of the local public forum shall be informal, and participants shall not be required to be sworn, represented by attorneys, or subjected to cross examination.

(3) Attendance or participation at the local public forum by a Commissioner shall not constitute a violation of Rule 515.

(4) The applicant shall participate in the local public forum and present information related to the application.

(5) The Director shall create a record of the local public forum by video-tape, audio-tape, or by court reporter. Such record shall be made available to all Commissioners for review prior to the hearing on the application and may be relied upon in making a decision to convene a public issues hearing.

g. **Statements.**

The local public forum shall be conducted to allow elected officials, local government personnel, and citizens to express concerns not completely addressed by the rules or the Proposed Plan or make statements regarding the potential impacts from applications for increased well density that relate to public health, safety, and welfare, including the environment and wildlife resources. Issues raised in the local public forum may include the following:

(1) Impact to local infrastructure;

(2) Impact to the environment;

(3) Impact to wildlife resources;

(4) Impact to ground water resources;

(5) Potential reclamation impact; and

(6) Other impact to public health, safety, and welfare

The local public forum shall be limited to matters that are within the jurisdiction of the Commission.

h. **Report to the Commission.** At the conclusion of the local public forum the Hearing Officer shall prepare and submit to the Commission a report of the proceedings. A copy of the report shall be made available, no later than seven days prior to the hearing on the application, to the Commissioners, the applicant, the Colorado Department of Public Health and Environment or the Colorado Parks and Wildlife if it consulted on the application, any affected local government and

the public and shall be posted on the Commission website. The report on the local public forum presented to the Commission shall be included in the administrative record for the application, taking into consideration the nature of the local public forum process.

i. **Conduct of the hearing on the application for increased well density.**

(1) The hearing on the application shall be conducted in accordance with Rule 528.

(2) The Commission shall approve or deny the application based solely on the application's technical merits in accordance with §34-60-116, C.R.S.

(3) The Hearing Officer for any local public forum shall present to the Commission the report of the local public forum.

(4) At the conclusion of the hearing on the application, the Commission shall consider and decide whether to convene a public issues hearing based on the local public forum or statements made under Rule 510. and any motions to intervene, and the Commission may:

A. Approve the application without condition;

B. Approve the application with conditions based on the technical testimony presented at the hearing on the application;

C. Approve the application, and with the applicant's consent, attach to the order on the application conditions the Commission determines are necessary to address issues related to public health, safety or welfare, including the environment and wildlife resources;

D. Approve the application and stay its effective date to convene a public issues hearing in accordance with Rule 508.j; or

E. Deny the application.

(5) If the Commission orders a public issues hearing it shall set the public issues hearing for the next regularly scheduled Commission meeting unless the applicant requests at a prehearing conference, and the Commission agrees, to convene the public issues hearing immediately following the hearing on the application.

j. **Public issues hearing.**

Upon a request by an applicant, protestant, or intervenor, or on the Commission's own motion, a public issues hearing shall be convened provided the Commission makes the following preliminary findings:

(1) That the public issues raised by the application reasonably relate to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy;

(2) That the potential impacts were not adequately addressed by:

A. In the case of an application for increased well density, the application or by the Proposed Plan; or

B. In the case of an Application for Permit-to-Drill, by such permit; and

(3) That the potential impacts are not adequately addressed by the rules and regulations of the Commission.

k. **Conduct of the public issues hearing.**

(1) The rules and regulations of the Commission shall apply to all participants in the public issues hearing.

(2) The public issues hearing shall be conducted, to the extent practicable, in accordance with Rule 528.

(3) After the public issues hearing the Commission may attach conditions to its order on the application to protect public health, safety and welfare, including the environment and wildlife resources, as are warranted by the relevant testimony and that are not otherwise addressed by these rules and regulations and the Proposed Plan. In addition, the Commission may without limitation:

A. Direct the applicant to amend its Proposed Plan for Commission review and approval for all or a portion of the application area to address specific issues related to public health, safety and welfare, including the environment and wildlife resources, including any identified impacts of increased well density within all or a portion of the application area, rather than on a single well basis.

B. Include in any order a provision to allow the Director discretion to attach specific conditions to individual well permits as the Commission determines are reasonable and necessary to protect public health, safety, and welfare, including the environment and wildlife resources.

(4) Any plan or conditions imposed by Commission order that would affect federal or Indian lands shall take into account conditions imposed by the federal or Indian authorities and any federal environmental analysis in order to facilitate regulatory consistency and minimize duplicative regulatory efforts.

(5) Any plan or conditions imposed shall take into account cost effectiveness and technical feasibility, and shall not be applied to prevent the drilling of new wells per se.

l. The Director and the Commission shall use best efforts to comply with the provisions of this Rule 508., however, any deviation from this rule shall not invalidate the Commission's action on the local public forum, the application for increased well density, or the public issues hearing.

509. PROTESTS/INTERVENTIONS/PARTICIPATION IN ADJUDICATORY PROCEEDINGS

a. The applicant and persons that have filed with the Commission a timely and proper protest or intervention pursuant to this rule shall have the right to participate formally in any adjudicatory proceeding. Intervention shall be granted by right and without fee to the relevant local government, to the Colorado Department of Public Health and Environment solely to raise environmental or public health, safety, and welfare concerns, and to the Colorado Parks and Wildlife solely to raise concerns about adverse impacts to wildlife resources.

(1) The protest or intervention shall be filed with the Secretary, and served on the applicant and its counsel at least 14 days prior to the hearing date.

(2) Description of affected interest:

A. A protest shall include information to demonstrate that the person is a protestant under these rules in order for the protest to be accepted by the Commission.

B. A local government, the Colorado Department of Public Health and Environment, or the Colorado Parks and Wildlife intervening as a matter of right shall include in the intervention information describing concerns relating to the public health, safety and welfare, including the environment and wildlife resources, raised by the application. When an intervention is filed by any local government, the Colorado Department of Public Health and Environment, the Colorado Parks and Wildlife, or any person on an application subject to Rule 508.a., information on the following shall be included:

i. That the public issues raised by the application reasonably relate to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and

ii. That the potential impacts were not adequately addressed by the application or by the Proposed Plan; and

iii. That the potential impacts are not adequately addressed by the rules and regulations of the Commission.

C. A party desiring to intervene by permission of the Commission shall include in the intervention information to demonstrate why the intervention will serve the public interest, in which case granting the intervention shall be at the Commission's sole discretion. The Commission, at its discretion, may limit the scope of the permissive intervenor's participation at the hearing.

(3) The pleading shall include:

A. A general statement of the factual or legal basis for the protest or intervention;

B. The relief requested;

C. A description of the intended presentation including a list of proposed witnesses;

D. A time estimate to hear the protest or intervention; and

E. A certificate of service attesting that the pleading has been served, at least 14 business days prior to the first hearing date on the matter, on the applicant and any other party which has filed a protest or intervention in the proceeding. If the pleading is served by mail the party filing the pleading shall provide an electronic or a facsimile copy of the pleading to the applicant and other persons who have filed a proper protest or intervention in the matter on or before the final date for protest or intervention. If for any reason the party filing the pleading is not able to furnish a copy of the pleading to the applicant and the other persons who have filed a proper protest or intervention on or before the final date for protest or intervention, the party filing the pleading shall so notify the Secretary, the applicant and the other parties to the proceeding.

b. The Secretary or the Director may require any additional information necessary pursuant to these rules to ensure the application, protest, or intervention is complete on its face.

c. Any person shall have the right to participate in an adjudicatory proceeding by making a 510. statement in accordance with these rules.

d. All pleadings filed pursuant to this rule shall be submitted with an original, two hard copies, and an electronic copy, and shall be accompanied by a docket fee established by the Commission (see Appendix III). The docket fee shall be refunded if an intervention is denied. In cases of extreme hardship, the docket fee may be refunded at the discretion of the Commission.

e. If the application is contested, the Commission or the Director, at its discretion, may direct the parties to engage in a prehearing conference in accordance with Rule 527. A prehearing conference may result in a continuance of the hearing, or bifurcation of hearing issues as determined by the Director, Hearing Officer, or Hearing Commissioner.

f. **Participation at the hearing:**

(1) Adjudicatory hearings shall be conducted in accordance with Rule 528. and any applicable prehearing orders of the Commission, or its designated Hearing Officer.

(2) Testimony and cross-examination by a protestant or intervenor shall be limited to those issues that reasonably relate to the interests that the protestant or intervenor seeks to protect, and which may be adversely affected by an order of the Commission.

510. STATEMENTS AT HEARING

a. Any person may make an oral statement at a hearing or submit a written statement, according to instructions available on the COGCC website (under "Forms"), prior to or at any hearing that relates to the proceeding before the Commission. The Commission, at its discretion, may limit the length of any oral statement or restrict repetitive statements. In an adjudicatory hearing, an oral statement shall not be accepted into the record unless:

(1) The statement is made under oath; and

(2) The parties to the hearing are allowed to cross-examine the maker of the statement.

b. The Commission, at its discretion, may accept a sworn written statement into the record with due regard to the fact the statement was not subject to cross-examination.

c. The parties to the hearing shall have the right to object to inclusion of any statement under this Rule 510. into the record. The Commission shall note the objection for the record. If the Commission accepts the basis for excluding the 510. statement from the record the substance of the statement shall not be considered by the Commission in making a decision on the matter at issue.

511. UNCONTESTED HEARING APPLICATIONS

a. If the matter is uncontested, the applicant may request, and the Director may recommend, approval without a hearing based on 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 on the application. For purposes of this rule an uncontested matter shall mean any application that is not subject to a protest or an intervention objecting to the relief requested in the application and shall include matters in which all interested parties have consented in writing to the granting of an application without a hearing.

b. Uncontested matters may be reviewed or heard administratively by a Hearing Officer and recommended for approval on the Commission's consent agenda. The Hearings Manager shall

confer with hearing applicants as to which option under c. or d., below, is appropriate for each uncontested application. From time to time, uncontested applications recommended for approval by a Hearing Officer that may be of special interest to the Commission may be recommended for presentation to the Commission.

c. **Applications where hearing officer review of sworn written testimony and exhibits is appropriate.** An applicant shall:

(1) Submit the following documents to the Commission at least 21 days prior to the hearing date:

A. One (1) original written request for approval under Rule 511 briefly describing reasons the application may be a candidate for recommendation for approval without a hearing based on review of the merits of the verified application and the supporting exhibits (rather than necessitating an administrative hearing before a Hearing Officer);

B. One (1) set of resumes/curricula vitae and sworn written testimony of witnesses verifying facts and accompanied by attachments or exhibits that adequately support the relief requested in the application;

C. A person having knowledge of the stated facts shall, under oath, sign a statement attesting to the facts stated in the written testimony and any attachments or exhibits. The sworn statement need not be notarized, but it shall contain language indicating that the signatory is affirming the 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;

D. 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;

E. One (1) set of exhibits which shall contain relevant highlights in bullet-point format on each exhibit; and

F. A draft proposed order with findings of fact and conclusions of law related to land, geology, engineering, and other appropriate subjects to support the relief requested in the application. Reference to testimony, exhibits, and previous Commission orders shall be included as findings in the draft proposed order.

(2) Submit one (1) email for each application containing editable attachments for each of the following documents to the Hearings Assistant:

A. Written request for approval;

B. Written testimony;

C. Summary of testimony; and

D. Draft proposed order.

d. **Applications where an administrative hearing before one or more Hearing Officer is appropriate.** An applicant shall:

(1) Submit the following hard-copy documents to the Hearings Manager no later than at the time the administrative hearing is held:

A. Two (2) sets of resumes/curricula vitae for the witnesses;

B. A written 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;

C. Two (2) sets of exhibits which shall contain relevant highlights in bullet-point format on each exhibit; and

D. A draft proposed order providing land, geology, engineering, and other appropriate findings to support the relief requested in the application. Reference to previous testimony, exhibits, and orders shall be included as findings in the draft proposed order.

(2) Submit one (1) email for each application containing editable attachments for each of the following documents to the Hearings Assistant:

A. Written request for approval;

B. Written testimony;

C. Summary of testimony; and

D. Draft proposed order.

512. COMMISSION MEMBERS REQUIRED FOR HEARINGS AND/OR DECISIONS

Five (5) members of the Commission constitute a quorum for the transaction of business. Testimony may be taken and oath or affirmation administered by any member of the Commission.

513. GEOGRAPHIC AREA PLANS

a. **Purpose.** Geographic Area Plans are intended to enable the Commission to adopt basin-specific rules that promote the purposes of the Act.

b. **Scope.** Geographic Area Plans shall cover an entire oil and gas field or geologic basin, likely encompassing the activities of multiple operators, in multiple sub-basins or drainages, over a period of ten (10) years or more.

c. **Procedure.**

(1) The Commission's adoption of a Geographic Area Plan shall follow Rule 529.

(2) The Commission may initiate a Geographic Area Plan for a basin by publishing notice of its intent to do so, and it may adopt a Geographic Area Plan after a public hearing, which shall include submittal of information from the public and public testimony. In addition to any other publication requirements in these rules, notice shall be published in a newspaper of local circulation in the area covered by the Geographic Area Plan and provided to the local governmental designee(s).

(3) In adopting a Geographic Area Plan, the Commission shall consult with the Colorado Department of Public Health and Environment, Colorado Parks and Wildlife, and local

governmental designee(s). The Commission shall also consider any local government comprehensive plans or other local government long-range planning tools.

(4) The Geographic Area Plan may include alternative development scenarios, designate units, adopt spacing orders, implement sampling or monitoring plans, or require consolidation of facilities within the area covered by the Plan subject to the Act.

514. RESERVED

515. EX PARTE COMMUNICATIONS

a. The following provisions shall be applied in any adjudicatory proceeding before the Commission or a Hearing Officer.

(1) No person shall make or knowingly cause to be made to any member of the Commission or a Hearing Officer an ex parte communication concerning the merits of a proceeding which has been noticed for hearing.

(2) No Commissioner or Hearing Officer shall make or knowingly cause to be made to any interested person an ex parte communication concerning the merits of a proceeding which has been noticed for hearing.

(3) A Commissioner or Hearing Officer who receives, or who makes, or knowingly causes to be made, a communication prohibited by this rule shall place on the public record of proceeding:

A. All such written communications and any responses thereto; and

B. Memoranda stating the substance of any such oral communications and any responses thereto.

(4) Upon receipt of a communication knowingly made or knowingly caused to be made by a person in violation of this rule, the Commission or a Hearing Officer may require the person to show cause why their claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected on account of such violation.

b. Oral or written communication with individual Commission members is permissible in a rulemaking proceeding. If such information is relied upon in final decision-making it shall be made part of the record by the Commission. After the rulemaking record is closed new information that is intended for the rulemaking record shall be presented to the Commission as a whole upon approval of a request to reopen the rulemaking record.

c. This rule shall not limit the right to challenge a decision of the Commission or a Hearing Officer on the grounds of bias or prejudice due to any ex parte communication.

516. STANDARDS OF CONDUCT

a. The purpose of this rule 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 are in addition to the requirements for Commission members set forth in Title 24, Article 18, Section 108.5 of the Colorado Revised Statutes. This rule should be construed and applied to further the objectives of fair and impartial decision making. To achieve these standards Commissioners 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 or Hearing Officer has a personal or financial interest that prejudices that Commissioner's or Hearing Officer's ability to participate objectively in an official act.

(1) A Commissioner or a Hearing Officer shall 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 protestant or intervenor, 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 Hearing Officer. If the Commissioner does not agree to withdraw, the other Commissioners, after discussion and comments from any member of the public, shall vote on whether a conflict of interest exists. Such vote shall be binding on the Commissioner disclosing the conflict.

(3) In determining whether there is a conflict of interest that warrants withdrawal the Commission members or Hearing Officer shall 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 or Hearing Officer has a direct or substantial financial interest.

B. Whether the potential conflict will result in the Commissioner 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 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 shall 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 to litigants, witnesses, lawyers and others with whom the Commission deals in an official capacity, 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, or their attorney, 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.

517. 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. Pro se participants shall be subject to these rules and regulations.

b. Except as provided in a. and c. of this rule, representation at hearings before the Commission shall be by attorneys licensed to practice law in the State of Colorado, and provided that 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;

(2) Is a resident or maintains a law office within Colorado; and

(3) Is personally appearing with the applicant in the matter and in all proceedings connected with it.

The resident attorney shall continue in the case unless other resident counsel is submitted. Any notice, pleading, or other paper may be served upon the resident attorney with the same effect as if personally served on the non-resident attorney within this state. Resident counsel shall be present before the Commission unless otherwise ordered by the Commission.

c. The Commission has the discretion to allow representation by a corporate officer or director of a community organization, a closely held corporation, a citizens' group duly authorized under Colorado law, or if a limited liability corporation, the member/manager in the following circumstances:

(1) Where the agency is adopting a rule of future effect;

(2) Local public forums; 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 528.c., a non-attorney shall not be permitted to examine or cross-examine witnesses, make objections or resist objections to the introduction of testimony, or make legal arguments.

e. At administrative hearings before the Director, attorneys shall not be required.

518. SUBPOENAS

The Commission may, through the Secretary or a Hearing Officer, 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 shall submit the form of the subpoena to the Secretary for execution. Upon execution, the party requesting the subpoena has the responsibility to serve the subpoena in accordance with the Rules of

Civil Procedure. Upon receipt of an objection to any discovery issued under this Rule, the Commission, the Secretary, 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.

519. 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 Colorado Oil and Gas Conservation Act.

b. In general, the rules of evidence applicable before a trial court without a jury shall be applicable, 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, to the extent practical, shall 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 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 shall not invalidate any Commission order, decision, rule or regulation.

c. **Administrative notice.** The Commission may take administrative notice of:

(1) Constitutions and statutes of any state and of the United States;

(2) Rules, regulations, official reports, decisions, and orders of state and federal administrative agencies;

(3) Decisions and orders of federal and state courts;

(4) Reports and other documents in the files of the Commission;

(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.

520. TIME OF HEARINGS AND HEARING/CONSENT AGENDA

a. Regular hearings shall be held before the Commission on such days as may be set by the Commission.

b. The Secretary shall place on the consent agenda those uncontested matters recommended by a Hearing Officer for approval and those matters in which an Administrative Order by Consent (AOC) has been agreed to by the parties.

(1) All matters on the consent agenda may be presented individually or in groups. All matters within a group shall be voted on together, without deliberation and without the necessity of reading 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 shall 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.

521. SERVICE UNDER RULES 522 AND 523

a. The Director will serve a Notice of Alleged Violation, a Notice of Hearing of an enforcement action or an Order Finding Violation 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.

b. All other documents in enforcement cases shall be served pursuant to Rule 503.h., or electronically (unless previously objected to by a party).

c. Notice to a Complainant pursuant to Rule 522.b.(1) may be served electronically (unless previously objected to by a party) or by first class mail. Where notice is sent electronically, notice is perfected once sent. Where notice is sent by first class mail, notice is perfected five days after mailing.

d. Service of an application by a Complainant pursuant to Rule 522.b.(5) will be 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.

e. A Cease and Desist Order may be served by confirmed electronic or facsimile copy, 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 302.

f. Service of certified mail on an operator is perfected under this Rule at the earliest of:

(1) The date the operator receives the notice;

(2) The date shown on the return receipt, if signed on behalf of the operator; or

(3) Five days after mailing.

522. PROCEDURES FOR ALLEGED VIOLATIONS

a. Identification of Alleged Violations

(1) If, on the Director's own initiative or based on a complaint, the Director has reasonable cause to believe that a violation of the Act, or of 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).

(2) The following persons (Complainant) may make a complaint to the Director requesting that an NOAV be issued:

A. The mineral owner;

B. The surface owner or tenant of the lands upon which the alleged violation occurred;

C. Other state agencies;

D. The local government with jurisdiction over the lands upon which the alleged violation took place; or

E. Any person who may be directly and adversely affected or aggrieved as a result of the alleged violation.

b. Complainant's Rights and Responsibilities

(1) The Director will investigate all complaints made pursuant to Rule 522.a.(2) to determine whether reasonable cause for a violation exists. The Director will notify the Complainant of the determination pursuant to Rule 521.

A. If the Director determines no violation occurred, no further action will be taken by the Director.

B. If the Director determines a violation may have occurred, the Director may resolve the matter without seeking penalties pursuant to subpart 522.c.(1) or initiate an enforcement action seeking penalties pursuant to subpart 522.d.

(2) If a complaint leads to issuance of an NOAV, a Complainant who has filed a written complaint on a Form 18, Complaint Form, will be given an opportunity to comment on the terms of a proposed settlement of the NOAV pursuant to subpart 522.e.(1).

(3) A Complainant who has filed a written complaint on a Form 18, Complaint Form, may apply for an Order Finding Violation (OFV) hearing before the Commission pursuant to Rule 503 if the Complainant objects to:

A. The Director's decision not to issue an NOAV; or

B. The settlement terms in a proposed Administrative Order by Consent (AOC) settling an alleged violation arising directly from the complaint.

(4) Complainants must file an application for an OFV hearing with the Commission within 21 days of notification of the Director's decision not to issue an NOAV or of the settlement terms in a proposed AOC. Applications filed later than 21 days following notification will not be heard.

(5) The Complainant must serve its OFV hearing application on the alleged violator pursuant to Rule 521 within 7 days of the filing of the application.

(6) The Complainant bears the burden of proof in an OFV hearing initiated by the Complainant.

c. Resolution of Alleged Violations without Penalties

(1) When the Director has reasonable cause to believe a violation has occurred, the Director may resolve the alleged violation without seeking a penalty if all of the following apply:

A. The alleged violation is of a Class 1 or Class 2 Rule under the Commission’s Penalty Schedule, Table 523-1;

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 has not resulted in actual adverse impacts and does not pose a significant threat of adverse impacts under the criteria set forth in Rule 523.c.(2), and 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 522.c.(1) apply.

(3) When the Director determines it is appropriate to resolve an alleged violation pursuant to subpart 522.c.(1), the Director will issue the operator either a Warning Letter or Corrective Action Required Inspection Report that identifies the alleged violation, the facts giving rise to the alleged violation, any corrective actions required to resolve the violation, and a schedule for conducting the corrective actions.

A. If the operator timely performs required corrective actions and otherwise returns to compliance, the alleged violation will be resolved and the matter closed without further action.

B. If the operator fails to fully perform all corrective actions required by a Warning Letter or a Corrective Action Required Inspection Report, or otherwise fails to return to compliance within the timeframe specified by the Director, the Director will initiate an enforcement action seeking penalties pursuant to subpart 522.d. for any unresolved alleged violation.

d. Enforcement Actions Seeking Penalties for Alleged Violations

When the Director determines subpart 522.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 violation. The NOAV may propose appropriate corrective action and an abatement schedule required by the Director to correct the violation. The NOAV may propose a specific penalty amount or refer generally to Rule 523.

(2) Answer

An answer to an NOAV must be filed within 35 days of the operator's receipt of an NOAV, unless exception is granted by the Director. If the operator fails to file an answer within 35 days, the Director may request the Commission to 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. The Secretary of the Commission will docket enforcement actions for hearing by issuing a Notice and Application for Hearing pursuant to Rule 507.

e. Resolution of Enforcement Actions

(1) Administrative Order by Consent

An enforcement action may be provisionally resolved by agreement between the operator and the Director except as provided in subpart 522.e.(2).

A. A proposed agreement to resolve an enforcement action will be memorialized in an Administrative Order by Consent (AOC) executed by the Director and the operator. An AOC will be noticed for review and approval by the Commission unless no penalties are recommended.

B. A Complainant who has filed a written complaint on a Form 18, Complaint Form, will be informed of the terms of a proposed AOC resolving alleged violations arising directly out of their complaint and will be given an opportunity to comment on the settlement terms before the AOC is finalized and presented to the Commission for approval. A Complainant who objects to the settlement terms proposed for an alleged violation arising directly from their complaint may file an application for an Order Finding Violation hearing pursuant to Rule 522.b.(3).

C. Administrative Orders by Consent will be docketed on the Commission's consent agenda and may be approved by motion without formal hearing. An approved AOC becomes a final order of the Commission subject to judicial review.

D. If the Commission does not approve an AOC, the Commission will remand the matter to the Director for further proceedings.

(2) Order Finding Violation

A. An enforcement action may not be resolved by the Director and must be heard by the Commission 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 operator has engaged in a pattern of violations; or

iii. A Complainant files a timely application for an OFV hearing pursuant to Rule 522.b.(2).

B. Commencing an OFV hearing

i. The Director will commence an OFV hearing for enforcement actions governed by subpart 522.e.(2)A. by filing an Notice and Application for Mandatory OFV Hearing.

ii. Order Finding Violation hearings for enforcement actions not governed by subpart 522.e.(2)A. 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, as amended by applicable pre-hearing orders, unless the parties have agreed to and executed an AOC not less than 7 days prior to the scheduled hearing date.

iii. A Complainant may file an application for an OFV hearing pursuant to Rule 522.b.(3).

iv. The Commission may conduct an OFV hearing on its own motion, with notice pursuant to Rule 507, if it believes the Director has failed to enforce a provision of the Act, or a Commission rule, order, or permit.

C. OFV hearing procedures

i. OFV prehearing procedures are governed by Rule 527. The Director may convene a prehearing conference pursuant to Rule 527 within a reasonable time after serving a Notice and Application for Hearing.

ii. OFV hearings are *de novo* proceedings governed by Rule 528.

iii. If the Director initiates the OFV hearing, a Complainant may participate as a non-party observer and may submit a Rule 510 statement, or may move to intervene pursuant to Rule 509.

iv. If a Complainant initiates an OFV hearing pursuant to Rule 522.b.(3), the Director may intervene as a matter of right.

f. Failure to Comply with Commission Orders

An operator's failure to timely implement corrective action pursuant to an AOC, OFV, or other Commission order constitutes an independent violation which may subject the operator to penalties or corrective action requirements.

g. Cease and Desist Orders

(1) The Commission or the Director may issue a cease and desist order when an operator's alleged violation of the Act, or a Commission rule, order, or permit, or failure to take required corrective action creates an emergency situation. If the order is entered by the Director, it will be reported to the Commission for review and approval.

(2) The order will be served pursuant to Rule 521.

(3) The order will state the provisions 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.

(4) Any protest 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. However, emergency corrective actions mandated by the order will not be stayed pending resolution of the protest.

(5) In the event 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.

523. PROCEDURES FOR ASSESSING PENALTIES

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, this Rule 523, and written guidance contained in the Commission's Enforcement Guidance and Penalty Policy.

b. Days of Violation

The duration of a violation presumptively will be calculated in days 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 continues until the appropriate corrective action is commenced to the Director's satisfaction.

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.

(3) The Commission will assess a penalty for each day the evidence shows a violation continued.

(4) 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 penalty for each violation will be calculated based on the Commission's Penalty Schedule, Table 523-1, (Appendix XX to these Rules) combined with an assessment of the degree of actual or threatened adverse impact to public health, safety, welfare, the environment, or wildlife resources. The maximum daily penalty cannot exceed $15,000 per day per violation.

(1) Penalty Schedule – Table 523-1. The Commission's Penalty Schedule classifies Commission rules as Class 1, 2, or 3 based on the severity of the potential consequences of a violation of the Rule. The base penalty for a violation of a Rule within each Class is:

Class 1 – $500 for each day of violation.
Class 2 – $3,000 for each day of violation.
Class 3 – $7,500 for each day of violation.

The Director retains the discretion to reclassify discrete subparts of a Rule, on a case by case basis, where a violation of that subpart does not have the same potential consequences as a violation of the remainder of the Rule.

(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, welfare, including the environment and wildlife resources resulting from the violation. The Commission will determine the degree of actual or threatened adverse impact to public health, safety, welfare, including the environment and wildlife resources, based on the totality of circumstances in each case. The Commission 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, fish, soil, water, air, and all other environmental 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. 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 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 may decrease a penalty if it finds any of the mitigating factors listed in subpart B, below, exist.

A. Aggravating factors

1. The violator acted with gross negligence or knowing and willful misconduct.

2. The violation resulted in significant waste of oil and gas resources.

3. The violation had a significant negative impact on correlative rights of other parties.

4. The violator was recalcitrant or uncooperative with the Commission or other agencies in correcting or responding to the violation.

5. The violator falsified reports or records.

6. The violator benefited economically from the violation, in which case the amount of such benefit may be taken into consideration.

7. The violator has engaged in a pattern of violations.

B. Mitigating factors

1. The violator self-reported the violation.

2. The violator demonstrated prompt, effective and prudent response to the violation, including assistance to any impacted parties.

3. The violator cooperated with the Commission and other agencies with respect to the violation.

4. The cause of the violation was outside of the violator's reasonable control and responsibility, or is customarily considered to be force majeure.

5. The violator made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation.

6. 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.

7. 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 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 Order Finding Violation hearing before the Commission when the Director determines an operator has:

A. Engaged in a pattern of violations; or

B. Acted with gross negligence or knowing and willful misconduct that resulted in an egregious violation.

(2) If the Commission finds after hearing that an operator has engaged in conduct described in subparagraph d.(1), the Commission 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 Director that the operator has brought each violation into compliance and that any penalty assessed (not subject to judicial review) has been paid.

(3) The Commission will consider the following non-exclusive list of factors in determining whether an operator has engaged in a pattern of violations:

A. The number of NOAVs an operator receives as a percentage of the number of wells it operates;

B. Frequent violation of the same or similar rules;

C. The overall number of Warning Letters or Corrective Action Required Inspections an operator receives within a span of years; and

D. Any other factors relevant to an objective determination of whether an operator has a pattern and practice of noncompliance.

e. Voluntary disclosure

(1) An operator who maintains a regulatory compliance program and voluntarily discloses to the Director a violation of the Act, or any Commission rule, order, or permit discovered as a direct result of such a program will have a rebuttable presumption of a penalty reduction, of at least a 35% for a disclosed violation, if:

A. The disclosure is made promptly after the operator learns of the violation as a result of its regulatory compliance program;

B. The operator cooperates with the Director regarding investigation of the disclosed violation; and

C. The operator has achieved or commits to achieve compliance within a reasonable time and pursues compliance with due diligence.

(2) This presumption will not apply if:

A. The disclosure or the regulatory compliance program was engaged in for fraudulent purposes;

B. The disclosed violation was part of a pattern of violations; or

C. The disclosed violation was egregious and the result of the operator's gross negligence or knowing and willful misconduct.

f. Public Projects. In its discretion, the Commission 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 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.

524. DETERMINATION OF RESPONSIBLE PARTY

In all cases initiated by the Commission or at the request of the Director, it shall be the burden of the Director to present sufficient evidence to the Commission to determine responsible party status. In all other cases, the applicant shall have the burden to present sufficient evidence to the Commission 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 shall 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 shall provide to the Commission or Director such information as the Commission or Director may reasonably require in making such determination.

d. The Commission shall make the determination under this section without regard to any contractual assignments of liability or other legal defenses between parties.

e. An operator shall enjoy a rebuttable presumption against mitigation liability under §34-60-124(7) C.R.S., for ongoing significant adverse environmental impacts where the violation which led to such impacts was committed by a predecessor operator and where the operator has conducted an environmental investigation, with reasonable due diligence, of the environmental condition of the particular asset or activity and such investigation did not reveal such significant adverse environmental impacts. The failure to report any condition which is causing such impacts, upon subsequent knowledge by the operator, shall negate the rebuttable presumption against mitigation liability.

f. Where multiple persons are determined to be responsible parties, they shall share in the mitigation liability in proportion to their respective shares of production, respective periods of ownership or respective contributions to the problem, or any other factors as may serve the interests of fairness.

g. The determination of responsible party status and mitigation liability shall require a showing that the responsible party conducted operations that have resulted in or have threatened to cause a significant 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 historic provisions of the Act or rules, whether or not the Commission has entered an order finding violation.

525. PERMIT-RELATED PENALTIES

a. If the Commission determines, after a hearing, that an operator failed to perform any required corrective action/abatement or failed to comply with a cease and desist order issued by the Director or the Commission 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 shall 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 shall continue the affected operations only for the purpose of bringing them into compliance with the permit(s) or modified permit(s) and shall 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 shall inform the Commission, and the Commission, if in agreement, shall 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 shall 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 shall 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 shall be vacated.

526. ADMINISTRATIVE HEARINGS IN UNCONTESTED MATTERS

a. As to applications where there has been no protest or intervention filed with the Commission in accordance with Rule 509., and where the Director has not recommended approval based on the content of the verified application and supporting exhibits, the application may be heard administratively prior to or on the date of the scheduled Commission hearing. The date and time of the administrative hearing shall be scheduled for the mutual convenience of the applicant and the Hearing Officer. The administrative hearing may be conducted prior to the protest or intervention date, but no order shall be entered by the Commission until it has fully considered any timely and properly filed protest or intervention.

b. One or more duly appointed Hearing Officers may hear the application at the administrative hearing. Administrative hearings shall proceed informally in a meeting format. The applicant may present its case using exhibits and witnesses. All witnesses shall be sworn. At the conclusion of the administrative hearing, the Hearing Officer shall make a decision concerning approval or denial of the application and so inform the applicant. The Hearing Officer shall 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 Hearing Officer recommends denial or qualified approval of the application, the applicant shall be entitled to a hearing de novo at the next scheduled hearing of the Commission.

c. The Commission or Director may appoint Hearing Officers from the Commission staff for the purpose of hearing uncontested matters, presiding at local public forums or otherwise representing the Commission. The service of the Hearing Officers shall be at the Director's discretion.

527. PREHEARING PROCEDURES FOR CONTESTED ADJUDICATORY PROCEEDINGS BEFORE THE COMMISSION

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 before the Commission. A prehearing conference shall be conducted at the direction of the Commission or the Director upon receipt of a protest or an intervention, or upon the request of the applicant or any person who has filed a protest or intervention. For matters in which a staff analysis has been prepared, the Director shall participate in the prehearing conference to advise the parties of the content of the preliminary staff analysis. The prehearing conference shall be conducted under the following general guidelines.

b. The Director, a Hearing Officer, or Hearing Commissioner shall preside over any prehearing conference and rule on preliminary matters in any proceeding pending before the Commission

c. The Secretary shall notify the applicant and any person who has filed a protest or intervention of the prehearing conference, and shall direct the attorneys for the parties, and pro se parties, to appear in order to expedite the hearing or settle issues, or both.

d. All parties shall be prepared to discuss all procedural and substantive issues, and shall be authorized to make binding commitments on all procedural matters.

e. Preparation should include advance study of all materials filed and materials obtained through discovery.

f. Failure of any person to attend the prehearing conference, after being notified of the date, time, and place shall be a waiver of any objection and shall be deemed to be a concurrence to any agreement reached, or to any order or ruling made at the prehearing conference, including the entry of a default judgment or the dismissal of a protest.

g. A prehearing statement may be required of any party.

h. 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, or Hearing Officer.

i. 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.

j. The Hearing Officer shall reduce to writing any agreement reached or orders issued at a prehearing conference. The Hearing Officer may require parties to submit proposed findings or orders.

k. It is the intent of this rule that a prehearing order shall be binding upon the participating parties.

l. Subsequent to the prehearing conference and prior to the hearing on a contested matter, the parties shall each prepare and submit to the Hearing Officer a recommended order for the Commission to consider for adoption at the time of hearing.

528. CONDUCT OF ADJUDICATORY HEARINGS.

a. **Contested applications.** Every party shall have the right to present its case by oral and/or documentary evidence. The following shall be the order of presentation unless otherwise established by the Commission at the hearing:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Presentation of any prehearing order;

(3) Presentation of any motions and disposition of procedural matters;

(4) Presentation of any stipulations;

(5) Opening statement by the applicant;

(6) Opening statements by the respondent (and intervenor, if any);

(7) Presentation of the case-in-chief by the applicant;

(8) Presentations by respondent (and intervener, if any);

(9) Presentation of statements under Rule 510, if any;

(10) Presentation of staff analysis, if requested by the Commission;

(11) Rebuttal by the applicant;

(12) Rebuttal by the respondent (and intervenor, if any);

(13) Closing statement by the applicant;

(14) Closing statements by the respondent (and intervenor, if any);

(15) Rebuttal closing statement by the applicant;

(16) Upon motion and for good cause shown, the Commission may permit surrebuttal;

(17) Closing of the record.

b. **Uncontested applications not approved administratively.** For uncontested applications not approved administratively pursuant to Rule 526., the applicant may present evidence in support of its application to the Commission. The order of presentation shall be as follows, unless otherwise established by the Commission at the hearing:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Presentation of staff analysis, if requested by the Commission. The Commission, at its discretion or upon request of the Director, may defer staff testimony until all of the evidence has been presented.

(3) Presentation of the case-in-chief by the applicant;

(4) Closing statement by the applicant;

(5) Closing of the record.

c. **Enforcement hearings.** In order to assure that all parties against whom a fine or penalty may be imposed are afforded due process of law, the Commission shall, at any hearing, permit the Director or the complainant pursuant to Rule 522.b.(4) to present evidence and argument and to conduct cross-examination required for a full disclosure of the facts. The enforcement matter shall be heard by the Commission de novo unless the operator waives its right to a de novo hearing prior to or at the Commission hearing. The order of presentation in a hearing for an enforcement matter shall be as follows, unless otherwise established by the Commission at the hearing:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Opening statements by all parties;

(3) Presentation by the Director;

(4) Presentation by any complainant under Rule 522.b.(4);

(5) Presentation by the operator;

(6) Rebuttal by the Director;

(7) Rebuttal by the respondent;

(8) Closing statements by the parties;

(9) Finding regarding existence of violation;

(10) If the Commission first determines by a preponderance of the evidence that a violation or violations exist, presentation by the Director of any recommended fine or permit-related penalty, and/or recommended corrective action/abatement to be taken by the operator;

(11) Response by any complainant under Rule 522.b.(4);

(12) Presentation of statements under Rule 510, if any;

(13) Response by the operator;

(14) Rebuttal by the Director;

(15) Closing statements by all parties;

(16) Closing of the record.

d. **Closing of record.** At the conclusion of closing statements, the record shall be closed to the presentation of any further evidence, testimony, or statements, except as such may occur in response to questions from the Commission.

e. **Witnesses.** Each witness shall take an oath or affirmation before testifying. After a witness has testified, the applicant, the protestant or participating intervenors and any Commissioner may cross-examine that witness in the order established by the chairperson of the Commission.

f. **Limitations of testimony.** Where two or more protestants or intervenors have substantially similar interests and positions, the Commission may limit cross-examination or argument on motions and objections to fewer than all the intervenors. The Commission may also limit testimony to avoid undue delay, waste of time or needless presentation of cumulative evidence.

g. **Commission findings and order.** After due consideration of written and oral statements, the testimony, and the arguments presented at hearing, the Commission shall make its findings and order, based upon evidence in the record and, as appropriate, consistent with the Act and any rule, permit, or order made pursuant thereto.

529. PROCEDURES FOR RULEMAKING PROCEEDINGS

a. **Initiation of rulemaking.** The Commission may initiate rulemaking on its motion or in response to an application filed by any person.

b. **Applications for rulemaking.** Any person may petition the Commission to initiate rulemaking. All applications for rulemaking shall 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 shall be noticed by publication in the Colorado Register not less than 21 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 shall 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 informal procedures 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 shall 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 shall state that the proposed regulations will be available upon request from the office of the Commission, the date of availability, and any fee. The notice shall include a short and plain statement which summarizes the intended action and states generally the basis and purpose of the rule.

f. **The rulemaking hearing.** The Commission shall hold a formal public hearing before promulgating any rules or regulations. At that hearing, the Commission shall afford any person an opportunity to submit data, views or arguments. The Commission may limit such testimony or presentation of evidence 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 shall 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 shall 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.

(3) The order of presentation at a rulemaking hearing shall 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 rule.

530. INVOLUNTARY POOLING PROCEEDINGS

a. An application for involuntary pooling pursuant to §34-60-116, C.R.S., may be filed at any time an owner within a drilling and spacing unit established by Commission order fails or refuses to agree to bear its proportionate share of the costs and risks of drilling and operating the well or to lease its minerals. An application for involuntary pooling may be filed at any time prior to or after the drilling of a well; however, any involuntary pooling order issued shall be retroactive to the date the application is filed, unless otherwise determined by the Commission.

b. An owner shall be deemed a nonconsenting owner in the area to be pooled if, after at least 35 days' written notice of the following information, the owner does not elect in writing to consent to participate in the cost of the well concerning which the pooling order is sought:

(1) The location and objective depth of the well;

(2) The estimated drilling and completion cost of the well; and

(3) The estimated spud date for the well or range of time within which spudding is to occur.An authority for expenditure prepared by the operator and containing the information required above, together with additional information deemed appropriate by the operator shall satisfy this obligation.

c. An unleased owner shall be deemed a nonconsenting owner if, after at least 35 days' written notice, the unleased owner has failed or refused a reasonable offer to lease. In determining whether a reasonable offer to lease has been tendered under §34-60-116(7)(d), C.R.S., the Commission shall consider the lease terms listed below for the drilling and spacing unit in the application and for all cornering and contiguous units that are under the proposed lease:

(1) Date of lease and primary term or offer with acreage in lease;

(2) Annual rental per acre;

(3) Bonus payment or evidence of its non-availability;

(4) Mineral interest royalty; and

(5) Such other lease terms as may be relevant.

SERIES SAFETY REGULATIONS

601. INTRODUCTION

The rules and regulations in this section are promulgated to protect the health, safety and welfare of the general public during the drilling, completion and operation of oil and gas wells and producing facilities. They do not apply to parties or requirements regulated under the Federal Occupational Safety and Health Act of 1970 (See Rule 212).

602. GENERAL

The training and actions of an operator's employees, as well as the proper location and operation of equipment, are essential to any safety program.

a. Employees shall be familiarized with these Rules as provided herein as they relate to their job functions. Each new employee should have his or her job outlined, explained and demonstrated.

b. Employees shall immediately report unsafe and potentially dangerous conditions to their supervisor and these conditions shall be remedied as soon as practicable. An operator shall notify the Director of any accident or natural event involving a fire, explosion, detonation, or release of pressure that results in: 1) injury to a member of the general public which requires Medical Treatment and/or 2) significant damage to equipment or the well site. This initial notification from the operator shall occur as soon as practicable, but no more than 24 hours after the accident or natural event. An Accident Report, Form 22, shall be submitted to the Director within 10 days of the accident or natural event.

   Where unsafe or potentially dangerous conditions exist, the owner or operator shall respond as directed by an agency with demonstrated authority to do so (such as sheriff, fire district director, etc.).

c. Vehicles of persons not involved in drilling, production, servicing, or seismic operations shall be located a minimum distance of one hundred (100) feet from the wellbore, or a distance equal to the height of the derrick or mast, whichever is greater. Equivalent safety measures shall be taken where terrain, location or other conditions do not permit this minimum distance requirements.

d. Existing wells are exempt from the provisions of these regulations as they relate to the location of the well.

e. Existing producing facilities shall be exempt from the provisions of these regulations with respect to minimum distance requirements and setbacks unless they are found by the Director to be unsafe.

f. Self-contained sanitary facilities shall be provided during drilling operations and at any other similarly staffed oil and gas operations facility.

603. STATEWIDE LOCATION REQUIREMENTS FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS

a. **Statewide location requirements.**

   (1) At the time of initial drilling, a Well shall be located not less than two hundred (200) feet from buildings, public roads, major above ground utility lines, or railroads.

Rule 604 setback requirements apply with respect to Building Units and Designated Outside Activity Areas.

(2) A well shall be located not less than one hundred fifty (150) feet from a surface property line. The Director may grant an exception if it is not feasible for the Operator to meet this minimum distance requirement and a waiver is obtained from the offset Surface Owner(s). An exception request letter stating the reasons for the exception shall be submitted to the Director and accompanied by a signed waiver(s) from the offset Surface Owner(s). Such waiver shall be written and filed in the county clerk and recorder's office and with the Director.

603.b. **Statewide rig floor safety valve requirements.** When drilling or well servicing operations are in progress on a well where there is any indication the well will flow hydrocarbons, either through prior records or present conditions, there shall be on the rig floor a safety valve with connections suitable for use with each size and type of tool joint or coupling being used on the job.

603.c. **Statewide static charge requirements.** Rig substructure, derrick, or mast shall be designed and operated to prevent accumulation of static charge.

603.d. **Statewide well servicing pressure check requirements.** Prior to initiating well servicing operations, the well shall be checked for pressure and steps taken to remove pressure or operate safely under pressure before commencing operations.

603.e. **Statewide well control equipment and other safety requirements.** Well control equipment and other safety requirements are:

(1) When there is any indication that a well will flow, either through prior records, present well conditions, the planned well work, or special orders of the Commission, blowout prevention equipment shall be installed.

(2) When required, blowout prevention equipment shall be in accordance with API Standard 53: Blowout Prevention Equipment Systems for Drilling Wells.

(3) Drilling after setting the surface casing shall not proceed until blowout prevention equipment is tested and found to be serviceable. Low pressure and high pressure tests shall be performed. Test pressure, test duration, and test frequency shall be in accordance with API Standard 53: Blowout Prevention Equipment Systems for Drilling Wells, except that the minimum low pressure for a low pressure test shall be 250 psi. Test pressure loss shall be less than or equal to 10% of the initial stabilized surface pressure at the end of the test when testing with rig pumps against casing. When a test plug is used to isolate the casing from the blowout prevention equipment being tested, then there shall be no pressure loss at the end of the test.

(4) While in service, blowout prevention equipment shall be inspected daily and a preventer operating test shall be performed on each round trip, but not more than once every twenty-four (24) hour period. Notation of operating tests shall be made on the daily report.

(5) All pipe fittings, valves and unions placed on or connected with blowout prevention equipment, well casing, casinghead, drill pipe, or tubing shall have a working pressure rating suitable for the maximum anticipated surface pressure and shall be in good working condition as per generally accepted industry standards.

(6) Blowout prevention equipment shall contain pipe rams that enable closure on the pipe being used. The choke line(s) and kill line(s) shall be anchored, tied or otherwise secured to prevent whipping resulting from pressure surges.

(7) Pressure testing of the casing string shall be conducted prior to drilling out any string of casing except conductor pipe. The minimum test pressure shall be 500 psi. Test pressure loss must be less than or equal to 10% of the initial stabilized surface pressure over a test period of 15 minutes, in order for the casing string to be considered serviceable. Upon demand the operator shall provide to the Commission the pressure test evidence.

(8) If the blind rams are closed for any purpose except operational testing, the valves on the choke lines or relief lines below the blind rams should be opened prior to opening the rams to bleed off any pressure.

(9) All rig employees shall have adequate understanding of and be able to operate the blowout prevention equipment system. New employees shall be trained in the operation of blowout prevention systems as soon as practicable to do so.

(10) Drilling contractors shall place a sign or marker at the point of intersection of the public road and rig access road.

(11) The number of the public road to be used in accessing the rig along with all necessary emergency numbers shall be posted in a conspicuous place on the drilling rig.

603.f. **Statewide equipment, weeds, waste, and trash requirements.** All locations, including wells and surface production facilities, shall be kept free of the following: equipment, vehicles, and supplies not necessary for use on that lease; weeds; rubbish, and other waste material. The burning or burial of such material on the premises shall be performed in accordance with applicable local, state, or federal solid waste disposal regulations and in accordance with the 900-Series Rules. In addition, material may be burned or buried on the premises only with the prior written consent of the Surface Owner.

603.g. **Statewide equipment anchoring requirements.** All equipment at drilling and production sites in geological hazard and floodplain areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement, or subsidence.

604. SETBACK AND MITIGATION MEASURES FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS

a. **Setbacks.** Effective August 1, 2013:

(1) **Exception Zone Setback.** No Well or Production Facility shall be located five hundred (500) feet or less from a Building Unit except as provided in Rules 604.a.(1) A and B, and 604.b.

A. Urban Mitigation Areas. The Director shall not approve a Form 2A or associated Form 2 proposing to locate a Well or a Production Facility within an Exception Zone Setback in an Urban Mitigation Area unless:

i. the Operator submits a waiver from each Building Unit Owner within five hundred (500) feet of the proposed Oil and Gas Location

with the Form 2A or associated Form 2, or obtains a variance pursuant to Rule 502; and

ii. the Operator certifies it has complied with Rules 305.a, 305.c., and 306.e.; and

iii. the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable; or

iv. the Oil and Gas Location is approved as part of a Comprehensive Drilling Plan pursuant to Rule 216.

B. Non-Urban Mitigation Area Locations. Except as provided in subsection 604.b., below, the Director shall not approve a Form 2 or Form 2A proposing to locate a Well or a Production Facility within an Exception Zone Setback not in an Urban Mitigation Area unless the Operator certifies it has complied with Rules 305.a., 305.c., and 306.e., and the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable.

(2) **Buffer Zone Setback.** No Well or Production Facility shall be located one thousand (1,000) feet or less from a Building Unit until the Operator certifies it has complied with Rule 305.a., 305.c., and 306.e. and the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures as necessary to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife.

(3) **High Occupancy Buildings**. No Well or Production Facility shall be located one thousand (1,000) feet or less from a High Occupancy Building Unit without Commission approval following Application and Hearing. Designated Setback Location and Exception Zone Setback mitigation measures pursuant to Rule 604.c. shall be required for Oil and Gas Locations within one thousand (1,000) feet of a High Occupancy Building, unless the Commission determines otherwise.

(4) **Designated Outside Activity Areas.** No Well or Production Facility shall be located three hundred fifty (350) feet or less from the boundary of a Designated Outside Activity Area. The Commission, in its discretion, may establish a setback of greater than three hundred fifty (350) feet based on the totality of circumstances. Designated Setback Location mitigation measures pursuant to Rule 604.c. shall be required for Oil and Gas Locations within one thousand (1,000) feet of a Designated Outside Activity Area, unless the Commission determines otherwise.

(5) **Maximum Achievable Setback**. If the applicable setback would extend beyond the area on which the Operator has a legal right to locate the Well or Production Facilities, the Operator may seek a variance under Rule 502.b. to reduce the setback to the maximum achievable distance.

604.b. **Exceptions.**

(1) **Existing Oil and Gas Locations.** The Director may grant an exception to setback distance requirements set forth in Rule 604 within a Designated Setback Location when a Well or Production Facility is proposed to be added to an existing or approved Oil and Gas Location if the Director determines alternative locations outside the applicable setback are technically or economically impracticable; mitigation measures imposed in the Form 2 or Form 2A will eliminate, minimize or mitigate noise, odors, light, dust, and similar nuisance conditions to the extent reasonably achievable; the proposed location complies with all other safety requirements of these Commission Rules; and:

A. An existing or approved Oil and Gas Location is within a Designated Setback Location solely as a result of the adoption of Rule 604.a., above, which established the Designated Setback Locations; or

B. The Oil and Gas Location is located within a Designated Setback Location solely as a result of Building Units constructed after the Oil and Gas Location was approved by the Director.

(2) **Existing Surface Use Agreement or Site Specific Development Plan**. The Director shall grant an exception to setback requirements set forth in Rule 604.a. for a Surface Use Agreement or site specific development plan (as defined in § 24-68-102(4)(a), C.R.S. that establishes vested property rights as defined in § 24-68-103, C.R.S.), that was executed on or before August 1, 2013, and which expressly governs the location of Wells or Production Facilities on the surface estate, provided mitigation measures imposed in the Form 2 or Form 2A will eliminate, minimize or mitigate noise, odors, light, dust, and similar nuisance conditions to the extent reasonably achievable and the location complies with all other safety requirements of these Commission Rules.

(3) **Surface Development after August 1, 2013 Pursuant to a Surface Use Agreement or Site Specific Development Plan.** A Surface Owner or Building Unit owner and mineral owner or mineral lessee may agree to locate future Building Units closer to existing or proposed Oil and Gas Locations than otherwise allowed under Rule 604.a. pursuant to a valid Surface Use Agreement or site specific development plan (as defined in § 24-68-102(4)(a), C.R.S., that establishes vested property rights as defined in § 24-68-103, C.R.S.) that expressly governs the location of Wells or Production Facilities on the surface estate. All setback, notice, consultation and meeting requirements contained in Rules 305, 306, and 604.a shall apply with respect to all Building Units that are not governed by the applicable SUA or site specific development plan. Copies of any applicable SUA or site specific development plan shall be submitted by the Operator with a Form 2A Application or associated Form 2 for a proposed Oil and Gas Location on the relevant surface estate.

(4) In the event the Director refuses to grant an exception or variance requested pursuant to Rule 604.a.(5) or 604.b., a hearing before the Commission shall be held at the next regularly scheduled meeting of the Commission, subject to the notice requirements of Rule 507.

604.c. **Mitigation Measures.** The following requirements apply to an Oil and Gas Location within a Designated Setback Location and such requirements shall be incorporated into the Form 2A or associated Form 2 as Conditions of Approval.

(1) **Provisions for future encroaching development.** If a location comes within a Designated Setback Location solely as a result of surface development after well pad construction begins or production equipment has been placed, certain mitigation measures may not apply as determined by the Director.

(2) **Location Specific Requirements – Designated Setback Locations.** Subject to Rule 502.b., the following mitigation measures shall apply to any Well or Production Facility proposed to be located within a Designated Setback Location for which a Form 2, Application for Permit—to-Drill or Form 2A, Oil and Gas Location Assessment, is submitted on or after August 1, 2013:

A. **Noise.** Operations involving pipeline or gas facility installation or maintenance, or the use of a drilling rig, are subject to the maximum permissible noise levels for Light Industrial Zones, as measured at the nearest Building Unit. Short-term increases shall be allowable as described in 802.c. Stimulation or re-stimulation operations and Production Facilities are governed by Rule 802.

B. **Closed Loop Drilling Systems – Pit Restrictions.**

i. Closed loop drilling systems are required within the Buffer Zone Setback.

ii. Pits are not allowed on Oil and Gas Locations within the Buffer Zone Setback, except fresh water storage pits, reserve pits to drill surface casing, and emergency pits as defined in the 100-Series Rules.

iii. Fresh water pits within the Exception Zone shall require prior approval of a Form 15, Earthen Pit Report/Permit. In the Buffer Zone, fresh water pits shall be reported within 30-days of pit construction.

iv. Fresh water storage pits within the Buffer Zone Setback shall be conspicuously posted with signage identifying the pit name, the operator's name and contact information, and stating that no fluids other than fresh water are permitted in the pit. Produced water, recycled E&P waste, or flowback fluids are not allowed in fresh water storage pits.

v. Fresh water storage pits within the Buffer Zone Setback shall include emergency escape provisions for inadvertent human access.

C. **Green Completions – Emission Control Systems.**

i. Flow lines, separators, and sand traps capable of supporting green completions as described in Rule 805 shall be installed at any Oil and Gas Location at which commercial quantities of gas are reasonably expected to be produced based on existing adjacent wells within 1 mile.

ii. Uncontrolled venting shall be prohibited in an Urban Mitigation Area.

iii. Temporary flowback flaring and oxidizing equipment shall include the following:

aa. Adequately sized equipment to handle 1.5 times the largest flowback volume of gas experienced in a ten (10) mile radius;

bb. Valves and porting available to divert gas to temporary equipment or to permanent flaring and oxidizing equipment; and

cc. Auxiliary fuel with sufficient supply and heat to sustain combustion or oxidation of the gas mixture when the mixture includes non-combustible gases.

D. **Traffic Plan.** If required by the local government, a traffic plan shall be coordinated with the local jurisdiction prior to commencement of move in and rig up. Any subsequent modification to the traffic plan must be coordinated with the local jurisdiction.

E. **Multi-well Pads.**

i. Where technologically feasible and economically practicable, operators shall consolidate wells to create multi-well pads, including shared locations with other operators. Multi-well production facilities shall be located as far as possible from Building Units.

ii. The pad shall be constructed in such a manner that noise mitigation may be installed and removed without disturbing the site or landscaping.

iii. Pads shall have all weather access roads to allow for operator and emergency response.

F. **Leak Detection Plan.** The Operator shall develop a plan to monitor Production Facilities on a regular schedule to identify fluid leaks.

G. **Berm construction.** Berms or other secondary containment devices in Designated Setback Locations shall be constructed around crude oil, condensate, and produced water storage tanks and shall enclose an area sufficient to contain and provide secondary containment for one-hundred fifty percent (150%) of the largest single tank. Berms or other secondary containment devices shall be sufficiently impervious to contain any spilled or released material. All berms and containment devices shall be inspected at regular intervals and maintained in good condition. No potential ignition sources shall be installed inside the secondary containment area unless the containment area encloses a

fired vessel. Refer to API Bulletin D16: Suggested Procedure for Development of a Spill Prevention Control and Countermeasure Plan

H. **Blowout preventer equipment ("BOPE").** Blowout prevention equipment for drilling operations in a Designated Setback Location shall consist of (at a minimum):

i. **Rig with Kelly.** Double ram with blind ram and pipe ram; annular preventer or a rotating head.

ii. **Rig without Kelly.** Double ram with blind ram and pipe ram.

Mineral Management certification or Director approved training for blowout prevention shall be required for at least one (1) person at the well site during drilling operations.

I. **BOPE testing for drilling operations.** Upon initial rig-up and at least once every thirty (30) days during drilling operations thereafter, pressure testing of the casing string and each component of the blowout prevention equipment including flange connections shall be performed to seventy percent (70%) of working pressure or seventy percent (70%) of the internal yield of casing, whichever is less. Pressure testing shall be conducted and the documented results shall be retained by the operator for inspection by the Director for a period of one (1) year. Activation of the pipe rams for function testing shall be conducted on a daily basis when practicable.

J. **BOPE for well servicing operations.**

i. Adequate blowout prevention equipment shall be used on all well servicing operations.

ii. Backup stabbing valves shall be required on well servicing operations during reverse circulation. Valves shall be pressure tested before each well servicing operation using both low-pressure air and high-pressure fluid.

K. **Pit level indicators.** Pit level indicators shall be used.

L. **Drill stem tests.** Closed chamber drill stem tests shall be allowed. All other drill stem tests shall require approval by the Director.

M. **Fencing requirements.** Unless otherwise requested by the Surface Owner, well sites constructed within Designated Setback Locations, shall be adequately fenced to restrict access by unauthorized persons.

N. **Control of fire hazards.** Any material not in use that might constitute a fire hazard shall be removed a minimum of twenty-five (25) feet from the wellhead, tanks and separator. Any electrical equipment installations inside the bermed area shall comply with API RP 500 classifications and comply with the current national electrical code as adopted by the State of Colorado.

O. **Loadlines.** All loadlines shall be bullplugged or capped.

P. **Removal of surface trash.** All surface trash, debris, scrap or discarded material connected with the operations of the property shall be removed from the premises or disposed of in a legal manner.

Q. **Guy line anchors.** All guy line anchors left buried for future use shall be identified by a marker of bright color not less than four (4) feet in height and not greater than one (1) foot east of the guy line anchor.

R. **Tank specifications.** All newly installed or replaced crude oil and condensate storage tanks shall be designed, constructed, and maintained in accordance with National Fire Protection Association (NFPA) Code 30 (2008 version). The operator shall maintain written records verifying proper design, construction, and maintenance, and shall make these records available for inspection by the Director. Only the 2008 version of NFPA Code 30 applies to this rule. This rule does not include later amendments to, or editions of, the NFPA Code 30. NFPA Code 30 may be examined at any state publication depository library. Upon request, the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203, will provide information about the publisher and the citation to the material.

S. **Access roads.** At the time of construction, all leasehold roads shall be constructed to accommodate local emergency vehicle access requirements, and shall be maintained in a reasonable condition.

T. **Well site cleared.** Within ninety (90) days after a well is plugged and abandoned, the well site shall be cleared of all non-essential equipment, trash, and debris. For good cause shown, an extension of time may be granted by the Director.

U. **Identification of plugged and abandoned wells.** The operator shall identify the location of the wellbore with a permanent monument as specified in Rule 319.a.(5). The operator shall also inscribe or imbed the well number and date of plugging upon the permanent monument.

V. **Development from existing well pads.** Where possible, operators shall provide for the development of multiple reservoirs by drilling on existing pads or by multiple completions or commingling in existing wellbores (see Rule 322). If any operator asserts it is not possible to comply with, or requests relief from, this requirement, the matter shall be set for hearing by the Commission and relief granted as appropriate.

W. **Site-specific measures.** During Rule 306 consultation, the operator may develop a mitigation plan to address location specific considerations not otherwise addressed by specific mitigation measures identified in this subsection 604.c.

(3) **Location Specific Requirements – Exception Zone Setback.** Within the Exception Zone Setback, the following mitigation measures will be mandatory:

A. All mitigation measures required pursuant to subsection 604.c.(2), above, and:

B. **Berm Construction:**

i. Containment berms shall be constructed of steel rings, designed and installed to prevent leakage and resist degradation from erosion or routine operation.

ii. Secondary containment areas for tanks shall be constructed with a synthetic or engineered liner that contains all primary containment vessels and flowlines and is mechanically connected to the steel ring to prevent leakage.

iii. For locations within five hundred (500) feet and upgradient of a surface water body, tertiary containment, such as an earthen berm, is required around Production Facilities.

In an Urban Mitigation Area Exception Zone Setback, no more than two (2) crude oil or condensate storage tanks shall be located within a single berm. 605. OIL AND GAS FACILITIES.

a. **Crude Oil and Condensate Tanks.**

(1) Atmospheric tanks used for crude oil storage shall be built in accordance with the following standards as applicable. Only those editions of standards cited within this rule shall apply to this rule; later amendments do not apply. The material cited in this rule is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, these materials may be examined at any state publication depository library.

A. Underwriters Laboratories, Inc., No. UL-142, "Standard for Steel above ground Tanks for Flammable and Combustible Liquids," 9th Edition (December 28, 2006);

B. API Standard No. 650, "Welded Steel Tanks for Oil Storage," 12th Edition (March 2013);

C. API Standard No. 12B, "Bolted Tanks for Storage of Production Liquids," 15th Edition (October 2008);

D. API Standard No. 12D, "Field Welded Tanks for Storage of Production Liquids," 11th Edition (October 2008); or

E. API No. 12F, "Shop Welded Tanks for Storage of Production Liquids," 12th Edition (October 2008).

(2) Tanks shall be located at least two (2) diameters or three hundred fifty (350) feet, whichever is smaller, from the boundary of the property on which it is built. Where the property line is a public way the tanks shall be two thirds (2/3) of the diameter from the nearest side of the public way or easement.

A. Tanks less than three thousand (3,000) barrels capacity shall be located at least three (3) feet apart.

B. Tanks three thousand (3,000) or more barrels capacity shall be located at least one-sixth (1/6) the sum of the diameters apart. When the diameter

of one tank is less than one-half (1/2) the diameter of the adjacent tank, the tanks shall be located at least one-half (1/2) the diameter of the smaller tank apart.

(3) At the time of installation, tanks shall be a minimum of two hundred (200) feet from any building.

(4) Berms or other secondary containment devices shall be constructed around crude oil, condensate, and produced water tanks to provide secondary containment for the largest single tank and sufficient freeboard to contain precipitation. A synthetic or engineered liner shall be placed directly beneath each above-ground tank. Berms and secondary containment devices and all containment areas shall be sufficiently impervious to contain any spilled or released material. Berms and secondary containment devices shall be inspected at regular intervals and maintained in good condition. No potential ignition sources shall be installed inside the secondary containment area unless the containment area encloses a fired vessel. Any electrical equipment installations inside the bermed area shall comply with API RP 500: Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities classified as Class I, Division I and Division 2, 3rd Edition (December 2012) and the current national electrical code as adopted by the State of Colorado.

(5) Tanks shall be a minimum of seventy-five (75) feet from a fired vessel or heater-treater.

(6) Tanks shall be a minimum of fifty (50) feet from a separator, well test unit, or other non-fired equipment.

(7) Tanks shall be a minimum of seventy-five (75) feet from a compressor with a rating of 200 horsepower, or more.

(8) Tanks shall be a minimum of seventy-five (75) feet from a wellhead.

(9) Gauge hatches on atmospheric tanks used for crude oil storage shall be closed at all times when not in use.

(10) Vent lines from individual tanks shall be joined and ultimate discharge shall be directed away from the loading racks and fired vessels in accord with API RP 12R-1, 5th Edition (August 1997, reaffirmed April 2, 2008). Only the 5th Edition of the API standard applies to this rule; later amendments do not apply. The API standard is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, these materials may be examined at any state publication depository library.

(11) During hot oil treatments on tanks containing thirty-five (35) degree or higher API gravity oil, hot oil units shall be located a minimum of one hundred (100) feet from any tank being serviced.

(12) **Labeling of tanks.** All tanks and containers shall be labeled in accordance with Rule 210.d.

605.b. **Fired Vessel, Heater-Treater.**

(1) Fired vessels (FV) including heater-treaters (HT) shall be minimum of fifty (50) feet from separators or well test units.

(2) FV-HT shall be a minimum of fifty (50) feet from a lease automatic custody transfer unit (LACT).

(3) FV-HT shall be a minimum of forty (40) feet from a pump.

(4) FV-HT shall be a minimum of seventy-five (75) feet from a well.

(5) At the time of installation, fired vessels and heater treaters shall be a minimum of two hundred (200) feet from buildings or well defined normally occupied outside areas.

(6) Vents on pressure safety devices shall terminate in a manner so as not to endanger the public or adjoining facilities. They shall be designed so as to be clear and free of debris and water at all times.

(7) All stacks, vents, or other openings shall be equipped with screens or other appropriate equipment to prevent entry by wildlife, including migratory birds.

605.c. **Special Equipment.** Under unusual circumstances special equipment may be required to protect public safety. The Director shall determine if such equipment should be employed to protect public safety and if so, require the operator to employ same. If the operator or the affected party does not concur with the action taken, the Director shall bring the matter before the Commission at public hearing.

(1) All wells located within five hundred (500) feet of a Residential Building Unit or well defined normally occupied outside area(s), shall be equipped with an automatic control valve that will shut the well in when a sudden change of pressure, either a rise or drop, occurs. Automatic control valves shall be designed so they fail safe.

(2) Pressure control valves required in (1) shall be activated by a secondary gas source supply, and shall be inspected at least every three (3) months to assure they are in good working order and the secondary gas supply has volume and pressure sufficient to activate the control valve.

(3) All pumps, pits, and producing facilities shall be adequately fenced to prevent access by unauthorized persons when the producing site or equipment is easily accessible to the public and poses a physical or health hazard.

(4) Sign(s) shall be posted at the boundary of the producing site where access exists, identifying the operator, lease name, location, and listing a phone number, including area code, where the operator may be reached at all times unless emergency numbers have been furnished to the county commission or its designee.

605.d. **Mechanical Conditions.** All Production Facilities, including associated valves, pipes and fittings, shall be securely fastened, inspected at regular intervals, and maintained in good mechanical condition.

605.e. **Buried or partially buried tanks, vessels, or structures.** Buried or partially buried tanks, vessels, or structures used for storage of E&P waste shall be properly designed, constructed, installed, and operated in a manner to contain materials safely. A synthetic or engineered liner shall be placed directly beneath. Such vessels

shall be tested for leaks after installation and maintained, repaired, or replaced to prevent spills or releases of E&P waste.

605.f. **Produced water pits, special use and buried or partially buried vessels, or structures.** At the time of initial construction, pits shall be located not less than five hundred (500) feet from any Building Unit.

606A. FIRE PREVENTION AND PROTECTION

a. Gasoline-fueled engines shall be shut down during fueling operations if the fuel tank is an integral part of the engine.

b. Handling, connecting and transfer operations involving liquefied petroleum gas (LPG) shall conform to the requirements of the State Oil Inspector.

c. Flammable liquids storage areas within any building or shed shall:

(1) be adequately vented to the outside air;

(2) have two (2) unobstructed exits leading from the building in different directions if the building is in excess of five hundred (500) square feet.

(3) be maintained with due regard to fire potential with respect to housekeeping and materials storage;

(4) be identified as a hazard and appropriate warning signs posted;

d. Flammable liquids shall not be stored within fifty (50) feet of the wellbore, except for the fuel in the tanks of operating equipment or supply for injection pumps. Where terrain and location configuration do not permit maintaining this distance, equivalent safety measures should be taken.

e. Liquefied petroleum gas (LPG) tanks larger than two hundred fifty (250) gallons and used for heating purposes, shall be placed as far as practical from and parallel to the adjacent side of the rig or wellbore as terrain and location configuration permit. Installation shall be consistent with provisions of NFPA 58, “Standards for the Storage and Handling of Liquid Petroleum Gases”.

f. Smoking shall be prohibited at or in the vicinity of operations which constitute a fire hazard and such locations shall be conspicuously posted with a sign, “No Smoking or Open Flame”. Matches and all smoking equipment may not be carried into “No Smoking” areas.

g. No source of ignition shall be permitted in an area where smoking has been prohibited unless it is first determined to be safe to do so by the supervisor in charge or his designated representative.

h. Open fires, transformers, or other sources of ignition shall be permitted only in designated areas located at a safe distance from the wellhead or flammable liquid storage areas.

i. Only approved heaters for Class I Division 2 areas, as designated by API RB 500B, shall be permitted on or near the rig floor. The safety features of these heaters shall not be altered.

j. Combustible materials such as oily rags and waste shall be stored in covered metal containers.

k. Material used for cleaning shall have a flash point of not less than one hundred degrees Fahrenheit (100° F). For limited special purposes, a lower flash point cleaner may be used when it is specifically required and should be handled with extreme care.

l. Firefighting equipment shall not be tampered with and shall not be removed for other than fire protection and firefighting purposes and services. A firefighting water system may be used for wash down and other utility purposes so long as its firefighting capability is not compromised. After use, water systems must be properly drained or properly protected from freezing.

m. An adequate amount of fire extinguishers and other firefighting equipment shall be suitably located, readily accessible, and plainly labeled as to their type and method of operation.

n. Fire protection equipment shall be periodically inspected and maintained in good operating condition at all times.

o. Firefighting equipment shall be readily available near all welding operations. When welding, cutting or other hot work is performed in locations where other than a minor fire might develop, a person shall be designated as a fire watch. The area surrounding the work shall be inspected at least one (1) hour after the hot work is completed.

p. Portable fire extinguishers shall be tagged showing the date of last inspection, maintenance or recharge. Inspection and maintenance procedures shall comply with the latest edition of the National Fire Protection Association's publication NFPA 10.

q. Personnel shall be familiarized with the location of fire control equipment such as drilling fluid guns, water hoses and fire extinguishers and trained in the use of such equipment. They shall also be familiar with the procedure for requesting emergency assistance as terrain and location configuration permit. Installation shall be consistent with provisions of NFPA 58, “Standards for the Storage and Handling of Liquefied Petroleum Gases”.

606B. AIR AND GAS DRILLING

a. Drilling compressors (air or gas) shall be located at least 125 feet from the wellbore and in a direction away from the air or gas discharge line.

b. The air or gas discharge line shall be laid in as nearly a straight line as possible from the wellbore and be a minimum of 150 feet in length. The line shall be securely anchored.

c. A pilot flame shall be maintained at the end of the air or gas discharge line at all times when air, gas, mist drilling, or well testing is in progress.

d. All combustible material shall be kept at least 100 feet away from the air and gas discharge line and flare pit.

e. The air line from the compressors to the standpipe shall be of adequate strength to withstand at least the maximum discharge pressure of the compressors used, and shall be checked daily for any evidence of damage or weakness.

f. Smoking shall not be allowed within 75 feet of the air and gas discharge line and flare pit.

g. All operations associated with the drilling, completion or production of a well shall be subject to the Colorado Air Quality Control Act, 25-7-101, C.R.S.

607. HYDROGEN SULFIDE GAS

a. When well servicing operations take place in zones known to contain at or above one hundred (100) ppm hydrogen sulfide gas, as measured in the gas stream, the operator shall file a hydrogen sulfide drilling operations plan (United States Department of the Interior, Bureau of Land Management, Onshore Order No. 6, November 23, 1990).

b. When proposing to drill a well in areas where hydrogen sulfide gas in excess of one hundred (100) ppm can reasonably be expected to be encountered, the operator shall submit as part of the Form 2, Application-for-Permit-to-Drill, a hydrogen sulfide drilling operations plan (United States Department of the Interior, Bureau of Land Management, Onshore Order No. 6, November 23, 1990).

c. Any gas analysis indicating the presence of hydrogen sulfide gas shall be reported to the Commission and the local governmental designee.

608. COALBED METHANE WELLS

a. **Assessment and monitoring of plugged and abandoned wells within one-quarter (1/4) mile of proposed coalbed methane (CBM) well.**

(1) Based upon examination of the Commission and other publicly available records, operators shall identify all plugged and abandoned (P&A) wells located within one-quarter (1/4) mile of a proposed coalbed methane (CBM) well. The operator shall assess the risk of leaking gas or water to the ground surface or into subsurface water resources, taking into account plugging and cementing procedures described in any recompletion or P&A report filed with the Commission. The operator shall notify the Director of the results of the assessment of the plugging and cementing procedures. The Director shall review the assessment and take appropriate action to pursue further investigation and remediation if warranted and in accordance with Colorado Revised Statute 34-60-124(4)(A).

(2) Operators shall use reasonable good faith efforts to obtain access to all P&A wells identified under Rule 608.a.(1) above to conduct a soil gas survey at all P&A wells located within one-quarter (1/4) mile of a proposed CBM well prior to production from the proposed CBM well and again one (1) year and thereafter every three (3) years after production has commenced. Operators shall submit the results of the soil gas survey to the Director within three (3) months of conducting the survey or advise the Director that access to the P&A wells could not be obtained.

b. **Water well sampling.**

(1) If a conventional gas well or P&A well exists within one-quarter (1/4) mile of a proposed CBM well, then the two (2) closest water wells within a one-half (1/2) mile radius of the conventional gas well or the P&A well shall be sampled ("Water Quality Testing Wells"). If possible, the water wells selected should be on opposite sides of the conventional gas well or the P&A well not exceeding a one-half (1/2) mile radius. If water wells on opposite sides of the conventional gas well or the P&A well cannot be identified, then the two (2) closest wells within a one-half (1/2) mile radius of the conventional gas well or the P&A well shall be sampled. If two (2) or more conventional wells or P&A wells are located within one-quarter (1/4) mile of the proposed CBM well, then the conventional well or

the P&A well closest to a proposed CBM well shall be used for selecting water wells for sampling.

If there are no conventional gas wells or P&A wells located within a one-quarter (1/4) mile radius of the proposed CBM well, then the selected water wells shall be within one-quarter (1/4) mile of the proposed CBM well. In areas where two (2) or more water wells exist within one-quarter (1/4) mile of the proposed CBM well, then the two (2) closest water wells shall be sampled. If possible, the water wells selected should be on opposite sides of the proposed CBM well. If water wells on opposite sides of the proposed CBM well cannot be identified, then the two (2) closest wells within one-quarter (1/4) mile radius shall be sampled. If two (2) water wells do not exist within a one-quarter (1/4) mile radius, then the closest single water well within either a one-quarter (1/4) mile radius or within a one-half (1/2) mile radius shall be selected.

If no water well is located within a one-quarter (1/4) mile radius area as described above or if access is denied, then a water well within one-half (1/2) mile of the proposed CBM well shall be selected. If no water wells meet the foregoing criteria, then sampling shall not be required. If the Commission has already acquired data on a water well within one-quarter (1/4) mile of the conventional well or the P&A well, but it is not the closest water well, then it shall be given preference in selecting a water well to be tested.

(2) The "initial baseline testing" described in this section shall include all major cations and anions, total dissolved solids (TDS), iron, manganese, selenium, nitrates and nitrites, dissolved methane, field pH, sodium adsorption ration (SAR), presence of bacteria (iron related, sulfate reducing, slime, and coliform), and specific conductance. Hydrogen sulfide shall also be measured using a field test method. Field observations such as odor, water color, sediment, bubbles, and effervescence shall also be included. The location of the water well shall be surveyed in accordance with Rule 215.

(3) If free gas or a dissolved methane concentration level greater than two (2) milligrams per liter (mg/l) is detected in a water well, gas compositional analysis and stable isotope analysis of the methane (carbon and deuterium) shall be performed to determine gas type. If the test results indicate biogenic gas, no further isotopic testing shall be done. If the test results indicate thermogenic or a mixture of thermogenic and biogenic gas, then the operator shall submit to the Director an action plan to determine the source of the gas. If the methane concentration increases by more than five (5) mg/l between sampling periods, or increases to more than ten (10) mg/l, the operator shall notify the Director and the owner of the water well immediately.

(4) Operators shall make a good faith effort to conduct initial baseline testing of the selected water wells prior to the drilling of the proposed CBM well; however, not conducting baseline testing because access to water wells cannot be obtained shall not be grounds for denial of an Application for Permit-to-Drill, Form 2. Within one (1) year after completion of the proposed CBM well, a "post-completion" test shall be performed for the same analytical parameters listed above and repeated three (3) and six (6) years thereafter or in accordance with the requirements of field rules developed pursuant to Rule 608.f. If the methane concentration increases by more than five (5) mg/l between sampling periods or increases to more than ten (10) mg/l, the operator shall prepare an action plan to determine the source of the gas and notify the Director and the water well owner immediately. If no significant changes from the baseline have been identified after the third test (i.e. the six-year test), no further testing shall be required.

Additional "post-completion" test(s) may be required if changes in water quality are identified during follow-up testing. The Director may require further water well sampling at any time in response to complaints from water well owners.

(5) Copies of all test results described above shall be provided to the Commission and the water well owner within three (3) months of collecting the samples. The analytical data and surveyed well locations shall also be submitted to the Director in an electronic data deliverable format.

c. **Coal outcrop and coal mine monitoring.**

(1) If the CBM well is within two (2) miles of the outcrop of the stratigraphic contact between the coal-bearing formation and the underlying formation, or within two (2) miles of an active, inactive, or abandoned coal mine, the operator shall make a good faith effort to obtain the access necessary to survey the outcrop or mine prior to drilling the CBM well to determine whether there are gas seeps and springs or water seeps that discharge from the coal-bearing formation in the area.

(2) If a gas seep is identified during the survey, then its location and areal extent shall be surveyed in accordance with Rule 215 and the concentration of the soil gas shall be determined. If possible, a sample of gas shall be collected from the seep for compositional analysis and stable isotope analysis of the methane (carbon and deuterium). Thereafter, the operator will inspect the gas seep, survey its areal extent, and measure soil gas concentrations annually, if access can be obtained. The operator shall submit the results of the outcrop or mine monitoring to the Commission and the landowner within three (3) months of its completion of the field work. The analytical data shall also be submitted to the Director in an electronic data deliverable format.

(3) If a gas seep is identified during the survey, the Director shall advise the landowners, local government, Colorado Geological Survey (CGS), and the Colorado Division of Reclamation, Mining, and Safety (DRMS), as appropriate, of the findings. In collaboration with state, local, and private interests, the CGS, DRMS, and the Commission may elect to develop a geologic hazard survey and determine whether the area should be recommended to be designated as a geologic hazard in accordance with Colorado Revised Statute 34-1-103 and 24-65.1-103.

(4) If the CBM well is within two (2) miles of the outcrop of the stratigraphic contact between the coal-bearing formation and the underlying formation, the operator shall survey the outcrop, review publicly available geologic and hydrogeologic data, and interview landowners to identify springs or water seeps that discharge from the coal-bearing formation.

If such a water feature is identified, then the operator shall survey its location and areal extent in accordance with Rule 215, measure the flow rate, photograph the feature, and collect and analyze a water sample in accordance with Rule 608.b.(2). Thereafter, the operator will inspect, survey the areal extent of, and measure the flow rate of the spring or water seep annually, if access can be obtained. The operator shall submit the results of the spring or water seep monitoring to the Commission and the landowner within three (3) months of its completion of the field work. The analytical data shall also be submitted to the Director in an electronic data deliverable format.

d. **Prior to producing - static bottom-hole pressure survey.** Prior to producing the well, the operator shall obtain a static bottom-hole pressure test on at least the first well drilled on

a government quarter (1/4) section. The survey shall be conducted by either a direct static bottom-hole pressure measurement or by a static fluid level measurement. The data acquired by the operator and a description of the procedures used to gather the data shall be reported on a Bottom Hole Pressure, Form 13, and submitted with the Completed Interval Report, Form 5A, filed with the Director. After reviewing the quality of the static bottom-hole pressure data and the adequacy of the geographic distribution of the data, or at the request of the operator, the Director may vary the number of wells subject to the static bottom-hole pressure survey requirement. If an application for increased well density or down spacing is filed with the Commission, then additional testing may be required.

e. **Bradenhead testing.** Upon completion of any well, and on wells presently completed, the operator shall equip the bradenhead access to the annulus between the production and surface casing, as well as any intermediate casing, with approved fittings to allow safe and convenient determination of pressure and fluid flow. All valves used for annular pressure monitoring shall remain exposed and not buried to allow for COGCC visual inspection at all times. A rigid housing may be used to protect the valves, provided that the housing can be easily opened or removed by the operator upon request of COGCC staff. This rule shall apply to all wells, regardless of function, completed for CBM production or below the coal-bearing formation. All wells capable of production, injection, or observation shall be tested by the operator for pressure and flow, with results submitted to the Director on a Bradenhead Test Report, Form 17, and to other applicable regulatory agencies. Bradenhead tests shall be performed on all wells on a biennial basis. Remedial requirements shall be determined by the appropriate regulatory agency. The bradenhead testing requirement shall not apply if the operator demonstrates to the satisfaction of the Director annular cement coverage greater than fifty (50) feet above the base of surface casing and zonal isolation is confirmed by reliable evidence such as a cement bond log or cementing ticket indicating that the height of cement coverage is fifty (50) feet above the base of the surface casing, and zonal isolation is confirmed by two consecutive bradenhead tests preceded by a minimum shut-in period of seven (7) days each.

f. **Locally specific field orders.** The provisions of this Rule 608 may, with the Director's approval, be modified or superseded on a basin, region, or county specific basis by field orders developed by the Commission in consultation with affected parties, including operators, county governments, and other state or local agencies, taking into account the goals of the 600-Series Rules and particular local geologic and operational conditions. In addition, the operator or other affected party shall have the right to file an application with the Commission to develop field orders for the basin, region, or county that modify the Rule 608 requirements as provided herein, which application shall set forth an explanation of good cause for the development of such orders.

609. STATEWIDE GROUNDWATER BASELINE SAMPLING AND MONITORING:

a. **Applicability and effective date.**

(1) This Rule 609 applies to Oil Wells, Gas Wells (hereinafter, Oil and Gas Wells), Multi-Well Sites, and Dedicated Injection Wells as defined in the 100-Series Rules, for which a Form 2, Application for Permit-to-Drill, is submitted on or after May 1, 2013.

(2) This Rule 609 does not apply to an existing Oil or Gas Well that is re-permitted for use as a Dedicated Injection Well.

(3) This rule does not apply to Oil and Gas Wells, Multi-Well Sites, or Dedicated Injection Wells that are regulated under Rule 608.b., Rule 318A.e.(4), or Orders of the Commission with respect to the Northern San Juan Basin promulgated prior to the effective date of this Rule that provide for groundwater testing.

(4) Nothing in this Rule is intended, and shall not be construed, to preclude or limit the Director from requiring groundwater sampling or monitoring at other Production Facilities consistent with other applicable Rules, including but not limited to the Oil and Gas Location Assessment process, and other processes in place under 900-series E&P Waste Management Rules (Form 15, Form 27, Form 28).

(5) An operator may elect to install one or more groundwater monitoring wells to satisfy, in full or in part, the requirements of Rule 609.b., but installation of monitoring wells is not required under this Rule.

b. **Sampling locations.** Initial baseline samples and subsequent monitoring samples shall be collected from all Available Water Sources, up to a maximum of four (4), within a one-half (1/2) mile radius of a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well. If more than four (4) Available Water Sources are present within a one-half (1/2) mile radius of a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well, the operator shall select the four sampling locations based on the following criteria:

(1) Proximity. Available Water Sources closest to the proposed Oil or Gas Well, a Multi-Well Site, or Dedicated Injection Well are preferred.

(2) Type of Water Source. Well maintained domestic water wells are preferred over other Available Water Sources.

(3) Orientation of sampling locations. To extent groundwater flow direction is known or reasonably can be inferred, sample locations from both downgradient and up-gradient are preferred over cross-gradient locations. Where groundwater flow direction is uncertain, sample locations should be chosen in a radial pattern from a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well.

(4) Multiple identified aquifers available. Where multiple defined aquifers are present, sampling the deepest and shallowest identified aquifers is preferred.

(5) Condition of Water Source. An operator is not required to sample Water Sources that are determined to be improperly maintained, nonoperational, or have other physical impediments to sampling that would not allow for a representative sample to be safely collected or would require specialized sampling equipment (e.g. shut-in wells, wells with confined space issues, wells with no tap or pump, non-functioning wells, intermittent springs).

c. **Inability to locate an Available Water Source.** Prior to spudding, an operator may request an exception from the requirements of this Rule 609 by filing a Form 4, Sundry Notice, for the Director's review and approval if:

(1) No Available Water Sources are located within one-half (1/2) mile of a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well;

(2) The only Available Water Sources are determined to be unsuitable pursuant to subpart b.5, above. An operator seeking an exception on this ground shall document the condition of the Available Water Sources it has deemed unsuitable; or

(3) The owners of all Water Sources suitable for testing under this Rule refuse to grant access despite an operator's reasonable good faith efforts to obtain consent to conduct sampling. An operator seeking an exception on this ground shall document the efforts used to obtain access from the owners of suitable Water Sources.

(4) If the Director takes no action on the Sundry Notice within ten (10) business days of receipt, the requested exception from the requirements of this Rule 609 shall be deemed approved.

d. **Timing of sampling.**

(1) Initial sampling shall be conducted within 12 months prior to setting conductor pipe in a Well or the first Well on a Multi-Well Site, or commencement of drilling a Dedicated Injection Well; and

(2) Subsequent monitoring: One subsequent sampling event shall be conducted at the initial sample locations between six (6) and twelve (12) months, and a second subsequent sampling event shall be conducted between sixty (60) and seventy-two (72) months following completion of the Well or Dedicated Injection Well, or the last Well on a Multi-Well Site. Wells that are drilled and abandoned without ever producing hydrocarbons are exempt from subsequent monitoring sampling under this subpart d.

(3) Previously sampled Water Sources. In lieu of conducting the initial sampling required pursuant to subjection d.(1) or the second subsequent sampling event required pursuant to subsection d.(2), an Operator may rely on water sampling analytical results obtained from an Available Water Source within the sampling area provided:

A. The previous water sample was obtained within the 18 months preceding the initial sampling event required pursuant to subsection d.(1) or the second subsequent sampling event required pursuant to subsection d.(2); and

B. the sampling procedures, including the constituents sampled for, and the analytical procedures used for the previous water sample were substantially similar to those required pursuant to subparts e.(1) and (2), below. An operator may not rely solely on previous water sampling analytical results obtained pursuant to the subsequent sampling requirements of subsection d.(2), above, to satisfy the initial sampling requirement of subsection d.(1); and

C. the Director timely received the analytical data from the previous sampling event.

(4) The Director may require additional sampling if changes in water quality are identified during subsequent monitoring.

e. **Sampling procedures and analysis.**

(1) Sampling and analysis shall be conducted in conformance with an accepted industry standard as described in Rule 910.b.(2). A model Sampling and Analysis Plan ("COGCC Model SAP") shall be posted on the COGCC website, and shall be updated periodically to remain current with evolving industry standards.

Sampling and analysis conducted in conformance with the COGCC Model SAP shall be deemed to satisfy the requirements of this subsection f.(1). Upon request, an operator shall provide its sampling protocol to the Director.

(2) The initial baseline testing described in this section shall include pH, specific conductance, total dissolved solids (TDS), dissolved gases (methane, ethane, propane), alkalinity (total bicarbonate and carbonate as CaCO3), major anions (bromide, chloride, fluoride, sulfate, nitrate and nitrite as N, phosphorus), major cations (calcium, iron, magnesium, manganese, potassium, sodium), other elements (barium, boron, selenium and strontium), presence of bacteria (iron related, sulfate reducing, slime forming), total petroleum hydrocarbons (TPH) and BTEX compounds (benzene, toluene, ethylbenzene and xylenes). Field observations such as odor, water color, sediment, bubbles, and effervescence shall also be documented. The location of the sampled Water Sources shall be surveyed in accordance with Rule 215.

(3) Subsequent sampling to meet the requirements of subpart d.(2) shall include total dissolved solids (TDS), dissolved gases (methane, ethane, propane), major anions (bromide, chloride, sulfate, and fluoride), major cations (potassium, sodium, magnesium, and calcium), alkalinity (total bicarbonate and carbonate as CaCO3), BTEX compounds (benzene, toluene, ethylbenzene and xylenes), and TPH.

(4) If free gas or a dissolved methane concentration greater than 1.0 milligram per liter (mg/l) is detected in a water sample, gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen – 12C, 13C, 1H and 2H) shall be performed to determine gas type. The operator shall notify the Director and the owner of the water well immediately if:

A. the test results indicated thermogenic or a mixture of thermogenic and biogenic gas;

B. the methane concentration increases by more than 5.0 mg/l between sampling periods; or

C. the methane concentration is detected at or above 10 mg/l.

(5) The operator shall notify the Director immediately if BTEX compounds or TPH are detected in a water sample.

f. **Sampling Results.** Copies of all final laboratory analytical results shall be provided to the Director and the water well owner or landowner within three (3) months of collecting the samples. The analytical results, the surveyed sample Water Source locations, and the field observations shall be submitted to the Director in an electronic data deliverable format.

(1) The Director shall make such analytical results available publicly by posting on the Commission's web site or through another means announced to the public.

(2) Upon request, the Director shall also make the analytical results and surveyed Water Source locations available to the Local Governmental Designee from the jurisdiction in which the groundwater samples were collected, in the same electronic data deliverable format in which the data was provided to the Director.

g. **Liability.** The sampling results obtained to satisfy the requirements of this Rule 609, including any changes in the constituents or concentrations of constituents present in the

samples, shall not create a presumption of liability, fault, or causation against the owner or operator of a Well, Multi-Well Site, or Dedicated Injection Well who conducted the sampling, or on whose behalf sampling was conducted by a third-party. The admissibility and probity of any such sampling results in an administrative or judicial proceeding shall be determined by the presiding body according to applicable administrative, civil, or evidentiary rules.

FINANCIAL ASSURANCE AND OIL AND GAS CONSERVATION AND ENVIRONMENTAL RESPONSE FUND

701. SCOPE

The rules in this series pertain to the provision of financial assurance by operators to ensure the performance of certain obligations imposed by the Oil and Gas Conservation Act (the Act), §34-60-106 (3.5), (11), (12) and (17) C.R.S., as well as the use of the Oil and Gas Conservation and Environmental Response Fund, §34-60-124 C.R.S., as a mechanism to plug and abandon orphan wells, perform orphaned site reclamation and remediation, and to conduct other authorized environmental activities.

702. General.

Operators are required to provide financial assurance to the Commission to demonstrate that they are capable of fulfilling the obligations imposed by the Act, as described in this series. Except as otherwise specified herein, a surety bond, in a form and from a company acceptable to the Commission, is an approved method of providing financial assurance. Any other method of providing financial assurance identified in §34-60-106(13), C.R.S., shall be submitted to the Commission for approval, and shall be equivalent to the protection provided by a surety bond and may require detailed Commission review on an ongoing basis, including the use of third party consultants, the reasonable expense for which shall be charged to the operator proposing such alternative financial assurance.

a. When the Director has reasonable cause to believe that the Commission may become burdened with the costs of fulfilling the statutory obligations described herein because an operator has demonstrated a pattern of non-compliance with oil and gas regulations in this or other states, because special geologic, environmental, or operational circumstances exist which make the plugging and abandonment of particular wells more costly, or due to other special and unique circumstances, the Director may petition the Commission for an increase in any individual or blanket financial assurance required in this series.

b. The requirements of this series do not apply to situations where financial assurance has been provided to federal or Indian agencies for operations regulated solely by such agencies.

703. Surface owner protection.

Operators shall provide financial assurance to the Commission, prior to commencing any operations with heavy equipment, to protect surface owners who are not parties to a lease, surface use or other relevant agreement with the operator from unreasonable crop loss or land damage caused by such operations. The determination that crop loss or land damage is unreasonable shall be made by the Commission after the affected surface owner has filed an application in accordance with the 500 Series rules. Financial assurance for the purpose of surface owner protection shall not be required for operations conducted on state lands when a bond has been filed with the State Board of Land Commissioners.

The financial assurance required by this section shall be in the amount of two thousand dollars ($2,000) per well for non-irrigated land, or five thousand dollars ($5,000) per well for irrigated land. In lieu of such individual amounts, operators may submit statewide, blanket financial assurance in the amount of twenty five thousand dollars ($25,000). Relief granted by the Commission upon application by a surface owner pursuant to this section may include an order requiring the operator to conduct corrective or remedial action, and any monetary award for unreasonable crop loss or land damage that cannot be remediated or corrected is not limited to the amount of the operator's financial assurance hereunder.

704. Centralized E&P waste management facilities.

An operator which makes application for an offsite, centralized E&P waste management facility shall, upon approval and prior to commencing construction, provide to the Commission financial assurance in an amount equal to the estimated cost necessary to ensure the proper reclamation, closure, and abandonment of such facility as set forth in Rule 908.g, or in an amount voluntarily agreed to with the Director, or in an amount to be determined by order of the Commission. Operators of centralized E&P waste management facilities permitted prior to May 1, 2009 on federal land and April 1, 2009 for all other land shall, by July 1, 2009, comply with Rule 908.g and this Rule 704. This section does not apply to underground injection wells and multi-well pits covered under Rules 706 and 707.

705. Seismic operations.

Any operator submitting a Notice of Intent to Conduct Seismic Operations, Form 20, shall, prior to commencing such operations, provide financial assurance to the Commission in the amount of twenty five thousand dollars ($25,000) statewide blanket financial assurance to ensure the proper plugging and abandonment of any shot holes and any necessary surface reclamation.

706. Soil protection and plugging and abandonment.

Prior to commencing the drilling of a well, an operator shall provide financial assurance to the Commission to ensure the protection of the soil, the proper plugging and abandonment of the well, and the reclamation of the site in accordance with the 300 Series of drilling regulations, the 900 Series of E&P waste management, the 1000 Series of reclamation regulations, and the 1100 Series of flowline regulations.

a. The financial assurance required by this section shall be in the amount of ten thousand dollars ($10,000) per well for wells less than three thousand (3,000) feet in total measured depth and twenty thousand dollars ($20,000) per well for wells greater than or equal to three thousand (3,000) feet in total measured depth.

b. In lieu of such per-well amount, an operator may submit statewide blanket financial assurance in the amount of sixty thousand dollars ($60,000) for the drilling and operation of less than one hundred (100) wells, or one hundred thousand dollars ($100,000) for the drilling and operation of one hundred (100) or more wells.

c. All oil and gas wells, excluding domestic gas wells, with financial assurance posted prior to May 1, 2009 for federal land and April 1, 2009 for all other land, as well as all new domestic gas wells, must have financial assurances in compliance with this Rule 706 in place on July 1, 2009. Under Rule 502.b.(1), an operator may seek a variance from these financial assurance requirements under appropriate circumstances.

707. Inactive wells

a. To the extent that an operator's inactive well count exceeds such operator's financial assurance amount divided by ten thousand dollars ($10,000) for inactive wells less than three thousand (3,000) feet in total measured depth or twenty thousand dollars ($20,000) for inactive wells greater than or equal to three thousand (3,000) feet in total measured depth, such additional wells shall be considered “excess inactive wells.” For each excess inactive well, an operator's required financial assurance amount under Rule 706 shall be increased by ten thousand dollars ($10,000) for inactive wells less than three thousand (3,000) feet in total measured depth or twenty thousand dollars ($20,000) for inactive wells greater than or equal to three thousand (3,000) feet in total measured depth. This requirement shall be modified or waived if the Commission approves a plan submitted by

the operator for reducing such additional financial assurance requirement, for returning wells to production in a timely manner, or for plugging and abandoning such wells on an acceptable schedule.

In determining whether such plan is acceptable, the Commission shall take into consideration such factors as: the number of excess inactive wells; the cost to plug and abandon such wells; the proportion of such wells to the total number of wells held by the operator; any business reason the operator may have for shutting-in or temporarily abandoning such wells; the extent to which such wells may cause or have caused a significant adverse environmental impact; the financial condition of the operator; the capability of the operator to manage such plan in an orderly fashion; and the availability of plugging and abandonment services. If an increase in financial assurance is ordered pursuant to this subsection, the operator may, at its option and in compliance with these 700 Series rules, submit new financial assurance or supplement its existing financial assurance.

b. Operators shall identify and list any shut-in or temporarily abandoned wells on their monthly production/injection report. In addition, when equipment is removed from a well so as to render it temporarily abandoned, operators shall file a Sundry Notice, Form 4, with the Commission within thirty (30) days describing such activity.

c. Any person, other than the operator, who causes equipment from a well to be removed so as to render it temporarily abandoned shall, prior to conducting such activity, file a notice of intent to remove equipment and receive the approval of the Director. The Director may condition such approval on concurrent plugging and abandonment of the well or on provision of the financial assurance required of operators in this series.

708. General Liability Insurance.

All operators shall maintain general liability insurance coverage for property damage and bodily injury to third parties in the minimum amount of one million dollars ($1,000,000) per occurrence. Such policies shall include the Commission as a “certificate holder” so that the Commission may receive advance notice of cancellation.

709. Financial assurance.

All financial assurance provided to the Commission pursuant to this Series shall remain in-place until such time as the Director determines an operator has complied with the statutory obligations described herein, or until such time as the Director determines that a successor-in-interest has filed satisfactory replacement financial assurance, at which time the Director shall provide written approval for release of such financial assurance. Whenever an operator fails to fulfill any statutory obligation described herein, and the Commission undertakes to expend funds to remedy the situation, the Director shall make application to the Commission for an order calling or foreclosing the operator's financial assurance.

a. Operators and third party providers of financial assurance shall be served with a copy of such application pursuant to Rule 503. and shall be accorded an opportunity to be heard thereon. Any third party provider of financial assurance which subsequently fails to comply with a Commission order to make such financial assurance available shall be considered an unacceptable provider of any new financial assurance to operators in Colorado, until such time as it applies for and receives an order of reinstatement. This provision shall be stayed by the filing of a judicial appeal. In addition, the Commission may institute suit to recover such monies.

b. If an operator's financial assurance is called or foreclosed by the Commission, the called or foreclosed amount shall be deposited in the Oil and Gas Conservation and Environmental Response Fund to be expended by the Director for the purposes referenced in Rule 701., and an overhead recovery fee of ten percent (10%) of the funds expended by the Director as direct costs shall be charged against any excess of the financial assurance over such costs. Any remainder of such financial assurance after such cost recovery shall be returned to its provider. In no circumstances will the liability of a third party provider of financial assurance exceed the face amount of such financial assurance.

c. If an operator's financial assurance is called or foreclosed by the Commission, such operator's Certificates of Clearance, Form 10, are forthwith suspended and no sales of gas or oil shall be allowed, except as may be allowed by the Commission order, until such time as the operator's financial assurance has been replaced or restored.

d. The Director shall not approve a new Operator Registration, Form 1, or a new Certificate of Clearance, Form 10, when wells are sold or transferred until the successor operator has filed satisfactory financial assurance under the 700-Series Rules.

710. Reserved.

711. Natural gas gathering, natural gas processing and underground natural gas storage facilities.

Operators of natural gas gathering, natural gas processing, or underground natural gas storage facilities shall be required to provide statewide blanket financial assurance to ensure compliance with the 900 Series rules in the amount of fifty thousand dollars ($50,000), or in an amount voluntarily agreed to with the Director, or in an amount to be determined by order of the Commission. Operators of small systems gathering or processing less than five (5) MMSCFD may provide individual financial assurance in the amount of five thousand dollars ($5,000).

712. Surface facilities and structures appurtenant to Class II Commercial Underground Injection Control wells.

Operators of Class II commercial Underground Injection Control (UIC) wells shall be required to provide financial assurance to ensure compliance with the 900-Series Rules in the amount of fifty-thousand dollars ($50,000) for each facility, or in an amount voluntarily agreed to with the Director, or in an amount to be determined by order of the Commission. The financial assurance required by this Rule 712 shall apply to the surface facilities and structures appurtenant to the Class II commercial injection well and used prior to the disposal of E&P wastes into such well and shall be in place by July 1, 2009. The financial assurance requirements for the plugging and abandonment of Class II commercial UIC wells are specified in Rule 706.

E&P WASTE MANAGEMENT

901. INTRODUCTION

a. **General.** The rules and regulations of this series establish the permitting, construction, operating and closure requirements for pits, methods of E&P waste management, procedures for spill/release response and reporting, and sampling and analysis for remediation activities. The 900 Series rules are applicable only to E&P waste, as defined in § 34-60-103(4.5), C.R.S., or other solid waste where the Colorado Department Of Public Health And Environment has allowed remediation and oversight by the Commission.

b. **COGCC reporting forms.** The reporting required by the rules and regulations of this series shall be made on forms provided by the Director. Alternate forms may be used where equivalent information is supplied and the format has been approved by the Director.

c. **Additional requirements.** Whenever the Director has reasonable cause to believe that an operator, in the conduct of any oil or gas operation, is performing any act or practice which threatens to cause or causes a violation of Table 910-1 and with consideration of water quality standards or classifications established by the Water Quality Control Commission ("WQCC") for waters of the state, the Director may impose additional requirements, including but not limited to, sensitive area determination, sampling and analysis, remediation, monitoring, permitting and the establishment of points of compliance. Any action taken pursuant to this Rule shall comply with the provisions of Rules 324A. through D. and the 500 Series rules.

d. **Alternative compliance methods.** Operators may propose for prior approval by the Director alternative methods for determining the extent of contamination, sampling and analysis, or alternative cleanup goals using points of compliance.

e. **Sensitive area determination.** When the operator or Director has data that indicate an impact or threat of impact to ground water or surface water, the Director may require the operator to make a sensitive area determination and that determination shall be subject to the Director's approval. The sensitive area determination shall be made using appropriate geologic and hydrogeologic data to evaluate the potential for impact to ground water and surface water, such as soil borings, monitoring wells, or percolation tests that demonstrate that seepage will not reach underlying ground water or waters of the State and impact current or future uses of these waters. Operators shall submit data evaluated and analysis used in the determination to the Director.

f. **Sensitive area operations.** Operations in sensitive areas shall incorporate adequate measures and controls to prevent significant adverse environmental impacts and ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC standards and classifications.

902. PITS - GENERAL AND SPECIAL RULES

a. Pits used for exploration and production of oil and gas shall be constructed and operated to protect public health, safety, and welfare and the environment, including soil, waters of the state, and wildlife, from significant adverse environmental, public health, or welfare impacts from E&P waste, except as permitted by applicable laws and regulations.

b. Pits shall be constructed, monitored, and operated to provide for a minimum of two (2) feet of freeboard at all times between the top of the pit wall at its point of lowest elevation and

the fluid level of the pit. A method of monitoring and maintaining freeboard shall be employed. Any unauthorized release of fluids from a pit shall be subject to the reporting requirements of Rule 906.

c. Any accumulation of oil or condensate in a pit shall be removed within twenty-four (24) hours of discovery. Operators shall use skimming, steam cleaning of exposed liners, or other safe and legal methods as necessary to maintain pits in clean condition and to control hydrocarbon odors. Only de minimis amounts of hydrocarbons may be present unless the pit is specifically permitted for oil or condensate recovery or disposal use. A Form 15, Earthen Pit Report/Permit, may be revoked by the Director and the Director may require that the pit be closed if an operator repeatedly allows more than de minimis amounts of oil or condensate to accumulate in a pit. This requirement is not applicable to properly permitted and properly fenced, lined, and netted skim pits that are designed, constructed, and operated to prevent impacts to wildlife, including migratory birds.

d. Where necessary to protect public health, safety and welfare or to prevent significant adverse environmental impacts resulting from access to a pit by wildlife, migratory birds, domestic animals, or members of the general public, operators shall install appropriate netting or fencing.

e. Pits used for a period of no more than three (3) years, or more than three (3) years if the Director has issued a variance, for storage, recycling, reuse, treatment, or disposal of E&P waste or fresh water, as applicable, may be permitted in accordance with Rule 903 to service multiple wells, subject to Director approval.

f. Unlined pits shall not be constructed on fill material.

g. Except as allowed under Rule 904.a, unlined pits shall not be constructed in areas where pathways for communication with ground water or surface water are likely to exist.

h. Produced water shall be treated in accordance with Rule 907 before being placed in a production pit.

i. Operators shall utilize appropriate biocide treatments to control bacterial growth and related odors as needed.

903. PIT PERMITTING/REPORTING REQUIREMENTS

a. An Earthen Pit Report/Permit, Form 15, shall be submitted to the Director for prior approval for the following pits:

(1) All production pits.

(2) Special purpose pits except those reported under Rule 903.b.(1) or Rule 903.b.(2).

(3) Drilling pits designed for use with fluids containing hydrocarbon concentrations exceeding 10,000 ppm TPH or chloride concentrations at total well depth exceeding 15,000 ppm.

(4) Multi-well pits containing produced water, drilling fluids, or completion fluids that will be recycled or reused, except where reuse consists only of moving drilling fluids from one (1) oil and gas location to another such location for reuse there.

b. An Earthen Pit Report/Permit, Form 15, shall be submitted within thirty (30) calendar days after construction for the following:

(1) Special purpose pits used in the initial phase of emergency response.

(2) Flare pits where there is no risk of condensate accumulation.

c. An Earthen Pit Report/Permit, Form 15, shall not be required for drilling pits using water-based bentonitic drilling fluids with concentrations of TPH and chloride below those referenced in Rule 903.a.(3).

d. An Earthen Pit Report/Permit, Form 15, shall be completed in accordance with the instructions in Appendix I. Failure to complete the form in full may result in delay of approval or return of form.

e. The Director shall endeavor to review any properly completed Earthen Pit Report/Permit, Form 15, within thirty (30) calendar days after receipt. In order to allow adequate time for pit permit review and approval, operators shall submit an Earthen Pit Report/Permit, Form 15, at the same time as the Application for Permit-to-Drill, Form 2, is submitted. The Director may condition permit approval upon compliance with additional terms, provisions, or requirements necessary to protect the waters of the state, public health, or the environment.

904. PIT LINING REQUIREMENTS AND SPECIFICATIONS

a. Pits that were constructed before May 1, 2009 on federal land, or before April 1, 2009 on other land, shall comply with their permit conditions and the rules in effect at the time of their construction. The following pits shall be lined if they are constructed on or after May 1, 2009 on federal land, or on or after April 1, 2009 on other land:

(1) Drilling pits designed for use with fluids containing hydrocarbon concentrations exceeding 10,000 ppm TPH or chloride concentrations at total well depth exceeding 15,000 ppm.

(2) Production pits, other than skim pits, unless the operator demonstrates to the Director's satisfaction that the quality of the produced water is equivalent to or better than that of the underlying groundwater or the operator can clearly demonstrate by substantial evidence, such as by appropriate percolation tests, that seepage will not reach the underlying aquifer or waters of the state at contamination levels in excess of applicable standards. Subject to Rule 901.c, this requirement shall not apply to such pits in Huerfano or Las Animas Counties constructed before May 1, 2011, or to such pits in Washington, Yuma, Logan, or Morgan counties constructed before May 1, 2013.

(3) Special purpose pits, except emergency pits constructed during initial emergency response to spills/releases, or flare pits where there is no risk of condensate accumulation.

(4) Skim pits.

(5) Multi-well pits used to contain produced water, drilling fluids, or completion fluids that will be recycled or reused, except where reuse consists only of moving drilling fluids from one oil and gas location to another such location for reuse there. Subject to Rule 901.c, this requirement shall not apply to multi-well pits used to contain produced water in Huerfano or Las Animas Counties constructed before May 1, 2011, or to multi-well

pits used to contain produced water in Washington, Yuma, Logan, or Morgan counties constructed before May 1, 2013.

(6) Pits at centralized E&P waste management facilities and UIC facilities.

b. The following specifications shall apply to all pits that are required to be lined by rule or by permit condition:

(1) Materials used in lining pits shall be of a synthetic material that is impervious, has high puncture and tear strength, has adequate elongation, and is resistant to deterioration by ultraviolet light, weathering, hydrocarbons, aqueous acids, alkali, fungi or other substances in the produced water.

(2) All pit lining systems shall be designed, constructed, installed, and maintained in accordance with the manufacturers' specifications and good engineering practices.

(3) Field seams must be installed and tested in accordance with manufacturer specifications and good engineering practices. Testing results must be maintained by the operator and provided to the Director upon request.

c. The following specifications shall also apply to pits that are required to be lined, except those at centralized E&P waste management facilities, unless an oil and gas operator demonstrates to the satisfaction of the Director that a liner system offering equivalent protection to public health, safety, and welfare, including the environment and wildlife resources, will be used:

(1) Liners shall have a minimum thickness of twenty-four (24) mils. The synthetic or fabricated liner shall cover the bottom and interior sides of the pit with the edges secured with at least a twelve (12) inch deep anchor trench around the pit perimeter. The anchor trench shall be designed to secure, and prevent slippage or destruction of, the liner materials.

(2) The foundation for the liner shall be constructed with soil having a minimum thickness of twelve (12) inches after compaction covering the entire bottom and interior sides of the pit, and shall be constructed so that the hydraulic conductivity shall not exceed 1.0×10^{-7} cm/sec after testing and compaction. Compaction and permeability test results measured in the laboratory and field must be maintained by the operator and provided to the Director upon request.

(3) As an alternative to the soil foundation described in Rule 904.c.(2), the foundation may be constructed with bedding material that exceeds a hydraulic conductivity of 1.0×10^{-7} cm/sec, if a double synthetic liner system is used; however, the bottom and sides of the pit shall be padded with soil or synthetic matting type material and shall be free of sharp rocks or other material that are capable of puncturing the liner. Each synthetic liner shall have a minimum thickness of twenty-four (24) mils.

d. The following specifications shall also apply to pits used at centralized E&P waste management facilities, unless an oil and gas operator demonstrates to the satisfaction of the Director that a liner system offering equivalent protection to public health, safety, and welfare, including the environment and wildlife resources, will be used:

(1) Liners shall have a minimum thickness of sixty (60) mils. The synthetic or fabricated liner shall cover the bottom and interior sides of the pit with the edges secured

with at least a twelve (12) inch deep anchor trench around the pit perimeter. The anchor trench shall be designed to secure, and prevent slippage or destruction of, the liner materials.

(2) The foundation for the liner shall be constructed with soil having a minimum thickness of twenty-four (24) inches after compaction covering the entire bottom and interior sides of the pit, and shall be constructed so that the hydraulic conductivity shall not exceed 1.0×10^{-7} cm/sec after testing and compaction. Compaction and permeability test results measured in the laboratory and field must be maintained by the operator and provided to the Director upon request.

(3) As an alternative to the soil foundation described in Rule 904.d.(2), a secondary liner consisting of a geosynthetic clay liner, which is a manufactured hydraulic barrier typically consisting of bentonite clay or other very low permeability material, supported by geotextiles or geomembranes, which are held together by needling, stitching, or chemical adhesives, may be used.

e. In Sensitive Areas, the Director may require a leak detection system for the pit or other equivalent protective measures, including but not limited to, increased record-keeping requirements, monitoring systems, and underlying gravel fill sumps and lateral systems. In making such determination, the Director shall consider the surface and subsurface geology, the use and quality of potentially-affected ground water, the quality of the produced water, the hydraulic conductivity of the surrounding soils, the depth to ground water, the distance to surface water and water wells, and the type of liner.

905. CLOSURE OF PITS, AND BURIED OR PARTIALLY BURIED PRODUCED WATER VESSELS.

a. Drilling pits shall be closed in accordance with the 1000-Series Rules.

b. Pits not used exclusively for drilling operations, buried or partially buried produced water vessels, and emergency pits shall be closed in accordance with an approved Site Investigation and Remediation Workplan, Form 27. The workplan shall be submitted for prior Director approval and shall include a description of the proposed investigation and remediation activities in accordance with Rule 909. Emergency pits shall be closed and remediated as soon as the initial phase of emergency response operations are complete or process upset conditions are controlled.

(1) Operators shall ensure that soils and ground water meet the concentration levels of Table 910-1.

(2) **Pit evacuation.** Prior to backfilling and site reclamation, E&P waste shall be treated or disposed in accordance with Rule 907.

(3) Liners shall be disposed as follows:

A. **Synthetic liner disposal.** Liner material shall be removed and disposed in accordance with applicable legal requirements for solid waste disposal.

B. **Constructed soil liners.** Constructed soil liner material may be removed for treatment or disposal, or, where left in place, the material shall be ripped and mixed with native soils in a manner to alleviate compaction and prevent an impermeable barrier to infiltration and ground water flow and shall meet soil standards listed in Table 910-1.

(4) Soil beneath the low point of the pit must be sampled to verify no leakage of the managed fluids. Soil left in place shall meet the standards listed in Table 910-1.

c. **Discovery of a spill/release during closure.** When a spill/release is discovered during closure operations, operators shall report the spill/release on the Spill/Release Report, Form 19, in accordance with Rule 906. Leaking pits and buried or partially buried produced water vessels shall be closed and remediated in accordance with Rules 909. and 910.

d. **Unlined drilling pits.** Unlined drilling pits shall be closed and reclaimed in accordance with the 1000 Series rules and operators shall ensure that soils and ground water meet the concentration levels in Table 910-1.

906. SPILLS AND RELEASES

a. **General.** Operators shall, immediately upon discovery, control and contain all spills/releases of E&P waste or produced fluids to protect the environment, public health, safety, and welfare, and wildlife resources. Operators shall investigate, clean up, and document impacts resulting from spills/releases as soon as practicable. The Director may require additional activities to prevent or mitigate threatened or actual significant adverse environmental impacts on any air, water, soil or biological resource, or to the extent necessary to ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC ground water standards and classifications.

b. **Reporting spills or releases of E&P Waste or produced fluids.**

(1) Report to the Director. Operators shall report a spill or release of E&P Waste or produced fluids that meet any of the following criteria to the Director verbally or in writing as soon as practicable, but no more than twenty-four (24) hours after discovery (the “Initial Report”).

A. A spills/release of any size that impacts or threatens to impact any waters of the state, a residence or occupied structure, livestock, or public byway;

B. A spill/release in which one (1) barrel or more of E&P Waste or produced fluids is spilled or released outside of berms or other secondary containment;

C. A spill/release of five (5) barrels or more regardless of whether the spill/release is completely contained within berms or other secondary containment.

The Initial Report to the Director shall include, at a minimum, the location of the spill/release and any information available to the Operator about the type and volume of waste involved.

If the Initial Report was not made by submitting a COGCC Spill/Release Report, Form 19 the Operator must submit a Form 19 with the Initial Report information as soon as practicable but not later than 72 hours after discovery of the spill/release unless extended by the Director.

In addition to the Initial Report to the Director, the Operator shall make a supplemental report on Form 19 not more than 10 calendar days after the spill/release is discovered that includes an 8 1/2 x 11 inch topographic map showing the governmental section and location of the spill or an aerial photograph showing the location of the spill; all pertinent

information about the spill/release known to the Operator that has not been reported previously; and information relating to the initial mitigation, site investigation, and remediation measures conducted by the Operator.

The Director may require further supplemental reports or additional information.

(2) Notification to the local government. In addition to the Initial Report to the Director, as soon as practicable, but not more than 24 hours after discovery of a spill/release of E & P Waste or produced fluids reportable under Rule 906.b.(1)A or B, above, an Operator shall provide verbal or written notification to the entity with jurisdiction over emergency response within the local municipality if the spill/release occurred within a municipality or the local county if the spill/release did not occur within a municipality. The notification shall include, at a minimum, the information provided in the Initial Report to the Director.

(3) Notification to the Surface Owner. In addition to the Initial Report to the Director, within 24 hours after discovery of a spill/release of E & P Waste or produced fluids reportable under Rule 906.b.(1)A or B, an Operator shall provide verbal notification to the affected Surface Owner or the Surface Owner's appointed tenant. If the Surface Owner cannot be reached within 24 hours, the Operator shall continue good faith efforts to notify the Surface Owner until notice has been provided. The verbal notification shall include, at a minimum, the information provided in the Initial Report to the Director.

(4) Report to Environmental Release/Incident Report Hotline. A spill/release of any size which impact or threaten to impact any surface water supply area shall be reported to the Director and to the Environmental Release/Incident Report Hotline (1-877-518-5608). Spills and releases that impact or threaten a surface water intake shall be verbally reported to the emergency contact for that facility immediately after discovery.

(5) Reporting chemical spills or releases. Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including the Emergency Planning and Community Right-to-Know Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Oil Pollution Act, and the Clean Water Act, as applicable.

c. **Remediation of spills/releases.** When threatened or actual significant adverse environmental impacts on any air, water, soil or other environmental resource from a spill/release exist or when necessary to ensure compliance with the concentration levels in Table 910-1 with consideration to WQCC ground water standards and classifications, the Director may require operators to submit a Site Investigation and Remediation Workplan, Form 27.

(1) Such spills/releases shall be remediated in accordance with Rules 909 and 910.

(2) The operator shall make good faith efforts to notify and consult with the affected Surface Owner, or the Surface Owner's appointed tenant, prior to commencing operations to remediate E&P waste from a spill/release in an area not being utilized for oil and gas operations. Such efforts shall not unreasonably delay commencement of remediation approved by the Director.

d. **Spill/release prevention.**

(1) **Secondary containment.** Secondary containment structures shall be sufficiently impervious to contain discharged material. Secondary containment that was constructed before May 1, 2009 on federal land, or before April 1, 2009 on other land, shall comply with the rules in effect at the time of construction. Secondary containment constructed on or after May 1, 2009 on federal land, or on or after April 1, 2009 on other land shall be constructed or installed around all tanks containing oil, condensate, or produced water with greater than 3,500 milligrams per liter (mg/l) total dissolved solids (TDS) and shall be sufficient to contain the contents of the largest single tank and sufficient freeboard to contain precipitation. Operators are also subject to tank and containment requirements under Rules 603. and 604. This requirement shall not apply to water tanks with a capacity of fifty (50) barrels or less.

(2) **Spill/release evaluation.** Operators shall determine and document the cause of a spill/release of E & P Waste or produced fluids and, to the extent practicable, identify and timely implement measures to prevent spills/releases due to similar causes in the future.

907. MANAGEMENT OF E&P WASTE

a. **General requirements.**

(1) **Operator obligations.** Operators shall ensure that E&P waste is properly stored, handled, transported, treated, recycled, or disposed to prevent threatened or actual significant adverse environmental impacts to air, water, soil or biological resources or to the extent necessary to ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC ground water standards and classifications.

(2) E&P waste management activities shall be conducted, and facilities constructed and operated, to protect the waters of the state from significant adverse environmental impacts from E&P waste, except as permitted by applicable laws and regulations.

(3) **Reuse and recycling.** To encourage and promote waste minimization, operators may propose plans for managing E&P waste through beneficial use, reuse, and recycling by submitting a written management plan to the Director for approval on a Sundry Notice, Form 4, if applicable. Such plans shall describe, at a minimum, the type(s) of waste, the proposed use of the waste, method of waste treatment, product quality assurance, and shall include a copy of any certification or authorization that may be required by other laws and regulations. The Director may require additional information.

b. **Waste transportation.**

(1) E&P waste, when transported off-site within Colorado for treatment or disposal, shall be transported to facilities authorized by the Director or waste disposal facilities approved to receive E&P waste by the Colorado Department of Public Health and Environment. When transported to facilities outside of Colorado for treatment or disposal, E&P waste shall be transported to facilities authorized and permitted by the appropriate regulatory agency in the receiving state.

(2) **Waste generator requirements.** Generators of E&P waste that is transported off-site shall maintain, for not less than five (5) years, copies of each invoice, bill, or ticket and such other records as necessary to document the following requirements A through F:

A. The date of the transport;

B. The identity of the waste generator;

C. The identity of the waste transporter;

D. The location of the waste pickup site;

E. The type and volume of waste; and

F. The name and location of the treatment or disposal site.

Such records shall be signed by the transporter, made available for inspection by the Director during normal business hours, and copies thereof shall be furnished to the Director upon request.

c. **Produced water.**

(1) **Treatment of produced water.** Produced water shall be treated prior to placement in a production pit to prevent crude oil and condensate from entering the pit.

(2) **Produced water disposal.** Produced water may be disposed as follows:

A. Injection into a Class II well, permitted in accordance with Rule 325.;

B. Evaporation/percolation in a properly permitted pit;

C. Disposal at permitted commercial facilities;

D. Disposal by roadspreading on lease roads outside sensitive areas for produced waters with less than 3,500 mg/l TDS when authorized by the surface owner and in accordance with an approved waste management plan per Rule 907.a.(3). Roadspreading of produced waters shall not impact waters of the state, shall not result in pooling or runoff, and the adjacent soils shall meet the concentration levels in Table 910-1. Flowback fluids shall not be used for dust suppression.

E. Discharging into state waters, in accordance with the Water Quality Control Act and the rules and regulations promulgated thereunder.

i. Operators shall provide the Colorado discharge permit number, latitude and longitude coordinates, in accordance with Rule 215.f, of the discharge outfall, and sources of produced water on a Source of Produced Water for Disposal, Form 26, and shall include a U.S.G.S. topographic map showing the location of the discharge outfall.

ii. Produced water discharged pursuant to this subsection (2).E. may be put to beneficial use in accordance with applicable state statutes and regulations governing the use and administration of water.

F. Evaporation in a properly lined pit at a centralized E&P waste management facility permitted in accordance with Rule 908.

(3) **Produced water reuse and recycling.** Produced water may be reused for enhanced recovery, drilling, and other approved uses in a manner consistent with existing water rights and in consideration of water quality standards and classifications established by the WQCC for waters of the state, or any point of compliance established by the Director pursuant to Rule 324D.

(4) **Mitigation.** Water produced during operation of an oil or gas well may be used to provide an alternative domestic water supply to surface owners within the oil or gas field, in accordance with all applicable laws, including, but not limited to, obtaining the necessary approvals from the WQCD for constructing a new "waterworks," as defined by Section 25-1-107(1)(X)(II)(A), C.R.S. Any produced water not so used shall be disposed of in accordance with subsection (2) or (3). Providing produced water for domestic use within the meaning of this subsection (4) shall not constitute an admission by the operator that the well is dewatering or impacting any existing water well. The water produced shall be to the benefit of the surface owner within the oil and gas field and may not be sold for profit or traded.

d. **Drilling fluids.**

(1) **Recycling and reuse.** Drilling pit contents may be recycled to another drilling pit for reuse consistent with Rule 903.

(2) **Treatment and disposal.** Drilling fluids may be treated or disposed as follows:

A. Injection into a Class II well permitted in accordance with Rule 325;

B. Disposal at a commercial solid waste disposal facility; or

C. Land treatment or land application at a centralized E&P waste management facility permitted in accordance with Rule 908.

(3) **Additional authorized disposal of water-based bentonitic drilling fluids.** Water-based bentonitic drilling fluids may be disposed as follows:

A. Drying and burial in pits on non-crop land. The resulting concentrations shall not exceed the concentration levels in Table 910-1, below; or

B. Land application as follows:

i. **Applicability.** Acceptable methods of land application include, but are not limited to, production facility construction and maintenance, and lease road maintenance.

ii. **Land application requirements.** The average thickness of water-based bentonitic drilling fluid waste applied shall be no more than three (3) inches prior to incorporation. The waste shall be applied to prevent ponding or erosion and shall be incorporated as a beneficial amendment into the native soils within ten (10) days of application. The resulting concentrations shall not exceed those in Table 910-1.

iii. **Surface owner approval.** Operators shall obtain written authorization from the surface owner prior to land application of water-based bentonitic drilling fluids.

iv. **Operator obligations.** Operators shall maintain a record of the source, the volume, and the location where the land application of the water-based bentonitic drilling fluid occurred. Upon the Director's written request, this information shall be provided within five (5) business days, in a format readily reviewable by the Director. Operators with control and authority over the wells from which the water-based bentonitic drilling fluid wastes are obtained retain responsibility for the land application operation, and shall diligently cooperate with the Director in responding to complaints regarding land application of water-based bentonitic drilling fluids.

v. **Approval.** Prior Director approval is not required for reuse of water-based bentonitic drilling fluids for land application as a soil amendment.

e. **Oily waste.** Oily waste includes those materials containing crude oil, condensate or other E&P waste, such as soil, frac sand, drilling fluids, and pit sludge that contain hydrocarbons.

(1) Oily waste may be treated or disposed as follows:

A. Disposal at a commercial solid waste disposal facility;

B. Land treatment onsite; or

C. Land treatment at a centralized E&P waste management facility permitted in accordance with Rule 908.

(2) Land treatment requirements:

A. In the case of a reportable spill, Operators shall submit a Site Investigation and Remediation Workplan, Form 27, for prior approval by the Director. Treatment shall thereafter be completed in accordance with the workplan and Rules 909. and 910.

B. Free oil shall be removed from the oily waste prior to land treatment.

C. Oily waste shall be spread evenly to prevent pooling, ponding, or runoff.

D. Contamination of stormwater runoff, ground water, or surface water shall be prevented.

E. Biodegradation shall be enhanced by disking, tilling, aerating, or addition of nutrients, microbes, water or other amendments, as appropriate.

F. Land-treated oily waste incorporated in place or beneficially reused shall not exceed the concentrations in Table 910-1.

F.

G. When land treatment occurs in an area not being utilized for oil and gas operations, operators shall obtain prior written surface owner approval. When land treatment occurs on an approved Oil and Gas Location prior to completion of interim reclamation or on the surface disturbance remaining after interim reclamation, notice shall be provided to the surface owner.

H. Land treatment shall be conducted in a manner that does not preclude compliance with reclamation rules 1003 and 1004.

f. **Other E&P Waste.** Other E&P waste such as workover fluids, tank bottoms, pigging wastes from gathering and flow lines, and natural gas gathering, processing, and storage wastes may be treated or disposed of as follows:

(1) Disposal at a commercial solid waste disposal facility;

(2) Treatment at a centralized E&P waste management facility permitted in accordance with Rule 908;

(3) Injection into a Class II injection well permitted in accordance with Rule 325; or

(4) An alternative method proposed in a waste management plan in accordance with rule 907.a.(3) and approved by the Director.

907A. MANAGEMENT OF NON-E&P WASTE

a. Certain wastes generated by oil and gas-related activities are non-E&P wastes and are not exempt from regulation as solid or hazardous wastes. These wastes need to be properly identified and disposed of in accordance with state and federal regulations.

b. Certain wastes generated by oil and gas-related activities can either be E&P wastes or non-E&P wastes depending on the circumstances of their generation.

c. The hazardous waste regulations require that a hazardous waste determination be made for any non-E&P solid waste. Hazardous wastes require storage, treatment, and disposal practices in accordance with 6 C.C.R. 1007-3. All non-hazardous/non-E&P wastes are considered solid waste which require storage, treatment, and disposal in accordance with 6 C.C.R. 1007-2.

908. CENTRALIZED E&P WASTE MANAGEMENT FACILITIES

a. **Applicability.** Operators may establish non-commercial, centralized E&P waste management facilities for the treatment, disposal, recycling or beneficial reuse of E&P waste. This rule applies only to non-commercial facilities, which means the operator does not represent itself as providing E&P waste management services to third parties, except as part of a unitized area or joint operating agreement or in response to an emergency. Centralized facilities may include components such as land treatment or land application sites, pits, and recycling equipment.

b. **Permit requirements.** Before any person shall commence construction of a centralized E&P waste management facility, such person shall file with the Director an application on Form 28 and pay a filing and service fee established by the Commission (see Appendix III), and obtain the Director's approval. The application shall contain the following:

(1) The name, address, phone and fax number of the operator, and a designated contact person.

(2) The name, address, and phone number of the surface owner of the site, if not the operator, and the written authorization of such surface owner.

(3) The legal description of the site.

(4) A general topographic, geologic, and hydrologic description of the site, including immediately adjacent land uses, a topographic map of a scale no less than 1:24,000 showing the location, and the average annual precipitation and evaporation rates at the site.

(5) **Centralized facility siting requirements.**

A. A site plan showing drainage patterns and any diversion or containment structures, and facilities such as roads, fencing, tanks, pits, buildings, and other construction details.

B. Scaled drawings of entire sections containing the proposed facility. The field measured distances from the nearer north or south and nearer east or west section lines shall be measured at ninety (90) degrees from said section lines to facility boundaries and referenced on the drawing. A survey shall be provided including a complete description of established monuments or collateral evidence found and all aliquot corners.

C. The facility shall be designed to control public access, prevent unauthorized vehicular traffic, provide for site security both during and after operating hours, and prevent illegal dumping of wastes. Appropriate measures shall also be implemented to prevent access to the centralized facility by wildlife or domestic animals.

D. Centralized facilities shall have a fire lane of at least ten (10) feet in width around the active treatment areas and within the perimeter fence. In addition, a buffer zone of at least ten (10) feet shall be maintained within the perimeter fire lane.

E. Surface water diversion structures, including, but not limited to, berms and ditches, shall be constructed to accommodate a one hundred (100) year, twenty four (24) hour event. The facility shall be designed and constructed with a run-on control system to prevent flow onto the facility during peak discharge and a run-off control system to contain the water volume from a twenty-five (25) year, twenty-four (24) hour storm.

(6) **Waste profile.** For each type of waste, the amounts to be received and managed by the facility shall be estimated on a monthly average basis. For each waste type to be treated, a characteristic waste profile shall be completed.

(7) **Facility design and engineering.** Facility design and engineering data, including plans and elevations, design basis, calculations, and process description.

A. Geologic data, including, but not limited to:

i. Type and thickness of unconsolidated soils;

ii. Type and thickness of consolidated bedrock, if applicable;

iii. Local and regional geologic structures; and

iv. Any geologic hazards that may affect the design and operation of the facility.

B. Hydrologic data, including, but not limited to:

i. Surface water features within two (2) miles;

ii. Depth to shallow ground water and major aquifers;

iii. Water wells within one (1) mile of the site boundary and well depth, depth to water, screened intervals, yields, and aquifer name;

iv. Hydrologic properties of shallow ground water and major aquifers including flow direction, flow rate, and potentiometric surface;

v. Site location in relation to the floodplain of nearby surface water features;

vi. Existing quality of shallow ground water; and

vii. An evaluation of the potential for impacts to nearby surface water and ground water.

C. Engineering data, including, but not limited to:

i. Type and quantity of material required for use as a liner, including design components;

ii. Location and depth of cut for liners;

iii. Location, dimensions, and grades of all surface water diversion structures;

iv. Location and dimensions of all surface water containment structures; and

v. Location of all proposed facility structures and access roads.

(8) **Operating plan.** An operating plan, including, but not limited to:

A. A detailed description of the method of treatment, loading rates, and application of nutrients and soil amendments;

B. Dust and moisture control;

C. Sampling;

D. Inspection and maintenance;

E. Emergency response;

F. Record-keeping;

G. Site security;

H. Hours of operation;

I. Noise and odor mitigation; and

J. Final disposition of waste. Where treated waste will be beneficially reused, a description of reuse and method of product quality assurance shall be included.

(9) **Ground water monitoring.**

A. **Water Wells.**

Water samples shall be collected from water wells known to the operator or registered with the Colorado State Engineer within a one (1) mile radius of the proposed facility and shall be analyzed to establish baseline water quality. Analytical parameters shall be selected based upon the proposed waste stream and shall include, at a minimum, all major cations and anions, total dissolved solids, iron and manganese, nutrients (nitrates, nitrites, selenium), benzene, toluene, ethylbenzene, xylenes, pH, and specific conductance. Operators shall use reasonable good faith efforts to identify and obtain access to such water wells for the purpose of collecting water samples. If access cannot be obtained, then the operator shall notify the Director of the wells for which access was not obtained and sampling of such wells by the operator shall not be required. Not conducting sampling because access to water wells cannot be obtained shall not be grounds for denial of the proposed facility.

Copies of all test results described above shall be provided to the Director and the water well owner within three (3) months of collecting the samples. Laboratory results shall also be submitted to the Director in an electronic data deliverable format.

B. **Site-specific monitoring wells.**

i. Where applicable, the Director shall require ground water monitoring to ensure compliance with the concentration levels in Table 910-1 and WQCC standards and classifications by establishing points of compliance, unless an oil and gas operator demonstrates to the satisfaction of the Director that an alternative method offering equivalent protection of public health, safety, and welfare, including the environment and wildlife resources, can be employed and provided the operator employs a dual liner with a leak detection system that provides for immediate leak detection from the uppermost liner. All monitoring well construction must be completed in accordance with the State Engineer's regulations on well construction, "Water Well Construction Rules" (2 C.C.R. 402-2).

ii. Where monitoring is required, the direction of flow, ground water gradient and quality of water shall be established by the installation of a minimum of three (3) monitor wells, including an up-gradient well and two (2) down-gradient wells that will serve

as points of compliance, or other methods authorized by the Director.

(10) **Surface water monitoring.** Where applicable, the Director shall require baseline and periodic surface water monitoring to ensure compliance with WQCC surface water standards and classifications. Operators shall use reasonable good faith efforts to obtain access to such surface water for the purpose of collecting water samples. If access cannot be obtained, then the operator shall notify the Director of the surface water for which access was not obtained and sampling of such surface water by the operator shall not be required. Not conducting sampling because access to surface water cannot be obtained shall not be grounds for denial of the proposed facility.

(11) **Contingency plan.** A contingency plan that describes the emergency response operations for the facility, 24-hour contact information for the person who has authority to initiate emergency response actions, and an outline of responsibilities under the joint operating agreement regarding maintenance, closure, and monitoring of the facility.

c. **Permit approval.** The Director shall endeavor to approve or deny the properly completed permit within thirty (30) days after receipt and may condition permit approval as necessary to prevent any threatened or actual significant adverse environmental impact on air, water, soil or biological resources or to the extent necessary to ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC ground water standards and classifications.

d. **Financial assurance.** The operator of a centralized E&P waste management facility shall submit for the Director's approval such financial assurance as required by Rule 704. prior to issuance of the operating permit.

e. **Facility modifications.** Throughout the life of the facility the operator shall submit proposed modifications to the facility design, operating plan, permit data, or permit conditions to the Director for prior approval.

f. **Annual permit review.** To ensure compliance with permit conditions and the 900 Series rules, the facility permit shall be subject to an annual review by the Director. To facilitate this review, the operator shall submit an annual report summarizing operations, including the types and volumes of waste actually handled at the facility. The Director may require additional information.

g. **Closure.**

(1) **Preliminary closure plan.** A general preliminary plan for closure shall be submitted with the Centralized E&P Waste Management Facility Permit, Form 28. The preliminary closure plan shall include, but not be limited to:

A. A general plan for closure and reclamation of the entire facility, including a description of the activities required to decommission and remove all equipment, close and reclaim pits, dispose of or treat residual waste, collect samples as needed to verify compliance with soil and ground water standards, implement post-closure monitoring, and complete other remediation, as required.

B. An estimate of the cost to close and reclaim the entire facility and to conduct post-closure monitoring. Cost estimates shall be subject to review by the Director.

(2) **Final closure plan.** A detailed Site Investigation and Remediation Workplan, Form 27, shall be submitted at least sixty (60) days prior to closure for approval by the Director. The workplan shall include, but not be limited to, a description of the activities required to decommission and remove all equipment, close and reclaim pits, dispose of or treat residual waste, collect samples as needed to verify compliance with soil and ground water standards, implement post-closure monitoring, and complete other remediation, as required.

h. Operators may be subject to local requirements for zoning and construction of facilities and shall provide copies of any approval notices, permits, or other similar types of notifications for the facility from local governments or other agencies to the Director for review prior to issuance of the operating permit.

909. SITE INVESTIGATION, REMEDIATION, AND CLOSURE

a. **Applicability.** This section applies to the closure and remediation of pits other than drilling pits constructed pursuant to Rule 903.a.(3); investigation, reporting and remediation of spills/releases; permitted waste management facilities including treatment facilities; plugged and abandoned wellsites; sites impacted by E&P waste management practices; or other sites as designated by the Director.

b. **General site investigation and remediation requirements.**

(1) **Sensitive Area Determination.** Operators shall complete a sensitive area determination in accordance with Rule 901.e.

(2) **Sampling and analyses.** Sampling and analysis of soil and ground water shall be conducted in accordance with Rule 910. to determine the horizontal and vertical extent of any contamination in excess of the concentrations in Table 910-1.

(3) **Management of E&P waste.** E&P waste shall be managed in accordance with Rule 907.

(4) **Pit evacuation.** Prior to backfilling and site reclamation, E&P waste shall be treated or disposed in accordance with Rule 907. and the 1000 Series rules.

(5) **Remediation.** Remediation shall be performed in a manner to mitigate, remove, or reduce contamination that exceeds the concentrations in Table 910-1 in order to ensure protection of public health, safety, and welfare, and to prevent and mitigate significant adverse environmental impacts. Soil that does not meet concentrations in Table 910-1 shall be remediated. Ground water that does not meet concentrations in Table 910-1 shall be remediated in accordance with a Site Investigation and Remediation Workplan, Form 27.

(6) **Reclamation.** Remediation sites shall be reclaimed in accordance with the 1000 Series rules for reclamation.

c. **Site Investigation And Remediation Workplan, Form 27.** Operators shall prepare and submit for prior Director approval a Site Investigation and Remediation Workplan, Form 27, for the following operations and remediation activities:

(1) Unlined pit closure when required by Rule 905.

(2) Remediation of spills/releases in accordance with Rule 906.

(3) Land treatment of oily waste in accordance with Rule 907.e.

(4) Closure of centralized E&P waste management facilities in accordance with Rule 908.g.

(5) Remediation of impacted ground water in accordance with Rule 910.b.(4).

d. **Multiple sites.** Remediation of multiple sites may be submitted on a single workplan with prior Director approval.

e. **Closure.**

(1) Remediation and reclamation shall be complete upon compliance with the concentrations in Table 910-1, or upon compliance with an approved workplan.

(2) **Notification of completion.** Within thirty (30) days after conclusion of site remediation and reclamation activities operators shall provide the following notification of completion:

A. Operators conducting remediation operations in accordance with Rule 909.b. shall submit to the Director a Site Investigation and Remediation Workplan, Form 27, containing information sufficient to demonstrate compliance with these rules.

B. Operators conducting remediation under an approved workplan shall submit to the Director, by adding or attaching to the original workplan, information sufficient to demonstrate compliance with the workplan.

f. **Release of financial assurance.** Financial assurance required by Rule 706. may be held by the Director until the required remediation of soil and/or ground water impacts is completed in accordance with the approved workplan, or until cleanup goals are met.

910. CONCENTRATIONS AND SAMPLING FOR SOIL AND GROUND WATER

a. **Soil and groundwater concentrations.** The concentrations for soil and ground water are in Table 910-1. Ground water standards and analytical methods are derived from the ground water standards and classifications established by WQCC.

b. **Sampling and analysis.**

(1) **Existing workplans.** Sampling and analysis for sites subject to an approved workplan shall be conducted in accordance with the workplan and the sampling and analysis requirements described in this rule.

(2) **Methods for sampling and analysis.** Sampling and analysis for site investigation or confirmation of successful remediation shall be conducted to determine the nature and extent of impact and confirm compliance with appropriate concentration levels in Table 910-1.

A. **Field analysis.** Field measurements and field tests shall be conducted using appropriate equipment, calibrated and operated according to

manufacturer specifications, by personnel trained and familiar with the equipment.

B. **Sample collection.** Samples shall be collected, preserved, documented, and shipped using standard environmental sampling procedures in a manner to ensure accurate representation of site conditions.

C. **Laboratory analytical methods.** Laboratories shall analyze samples using standard methods (such as EPA SW-846 or API RP-45) appropriate for detecting the target analyte. The method selected shall have detection limits less than or equal to the concentrations in Table 910-1.

D. **Background sampling.** Samples of comparable, nearby, non-impacted, native soil, ground water or other medium may be required by the Director for establishing background conditions.

(3) **Soil sampling and analysis.**

A. **Applicability.** If soil contamination is suspected or known to exist as a result of spills/releases or E&P waste management, representative samples of soil shall be collected and analyzed in accordance with this rule.

B. **Sample collection.** Samples shall be collected from areas most likely to have been impacted, and the horizontal and vertical extent of contamination shall be determined. The number and location of samples shall be appropriate to the impact.

C. **Sample analysis.** Soil samples shall be analyzed for contaminants listed in Table 910-1 as appropriate to assess the impact or confirm remediation. The analytical parameters shall be selected based on site-specific conditions and process knowledge and shall be agreed to and approved by the Director.

D. **Soil impacted by produced water.** For impacts to soil due to produced water, samples from comparable, nearby non-impacted native soil shall be collected and analyzed for purposes of establishing background soil conditions including pH and electrical conductivity (EC). Where EC of the impacted soil exceeds the level in Table 910-1, the sodium adsorption ratio (SAR) shall also be determined.

E. **Soil impacted by hydrocarbons.** For impacts to soil due to hydrocarbons, samples shall be analyzed for TPH or organic compounds per Table 910-1 as determined by site-specific conditions and process knowledge.

(4) **Ground water sampling and analysis.**

A. **Applicability.** Operators shall collect and analyze representative samples of ground water in accordance with these rules under the following circumstances:

(i) Where ground water contamination is suspected or known to exceed the concentrations in Table 910-1;

(ii) Where impacted soils are in contact with ground water; or

(iii) Where impacts to soils extend down to the high water table.

B. **Sample collection.** Samples shall be collected from areas most likely to have been impacted, downgradient or in the middle of excavated areas. The number and location of samples shall be appropriate to determine the horizontal and vertical extent of the impact. If the concentrations in Table 910-1 are exceeded, the direction of flow and a ground water gradient shall be established, unless the extent of the contamination and migration can otherwise be adequately determined.

C. **Sample analysis.** Ground water samples shall be analyzed for benzene, toluene, ethylbenzene, xylene, and API RP-45 constituents, or other parameters appropriate for evaluating the impact. The analytical parameters shall be selected based on site-specific conditions and process knowledge and shall be agreed to and approved by the Director.

D. **Impacted ground water.** Where ground water contaminants exceed the concentrations listed in Table 910-1, operators shall notify the Director and submit to the Director for prior approval a Site Investigation and Remediation Workplan, Form 27, for the investigation, remediation, or monitoring of ground water to meet the required concentrations in Table 910-1.

911. PIT, BURIED OR PARTIALLY BURIED PRODUCED WATER VESSEL, BLOWDOWN PIT, AND BASIC SEDIMENT/TANK BOTTOM PIT MANAGEMENT REQUIREMENTS PRIOR TO DECEMBER 30, 1997.

a. **Applicability.** This rule applies to the management, operation, closure and remediation of drilling, production and special purpose pits, buried or partially buried produced water vessels, blowdown pits, and basic sediment/tank bottom pits put into service prior to December 30, 1997 and unlined skim pits put into service prior to July 1, 1995. For pits constructed after December 30, 1997 and skim pits constructed after July 1, 1995, operators shall comply with the requirements contained in Rules 901. through 910.

b. **Inventory.** Operators were required to submit to the Director no later than December 31, 1995, an inventory identifying production pits, buried or partially buried produced water vessels, blowdown pits, and basic sediment/tank bottom pits that existed on June 30, 1995. The inventory required operators to provide the facility name, a description of the location, type, capacity and use of pit/vessel, whether netted or fenced, lined or unlined, and where available, water quality data. Operators who have failed to submit the required inventory are in continuing violation of this rule.

c. **Sensitive area determination.**

(1) For unlined production and special purpose pits constructed prior to July 1, 1995 and not closed by December 30, 1997, operators were required to determine whether the pit was located within a sensitive area in accordance with the Sensitive Area Determination Decision Tree, Figure 901-1 (now Rule 901.e.) and submit data evaluated and analysis used in the determination to the Director on a Sundry Notice, Form 4. In December 2008, Figure 901-1 was deleted from the 900-Series Rules.

(2) For steel, fiberglass, concrete, or other similar produced water vessels that were buried or partially buried and located in sensitive areas prior to December 30,

1997, operators were required to test such vessels for integrity, unless a monitoring or leak detection system was put in place.

d. The following permitting/reporting requirements applied to pits constructed prior to December 30, 1997:

(1) A Sundry Notice, Form 4, including the name, address, and phone number of the primary contact person operating the production pit for the operator, the facility name, a description of the location, type, capacity and use of pit, engineering design, installation features and water quality data, if available, was required for the following:

A. Lined production pits and lined special purpose pits constructed after July 1, 1995.

B. Unlined production pits constructed prior to July 1, 1995 which are lined in accordance with Rule 905. by December 30, 1997.

(2) An Application For Permit For Unlined Pit, Form 15 was required for the following:

A. Unlined production pits and special purpose pits in sensitive areas constructed prior to July 1, 1995, and not closed by December 30, 1997.

B. Unlined production pits outside sensitive areas constructed after July 1, 1995 and not closed by December 30, 1997.

(3) An Application For Permit For Unlined Pit, Form 15 and a variance under Rule 904.e.(1). (repealed, now Rule 502.b.) was required for unlined production pits and unlined special purpose pits in sensitive areas constructed after July 1, 1995.

(4) A Sundry Notice, Form 4 was required for unlined production pits outside sensitive areas receiving produced water at an average daily rate of five (5) or less barrels per day calculated on a monthly basis for each month of operation constructed prior to December 30, 1997.

e. The Director may have established points of compliance for unlined production pits and special purpose pits and for lined production pits in sensitive areas constructed after July 1, 1995.

f. **Closure requirements.**

(1) Operators of production or special purpose pits existing on July 1, 1995 which were closed before December 30, 1997, were required to submit a Sundry Notice, Form 4, within thirty (30) days of December 30, 1997. The Sundry Notice, Form 4 shall include a copy of the existing pit permit, if a permit was obtained, and a description of the closure process.

(2) Pits closed prior to December 30, 1997 were required to be reclaimed in accordance with the 1000 Series rules. Pits closed after December 30, 1997 shall be closed in accordance with the 900 Series rules and reclaimed in accordance with the 1000 Series rules.

(3) Operators of steel, fiberglass, concrete or other similar produced water vessels buried or partially buried and located in sensitive areas were required to repair or replace vessels and tanks found to be leaking. Operators shall repair or replace

vessels and tanks found to be leaking. Operators shall submit to the Director a Sundry Notice, Form 4, describing the integrity testing results and action taken within thirty (30) days of December 30, 1997.

(4) Closure of pits and steel, fiberglass, concrete or other similar produced water vessels, and associated remediation operations conducted prior to December 30, 1997 are not subject to Rules 905., 906., 907., 909. and 910.

912. VENTING OR FLARING NATURAL GAS

a. The unnecessary or excessive venting or flaring of natural gas produced from a well is prohibited.

b. Except for gas flared or vented during an upset condition, well maintenance, well stimulation flowback, purging operations, or a productivity test, gas from a well shall be flared or vented only after notice has been given and approval obtained from the Director on a Sundry Notice, Form 4, stating the estimated volume and content of the gas. The notice shall indicate whether the gas contains more than one (1) ppm of hydrogen sulfide. If necessary to protect the public health, safety or welfare, the Director may require the flaring of gas.

c. Gas flared, vented or used on the lease shall be estimated based on a gas-oil ratio test or other equivalent test approved by the Director, and reported on Operator's Monthly Report of Operations, Form 7.

d. Flared gas that is subject to Sundry Notice, Form 4, shall be directed to a controlled flare in accordance with Rule 903.b.(2) or other combustion device operated as efficiently as possible to provide maximum reduction of air contaminants where practicable and without endangering the safety of the well site personnel and the public.

e. Operators shall notify the local emergency dispatch or the local governmental designee of any natural gas flaring. Notice shall be given prior to flaring when flaring can be reasonably anticipated, or as soon as possible, but in no event more than two (2) hours after the flaring occurs.

Table 910-1
CONCENTRATION LEVELS[1]

Contaminant of Concern	Concentrations
Organic Compounds in Soil	
TPH (total volatile and extractable petroleum hydrocarbons)	**500 mg/kg**
Benzene	**0.17 mg/kg[2]**
Toluene	**85 mg/kg[2]**
Ethylbenzene	**100 mg/kg[2]**
Xylenes (total)	**175 mg/kg[2]**
Acenaphthene	**1,000 mg/kg[2]**
Anthracene	**1,000 mg/kg[2]**
Benz(a)anthracene	**0.22 mg/kg[2]**
Benzo(b)fluoranthene	**0.22 mg/kg[2]**
Benzo(k)fluoranthene	**2.2 mg/kg[2]**
Benzo(a)pyrene	**0.022 mg/kg[2]**
Chrysene	**22 mg/kg[2]**
Dibenzo(a,h)anthracene	**0.022 mg/kg[2]**
Fluoranthene	**1,000 mg/kg[2]**

Fluorene	**1,000 mg/kg[2]**
Indeno(1,2,3,c,d)pyrene	**0.22 mg/kg[2]**
Naphthalene	**23 mg/kg[2]**
Pyrene	**1,000 mg/kg[2]**
Organic Compounds in Ground Water	
Benzene	**5 µg/l[3]**
Toluene	**560 to 1,000 µg/l[3]**
Ethylbenzene	**700 µg/l[3]**
Xylenes (Total)	**1,400 to 10,000 µg/l[3,4]**
Inorganics in Soils	
Electrical Conductivity (EC)	**<4 mmhos/cm or 2x background**
Sodium Adsorption Ratio (SAR)	**<12[5]**
pH	**6-9**
Inorganics in Ground Water	
Total Dissolved Solids (TDS)	**<1.25 x background[3]**
Chlorides	**<1.25 x background[3]**
Sulfates	**<1.25 x background[3]**
Metals in Soils	
Arsenic	**0.39 mg/kg[2]**
Barium (LDNR True Total Barium)	**15,000 mg/kg[2]**
Boron (Hot Water Soluble)	**2 mg/l[3]**
Cadmium	**70 mg/kg[3,6]**
Chromium (III)	**120,000 mg/kg[2]**
Chromium (VI)	**23 mg/kg[2,6]**
Copper	**3,100 mg/kg[2]**
Lead (inorganic)	**400 mg/kg[2]**
Mercury	**23 mg/kg[2]**
Nickel (soluble salts)	**1,600 mg/kg[2,6]**
Selenium	**390 mg/kg[2,6]**
Silver	**390 mg/kg[2]**
Zinc	**23,000 mg/kg[2,6]**
Liquid Hydrocarbons in Soils and Ground Water	
Liquid hydrocarbons including condensate and oil	**Below detection level**

COGCC recommends that the latest version of EPA SW 846 analytical methods be used where possible and that analyses of samples be performed by laboratories that maintain state or national accreditation programs.

[1] Consideration shall be given to background levels in native soils and ground water.
[2] Concentrations taken from CDPHE-HMWMD Table 1 Colorado Soil Evaluation Values (December 2007).
[3] Concentrations taken from CDPHE-WQCC Regulation 41 - The Basic Standards for Ground Water.
[4] For this range of standards, the first number in the range is a strictly health-based value, based on the WQCC's established methodology for human health-based standards. The second number in the range is a maximum contaminant level (MCL), established under the Federal Safe Drinking Water Act which has been determined to be an acceptable level of this chemical in public water supplies, taking treatability and laboratory detection limits into account. The WQCC intends that control requirements for this chemical be implemented to attain a level of ambient water quality that is at least equal to the first number in the range except as follows: 1) where ground water quality exceeds the first number in the range due to a release of contaminants that occurred prior to September 14, 2004 (regardless of the date of discovery or subsequent migration of such contaminants) clean-up levels for the entire contaminant plume shall be no more restrictive than the second number in the range or the ground water quality resulting from such release, whichever is more protective, and 2) whenever the WQCC has adopted alternative, site-specific standards for the chemical, the site-specific standards shall apply instead of these statewide standards.
[5] Analysis by USDA Agricultural Handbook 60 method (20B) with soluble cations determined by method (2). Method (20B) = estimation of exchangeable sodium percentage and exchangeable potassium percentage from soluble cations. Method (2) = saturated paste method (note: each analysis requires a unique sample of

at least 500 grams). If soils are saturated, USDA Agricultural Handbook 60 with soluble cations determined by method (3A) saturation extraction method.

[6] The table value for these inorganic constituents is taken from the CDPHE-HMWMD Table 1 Colorado Soil Evaluation Values (December 2007). However, because these values are high, it is possible that site-specific geochemical conditions may exist that could allow these constituents to migrate into ground water at levels exceeding ground water standards even though the concentrations are below the table values. Therefore, when these constituents are present as contaminants, a secondary evaluation of their leachability must be performed to ensure ground water protection.

RULES AND REGULATIONS

DEFINITIONS
(100 Series)

ACT shall mean the Oil and Gas Conservation Act of the State of Colorado.

APPLICANT shall mean the person who institutes a proceeding before the Commission which it has standing to institute under these rules.

AQUIFER shall mean a geologic formation, group of formations or part of a formation that can both store and transmit ground water. It includes both the saturated and unsaturated zone but does not include the confining layer which separates two (2) adjacent aquifers.

AUTHORIZED DEPUTY shall mean a representative of the Director as authorized by the Commission.

AVAILABLE WATER SOURCE shall mean a water source for which the water well owner, owner of a spring, or a land owner, as applicable, has given consent for sampling and testing and has consented to having the sample data obtained made available to the public, including without limitation, being posted on the COGCC website.

BARREL shall mean 42 (U.S.) gallons at 60° F. at atmospheric pressure.

BATTERY shall mean the point of collection (tanks) and disbursement (tank, meter, LACT unit) of oil or gas from producing well(s).

BASE FLUID shall mean the continuous phase fluid type, such as water, used in a hydraulic fracturing treatment.

BEST MANAGEMENT PRACTICES (BMPs) are practices that are designed to prevent or reduce impacts caused by oil and gas operations to air, water, soil, or biological resources, and to minimize adverse impacts to public health, safety and welfare, including the environment and wildlife resources.

BRADENHEAD shall mean the annular space between the surface casing and the next smaller diameter casing string that extends up to the wellhead.

BRADENHEAD TEST AREA shall mean any area designated as a bradenhead test area by the Commission under Rule 207.b.

BUILDING UNIT shall mean a Residential Building Unit; and every five thousand (5,000) square feet of building floor area in commercial facilities or every fifteen thousand (15,000) square feet of building floor area in warehouses that are operating and normally occupied during working hours.

CEASE AND DESIST ORDER shall mean an order issued by the Commission or the Director pursuant to C.R.S. §34-60-121(5).

CEMENT shall be measured in 94-pound sacks.

CENTRALIZED E&P WASTE MANAGEMENT FACILITY shall mean a facility, other than a commercial disposal facility regulated by the Colorado Department of Public Health and Environment, that (1) is either used exclusively by one owner or operator or used by more than one operator under an operating agreement; and (2) is operated for a period greater than three (3) years; and (3) receives for collection, treatment, temporary storage, and/or disposal produced water, drilling fluids, completion fluids, and any other exempt E&P wastes that are generated from two or more production units or areas or from a set of commonly owned or operated leases. This definition includes oil-field naturally occurring radioactive

materials (NORM) related storage, decontamination, treatment, or disposal. This definition excludes a facility that is permitted in accordance with Rule 903 pursuant to Rule 902.e.

CHEMICAL ABSTRACTS SERVICE shall mean the division of the American Chemical Society that is the globally recognized authority for information on chemical substances.

CHEMICAL ABSTRACTS SERVICE NUMBER OR CAS NUMBER shall mean the unique identification number assigned to a chemical by the chemical abstracts service.

CHEMICAL(S) shall mean any element, chemical compound, or mixture of elements or compounds that has its own specific name or identity such as a chemical abstract service number, whether or not such chemical is subject to the requirements of 29 Code of Federal Regulations §1910.1200(g)(2) (2011).

CHEMICAL DISCLOSURE REGISTRY shall mean the chemical registry website known as fracfocus.org developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. If such website becomes permanently inoperable, then chemical disclosure registry shall mean another publicly accessible information website that is designated by the Commission.

CHEMICAL FAMILY shall mean a group of chemicals that share similar chemical properties and have a common general name.

CHEMICAL INVENTORY shall mean a list of the Chemical Products (including Material Safety Data Sheets) brought to a well site for use downhole during drilling, completion, and workover operations, including fracture stimulations, and the maximum capacity of fuel stored on the oil and gas location during those operations. The Chemical Inventory shall include how much of the Chemical Product was used, how it was used, and when it was used.

CHEMICAL PRODUCT shall mean any substance consisting of one or more constituent chemicals that is marketed or sold as a commodity. Chemical Products shall not include substances that are known to be entirely benign, innocuous, or otherwise harmless, such as sand, walnut shells, and similar natural substances.

CLASSIFIED WATER SUPPLY SEGMENT shall mean perennial or intermittent streams, which are surface waters classified as being suitable or intended to become suitable for potable water supplies by the Colorado Water Quality Control Commission, pursuant to the Basic Standards and Methodologies for Surface Water Regulations (5 C.C.R. 1002-31).

COMMERCIAL DISPOSAL WELL FACILITY shall mean a facility whose primary objective is disposal of Class II waste from a third party for financial profit.

COMMISSION shall mean the Oil and Gas Conservation Commission of the State of Colorado.

COMPLETION. An oil well shall be considered completed when the first new oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging are complied with as set out in these rules. Any well not previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the Director, a well that requires extensive testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

COMPREHENSIVE DRILLING PLAN shall mean a plan created by one or more operator(s) covering future oil and gas operations in a defined geographic area within a geologic basin. The Plan may (a) identify natural features of the geographic area, including vegetation, wildlife resources, and other

attributes of the physical environment; (b) describe the operator's future oil and gas operations in the area; (c) identify potential impacts from such operations; (d) develop agreed-upon measures to avoid, minimize, and mitigate the identified potential impacts; and (e) include other relevant information.

CONTAINER shall mean any portable device in which a hazardous material is stored, transported, treated, disposed of, or otherwise handled. Examples include, but are not limited to, drums, barrels, totes, carboys, and bottles.

CORNERING AND CONTIGUOUS UNITS when used in reference to an exception location shall mean those lands which make up the unit(s) immediately adjacent to and toward which a well is encroaching upon established setbacks.

CROP LAND shall mean lands which are cultivated, mechanically or manually harvested, or irrigated for vegetative agricultural production.

CUBIC FOOT of gas shall mean the volume of gas contained in one cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be 14.73 psia, and the standard temperature base shall be 60° Fahrenheit.

D–J BASIN FOX HILLS PROTECTION AREA shall mean that area of the State consisting of Townships 5 South through Townships 5 North, Ranges 58 West through 70 West, and Township 6 South, Ranges 65 West through 70 West.

DAY shall mean calendar days.

DEDICATED INJECTION WELL shall mean any Class II wells used for the exclusive purpose of injecting fluids or gas from the surface for enhanced oil recovery or the disposal of E&P wastes. A gas storage well is not a dedicated injection well.

DESIGNATED AGENT, when used herein shall mean the designated representative of any producer, operator, transporter, refiner, gasoline or other extraction plant operator, or initial purchaser.

DESIGNATED SETBACK LOCATION shall mean any Oil and Gas Location upon which any Well or Production Facility is or will be situated within, a Buffer Zone Setback (1,000 feet), or an Exception Zone Setback (500 feet), or within one thousand (1,000) feet of a High Occupancy Building Unit or a Designated Outside Activity Area, as referenced in Rule 604. The measurement for determining any Designated Setback Location shall be the shortest distance between any existing or proposed Well or Production Facility on the Oil and Gas Location and the nearest edge or corner of any Building Unit, nearest edge or corner of any High Occupancy Building Unit, or nearest boundary of any Designated Outside Activity Area.

DESIGNATED OUTSIDE ACTIVITY AREA: Upon Application and Hearing, the Commission, in its discretion, may establish a Designated Outside Activity Area (DOAA) for:

(i) an outdoor venue or recreation area, such as a playground, permanent sports field, amphitheater, or other similar place of public assembly owned or operated by a local government, which the local government seeks to have established as a Designated Outside Activity Area; or

(ii) an outdoor venue or recreation area, such as a playground, permanent sports field, amphitheater, or other similar place of public assembly where ingress to, or egress from the venue could be impeded in the event of an emergency condition at an Oil and Gas Location less than three hundred and fifty (350) feet from the venue due to the configuration of the venue and the number of persons known or expected to simultaneously occupy the venue on a regular basis.

The Commission shall determine whether to establish a Designated Outside Activity Area and, if so, the appropriate boundaries for the DOAA based on the totality of circumstances and consistent with the purposes of the Oil and Gas Conservation Act.

DIRECTOR shall mean the Director of the Oil and Gas Conservation Commission of the State of Colorado or any member of the Director's staff authorized to represent the Director.

DOMESTIC GAS WELL shall mean a gas well that produces solely for the use of the surface owner. The gas produced cannot be sold, traded or bartered.

DRILLING PITS shall mean those pits used during drilling operations and initial completion of a well, and include:

> **ANCILLARY PITS** used to contain fluids during drilling operations and initial completion procedures, such as circulation pits and water storage pits.
>
> **COMPLETION PITS** used to contain fluids and solids produced during initial completion procedures, and not originally constructed for use in drilling operations.
>
> **FLOWBACK PITS** used to contain fluids and solids produced during initial completion procedures.
>
> **RESERVE PITS** used to store drilling fluids for use in drilling operations or to contain E&P waste generated during drilling operations and initial completion procedures.

EMERGENCY ORDER shall mean an order issued by the Commission pursuant to C.R.S. §34-60-108(3).

EMERGENCY SITUATION for purposes of C.R.S. §34-60-121(5) and the rules promulgated thereunder shall mean a fact situation which presents an immediate danger to public health, safety or welfare.

EXPLORATION AND PRODUCTION WASTE (E&P WASTE) shall mean those wastes associated with operations to locate or remove oil or gas from the ground or to remove impurities from such substances and which are uniquely associated with and intrinsic to oil and gas exploration, development, or production operations that are exempt from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 USC Sections 6921, et seq. For natural gas, primary field operations include those production-related activities at or near the wellhead and at the gas plant (regardless of whether or not the gas plant is at or near the wellhead), but prior to transport of the natural gas from the gas plant to market. In addition, uniquely associated wastes derived from the production stream along the gas plant feeder pipelines are considered E&P wastes, even if a change of custody in the natural gas has occurred between the wellhead and the gas plant. In addition, wastes uniquely associated with the operations to recover natural gas from underground storage fields are considered to be E&P waste.

FIELD shall mean the general area which is underlaid or appears to be underlaid by at least one pool; and “field” shall include the underground reservoir or reservoirs containing oil or gas or both. The words “field” and “pool” mean the same thing when only one underground reservoir is involved; however, “field”, unlike “pool”, may relate to two or more pools.

FINANCIAL ASSURANCE shall mean a surety bond, cash collateral, certificate of deposit, letter of credit, sinking fund, escrow account, lien on property, security interest, guarantee, or other instrument or method in favor of and acceptable to the Commission. With regard to third party liability concerns related to public health, safety and welfare, the term encompasses general liability insurance.

FIRST AID TREATMENT shall mean using a non-prescription medication at non-prescription strength; administering tetanus immunizations; cleaning, flushing, or soaking wounds on the surface of the skin; using wound coverings such as bandages, gauze pads, or butterfly bandages; using hot or cold therapy;

using any non-rigid means of support such as elastic bandages; using temporary immobilization devices when transporting an accident victim; drilling of a fingernail or toenail to relieve pressure or draining fluid from a blister; using eye patches; removing foreign bodies from the eye using only irrigation or a cotton swab; removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means; using finger guards; using massages; or drinking fluids for the relief of heat stress.

FLOWLINES shall mean those segments of pipe from the wellhead downstream through the production facilities ending at: in the case of gas lines, the gas metering equipment; or in the case of oil lines the oil loading point or LACT unit; or in the case of water lines, the water loading point, the point of discharge to a pit, the injection wellhead, or the permitted surface water discharge point.

GAS FACILITY shall mean those facilities that process or compress natural gas after production-related activities which are conducted at or near the wellhead and prior to a point where the gas is transferred to a carrier for transport.

GAS STORAGE WELL means any well drilled for the injection, withdrawal, production, observation, or monitoring of natural gas stored in underground formations. The fact that any such well is used incidentally for the production of native gas or the enhanced recovery of native hydrocarbons shall not affect its status as a gas storage well.

GAS WELL shall mean a well, the principal production of which at the mouth of the well is gas, as defined by the Act.

GATHERING LINE shall mean a pipeline and equipment described below that transports gas from a production facility (ordinarily commencing downstream of the final production separator at the inlet flange of the custody transfer meter) to a natural gas processing plant or transmission line or main. The term "gathering line" includes valves, metering equipment, communication equipment, cathodic protection facilities, and pig launchers and receivers, but does not include dehydrators, treaters, tanks, separators, or compressors located downstream of the final production facilities and upstream of the natural gas processing plants, transmission lines, or main lines.

GREEN COMPLETION PRACTICES shall mean those practices intended to reduce emissions of salable gas and condensate vapors during cleanout and flowback operations prior to the well being placed on production.

GROUNDWATER means subsurface waters in a zone of saturation.

HEALTH PROFESSIONAL shall mean a physician, physician assistant, nurse practitioner, registered nurse, or emergency medical technician licensed by the State of Colorado.

HIGH OCCUPANCY BUILDING UNIT shall mean:

- any operating Public School as defined in § 22-7-703(4), C.R.S., Nonpublic School as defined in § 22-30.5-103.6(6.5), C.R.S., Nursing Facility as defined in § 25.5-4-103(14), C.R.S., Hospital, Life Care Institutions as defined in § 12-13-101, C.R.S., or Correctional Facility as defined in § 17-1-102(1.7), C.R.S., provided the facility or institution regularly serves 50 or more persons; or

- an operating Child Care Center as defined in § 26-6-102(1.5), C.R.S.

HORIZONTAL WELL shall mean a well which is drilled in such a way that the wellbore deviates laterally to an approximate horizontal orientation within the target formation with the length of the horizontal component of the wellbore extending at least one hundred feet (100') in the target formation, measured

from the initial point of penetration into the target formation through the terminus of the horizontal component of the wellbore in the same common source of hydrocarbon supply.

HYDRAULIC FRACTURING ADDITIVE shall mean any chemical substance or combination of substances, including any chemicals and proppants, that is intentionally added to a base fluid for purposes of preparing a hydraulic fracturing fluid for treatment of a well.

HYDRAULIC FRACTURING FLUID shall mean the fluid, including the applicable base fluid and all hydraulic fracturing additives, used to perform a hydraulic fracturing treatment.

HYDRAULIC FRACTURING TREATMENT shall mean all stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geologic formation to enhance production of oil and natural gas.

INACTIVE WELL shall mean any shut-in well from which no production has been sold for a period of twelve (12) consecutive months; any well which has been temporarily abandoned for a period of six (6) consecutive months; or, any injection well which has not been utilized for a period of twelve (12) consecutive months.

INDIAN LANDS shall mean those lands located within the exterior boundaries of a defined Indian reservation, including allotted Indian lands, in which the legal, beneficial, or restricted ownership of the underlying oil, gas, or coal bed methane or of the right to explore for and develop the oil, gas, or coal bed methane belongs to or is leased from an Indian tribe.

INTERVENOR shall mean a local government, or the Colorado Department of Public Health and Environment intervening solely to raise environmental or public health, safety and welfare concerns, or the Colorado Parks and Wildlife intervening solely to raise wildlife resource concerns, in which case the intervention shall be granted of right, or a person who has timely filed an intervention in a relevant proceeding and has demonstrated to the satisfaction of the Commission that the intervention will serve the public interest, in which case the person may be recognized as a permissive intervenor at the Commission's discretion.

LACT ("Lease Automated Custody Transfer") shall mean the transfer of produced crude oil or condensate, after processing or treating in the producing operations, from storage vessels or automated transfer facilities to pipelines or any other form of transportation.

LAND APPLICATION shall mean the disposal method by which E&P waste is spread upon or sometimes mixed into soils.

LAND TREATMENT shall mean the treatment method by which E&P waste is applied to soils and treated to result in a reduction of hydrocarbon concentration by biodegradation and other natural attenuation processes. Land treatment may be enhanced by tilling, disking, aerating, composting and the addition of nutrients or microbes.

LOCAL GOVERNMENT means a county, home rule or statutory city, town, territorial charter city or city and county, or any special district established pursuant to the Special District Act, C.R.S. §32-1-101 to 32-1-1807 (2013).

LOCAL GOVERNMENTAL DESIGNEE means the office designated to receive, on behalf of the local government, copies of all documents required to be filed with the local governmental designee pursuant to these rules.

LOG or WELL LOG shall mean a systematic detailed record of formations encountered in the drilling of a well.

MATERIAL SAFETY DATA SHEET (MSDS) shall mean the most current version of written or printed material concerning a hazardous chemical.

MEDICAL TREATMENT shall mean the management and care of a patient to combat a disease or disorder. An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. “Medical treatment” includes situations where a physician or other licensed health care professional recommends medical treatment but the employee does not follow the recommendation. “Medical treatment” does not include first aid treatment, as defined herein, visits to a physician or other licensed health care professional solely for observation or counseling, or the conduct of diagnostic procedures such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes.

MINIMIZE ADVERSE IMPACTS shall mean, wherever reasonably practicable, to avoid adverse impacts to wildlife resources or significant adverse impacts to the environment from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided, mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

MINIMIZE EROSION shall mean implementing best management practices that are selected based on site-specific conditions and maintained to reduce erosion. Representative erosion control practices include, but are not limited to, revegetation of disturbed areas, mulching, berms, diversion dikes, surface roughening, slope drains, check dams, and other comparable measures.

MITIGATION with respect to wildlife resources shall mean measures that compensate for adverse impacts to such resources, including, as appropriate, habitat enhancement, on-site habitat mitigation, off-site habitat mitigation, or mitigation banking.

MULTI-WELL PITS shall mean pits used for treatment, storage, recycling, reuse, or disposal of E&P wastes generated from more than one (1) well that do not constitute a centralized E&P waste management facility and that will be in use for no more than three (3) years.

MULTI-WELL SITE shall mean a common well pad from which multiple wells may be drilled to various bottomhole locations.

NON-CROP LAND shall mean all lands which are not defined as crop land, including range land.

OIL AND GAS FACILITY shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment, or processing of oil or natural gas.

OIL AND GAS LOCATION shall mean a definable area where an operator has disturbed or intends to disturb the land surface in order to locate an oil and gas facility.

OIL AND GAS OPERATIONS means exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and gas well, underground injection well, or gas storage well; production operations related to any such well including the installation of flowlines and gathering systems; the generation, transportation, storage, treatment, or disposal of exploration and production wastes; and any construction, site preparation, or reclamation activities associated with such operations.

OIL WELL shall mean a well, the principal production of which at the mouth of the well is oil, as defined by the Act.

OPERATOR shall mean any person who exercises the right to control the conduct of oil and gas operations.

ORDINARY HIGH-WATER LINE shall mean the line that water impresses on the land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' ordinary high-water line.

ORPHAN WELL shall mean a well for which no owner or operator can be found, or where such owner or operator is unwilling or unable to plug and abandon such well.

ORPHANED SITE shall mean a site, where a significant adverse environmental impact may be or has been caused by oil and gas operations for which no responsible party can be found, or where such responsible party is unwilling or unable to mitigate such impact.

OWNER shall mean the person who has the right to drill into and produce from a pool and to appropriate the oil or gas produced therefrom either for such owner or others or for such owner and others, including owners of a well capable of producing oil or gas, or both.

PIT shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. Pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils.

PLUGGING AND ABANDONMENT shall mean the cementing of a well, the removal of its associated production facilities, the removal or abandonment in-place of its flowline, and the remediation and reclamation of the wellsite.

POINT OF COMPLIANCE means one or more points or locations at which compliance with applicable groundwater standards established under Water Quality Control Commission Basic Standards for Groundwater, Section 3.11.4, must be achieved.

POLLUTION means man-made or man-induced contamination or other degradation of the physical, chemical, biological, or radiological integrity of air, water, soil, or biological resource.

The words **POOL, PERSON, OWNER, PRODUCER, OIL, GAS, WASTE, CORRELATIVE RIGHTS and COMMON SOURCE OF SUPPLY** are defined by the Act, and said definitions are hereby adopted in these Rules and Regulations. The word "operator" is used in these rules and regulations and accompanying forms interchangeably with the same meaning as the term "owner" except in Rules 301, 323, 401 and 530 where the word "operator" is used to identify the persons designated by the owner or owners to perform the functions covered by those rules.

PRODUCED AND MARKETED. These words, as used in the Act, shall mean, when oil shall have left the lease tank battery or when natural gas shall have passed the metering point and entered into the stream of commerce as its first step toward the ultimate consumer.

PRODUCTION FACILITY shall mean any storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with oil wells, gas wells, or injection wells.

PRODUCTION PITS shall mean those pits used after drilling operations and initial completion of a well, including pits at natural gas gathering, processing and storage facilities, which constitute:

SKIMMING/SETTLING PITS used to provide retention time for settling of solids and separation of residual oil for the purposes of recovering the oil or fluid.

PRODUCED WATER PITS used to temporarily store produced water prior to injection for enhanced recovery or disposal, off-site transport, or surface-water discharge including pits that service multiple wells on an Oil and Gas Location.

PERCOLATION PITS used to dispose of produced water by percolation and evaporation through the bottom or sides of the pits into surrounding soils.

EVAPORATION PITS used to contain produced waters which evaporate into the atmosphere by natural thermal forces.

PROPPANT shall mean sand or any natural or man-made material that is used in a hydraulic fracturing treatment to prop open the artificially created or enhanced fractures once the treatment is completed.

PROTESTANT shall mean a person who has timely filed a protest in a relevant proceeding and has demonstrated to the Commission's satisfaction that the person filing the protest would be directly and adversely affected or aggrieved by the Commission's ruling in the proceeding, and that any injury or threat of injury sustained would be entitled to legal protection under the act.

PUBLIC WATER SYSTEM shall mean those systems listed in Appendix VI to these Rules. These systems provide to the public water for human consumption through pipes or other constructed conveyances, if such systems have at least fifteen (15) service connections or regularly serve an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such definition includes:

(i) Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system.

(ii) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.

The definition of “Public Water System” for purposes of Rule 317B does not include any “special irrigation district,” as defined in Colorado Primary Drinking Water Regulations (5 C.C.R. 1003.1).

RECLAMATION shall mean the process of returning or restoring the surface of disturbed land as nearly as practicable to its condition prior to the commencement of oil and gas operations or to landowner specifications with an approved variance under Rule 502.b.

REFERENCE AREA shall mean an area either (1) on a portion of the site that will not be disturbed by oil and gas operations, if that is the desired final reclamation; or (2) another location that is undisturbed by oil and gas operations and proximate and similar to a proposed oil and gas location in terms of vegetative potential and management, owned by a person who agrees to allow periodic access to it by the Director and the operator for the purpose of providing baseline information for reclamation standards, and intended to reflect the desired final reclamation.

REGULATORY COMPLIANCE PROGRAM shall mean a documented program that evaluates an operator’s operations on a scheduled basis to determine compliance with regulatory requirements, especially those required by the Act, or Commission rules, orders, or permits. Such a program should include documentation of results, written procedures, a recognized authority within the organization, and designated personnel whose purpose is monitoring and maintaining compliance with applicable regulatory requirements.

RELEASE shall mean any unauthorized discharge of E&P waste to the environment over time.

REMEDIATION shall mean the process of reducing the concentration of a contaminant or contaminants in water or soil to the extent necessary to ensure compliance with the concentration levels in Table 910-1 and other applicable ground water standards and classifications.

RESERVE PITS shall mean those pits used to store drilling fluids for use in drilling operations or to contain E&P waste generated during drilling operations and initial completion procedures.

RESIDENTIAL BUILDING UNIT means a building or structure designed for use as a place of residency by a person, a family, or families. The term includes manufactured, mobile, and modular homes, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes.

RESPONDENT shall mean a party against whom a proceeding is instituted, or a protestant who protests the granting of the relief sought in the application as provided in Rule 509.

RESPONSIBLE PARTY shall mean an owner or operator who conducts an oil and gas operation in a manner which is in contravention of any then-applicable provision of the Act, or of any rule, regulation, 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. RESPONSIBLE PARTY includes any person who disposes of any other waste by mixing it with exploration and production waste so as to threaten to cause, or actually cause, a significant adverse environmental impact to any air, water, soil, or biological resource.

RESTRICTED SURFACE OCCUPANCY AREA shall mean the following:

- rocky mountain bighorn sheep production areas;

- desert bighorn sheep production areas;

- areas within 0.6 miles of any greater sage-grouse, Gunnison sage-grouse, and lesser prairie chicken leks (strutting and booming grounds);

- areas within 0.4 miles of any Columbian sharp-tailed grouse or plains sharp-tailed grouse leks (strutting grounds);

- areas within 1/4 mile of active Bald Eagle nest sites, Golden Eagle nest sites, or Osprey nest sites;

- areas within 1/2 mile of active Ferruginous Hawk nest sites, Northern Goshawk nest sites, Peregrine Falcon nest sites, or Prairie Falcon nest sites;

- areas located within 300 feet of the ordinary high-water mark of any stream segment located within designated Cutthroat Trout habitat; and

- areas within 300 feet of the ordinary high-water mark of a stream or lake designated by the Colorado Parks and Wildlife as “Gold Medal.”

Maps showing and spatial data identifying the individual and combined extents of the above habitat areas shall be maintained by the Commission and made available on the Commission website, and copies of the maps shall be attached as Appendix VII. The extent of restricted surface occupancy areas is subject to update on a periodic but no more frequent than annual basis and may be modified only through the Commission’s rulemaking process, as provided in Rule 529. Any changes to restricted surface occupancy areas shall not affect Form 2As or Comprehensive Drilling Plans approved prior to the effective date of such changes.

SEISMIC OPERATIONS shall mean all activities associated with acquisition of seismic data including but not limited to surveying, shothole drilling, recording, shothole plugging and reclamation.

SENSITIVE AREA is an area vulnerable to potential significant adverse groundwater impacts, due to factors such as the presence of shallow groundwater or pathways for communication with deeper groundwater; proximity to surface water, including lakes, rivers, perennial or intermittent streams, creeks, irrigation canals, and wetlands. Additionally, areas classified for domestic use by the Water Quality Control Commission, local (water supply) wellhead protection areas, areas within 1/8 mile of a domestic water well, areas within 1/4 mile of a public water supply well, ground water basins designated by the Colorado Ground Water Commission, and surface water supply areas are sensitive areas.

SENSITIVE WILDLIFE HABITAT shall mean:

- mule deer critical winter range (being both mule deer winter concentration areas (that part of the winter range where densities are at least 200% of the surrounding winter range density during the same period used to define winter range in 5 out of 10 winters), and mule deer severe winter range (that part of the winter range where 90% of the individuals are located during the average 5 winters out of 10 from the first heavy snowfall to spring green-up)) (west of Interstate 25 and excluding Las Animas County);

- elk winter concentration areas (west of Interstate 25 and excluding Las Animas County);

- pronghorn antelope winter concentration areas (west of Interstate 25);

- bighorn sheep winter range;

- elk production areas (being that part of the overall range occupied by the females for calving) (west of Interstate 25 and excluding Las Animas County);

- Columbian sharp-tailed grouse and plains sharp-tailed grouse production areas (being an area that contains 80% of nesting and brood rearing habitat for any identified population);

- greater sage-grouse and Gunnison sage-grouse production areas (being an area that contains 80% of nesting and brood rearing habitat for any population identified in the Colorado Greater Sage-Grouse Conservation Plan (CPW, 2008) or the Gunnison Sage-Grouse Range-Wide Conservation Plan (May 2005), respectively);

- lesser prairie chicken production areas (being an area that includes 80% of nesting and brood rearing habitat);

- black-footed ferret release areas;

- Bald Eagle nest sites and winter night roost sites; and

- Golden Eagle nest sites.

Maps showing and spatial data identifying the individual and combined extents of the above habitat areas shall be maintained by the Commission and made available on the Commission website, and copies of the maps shall be attached as Appendix VIII. The extent of sensitive wildlife habitat is subject to update on a periodic but no more frequent than biennial basis and may be modified only through the Commission's rulemaking procedures, as provided in Rule 529. Any modifications to sensitive wildlife habitat shall not affect Form 2As or Comprehensive Drilling Plans approved prior to the effective date of such changes.

SHUT-IN WELL shall mean a well which is capable of production or injection by opening valves, activating existing equipment or supplying a power source.

SIMULTANEOUS INJECTION WELL shall mean any well in which water produced from oil and gas producing zones is injected into a lower injection zone and such water production is not brought to the surface.

SOLID WASTE shall mean any garbage, refuse, sludge from a waste treatment plant, water supply plant, air pollution control facility, or other discarded material; including solid, liquid, semisolid, or contained gaseous material resulting from industrial operations, commercial operations, or community activities. Solid waste does not include any solid or dissolved materials in domestic sewage, or agricultural wastes, or solid or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to permits under the provisions of the Colorado Water Quality Control Act, Title 25, Article 8, C.R.S. or materials handled at facilities licensed pursuant to the provisions on radiation control in Title 25, Article 11, C.R.S. Solid waste does not include: (a) materials handled at facilities licensed pursuant to the provisions on radiation control in Title 25, Article 11, C.R.S.; (b) excluded scrap metal that is being recycled; or (c) shredded circuit boards that are being recycled.

SOLID WASTE DISPOSAL shall mean the storage, treatment, utilization, processing, or final disposal of solid wastes.

SPECIAL FIELD RULES shall mean those rules promulgated for and which are limited in their application to individual pools or fields within the State of Colorado.

SPECIAL PURPOSE PITS shall mean those pits used in oil and gas operations, including pits at natural gas gathering, processing and storage facilities, which constitute:

> **BLOWDOWN PITS** used to collect material resulting from, including but not limited to, the emptying or depressurizing of wells, vessels, or gas gathering systems.
>
> **FLARE PITS** used exclusively for flaring gas.
>
> **EMERGENCY PITS** used to contain liquids during an initial phase of emergency response operations related to a spill/release or process upset conditions.
>
> **BASIC SEDIMENT/TANK BOTTOM PITS** used to temporarily store or treat the extraneous materials in crude oil which may settle to the bottoms of tanks or production vessels and which may contain residual oil.
>
> **WORKOVER PITS** used to contain liquids during the performance of remedial operations on a producing well in an effort to increase production.
>
> **PLUGGING PITS** used for containment of fluids encountered during the plugging process.

SPILL shall mean any unauthorized sudden discharge of E&P waste to the environment.

STORMWATER RUNOFF shall mean rain or snowmelt that flows over land and does not percolate into soil and includes stormwater that flows onto and off of an oil and gas location or facility.

STRATIGRAPHIC WELL means a well drilled for stratigraphic information only. Wells drilled in a delineated field to known productive horizons shall not be classified as “stratigraphic.” Neither the term “well” nor “stratigraphic well” shall include seismic holes drilled for the purpose of obtaining geophysical information only.

SURFACE OWNER shall mean any person owning all or part of the surface of land upon which oil and gas operations are conducted, as shown by the tax records of the county in which the tract of land is situated, or any person with such rights under a recorded contract to purchase.

SURFACE USE AGREEMENT shall mean any agreement in the nature of a contract or other form of document binding on the Operator, including any lease, damage agreement, waiver, local government approval or permit, or other form of agreement, which governs the operator's activities on the surface in relation to locating a Well, Multi-Well Site, Production Facility, pipeline or any other Oil and Gas Facility that supports oil and gas development located on the Surface Owner's property.

SURFACE WATER INTAKE shall mean the works or structures at the head of a conduit through which water is diverted from a classified water supply segment and/or source (e.g., river or lake) into the treatment plant.

SURFACE WATER SUPPLY AREA shall mean the classified water supply segments within five (5) stream miles upstream of a surface water intake on a classified water supply segment. Surface Water Supply Areas shall be identified on the Public Water System Surface Water Supply Area Map or through use of the Public Water System Surface Water Supply Area Applicability Determination Tool described in Rule 317B.b.

SUSPENDED OPERATIONS WELL shall mean a well in which drilling operations have been suspended prior to reaching total depth and at least one casing string (the surface casing) has been set and cemented in the wellbore. This definition does not include wells in which only conductor pipe has been set, and the surface hole has not been spud.

TANK shall mean a stationary vessel constructed of non-earthen materials (e.g concrete, steel, plastic) that provides structural support and is designed and operated to store produced fluids or E&P waste. Examples include, but are not limited to, condensate tanks, crude oil tanks, produced water tanks, and gun barrels. Exclusions include Containers and process vessels such as separators, heater treaters, free water knockouts, and slug catchers. ~~that is used to contain fluids, constructed of non-earthen materials (e.g. concrete, steel, plastic) that provide structural support.~~

TEMPORARILY ABANDONED WELL shall mean a well that has all downhole completed intervals isolated with a plug set above the highest perforation such that the well cannot produce without removing a plug or a well which is incapable of production or injection without the addition of one or more pieces of wellhead or other equipment, including valves, tubing, rods, pumps, heater-treaters, separators, dehydrators, compressors, piping or tanks.

TIER 1 OIL AND GAS LOCATION shall mean an oil and gas location where the slope is less than five percent (5%), the soil has low erosion potential, vegetative cover or permanent erosion resistance cover is greater than seventy-five percent (75%), the distance from a perennial stream or Classified Water Supply Segment is greater than five hundred (500) feet, and the oil and gas location size is less than one (1) acre, measured by the amount of surface disturbance at the time of the termination of a construction stormwater permit issued by the Colorado Department of Public Health and Environment.

TOTAL WATER VOLUME shall mean the total quantity of water from all sources used in the hydraulic fracturing treatment, including surface water, ground water, produced water or recycled water.

TRADE SECRET shall have the meaning set forth in § 7-74-102(4) (2011) of the Colorado Uniform Trade Secrets Act.

TRADE SECRET CHEMICAL PRODUCT shall mean a Chemical Product the composition of which is a Trade Secret.

URBAN MITIGATION AREA shall mean an area where: (A) At least twenty-two (22) Building Units or one (1) High Occupancy Building Unit (existing or under construction) are located within a 1,000' radius of the proposed Oil and Gas Location; or (B) At least eleven (11) Building Units or one (1) High Occupancy Building Unit (existing or under construction) are located within any semi-circle of the 1,000 radius mentioned in section (A) above.

~~**VOLUNTARY SELF-EVALUATION** shall mean a self-initiated assessment, audit, or review, not otherwise expressly required by environmental law, that is performed by any person or entity, for itself, either by an employee or employees employed by such person or entity who are assigned the responsibility of performing such assessment, audit, or review or by a consultant engaged by such person or entity expressly and specifically for the purpose of performing such assessment, audit, or review to determine whether such person or entity is in compliance with environmental laws.~~

WAITING ON COMPLETION WELL shall mean a well which has been drilled, cased, and cemented but the objective hydrocarbon formation has not yet been completed or stimulated using an open-hole, a liner, or a perforated casing completion.

WATER SOURCE shall mean water wells that are registered with Colorado Division of Water Resources, including household, domestic, livestock, irrigation, municipal/public, and commercial wells, permitted or adjudicated springs, or monitoring wells installed for the purpose of complying with groundwater baseline sampling and monitoring requirements under Rules 318A.e.(4), 608, or 609.

WATERS OF THE STATE mean any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, water in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed. Waters of the state include, but are not limited to, all streams, lakes, ponds, impounding reservoirs, wetlands , watercourses, waterways, wells, springs, irrigation ditches or canals, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the State.

WELL when used alone in these Rules and Regulations, shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

WELL SITE shall mean the areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection well and its associated well pad.

WILDCAT (EXPLORATORY) WELL means any well drilled beyond the known producing limits of a pool.

WILDLIFE RESOURCES shall mean fish, wildlife, and their aquatic and terrestrial habitats.

ZONE OF INCORPORATION shall mean the soil layer from the soil surface to a depth of twelve (12) inches below the surface.

ALL OTHER WORDS used herein shall be given their usual customary and accepted meaning, and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry.

GENERAL RULES

201. EFFECTIVE SCOPE OF RULES AND REGULATIONS

All rules and regulations of a general nature herein promulgated to prevent waste and to conserve oil and gas in the State of Colorado while protecting public health, safety, and welfare, including the environment and wildlife resources, shall be effective throughout the State of Colorado and be in force in all pools and fields except as may be amended, modified, altered or enlarged generally or in specific individual pools or fields by orders heretofore or hereafter issued by the Commission, and except where special field rules apply, in which case the special field rules shall govern to the extent of any conflict.

Nothing in these rules shall establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations, so long as such local regulation is not in operational conflict with the Act or regulations promulgated thereunder.

These rules shall not apply to: (i) Indian trust lands and minerals; or (ii) the Southern Ute Indian Tribe within the exterior boundaries of the Southern Ute Indian Reservation. These rules shall apply to non-Indians conducting oil and gas operations on lands within the exterior boundaries of the Southern Ute Indian Reservation where both the surface and oil and gas estates are owned in fee by persons or entities other than the Southern Ute Indian Tribe, regardless of whether such lands are communitized or pooled. Additionally, the State of Colorado shall exercise criminal and civil jurisdiction within the Town of Ignacio, Colorado or within any other municipality within the Southern Ute Indian Reservation incorporated under the laws of Colorado, as provided by Sec. 5, Public Law No. 98-290 (1984).

If any portion of these Rules is found to be invalid, the remaining portion of the Rules shall remain in force and effect.

202. OFFICE AND DUTIES OF DIRECTOR

The office of Director of the Commission is hereby created. It shall be the duty of the Director to aid the Commission in the administration of the Act, as may be required of the Director from time to time and to act as hearing officer when so directed by the Commission.

203. OFFICE AND DUTIES OF SECRETARY

The office of Secretary to the Commission is hereby created. The duties of the Secretary shall be as determined from time to time by the Commission.

204. ~~GENERAL FUNCTIONS OF DIRECTOR~~RIGHT OF ENTRY AND INSPECTION

The Director and the authorized deputies shall also have the right at all reasonable times to go upon and inspect any oil or gas properties, disposal facilities, or transporters facilities and wells for the purpose of making any investigation or tests to ascertain whether the provisions of the Act or these rules or any special field rules are being complied with, and shall report any violation thereof to the Commission.

205. ACCESS TO RECORDS

a. All producers, operators, transporters, refiners, gasoline or other extraction plant operators and initial purchasers of oil and gas within this State, shall make and keep appropriate books and records covering their operations in the State, including natural gas meter calibration

reports, from which they may be able to make and substantiate the reports required by the Commission or the Director or otherwise demonstrate compliance with these Rules.

b. Beginning May 1, 2009 on federal land and April 1, 2009 on all other land, operators shall maintain MSDS sheets for any Chemical Products brought to a well site for use downhole during drilling, completion, and workover operations, excluding hydraulic fracturing treatments. With the exception of fuel as provided for in Rule 205.c., the reporting and disclosure of hydraulic fracturing additives and chemicals brought to a well site for use in connection with hydraulic fracturing treatments is governed by Rule 205A.

c. Beginning June 1, 2009, operators shall maintain a Chemical Inventory by well site for each Chemical Product used downhole during drilling, completion, and workover operations, excluding hydraulic fracturing treatments, in an amount exceeding five hundred (500) pounds during any quarterly reporting period. Operators shall also maintain a chemical inventory by well site for non-vehicular fuel stored at the well site during drilling, completion, and workover operations, including hydraulic fracturing treatments, in an amount exceeding five hundred (500) pounds during any quarterly reporting period.

The five hundred (500) pound reporting threshold shall be based on the cumulative maximum amount of a Chemical Product present at the well site during the quarterly reporting period. Entities maintaining Chemical Inventories under this section shall update these inventories quarterly throughout the life of the well site. These records must be maintained in a readily retrievable format at the operator's local field office. The Colorado Department of Public Health and Environment may obtain information provided to the Commission or Director in a Chemical Inventory upon written request to the Commission or the Director.

d. Where the composition of a Chemical Product is considered a Trade Secret by the vendor or service provider, Operators shall only be required to maintain the identity of the Trade Secret Chemical Product and shall not be required to maintain information concerning the identity of chemical constituents in a Trade Secret Chemical Product or the amounts of such constituents. The vendor or service provider shall provide to the Commission a list of the chemical constituents contained in a Trade Secret Chemical Product upon receipt of a letter from the Director stating that such information is necessary to respond to a spill or release of a Trade Secret Chemical Product or a complaint from a potentially adversely affected landowner regarding impacts to public health, safety, welfare, or the environment. Upon receipt of a written statement of necessity, information regarding the chemical constituents contained in a Trade Secret Chemical Product shall be disclosed by the vendor or service provider directly to the Director or his or her designee.

The Director or designee may disclose information regarding those chemical constituents to additional Commission staff members to the extent that such disclosure is necessary to allow the Commission staff member receiving the information to assist in responding to the spill, release, or complaint, provided that such individuals shall not disseminate the information further. In addition, the Director may disclose information regarding those chemical constituents to any Commissioner, the relevant County Public Health Director or Emergency Manager, or to the Colorado Department of Public Health and Environment's Director of Environmental Programs upon request by that individual. Any information so disclosed to the Director, a Commission staff member, a Commissioner, a County Public Health Director or Emergency Manager, or to the Colorado Department of Public Health and Environment's Director of Environmental Programs shall at all times be considered confidential and shall not become part of the Chemical Inventory, nor shall it be construed as publicly available. The Colorado Department of Public Health and Environment's Director of Environmental Programs, or his or her designee, may disclose information regarding the chemical constituents contained in a Trade Secret Chemical

Product to Colorado Department of Public Health and Environment staff members under the same terms and conditions as apply to the Director.

e. The vendor or service provider shall also provide the chemical constituents of a Trade Secret Chemical Product to any health professional who requests such information in writing if the health professional provides a written statement of need for the information and executes a Confidentiality Agreement, Form 35. The written statement of need shall be a statement that the health professional has a reasonable basis to believe that (1) the information is needed for purposes of diagnosis or treatment of an individual, (2) the individual being diagnosed or treated may have been exposed to the chemical concerned, and (3) knowledge of the chemical constituents of such Trade Secret Chemical Product will assist in such diagnosis or treatment. The Confidentiality Agreement, Form 35, shall state that the health professional shall not use the information for purposes other than the health needs asserted in the statement of need, and that the health professional shall otherwise maintain the information as confidential. Where a health professional determines that a medical emergency exists and the chemical constituents of a Trade Secret Chemical Product are necessary for emergency treatment, the vendor or service provider shall immediately disclose the chemical constituents of a Trade Secret Chemical Product to that health professional upon a verbal acknowledgement by the health professional that such information shall not be used for purposes other than the health needs asserted and that the health professional shall otherwise maintain the information as confidential. The vendor or service provider may request a written statement of need, and a Confidentiality Agreement, Form 35, from all health professionals to whom information regarding the chemical constituents was disclosed, as soon as circumstances permit. Information so disclosed to a health professional shall not become part of the Chemical Inventory and shall in no way be construed as publicly available.

f. Such books, records, inventories, and copies of said reports required by the Commission or the Director shall be kept on file and available for inspection by the Commission for a period of at least five years except for the Chemical Inventory, which shall be kept on file and available for inspection by the Commission for the life of the applicable oil and gas well or oil and gas location and for five (5) years after plugging and abandonment. Upon the written request of the Commission or the Director for information required to be maintained or provided under this section, the record-keeping entity or third-party vendor shall supply the Commission or the Director with the requested information within three (3) business days in a format readily-reviewable by the Commission or the Director, except in the instance where such information is necessary to administer emergency medical treatment in which case such information shall be provided as soon as possible. Information provided to the Commission or the Director under this section that is entitled to protection under state or federal law, including C.R.S. § 24-72-204, as a trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data shall be kept confidential and protected against public disclosure unless otherwise required, permitted, or authorized by other state or federal law. Any disclosure of information entitled to protection under any state or federal law made pursuant to this section shall be made only to the persons required, permitted, or authorized to receive such information under state or federal law in order to assist in the response to a spill, release, or complaint and shall be subject to a requirement that the person receiving such information maintain the confidentiality of said information. The Commission or the Director shall notify the owner, holder, or beneficiary of any such protected information at least one (1) business day prior to any required, permitted, or authorized disclosure. This notification shall include the name and contact information of the intended recipient of such protected information, the reason for the disclosure, and the state or federal law authorizing the disclosure. Information so disclosed shall not become part of the Chemical Inventory and shall in no way be construed as publicly available. 200-4 As of May 30, 2009

g. The Director and the authorized deputies shall have access to all well records wherever located. All operators, drilling contractors, drillers, service companies, or other persons engaged in drilling or servicing wells, shall permit the Director, or authorized deputy, at the Director's or their risk, in the absence of negligence on the part of the owner, to come upon any lease, property, or well operated or controlled by them, and to inspect the record and operation of such wells and to have access at all times to any and all records of wells; provided, that information so obtained shall be kept confidential and shall be reported only to the Commission or its authorized agents.

h. In the event that the vendor or service provider does not provide the information required by Rules 205.d, 205.e, or 205.f directly to the Commission or a health professional, the operator is responsible for providing the required information.

i. In the event the operator establishes to the satisfaction of the Director that it lacks the right to obtain the information required by Rules 205.d, 205.e, or 205.f and to provide it directly to the Commission or a health professional, the operator shall receive a variance from these rule provisions from the Director.

205A. HYDRAULIC FRACTURING CHEMICAL DISCLOSURE.

a. **Applicability**. This Commission Rule 205a applies to hydraulic fracturing treatments performed on or after April 1, 2012.

b. **Required disclosures**.

(1) Vendor and service provider disclosures. A service provider who performs any part of a hydraulic fracturing treatment and a vendor who provides hydraulic fracturing additives directly to the operator for a hydraulic fracturing treatment shall, with the exception of information claimed to be a trade secret, furnish the operator with the information required by subsection 205A.b.(2)(A)(viii) – (xii) and subsection 205A.b.(2)(B), as applicable, and with any other information needed for the operator to comply with subsection 205A.b.(2). Such information shall be provided as soon as possible within 30 days following the conclusion of the hydraulic fracturing treatment and in no case later than 90 days after the commencement of such hydraulic fracturing treatment.

(2) Operator disclosures.

A. Within 60 days following the conclusion of a hydraulic fracturing treatment, and in no case later than 120 days after the commencement of such hydraulic fracturing treatment, the operator of the well must complete the chemical disclosure registry form and post the form on the chemical disclosure registry, including:

i. the operator name;

ii. the date of the hydraulic fracturing treatment;

iii. the county in which the well is located;

iv. the API number for the well;

v. the well name and number;

vi. the longitude and latitude of the wellhead;

vii. the true vertical depth of the well;

viii. the total volume of water used in the hydraulic fracturing treatment of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment, if something other than water;

ix. each hydraulic fracturing additive used in the hydraulic fracturing fluid and the trade name, vendor, and a brief descriptor of the intended use or function of each hydraulic fracturing additive in the hydraulic fracturing fluid;

x. each chemical intentionally added to the base fluid;

xi. the maximum concentration, in percent by mass, of each chemical intentionally added to the base fluid; and

xii. the chemical abstract service number for each chemical intentionally added to the base fluid, if applicable.

B. If the vendor, service provider, or operator claim that the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical is/are claimed to be a trade secret, the operator of the well must so indicate on the chemical disclosure registry form and, as applicable, the vendor, service provider, or operator shall submit to the Director a Form 41 claim of entitlement to have the specific identity of a chemical, the concentration of a chemical, or both withheld as a trade secret. The operator must nonetheless disclose all information required under subsection 205A.b.(2)(A) that is not claimed to be a trade secret. If a chemical is claimed to be a trade secret, the operator must also include in the chemical registry form the chemical family or other similar descriptor associated with such chemical.

C. At the time of claiming that a hydraulic fracturing chemical, concentration, or both is entitled to trade secret protection, a vendor, service provider or operator shall file with the commission claim of entitlement, Form 41, containing contact information. Such contact information shall include the claimant's name, authorized representative, mailing address, and phone number with respect to trade secret claims. If such contact information changes, the claimant shall immediately submit a new Form 41 to the Commission with updated information.

D. Unless the information is entitled to protection as a trade secret, information submitted to the Commission or posted to the chemical disclosure registry is public information.

(3) Ability to search for information. The chemical disclosure registry shall allow the Commission staff and the public to search and sort the registry for Colorado information by geographic area, ingredient, chemical abstract service number, time period, and operator.

(4) Inaccuracies in information. A vendor is not responsible for any inaccuracy in information that is provided to the vendor by a third party manufacturer of the hydraulic fracturing additives. A service provider is not responsible for any inaccuracy in information that is provided to the service provider by the vendor. An operator is not responsible for any inaccuracy in information provided to the operator by the vendor or service provider.

(5) Disclosure to health professionals. Vendors, service companies, and operators shall identify the specific identity and amount of any chemicals claimed to be a trade secret to any health professional who requests such information in writing if the health professional provides a written statement of need for the information and executes a confidentiality agreement, Form 35. The written statement of need shall be a statement that the health professional has a reasonable basis to believe that (1) the information is needed for purposes of diagnosis or treatment of an individual, (2) the individual being diagnosed or treated may have been exposed to the chemical concerned, and (3) knowledge of the information will assist in such diagnosis or treatment. The confidentiality agreement, Form 35, shall state that the health professional shall not use the information for purposes other than the health needs asserted in the statement of need, and that the health professional shall otherwise maintain the information as confidential. Where a health professional determines that a medical emergency exists and the specific identity and amount of any chemicals claimed to be a trade secret are necessary for emergency treatment, the vendor, service provider, or operator, as applicable, shall immediately disclose the information to that health professional upon a verbal acknowledgement by the health professional that such information shall not be used for purposes other than the health needs asserted and that the health professional shall otherwise maintain the information as confidential. The vendor, service provider, or operator, as applicable, may request a written statement of need, and a confidentiality agreement, Form 35, from all health professionals to whom information regarding the specific identity and amount of any chemicals claimed to be a trade secret was disclosed, as soon as circumstances permit. Information so disclosed to a health professional shall in no way be construed as publicly available.

c. Disclosures not required. A vendor, service provider, or operator is not required to:

(1) disclose chemicals that are not disclosed to it by the manufacturer, vendor, or service provider;

(2) disclose chemicals that were not intentionally added to the hydraulic fracturing fluid; or

(3) disclose chemicals that occur incidentally or are otherwise unintentionally present in trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid.

d. Trade secret protection.

(1) Vendors, service companies, and operators are not required to disclose trade secrets to the chemical disclosure registry.

(2) If the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical are claimed to be entitled to

protection as a trade secret, the vendor, service provider or operator may withhold the specific identity, the concentration, or both the specific identity and concentration, of the chemical, as the case may be, from the information provided to the chemical disclosure registry. Provided, however, operators must provide the information required by Rule 205A.b.(2)(B) & (C).

The vendor, service provider, or operator, as applicable, shall provide the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a trade secret to the Commission upon receipt of a letter from the Director stating that such information is necessary to respond to a spill or release or a complaint from a person who may have been directly and adversely affected or aggrieved by such spill or release. Upon receipt of a written statement of necessity, such information shall be disclosed by the vendor, service provider, or operator, as applicable, directly to the Director or his or her designee and shall in no way be construed as publicly available.

The Director or designee may disclose information regarding the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a trade secret to additional Commission staff members to the extent that such disclosure is necessary to allow the Commission staff member receiving the information to assist in responding to the spill, release, or complaint, provided that such individuals shall not disseminate the information further. In addition, the Director may disclose such information to any Commissioner, the relevant county public health director or emergency manager, or to the Colorado Department of Public Health and Environment's director of environmental programs upon request by that individual. Any information so disclosed to the Director, a Commission staff member, a Commissioner, a county public health director or emergency manager, or to the Colorado Department of Public Health and Environment's director of environmental programs shall at all times be considered confidential and shall not be construed as publicly available. The Colorado Department of Public Health and Environment's director of environmental programs, or his or her designee, may disclose such information to Colorado Department of Public Health and Environment staff members under the same terms and conditions as apply to the director.

e. Incorporated materials. Where referenced herein, these regulations incorporate by reference material originally published elsewhere. Such incorporation does not include later amendments to or editions of the referenced material. Pursuant to section 24-4-103 (12.5) C.R.S., the Commission maintains copies of the complete text of the incorporated materials for public inspection during regular business hours. Information regarding how the incorporated material may be obtained or examined is available at the Commission's office located at 1120 Lincoln Street, Suite 801, Denver, Colorado 80203.

206. REPORTS

All producers, operators, transporters, refiners, gasoline and other extraction plant operators, and initial purchasers of oil and gas within the State shall from time to time file accurate and complete reports containing such information and covering such geographic areas or periods as the Commission or Director shall require.

207. TESTS AND SURVEYS

a. **Tests and surveys.** When deemed necessary or advisable, the Commission is authorized to require that tests or surveys be made to determine the presence of waste or occurrence of pollution. The Commission, in calling for reports under Rule 206 and tests or surveys to be made as provided in this rule, shall designate the time allowed to the operator for compliance, which provisions as to time shall prevail over any other time provisions in these rules.

b. **Bradenhead monitoring.**

(1) The Director shall have authority to designate specific fields or portions of fields as bradenhead test areas. At all wells within the bradenhead test area, the bradenhead access to the annulus between the production and surface casing, as well as any intermediate casing, shall be equipped with fittings to allow safe and convenient determinations of pressure and fluid flow. All valves used for annular pressure monitoring shall remain exposed and not buried to allow for COGCC visual inspection at all times. A rigid housing may be used to protect the valves, provided that the housing can be easily opened or removed by the operator upon request of COGCC staff. Any such proposed bradenhead test area shall be designated by notice to all operators on record within the area and by publication. The proposed designation, if no protests are timely filed, shall be placed upon the Commission consent agenda for the regular monthly meeting of the Commission following the month in which such notice is given, and shall be approved or heard by the Commission in accordance with Rule 520. Such designation shall be effective immediately, upon approval by the Commission.

(2) All operators within any bradenhead test area shall have thirty (30) days after the effective date of the designation to commence the taking of bradenhead pressure readings in all wells located therein which are equipped for such readings. The operator shall equip any well which is not so equipped within ninety (90) days of the effective date, and within thirty (30) days thereafter the operator shall take the required reading. Such readings shall include the date, time and pressure of each reading, and the type of fluid reported. Such readings shall be taken in bradenhead test areas annually, maintained at the operator's office for a period of five (5) years, and shall be reported to the Director upon written request.

208. CORRECTIVE ACTION

The Commission shall require correction, in a manner to be prescribed or approved by it, of any condition which is causing or is likely to cause waste or pollution; and require the proper plugging and abandonment of any well or wells no longer used or useful in accordance with such reasonable plan as may be prescribed by it.

209. PROTECTION OF COAL SEAMS AND WATER-BEARING FORMATIONS

In the conduct of oil and gas operations each owner shall exercise due care in the protection of coal seams and water-bearing formations as required by the applicable statutes of the State of Colorado.

Special precautions shall be taken in drilling and abandoning wells to guard against any loss of artesian water from the stratum in which it occurs and the contamination of fresh water by objectionable water, oil, or gas. Before any oil or gas well is completed as a producer, all oil, gas and water strata above and below the producing horizon shall be sealed or separated in order to prevent the intermingling of their contents.

210. SIGNS AND MARKERS

The operator shall mark each and every well in a conspicuous place, from the time of initial drilling until final abandonment, as follows:

a. **Drilling and Recompletion Operations.** Directional signs, no less than three (3) and no more than six (6) square feet in size, shall be provided during any drilling or recompletion operation, by the operator or drilling contractor. Such signs shall be at locations sufficient to advise emergency crews where drilling is taking place; at a minimum, such locations shall include (i) the first point of intersection of a public road and the rig access road and (ii) thereafter at each intersection of the rig access route, except where the route to the rig is clearly obvious to uninformed third parties. Signs not necessary to meet other obligations under these rules shall be removed as soon as practicable after the operation is complete.

b. **Permanent Designations.**

(1) **Wells**. Within sixty (60) days after the completion of a well, a permanent sign shall be located at the wellhead which shall identify the well and provide its legal location, including the quarter quarter section. When no associated battery is present, the additional information required under Rule 210.b.(2) shall be required on the sign.

(2) **Batteries**. Within sixty (60) days after the installation of a battery, a permanent sign shall be located at the battery. At the option of the operator, or at the request of local emergency response authorities, the sign may be placed at the intersection of the lease access road with a public, farm or ranch road if the referenced battery is readily apparent from such location. Such sign, which shall be no less than three (3) square feet and no more than six (6) square feet, shall provide: the name of the operator; a phone number at which the operator can be reached at all times; a phone number for local emergency services (911 where available); the lease name or well name(s) associated with the battery; the public road used to access the site; and the legal location, including the quarter quarter section. In lieu of providing the legal location on the permanent sign, it may be stenciled on a tank in characters visible from one-hundred (100) feet.

c. **Centralized E&P Waste Management Facilities**. The main point of access to a centralized E&P waste management facility shall be marked by a sign captioned "(operator name) E&P Waste Management Facility." Such sign, which shall be no less than three (3) square feet and no more than six (6) square feet shall provide: a phone number at which the operator can be reached at all times; a phone number for local emergency services (911 where available); the public road used to access the facility; and the legal location, including quarter quarter section, of the facility.

d. **Tanks and Containers.**

(1) All tanks with a capacity of ten (10) barrels or greater shall by September 1, 2009 be labeled or posted with the following information:

A. Name of operator;

B. Operator's emergency contact telephone number;

C. Tank capacity;

D. Tank contents; and

E. National Fire Protection Association (NFPA) Label.

(2) Containers that are used to store, treat, or otherwise handle a hazardous material and which are required to be marked, placarded, or labeled in accordance with the U.S. Department of Transportation's Hazardous Materials Regulations, shall retain the markings, placards, and labels on the container. Such markings, placards, and labels must be retained on the container until it is sufficiently cleaned of residue and purged of vapors to remove any potential hazards.

e. **General sign requirements**. No sign required under this Rule 210. shall be installed at a height exceeding six (6) feet. Operators shall maintain signs in a legible condition, and shall replace damaged or vandalized signs within sixty (60) days. New operators shall update signs within sixty (60) days after change of operator approval is received from the Commission.

211. NAMING OF FIELDS

All oil and gas fields discovered in the State subsequent to the adoption of these rules and regulations shall be named by the Director or at the Director's direction.

212. SAFETY

For safety regulations regarding industry personnel, contact the U.S. Department of Labor, Occupational Safety and Health Administration, Regional Administrator, Colorado Region VIII, 1244 Speer Blvd Suite 551 Denver, CO, 80204, (720)-264-6550. For State Safety regulations regarding public safety see Rules 601-608.

213. FORMS UPON REQUEST

Forms required by the Commission will be furnished upon request. (Please see Procedures and Forms Guidelines)

214. LOCAL GOVERNMENTAL DESIGNEE

Each local government which designates an office for the purposes set forth in the 100 Series shall provide the Commission written notice of such designation, including the name, address and telephone number, facsimile number, electronic mail address, local emergency dispatch and other emergency numbers of the local governmental designee. It shall be the responsibility of such local governmental designee to ensure that all documents provided to the local governmental designee by oil and gas operators and the Commission or the Director are distributed to the appropriate persons and offices.

215. GLOBAL POSITIONING SYSTEMS

Global Positioning Systems (GPS) may be used to locate facilities used in oil and gas operations provided they meet the following minimum standards of the Commission:

a. Instruments rated as Differential Global Positioning System (DGPS) shall be used.

b. Instruments shall be capable of one (1) meter accuracy after differential correction.

c. All GPS data shall be differentially corrected by post processing prior to data submission.

d. Position dilution of precision (PDOP) values shall not be higher than six (6) and shall be included with location data.

e. Elevation mask (lowest acceptable height above the horizon) shall be no less than fifteen degrees (15^{o})

f. Latitude and longitude coordinates shall be provided in decimal degrees with an accuracy and precision of five (5) decimals of a degree using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345 N, longitude 104.45632 W).

g. Raw and corrected data files shall be held for a period of three (3) years.

h. Measurements shall be made by a trained GPS operator familiar with the theory of GPS, the use of GPS instrumentation, and typical constraints encountered during field activities.

216. COMPREHENSIVE DRILLING PLANS

a. **Purpose.** Comprehensive Drilling Plans are intended to identify foreseeable oil and gas activities in a defined geographic area, facilitate discussions about potential impacts, and identify measures to minimize adverse impacts to public health, safety, welfare, and the environment, including wildlife resources, from such activities. An operator's decisions to initiate and enter into a Comprehensive Drilling Plan are voluntary.

b. **Scope.** A Comprehensive Drilling Plan shall cover more than one (1) proposed oil and gas location within a geologic basin, but its scope may otherwise be customized by the operator to address specific issues in particular areas. Although operators are encouraged to develop joint Comprehensive Drilling Plans covering the proposed activities of multiple operators where appropriate, Comprehensive Drilling Plans will typically cover the activities of one operator.

c. **Information requirements.** Operators are encouraged to submit the most detailed information practicable about the future activities in the geographic area covered by the Comprehensive Drilling Plan. Detailed information is more likely to lead to identification of specific impacts and agreement regarding measures to minimize adverse impacts. The information included in the Comprehensive Drilling Plan shall be decided upon by the operator, in consultation with other participants. Information provided by operators to federal agencies to obtain approvals for surface disturbing activities on federal land may be submitted in support of a Comprehensive Drilling Plan. The following information may be included as part of a Comprehensive Drilling Plan, depending on the circumstances:

(1) A U.S. Geological Survey 1:24,000 topographic map showing the proposed oil and gas locations, including proposed access roads and gathering systems reasonably known to the operator(s);

(2) A current aerial photo showing the proposed oil and gas locations displayed at the same scale as the topographic map to facilitate use as an overlay;

(3) Overlay maps showing the proposed oil and gas locations, including all proposed access roads and gathering systems, drainages and stream crossings, and existing and proposed buildings, roads, utility lines, pipelines, known mines, oil or gas wells, water wells known to the operator(s) and those registered with the State Engineer's Office, and riparian areas;

(4) A list of all proposed oil and gas facilities to be installed within the area covered by the Comprehensive Drilling Plan over the time of the Plan and the anticipated timing of the installation;

(5) A plan for the management of exploration and production waste;

(6) A description of the wildlife resources at each oil and gas location;

(7) Wildlife information that is determined necessary after consultation with the Colorado Parks and Wildlife;

(8) Locations of all proposed reference areas to be used as guides for interim and final reclamation;

(9) Past economic uses to which the land has been put in the previous ten (10) years reasonably known to the operator(s);

(10) Any planned variance requests that are reasonably known to the operator;

(11) Proposed best management practices or mitigation to minimize adverse impacts to resources such as air, water, or wildlife resources; and

(12) A list of all parties that participated in creating the Comprehensive Drilling Plan pursuant to Rule 216.d.(2).

d. **Procedure.**

(1) One or more operator(s) may submit a proposed Comprehensive Drilling Plan to the Commission, describing the operator's reasonably foreseeable oil and gas development activities in a specified geographic area within a geologic basin. The Director may request an operator to initiate a Comprehensive Drilling Plan, but the decision to do so rests solely with the operator.

(2) The operator(s) shall invite the Colorado Department of Public Health and Environment, the Colorado Parks and Wildlife, local governmental designee(s), and all surface owners to participate in the development of the Comprehensive Drilling Plan. In many cases, participation by these agencies and individuals will facilitate identification of potential impacts and development of conditions of approval to minimize adverse impacts.

(3) The operator(s), the Director, and participants involved in the Comprehensive Drilling Plan process shall review the proposal, identify information needs, discuss operations and potential impacts, and establish measures to minimize adverse impacts resulting from oil and gas development activities covered by the Plan.

(4) The Director shall place on the Commission's hearing agenda in a timely manner a Comprehensive Drilling Plan that has been agreed to in writing by the operator(s) and that the Director considers suitable after consultation with the Colorado Department of Public Health and Environment and the Colorado Parks and Wildlife, as applicable, and consideration of any other comments.

(5) The Director shall identify and document the agreed-upon conditions of approval for activities within the geographic area covered by the accepted Comprehensive Drilling Plan.

(6) Comprehensive Drilling Plans that have been accepted by the Commission shall be posted on the COGCC website, subject to any confidential or proprietary information belonging to the operator or other parties being withheld. Written information obtained or compiled from landowners and operators in conjunction with development of a Comprehensive Drilling Plan is exempt from disclosure to the public, provided that any page containing information subject to withholding under the Colorado Open Records Act is clearly labeled with the words "Confidential Information." The Commission, the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife will keep all such data and information confidential to the extent allowed by the Colorado Open Records Act.

(7) Before initiating a Comprehensive Drilling Plan, operators are encouraged to discuss with the Director and, as appropriate, the Colorado Department of Public Health and Environment and the Colorado Parks and Wildlife, the scope of the Plan, the schedule for its preparation, the information to be included, any public participation opportunities, and whether the Plan is intended to satisfy Form 2A requirements.

e. **Variances and site-specific approvals.**

(1) A Comprehensive Drilling Plan may incorporate variances to any of these rules, provided that all of the requirements for granting variances are met.

(2) Practices and conditions agreed to in an accepted Comprehensive Drilling Plan shall be:

A. Included as conditions of approval in any Form 2 or other permit for individual wells or other ground-disturbing activity covered by the Plan, where no Form 2A is required under Rule 303.d.(2).B.

B. Included as conditions of approval in any Form 2, Form 2A, or other permit for individual wells or other ground-disturbing activity covered by the Plan, where a Form 2A is required under Rule 303.d.(1).

Any permit-specific condition of approval for wildlife habitat protection will be included only with the consent of the surface owner.

f. **Incentives.** The following incentives shall apply as a means to facilitate and encourage the development of Comprehensive Drilling Plans by operators:

(1) Where the Comprehensive Drilling Plan contains information substantially equivalent to that which would be required in a Form 2A for the proposed oil and gas location and the Comprehensive Drilling Plan has been subject to procedures substantially equivalent to those required for a Form 2A, then a Form 2A shall not be required for a proposed oil and gas location that was included in the Comprehensive Drilling Plan and does not involve a variance from the Plan or a variance from these rules not addressed in the Comprehensive Drilling Plan.

(2) Where the Comprehensive Drilling Plan does not contain information substantially equivalent to that which would be required in a Form 2A for the proposed oil and gas location or the Comprehensive Drilling Plan has not been subject to procedures substantially equivalent to those required for a Form 2A or the operator seeks a variance from the Comprehensive Drilling Plans or a provision of these rules that is not addressed in the Plan, then a Form 2A shall be required

for a proposed oil and gas location included in the Comprehensive Drilling Plan. However, the Director shall modify the informational and procedural requirements for such Form 2A to reflect the information included in and procedures used to approve the Comprehensive Drilling Plan and with input, where appropriate, from the Colorado Department of Public Health and Environment and the Colorado Parks and Wildlife.

(3) Where a proposed oil and gas location is covered by an approved Comprehensive Drilling Plan and no variance is sought from such Plan or these rules not addressed in the Comprehensive Drilling Plan, then the Director shall give priority to and approve or deny an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, within thirty (30) days of a determination that such application is complete pursuant to Rule 303.h unless significant new information is brought to the attention of the Director.

(4) Where the Director does not issue a decision on an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, for an oil and gas location as described in Rule 216.f.(3) above within thirty (30) days, then within five (5) days the Director shall provide the operator with a written explanation for the delay and the anticipated decision date, and the operator may request a hearing before the Commission. Such a hearing shall be expedited but will be held only after both the 20 days' notice and the newspaper notice are given as required by Section 34-60-108, C.R.S. However, the hearing may be held after the newspaper notice if all of the entities listed under Rule 503.b waive the 20-day notice requirement.

(5) Any party requesting a hearing pursuant to Rule 503.b.(7) on the Director's approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, for an oil and gas location that includes conditions of approval arrived at as part of an accepted Comprehensive Drilling Plan shall bear the burden of establishing that the conditions of approval are insufficient to protect public health, safety, welfare, the environment, and wildlife resources due to new information or changed circumstances occurring since the Comprehensive Drilling Plan was accepted by the Commission.

g. **Duration.** Once accepted by the Commission, a Comprehensive Drilling Plan shall be valid for a period of six (6) years.

h. **Modification.** An accepted Comprehensive Drilling Plan may be modified using the same process as that leading to acceptance of the original Plan either upon the initiative of the operator or upon the initiative of the Director and upon a showing that there has been a change in an applicable provision in these rules or a significant change to the basis upon which the Plan was developed. The review and approval of the modification shall focus only on the proposed modification(s).

SERIES DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT

301. RECORDS, REPORTS, NOTICES-GENERAL

Any written notice of intention to do work or to change plans previously approved must be filed with the Director, and must reach the Director and receive approval before the work is begun, or such approval may be given orally and, if so given, shall thereafter be confirmed to the Director in writing.

In case of emergency, or any situation where operations might be unduly delayed, any notice or information required by these rules and regulations to be given to the Director may be given orally or by wire, and if approval is obtained the transaction shall be promptly confirmed in writing to the Director, as a matter of record.

Immediate notice shall be given to the Director when public health or safety is in jeopardy. Notice shall also be given to the Director of any other significant downhole problem or mechanical failure in any well within ten (10) days.

The owner shall keep on the leased premises, or at the owner's headquarters in the field, or otherwise conveniently available to the Director, accurate and complete records of the drilling, redrilling, deepening, repairing, plugging or abandoning of all wells, and of all other well operations, and of all alterations to casing. These records shall show all the formations penetrated, the content and quality of oil, gas or water in each formation tested, and the grade, weight and size, and landed depth of casing used in drilling each well on the leased premises, and any other information obtained in the course of well operation. Such records on each well shall be maintained by any subsequent owner.

Whenever a person has been designated as an operator by an owner or owners of the lease or well, such an operator may submit the reports as herein required by the Commission.

302. COGCC Form 1. REGISTRATION FOR OIL AND GAS OPERATIONS

a. Prior to the commencement of its operations, all producers, operators, transporters, refiners, gasoline or other extraction plant operators, and initial purchasers who are conducting operations subject to this Act in the State of Colorado, shall, for purposes of the Act, file a Registration For Oil and Gas Operations, Form 1, with the Director in the manner and form approved by the Commission. Any producer, operator, transporter, refiner, gasoline or other extraction plant operator, and initial purchaser conducting operations subject to the Act who has not previously filed a Registration For Oil and Gas Operations, Form 1, shall do so. Any person providing financial assurance for oil and gas operators in Colorado shall file a Form 1 with the Director. All changes of address of the parties required to file a Form 1 shall be immediately reported by submitting a new Form 1.

b. **Designation of Agent, Form 1A.** Operator employees approved to submit documents shall be listed on a completed Designation of Agent, Form 1A. A company/individual other than the operator may be designated as an agent, and its representatives shall be listed on a completed Designation of Agent, Form 1A. This agency shall remain in effect until it is terminated in writing by submitting a new Designation of Agent, Form 1A. All changes to reported agent information shall be immediately reported by submitting a new Designation of Agent, Form 1A.

303. REQUIREMENTS FOR FORM 2, APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE; FORM 2A, OIL AND GAS LOCATION ASSESSMENT.

a. **FORM 2. APPLICATION FOR PERMIT-TO-DRILL, DEEPEN, RE-ENTER, OR RECOMPLETE, AND OPERATE.**

(1) **Approval by Director.** A complete Form 2, Application for Permit-to-Drill, Deepen, Re-enter or Recomplete and Operate (Application for Permit-to-Drill) must be approved by the Director before commencement of operations with heavy equipment for the following operations:

A. Drilling any well;

B. Deepening any existing well;

C. Re-entering any plugged well (except for re-entry to re-plug shall require a Well Abandonment Report, Form 6, per Rule 311);

D. Recompleting and operating any existing well; or

E. Drilling a sidetrack from any well.

(2) **Approved Location.** An approved Form 2A, Oil and Gas Location Assessment, is required for the well location per Rule 303.b.

(3) **Operational Conflicts.** The Permit to Drill shall be binding with respect to any provision of a local governmental permit or land use approval that is in operational conflict with the Permit to Drill.

(4) **Filing Fees.** A Form 2, Application for Permit-to-Drill, shall be submitted with a filing and service fee established by the Commission (see Appendix III). Wells drilled for stratigraphic information only shall be exempt from paying the filing and service fee.

(5) **Information Requirements.** ~~The Form 2 requires the attachment of the following information:~~

The Form 2 requires the following information:

A. Every Form 2, Application for Permit-to-Drill, shall specify the distance between the well and wall or corner of the nearest building, Building Unit, High Occupancy Building Unit, Designated Outside Activity Area, public road, above ground utility, railroad, and property line.

~~B. The distance between the wall or corner of the nearest Building Unit and the center of the proposed well.~~

B. **Wellbore Diagram.** A Form 2 to deepen, to re-enter, to recomplete to a different reservoir, or to drill a sidetrack of an existing well shall have a wellbore diagram attached.

C. ~~Details of the proposed work and a wellbore diagram.~~A Form 2 to deepen, to re-enter, to recomplete to a different reservoir, or to drill a sidetrack of an existing well shall include the details of the proposed work.

~~D.~~

~~E.~~D. **Well Location Plat.** A Form 2 to drill a new well or a new wellbore shall have a well location plat attached. The plat shall be a current scaled drawing(s) of the entire section(s) penetrated by the proposed well with the following minimum information:

~~F.~~ **~~Well Location Plat,~~** ~~A Form 2 shall include a current 8½" by 11" scaled drawing of the entire section(s) containing the proposed well location with the following minimum information:~~

i. Dimensions on adjacent exterior section lines sufficient to completely describe the quarter section(s) containing the proposed well surface location, top of productive zone, wellbore, and bottom hole location shall be indicated. If dimensions are not field measured, state how the dimensions were determined.

ii. For irregular, partial or truncated sections, dimensions will be furnished to completely describe the entire section(s) containing the proposed well.

iii. The field-measured distances from the nearer north/south and nearer east/west section lines shall be measured at 90 degrees from said section lines to the well surface location and referenced on the plat. For unsurveyed land grants and other areas where an official public land survey system does not exist, the well locations shall be spotted as footages on a protracted section plat using Global Positioning System (GPS) technology and reported as latitude and longitude in accordance with Rule 215.

~~ii. Dimensions on adjacent exterior section lines sufficient to completely describe the quarter section containing the proposed well shall be indicated. If dimensions are not field measured, state how the dimensions were determined.~~

iv. The latitude and longitude of the proposed ~~well~~ surface location shall be provided on the drawing with a minimum of five (5) decimal places of accuracy and precision using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345 N, longitude 104.45632 W). If GPS technology is utilized to determine the latitude and longitude, all GPS data shall meet the requirements set forth in Rule 215. a. through h.

v. The well location plat for deviated wellbore (directional, highly deviated, or horizontal) to be drilled utilizing controlled directional drilling methods shall meet the requirements set forth in Rule 321.

~~iii.~~

~~iv. For directional drilling into adjacent sections, those sections shall also be shown on the location plat and dimensions on exterior section lines sufficient to completely describe the quarter section containing the proposed wellbore. The proposed top of productive interval and bottom hole location shall be indicated. (Additional requirements related to directional drilling are found in Rule 321.)~~

~~v. For irregular, partial or truncated sections, dimensions will be furnished to completely describe the entire section(s) containing the proposed well.~~

~~vi. The field-measured distances from the nearer north/south and nearer east/west section lines shall be measured at 90 degrees from said section lines to the well location and referenced on the plat. For unsurveyed land grants and other areas where an official public land survey system does not exist, the well locations shall be spotted as footages on a protracted section plat using Global Positioning System (GPS) technology and reported as latitude and longitude in accordance with Rule 215.~~

~~vii.~~vi. A map legend.

~~viii.~~vii. A north arrow.

~~ix.~~viii. A scale expressed as an equivalent (e.g. - 1" = 1000').

~~x.~~ix. A bar scale.

~~xi.~~x. The ground elevation.

~~xii.~~xi. The basis of the elevation (how it was calculated or its source).

~~xiii.~~xii. The basis of bearing or interior angles used.

~~xiv.~~xiii. Complete description of monuments and/or collateral evidence found; all aliquot corners used shall be described.

~~xv.~~xiv. The legal land description by section, township, range, principal meridian, baseline and county.

~~xvi.~~xv. Operator name.

~~xvii.~~xvi. Well name and well number.

~~xviii.~~xvii. Date of completion of scaled drawing.

E. **Deviated Drilling Plan.** A Form 2 to drill a deviated wellbore (directional, highly deviated, or horizontal) utilizing controlled directional drilling methods shall have the deviated drilling plan attached. The deviated drilling plan shall meet the requirements set forth in Rule 321.

~~G. **Deviated Drilling Plan.** If the proposed well is to be horizontal or deviated, drilled with controlled directional drilling methods, a deviated drilling plan with~~

~~sufficient coordinate data to describe the location of the wellbore from the base of the surface casing to the kick off point and from that point to total depth, and two wellbore deviation plots, one depicting the plan view and one depicting the side view. (Additional requirements related to directional drilling are found in Rule 321.)~~

303.b. **FORM 2A, OIL AND GAS LOCATION ASSESSMENT.**

(1) Unless exempted under subsection 2, below, a completed Form 2A, Oil and Gas Location Assessment, approved by the Director or the Commission is required for:

A. Any new Oil and Gas Location. For purposes of this section, "new Oil and Gas Location" shall mean surface disturbance at a previously undisturbed site;

B. Surface disturbance for purposes of modifying or expanding an existing Oil and Gas Location; or

C. The addition of a well or a pit, except an Emergency Pit or a Flare Pit where there is no risk of condensate accumulation, to any existing Oil and Gas Location.

(2) **Exemptions.** A new Form 2A shall not be required for the following:

A. Surface disturbance, other than for purposes described in subsections 303.b.(1) B and C. above, at an existing Oil and Gas Location within the originally disturbed area, even if interim reclamation has been performed;

B. For an Oil and Gas Location covered by an approved Comprehensive Drilling Plan and where such Comprehensive Drilling Plan contains information substantially equivalent to that which would be required for a Form 2A for the proposed Oil and Gas Location and the Comprehensive Drilling Plan has been subject to procedures substantially equivalent to those required for a Form 2A, including but not limited to consultation with Surface Owners, local governments, the Colorado Department of Public Health and Environment or Colorado Parks and Wildlife, where applicable, and public notice and opportunity to comment, and where the operator does not seek a variance from the Comprehensive Drilling Plan or a provision of these rules that is not addressed in the Plan;

C. Gathering lines;

D. Seismic operations;

E. Pipelines for oil, gas, or water; or

F. Roads.

(3) **Information Requirements.**

The Form 2A requires ~~the attachment of~~ the following information:

A. A Form 2A shall specify the shortest distance between any Well or Production Facility proposed or existing on the Oil and Gas Location and

the edge or corner of the nearest building, Building Unit, High Occupancy Building Unit, the nearest boundary of a Designated Outside Activity Area, and the nearest public road, above ground utility, railroad, and property line.

B. **Location Pictures.** A minimum of four (4) color photographs, one (1) of the staked location from each cardinal direction shall be attached. Each photograph shall be identified by: date taken, well or location name, and direction of view.

C. A list of major equipment components to be used in conjunction with drilling and operating the well(s), including all tanks, pits, flares, combustion equipment, separators, and other ancillary equipment and a description of any pipelines for oil, gas, or water.

D. **Location Drawing.** A scaled drawing, or scaled aerial photograph showing the approximate outline of the Oil and Gas Location and all wells and/or Production Facilities used for measuring distances shall be attached. The drawing shall include all visible improvements within five hundred (500) feet of the proposed Oil and Gas Location (as measured from the proposed edge of disturbance), with a horizontal distance and approximate bearing from the oil and gas facilities. Visible improvements shall include, but not be limited to, all buildings and Building Units, publicly maintained roads and trails, fences, above-ground utility lines, railroads, pipelines or pipeline markers, mines, oil wells, gas wells, injection wells, water wells known to the operator and those registered with the Colorado State Engineer, known springs, plugged wells, known sewers with manholes, standing bodies of water, and natural channels including permanent canals and ditches through which water may flow. If there are no visible improvements within five hundred (500) feet of a proposed Oil and Gas Location, it shall be so noted on the Form 2A.

E. **Hydrology Map.** A topographic map showing all surface waters and riparian areas within one thousand (1,000) feet of the proposed Oil and Gas Location, with a horizontal distance and approximate bearing from the Oil and Gas Location shall be attached.

F. **Access Road Map.** An 8 1/2” by 11” vicinity map, U.S. Geological Survey topographic map, or scaled aerial photograph showing the access route from the highway or county road to the proposed Oil and Gas Location shall be attached.

G. Designation of the current land use(s) and landowner’s designated final land use(s) and basis for setting reclamation standards.

   i. If the final land use includes residential, industrial/commercial, or cropland and does not include any other uses, the land use should be indicated and no further information is needed.

   ii. If the final land use includes rangeland, forestry, recreation, or wildlife habitat, then a reference area shall be selected and the following information shall be ~~submitted~~attached:

aa. **Reference Area Map.** A topographic map showing the location of the site, and the location of the reference area; and

bb. **Reference Area Pictures.** Four (4) color photographs of the reference area, taken during the growing season of vegetation and facing each cardinal direction. Each photograph shall be identified by date taken, well or Oil and Gas Location name, and direction of view. Provided that these photographs may be submitted at any time up to twelve (12) months after the Form 2A.

H. **NRCS Map Unit Description.** Natural Resources Conservation Service (NRCS) soil map unit description shall be attached.

I. **Construction Layout Drawing.** If the Oil and Gas Location disturbance is to occur on lands with a slope ten percent (10%) or greater, or one (1) foot of elevation gain or more in ten (10) foot distance, then the following information shall be attached~~Form 2A requires the following information~~:

i. Construction layout drawing (construction and operation); and

ii. Location cross-section plot (construction and operation).

J. If the proposed Oil and Gas Location is within one thousand (1,000) feet of a Building Unit, the following information shall be attached~~Form 2A requires the following information~~:

i. **Facility Layout Drawing**. A scaled facility layout drawing depicting the location of all existing and proposed new Oil and Gas Facilities listed on the Form 2A;

ii. **Waste Management Plan**. A Waste Management Plan describing how the Operator intends to satisfy the general requirements of Rule 907.a.; and

iii. **Rule 305.a.(2) Certification**. Evidence that Building Unit owners within the Buffer Zone received the pre-application notice required by Rule 305.a.(2).

K. **Rule 305.a.(1) Certification.** If the proposed Oil and Gas Location is within an Urban Mitigation Area, evidence that the local government received the pre-application notice required by Rule 305.a.(1) shall be attached.

L. **Multi-Well Plan.** Where the proposed Oil and Gas Location is for multiple wells on a single pad, a drawing showing proposed wellbore trajectory with bottom-hole locations shall be attached.

M. A description of any applicant-proposed Best Management Practices or, where a variance from a provision of these rules is sought, any applicant-proposed measures to meet the standards for such a variance. With the consent of the Surface Owner, this may include mitigation measures contained in a relevant Surface Use Agreement.

N. If the proposed Oil and Gas Location is covered by an approved Comprehensive Drilling Plan pursuant to Rule 216, a list of any conditions of approval.

O. Contact information for the Surface Owner(s) and an indication as to whether there is a Surface Use Agreement(s) or any other agreement(s) between the applicant and the Surface Owner(s) for the proposed Oil and Gas Location.

P. Designation of whether the proposed Oil and Gas Location is within sensitive wildlife habitat or a restricted surface occupancy area.

Q. If the proposed Oil and Gas Location is within a zone defined in Rule 317B, Table 1, documentation that the applicant has provided notification of the application submittal to potentially impacted public water systems within fifteen (15) stream miles downstream.

R. Any additional data as reasonably required by the Commission as a result of consultation with the Colorado Department of Public Health and Environment or Colorado Parks and Wildlife.

S. Oil and Gas Locations in wetlands. The Form 2A shall also indicate if an Army Corps of Engineers permit pursuant to 33 U.S.C.A. §1342 and 1344 of the Water Pollution and Control Act (Section 404 of the federal "Clean Water Act") is required for the construction of an Oil and Gas Location.

T. The Operator shall indicate on the Form 2A whether it intends to seek a location exception under Rules 604.b(2) or b(3), and, if so, ~~shall attach~~ the relevant Surface Use Agreement(s) shall be attached.

(4) Where the information required under subsection (3) has been included in a federal Surface Use Plan of Operations meeting the requirements of Onshore Oil and Gas Order Number 1 (72 Fed. Reg. 10308 (March 7, 2007)), or for a federal Right of Way, Form 299, then the operator may attach the completed pertinent information and identify on the Form 2A where the information required under this section may be found therein.

303.c. **PROCESSING TIME FOR APPROVALS UNDER THIS SECTION.**

(1) In accordance with Rule 216.f.(3), where a proposed Oil and Gas Location is covered by an approved Comprehensive Drilling Plan and no variance is sought from such Plan or these rules not addressed in the Comprehensive Drilling Plan, the Director shall give priority to and approve or deny an Application for Permit-to-Drill, Form 2, or, where applicable, Oil and Gas Location Assessment, Form 2A, within thirty (30) days of a determination that such application is complete pursuant to Rule 303.h, unless significant new information is brought to the attention of the Director.

(2) If the Director has not issued a decision on an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, within seventy-five (75) days of a determination that such application is complete, the operator may request a hearing before the Commission on the permit application. Such a hearing shall be expedited but will be held only after both the 20 days' notice and the newspaper notice are given as required by Section 34-60-108, C.R.S. However,

the hearing can be held after the newspaper notice if all of the entities listed under Rule 503.b waive the 20-day notice requirement.

303.d. **Revisions to Form 2 or Form 2A.** Prior to approval of the Form 2 or Form 2A permit application, minor revisions or requested information may be provided by contacting the COGCC staff. After approval, any substantive changes shall be submitted for approval on a Form 2 or Form 2A. A Sundry Notice, Form 4, shall be submitted, along with supplemental information requested by the Director, when non-substantive revisions are made after approval, and no additional fee shall be imposed.

303.e. **Incomplete applications.** Applications for Permit-to-Drill, Form 2, or Oil and Gas Location Assessments, Form 2A, which are submitted without the required attachments, the proper signature, or the required information, shall be considered incomplete and shall not be reviewed or approved. The COGCC staff shall notify the applicant in not more than ten (10) days of its receipt of the application of such inadequacies, except that the Director shall notify the applicant of inadequacies within three (3) business days of its receipt where the proposed Oil and Gas Location is covered by an accepted Comprehensive Drilling Plan. The applicant shall then have thirty (30) days from the date that it was contacted to correct or provide requested information, otherwise the application shall be considered withdrawn and the fee shall not be refunded.

303.f. **Information requests after completeness determination.** Subsequent to deeming an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, complete, the Director may request from the operator additional information needed to complete review of and make a decision on such an application. Such an information request shall not affect an operator's ability to request a hearing pursuant to Rule 303.e seventy-five (75) days from the date the Form 2 or Form 2A was originally determined to be complete pursuant to Rule 303.h.

303.g. **Permit expiration.**

(1) Applications for Permit-to-Drill, Form 2. Approval of a Form 2 shall become null and void if drilling operations on the permitted well are not commenced within two (2) years after the date of approval. The Director shall not approve extensions to Applications for Permit-to-Drill, Form 2.

(2) Oil and Gas Location Assessments, Form 2A. If construction operations are not commenced on an approved Oil and Gas Location within three (3) years after the date of approval, then the approval shall become null and void. The Director shall not approve extensions to Oil and Gas Location Assessments, Form 2A.

303.h. **Permits in areas pending Commission hearing.** The Director may withhold the issuance of any Applications for Permit-to-Drill, Form 2, for any well or proposed well that is located in an area for which an application has been filed, or which the Commission has sought, by its own motion, to establish drilling units, in which case the hearing thereon shall be held at the next meeting of the Commission at which time the matter can be legally heard.

303.i. **Special circumstances for permit issuance without notice or consultation.** The Director may issue a permit at any time in the event that an operator files a sworn statement and demonstrates therein to the Director's satisfaction that:

(1) The operator had the right or obligation under the terms of an existing contract to drill a well; and the owner or operator has a leasehold estate or a right to acquire a

leasehold estate under said contract which will be terminated unless the operator is permitted to immediately commence the drilling of said well; or

(2) Due to exigent circumstances (including a recent change in geological interpretation), significant economic hardship to a drilling contractor will result or significant economic hardship to an operator in the form of drilling stand by charges will result.

In the event the Director issues a permit under this rule, the operator shall not be required to meet obligations to Surface Owners, local governmental designees, the Colorado Department of Public Health and Environment, or Colorado Parks and Wildlife under Rule 305 (except Rules 305.f.(4) and 305.f.(6), for which compliance will still be required) and 306. The Director shall report permits granted in such manner to the Commission at regularly scheduled monthly hearings.

303.j. **Special circumstances for withholding approval of Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A.**

(1) The Director may withhold approval of any Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, for any proposed well or Oil and Gas Location when, based on information supplied in a written complaint submitted by any party with standing under Rule 522.a.(1), other than a local governmental designee, or by staff analysis, the Director has reasonable cause to believe the proposed well or Oil and Gas Location is in material violation of the Commission's rules, regulations, orders or statutes, or otherwise presents an imminent threat to public health, safety and welfare, including the environment, or a material threat to wildlife resources. Any such withholding of approval shall be limited to the minimum period of time necessary to investigate and dismiss the complaint, or to resolve the alleged violation or issue. If the complaint is dismissed or the matter resolved to the dissatisfaction of the complainant, such person may consult with the parties identified in Rule 503.b.(7).

(2) In the event the Director withholds approval of any Application for Permit-To-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, under this Rule 303.j., an operator may ask the Commission to issue an emergency order rescinding the Director's decision.

303.k. **Suspending approved Application for Permit-To-Drill, Form 2.** Prior to the spudding of the well, the Director shall suspend an approved Application for Permit-to-Drill, Form 2, if the Director has reasonable cause to believe that information submitted on the Application for Permit-to-Drill, Form 2 was materially incorrect. Under the circumstances described in Rule 303.i.(1) or (2), an operator may ask the Commission to issue an emergency order rescinding the Director's decision.

303.l. **Reclassification of stratigraphic well.** If a test for productivity is made in a stratigraphic well, the well must be reclassified as a well drilled for oil or gas and is subject to all of the rules and regulations for well drilled for oil or gas, including filing of reports and mechanical logs.

303.m. **Provisions for avoiding mine sites.** Any person holding, or who has applied for, a permit issued or to be issued under §34-33-101 to 137, C.R.S., may at their election, notify the Director of such permit or application. Such notice shall include the name, mailing address and facsimile number of such person and designate by legal description the life-of-mine area permitted, or applied for, with the Division of Reclamation, Mining, and Safety. As soon as practicable after receiving such notice

and designation, the Director shall inform the party designated therein each time that an Application for Permit-to-Drill, Form 2, is filed with the Director which pertains to a well or wells located or to be located within said life-of-mine area as designated. The provisions of Rule 303.i.(1) and (2) will not be applicable to this rule.

304. FINANCIAL ASSURANCE REQUIREMENTS

Prior to drilling or assuming the operations for a well an operator shall provide financial assurance in accordance with the 700 Series rules. When an operator's existing wells are not in compliance with the 700 Series, the Director may withhold action on an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, until such time as a hearing on the permit application is held by the Commission. Such hearing shall be held at the next regularly scheduled Commission hearing at which time the matter can be legally heard.

305. FORM 2 AND 2A APPLICATION PROCEDURES

a. **Pre-application notifications.** For Oil and Gas Locations proposed within an Urban Mitigation Area or within the Buffer Zone Setback, an Operator shall provide a "Notice of Intent to Conduct Oil and Gas Operations" to the persons specified herein not less than thirty (30) days prior to submitting a Form 2A, Oil and Gas Location Assessment, to the Director.

(1) Urban Mitigation Area Notice to Local Government. For Oil and Gas Locations within an Urban Mitigation Area, an Operator shall notify the local government in writing that it intends to apply for an Oil and Gas Location Assessment. Such notice shall be provided to the Local Governmental Designee in those jurisdictions that have designated an LGD, and to the planning department in jurisdictions that have no LGD. The notice shall include a general description of the proposed Oil and Gas Facilities, the location of the proposed Oil and Gas Facilities, the anticipated date operations (by calendar quarter and year) will commence, and that an additional notice pursuant to Rule 305.c. will be sent by the Operator. This notice shall serve as an invitation to the local government to engage in discussions with the Operator regarding proposed operations and timing, local government jurisdictional requirements, and opportunities to collaborate regarding site development. A local government may waive its right to notice under this provision at any time by providing written notice to an Operator and the Director.

(2) Exception Zone and Buffer Zone Setback Notice to the Surface Owner and Building Unit Owners. For Oil and Gas Locations proposed within the Exception Zone or Buffer Zone Setback, Operators shall notify the Surface Owner and the owners of all Building Units that a permit to conduct Oil and Gas Operations is being sought. The Operator may rely on the county assessor tax records to identify the persons entitled to receive the Notice. Notice shall include the following:

A. The Operator's contact information;

B. The location and a general description of the proposed Well or Oil and Gas Facilities;

C. The anticipated date operations will commence (by calendar quarter and year);

D. The Local Governmental Designee's (LGD) contact information;

E. Notice that the Building Unit owner may request a meeting to discuss the proposed operations by contacting the LGD or the Operator; and

F. A "Notice of Comment Period" will be sent pursuant to Rule 305.c. when the public comment period commences.

b. Posting Form 2A and Form 2.

(1) **Form 2A.** Upon receipt of an Oil and Gas Location Assessment, Form 2A, the Director shall, as provided by Rule 303, determine if the application is complete and, if so, post such Form 2A on the Commission's website. The Commission shall provide concurrent electronic notice of such posting to the relevant Local Governmental Designee (LGD) and the Colorado Parks and Wildlife (where consultation is triggered pursuant to Rule 306.c) and the Colorado Department of Public Health and Environment (where consultation is triggered pursuant to Rule 306.d). The website posting shall clearly indicate:

A. The date on which the Form 2A was posted;

B. The date by which public comments must be received to be considered;

C. The address(es) to which the public may direct comments; and

D. Where the proposed Oil and Gas Location is covered by an accepted Comprehensive Drilling Plan, directions for review of the Plan.

(2) **Form 2.** If an Application for Permit-to-Drill, Form 2, is concurrently filed with a Form 2A, that fact shall be noted in the posting provided herein. If a Form 2 is subsequently filed, only a summary notice of such filing, indicating that a Form 2A covering the well has been previously accepted or approved, shall be posted, with concurrent notice to the local governmental designee and, where consultation with one of those agencies is triggered, the Colorado Parks and Wildlife or Colorado Department of Public Health and Environment.

305.c. **Completeness determination and comment period notifications.** Upon receipt of a completeness determination from the Director, an Operator shall notify the persons specified herein of their opportunity to meet with the Operator pursuant to Rule 306 and submit written comments about the proposed Oil and Gas Location to the Director, the LGD, and the Operator, and shall provide information about the Oil and Gas Location as follows:

(1) **Oil and Gas Location Assessment Notice ("OGLA Notice").**

A. Parties to be noticed:

i. Surface Owners;

ii. Owners of all Building Units within the Exception Zone Setback; and

iii. Owners of surface property within five hundred (500) feet of the proposed Oil and Gas Location, for proposed Oil and Gas Locations not subject to Rule 318A or 318B.

The operator may rely on the tax records of the assessor for the county in which the affected lands are located to identify the persons entitled to receive the OGLA Notice.

B. The OGLA Notice shall be delivered by hand; certified mail, return-receipt requested; electronic mail, return receipt requested; or by other delivery service with receipt confirmation unless an alternative method of notice is pre-approved by the Director.

C. The OGLA Notice shall include:

i. The Form 2A itself (without attachments);

ii. A copy of the information required under Rule 303.b.(3).C, 303.b.(3).D, 303.b.(3).F, and 303.b(3).J.i.;

iii. The COGCC's information sheet on hydraulic fracturing treatments except where hydraulic fracturing treatments are not going to be applied to the well in question;

iv. Instructions on how Building Unit owners can contact their Local Governmental Designee;

v. An invitation to meet with the Operator before Oil and Gas Operations commence on the proposed Oil and Gas Location;

vi. An invitation to provide written comments to the LGD, the Operator and to the Director regarding the proposed Oil and Gas Operations, including comments regarding the mitigation measures or Best Management Practices to be used at the Oil and Gas Location.

(2) **Buffer Zone Notice.** A "Notice of Comment Period" shall be provided by postcard to owners of Building Units within the Buffer Zone. The operator may rely on the county assessor tax records to identify the persons entitled to receive the Buffer Zone Notice. Notice shall include the following information:

A. The Operator's contact information;

B. The Local Governmental Designee's contact information;

C. The COGCC's website address and telephone number;

D. The location of the proposed Oil and Gas Facilities and the anticipated date operations will commence (by month and year);

E. An invitation to meet with the Operator before Oil and Gas Operations commence on the proposed Oil and Gas Location;

F. An invitation to provide written comments to the LGD, the Operator and to the Director regarding the proposed Oil and Gas Operations, including comments regarding the mitigation measures or Best Management Practices to be used at the Oil and Gas Location.

(3) **Appointment of agent.** The Surface Owner or Building Unit owner may appoint an agent, including its tenant, for purposes of subsequent notice and for consultation or meetings under Rule 306. Such appointment shall be made in writing to the operator and must provide the agent's name, address, and telephone number.

(4) **Tenants.** With respect to notices given under this Rule 305, it shall be the responsibility of the notified Surface Owner or Building Unit owner to give notice of the proposed operation to the tenant farmer, lessee, or other party that may own or have an interest in any crops or surface improvements that could be affected by such proposed operation.

(5) **Waiver.** Any of the notices required herein may be waived in writing by the Surface Owner, its agent, or the Local Governmental Designee, provided that a waiver by a Surface Owner or its agent shall not prevent the Surface Owner or any successor-in-interest to the Surface Owner from rescinding that waiver if such rescission is in accordance with applicable law.

305.d. **Comment period.** The Director shall not approve a Form 2A, or any associated Form 2, for a proposed Well or Production Facility for twenty (20) days from posting pursuant to Rule 305.b, and shall accept and immediately post on the Commission's website any comments received from the public, the Local Governmental Designee, the Colorado Department of Public Health and Environment, or Colorado Parks and Wildlife regarding the proposed Oil and Gas Location.

(1) The Director shall extend the comment period to thirty (30) days upon the written request during the twenty (20) day comment period by the Local Governmental Designee, the Colorado Department of Public Health and Environment, Colorado Parks and Wildlife, the Surface Owner, or an owner of surface property who receives notice under Rule 305.c.(1)(A).iii.

(2) For Oil and Gas Locations proposed within an Urban Mitigation Area or within five hundred (500) feet of a Building Unit, the Director shall extend the comment period to not more than forty (40) days upon the written request of the Local Governmental Designee received within the original 20 day comment period.

The Director shall post notice of an extension granted under this provision on the COGCC website within twenty-four (24) hours of receipt of the extension request.

305.e. **Permit approval.** Upon the conclusion of the comment period and, where applicable, consultation with the Local Governmental Designee, Colorado Parks and Wildlife or Colorado Department of Public Health and Environment pursuant to Rules 306.b, 306.c. or 306.d, respectively, the Director may attach technically feasible and economically practicable conditions of approval to the Form 2 or Form 2A as the Director deems necessary to implement the provisions of the Act or these rules pursuant to Commission staff analysis or to respond to legitimate public health, safety, or welfare concerns expressed during the comment period. Provided, that an applicant under Rule 503 who claims that such a condition is not technically feasible, economically practicable, or necessary to implement the provisions of the Act or these rules, or to respond to legitimate public health, safety, or welfare concerns shall have the burden of proof on that issue before the Commission.

(1) **Notice of decision.** Upon making a decision on an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, the Director shall promptly provide notification of the decision and any conditions of approval to the operator and to any party with standing to request a hearing before the Commission pursuant to Rule 503.b, unless such a party has waived in writing its right to such notice and the Director has been provided a copy of such waiver.

(2) **Suspension of approval.** If a party, Surface Owner or local government requests a hearing before the Commission pursuant to Rule 503.b on an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, then it

shall notify the Director in writing within ten (10) days after the issuance of the decision, setting forth the basis for the objection. Upon receipt of such an objection, the Director shall suspend the approval of the Form 2 or Form 2A and set the matter for an expedited adjudicatory hearing. Such a hearing shall be expedited but will only be held after both the 20 days' notice and the newspaper notice are given as required by Section 34-60-108, C.R.S. However, the hearing can be held after the newspaper notice if all of the entities listed under Rule 503.b waive the 20-day notice requirement. If such an objection is not received, the permit shall issue as proposed by the Director.

(3) **Appeal.** If the approval of a Form 2 or Form 2A is not suspended as provided for herein, the issuance of the approved Form 2 or Form 2A by the Director shall be deemed a final decision of the Commission, subject to judicial appeal.

305.f. **Statutory Notice to Surface Owners.** Not less than thirty (30) days in advance of commencement of operations with heavy equipment for the drilling of a well, operators shall provide the statutorily required notice to the well site Surface Owner(s) as described below and the Local Governmental Designee in whose jurisdiction the well is to be drilled. Notice to the Surface Owner may be waived in writing by the Surface Owner.

(1) Surface Owner Notice is not required on federal- or Indian-owned surface lands.

(2) Surface Owner Notice shall be delivered by hand; certified mail, return-receipt requested; or by other delivery service with receipt confirmation. Electronic mail may be used if the Surface Owner has approved such use in writing.

(3) The Surface Owner Notice must provide:

A. The operator's name and contact information for the operator or its agent;

B. A site diagram or plat of the proposed well location and any associated roads and production facilities;

C. The date operations with heavy equipment are expected to commence;

D. A copy of the COGCC Informational Brochure for Surface Owners;

E. A postage-paid, return-addressed post card whereby the Surface Owner may request consultation pursuant to Rule 306; and,

F. A copy of the COGCC Onsite Inspection Policy (See Appendix or COGCC website), where the Oil and Gas Location is not subject to a Surface-Use Agreement.

(4) **Notice of subsequent well operations.** An operator shall provide to the surface owner or agent at least seven (7) days advance notice of subsequent well operations with heavy equipment that will materially impact surface areas beyond the existing access road or well site, such as recompleting or stimulating the well.

(5) **Notice during irrigation season.** If a well is to be drilled on irrigated crop lands between March 1 and October 31, the operator shall contact the Surface Owner or agent at least fourteen (14) days prior to commencement of operations with heavy equipment to coordinate drilling operations to avoid unreasonable interference with irrigation plans and activities.

(6) **Final reclamation notice.** Not less than thirty (30) days before any final reclamation operations are to take place pursuant to Rule 1004, the operator shall notify the Surface Owner. Final reclamation operations shall mean those reclamation operations to be undertaken when a well is to be plugged and abandoned or when production facilities are to be permanently removed. Such notice is required only where final reclamation operations commence more than thirty (30) days after the completion of a well.

305.g. **Location Signage.** The Operator shall, concurrent with the Surface Owner Notice, post a sign not less than two feet by two feet at the intersection of the lease road and the public road providing access to the well site, with the name of the proposed well, the legal location thereof, and the estimated date of commencement. Such sign shall be maintained until completion operations at the well are concluded.

305.h. **Buffer Zone Move-In, Rig-Up Notice.** At least 30 days, but no more than 90 days, before the Move-In, Rig-Up of a drilling rig, the operator shall provide Move-In, Rig-Up ("MIRU") Notice to all Building Unit owners within the Buffer Zone if: (i) it has been more than one year since the previous notice or since drilling activity last occurred, or (ii) notice was not previously required.

(1) The operator may rely on the county assessor tax records to identify the persons entitled to MIRU Notice. MIRU Notice shall be delivered by hand; certified mail, with return-receipt requested; electronic mail, with return receipt requested; or by other delivery service with receipt confirmation.

(2) The MIRU Notice must include:

A. A statement informing the Building Unit owner that the operator intends to Move-In and Rig-Up a drilling rig to drill wells within 1000 feet of their Building Unit;

B. The operator's contact information;

C. The legal location of the proposed wells (Quarter-Quarter, Section, Township, Range, County);

D. The approximate street address of the proposed well locations (Street Number, Name, City);

E. The name and number of the proposed wells, including the API Number if the APD has been approved or the eForm Document Number if the APD is pending approval;

F. The anticipated date (Day, Month, Year) the drilling rig will move in and rig up; and

G. The COGCC's website address and telephone number.

(3) A Building Unit owner entitled to receive MIRU Notice may waive their right in writing at any time.

(4) An operator may request an exception to this Rule and provide MIRU Notice less than 30 days prior to Move-In, Rig-Up of the drilling rig for good cause.

306. CONSULTATION AND MEETING PROCEDURES. Following the notifications provided for in Rule 305.c, an Operator shall comply with the following consultation and meeting procedures:

a. **Surface owners**. The Operator shall consult in good faith with the Surface Owner, or the Surface Owner's appointed agent as provided for in Rule 305 in locating roads, production facilities, and well sites, or other oil and gas operations, and in preparation for reclamation and abandonment. Such consultation shall occur at a time mutually agreed to by the parties prior to the commencement of operations with heavy equipment upon the lands of the Surface Owner. The Surface Owner or appointed agent may comment on preferred locations for wells and associated production facilities, the preferred timing of oil and gas operations, and mitigation measures or Best Management Practices to be used during Oil and Gas Operations.

(1) **Information provided by operator**. When consulting with the Surface Owner or appointed agent, the operator shall furnish a description or diagram of the proposed drilling location; dimensions of the drill site; topsoil management practices to be employed; and, if known, the location of associated production or injection facilities, pipelines, roads and any other areas to be used for oil and gas operations (if not previously furnished to such Surface Owner or if different from what was previously furnished).

(2) **Waiver.** The Surface Owner or the Surface Owner's appointed agent may waive, permanently or otherwise, their right to consult with the operator at any time. Such waiver must be in writing, signed by the Surface Owner, and submitted to the operator.

306.b. **Local governments**.

(1) Local governments that have appointed a Local Governmental Designee and have indicated to the Director a desire for consultation shall be given an opportunity to consult with the Applicant and the Director on an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, for the location of roads, Production Facilities and Well sites, and mitigation measures or Best Management Practices during the comment period under Rule 305.d.

(2) Within fourteen (14) days of being notified of a Form 2 or a Form 2A completeness determination pursuant to Rule 305.c, the Local Governmental Designee may notify the Commission and the Colorado Department of Public Health and Environment by electronic mail of its desire to have the Colorado Department of Public Health and Environment consult on a proposed Oil and Gas Location, based on concerns regarding public health, safety, welfare, or impacts to the environment.

(3) For proposed Oil and Gas Locations within Exception Zone Setback or Urban Mitigation Areas, the Operator shall attend an informational meeting with Building Unit owners within the Exception Zone Setback or Urban Mitigation Area if the LGD requests such a meeting. Such informational meetings may be held on an individual basis, in small groups, or in larger community meetings and shall be held at a convenient place and time.

306.c. **Colorado Parks and Wildlife.**

(1) **Consultation to occur.**

A. Subject to the provisions of Rule 1202.d, Colorado Parks and Wildlife shall consult with the Commission, the Surface Owner, and the Operator on an Oil and Gas Location Assessment, Form 2A, where:

i. Consultation is required pursuant to a provision in the 1200-Series of these rules;

ii. The operator seeks a variance from a provision in the 1200-Series of these rules; or

iii. Colorado Parks and Wildlife requests consultation because the proposed Oil and Gas Location would be within areas of known occurrence or habitat of a federally threatened or endangered species, as shown on the Colorado Parks and Wildlife Species Activity Mapping (SAM) system.

B. The Commission shall consult with Colorado Parks and Wildlife when an operator requests a modification of an existing Commission order to increase well density or otherwise proposes to increase well density to more than one (1) well per forty (40) acres, or the Commission develops a basin-wide order involving wildlife or wildlife-related environmental concerns or protections.

C. Notwithstanding the foregoing, the requirement to consult with Colorado Parks and Wildlife may be waived by Colorado Parks and Wildlife at any time.

(2) **Procedure.**

A. The operator shall provide:

i. A description of the oil and gas operation to be considered, including location;

ii. Any other relevant available information on the oil and gas operation, the affected wildlife resource, or the provision(s) of the 1200-Series Rules upon which the consultation is based; and

iii. Proposed mitigation for the affected wildlife resource.

B. The Commission shall take into account the information submitted by the operator consistent with Rule 1202.c.

C. The operator, the Commission, the Surface Owner, and Colorado Parks and Wildlife shall have forty (40) days to conduct the consultation called for in this section. Such consultation shall begin concurrent with the start of the public comment period. If no consultation occurs within such 40-day period, the requirement to consult shall be deemed waived, and the Director shall consider the operator's application on the basis of the materials submitted by the operator.

(3) **Result of consultation under Rule 306.c.**

A. As a result of consultation called for in this subsection, Colorado Parks and Wildlife may make written recommendations to the Commission on

conditions of approval necessary to minimize adverse impacts to wildlife resources. Where applicable, Colorado Parks and Wildlife may also make written recommendations on whether a variance request should be granted, under what conditions, and the reasons for any such recommendations.

B. **Agreed-upon conditions of approval.** Where the operator, the Director, Colorado Parks and Wildlife, and the Surface Owner agree to conditions of approval for Oil and Gas Locations as a result of consultation, these conditions of approval shall be incorporated into approvals of an Oil and Gas Location Assessment, Form 2A, or an Application for Permit-to-Drill, Form 2, where applicable.

C. **Permit-specific conditions.** Where the consultation called for in this subsection results in permit-specific conditions of approval to minimize adverse impacts to wildlife resources, the Director shall attach such permit-specific conditions only with the consent of the affected Surface Owner.

D. **Standards for consultation and initial decision.** Following consultation and subject to subsection C above and Rule 1202.c, the Director shall decide whether to attach conditions of approval to a Form 2A or Form 2, where applicable. In making this decision, the Director shall apply the criteria of Rule 1202.

E. **Notification of decision to consulting agency.** Where consultation occurs under Rule 306.c, the Director shall provide to Colorado Parks and Wildlife the conditions of approval for the Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, on the same day that he or she announces a decision to approve the application.

306.d. **Colorado Department of Public Health and Environment.**

(1) **Consultation to occur.**

A. The Commission shall consult with the Colorado Department of Public Health and Environment on an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, where:

i. Within fourteen (14) days of notification pursuant to Rule 305, the Local Governmental Designee requests the participation of the Colorado Department of Public Health and Environment in the Commission's consideration of an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, based on concerns regarding public health, safety, welfare, or impacts to the environment;

ii. The operator seeks from the Director a variance from, or consultation is otherwise required or permitted under, a provision of one of the following rules intended for the protection of public health, safety, welfare, or the environment:

aa. Rule 317B. Public Water System Protection;

bb. Rule 325. Underground Disposal of Water;

cc. Rule 603. Statewide Location Requirements for Oil and Gas Facilities, Drilling, and Well Servicing Operations;

dd. Rule 604. Setback and Mitigation Measures for Oil and Gas Facilities, Drilling, and Well Servicing Operations;

ee. Rule 608. Coalbed Methane Wells;

ff. Rule 805. Odors and Dust;

gg. 900-Series E&P Waste Management; or

hh. Rule 1002.f. Stormwater Management.

All requests for variances from these rules must be made at the time an operator submits a Form 2A.

B. The Commission shall consult with the Colorado Department of Public Health and Environment when an operator requests a modification of an existing Commission order to increase well density or otherwise proposes to increase well density to more than one (1) well per forty (40) acres, or the Commission develops a basin-wide order that can reasonably be anticipated to have impacts on public health, welfare, safety, or environmental concerns or protections.

C. Notwithstanding the foregoing, the requirement to consult with the Colorado Department of Public Health and Environment may be waived by the Colorado Department of Public Health and Environment at any time.

(2) **Procedure.**

A. Where required, the Commission and the Colorado Department of Public Health and Environment shall have forty (40) days to conduct the consultation called for in this section. Such consultation shall begin concurrent with the start of the public comment period. If no consultation occurs within such 40-day period, the requirement to consult shall be waived, and the Director shall consider the operator's application on the basis of the materials submitted by the operator.

B. The consultation called for in this section shall focus on identifying potential impacts to public health, safety, welfare, or the environment from activities associated with the proposed Oil and Gas Location, and development of conditions of approval or other measures to minimize adverse impacts.

C. Where consultation occurs pursuant to Rule 306.d.(1).A, it may include:

i. Review of the permit application;

ii. Discussions with the local governmental designee to better understand local government's concerns;

iii. Discussions with the Commission, operator, Surface Owner, or those potentially affected; and

iv. Review of public comments.

D. Where consultation occurs pursuant to Rule 306.d.(1).A.ii, the Colorado Department of Public Health and Environment shall have the opportunity to:

i. Review the permit application, the request for variance, and the basis for the request; and

ii. Discuss the request with the operator, the surface owner, and the Commission.

E. Where consultation occurs pursuant to Rule 306.d.(1).B, the Colorado Department of Public Health and Environment shall have the opportunity to:

i. Review the well-density increase application or draft Commission order; and

ii. Discuss the request with the operator or proponent, the Commission, and the local governmental designee.

(3) **Results of consultation under Rule 306.d.**

A. As a result of consultation called for in this subsection, the Colorado Department of Public Health and Environment may make written recommendations to the Commission on conditions of approval necessary to protect public health, safety, and welfare or the environment. Such recommendations may include, but are not limited to, monitoring requirements or best management practices. Where applicable, the Colorado Department of Public Health and Environment may also make written recommendations on whether a variance request should be granted, under what conditions, and the reasons for any such recommendations.

B. **Agreed-upon conditions of approval.** Where the operator, the Director, the Colorado Department of Public Health and Environment, and the Surface Owner agree to conditions of approval for Oil and Gas Locations as a result of consultation, these conditions of approval shall be incorporated into approvals of an Oil and Gas Location Assessment, Form 2A, or Applications for Permit-to-Drill, Form 2, where applicable.

C. **Standards for consultation and Director decision.** Following consultation, the Director shall decide whether to attach conditions of approval recommended by the Colorado Department of Public Health and Environment to a Form 2A or Form 2, where applicable. This decision shall minimize significant adverse impacts to public health, safety, and welfare, including the environment, consistent with other statutory obligations.

D. **Notification of decision to consulting agency.** Where consultation occurs under Rule 306.d, the Director shall provide to the Colorado Department of Public Health and Environment the conditions of approval for the Application for Permit-to-Drill, Form 2, or Oil and Gas Location

Assessment, Form 2A, on the same day that he or she announces a decision to approve the application.

306.e. **Meetings with Building Unit Owners Within a Buffer Zone Setback.**

(1) **Meetings with Building Unit Owners**. An Operator shall be available to meet with Building Unit owners who received an OGLA Notice or a Buffer Zone Notice pursuant to Rule 305.c. and requested a meeting regarding the proposed Oil and Gas Location. Operators shall also be available to meet with such Building Unit owners if requested to do so by the Local Governmental Designee and such meetings shall comply with Rule 306.b.(3). Such informational meetings may be held on an individual basis, in small groups, or in larger community meetings.

(2) **Information provided by operator**. When meeting with Building Unit owners or their appointed agent(s) pursuant to subsection (1), above, the Operator shall provide the following information: the date construction is anticipated to begin; the anticipated duration of pad construction, drilling and completion activities; the types of equipment anticipated to be present on the Location; and the operator's interim and final reclamation obligation. In addition, the Operator shall present a description and diagram of the proposed Oil and Gas Location that includes the dimensions of the Location and the anticipated layout of production or injection facilities, pipelines, roads and any other areas to be used for oil and gas operations. The Operator and Building Unit owners shall be encouraged to discuss potential concerns associated with Oil and Gas Operations, such as security, noise, light, odors, dust, and traffic, and shall provide information on proposed or recommended Best Management Practices or mitigation measures to eliminate, minimize or mitigate those issues.

(3) **Waiver.** The Building Unit owner or agent may waive, permanently or otherwise, the foregoing meeting requirements. Any such waiver shall be in writing, signed by the owner or agent, and shall be submitted by the Building Unit owner or agent to the operator and the Director.

(4) **Mitigation Measures.** Operators will consider all legitimate concerns related to public health, safety, and welfare raised during informational meetings or in written comments and, in consultation with the Director and Local Governmental Designee if the LGD so requests, will add relevant and appropriate Best Management Practices or mitigation measures as Conditions of Approval into the Form 2A and any associated Form 2s.

(5) **Operator Certification.** The Director shall not approve a Form 2A, Oil and Gas Location Assessment, until the operator certifies it has complied with the meeting requirements of this Rule 306.e.

f. **Final reclamation consultation.** In preparing for final reclamation and plugging and abandonment, the operator shall use its best efforts to consult in good faith with the affected Surface Owner (or the tenant when the Surface Owner has requested that such consultation be made with the tenant). Such good faith consultation shall allow the Surface Owner (or appointed agent) the opportunity to provide comments concerning preference for timing of such operations and all aspects of final reclamation, including, but not limited to, the desired final land use and seed mix to be applied.

g. **Tenants.** Operators shall have no obligation to consult with tenant farmers, lessees, or any other party that may own or have an interest in any crops or surface improvements that could be affected by the proposed operation unless the Surface Owner appoints such person as its agent for such purposes. Nothing shall prevent the Surface Owner from

including a tenant in any consultation, whether or not appointed as the Surface Owner's agent.

307. COGCC Form 4. SUNDRY NOTICES

The Sundry Notice, Form 4, is a multipurpose form which shall be used by an operator to request approval from or provide notice to the Director as required by rule or when no other specific form exists, i.e., well name or number change. The rules requiring the use of the Sundry Notice, Form 4, are listed in Appendix I.

308A. COGCC Form 5. DRILLING COMPLETION REPORT

a. Preliminary Drilling Completion Report, Form 5

~~A "Preliminary" Drilling Completion Report, Form 5 shall be submitted within 90 days of the suspension of commenced drilling activities prior to reaching total depth on a well. The form shall include the date drilling activity was suspended, the reason for the suspension, the anticipated date and method of resumption of drilling, and the details of all work performed to date. A cement job summary shall be submitted with the Form 5 for every casing string set, except for the conductor casing and those with verification by a cement bond log as required by Rule 317.o. or by permit conditions. A "Final" Form 5 shall be submitted after reaching total depth as required by Rule 308A.b.~~

(1) If drilling is suspended prior to reaching total depth and does not recommence within 90 days, an operator shall submit a "Preliminary" Drilling Completion Report, Form 5 within the next 10 days.

(2) **Information Requirements.** The "Preliminary" Drilling Completion Report, Form 5 shall include the following information:

A. The date drilling activity was suspended

B. The reason for the suspension

C. The anticipated date and method of resumption of drilling

D. The details of all work performed to date, including all the information required in Rule 308A.b.(2) that has been obtained

(3) A "Final" Form 5 shall be submitted after reaching total depth as required by Rule 308A.b.

b. Final Drilling Completion Report, Form 5

~~A "Final" Drilling Completion Report, Form 5, shall be submitted within 60 days of rig release after drilling, sidetracking, or deepening a well to total depth, or any time the wellbore configuration is changed. In the case of continuous, sequential drilling of multiple wells on a pad, the Final Form 5 shall be submitted for all the wells within 60 days of rig release for the last well drilled on the pad.~~

~~A cement job summary shall be submitted with the Form 5 for every casing string set, except for the conductor casing and those with verification by a cement bond log as required by Rule 317.o. or by permit conditions. A "Final" Form 5 shall be submitted after reaching total depth as required by Rule 308A.b. Copies of all logs run, open-hole and cased-hole, electric, mechanical, mud, or other, shall be submitted with the Form 5 as follows: a digital image file (PDF, TIFF, PDS, or other format approved by the Director) of every log run shall be attached to the form; a digital data file (LAS, DLIS, or other format approved by the Director) shall also be attached for every log run, with the exception of mud logs and cement bond logs. A paper copy may be submitted in lieu of the digital image file. If drill stem tests are run, they shall be submitted with this completion report. If a core analysis is run, it shall be submitted with the completion report if available; if the core analysis is not available when the completion report is submitted the operator shall note this on the Form 5 and provide a copy of the analysis on a Sundry Notice, Form 4, as soon as it is available. Directional surveys shall meet the requirements set forth in Rule 321. The latitude and~~

~~longitude coordinates of the "as drilled" well location shall be reported on the Form 5. The latitude and longitude coordinates shall be in decimal degrees to an accuracy and precision of five decimals of a degree using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345, longitude -104.45632). If GPS technology is utilized to determine the latitude and longitude, all GPS data shall meet the requirements set forth in Rule 215 and the Position Dilution of Precision (PDOP) reading, the GPS instrument operator's name and the date of the GPS measurement shall also be reported on the Form 5.~~

(1) A "Final" Drilling Completion Report, Form 5, shall be submitted within 60 days of rig release after drilling, sidetracking, or deepening a well to total depth. In the case of continuous, sequential drilling of multiple wells on a pad, the Final Form 5 shall be submitted for all the wells within 60 days of rig release for the last well drilled on the pad.

(2) **Information Requirements.** The "Final" Drilling Completion Report, Form 5 shall include the following information:

A. A cement job summary for every casing string set, except for those with verification by a cement bond log as required by Rule 317.p. or by permit conditions, shall be attached to the form.

B. All logs run, open-hole and cased-hole, electric, mechanical, mud, or other, shall be reported and copies submitted as specified here:

i. A digital image file (PDF, TIFF, PDS, or other format approved by the Director) of every log run shall be attached to the form. A paper copy may be submitted in lieu of the digital image file and shall be so noted on the form.

ii. A digital data file (LAS, DLIS, or other format approved by the Director) of every log run, with the exception of mud logs and cement bond logs, shall be attached to the form.

C. All drill stem tests shall be reported and test results shall be attached to the form.

D. All cores shall be reported and the core analyses attached to the form. If core analyses are not yet available, the Operator shall note this on the Form 5 and provide a copy of the analyses as soon as it is available, via a Sundry Notice, Form 4.

E. Any directional survey shall be attached to the form and shall meet the requirements set forth in Rule 321.

F. The latitude and longitude coordinates of the "as drilled" well location shall be reported on the form. The latitude and longitude coordinates shall be in decimal degrees to an accuracy and precision of five decimals of a degree using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345, longitude -104.45632). If GPS technology is utilized to determine the latitude and longitude, all GPS data shall meet the requirements set forth in Rule 215 and the Position Dilution of Precision (PDOP) reading, the GPS instrument operator's name and the date of the GPS measurement shall also be reported on the form.

(3) A Drilling Completion Report, Form 5, shall be submitted within 30 days of the completion of well operations in which the casing or cement in the wellbore is changed. Changes to the wellbore casing or cement configuration include, but shall not be limited to, the operations listed in Rule 317.e.(1). The form shall include the following attachments:

A. Daily operations summary

B. Cement verification reports from the contractor

C. Cement bond log(s) if run by choice or as a required condition of the repair approval, submitted per Rule 308A.b.(2).B.

308B. COGCC Form 5A. COMPLETED INTERVAL REPORT

The Completed Interval Report, Form 5A, shall be submitted within 30 days after a formation is completed (successful or not); after a formation is temporarily abandoned or permanently abandoned; after a formation is recompleted, reperforated or restimulated; and after a formation is commingled. The details of fracturing, acidizing, or other similar treatment, including the volumes of all fluids involved, shall be reported on the Form 5A.

In order to resolve completed interval information uncertainties, the Director may require an operator to submit further information in an additional Completed Interval Report, Form 5A.

308C. CONFIDENTIALITY

Upon submittal of a Sundry Notice, Form 4, request by the operator, completion reports, including Drilling Completion Reports, Form 5 and Completed Interval Reports, Form 5A, and mechanical logs of exploratory or wildcat wells shall be marked "confidential" by the Director and kept confidential for six (6) months after the date of completion, unless the operator gives written permission to release such logs at an earlier date.

309. COGCC Form 7. OPERATOR'S MONTHLY REPORT OF OPERATIONS

a. Operators shall report all existing oil and gas wells that are not plugged and abandoned on the Operator's Monthly Report of Operations, Form 7, within 45 days after the end of each month. A well must be reported every month from the month that it is spud until it has been reported for one month as abandoned. Each formation that is completed in a well shall be reported every month from the time that it is completed until it has been abandoned and reported for one month as abandoned. ~~All information required by the form shall be reported.~~ The reported volumes shall include ~~including~~ all fluids produced during ~~the~~ flowback, initial testing, and completion of the well.

b. The volume of specific fluids injected into a Class II Underground Injection Control well shall be reported on an Operator's Monthly Report of Operations, Form 7, within 45 days after the end of each month. The specific Class II fluids reported on Form 7 are produced fluids and any gas or fluids used during enhanced recovery unit operations. Produced fluids include, but are not limited to, produced water~~; used drilling fluids; used workover fluids; used stimulation fluids; and used fluids from circulation during cementing operations recovered from production, injection, and exploratory wells.~~ and fluids recovered during drilling, casing cementing, pressure testing, completion, flowback, workover, and formation stimulation of all oil and gas wells including production, exploration, injection, service and monitoring wells.

   Injection of any other Class II fluids requires separate volume reporting on a Form 14, as described in Rule 316A.

310. COGCC Form 8. OIL AND GAS CONSERVATION LEVY

On or before March 1, June 1, September 1 and December 1 of each year, every producer or purchaser, whichever disburses funds directly to each and every person owning a working interest, a royalty interest, an overriding royalty interest, a production payment and other similar interests from the sale of oil or natural gas subject to the charge imposed by §34-60-122(1) (a) C.R.S., 1973, as amended, shall file a return with the Director showing by operator, the volume of oil, gas or condensate produced or purchased during the preceding calendar quarter, including

the total consideration due or received at the point of delivery. No filing shall be required when the charge imposed is zero mill ($0.0000) per dollar value.

The levy shall be an amount fixed by order of the Commission. The levy amount may, from time to time, be reduced or increased to meet the expenses chargeable against the oil and gas conservation and environmental response fund. The present charge imposed, as of July 1, 2007, is seven tenths of a mill ($0.0007) per dollar value.

311. COGCC Form 6. WELL ABANDONMENT REPORT

a. **Notice of Intent to Abandon, Form 6.** Prior to the abandonment of a well, a Well Abandonment Report, Form 6 – Notice of Intent to Abandon, shall be submitted to, and approved by, the Director. The Form 6 - Notice of Intent to Abandon shall be completed and attachments included to fully describe the proposed abandonment operations. This includes the proposed depths of mechanical plugs and casing cuts; the proposed depths and volumes of all cement plugs; the amount, size and depth of casing and junk to be left in the well; the volume, weight, and type of fluid to be left in the wellbore between cement or mechanical plugs; and the nature and quantities of any other materials to be used in the plugging. The operator shall provide a current wellbore diagram and a wellbore diagram showing the proposed plugging procedure with the Form 6. If the well is not plugged within six months of approval a new Form 6 – Notice of Intent to Abandon shall be filed.

b. **Subsequent Report of Abandonment, Form, 6.** Within 30 days after abandonment, the Well Abandonment Report, Form 6 - Subsequent Report of Abandonment, shall be filed with the Director. The abandonment details shall include an account of the manner in which the abandonment or plugging work was performed. Copies of any casing pressure test results and downhole logs run during plugging and abandonment shall be submitted with Form 6. Additionally, plugging verification reports detailing all procedures are required. A Plugging Verification Report shall be submitted for each person or contractor actually setting the plugs. The Form 6 - Subsequent Report of Abandonment, and the Plugging Verification Reports shall detail the depths of mechanical plugs and casing cuts, the depths and volumes of all cement plugs, the amount, size and depth of casing and junk left in the well, the volume and weight of fluid left in the wellbore and the nature and quantities of any other materials used in the plugging. Plugging Verification Reports shall conform with the operator's report and both shall show that plugging procedures are at least as extensive as those approved by the Director.

c. **Re-Plugging.** A Well Abandonment Report, Form 6 – Notice of Intent to Abandon, shall be submitted to, and approved by, the Director prior to the re-entry of a plugged and abandoned well for the purpose of re-plugging the well. A Well Abandonment Report, Form 6 - Subsequent Report of Abandonment shall be filed with the Director within 30 days of the completion of the re-plugging operations. These forms shall be submitted with all the information required above and any additional information required by current policy.

d. **As-Drilled Location.** For all wells being plugged, the latitude and longitude coordinates of the “as drilled” well location shall be reported on the Form 6. When plugging a well for which this data has been obtained and submitted to the Commission previously, the operator shall submit this data on the Form 6 – Notice of Intent to Abandon. When plugging a well for which this data has not yet been obtained and submitted to the Commission, the operator shall determine the “as drilled” location prior to plugging and submit the location on the Form 6 – Subsequent Report of Abandonment. The latitude and longitude coordinates shall be in decimal degrees to an accuracy and precision of five decimals of a degree using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345, longitude -104.45632). If GPS technology is utilized to determine the latitude

and longitude, all GPS data shall meet the requirements set forth in Rule 215 and the Position Dilution of Precision (PDOP) reading, the GPS instrument operator's name and the date of the GPS measurement shall also be reported on the Form 6.

312. COGCC Form 10. CERTIFICATE OF CLEARANCE AND/OR CHANGE OF OPERATOR

a. Each operator of any oil or gas well completed after April 30, 1956, shall file with the Director, within thirty (30) days after initial sale of oil or gas a Certificate of Clearance and/or Change of Operator, Form 10, in accordance with the instructions appearing on such form, for each well producing oil or gas or both oil and gas. A Form 10 shall be filed for any well from which oil, gas or other hydrocarbon is being produced.

   A Form 10 shall be filed within thirty (30) days should the oil transporter (first purchaser) and/or the gas gatherer (first purchaser) change. In addition, within fifteen (15) days of an operator change for any well, a Form 10 shall be filed with a filing and service fee as set by the Commission. (See Appendix III)

b. Each operator of a Class II injection well shall file a new Form 10 with the Director within 30 days of the transfer of ownership.

c. Whenever there shall occur a change in the producer or operator filing the certificate under Rule 312.a. hereof, or whenever there shall occur a change of transporter from any well within the State, a new Form 10 shall be executed and filed within fifteen (15) days in accordance with the instructions appearing on such form. In the case of temporary use of oil for well treating or stimulating purposes, no new form need be executed. In the case of other temporary change in transporter involving the production of less than one (1) month, the producer or operator may, in lieu of filing a new certificate, notify the Commission and the transporter authorized by the certificate on file with the Commission by letter of the estimated amount to be moved by the temporary transporter and the name of such temporary transporter. A copy of such notice shall also be furnished such temporary transporter.

d. In no instance shall the temporary transporter move any quantity greater than the estimated amount shown in said notice.

e. The certificate, when properly executed and approved by the Commission, shall constitute authorization to the pipeline or other transporter to transport the authorized volume from the well named therein; provided that this section shall not prevent the production or transportation in order to prevent waste, pending execution and approval of said certificate. Permission for the transportation of such production shall be granted in writing to the producer and transporter.

f. The certificate shall remain in force and effect until:

   (1) The producer or operator filing the certificate is changed; or

   (2) The transporter is changed; or

   (3) The certificate is canceled by the Commission.

g. A copy of each Form 10 to be filed hereunder shall be sent by the Director to those local governmental designees who so request.

h. It is the operator's responsibility to mail approved copies of the Certificate of Clearance and/or Change of Operator, Form 10, to the transporter and/or gatherer for each well listed.

i. A completed Form 10 shall be required for any change of operator for all oil and gas facilities, excluding gathering systems, gas-processing plants, and gas storage facilities as those shall be changed with a Form 12, Gas Facility Registration/Change of Operator.

313. COGCC Form 11. MONTHLY REPORT OF GASOLINE OR OTHER EXTRACTION PLANT

All operators of gasoline or other extraction plants shall make monthly reports to the Director on Form 11 Such forms shall contain all information required thereon and shall be filed with the Director on or before the twenty-fifth (25th) day of each month covering the preceding month.

314. COGCC Form 17. BRADENHEAD TEST REPORT

Results of bradenhead tests, as required by Rule 207.b., shall be submitted to the Director within ten (10) days of completion by filing a Form 17. A wellbore diagram shall be submitted if not previously submitted or if the wellbore configuration has changed. If sampled, then the results of any gas and liquid analysis shall be submitted.

315. REPORT OF RESERVOIR PRESSURE TEST

Where the Director believes it is necessary to prevent waste, protect correlative rights, or prevent a significant adverse impact, the Director may require subsurface pressure measurements. Whenever such measurements are made, results shall be reported on a Sundry Notice, Form 4, within twenty (20) days after completion of tests, or submitted on any company form approved by the Director containing the same information.

316A. COGCC Form 14. NON-PRODUCED WATER INJECTION

a. Form 14A. AUTHORIZATION OF SOURCE OF CLASS II WASTE FOR DISPOSAL

Prior approval of a Form 14A, Authorization of Source of Class II Waste for Disposal, is required for the injection of Class II waste (other than the fluids specifically described in Rules 308B and 309) into any formation in a dedicated Class II Underground Injection Control well. Examples include, but are not limited to, ground water recovered during a remediation project or chemical treatments. The Form 14A shall include a description of the nature and source of the injected fluids, the types of chemicals used to treat the injected fluids, and the date of initial fluid injection for new injection wells. The Form 14A must be submitted and approved for a new disposal facility and for any changes in the source of Class II waste for an existing facility.

b. Form 14. MONTHLY REPORT OF NON-PRODUCED WATER INJECTED

i. Operators engaged in the injection of Class II waste (other than the fluids specifically described in Rules 308B and 309) into any formation in a dedicated Class II Underground Injection Control well shall submit a Form 14, Monthly Report of Non-Produced Water Injected within 45 days after the end of each month. This report shall include the type and amount of waste received from transporters.

ii. Operators of simultaneous injection wells shall, by March 1 of each year, report to the Director the calculated injected volume for the previous year by month on a Form 14.

iii. Operators of gas storage projects shall, by March 1 of each year, report to the Director the amount of gas injected and withdrawn for the previous year and the amount of gas remaining in the reservoir as of December 31 of that year.

316B. COGCC Form 21. MECHANICAL INTEGRITY TEST

Not less than 10 days prior to the performance of a mechanical integrity test, the Director shall be notified with a Field Operations Notice, Form 42 – Mechanical Integrity Test, of the scheduled date on which the test will be performed. ~~Results of mechanical integrity tests of injection wells, shut-in wells, or temporarily abandoned wells, as described in Rule 326, shall be submitted on Form 21, Mechanical Integrity Test, within 30 days after the test.~~ Results of any mechanical integrity test shall be submitted on Form 21, Mechanical Integrity Test, within 30 days after the test. The Form 21 shall be completely filled out except for Part II, which is required only for injection wells. An original copy of the pressure chart shall be submitted with every Form 21.

316C. COGCC Form 42. FIELD OPERATIONS NOTICE

Operators shall submit a Form 42, Field Operations Notice, as designated below and in accordance with a Condition of Approval on any Form 2, Application for Permit to Drill; Form 2A, Oil and Gas Location Assessment; Form 4, Sundry Notice; Form 6, Well Abandonment Report; or any other approved form.

a. **Notice of Intent to Conduct Hydraulic Fracturing Treatment.** Operators shall give at least 48 hours advance written notice of intent to the Commission of a hydraulic fracturing treatment at any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Hydraulic Fracturing Treatment. The Commission shall provide prompt electronic notice of such intention to the relevant local governmental designee (LGD).

b. **Notice of Spud.** Operators shall give at least 48 hours advance written notice of intent to the Commission of a surface hole spud on any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Spud. The Commission shall provide prompt electronic notice of such intention to the relevant local governmental designee (LGD).

c. **Notice of Construction or Major Change.** Operators shall give at least 48 hours advance written notice of intent to the Commission of a construction or major change at any Well, Oil and Gas Locations, or Oil and Gas Facility. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Construction or Major Change.

d. **Notice to Run and Cement Casing.** If required by policy or condition of approval, Operators shall give at least 24 hours advance written notice of intent to the Commission to run and cement casing on any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice to Run and Cement Casing.

e. **Notice of Formation Integrity Test.** If required by policy or condition of approval, Operators shall give at least 24 hours advance written notice intent to the Commission of a formation integrity test on any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Formation Integrity Test.

f. **Notice of Mechanical Integrity Test.** Operators shall give at least 10 day advance written notice of intent to the Commission of a mechanical integrity test on any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Mechanical Integrity Test.

g. **Notice of Bradenhead Test.** Operators shall give at least 48 hours advance written notice to the Commission of a bradenhead test at any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Bradenhead Test.

h. **Notice of Blow Out Preventer Test.** If required by policy or condition of approval, Operators shall give at least 24 hours advance written notice of intent to the Commission of a blow out preventer test at any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Blow Out Preventer Test.

i. **Notice of Site Ready for Reclamation Inspection.** Operators shall give written notice to the Commission of a site ready for reclamation inspection at any well, well pad or production facility. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Site Ready for Reclamation Inspection.

j. **Notice of Pit Liner Installation.** Operators shall give at least 48 hours advance written notice of intent to the Commission of a pit liner installation at any facility. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Pit Liner Installation.

k. **Notice of Significant Lost Circulation.** Operators shall give written notice to the Commission of significant lost circulation at any well within 24 hours. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Significant Lost Circulation.

l. **Notice of High Bradenhead Pressure During Stimulation.** Operators shall give at least 24 hours advance written notice to the Commission of high bradenhead pressure during stimulation at any well. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of High Bradenhead Pressure During Stimulation.

m. **Notice of Completion of Form 2/2A Permit Conditions.** If required by policy or condition of approval, Operators shall give written notice to the Commission of completion of Form 2 or 2A permit conditions at any well, Oil and Gas Location, or Oil and Gas facility. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Completion of Form 2/2A Permit Conditions.

n. **Notice of Inspection Corrective Actions Performed.** Operators shall give written notice to the Commission of inspection corrective actions performed at any well, Oil and Gas Location, or Oil and Gas facility. Such notice shall be provided on a Field Operations Notice, Form 42 - Notice of Inspection Corrective Actions Performed.

317. GENERAL DRILLING RULES

Unless altered, modified, or changed for a particular field or formation upon hearing before the Commission the following shall apply to the drilling or deepening of all wells.

a. **Blowout prevention equipment ("BOPE").** The operator shall take all necessary precautions for keeping a well under control while being drilled or deepened. BOPE, if any, shall be indicated on the Application for Permit to Drill, Deepen, Re-enter, or Recomplete and Operate (Form 2), as well as any known subsurface conditions (e.g. under or over-pressured formations). The working pressure of any BOPE shall exceed the anticipated surface pressure to which it may be subjected, assuming a partially evacuated hole with a pressure gradient of 0.22 psi/ft. [For BOPE requirements in Designated Setback Locations see Rule 604.c.(2). For statewide BOPE specification, inspection, operation and testing requirements see Rule 603.e.]

(1) The Director shall have the authority to designate specific areas, fields or formations as requiring certain BOPE. Any such proposed designation shall occur by notice describing the area, field or formation in question and shall be given to all operators of record within such area or field and by publication. The proposed

designation, if no protest is timely filed, shall be placed on the Commission consent agenda for its next regularly scheduled meeting following the month in which such notice was given. The matter shall be approved or heard by the Commission in accordance with Rule 520. Such designation shall be effective immediately upon approval by the Commission, except as to any previously-approved Form 2.

(2) The Director shall have the authority, outside areas designated pursuant to Rule 317.a.(1), to condition approval of any application for permit to drill by requiring BOPE which the Director determines to be necessary for keeping the well under control. Should the operator object to such condition of approval, the matter shall be heard at the next regularly scheduled meeting of the Commission, subject to the notice requirements of Rule 507.

b. **Bottom hole location.** Unless authorized by the provisions of Rule 321., all wells shall be so drilled that the horizontal distance between the bottom of the hole and the location at the top of the hole shall be at all times a practical minimum.

c. **Requirement to post permit at the rig. ~~and provide spud notice~~.** A copy of the approved Application for Permit-to-Drill, Form 2, shall be posted in a conspicuous place on the drilling rig or workover rig. ~~A notice shall be provided to the Director on a Sundry Notice, Form 4, no later than five (5) days following the spudding of a well. The Director may apply a condition of approval for Application for Permit-to-Drill, Form 2, requiring not less than twenty-four (24) hours nor more than seventy-two (72) hours verbal or written notice prior to spud.~~

d. **Requirement to provide spud notice.** An advance notice shall be provided to the Director on a Field Operations Notice, Form 42, no less than 48 hours prior to spudding a well.

e. ~~**Casing program to protect hydrocarbon horizons and ground water.** The casing for each well must protect any potential oil or gas bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and prevent oil, gas or water from migrating from one horizon to another. Prior written approval from the Director on a Form 4, Sundry Notice, is required before pumping cement down the bradenhead access to the annulus between the production casing (or intermediate casing, if present) and surface casing, any routine or planned casing repair operations, or any other changes to the casing or cement in the wellbore. During well operations, prior verbal approval for unforeseen casing repairs shall be acceptable. A Drilling Completion Report, Form 5, daily operations summary, cement verification reports from the contractor, and if required as a condition of the repair approval, cement bond log(s), shall be submitted within 30 days after completion of operations.~~

e. **Casing program to protect hydrocarbon horizons and ground water.** The casing in every well must prevent water from infiltrating into any potential hydrocarbon horizons penetrated during drilling and must prevent oil, gas, and water from migrating from one horizon to another.

(1) Prior written approval from the Director on a Form 4, Sundry Notice, is required before commencing any of the following operations:

A. Pumping cement down the Bradenhead access to the annulus between the production casing (or intermediate casing, if present) and surface casing

B. All routine or planned casing repair operations

C. Any other changes to the casing or cement in the wellbore

(2) In the case of unforeseen casing repairs during well operations, verbal approval shall be obtained, and shall be followed immediately by a Form 4, Sundry Notice.

(3) A Drilling Completion Report, Form 5 shall be submitted within 30 days of the completion of the operations listed above, per Rule 308A.b.(3).

(4) Prior written approval from the Director on a Form 4, Sundry Notice, is required before changing the gross interval of perforations in a completed formation, including into a formation designated as a common source of supply. A Completed Interval Report, Form 5A shall be submitted within 30 days of the Gross Interval Change, per Rule 308B.

f. **Surface casing where subsurface conditions are unknown.** In areas where pressure and formations are unknown, sufficient surface casing shall be run to reach a depth below all known or reasonably estimated utilizable domestic fresh water levels and to prevent blowouts or uncontrolled flows, and shall be of sufficient size to permit the use of an intermediate string or strings of casings. Surface casing shall be set in or through an impervious formation and shall be cemented by pump and plug or displacement or other approved method with sufficient cement to fill the annulus to the top of the hole, all in accordance with reasonable requirements of the Director. In the D–J Basin Fox Hills Protection Area surface casing will be set in accordance with Rule 317A. (See also subparagraph g.).

g. **Surface casing where subsurface conditions are known.** For wells drilled in areas where subsurface conditions have been established by drilling experience, surface casing, size at the owner's option, shall be set and cemented to the surface by the pump and plug or displacement or other approved method at a depth and in a manner sufficient to protect all fresh water and to ensure against blowouts or uncontrolled flows. In the D–J Basin Fox Hills Protection Area surface casing shall be set in accordance with Rule 317A. (See also subparagraph g.).

h. **Alternate aquifer protection by stage cementing.** In areas where fresh water aquifers are of such depth as to make it impractical or uneconomical to set the full amount of surface casing necessary to comply fully with the requirement to cover or isolate all fresh water aquifers as required in subparagraph e. and f., the owner may, at its option, comply with this requirement by stage cementing the intermediate and/or production string so as to accomplish the required result. If unanticipated fresh water aquifers are encountered after setting the surface pipe they shall be protected or isolated by stage cementing the intermediate and/or production string with a solid cement plug extending from fifty (50) feet below each fresh water aquifer to fifty (50) feet above said fresh water aquifer or by other methods approved by the Director in each case. In the D–J Basin Fox Hills Protection Area any stage cementing shall occur only in accordance with Rule 317A. If the stage cement is not circulated to surface, a temperature log or cement bond log shall be run to determine the top of the stage cement to ensure aquifers are protected.

i. **Surface and intermediate casing cementing.** The operator shall ensure that all surface and intermediate casing cement required under this rule shall be of adequate quality to achieve a minimum compressive strength of three hundred (300) psi after twenty-four (24) hours and eight hundred (800) psi after seventy-two (72) hours measured at ninety-five degrees Fahrenheit (95 °F) and at eight hundred (800) psi confining pressure. All surface casing shall be cemented with a continuous column from the bottom of the casing to the surface. After thorough circulation of the wellbore, cement shall be pumped behind the intermediate casing to at least two hundred (200) feet above the top of the shallowest known production horizon and as required in 317.g. Cement placed behind the surface and intermediate casing shall be allowed to set a minimum of eight (8) hours, or until three hundred (300) psi calculated compressive strength is developed, whichever occurs first, prior to commencing drilling operations. If the surface casing cement level falls below the surface, to the extent safety or aquifer protection is compromised, remedial cementing operations shall be performed.

j. **Production casing cementing.** The operator shall ensure that all cement required under this rule placed behind production casing shall be of adequate quality to achieve a minimum compressive strength of at least three hundred (300) psi after twenty-four (24) hours and of at least eight hundred (800) psi after seventy-two (72) hours both measured at eight hundred (800) psi at either ninety-five degrees Fahrenheit (95 °F) ~~and eight hundred (800) psi~~ or at the minimum expected downhole temperature. After thorough circulation of a wellbore, cement shall be pumped behind the production casing (200) feet above the top of the shallowest uncovered known producing horizon. All fresh water aquifers which are exposed below the surface casing shall be cemented behind the production casing. All such cementing around an aquifer shall consist of a continuous cement column extending from at least fifty (50) feet below the bottom of the fresh water aquifer which is being protected to at least fifty (50) feet above the top of said fresh water aquifer. Cement placed behind the production casing shall be allowed to set seventy-two (72) hours, or until eight hundred (800) psi calculated compressive strength is developed, whichever occurs first, prior to the undertaking of any completion operation.

k. **Production and intermediate casing pressure testing.** The installed production casing or, in the case of a production liner, the intermediate casing, shall be adequately pressure tested for the conditions anticipated to be encountered during completion and production operations.

l. **Protection of aquifers and production stratum and suspension of drilling operations before running production casing**. In the event drilling operations are suspended before production string is run, the Director shall be notified immediately and the operator shall take adequate and proper precautions to assure that no alien water enters oil or gas strata, nor potential fresh water aquifers during such suspension period or periods. If alien water is found to be entering the production stratum or to be causing significant adverse environmental impact to fresh water aquifers during completion testing or after the well has been put on production, the condition shall be promptly remedied.

m. **Flaring of gas during drilling and notice to local emergency dispatch.** Any gas escaping from the well during drilling operations shall be, so far as practicable, conducted to a safe distance from the well site and burned. The operator shall notify the local emergency dispatch as provided by the local governmental designee of any such flaring. Such notice shall be given prior to the flaring if the flaring can be reasonably anticipated, and in all other cases as soon as possible but in no event more than two (2) hours after the flaring occurs.

n. **Protection of productive strata during deepening operations.** If a well is deepened for the purpose of producing oil and gas from a lower stratum, such deepening to and completion in the lower stratum shall be conducted in such a manner as to protect all upper productive strata.

o. **Requirement to evaluate disposal zones for hydrocarbon potential.** If a well is drilled as a disposal well then the disposal zone shall be evaluated for hydrocarbon potential. The proposed hydrocarbon evaluation method shall be submitted in writing and approved by the Director prior to implementation. The productivity results shall be submitted to the Director upon completion of the well.

p. **Requirement to log well.** For all new drilling operations, the operator shall be required to run a minimum of a resistivity log with gamma-ray or other petrophysical log(s) approved by the Director that adequately describe the stratigraphy of the wellbore. A cement bond log shall be run on all production casing or, in the case of a production liner, the intermediate casing, when these casing strings are run. These logs and all other logs run shall be submitted with the Drilling Completion Report, Form 5. Open-hole logs or equivalent cased-hole logs shall be run at depths that adequately verify the setting depth of surface

casing and any aquifer coverage. These requirements shall not apply to unlogged open-hole completion intervals. ~~, or to wells in which no open hole logs are run.~~

q. **Remedial cementing during recompletion.** The Director may apply a condition of approval for Application for Permit-to-Drill, Form 2, to require remedial cementing during recompletion operations consistent with the provisions for protecting aquifers and hydrocarbon bearing zones in this Rule 317.

r. Statewide Wellbore Collision Prevention

(1) An operator will perform an anti-collision evaluation of all active offset wellbores that have the potential of being within 150 feet of a proposed well prior to drilling operations for the proposed well. This anti-collision scan will include a downhole directional survey (gyro survey, measurement while drilling survey, or equivalent survey) of the offset wells with included error of uncertainty per survey instrument, and compared against the proposed well path with its respective error of uncertainty. If current downhole directional surveys do not exist for the offset wells, the operator of the proposed well will ensure such surveys are conducted to verify wellbore location. For the proposed well, upon conclusion of drilling operations an as-constructed downhole directional survey shall be attached to the Drilling Completion Report, Form 5.

s. Statewide Fracture Stimulation Setback

(1) No portion of a proposed wellbore's treated interval shall be located within 150 feet of an existing (producing, shut-in, or temporarily abandoned) or permitted oil and gas wellbore's treated interval belonging to another operator without the signed written consent of the operator of the encroached upon wellbore. The signed written consent shall be attached to the Application for Permit-to-Drill, Form 2 for the proposed wellbore.

(2) The distance between wellbores measurement shall be based upon the directional survey for drilled wellbores and the deviated drilling plan for permitted wellbores, or as otherwise reflected in the COGCC well records. The distance shall be measured from the perforation or mechanical isolation device.

317A. SPECIAL DRILLING RULES - D–J BASIN FOX HILLS PROTECTION AREA

The following special drilling rules shall apply to wells in the D–J Basin Fox Hills Protection Area as defined in the 100 Series of the Rules and Regulations:

a. **Surface Casing - Minimum Requirements for Well Control.** In all wells drilled within the D–J Basin Fox Hills Protection Area, surface casing shall be run to a minimum depth of five percent (5%) of the projected total depth to which the well is to be drilled, provided that in no event shall the surface casing be run to a depth less than two hundred (200) feet. The Director may, on a case-by-case basis, grant variances in this five percent (5%) requirement where the Director finds that the well is a development well in which pressures can be accurately predicted and finds that, based upon those predictions, the five percent (5%) requirement should be varied to achieve effective well control. In all cases, however, the actual depth at which the surface casing is set shall be calculated to position the casing seat to a depth within a competent formation (preferably shale) which will contain the maximum pressure to which the casing will be exposed during normal drilling operations.

b. **Surface Casing - Aquifer Protection.** For purposes of aquifer protection, surface casing must be set as follows in wells which are not exploratory wells:

(1) Surface casing shall be run to a depth at least fifty (50) feet below the Fox Hills transition zone in wells drilled within Townships 5 South through 5 North, Ranges 65 West through 70 West or within Townships 3 North through 5 North, Range 64 West.

(2) With respect to Townships 5 South through 5 North, Ranges 58 West through 63 West, Townships 5 South through 2 North, Range 64 West; and Township 6 South, Ranges 65 West through 70 West, in all wells located within one (1) mile of a permitted producing water well, surface casing shall be set to a depth sufficient to protect the deepest permitted producing water well within such one mile area. Said depth shall be at least fifty (50) feet below the depth of the base of the aquifer from which said deepest water well is producing, or fifty (50) feet below the base of the Fox Hills Transition Zone if such deepest water well produces from the Fox Hills Aquifer.

Upon the request of the operator, the Director (or the Commission upon appeal) may grant a variance to the requirements of this subparagraph b. upon a showing to the Director, or the Commission upon appeal, that the variance does not violate the basic intent of said requirements. For such variance purpose, the basic intent of said requirements is stated to be to provide reasonable aquifer protection for the water well(s) which are permitted by the State of Colorado Division of Water Resources and are currently producing in the area potentially affected by the oil or gas well to be drilled.

c. **Exploratory Wells.** For purposes of the D–J Basin Fox Hills Protection Area only, the term exploratory well means any well:

(1) Which targets the classically demonstrated zones with limited geographic extent such as channel, bar, valley fill and levee type sandstones that were deposited prior to the x-bentonite time stratigraphic event; or

(2) Which can be demonstrated to be separated from a known producing horizon by a dry hole; or

(3) Which can be demonstrated to be targeted to a horizon which is geologically separate from the producing horizon in an offsetting producing well, or

(4) Which the Director, or the Commission upon appeal, may define as an exploratory well by variance, it being the basic intent of this definition that the requirements of subparagraph b. not operate to discourage the drilling of high risk wells.

317B. PUBLIC WATER SYSTEM PROTECTION

a. **Definitions.** For purposes of this Rule 317B:

(1) **Drilling, Completion, Production and Storage ("DCPS") Operations** shall mean operations at (i) well sites for the drilling, completion, recompletion, workover, or stimulation of wells or chemical and production fluid storage, and (ii) any other oil and gas location at which production facilities are operated. DCPS Operations shall exclude roads, gathering lines, pipelines, and routine operations and maintenance.

(2) **Existing Oil and Gas Location** shall mean an oil and gas location, excluding roads, pipelines, and gathering lines, permitted or constructed prior to the later of May 1, 2009 for federal land or April 1, 2009 for all other land or the date that the oil and gas location becomes subject to Rule 317B by virtue of its proximity to a Classified Water Supply Segment.

(3) **New Oil and Gas Location** shall mean an oil and gas location, excluding roads, pipelines, and gathering lines, that is not an existing oil and gas location.

(4) **New Surface Disturbance** shall mean surface disturbance that expands the area of surface covered by an oil and gas location beyond that initially disturbed in the construction of the oil and gas location.

(5) **Non-Exempt Linear Feature** shall mean a road, gathering line, or pipeline that is not necessary to cross a stream or connect or access a well or a gathering line.

b. **Applicability Determination.**

(1) Rule 317B is applicable to DCPS Operations within Surface Water Supply Areas. The applicability of Rule 317B will be determined by reviewing the Public Water System Surface Water Supply Area Map, attached as part of Appendix VI, or by entering information into the Public Water System Surface Water Supply Area Applicability Determination Tool, also located on the Commission website.

(2) The Public Water Systems subject to the protections of this Rule 317B are those listed in Appendix VI. Any additions or deletions to the Public Water Systems listed in Appendix VI or the Public Water System Surface Water Supply Area Map, also located in Appendix VI, shall be by Commission rulemaking, as provided in Rule 529.

(3) DCPS Operations at New Oil and Gas Locations within a Surface Water Supply Area will be subject to the requirements in Rules 317B.c, 317B.d, or 317B.e based on the buffer zones defined in Table 1, below. DCPS Operations at Existing Oil and Gas Locations within a Surface Water Supply Area at which no new surface disturbance has occurred after the date Rule 317B became applicable to that oil and gas location will be subject to the requirements in Rule 317B.f.(1) based on the buffer zones defined in Table 1. DCPS Operations at Existing Oil and Gas Locations within a Surface Water Supply Area at which new surface disturbance has occurred after the date Rule 317B became applicable to that oil and gas location will be subject to the requirements in Rule 317B.f.(2) based on the buffer zones defined in Table 1.

(4) For Classified Water Supply Segments that are perennial and intermittent streams, buffer zones shall be determined by measuring from the ordinary high water line of each bank to the near edge of the disturbed area at the oil and gas location at which the DCPS Operations will occur.

(5) The buffer zones shall apply only to DCPS Operations located on the surface. The buffer zones shall not apply to subsurface boreholes and equipment or materials contained therein. The buffer zones shall not apply to DCPS Operations located in an area that does not drain to a classified water supply segment protected by this Rule 317B.

TABLE 1. Buffer Zones Associated with DCPS Operations.

Zone	Classified Water Supply Segments (ft)
Internal Buffer	0 - 300
Intermediate Buffer	301 - 500
External Buffer	501 - 2,640

c. **Requirements for DCPS Operations Conducted at New Oil and Gas Locations in the Internal Buffer Zone.**

DCPS Operations conducted and Non-Exempt Linear Features located at New Oil and Gas Locations within a Surface Water Supply Area may not occur in whole or in part within the Internal Buffer Zone identified in Table 1 unless a variance is granted pursuant to Rule 502.b and consultation with the Colorado Department of Public Health and Environment occurs pursuant to Rule 306.d and a Form 2A or Form 2 with appropriate conditions of approval has been approved, or the Director has approved a Comprehensive Drilling Plan pursuant to Rule 216 that covers the operation. In determining appropriate conditions of approval for such operations, the Director shall consider the extent to which the conditions of approval are required to prevent impacts to the Public Water System.

(1) The Commission shall grant a variance if the operator demonstrates that:

A. The proposed DCPS Operations and applicable best management practices and operating procedures will result in substantially equivalent protection of drinking water quality in the Surface Water Supply area; and

B. Either:

i. Conducting the DCPS Operation outside the Internal Buffer Zone would pose a greater risk to public health, safety, or welfare, including the environment and wildlife resources, such as may be the case where conducting the DCPS Operations outside the Internal Buffer Zone would require construction in steep or erosion-prone terrain or result in greater surface disturbance due to an inability to use infrastructure already constructed such as roads, well sites, or pipelines; or

ii. Conducting DCPS Operations beyond the Internal Buffer Zone is technically infeasible and prevents the operator from exercising its mineral rights.

(2) At a minimum, for any DCPS Operation at a New Oil and Gas Location within the Internal Buffer Zone, the Director shall include as conditions of approval in the Form 2A, Form 2, or Comprehensive Drilling Plan, the requirements of Rule 317B.d.

d. **Requirements for DCPS Operations at New Oil and Gas Locations in the Intermediate Buffer Zone.**

The following shall be required for all DCPS Operations at New Oil and Gas Locations within a Surface Water Supply Area and in the Intermediate Buffer Zone as defined in Table 1.

(1) Pitless drilling systems;

(2) Flowback and stimulation fluids contained within tanks that are placed on a well pad or in an area with downgradient perimeter berming;

(3) Berms or other containment devices shall be constructed in compliance with Rule 604.c.(2)G around crude oil, condensate, and produced water storage tanks; and

(4) When sufficient water exists in the Classified Water Supply Segment, collection of baseline surface water data consisting of a pre-drilling surface water sample collected immediately downgradient of the oil and gas location and follow-up surface water data consisting of a sample collected at the same location three (3) months after the conclusion of any drilling activities and operations or completion. The sample parameters shall include:

A. pH;

B. Alkalinity;

C. Specific conductance;

D. Major cations/anions (chloride, fluoride, sulfate, sodium);

E. Total dissolved solids;

F. BTEX/GRO/DRO;

G. TPH;

H. PAH's (including benzo(a)pyrene); and

I. Metals (arsenic, barium, calcium, chromium, iron, magnesium, selenium).

Current applicable EPA-approved analytical methods for drinking water must be used and analyses must be performed by laboratories that maintain state or nationally accredited programs.

Copies of all test results described above shall be provided to the Commission and the potentially impacted Public Water System(s) within three (3) months of collecting the samples. In addition, the analytical results and surveyed sample locations shall be submitted to the Commission in an electronic data deliverable format.

(5) Notification of potentially impacted Public Water Systems within fifteen (15) stream miles downstream of the DCPS Operation prior to commencement of new surface disturbing activities at the site.

(6) An emergency spill response program that includes employee training, safety, and maintenance provisions and current contact information for downstream Public Water System(s) located within fifteen (15) stream miles of the DCPS Operation, as well as the ability to notify any such downstream Public Water System(s) with intake(s) within fifteen (15) stream miles downstream of the DCPS operations.

In the event of a spill or release, the operator shall immediately implement the emergency response procedures in the above-described emergency response program.

If a spill or release impacts or threatens to impact a Public Water System, the operator shall notify the affected or potentially affected Public Water System(s) immediately following discovery of the release, and the spill or release shall be reported to the Commission in accordance with Rule 906.b.(3), and to the Environmental Release/Incident Report Hotline (1-877-518-5608) in accordance with Rule 906.b.(4).

e. **Requirements for DCPS Operations at New Oil and Gas Locations within the External Buffer Zone.**

The following shall be required when DCPS Operations are conducted at New Oil and Gas Locations within a Surface Water Supply Area and in the External Buffer Zone as defined in Table 1.

(1) Pitless drilling systems or containment of all drilling flowback and stimulation fluids pursuant to Rule 904; and

(2) When sufficient water exists in the Classified Water Supply Segment, collection of baseline surface water data consisting of a pre-drilling surface water sample collected immediately downgradient of the oil and gas location and follow-up surface water data consisting of a sample collected at the same location three (3) months after the conclusion of any drilling activities and operations or completion. The sample parameters shall include:

A. pH;

B. Alkalinity;

C. Specific conductance;

D. Major cations/anions (chloride, fluoride, sulfate, sodium);

E. Total dissolved solids;

F. BTEX/GRO/DRO;

G. TPH;

H. PAH's (including benzo(a)pyrene); and

I. Metals (arsenic, barium, calcium, chromium, iron, magnesium, selenium).

Current applicable EPA-approved analytical methods for drinking water must be used and analyses must be performed by laboratories that maintain state or nationally accredited programs.

Copies of all test results described above shall be provided to the Commission and the potentially impacted Public Water System(s) within three (3) months of collecting the samples. In addition, the analytical results and surveyed sample locations shall be submitted to the Commission in an electronic data deliverable format.

(3) Notification of potentially impacted Public Water Systems within fifteen (15) stream miles downstream of the DCPS Operation prior to commencement of new surface disturbing activities at the site.

(4) An emergency spill response program that includes employee training, safety, and maintenance provisions and current contact information for downstream Public Water System(s) located within fifteen (15) stream miles of the DCPS Operation, as well as the ability to notify any such downstream Public Water System(s) with intake(s) within fifteen (15) stream miles downstream of the DCPS operations.

In the event of a spill or release, the operator shall immediately implement the emergency response procedures in the above-described emergency response program.

If a spill or release impacts or threatens to impact a Public Water System, the operator shall notify the affected or potentially affected Public Water System(s) immediately following discovery of the release, and the spill or release shall be reported to the Commission in accordance with Rule 906.b.(3), and to the Environmental Release/Incident Report Hotline (1-877-518-5608) in accordance with Rule 906.b.(4).

f. **Requirements for DCPS Operations at Existing Oil and Gas Locations.**

(1) Existing Oil and Gas Locations and DCPS Operations at Existing Oil and Gas Locations within a Surface Water Supply Area and within zones specified in Table 1 shall be subject to the following requirements instead of the requirements of Rules 317B.c, 317B.d, or 317B.e provided that no new surface disturbance at the Existing Oil and Gas Location occurs after the later of May 1, 2009 for federal land or April 1, 2009 for all other land or the date Rule 317B became applicable to the oil and gas location:

A. Collection of surface water data from a Classified Water Supply Segment consisting of a sample collected immediately downgradient of the oil and gas operation will occur by the latest of June 1, 2009, within six (6) months after the date Rule 317B became applicable to the oil and gas location, or when sufficient water exists in the stream:

i. pH;

ii. Alkalinity;

iii. Specific conductance;

iv. Major cations/anions (chloride, fluoride, sulfate, sodium);

v. Total dissolved solids;

vi. BTEX/GRO/DRO;

vii. TPH;

viii. PAH's (including benzo(a)pyrene); and

ix. Metals (arsenic, barium, calcium, chromium, iron, magnesium, selenium).

Current applicable EPA-approved analytical methods for drinking water must be used and analyses must be performed by laboratories that maintain state or nationally accredited programs.

Copies of all test results described above shall be provided to the Commission and the potentially impacted Public Water System(s) within three (3) months of collecting the samples. In addition, the analytical results and surveyed sample locations shall be submitted to the Commission in an electronic data deliverable format.

B. An emergency spill response program that includes employee training, safety, and maintenance provisions and current contact information for downstream Public Water System(s) located within fifteen (15) stream miles of the DCPS Operation, as well as the ability to notify any such downstream Public Water System(s) with intake(s) within fifteen (15) stream miles downstream of the DCPS Operations.

In the event of a spill or release, the operator shall immediately implement the emergency response procedures in the above-described emergency response program.

If a spill or release impacts or threatens to impact a Public Water System, the operator shall notify the affected or potentially affected Public Water System(s) immediately following discovery of the release, and the spill or release shall be reported to the Commission in accordance with Rule 906.b.(3), and to the Environmental Release/Incident Report Hotline (1-877-518-5608) in accordance with Rule 906.b.(4).

C. Operators shall employ and maintain Best Management Practices, as necessary, to comply with this rule.

(2) Existing Oil and Gas Locations and DCPS Operations at Existing Oil and Gas Locations within a Surface Water Supply Area and within zones specified in Table 1 for which new surface disturbance occurs on or after the later of May 1, 2009 for federal land or on or after April 1, 2009 for all other land or the date Rule 317B became applicable to the oil and gas location shall be subject to the requirements of Rule 317B.f.(3) instead of the requirements of Rules 317B.c, 317B.d, or 317B.e where the additional new surface disturbance is addressed in a Comprehensive Drilling Plan accepted pursuant to Rule 216, or if:

A. The new disturbance from the DCPS Operation will not increase the existing disturbed area prior to interim reclamation by more than one hundred (100) percent up to a maximum of three (3) acres, and

B. The new surface disturbance occurs in a direction away from the stream or no closer to the stream if moving away from the stream would result in more damaging surface disturbance such as location on a steep slope, in an area of high soil erosion potential, or in a wetland.

(3) Where the provisions of Rule 317B.f.(2) apply, the following zone requirements shall apply:

A. For all zones, the requirements of Rule 317B.f.(1), except that the sampling parameters in Rule 317B.f.(1).A shall occur no later than six (6) months

after commencing the DCPS Operations at the Existing Oil and Gas Location.

B. For External and Intermediate Buffer Zones: pitless drilling systems or containment of drilling, flowback, and stimulation fluids with impervious liners, as provided in Rule 904.

C. For Internal Buffer Zones:

i. Pitless drilling systems;

ii. Flowback and stimulation fluids contained within tanks and placed on a well pad or in an area with downgradient perimeter berming;

iii. Berms constructed in compliance with Rule 604.c.(2)G around all crude oil, condensate, and produced water tanks; and

iv. Notification of potentially impacted Public Water Systems within fifteen (15) stream miles downstream of the DCPS Operation prior to commencement of new surface disturbing activities at the site.

318. LOCATION OF WELLS

All wells drilled for oil or gas to a common source of supply shall have the following setbacks:

a. **Wells 2,500 feet or greater in depth.** A well to be drilled two thousand five hundred (2,500) feet or greater shall be located not less than six hundred (600) feet from any lease line, and shall be located not less than one thousand two hundred (1,200) feet from any other producible or drilling oil or gas well when drilling to the same common source of supply, unless authorized by order of the Commission upon hearing.

b. **Wells less than 2,500 feet in depth.** A well to be drilled to less than a depth of two thousand five hundred (2,500) feet below the surface shall be located not less than two hundred (200) feet from any lease line, and not less than three hundred (300) feet from any other producible oil or gas well, or drilling well, in said source of supply, except that only one producible oil or gas well in each such source of supply shall be allowed in each governmental quarter-quarter section unless an exception under Rule 318.c. is obtained.

c. **Exception locations.** The Director may grant an operator's request for a well location exception to the requirements of this rule or any order because of geologic, environmental, topographic or archaeological conditions, irregular sections, a surface owner request, or for other good cause shown provided that a waiver or consent signed by the lease owner toward whom the well location is proposed to be moved, agreeing that said well may be located at the point at which the operator proposes to drill the well and where correlative rights are protected. If the operator of the proposed well is also the operator of the drilling unit or unspaced offset lease toward which the well is proposed to be moved, waivers shall be obtained from the mineral interest owners under such lands. If waivers cannot be obtained from all parties and no party objects to the location, the operator may apply for a variance under Rule 502.b. If a party or parties object to a location and cannot reach an agreement, the operator may apply for a Commission hearing on the exception location.

d. **Exemptions to Rule 318.**

(1) This rule shall not apply to authorized secondary recovery projects.

(2) This rule shall apply to fracture or crevice production found in shale, except from fields previously exempted from this rule.

(3) In a unit operation, approved by federal or state authorities, the rules herein set forth shall not apply except that no well in excess of two thousand five hundred (2,500) feet in depth shall be located less than six hundred (600) feet from the exterior or interior (if there be one) boundary of the unit area and no well less than two thousand five hundred (2,500) feet in depth below the surface shall be located less than two hundred (200) feet from the exterior or interior (if there be one) boundary of the unit area unless otherwise authorized by the order of the Commission after proper notice to owners outside the unit area.

e. **Wells located near a mine.** No well drilled for oil or gas shall be located within two hundred (200) feet of a shaft or entrance to a coal mine not definitely abandoned or sealed, nor shall such well be located within one hundred (100) feet of any mine shaft house, mine boiler house, mine engine house, or mine fan; and the location of any proposed well shall insure that when drilled it will be at least fifteen (15) feet from any mine haulage or airway.

318A. GREATER WATTENBERG AREA SPECIAL WELL LOCATION, SPACING AND UNIT DESIGNATION RULE

a. **GWA, GWA wells, GWA windows and unit designations.** The Greater Wattenberg Area ("GWA") is defined to include those lands from and including Townships 2 South to 7 North and Ranges 61 West to 69 West, 6th P.M. In the GWA, operators may utilize the following described surface drilling locations (“GWA windows”) to drill, twin, deepen, or recomplete a well ("GWA well") and to commingle any or all of the Cretaceous Age formations from the base of the Dakota Formation to the surface:

(1) A square with sides four hundred (400) feet in length, the center of which is the center of any governmental quarter-quarter section (“400’ window”); and,

(2) A square with sides eight hundred (800) feet in length, the center of which is the center of any governmental quarter section (“800’ window”).

(3) Absent a showing of good cause, which shall include the existence of a surface use or other agreement with the surface owner authorizing a surface well location outside of a GWA window, all surface wellsites shall be located within a GWA window.

(4) Unit designations.

A. 400’ window. When completing a GWA well in a 400’ window to a spaced formation, the operator shall designate drilling and spacing units in accordance with existing spacing orders.

B. 800’ window. When completing a GWA well in an 800’ window, whether in spaced or unspaced formations, the operator shall: (i) designate drilling and spacing units in accordance with existing spacing orders where units are not smaller than a governmental quarter section; or (ii) form a voluntary drilling and spacing unit consisting of a governmental quarter section; or (iii) where designating a drilling and spacing unit smaller than a governmental quarter section, secure waiver(s) from the operator or

from the mineral owners (if the operator is also the holder of the mineral lease) of the lands in the governmental quarter section that are not to be included in the spacing unit; or (iv) apply to the Commission to form an alternate unit or to respace the area.

C. Unspaced areas and wellbore spacing units. When completing a GWA well to an unspaced formation, the operator shall designate a drilling and spacing unit not smaller than a governmental quarter-quarter section if such well is proposed to be located greater than four hundred sixty (460) feet from the quarter-quarter section boundary in which it is located. If a well is proposed to be located less than four hundred sixty (460) feet from the governmental quarter-quarter section boundary, a wellbore spacing unit ("wellbore spacing unit") for such well shall be comprised of the governmental quarter-quarter sections that are located less than four hundred sixty (460) feet from the wellbore regardless of section or quarter section lines.

D. Horizontal GWA well. Where a drilling and spacing unit does not exist for a horizontal well, a horizontal wellbore spacing unit shall be designated by the operator for each proposed horizontal well. The horizontal wellbore spacing unit may be of different sizes and configurations depending on lateral length and orientation but shall be comprised of the governmental quarter-quarter sections in which the wellbore lateral penetrates the productive formation as well as any governmental quarter-quarter sections that are located less than four hundred sixty (460) feet from the completed interval of the wellbore lateral regardless of section or quarter section lines. However, if the horizontal component of the horizontal wellbore is located entirely within a GWA window, the operator shall designate a drilling and spacing unit in accordance with subsections a.(4)A. and a.(4)B. of this rule. A horizontal wellbore spacing unit may overlap portions of another horizontal wellbore spacing unit or other wellbore spacing unit designated in accordance with subsection a.(4)C. GWA horizontal wells and horizontal wellbore spacing units shall be subject to the notice and hearing procedures as provided for in Rule 318A.e.(6).

b. **Recompletion/commingling of existing wells.** Any GWA well in existence prior to the effective date of this rule, which is not located as described above, may also be utilized for deepening to or recompletion in any Cretaceous Age formation and for the commingling of production therefrom.

c. **Surface locations**. Prior to the approval of any Application for Permit-to-Drill submitted for a GWA well, the proposed surface well location shall be reviewed in accordance with the following criteria:

(1) A new surface well location shall be approved in accordance with Commission rules when it is less than fifty (50) feet from an existing surface well location.

(2) When the operator is requesting a surface well location greater than fifty (50) feet from a well (unless safety or mechanical considerations of the well to be twinned or topographical or surface constraints justify a location greater than fifty (50) feet), the operator shall provide a consent to the exception signed by the surface owner on which the well is proposed to be located in order for the Director to approve the well location administratively.

(3) If there is no well located within a GWA window but there is an approved exception location well located outside of a GWA window that is attributed to such window, the provisions of subsections (1) and (2) of this subsection c. shall be applicable to such location.

d. **Prior wells excepted.** This rule does not alter the size or configuration of drilling units for GWA wells in existence prior to the effective date of this rule. Where deemed necessary by an operator for purposes of allocating production, such operator may allocate production to any drilling and spacing unit with respect to a particular Cretaceous Age formation consistent with the provisions of this rule.

e. **GWA infill.**

(1) **Interior infill wells.** Additional bottom hole locations for the "J" Sand, Codell and Niobrara Formations are hereby established greater than four hundred sixty (460) feet from the outer boundary of any existing 320-acre drilling and spacing unit ("interior infill wells"). Pursuant to the well location provisions of subsection a., above, interior infill well locations shall be reached by utilizing directional drilling techniques from the GWA windows.

A. If a bottom hole location for an interior infill well is proposed to be located less than four hundred sixty (460) feet from the outer boundary of an existing drilling and spacing unit, a wellbore spacing unit as defined in a.(4)C., above, shall be designated by the operator for such well.

B. If a bottom hole location for an interior infill well is proposed to be located greater than four hundred sixty (460) feet from an existing 80-acre or existing 320-acre drilling and spacing unit, the spacing unit for such well shall conform to the existing 80-acre or existing 320-acre drilling and spacing unit.

(2) **Boundary wells.** Additional bottom hole locations for the "J" Sand, Codell and Niobrara Formations are hereby established less than four hundred sixty (460) feet from the outer boundary of a 320-acre governmental half section or from the outer boundary of any existing 320-acre drilling and spacing unit ("boundary wells"). A wellbore spacing unit as defined in a.(4)C., above, shall be designated by the operator for such well.

(3) **Additional producing formations.** An operator wanting to complete an interior infill well or boundary well in a formation other than the "J" Sand, Codell, or Niobrara Formations ("additional producing formation") must request an exception location prior to completing the additional producing formation. The spacing unit dedicated to the exception location shall comply with subsections (1) or (2), above, as appropriate.

(4) Existing production facilities. To the extent reasonably practicable, operators shall utilize existing roads, pipelines, tank batteries and related surface facilities for all interior infill wells and boundary wells.

(5) Notice and hearing procedures. For proposed boundary wells, wellbore spacing units, and additional producing formations provided by this subsection e., and for proposed horizontal wells and horizontal wellbore spacing units as provided by 318A.a.(4)D., the following process shall apply:

A. Notice shall be given by certified mail by the operator of a proposed boundary well, wellbore spacing unit, horizontal well or horizontal wellbore

spacing unit to all Owners in the proposed wellbore spacing unit. Notice shall be given by certified mail by the operator of a proposed additional producing formation to all Owners in cornering and contiguous spacing units of the requested completion and the proposed spacing unit; if the additional producing formation is unspaced only the Owner in the proposed spacing unit needs to be notified. Notice for a boundary well, wellbore spacing unit, horizontal well or horizontal wellbore spacing unit shall include a description of the wellbore orientation, the anticipated spud date, the size and shape of the proposed wellbore spacing unit (with depiction attached), the proposed surface and bottom hole locations, identified by footage descriptions, and the survey plat. For proposed horizontal wells and horizontal wellbore spacing units, the operator shall also identify by footage descriptions, the location at which the wellbore penetrates the target formation.

B. Each owner shall have a 30 day period after receipt of such notice to object in writing to the operator. The written objection must be based upon a claim that the notice provided by the operator does not comply with the informational requirements of subsection A., above, and/or a technical objection that either waste will be caused, correlative rights will be adversely affected, or that the operator is not an "owner", as defined in the Act, of the mineral estate(s) through which the wellbore penetrates within the target formation. Specific facts must form the basis for such objection. The objecting party shall provide a copy of the written objection to the Director.

C. If an objection pursuant to subsection B. is timely received, the operator may seek a hearing before the Commission on the objection. The objecting party will bear the burden of proving that the notice provided by the operator does not comply with the informational requirements of subsection A., above, that the operator is not an owner, as defined by the Act, and/or the approval of the boundary well location, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation would either create waste or adversely affect the objecting party's correlative rights. The objection may be first presented to the hearing officer of the Commission and such hearing officer, based on the facts, may recommend to the Commission that such objection shall stand or be dismissed.

D. If the objection stands, the Commission may either enter an order approving or denying the proposed boundary well location, wellbore spacing unit, horizontal well location, horizontal wellbore spacing unit or additional producing formation, with or without conditions. Such conditions may be requisites for the Application for Permit-to-Drill, Form 2, if the operator chooses to proceed with an Application for Permit-to-Drill, Form 2, relative to the proposed boundary well, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation. If the objection is dismissed, the operator shall treat the objection as withdrawn and otherwise proceed with subsection E. below.

E. Absent receipt of a timely objection pursuant to subsections A. and B., above, the Director may administratively approve the boundary well, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional producing formation. A location plat evidencing the well location, wellbore spacing unit, or additional producing formation and applicable spacing unit shall be submitted to the Director together with copies of any surface waivers and a certification that no timely objections were received. An Application for Permit-to-Drill, Form 2, specifically identifying that a boundary well, wellbore spacing unit, horizontal well, horizontal wellbore spacing unit or additional

producing formation is proposed, shall also be filed with the Director in accordance with Rule 303 within 90 days of the expiration of the 30 day notice period or such notice shall be deemed withdrawn. Should such notice be withdrawn or deemed withdrawn, the proposed operator shall not submit another notice for the same well or wellbore spacing unit within 45 days of the date the original notice is withdrawn or deemed withdrawn.

f. Groundwater baseline sampling and monitoring.

(1) Applicability and effective date.

A. This Rule 318A.f. applies to Oil Wells, Gas Wells (hereinafter, Oil and Gas Wells), Multi-Well Sites, and Dedicated Injection Wells as defined in the 100-Series Rules, for which a Form 2 Application for Permit to Drill is submitted on or after May 1, 2013.

B. This Rule 318A.f. does not apply to an existing Oil or Gas Well that is re-permitted for use as a Dedicated Injection Well.

C. Nothing in this Rule is intended, and shall not be construed, to preclude or limit the Director from requiring groundwater sampling or monitoring at other Production Facilities consistent with other applicable Rules, including but not limited to the Oil and Gas Location Assessment process, and other processes in place under 900-series E&P Waste Management Rules (Form 15, Form 27, Form 28).

(2) Sampling Locations.

A. Initial baseline samples and a subsequent monitoring sample shall be collected from one (1) Available Water Source in the governmental quarter section in which a new Oil and Gas Well, the first well on a Multi-Well Site, or a Dedicated Injection Well is located. If a sampling location has previously been established within the governmental quarter section, and sampled within the prior sixty (60) months before spudding, no initial baseline sample is required.

B. If there is no Available Water Source within the governmental quarter section where a proposed new Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well is located, then an Available Water Source from a previously unsampled governmental quarter section within a 1/2 mile radius of the Oil and Gas well, Multi-Well Site, or Dedicated Injection Well, if any, shall be sampled. Once a sample location is established in a governmental quarter section, no additional sample locations are required for that governmental quarter section.

C. If there is more than one Available Water Source in the governmental quarter section or, if applicable, within the half-mile radius around the Oil and Gas Well, the first well on a Multi-Well Site, or a Dedicated Injection Well, the sample location shall be selected based on the following criteria:

i. Proximity. Available Water Sources closest to the proposed Oil or Gas Well, a Multi-Well Site, or a Dedicated Injection Well are preferred.

ii. Type of Water Source. Well maintained domestic water wells are preferred over other Available Water Sources.

iii. Multiple identified aquifers available. Where multiple defined aquifers are present, sampling the deepest identified aquifer is preferred.

iv. Condition of Water Source. An operator is not required to sample Water Sources that are determined to be improperly maintained, nonoperational, or have other physical impediments to sampling that would not allow for a representative sample to be safely collected or would require specialized sampling equipment (e.g. shut-in wells, wells with confined space issues, wells with no tap or pump, non-functioning wells, intermittent springs).

(3) Exceptions. Prior to spudding, an operator may request an exception from the requirements of this Rule 318.A.f. by filing a Sundry Notice (Form 4) for the Director's review and approval if:

A. No Available Water Sources are located within the governmental quarter section or a previously unsampled quarter section within a 1/2 mile radius of a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well;

B. The only Available Water Sources are determined to be unsuitable pursuant to subpart (4)B.ii.dd, above. An operator seeking an exception on this ground shall document the condition of the Available Water Sources it has deemed unsuitable; or

C. The owners of all Water Sources suitable for testing under this Rule refuse to grant access despite an operator's reasonable good faith efforts to obtain consent to conduct sampling. An operator seeking an exception on this ground shall document the efforts used to obtain access from the owners of suitable Water Sources.

D. If the Director takes no action on the Sundry Notice within ten (10) business days of receipt, the requested exception from the requirements of this Rule 318A.e.(4) shall be deemed approved.

(4) Timing of Sampling.

A. Except as provided in subpart (4)B.i, above, initial sampling shall be conducted within 12 months prior to setting conductor pipe in an Oil and Gas Well or the first well on a Multi-Well Site, or commencement of drilling a Dedicated Injection Well.

B. One subsequent sampling event shall be conducted at the initial (or previously established) sample location between six (6) and twelve (12) months following completion of the Well or Dedicated Injection Well, or the last Well on a Multi-Well Site. Wells that are drilled and abandoned without ever producing hydrocarbons are exempt from subsequent monitoring sampling under this subpart (4)D.ii.

(5) Sampling and analysis shall be conducted in conformance with an accepted industry standard as described in Rule 910.b.(2). A model Sampling and Analysis Plan ("COGCC Model SAP") shall be posted on the COGCC website, and shall be updated periodically to remain current with evolving industry standards. Sampling and analysis conducted in conformance with the COGCC Model SAP shall be deemed to satisfy the requirements of this subsection. Upon request, an operator shall provide its sampling protocol to the Director.

~~(5)~~**(6) Initial Baseline Sampling Analysis.** The initial baseline sampling required pursuant to subpart (4)D.i shall include pH, specific conductance, total dissolved solids (TDS), dissolved gases (methane, ethane, propane), alkalinity (total bicarbonate and carbonate as CaCO3), major anions (bromide, chloride, fluoride, sulfate, nitrate and nitrite as N, phosphorus), major cations (calcium, iron, magnesium, manganese, potassium, sodium), other elements (barium, boron, selenium and strontium), presence of bacteria (iron related, sulfate reducing, slime forming), total petroleum hydrocarbons (TPH) and BTEX compounds (benzene, toluene, ethylbenzene and xylenes). Field observations such as odor, water color, sediment, bubbles, and effervescence shall also be documented. The location of the sampled Water Source shall be surveyed in accordance with Rule 215.

~~(6)~~**(7) Subsequent Sampling Analysis.** Subsequent sampling to meet the requirements of subpart (4)D.ii shall include total dissolved solids (TDS), dissolved gases (methane, ethane, propane), major anions (bromide, chloride, sulfate, and fluoride), major cations (potassium, sodium, magnesium, and calcium), alkalinity (total bicarbonate and carbonate as CaCO3), BTEX compounds (benzene, toluene, ethylbenzene and xylenes), and TPH.

~~(7)~~**(8) Methane Detections.** If free gas or a dissolved methane concentration greater than 1.0 milligram per liter (mg/l) is detected in a water sample, gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen – 12C, 13C, 1H and 2H) shall be performed to determine gas type. The operator shall notify the Director and the owner of the water well immediately if:

A. the test results indicated thermogenic or a mixture of thermogenic and biogenic gas;

B. the methane concentration increases by more than 5.0 mg/l between sampling periods; or

C. the methane concentration is detected at or above 10 mg/l.

~~(8)~~**(9) BTEX or TPH Detections.** The Operator shall notify the Director immediately if BTEX compounds or TPH are detected in a water sample.

~~(9)~~(10) **Sampling Results.** Copies of all final laboratory analytical results shall be provided to the Director and the water well owner or landowner within three (3) months of collecting the samples. The analytical results, the surveyed sample Water Source location, and the field observations shall be submitted to the Director in an electronic data deliverable format.

A. The Director shall make such analytical results available publicly by posting on the Commission's web site or through another means announced to the public.

B. Upon request, the Director shall also make the analytical results and surveyed Water Source location available to the Local Governmental Designee from the jurisdiction in which the groundwater samples were collected, in the same electronic data deliverable format in which the data was provided to the Director.

~~(10)~~(11) **Liability.** The sampling results obtained to satisfy the requirements of this Rule 318A.f., including any changes in the constituents or concentrations of constituents present in the samples, shall not create a presumption of liability, fault, or causation against the owner or operator of a Well, Multi-Well Site, or Dedicated Injection Well who conducted the sampling, or on whose behalf sampling was conducted by a third-party. The admissibility and probity of any such sampling results in an administrative or judicial proceeding shall be determined by the presiding body according to applicable administrative, civil, or evidentiary rules.

g. **Limit on locations**. This rule does not limit the number of formations that may be completed in any GWA drilling and spacing unit nor, subject to subsection c., above, does it limit the number of wells that may be located within the GWA windows.

h. **GWA water sampling**. The Director may apply appropriate drilling permit conditions to require water well sampling near any proposed GWA wells in accordance with the guidelines set forth in subsection f., above.

i. **Waste Management**. In conjunction with filing an Oil and Gas Location Assessment, Form 2A, the operator shall include a waste management plan meeting the general requirements of Rule 907.a.

j. **Exception locations**. The provisions of Rule 318.c. respecting exception locations shall be applicable to GWA wells, however, absent timely objection, boundary wells, wellbore spacing units, and additional producing formations shall be administratively approved as provided in subsection e.(6) above.

k. **Correlative rights.** This rule shall not serve to bar the granting of relief to owners who file an application alleging abuse of their correlative rights to the extent that such owners can demonstrate that their opportunity to produce Cretaceous Age formations from the drilling locations herein authorized does not provide an equal opportunity to obtain their just and equitable share of oil and gas from such formations.

l. **Supersedes orders and policy**. Subject to paragraph d. above, this rule supersedes all prior Commission drilling and spacing orders affecting well location and density requirements of GWA wells. Where the Commission has issued a specific order limiting the number of horizontal wells permitted in a drilling and spacing unit, the well density in such unit shall be governed by that order.

m The landowner notice provision for the owner(s) of surface property within five hundred (500) feet of the proposed oil and gas location under Rule 305.e. shall not apply to any such locations that are subject to the provisions of this subsection 318A.

~~n. **Minimum interwell distance.** No horizontal wellbore lateral shall be located less than 150 feet from any existing or permitted (producing, shut-in, or temporarily abandoned) oil or gas wellbore as illustrated in the directional survey for drilled wellbores or as illustrated in the deviated drilling plan for permitted wellbores or as otherwise reflected in the COGCC well records. This requirement may be waived in writing by the operator of the encroached upon well.~~

318B. Yuma/Phillips County Special Well Location Rule

a. This Special Well Location Rule ("WLR") governs wells drilled to and completed in the Niobrara Formation for the following lands:

Township 1 North Range 44 West: Sections 7, 18, 19, 30 through 33 Range 45 West: Sections 7 through 36 Range 46 West: Sections 4 through 9 Range 47 West: All Range 48 West: All

Township 2 North Range 46 West: All Range 47 West: All Range 48 West: All

Township 3 North Range 45 West: Sections 1 through 18 Range 46 West: All Range 47 West: All Range 48 West: All

Township 4 North Range 45 West: All Range 46 West: All Range 47 West: All Range 48 West: All

Township 5 North Range 45 West: All Range 46 West: All Range 47 West: All Range 48 West: All

Township 6 North Range 45 West: All Range 46 West: All Range 47 West: All Range 48 West: All

Township 7 North Range 45 West: All Range 46 West: All Range 47 West: All

Township 8 North Range 45 West: All Range 46 West: All Range 47 West: All

Township 9 North Range 45 West: Sections 19 through 36 Range 46 West: Sections 19 through 36 Range 47 West: Sections 19 through 36

Township 1 South Range 44 West: Sections 3 through 10, 16 through 21, 27 through 34 Range 45 West: Sections 3 through 5 Range 46 West: Sections 4 through 9, 16 through 36 Range 47 West: All Range 48 West: All

Township 2 South Range 44 West: Sections 3 through 6 Range 45 West: Section 7: W½, Section 18: W½, Section 19: All Range 46 West: Sections 1 through 24 Range 47 West: All Range 48 West: All

Township 3 South Range 48 West: All

Township 4 South Range 48 West: All

Within the WLR Area, operators may conduct drilling operations to the Niobrara Formation as follows:

(1) Four (4) Niobrara Formation wells may be drilled in any quarter section.

(2) No more than one (1) well may be located in any quarter quarter section.

(3) No minimum distance shall be required between wells producing from the Niobrara Formation in any quarter section

(4) Wells shall be located at least three hundred (300) feet from the boundary of said quarter section, and wells located outside any drilling units already established by the Commission in the WLR Area prior to this WLR's effective date (July 30, 2006) shall, in addition, be located at least three hundred (300) feet from any lease line. Further, wells shall be located not less than nine hundred (900) feet from any producible well drilled to the Niobrara Formation prior to this WLR's effective date (July 30, 2006) located in a contiguous or cornering quarter section unless exception is approved by the Director.

b. Any well drilled to the Niobrara Formation in the WLR Area prior to the effective date (July 30, 2006) of this WLR which is legally located when this WLR becomes effective but is not located as listed above shall be treated as properly located for purposes of this WLR.

c. This WLR does not alter the size or configuration of any drilling units already established by the Commission in the WLR Area prior to this WLR's effective date (July 30, 2006).

d. This WLR shall not serve to bar the granting of relief to owners who file an application alleging abuse of their correlative rights to the extent that such owners can demonstrate that their opportunity to produce from the Niobrara Formation at locations herein authorized does not provide an equal opportunity to obtain their just and equitable share of oil and gas from such formation.

e. Well exception locations to this WLR shall be subject to the provisions of Rule 318.c.

f. This WLR is a well location rule and supersedes existing Commission orders in effect at the time of its adoption only to the extent that the existing orders relate to permissible well locations and the number of wells that may be drilled in a quarter section. Commission orders in effect when this Rule 318B. is adopted nonetheless apply with respect to the size of drilling units already established by the Commission in the WLR Area. This WLR is not intended to establish well spacing. Accordingly, when an area subject to Rule 318B. is otherwise unspaced, it does not act to space the area but instead provides the permissible locations for any new Niobrara Formation wells. Similarly, Rule 318B. does not affect production allocation for existing or future wells. An operator may allocate production in accordance with the applicable lease, contract terms or established drilling and spacing units recognizing the owner's right to apply to the COGCC to resolve any outstanding correlative rights issues.

g. The landowner notice provisions for owner(s) of surface property within five hundred (500) feet of the proposed oil and gas location under Rule 305.e shall not apply to any such locations that are subject to the provisions of this Rule 318B.

319. ABANDONMENT

The requirements for abandoning a well shall be as follows:

a. **Plugging**

(1) A dry or abandoned well, seismic, core, or other exploratory hole, must be plugged in such a manner that oil, gas, water, or other substance shall be confined to the reservoir in which it originally occurred. If the wellbore is not static before setting a plug in an open hole or after casing is removed from the wellbore, then any Produced Fluids must be circulated from the wellbore and the wellbore shall be filled with wellbore fluids sufficient to maintain a balance or overbalance of the producing formation. Wellbore fluids shall be in a static state prior to pumping balanced cement plugs, unless the cement plug is being placed as a preliminary step to counteract a high pressure or a lost circulation zone before establishing a static state. Intervals between plugs shall be filled with wellbore fluids of sufficient density to exert hydrostatic pressure exceeding the greatest formation pressure encountered while drilling such interval. If mud is necessary to maintain wellbore fluids in a static state prior to setting plugs, a minimum mud weight of 9 pounds per gallon shall be used. Water spacers shall be used both ahead of and behind balanced plug cement slurry to minimize cement contamination by any wellbore fluids that are incompatible with the cement slurry. Any cement plug shall be a minimum of ~~50~~ 100 feet in length and shall extend a minimum of ~~50~~ 100 feet above each zone to be protected. The material used in plugging, whether cement, mechanical plug, or some other equivalent method approved in writing by the Director, must be placed in the well in a manner to permanently prevent migration of oil, gas, water, or other substance from the formation or horizon in which it originally occurred. The preferred plugging cement slurry is that recommended by the American Petroleum Institute (API) Environmental Guidance Document: Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, i.e., a neat cement slurry mixed to API standards. However, pozzolan, salt-compatible cements, gel, high-temperature additives, extenders, accelerators, retarders, dispersants, water loss control additives, lost circulation material, and other additives may be used, as appropriate for the well being plugged, if the operator can document to the Director's satisfaction that the slurry design will achieve a minimum compressive strength of 300 psi after 24 hours and 800 psi after 72 hours measured at 95 degrees Fahrenheit (95 °F) and at 800 psi confining pressure.

(2) The operator shall have the option as to the method of placing cement in the hole by (a) dump bailer, (b) pumping a balanced cement plug through tubing or drill pipe, (c) pump and plug, or (d) equivalent method approved by the Director prior to plugging. Unless prior approval is given, all wellbores shall have water, mud or other approved fluid between all plugs.

(3) No substance of any nature or description other than normally used in plugging operations shall be placed in any well at any time during plugging operations. All final reports of plugging and abandonment shall be submitted on a Well Abandonment Report, Form 6, and accompanied by a job log or cement verification report from the plugging contractor specifying the type of fluid used to fill the wellbore, type and slurry volume of API Class cement used, date of work, and depth the plugs were placed.

(4) In order to protect the fresh water strata, no surface casing shall be pulled from any well unless authorized by the Director.

(5) All abandoned wells shall have a plug or seal placed in the casing and all open annuli from a depth of 50 feet to the surface of the ground or the bottom of the cellar in the hole in such manner as not to interfere with soil cultivation or other surface use. For below-grade markers, the top of the casing must be fitted with a screw cap or a steel plate welded in place with a weep hole. For above-grade markers, the top of the casing must be fitted with a screw cap or a steel plate welded in place with a weep hole, and a permanent monument shall be a pipe not less than four inches in diameter and not less than 10 feet in length, of which four feet shall be above ground level and the remainder embedded in cement or welded to the surface casing. Whether a below-grade or an above-grade marker is used, the marker shall be inscribed with the well's legal location, well name and number, and API Number.

(6) The operator must obtain approval from the Director of the plugging method prior to plugging, and shall notify the Director of the estimated time and date the plugging operation of any well is to commence, and identify the depth and thickness of all known sources of groundwater. For good cause shown, the Director may require that a cement plug be tagged if a cement retainer or bridge plug is not used. If requested by the operator, the Director shall furnish written follow-up documentation for a requirement to tag cement plugs.

(7) **Wells Used for Fresh Water.** When the well, seismic, core, or other exploratory hole to be plugged may safely be used as a fresh water well, and such utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water; provided that written authority for such use is secured from the landowner and, in such written authority, the landowner assumes the responsibility to plug the well upon its abandonment as a water well in accordance with these rules. Such written authority and assumption of responsibility shall be filed with the Commission, provided further that the landowner furnish a copy of the permit for a water well approved by the Division of Water Resources.

b. **Temporary Abandonment.**

(1) A well may be temporarily abandoned after passing a successful mechanical integrity test per Rule 326upon approval of the Director, for a period not to exceed six months provided the hole is cased or left in such a manner as to prevent migration of oil, gas, water or other substance from the formation or horizon in which it originally occurred. All temporarily abandoned wells shall be closed to the atmosphere with a swedge and valve or packer, or other approved method. The well sign shall remain in place. If an operator requests temporary abandonment status in excess of six months the operator shall state the reason for requesting such extension and state plans for future operation. A Sundry Notice, Form 4, or other form approved by the Director, shall be submitted annually stating the method the well is closed to the atmosphere and plans for future operation. Subsequent mechanical integrity tests will be required at the frequency specified in Rule 326.

(2) The manner in which the well is to be maintained should be reported to the Commission, and bonding requirements, as provided for in Rule 304, kept in force until such time as the well is permanently abandoned.

(3) A well which has ceased production or injection and is incapable of production or injection shall be abandoned within six months thereafter unless the well passes a successful mechanical integrity test per Rule 326, and the time is extended by the Director upon application by the owner. The application shall indicate why the

well is temporarily abandoned and future plans for utilization. In the event the well is covered by a blanket bond, the Director may require an individual plugging bond on the temporarily abandoned well. Subsequent mechanical integrity tests will be required at the frequency specified in Rule 326. Gas storage wells are to be considered active at all times unless physically plugged.

320. LIABILITY

The owner and operator of any well drilled for oil or gas production or injection purposes, or any seismic, core, or other exploratory holes, whether cased or uncased, shall be liable and responsible for the plugging thereof in accordance with the rules and regulations of the Commission regardless of whether the cost of such plugging and abandonment exceeds the amount of security as set forth in Rule 304.

321. DIRECTIONAL DRILLING

a. **Deviated Drilling Plan.** If an operator intends to drill a deviated wellbore (directional, highly deviated, or horizontal) utilizing controlled directional drilling methods, the deviated drilling plan shall be attached to the Application for Permit-to-Drill, Form 2. The deviated drilling plan shall include a listing of coordinate data sufficient to describe the location of the wellbore from the base of the surface casing to the kick off point and from that point to total depth. The plan shall also include two wellbore deviation plots, one depicting the map view and one depicting the side view.

b. **Well Location Plat**. If an operator intends to drill a deviated wellbore (directional, highly deviated, or horizontal) utilizing controlled directional drilling methods, the well location plat attached to the Application for Permit-to-Drill, Form 2 shall include (in addition to the information required in Rule 303.a) the proposed top of the productive zone and the bottom hole location. If the wellbore penetrates multiple sections, the well location plat shall depict every section penetrated by the wellbore.

c. ~~If an operator intends to drill a horizontal or deviated wellbore utilizing controlled directional drilling methods, the plans shall accompany an Application for Permit-to-Drill, Form 2. The deviated drilling plan shall include sufficient coordinate data to describe the location of the wellbore from the base of the surface casing to the kick off point and from that point to total depth, and two wellbore deviation plots, one depicting the plan view and one depicting the side view. The well location plat shall show (in addition to the information required in Rule 303.a.) the surface and bottom hole locations. If the wellbore penetrates multiple sections, the well location plat shall depict each section penetrated in the wellbore.~~

c. **Directional Survey.** If an operator has drilled a deviated wellbore, either intentionally or unintentionally, the directional survey shall be attached to the Drilling Completion Report, Form 5. The directional survey shall include a listing of coordinate data sufficient to describe the location of the wellbore from the base of the surface casing to the kick off point and from that point to total depth. The survey shall also include two wellbore deviation plots, one depicting the map view and one depicting the side view.

~~A copy of the directional survey coordinate listing and two wellbore deviation plots (plan and side views) shall be submitted with the Drilling Completion Report, Form 5. The survey data shall be provided in a single analysis report with sufficient detail to determine the location of the wellbore from the base of the surface casing to the kick off point and from that point to total depth.~~

d. **Wellbore Setback Compliance.** It shall be the operator's responsibility to ensure that the wellbore complies with the setback requirements in Commission orders or rules prior to producing the well.

~~c. It shall be the operator's responsibility to ensure that the wellbore complies with the setback requirements in Commission orders or rules prior to producing the well.~~

322. COMMINGLING

The commingling of production from multiple formations or wells is encouraged in order to maximize the efficient use of wellbores and to minimize the surface disturbance from oil and gas operations. Commingling may be conducted at the discretion of an operator, unless the Commission has issued an order or promulgated a rule excluding specific wells, geologic formations, geographic areas, or field from commingling in response to an application filed by a directly and adversely affected or aggrieved party or on the Commission's own motion.

This rule supercedes the procedural requirements to establish commingling and allocation contained in any Commission order as of the effective date of this rule, but does not supersede any allocation made under such order.

323. OPEN PIT STORAGE OF OIL OR HYDROCARBON SUBSTANCES

Storage of oil or any other produced liquid hydrocarbon substance in earthen pits or reservoirs is considered to constitute waste, except in emergencies where such substances cannot be otherwise contained. In such cases, these substances must be reclaimed and such storage eliminated as soon as practicable after the emergency is controlled, unless special permission to delay or continue is obtained from the Director.

324A. POLLUTION

a. The operator shall take precautions to prevent significant adverse environmental impacts to air, water, soil, or biological resources to the extent necessary to protect public health, safety and welfare, including the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility to prevent the unauthorized discharge or disposal of oil, gas, E&P waste, chemical substances, trash, discarded equipment or other oil field waste.

b. No operator, in the conduct of any oil or gas operation shall perform any act or practice which shall constitute a violation of water quality standards or classifications established by the Water Quality Control Commission for waters of the state, or any point of compliance established by the Director pursuant to Rule 324D. The Director may establish one or more points of compliance for any event of pollution, which shall be complied with by all parties determined to be a responsible party for such pollution.

c. No owner, in the conduct of any oil or gas operation, shall perform any act or practice which shall constitute a violation of any applicable air quality laws, regulations, and permits as administered by the Air Quality Control Commission or any other local or federal agency with authority for regulating air quality associated with such activities.

d. No injection shall be authorized pursuant to Rule 325 or Rule 401 unless the person applying for authorization to conduct the injection activities demonstrates that those activities will not result in the presence in an underground source of drinking water of any physical, chemical, biological or radiological substance or matter which may cause a violation of any primary drinking water regulation in effect as of July 12, 1982 and found at 40 C.F.R.

Part 141, or may otherwise adversely affect the health of persons. An underground source of drinking water is an aquifer or its portion:

(1) A which supplies any public water system; or

B which contains a sufficient quantity of ground water to supply a public water system; and

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 milligrams per liter total dissolved solids; and

(2) which is not an exempted aquifer.

e. No person shall accept water produced from oil and gas operations, or other oil field waste for disposal in a commercial disposal facility, without first obtaining a Certificate of Designation from the County in which such facility is located, in accord with the regulations pertaining to solid waste disposal sites and facilities as promulgated by the Colorado Department of Public Health and Environment.

324B . EXEMPT AQUIFERS

a. **Criteria for aquifer exemption.** An aquifer or a portion thereof may be designated by the Director or the Commission as an exempted aquifer, in connection with the filing of an application pursuant to Rule 325, or Rule 401, and after notification to the Colorado Department of Public Health and Environment, Water Quality Control Division, if it meets the following criteria

(1) It does not currently serve as a source of drinking water, and either subparagraph (2) or (3) below apply;

(2) It cannot now and will not in the future serve as a source of drinking water because:

A. It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a person filing an application pursuant to Rule 325, or Rule 401, to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible; or

B. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or

C. It is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption;

(3) The total dissolved solids content of the ground water is more than three thousand (3,000) and less than ten thousand (10,000) milligrams per liter and it is not reasonably expected to supply a public water system.

b. **Aquifer exemption public notice.** If an aquifer exemption is required as part of an injection permit process, the injection well applicant shall apply for an aquifer exemption. This application shall contain data and information which show that applicable aquifer exemption criteria set forth in Rule 324B.a. are met. After evaluation of the application and prior to designating an aquifer or a portion thereof as an exempted aquifer, the Director shall publish a notice of proposed designation in a newspaper of general

circulation serving the area where the aquifer is located. The notice shall identify such aquifer or portion thereof which the Director proposes to designate as exempted, and shall state that any person who can make a showing to the Director that the requested designation does not meet the criteria set forth in Rule 324B.a. may request the Commission to hold a hearing thereon.

c. **Evaluation of written requests for public hearing.** Written requests for a public hearing before the Commission shall be reviewed and evaluated by the Director in consultation with the applicant to determine if the criteria set forth in Rule 324B.a. have been met. If, within thirty (30) days after publication of the notice, the Commission receives a hearing request for which the Director determines the criteria set forth in Rule 324B.a. have not been met, the Commission shall hold such a hearing in accordance with the provisions of §34-60-108, C.R.S., 1973, as amended, and shall make a final determination regarding designation.

d. **Aquifer exemption designation.** If, within thirty (30) days after publication of the notice described in subparagraph b. above, the Commission does not receive a hearing request or receives a hearing request for which the Director determines the criteria set forth in Rule 324B.a. have been met, said aquifer or portion thereof shall be considered exempted thirty (30) days after publication of the notice.

324C. QUALITY ASSURANCE FOR CHEMICAL ANALYSIS

For the purpose of application for a permit for all wells authorized under Rule 325 and Rule 401, collection and analysis of water samples must comply with the Commission's approved quality assurance project plan.

324D. CRITERIA TO ESTABLISH POINTS OF COMPLIANCE

In determining a point of compliance, the Director shall take into consideration recommendations of the operator or any responsible party or parties, if applicable, including technical and economic feasibility, together with the following factors:

a. The classified use established by the Water Quality Control Commission, for any groundwater or surface water which will be impacted by contamination. If not so classified, the Director shall consider the quality, quantity, potential economic use and accessibility of such water;

b. The geologic and hydrologic characteristics of the site, such as depth to groundwater, groundwater flow, direction and velocity, soil types, surface water impacts, and climate;

c. The toxicity, mobility, and persistence in the environment of contaminants released or discharged from the site;

d. Established wellhead protection areas;

e. The potential of the site as an aquifer recharge area; and

f. The distance to the nearest permitted domestic water well or public water supply well completed in the same aquifer affected by the event.

g. The distance to the nearest permitted livestock or irrigation water well completed in the same aquifer affected by the event.

325. UNDERGROUND DISPOSAL OF WATER

a. No person shall commence operations for the underground disposal of water, or any other fluids, into a Class II well, or any well regulated by the Commission, nor shall any person commence construction of such a well, without having first obtained written authorization for such operations from the Director. Persons wishing to obtain authorization to conduct underground disposal activities shall file with the Director an Underground Injection Formation Permit Application, Form 31 and an Injection Well Permit Application, Form 33. If the disposal well is to be drilled, this application shall be submitted concurrently with the Application for Permit-to-Drill, Form 2, along with a service and filing fee to be determined by the Commission. (See Appendix III)

b. **Withholding approval of underground disposal of water.** The Director may withhold the issuance of a permit and the granting of approval of any Underground Injection Formation Permit Application, Form 31 and any Injection Well Permit Application, Form 33 for any proposed disposal well when the Director has reasonable cause to believe that the proposed disposal well could result in a significant adverse impact on the environment or public health, safety and welfare. In the event such approval is not granted, the Director shall immediately advise the operator and bring the matter to the Commission at its next regularly scheduled hearing.

c. The application for a dedicated injection well shall include the following information:

(1) The name, description and depth of the formation into which water is to be injected, and all underground sources of drinking water which may be affected by the proposed operation. A water analysis of the injection formation (if the total dissolved solids of the injection formation is determined to less than ten thousand (10,000) milligrams per liter, the aquifer must be exempted in accordance with Rule 322B.). The fracture pressure or fracture gradient of the injection formation.

(2) A base plat covering the area within one-quarter (1/4) mile of the proposed disposal well showing location of the proposed disposal well or wells and the location of all oil and gas wells, domestic and irrigation wells of public record and the identification of all oil and gas wells currently producing from the proposed injection zone within one-half (1/2) mile of the disposal zone. The names, addresses and holdings of all surface and mineral owners as defined in C.R.S. 34-60-103 (7), within one-quarter (1/4) mile of the proposed disposal well or wells, or all owners of record in the field if a field-wide system is proposed. These owners shall be specifically outlined and identified on the base plat. A list of all domestic and irrigation wells of public record, within one-quarter (1/4) mile of the proposed disposal well or wells, including their location and depth. (This information may be obtained at the Colorado Division of Water Resources.) Remedial action shall be required for any well within one-quarter (1/4) mile of the proposed disposal well or wells in which the injection zone is not adequately confined. The applicant shall include information regarding the need for remedial action on any well(s) penetrating the injection zone within one-quarter (1/4) mile of the proposed disposal well or wells, which the applicant may or may not operate and a plan for the performance of any such remedial work. A copy of all plans and specifications for the system and its appurtenances.

(3) A resistivity log, run from the bottom of the surface casing to total depth of the disposal well or wells or any well within one (1) mile together with a log from that well that can be correlated with the injection well. If the disposal well is to be drilled, a description of the typical stratigraphic level of the disposal formation in the disposal well or wells, and any other available logging or testing data, on the disposal well or wells.

(4) A full description of the casing in the disposal well or wells. This shall include any information available on any remedial cement work performed to any casing string. This shall also include a schematic drawing showing all casing strings with cement volumes and tops, existing or as proposed, plug back total depth, depth of any existing open or squeezed perforations, setting depths of any bridge plugs existing or proposed, planned perforations in the injection zone, tubing and packer size and setting depth. A diagram of the surface facility showing all pipelines and tanks associated with the system. A listing of all leases connected directly by pipelines to the system.

(5) A listing of all sources of water, by lease and well, to be injected shall be submitted on a Source of Produced Water for Disposal, Form 26.

(6) Any proposed stimulation program.

(7) The ~~estimated~~ minimum and maximum amount of water to be injected daily with anticipated injection pressures. Maximum injection pressure will be set by the Director upon approval.

(8) The names and addresses of those persons notified by the applicant, as required by subparagraph i. of this rule.

d. The application for a simultaneous injection well shall include the following:

(1) The name, description and depth of the formation into which water is to be injected, and all underground sources of drinking water which may be affected by the proposed operation. A water analysis of the injection formation (if the total dissolved solids of the injection formation is determined to be less than ten thousand (10,000) milligrams per liter, the aquifer must be exempted in accordance with Rule 324B.); a water analysis from the producing formation; and go fracture pressure or fracture gradient of the injection formation.

(2) A base plat covering the area within one-quarter (1/4) mile of the proposed well showing the location of the proposed well or wells and the location of all oil and gas wells, domestic and irrigation wells of public record and the identification of all oil and gas wells currently producing from the proposed injection zone within one-half (1/2) mile of the disposal zone and the names, addresses and holdings of all mineral owners as defined in §34-60-103 (7), C.R.S., within one-quarter (1/4) mile of the proposed disposal well or wells, or all owners of record in the field if a field-wide system is proposed. These owners shall be specifically outlined and identified on the base plat. Remedial action shall be required for any well within one-quarter (1/4) mile of the proposed well or wells in which the injection zone is not adequately confined. The applicant shall include information regarding the need for remedial action on any well(s) penetrating the injection zone within one-quarter (1/4) mile of the proposed disposal well or wells, which the applicant may or may not operate and a plan for the performance of any such remedial work and a copy of all plans and specifications for the system and its appurtenances.

(3) A resistivity log, run from the bottom of the surface casing to total depth of the disposal zone or such log from a well within one (1) mile together with a log from that well that can be correlated with the simultaneous injection well. If the simultaneous injection well is to be drilled, a description of the typical stratigraphic level of the injection formation in the simultaneous injection well or wells, and any other available logging or testing data, on the simultaneous injection well or wells.

(4) A full description of the casing in the simultaneous injection well or wells. This shall include any information available on any remedial cement work performed to any casing string. This shall also include a schematic drawing showing all casing strings with cement volumes and tops, existing or as proposed, plug back total depth, depth of any existing open or squeezed perforations, setting depths of any bridge plugs existing or proposed, planned perforations in the injection zone, downhole pump setting depth and any tubing and or packer size and setting depth.

(5) Any proposed stimulation program.

(6) The ~~estimated~~ amount of water to be injected daily.

(7) Downhole pump specifications, together with a calculation of maximum discharge pressure created under proposed wellbore configuration. Downhole pump configurations shall be designed to inject below the injection zone fracture gradient.

(8) The names and addresses of those persons notified by the applicant, as required by subparagraph j. of this rule.

The following rules shall apply to both dedicated injection well and simultaneous injection well applications.

e. **Mechanical integrity testing requirement.** Prior to application approval, the proposed disposal well must satisfactorily pass a mechanical integrity test in accordance with Rule 326.

f. **Commercial disposal well requirements.** Prior to application approval, the appurtenant commercial disposal well operations shall comply with the requirements of Rules 706, 707, and 712.

g. **Multiple well applications.** Application may be made to include the use of more than one (1) disposal well on the same lease, or on more than one (1) lease. Wherever feasible and applicable, the application shall contemplate a coordinated plan for the entire field.

h. The designated operator of a unitized or cooperative project shall execute the application.

i. Notice of the application for a dedicated injection well shall be given by the applicant by registered or certified mail or by personal delivery, to each surface owner and owner as defined in §34-60-103(7), C.R.S., within one-quarter (1/4) mile of the proposed well or wells and to owners and operators of oil and gas wells producing from the injection zone within one-half (1/2) mile of the disposal well or to owners of cornering and contiguous units where injection will occur into the producing zones, whichever is the greater distance.

j. Notice of the application for a simultaneous injection well shall be given by the applicant by registered or certified mail or by personal delivery, to each owner as defined in §34-60-103(7), C.R.S., within one-quarter (1/4) mile of the proposed well or wells and to owners and operators of oil and gas wells producing from the injection zone within one-half (1/2) mile of the disposal well or to owners of cornering and contiguous units where injection will occur into the producing zones, whichever is the greater distance.

k. A copy of the notice of application shall be included with the disposal application filed with the Commission, and the applicant shall certify that notice by registered or certified mail or by

personal delivery, to each of the owners specified in subparagraphs i. and j., has been accomplished.

l. **Notice of application requirements.** The notice shall briefly describe the disposal application and include legal location, proposed injection zone, depth of injection, and other relevant information. The notice shall state that any person who would be directly and adversely affected or aggrieved by the authorization of the underground disposal into the propose injection zone may file, within 15 days of notification, a written request for a public hearing before the Commission, provided such request meets the protest requirements specified in subparagraph m. of this rule. The notice shall also state that additional information on the operation of the proposed disposal well may be obtained at the Commission office.

m. **Evaluation of written requests for public hearing.** Written requests for public hearing before the Commission by a person, notified in accordance with subparagraphs i. and j. of this rule, who may be directly and adversely affected or aggrieved by the authorization of the underground disposal into the proposed injection zone, shall be reviewed and evaluated by the Director in consultation with the applicant. Written protests shall specifically provide information on:

(1) Possible conflicts between the injection zone's proposed disposal use and present or future use as a source of drinking water or present or future use as a source of hydrocarbons, or

(2) Operations at the well site which may affect potential and current sources of drinking water.

n. **Dedicated injection well public notice.** The Director shall publish a notice of the proposed disposal permit for dedicated injection wells in a newspaper of general circulation serving the area where the well(s) is (are) located. The notice shall briefly describe the disposal application and include legal location, proposed injection zone, depth of injection and other relevant information. Comment period on the proposed disposal application shall end thirty (30) days after date of publication. If any data, information, or arguments submitted during the public comment period appear to raise substantial questions concerning potential impacts to the environment, public health, safety and welfare raised by the proposed disposal well permit the Director may request that the Commission hold a hearing.

o. **Injection application deadlines.** If all of the data or information necessary to approve the disposal application has not been received within six (6) months of the date of receipt, the application will be withdrawn from consideration. However, for good cause shown, a ninety (90) day extension may be granted, if requested prior to the date of expiration.

326. MECHANICAL INTEGRITY TESTING

For the purpose of this rule, a mechanical integrity test of a well is a test to determine if there is a significant leak in the well's casing, tubing, or mechanical isolation device, or if there is significant fluid movement into an underground source of drinking water through vertical channels adjacent to the wellbore.

a. **Injection Wells** - A mechanical integrity test shall be performed on all injection wells.

(1) The mechanical integrity test shall include one of the following tests to determine whether significant leaks are present in the casing, tubing, or mechanical isolation device:

A. Isolation of the tubing-casing annulus with a packer set at 100 feet or less above the highest open injection zone perforation, unless an alternate isolation distance is approved in writing by the Director. The pressure test shall be with liquid or gas at a pressure of not less than 300 psi or the average injection pressure, whichever is greater, and not more than the maximum permitted injection pressure; or

B. The monitoring and reporting to the Director, on a monthly basis for 60 consecutive months, of the average casing-tubing annulus pressure, following an initial pressure test; or

C. Any equivalent test or combination of tests approved by the Director.

(2) The mechanical integrity test shall include one of the following tests to determine whether there are significant fluid movements in vertical channels adjacent to the well bore:

A. Cementing records which shall only be valid for injection wells in existence prior to July 1, 1986;

B. Tracer surveys;

C. Cement bond log or other acceptable cement evaluation log;

D. Temperature surveys; or

E. Any other equivalent test or combination of tests approved by the Director.

(3) No person shall inject fluids via a new injection well unless a mechanical integrity test on the well has been performed and supporting documents including Mechanical Integrity Test, Form 21, submitted and approved by the Director. Verbal approval may be granted for continuous injection following a successful test.

(4) Following the performance of the initial mechanical integrity test required by subparagraph (3), additional mechanical integrity tests shall be performed on each type of injection well as follows:

A. Dedicated injection well. As long as it is used for the injection of fluids, mechanical integrity tests shall be performed at the rate of not less than one test every five years, except as specified by subparagraph C below. Five year periods shall commence on the date the initial mechanical integrity test is performed or the date any mechanical integrity test specified in subparagraph C below.

B. Simultaneous injection well. No additional tests will be required after the initial mechanical integrity test.

C. All injection wells. A new mechanical integrity test shall be performed after any casing repairs, after resetting the tubing or mechanical isolation device, or whenever the tubing and/or mechanical isolation device is moved during workover operations.

b. **Shut-in Wells** - All shut-in wells shall pass a mechanical integrity test.

(1) A mechanical integrity test shall be performed on each shut-in well within two years of the initial shut-in date.

(2) Subsequently, a mechanical integrity test shall be performed on each shut-in well on 5 year intervals from the date the initial mechanical integrity test was performed, as long as the well remains shut-in.

(3) The mechanical integrity test for a shut-in well shall be performed after: isolating the wellbore with a bridge plug or similar approved isolating device set 100 feet or less above the highest open perforation. The pressure test shall be with liquid or gas at an initial, stabilized surface pressure of not less than 300 psi surface pressure or any equivalent test or combination of tests approved by the Director.

c. **Temporarily Abandoned Wells** – All temporarily abandoned wells shall pass a mechanical integrity test.

(1) A mechanical integrity test shall be performed on each temporarily abandoned well within 30 days of temporarily abandoning the well.

(2) Subsequently, a mechanical integrity test shall be performed on each temporarily abandoned well on five year intervals from the date of the initial mechanical integrity test was performed, as long as the well remained temporarily abandoned.

(3) The mechanical integrity test for a temporarily abandoned well shall be performed after isolating the wellbore with a bridge plug or similar approved isolating device set 100 feet or less above the highest open perforation. The pressure test shall be liquid or gas at an initial, stabilized surface pressure of not less than 300 psi surface pressure or any equivalent test or combination of tests approved by the Director.

d. **Waiting-on-completion and Suspended Operations Wells** – A mechanical integrity test shall be performed on each waiting-on-completion well within two years of setting the production casing. A mechanical integrity test shall be performed on each suspended operations well within two years of setting any casing string and suspending operations prior to reaching permitted total depth.

e. Not less than 10 days prior to the performance of any mechanical integrity test required by this rule, any person required to perform the test shall notify the Director with a Form 42, Field Operations Notice, Mechanical Integrity Test, of the scheduled date and time when the test will be performed.

~~e~~f. All wells shall maintain mechanical integrity.

(1) All non-injection wells which lack mechanical integrity, as determined through a mechanical integrity test or other means, shall be repaired or plugged and abandoned within six months. If an operator has performed a mechanical integrity test within the two years required for shut-in wells or the 30 days required for temporarily abandoned wells by this Rule, they will have six months from the date of the unsuccessful test to make repairs or plug and abandon the well. If the operator has not performed a mechanical integrity test within the required time frames in Rule 326.b.(1) and 326.c.(1), they will not be given an additional six months in the event of an unsuccessful test.

(2) All injection wells which fail a mechanical integrity test, or which are determined through any other means to lack mechanical integrity, shall be shut-in immediately.

~~f~~g. Mechanical integrity test pressure loss or gain must not exceed 10% of the initial stabilized surface pressure over a test period of 15 minutes. The test may be repeated if the pressure loss or gain is determined to be the result of compression related to gas dissolution from the fluid column or temperature effects related to the fluid used to load the column. Wells that do not satisfy this test requirement are considered to lack mechanical integrity and are subject to the requirements of Rule 326.d.

327. WELL CONTROL

The operator shall take all reasonable precautions, in addition to fully complying with Rule 317 to prevent any oil, gas or water well from flowing uncontrolled and shall take immediate steps and exercise due diligence to bring under control any such well. For controlled events, a "significant" well control event is an unanticipated influx of formation fluids into the wellbore which requires increasing the pre-existing mud weight by 4% or more.

The operator shall ~~report~~ notify the Director of all uncontrolled events ~~to the Director~~ as soon as practicable, but no later than 24 hours following the incident. Within 15 days after these occurrences the operator shall submit a Spill Report, Form 19, and/or a Well Control Report, Form 23, as appropriate, for reportable spills/releases or kicks while drilling, providing all details required on the forms. The Director shall maintain these written reports in a central file.

328. MEASUREMENT OF OIL

The volume of all oil production from a lease or a production unit shall be measured and recorded prior to removal from the lease or production unit. The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of properly calibrated meter measurements or tank measurements of oil-level differences, made and recorded to the nearest one-quarter (1/4) inch of one hundred percent (100%) capacity tables, subject to the following corrections in items a., b., and c. below. This rule shall be used consistently with standards established by the American Society for Testing and Materials (ASTM), the American Petroleum Institute (API) Manual of Petroleum Measurement Standards, the American Gas Association (AGA), the Gas Processors Association (GPA), or other applicable standards-setting organizations, and pursuant to contractual rights or obligations. Only those editions of standards cited within this rule shall apply to this rule; later amendments do not apply. The material cited in this rule is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, these materials may be examined at any state publication depository library.

a. **Correction for Impurities.** The percentage of impurities (water, sand and other foreign substances not constituting a natural component part of the oil) shall be determined to the satisfaction of the Director, and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities.

b. **Temperature Correction.** The observed volume of oil corrected for impurities shall be further corrected to the standard volume of sixty degrees Fahrenheit (60° F) in accordance with ASTM D-1250 Table 7, or any close approximation thereof approved by the Director.

c. **Gravity Determination.** The gravity of oil at sixty degrees Fahrenheit (60° F). shall be determined in accordance with ASTM D-1250 Table 5, or any close approximation thereof approved by the Director.

d. **Tank Gauging.** Measurement by tank gauging shall be completed in accordance with industry standards as specified in API CH. 3 Gauging of Tanks (Section 3.1a Second Edition August 2005 and Section 3.1b Second Edition June 2001) and the API CH. 18.1, Measure Procedures for Crude Oil Gathered from Small Tanks by Truck (Second Edition April 1997).

e. **Metering Station.** Measurement shall be completed in accordance with industry standards as specified in API CH. 4 Proving Systems (Section 2, Third Edition September 2003 and Section 8, First Edition November 1995), API CH. 5 Metering (CH. 5.1 Fourth Edition October 2005, CH. 5.2 Third Edition October 2005, CH. 5.3 Fifth Edition September 2005, CH. 5.4 Second Edition July 2005, CH. 5.5 Second Edition July 2005, and CH. 5.6 First Edition October 2002), API CH. 7 Temperature Determination (First Edition June 2001), API CH. 8 Sampling (CH. 8.1 Third Edition October 1995 and CH. 8.2 Second Edition October 1995), and the API CH. 12, Calculation of Quantities (CH. 12.1 Part 1 Second Edition November 2001).

f. **LACT Meters.** Measurement utilizing LACT units shall be in accordance with industry specifications or standards as specified in API SPEC. 6.1, Lease Automatic Custody Transfer Systems (Second Edition May 1991).

g. **Sales Reconciliation.** In order to facilitate the resolution of questions regarding the payment of proceeds or sales reconciliation from a well, a payee may submit a Form 37 to the payor requesting additional information concerning the payee's interest in the well, price of the oil sold, taxes applied to the sale of oil, differences in well production and well sales, and other information as described in § 34-60-118.5, C.R.S. The payor shall return the completed form to the payee within sixty (60) days of receipt. Submittal of this form to the payor shall fulfill the requirement for "written request" described in § 34-60-118.5(2.5), C.R.S., and is a prerequisite to filing a complaint with the Commission. The payor shall use its best efforts to consult in good faith with the payee to resolve disputes regarding payment of proceeds or sales reconciliation.

A Form 37 requesting information concerning payment of proceeds may be submitted by the payee at any time. A Form 37 requesting information concerning sales volume reconciliation shall be submitted by the payee within one year of receipt of payment or the notification of a revised payment. The Commission may act to prohibit or terminate any abuse of the reconciliation process, such as the submittal by a payee of multiple repeated requests for sales volume reconciliation regarding the same well. Such action by the Commission may include, but is not limited to, relieving the payor from its obligation to answer the request and limiting or prohibiting the payee's submittal of additional requests.

329. MEASUREMENT OF GAS

The volume of all gas produced from a lease or a production unit shall be measured and recorded prior to removal from the lease or production unit. Production of gas of all kinds shall be measured by meter unless otherwise agreed to by the Director. For computing volume of gas to be reported to the Commission, the standard pressure base shall be fourteen point seventy-three (14.73) psia, regardless of atmospheric pressure at the point of measurement, and the standard temperature base shall be sixty degrees Fahrenheit (60° F). All volumes of gas to be reported to the Commission shall be adjusted by computation to these standards, regardless of pressures and temperatures at which the gas was actually measured, unless otherwise authorized by the Director. This rule shall be used consistently with standards established by the American Society for Testing and Materials (ASTM), the American petroleum Institute (API) Manual of Petroleum Measurement Standards, the American Gas Association (AGA), the Gas Processors Association (GPA), or other applicable standards-setting organizations, and pursuant to contractual rights and obligations. Only those editions of standards cited within this rule shall apply to this rule; later

amendments do not apply. The material cited in this rule is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, these materials may be examined at any state publication depository library.

a. **Metering Station.** Installation and operation of gas measurement stations shall be in accordance with industry standards as specified in API CH. 14.3, Orifice Measurement (Part 2, Fourth Edition April 2000 and Part 3, Third Edition August 1992 and Part 4, Third Edition November 1992); API CH. 21.1, Electronic Measurement (gas) (First Edition September 1993); AGA Report #7, Turbine Measurement (January 2006); AGA Report #9, Ultrasonic Measurement (April 2007); and AGA Report #11, Coriolis Measurement (January 2003).

b. **Metering Equipment.** The devices used to measure the differential, line pressure, and temperature shall have accepted accuracy ratings established in industry standards as specified in API CH. 22, Testing Protocol Standards (CH. 22.1 First Edition November 2006 and CH. 22.2 First Edition August 2005).

c. **Meter Calibration.** Meters shall be calibrated annually unless more frequent calibration is required by contractual obligations or by the Director. All calibration reports shall be created, maintained, and made available as operation records pursuant to Rule 205. In the event two consecutive meter calibrations exceed a 2% error, the operator shall report the test results to the Director who may require the operator to show cause why the meter should not be replaced.

d. **Gas Quality.** The heating value of produced natural gas shall be representative of the flowing gas stream at the lease or unit boundary, as determined by chromatographic analysis of a sample obtained in close proximity to the volume measurement device and shall be reported on an Operator's Monthly Report of Operations, Form 7. Gas sampling and analysis shall occur annually unless more frequent sampling is required by contractual obligations or by the Director. Gas sampling, gas chromatography, and the resulting analysis data shall be in accordance with industry standards as specified in API CH. 14.1, Gas Sampling (Fifth Edition February 2006); GPA 2166, Gas Sampling (Revised 2005); GPA 2261, Gas Analysis (Revised 2000); GPA 2286, Extended Analysis; GPA 2145, Gas Physical Properties (Revised 2003); and GPA 2172, Gas Heating Value (Revised 1996).

e. **Sales Reconciliation.** In order to facilitate the resolution of questions regarding the payment of proceeds or sales reconciliation from a well, a payee may submit a Form 37 to the payer requesting additional information concerning the payee's interest in the well, price of the gas sold, taxes applied to the sale of gas, differences in well production and well sales, and other information as described in § 34-60-118.5, C.R.S. The payer shall return the completed form to the payee within sixty (60) days of receipt. Submittal of this form to the payer shall fulfill the requirement for "written request" described in § 34-60-118.5(2.5), C.R.S., and is a prerequisite to filing a complaint with the Commission. The payer shall use its best efforts to consult in good faith with the payee to resolve disputes regarding payment of proceeds or sales reconciliation.

   A Form 37 requesting information concerning payment of proceeds may be submitted by the payee at any time. A Form 37 requesting information concerning sales volume reconciliation shall be submitted by the payee within one year of receipt of payment or the notification of a revised payment. The Commission may act to prohibit or terminate any abuse of the reconciliation process, such as the submittal by a payee of multiple repeated requests for sales volume reconciliation regarding the same well. Such action by the Commission may include, but is not limited to, relieving the payer from its obligation to answer the request and limiting or prohibiting the payee's submittal of additional requests.

330. MEASUREMENT OF PRODUCED AND INJECTED WATER

a. The volume of produced water shall be computed and reported in terms of barrels on the basis of properly calibrated meter measurements or tank measurements of water-level differences, made and recorded to the nearest one-quarter (1/4) inch of one hundred (100%) percent capacity tables. If measurements are based on oil/water ratios, the oil/water ratio must be based on a production test performed during the last calendar year. Other equivalent methods for measurement of produced water may be approved by the Director.

b. The volume of water injected into a Class II dedicated injection well shall be computed and reported in term of barrels on the basis of ~~property~~ properly calibrated meter measurements or tank measurements of water-level differences made and recorded to the nearest one-quarter (1/4) inch of one hundred percent (100%) capacity tables. If water is transported to an injection facility by means other than direct pipeline, measurement of water is required by a properly calibrated meter

c. The volume of water injected and produced in simultaneous injection wells shall be computed and reported in terms of barrels on the basis of calculated pump volumes, on the basis of property calibrated meter measurements, or on the basis of a produced gas to water ratio based on an annual production test.

331. VACUUM PUMPS ON WELLS

The installation of vacuum pumps or other devices for the purpose of imposing a vacuum at the wellhead or on any oil or gas bearing reservoir may be approved by the Director upon application therefore, except as herein provided. The application shall be accompanied by an exhibit showing the location of all wells on adjacent premises and all offset wells on adjacent lands, and shall set forth all material facts involved and the manner and method of installation proposed. Notice of the application shall be given by the applicant by registered or certified mail, or by delivering a copy of the application to each producer within one-half (1/2) mile of the installation.

In the event no producer within one-half (1/2) mile of the installation or the Commission itself files written objection or complaint to the application within fifteen (15) days of the date of application, then the application shall be approved, but if any producer within one-half (1/2) mile of said installation or the Commission itself files written objection within fifteen (15) days of the date of application, then a hearing shall be held as soon as practicable.

332. USE OF GAS FOR ARTIFICIAL GAS LIFTING

Gas may be used for artificial gas lifting of oil where all such gas returned to the surface with the oil is used without waste. Where the returned gas is not to be so used, the use of gas for artificial gas lifting of oil is prohibited unless otherwise specifically ordered and authorized by the Commission upon hearing.

333. SEISMIC OPERATIONS

a. **COGCC Form 20, Notice of Intent to Conduct Seismic Operations.** Seismic operations require an approved Form 20 which shall be submitted to the Director prior to commencement of shothole drilling or recording operations. An informational copy of the Form 20 shall be filed by the operator with the local governmental designee at or before the time of filing with the Director. Any change of plans or line locations may be

implemented without Director approval provided that after such change is performed, the Director shall receive written notice of the change within five (5) days.

A map shall be included with the notice. This map shall be at a scale of at least 1:48,000 showing sections, townships and ranges and providing the location of the proposed seismic lines, including source and receiver line locations.

The Notice of Intent to Conduct Seismic Operations, Form 20, shall be in effect for six (6) months from the date of approval. An extension of time may be granted upon written request submitted prior to the expiration date.

b. **Surface owner consultation**. Prior to the commencement of any seismic operation, a good faith effort shall be made to consult with all surface owners of the lands included in the seismic project area.

c. **Exploration requiring the drilling of shotholes:**

(1) **Explosive storage**. All explosives shall be legally and safely stored and accounted for in magazines when not in use in accordance with relevant regulations of the Alcohol, Tobacco and Firearms Division of the Federal Department of the Treasury.

(2) **Blasting safety setbacks**. Blasting shall be kept a safe distance from a building, water well or spring, unless by special written permission of the surface owner or lessee, according to the following minimum setback distances:

CHARGES IN LBS. GREATER THAN	CHARGES IN LBS. UP TO AND INCLUDING	MINIMUM SETBACK DISTANCE IN FEET
0	2	200
2	5	300
5	6	360
6	7	420
7	8	480
8	9	540
9	10	600
10	11	649
11	12	696
12	13	741
13	14	784
14	15	825
15	16	864
16	17	901
17	18	936
18	19	969
19	20	1000
20		1320

(3) Prior to any shothole drilling, the operator shall contact the Utility Notification Center of Colorado at 1-800-922-1987.

(4) **Drilling and plugging**. The following guidelines shall be used to plug shotholes unless the operator can demonstrate that another method will provide adequate protection to ground water quality and movement and long-term land stability:

A. Any slurry, drilling fluids, or cuttings which are deposited on the surface around the seismic hole shall be raked or otherwise spread out to at least within one (1) inch of the surface, such that the growth of the natural grasses or foliage shall not be impaired.

B. All shotholes shall be preplugged or anchored to prevent public access if not immediately shot. In the event the preplug does not hold, seismic holes shall be properly plugged and abandoned as soon as practical after the shot has been fired. However, a fired hole shall not be left unplugged for more than thirty (30) days without approval of the Director. In no event shall shotholes be left open, but shall be covered with a tin hat or other similar cover until they are properly plugged. The hats shall be imprinted with the seismic contractor's name or identification number or mark.

C. The hole shall be filled to a depth of approximately three (3) feet below ground level by returning the cuttings to the hole and tamping the returned cuttings to ensure the hole is not bridged. A non-metallic perma-plug either imprinted or tagged with the operator name or the identification number or mark described in the notice of intent shall be set at a depth of three (3) feet, and the remaining hole shall be filled and tamped to the surface with cuttings and native soil. A sufficient mound of native soil shall be left over the hole to allow for settling.

D. When non-artesian water is encountered while drilling seismic shotholes, the holes shall be filled from the bottom up with a high grade coarse ground bentonite to ten (10) feet above the static water level or to a depth of three (3) feet from the surface; the remaining hole shall be filled and tamped to the surface with cuttings and native soil, unless the operator otherwise demonstrates that use of another suitable plugging material may be substituted for bentonite without harm to ground water resources.

E. If artesian flow (water rising above the depth at which encountered) is encountered in the drilling of any seismic hole, cement or high grade coarse ground bentonite shall be used to seal off the water flow with the selected material placed from the bottom of the hole to the surface or at least fifty (50) feet above the top of the water-bearing material, thereby preventing cross-flow between aquifers, erosion or contamination of fresh water supplies. Said holes shall be plugged immediately.

d. **COGCC Form 20A, Completion Report for Seismic Operations.** A Form 20A shall be submitted to the Director within sixty (60) days after completion of the project. The report shall include: maps (with a scale not less than 1:48,000) showing the location of all receiver lines, energy source lines and any shotholes. Shotholes encountering artesian flow shall be indicated on the map.

If the program included any shotholes, then the completion report shall be accompanied by the following:

(1) a certification by the party responsible for plugging the holes that all shotholes are plugged as prescribed by these rules and approved by the Director, and

(2) the latitude and longitude of each shothole location. The latitude and longitude coordinates shall be referenced in decimal degrees to an accuracy and precision of five decimals of a degree using the North American Datum (NAD) of 1983 (e.g.; latitude 37.12345 N, longitude 104.45632 W) or reported in other form as approved by the Director. If GPS technology is utilized to determine the latitude and longitude, all GPS data shall meet the requirements set forth in Rule 215. a. through h.

e. **Bonding Requirements**. The company submitting the Notice of Intent to Conduct Seismic Operations, Form 20, shall file financial assurance in accordance with Rule 705. prior to the commencement of operations. The bond shall remain in effect until a request is made by the company to release the bond for the following reasons:

(1) The shotholes have been properly plugged and abandoned, and source and receiver lines have been reclaimed in accordance with this Rule 333., and

(2) There are no outstanding complaints received from surface owners that have not been investigated by the Director and addressed as provided for in Rule 522.

f. **Reclamation requirements**. Upon completion of seismic operations the surface of the land shall be restored as nearly as practicable to its original condition at the commencement of seismic operations. Appropriate reclamation of disturbed areas will vary depending upon site specific conditions and may include compaction alleviation and revegetation. All flagging, stakes, cables, cement, mud sacks or other materials associated with seismic operations shall be removed.

334. PUBLIC HIGHWAYS AND ROADS

All persons subject to the act and these rules and regulations while using public highways or roads shall be subject to the State Vehicles and Traffic Laws pursuant to Title 42, C.R.S. and the State Highway and Roads Laws, Title 43, C.R.S., pertaining to the use of public highways or roads within the state.

335. COGCC Form 15. EARTHEN PIT REPORT/PERMIT

An Earthen Pit Report/Permit, Form 15, shall be submitted for approval by the Director in accordance with Rule 903.

336. COGCC Form 18. COMPLAINT REPORT

Any party who wishes to file a complaint regarding oil and gas operations is encouraged to submit a Form 18. The Director shall investigate any complaint and determine what, if any, action shall be taken in accordance with Rule 522.

337. COGCC Form 19. SPILL/RELEASE REPORT

A spill or release of E&P waste or produced fluids shall be reported to the Director on a Spill/Release Report, Form 19 pursuant to the reporting requirements in Rule 906.

338. COGCC Form 27. SITE INVESTIGATION AND REMEDIATION WORKPLAN

Site Investigation and Remediation Workplan, Form 27, shall be submitted when required in accordance with Rule 909.

339. BRADENHEAD MONITORING DURING WELL STIMULATION OPERATIONS

The placement of all stimulation fluids shall be confined to the objective formations during treatment to the extent practicable.

During stimulation operations, bradenhead annulus pressure shall be continuously monitored and recorded on all wells being stimulated.

If at any time during stimulation operations the bradenhead annulus pressure increases more than 200 psig, the operator shall verbally notify the Director as soon as practicable, but no longer than 24 hours following the incident. A Form 42, Field Operations Notice, Notice of High Bradenhead Pressure During Stimulation shall be submitted by the end of the first business day following the event. Within fifteen (15) days after the occurrence, the operator shall submit a Sundry Notice, Form 4, giving all details, including corrective actions taken.

If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded.

The operator shall keep all well stimulation records and pressure charts on file and available for inspection by the Commission for a period of at least five (5) years. Under Rule 502.b.(1), an operator may seek a variance from these bradenhead monitoring, recording, and reporting requirements under appropriate circumstances.

RULES OF PRACTICE AND PROCEDURE

501. APPLICABILITY OF RULES OF PRACTICE AND PROCEDURE

a. **General.** These rules shall be known and designated as "Rules of Practice and Procedure before the Oil and Gas Conservation Commission of the State of Colorado," and shall apply to all proceedings before the Commission. These rules shall be liberally construed to secure just, speedy, and inexpensive determination of all issues presented to the Commission.

b. **Prohibition of abuse.** Notwithstanding any provision of these rules, the Commission shall, 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, protestant, intervenor, witness or party offering a statement pursuant to Rule 510. in a proceeding. Such action may include, but is not limited to, summary dismissal of an application, protest, intervention or other pleading; limitation or prohibition of harassing or abusive testimony; and finding a party in contempt. Grounds for such action 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.

c. **Judicial review.** Any rule, regulation, or final order of the Commission, or any approval of an Application for Permit-to-Drill, Form 2, or Oil and Gas Location Assessment, Form 2A, by the Director for which a hearing is not requested within ten (10) days pursuant to Rule 305.e.(2), shall be subject to judicial review in accordance with the provisions of the Administrative Procedure Act, §24-4-101 to -108, C.R.S., and any other applicable provisions of law. The statutory time period for filing a notice of appeal from any Commission decision shall commence on the date the order is served or that is three (3) business days after the date the order is mailed.

502. PROCEEDINGS NOT REQUIRING THE FILING OF AN APPLICATION

a. **Commission's own motion.** The Commission may, on its own motion, initiate proceedings upon any questions relating to conservation of oil and gas or the conduct of 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 shall be effective upon issuance and shall remain effective for a period not to exceed 14 days. Notice of an emergency order shall be given as soon as possible after issuance.

b. **Variances.**

(1) Variances to any Commission rules, regulations, or orders 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 shall 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 rules, regulations, or orders, 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 Oil and Gas Conservation Act.

(2) No variance to the rules and regulations applicable to the Underground Injection Control Program shall be granted by the Director without consultation with the U.S. Environmental Protection Agency, Region VIII, Waste Water Management Division Director.

(3) The Director shall report any variances granted at the monthly Commission hearing following the date on which such variance was granted.

503. ALL OTHER PROCEEDINGS COMMENCED BY FILING AN APPLICATION

a. All proceedings other than those initiated by the Commission or variance requests submitted for Director approval shall be commenced by filing with the Commission the original, two hard copies, and an electronic copy of a typewritten or printed petition which shall be titled "application." The application shall also be submitted on compatible electronic media. All operators' applications should include the operator's identification number. The application shall set forth in reasonable detail the relief requested and the legal and factual grounds for such relief. The original of the application shall be executed by a person with authority to do so on behalf of the applicant, and the contents thereof shall be verified by a party with sufficient knowledge to confirm the facts contained therein. With the exception of those from state and local government agencies, each application shall be accompanied by a docket fee established by the Commission (see Appendix III), except applications seeking an order finding violation or an emergency order.

b. Applications to the Commission may be filed by the following applicants:

(1) For purposes of applications for the creation of drilling units, applications for additional wells within existing drilling units, other applications for modifications to existing drilling unit orders, or applications for exceptions to Rule 318., only those owners within the proposed drilling unit, or within the existing drilling unit to be affected by the application, may be applicants.

(2) For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., only those persons who own an interest in the mineral estate of the tracts to be pooled may be applicants.

(3) For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., only those persons who own an interest in the mineral estate underlying the tract or tracts to be unitized may be applicants.

(4) For purposes of seeking an order finding violation, only the Director or a party who made a complaint under Rule 522. may be an applicant.

(5) For purposes of seeking a variance from the Commission, only the operator, mineral owner, surface owner or tenant of the lands which will be affected by such variance, other state agencies, any local government within whose jurisdiction the affected operation is located, or any person who may be directly and adversely affected or aggrieved if such variance is not granted, may be an applicant.

(6) For purposes of seeking a hearing pursuant to Rules 216.f.(4), 303.c.(2), or 303.j.(2), the operator seeking approval of the Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, may be the applicant.

(7) For purposes of seeking a hearing on approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, under Rule 305.e.(2), any of the following may be the applicant:

A. The operator;

B. The surface owner, solely to raise alleged noncompliance with Commission rules or statute, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and

C. The relevant local government, provided that the hearing shall be conducted in similar fashion as is specified in Rules 508.j, 508.k, and 508.l with respect to a public issues hearing. It shall be the burden of the local government to bring forward evidence sufficient for the Commission to make the preliminary findings specified in Rule 508.j at the outset of such hearing.

(8) For purposes of seeking a hearing on provisions related to measurement pursuant to Rule 328 or 329, the mineral interest owner may be the applicant.

(9) For purposes of seeking a hearing for an order limiting surface density pursuant to Rule 1202.d.(5), the operator shall be the applicant.

(10) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (9) above, only persons who can demonstrate that they are directly and adversely affected or aggrieved by the conduct of oil and gas operations or an order of the Commission and that their interest is entitled to legal protection under the Act may be an applicant.

c. Applications subject to the requirements for local public forums under Rule 508.a. shall be accompanied by a proposed plan (the "Proposed Plan") to address protection of public health, safety, and welfare, including the environment and wildlife resources, and a description of the current surface occupancy/use. The Proposed Plan shall include the rules and regulations of the Commission as they are applied to oil and gas operations in the application lands along with any procedures or conditions the applicant will voluntarily follow to address the protection of public health, safety, and welfare, including the environment and wildlife resources.

d. Upon the filing of an application, the Secretary shall set the matter for hearing and ensure that notice is given.

e. No later than seven days after the application is filed, the applicant shall submit to the Commission a certificate of service demonstrating that the applicant served a copy of the application on all persons entitled to notice pursuant to these rules by mailing a copy thereof, first-class postage prepaid, to the last known mailing address of the person to be served, or by personal delivery. The applicant shall at the same time submit to the Commission a list of all persons entitled to notice pursuant to these rules on compatible electronic media.

f. The applicant shall enjoy a rebuttable presumption that it has properly served notice on persons entitled to notice of the proceeding by demonstrating through certification or testimony that notice was provided pursuant to Rules 507. and 508.

g. In order to continue to receive copies of the pleadings filed in a specific proceeding a party who receives notice of the application shall file with the Secretary a protest or intervention in accordance with these rules.

h. Subsequent to the initiation of a proceeding, all pleadings filed by any party shall be offered by filing with the Secretary the original, two hard copies, and an electronic copy bearing the docket number assigned to such proceeding. Each pleading shall include the certificate of the party filing the pleading that the pleading has been served on all persons who have filed a protest or intervention in accordance with these rules, by mailing a copy thereof, first-class postage prepaid, to the last known mailing address of the person to be served, or by personal delivery.

504. DOCKET NUMBER OF PROCEEDINGS

When a proceeding is initiated the Secretary of the Commission shall assign it a new docket number and enter on a separate page of a docket provided for such purpose, the proceeding with the date of the filing

of the application, or the date of the entry of the Commission order, initiating such proceeding. All subsequent pleadings shall be assigned the same docket number and shall be noted with the date of filing upon the docket page or continued docket page, for such proceeding, as the case may be.

505. REQUIREMENT OF PUBLIC HEARING

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 shall hold a public hearing, scheduled in accordance with Rule 506. at such time and place as may be prescribed by the Commission. Any party shall be entitled to be heard as provided in these rules and regulations. The foregoing shall not apply to the issuance of an emergency order, notice of alleged violation, or cease and desist order.

506. HEARING DATE/CONTINUANCE

a. All applications shall be filed no later than ~~fifty (50~~70~~)~~ days in advance of the hearing date for which the applicant proposes the matter be docketed provided the docket has not been filled by the Secretary. The Secretary shall have the discretion to accept applications later than ~~fifty (50~~70~~)~~ days prior to the hearing date, subject to docket availability and the notice requirements of Rules 507. and 508. The Secretary shall grant the first request by an applicant for a continuance of any matter three ~~(3)~~ business days before the scheduled hearing, provided that a protest has not been filed. The Secretary or a Hearing Officer shall have the discretion to grant any motion for continuance. The Commission may at any time direct the Secretary to discontinue granting continuances.

b. In all rulemaking proceedings, hearings shall be held in accordance with Rule 529.

c. The Commission, Secretary, or Hearing Officer may for good cause cancel or continue any hearing to another date. Any continuance of a hearing shall not extend the filing deadline for the filing of protests or interventions in accordance with Rule 509~~.~~, unless the application is amended, or as otherwise allowed by the Commission.

d. 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 change at its discretion the proposed hearing docket, including the time or date of any scheduled hearing. It shall be the responsibility of the participating party and its attorney to be present when the Commission hears the matter.

507. NOTICE FOR HEARING

a. **General notice provisions.**

(1) When any proceeding has been initiated, the Commission shall require notice of such proceeding to be given to all persons specified in the relevant sections of Rules 507.b. and 507.c. at least ~~21~~ 35 days in advance of any Commission hearing at which the matter will first be heard. Notice shall be provided in accordance with the requirements of §34-60-108(4), C.R.S.

(2) The applicant is responsible for service and publication of required notices, including any related costs.

(3) The Secretary shall give notice to any person who has filed a request to be placed on the Commission hearing notice list, and paid the annual fee therefor. Notice by publication or notice provided pursuant to the hearing notice list shall not confer interested party status on any person.

b. **Notice for specific applications.**

(1) **Applications affecting drilling units.** For purposes of applications for the creation of drilling units, applications for 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 5 of this rule) notice of the application shall be served on the owners within the proposed drilling unit or within the existing drilling unit to be affected by the applications.

(2) **Applications for involuntary pooling.** For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S. notice of the application shall be served on those persons who own any interest in the mineral estate of the tracts to be pooled, except owners of an overriding royalty interest.

(3) **Applications for unitization.** For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., notice of the application shall 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.

(4) **Applications changing certain well location setbacks.** For purposes of applications that change the permitted minimum setbacks for established drilling and spacing units, notice of the application shall be served on those owners of contiguous or cornering tracts who may be affected by such change.

(5) **Applications for well location exception.** For purposes of applications made for exceptions to Rule 318, exceptions to legal locations within drilling and spacing units, or for an exception location to an existing order, notice of the application shall 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 shall 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 shall be presumed sufficient if served upon the designated operator of the affected formation.

(6) **Orders related to violations.** With respect to the resolution of a Notice of Alleged Violation (NOAV) through an Administrative Order by Consent (AOC), and to applications for an Order Finding Violation (OFV), notice shall be provided to the complainant, 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 local government, Colorado Department of Public Health and Environment, and Colorado Parks and Wildlife.** For purposes of intervention pursuant to Rule 509 notice shall also be given to the local governmental designee, the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife of applications made under subsections b.(1) and (3) of this rule at the same time that notice is provided to the Commission.

508. LOCAL PUBLIC FORUMS, HEARINGS ON APPLICATIONS FOR INCREASED WELL DENSITY AND PUBLIC ISSUES HEARINGS.

a. **Applicability of rule.** The provisions of this Rule 508 only apply to applications that would result in more than one (1) well site or multi-well site per forty (40) acre nominal governmental quarter-quarter section or that request approval for additional wells that would result in more than one (1) well site or multi-well site per forty (40) acre nominal governmental quarter-quarter section, within existing drilling units, not previously authorized by Commission order (together, for purposes of this rule, an “application for increased well density” or “application”).

b. **Local public forum.**

(1) The rules and regulations of the Commission as they are applied to oil and gas operations are expected to adequately address impacts to public health, safety and welfare, including the environment and wildlife resources, which may be raised by an application for increased well density.

(2) A local public forum may, however, be convened to consider potential issues related to public health, safety, and welfare, including the environment and wildlife resources, that may be raised by an application for increased well density that may not be completely addressed by these rules or the Proposed Plan submitted pursuant to Rule 503.c.

A. A local public forum shall be convened on the Commission's own motion, or upon request from the local governmental designee or the applicant.

B. A local public forum may be convened at the Director's discretion, or upon receipt of a request for a local public forum from a citizen of the county(ies) in which the application area is situated, after the Director's consideration of the following factors:

(i) The size of the application area and the number and density of surface location requested;

(ii) The population density of the application area;

(iii) The distribution of Indian, federal and fee lands within the application area;

(iv) The level of current or past public interest in increased well density in the vicinity of the application area;

(v) Whether the application is limited to the deepening or recompletion of existing wells, or directional drilling from existing surface locations; or

(vi) Whether the application is limited to an exploratory unit formed for involuntary pooling purposes.

(3) The Director shall notify the local governmental designee, the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife of any application for increased well density no later than seven days after receipt of such application. If the local governmental designee elects to require a local public forum it shall notify the Director of its decision within seven days of receipt of notice of the application.

(4) The Director shall notify the applicant of any decision to convene a local public forum no later than 14 days after receipt of the application.

c. **Local public forums on federal and Indian lands.**

(1) If the surface and the minerals of the application area are comprised in their entirety of federal or Indian lands no local public forum shall be convened because potential impacts to the environment or public health, safety, and welfare on such lands are subject to federal or tribal requirements. All proceedings on any application for increased well density on federal or Indian lands shall be conducted to comply with the obligations contained in any intergovernmental or tribal memoranda of understanding governing the conduct of oil and gas operations on federal or Indian lands.

(2) If the application area is comprised in part of federal or Indian lands, the Director shall consult with the appropriate federal or Indian authorities before scheduling any public forum on the application. Insofar as the application includes federal or Indian lands, proceedings thereon shall be conducted in accordance with this rule and any obligations contained in any intergovernmental or tribal memoranda of understanding governing the conduct of oil and gas operations on federal or Indian lands.

(3) The Director shall notify the appropriate federal and Indian authorities of any local public forum to be convened to evaluate an application area that includes federal or Indian lands. Federal or Indian participation in the local public forum may include, without limitation, presentation of the most recent applicable resource management plan(s) and any environmental assessment(s) or environmental impact statement(s) that cover or include all or any portion of the application area.

d. **Notice of the local public forum.**

(1) Within seven days from the date the applicant receives notice from the Director that a local public forum shall be convened, the applicant shall submit to the Director a list of the surface owners within the application area. In determining the identity and address of a surface owner for the purpose of giving all notices under this rule the records of the assessor for the county in which the lands are situated may be relied upon.

(2) At least 21 days before the date of the local public forum the Director shall mail to the listed surface owners notice thereof.

(3) Within 14 days of receipt of an application for increased well density the Director shall, by regular or electronic mail or by facsimile copy, provide to the local governmental designee(s), the Colorado Department of Public Health and Environment, and the Colorado Parks and Wildlife notice of the local public forum or notice that based on the factors in Rule 508.b.(2).B above, the Director will not conduct a local public forum

(4) At least 14 days before the date of the local public forum the Director shall publish notice thereof in a newspaper of general circulation in the county or counties where the application lands are located.

(5) The notice for the local public forum shall state that the forum is being conducted to consider any issues raised by the application that may affect public health, safety, and welfare, including the environment and wildlife resources that are not addressed by the rules or the Proposed Plan.

(6) Within seven days of receipt of an application for increased well density, the Director shall post a description of such application on the Commission website.

e. **Timing and location of the local public forum.**

(1) As soon as practicable after publication of notice, but at least 14 days prior to the scheduled Commission hearing on the application, the Director shall conduct the local public forum at a location reasonably proximate to the lands affected by the application. In the alternative, if the hearing is to be held at a location reasonably proximate to the lands affected by the application, the local public forum shall be replaced by the presentation of statements in accordance with Rule 510. during the hearing on the application.

(2) The Director shall immediately notify the applicant of the scheduled time and location of the local public forum.

(3) To the extent practicable, the local public forum shall be scheduled to accommodate the Director or the Director's designee, the participants, and the applicant.

(4) If the application area is comprised of lands located in more than one jurisdiction the Director shall coordinate the local public forum to provide for a single forum at a location reasonably proximate to the lands affected by the application.

f. **Conduct of the local public forum.**

(1) A Hearing Officer shall preside over the local public forum. The Hearing Officer shall provide to the participants an explanation of the purpose of the local public forum and how the Commission may use the information obtained from the local public forum. The purpose of the local public forum is to address the sufficiency of the rules or the Proposed Plan with respect to protection of public health, safety, and welfare, including the environment and wildlife resources.

(2) The conduct of the local public forum shall be informal, and participants shall not be required to be sworn, represented by attorneys, or subjected to cross examination.

(3) Attendance or participation at the local public forum by a Commissioner shall not constitute a violation of Rule 515.

(4) The applicant shall participate in the local public forum and present information related to the application.

(5) The Director shall create a record of the local public forum by video-tape, audio-tape, or by court reporter. Such record shall be made available to all Commissioners for review prior to the hearing on the application and may be relied upon in making a decision to convene a public issues hearing.

g. **Statements.**

The local public forum shall be conducted to allow elected officials, local government personnel, and citizens to express concerns not completely addressed by the rules or the Proposed Plan or make statements regarding the potential impacts from applications for increased well density that relate to public health, safety, and welfare, including the environment and wildlife resources. Issues raised in the local public forum may include the following:

(1) Impact to local infrastructure;

(2) Impact to the environment;

(3) Impact to wildlife resources;

(4) Impact to ground water resources;

(5) Potential reclamation impact; and

(6) Other impact to public health, safety, and welfare

The local public forum shall be limited to matters that are within the jurisdiction of the Commission.

h. **Report to the Commission.** At the conclusion of the local public forum the Hearing Officer shall prepare and submit to the Commission a report of the proceedings. A copy of the report shall be

made available, no later than seven days prior to the hearing on the application, to the Commissioners, the applicant, the Colorado Department of Public Health and Environment or the Colorado Parks and Wildlife if it consulted on the application, any affected local government and the public and shall be posted on the Commission website. The report on the local public forum presented to the Commission shall be included in the administrative record for the application, taking into consideration the nature of the local public forum process.

i. **Conduct of the hearing on the application for increased well density.**

(1) The hearing on the application shall be conducted in accordance with Rule 528.

(2) The Commission shall approve or deny the application based solely on the application's technical merits in accordance with- §34-60-116, C.R.S.

(3) The Hearing Officer for any local public forum shall present to the Commission the report of the local public forum.

(4) At the conclusion of the hearing on the application, the Commission shall consider and decide whether to convene a public issues hearing based on the local public forum or statements made under Rule 510. and any motions to intervene, and the Commission may:

A. Approve the application without condition;

B. Approve the application with conditions based on the technical testimony presented at the hearing on the application;

C. Approve the application, and with the applicant's consent, attach to the order on the application conditions the Commission determines are necessary to address issues related to public health, safety or welfare, including the environment and wildlife resources;

D. Approve the application and stay its effective date to convene a public issues hearing in accordance with Rule 508.j; or

E. Deny the application.

(5) If the Commission orders a public issues hearing it shall set the public issues hearing for the next regularly scheduled Commission meeting unless the applicant requests at a prehearing conference, and the Commission agrees, to convene the public issues hearing immediately following the hearing on the application.

j. **Public issues hearing.**

Upon a request by an applicant, protestant, or intervenor, or on the Commission's own motion, a public issues hearing shall be convened provided the Commission makes the following preliminary findings:

(1) That the public issues raised by the application reasonably relate to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy;

(2) That the potential impacts were not adequately addressed by:

A. In the case of an application for increased well density, the application or by the Proposed Plan; or

B. In the case of an Application for Permit-to-Drill, by such permit; and

(3) That the potential impacts are not adequately addressed by the rules and regulations of the Commission.

k. **Conduct of the public issues hearing.**

(1) The rules and regulations of the Commission shall apply to all participants in the public issues hearing.

(2) The public issues hearing shall be conducted, to the extent practicable, in accordance with Rule 528.

(3) After the public issues hearing the Commission may attach conditions to its order on the application to protect public health, safety and welfare, including the environment and wildlife resources, as are warranted by the relevant testimony and that are not otherwise addressed by these rules and regulations and the Proposed Plan. In addition, the Commission may without limitation:

A. Direct the applicant to amend its Proposed Plan for Commission review and approval for all or a portion of the application area to address specific issues related to public health, safety and welfare, including the environment and wildlife resources, including any identified impacts of increased well density within all or a portion of the application area, rather than on a single well basis.

B. Include in any order a provision to allow the Director discretion to attach specific conditions to individual well permits as the Commission determines are reasonable and necessary to protect public health, safety, and welfare, including the environment and wildlife resources.

(4) Any plan or conditions imposed by Commission order that would affect federal or Indian lands shall take into account conditions imposed by the federal or Indian authorities and any federal environmental analysis in order to facilitate regulatory consistency and minimize duplicative regulatory efforts.

(5) Any plan or conditions imposed shall take into account cost effectiveness and technical feasibility, and shall not be applied to prevent the drilling of new wells per se.

l. The Director and the Commission shall use best efforts to comply with the provisions of this Rule 508., however, any deviation from this rule shall not invalidate the Commission's action on the local public forum, the application for increased well density, or the public issues hearing.

509. PROTESTS/INTERVENTIONS/PARTICIPATION IN ADJUDICATORY PROCEEDINGS

a. The applicant and persons that have filed with the Commission a timely and proper protest or intervention pursuant to this rule shall have the right to participate formally in any adjudicatory proceeding. Intervention shall be granted by right and without fee to the relevant local government, to the Colorado Department of Public Health and Environment solely to raise environmental or public health, safety, and welfare concerns, and to the Colorado Parks and Wildlife solely to raise concerns about adverse impacts to wildlife resources.

(1) The protest or intervention shall be filed with the Secretary, and served on the applicant and its counsel at least 14 days prior to the hearing date.

(2) Description of affected interest:

A. A protest shall include information to demonstrate that the person is a protestant under these rules in order for the protest to be accepted by the Commission.

B. A local government, the Colorado Department of Public Health and Environment, or the Colorado Parks and Wildlife intervening as a matter of right shall include in the intervention information describing concerns relating to the public health, safety and welfare, including the environment and wildlife resources, raised by the application. When an intervention is filed by any local government, the Colorado Department of Public Health and Environment, the Colorado Parks and Wildlife, or any person on an application subject to Rule 508.a., information on the following shall be included:

i. That the public issues raised by the application reasonably relate to potential significant adverse impacts to public health, safety and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and

ii. That the potential impacts were not adequately addressed by the application or by the Proposed Plan; and

iii. That the potential impacts are not adequately addressed by the rules and regulations of the Commission.

C. A party desiring to intervene by permission of the Commission shall include in the intervention information to demonstrate why the intervention will serve the public interest, in which case granting the intervention shall be at the Commission's sole discretion. The Commission, at its discretion, may limit the scope of the permissive intervenor's participation at the hearing.

(3) The pleading shall include:

A. A general statement of the factual or legal basis for the protest or intervention;

B. The relief requested;

C. A description of the intended presentation including a list of proposed witnesses;

D. A time estimate to hear the protest or intervention; and

E. A certificate of service attesting that the pleading has been served, at least 14 business days prior to the first hearing date on the matter, on the applicant and any other party which has filed a protest or intervention in the proceeding. If the pleading is served by mail the party filing the pleading shall provide an electronic or a facsimile copy of the pleading to the applicant and other persons who have filed a proper protest or intervention in the matter on or before the final date for protest or intervention. If for any reason the party filing the pleading is not able to furnish a copy of the pleading to the applicant and the other persons who have filed a proper protest or intervention on or before the final date for protest or intervention, the party filing the pleading shall so notify the Secretary, the applicant and the other parties to the proceeding.

b. The Secretary or the Director may require any additional information necessary pursuant to these rules to ensure the application, protest, or intervention is complete on its face.

c. Any person shall have the right to participate in an adjudicatory proceeding by making a 510. statement in accordance with these rules.

d. All pleadings filed pursuant to this rule shall be submitted with an original, two hard copies, and an electronic copy, and shall be accompanied by a docket fee established by the Commission (see Appendix III). The docket fee shall be refunded if an intervention is denied. In cases of extreme hardship, the docket fee may be refunded at the discretion of the Commission.

e. If the application is contested, the Commission or the Director, at its discretion, may direct the parties to engage in a prehearing conference in accordance with Rule 527. A prehearing conference may result in a continuance of the hearing, or bifurcation of hearing issues as determined by the Director, Hearing Officer, or Hearing Commissioner.

f. **Participation at the hearing:**

(1) Adjudicatory hearings shall be conducted in accordance with Rule 528. and any applicable prehearing orders of the Commission, or its designated Hearing Officer.

(2) Testimony and cross-examination by a protestant or intervenor shall be limited to those issues that reasonably relate to the interests that the protestant or intervenor seeks to protect, and which may be adversely affected by an order of the Commission.

510. STATEMENTS AT HEARING

a. Any person may make an oral statement at a hearing or submit a written statement, according to instructions available on the COGCC website (under "Forms"), prior to or at any hearing that relates to the proceeding before the Commission. The Commission, at its discretion, may limit the length of any oral statement or restrict repetitive statements. In an adjudicatory hearing, an oral statement shall not be accepted into the record unless:

(1) The statement is made under oath; and

(2) The parties to the hearing are allowed to cross-examine the maker of the statement.

b. The Commission, at its discretion, may accept a sworn written statement into the record with due regard to the fact the statement was not subject to cross-examination.

c. The parties to the hearing shall have the right to object to inclusion of any statement under this Rule 510. into the record. The Commission shall note the objection for the record. If the Commission accepts the basis for excluding the 510. statement from the record the substance of the statement shall not be considered by the Commission in making a decision on the matter at issue.

511. UNCONTESTED HEARING APPLICATIONS

a. If the matter is uncontested, the applicant may request, and the Director may recommend, approval without a hearing based on 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 on the application. For purposes of this rule an uncontested matter shall mean any application that is not subject to a protest or an intervention objecting to the relief requested in the application and shall include matters in which all interested parties have consented in writing to the granting of an application without a hearing.

b. Uncontested matters may be reviewed or heard administratively by a Hearing Officer and recommended for approval on the Commission's consent agenda. The Hearings Manager shall confer with hearing applicants as to which option under c. or d., below, is appropriate for each uncontested application. From time to time, uncontested applications recommended for approval by a Hearing Officer that may be of special interest to the Commission may be recommended for presentation to the Commission.

c. **Applications where hearing officer review of sworn written testimony and exhibits is appropriate.** An applicant shall:

(1) Submit the following documents to the Commission at least 21 days prior to the hearing date:

A. One (1) original written request for approval under Rule 511 briefly describing reasons the application may be a candidate for recommendation for approval without a hearing based on review of the merits of the verified application and the supporting exhibits (rather than necessitating an administrative hearing before a Hearing Officer);

B. One (1) set of resumes/curricula vitae and sworn written testimony of witnesses verifying facts and accompanied by attachments or exhibits that adequately support the relief requested in the application;

C. A person having knowledge of the stated facts shall, under oath, sign a statement attesting to the facts stated in the written testimony and any attachments or exhibits. The sworn statement need not be notarized, but it shall contain language indicating that the signatory is affirming the 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;

D. 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;

E. One (1) set of exhibits which shall contain relevant highlights in bullet-point format on each exhibit; and

F. A draft proposed order with findings of fact and conclusions of law related to land, geology, engineering, and other appropriate subjects to support the relief requested in the application. Reference to testimony, exhibits, and previous Commission orders shall be included as findings in the draft proposed order.

(2) Submit one (1) email for each application containing editable attachments for each of the following documents to the Hearings Assistant:

A. Written request for approval;

B. Written testimony;

C. Summary of testimony; and

D. Draft proposed order.

d. **Applications where an administrative hearing before one or more Hearing Officer is appropriate.** An applicant shall:

(1) Submit the following hard-copy documents to the Hearings Manager no later than at the time the administrative hearing is held:

A. Two (2) sets of resumes/curricula vitae for the witnesses;

B. A written 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;

C. Two (2) sets of exhibits which shall contain relevant highlights in bullet-point format on each exhibit; and

D. A draft proposed order providing land, geology, engineering, and other appropriate findings to support the relief requested in the application. Reference to previous testimony, exhibits, and orders shall be included as findings in the draft proposed order.

(2) Submit one (1) email for each application containing editable attachments for each of the following documents to the Hearings Assistant:

A. Written request for approval;

B. Written testimony;

C. Summary of testimony; and

D. Draft proposed order.

512. COMMISSION MEMBERS REQUIRED FOR HEARINGS AND/OR DECISIONS

Five (5) members of the Commission constitute a quorum for the transaction of business. Testimony may be taken and oath or affirmation administered by any member of the Commission.

513. GEOGRAPHIC AREA PLANS

a. **Purpose.** Geographic Area Plans are intended to enable the Commission to adopt basin-specific rules that promote the purposes of the Act.

b. **Scope.** Geographic Area Plans shall cover an entire oil and gas field or geologic basin, likely encompassing the activities of multiple operators, in multiple sub-basins or drainages, over a period of ten (10) years or more.

c. **Procedure.**

(1) The Commission's adoption of a Geographic Area Plan shall follow Rule 529.

(2) The Commission may initiate a Geographic Area Plan for a basin by publishing notice of its intent to do so, and it may adopt a Geographic Area Plan after a public hearing, which shall include submittal of information from the public and public testimony. In addition to any other publication requirements in these rules, notice shall be published in a newspaper of local circulation in the area covered by the Geographic Area Plan and provided to the local governmental designee(s).

(3) In adopting a Geographic Area Plan, the Commission shall consult with the Colorado Department of Public Health and Environment, Colorado Parks and Wildlife, and local

governmental designee(s). The Commission shall also consider any local government comprehensive plans or other local government long-range planning tools.

(4) The Geographic Area Plan may include alternative development scenarios, designate units, adopt spacing orders, implement sampling or monitoring plans, or require consolidation of facilities within the area covered by the Plan subject to the Act.

514. RESERVED

515. EX PARTE COMMUNICATIONS

a. The following provisions shall be applied in any adjudicatory proceeding before the Commission or a Hearing Officer.

(1) No person shall make or knowingly cause to be made to any member of the Commission or a Hearing Officer an ex parte communication concerning the merits of a proceeding which has been noticed for hearing.

(2) No Commissioner or Hearing Officer shall make or knowingly cause to be made to any interested person an ex parte communication concerning the merits of a proceeding which has been noticed for hearing.

(3) A Commissioner or Hearing Officer who receives, or who makes, or knowingly causes to be made, a communication prohibited by this rule shall place on the public record of proceeding:

A. All such written communications and any responses thereto; and

B. Memoranda stating the substance of any such oral communications and any responses thereto.

(4) Upon receipt of a communication knowingly made or knowingly caused to be made by a person in violation of this rule, the Commission or a Hearing Officer may require the person to show cause why their claim or interest in the proceeding should not be dismissed, denied, or otherwise adversely affected on account of such violation.

b. Oral or written communication with individual Commission members is permissible in a rulemaking proceeding. If such information is relied upon in final decision-making it shall be made part of the record by the Commission. After the rulemaking record is closed new information that is intended for the rulemaking record shall be presented to the Commission as a whole upon approval of a request to reopen the rulemaking record.

c. This rule shall not limit the right to challenge a decision of the Commission or a Hearing Officer on the grounds of bias or prejudice due to any ex parte communication.

516. STANDARDS OF CONDUCT

a. The purpose of this rule 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 are in addition to the requirements for Commission members set forth in Title 24, Article 18, Section 108.5 of the Colorado Revised Statutes. This rule should be construed and applied to further the objectives of fair and impartial decision making. To achieve these standards Commissioners 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 or Hearing Officer has a personal or financial interest that prejudices that Commissioner's or Hearing Officer's ability to participate objectively in an official act.

(1) A Commissioner or a Hearing Officer shall 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 protestant or intervenor, 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 Hearing Officer. If the Commissioner does not agree to withdraw, the other Commissioners, after discussion and comments from any member of the public, shall vote on whether a conflict of interest exists. Such vote shall be binding on the Commissioner disclosing the conflict.

(3) In determining whether there is a conflict of interest that warrants withdrawal the Commission members or Hearing Officer shall 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 or Hearing Officer has a direct or substantial financial interest.

B. Whether the potential conflict will result in the Commissioner 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 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 shall 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 to litigants, witnesses, lawyers and others with whom the Commission deals in an official capacity, 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, or their attorney, 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.

517. 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. Pro se participants shall be subject to these rules and regulations.

b. Except as provided in a. and c. of this rule, representation at hearings before the Commission shall be by attorneys licensed to practice law in the State of Colorado, and provided that 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;

(2) Is a resident or maintains a law office within Colorado; and

(3) Is personally appearing with the applicant in the matter and in all proceedings connected with it.

The resident attorney shall continue in the case unless other resident counsel is submitted. Any notice, pleading, or other paper may be served upon the resident attorney with the same effect as if personally served on the non-resident attorney within this state. Resident counsel shall be present before the Commission unless otherwise ordered by the Commission.

c. The Commission has the discretion to allow representation by a corporate officer or director of a community organization, a closely held corporation, a citizens' group duly authorized under Colorado law, or if a limited liability corporation, the member/manager in the following circumstances:

(1) Where the agency is adopting a rule of future effect;

(2) Local public forums; 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 528.c., a non-attorney shall not be permitted to examine or cross-examine witnesses, make objections or resist objections to the introduction of testimony, or make legal arguments.

e. At administrative hearings before the Director, attorneys shall not be required.

518. SUBPOENAS

The Commission may, through the Secretary or a Hearing Officer, 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 shall submit the form of the subpoena to the Secretary for execution. Upon execution, the party requesting the subpoena has the responsibility to serve the subpoena in accordance with the Rules of

Civil Procedure. Upon receipt of an objection to any discovery issued under this Rule, the Commission, the Secretary, 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.

519. 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 Colorado Oil and Gas Conservation Act.

b. In general, the rules of evidence applicable before a trial court without a jury shall be applicable, 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, to the extent practical, shall 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 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 shall not invalidate any Commission order, decision, rule or regulation.

c. **Administrative notice.** The Commission may take administrative notice of:

(1) Constitutions and statutes of any state and of the United States;

(2) Rules, regulations, official reports, decisions, and orders of state and federal administrative agencies;

(3) Decisions and orders of federal and state courts;

(4) Reports and other documents in the files of the Commission;

(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.

520. TIME OF HEARINGS AND HEARING/CONSENT AGENDA

a. Regular hearings shall be held before the Commission on such days as may be set by the Commission.

b. The Secretary shall place on the consent agenda those uncontested matters recommended by a Hearing Officer for approval and those matters in which an Administrative Order by Consent (AOC) has been agreed to by the parties.

(1) All matters on the consent agenda may be presented individually or in groups. All matters within a group shall be voted on together, without deliberation and without the necessity of reading 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 shall 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.

521. ~~RESERVED~~SERVICE UNDER RULES 522 AND 523

a. The Director will serve a Notice of Alleged Violation, a Notice of Hearing of an enforcement action or an Order Finding Violation 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.

b. All other documents in enforcement cases shall be served pursuant to Rule 503.h., or electronically (unless previously objected to by a party).

c. Notice to a Complainant pursuant to Rule 522.b.(1) may be served electronically (unless previously objected to by a party) or by first class mail. Where notice is sent electronically, notice is perfected once sent. Where notice is sent by first class mail, notice is perfected five days after mailing.

d. Service of an application by a Complainant pursuant to Rule 522.b.(5) will be 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.

e. A Cease and Desist Order may be served by confirmed electronic or facsimile copy, 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 302.

f. Service of certified mail on an operator is perfected under this Rule at the earliest of:

(1) The date the operator receives the notice;

(2) The date shown on the return receipt, if signed on behalf of the operator; or

(3) Five days after mailing.

522. PROCEDURE ~~TO BE FOLLOWED REGARDING~~S FOR ALLEGED VIOLATIONS

a. Identification of Alleged Violations

(1) If, on the Director's own initiative or based on a complaint, the Director has reasonable cause to believe that a violation of the Act, or of 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).

(2) The following persons (Complainant) may make a complaint to the Director requesting that an NOAV be issued:

A. The mineral owner;

B. The surface owner or tenant of the lands upon which the alleged violation occurred;

C. Other state agencies;

D. The local government with jurisdiction over the lands upon which the alleged violation took place; or

E. Any person who may be directly and adversely affected or aggrieved as a result of the alleged violation.

b. Complainant's Rights and Responsibilities

(1) The Director will investigate all complaints made pursuant to Rule 522.a.(2) to determine whether reasonable cause for a violation exists. The Director will notify the Complainant of the determination pursuant to Rule 521.

A. If the Director determines no violation occurred, no further action will be taken by the Director.

B. If the Director determines a violation may have occurred, the Director may resolve the matter without seeking penalties pursuant to subpart 522.c.(1) or initiate an enforcement action seeking penalties pursuant to subpart 522.d.

(2) If a complaint leads to issuance of an NOAV, a Complainant who has filed a written complaint on a Form 18, Complaint Form, will be given an opportunity to comment on the terms of a proposed settlement of the NOAV pursuant to subpart 522.e.(1).

(3) A Complainant who has filed a written complaint on a Form 18, Complaint Form, may apply for an Order Finding Violation (OFV) hearing before the Commission pursuant to Rule 503 if the Complainant objects to:

A. The Director's decision not to issue an NOAV; or

B. The settlement terms in a proposed Administrative Order by Consent (AOC) settling an alleged violation arising directly from the complaint.

(4) Complainants must file an application for an OFV hearing with the Commission within 21 days of notification of the Director's decision not to issue an NOAV or of the settlement terms in a proposed AOC. Applications filed later than 21 days following notification will not be heard.

(5) The Complainant must serve its OFV hearing application on the alleged violator pursuant to Rule 521 within 7 days of the filing of the application.

(6) The Complainant bears the burden of proof in an OFV hearing initiated by the Complainant.

c. Resolution of Alleged Violations without Penalties

(1) When the Director has reasonable cause to believe a violation has occurred, the Director may resolve the alleged violation without seeking a penalty if all of the following apply:

A. The alleged violation is of a Class 1 or Class 2 Rule under the Commission's Penalty

Schedule, Table 523-1;

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 has not resulted in actual adverse impacts and does not pose a significant threat of adverse impacts under the criteria set forth in Rule 523.c.(2), and 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 522.c.(1) apply.

(3) When the Director determines it is appropriate to resolve an alleged violation pursuant to subpart 522.c.(1), the Director will issue the operator either a Warning Letter or Corrective Action Required Inspection Report that identifies the alleged violation, the facts giving rise to the alleged violation, any corrective actions required to resolve the violation, and a schedule for conducting the corrective actions.

A. If the operator timely performs required corrective actions and otherwise returns to compliance, the alleged violation will be resolved and the matter closed without further action.

B. If the operator fails to fully perform all corrective actions required by a Warning Letter or a Corrective Action Required Inspection Report, or otherwise fails to return to compliance within the timeframe specified by the Director, the Director will initiate an enforcement action seeking penalties pursuant to subpart 522.d. for any unresolved alleged violation.

d. Enforcement Actions Seeking Penalties for Alleged Violations

When the Director determines subpart 522.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 violation. The NOAV may propose appropriate corrective action and an abatement schedule required by the Director to correct the violation. The NOAV may propose a specific penalty amount or refer generally to Rule 523.

(2) Answer

An answer to an NOAV must be filed within 35 days of the operator's receipt of an NOAV, unless exception is granted by the Director. If the operator fails to file an answer within 35 days, the Director may request the Commission to 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. The Secretary of the Commission will docket enforcement actions for hearing by issuing a Notice and Application for Hearing pursuant to Rule 507.

e. Resolution of Enforcement Actions

(1) Administrative Order by Consent

An enforcement action may be provisionally resolved by agreement between the operator and the Director except as provided in subpart 522.e.(2).

A. A proposed agreement to resolve an enforcement action will be memorialized in an Administrative Order by Consent (AOC) executed by the Director and the operator. An AOC will be noticed for review and approval by the Commission unless no penalties are recommended.

B. A Complainant who has filed a written complaint on a Form 18, Complaint Form, will be informed of the terms of a proposed AOC resolving alleged violations arising directly out of their complaint and will be given an opportunity to comment on the settlement terms before the AOC is finalized and presented to the Commission for approval. A Complainant who objects to the settlement terms proposed for an alleged violation arising directly from their complaint may file an application for an Order Finding Violation hearing pursuant to Rule 522.b.(3).

C. Administrative Orders by Consent will be docketed on the Commission's consent agenda and may be approved by motion without formal hearing. An approved AOC becomes a final order of the Commission subject to judicial review.

D. If the Commission does not approve an AOC, the Commission will remand the matter to the Director for further proceedings.

(2) Order Finding Violation

A. An enforcement action may not be resolved by the Director and must be heard by the Commission 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 operator has engaged in a pattern of violations; or

iii. A Complainant files a timely application for an OFV hearing pursuant to Rule 522.b.(2).

B. Commencing an OFV hearing

i. The Director will commence an OFV hearing for enforcement actions governed by subpart 522.e.(2)A. by filing an Notice and Application for Mandatory OFV Hearing.

ii. Order Finding Violation hearings for enforcement actions not governed by subpart 522.e.(2)A. 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, as amended by applicable pre-hearing orders, unless the parties have agreed to and executed an AOC not less than 7 days prior to the scheduled hearing date.

iii. A Complainant may file an application for an OFV hearing pursuant to Rule 522.b.(3).

iv. The Commission may conduct an OFV hearing on its own motion, with notice pursuant to Rule 507, if it believes the Director has failed to enforce a provision of the Act, or a Commission rule, order, or permit.

C. OFV hearing procedures

i. OFV prehearing procedures are governed by Rule 527. The Director may convene a prehearing conference pursuant to Rule 527 within a reasonable time after serving a Notice and Application for Hearing.

ii. OFV hearings are *de novo* proceedings governed by Rule 528.

iii. If the Director initiates the OFV hearing, a Complainant may participate as a non-party observer and may submit a Rule 510 statement, or may move to intervene pursuant to Rule 509.

iv. If a Complainant initiates an OFV hearing pursuant to Rule 522.b.(3), the Director may intervene as a matter of right.

f. Failure to Comply with Commission Orders

An operator's failure to timely implement corrective action pursuant to an AOC, OFV, or other Commission order constitutes an independent violation which may subject the operator to penalties or corrective action requirements.

g. Cease and Desist Orders

(1) The Commission or the Director may issue a cease and desist order when an operator's alleged violation of the Act, or a Commission rule, order, or permit, or failure to take required corrective action creates an emergency situation. If the order is entered by the Director, it will be reported to the Commission for review and approval.

(2) The order will be served pursuant to Rule 521.

(3) The order will state the provisions 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.

(4) Any protest 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. However, emergency corrective actions mandated by the order will not be stayed pending resolution of the protest.

(5) In the event 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.~~a. **Notice of Alleged Violation.**~~

~~(1) A complaint requesting that the Director issue a Notice of Alleged Violation (NOAV) may be made by the mineral owner, surface owner or tenant of the lands upon which the alleged violation took place, by other state agencies, by the local government within whose boundaries the lands are located upon which the alleged violation took place, or by any other person who may be directly and adversely affected or aggrieved as a result of the alleged violation.~~

~~(2) Oral complaints shall be confirmed in writing. Persons making a complaint are encouraged to submit a Complaint Report, Form 18.~~

~~(3) If the Director, on the Director's own initiative or based on a complaint, has reasonable cause to believe that a violation of the Act, or of any rule, regulation, or order of the Commission, or of any permit issued by the Director, has occurred, the Director shall cause the operator to voluntarily remedy the violation, or shall issue an NOAV to the operator. Reasonable cause requires, at least, physical evidence of the alleged violation, as verified by the Director.~~

~~(4) If the Director, after investigating a complaint made in accordance with this Rule 522.a.(1), decides not to issue an NOAV, the complainant may file an application to the Commission pursuant to Rule 503.b.(4), requesting the Commission enter an Order Finding Violation (OFV) in accordance with this rule.~~

~~(5) **NOAV process.**~~

~~A. An NOAV issued by the Director shall be served on the operator or the operator's designated agent by personal delivery or by certified mail, return receipt requested, delivered to the address the operator has on file with the Commission pursuant to Rule 302. Service is perfected under this subsection at the earliest of:~~

~~(1) The date the operator receives the NOAV;~~

~~(2) The date shown on the return receipt, if signed on behalf of the operator; or~~

~~(3) Seven days after mailing.~~

~~B. The NOAV does not constitute final agency action for purposes of judicial appeal.~~

~~C. The NOAV shall identify the statute, rule, regulation, order, permit or permit condition subject to Commission jurisdiction allegedly violated and the facts alleged to constitute the violation. The NOAV may propose appropriate corrective action and an abatement schedule if any, that the Director elects to require. The NOAV shall also describe the penalty, if any, which the Director may propose, to be recommended in accordance with Rule 523.~~

~~b. **Resolution of a Notice of Alleged Violation.**~~

~~(1) Informal procedures to resolve issues raised by an NOAV with the Director are encouraged. Such procedures may include, but are not limited to, meetings, phone conferences and the exchange of information. If, as a result of such procedures, the Director determines that no violation has occurred, the Director shall revoke the NOAV in writing and shall provide a copy of the written notification to the complainant, if any.~~

~~(2) NOAVs may be resolved by written agreement of the operator and the Director as to the appropriate corrective action and abatement schedule, a copy of which shall be provided by the Director to the complainant, if any. Such agreements do not require Commission approval and shall not be placed on the Commission docket, except at the request of the operator.~~

~~(3) NOAVs which are not resolved by written agreement for correction and abatement or which recommend the imposition of a penalty may be provisionally resolved by negotiation between the operator and the Director. If such negotiations result in a proposed agreement, an Administrative Order By Consent (AOC) containing such agreement shall~~

be prepared and presented for review and approval by the Commission. The Secretary may place an AOC on the consent agenda for Commission approval without a hearing, unless an objection thereto is filed by the complainant, pursuant to Rule 522.b.(4). Upon Commission approval, the AOC shall become a final order. Unless the operator so agrees, such AOC shall not constitute an admission of the alleged violation.

(4) The Director shall advise the complainant of any informal procedures used to facilitate resolution of the NOAV. A complainant may object to the proposed resolution by an AOC. At the Director's discretion the AOC may be reviewed and modified based on the complainant's concerns, with the consent of the operator. If the complainant objects to the Director's final decision to revoke or settle the NOAV, the complainant shall have the right to file with the Commission an application for an Order Finding Violation (OFV). Such application shall be filed pursuant to Rule 503 within forty-five (45) days of the receipt of the Director's written determination. For purposes of this Rule, the Director's written determination shall be deemed to be received three (3) business days after mailing a copy thereof, first-class postage prepaid, to the last known address of the complainant. The application shall be served on the Director and the operator. The complainant shall have the burden of proof in an OFV hearing for which the complainant applies.

c. **Order Finding Violation.**

(1) If the operator contests the NOAV, as to the existence of the violation, the appropriate corrective action and abatement schedule, or any proposed penalty, the Director shall make application to the Commission for an OFV and shall place the matter on the next available Commission docket, providing that at least 21 days' notice of such application is provided to the operator. A Notice of Hearing shall be served on the operator or the operator's designated agent by personal delivery or by certified mail, return receipt requested, delivered to the address the operator has on file with the Commission pursuant to Rule 302. Service is perfected under this subsection at the earliest of:

A. The date the operator receives the Notice of Hearing;

B. The date shown on the return receipt, if signed on behalf of the operator; or

C. Seven days after mailing

(2) If the Director decides not to issue an NOAV, the Commission may conduct a hearing to consider whether to issue an OFV upon 21 days' notice to the affected operator under the following circumstances:

A. On the Commission's own initiative if it believes that the Director has failed to enforce a provision of statute, rule, regulation, order, permit or permit condition subject to Commission jurisdiction.

B. On the application of a complainant pursuant to Rule 503.b.(4), provided that such complainant has first made a written request to the Director to issue an NOAV and the Director has determined in writing not to do so. An application for hearing by a complainant shall be filed within forty-five (45) days of the receipt of the Director's written determination. For purposes of this rule, the Director's written determination shall be deemed to be received three (3) business days after mailing a copy thereof, first-class postage prepaid, to the last known address of the complainant. The application shall be served on the Director and the operator. The complainant shall have the burden of proof in an OFV hearing for which the complainant applies.

(3) Upon an operator's request, a settlement conference shall be held with the Director no less than seven days before the hearing on an OFV. If an agreement is reached, an AOC containing such agreement shall be prepared and presented for review and approval by the Commission, at its discretion. Upon such approval, the AOC shall become a final order. Such approval may be granted without hearing, unless an objection is filed by a complainant. Unless the operator so agrees, such AOC shall not constitute an admission of the alleged violation.

(4) A complainant who objects to a proposed AOC may file an application for an OFV with the Commission. A complainant's application for an OFV must be filed no more than 45 days following receipt of the Director's written determination of a final AOC pursuant to Rule 503.b.(4). The Director's written determination shall be deemed to be received three (3)

business days after mailing a copy thereof, first-class postage prepaid, to the last known address of the complainant. The application shall be served on the Director and the operator. The complainant shall have the burden of proof in an OFV hearing for which the complainant applies.

(5) A hearing to consider whether to issue an OFV shall be a de novo proceeding, unless the parties stipulate as to the facts, or as to the appropriate corrective action and abatement schedule, in which case the hearing may be accordingly limited.

(6) The Director is always a necessary party to a hearing on an OFV. The operator against which an OFV is sought is always a necessary party but need not present a case. Any person, which is not the applicant for an OFV, but whose complaint initiated the enforcement proceeding, shall be granted intervenor status if so requested, pursuant to Rule 509, except that the filing fee shall be waived.

d. **Cease and Desist Orders.**

(1) The Commission or the Director may issue a cease and desist order whenever an operator fails to take corrective action required by final AOC or OFV.

(2) Whenever the Commission has evidence that a violation of any provision of the Act, any rule, permit, or order of the Commission has occurred under circumstances deemed to constitute an emergency situation, the Commission or the Director may issue a cease and desist order. If the order is entered by the Director it shall be immediately reported to the Commission for review and approval. Except as provided in subsection (3) below, such order shall be considered a final order for purposes of judicial review.

(3) The order shall be served by personal delivery or by certified mail, return receipt requested, or by confirmed electronic or facsimile copy followed by a copy provided by certified mail, return receipt requested, on the operator or the operator's designated agent and shall state the provision alleged to have been violated, 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. Any protest by an operator to a cease and desist order issued by the Director shall automatically stay the effective date of the order, in which case the order shall not be considered final for purposes of judicial review until such protest is heard.

(4) In the event 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.

523. PROCEDURES FOR ASSESSING FINESPENALTIES

a. **Fines.** An operator who violates any provision of the Act or any rule, permit, or order issued by the Commission shall be subject to a fine which shall be imposed only by order of the Commission, after hearing, or by an AOC approved by the Commission. All fines shall be calculated using the base fine amount for the particular violation as set forth in the fine schedule in subparagraph c. of this Rule 523. subject to the following:

(1) The Commission may in its discretion find that each day a violation exists constitutes a separate violation; however, no fine for any single violation shall exceed one thousand dollars ($1,000) per day.

(2) All fines shall be subject to adjustment based upon the factors listed in subparagraph d. of this Rule 523.

(3) For a violation which does not result in significant waste of oil and gas resources, damage to correlative rights, or a significant adverse impact on public health, safety or welfare, including the environment or wildlife resources, the maximum penalty for any single violation shall not exceed ten thousand dollars ($10,000) regardless of the number of days of such violation.

(4) Fines for violations for which no base fine is listed shall be determined by the Commission at its discretion subject to subparagraphs (1), (2), and (3) of this Rule 523.a.

b. **Voluntary disclosure.** Any operator who conducts a voluntary self-evaluation as defined in the 100 Series of the rules and makes a voluntary disclosure to the Director of a significant adverse impact on the environment or of a failure to obtain or comply with any necessary permits, shall enjoy a rebuttable presumption against the imposition of a fine for any violation relating to such impact or failure, under the following conditions:

(1) The disclosure is made promptly after the operator learns of the violation as a result of the voluntary self-evaluation;

(2) The operator making the disclosure cooperates with the Director regarding investigation of the issue identified in the disclosure; and

(3) The operator making the disclosure has achieved or commits to achieve compliance within a reasonable time and pursues compliance with due diligence.

The Commission shall deny the presumption against the imposition of fines only if, after hearing, it finds that any of the preceding conditions have not been met, or that the use of this process was engaged in for fraudulent purposes.

c. **Base fine schedule.** The following table sets forth the base fine for violation of the rules listed

RULE NUMBER	BASE FINE
205	$1000
205A	$1000
206	$1000
207	$1000
208	$1000
209	$1000
210	$500

RULE NUMBER	BASE FINE
301	$1000
302	$1000
303	$1000
305	$1000
306	$1000
307	$500
308	$1000
309	$1000
310	$1000
311	$500
312	$500
313	$500
313A	$1000
314A	$500
315	$500
316A	$1000
316B	$1000
317	$1000
317A	$1000
317B	$1000
318	$1000
319	$1000

~~320~~	~~$1000~~
~~321~~	~~$1000~~
~~322~~	~~$1000~~
~~323~~	~~$1000~~
~~324~~	~~$1000~~
~~325~~	~~$1000~~
~~326~~	~~$1000~~
~~327~~	~~$1000~~
~~328~~	~~$1000~~
~~329~~	~~$1000~~
~~330~~	~~$1000~~
~~331~~	~~$1000~~
~~332~~	~~$1000~~
~~333~~	~~$1000~~
~~341~~	~~$1000~~

~~RULE NUMBER~~	~~BASE FINE~~
~~401~~	~~$1000~~
~~403~~	~~$1000~~
~~404~~	~~$1000~~
~~405~~	~~$500~~

~~RULE NUMBER~~	~~BASE FINE~~
~~602~~	~~$1000~~
~~603~~	~~$1000~~
~~604~~	~~$1000~~
~~606A~~	~~$1000~~
~~606B~~	~~$1000~~
~~607~~	~~$1000~~
~~608~~	~~$1000~~

~~RULE NUMBER~~	~~BASE FINE~~
~~703~~	~~$1000~~
~~704~~	~~$1000~~
~~705~~	~~$1000~~
~~706~~	~~$1000~~
~~707~~	~~$1000~~
~~708~~	~~$1000~~
~~709~~	~~$1000~~
~~711~~	~~$1000~~
~~712~~	~~$1000~~

~~RULE NUMBER~~	~~BASE FINE~~
~~802~~	~~$1000~~
~~803~~	~~$500~~
~~804~~	~~$500~~
~~805~~	~~$1000~~

~~RULE NUMBER~~	~~BASE FINE~~
~~901~~	~~$1000~~
~~902~~	~~$1000~~

903	$1000
904	$1000
905	$1000
906	$1000
907	$1000
908	$1000
909	$1000
910	$1000
911	$1000
912	$1000

RULE NUMBER	BASE FINE
1002	$1000
1003	$1000
1004	$1000

RULE NUMBER	BASE FINE
1101	$1000
1102	$1000
1103	$1000

RULE NUMBER	BASE FINE
1201	$1000
1203	$1000
1204	$1000
1205	$1000

d. **Adjustment.** The fine may be increased (if base fine is less than $1000) or decreased by application of the aggravating and mitigating factors set forth below.

Aggravating factors.

(1) The violation was intentional or reckless.

(2) The violation had a significant negative impact, or threat of significant negative impact, on the environment or on public health, safety, or welfare.

(3) The violation resulted in significant waste of oil and gas resources.

(4) The violation had a significant negative impact on correlative rights of other parties.

(5) The violation resulted in or threatened to result in significant loss or damage to public or private property.

(6) The violation involved recalcitrance or recidivism upon the part of the violator.

(7) The violation involved intentional false reporting or recordkeeping.

(8) The violation resulted in economic benefit to the violator, including the economic benefit associated with noncompliance with the applicable rule, in which case the amount of such benefit may be taken into consideration.

(9) The violation results in significant, avoidable loss of wildlife or wildlife resources, including the ability of the land to produce vegetation supportive of wildlife.

Mitigating factors.

(1) The violator self-reported the violation.

(2) The violator demonstrated prompt, effective and prudent response to the violation, including assistance to any impacted parties.

(3) The violator cooperated with the Commission, or other agencies with respect to the violation.

(4) The cause(s) of the violation was (were) outside of the violator's reasonable control and responsibility, or is (are) customarily considered to be force majeure.

(5) The violator made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation.

(6) The cost of correcting the violation reduced or eliminated any economic benefit to the violator.

(7) The violator has demonstrated a history of compliance with Commission rules, regulations and orders.

e. **Public projects.** In lieu of or in reduction of fine amounts, an AOC may provide for the initiation of or participation in operator projects which are beneficial to public health, safety and welfare, including the environment and wildlife resources, and the Commission encourages AOCs which so provide.

f. **Payment of fines.** An operator against whom the Commission enters an order to pay a fine must pay the amount due within 35 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 shall 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, a permit condition, or these rules and regulations shall not be stayed pending resolution of an appeal unless the stay is ordered by the court.

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, this Rule 523, and written guidance contained in the Commission's Enforcement Guidance and Penalty Policy.

b. Days of Violation

The duration of a violation presumptively will be calculated in days 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 continues until the appropriate corrective action is commenced to the Director's satisfaction.

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.

(3) The Commission will assess a penalty for each day the evidence shows a violation continued.

(4) 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 penalty for each violation will be calculated based on the Commission's Penalty Schedule, Table 523-1, (Appendix XX to these Rules) combined with an assessment of the degree of actual or threatened adverse impact to public health, safety, welfare, the environment, or wildlife resources. The maximum daily penalty cannot exceed $15,000 per day per violation.

(1) Penalty Schedule – Table 523-1. The Commission's Penalty Schedule classifies Commission rules as Class 1, 2, or 3 based on the severity of the potential consequences of a violation of the Rule. The base penalty for a violation of a Rule within each Class is:

Class 1 – $500 for each day of violation.
Class 2 – $3,000 for each day of violation.
Class 3 – $7,500 for each day of violation.

The Director retains the discretion to reclassify discrete subparts of a Rule, on a case by case basis, where a violation of that subpart does not have the same potential consequences as a violation of the remainder of the Rule.

(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, welfare, including the environment and wildlife resources resulting from the violation. The Commission will determine the degree of actual or threatened adverse impact to public health, safety, welfare, including the environment and wildlife resources, based on the totality of circumstances in each case. The Commission 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, fish, soil, water, air, and all other environmental 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. 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 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 may decrease a penalty if it finds any of the mitigating factors listed in subpart B, below, exist.

A. Aggravating factors

1. The violator acted with gross negligence or knowing and willful misconduct.

2. The violation resulted in significant waste of oil and gas resources.

3. The violation had a significant negative impact on correlative rights of other parties.

4. The violator was recalcitrant or uncooperative with the Commission or other agencies in correcting or responding to the violation.

5. The violator falsified reports or records.

6. The violator benefited economically from the violation, in which case the amount of such benefit may be taken into consideration.

7. The violator has engaged in a pattern of violations.

B. Mitigating factors

1. The violator self-reported the violation.

2. The violator demonstrated prompt, effective and prudent response to the violation, including assistance to any impacted parties.

3. The violator cooperated with the Commission and other agencies with respect to the violation.

4. The cause of the violation was outside of the violator's reasonable control and responsibility, or is customarily considered to be force majeure.

5. The violator made a good faith effort to comply with applicable requirements prior to the Commission learning of the violation.

6. 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.

7. 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 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 Order Finding Violation hearing before the Commission when the Director determines an operator has:

A. Engaged in a pattern of violations; or

B. Acted with gross negligence or knowing and willful misconduct that resulted in an egregious violation.

(2) If the Commission finds after hearing that an operator has engaged in conduct described in subparagraph d.(1), the Commission 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 Director that the operator has brought each violation into compliance and that any penalty assessed (not subject to judicial review) has been paid.

(3) The Commission will consider the following non-exclusive list of factors in determining whether an operator has engaged in a pattern of violations:

A. The number of NOAVs an operator receives as a percentage of the number of wells it operates;

B. Frequent violation of the same or similar rules;

C. The overall number of Warning Letters or Corrective Action Required Inspections an operator receives within a span of years; and

D. Any other factors relevant to an objective determination of whether an operator has a pattern and practice of noncompliance.

e. Voluntary disclosure

(1) An operator who maintains a regulatory compliance program and voluntarily discloses to the Director a violation of the Act, or any Commission rule, order, or permit discovered as a direct result of such a program will have a rebuttable presumption of a penalty reduction, of at least a 35% for a disclosed violation, if:

A. The disclosure is made promptly after the operator learns of the violation as a result of its regulatory compliance program;

B. The operator cooperates with the Director regarding investigation of the disclosed violation; and

C. The operator has achieved or commits to achieve compliance within a reasonable time and pursues compliance with due diligence.

(2) This presumption will not apply if:

A. The disclosure or the regulatory compliance program was engaged in for fraudulent purposes;

B. The disclosed violation was part of a pattern of violations; or

C. The disclosed violation was egregious and the result of the operator's gross negligence or knowing and willful misconduct.

f. Public Projects. In its discretion, the Commission 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 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.

524. DETERMINATION OF RESPONSIBLE PARTY

In all cases initiated by the Commission or at the request of the Director, it shall be the burden of the Director to present sufficient evidence to the Commission to determine responsible party status. In all other cases, the applicant shall have the burden to present sufficient evidence to the Commission 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 shall 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 shall provide to the Commission or Director such information as the Commission or Director may reasonably require in making such determination.

d. The Commission shall make the determination under this section without regard to any contractual assignments of liability or other legal defenses between parties.

e. An operator shall enjoy a rebuttable presumption against mitigation liability under §34-60-124(7) C.R.S., for ongoing significant adverse environmental impacts where the violation which led to such impacts was committed by a predecessor operator and where the operator has conducted an environmental investigation, with reasonable due diligence, of the environmental condition of the particular asset or activity and such investigation did not reveal such significant adverse environmental impacts. The failure to report any condition which is causing such impacts, upon subsequent knowledge by the operator, shall negate the rebuttable presumption against mitigation liability.

f. Where multiple persons are determined to be responsible parties, they shall share in the mitigation liability in proportion to their respective shares of production, respective periods of ownership or respective contributions to the problem, or any other factors as may serve the interests of fairness.

g. The determination of responsible party status and mitigation liability shall require a showing that the responsible party conducted operations that have resulted in or have threatened to cause a significant 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 historic provisions of the Act or rules, whether or not the Commission has entered an order finding violation.

525. PERMIT-RELATED PENALTIES

a. If the Commission determines, after a hearing, that an operator failed to perform any required corrective action/abatement or failed to comply with a cease and desist order issued by the Director or the Commission 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 shall 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 shall continue the affected operations only for the purpose of bringing them into compliance with the permit(s) or modified permit(s) and shall 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 shall inform the Commission, and the Commission, if in agreement, shall 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 shall 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 shall 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 shall be vacated.

526. ADMINISTRATIVE HEARINGS IN UNCONTESTED MATTERS

a. As to applications where there has been no protest or intervention filed with the Commission in accordance with Rule 509., and where the Director has not recommended approval based on the content of the verified application and supporting exhibits, the application may be heard administratively prior to or on the date of the scheduled Commission hearing. The date and time of the administrative hearing shall be scheduled for the mutual convenience of the applicant and the Hearing Officer. The administrative hearing may be conducted prior to the protest or intervention date, but no order shall be entered by the Commission until it has fully considered any timely and properly filed protest or intervention.

b. One or more duly appointed Hearing Officers may hear the application at the administrative hearing. Administrative hearings shall proceed informally in a meeting format. The applicant may present its case using exhibits and witnesses. All witnesses shall be sworn. At the conclusion of the administrative hearing, the Hearing Officer shall make a decision concerning approval or denial of the application and so inform the applicant. The Hearing Officer shall 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 Hearing Officer recommends denial or qualified approval of the application, the applicant shall be entitled to a hearing de novo at the next scheduled hearing of the Commission.

c. The Commission or Director may appoint Hearing Officers from the Commission staff for the purpose of hearing uncontested matters, presiding at local public forums or otherwise representing the Commission. The service of the Hearing Officers shall be at the Director's discretion.

527. PREHEARING PROCEDURES FOR CONTESTED ADJUDICATORY PROCEEDINGS BEFORE THE COMMISSION

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 before the Commission. A prehearing conference shall be conducted at the direction of the Commission or the Director upon receipt of a protest or an intervention, or upon the request of the applicant or any person who has filed a protest or intervention. For matters in which a staff analysis has been prepared, the Director shall participate in the prehearing conference to advise the parties of the content of the preliminary staff analysis. The prehearing conference shall be conducted under the following general guidelines.

b. The Director, a Hearing Officer, or Hearing Commissioner shall preside over any prehearing conference and rule on preliminary matters in any proceeding pending before the Commission

c. The Secretary shall notify the applicant and any person who has filed a protest or intervention of the prehearing conference, and shall direct the attorneys for the parties, and pro se parties, to appear in order to expedite the hearing or settle issues, or both.

d. All parties shall be prepared to discuss all procedural and substantive issues, and shall be authorized to make binding commitments on all procedural matters.

e. Preparation should include advance study of all materials filed and materials obtained through discovery.

f. Failure of any person to attend the prehearing conference, after being notified of the date, time, and place shall be a waiver of any objection and shall be deemed to be a concurrence to any agreement reached, or to any order or ruling made at the prehearing conference, including the entry of a default judgment or the dismissal of a protest.

g. A prehearing statement may be required of any party.

h. 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, or Hearing Officer.

i. 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.

j. The Hearing Officer shall reduce to writing any agreement reached or orders issued at a prehearing conference. The Hearing Officer may require parties to submit proposed findings or orders.

k. It is the intent of this rule that a prehearing order shall be binding upon the participating parties.

l. Subsequent to the prehearing conference and prior to the hearing on a contested matter, the parties shall each prepare and submit to the Hearing Officer a recommended order for the Commission to consider for adoption at the time of hearing.

528. CONDUCT OF ADJUDICATORY HEARINGS.

a. **Contested applications.** Every party shall have the right to present its case by oral and/or documentary evidence. The following shall be the order of presentation unless otherwise established by the Commission at the hearing:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Presentation of any prehearing order;

(3) Presentation of any motions and disposition of procedural matters;

(4) Presentation of any stipulations;

(5) Opening statement by the applicant;

(6) Opening statements by the respondent (and intervenor, if any);

(7) Presentation of the case-in-chief by the applicant;

(8) Presentations by respondent (and intervener, if any);

(9) Presentation of statements under Rule 510, if any;

(10) Presentation of staff analysis, if requested by the Commission;

(11) Rebuttal by the applicant;

(12) Rebuttal by the respondent (and intervenor, if any);

(13) Closing statement by the applicant;

(14) Closing statements by the respondent (and intervenor, if any);

(15) Rebuttal closing statement by the applicant;

(16) Upon motion and for good cause shown, the Commission may permit surrebuttal;

(17) Closing of the record.

b. **Uncontested applications not approved administratively.** For uncontested applications not approved administratively pursuant to Rule 526., the applicant may present evidence in support of its application to the Commission. The order of presentation shall be as follows, unless otherwise established by the Commission at the hearing:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Presentation of staff analysis, if requested by the Commission. The Commission, at its discretion or upon request of the Director, may defer staff testimony until all of the evidence has been presented.

(3) Presentation of the case-in-chief by the applicant;

(4) Closing statement by the applicant;

(5) Closing of the record.

c. **Enforcement hearings.** In order to assure that all parties against whom a fine or penalty may be imposed are afforded due process of law, the Commission shall, at any hearing, permit the Director or the complainant pursuant to Rule 522.b.(4) to present evidence and argument and to conduct cross-examination required for a full disclosure of the facts. The enforcement matter shall be heard by the Commission de novo unless the operator waives its right to a de novo hearing prior to or at the Commission hearing. The order of presentation in a hearing for an enforcement matter shall be as follows, unless otherwise established by the Commission at the hearing:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Opening statements by all parties;

(3) Presentation by the Director;

(4) Presentation by any complainant under Rule 522.b.(4);

(5) Presentation by the operator;

(6) Rebuttal by the Director;

(7) Rebuttal by the respondent;

(8) Closing statements by the parties;

(9) Finding regarding existence of violation;

(10) If the Commission first determines by a preponderance of the evidence that a violation or violations exist, presentation by the Director of any recommended fine or permit-related penalty, and/or recommended corrective action/abatement to be taken by the operator;

(11) Response by any complainant under Rule 522.b.(4);

(12) Presentation of statements under Rule 510, if any;

(13) Response by the operator;

(14) Rebuttal by the Director;

(15) Closing statements by all parties;

(16) Closing of the record.

d. **Closing of record.** At the conclusion of closing statements, the record shall be closed to the presentation of any further evidence, testimony, or statements, except as such may occur in response to questions from the Commission.

e. **Witnesses.** Each witness shall take an oath or affirmation before testifying. After a witness has testified, the applicant, the protestant or participating intervenors and any Commissioner may cross-examine that witness in the order established by the chairperson of the Commission.

f. **Limitations of testimony.** Where two or more protestants or intervenors have substantially similar interests and positions, the Commission may limit cross-examination or argument on motions and objections to fewer than all the intervenors. The Commission may also limit testimony to avoid undue delay, waste of time or needless presentation of cumulative evidence.

g. **Commission findings and order.** After due consideration of written and oral statements, the testimony, and the arguments presented at hearing, the Commission shall make its findings and order, based upon evidence in the record and, as appropriate, consistent with the Act and any rule, permit, or order made pursuant thereto.

529. PROCEDURES FOR RULEMAKING PROCEEDINGS

a. **Initiation of rulemaking.** The Commission may initiate rulemaking on its motion or in response to an application filed by any person.

b. **Applications for rulemaking.** Any person may petition the Commission to initiate rulemaking. All applications for rulemaking shall 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 shall be noticed by publication in the Colorado Register not less than 21 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 shall 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 informal procedures 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 shall 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 shall state that the proposed regulations will be available upon request from the office of the Commission, the date of availability, and any fee. The notice shall include a short and plain statement which summarizes the intended action and states generally the basis and purpose of the rule.

f. **The rulemaking hearing.** The Commission shall hold a formal public hearing before promulgating any rules or regulations. At that hearing, the Commission shall afford any person an opportunity to submit data, views or arguments. The Commission may limit such testimony or presentation of evidence 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 shall 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 shall 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.

(3) The order of presentation at a rulemaking hearing shall 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 rule.

530. INVOLUNTARY POOLING PROCEEDINGS

a. An application for involuntary pooling pursuant to §34-60-116, C.R.S., may be filed at any time an owner within a drilling and spacing unit established by Commission order fails or refuses to agree to bear its proportionate share of the costs and risks of drilling and operating the well or to lease its minerals. An application for involuntary pooling may be filed at any time prior to or after the drilling of a well; however, any involuntary pooling order issued shall be retroactive to the date the application is filed ~~with the Commission~~, unless otherwise determined by the Commission ~~unless the payor agrees otherwise~~.

b. An owner shall be deemed a nonconsenting owner in the area to be pooled if, after at least 35 days' written notice of the following information, the owner does not elect in writing to consent to participate in the cost of the well concerning which the pooling order is sought:

(1) The location and objective depth of the well;

(2) The estimated drilling and completion cost of the well; and

(3) The estimated spud date for the well or range of time within which spudding is to occur.An authority for expenditure prepared by the operator and containing the information required above, together with additional information deemed appropriate by the operator shall satisfy this obligation.

c. An unleased owner shall be deemed a nonconsenting owner if, after at least 35 days' written notice, the unleased owner has failed or refused a reasonable offer to lease. In determining whether a reasonable offer to lease has been tendered under §34-60-116(7)(d), C.R.S., the Commission shall consider the lease terms listed below for the drilling and spacing unit in the application and for all cornering and contiguous units that are under the proposed lease:

(1) Date of lease and primary term or offer with acreage in lease;

(2) Annual rental per acre;

(3) Bonus payment or evidence of its non-availability;

(4) Mineral interest royalty; and

(5) Such other lease terms as may be relevant.

SERIES SAFETY REGULATIONS

601. INTRODUCTION

The rules and regulations in this section are promulgated to protect the health, safety and welfare of the general public during the drilling, completion and operation of oil and gas wells and producing facilities. They do not apply to parties or requirements regulated under the Federal Occupational Safety and Health Act of 1970 (See Rule 212).

602. GENERAL

The training and actions of an operator's employees, as well as the proper location and operation of equipment, are essential to any safety program.

a. Employees shall be familiarized with these Rules as provided herein as they relate to their job functions. Each new employee should have his or her job outlined, explained and demonstrated.

b. Employees shall immediately report unsafe and potentially dangerous conditions to their supervisor and these conditions shall be remedied as soon as practicable. An operator shall notify the Director of any accident or natural event involving a fire, explosion, detonation, or release of pressure that results in: 1) injury to a member of the general public which requires Medical Treatment and/or 2) significant damage to equipment or the well site. This initial notification from the operator shall occur as soon as practicable, but no more than 24 hours after the accident or natural event. An Accident Report, Form 22, shall be submitted to the Director within 10 days of the accident or natural event.

   Where unsafe or potentially dangerous conditions exist, the owner or operator shall respond as directed by an agency with demonstrated authority to do so (such as sheriff, fire district director, etc.).

c. Vehicles of persons not involved in drilling, production, servicing, or seismic operations shall be located a minimum distance of one hundred (100) feet from the wellbore, or a distance equal to the height of the derrick or mast, whichever is greater. Equivalent safety measures shall be taken where terrain, location or other conditions do not permit this minimum distance requirements.

d. Existing wells are exempt from the provisions of these regulations as they relate to the location of the well.

e. Existing producing facilities shall be exempt from the provisions of these regulations with respect to minimum distance requirements and setbacks unless they are found by the Director to be unsafe.

f. Self-contained sanitary facilities shall be provided during drilling operations and at any other similarly staffed oil and gas operations facility.

603. STATEWIDE LOCATION REQUIREMENTS FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS

a. **Statewide location requirements.**

   (1) At the time of initial drilling, a Well shall be located not less than two hundred (200) feet from buildings, public roads, major above ground utility lines, or railroads.

Rule 604 setback requirements apply with respect to Building Units and Designated Outside Activity Areas.

(2) A well shall be located not less than one hundred fifty (150) feet from a surface property line. The Director may grant an exception if it is not feasible for the Operator to meet this minimum distance requirement and a waiver is obtained from the offset Surface Owner(s). An exception request letter stating the reasons for the exception shall be submitted to the Director and accompanied by a signed waiver(s) from the offset Surface Owner(s). Such waiver shall be written and filed in the county clerk and recorder's office and with the Director.

603.b. **Statewide rig floor safety valve requirements.** When drilling or well servicing operations are in progress on a well where there is any indication the well will flow hydrocarbons, either through prior records or present conditions, there shall be on the rig floor a safety valve with connections suitable for use with each size and type of tool joint or coupling being used on the job.

603.c. **Statewide static charge requirements.** Rig substructure, derrick, or mast shall be designed and operated to prevent accumulation of static charge.

603.d. **Statewide well servicing pressure check requirements.** Prior to initiating well servicing operations, the well shall be checked for pressure and steps taken to remove pressure or operate safely under pressure before commencing operations.

603.e. **Statewide well control equipment and other safety requirements.** Well control equipment and other safety requirements are:

(1) When there is any indication that a well will flow, either through prior records, present well conditions, the planned well work, or special orders of the Commission, blowout prevention equipment shall be installed.

(2) When required, blowout prevention equipment shall be in accordance with API Standard 53: Blowout Prevention Equipment Systems for Drilling Wells.

(3) Drilling after setting the surface casing shall not proceed until blowout prevention equipment is tested and found to be serviceable. Low pressure and high pressure tests shall be performed. Test pressure, test duration, and test frequency shall be in accordance with API Standard 53: Blowout Prevention Equipment Systems for Drilling Wells, except that the minimum low pressure for a low pressure test shall be 250 psi. Test pressure loss shall be less than or equal to 10% of the initial stabilized surface pressure at the end of the test when testing with rig pumps against casing. When a test plug is used to isolate the casing from the blowout prevention equipment being tested, then there shall be no pressure loss at the end of the test.

(~~3~~4) While in service, blowout prevention equipment shall be inspected daily and a preventer operating test shall be performed on each round trip, but not more than once every twenty-four (24) hour period. Notation of operating tests shall be made on the daily report.

(~~4~~5) All pipe fittings, valves and unions placed on or connected with blowout prevention equipment, well casing, casinghead, drill pipe, or tubing shall have a working pressure rating suitable for the maximum anticipated surface pressure and shall be in good working condition as per generally accepted industry standards.

(~~5~~6) Blowout prevention equipment shall contain pipe rams that enable closure on the pipe being used. The choke line(s) and kill line(s) shall be anchored, tied or otherwise secured to prevent whipping resulting from pressure surges.

(~~6~~7) Pressure testing of the casing string shall be conducted prior to drilling out any string of casing except conductor pipe. The minimum test pressure shall be 500 psi. Test pressure loss must be less than or equal to 10% of the initial stabilized surface pressure over a test period of 15 minutes, in order for the casing string to be considered serviceable. Upon demand the operator shall provide to the Commission the pressure test evidence.

(~~7~~8) If the blind rams are closed for any purpose except operational testing, the valves on the choke lines or relief lines below the blind rams should be opened prior to opening the rams to bleed off any pressure.

(~~8~~9) All rig employees shall have adequate understanding of and be able to operate the blowout prevention equipment system. New employees shall be trained in the operation of blowout prevention systems as soon as practicable to do so.

(~~9~~10) Drilling contractors shall place a sign or marker at the point of intersection of the public road and rig access road.

(~~10~~11) The number of the public road to be used in accessing the rig along with all necessary emergency numbers shall be posted in a conspicuous place on the drilling rig.

603.f. **Statewide equipment, weeds, waste, and trash requirements.** All locations, including wells and surface production facilities, shall be kept free of the following: equipment, vehicles, and supplies not necessary for use on that lease; weeds; rubbish, and other waste material. The burning or burial of such material on the premises shall be performed in accordance with applicable local, state, or federal solid waste disposal regulations and in accordance with the 900-Series Rules. In addition, material may be burned or buried on the premises only with the prior written consent of the Surface Owner.

603.g. **Statewide equipment anchoring requirements.** All equipment at drilling and production sites in geological hazard and floodplain areas shall be anchored to the extent necessary to resist flotation, collapse, lateral movement, or subsidence.

604. SETBACK AND MITIGATION MEASURES FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS

a. **Setbacks.** Effective August 1, 2013:

(1) **Exception Zone Setback.** No Well or Production Facility shall be located five hundred (500) feet or less from a Building Unit except as provided in Rules 604.a.(1) A and B, and 604.b.

A. Urban Mitigation Areas. The Director shall not approve a Form 2A or associated Form 2 proposing to locate a Well or a Production Facility within an Exception Zone Setback in an Urban Mitigation Area unless:

i. the Operator submits a waiver from each Building Unit Owner within five hundred (500) feet of the proposed Oil and Gas Location

with the Form 2A or associated Form 2, or obtains a variance pursuant to Rule 502; and

ii. the Operator certifies it has complied with Rules 305.a, 305.c., and 306.e.; and

iii. the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable; or

iv. the Oil and Gas Location is approved as part of a Comprehensive Drilling Plan pursuant to Rule 216.

B. Non-Urban Mitigation Area Locations. Except as provided in subsection 604.b., below, the Director shall not approve a Form 2 or Form 2A proposing to locate a Well or a Production Facility within an Exception Zone Setback not in an Urban Mitigation Area unless the Operator certifies it has complied with Rules 305.a., 305.c., and 306.e., and the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures sufficient to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife to the maximum extent technically feasible and economically practicable.

(2) **Buffer Zone Setback.** No Well or Production Facility shall be located one thousand (1,000) feet or less from a Building Unit until the Operator certifies it has complied with Rule 305.a., 305.c., and 306.e. and the Form 2A or Form 2 contains conditions of approval related to site specific mitigation measures as necessary to eliminate, minimize or mitigate potential adverse impacts to public health, safety, welfare, the environment, and wildlife.

(3) **High Occupancy Buildings**. No Well or Production Facility shall be located one thousand (1,000) feet or less from a High Occupancy Building Unit without Commission approval following Application and Hearing. Designated Setback Location and Exception Zone Setback mitigation measures pursuant to Rule 604.c. shall be required for Oil and Gas Locations within one thousand (1,000) feet of a High Occupancy Building, unless the Commission determines otherwise.

(4) **Designated Outside Activity Areas.** No Well or Production Facility shall be located three hundred fifty (350) feet or less from the boundary of a Designated Outside Activity Area. The Commission, in its discretion, may establish a setback of greater than three hundred fifty (350) feet based on the totality of circumstances. Designated Setback Location mitigation measures pursuant to Rule 604.c. shall be required for Oil and Gas Locations within one thousand (1,000) feet of a Designated Outside Activity Area, unless the Commission determines otherwise.

(5) **Maximum Achievable Setback**. If the applicable setback would extend beyond the area on which the Operator has a legal right to locate the Well or Production Facilities, the Operator may seek a variance under Rule 502.b. to reduce the setback to the maximum achievable distance.

604.b. **Exceptions.**

(1) **Existing Oil and Gas Locations.** The Director may grant an exception to setback distance requirements set forth in Rule 604 within a Designated Setback Location when a Well or Production Facility is proposed to be added to an existing or approved Oil and Gas Location if the Director determines alternative locations outside the applicable setback are technically or economically impracticable; mitigation measures imposed in the Form 2 or Form 2A will eliminate, minimize or mitigate noise, odors, light, dust, and similar nuisance conditions to the extent reasonably achievable; the proposed location complies with all other safety requirements of these Commission Rules; and:

A. An existing or approved Oil and Gas Location is within a Designated Setback Location solely as a result of the adoption of Rule 604.a., above, which established the Designated Setback Locations; or

B. The Oil and Gas Location is located within a Designated Setback Location solely as a result of Building Units constructed after the Oil and Gas Location was approved by the Director.

(2) **Existing Surface Use Agreement or Site Specific Development Plan**. The Director shall grant an exception to setback requirements set forth in Rule 604.a. for a Surface Use Agreement or site specific development plan (as defined in § 24-68-102(4)(a), C.R.S. that establishes vested property rights as defined in § 24-68-103, C.R.S.), that was executed on or before August 1, 2013, and which expressly governs the location of Wells or Production Facilities on the surface estate, provided mitigation measures imposed in the Form 2 or Form 2A will eliminate, minimize or mitigate noise, odors, light, dust, and similar nuisance conditions to the extent reasonably achievable and the location complies with all other safety requirements of these Commission Rules.

(3) **Surface Development after August 1, 2013 Pursuant to a Surface Use Agreement or Site Specific Development Plan.** A Surface Owner or Building Unit owner and mineral owner or mineral lessee may agree to locate future Building Units closer to existing or proposed Oil and Gas Locations than otherwise allowed under Rule 604.a. pursuant to a valid Surface Use Agreement or site specific development plan (as defined in § 24-68-102(4)(a), C.R.S., that establishes vested property rights as defined in § 24-68-103, C.R.S.) that expressly governs the location of Wells or Production Facilities on the surface estate. All setback, notice, consultation and meeting requirements contained in Rules 305, 306, and 604.a shall apply with respect to all Building Units that are not governed by the applicable SUA or site specific development plan. Copies of any applicable SUA or site specific development plan shall be submitted by the Operator with a Form 2A Application or associated Form 2 for a proposed Oil and Gas Location on the relevant surface estate.

(4) In the event the Director refuses to grant an exception or variance requested pursuant to Rule 604.a.(5) or 604.b., a hearing before the Commission shall be held at the next regularly scheduled meeting of the Commission, subject to the notice requirements of Rule 507.

604.c. **Mitigation Measures.** The following requirements apply to an Oil and Gas Location within a Designated Setback Location and such requirements shall be incorporated into the Form 2A or associated Form 2 as Conditions of Approval.

(1) **Provisions for future encroaching development.** If a location comes within a Designated Setback Location solely as a result of surface development after well pad construction begins or production equipment has been placed, certain mitigation measures may not apply as determined by the Director.

(2) **Location Specific Requirements – Designated Setback Locations.** Subject to Rule 502.b., the following mitigation measures shall apply to any Well or Production Facility proposed to be located within a Designated Setback Location for which a Form 2, Application for Permit—to-Drill or Form 2A, Oil and Gas Location Assessment, is submitted on or after August 1, 2013:

A. **Noise.** Operations involving pipeline or gas facility installation or maintenance, or the use of a drilling rig, are subject to the maximum permissible noise levels for Light Industrial Zones, as measured at the nearest Building Unit. Short-term increases shall be allowable as described in 802.c. Stimulation or re-stimulation operations and Production Facilities are governed by Rule 802.

B. **Closed Loop Drilling Systems – Pit Restrictions.**

i. Closed loop drilling systems are required within the Buffer Zone Setback.

ii. Pits are not allowed on Oil and Gas Locations within the Buffer Zone Setback, except fresh water storage pits, reserve pits to drill surface casing, and emergency pits as defined in the 100-Series Rules.

iii. Fresh water pits within the Exception Zone shall require prior approval of a Form 15, Earthen Pit Report/Permit. In the Buffer Zone, fresh water pits shall be reported within 30-days of pit construction.

iv. Fresh water storage pits within the Buffer Zone Setback shall be conspicuously posted with signage identifying the pit name, the operator's name and contact information, and stating that no fluids other than fresh water are permitted in the pit. Produced water, recycled E&P waste, or flowback fluids are not allowed in fresh water storage pits.

v. Fresh water storage pits within the Buffer Zone Setback shall include emergency escape provisions for inadvertent human access.

C. **Green Completions – Emission Control Systems.**

i. Flow lines, separators, and sand traps capable of supporting green completions as described in Rule 805 shall be installed at any Oil and Gas Location at which commercial quantities of gas are reasonably expected to be produced based on existing adjacent wells within 1 mile.

ii. Uncontrolled venting shall be prohibited in an Urban Mitigation Area.

iii. Temporary flowback flaring and oxidizing equipment shall include the following:

aa. Adequately sized equipment to handle 1.5 times the largest flowback volume of gas experienced in a ten (10) mile radius;

bb. Valves and porting available to divert gas to temporary equipment or to permanent flaring and oxidizing equipment; and

cc. Auxiliary fuel with sufficient supply and heat to sustain combustion or oxidation of the gas mixture when the mixture includes non-combustible gases.

D. **Traffic Plan.** If required by the local government, a traffic plan shall be coordinated with the local jurisdiction prior to commencement of move in and rig up. Any subsequent modification to the traffic plan must be coordinated with the local jurisdiction.

E. **Multi-well Pads.**

i. Where technologically feasible and economically practicable, operators shall consolidate wells to create multi-well pads, including shared locations with other operators. Multi-well production facilities shall be located as far as possible from Building Units.

ii. The pad shall be constructed in such a manner that noise mitigation may be installed and removed without disturbing the site or landscaping.

iii. Pads shall have all weather access roads to allow for operator and emergency response.

F. **Leak Detection Plan.** The Operator shall develop a plan to monitor Production Facilities on a regular schedule to identify fluid leaks.

G. **Berm construction.** Berms or other secondary containment devices in Designated Setback Locations shall be constructed around crude oil, condensate, and produced water storage tanks and shall enclose an area sufficient to contain and provide secondary containment for one-hundred fifty percent (150%) of the largest single tank. Berms or other secondary containment devices shall be sufficiently impervious to contain any spilled or released material. All berms and containment devices shall be inspected at regular intervals and maintained in good condition. No potential ignition sources shall be installed inside the secondary containment area unless the containment area encloses a

fired vessel. Refer to API Bulletin D16: Suggested Procedure for Development of a Spill Prevention Control and Countermeasure Plan

H. **Blowout preventer equipment ("BOPE").** Blowout prevention equipment for drilling operations in a Designated Setback Location shall consist of (at a minimum):

i. **Rig with Kelly.** Double ram with blind ram and pipe ram; annular preventer or a rotating head.

ii. **Rig without Kelly.** Double ram with blind ram and pipe ram.

Mineral Management certification or Director approved training for blowout prevention shall be required for at least one (1) person at the well site during drilling operations.

I. **BOPE testing for drilling operations.** Upon initial rig-up and at least once every thirty (30) days during drilling operations thereafter, pressure testing of the casing string and each component of the blowout prevention equipment including flange connections shall be performed to seventy percent (70%) of working pressure or seventy percent (70%) of the internal yield of casing, whichever is less. Pressure testing shall be conducted and the documented results shall be retained by the operator for inspection by the Director for a period of one (1) year. Activation of the pipe rams for function testing shall be conducted on a daily basis when practicable.

J. **BOPE for well servicing operations.**

i. Adequate blowout prevention equipment shall be used on all well servicing operations.

ii. Backup stabbing valves shall be required on well servicing operations during reverse circulation. Valves shall be pressure tested before each well servicing operation using both low-pressure air and high-pressure fluid.

K. **Pit level indicators.** Pit level indicators shall be used.

L. **Drill stem tests.** Closed chamber drill stem tests shall be allowed. All other drill stem tests shall require approval by the Director.

M. **Fencing requirements.** Unless otherwise requested by the Surface Owner, well sites constructed within Designated Setback Locations, shall be adequately fenced to restrict access by unauthorized persons.

N. **Control of fire hazards.** Any material not in use that might constitute a fire hazard shall be removed a minimum of twenty-five (25) feet from the wellhead, tanks and separator. Any electrical equipment installations inside the bermed area shall comply with API RP 500 classifications and comply with the current national electrical code as adopted by the State of Colorado.

O. **Loadlines.** All loadlines shall be bullplugged or capped.

P. **Removal of surface trash.** All surface trash, debris, scrap or discarded material connected with the operations of the property shall be removed from the premises or disposed of in a legal manner.

Q. **Guy line anchors.** All guy line anchors left buried for future use shall be identified by a marker of bright color not less than four (4) feet in height and not greater than one (1) foot east of the guy line anchor.

R. **Tank specifications.** All newly installed or replaced crude oil and condensate storage tanks shall be designed, constructed, and maintained in accordance with National Fire Protection Association (NFPA) Code 30 (2008 version). The operator shall maintain written records verifying proper design, construction, and maintenance, and shall make these records available for inspection by the Director. Only the 2008 version of NFPA Code 30 applies to this rule. This rule does not include later amendments to, or editions of, the NFPA Code 30. NFPA Code 30 may be examined at any state publication depository library. Upon request, the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203, will provide information about the publisher and the citation to the material.

S. **Access roads.** At the time of construction, all leasehold roads shall be constructed to accommodate local emergency vehicle access requirements, and shall be maintained in a reasonable condition.

T. **Well site cleared.** Within ninety (90) days after a well is plugged and abandoned, the well site shall be cleared of all non-essential equipment, trash, and debris. For good cause shown, an extension of time may be granted by the Director.

U. **Identification of plugged and abandoned wells.** The operator shall identify the location of the wellbore with a permanent monument as specified in Rule 319.a.(5). The operator shall also inscribe or imbed the well number and date of plugging upon the permanent monument.

V. **Development from existing well pads.** Where possible, operators shall provide for the development of multiple reservoirs by drilling on existing pads or by multiple completions or commingling in existing wellbores (see Rule 322). If any operator asserts it is not possible to comply with, or requests relief from, this requirement, the matter shall be set for hearing by the Commission and relief granted as appropriate.

W. **Site-specific measures.** During Rule 306 consultation, the operator may develop a mitigation plan to address location specific considerations not otherwise addressed by specific mitigation measures identified in this subsection 604.c.

(3) **Location Specific Requirements – Exception Zone Setback.** Within the Exception Zone Setback, the following mitigation measures will be mandatory:

A. All mitigation measures required pursuant to subsection 604.c.(2), above, and:

B. **Berm Construction:**

i. Containment berms shall be constructed of steel rings, designed and installed to prevent leakage and resist degradation from erosion or routine operation.

ii. Secondary containment areas for tanks shall be constructed with a synthetic or engineered liner that contains all primary containment vessels and flowlines and is mechanically connected to the steel ring to prevent leakage.

iii. For locations within five hundred (500) feet and upgradient of a surface water body, tertiary containment, such as an earthen berm, is required around Production Facilities.

—In an Urban Mitigation Area Exception Zone Setback, no more than two (2) crude oil or condensate storage tanks shall be located within a single berm.

605. OIL AND GAS FACILITIES.

a. **Crude Oil and Condensate Tanks.**

(1) Atmospheric tanks used for crude oil storage shall be built in accordance with the following standards as applicable. Only those editions of standards cited within this rule shall apply to this rule; later amendments do not apply. The material cited in this rule is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, these materials may be examined at any state publication depository library.

A. Underwriters Laboratories, Inc., No. UL-142, "Standard for Steel above ground Tanks for Flammable and Combustible Liquids," 9th Edition (December 28, 2006);

B. API Standard No. 650, "Welded Steel Tanks for Oil Storage," 12th Edition (March 2013);

C. API Standard No. 12B, "Bolted Tanks for Storage of Production Liquids," 15th Edition (October 2008);

D. API Standard No. 12D, "Field Welded Tanks for Storage of Production Liquids," 11th Edition (October 2008); or

E. API No. 12F, "Shop Welded Tanks for Storage of Production Liquids," 12th Edition (October 2008).

(2) Tanks shall be located at least two (2) diameters or three hundred fifty (350) feet, whichever is smaller, from the boundary of the property on which it is built. Where the property line is a public way the tanks shall be two thirds (2/3) of the diameter from the nearest side of the public way or easement.

A. Tanks less than three thousand (3,000) barrels capacity shall be located at least three (3) feet apart.

B. Tanks three thousand (3,000) or more barrels capacity shall be located at least one-sixth (1/6) the sum of the diameters apart. When the diameter of one tank is less than one-half (1/2) the diameter of the adjacent tank, the tanks shall be located at least one-half (1/2) the diameter of the smaller tank apart.

(3) At the time of installation, tanks shall be a minimum of two hundred (200) feet from any building.

(4) Berms or other secondary containment devices shall be constructed around crude oil, condensate, and produced water tanks to provide secondary containment for the largest single tank and sufficient freeboard to contain precipitation. A synthetic or engineered liner shall be placed directly beneath each above-ground tank. Berms and secondary containment devices and all containment areas shall be sufficiently impervious to contain any spilled or released material. Berms and secondary containment devices shall be inspected at regular intervals and maintained in good condition. No potential ignition sources shall be installed inside the secondary containment area unless the containment area encloses a fired vessel. Any electrical equipment installations inside the bermed area shall comply with API RP 500: Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities classified as Class I, Division I and Division 2, 3rd Edition (December 2012) and the current national electrical code as adopted by the State of Colorado.

(5) Tanks shall be a minimum of seventy-five (75) feet from a fired vessel or heater-treater.

(6) Tanks shall be a minimum of fifty (50) feet from a separator, well test unit, or other non-fired equipment.

(7) Tanks shall be a minimum of seventy-five (75) feet from a compressor with a rating of 200 horsepower, or more.

(8) Tanks shall be a minimum of seventy-five (75) feet from a wellhead.

(9) Gauge hatches on atmospheric tanks used for crude oil storage shall be closed at all times when not in use.

(10) Vent lines from individual tanks shall be joined and ultimate discharge shall be directed away from the loading racks and fired vessels in accord with API RP 12R-1, 5th Edition (August 1997, reaffirmed April 2, 2008). Only the 5th Edition of the API standard applies to this rule; later amendments do not apply. The API standard is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203. In addition, these materials may be examined at any state publication depository library.

(11) During hot oil treatments on tanks containing thirty-five (35) degree or higher API gravity oil, hot oil units shall be located a minimum of one hundred (100) feet from any tank being serviced.

(12) **Labeling of tanks.** All tanks and containers shall be labeled in accordance with Rule 210.d.

605.b. **Fired Vessel, Heater-Treater.**

(1) Fired vessels (FV) including heater-treaters (HT) shall be minimum of fifty (50) feet from separators or well test units.

(2) FV-HT shall be a minimum of fifty (50) feet from a lease automatic custody transfer unit (LACT).

(3) FV-HT shall be a minimum of forty (40) feet from a pump.

(4) FV-HT shall be a minimum of seventy-five (75) feet from a well.

(5) At the time of installation, fired vessels and heater treaters shall be a minimum of two hundred (200) feet from buildings or well defined normally occupied outside areas.

(6) Vents on pressure safety devices shall terminate in a manner so as not to endanger the public or adjoining facilities. They shall be designed so as to be clear and free of debris and water at all times.

(7) All stacks, vents, or other openings shall be equipped with screens or other appropriate equipment to prevent entry by wildlife, including migratory birds.

605.c. **Special Equipment.** Under unusual circumstances special equipment may be required to protect public safety. The Director shall determine if such equipment should be employed to protect public safety and if so, require the operator to employ same. If the operator or the affected party does not concur with the action taken, the Director shall bring the matter before the Commission at public hearing.

(1) All wells located within five hundred (500) feet of a Residential Building Unit or well defined normally occupied outside area(s), shall be equipped with an automatic control valve that will shut the well in when a sudden change of pressure, either a rise or drop, occurs. Automatic control valves shall be designed so they fail safe.

(2) Pressure control valves required in (1) shall be activated by a secondary gas source supply, and shall be inspected at least every three (3) months to assure they are in good working order and the secondary gas supply has volume and pressure sufficient to activate the control valve.

(3) All pumps, pits, and producing facilities shall be adequately fenced to prevent access by unauthorized persons when the producing site or equipment is easily accessible to the public and poses a physical or health hazard.

(4) Sign(s) shall be posted at the boundary of the producing site where access exists, identifying the operator, lease name, location, and listing a phone number, including area code, where the operator may be reached at all times unless emergency numbers have been furnished to the county commission or its designee.

605.d. **Mechanical Conditions.** All Production Facilities, including associated valves, pipes and fittings, shall be securely fastened, inspected at regular intervals, and maintained in good mechanical condition.

605.e. **Buried or partially buried tanks, vessels, or structures.** Buried or partially buried tanks, vessels, or structures used for storage of E&P waste shall be properly designed, constructed, installed, and operated in a manner to contain materials safely. A synthetic or engineered liner shall be placed directly beneath. Such vessels

shall be tested for leaks after installation and maintained, repaired, or replaced to prevent spills or releases of E&P waste.

605.f. **Produced water pits, special use and buried or partially buried vessels, or structures.** At the time of initial construction, pits shall be located not less than five hundred (500) feet from any Building Unit.

606A. FIRE PREVENTION AND PROTECTION

a. Gasoline-fueled engines shall be shut down during fueling operations if the fuel tank is an integral part of the engine.

b. Handling, connecting and transfer operations involving liquefied petroleum gas (LPG) shall conform to the requirements of the State Oil Inspector.

c. Flammable liquids storage areas within any building or shed shall:

(1) be adequately vented to the outside air;

(2) have two (2) unobstructed exits leading from the building in different directions if the building is in excess of five hundred (500) square feet.

(3) be maintained with due regard to fire potential with respect to housekeeping and materials storage;

(4) be identified as a hazard and appropriate warning signs posted;

d. Flammable liquids shall not be stored within fifty (50) feet of the wellbore, except for the fuel in the tanks of operating equipment or supply for injection pumps. Where terrain and location configuration do not permit maintaining this distance, equivalent safety measures should be taken.

e. Liquefied petroleum gas (LPG) tanks larger than two hundred fifty (250) gallons and used for heating purposes, shall be placed as far as practical from and parallel to the adjacent side of the rig or wellbore as terrain and location configuration permit. Installation shall be consistent with provisions of NFPA 58, “Standards for the Storage and Handling of Liquid Petroleum Gases”.

f. Smoking shall be prohibited at or in the vicinity of operations which constitute a fire hazard and such locations shall be conspicuously posted with a sign, “No Smoking or Open Flame”. Matches and all smoking equipment may not be carried into “No Smoking” areas.

g. No source of ignition shall be permitted in an area where smoking has been prohibited unless it is first determined to be safe to do so by the supervisor in charge or his designated representative.

h. Open fires, transformers, or other sources of ignition shall be permitted only in designated areas located at a safe distance from the wellhead or flammable liquid storage areas.

i. Only approved heaters for Class I Division 2 areas, as designated by API RB 500B, shall be permitted on or near the rig floor. The safety features of these heaters shall not be altered.

j. Combustible materials such as oily rags and waste shall be stored in covered metal containers.

k. Material used for cleaning shall have a flash point of not less than one hundred degrees Fahrenheit (100° F). For limited special purposes, a lower flash point cleaner may be used when it is specifically required and should be handled with extreme care.

l. Firefighting equipment shall not be tampered with and shall not be removed for other than fire protection and firefighting purposes and services. A firefighting water system may be used for wash down and other utility purposes so long as its firefighting capability is not compromised. After use, water systems must be properly drained or properly protected from freezing.

m. An adequate amount of fire extinguishers and other firefighting equipment shall be suitably located, readily accessible, and plainly labeled as to their type and method of operation.

n. Fire protection equipment shall be periodically inspected and maintained in good operating condition at all times.

o. Firefighting equipment shall be readily available near all welding operations. When welding, cutting or other hot work is performed in locations where other than a minor fire might develop, a person shall be designated as a fire watch. The area surrounding the work shall be inspected at least one (1) hour after the hot work is completed.

p. Portable fire extinguishers shall be tagged showing the date of last inspection, maintenance or recharge. Inspection and maintenance procedures shall comply with the latest edition of the National Fire Protection Association's publication NFPA 10.

q. Personnel shall be familiarized with the location of fire control equipment such as drilling fluid guns, water hoses and fire extinguishers and trained in the use of such equipment. They shall also be familiar with the procedure for requesting emergency assistance as terrain and location configuration permit. Installation shall be consistent with provisions of NFPA 58, “Standards for the Storage and Handling of Liquefied Petroleum Gases”.

606B. AIR AND GAS DRILLING

a. Drilling compressors (air or gas) shall be located at least 125 feet from the wellbore and in a direction away from the air or gas discharge line.

b. The air or gas discharge line shall be laid in as nearly a straight line as possible from the wellbore and be a minimum of 150 feet in length. The line shall be securely anchored.

c. A pilot flame shall be maintained at the end of the air or gas discharge line at all times when air, gas, mist drilling, or well testing is in progress.

d. All combustible material shall be kept at least 100 feet away from the air and gas discharge line and flare pit.

e. The air line from the compressors to the standpipe shall be of adequate strength to withstand at least the maximum discharge pressure of the compressors used, and shall be checked daily for any evidence of damage or weakness.

f. Smoking shall not be allowed within 75 feet of the air and gas discharge line and flare pit.

g. All operations associated with the drilling, completion or production of a well shall be subject to the Colorado Air Quality Control Act, 25-7-101, C.R.S.

607. HYDROGEN SULFIDE GAS

a. When well servicing operations take place in zones known to contain at or above one hundred (100) ppm hydrogen sulfide gas, as measured in the gas stream, the operator shall file a hydrogen sulfide drilling operations plan (United States Department of the Interior, Bureau of Land Management, Onshore Order No. 6, November 23, 1990).

b. When proposing to drill a well in areas where hydrogen sulfide gas in excess of one hundred (100) ppm can reasonably be expected to be encountered, the operator shall submit as part of the Form 2, Application-for-Permit-to-Drill, a hydrogen sulfide drilling operations plan (United States Department of the Interior, Bureau of Land Management, Onshore Order No. 6, November 23, 1990).

c. Any gas analysis indicating the presence of hydrogen sulfide gas shall be reported to the Commission and the local governmental designee.

608. COALBED METHANE WELLS

a. **Assessment and monitoring of plugged and abandoned wells within one-quarter (1/4) mile of proposed coalbed methane (CBM) well.**

(1) Based upon examination of the Commission and other publicly available records, operators shall identify all plugged and abandoned (P&A) wells located within one-quarter (1/4) mile of a proposed coalbed methane (CBM) well. The operator shall assess the risk of leaking gas or water to the ground surface or into subsurface water resources, taking into account plugging and cementing procedures described in any recompletion or P&A report filed with the Commission. The operator shall notify the Director of the results of the assessment of the plugging and cementing procedures. The Director shall review the assessment and take appropriate action to pursue further investigation and remediation if warranted and in accordance with Colorado Revised Statute 34-60-124(4)(A).

(2) Operators shall use reasonable good faith efforts to obtain access to all P&A wells identified under Rule 608.a.(1) above to conduct a soil gas survey at all P&A wells located within one-quarter (1/4) mile of a proposed CBM well prior to production from the proposed CBM well and again one (1) year and thereafter every three (3) years after production has commenced. Operators shall submit the results of the soil gas survey to the Director within three (3) months of conducting the survey or advise the Director that access to the P&A wells could not be obtained.

b. **Water well sampling.**

(1) If a conventional gas well or P&A well exists within one-quarter (1/4) mile of a proposed CBM well, then the two (2) closest water wells within a one-half (1/2) mile radius of the conventional gas well or the P&A well shall be sampled ("Water Quality Testing Wells"). If possible, the water wells selected should be on opposite sides of the conventional gas well or the P&A well not exceeding a one-half (1/2) mile radius. If water wells on opposite sides of the conventional gas well or the P&A well cannot be identified, then the two (2) closest wells within a one-half (1/2) mile radius of the conventional gas well or the P&A well shall be sampled. If two (2) or more conventional wells or P&A wells are located within one-quarter (1/4) mile of the proposed CBM well, then the conventional well or

the P&A well closest to a proposed CBM well shall be used for selecting water wells for sampling.

If there are no conventional gas wells or P&A wells located within a one-quarter (1/4) mile radius of the proposed CBM well, then the selected water wells shall be within one-quarter (1/4) mile of the proposed CBM well. In areas where two (2) or more water wells exist within one-quarter (1/4) mile of the proposed CBM well, then the two (2) closest water wells shall be sampled. If possible, the water wells selected should be on opposite sides of the proposed CBM well. If water wells on opposite sides of the proposed CBM well cannot be identified, then the two (2) closest wells within one-quarter (1/4) mile radius shall be sampled. If two (2) water wells do not exist within a one-quarter (1/4) mile radius, then the closest single water well within either a one-quarter (1/4) mile radius or within a one-half (1/2) mile radius shall be selected.

If no water well is located within a one-quarter (1/4) mile radius area as described above or if access is denied, then a water well within one-half (1/2) mile of the proposed CBM well shall be selected. If no water wells meet the foregoing criteria, then sampling shall not be required. If the Commission has already acquired data on a water well within one-quarter (1/4) mile of the conventional well or the P&A well, but it is not the closest water well, then it shall be given preference in selecting a water well to be tested.

(2) The "initial baseline testing" described in this section shall include all major cations and anions, total dissolved solids (TDS), iron, manganese, selenium, nitrates and nitrites, dissolved methane, field pH, sodium adsorption ration (SAR), presence of bacteria (iron related, sulfate reducing, slime, and coliform), and specific conductance. Hydrogen sulfide shall also be measured using a field test method. Field observations such as odor, water color, sediment, bubbles, and effervescence shall also be included. The location of the water well shall be surveyed in accordance with Rule 215.

(3) If free gas or a dissolved methane concentration level greater than two (2) milligrams per liter (mg/l) is detected in a water well, gas compositional analysis and stable isotope analysis of the methane (carbon and deuterium) shall be performed to determine gas type. If the test results indicate biogenic gas, no further isotopic testing shall be done. If the test results indicate thermogenic or a mixture of thermogenic and biogenic gas, then the operator shall submit to the Director an action plan to determine the source of the gas. If the methane concentration increases by more than five (5) mg/l between sampling periods, or increases to more than ten (10) mg/l, the operator shall notify the Director and the owner of the water well immediately.

(4) Operators shall make a good faith effort to conduct initial baseline testing of the selected water wells prior to the drilling of the proposed CBM well; however, not conducting baseline testing because access to water wells cannot be obtained shall not be grounds for denial of an Application for Permit-to-Drill, Form 2. Within one (1) year after completion of the proposed CBM well, a "post-completion" test shall be performed for the same analytical parameters listed above and repeated three (3) and six (6) years thereafter or in accordance with the requirements of field rules developed pursuant to Rule 608.f. If the methane concentration increases by more than five (5) mg/l between sampling periods or increases to more than ten (10) mg/l, the operator shall prepare an action plan to determine the source of the gas and notify the Director and the water well owner immediately. If no significant changes from the baseline have been identified after the third test (i.e. the six-year test), no further testing shall be required.

Additional "post-completion" test(s) may be required if changes in water quality are identified during follow-up testing. The Director may require further water well sampling at any time in response to complaints from water well owners.

(5) Copies of all test results described above shall be provided to the Commission and the water well owner within three (3) months of collecting the samples. The analytical data and surveyed well locations shall also be submitted to the Director in an electronic data deliverable format.

c. **Coal outcrop and coal mine monitoring.**

(1) If the CBM well is within two (2) miles of the outcrop of the stratigraphic contact between the coal-bearing formation and the underlying formation, or within two (2) miles of an active, inactive, or abandoned coal mine, the operator shall make a good faith effort to obtain the access necessary to survey the outcrop or mine prior to drilling the CBM well to determine whether there are gas seeps and springs or water seeps that discharge from the coal-bearing formation in the area.

(2) If a gas seep is identified during the survey, then its location and areal extent shall be surveyed in accordance with Rule 215 and the concentration of the soil gas shall be determined. If possible, a sample of gas shall be collected from the seep for compositional analysis and stable isotope analysis of the methane (carbon and deuterium). Thereafter, the operator will inspect the gas seep, survey its areal extent, and measure soil gas concentrations annually, if access can be obtained. The operator shall submit the results of the outcrop or mine monitoring to the Commission and the landowner within three (3) months of its completion of the field work. The analytical data shall also be submitted to the Director in an electronic data deliverable format.

(3) If a gas seep is identified during the survey, the Director shall advise the landowners, local government, Colorado Geological Survey (CGS), and the Colorado Division of Reclamation, Mining, and Safety (DRMS), as appropriate, of the findings. In collaboration with state, local, and private interests, the CGS, DRMS, and the Commission may elect to develop a geologic hazard survey and determine whether the area should be recommended to be designated as a geologic hazard in accordance with Colorado Revised Statute 34-1-103 and 24-65.1-103.

(4) If the CBM well is within two (2) miles of the outcrop of the stratigraphic contact between the coal-bearing formation and the underlying formation, the operator shall survey the outcrop, review publicly available geologic and hydrogeologic data, and interview landowners to identify springs or water seeps that discharge from the coal-bearing formation.

If such a water feature is identified, then the operator shall survey its location and areal extent in accordance with Rule 215, measure the flow rate, photograph the feature, and collect and analyze a water sample in accordance with Rule 608.b.(2). Thereafter, the operator will inspect, survey the areal extent of, and measure the flow rate of the spring or water seep annually, if access can be obtained. The operator shall submit the results of the spring or water seep monitoring to the Commission and the landowner within three (3) months of its completion of the field work. The analytical data shall also be submitted to the Director in an electronic data deliverable format.

d. **Prior to producing - static bottom-hole pressure survey.** Prior to producing the well, the operator shall obtain a static bottom-hole pressure test on at least the first well drilled on

a government quarter (1/4) section. The survey shall be conducted by either a direct static bottom-hole pressure measurement or by a static fluid level measurement. The data acquired by the operator and a description of the procedures used to gather the data shall be reported on a Bottom Hole Pressure, Form 13, and submitted with the Completed Interval Report, Form 5A, filed with the Director. After reviewing the quality of the static bottom-hole pressure data and the adequacy of the geographic distribution of the data, or at the request of the operator, the Director may vary the number of wells subject to the static bottom-hole pressure survey requirement. If an application for increased well density or down spacing is filed with the Commission, then additional testing may be required.

e. **Bradenhead testing.** Upon completion of any well, and on wells presently completed, the operator shall equip the bradenhead access to the annulus between the production and surface casing, as well as any intermediate casing, with approved fittings to allow safe and convenient determination of pressure and fluid flow. All valves used for annular pressure monitoring shall remain exposed and not buried to allow for COGCC visual inspection at all times. A rigid housing may be used to protect the valves, provided that the housing can be easily opened or removed by the operator upon request of COGCC staff. This rule shall apply to all wells, regardless of function, completed for CBM production or below the coal-bearing formation. All wells capable of production, injection, or observation shall be tested by the operator for pressure and flow, with results submitted to the Director on a Bradenhead Test Report, Form 17, and to other applicable regulatory agencies. Bradenhead tests shall be performed on all wells on a biennial basis. Remedial requirements shall be determined by the appropriate regulatory agency. The bradenhead testing requirement shall not apply if the operator demonstrates to the satisfaction of the Director annular cement coverage greater than fifty (50) feet above the base of surface casing and zonal isolation is confirmed by reliable evidence such as a cement bond log or cementing ticket indicating that the height of cement coverage is fifty (50) feet above the base of the surface casing, and zonal isolation is confirmed by two consecutive bradenhead tests preceded by a minimum shut-in period of seven (7) days each.

f. **Locally specific field orders.** The provisions of this Rule 608 may, with the Director's approval, be modified or superseded on a basin, region, or county specific basis by field orders developed by the Commission in consultation with affected parties, including operators, county governments, and other state or local agencies, taking into account the goals of the 600-Series Rules and particular local geologic and operational conditions. In addition, the operator or other affected party shall have the right to file an application with the Commission to develop field orders for the basin, region, or county that modify the Rule 608 requirements as provided herein, which application shall set forth an explanation of good cause for the development of such orders.

609. STATEWIDE GROUNDWATER BASELINE SAMPLING AND MONITORING:

a. **Applicability and effective date.**

(1) This Rule 609 applies to Oil Wells, Gas Wells (hereinafter, Oil and Gas Wells), Multi-Well Sites, and Dedicated Injection Wells as defined in the 100-Series Rules, for which a Form 2, Application for Permit-to-Drill, is submitted on or after May 1, 2013.

(2) This Rule 609 does not apply to an existing Oil or Gas Well that is re-permitted for use as a Dedicated Injection Well.

(3) This rule does not apply to Oil and Gas Wells, Multi-Well Sites, or Dedicated Injection Wells that are regulated under Rule 608.b., Rule 318A.e.(4), or Orders of the Commission with respect to the Northern San Juan Basin promulgated prior to the effective date of this Rule that provide for groundwater testing.

(4) Nothing in this Rule is intended, and shall not be construed, to preclude or limit the Director from requiring groundwater sampling or monitoring at other Production Facilities consistent with other applicable Rules, including but not limited to the Oil and Gas Location Assessment process, and other processes in place under 900-series E&P Waste Management Rules (Form 15, Form 27, Form 28).

(5) An operator may elect to install one or more groundwater monitoring wells to satisfy, in full or in part, the requirements of Rule 609.b., but installation of monitoring wells is not required under this Rule.

b. **Sampling locations.** Initial baseline samples and subsequent monitoring samples shall be collected from all Available Water Sources, up to a maximum of four (4), within a one-half (1/2) mile radius of a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well. If more than four (4) Available Water Sources are present within a one-half (1/2) mile radius of a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well, the operator shall select the four sampling locations based on the following criteria:

(1) Proximity. Available Water Sources closest to the proposed Oil or Gas Well, a Multi-Well Site, or Dedicated Injection Well are preferred.

(2) Type of Water Source. Well maintained domestic water wells are preferred over other Available Water Sources.

(3) Orientation of sampling locations. To extent groundwater flow direction is known or reasonably can be inferred, sample locations from both downgradient and up-gradient are preferred over cross-gradient locations. Where groundwater flow direction is uncertain, sample locations should be chosen in a radial pattern from a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well.

(4) Multiple identified aquifers available. Where multiple defined aquifers are present, sampling the deepest and shallowest identified aquifers is preferred.

(5) Condition of Water Source. An operator is not required to sample Water Sources that are determined to be improperly maintained, nonoperational, or have other physical impediments to sampling that would not allow for a representative sample to be safely collected or would require specialized sampling equipment (e.g. shut-in wells, wells with confined space issues, wells with no tap or pump, non-functioning wells, intermittent springs).

c. **Inability to locate an Available Water Source.** Prior to spudding, an operator may request an exception from the requirements of this Rule 609 by filing a Form 4, Sundry Notice, for the Director's review and approval if:

(1) No Available Water Sources are located within one-half (1/2) mile of a proposed Oil and Gas Well, Multi-Well Site, or Dedicated Injection Well;

(2) The only Available Water Sources are determined to be unsuitable pursuant to subpart b.5, above. An operator seeking an exception on this ground shall document the condition of the Available Water Sources it has deemed unsuitable; or

(3) The owners of all Water Sources suitable for testing under this Rule refuse to grant access despite an operator's reasonable good faith efforts to obtain consent to conduct sampling. An operator seeking an exception on this ground shall document the efforts used to obtain access from the owners of suitable Water Sources.

(4) If the Director takes no action on the Sundry Notice within ten (10) business days of receipt, the requested exception from the requirements of this Rule 609 shall be deemed approved.

d. **Timing of sampling.**

(1) Initial sampling shall be conducted within 12 months prior to setting conductor pipe in a Well or the first Well on a Multi-Well Site, or commencement of drilling a Dedicated Injection Well; and

(2) Subsequent monitoring: One subsequent sampling event shall be conducted at the initial sample locations between six (6) and twelve (12) months, and a second subsequent sampling event shall be conducted between sixty (60) and seventy-two (72) months following completion of the Well or Dedicated Injection Well, or the last Well on a Multi-Well Site. Wells that are drilled and abandoned without ever producing hydrocarbons are exempt from subsequent monitoring sampling under this subpart d.

(3) Previously sampled Water Sources. In lieu of conducting the initial sampling required pursuant to subjection d.(1) or the second subsequent sampling event required pursuant to subsection d.(2), an Operator may rely on water sampling analytical results obtained from an Available Water Source within the sampling area provided:

A. The previous water sample was obtained within the 18 months preceding the initial sampling event required pursuant to subsection d.(1) or the second subsequent sampling event required pursuant to subsection d.(2); and

B. the sampling procedures, including the constituents sampled for, and the analytical procedures used for the previous water sample were substantially similar to those required pursuant to subparts e.(1) and (2), below. An operator may not rely solely on previous water sampling analytical results obtained pursuant to the subsequent sampling requirements of subsection d.(2), above, to satisfy the initial sampling requirement of subsection d.(1); and

C. the Director timely received the analytical data from the previous sampling event.

(4) The Director may require additional sampling if changes in water quality are identified during subsequent monitoring.

e. **Sampling procedures and analysis.**

(1) Sampling and analysis shall be conducted in conformance with an accepted industry standard as described in Rule 910.b.(2). A model Sampling and Analysis Plan ("COGCC Model SAP") shall be posted on the COGCC website, and shall be updated periodically to remain current with evolving industry standards.

Sampling and analysis conducted in conformance with the COGCC Model SAP shall be deemed to satisfy the requirements of this subsection f.(1). Upon request, an operator shall provide its sampling protocol to the Director.

(2) The initial baseline testing described in this section shall include pH, specific conductance, total dissolved solids (TDS), dissolved gases (methane, ethane, propane), alkalinity (total bicarbonate and carbonate as CaCO3), major anions (bromide, chloride, fluoride, sulfate, nitrate and nitrite as N, phosphorus), major cations (calcium, iron, magnesium, manganese, potassium, sodium), other elements (barium, boron, selenium and strontium), presence of bacteria (iron related, sulfate reducing, slime forming), total petroleum hydrocarbons (TPH) and BTEX compounds (benzene, toluene, ethylbenzene and xylenes). Field observations such as odor, water color, sediment, bubbles, and effervescence shall also be documented. The location of the sampled Water Sources shall be surveyed in accordance with Rule 215.

(3) Subsequent sampling to meet the requirements of subpart d.(2) shall include total dissolved solids (TDS), dissolved gases (methane, ethane, propane), major anions (bromide, chloride, sulfate, and fluoride), major cations (potassium, sodium, magnesium, and calcium), alkalinity (total bicarbonate and carbonate as CaCO3), BTEX compounds (benzene, toluene, ethylbenzene and xylenes), and TPH.

(4) If free gas or a dissolved methane concentration greater than 1.0 milligram per liter (mg/l) is detected in a water sample, gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen – 12C, 13C, 1H and 2H) shall be performed to determine gas type. The operator shall notify the Director and the owner of the water well immediately if:

A. the test results indicated thermogenic or a mixture of thermogenic and biogenic gas;

B. the methane concentration increases by more than 5.0 mg/l between sampling periods; or

C. the methane concentration is detected at or above 10 mg/l.

(5) The operator shall notify the Director immediately if BTEX compounds or TPH are detected in a water sample.

f. **Sampling Results.** Copies of all final laboratory analytical results shall be provided to the Director and the water well owner or landowner within three (3) months of collecting the samples. The analytical results, the surveyed sample Water Source locations, and the field observations shall be submitted to the Director in an electronic data deliverable format.

(1) The Director shall make such analytical results available publicly by posting on the Commission's web site or through another means announced to the public.

(2) Upon request, the Director shall also make the analytical results and surveyed Water Source locations available to the Local Governmental Designee from the jurisdiction in which the groundwater samples were collected, in the same electronic data deliverable format in which the data was provided to the Director.

g. **Liability.** The sampling results obtained to satisfy the requirements of this Rule 609, including any changes in the constituents or concentrations of constituents present in the

samples, shall not create a presumption of liability, fault, or causation against the owner or operator of a Well, Multi-Well Site, or Dedicated Injection Well who conducted the sampling, or on whose behalf sampling was conducted by a third-party. The admissibility and probity of any such sampling results in an administrative or judicial proceeding shall be determined by the presiding body according to applicable administrative, civil, or evidentiary rules.

FINANCIAL ASSURANCE AND OIL AND GAS CONSERVATION AND ENVIRONMENTAL RESPONSE FUND

701. SCOPE

The rules in this series pertain to the provision of financial assurance by operators to ensure the performance of certain obligations imposed by the Oil and Gas Conservation Act (the Act), §34-60-106 (3.5), (11), (12) and (17) C.R.S., as well as the use of the Oil and Gas Conservation and Environmental Response Fund, §34-60-124 C.R.S., as a mechanism to plug and abandon orphan wells, perform orphaned site reclamation and remediation, and to conduct other authorized environmental activities.

702. General.

Operators are required to provide financial assurance to the Commission to demonstrate that they are capable of fulfilling the obligations imposed by the Act, as described in this series. Except as otherwise specified herein, a surety bond, in a form and from a company acceptable to the Commission, is an approved method of providing financial assurance. Any other method of providing financial assurance identified in §34-60-106(13), C.R.S., shall be submitted to the Commission for approval, and shall be equivalent to the protection provided by a surety bond and may require detailed Commission review on an ongoing basis, including the use of third party consultants, the reasonable expense for which shall be charged to the operator proposing such alternative financial assurance.

a. When the Director has reasonable cause to believe that the Commission may become burdened with the costs of fulfilling the statutory obligations described herein because an operator has demonstrated a pattern of non-compliance with oil and gas regulations in this or other states, because special geologic, environmental, or operational circumstances exist which make the plugging and abandonment of particular wells more costly, or due to other special and unique circumstances, the Director may petition the Commission for an increase in any individual or blanket financial assurance required in this series.

b. The requirements of this series do not apply to situations where financial assurance has been provided to federal or Indian agencies for operations regulated solely by such agencies.

703. Surface owner protection.

Operators shall provide financial assurance to the Commission, prior to commencing any operations with heavy equipment, to protect surface owners who are not parties to a lease, surface use or other relevant agreement with the operator from unreasonable crop loss or land damage caused by such operations. The determination that crop loss or land damage is unreasonable shall be made by the Commission after the affected surface owner has filed an application in accordance with the 500 Series rules. Financial assurance for the purpose of surface owner protection shall not be required for operations conducted on state lands when a bond has been filed with the State Board of Land Commissioners.

The financial assurance required by this section shall be in the amount of two thousand dollars ($2,000) per well for non-irrigated land, or five thousand dollars ($5,000) per well for irrigated land. In lieu of such individual amounts, operators may submit statewide, blanket financial assurance in the amount of twenty five thousand dollars ($25,000). Relief granted by the Commission upon application by a surface owner pursuant to this section may include an order requiring the operator to conduct corrective or remedial action, and any monetary award for unreasonable crop loss or land damage that cannot be remediated or corrected is not limited to the amount of the operator's financial assurance hereunder.

704. Centralized E&P waste management facilities.

An operator which makes application for an offsite, centralized E&P waste management facility shall, upon approval and prior to commencing construction, provide to the Commission financial assurance in an amount equal to the estimated cost necessary to ensure the proper reclamation, closure, and abandonment of such facility as set forth in Rule 908.g, or in an amount voluntarily agreed to with the Director, or in an amount to be determined by order of the Commission. Operators of centralized E&P waste management facilities permitted prior to May 1, 2009 on federal land and April 1, 2009 for all other land shall, by July 1, 2009, comply with Rule 908.g and this Rule 704. This section does not apply to underground injection wells and multi-well pits covered under Rules 706 and 707.

705. Seismic operations.

Any operator submitting a Notice of Intent to Conduct Seismic Operations, Form 20, shall, prior to commencing such operations, provide financial assurance to the Commission in the amount of twenty five thousand dollars ($25,000) statewide blanket financial assurance to ensure the proper plugging and abandonment of any shot holes and any necessary surface reclamation.

706. Soil protection and plugging and abandonment.

Prior to commencing the drilling of a well, an operator shall provide financial assurance to the Commission to ensure the protection of the soil, the proper plugging and abandonment of the well, and the reclamation of the site in accordance with the 300 Series of drilling regulations, the 900 Series of E&P waste management, the 1000 Series of reclamation regulations, and the 1100 Series of flowline regulations.

a. The financial assurance required by this section shall be in the amount of ten thousand dollars ($10,000) per well for wells less than three thousand (3,000) feet in total measured depth and twenty thousand dollars ($20,000) per well for wells greater than or equal to three thousand (3,000) feet in total measured depth.

b. In lieu of such per-well amount, an operator may submit statewide blanket financial assurance in the amount of sixty thousand dollars ($60,000) for the drilling and operation of less than one hundred (100) wells, or one hundred thousand dollars ($100,000) for the drilling and operation of one hundred (100) or more wells.

c. All oil and gas wells, excluding domestic gas wells, with financial assurance posted prior to May 1, 2009 for federal land and April 1, 2009 for all other land, as well as all new domestic gas wells, must have financial assurances in compliance with this Rule 706 in place on July 1, 2009. Under Rule 502.b.(1), an operator may seek a variance from these financial assurance requirements under appropriate circumstances.

707. Inactive wells

a. To the extent that an operator's inactive well count exceeds such operator's financial assurance amount divided by ten thousand dollars ($10,000) for inactive wells less than three thousand (3,000) feet in total measured depth or twenty thousand dollars ($20,000) for inactive wells greater than or equal to three thousand (3,000) feet in total measured depth, such additional wells shall be considered “excess inactive wells.” For each excess inactive well, an operator's required financial assurance amount under Rule 706 shall be increased by ten thousand dollars ($10,000) for inactive wells less than three thousand (3,000) feet in total measured depth or twenty thousand dollars ($20,000) for inactive wells greater than or equal to three thousand (3,000) feet in total measured depth. This requirement shall be modified or waived if the Commission approves a plan submitted by

the operator for reducing such additional financial assurance requirement, for returning wells to production in a timely manner, or for plugging and abandoning such wells on an acceptable schedule.

In determining whether such plan is acceptable, the Commission shall take into consideration such factors as: the number of excess inactive wells; the cost to plug and abandon such wells; the proportion of such wells to the total number of wells held by the operator; any business reason the operator may have for shutting-in or temporarily abandoning such wells; the extent to which such wells may cause or have caused a significant adverse environmental impact; the financial condition of the operator; the capability of the operator to manage such plan in an orderly fashion; and the availability of plugging and abandonment services. If an increase in financial assurance is ordered pursuant to this subsection, the operator may, at its option and in compliance with these 700 Series rules, submit new financial assurance or supplement its existing financial assurance.

b. Operators shall identify and list any shut-in or temporarily abandoned wells on their monthly production/injection report. In addition, when equipment is removed from a well so as to render it temporarily abandoned, operators shall file a Sundry Notice, Form 4, with the Commission within thirty (30) days describing such activity.

c. Any person, other than the operator, who causes equipment from a well to be removed so as to render it temporarily abandoned shall, prior to conducting such activity, file a notice of intent to remove equipment and receive the approval of the Director. The Director may condition such approval on concurrent plugging and abandonment of the well or on provision of the financial assurance required of operators in this series.

708. General Liability Insurance.

All operators shall maintain general liability insurance coverage for property damage and bodily injury to third parties in the minimum amount of one million dollars ($1,000,000) per occurrence. Such policies shall include the Commission as a “certificate holder” so that the Commission may receive advance notice of cancellation.

709. Financial assurance.

All financial assurance provided to the Commission pursuant to this Series shall remain in-place until such time as the Director determines an operator has complied with the statutory obligations described herein, or until such time as the Director determines that a successor-in-interest has filed satisfactory replacement financial assurance, at which time the Director shall provide written approval for release of such financial assurance. Whenever an operator fails to fulfill any statutory obligation described herein, and the Commission undertakes to expend funds to remedy the situation, the Director shall make application to the Commission for an order calling or foreclosing the operator's financial assurance.

a. Operators and third party providers of financial assurance shall be served with a copy of such application pursuant to Rule 503. and shall be accorded an opportunity to be heard thereon. Any third party provider of financial assurance which subsequently fails to comply with a Commission order to make such financial assurance available shall be considered an unacceptable provider of any new financial assurance to operators in Colorado, until such time as it applies for and receives an order of reinstatement. This provision shall be stayed by the filing of a judicial appeal. In addition, the Commission may institute suit to recover such monies.

b. If an operator's financial assurance is called or foreclosed by the Commission, the called or foreclosed amount shall be deposited in the Oil and Gas Conservation and Environmental Response Fund to be expended by the Director for the purposes referenced in Rule 701., and an overhead recovery fee of ten percent (10%) of the funds expended by the Director as direct costs shall be charged against any excess of the financial assurance over such costs. Any remainder of such financial assurance after such cost recovery shall be returned to its provider. In no circumstances will the liability of a third party provider of financial assurance exceed the face amount of such financial assurance.

c. If an operator's financial assurance is called or foreclosed by the Commission, such operator's Certificates of Clearance, Form 10, are forthwith suspended and no sales of gas or oil shall be allowed, except as may be allowed by the Commission order, until such time as the operator's financial assurance has been replaced or restored.

d. The Director shall not approve a new Operator Registration, Form 1, or a new Certificate of Clearance, Form 10, when wells are sold or transferred until the successor operator has filed satisfactory financial assurance under the 700-Series Rules.

710. Reserved.~~Oil and Gas Conservation and Environmental Response Fund.~~

~~The Commission shall ensure that the two-year average of the unobligated portion of the Oil and Gas Conservation and Environmental Response Fund is maintained at a level of approximately, but not to exceed, four million dollars ($4,000,000), and that there is an adequate balance in the fund to address environmental response needs, which may be used in accordance with the Act and Rule 701.~~

711. Natural gas gathering, natural gas processing and underground natural gas storage facilities.

Operators of natural gas gathering, natural gas processing, or underground natural gas storage facilities shall be required to provide statewide blanket financial assurance to ensure compliance with the 900 Series rules in the amount of fifty thousand dollars ($50,000), or in an amount voluntarily agreed to with the Director, or in an amount to be determined by order of the Commission. Operators of small systems gathering or processing less than five (5) MMSCFD may provide individual financial assurance in the amount of five thousand dollars ($5,000).

712. Surface facilities and structures appurtenant to Class II Commercial Underground Injection Control wells.

Operators of Class II commercial Underground Injection Control (UIC) wells shall be required to provide financial assurance to ensure compliance with the 900-Series Rules in the amount of fifty-thousand dollars ($50,000) for each facility, or in an amount voluntarily agreed to with the Director, or in an amount to be determined by order of the Commission. The financial assurance required by this Rule 712 shall apply to the surface facilities and structures appurtenant to the Class II commercial injection well and used prior to the disposal of E&P wastes into such well and shall be in place by July 1, 2009. The financial assurance requirements for the plugging and abandonment of Class II commercial UIC wells are specified in Rule 706.

E&P WASTE MANAGEMENT

901. INTRODUCTION

a. **General.** The rules and regulations of this series establish the permitting, construction, operating and closure requirements for pits, methods of E&P waste management, procedures for spill/release response and reporting, and sampling and analysis for remediation activities. The 900 Series rules are applicable only to E&P waste, as defined in § 34-60-103(4.5), C.R.S., or other solid waste where the Colorado Department Of Public Health And Environment has allowed remediation and oversight by the Commission.

b. **COGCC reporting forms.** The reporting required by the rules and regulations of this series shall be made on forms provided by the Director. Alternate forms may be used where equivalent information is supplied and the format has been approved by the Director.

c. **Additional requirements.** Whenever the Director has reasonable cause to believe that an operator, in the conduct of any oil or gas operation, is performing any act or practice which threatens to cause or causes a violation of Table 910-1 and with consideration of water quality standards or classifications established by the Water Quality Control Commission ("WQCC") for waters of the state, the Director may impose additional requirements, including but not limited to, sensitive area determination, sampling and analysis, remediation, monitoring, permitting and the establishment of points of compliance. Any action taken pursuant to this Rule shall comply with the provisions of Rules 324A. through D. and the 500 Series rules.

d. **Alternative compliance methods.** Operators may propose for prior approval by the Director alternative methods for determining the extent of contamination, sampling and analysis, or alternative cleanup goals using points of compliance.

e. **Sensitive area determination.** When the operator or Director has data that indicate an impact or threat of impact to ground water or surface water, the Director may require the operator to make a sensitive area determination and that determination shall be subject to the Director's approval. The sensitive area determination shall be made using appropriate geologic and hydrogeologic data to evaluate the potential for impact to ground water and surface water, such as soil borings, monitoring wells, or ~~appropriate~~ percolation tests that demonstrate that seepage will not reach underlying ground water or waters of the State and impact current or future uses of these waters. Operators shall submit data evaluated and analysis used in the determination to the Director.

f. **Sensitive area operations.** Operations in sensitive areas shall incorporate adequate measures and controls to prevent significant adverse environmental impacts and ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC standards and classifications.

902. PITS - GENERAL AND SPECIAL RULES

a. Pits used for exploration and production of oil and gas shall be constructed and operated to protect public health, safety, and welfare and the environment, including soil, waters of the state, and wildlife, from significant adverse environmental, public health, or welfare impacts from E&P waste, except as permitted by applicable laws and regulations.

b. Pits shall be constructed, monitored, and operated to provide for a minimum of two (2) feet of freeboard at all times between the top of the pit wall at its point of lowest elevation and

the fluid level of the pit. A method of monitoring and maintaining freeboard shall be employed. Any unauthorized release of fluids from a pit shall be subject to the reporting requirements of Rule 906.

c. Any accumulation of oil or condensate in a pit shall be removed within twenty-four (24) hours of discovery. Operators shall use skimming, steam cleaning of exposed liners, or other safe and legal methods as necessary to maintain pits in clean condition and to control hydrocarbon odors. Only de minimis amounts of hydrocarbons may be present unless the pit is specifically permitted for oil or condensate recovery or disposal use. A Form 15, Earthen Pit Report/Permit, may be revoked by the Director and the Director may require that the pit be closed if an operator repeatedly allows more than de minimis amounts of oil or condensate to accumulate in a pit. This requirement is not applicable to properly permitted and properly fenced, lined, and netted skim pits that are designed, constructed, and operated to prevent impacts to wildlife, including migratory birds.

d. Where necessary to protect public health, safety and welfare or to prevent significant adverse environmental impacts resulting from access to a pit by wildlife, migratory birds, domestic animals, or members of the general public, operators shall install appropriate netting or fencing.

e. Pits used for a period of no more than three (3) years, or more than three (3) years if the Director has issued a variance, for storage, recycling, reuse, treatment, or disposal of E&P waste or fresh water, as applicable, may be permitted in accordance with Rule 903 to service multiple wells, subject to Director approval.

f. Unlined pits shall not be constructed on fill material.

g. Except as allowed under Rule 904.a, unlined pits shall not be constructed in areas where pathways for communication with ground water or surface water are likely to exist.

h. Produced water shall be treated in accordance with Rule 907 before being placed in a production pit.

i. Operators shall utilize appropriate biocide treatments to control bacterial growth and related odors as needed.

903. PIT PERMITTING/REPORTING REQUIREMENTS

a. An Earthen Pit Report/Permit, Form 15, shall be submitted to the Director for prior approval for the following pits:

(1) All production pits.

(2) Special purpose pits except those reported under Rule 903.b.(1) or Rule 903.b.(2).

(3) Drilling pits designed for use with fluids containing hydrocarbon concentrations exceeding 10,000 ppm TPH or chloride concentrations at total well depth exceeding 15,000 ppm.

(4) Multi-well pits containing produced water, drilling fluids, or completion fluids that will be recycled or reused, except where reuse consists only of moving drilling fluids from one (1) oil and gas location to another such location for reuse there.

b. An Earthen Pit Report/Permit, Form 15, shall be submitted within thirty (30) calendar days after construction for the following:

(1) Special purpose pits used in the initial phase of emergency response.

(2) Flare pits where there is no risk of condensate accumulation.

c. An Earthen Pit Report/Permit, Form 15, shall not be required for drilling pits using water-based bentonitic drilling fluids with concentrations of TPH and chloride below those referenced in Rule 903.a.(3).

d. An Earthen Pit Report/Permit, Form 15, shall be completed in accordance with the instructions in Appendix I. Failure to complete the form in full may result in delay of approval or return of form.

e. The Director shall endeavor to review any properly completed Earthen Pit Report/Permit, Form 15, within thirty (30) calendar days after receipt. In order to allow adequate time for pit permit review and approval, operators shall submit an Earthen Pit Report/Permit, Form 15, at the same time as the Application for Permit-to-Drill, Form 2, is submitted. The Director may condition permit approval upon compliance with additional terms, provisions, or requirements necessary to protect the waters of the state, public health, or the environment.

904. PIT LINING REQUIREMENTS AND SPECIFICATIONS

a. Pits that were constructed before May 1, 2009 on federal land, or before April 1, 2009 on other land, shall comply with their permit conditions and the rules in effect at the time of their construction. The following pits shall be lined if they are constructed on or after May 1, 2009 on federal land, or on or after April 1, 2009 on other land:

(1) Drilling pits designed for use with fluids containing hydrocarbon concentrations exceeding 10,000 ppm TPH or chloride concentrations at total well depth exceeding 15,000 ppm.

(2) Production pits, other than skim pits, unless the operator demonstrates to the Director's satisfaction that the quality of the produced water is equivalent to or better than that of the underlying groundwater or the operator can clearly demonstrate by substantial evidence, such as by appropriate percolation tests, that seepage will not reach the underlying aquifer or waters of the state at contamination levels in excess of applicable standards. Subject to Rule 901.c, this requirement shall not apply to such pits in Huerfano or Las Animas Counties constructed before May 1, 2011, or to such pits in Washington, Yuma, Logan, or Morgan counties constructed before May 1, 2013.

(3) Special purpose pits, except emergency pits constructed during initial emergency response to spills/releases, or flare pits where there is no risk of condensate accumulation.

(4) Skim pits.

(5) Multi-well pits used to contain produced water, drilling fluids, or completion fluids that will be recycled or reused, except where reuse consists only of moving drilling fluids from one oil and gas location to another such location for reuse there. Subject to Rule 901.c, this requirement shall not apply to multi-well pits used to contain produced water in Huerfano or Las Animas Counties constructed before May 1, 2011, or to multi-well

pits used to contain produced water in Washington, Yuma, Logan, or Morgan counties constructed before May 1, 2013.

(6) Pits at centralized E&P waste management facilities and UIC facilities.

b. The following specifications shall apply to all pits that are required to be lined by rule or by permit condition:

(1) Materials used in lining pits shall be of a synthetic material that is impervious, has high puncture and tear strength, has adequate elongation, and is resistant to deterioration by ultraviolet light, weathering, hydrocarbons, aqueous acids, alkali, fungi or other substances in the produced water.

(2) All pit lining systems shall be designed, constructed, installed, and maintained in accordance with the manufacturers' specifications and good engineering practices.

(3) Field seams must be installed and tested in accordance with manufacturer specifications and good engineering practices. Testing results must be maintained by the operator and provided to the Director upon request.

c. The following specifications shall also apply to pits that are required to be lined, except those at centralized E&P waste management facilities, unless an oil and gas operator demonstrates to the satisfaction of the Director that a liner system offering equivalent protection to public health, safety, and welfare, including the environment and wildlife resources, will be used:

(1) Liners shall have a minimum thickness of twenty-four (24) mils. The synthetic or fabricated liner shall cover the bottom and interior sides of the pit with the edges secured with at least a twelve (12) inch deep anchor trench around the pit perimeter. The anchor trench shall be designed to secure, and prevent slippage or destruction of, the liner materials.

(2) The foundation for the liner shall be constructed with soil having a minimum thickness of twelve (12) inches after compaction covering the entire bottom and interior sides of the pit, and shall be constructed so that the hydraulic conductivity shall not exceed 1.0×10^{-7} cm/sec after testing and compaction. Compaction and permeability test results measured in the laboratory and field must be maintained by the operator and provided to the Director upon request.

(3) As an alternative to the soil foundation described in Rule 904.c.(2), the foundation may be constructed with bedding material that exceeds a hydraulic conductivity of 1.0×10^{-7} cm/sec, if a double synthetic liner system is used; however, the bottom and sides of the pit shall be padded with soil or synthetic matting type material and shall be free of sharp rocks or other material that are capable of puncturing the liner. Each synthetic liner shall have a minimum thickness of twenty-four (24) mils.

d. The following specifications shall also apply to pits used at centralized E&P waste management facilities, unless an oil and gas operator demonstrates to the satisfaction of the Director that a liner system offering equivalent protection to public health, safety, and welfare, including the environment and wildlife resources, will be used:

(1) Liners shall have a minimum thickness of sixty (60) mils. The synthetic or fabricated liner shall cover the bottom and interior sides of the pit with the edges secured

with at least a twelve (12) inch deep anchor trench around the pit perimeter. The anchor trench shall be designed to secure, and prevent slippage or destruction of, the liner materials.

(2) The foundation for the liner shall be constructed with soil having a minimum thickness of twenty-four (24) inches after compaction covering the entire bottom and interior sides of the pit, and shall be constructed so that the hydraulic conductivity shall not exceed 1.0×10^{-7} cm/sec after testing and compaction. Compaction and permeability test results measured in the laboratory and field must be maintained by the operator and provided to the Director upon request.

(3) As an alternative to the soil foundation described in Rule 904.d.(2), a secondary liner consisting of a geosynthetic clay liner, which is a manufactured hydraulic barrier typically consisting of bentonite clay or other very low permeability material, supported by geotextiles or geomembranes, which are held together by needling, stitching, or chemical adhesives, may be used.

e. In Sensitive Areas, the Director may require a leak detection system for the pit or other equivalent protective measures, including but not limited to, increased record-keeping requirements, monitoring systems, and underlying gravel fill sumps and lateral systems. In making such determination, the Director shall consider the surface and subsurface geology, the use and quality of potentially-affected ground water, the quality of the produced water, the hydraulic conductivity of the surrounding soils, the depth to ground water, the distance to surface water and water wells, and the type of liner.

905. CLOSURE OF PITS, AND BURIED OR PARTIALLY BURIED PRODUCED WATER VESSELS.

a. Drilling pits shall be closed in accordance with the 1000-Series Rules.

b. Pits not used exclusively for drilling operations, buried or partially buried produced water vessels, and emergency pits shall be closed in accordance with an approved Site Investigation and Remediation Workplan, Form 27. The workplan shall be submitted for prior Director approval and shall include a description of the proposed investigation and remediation activities in accordance with Rule 909. Emergency pits shall be closed and remediated as soon as the initial phase of emergency response operations are complete or process upset conditions are controlled.

(1) Operators shall ensure that soils and ground water meet the concentration levels of Table 910-1.

(2) **Pit evacuation.** Prior to backfilling and site reclamation, E&P waste shall be treated or disposed in accordance with Rule 907.

(3) Liners shall be disposed as follows:

A. **Synthetic liner disposal.** Liner material shall be removed and disposed in accordance with applicable legal requirements for solid waste disposal.

B. **Constructed soil liners.** Constructed soil liner material may be removed for treatment or disposal, or, where left in place, the material shall be ripped and mixed with native soils in a manner to alleviate compaction and prevent an impermeable barrier to infiltration and ground water flow and shall meet soil standards listed in Table 910-1.

(4) Soil beneath the low point of the pit must be sampled to verify no leakage of the managed fluids. Soil left in place shall meet the standards listed in Table 910-1.

c. **Discovery of a spill/release during closure.** When a spill/release is discovered during closure operations, operators shall report the spill/release on the Spill/Release Report, Form 19, in accordance with Rule 906. Leaking pits and buried or partially buried produced water vessels shall be closed and remediated in accordance with Rules 909. and 910.

d. **Unlined drilling pits.** Unlined drilling pits shall be closed and reclaimed in accordance with the 1000 Series rules and operators shall ensure that soils and ground water meet the concentration levels in Table 910-1.

906. SPILLS AND RELEASES

a. **General.** Operators shall, immediately upon discovery, control and contain all spills/releases of E&P waste or produced fluids to protect the environment, public health, safety, and welfare, and wildlife resources. Operators shall investigate, clean up, and document impacts resulting from spills/releases as soon as practicable. The Director may require additional activities to prevent or mitigate threatened or actual significant adverse environmental impacts on any air, water, soil or biological resource, or to the extent necessary to ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC ground water standards and classifications.

b. **Reporting spills or releases of E&P Waste or produced fluids.**

(1) Report to the Director. Operators shall report a spill or release of E&P Waste or produced fluids that meet any of the following criteria to the Director verbally or in writing as soon as practicable, but no more than twenty-four (24) hours after discovery (the “Initial Report”).

A. A spills/release of any size that impacts or threatens to impact any waters of the state, a residence or occupied structure, livestock, or public byway;

B. A spill/release in which one (1) barrel or more of E&P Waste or produced fluids is spilled or released outside of berms or other secondary containment;

C. A spill/release of five (5) barrels or more regardless of whether the spill/release is completely contained within berms or other secondary containment.

The Initial Report to the Director shall include, at a minimum, the location of the spill/release and any information available to the Operator about the type and volume of waste involved.

If the Initial Report was not made by submitting a COGCC Spill/Release Report, Form 19 the Operator must submit a Form 19 with the Initial Report information as soon as practicable but not later than 72 hours after discovery of the spill/release unless extended by the Director.

In addition to the Initial Report to the Director, the Operator shall make a supplemental report on Form 19 not more than 10 calendar days after the spill/release is discovered that includes an 8 1/2 x 11 inch topographic map showing the governmental section and location of the spill or an aerial photograph showing the location of the spill; all pertinent

information about the spill/release known to the Operator that has not been reported previously; and information relating to the initial mitigation, site investigation, and remediation measures conducted by the Operator.

The Director may require further supplemental reports or additional information.

(2) Notification to the local government. In addition to the Initial Report to the Director, as soon as practicable, but not more than 24 hours after discovery of a spill/release of E & P Waste or produced fluids reportable under Rule 906.b.(1)A or B, above, an Operator shall provide verbal or written notification to the entity with jurisdiction over emergency response within the local municipality if the spill/release occurred within a municipality or the local county if the spill/release did not occur within a municipality. The notification shall include, at a minimum, the information provided in the Initial Report to the Director.

(3) Notification to the Surface Owner. In addition to the Initial Report to the Director, within 24 hours after discovery of a spill/release of E & P Waste or produced fluids reportable under Rule 906.b.(1)A or B, an Operator shall provide verbal notification to the affected Surface Owner or the Surface Owner's appointed tenant. If the Surface Owner cannot be reached within 24 hours, the Operator shall continue good faith efforts to notify the Surface Owner until notice has been provided. The verbal notification shall include, at a minimum, the information provided in the Initial Report to the Director.

(4) Report to Environmental Release/Incident Report Hotline. A spill/release of any size which impact or threaten to impact any surface water supply area shall be reported to the Director and to the Environmental Release/Incident Report Hotline (1-877-518-5608). Spills and releases that impact or threaten a surface water intake shall be verbally reported to the emergency contact for that facility immediately after discovery.

(5) Reporting chemical spills or releases. Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including the Emergency Planning and Community Right-to-Know Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Oil Pollution Act, and the Clean Water Act, as applicable.

c. **Remediation of spills/releases.** When threatened or actual significant adverse environmental impacts on any air, water, soil or other environmental resource from a spill/release exist or when necessary to ensure compliance with the concentration levels in Table 910-1 with consideration to WQCC ground water standards and classifications, the Director may require operators to submit a Site Investigation and Remediation Workplan, Form 27.

(1) Such spills/releases shall be remediated in accordance with Rules 909 and 910.

(2) The operator shall make good faith efforts to notify and consult with the affected Surface Owner, or the Surface Owner's appointed tenant, prior to commencing operations to remediate E&P waste from a spill/release in an area not being utilized for oil and gas operations. Such efforts shall not unreasonably delay commencement of remediation approved by the Director.

d. **Spill/release prevention.**

(1) **Secondary containment.** Secondary containment structures shall be sufficiently impervious to contain discharged material. Secondary containment that was constructed before May 1, 2009 on federal land, or before April 1, 2009 on other land, shall comply with the rules in effect at the time of construction. Secondary containment constructed on or after May 1, 2009 on federal land, or on or after April 1, 2009 on other land shall be constructed or installed around all tanks containing oil, condensate, or produced water with greater than 3,500 milligrams per liter (mg/l) total dissolved solids (TDS) and shall be sufficient to contain the contents of the largest single tank and sufficient freeboard to contain precipitation. Operators are also subject to tank and containment requirements under Rules 603. and 604. This requirement shall not apply to water tanks with a capacity of fifty (50) barrels or less.

(2) **Spill/release evaluation.** Operators shall determine and document the cause of a spill/release of E & P Waste or produced fluids and, to the extent practicable, identify and timely implement measures to prevent spills/releases due to similar causes in the future.

907. MANAGEMENT OF E&P WASTE

a. **General requirements.**

(1) **Operator obligations.** Operators shall ensure that E&P waste is properly stored, handled, transported, treated, recycled, or disposed to prevent threatened or actual significant adverse environmental impacts to air, water, soil or biological resources or to the extent necessary to ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC ground water standards and classifications.

(2) E&P waste management activities shall be conducted, and facilities constructed and operated, to protect the waters of the state from significant adverse environmental impacts from E&P waste, except as permitted by applicable laws and regulations.

(3) **Reuse and recycling.** To encourage and promote waste minimization, operators may propose plans for managing E&P waste through beneficial use, reuse, and recycling by submitting a written management plan to the Director for approval on a Sundry Notice, Form 4, if applicable. Such plans shall describe, at a minimum, the type(s) of waste, the proposed use of the waste, method of waste treatment, product quality assurance, and shall include a copy of any certification or authorization that may be required by other laws and regulations. The Director may require additional information.

b. **Waste transportation.**

(1) E&P waste, when transported off-site within Colorado for treatment or disposal, shall be transported to facilities authorized by the Director or waste disposal facilities approved to receive E&P waste by the Colorado Department of Public Health and Environment. When transported to facilities outside of Colorado for treatment or disposal, E&P waste shall be transported to facilities authorized and permitted by the appropriate regulatory agency in the receiving state.

(2) **Waste generator requirements.** Generators of E&P waste that is transported off-site shall maintain, for not less than five (5) years, copies of each invoice, bill, or ticket and such other records as necessary to document the following requirements A through F:

A. The date of the transport;

B. The identity of the waste generator;

C. The identity of the waste transporter;

D. The location of the waste pickup site;

E. The type and volume of waste; and

F. The name and location of the treatment or disposal site.

Such records shall be signed by the transporter, made available for inspection by the Director during normal business hours, and copies thereof shall be furnished to the Director upon request.

c. **Produced water.**

(1) **Treatment of produced water.** Produced water shall be treated prior to placement in a production pit to prevent crude oil and condensate from entering the pit.

(2) **Produced water disposal.** Produced water may be disposed as follows:

A. Injection into a Class II well, permitted in accordance with Rule 325.;

B. Evaporation/percolation in a properly permitted pit;

C. Disposal at permitted commercial facilities;

D. Disposal by roadspreading on lease roads outside sensitive areas for produced waters with less than 3,500 mg/l TDS when authorized by the surface owner and in accordance with an approved waste management plan per Rule 907.a.(3). Roadspreading of produced waters shall not impact waters of the state, shall not result in pooling or runoff, and the adjacent soils shall meet the concentration levels in Table 910-1. Flowback fluids shall not be used for dust suppression.

E. Discharging into state waters, in accordance with the Water Quality Control Act and the rules and regulations promulgated thereunder.

i. Operators shall provide the Colorado discharge permit number, latitude and longitude coordinates, in accordance with Rule 215.f, of the discharge outfall, and sources of produced water on a Source of Produced Water for Disposal, Form 26, and shall include a U.S.G.S. topographic map showing the location of the discharge outfall.

ii. Produced water discharged pursuant to this subsection (2).E. may be put to beneficial use in accordance with applicable state statutes and regulations governing the use and administration of water.

F. Evaporation in a properly lined pit at a centralized E&P waste management facility permitted in accordance with Rule 908.

(3) **Produced water reuse and recycling.** Produced water may be reused for enhanced recovery, drilling, and other approved uses in a manner consistent with existing water rights and in consideration of water quality standards and classifications established by the WQCC for waters of the state, or any point of compliance established by the Director pursuant to Rule 324D.

(4) **Mitigation.** Water produced during operation of an oil or gas well may be used to provide an alternative domestic water supply to surface owners within the oil or gas field, in accordance with all applicable laws, including, but not limited to, obtaining the necessary approvals from the WQCD for constructing a new "waterworks," as defined by Section 25-1-107(1)(X)(II)(A), C.R.S. Any produced water not so used shall be disposed of in accordance with subsection (2) or (3). Providing produced water for domestic use within the meaning of this subsection (4) shall not constitute an admission by the operator that the well is dewatering or impacting any existing water well. The water produced shall be to the benefit of the surface owner within the oil and gas field and may not be sold for profit or traded.

d. **Drilling fluids.**

(1) **Recycling and reuse.** Drilling pit contents may be recycled to another drilling pit for reuse consistent with Rule 903.

(2) **Treatment and disposal.** Drilling fluids may be treated or disposed as follows:

A. Injection into a Class II well permitted in accordance with Rule 325;

B. Disposal at a commercial solid waste disposal facility; or

C. Land treatment or land application at a centralized E&P waste management facility permitted in accordance with Rule 908.

(3) **Additional authorized disposal of water-based bentonitic drilling fluids.** Water-based bentonitic drilling fluids may be disposed as follows:

A. Drying and burial in pits on non-crop land. The resulting concentrations shall not exceed the concentration levels in Table 910-1, below; or

B. Land application as follows:

i. **Applicability.** Acceptable methods of land application include, but are not limited to, production facility construction and maintenance, and lease road maintenance.

ii. **Land application requirements.** The average thickness of water-based bentonitic drilling fluid waste applied shall be no more than three (3) inches prior to incorporation. The waste shall be applied to prevent ponding or erosion and shall be incorporated as a beneficial amendment into the native soils within ten (10) days of application. The resulting concentrations shall not exceed those in Table 910-1.

iii. **Surface owner approval.** Operators shall obtain written authorization from the surface owner prior to land application of water-based bentonitic drilling fluids.

iv. **Operator obligations.** Operators shall maintain a record of the source, the volume, and the location where the land application of the water-based bentonitic drilling fluid occurred. Upon the Director's written request, this information shall be provided within five (5) business days, in a format readily reviewable by the Director. Operators with control and authority over the wells from which the water-based bentonitic drilling fluid wastes are obtained retain responsibility for the land application operation, and shall diligently cooperate with the Director in responding to complaints regarding land application of water-based bentonitic drilling fluids.

v. **Approval.** Prior Director approval is not required for reuse of water-based bentonitic drilling fluids for land application as a soil amendment.

e. **Oily waste.** Oily waste includes those materials containing crude oil, condensate or other E&P waste, such as soil, frac sand, drilling fluids, and pit sludge that contain hydrocarbons.

(1) Oily waste may be treated or disposed as follows:

A. Disposal at a commercial solid waste disposal facility;

B. Land treatment onsite; or

C. Land treatment at a centralized E&P waste management facility permitted in accordance with Rule 908.

(2) Land treatment requirements:

A. In the case of a reportable spill, Operators shall submit a Site Investigation and Remediation Workplan, Form 27, for prior approval by the Director. Treatment shall thereafter be completed in accordance with the workplan and Rules 909. and 910.

B. Free oil shall be removed from the oily waste prior to land treatment.

~~B~~C. Oily waste shall be spread evenly to prevent pooling, ponding, or runoff.

~~C~~D. Contamination of stormwater runoff, ground water, or surface water shall be prevented.

~~D~~E. Biodegradation shall be enhanced by disking, tilling, aerating, or addition of nutrients, microbes, water or other amendments, as appropriate.

~~E~~F. Land-treated oily waste incorporated in place or beneficially reused shall not exceed the concentrations in Table 910-1.

F. ~~When a threatened or significant adverse environmental impact from onsite land treatment exists, operators shall submit a Site Investigation and Remediation Workplan, Form 27, for approval by the Director. Treatment~~

~~shall thereafter be completed in accordance with the workplan and Rules 909. and 910.~~

G. When land treatment occurs in an area not being utilized for oil and gas operations, operators shall obtain prior written surface owner approval. When land treatment occurs on an approved Oil and Gas Location prior to completion of interim reclamation or on the surface disturbance remaining after interim reclamation, notice shall be provided to the surface owner.

H. Land treatment shall be conducted in a manner that does not preclude compliance with reclamation rules 1003 and 1004.

f. **Other E&P Waste.** Other E&P waste such as workover fluids, tank bottoms, pigging wastes from gathering and flow lines, and natural gas gathering, processing, and storage wastes may be treated or disposed of as follows:

(1) Disposal at a commercial solid waste disposal facility;

(2) Treatment at a centralized E&P waste management facility permitted in accordance with Rule 908;

(3) Injection into a Class II injection well permitted in accordance with Rule 325; or

(4) An alternative method proposed in a waste management plan in accordance with rule 907.a.(3) and approved by the Director.

907A. MANAGEMENT OF NON-E&P WASTE

a. Certain wastes generated by oil and gas-related activities are non-E&P wastes and are not exempt from regulation as solid or hazardous wastes. These wastes need to be properly identified and disposed of in accordance with state and federal regulations.

b. Certain wastes generated by oil and gas-related activities can either be E&P wastes or non-E&P wastes depending on the circumstances of their generation.

c. The hazardous waste regulations require that a hazardous waste determination be made for any non-E&P solid waste. Hazardous wastes require storage, treatment, and disposal practices in accordance with 6 C.C.R. 1007-3. All non-hazardous/non-E&P wastes are considered solid waste which require storage, treatment, and disposal in accordance with 6 C.C.R. 1007-2.

908. CENTRALIZED E&P WASTE MANAGEMENT FACILITIES

a. **Applicability.** Operators may establish non-commercial, centralized E&P waste management facilities for the treatment, disposal, recycling or beneficial reuse of E&P waste. This rule applies only to non-commercial facilities, which means the operator does not represent itself as providing E&P waste management services to third parties, except as part of a unitized area or joint operating agreement or in response to an emergency. Centralized facilities may include components such as land treatment or land application sites, pits, and recycling equipment.

b. **Permit requirements.** Before any person shall commence construction of a centralized E&P waste management facility, such person shall file with the Director an application on

Form 28 and pay a filing and service fee established by the Commission (see Appendix III), and obtain the Director's approval. The application shall contain the following:

(1) The name, address, phone and fax number of the operator, and a designated contact person.

(2) The name, address, and phone number of the surface owner of the site, if not the operator, and the written authorization of such surface owner.

(3) The legal description of the site.

(4) A general topographic, geologic, and hydrologic description of the site, including immediately adjacent land uses, a topographic map of a scale no less than 1:24,000 showing the location, and the average annual precipitation and evaporation rates at the site.

(5) **Centralized facility siting requirements.**

A. A site plan showing drainage patterns and any diversion or containment structures, and facilities such as roads, fencing, tanks, pits, buildings, and other construction details.

B. Scaled drawings of entire sections containing the proposed facility. The field measured distances from the nearer north or south and nearer east or west section lines shall be measured at ninety (90) degrees from said section lines to facility boundaries and referenced on the drawing. A survey shall be provided including a complete description of established monuments or collateral evidence found and all aliquot corners.

C. The facility shall be designed to control public access, prevent unauthorized vehicular traffic, provide for site security both during and after operating hours, and prevent illegal dumping of wastes. Appropriate measures shall also be implemented to prevent access to the centralized facility by wildlife or domestic animals.

D. Centralized facilities shall have a fire lane of at least ten (10) feet in width around the active treatment areas and within the perimeter fence. In addition, a buffer zone of at least ten (10) feet shall be maintained within the perimeter fire lane.

E. Surface water diversion structures, including, but not limited to, berms and ditches, shall be constructed to accommodate a one hundred (100) year, twenty four (24) hour event. The facility shall be designed and constructed with a run-on control system to prevent flow onto the facility during peak discharge and a run-off control system to contain the water volume from a twenty-five (25) year, twenty-four (24) hour storm.

(6) **Waste profile.** For each type of waste, the amounts to be received and managed by the facility shall be estimated on a monthly average basis. For each waste type to be treated, a characteristic waste profile shall be completed.

(7) **Facility design and engineering.** Facility design and engineering data, including plans and elevations, design basis, calculations, and process description.

A. Geologic data, including, but not limited to:

i. Type and thickness of unconsolidated soils;

ii. Type and thickness of consolidated bedrock, if applicable;

iii. Local and regional geologic structures; and

iv. Any geologic hazards that may affect the design and operation of the facility.

B. Hydrologic data, including, but not limited to:

i. Surface water features within two (2) miles;

ii. Depth to shallow ground water and major aquifers;

iii. Water wells within one (1) mile of the site boundary and well depth, depth to water, screened intervals, yields, and aquifer name;

iv. Hydrologic properties of shallow ground water and major aquifers including flow direction, flow rate, and potentiometric surface;

v. Site location in relation to the floodplain of nearby surface water features;

vi. Existing quality of shallow ground water; and

vii. An evaluation of the potential for impacts to nearby surface water and ground water.

C. Engineering data, including, but not limited to:

i. Type and quantity of material required for use as a liner, including design components;

ii. Location and depth of cut for liners;

iii. Location, dimensions, and grades of all surface water diversion structures;

iv. Location and dimensions of all surface water containment structures; and

v. Location of all proposed facility structures and access roads.

(8) **Operating plan.** An operating plan, including, but not limited to:

A. A detailed description of the method of treatment, loading rates, and application of nutrients and soil amendments;

B. Dust and moisture control;

C. Sampling;

D. Inspection and maintenance;

E. Emergency response;

F. Record-keeping;

G. Site security;

H. Hours of operation;

I. Noise and odor mitigation; and

J. Final disposition of waste. Where treated waste will be beneficially reused, a description of reuse and method of product quality assurance shall be included.

(9) **Ground water monitoring.**

A. **Water Wells.**

Water samples shall be collected from water wells known to the operator or registered with the Colorado State Engineer within a one (1) mile radius of the proposed facility and shall be analyzed to establish baseline water quality. Analytical parameters shall be selected based upon the proposed waste stream and shall include, at a minimum, all major cations and anions, total dissolved solids, iron and manganese, nutrients (nitrates, nitrites, selenium), benzene, toluene, ethylbenzene, xylenes, pH, and specific conductance. Operators shall use reasonable good faith efforts to identify and obtain access to such water wells for the purpose of collecting water samples. If access cannot be obtained, then the operator shall notify the Director of the wells for which access was not obtained and sampling of such wells by the operator shall not be required. Not conducting sampling because access to water wells cannot be obtained shall not be grounds for denial of the proposed facility.

Copies of all test results described above shall be provided to the Director and the water well owner within three (3) months of collecting the samples. Laboratory results shall also be submitted to the Director in an electronic data deliverable format.

B. **Site-specific monitoring wells.**

i. Where applicable, the Director shall require ground water monitoring to ensure compliance with the concentration levels in Table 910-1 and WQCC standards and classifications by establishing points of compliance, unless an oil and gas operator demonstrates to the satisfaction of the Director that an alternative method offering equivalent protection of public health, safety, and welfare, including the environment and wildlife resources, can be employed and provided the operator employs a dual liner with a leak detection system that provides for immediate leak detection from the uppermost liner. All monitoring well construction must be completed in accordance with the State Engineer's regulations on well construction, "Water Well Construction Rules" (2 C.C.R. 402-2).

ii. Where monitoring is required, the direction of flow, ground water gradient and quality of water shall be established by the

installation of a minimum of three (3) monitor wells, including an up-gradient well and two (2) down-gradient wells that will serve as points of compliance, or other methods authorized by the Director.

(10) **Surface water monitoring.** Where applicable, the Director shall require baseline and periodic surface water monitoring to ensure compliance with WQCC surface water standards and classifications. Operators shall use reasonable good faith efforts to obtain access to such surface water for the purpose of collecting water samples. If access cannot be obtained, then the operator shall notify the Director of the surface water for which access was not obtained and sampling of such surface water by the operator shall not be required. Not conducting sampling because access to surface water cannot be obtained shall not be grounds for denial of the proposed facility.

(11) **Contingency plan.** A contingency plan that describes the emergency response operations for the facility, 24-hour contact information for the person who has authority to initiate emergency response actions, and an outline of responsibilities under the joint operating agreement regarding maintenance, closure, and monitoring of the facility.

c. **Permit approval.** The Director shall endeavor to approve or deny the properly completed permit within thirty (30) days after receipt and may condition permit approval as necessary to prevent any threatened or actual significant adverse environmental impact on air, water, soil or biological resources or to the extent necessary to ensure compliance with the concentration levels in Table 910-1, with consideration to WQCC ground water standards and classifications.

d. **Financial assurance.** The operator of a centralized E&P waste management facility shall submit for the Director's approval such financial assurance as required by Rule 704. prior to issuance of the operating permit.

e. **Facility modifications.** Throughout the life of the facility the operator shall submit proposed modifications to the facility design, operating plan, permit data, or permit conditions to the Director for prior approval.

f. **Annual permit review.** To ensure compliance with permit conditions and the 900 Series rules, the facility permit shall be subject to an annual review by the Director. To facilitate this review, the operator shall submit an annual report summarizing operations, including the types and volumes of waste actually handled at the facility. The Director may require additional information.

g. **Closure.**

(1) **Preliminary closure plan.** A general preliminary plan for closure shall be submitted with the Centralized E&P Waste Management Facility Permit, Form 28. The preliminary closure plan shall include, but not be limited to:

A. A general plan for closure and reclamation of the entire facility, including a description of the activities required to decommission and remove all equipment, close and reclaim pits, dispose of or treat residual waste, collect samples as needed to verify compliance with soil and ground water standards, implement post-closure monitoring, and complete other remediation, as required.

B. An estimate of the cost to close and reclaim the entire facility and to conduct post-closure monitoring. Cost estimates shall be subject to review by the Director.

(2) **Final closure plan.** A detailed Site Investigation and Remediation Workplan, Form 27, shall be submitted at least sixty (60) days prior to closure for approval by the Director. The workplan shall include, but not be limited to, a description of the activities required to decommission and remove all equipment, close and reclaim pits, dispose of or treat residual waste, collect samples as needed to verify compliance with soil and ground water standards, implement post-closure monitoring, and complete other remediation, as required.

h. Operators may be subject to local requirements for zoning and construction of facilities and shall provide copies of any approval notices, permits, or other similar types of notifications for the facility from local governments or other agencies to the Director for review prior to issuance of the operating permit.

909. SITE INVESTIGATION, REMEDIATION, AND CLOSURE

a. **Applicability.** This section applies to the closure and remediation of pits other than drilling pits constructed pursuant to Rule 903.a.(3); investigation, reporting and remediation of spills/releases; permitted waste management facilities including treatment facilities; plugged and abandoned wellsites; sites impacted by E&P waste management practices; or other sites as designated by the Director.

b. **General site investigation and remediation requirements.**

(1) **Sensitive Area Determination.** Operators shall complete a sensitive area determination in accordance with Rule 901.e.

(2) **Sampling and analyses.** Sampling and analysis of soil and ground water shall be conducted in accordance with Rule 910. to determine the horizontal and vertical extent of any contamination in excess of the concentrations in Table 910-1.

(3) **Management of E&P waste.** E&P waste shall be managed in accordance with Rule 907.

(4) **Pit evacuation.** Prior to backfilling and site reclamation, E&P waste shall be treated or disposed in accordance with Rule 907. and the 1000 Series rules.

(5) **Remediation.** Remediation shall be performed in a manner to mitigate, remove, or reduce contamination that exceeds the concentrations in Table 910-1 in order to ensure protection of public health, safety, and welfare, and to prevent and mitigate significant adverse environmental impacts. Soil that does not meet concentrations in Table 910-1 shall be remediated. Ground water that does not meet concentrations in Table 910-1 shall be remediated in accordance with a Site Investigation and Remediation Workplan, Form 27.

(6) **Reclamation.** Remediation sites shall be reclaimed in accordance with the 1000 Series rules for reclamation.

c. **Site Investigation And Remediation Workplan, Form 27.** Operators shall prepare and submit for prior Director approval a Site Investigation and Remediation Workplan, Form 27, for the following operations and remediation activities:

(1) Unlined pit closure when required by Rule 905.

(2) Remediation of spills/releases in accordance with Rule 906.

(3) Land treatment of oily waste in accordance with Rule 907.e.~~(2).F.~~

(4) Closure of centralized E&P waste management facilities in accordance with Rule 908.g.

(5) Remediation of impacted ground water in accordance with Rule 910.b.(4).

d. **Multiple sites.** Remediation of multiple sites may be submitted on a single workplan with prior Director approval.

e. **Closure.**

(1) Remediation and reclamation shall be complete upon compliance with the concentrations in Table 910-1, or upon compliance with an approved workplan.

(2) **Notification of completion.** Within thirty (30) days after conclusion of site remediation and reclamation activities operators shall provide the following notification of completion:

A. Operators conducting remediation operations in accordance with Rule 909.b. shall submit to the Director a Site Investigation and Remediation Workplan, Form 27, containing information sufficient to demonstrate compliance with these rules.

B. Operators conducting remediation under an approved workplan shall submit to the Director, by adding or attaching to the original workplan, information sufficient to demonstrate compliance with the workplan.

f. **Release of financial assurance.** Financial assurance required by Rule 706. may be held by the Director until the required remediation of soil and/or ground water impacts is completed in accordance with the approved workplan, or until cleanup goals are met.

910. CONCENTRATIONS AND SAMPLING FOR SOIL AND GROUND WATER

a. **Soil and groundwater concentrations.** The concentrations for soil and ground water are in Table 910-1. Ground water standards and analytical methods are derived from the ground water standards and classifications established by WQCC.

b. **Sampling and analysis.**

(1) **Existing workplans.** Sampling and analysis for sites subject to an approved workplan shall be conducted in accordance with the workplan and the sampling and analysis requirements described in this rule.

(2) **Methods for sampling and analysis.** Sampling and analysis for site investigation or confirmation of successful remediation shall be conducted to determine the nature and extent of impact and confirm compliance with appropriate concentration levels in Table 910-1.

A. **Field analysis.** Field measurements and field tests shall be conducted using appropriate equipment, calibrated and operated according to

manufacturer specifications, by personnel trained and familiar with the equipment.

B. **Sample collection.** Samples shall be collected, preserved, documented, and shipped using standard environmental sampling procedures in a manner to ensure accurate representation of site conditions.

C. **Laboratory analytical methods.** Laboratories shall analyze samples using standard methods (such as EPA SW-846 or API RP-45) appropriate for detecting the target analyte. The method selected shall have detection limits less than or equal to the concentrations in Table 910-1.

D. **Background sampling.** Samples of comparable, nearby, non-impacted, native soil, ground water or other medium may be required by the Director for establishing background conditions.

(3) **Soil sampling and analysis.**

A. **Applicability.** If soil contamination is suspected or known to exist as a result of spills/releases or E&P waste management, representative samples of soil shall be collected and analyzed in accordance with this rule.

B. **Sample collection.** Samples shall be collected from areas most likely to have been impacted, and the horizontal and vertical extent of contamination shall be determined. The number and location of samples shall be appropriate to the impact.

C. **Sample analysis.** Soil samples shall be analyzed for contaminants listed in Table 910-1 as appropriate to assess the impact or confirm remediation. The analytical parameters shall be selected based on site-specific conditions and process knowledge and shall be agreed to and approved by the Director.

D. **Soil impacted by produced water.** For impacts to soil due to produced water, samples from comparable, nearby non-impacted native soil shall be collected and analyzed for purposes of establishing background soil conditions including pH and electrical conductivity (EC). Where EC of the impacted soil exceeds the level in Table 910-1, the sodium adsorption ratio (SAR) shall also be determined.

E. **Soil impacted by hydrocarbons.** For impacts to soil due to hydrocarbons, samples shall be analyzed for TPH or organic compounds per Table 910-1 as determined by site-specific conditions and process knowledge.

(4) **Ground water sampling and analysis.**

A. **Applicability.** Operators shall collect and analyze representative samples of ground water in accordance with these rules under the following circumstances:

(i) Where ground water contamination is suspected or known to exceed the concentrations in Table 910-1;

(ii) Where impacted soils are in contact with ground water; or

(iii) Where impacts to soils extend down to the high water table.

B. **Sample collection.** Samples shall be collected from areas most likely to have been impacted, downgradient or in the middle of excavated areas. The number and location of samples shall be appropriate to determine the horizontal and vertical extent of the impact. If the concentrations in Table 910-1 are exceeded, the direction of flow and a ground water gradient shall be established, unless the extent of the contamination and migration can otherwise be adequately determined.

C. **Sample analysis.** Ground water samples shall be analyzed for benzene, toluene, ethylbenzene, xylene, and API RP-45 constituents, or other parameters appropriate for evaluating the impact. The analytical parameters shall be selected based on site-specific conditions and process knowledge and shall be agreed to and approved by the Director.

D. **Impacted ground water.** Where ground water contaminants exceed the concentrations listed in Table 910-1, operators shall notify the Director and submit to the Director for prior approval a Site Investigation and Remediation Workplan, Form 27, for the investigation, remediation, or monitoring of ground water to meet the required concentrations in Table 910-1.

911. PIT, BURIED OR PARTIALLY BURIED PRODUCED WATER VESSEL, BLOWDOWN PIT, AND BASIC SEDIMENT/TANK BOTTOM PIT MANAGEMENT REQUIREMENTS PRIOR TO DECEMBER 30, 1997.

a. **Applicability.** This rule applies to the management, operation, closure and remediation of drilling, production and special purpose pits, buried or partially buried produced water vessels, blowdown pits, and basic sediment/tank bottom pits put into service prior to December 30, 1997 and unlined skim pits put into service prior to July 1, 1995. For pits constructed after December 30, 1997 and skim pits constructed after July 1, 1995, operators shall comply with the requirements contained in Rules 901. through 910.

b. **Inventory.** Operators were required to submit to the Director no later than December 31, 1995, an inventory identifying production pits, buried or partially buried produced water vessels, blowdown pits, and basic sediment/tank bottom pits that existed on June 30, 1995. The inventory required operators to provide the facility name, a description of the location, type, capacity and use of pit/vessel, whether netted or fenced, lined or unlined, and where available, water quality data. Operators who have failed to submit the required inventory are in continuing violation of this rule.

c. **Sensitive area determination.**

(1) For unlined production and special purpose pits constructed prior to July 1, 1995 and not closed by December 30, 1997, operators were required to determine whether the pit was located within a sensitive area in accordance with the Sensitive Area Determination Decision Tree, Figure 901-1 (now Rule 901.e.) and submit data evaluated and analysis used in the determination to the Director on a Sundry Notice, Form 4. In December 2008, Figure 901-1 was deleted from the 900-Series Rules.

(2) For steel, fiberglass, concrete, or other similar produced water vessels that were buried or partially buried and located in sensitive areas prior to December 30,

1997, operators were required to test such vessels for integrity, unless a monitoring or leak detection system was put in place.

d. The following permitting/reporting requirements applied to pits constructed prior to December 30, 1997:

(1) A Sundry Notice, Form 4, including the name, address, and phone number of the primary contact person operating the production pit for the operator, the facility name, a description of the location, type, capacity and use of pit, engineering design, installation features and water quality data, if available, was required for the following:

A. Lined production pits and lined special purpose pits constructed after July 1, 1995.

B. Unlined production pits constructed prior to July 1, 1995 which are lined in accordance with Rule 905. by December 30, 1997.

(2) An Application For Permit For Unlined Pit, Form 15 was required for the following:

A. Unlined production pits and special purpose pits in sensitive areas constructed prior to July 1, 1995, and not closed by December 30, 1997.

B. Unlined production pits outside sensitive areas constructed after July 1, 1995 and not closed by December 30, 1997.

(3) An Application For Permit For Unlined Pit, Form 15 and a variance under Rule 904.e.(1). (repealed, now Rule 502.b.) was required for unlined production pits and unlined special purpose pits in sensitive areas constructed after July 1, 1995.

(4) A Sundry Notice, Form 4 was required for unlined production pits outside sensitive areas receiving produced water at an average daily rate of five (5) or less barrels per day calculated on a monthly basis for each month of operation constructed prior to December 30, 1997.

e. The Director may have established points of compliance for unlined production pits and special purpose pits and for lined production pits in sensitive areas constructed after July 1, 1995.

f. **Closure requirements.**

(1) Operators of production or special purpose pits existing on July 1, 1995 which were closed before December 30, 1997, were required to submit a Sundry Notice, Form 4, within thirty (30) days of December 30, 1997. The Sundry Notice, Form 4 shall include a copy of the existing pit permit, if a permit was obtained, and a description of the closure process.

(2) Pits closed prior to December 30, 1997 were required to be reclaimed in accordance with the 1000 Series rules. Pits closed after December 30, 1997 shall be closed in accordance with the 900 Series rules and reclaimed in accordance with the 1000 Series rules.

(3) Operators of steel, fiberglass, concrete or other similar produced water vessels buried or partially buried and located in sensitive areas were required to repair or replace vessels and tanks found to be leaking. Operators shall repair or replace

vessels and tanks found to be leaking. Operators shall submit to the Director a Sundry Notice, Form 4, describing the integrity testing results and action taken within thirty (30) days of December 30, 1997.

(4) Closure of pits and steel, fiberglass, concrete or other similar produced water vessels, and associated remediation operations conducted prior to December 30, 1997 are not subject to Rules 905., 906., 907., 909. and 910.

912. VENTING OR FLARING NATURAL GAS

a. The unnecessary or excessive venting or flaring of natural gas produced from a well is prohibited.

b. Except for gas flared or vented during an upset condition, well maintenance, well stimulation flowback, purging operations, or a productivity test, gas from a well shall be flared or vented only after notice has been given and approval obtained from the Director on a Sundry Notice, Form 4, stating the estimated volume and content of the gas. The notice shall indicate whether the gas contains more than one (1) ppm of hydrogen sulfide. If necessary to protect the public health, safety or welfare, the Director may require the flaring of gas.

c. Gas flared, vented or used on the lease shall be estimated based on a gas-oil ratio test or other equivalent test approved by the Director, and reported on Operator's Monthly Report of Operations, Form 7.

d. Flared gas that is subject to Sundry Notice, Form 4, shall be directed to a controlled flare in accordance with Rule 903.b.(2) or other combustion device operated as efficiently as possible to provide maximum reduction of air contaminants where practicable and without endangering the safety of the well site personnel and the public.

e. Operators shall notify the local emergency dispatch or the local governmental designee of any natural gas flaring. Notice shall be given prior to flaring when flaring can be reasonably anticipated, or as soon as possible, but in no event more than two (2) hours after the flaring occurs.

Table 910-1
CONCENTRATION LEVELS[1]

Contaminant of Concern	Concentrations
Organic Compounds in Soil	
TPH (total volatile and extractable petroleum hydrocarbons)	**500 mg/kg**
Benzene	**0.17 mg/kg[2]**
Toluene	**85 mg/kg[2]**
Ethylbenzene	**100 mg/kg[2]**
Xylenes (total)	**175 mg/kg[2]**
Acenaphthene	**1,000 mg/kg[2]**
Anthracene	**1,000 mg/kg[2]**
Benz(a)anthracene	**0.22 mg/kg[2]**
Benzo(b)fluoranthene	**0.22 mg/kg[2]**
Benzo(k)fluoranthene	**2.2 mg/kg[2]**
Benzo(a)pyrene	**0.022 mg/kg[2]**
Chrysene	**22 mg/kg[2]**
Dibenzo(a,h)anthracene	**0.022 mg/kg[2]**
Fluoranthene	**1,000 mg/kg[2]**

Fluorene	**1,000 mg/kg[2]**
Indeno(1,2,3,c,d)pyrene	**0.22 mg/kg[2]**
Naphthalene	**23 mg/kg[2]**
Pyrene	**1,000 mg/kg[2]**
Organic Compounds in Ground Water	
Benzene	**5 µg/l[3]**
Toluene	**560 to 1,000 µg/l[3]**
Ethylbenzene	**700 µg/l[3]**
Xylenes (Total)	**1,400 to 10,000 µg/l[3,4]**
Inorganics in Soils	
Electrical Conductivity (EC)	**<4 mmhos/cm or 2x background**
Sodium Adsorption Ratio (SAR)	**<12[5]**
pH	**6-9**
Inorganics in Ground Water	
Total Dissolved Solids (TDS)	**<1.25 x background[3]**
Chlorides	**<1.25 x background[3]**
Sulfates	**<1.25 x background[3]**
Metals in Soils	
Arsenic	**0.39 mg/kg[2]**
Barium (LDNR True Total Barium)	**15,000 mg/kg[2]**
Boron (Hot Water Soluble)	**2 mg/l[3]**
Cadmium	**70 mg/kg[3,6]**
Chromium (III)	**120,000 mg/kg[2]**
Chromium (VI)	**23 mg/kg[2,6]**
Copper	**3,100 mg/kg[2]**
Lead (inorganic)	**400 mg/kg[2]**
Mercury	**23 mg/kg[2]**
Nickel (soluble salts)	**1,600 mg/kg[2,6]**
Selenium	**390 mg/kg[2,6]**
Silver	**390 mg/kg[2]**
Zinc	**23,000 mg/kg[2,6]**
Liquid Hydrocarbons in Soils and Ground Water	
Liquid hydrocarbons including condensate and oil	**Below detection level**

COGCC recommends that the latest version of EPA SW 846 analytical methods be used where possible and that analyses of samples be performed by laboratories that maintain state or national accreditation programs.

[1] Consideration shall be given to background levels in native soils and ground water.
[2] Concentrations taken from CDPHE-HMWMD Table 1 Colorado Soil Evaluation Values (December 2007).
[3] Concentrations taken from CDPHE-WQCC Regulation 41 - The Basic Standards for Ground Water.
[4] For this range of standards, the first number in the range is a strictly health-based value, based on the WQCC's established methodology for human health-based standards. The second number in the range is a maximum contaminant level (MCL), established under the Federal Safe Drinking Water Act which has been determined to be an acceptable level of this chemical in public water supplies, taking treatability and laboratory detection limits into account. The WQCC intends that control requirements for this chemical be implemented to attain a level of ambient water quality that is at least equal to the first number in the range except as follows: 1) where ground water quality exceeds the first number in the range due to a release of contaminants that occurred prior to September 14, 2004 (regardless of the date of discovery or subsequent migration of such contaminants) clean-up levels for the entire contaminant plume shall be no more restrictive than the second number in the range or the ground water quality resulting from such release, whichever is more protective, and 2) whenever the WQCC has adopted alternative, site-specific standards for the chemical, the site-specific standards shall apply instead of these statewide standards.
[5] Analysis by USDA Agricultural Handbook 60 method (20B) with soluble cations determined by method (2). Method (20B) = estimation of exchangeable sodium percentage and exchangeable potassium percentage from soluble cations. Method (2) = saturated paste method (note: each analysis requires a unique sample of

at least 500 grams). If soils are saturated, USDA Agricultural Handbook 60 with soluble cations determined by method (3A) saturation extraction method.

[6] The table value for these inorganic constituents is taken from the CDPHE-HMWMD Table 1 Colorado Soil Evaluation Values (December 2007). However, because these values are high, it is possible that site-specific geochemical conditions may exist that could allow these constituents to migrate into ground water at levels exceeding ground water standards even though the concentrations are below the table values. Therefore, when these constituents are present as contaminants, a secondary evaluation of their leachability must be performed to ensure ground water protection.

Statement of Basis, Specific Statutory Authority, and Purpose
New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1

Cause No. 1R Docket No. 1412-RM-02
Enforcement and Penalty Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for new rules and amendments ("Enforcement and Penalty Rules") to the Colorado Oil and Gas Conservation Commission ("Commission") Rules of Practice and Procedure, 2 CCR 404-1 ("Rules"). The Commission promulgated the Enforcement and Penalty Rules on December 15-16, 2014.

The Commission is promulgating the Enforcement and Penalty Rules to implement amendments to Section 34-60-121, C.R.S., enacted by the passage of HB 14-1356 ("Penalty Bill"), and Executive Order D 2013-004, which directed the Commission to review, propose rules, and adopt guidance regarding its enforcement and penalty assessment procedure. The Enforcement and Penalty Rules are also promulgated to make certain Commission rules more consistent, effective, and efficient pursuant to Executive Order D 2012-002. The Enforcement and Penalty Rules are intended to deter noncompliance and encourage operators that are not in compliance to quickly and cooperatively come into compliance. As a result, they are also intended to protect public health, safety, and welfare, including the environment and wildlife resources.

In adopting the Enforcement and Penalty Rules, the Commission relied upon the entire administrative record for this Rulemaking proceeding, which formally began on June 6, 2014, when the Penalty Bill became effective.

Stakeholder and Public Participation

The Commission held stakeholder meetings regarding the proposed Enforcement and Penalty Rules on August 13, 2014, September 18, 2014, and October 3, 2014. The Commission invited and accepted written and verbal comments from stakeholders regarding the proposed Enforcement and Penalty Rules during these stakeholder meetings.

The Commission encouraged public participation in the Rulemaking by allowing the public to comment on the proposed rules in advance of or during the hearing. As well, persons or organizations desiring to do so could participate in the Rulemaking as a party. Parties could submit prehearing statements and comments, including alternative rules or amendments, and respond to the prehearing statements and comments submitted by other parties.

The Commission issued a Notice of Rulemaking Hearing concerning the Enforcement and Penalty Rules on **[October 15, 2014]**.

Statutory Authority

The Commission's authority to promulgate the Enforcement and Penalty Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act ("Act"), §§ 34-60-101 – 130, C.R.S.:

- Section 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules);

- Section 34-60-106(2)(a), C.R.S. (Commission has authority to regulate the "drilling, producing, and plugging of wells and all other operations for the production of oil or gas.");

- Section 34-60-106(2)(d), C.R.S. (Commission has authority to regulate "Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility.");

- Newly amended Section 34-60-121(1) and (7), C.R.S. (Commission has authority to take enforcement action and impose penalties for violations); and

- Section 34-60-130, C.R.S. (Commission has authority to promulgate rules to implement the reporting of spills).

Identification of New and Amended Rules

The Commission adopted amendments to Rules:

- 100-Series Rules.
- 200-Series Rules: 204 and 205.
- 300-Series Rules: 303, 308A, 309, 311, 316A, 316B, 317, 318A, 319, 321, 325, 326, 327, and 330.
- 500-Series Rules: 506, 507, 521, 522, 523, and 530.
- 600-Series Rules: 603 and 605.
- 700-Series Rules: 710.
- 900-Series Rules: 901, 904, 907, 909, and 910.

Overview of Purpose and Intent

The primary purpose for the Commission's promulgation of the Enforcement and Penalty Rules is to implement significant rule and policy changes to the regulatory oversight of oil and gas operations. The necessity for these changes has been

demonstrated by formal action by the executive and legislative branches of Colorado's government.

The Commission is promulgating the Enforcement and Penalty Rules to implement the statutory changes to Section 34-60-121, C.R.S., respond to Executive Order D-2013-004, and address revisions suggested in the *Enforcement and Penalty Policy Review under Executive Order No. D 2013-004* ("*Enforcement and Penalty Policy Review")*. An additional purpose of the Rulemaking is to clarify specific requirements of some Commission rules.

In addition to adopting the Enforcement and Penalty Rules, the Commission is developing an *Enforcement Guidance and Penalty Policy* that will provide interested stakeholders written guidance describing the Commission's enforcement and penalty assessment procedures.

Penalty Bill

The Enforcement and Penalty Rules implement the Penalty Bill, which the General Assembly passed during the 2014 legislative session. The Penalty Bill is codified at Section 34-60-121(1) and (7), C.R.S. (2014), and took effect on June 6, 2014.

The Penalty Bill amended Subsection (1) to explicitly state two purposes of the Commission's enforcement and penalty authority: deter violations and encourage prompt compliance. The amendments also eliminate the existing $10,000 penalty cap for a violation, increase the daily penalty amount from $1,000 to $15,000 for each violation, and call for the Commission to assess a penalty for each day that the evidence demonstrates a violation occurred.

The Legislature also directed the Commission to consider the following presumptions when calculating the days of violation:

- A minor violation begins on the day an operator should have submitted a report or started the corrective action and ends when the operator submits the report or starts the corrective action;

- All other violations begin when the operator discovered or should have discovered the violation and ends when the operator starts the corrective action; and

- The days of violation does not include any period where the operator engages in good faith negotiation with the Commission and prompt, effective, and prudent response to the violation.

Importantly, the amended statute confirms that an operator's violation of a Commission order or Administrative Order by Consent is a separate violation that may result in the Commission assessing additional penalties against the operator.

Amended Subsection (1) requires the Commission to publish a quarterly report about each penalty assessed during the previous quarter. The report must include information regarding the amount of each penalty (both daily and total penalty amounts), whether the penalty was assessed by hearing or administrative order by consent, the days of violation, and whether the violation was part of a pattern of violations.

Amended Subsection (7) requires the Commission to hold a hearing if an operator's alleged conduct was grossly negligent or knowing and willful and caused an egregious violation or demonstrates a pattern of violations. If the Commission finds a violation after one of these types of hearings, it can now issue an order prohibiting the operator from receiving new permits, suspending the operator's Certification of Clearance, or both. If the operator later comes into compliance, the Commission can vacate its order.

Executive Order D 2013-004

Executive Order D 2013-004, signed on May 8, 2013, directed the Commission to review its enforcement program, penalty structure, and imposition of penalties. Similar to language passed by the General Assembly in the Penalty Bill, the Executive Order instructed the Commission to "reevaluate its enforcement philosophy and approach and strive to structure fines and penalties to ensure that operators comply with rules and respond promptly and effectively to any impacts from such violations."

As required by Executive Order D 2013-004, the Commission strategically reviewed its enforcement and penalty assessment program and, on December 10, 2013, issued the *Enforcement and Penalty Policy Review*.

The *Enforcement and Penalty Policy Review* proposed potential changes to Commission Rules 522 and 523, as well as changes to existing Commission enforcement policies and procedures. The following changes to Commission rules were proposed:

1) Establish criteria by rule to decide the degree of actual or threatened adverse impact to public health or the environment resulting from a violation;

2) Reduce the emphasis in current rules to rely upon informal procedures to resolve Notices of Alleged Violations;

3) Require a full hearing before the Commission to resolve an alleged pattern of violations;

4) Revise the Commission's Penalty Schedule (assuming a statutory change to the allowable maximum daily penalty was made) and specified aggravating

and mitigating factors to ensure penalties are appropriate to the nature of a violation;

5) Reduce the time period in which a complainant must object to (i) a decision by the Director to decline to issue a Notice of Alleged Violation and (ii) an Administrative Order by Consent; and

6) Conform existing Commission rules to any changes made to the Act.

The *Enforcement and Penalty Policy Review* proposed the following changes to Commission policies:

a) Develop a Penalty Matrix that establishes base penalties taking into account the seriousness of a violation and the degree of actual or threatened adverse impact to public health, safety, welfare, the environment, or wildlife resources (again, assuming a statutory change to the penalty amount);

b) Limit the extent to which a penalty may be reduced for mitigating factors;

c) Clarify in policy the criteria to be considered to determine the degree of actual or threatened adverse impact to the environment caused by a violation;

d) Retain appropriate flexibility to consider ability to pay when setting a penalty;

e) Allow appropriate penalty mitigation when large remediation costs have been incurred by a violator;

f) Describe in written policy the criteria and factors used to eliminate and consolidate claims that are asserted initially in a Notice of Alleged Violation as written in the field; and

g) Clarify in policy how a pattern of violations is to be determined.

Amendments and Additions to Rules

The most significant changes undertaken in this Rulemaking were to Rules 522 and 523. The changes to those rules are described below separately from changes to the other 500-Series Rules.

Rule 522. Procedures for Alleged Violations

The Enforcement and Penalty Rules substantially revised Rule 522 to describe the Commission's enforcement procedures. The Penalty Bill, Executive Order D 2013-004, and the Commission's *Enforcement and Penalty Policy Review* called for important changes to the existing enforcement procedures, and the Commission revised Rule 522 to implement these changes. In addition, the Commission used the factors set forth in Executive Order 2012-002 to clarify the language of the Rule.

522.a. Identification of Alleged Violations

Subpart (a) was revised to establish how the Commission can identify alleged violations and what persons, i.e. Complainants, can participate in enforcement proceedings. Previously, Subpart (a) regulated numerous aspects of the Commission's enforcement procedures: the receipt of complaints, the Director's discretion to issue a Notice of Alleged Violation ("NOAV"), under what circumstances a Complainant could seek Commission review of an alleged violation, and the NOAV process.

As amended, the Subpart's narrowed scope focuses upon two issues. First, Paragraph (1) describes the Director's discretion to issue an NOAV and is similar to the regulatory language in the previous Rule 522.a.(3). While the Commission eliminated the Rule's narrative description of "reasonable cause," the Commission retained "reasonable cause" as the same threshold determination necessary for the Director to initiate an enforcement action. This "reasonable cause" standard is now described more fully in the *Enforcement Guidance and Penalty Policy*.

Second, Paragraph (2) gives a specific title of "Complainant" to certain categories of persons that submit a complaint to the Director requesting issuance of an NOAV. However, the amendments made no changes to the categories of persons that qualify as Complainants. One of the purposes of the Penalty and Enforcement Rules is to better explain and clarify the NOAV process, so the Commission refined the regulatory language previously in this Subpart and moved the requirements into separate subparts of 522 as explained below.

522.b. Complainant's Rights and Responsibilities

Subpart (b) was revised to describe a Complainant's rights and responsibilities. A Complainant is required to file a Form 18 written complaint to receive these rights. Filing a Form 18 ensures Commission staff has sufficient information to contact the Complainant regarding the complaint and track the issues directly raised by the Complainant. The Commission will continue to improve the clarity and simplicity of the directions and procedures for Complainant's to file Form 18s on its website.

Paragraph (1) requires the Director to investigate any complaint from a Complainant and verify whether evidence supports reasonable cause to believe a violation may have occurred. Further, the Paragraph requires the Director to notify the Complainant of the Director's resolution of the investigation pursuant to the new service Rule 521. The revised Rule maintains the Complainant's ability to comment on an Administrative Order by Consent ("AOC") at this stage in the process.

The amendments to this Subpart combine language from Rule 522.a.(4) and 522.b.(4) that described a Complainant's ability to file an application for an Order Finding Violation ("OFV") hearing if the Director does not issue an NOAV or if the Complainant objects to the settlement terms in an AOC. The new Rule also clarifies

that a Complainant may only comment or object to the "settlement terms" of an AOC "settling an alleged violation arising directly from the complaint." These changes ensure that an enforcement action can progress efficiently, while still affording a Complainant the ability to participate in the resolution of issues directly identified by the Complainant.

These revisions also clarified and changed some of the procedures for a Complainant's filing of an OFV application. First, the time period within which a Complainant must file an application for an OFV hearing was also condensed from 45 days to 21 days to allow for the expedient resolution of enforcement actions, in accordance with the suggestion provided in the *Enforcement and Penalty Policy Review*. Complainants will be informed of the proposed terms of an AOC before those terms are finalized. In most cases Complainants will know before they receive notice whether they intend to protest the AOC. Thus, 21 days should be sufficient time in which to file a notice-pleading stating the grounds of their protest and requesting an OFV hearing.

In addition, the Rule also clarifies the service procedures for a Complainant's OFV hearing application. The failure to a Complaint to properly serve an application under this Rule prevents the Commission from hearing the Complainant's application because proper service is a jurisdictional prerequisite for a Commission hearing. Consistent with the previous Rules, a Complainant bears the burden of proof in an OFV hearing initiated by the Complainant under this Subpart.

522.c. Resolution of Alleged Violations without Penalties

Subpart (c) was revised to better describe the limited situations in which the Director has the discretion to resolve alleged violations without seeking penalties. The Commission developed the procedure now codified in Subpart (c) during its implementation of Colorado's LEAN Process, which focused Colorado's agencies on making their procedures more effective, efficient, and elegant.

Consistent with the purpose of encouraging operators to swiftly come into compliance as articulated in the Penalty Bill and Executive Order D 2013-004, a resolution without penalties is only available if the operator timely performs all corrective actions and promptly returns to compliance. Further, resolution without penalties is only available if all of the following elements apply: the rule allegedly violated is either Class 1 or Class 2, as described in Rule 523; the operator has not previously received a Warning Letter or Corrective Action Required Inspection Report for the same or substantially similar violation; and the Director determines the alleged violation has not caused adverse environmental impacts, does not pose a threat of adverse impacts, and can be corrected quickly. Corrective Action Required Inspection Reports replace the Commission's current Unsatisfactory Inspection Reports.

If the Director chooses to resolve the alleged violation without penalties because all of the elements in Paragraph (1) apply, Paragraph (3) specifies the procedure to be followed, as well as consequences if the operator fails to come into compliance.

The changes to Subpart (c) also incorporate the *Enforcement and Penalty Policy Review's* recommendation to reduce the emphasis on informal resolution of alleged violations in three ways. First, the language that "informal procedures to resolve issues raised by an NOAV with the Director are encouraged" was completely removed. Second the amendments limit the situations in which the Director can resolve an alleged resolution without initiating an enforcement action. Finally, the Director retains the discretion to pursue an enforcement action even if all of the criteria to resolve an alleged violation without penalties are satisfied in Paragraph (2) and (4)B.

522.d. Enforcement Actions Seeking Penalties for Alleged Violations

Subpart (d) describes the procedure to initiate an enforcement action for an alleged violation for which the Commission is seeking penalties. Regulatory language from the previous version of Rule 522.a. regarding the NOAV process was relocated to this Subpart to describe the NOAV process in more detail and provide for general procedural matters. Locating this process in a different subpart further distinguishes it from those violations that qualify for resolution without penalties.

The Director commences an enforcement action by issuing an NOAV and the Rule specifies what information an NOAV may contain. Subpart (d)(2) now requires an operator to file an answer to an NOAV within 35 days, and provides that the Director may ask the Commission to enter a default judgment if an answer is not timely filed. This new answer requirement is intended to help Commission staff evaluate the alleged violation based on information from the operator and decide how to proceed next in the enforcement process. An answer also confirms that the operator is aware of the violation.

Paragraph (3) combines procedural matters that were previously spread throughout Rule 522. In addition, this paragraph also clarifies that service of an NOAV is the "commencement of an action or other proceeding" for purposes of § 34-60-115, C.R.S.

522.e. Resolution of Enforcement Actions

Subpart (e) was added to describe the process by which enforcement actions seeking penalties can be resolved and contemplates resolution by AOC under Paragraph (1) or by an OFV hearing under Paragraph (2).

The process for resolution by AOC in Paragraph (1) builds upon and clarifies language previously in 522.b.(3) regarding how an AOC is developed and the process by which it is presented to the Commission for review and approval. It also describes the involvement of a Complainant in the AOC process to ensure a Complainant has the opportunity to participate in resolving violations that the

Complainant directly identified. As well, the amendments clarify that a matter is remanded to the Director if the Commission does not approve the AOC.

Importantly, and consistent with the Penalty Bill and *Enforcement and Penalty Policy Review*, the Director cannot settle certain violations by AOC. Paragraph (2)(A) requires an OFV hearing before the Commission to resolve an alleged violation in three scenarios:

- The Director alleges the operator is responsible for gross negligence or knowing and willful misconduct that resulted in an egregious violation;
- The Director alleges the operator has engaged in a pattern of violations; or
- A Complainant files a timely application for an OFV hearing pursuant to Rule 522.b.(2).

The first two scenarios incorporate the Penalty Bill's mandatory hearings and the third codifies an already-existing requirement.

Paragraph (2)(B) describes the procedures for the Director to commence an OFV hearing whether the hearing is discretionary or mandatory. To commence a discretionary OFV hearing, the Director need only serve the NOAV and Notice and Application for Hearing. However, to commence an OFV hearing for one of the three mandatory hearing scenarios in Paragraph (2)(A) above, the Director is required to file a Notice and Application for Mandatory OFV Hearing. The different procedures are designed to notify operators at the outset whether the violation can be resolved by AOC. The Rule also reiterates how a Complainant may commence an OFV hearing and the Commission may initiate an OFV hearing by its own motion.

This paragraph clarifies that OFV hearings not governed by one of the circumstances in which a hearing is mandatory are commenced by service of the NOAV and Notice and Application for Hearing, without a separate application filed by the Director. In addition, in order to make sure that parties have time to prepare for hearing if settlement is not achieved, the amendments ensure that the OFV hearing will commence on the date stated in the Notice and Application for Hearing unless parties agree to an AOC not less than 7 days prior to that date. If the parties reach agreement on an AOC less than 7 days prior to the hearing, the parties may advise the Commission of this fact at the hearing and not engage in a full evidentiary hearing if the Commission determines it is unnecessary.

Paragraph (2)(C) explains the OFV prehearing and hearing procedures. The revised Rule also grants the Director the option to intervene as a matter of right in a Complainant's OFV hearing. Previously, the Director was a necessary party pursuant to Rule 522.c.(5). The discretionary intervention allows the operator and Complainant, which are the parties in dispute, to present the matter without consuming Commission staff's resources. Even if the Director does not intervene, Commission staff will still be available to answer technical and administrative

questions as the Commission requires during the proceeding. In addition, staff may also always present analysis without being a party to the proceeding.

522.f. Failure to Comply with Commission Orders

Subpart (f) was added to Rule 522 to conform with Section 34-60-121(1)(c)(I)(C), C.R.S., as amended by the Penalty Bill. Rule 522.f. provides that an operator's failure to implement corrective action required by an AOC, OFV, or other Commission order is a new violation independent of the original underlying violation. Consequently, an operator may be assessed penalties or required to perform additional corrective action if an operator fails to timely comply with the requirements of an AOC, OFV, or other Commission order.

The violation of a Commission enforcement order is a Class 3 violation in the Commission's Penalty Schedule, Table 523-1, because of its significant deviation from the purposes of the Penalty Bill, Executive Order 2013-004, and the *Enforcement and Penalty Policy Review*. The violation of a Commission general or field order is a Class 2 violation.

522.g. Cease and Desist Orders

Subpart (g) clarifies the previously existing regulatory language regarding the Commission's issuance of cease and desist orders. As amended, the Subpart makes clear that the Commission may issue a cease and desist order when an operator's alleged violation creates an emergency situation. The Director can also issue a cease and desist order under the same circumstances; however, the order must be reported to the Commission for review and approval. A cease and desist order is now served pursuant to the new general service Rule 521. Further, the Commission amended the Subpart to ensure that corrective actions required to address the emergency situation will not be stayed if an operator protests the cease and desist order. In an emergency situation, promptly undertaking corrective action is critically important to protecting the public health, safety, and welfare, including the environment and wildlife resources, from further harm. The Subpart was also clarified to address the process by which the Commission will hear an operator's protest of a cease and desist order.

Rule 523. Procedures for Assessing Penalties

Similar to Rule 522, the Commission's Rulemaking substantially revised Rule 523, which outlines the procedure for assessing penalties for a violation. Passage of the Penalty Bill eliminated the $10,000 penalty cap for a violation, increased the daily penalty amount from $1,000 to $15,000 for each violation, and called for the Commission to assess a penalty for each day that evidence demonstrates a violation occurred. The Penalty Bill also specified presumptions the Commission must incorporate into its Rule governing the calculation of a violation's duration to assess

penalties. The statutory changes as well as the Commission's recommendations in the *Enforcement and Penalty Policy Review* necessitated revisions and additions to Rule 523.

523.a. General

Subpart (a) was revised to focus the Subpart on providing only a general overview of the Commission's penalty assessment procedure. Paragraphs (1) – (4) were removed because the Paragraphs describe the Commission's historic procedure to assess penalties, and do not conform to the procedure established in Section 34-60-121, C.R.S.

523.b. Days of Violation

The Commission created a new Subpart (b) to explain how the duration of a violation is calculated. Because the $10,000 cap on the penalty per violation was eliminated by the Penalty Bill, many violations can potentially persist for multiple days and continue to accrue daily penalties if the operator does not commence corrective action.

Section 34-60-121(1), C.R.S., directed the Commission to assess the duration of a violation based on several presumptions. These presumptions largely codify existing Commission practice and the analysis set forth in the *Enforcement and Penalty Policy Review*. However, these practices were not previously established by rule. Based on these amendments, the Commission will presumptively assess the duration of a minor violation from the day an operator should have submitted a report or started the corrective action until the day the operator submits the report or commences corrective action. For all other violations, the Commission will presumptively assess penalties from the day the operator discovered or should have discovered the violation until the day the operator commences corrective action.

Revisions to Paragraphs (1) and (2) incorporate this language into the Rule and also provide examples of what an operator can do to commence corrective action. For circumstances that may qualify as commencing corrective action but are not included in this list, operators will need to demonstrate measures have been taken to control or contain immediate threats to public health, safety and welfare, including the environment and wildlife resources.

Paragraphs (3) and (4) were added to conform the Rule to the new statutory language. Under Paragraph (3), the Commission will assess a penalty for each day the evidence shows a violation continued, which amendment fulfills the Penalty Bill's directive codified at Section 34-60-121(1)(e), C.R.S. Lastly, Paragraph (4) explains that operators may have daily penalties subtracted from the total penalty amount for days during which the operator is engaged in good faith negotiation with the Commission concerning required corrective actions, or is waiting on a response from the Director on a proposed work plan.

523.c. Penalty Calculation

Subpart (c) was added to reflect the General Assembly's changes to the penalty cap and maximum penalty amount per violation, the *Enforcement and Penalty Policy Review's* recommendations, and the Governor's directives to establish minimum fine amounts for egregious or aggravating circumstances and to apply the statutory maximum as necessary to protect public health, safety, welfare, and environment.

The four paragraphs in Subpart (c) establish a step-by-step procedure for the Commission to follow when assessing a penalty: first, determine the base penalty for the violation; second, determine the daily penalty amount by increasing the base amount if the violation caused actual or threatened adverse impacts to public health, safety, and welfare, including the environment and wildlife resources; third, adjust the penalty per violation for aggravating or mitigating factors; and fourth, adjust the daily penalty amount for violations of long duration, if appropriate.

Section 34-60-121(c)(I) directs the Commission to establish a penalty schedule "appropriate to the nature of the violation." Executive Order D 2013-004 directs the Commission to "ensure that the penalties assessed are appropriate for the gravity of violations," which emphasizes the Commission's responsibility to classify violations. Previously, the maximum penalty for a violation of most Commission rules was a $1,000 base penalty due to the language in the Act before the Penalty Bill amended it.

Base Penalty

Paragraph (1) assigns a base penalty amount depending on the classification of the violation according to the Commission's Penalty Schedule. The base penalty amount does not account for a violation's threatened or actual harm because the Commission separately adjusts the penalty amount for "harm" pursuant to Paragraph (2). The Commission assigned base penalties for violations by considering: 1) the core principles of deterring non-compliance and encouraging prompt return to compliance when violations do occur; 2) the severity of potential harm associated with a violation of specific rules, ranging from "ministerial" rules to rules directly related to protection of public health, safety, and welfare, including the environment and wildlife resources; and 3) the new statutory maximum of $15,000 per day. The base penalty assumes there has been no actual or threatened harm.

The Commission has assigned rule classes to particular violations depending on the severity of the violation. The severity of a violation was determined by the consequences of a particular violation generally, without the application of particular circumstances of a case, and how great of a risk the violation of the rule was to the Commission's statutory mandate to foster responsible, balanced development and protect public health, safety, and welfare, including the environment and wildlife resources. Rule violations were classified as Class 1, 2, or

3 violations in the Penalty Schedule, Table 523-1. Rules described as N/A are administrative or descriptive and generally do not impose any specific requirements on operators. This classification is intended to provide consistency in how different operators are penalized for violations of the same rule by establishing a uniform base penalty. However, based on the circumstances of an alleged violation, the Rule grants the Director discretion to reclassify a discrete subpart of a Rule if the alleged violation of the subpart has different potential consequences from a violation of the remainder of the Rule.

The Commission relied upon the Penalty Bill's characterization of minor or other reporting violations to establish Class 1 violations and further defined them as those violations that do not present a direct risk. The Commission classified rules as Class 3 if a violation of the rule could per se cause harm and/or has a significant probability of impacting the elements of the Commission's statutory mandate. The Commission classified rules as Class 2 if they were more severe than Class 1, because they may cause harm, but were less severe than a Class 3 violation.

Daily Penalty

Paragraph (2) adds a second element to the daily penalty calculation: the degree of actual or threatened adverse impact resulting from a violation. This element takes into account the actual circumstances of a particular violation. For example, this element takes into account whether there was a water source nearby that was threatened or whether public property was damaged in this particular case. This fulfills Executive Order 2013-004's directive to "apply the statutory maximum as necessary to protect public health, welfare, safety, and the environment" and results in a case-specific analysis missing from the generic rule classification that establishes the base penalty amount as described above.

Aggravating and Mitigating Factors

Paragraph (3) amended the aggravating and mitigating factors the Commission can use to increase or decrease the penalty, which were previously listed in Rule 523.d. The Commission deleted three aggravating factors because Paragraph (2) obligates the Commission to adjust the base penalty amount for these same factors. The deleted aggravating factors were:

- The violation had a significant negative impact, or threat of significant negative impact, on the environment or on public health, safety, or welfare.
- The violation resulted in or threatened to result in significant loss or damage to private or public property.
- The violation results in significant, avoidable loss of wildlife or wildlife resources, including the ability of the land to produce vegetation supportive of wildlife.

The Commission also deleted the following aggravating factor, due to the addition described below:

- The violation was intentional or reckless.

The Commission added the following aggravating factors to fulfill the directive of Executive Order 2013-004:

- The violator acted with gross negligence or knowing and willful misconduct.

- The violator has engaged in a pattern of violations.

The first aggravating factor now incorporates the Act's contemplation of different treatment for these types of violations; however, it does not limit the aggravating factor to instances that resulted in an "egregious violation," which is a requirement for a mandatory OFV hearing. In order to have consistency, these terms replaced the previous state-of-mind terms of "intentional" and "reckless." The changes to the aggravating and mitigating factors also include minor adjustments to the language and phrasing in order to make them as clear as possible. There are now seven aggravating and seven mitigating factors.

Violations of Long Duration

Paragraph (4) was added to implement the directive to maintain appropriate flexibility required by the Executive Order D 2013-004 and the *Enforcement and Penalty Policy Review*. The Executive Order directed the Commission to develop penalty rules that "where applicable, allow a reasonable amount of flexibility and discretion." The *Enforcement and Penalty Policy Review* proposed adjustments for violations of long duration modeled after Colorado Environment and Public Health Department agencies' enforcement and penalty policies. Moreover, the Commission calculated penalties for violations of long duration from past enforcement examples and determined that a method for adjustment was necessary to ensure that the penalty is appropriate.

The Paragraph grants the Commission discretion to decrease the daily penalty amount for violations of long duration so long as the penalty amount is appropriate given the nature of the violation. The adjustment is described in further detail in the Commission's *Enforcement Guidance and Penalty Policy*.

Rule 523.d. Pattern of Violations, Gross Negligence or Knowing and Willful Misconduct

Subpart (d) was added to Rule 523 to incorporate changes from the Penalty Bill. The regulatory language in Paragraph (1) now implements the Bill by requiring the Director to apply for an OFV hearing if the Director determines an operator has engaged in a pattern of violations or acted with gross negligence or knowing and willful conduct and the actions caused an egregious violation.

Paragraph (2) also implements the Penalty Bill by stating the additional remedies the Commission may impose if it finds an operator has engaged in a pattern of violations or acted with gross negligence or knowing and willful conduct to cause an egregious violation. Under the previous rules, the Commission could only withhold new permits and could only withhold them for a pattern of violations. With its new statutory authority, the Commission can now suspend an operator's Certification of Clearance or withhold issuing new permits, or both, under either circumstance. The ability to impose this type of strict enforcement measure, when an operator does not take necessary measure to remediate significant adverse impacts to public health or the environment, furthers the important purpose of Executive Order 2013-004 and the Penalty Bill. The revised rule also authorizes the Director to lift the suspension if the operator demonstrates to the Director's satisfaction that the operator has brought each violation into compliance and paid all penalties.

A pattern of violations is a history of repeated abuse or violation of the Act, Commission Rules, orders, and/or permits that demonstrates an operator's habitual disregard of those legal requirements. Paragraph (3) clarifies the four non-exclusive factors the Commission may use to determine whether an operator has engaged in a pattern of violations, as suggested by the *Enforcement and Penalty Policy Review*. The four identified factors are: the number of NOAVs an operator receives as a percentage of the wells it operates; how frequently the operator violates the same or similar requirements; number of warning letters or corrective action required inspections an operator receives during a span of years; and any other factors to objectively determine whether an operator has a pattern and practice of noncompliance.

Rule 523.e. Voluntary Disclosure

A variation of Subpart (e) formerly existed as Subpart (b) to the Rule. Subpart (b) was rarely used. Operators may not have previously exercised the voluntary disclosure option, because it was limited to disclosures of a "significant adverse impact on the environment or of a failure to obtain or comply with any necessary permits." However, because voluntary disclosure can help meet the goals of avoiding non-compliance and quickly returning to compliance, the Commission has adjusted the provision to increase its utility.

Under Subpart (e), an operator must discover a violation that it voluntarily discloses as result of an implemented "regulatory compliance program," instead of through a "voluntary self-evaluation." The definition of a "regulatory compliance program" was added to the 100-Series Rules and is further explained in the enforcement guidance. An operator that invokes subpart 523.e. should be prepared to demonstrate that the regulatory compliance program is an established part of the operator's routine operating procedures. Indicia of such a program might include evidence of regularly scheduled compliance audits; clear assignments of specific personnel responsible for conducting compliance audits, as well as management-level personnel responsible for the audit program; paperwork associated with the

company's compliance audits (e.g., checklists or standard operating procedures for conducting audits); and reports generated as a result of compliance audits. The amendments did not otherwise change the conditions an operator must satisfy to receive the rebuttable presumption of a penalty reduction amount.

As amended, the voluntary disclosure presumptive penalty reduction can now apply to any violation of the Act, or any Commission rule, order, or permit. However, the amendments expand the situations where the presumptive reduction does not apply and decrease the minimum presumptive amount of penalty reduction to reflect the priorities set forth in the Penalty Bill. The voluntary disclosure presumption will not apply to violations that are part of a pattern of violations or were the result of the operator's gross negligence or knowing and willful misconduct. In addition, the presumptive penalty reduction is a minimum of 35% of the potential penalty for the disclosed violation and the Director has discretion to increase the penalty reduction percentage, including to eliminate a penalty entirely.

These adjustments to the voluntary disclosure presumption are designed to balance the directive from the Governor in Executive Order D 2013-004 and the General Assembly in the Penalty Bill to (1) strongly deter violations by ensuring penalties are appropriate and (2) encourage operators to promptly and cooperatively correct violations by providing a mechanism to reduce penalty amounts under certain conditions. Further, the Commission anticipates operators implementing a regulatory compliance program will operate at the highest standard and be more protective of the public health, safety, and welfare, including the environment and wildlife resources.

Rule 523.f. Public Projects

Subpart (f) previously existed in Rule 523 as Subpart (e). The revised Subpart requires that the public project must benefit the public health, safety, and welfare, including the environment and wildlife resources for an operator to offset costs. The amendments also clarify that an operator must voluntarily undertake the public project and an operator cannot offset costs of a public project if the operator is otherwise legally required to undertake the project. Subpart (f) grants the Commission discretion in approving a dollar-for-dollar or some lesser ratio offset of project cost to penalty amount.

Rule 523.g. Payment of Penalties

Subpart (g) regarding payment of penalties formerly existed in Rule 523 as Subpart (f). The Commission clarified the language of this subpart, but did not make any substantive changes to this subpart.

Other Rule Additions and Amendments

The Commission made the following additions and amendments to the below-listed rules. These changes were primarily designed to clarify specific details of these rules or to conform them to the amendments to Rules 522 and 523.

100-Series Rules

Bradenhead was defined to provide greater clarity for Rules 207.b. and 341.

Container was amended to provide a non-exhaustive list of examples.

Produced Water Pits was amended to clarify that the definition includes pits that service multiple wells on an oil and gas location.

Regulatory Compliance Program was added to define for operators what the Commission would require from a program for an operator to voluntarily disclose a violation pursuant to Rule 523.

Suspended Operations Well was added to clarify suspended well operations and that they do not include wells in which only conductor pipe has been set and the well has not yet been spud. The definition was added to ensure operators could comply with the mechanical integrity testing requirements in amended Rule 326.d.

Tank was amended to clarify that separation equipment and process vessels, other than gun barrels, are not included within the Commission's definition of "tank."

Temporarily Abandoned Well, as clarified, is now defined as a well that has all downhole completed intervals isolated with a plug that an operator sets above the highest perforation. Setting the plug in this way ensures the well cannot produce without removing the plug.

Voluntary Self-Evaluation was deleted because the Commission changed regulatory language in Rule 523 from voluntary self-evaluation to regulatory compliance program.

Waiting on Completion Well was added and defined as a well that an operator has drilled and cased to the final depth but has not perforated. The definition was added to ensure operators could comply with the mechanical integrity testing requirements in amended Rule 326.d.

200-Series Rules

204. was amended to change the title to accurately reflect the Rule's substantive requirements.

205.c. was amended with the addition of non-vehicular. This was added to make it clear that the existing requirement to track fuel storage is applicable to only fuel stored in tanks that are not part of the vehicle. Fuel stored in saddle tanks on the vehicle, in tanks mounted on the bed and attached to the vehicle, or in a tanker trailer used to transport fuels are not required to be tracked.

300-Series Rules

308A.a. was clarified to require an operator to submit a "Preliminary" Drilling Completion Report, Form 5, within 90 days of suspending drilling activities only if the operator has not resumed drilling operations.

308A.b. was clarified to state what information an operator must include in a "Final" Drilling Completion Report, Form 5. As well, the requirements regarding Drilling Completion Report, Form 5, that were previously located in Rule 317.e. were consolidated in 308A.b. to make the Rules easier to understand and more efficient.

316A.a. was clarified to include examples of Class II wastes that an operator can inject into any formation in a dedicated Class II Underground Injection Control well with prior approval from the Commission. The clarification should make compliance with the Rule easier to understand.

317.e. was clarified to ensure consistent and effective regulatory oversight. The clarified Rule requires operators to obtain the Commission's approval before operators make changes to gross interval perforations in completed formations. As well, the requirements regarding Drilling Completion Report, Form 5, previously found in Rule 317.e. were consolidated into 308A.b.

317.r. was added to codify an engineering control that better protects people and the environment and has been utilized by the Commission as a condition of approval on permits for a year. The Rule now requires operators to perform an anti-collision evaluation of all existing offset wellbores that may be within 150 feet of a proposed well. An operator must perform the evaluation before drilling the well and must include surveys of the offset wells. Only if the results of the evaluation show that drilling the proposed well will not risk collision or harm to people or to the environment can the operator drill the well. If the well is drilled, the operator must submit an as-constructed gyro survey with the Drilling Completion Report, Form 5, to the Commission when drilling operations are complete.

317.s. was moved from current Rule 318.A.n and moved into Rule 317 to create a fracture stimulation setback between wellbore's treated intervals applicable statewide instead of just applying to the Greater Wattenberg Area ("GWA"). If a proposed wellbore's treated interval will be located within 150 feet of an existing oil or gas wellbore's treated interval owned by a different operator, the operator of the

proposed well must submit a signed written consent from the operator of the encroached upon well with the Application for Permit-to-Drill, Form 2A similar setback applied to fracture-stimulated wells in the GWA under Rule 318.A.n., but the GWA-specific rule was eliminated during the Rulemaking because the Commission adopted a statewide setback.

318A.f.(5), as amended, clarifies that sampling analysis shall comply with Rule 910.b.(2) and that the same sampling standards and analysis are required under Rule 318 as Rule 609.

318A.n. was deleted because the Commission amended Rule 317.s. to include a fracture stimulation setback requirement to all wells throughout the state, not just fracture stimulated wells in the GWA.

319.a.(1) was amended to describe the steps an operator must complete before setting a cement plug. The amended regulations codify the API standards and engineered controls as requirements to consistently and efficiently regulate plugging requirements for abandoning a well.

321 was clarified to make the Rule easier to understand.

325.c.(7) and 325.d.(6) were clarified to state that the Commission's intent is that the maximum or minimum amount stated on the permit is an absolute, not an estimate.

326.d. was added to state what mechanical integrity tests are required for wells that are waiting-on-completion or in suspended operations. The revision ensures consistent regulatory oversight because it requires operators to perform integrity testing on these types of wells. The definitions of waiting-on-completion and suspended operations wells were added to the 100-Series Rules.

327 was revised to explain what constitutes a significant well control event for purposes of the Rule. The revision will make the Rule more effective as it assists operators seeking to comply with the reporting requirements of Rule 327. A significant well control event occurs when formation fluids flow into the wellbore unexpectedly and gaining well control requires increasing the weight of mud already in the well by 4% or more.

500 Series Rules

506.a. was amended to require an applicant to submit an application for a hearing no later than 70 days in advance of the date that the applicant requests the Commission to hear the matter, which allows additional time to prepare or resolve the matter. The Secretary retains the discretion to accept applications filed within 70 days of the requested hearing date.

507.a.(1) was amended to allow additional time between the notice of hearing and the hearing. Presently, the Commission must provide notice 20 days before a hearing to the persons identified in Rule 507. The Rule now requires the Commission to provide notice at least 35 days in advance of the hearing to the persons identified. The amendment affords involved parties additional time to prepare or reach resolution.

521 was formerly "reserved," but has now been utilized to describe the requirements necessary to serve a person when service is required by the Rules. The inclusion of a Rule dedicated to service is intended make service procedures easier to understand and locate the requirements for service in a single Rule. Where the term "electronically" is used in this rule, it refers in most cases to email, but could also refer to the faxing of documents if such service is necessary.

530.a. was amended to accord with current Commission practice. The Rule now states that an application for involuntary pooling becomes effective either on the date the operator filed the application with the Commission or on a date determined by the Commission. Some circumstances may demand a different effective date and the Commission wants to ensure its flexibility if those circumstances arise.

600 Series Rules

603.e.(3) now requires operators to test blowout prevention equipment using both high and low pressure tests following API Recommended Practice 53 with one modification: 250 psi is the minimum pressure for a low pressure test. For operators testing rig pumps against casing, the resulting pressure loss cannot be more than 10%. For operators using a test plug to isolate casing from the blowout prevention equipment, there cannot be any pressure loss from a test. Codifying best management practices for testing blowout prevention equipment better protects the public health, safety, and welfare, including the environment and wildlife resources.

700 Series Rules

710 was changed to "Reserved," because it previously described the Oil and Gas Conservation and Environmental Response Fund, which is duplicative of the Act and outdated due to statutory amendments. House Bill 14-1077 raised the cap for the fund from $4 million to $6 million.

900 Series Rules

901.e. has been clarified to include examples of acceptable methods to gather data for sensitive area determinations. This clarification makes the Rule easier to

understand and is intended to increase consistency in gathering data for sensitive area determinations.

904.a. was amended to clarify that pits constructed before May 1, 2009 on federal land or before April 1, 2009 on other land must also comply with permit conditions existing when the pit was constructed. This clarification makes the Rule easier to understand and is intended to ensure consistency in the regulation of pits.

904.b. was clarified to state subpart (b) applies to all pits that are required to be lined by either rule or permit condition. This clarification is intended to ensure consistent, effective regulation of all lined pits.

907.c.2.(D) was clarified to state an operator may only use road spreading to dispose of produced water with an approved waste management plan. This clarification is intended to ensure consistent, effective regulation of produced water disposal.

907.e.(2) was amended to require operators to submit a Site Investigation and Remediation Work Plan, Form 27, and receive the Director's approval before beginning land treatment of any oily wastes. As well, the land treatment cannot interfere with an operation's compliance with Rules 1003 and 1004 and must comply with Rules 909 and 910. Previously, a Site Investigation and Remediation Work Plan, Form 27, was only required if land treatment onsite caused a threatened or significant adverse environmental impact. The amendment also clarified that operators must notice the surface owners of land proposed to be treated with oily waste if on an Oil and Gas Location. This clarification is intended to ensure consistent, effective regulatory oversight of operators disposing of oily waste via land treatment. As well, the amendments are better protective of the public health, safety, and welfare, including the environment and wildlife resources.

910.b.(3)(E) was amended to require analyzing hydrocarbon-impacted soils for organic compounds identified in Table 910-1 other than Total Petroleum Hydrocarbons ("TPH") as determined by site-specific conditions and process knowledge. Before the Rulemaking, hydrocarbon-impacted soils had to be analyzed for TPH. The Rule, as amended, is better protective of the public health, safety, and welfare, including the environment and wildlife resources.

Effective Date

The Commission adopted the Enforcement and Penalty Rules, which add new rules and clarify and amend other Rules, at its hearing on December 15-16, 2014 in Cause No. 1R Docket No. 1412-RM-02 are effective per Section 24-4-103, C.R.S.

Notice of Rulemaking Hearing

Tracking number

2014-01072

Department

100,800 - Department of Personnel and Administration

Agency

801 - State Personnel Board and Division of Human Resources

CCR number

4 CCR 801-1

Rule title

PERSONNEL BOARD RULES AND PERSONNEL DIRECTOR'S ADMINISTRATIVE PROCEDURES

Rulemaking Hearing

Date

11/14/2014

Time

09:30 AM

Location

1525 Sherman St. Room 513, Fifth Floor, Denver, CO 80203

Subjects and issues involved

align rules 5-19 and 5-20 with Family Care Act

Statutory authority

Colo. Const art. XII; C.R.S. 24-50-101 et seq,.; C.R.S. 8-13-201 et seq.

Contact information

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[PUBLISHING INSTRUCTIONS: To precede Chapter 1]

Preamble

Unless otherwise noted in a specific provision, the State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 5, 2005, pursuant to a Statement of Basis and Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005.

This version reflects rulemaking by the State Personnel Director as follows: to modify Procedure 5-19 and Procedure 5-20 effective January 14, 2015 to align with the Family Care Act.

[PUBLISHING INSTRUCTIONS: Publish to replace procedures 5-19 and 5-20]

Family/Medical Leave (FML)

5-19. The state is considered a single employer under the Family and Medical Leave Act (FMLA) and complies with its requirements, ~~as well as~~ the Family Care Act, and the following rules for all employees in the state personnel system. Family/medical leave cannot be waived. ~~(5/1/10)~~ (1/14/15)

5-20. FML is granted to eligible employees for: (1) birth and care of a child and must be completed within one year of the birth; (2) placement and care of an adopted or foster child and must be completed within one year of the placement; (3) the serious health condition of an employee's parent, child under the age of 18 or an adult child who is disabled, ~~or~~ spouse, partner in a civil union, or registered domestic partner for physical care or psychological comfort; (4) an employee's own serious health condition; (5) active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or, (6) military caregiver leave for a parent, child, spouse, or next of kin who suffered a serious injury or illness in the line of duty while on active duty. Military caregiver leave includes time for veterans who are receiving treatment within 5 years of the beginning of that treatment. Definitions of a serious health condition and health care provider are in the "Definitions" section of the "Organization, Responsibilities, Ethics, and Definitions" chapter. ~~(5/1/10)~~ (1/14/15)

[PUBLISHING INSTRUCTIONS: Publish to replace previous preamble; precede Chapter 1]

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Unless otherwise noted in a specific provision, the State Personnel Director's Administrative Procedures were adopted by the State Personnel Director on May 5, 2005, pursuant to a Statement of Basis and Purpose dated May 5, 2005. Such rules and procedures were effective July 1, 2005.

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5-20. FML is granted to eligible employees for: (1) birth and care of a child and must be completed within one year of the birth; (2) placement and care of an adopted or foster child and must be completed within one year of the placement; (3) the serious health condition of an employee's parent, child under the age of 18 or an adult child who is disabled, spouse, partner in a civil union, or registered domestic partner for physical care or psychological comfort; (4) an employee's own serious health condition; (5) active duty military leave when a parent, child, or spouse experiences a qualifying event directly related to being deployed to a foreign country; or, (6) military caregiver leave for a parent, child, spouse, or next of kin who suffered a serious injury or illness in the line of duty while on active duty. Military caregiver leave includes time for veterans who are receiving treatment within 5 years of the beginning of that treatment. Definitions of a serious health condition and health care provider are in the "Definitions" section of the "Organization, Responsibilities, Ethics, and Definitions" chapter. (1/14/15)

Notice of Rulemaking Hearing

Tracking number

2014-01090

Department

900 - Department of Law

Agency

901 - Peace Officer Standards and Training Board

CCR number

4 CCR 901-1

Rule title

PEACE OFFICER TRAINING PROGRAMS AND PEACE OFFICER CERTIFICATION

Rulemaking Hearing

Date

11/21/2014

Time

10:00 AM

Location

1300 Broadway, 1st Floor, Denver CO 80203

Subjects and issues involved

Amendments to: Rule14 establishes equivalent municipal ordinances as basis for non-certification or decertification; Rule 17 requires certified officers to maintain their personal information records; Rule 20 updates the title of the course materials for VIN Inspector certification; Rule 21 updates language for acceptable media for instructors and adds language re wellness training and required materials; New Rule 28 creates minimum requirements for annual in-service training and reporting.

Statutory authority

24-31-303(1)(g)

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COLORADO DEPARTMENT OF LAW
PEACE OFFICER STANDARDS AND TRAINING BOARD

RULES CONCERNING FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK, CERTIFICATION RECORDS, VEHICLE IDENTIFICATION NUMBER INSPECTOR PROGRAMS, BASIC AND RESERVE TRAINING ACADEMIES, AND IN-SERVICE TRAINING PROGRAM

STATEMENT OF BASIS, STATUTORY AUTHORITY, AND PURPOSE

Pursuant to sections 24-31-303 (1) (g), (l) and (m), C.R.S., the Colorado Peace Officer Standards and Training Board (POST) has the authority and duty to promulgate rules and regulations deemed necessary by such board for the certification of applicants to serve as peace officers or reserve officers in the state, to promulgate rules deemed necessary by such board concerning annual in-service training requirements, and to promulgate rules as the board may deem necessary or proper to carry out the provisions and purposes of article 4 of Title 24.

Amendments are proposed to Rule 14 to include a municipal ordinance as a basis for not obtaining certification if the municipal ordinance is the equivalent of any enumerated felony or misdemeanor in section 24-31-305 (1.5) and to change the required fingerprint card for certification criminal history checks to a POST Applicant Fingerprint Card.

Amendments are proposed to Rule 17 to require POST certificate holders to maintain records on his or her certification and to use the POST portal in doing so.

Amendments to Rule 20 concern the use of the National Insurance Crime Bureau Passenger and Commercial Vehicle Identification Manual for a Vehicle Identification Number Inspector Program and requiring the program director to submit a roster of passing students to POST.

Amendments to Rule 21 change the required documentation from videotapes or DVDs to a video in a digital media format approved by POST and implements document retaining requirements for academic and skills instructors.

Rule 28 is created to give minimum requirements for annual in-service training and govern in-service reporting requirement by law enforcement agencies.

It has been declared by the General Assembly that certification and training standards of peace officers is a matter of statewide concern. The absence of implementing rules to carry out the purpose of the statutes would be contrary to the public health, peace, safety and welfare of the state. For these reasons, it is imperatively necessary that these proposed amendments be adopted.

Rule 14 – Fingerprint-Based Criminal History Record Check

*Effective ~~March 1, 2006~~ **January 14, 2015***

(a) Definitions.

(I) The fingerprint-based criminal history record check is a computerized search of a person's fingerprints that have been taken on a POST Applicant Fingerprint Card and processed by the Colorado Bureau of Investigation (CBI) and Federal Bureau of Investigation (FBI) for the purpose of determining a person's eligibility for certification as a peace officer in the State of Colorado.

(II) The enrollment date of a training academy is the first day of instruction at an approved basic or reserve training academy. The enrollment date shall be synonymous with the first day of instruction as reflected on the approved academy schedule.

(III) As used in this Rule, to enroll in an academy means that a person has applied and been accepted for admission into an academy and is physically present at the academy to receive instruction.

(b) Eligibility for certification. No person shall be eligible for certification as a Colorado peace officer if he or she has been convicted of a felony or any misdemeanor as referenced in § 24-31-305(1.5), C.R.S., or any misdemeanor in violation of federal law or the law of any state ***OR ANY LOCAL MUNICIPAL ORDINANCE*** that is the equivalent of any of the offenses specified in § 24-31-305(1.5), C.R.S.

(c) Enrollment. Pursuant to § 24-31-304, C.R.S. and POST Rules, all persons seeking to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant shall submit their fingerprints to CBI prior to enrolling in the training academy or prior to participating in the testing process as a provisional or renewal applicant.

(d) POST Applicant Fingerprint Card.

(I) The POST Applicant Fingerprint Card~~, U.S. GPO: 2001, 483-800/2-02321, FD-258 (REV. 5-11-99)~~ is the only authorized fingerprint card that shall be submitted for the fingerprint-based criminal history record check.

(II) The Board recommends that a person's fingerprints be taken on the POST Applicant Fingerprint Card at a law enforcement agency. Any fee that may be charged by the agency for this service is the responsibility of the applicant.

(III) Payment of a fee to cover the cost of processing the POST Applicant Fingerprint Card must be submitted to CBI with each completed POST Applicant Fingerprint Card. Remittance of this fee to CBI is the responsibility of the applicant.

(IV) For provisional and renewal applicants, the POST Applicant Fingerprint Card will be provided by POST. The applicant is responsible for having his or her fingerprints taken and for ensuring that the completed POST Applicant Fingerprint Card and fee are submitted to CBI prior to the applicant's participation in the testing process as a provisional or renewal applicant.

(V) For persons seeking to enroll in a basic or reserve training academy, the POST Applicant Fingerprint Card will be provided by the academy. The person's fingerprints shall be taken in accordance with the academy's policies and procedures. The academy is responsible for ensuring that the completed POST Applicant Fingerprint Card and fee are submitted to CBI prior to the person's enrollment in the academy.

(e) Results from completed criminal history record checks.

(I) The Board shall be the authorized agency to receive the results from all POST Applicant Fingerprint Cards that have been processed for the state and national fingerprint-based criminal history record checks.

(II) All results from the completed criminal history record checks will be provided to the Board. Notice of subsequent arrests and convictions will also be provided to the Board.

(f) Basic and reserve training academies.

(I) A training academy shall not enroll any person who has been convicted of an offense that would result in the denial of certification pursuant to § 24-31-305(1.5), C.R.S. The only exception shall be if the Board has granted the person an exemption from denial of enrollment pursuant to § 24-31-304(4)(a), C.R.S. and POST Rule 7, *Variances*.

(II) No person shall be enrolled in a training academy unless the person has been fingerprinted on a POST Applicant Fingerprint Card and an academy has submitted the person's completed POST Applicant Fingerprint Card and fee to CBI prior to enrolling the person in the academy.

(III) A POST Form 11-E, *Enrollment Advisory Form*, shall be completed on the first day of the academy by both the person enrolled in the academy and the academy director ***OR DESIGNEE***. The completed *Enrollment Advisory Form* shall be maintained at the academy.

(IV) The academy director shall ensure that an accurate enrollment roster for each academy class is received at POST no later than 5:00 p.m. on the next business day following the first day of the academy. Each enrollment roster shall contain the following information:

(A) Name of the academy; and

(B) Start and end dates of the academy; and

(C) Alphabetical list of the full names of all persons enrolled in the academy; and

(D) Date of birth for each person; and

(E) Social Security Number for each person.

(V) If the results of a criminal history record check reveal that a person currently enrolled in an academy is prohibited from enrolling pursuant to § 24-31-304(2), C.R.S., the Board or its designated representative(s) shall notify the academy. The academy shall take appropriate measures to immediately dismiss the person from the academy.

(g) Exemption from denial of enrollment.

(I) If a person anticipates that he or she will be prohibited from either enrolling in a training academy or participating in the testing process as a provisional or renewal applicant because he or she has been convicted of any misdemeanor described in § 24-31-305(1.5), C.R.S., the person may submit a request for exemption from denial of enrollment under POST Rule 7, *Variances*.

(II) Only if the person has, in fact, submitted a request for exemption from denial of enrollment under POST Rule 7, *Variances*, and the request has been granted by the Board, will the person be permitted to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant.

(III) No person convicted of a felony may request an exemption from denial of enrollment.

Rule 14 – Fingerprint-Based Criminal History Record Check

Effective January 14, 2015

(a) Definitions.

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(II) The enrollment date of a training academy is the first day of instruction at an approved basic or reserve training academy. The enrollment date shall be synonymous with the first day of instruction as reflected on the approved academy schedule.

(III) As used in this Rule, to enroll in an academy means that a person has applied and been accepted for admission into an academy and is physically present at the academy to receive instruction.

(b) Eligibility for certification. No person shall be eligible for certification as a Colorado peace officer if he or she has been convicted of a felony or any misdemeanor as referenced in § 24-31-305(1.5), C.R.S., or any misdemeanor in violation of federal law or the law of any state or any local municipal ordinance that is the equivalent of any of the offenses specified in § 24-31-305(1.5), C.R.S.

(c) Enrollment. Pursuant to § 24-31-304, C.R.S. and POST Rules, all persons seeking to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant shall submit their fingerprints to CBI prior to enrolling in the training academy or prior to participating in the testing process as a provisional or renewal applicant.

(d) POST Applicant Fingerprint Card.

(I) The POST Applicant Fingerprint Card is the only authorized fingerprint card that shall be submitted for the fingerprint-based criminal history record check.

(II) The Board recommends that a person's fingerprints be taken on the POST Applicant Fingerprint Card at a law enforcement agency. Any fee that may be charged by the agency for this service is the responsibility of the applicant.

(III) Payment of a fee to cover the cost of processing the POST Applicant Fingerprint Card must be submitted to CBI with each completed POST Applicant Fingerprint Card. Remittance of this fee to CBI is the responsibility of the applicant.

(IV) For provisional and renewal applicants, the POST Applicant Fingerprint Card will be provided by POST. The applicant is responsible for having his or her fingerprints taken and for ensuring that the completed POST Applicant Fingerprint Card and fee are submitted to CBI prior to the applicant's participation in the testing process as a provisional or renewal applicant.

(V) For persons seeking to enroll in a basic or reserve training academy, the POST Applicant Fingerprint Card will be provided by the academy. The person's fingerprints shall be taken in accordance with the academy's policies and procedures. The academy is responsible for ensuring that the completed POST Applicant Fingerprint Card and fee are submitted to CBI prior to the person's enrollment in the academy.

(e) Results from completed criminal history record checks.

(I) The Board shall be the authorized agency to receive the results from all POST Applicant Fingerprint Cards that have been processed for the state and national fingerprint-based criminal history record checks.

(II) All results from the completed criminal history record checks will be provided to the Board. Notice of subsequent arrests and convictions will also be provided to the Board.

(f) Basic and reserve training academies.

(I) A training academy shall not enroll any person who has been convicted of an offense that would result in the denial of certification pursuant to § 24-31-305(1.5), C.R.S. The only exception shall be if the Board has granted the person an exemption from denial of enrollment pursuant to § 24-31-304(4)(a), C.R.S. and POST Rule 7, *Variances*.

(II) No person shall be enrolled in a training academy unless the person has been fingerprinted on a POST Applicant Fingerprint Card and an academy has submitted the person's completed POST Applicant Fingerprint Card and fee to CBI prior to enrolling the person in the academy.

(III) A POST Form 11-E, *Enrollment Advisory Form*, shall be completed on the first day of the academy by both the person enrolled in the academy and the academy director or designee. The completed *Enrollment Advisory Form* shall be maintained at the academy.

(IV) The academy director shall ensure that an accurate enrollment roster for each academy class is received at POST no later than 5:00 p.m. on the next business day following the first day of the academy. Each enrollment roster shall contain the following information:

(A) Name of the academy; and

(B) Start and end dates of the academy; and

(C) Alphabetical list of the full names of all persons enrolled in the academy; and

(D) Date of birth for each person; and

(E) Social Security Number for each person.

(V) If the results of a criminal history record check reveal that a person currently enrolled in an academy is prohibited from enrolling pursuant to § 24-31-304(2), C.R.S., the Board or its designated representative(s) shall notify the academy. The academy shall take appropriate measures to immediately dismiss the person from the academy.

(g) Exemption from denial of enrollment.

(I) If a person anticipates that he or she will be prohibited from either enrolling in a training academy or participating in the testing process as a provisional or renewal applicant because he or she has been convicted of any misdemeanor described in § 24-31-305(1.5), C.R.S., the person may submit a request for exemption from denial of enrollment under POST Rule 7, *Variances*.

(II) Only if the person has, in fact, submitted a request for exemption from denial of enrollment under POST Rule 7, *Variances*, and the request has been granted by the Board, will the person be permitted to either enroll in a training academy or participate in the testing process as a provisional or renewal applicant.

(III) No person convicted of a felony may request an exemption from denial of enrollment.

Rule 17 – Certification Records

*Effective ~~July 1, 2012~~ **January 14, 2015***

(a) Every POST certificate holder shall ***KEEP CURRENT*** ~~submit a completed POST Form 5, *Change of Name, Address or Telephone*, to the Board within thirty (30) days of any change of~~ his or her name, home address, mailing address, ***EMAIL ADDRESS,*** home telephone number, or cell phone number ***THROUGH THE POST PORTAL.***

~~(b) Any POST certificate holder convicted in any jurisdiction of a felony or any misdemeanor contained in § 24-31-305(1.5)(a) thru (h), C.R.S., shall notify the POST Board in writing of such conviction within 5 business days.~~

~~(c)~~***(b)*** When any person is appointed or separated as a certified peace officer, ***AS PER RULES 10, 11 AND 12*** ~~identified in §16-2.5-102 and §16-2.5-110, C.R.S.,~~ such agency shall submit ~~a completed Form 6 - *Notice of Peace Officer Appointment/Separation* to the Board~~ ***AN UPDATE THROUGH THE POST PORTAl*** within fifteen (15) days of such appointment or separation. ~~All other agencies listed who by state statute are not obligated to appoint certified peace officers as recognized in Title 16, Article 2.5, Part 1 may submit a completed Form 6, if they want their certified peace officers' certification to continue in effect.~~

~~(d)~~***(c)*** During the month of January of each year, ***EACH AGENCY SHALL*** ~~the POST Board will provide every law enforcement agency with an electronic report in pdf format of those certified peace officers, identified in Title 16, Article 2.5, Part 1, C.R.S., and currently listed in the POST electronic records as appointed by such agency. Every law enforcement agency will~~ verify ***THE ACCURACY OF*** ~~within fifteen (15) days the continuing appointment or separation of~~ the certified peace officers associated with the law enforcement agency ***LISTED ON THE POST PORTAL BY SUBMITTING AN EMAIL TO POST.***

Rule 17 – Certification Records

Effective January 14, 2015

(a) Every POST certificate holder shall keep current his or her name, home address, mailing address, email address**,** home telephone number, or cell phone number through the POST portal.

(b) When any person is appointed or separated as a certified peace officer, as per Rules 10, 11 and 12, such agency shall submit an update through the POST portal within fifteen (15) days of such appointment or separation.

(c) By the 31st of January of each year, each agency shall verify the accuracy of the certified peace officers associated with the law enforcement agency listed on the POST portal by submitting an email to POST.

Rule 20 – Vehicle Identification Number Inspector Programs

Effective ~~November 15, 2013~~ ***February 7, 2014***

(a) Every vehicle identification number (VIN) inspector program must contain a minimum of seventeen (17) hours, and be approved prior to the start of instruction.

(b) The program director must submit ***ALL OF*** the following documentation to the Board at least sixty (60) days prior to the start of instruction:

(I) A narrative of performance objectives for the program (new programs only);~~ and~~

(II) A list of courses to be taught and the time allocated for each course (new programs only); and

(III) ~~Submit a~~ ***A*** completed POST Form 9A, ***VIN INSPECTOR*** *Training Program Approval****,*** and a list of instructors and their qualifications. Instructors shall be approved only for a specific program under this rule (all programs).

(c) To be approved, a program must include ~~at least~~ ***ALL OF*** the following:

(I) Legal aspects of VIN inspection; ~~and~~

(II) Use of the National ~~Auto Theft Bureau~~ ***Insurance Crime Bureau (NICB) Passenger and Commercial Vehicle Identification M***~~m~~anual***s***; ~~and~~

(III) How to conduct a VIN inspection; and

(IV) How to meet the reporting requirements of a VIN inspection.

(d) The program director must submit ***A ROSTER OF PASSING STUDENTS TO POST*** ~~the following to the Board~~ within thirty (30) days of the end of the program~~:~~**.**

~~(I) The score of each trainee and a statement whether each trainee passed or failed the course.~~

Rule 20 – Vehicle Identification Number Inspector Programs

Effective February 7, 2014

(a) Every vehicle identification number (VIN) inspector program must contain a minimum of seventeen (17) hours, and be approved prior to the start of instruction.

(b) The program director must submit all of the following documentation to the Board at least sixty (60) days prior to the start of instruction:

(I) A narrative of performance objectives for the program (new programs only);

(II) A list of courses to be taught and the time allocated for each course (new programs only); and

(III) A completed POST Form 9A, *VIN Inspector Training Program Approval,* and a list of instructors and their qualifications. Instructors shall be approved only for a specific program under this rule (all programs).

(c) To be approved, a program must include all of the following:

(I) Legal aspects of VIN inspection;

(II) Use of the National Insurance Crime Bureau (NICB) *Passenger* and *Commercial Vehicle Identification Manuals*;

(III) How to conduct a VIN inspection; and

(IV) How to meet the reporting requirements of a VIN inspection.

(d) The program director must submit a roster of passing students to POST within thirty (30) days of the end of the program.

Rule 21 – Basic and Reserve Training Academies
Effective ~~March 1, 2011~~ ***January 14, 2015***

(a) Academy approval.

(I) All aspects of an academy must be in compliance with POST Rules and Program requirements before academy approval will be considered.

(II) Only an academy that is approved by the Board may provide training required for certified peace officer status; and

(III) Each scheduled academy class of an approved training academy must be approved prior to the start of instruction.

(b) Continuing academies.

(I) A continuing academy is an approved basic or reserve academy that conducts and completes at least one approved academy class every three (3) years and operates in compliance with these Rules.

(II) If a continuing academy does not complete at least one approved academy class in any consecutive three (3) year period, approval of the academy shall expire. An expired academy must reapply for approval as a new academy and be approved prior to providing any academy instruction.

(III) Other than as referenced in the preceding paragraph (II), a continuing academy may remain approved until its status is surrendered, suspended or revoked.

(IV) The academy director must ensure that the following documents are received at POST at least thirty (30) days**,** but no more than sixty (60) days, prior to the start of instruction for each scheduled academy class:

(A) A completed POST Form 7, *Application for Academy Approval*; and

(B) A completed "*Scheduling Request for POST Exam*" form (basic academies only); and

(C) A complete and accurate academy schedule with the following information clearly noted on the schedule.

(1) All courses, dates and times in chronological order for each course, major exams and the name of the primary instructor for each course; and

(2) All dates and times when arrest control drill training, night driving and dim light shooting will be instructed; and

(3) For arrest control and firearms training, if the schedule shows more than eight (8) hours of instruction in any one day, then the schedule must denote lab or lecture hours, as appropriate; and

(4) If multiple courses are listed within the same block of time on the schedule, then either the schedule itself or accompanying documents must specify the amount of time that will be instructed for each course.

(V) No later than 5:00 p.m. on the next business day following the first day of each approved academy class, the academy director shall ensure that an accurate enrollment roster is received at POST. See also POST Rule 14, *Fingerprint-Based Criminal History Record Check*.

(VI) The academy director shall notify POST prior to the occurrence of any change of the academy's start date or end date, to include cancellation of the academy, as submitted to POST on the Form 7, *Application for Academy Approval*.

(VII) Each college academy and private occupational school academy shall establish an advisory committee that consists of law enforcement officials and administrators to assist with providing logistical support and validation of training.

(c) New academies.

(I) A new academy is either a basic or reserve academy that has never conducted approved training, or a basic or reserve academy that has not conducted approved training within the previous three (3) years.

(II) The academy director of a proposed new academy shall contact POST at least six (6) months prior to the anticipated start date of the new academy to ascertain application procedures and deadlines for submitting documents for new academy approval.

(III) The following types of academies are considered separate academies that must be individually approved:

(A) Basic and reserve academies even if operated by the same agency, organization or academic institution.

(B) Academies located either on a satellite campus, or at a different physical location than the primary academy.

(IV) The proposed formal name of an academy must neither misrepresent the status of the academy, nor mislead law enforcement or the public.

(V) Required documentation that must be submitted for new academy approval includes, but is not limited to, a ~~videotape or DVD~~ ***video in a digital media format approved by POST*** of all proposed sites where academic instruction and skills training will take place, site safety plans, lesson plans for all academic courses and all skills training programs that are required by the Basic or Reserve Academic Training Program, resumes for all academic instructors, and documentation of qualifications for all skills instructors.

(VI) Once a proposed new academy begins the approval process by submitting any of the required documentation listed in the preceding paragraph (V) to POST, the proposed new academy shall have a maximum of twelve (12) months to complete the new academy approval process.

(VII) The director of a proposed new academy shall also ensure that the documents required to be submitted by continuing academies, as listed in paragraph (b)(IV) of this Rule, are received at POST at least thirty (30) days, but no more than sixty (60) days, prior to the start of instruction.

(VIII) Prior to approval, the proposed new academy must pass an on-site pre-approval inspection conducted by the Board or its designated representative(s).

(d) Training sites, site safety plans and equipment.

(I) An academy shall have the following training sites and facilities:

(A) For academics: A classroom with adequate heating, cooling, ventilation, lighting, acoustics and space, and a sufficient

number of desks or tables and chairs in the classroom for each trainee; and

(B) For firearms: A firing range with adequate backstop and berms to ensure the safety of all persons at or near the range, and some type of visual notification (range flag, signs, lights, or other) whenever the range is being utilized for live fire; and

(C) For driving: A safe driving track for conducting law enforcement driving; and

(D) For arrest control: An indoor site for instructing arrest control training with sufficient space and mats to ensure trainee safety; and

(E) For practical exercises ***AND WELLNESS TRAINING***: Appropriate and safe locations for ***CONDUCTING*** all practical exercises ***AND WELLNESS LAB TRAINING***.

(II) ***APPROVAL OF*** ~~T~~*t*raining sites.

(A) All new training sites for academic classroom instruction and skills training must be approved by POST in consultation with the appropriate subject matter expert committee prior to conducting any training at the site.

(B) Each academy is responsible for obtaining approval for all of its training sites of academic instruction and skills training.

(C) Academy directors shall ensure that all sites for practical ***EXERCISES AND WELLNESS LAB*** training are safe and that appropriate training can be accomplished at the site to achieve the course objectives or performance outcomes.

(D) Presumed approval or use of a specific site by one academy does not extend to automatic approval of the site for use by other academies.

(E) If an approved site is not utilized during any consecutive three (3) year period by any academy for the type of training for which the site was initially approved, then site approval expires. In order to resume training at an expired site, the site must be resubmitted for approval and approved.

(F) The following items must be submitted to POST in order for approval of a new or expired training site to be considered:

(1) ~~A VHS-format videotape (or DVD video on a DVD-R disk that will play through a set-top DVD player to a TV)~~ ***Video in a digital media format approved by POST*** that accurately depicts the site where instruction is to take place; and

(2) A detailed description of the site must be included, either as verbal narrative on the ~~videotape or DVD,~~ ***video*** or as a written supplement; and

(3) An up-to-date written site safety plan.

(G) If an approved site has been in continuous use by at least one approved academy for at least the previous three (3) consecutive years and an additional academy seeks approval of the same site, then the director of the additional academy may submit a written request to POST that includes the location and/or description of the site, in lieu of the ~~VHS or DVD~~ ***video***, along with an up-to-date written site safety plan.

(III) Site safety plans.

(A) Each site of skills training and academic or classroom instruction must have an up-to-date and approved written site safety plan present on site during any academy training at the site; and

(B) Copies of all site safety plans must also be on file at the academy at all times; and

(C) Each site safety plan shall include procedures for managing medical emergencies, injuries, or accidents that are probable or likely to occur at the site; and

(D) All academy staff members, instructors and trainees shall be familiar with the content of each site safety plan as it pertains to the nature and scope of their involvement with the academy.

(IV) Equipment.

(A) An academy shall have and maintain the necessary equipment and instructional aids in sufficient quantities for conducting all aspects of the required academy training program; and

(B) All training sites and facilities, equipment, books, supplies, materials and the like shall be maintained in good condition.

(C) The following items shall be present at each training site during any academy training at the site:

(1) An effective means of summoning emergency medical assistance; and

(2) A first aid kit that contains appropriate supplies to treat medical emergencies or injuries that are likely to be sustained at the site.

(e) Academy directors.

(I) Qualifications. Each academy shall designate an on-site academy director whose qualifications, based upon education, experience and training, demonstrate his or her ability to manage the academy.

(II) Compliance. The academy director shall ensure that the academy operates in compliance with all POST Rules.

(III) Records. The academy director shall be responsible for establishing and maintaining a records management system that includes, but is not limited to, enrollment rosters, POST Form 11-E's, trainee files, trainee manuals, attendance records, lesson plans, source material, instructor files, instructor/course evaluations and site safety plans.

(IV) Change of director. The academy director or authorized representative of an academy shall notify POST as soon as practicable of any change of academy director or any change of the academy director's electronic mailing address.

(f) Curriculum requirements.

(I) Academic standards.

(A) All training academies shall meet or exceed the required course content and minimum number of hours for each academic course of instruction and for each of the skills programs as required by

the Basic Academic Training Program or Reserve Academic Training Program.

(B) Successful completion required.

(1) Trainees must successfully complete the Basic Academic Training Program or Reserve Academic Training Program with a minimum score of seventy percent (70%); and

(2) Trainees must successfully complete all skills training as required by the Arrest Control Training Program, Law Enforcement Driving Program and Firearms Training Program.

(3) If an academy applies a higher standard than what is required by the preceding paragraphs (1) and (2), the higher standard must be described in the Trainee Manual and in the respective skills lesson plans or course materials, as applicable.

(II) Attendance.

(A) For all hours of all skills training programs, 100% attendance and participation are required except as specified in Rule 24(b)(VIII).

(B) Attendance is required for all hours of all academic classes. Any trainee who is absent for any portion of an academic class shall make up the missed class content in accordance with the academy's rules and regulations.

(C) Written attendance records are required.

(1) For trainees: Written daily attendance records that are accurate and up-to-date shall be kept for all trainees enrolled in all academic classes and all skills training classes.

(2) For skills instructors: Written attendance records that are accurate and up-to-date shall be kept for all instructors who teach any portion of a skills training program.

(3) FOR SKILLS TRAINING, THE FORMAT OF THE ATTENDANCE RECORDS MUST CLEARLY SUBSTANTIATE THAT THE MINIMUM RATIOS REQUIRED BY RULE 24, SKILLS TRAINING SAFETY AND SKILLS PROGRAM REQUIREMENTS FOR BASIC AND RESERVE ACADEMIES, HAVE BEEN MET.

(III) Lesson plans.

(A) All basic and reserve training academies shall develop and maintain up-to-date ~~formal written~~ lesson plans that are on file for each academic course of instruction and for each of the skills training programs.

(B) Each ***ACADEMIC AND SKILLS*** lesson plan ~~and/or an accompanying lesson plan cover sheet~~ must include at least the following information, as applicable:

(1) Course title ***AS SPECIFIED IN THE POST ACADEMIC TRAINING PROGRAM (BASIC OR RESERVE) OR THE POST SKILLS TRAINING PROGRAM***; and

(2) Number of hours for the course required by the POST Academic Training Program and the number of actual course hours that will be instructed; and

(3) Learning goals, course objectives and/or performance outcomes for the course; and

(4) Method of instruction; and

(5) Instructional content of the course that substantiates the stated goals, objectives and/or outcomes of the course; and

(6) A copy of any handouts, multimedia and/or PowerPoint presentations that will be used during the instruction~~.~~ ***; AND***

(7) A LIST OF SOURCE MATERIAL UTILIZED FOR THE COURSE.

(C) SKILLS LESSON PLANS MUST ADDITIONALLY INCLUDE THE PROGRAM- SPECIFIC DOCUMENTATION REFERENCED WITHIN THE APPLICABLE POST SKILLS TRAINING PROGRAM.

(IV) Daily schedules.

(A) For all skills training programs, daily schedules are required that contain the information referenced in each of the skills training programs.

(B) The format, number of pages and organization of information on the daily schedules shall be at the discretion of the primary skills instructor and/or academy director.

(V) Source material.

(A) For source material identified as required source material in the current POST Curriculum Bibliography, at least one (1) copy of each of the publications or sources must be maintained at the place of academic instruction. For those sources that are referenced with a website address, providing the trainees with readily available Internet access is acceptable in lieu of maintaining at least one (1) copy of each of the publications or sources.

(VI) Academy examinations.

(A) All academies shall administer written, oral or practical examinations periodically during each academy in order to measure the attainment of course objectives or performance outcomes as specified in the Basic Academic Training Program or Reserve Academic Training Program.

(B) The academy director shall prescribe the manner, method of administration, frequency and length of academy examinations.

(C) The time allotted for academic examinations shall be in addition to the number of Required Minimum Hours for each course as specified in the Basic Academic Training Program or Reserve Academic Training Program.

(VII) ***ACADEMY*** ~~C~~***c***ertificates of completion.

(A) The academy director shall issue a certificate of completion to each trainee who successfully completes all requirements of the approved academy within two (2) years of enrollment.

~~(B) The academy director shall not issue a certificate of completion to any trainee who has not attended and successfully completed 100% of all required skills training.~~

(B) ONLY A TRAINEE WHO HAS ATTENDED AND SUCCESSFULLY COMPLETED ALL ACADEMIC CLASSES AND ALL THREE (3) SKILLS TRAINING PROGRAMS SHALL BE ISSUED AN ACADEMY CERTIFICATE OF COMPLETION.

(C) Each ***ACADEMY*** certificate of completion shall contain the following information:

(1) Trainee's name; and

(2) Name of the approved academy; and

(3) Type of academy (basic or reserve); and

(4) Date of academy completion (month, day, year); and

(5) Total number of hours of the completed academy; and

(6) Signature of the academy director and/or agency or academic representative.

(7) Reserve academy certificates of completion shall additionally state whether the total number of academy hours does or does not include the approved law enforcement driving program.

(g) Instructors.

(I) Minimum qualifications.

(A) Academic instructors shall possess the requisite education, experience and/or training necessary, as determined by the academy director, to competently instruct specific academic courses or blocks of instruction.

(B) Skills instructors shall meet the minimum qualifications as described in Rule 23, *Academy Skills Instructors*.

(II) Instructor files.

(A) A ~~record or~~ file ~~that contains at least the following information~~ shall be maintained for each instructor who teaches any portion of an academic class or skills training class~~:~~ **.**

~~(1) A resume or certificates of completion and/or other documentation that substantiates the instructor's qualifications.~~

(1) FOR ACADEMIC INSTRUCTORS, THE FILE MUST CONTAIN A CURRENT RESUME AND/OR OTHER DOCUMENTATION THAT SUBSTANTIATES THE INSTRUCTOR'S QUALIFICATIONS.

(2) FOR SKILLS INSTRUCTORS, THE FILE MUST CONTAIN COPIES OF THE RELEVANT CERTIFICATES OF COMPLETION REFERENCED IN RULE 23, ACADEMY SKILLS INSTRUCTORS, AND/OR A COPY OF THE APPLICABLE SKILLS INSTRUCTOR APPROVAL LETTER ISSUED BY POST.

~~(2)~~***(B) THE ACADEMY SHALL MAINTAIN*** ~~C~~***c***urrent contact information for ***EACH INSTRUCTOR.*** ~~the instructor that includes a work, home or cellular telephone number, and a work, home or electronic mailing address.~~

~~(B)~~***(C)*** Exception. Licensed attorneys from the same office or firm may be included in one instructor file, as long as the file contains the names of all attorneys from that office or firm who provide instruction at the academy.

(III) Instructor/course evaluations.

(A) Trainees shall complete written evaluations for each instructor and/or course of instruction for all academic courses and skills training programs of the approved academy.

(B) Either the POST Form 10, *Instructor/Course Evaluation*, or comparable academy forms and/or documents may be used for this purpose.

(C) The academy director shall determine the most meaningful format and method of administration of the instructor/course evaluations in order to monitor instructor quality and course content and to meet the needs of the individual academy.

(h) Duty to report.

(I) In addition to any notifications that may be required administratively or under federal, state or local law, it shall be the duty of every academy director or the academy director's designee to report the following events to POST immediately or as soon as practicable after the event:

(A) Any death, gunshot wound or serious bodily injury that occurs to <u>any</u> <u>person</u> whose death, gunshot wound or serious bodily injury was either caused by, or may have been caused by, any training or activity associated with the academy; or

(B) Any bodily injury that occurs to any person who is not affiliated with the academy, i.e., an <u>innocent</u> <u>bystander</u>, whose bodily injury was either caused by, or may have been caused by, any training or activity associated with the academy.

(II) Training to cease.

(A) In the event of any death or gunshot wound as described in paragraph (h)(I)(A) of this section, all training shall immediately cease at the training site where the death or gunshot wound occurred.

(B) Training may resume only after the Board or its designated representative(s) have ensured that the program is operating in compliance with POST Rules.

(III) Serious bodily injury means those injuries as defined in § 18-1-901(3)(p), C.R.S.

(IV) Bodily injury means those injuries as defined in § 18-1-901(3)(c), C.R.S.

(V) All instructors shall be familiar with the information contained in this Section (h) as it pertains to the nature and scope of their involvement with the academy.

(i) Academy records requirements.

(I) Trainee file***s***. During the academy, a file shall be maintained for each trainee or a systematic filing system must exist that contains at least the following records:

(A) Trainee's full legal name and date of birth; and

(B) Photocopy of the trainee's high school diploma or high school equivalency certificate; and

(C) Photocopy of the trainee's valid driver's license; and

(D) Form 11-E, *Enrollment Advisory Form*.

(II) Trainee manual.

(A) Each academy shall maintain an up-to-date trainee manual that contains relevant and accurate information. At a minimum, the trainee manual shall contain the academy's rules and regulations, academic requirements, attendance policies and site safety plans.

(B) Upon entry into the academy, each trainee should be issued a copy of the trainee manual and acknowledge receipt of the manual in writing.

(III) The following records shall be maintained at the academy and shall be readily available for inspection at any reasonable time by the Board or its designated representative(s).

(A) A completed Form 11-E, *Enrollment Advisory Form*, for each trainee enrolled in the academy in progress; and

(B) Current trainee manual; and

(C) Current lesson plans; and

(D) Current source material; and

(E) Instructor files for current instructors; and

(F) Copies of all site safety plans; and

(G) Trainee files for the academy in progress and the previously completed academy; and

(H) Attendance records for the academy in progress and the previously completed academy; and

(I) Instructor/course evaluations for the academy in progress and the previously completed academy.

(IV) ~~All a~~***A***academy records must be retained for at least the three (3) year period as ~~required by~~ ***REFERENCED IN*** the Uniform Records Retention Act, § 6-17-101, et seq., C.R.S.

Rule 21 – Basic and Reserve Training Academies
Effective January 14, 2015

(a) Academy approval.

(I) All aspects of an academy must be in compliance with POST Rules and Program requirements before academy approval will be considered.

(II) Only an academy that is approved by the Board may provide training required for certified peace officer status; and

(III) Each scheduled academy class of an approved training academy must be approved prior to the start of instruction.

(b) Continuing academies.

(I) A continuing academy is an approved basic or reserve academy that conducts and completes at least one approved academy class every three (3) years and operates in compliance with these Rules.

(II) If a continuing academy does not complete at least one approved academy class in any consecutive three (3) year period, approval of the academy shall expire. An expired academy must reapply for approval as a new academy and be approved prior to providing any academy instruction.

(III) Other than as referenced in the preceding paragraph (II), a continuing academy may remain approved until its status is surrendered, suspended or revoked.

(IV) The academy director must ensure that the following documents are received at POST at least thirty (30) days**,** but no more than sixty (60) days, prior to the start of instruction for each scheduled academy class:

(A) A completed POST Form 7, *Application for Academy Approval*; and

(B) A completed "*Scheduling Request for POST Exam*" form (basic academies only); and

(C) A complete and accurate academy schedule with the following information clearly noted on the schedule.

(1) All courses, dates and times in chronological order for each course, major exams and the name of the primary instructor for each course; and

(2) All dates and times when arrest control drill training, night driving and dim light shooting will be instructed; and

(3) For arrest control and firearms training, if the schedule shows more than eight (8) hours of instruction in any one day, then the schedule must denote lab or lecture hours, as appropriate; and

(4) If multiple courses are listed within the same block of time on the schedule, then either the schedule itself or accompanying documents must specify the amount of time that will be instructed for each course.

(V) No later than 5:00 p.m. on the next business day following the first day of each approved academy class, the academy director shall ensure that an accurate enrollment roster is received at POST. See also POST Rule 14, *Fingerprint-Based Criminal History Record Check*.

(VI) The academy director shall notify POST prior to the occurrence of any change of the academy's start date or end date, to include cancellation of the academy, as submitted to POST on the Form 7, *Application for Academy Approval*.

(VII) Each college academy and private occupational school academy shall establish an advisory committee that consists of law enforcement officials and administrators to assist with providing logistical support and validation of training.

(c) New academies.

(I) A new academy is either a basic or reserve academy that has never conducted approved training, or a basic or reserve academy that has not conducted approved training within the previous three (3) years.

(II) The academy director of a proposed new academy shall contact POST at least six (6) months prior to the anticipated start date of the new academy to ascertain application procedures and deadlines for submitting documents for new academy approval.

(III) The following types of academies are considered separate academies that must be individually approved:

(A) Basic and reserve academies even if operated by the same agency, organization or academic institution.

(B) Academies located either on a satellite campus, or at a different physical location than the primary academy.

(IV) The proposed formal name of an academy must neither misrepresent the status of the academy, nor mislead law enforcement or the public.

(V) Required documentation that must be submitted for new academy approval includes, but is not limited to, a video in a digital media format approved by POST of all proposed sites where academic instruction and skills training will take place, site safety plans, lesson plans for all academic courses and all skills training programs that are required by the Basic or Reserve Academic Training Program, resumes for all academic instructors, and documentation of qualifications for all skills instructors.

(VI) Once a proposed new academy begins the approval process by submitting any of the required documentation listed in the preceding paragraph (V) to POST, the proposed new academy shall have a maximum of twelve (12) months to complete the new academy approval process.

(VII) The director of a proposed new academy shall also ensure that the documents required to be submitted by continuing academies, as listed in paragraph (b)(IV) of this Rule, are received at POST at least thirty (30) days, but no more than sixty (60) days, prior to the start of instruction.

(VIII) Prior to approval, the proposed new academy must pass an on-site pre-approval inspection conducted by the Board or its designated representative(s).

(d) Training sites, site safety plans and equipment.

(I) An academy shall have the following training sites and facilities:

(A) For academics: A classroom with adequate heating, cooling, ventilation, lighting, acoustics and space, and a sufficient

number of desks or tables and chairs in the classroom for each trainee; and

(B) For firearms: A firing range with adequate backstop and berms to ensure the safety of all persons at or near the range, and some type of visual notification (range flag, signs, lights, or other) whenever the range is being utilized for live fire; and

(C) For driving: A safe driving track for conducting law enforcement driving; and

(D) For arrest control: An indoor site for instructing arrest control training with sufficient space and mats to ensure trainee safety; and

(E) For practical exercises and wellness training: Appropriate and safe locations for conducting all practical exercises and wellness lab training.

(II) Approval of training sites.

(A) All new training sites for academic classroom instruction and skills training must be approved by POST in consultation with the appropriate subject matter expert committee prior to conducting any training at the site.

(B) Each academy is responsible for obtaining approval for all of its training sites of academic instruction and skills training.

(C) Academy directors shall ensure that all sites for practical exercises and wellness lab training are safe and that appropriate training can be accomplished at the site to achieve the course objectives or performance outcomes.

(D) Presumed approval or use of a specific site by one academy does not extend to automatic approval of the site for use by other academies.

(E) If an approved site is not utilized during any consecutive three (3) year period by any academy for the type of training for which the site was initially approved, then site approval expires. In order to resume training at an expired site, the site must be resubmitted for approval and approved.

(F) The following items must be submitted to POST in order for approval of a new or expired training site to be considered:

(1) Video in a digital media format approved by POST that accurately depicts the site where instruction is to take place; and

(2) A detailed description of the site must be included, either as verbal narrative on the video or as a written supplement; and

(3) An up-to-date written site safety plan.

(G) If an approved site has been in continuous use by at least one approved academy for at least the previous three (3) consecutive years and an additional academy seeks approval of the same site, then the director of the additional academy may submit a written request to POST that includes the location and/or description of the site, in lieu of the video, along with an up-to-date written site safety plan.

(III) Site safety plans.

(A) Each site of skills training and academic or classroom instruction must have an up-to-date and approved written site safety plan present on site during any academy training at the site; and

(B) Copies of all site safety plans must also be on file at the academy at all times; and

(C) Each site safety plan shall include procedures for managing medical emergencies, injuries, or accidents that are probable or likely to occur at the site; and

(D) All academy staff members, instructors and trainees shall be familiar with the content of each site safety plan as it pertains to the nature and scope of their involvement with the academy.

(IV) Equipment.

(A) An academy shall have and maintain the necessary equipment and instructional aids in sufficient quantities for conducting all aspects of the required academy training program; and

(B) All training sites and facilities, equipment, books, supplies, materials and the like shall be maintained in good condition.

(C) The following items shall be present at each training site during any academy training at the site:

(1) An effective means of summoning emergency medical assistance; and

(2) A first aid kit that contains appropriate supplies to treat medical emergencies or injuries that are likely to be sustained at the site.

(e) Academy directors.

(I) Qualifications. Each academy shall designate an on-site academy director whose qualifications, based upon education, experience and training, demonstrate his or her ability to manage the academy.

(II) Compliance. The academy director shall ensure that the academy operates in compliance with all POST Rules.

(III) Records. The academy director shall be responsible for establishing and maintaining a records management system that includes, but is not limited to, enrollment rosters, POST Form 11-E's, trainee files, trainee manuals, attendance records, lesson plans, source material, instructor files, instructor/course evaluations and site safety plans.

(IV) Change of director. The academy director or authorized representative of an academy shall notify POST as soon as practicable of any change of academy director or any change of the academy director's electronic mailing address.

(f) Curriculum requirements.

(I) Academic standards.

(A) All training academies shall meet or exceed the required course content and minimum number of hours for each academic course of instruction and for each of the skills programs as required by the Basic Academic Training Program or Reserve Academic Training Program.

(B) Successful completion required.

(1) Trainees must successfully complete the Basic Academic Training Program or Reserve Academic Training Program with a minimum score of seventy percent (70%); and

(2) Trainees must successfully complete all skills training as required by the Arrest Control Training Program, Law Enforcement Driving Program and Firearms Training Program.

(3) If an academy applies a higher standard than what is required by the preceding paragraphs (1) and (2), the higher standard must be described in the Trainee Manual and in the respective skills lesson plans or course materials, as applicable.

(II) Attendance.

(A) For all hours of all skills training programs, 100% attendance and participation are required except as specified in Rule 24(b)(VIII).

(B) Attendance is required for all hours of all academic classes. Any trainee who is absent for any portion of an academic class shall make up the missed class content in accordance with the academy's rules and regulations.

(C) Written attendance records are required.

(1) For trainees: Written daily attendance records that are accurate and up-to-date shall be kept for all trainees enrolled in all academic classes and all skills training classes.

(2) For skills instructors: Written attendance records that are accurate and up-to-date shall be kept for all instructors who teach any portion of a skills training program.

(3) For skills training, the format of the attendance records must clearly substantiate that the minimum ratios required by Rule 24, Skills Training Safety and Skills

Program Requirements for Basic and Reserve Academies, have been met.

(III) Lesson plans.

(A) All basic and reserve training academies shall develop and maintain up-to-date ~~formal written~~ lesson plans that are on file for each academic course of instruction and for each of the skills training programs.

(B) Each academic and skills lesson plan must include at least the following information, as applicable:

(1) Course title as specified in the POST Academic Training Program (Basic or Reserve) or the POST skills training program; and

(2) Number of hours for the course required by the POST Academic Training Program and the number of actual course hours that will be instructed; and

(3) Learning goals, course objectives and/or performance outcomes for the course; and

(4) Method of instruction; and

(5) Instructional content of the course that substantiates the stated goals, objectives and/or outcomes of the course; and

(6) A copy of any handouts, multimedia and/or PowerPoint presentations that will be used during the instruction~~.~~ ***;*** and

(7) A list of source material utilized for the course.

(C) Skills lesson plans must additionally include the program-specific documentation referenced within the applicable POST skills training program.

(IV) Daily schedules.

(A) For all skills training programs, daily schedules are required that contain the information referenced in each of the skills training programs.

(B) The format, number of pages and organization of information on the daily schedules shall be at the discretion of the primary skills instructor and/or academy director.

(V) Source material.

(A) For source material identified as required source material in the current POST Curriculum Bibliography, at least one (1) copy of each of the publications or sources must be maintained at the place of academic instruction. For those sources that are referenced with a website address, providing the trainees with readily available Internet access is acceptable in lieu of maintaining at least one (1) copy of each of the publications or sources.

(VI) Academy examinations.

(A) All academies shall administer written, oral or practical examinations periodically during each academy in order to measure the attainment of course objectives or performance outcomes as specified in the Basic Academic Training Program or Reserve Academic Training Program.

(B) The academy director shall prescribe the manner, method of administration, frequency and length of academy examinations.

(C) The time allotted for academic examinations shall be in addition to the number of Required Minimum Hours for each course as specified in the Basic Academic Training Program or Reserve Academic Training Program.

(VII) Academy certificates of completion.

(A) The academy director shall issue a certificate of completion to each trainee who successfully completes all requirements of the approved academy within two (2) years of enrollment.

(B) Only a trainee who has attended and successfully completed all academic classes and all three (3) skills training programs shall be issued an academy certificate of completion.

(C) Each academy certificate of completion shall contain the following information:

(1) Trainee's name; and

(2) Name of the approved academy; and

(3) Type of academy (basic or reserve); and

(4) Date of academy completion (month, day, year); and

(5) Total number of hours of the completed academy; and

(6) Signature of the academy director and/or agency or academic representative.

(7) Reserve academy certificates of completion shall additionally state whether the total number of academy hours does or does not include the approved law enforcement driving program.

(g) Instructors.

(I) Minimum qualifications.

(A) Academic instructors shall possess the requisite education, experience and/or training necessary, as determined by the academy director, to competently instruct specific academic courses or blocks of instruction.

(B) Skills instructors shall meet the minimum qualifications as described in Rule 23, *Academy Skills Instructors*.

(II) Instructor files.

(A) A file shall be maintained for each instructor who teaches any portion of an academic class or skills training class.

(1) For academic instructors, the file must contain a current resume and/or other documentation that substantiates the instructor's qualifications.

(2) For skills instructors, the file must contain copies of the relevant certificates of completion referenced in Rule 23, *Academy Skills Instructors*, and/or a copy of the

applicable skills instructor approval letter issued by POST.

(B) The academy shall maintain current contact information for each instructor.

(C) Exception. Licensed attorneys from the same office or firm may be included in one instructor file, as long as the file contains the names of all attorneys from that office or firm who provide instruction at the academy.

(III) Instructor/course evaluations.

(A) Trainees shall complete written evaluations for each instructor and/or course of instruction for all academic courses and skills training programs of the approved academy.

(B) Either the POST Form 10, *Instructor/Course Evaluation*, or comparable academy forms and/or documents may be used for this purpose.

(C) The academy director shall determine the most meaningful format and method of administration of the instructor/course evaluations in order to monitor instructor quality and course content and to meet the needs of the individual academy.

(h) Duty to report.

(I) In addition to any notifications that may be required administratively or under federal, state or local law, it shall be the duty of every academy director or the academy director's designee to report the following events to POST immediately or as soon as practicable after the event:

(A) Any death, gunshot wound or serious bodily injury that occurs to <u>any</u> <u>person</u> whose death, gunshot wound or serious bodily injury was either caused by, or may have been caused by, any training or activity associated with the academy; or

(B) Any bodily injury that occurs to any person who is not affiliated with the academy, i.e., an <u>innocent</u> <u>bystander</u>, whose bodily injury was either caused by, or may have been caused by, any training or activity associated with the academy.

(II) Training to cease.

(A) In the event of any death or gunshot wound as described in paragraph (h)(I)(A) of this section, all training shall immediately cease at the training site where the death or gunshot wound occurred.

(B) Training may resume only after the Board or its designated representative(s) have ensured that the program is operating in compliance with POST Rules.

(III) Serious bodily injury means those injuries as defined in § 18-1-901(3)(p), C.R.S.

(IV) Bodily injury means those injuries as defined in § 18-1-901(3)(c), C.R.S.

(V) All instructors shall be familiar with the information contained in this Section (h) as it pertains to the nature and scope of their involvement with the academy.

(i) Academy records requirements.

(I) Trainee file***s***. During the academy, a file shall be maintained for each trainee or a systematic filing system must exist that contains at least the following records:

(A) Trainee's full legal name and date of birth; and

(B) Photocopy of the trainee's high school diploma or high school equivalency certificate; and

(C) Photocopy of the trainee's valid driver's license; and

(D) Form 11-E, *Enrollment Advisory Form*.

(II) Trainee manual.

(A) Each academy shall maintain an up-to-date trainee manual that contains relevant and accurate information. At a minimum, the trainee manual shall contain the academy's rules and regulations, academic requirements, attendance policies and site safety plans.

(B) Upon entry into the academy, each trainee should be issued a copy of the trainee manual and acknowledge receipt of the manual in writing.

(III) The following records shall be maintained at the academy and shall be readily available for inspection at any reasonable time by the Board or its designated representative(s).

(A) A completed Form 11-E, *Enrollment Advisory Form*, for each trainee enrolled in the academy in progress; and

(B) Current trainee manual; and

(C) Current lesson plans; and

(D) Current source material; and

(E) Instructor files for current instructors; and

(F) Copies of all site safety plans; and

(G) Trainee files for the academy in progress and the previously completed academy; and

(H) Attendance records for the academy in progress and the previously completed academy; and

(I) Instructor/course evaluations for the academy in progress and the previously completed academy.

(IV) Academy records must be retained for at least the three (3) year period as referenced in the Uniform Records Retention Act, § 6-17-101, et seq., C.R.S.

Rule 28-In-Service Training Program

Effective January 14, 2015

The purpose of in-service training is to provide continuing education to certified peace officers to develop their knowledge and/or skills. The annual in-service training program is defined in Colorado Revised Statutes 24-31-303 (l) states that the POST Board can "promulgate rules deemed necessary by the Board concerning annual in-service training requirements for certified peace officers, including but not limited to evaluation of the training program and processes to ensure substantial compliance by law enforcement agencies and departments". In-service training is mandatory for certified peace officers who are currently employed in positions requiring certified peace officers as defined in Colorado Revised Statutes section 16-2.5-102. This includes certified fulltime, part-time and reserve peace officers.

(a) Annual Hour Requirement

The in-service training program requires certified peace officers to complete a minimum of 24 hours of in-service training annually. Of the 24 hours, a minimum of 12 hours shall be perishable skills training as specified below.

(b) Training Period

The training period shall be the calendar year, from January 1 to December 31, of each year. In-service training in excess of 24 hours each year shall not be credited towards any future or prior training period.

(c) Approved Training for POST Credit

All training that is POST approved is authorized for in-service credit. The authority and responsibility for other forms of training shall be with the chief executive of each law enforcement agency. The chief executive accepts responsibility and liability for the course content and instructor qualification. Legislatively mandated training may be used for credit towards the training requirement.

The following are examples of training that would qualify for in-service credit:

(I) Training received during the Basic Academic Training Program (Basic Academy).

(II) Computer or web-based courses that have been approved by POST may be used for in-service credit.

(III) The viewing of law enforcement related audiovisual material (DVD, video, etc.) or material related to the viewer's position or rank can be used in conjunction with a facilitated discussion or other presentation. This could include roll call or lineup briefings where the session is dedicated to training and not for the purpose of information exchange.

(IV) For each class hour attended at an accredited college or university in any course that is required to earn a degree, one hour of in-service credit may be awarded.

(d) Perishable Skills Training

Perishable skills training shall consist of a minimum of 12 hours each calendar year. It is recommended that officers complete a minimum of four hours of firearms, arrest control and driving. Examples of perishable skills training could include:

(I) Firearms-live or simulator exercises and scenarios, firearms fundamentals, use of force training or discussions, classroom training requiring student interaction and/or decision making, classroom discussion on agency policies and/or legal issue

(II) Arrest Control-live or simulator exercises and scenarios, classroom discussion followed by interactive scenario events. Arrest control fundamentals, agency policies and/or legal issues

(III) Driving-behind-the-wheel or simulator training, classroom discussion regarding judgment/decision making in driving, agency policies and/or legal issues

(e) Agency Maintenance of Training Records

The chief executive of each agency is responsible for the accurate tracking of training attendance into the POST records management system.

At the end of each calendar year, agencies shall have accurately entered all training for the certified peace officers employed at any time during the year regardless of current employment status. This information shall be entered into the POST records management system.

(I) Waiver of In-Service Requirements

All certified peace officers shall meet the minimum annual hours. However, under circumstances listed below, an agency may request a waiver for a portion of the annual in-service training requirement. Any waiver of the annual training request must be made in writing to the POST Director prior to the end of the calendar year (December 31).

(A) Perishable Skills Waiver

Agency executives may request an exemption from the perishable skills training requirement. This request shall be in writing to the POST Director. This request shall state that either their certified peace officers do not carry firearms, or they infrequently interact with or effect physical arrests, or they do not utilize marked emergency vehicles as part of their normal duties.

(B) Partial Year Employment Waiver

The 24 hours of in-service training is required if a certified peace officer is employed for the entire calendar year. Certified peace officers who are employed after the start of the calendar year only need to complete a prorated number of training hours. Therefore, one hour per month of regular training and one hour a month of perishable skills training shall be required. (Example: If a certified peace officer is hired in July, six hours of regular training and six hours of perishable skills training should be completed for that calendar year).

(C) Long Term Disability, Medical Leave or Restricted Duty

If a certified peace officer is unable to complete the in-service annual hours due to long term disability, medical leave or restricted duty, the agency must obtain a letter from a physician stating that participation in any type of training including audiovisual or online training would be detrimental to the officer's health. The letter should define the time that the officer is unable to attend any training. Those granted a waiver will be on a prorated basis for the time stated in the physician's letter. The agency does not need to forward the physician's letter to POST but only reference it in a waiver request.

(D) Military Leave

Those certified peace officers deployed in military service only need to complete a prorated number of training hours.

(II) Compliance

(A) Agencies are required to be in compliance with the in-service program.

(B) POST will send out a preliminary compliance report following each training period. The report will provide the compliance status of each agency and its certified peace officers. Agencies shall have thirty (30) days from the date of the preliminary report to dispute the POST data and provide additional training information. Following the thirty-day period, POST will distribute the final compliance reports to all agencies.

(C) Agencies that are out of compliance in the final compliance report will be suspended from receiving any POST funds until compliance is reached. Agencies may appeal this by following the process in Rule 5-*Hearings*. If an agency seeks an appeal within 30 days of being notified that they are out of compliance, funding shall not be eliminated until the agency has completed the Rule 5 process.

(D) The POST Board shall evaluate the program annually following the release of the final compliance reports. Such evaluation will include a review and evaluation of the program. The evaluation may be based on the compliance rate, agency survey and other performance metrics. Agencies shall complete an annual training evaluation survey as part of the substantial compliance measurement by February 1 of each year.

Notice of Rulemaking Hearing

Tracking number

2014-01084

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2 Part 1

Rule title

SOLID WASTE DISPOSAL SITES AND FACILITIES

Rulemaking Hearing

Date

11/18/2014

Time

09:30 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, Bldg. A, Sabin Conference Room

Subjects and issues involved

These amendments to 6 CCR 1007-2 include the deletion and replacement of the existing Section 10 regulations (Waste Tire Facilities and Waste Tire Haulers) with new Section 10 regulations (Waste Tires); the revision of the Section 16 regulations (Materials Prohibited from Disposal); and the associated additions, deletions and revisions to Section 1.2 (Definitions).

Statutory authority

30-20-109, C.R.S.; 30-20-1401(2), C.R.S.; and 30-20-1405(3)(c)

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-2

PART 1 - REGULATIONS PERTAINING TO SOLID WASTE SITES AND FACILITIES

Deletion and Replacement of Existing Section 10 Regulation (Waste Tire Facilities and Waste Tire Haulers) with New Section 10 Regulations (Waste Tires); the Amendment of Section 16 (Materials Prohibited From Disposal) and the Associated Additions and Revision to Section 1.2 Definitions

1) Section 1.2 is being amended by adding the following definitions in alphabetical order to read as follows:

1.2 Definitions

*****

"Applicant" for the purposes of Section 10.12 means any person or business seeking a rebate from the Waste Tire End Users Fund.

*****

"Authorized signature" means the signature of an individual who has authority to sign on behalf of and bind an individual or corporation.

*****

"Beneficial user" means a person who uses solid waste as an ingredient in a manufacturing process or as an effective substitute for natural or commercial products, in a manner that does not pose a threat to human health or the environment. Avoidance of processing or disposal cost alone does not constitute beneficial use.

*****

"Buffings" means the residual rubber material removed from the supporting structure of a waste tire or a retreaded or recapped tire.

*****

"Commission" means the solid and hazardous waste commission created in section 25-15-302, C.R.S.

*****

"Daily cover" means using tire-derived product as an alternate cover placed upon exposed solid waste in a permitted solid waste facility to control disease vectors, fires, odors, blowing litter and scavenging, without presenting a threat to human health or the environment.

*****

"Mobile Processor" means a person who processes waste tires at a location other than the location of the person's certificate of registration.

*****

"Motor vehicle" means a self-propelled vehicle that is designed for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways or a low speed electric vehicle. "Motor vehicle" includes automobiles, minivans, all trucks, motor homes, and motorcycles.

*****

"Public project" means:

(a) A publicly funded contract entered into by a governmental body of the executive branch of this state that is subject to the "Procurement Code", articles 101 to 112 of title 24, C.R.S.; and

(b) A publicly funded contract entered into by a county, municipal government, or special district, including a school district or recreation district.

*****

"Pyrolysis" means the thermochemical decomposition of material at elevated temperatures without the participation of oxygen.

*****

"Recapped or retreaded tire" means a previously worn tire which has gone through a remanufacturing process designed to extend its useful service life.

*****

"Retailer" as used in Section 10 of these Regulations means a person who sells a small quantity of product to a consumer, as opposed to a wholesaler or supplier who typically sells large quantities of products to other businesses. Retailers of tire-derived product are persons who sell small quantities of tire-derived product to consumers.

*****

"Trailer" means a wheeled vehicle, without motive power, that is designed to be drawn by a motor vehicle.

*****

"Used tire" means a tire that was previously used as a tire and is graded and classified for reuse as a tire based on specifications and criteria maintained pursuant to section 30-20-1410(1)(a), C.R.S.

*****

"Waste Tire Bale" means waste tires that are mechanically compressed and bound into block form and are secured using stainless steel or heavy gauge baling wire.

"Waste Tire Cleanup Program" means the program created by part 14 of article 20 of title 30, C.R.S.

*****

"Waste Tire Generator" means a person who generates motor vehicle or trailer waste tires. The term includes new tire retailers, used tire retailers, automobile dealers, automobile dismantlers, public and private vehicle maintenance shops, garages, service stations, car care centers, automotive fleet centers, local government fleet operators, and rental fleet operators.

*****

"Waste Tire Processor" means a person who processes a waste tire into a tire-derived product.

*****

2) Section 1.2 is being amended by revising the following definitions to read as follows:

1.2 Definitions

*****

"Collection facility" as used in Section 16 of these Regulations means any facility that accepts, aggregates and stores used oil, used lead-acid batteries, OR waste electronic devices~~, or waste tires~~ generated elsewhere for transport to a location described in Sections 16.2, 16.3, 16.4, and 16.5 of these Regulations.

*****

"End User" means a person who:

(a) U~~u~~ses a tire-derived product for a commercial or industrial purpose~~.~~;

(b) USES A WHOLE WASTE TIRE TO GENERATE ENERGY OR FUEL; OR

(c) CONSUMES TIRE-DERIVED PRODUCT OR USES TIRE-DERIVED PRODUCT IN ITS FINAL APPLICATION OR IN MAKING NEW MATERIALS WITH A DEMONSTRATED SALE TO A THIRD PARTY CUSTOMER.

"Residentially generated" as used in Section 16 of these Regulations means used lead-acid batteries, OR used oil~~, and waste tires~~ generated by a person or by removal of said items from a personal vehicle not used primarily for a commercial or business purpose.

*****

"Retailer" as used in Section~~s 10 and~~ 16 of these Regulations means any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity that engages in the sale of new lead-acid batteries, ELECTRONIC DEVICES, OR lubricating oil~~, or new tires~~ directly to the consumer.

*****

"Tire" means a RUBBER CUSHION THAT FITS AROUND A WHEEL. ~~tire for any passenger vehicle, including any truck, weighing less than fifteen thousand pounds, and for any truck, including any truck tractor, trailer, or semitrailer, weighing more than fifteen thousand pounds; except that "tire" does not include:~~

~~(I) Tires that are recapped or otherwise reprocessed for use; or~~

~~(II) Tires that are used for:~~

~~(A) Farm equipment exempt from sales and use taxes pursuant to section 39-26-716, C.R.S.; or~~

~~(B) A farm tractor or implement of husbandry exempt from registration pursuant to section 42-3-104, C.R.S.~~

*****

"Tire-Derived Product" means matter that:

(~~I~~a) Is derived from a process that uses whole tires as a feedstock, including~~, but not limited to,~~ shredding, crumbing, and chipping; ~~and~~

(~~II~~b) ~~Has been sold and removed from the facility of a processor.~~ ADHERES TO ESTABLISHED ENGINEERING OR OTHER APPROPRIATE SPECIFICATIONS OR TO ESTABLISHED PRODUCT END USER SPECIFICATIONS OR CUSTOMER CONDITIONS OF ACCEPTANCE.

(c) HAS A DEMONSTRATED BENEFIT ASSOCIATED WITH THE END USE;

(d) CAN BE USED AS A SUBSTITUTE FOR, OR IN CONJUNCTION WITH, A COMMERCIAL PRODUCT OR RAW MATERIAL; AND

(e) HAS EITHER BEEN SOLD AND REMOVED FROM THE FACILITY OF A PROCESSOR OR HAS BEEN USED ON SITE BY THE PROCESSOR.

*****

"Waste Tire" means a tire that is MODIFIED FROM ITS ORIGINAL SPECIFICATIONS BUT NOT PROCESSED INTO A TIRE-DERIVED PRODUCT, IS NO LONGER BEING USED FOR ITS INITIAL INTENDED PURPOSE AS A TIRE, AND IS NOT A USED TIRE. ~~no longer mounted on a motor vehicle and is no longer suitable for use as a tire due to wear, damage, or deviation from the manufacturer's original specifications. "Waste Tire" includes the following types of tires that are not organized for resale by size in a rack or a stack in a manner that allows the inspection of each individual tire: A repairable tire, scrap tire, altered waste tire, and a used tire. "Waste Tire" does not include a tire-derived product or crumb rubber.~~

*****

"Waste Tire Collection Facility" means a~~ny~~ facility AT WHICH WASTE TIRES ARE STORED AWAITING PICKUP BY A REGISTERED WASTE TIRE HAULER FOR TRANSPORTATION TO A REGISTERED WASTE TIRE PROCESSOR OR REGISTERED WASTE TIRE MONOFILL. ~~that aggregates or stores waste tires for transport to another location.~~

*****

"Waste Tire Hauler" means a person who transports TEN OR MORE waste tires IN ANY ONE LOAD. ~~for compensation.~~

*****

"Waste T~~t~~ire M~~m~~onofill" means PART OR ALL OF A SOLID WASTE DISPOSAL SITE AND FACILTY THAT HAS BEEN ISSUED A CERTIFICATE OF DESIGNATION AND AT WHICH ONLY WASTE TIRES ARE ACCEPTED. ~~any duly licensed and permitted (issued a Certificate of Designation by the local governing authority) solid waste disposal site and facility or section of a solid waste disposal site and facility at which only waste tires are accepted.~~

*****

"Wholesaler" as used in Section~~s 10 and~~ 16 of these Regulations means any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity that sells new lead-acid batteries, electronic devices, or lubricating oil~~, or new tires~~ for resale.

*****

3) Section 1.2 is being amended by deleting the definitions of "Fleet Service Facility", "Passenger tire equivalents", "Processor", "Tire", and "Waste Tire Facility" as follows:

1.2 Definitions

****

~~**"Fleet Service Facility"** as used in Section 10 of these Regulations means any facility that generates waste tires as a result of replacing old tires on fleet vehicles with new tires. This category of facilities could include, but would not be limited to, automobile dealerships, school districts, governmental fleet maintenance facilities, and package delivery fleet maintenance facilities.~~

****

~~**"Passenger tire equivalents"** means a conversion measurement that is used to estimate waste tire weights and volume amounts defined as an average sized whole passenger/light truck tire weighing twenty-two and one-half (22.5) pounds and occupying a volume of four (4) cubic feet.~~

****

~~**"Processor"** means a person who processes waste tires in Colorado for recycling or beneficial use.~~

****

~~**"Tire"** as used in Section 16 of these Regulations means a pneumatic rubber covering designed to encircle the wheel of a vehicle in which a person or property is or may be transported or drawn upon a highway.~~

****

~~**"Waste Tire Facility"** means:~~

~~(I) (a) A waste tire monofill;~~

~~(b) A facility of an end user or processor;~~

~~(c) A facility of a tire retailer or tire wholesaler that is a source of waste tires pursuant to section 30-20-1007 or 30-20-1008, C.R.S.;~~

~~(d) A waste tire collection facility; or~~

~~(e) A fleet service facility.~~

~~(II) "Waste Tire Facility" does not include the facility of a waste tire hauler unless that hauler stores any quantity of waste tires at the facility in excess of ninety (90) days.~~

4) The existing Section 10 Regulations (Waste Tire Facilities and Waste Tire Haulers) are being deleted in their entirety and replaced with new Section 10 Regulations (Waste Tires) to read as follows:

SECTION 10

WASTE TIRES

10.1 Scope and Applicability

10.2 General Provisions

10.3 Standards for Waste Tire Haulers

10.4 Standards for Generators of Motor Vehicle and Trailer Waste Tires

10.5 Standards for Waste Tire Monofills

10.6 Standards for Waste Tire Processors

10.7 Standards for Mobile Waste Tire Processors

10.8 Standards for Waste Tire Collection Facilities

10.9 Standards for End Users

10.10 Standards for Management of Used Tires

10.11 Waste Tire Fee Administration

10.12 Waste Tire End Users Fund

SECTION 10.1- SCOPE and APPLICABILITY

10.1.1 PURPOSE

The purpose of this Section10 is to implement the provisions of section 30-20-1401 through 30-20-1417, C.R.S.

10.1.2 APPLICABILITY

This section 10 applies to all persons, unless otherwise exempted, who generate, accumulate, store, transport, dispense, or process waste tires, used tires or tire-derived product. Section 10.11 applies to all persons who sell new motor vehicle or trailer tires. Persons managing waste tires pursuant to this section 10 are exempt from section 8 for their waste tire management activities, except for the beneficial use of waste tires. Persons managing waste tires pursuant to this section 10 who engage in other recycling activities are subject to section 8 for those activities.

10.1.3 EXEMPTIONS

(A) This section 10 does not apply to:

(1) Operation, including by a local, state or federal government agency, of a vehicle that is primarily engaged in the collection and transportation of solid wastes other than waste tires;

(2) A person who only travels through the state with waste tires as part of interstate commerce and does not collect, deposit, transfer, store or dispose of any waste tires within this state;

(3) Transportation of products made from waste tires for sale or other distribution;

(4) Household Hazardous Waste roundup events, community cleanup events, and other one-time or occasional collection events where waste tires are accepted for drop-off by persons not engaged in commercial activity and where the waste tires are picked up by a registered Waste Tire Hauler and transported to the facility of a registered Waste Tire Hauler or Waste Tire Generator, Waste Tire Collection Facility, Waste Tire Processor, Waste Tire Monofill, approved beneficial user of whole waste tires, municipal or county-owned waste tire collection area, or municipal or privately owned solid waste landfill; at the conclusion of the event;

(5) The beneficial use of less than ten (10) waste tires. A person who beneficially uses ten (10) or more waste tires must:

(a) Comply with section 8.6;

(b) Comply with section 10.3 if they transport their own waste tires,

(c) Comply with section 10.6 if they process waste tires at the facility, and

(d) Comply with section 10.8, if they store more than five hundred (500) waste tires at any one site at any one time.

(B) Owners/operators of Solid Waste Landfills, Transfer Stations, and Recycling Facilities that accumulate waste tires by separating them out of the solid waste streams are exempt from section 10.8 of these Regulations if they:

(1) Store less than five hundred (500) waste tires outdoors at their facility, and

(2) Store less than a total of one thousand five hundred (1,500) waste tires at their facility.

(C) Government entities that store waste tires as part of road-side cleanup activities are exempt from section 10.8 if they:

(1) Store less than five hundred (500) waste tires outdoors at their facility, and

(2) Store less than a total of one thousand five hundred (1,500) waste tires at their facility.

(D) A government entity that removes illegally disposed waste tires from the road-side is exempt from section 10.3 if the waste tires are disposed of or recycled in accordance with this section 10.

(E) Registered waste tire haulers, generators, monofills, processors and waste tire collection facilities who accept ten (10) or more unmanifested waste tires or ten (10) or more waste tires from unregistered waste tire haulers must submit to the Department within twenty (20) days from the end of the preceding month a Uniform Waste Tire Manifest(s) Form WT-2 for the receipt of unmanifested waste tires. The Uniform Waste Tire Manifest Form must contain the following information:

(1) Date(s) waste tires were accepted;

(2) The total amount of waste tires accepted;

(3) License plate number of unregistered waste tire hauler vehicle used to deliver waste tires;

(4) If available the name, address and telephone number of the person who delivered the waste tires.

(5) If possible, the source of the tires.

SECTION 10.2 - GENERAL PROVISIONS

10.2.1 COMPLIANCE WITH OTHER LAWS

Waste Tire Haulers, Waste Tire Generators, Waste Tire Processors, Mobile Waste Tire Processors, Waste Tire Collection Facilities, Waste Tire Monofills, End Users, and Beneficial Users must comply with all local, state, and federal laws, regulations, ordinances, and other requirements.

10.2.2 OPERATIONS COVERED BY MULTIPLE PARTS OF THIS SECTION 10

Waste Tire Generators, Waste Tire Haulers, Waste Tire Collection Facilities, Waste Tire Processors, Mobile Waste Tire Processors, Waste Tire Monofills, and End Users may perform activities that are regulated by multiple parts of this section 10. If so, these entities must register accordingly and comply with the requirements of all applicable parts of these regulations, which are not duplicative or overlapping.

10.2.3 LIMITATIONS ON THE DISPOSAL OF WASTE TIRES

(A) Except as specified in section 10.2.3(B) below, a person must dispose of waste tires only by delivery to a generator engaging in waste tire collection, to a waste tire processor, to a waste tire monofill, or to a waste tire collection facility. This prohibition on disposal also applies to waste tires that have been cut in half or otherwise modified but not processed into tire-derived product.

(B) If an individual not engaged in commercial waste tire activities is able to establish that due diligence has been conducted and no option for disposing of a waste tire as specified by section 10.2.3(A) is available, then the individual may dispose of the waste tire in a solid waste disposal site and facility or transfer station. To establish due diligence, an individual must (1) contact the local governing authority to determine whether local recycling options are available, (2) contact the Department to determine whether local recycling options are available, and (3) contact all waste tire generators, waste tire haulers, waste tire monofils, waste tire processors and waste tire collection facilities within fifty (50) miles to determine whether alternatives to final disposal exist. The Department has discretion to determine whether this due diligence requirement has been satisfied.

10.2.4 EXEMPTION FROM ANNUAL FEES IN SECTION 1.7.3

The annual fee requirement of section 1.7.3 does not apply to persons registered pursuant to sections 10.3, 10.4, 10.6, 10.7, 10.8, or 10.9 for their activities governed by these sections.

10.2.5 ENFORCEMENT

The Department may enforce this section 10 through its enforcement authorities, including those specified in sections 30-20-113 and 30-20-114, C.R.S.

SECTION 10.3 - STANDARDS FOR WASTE TIRE HAULERS

10.3.1 GENERAL

(A) Unless transported out of state, a person may only transport waste tires to the following types of facilities, sites and users in Colorado:

(1) A registered waste tire generator;

(2) A registered waste tire hauler;

(3) A registered waste tire collection facility;

(4) A registered waste tire monofill;

(5) An end user of whole waste tires in compliance with section 10.9 of these Regulations

(6) A registered waste tire processor;

(7) A municipal or county-owned waste tire collection area;

(8) A municipal or privately owned solid waste landfill in compliance with this section 10.2.3 (B); or

(9) A beneficial user of whole waste tires that has been approved by the Department.

(B) A person registered as a Waste Tire Hauler pursuant to section 10.3.3 of these Regulations may pick up waste tires from a person exempted from this section 10, who is not registered as a Waste Tire Generator, Waste Tire Hauler, Waste Tire Collection Facility, Waste Tire Processor, Mobile Waste Tire Processor, or Waste Tire Monofill, an illegal waste tire site or from a private property as long as the Waste Tire Hauler creates a manifest for the load of waste tires pursuant to Section 10.3.5 of these Regulations, and ensures delivery of the waste tires only to a facility listed in section 10.3.1(A) above.

(C) Waste Tire Haulers must within twenty-four (24) hours of identification notify the Solid Waste Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two (2) weeks of this notification, the facility must submit a written report describing the emergency to the Solid Waste Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the issues generated by the emergency.

(D) A Waste Tire Hauler that is not also registered as a Waste Tire Generator, Waste Tire Collection Facility, Waste Tire Processor, or Waste Tire Monofill must not have on site:

(1) More than one thousand five hundred (1,500) waste tires at any one time; or

(2) A waste tire for more than three (3) days; or

(3) Waste tires outside the waste hauler's vehicle or trailer.

10.3.2 REGISTRATION FOR WASTE TIRE HAULERS

(A) No person shall transport a load of ten (10) or more waste tires at one time unless he/she has registered with the Department by submitting an application for Certificate of Registration (Form WT-1 or WT-1H) to the Hazardous Materials and Waste Management Division of the Department and received a Certificate of Registration from the Department.

(B) An application for a Certificate of Registration as a Waste Tire Hauler must be submitted on Form WT-1 or WT-1H. The application must be delivered to the Department, electronically or by hard copy, and must include, at a minimum, the following information:

(1) The business name of the Waste Tire Hauler and any other names under which the Waste Tire Hauler may do business;

(2) The principal business address of the Waste Tire Hauler;

(3) A business telephone number(s);

(4) The name and address of the responsible officer of a corporate Waste Tire Hauler or the owner(s) of a Waste Tire Hauler operating a proprietorship or partnership;

(5) The signature and date of signature of the Waste Tire Hauler applicant;

(6) The number of vehicles the Waste Tire Hauler uses to transport waste tires in Colorado; and

(7) A current vehicle registration for each vehicle the Waste Tire Hauler will use to haul waste tires which includes the following information for each vehicle: the license plate number, the state in which the vehicle is registered, the Vehicle Identification Number ("VIN"), the make/model and year, and the registered owner.

(C) The Department will issue a Certificate of Registration and corresponding decal(s) to an applicant if the applicant has submitted an application to the Department containing all information required in section 10.3.2(B) and has submitted the annual report required by section 10.3.6.

(D) The Certificate of Registration for a Waste Tire Hauler is valid from the date of issuance to March 15 of the year indicated on the Certificate of Registration.

(E) A Waste Tire Hauler must submit an updated application for a Certificate of Registration within fifteen (15) days after the Waste Tire Hauler purchases a new vehicle, rents or leases a vehicle, or operates a facility at a new location.

(F) A Waste Tire Hauler is not authorized to haul waste tires after the March 15 expiration date unless the Waste Tire Hauler has applied to renew the Waste Tire Hauler Certificate of Registration prior to expiration and has received a new Certificate of Registration as a Waste Tire Hauler from the Department and Waste Tire Hauler decals, pursuant to section 10.3.3 below.

(G) All Waste Tire Haulers who wish to continue hauling waste tires must submit application for renewal no later than February 1.

(H) A legible copy of the Certificate of Registration must be maintained and made available for inspection at the Waste Tire Hauler's principal place of business.

(I) A Waste Tire Hauler Certificate of Registration is not transferable by the Waste Tire Hauler to whom it was issued to any other person or entity.

(J) A Waste Tire Hauler who has previously filed an application for a Certificate of Registration as a Waste Tire Hauler (Form WT-1 or WT-1H) is required to notify the Department in writing whenever changes occur to the following:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number; or

(7) The Waste Tire Hauler is no longer hauling waste tires.

(K) The Department may cancel a Certificate of Registration of a person who no longer hauls waste tires.

10.3.3 WASTE TIRE HAULER DECALS

(A) No person shall transport a load of ten (10) or more waste tires in Colorado without having received a Waste Tire Hauler decal(s). An application for a Certificate of Registration submitted pursuant to

section 10.3.2 above shall also serve as the application for a Waste Tire Hauler decal(s). A Waste Tire Hauler must submit an updated application for a Certificate of Registration within 15 days after the Waste Tire Hauler purchases a new vehicle, or rents or leases a vehicle.

(B) Waste Tire Haulers will receive Waste Tire Hauler decal(s) and temporary decals (if needed) for each vehicle from the Department with their Certificate of Registration. Each decal will have a unique number.

(C) Each Waste Tire Hauler vehicle decal will be valid until March 15 of the year indicated on the vehicle decal and will have a unique number. Prior to the expiration date, a Waste Tire Hauler must submit a new application for a Certificate of Registration pursuant to section 10.3.2 above.

(D) A Waste Tire Hauler decal must be affixed to the lower left hand corner of the windshield of each vehicle the Waste Tire Hauler owns, rents, leases and/or uses to transport waste tires or in some other manner so the decal is visible on vehicles that do not have a windshield

(E) A Waste Tire Hauler decal is not transferable by the Waste Tire Hauler to whom it was issued to any other person or entity and must not be used for any vehicle not listed by the Registered Waste Tire Hauler on its application for a Certificate of Registration as a Waste Tire Hauler.

(F) Commercial freight carriers must obtain a temporary decal from the registered Waste Tire Hauler who contracts with them. The temporary decals must be displayed on the lower left hand side of the windshield or in some other manner so the decal is visible on vehicles that do not have a windshield at all times when the vehicle is under contract for waste tire transportation. Upon termination of contract, the temporary decal must be returned within twenty-four (24) hours to the registered Waste Tire Hauler. Commercial freight carriers must comply with sections 10.3.1 and 10.3.4.

10.3.4 MANIFEST REQUIREMENTS FOR WASTE TIRE HAULERS

(A) No Waste Tire Hauler may accept waste tires for transportation without properly completing a paper or electronic manifest pursuant to section 10.3.4 of these Regulations unless they comply with 10.1.3 (E).

(B) Paper or electronic copies of manifests for all transport of waste tires accepted by a Waste Tire Hauler must be maintained on-site at the Waste Tire Hauler's principal business address as identified on the Certificate of Registration and available for inspection for three (3) years from the date of delivery.

(C) A Waste Tire Hauler must create a paper or electronic manifest for each load of waste tires. Such persons must use the Uniform Waste Tire Manifest Form WT-2, available at the Department's website. Each manifest will have a unique number. The completed Uniform Waste Tire Manifest must contain the following information:

(1) The name, address, telephone number, and Certificate of Registration number, if applicable, of the generator(s) or source(s) of the waste tires in the load;

(2) The quantity of waste tires picked up at each generator or source as measured by:

(a) The actual number of waste tires; or

(b) The weight of waste tires measured in tons;

(3) The name, address, telephone number and Certificate of Registration number of the Waste Tire Hauler and the Waste Tire Hauler decal number of the vehicle used to transport the waste tires

and, if applicable, the name and United States Department of Transportation (USDOT) number of the contracted commercial freight carrier;

(4) The date(s) of transport;

(5) The name, address, telephone number and Certificate of Registration number and decal number of the destination facility to which the waste tires will be delivered;

(6) The signatures, under penalty of perjury, of each generator/source of the waste tires, the Waste Tire Hauler, the secondary Waste Tire Hauler (if any), and the facility that is the destination of the waste tires; and

(7) Whether the waste tires originated from an illegal waste tire site or from a private property.

(8) Whether the waste tires originated from an unregistered waste tire hauler and license plate number of unregistered waste tire hauler.

(D) Waste Tire Haulers must:

(1) Carry the paper or electronic Uniform Waste Tire Manifest of each load in the vehicle while hauling the waste tires described on the Manifest (the Manifest need not be displayed in the vehicle);

(2) Provide a copy of the paper or electronic Uniform Waste Tire Manifest for each load to the applicable waste tire generator/source of the waste tires within thirty (30) days of delivery to the destination facility;

(3) Provide a paper or electronic completed copy of the Uniform Waste Tire Manifest for each load to the destination facility when the hauler delivers the waste tires; and

(4) Make a copy of any paper or electronic Uniform Waste Tire Manifest available to the Department upon request.

10.3.5 ANNUAL REPORT

A Waste Tire Hauler must submit an annual report to the Department on the Commercial Waste Tire Hauler Annual Report Form (Form WT-4). This form may be obtained by contacting the Department or available at the Department's website.

(A) The report must account for the number of waste tires transported by the person during the previous calendar year (beginning January 1 and ending December 31). Waste tire quantities must be reported by actual count or by actual weight in tons.

(B) The annual report must be delivered to the Department, via certified mail, regular mail, facsimile, hand delivery, or electronically by April 1 of each year and must include the following:

(1) Quantity of waste tires collected by the Waste Tire Hauler from within Colorado for the applicable reporting period;

(2) Quantity of waste tires that are brought to Colorado locations by the Waste Tire Hauler from out-of-state sources during the applicable reporting period;

(3) Quantity of waste tires that are taken from Colorado locations by the Waste Tire Hauler to out-of-state destinations during the applicable reporting period;

(4) Quantity of waste tires identified as used tires;

(5) Final disposition of all the waste tires collected during the applicable reporting period by listing each waste tire collection facility, waste tire monofill, municipal or privately owned solid waste landfill, or end user or processor facility, beneficial users of waste tires and the total quantities of waste tires that the Waste Tire Hauler has delivered to each; and

(6) The total amount of waste tires accepted from a person exempted from section 10.

10.3.6 WASTE TIRE HAULER SELF-CERTIFICATION

(A) The Department may require Waste Tire Haulers to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) Any Waste Tire Hauler who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide Waste Tire Haulers a reasonable amount of time to complete and return the checklist. At a minimum, the Waste Tire Hauler will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist will contain a certification in substantially the following form, which must be signed by an authorized representative of the Waste Tire Hauler:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.4 - STANDARDS FOR GENERATORS OF MOTOR VEHICLE AND TRAILER WASTE TIRES

10.4.1 GENERAL

This section 10.4 applies to all generators of motor vehicle or trailer waste tires, including but not limited to, new tire retailers, used tire retailers, automobile dealers, automobile dismantlers, public and private vehicle maintenance shops, garages, service stations, car care centers, automotive fleet centers, local government fleet operators, salvage and scrap yards and rental fleet operators.

10.4.2 GENERAL STANDARDS FOR GENERATORS OF MOTOR VEHICLE AND TRAILER WASTE TIRES

(A) All Waste Tire Generators must maintain all weather access roads to those areas of their facilities where waste tires are stored.

(B) All Waste Tire Generators must collect litter in and around any area used to store waste tires in order to avoid a fire hazard or a nuisance condition and control the growth of vegetation to minimize potential fuel sources.

(C) Waste Tire Generators must maintain a working telephone at their facilities.

(D) Waste Tire Generators must comply with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire, Prevention and Control in the Department of Public Safety.

(E) Waste Tire Generators that are not also registered as a Waste Tire Collection Facility, Waste Tire Processor, or Waste Tire Monofill must not:

(1) Have on site more than one thousand five hundred (1,500) waste tires at any one time; or

(2) Store more than five hundred (500) waste tires outdoors at their facility.

(F) Waste Tire Generators must immediately notify the Solid Waste and Materials Management Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two (2) weeks of this notification, the Waste Tire Generator must submit a written report describing the emergency to the Solid Waste and Materials Management Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the issues generated by the emergency.

(G) Waste Tire Generators must arrange for the commercial hauling or mobile processing of waste tires only with a waste tire hauler or mobile waste tire processor who is currently registered pursuant to these Regulations.

(H) Waste Tire Generators may accept waste tires.

(I) Waste Tire Generators that sell replacement tires in Colorado must not refuse to accept from a customer, at the point of transfer, motor vehicle or trailer waste tires of the same general type and in a quantity at least equal to the number of new tires purchased.

(J) Waste Tire Generators must maintain records for three (3) years showing how many waste tires they generated.

(K) Waste Tire Generators who accumulate at any one time more than hundred (100) waste tires must maintain security measures to prevent unlawful access to waste tires.

(L) Waste tires must not create nuisance conditions that could attract vectors of disease.

10.4.3 WASTE TIRE GENERATOR REGISTRATION REQUIREMENTS

(A) No person shall commercially generate motor vehicle or trailer waste tires, including but not limited to, as a new tire retailer, used tire retailer, automobile dealer, automobile dismantler, public or private vehicle maintenance shop, garage, service station, car care center, automotive fleet center, local government fleet operator, salvage and scrap yards or rental fleet operator in Colorado without having received a Certificate of Registration from the Department.

(B) An application for a Certificate of Registration must be submitted on Form WT-1 to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for the generation of waste tires must include, at a minimum:

(1) The business name of Waste Tire Generator and any other names under which the Waste Tire Generator may do business;

(2) The principal business address of the Waste Tire Generator;

(3) A business telephone number(s);

(4) The name and address of the responsible officer of a corporate Waste Tire Generator, or the owner(s) of a Waste Tire Generator operating a proprietorship or a partnership;

(5) Whether the Waste Tire Generator sells new motor vehicle tires or new trailer tires; and

(6) The signature and date of signature of the Waste Tire Generator applicant.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the facility and made available for inspection.

(E) A Certificate of Registration is not transferable by the Waste Tire Generator to whom it was issued to any other person or entity.

(F) A Waste Tire Generator who has previously filed an application for a Certificate of Registration as a Waste Tire Generator (Form WT-1) is required to notify the Department in writing whenever changes occur to the following:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number;

(7) Waste tires are generated at a new location not registered with the Department; or

(8) The Waste Tire Generator is no longer generating waste tires at the location registered with the Department.

(G) The Department may cancel a Certificate of Registration of a person who no longer generates waste tires at their registered location.

10.4.4 WASTE TIRE GENERATOR FACILITY DECAL

(A) An application for a Certificate of Registration pursuant to section 10.4.3 above shall also serve as an application for a Waste Tire Facility decal.

(B) Waste Tire Generators will receive a Waste Tire Facility decal from the Department with their Certificate of Registration.

(C) Waste Tire Facility decals will have a unique number.

(D) Waste Tire Generators must post their Waste Tire Facility decal in a prominent location at the address where the waste tires are generated and where the decal is visible to the Waste Tire Hauler.

10.4.5 WASTE TIRE GENERATOR MANIFEST REQUIREMENTS

(A) No Waste Tire Generator may accept a shipment of more than ten (10) motor vehicle or trailer waste tires without an accompanying manifest properly completed pursuant to section 10.3.4 of these Regulations unless they comply with 10.1.3 (E).

(B) No Waste Tire Generator may offer a shipment of motor vehicle or trailer waste tires without receiving a manifest properly completed by the Waste Tire Hauler pursuant to section 10.3.4 of these Regulations.

(C) No Waste Tire Generator may offer motor vehicle or trailer waste tires for mobile processing without receiving a manifest properly completed by the Mobile Waste Tire Processor pursuant to section 10.7.5 of these Regulations.

(D) Manifests for all shipments of motor vehicle or trailer waste tires must be maintained on-site at the Waste Tire Generator's facility and available for inspection for three (3) years from the date of pick-up.

10.4.6 WASTE TIRE GENERATOR SELF-CERTIFICATION

(A) The Department may require Waste Tire Generators to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) Any Waste Tire Generator who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide Waste Tire Generators a reasonable amount of time to complete and return a checklist. At a minimum, the Waste Tire Generator will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the Waste Tire Generator:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.5 - STANDARDS FOR WASTE TIRE MONOFILLS

10.5.1 GENERAL WASTE TIRE MONOFILL STANDARDS

(A) Any person who owns or operates a Waste Tire Monofill must have and comply with a valid Certificate of Designation issued pursuant to section 1.3 of these Regulations.

(B) A Certificate of Designation for a Waste Tire Monofill must include an Engineering Design and Operations Plan (EDOP) which includes the requirements listed in section 10.5.8, a Waste Tire Inventory Reduction Plan as required by 10.5.1 (J), the Financial Assurance requirements in section 10.5.6, and a Closure and Post-Closure Plan as required by section 10.5.9.

(C) Any person who owns or operates a Waste Tire Monofill must maintain all weather access roads to those areas of active operation and as necessary to meet the Fire Prevention, Training and Firefighting Plan required by subsection 10.5.8(A)(3) of these Regulations.

(D) Any person who owns or operates a Waste Tire Monofill must collect litter in order to avoid a fire hazard or a nuisance condition and control the growth of vegetation to minimize potential fuel sources.

(E) Any person who owns or operates a Waste Tire Monofill must implement security measures to preclude unauthorized entry.

(F) Any person who owns or operates a Waste Tire Monofill must post signs in public view at the entrance to the Waste Tire Monofill with the name of the facility, the hours which the facility is open for public use, a listing of the wastes accepted at the facility, and a phone number for a 24 hour emergency contact. The signs must be posted in English and any other language predominant in the area surrounding the facility.

(G) Any person who owns or operates a Waste Tire Monofill must maintain a working telephone at each Waste Tire Monofill facility.

(H) During all stages of operation of a Waste Tire Monofill, the owner or operator must have an attendant who is responsible for site activities.

(I) A Waste Tire Monofill owner or operator must immediately notify the Solid Waste Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two (2) weeks of this notification, the owner or operator must submit a written report describing the emergency to the Solid Waste Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the issues generated by the emergency.

(J) Waste Tire Inventory Reduction Plan: Owners/operators of a Waste Tire Monofill must on an annual basis, for every one (1) waste tire received, end use at least two (2) waste tires or process at least two (2) waste tires into tired-derived product. All owners or operators must submit for Department approval a Waste Tire Inventory Reduction Plan that shows how they will comply with this section. All owners or operators must comply with their Waste Tire Inventory Reduction Plan. An owner or operator of a Waste Tire Monofill may claim that information or data submitted in the Waste Tire Inventory Reduction Plan, should be withheld as Confidential Business Information ("CBI") or Trade Secret. The Department will hold information contained in the Waste Tire Inventory Reduction Plan as CBI/Trade Secret pursuant to section 7-74-102, C.R.S. and section 18-4-408(2), C.R.S. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

(K) Any person who owns or operates a Waste Tire Monofill must arrange for the commercial hauling or mobile processing of waste tires only with a waste tire hauler or mobile waste tire processor who is currently registered pursuant to these Regulations.

(L) Any person who owns or operates a Waste Tire Monofill must ensure that all waste tires collected at its facility are delivered to a waste tire monofill, a waste tire processor or to a waste tire collection facility operating in compliance with the Act and the Regulations or mobile processed. An owner/operator of a Waste Tire Monofill may ship whole waste tires to an End User who end uses whole waste tires for fuel or energy recovery.

(M) Any person who owns or operates a Waste Tire Monofill must not place any waste tires into monofill storage after January 1, 2018. All Waste Tire Monofills must close by July 1, 2024.

(N) Any person who owns or operates a Waste Tire Monofill must comply with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(O) Any person who owns or operates a Waste Tire Monofill must comply with their facility's Engineering Design and Operations Plan (EDOP).

10.5.2 WASTE TIRE MONOFILL REGISTRATION REQUIREMENTS

(A) No person shall operate a Waste Tire Monofill without having received a Certificate of Registration from the Department.

(B) Applications for Certificates of Registration must be submitted on Form WT-1 to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for operation of a Waste Tire Monofill must include:

(1) The business name of the Waste Tire Monofill and any other names under which the Waste Tire Monofill may do business;

(2) The principal business address of the Waste Tire Monofill;

(3) A business telephone number(s);

(4) The name and address of the responsible officer of a corporate Waste Tire Monofill, or the owner(s) of a Waste Tire Monofill operating a proprietorship or a partnership; and

(5) The signature and date of signature of the Waste Tire Monofill applicant.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the facility and made available for inspection.

(E) A Certificate of Registration is not transferable by the owner or operator of a Waste Tire Monofill to whom it was issued to any other person or entity, without the Department's prior approval based on information described in section 10.5.2(F) below.

(F) An owner or operator of a Waste Tire Monofill who has previously filed an application for a Certificate of Registration as a Waste Tire Monofill (Form WT-1) is required to notify the Department in writing whenever changes occur to the following:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number; or

(7) The owner or operator is no longer operating a Waste Tire Monofill at the location registered with the Department.

(G) The Department may cancel a Certificate of Registration of an owner or operator who no longer operates a Waste Tire Monofill at their registered location.

10.5.3 WASTE TIRE MONOFILL FACILITY DECAL

(A) An application for a Certificate of Registration pursuant to section 10.5.2 above, shall also serve as an application for a Waste Tire Facility decal.

(B) An owners or operator of a Waste Tire Monofill will receive a Waste Tire Facility decal from the Department with its Certificate of Registration. Waste Tire decals will have a unique number.

(C) An owner or operator of a Waste Tire Monofill must post their Waste Tire Facility decal in a prominent location at the address used to store/accumulate waste tires and where the decal is visible to the Waste Tire Hauler.

10.5.4 WASTE TIRE MONOFILL MANIFEST REQUIREMENTS

(A) No owner or operator of a Waste Tire Monofill may accept a shipment of more than ten (10) waste tires from a Waste Tire Hauler or Mobile Waste Tire Processor without an accompanying manifest properly completed pursuant to sections 10.3.4 or 10.7.5 of these Regulations unless they comply with 10.1.3 (E).

(B) Manifests for all shipments of waste tires accepted by an owner or operator of a Waste Tire Monofill must be maintained on-site at that facility and available for inspection for three (3) years from the date of delivery.

(C) No owner or operator of a Waste Tire Monofill may offer a shipment of more than ten (10) waste tires without an accompanying manifest properly completed by the Waste Tire Hauler pursuant to section 10.3.4 of these Regulations.

(D) No owner or operator of a Waste Tire Monofill may offer waste tires for processing without receiving a manifest properly completed by the Mobile Waste Tire Processor pursuant to section 10.7.5 of these Regulations.

(E) Manifests for all shipments of waste tires offered by the owner or operator of a Waste Tire Monofill must be maintained on-site at that facility and available for inspection for three (3) years from the date of pick-up.

10.5.5 WASTE TIRE MONOFILL FINANCIAL ASSURANCE

Any person who owns or operates a Waste Tire Monofill must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section 1.8 of these Regulations.

10.5.6 ANNUAL REPORT

(A) Any person who owns or operates a Waste Tire Monofill must submit an annual report to the Department and local governing body having jurisdiction by April 1 of each year on the Waste Tire Facility Annual Reporting Form (Form WT-5). The annual report must include the amount, by actual count or by actual weight in tons, of waste tires received at the facility, how many waste tires were processed or end used at the facility, how many waste tires were shipped off-site from the facility for the preceding calendar year, and the total amount of waste tires accepted from unregistered waste tire haulers.

(B) The annual report must include, in addition to the information in section 10.5.6(A) above, information concerning compliance with the Waste Tire Inventory Reduction Plan in section 10.5.1 (J). An owner or operator of a Waste Tire Monofill may claim that information or data submitted in the annual report, including the report on the Waste Tire Inventory Reduction Plan, should be withheld as Confidential Business Information ("CBI") or Trade Secret. The Department will hold information contained in the Waste Tire Inventory Reduction Plan as CBI/Trade Secret pursuant to section 7-74-102, C.R.S. and section 18-4-408(2), C.R.S. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

10.5.7 WASTE TIRE MONOFILL SELF-CERTIFICATION

(A) The Department may require an owner or operator of a Waste Tire Monofill to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) An owner or operator of a Waste Tire Monofill who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide the owner or operator of a Waste Tire Monofill a reasonable amount of time to complete and return a checklist. At a minimum, the owner or operator of a Waste Tire Monofill will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist will contain a certification in substantially the following form, which must be signed by an authorized representative of the Waste Tire Monofill:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.5.8 WASTE TIRE MONOFILL FACILITY ENGINEERING DESIGN AND OPERATIONS PLAN

(A) Any person who owns or operates a Waste Tire Monofill must have an Engineering Design and Operations Plan (EDOP), approved by the Department, which must, at a minimum, include all of the following:

(1) General:

(a) Nature of the activity conducted at the facility;
(b) The capacity and type of equipment to be used at the facility;
(c) All methods of waste tire processing and storage;
(d) Means used to track inventory on a volume or weight basis;
(e) Security measures;
(f) How the facility intends to implement the requirements listed in section 10.5.1 above; and
(g) Annual training requirements for all employees on all approved facility plans described in this section 10.5.8, and how that training will be documented and verified.

(2) Emergency Response Plan which includes:

(a) General facility information including:
(i) The facility name, mailing address and telephone number;
(ii) The facility operator's name, mailing address and telephone number; and
(iii) The property owner's name, mailing address and telephone number;

(b) An emergency contact list including the names and telephone numbers of the persons and appropriate agencies to be contacted in case of emergency, including:
(i) The Emergency Coordinator;
(ii) The Facility Owner;
(iii) The Facility Operator;
(iv) The Local Fire Authority; and
(v) Any additional numbers that may be needed.

(c) Emergency Equipment available on site, including specific capabilities and uses;

(d) A map showing the location of fire lanes, tire pile configurations, fire hydrants, power supply, and emergency response equipment; and

(e) A description of emergency response procedures to be followed in the event of a fire or other emergency.

(3) Fire Prevention, Training and Firefighting Plan which:

(a) Includes specification of the Facility's fire lane locations and widths;

(b) Includes means that are assumed to be used to extinguish fires;

(c) Designates a Facility Emergency Coordinator;

(d) Is written by a qualified professional in accordance with local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(e) Ensures the owner or operator complies with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection,

the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(f) Includes specification for adequate water supply available for use by the local fire authority for firefighting. Owners and operators may demonstrate compliance with this requirement through alternative methods approved by the local fire authority;

(4) Vector Control Plan which includes:

(a) Provisions for storage of tires in a manner which prevents the breeding and harborage of mosquitoes, rodents, and other vectors by any of the following means: (i) cover with impermeable barriers, other than soil, to prevent entry or accumulation of precipitation, or (ii) use of treatments or methods, such as pesticides, to prevent or eliminate vector breeding as necessary.

(b) If pesticides are used in vector control efforts, they must be used in accordance with the Pesticide Applicators Act, section 35-10-101, C.R.S.

10.5.9 CLOSURE AND POST-CLOSURE CARE OF WASTE TIRE MONOFILLS

(A) Any person who owns or operates a Waste Tire Monofill must close and maintain the Waste Tire Monofill in accordance with sections 2.5, 2.6, and 10.5 of these Regulations.

(B) Any person who owns or operates a Waste Tire Monofill must prepare a Closure Plan as part of the Engineering Design and Operations Plan. The Closure Plan must describe the steps necessary to close the Waste Tire Monofill at any point during its active life and at the end of the facility's active life. The facility may either: 1) close the waste in place as a solid waste landfill in accordance with these Solid Waste Regulations, or 2) remove all solid waste and residual contamination to meet unrestricted use concentrations. Option 2, also known as "clean closure," eliminates the need for post closure care. Both Option 1 and Option 2 require the owner or operator of a Waste Tire Monofill to develop a closure plan.

(1) The closure plan, at a minimum, must include the following information:
(a) Provisions for removal of all solid waste at those facilities choosing partial or facility-wide clean closure;
i. Proposed plans and procedures for sampling and testing soil based on visual identification of staining or other indications of residual contamination;
ii. Provisions for sampling and analyses of soil for potential hazardous characteristics and provisions for final disposal. Soils will need to meet unrestricted use concentrations or background levels whichever is greater.
(b) Provision for the consolidation and placement of residual wastes remaining on site;
(c) Procedures for placement of final cover materials and final cover configurations.

(2) General description of the site post-closure, including:
(a) The final property contours, material and procedures to be used to cover the waste tires;
(b) A description of final soil placement and establishment of plant life;
(c) A description of anticipated post disposal land use;
(d) A schedule for completing all activities necessary to satisfy the closure criteria of this section; and
(e) An analysis of whether C.R.S. § 25-15-320 will require an environmental covenant following closure.

(3) Owners or operators of all Waste Tire Monofills must submit a Closure Report to the Department at the time of final closure. The report must summarize the number or volume of tires disposed of in each pit, and phone number of person(s) responsible for post closure control of the facility.

(4) At least sixty (60) days in advance of the proposed closure date, the owner or operator must notify the Department and the local governing authority of the proposed closure date.

(5) The owner or operator must notify the general public at least sixty (60) days in advance of the proposed closure by placing signs of suitable size at the entrance to the site and facility.

(6) The owner or operator of the facility must complete closure activities of the facility in accordance with the closure plan and within one hundred eighty (180) calendar days following the final receipt of waste. Extensions of the closure period may be granted by the Department if the owner or operator demonstrates that closure will take longer than one hundred eighty (180) calendar days and the owner/operator has taken and will continue to take all steps to prevent threats to human health and the environment.

(7) Following closure of an Waste Tire Monofill, the owner or operator shall comply with C.R.S. § 25-15-320 unless the site is remediated to a condition that is suitable for unrestricted use, and if waste is left in place as part of the closure, record a notation in the chain of title specifying that the land has been used as a Waste Tire Monofill. A copy of the notation must be provided to the Department prior to recording for review and approval.

(8) Closure Certification: A closure certification report is required to be submitted within sixty (60) calendar days of completion of closure activities which documents all the requirements and conditions of the closure plan have been achieved. The Report must be signed and sealed by a Colorado registered professional engineer and is subject to review and approval by the Department.

(C) POST-CLOSURE CARE AND MAINTENANCE REQUIREMENTS FOR WASTE TIRE MONOFILLS

Post-Closure Activities: Following closure of the Waste Tire Monofill the owner or operator shall submit a Post-Closure Care Plan within sixty (60) calendar days of determining that the waste tire facility was closed as a landfill that will include at least the following:

(1) Provisions to prevent nuisance conditions;

(2) Maintaining the integrity and effectiveness of the final cover, should waste be closed in place, including making repairs to the cover and replanting vegetation as necessary; and

(3) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

10.6 - STANDARDS FOR WASTE TIRE PROCESSORS

10.6.1 GENERAL

Waste tire processing is not subject to the Recycling requirements of section 8 or the annual fee requirements of section 1.7.3.

10.6.2 GENERAL STANDARDS FOR WASTE TIRE PROCESSORS

(A) All Waste Tire Processors must maintain all weather access roads to those areas of active operation and as necessary to meet the Fire Prevention, Training and Firefighting Plan required by subsection 10.6.9(A)(3) of these Regulations.

(B) All Waste Tire Processors must collect litter in order to avoid a fire hazard or a nuisance condition and control the growth of vegetation to minimize potential fuel sources.

(C) All Waste Tire Processors must implement security measures to preclude unauthorized entry.

(D) Prominent signs in English and any other language predominant in the area surrounding the facility must be posted in public view at the entrance to each Waste Tire Processing facility with the name of the facility, the hours which the facility is open for public use, a listing of the wastes accepted at the facility, and a phone number for a 24 hour emergency contact.

(E) The Waste Tire Processor must maintain a working telephone at each Waste Tire Processor facility.

(F) During all stages of operation of a Waste Tire Processor, the facility must have an attendant who is responsible for site activities.

(G) A Waste Tire Processor operator must immediately notify the Solid Waste Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two (2) weeks of this notification, the facility must submit a written report describing the emergency to the Solid Waste Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the issues generated by the emergency.

(H) Following a one-year accumulation period, the weight or volume of waste tires that are processed must be at least 75% of the total weight or volume of waste tires received and currently in storage over a three year rolling average. A Waste Tire Processor that is also registered as a Waste Tire Monofill is exempt from this requirement and must comply with the requirement in section 10.5.1(J).

(I) A Waste Tire Processor that is not also registered as a Waste Tire Monofill must not have at the processing facility at any one time more than the lesser of:

(1) One hundred thousand (100,000) waste tires;

(2) The amount of waste tires allowed under local requirements; or

(3) The amount of waste tires anticipated in the Waste Tire Processor's financial assurance instrument.

(J) Waste Tire Processors must arrange for the commercial hauling of waste tires only with a waste tire hauler who is currently registered pursuant to section 10.3.2 of these Regulations.

(K) Waste Tire Processors must ensure that any waste tires shipped off-site from their facilities are delivered either out of state or to a registered Waste Tire Generator, Waste Tire Hauler, Waste Tire Collection Facility, Waste Tire Monofill, or another Waste Tire Processor operating in compliance with the Act and the Regulations. Waste Tire Processors may ship whole waste tires to an End User who end uses whole waste tires for fuel or energy recovery.

(L) Waste Tire Processors must comply with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(M) Waste Tire Processors must comply with the facility's Engineering Design and Operations Plan (EDOP).

10.6.3 WASTE TIRE PROCESSORS REGISTRATION REQUIREMENTS

(A) No person shall process waste tires without having received a Certificate of Registration from the Department.

(B) Applications for Certificates of Registration must be submitted on Form WT-to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for operation of a Waste Tire Processor must include:

(1) The business name of the Waste Tire Processor and any other names under which the Waste Tire Processor may do business;

(2) The principal business address of the Waste Tire Processor;

(3) A business telephone number(s);

(4) The name and address of the responsible officer of a corporate Waste Tire Processor, or the owner(s) of a Waste Tire Processor operating a proprietorship or a partnership; and

(5) The signature and date of signature of the Waste Tire Processor applicant.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the facility and made available for inspection

(E) A Certificate of Registration is not transferable by the Waste Tire Processor to whom it was issued to any other person or entity.

(F) A Waste Tire Processor who has previously filed an application for a Certificate of Registration as a Waste Tire Processor (Form WT-1) is required to notify the Department in writing whenever changes to the following occur:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number;

(7) Waste tires are processed at a new location not registered with the Department; or

(8) The owner/operator is no longer operating as a Waste Tire Processor at the location registered with the Department.

(G) The Department may cancel a Certificate of Registration of a person who no longer processes waste tires.

10.6.4 WASTE TIRE PROCESSOR FACILITY DECAL

(A) An application for a Certificate of Registration pursuant to section 10.6.3 above, will also serve as an application for a Waste Tire Facility decal.

(B) Waste Tire Processors will receive a Waste Tire Facility decal from the Department with their Certificate of Registration. Waste tire decals will have a unique number.

(C) Waste Tire Processors must post their Waste Tire Facility decal in a prominent location at the address used to process tires and where the decal is visible to the Waste Tire Hauler.

10.6.5 WASTE TIRE PROCESSOR MANIFEST REQUIREMENTS

(A) No Waste Tire Processor may accept a shipment of ten (10) or more waste tires from a Waste Tire Hauler without an accompanying manifest properly completed pursuant to section 10.3.4 of these Regulations unless they comply with 10.1.3 (E).

(B) Waste Tire Processors must maintain on-site at their facility manifests for all shipments of waste tires accepted and make the manifests available for inspection for three (3) years from the date of delivery.

(C) No Tire Waste Tire Processor may offer a shipment of ten (10) or more waste tires without an accompanying manifest properly completed by the Waste Tire Hauler pursuant to section 10.3.4 of these Regulations.

(D) Waste Tire Processors must maintain on-site at their facility manifests for all shipments of waste tires offered and make the manifests available for inspection for three (3) years from the date of pick-up.

10.6.6 WASTE TIRE PROCESSOR FINANCIAL ASSURANCE

All Waste Tire Processors must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section 1.8 of these Regulations.

10.6.7 ANNUAL REPORT

(A) All Waste Tire Processors must submit an annual report to the Department and local governing body having jurisdiction by April 1 of each year on the Waste Tire Facility Annual Reporting Form (Form WT-5). The annual report must include the amount, by actual count or by actual weight in tons, of waste tires received at the facility, how many waste tires were processed at the facility, how many waste tires were shipped off-site from the facility for the preceding year, and the total amount of waste tires accepted from unregistered waste tire haulers.

(B) The annual report must include, in addition to the information in section 10.6.7(A) above, information concerning compliance with Section 10.6.2(H) that the Waste Tire Processor processed into tire-derived product at least 75% of the three year rolling average annual amount, by weight or number, of waste tires that the Waste Tire Processor accepted during the previous three (3) calendar years.

(C) A Waste Tire Processor may claim that information or data submitted in the Waste Tire Annual Report should be withheld as Confidential Business Information (“CBI”) or Trade Secret. The Department will hold information contained in the Waste Tire Inventory Reduction Plan as CBI/Trade Secret pursuant to section 7-74-102, C.R.S. and section 18-4-408(2), C.R.S. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

10.6.8 WASTE TIRE PROCESSOR SELF-CERTIFICATION

(A) The Department may require Waste Tire Processors to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) Any Waste Tire Processor who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide Waste Tire Processors a reasonable amount of time to complete and return a checklist. At a minimum, the Waste Tire Processor will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the Waste Tire Processor:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.6.9 WASTE TIRE PROCESSOR ENGINEERING DESIGN AND OPERATIONS PLAN

(A) Each Waste Tire Processor must have an Engineering Design and Operations Plan, approved by the Department, which must, at a minimum, include all of the following:

(1) General:

(a) Nature of the activity conducted at the facility;
(b) The capacity and type of equipment to be used at the facility;
(c) All methods of processing and storage;
(d) Means used to track inventory on a volume or weight basis;
(e) Security measures;
(f) How the facility intends to implement the requirements listed in section 10.6.2 above; and
(g) Annual training requirements for all employees on all approved facility plans described in section 10.6.9, and how that training will be documented and verified.

(2) Emergency Response Plan which includes:

(a) General facility information including:

(i) The facility name, mailing address and telephone number;
(ii) The facility operator's name, mailing address and telephone number; and
(iii) The property owner's name, mailing address and telephone number.

(b) An emergency contact list including the names and telephone numbers of the persons and appropriate agencies to be contacted in case of emergency, including:

(i) The Emergency Coordinator;
(ii) The Facility Owner;
(iii) The Facility Operator;
(iv) The Local Fire Authority; and
(v) Any additional numbers that may be needed.

(c) Emergency Equipment available on site, including specific capabilities and uses.

(d) A map showing the location of fire lanes, tire pile configurations, fire hydrants, power supply, and emergency response equipment.

(e) A description of emergency response procedures to be followed in the event of a fire or other emergency.

(3) Fire Prevention, Training and Firefighting Plan which:

(a) Includes specification of the Facility's fire lane locations and widths;

(b) Includes means that are assumed to be used to extinguish fires;

(c) Designates a Facility Emergency Coordinator;

(d) Is written by a qualified professional in accordance with local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety; and

(e) Ensures the Waste Tire Processor complies with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(4) Vector Control Plan which includes:

(a) Provisions for storage of tires in a manner which prevents the breeding and harborage of mosquitoes, rodents, and other vectors by any of the following means: (i) cover with impermeable barriers, other than soil, to prevent entry or accumulation of precipitation, or (ii) use of treatments or methods, such as pesticides, to prevent or eliminate vector breeding as necessary; and

(b) Provisions ensuring that if pesticides are used in vector control efforts, they must be used in accordance with the Pesticide Applicators Act, section 35-10-101, C.R.S.

10.6.10 CLOSURE AND POST-CLOSURE CARE OF WASTE TIRE PROCESSOR FACILITIES

(A) Waste Tire Processors must close and maintain their facilities in accordance with sections 2.5, 2.6, and 10.6 of these Regulations.

(B) Closure Plan Requirements for Waste Tire Processors: The closure plan must be prepared as part of an Engineering Design and Operations Plan and must describe the steps necessary to close the Waste Tire Processor's facility at any point during its active life and at the end of the facility's active life. The Waste Tire Processor must remove all solid waste and residual contamination to meet unrestricted use concentrations. The closure plan, at a minimum, must include the following information:

(1) Provisions for removal of all solid waste at the site, including:

(a) Proposed plans and procedures for sampling and testing soil based on visual identification of staining or other indications of residual contamination;

(b) Provisions for sampling and analyses of soil for potential hazardous characteristics and provisions for final disposal. Soils will need to meet unrestricted use concentrations or background levels whichever is greater; and

(c) A schedule for completing all activities necessary to satisfy the closure criteria of this section.

(2) Waste Tire Processors must submit a Closure Certification Report to the Department at the time of final closure. The report must summarize and document the closure activities, including any analytical results, needed to support the unrestricted use condition of the facility.

(3) At least sixty (60) days in advance of the proposed closure date, the Waste Tire Processor must notify the Department and the local governing authority of the proposed closure date.

(4) The owner or operator must notify the general public at least sixty (60) days in advance of the proposed closure by placing signs of suitable size at the entrance to the site and facility.

(5) Waste Tire Processors must complete closure activities of their facility in accordance with the closure plan and within one hundred eighty (180) calendar days following the final receipt of waste tires. Extensions of the closure period may be granted by the Department if the Waste Tire Processor demonstrates that closure will take longer than one hundred eighty (180) calendar days and the owner/operator has taken and will continue to take all steps to prevent threats to human health and the environment.

(6) Closure Certification: Waste Tire Processors must submit a closure certification report within sixty (60) calendar days of completion of closure activities which documents all the requirements and conditions of the closure plan have been achieved. The Report must be signed and sealed by a Colorado registered professional engineer and is subject to review and approval by the Department.

10.7 - STANDARDS FOR MOBILE WASTE TIRE PROCESSORS

10.7.1 GENERAL

Mobile waste tire processing is not subject to the Recycling requirements of section 8 or the annual fee requirements of section 1.7.3.

10.7.2 GENERAL STANDARDS FOR MOBILE WASTE TIRE PROCESSORS

(A) All Mobile Waste Tire Processors must collect litter around their mobile processing operation in order to avoid a fire hazard or a nuisance and control the growth of vegetation to minimize potential fuel sources.

(B) The operator must ensure access to a working telephone at each Mobile Waste Tire Processor site.

(C) During all stages of operation at a mobile processing site, a Mobile Waste Tire Processor must ensure that an attendant who is responsible for mobile processing site activities is present.

(D) A Mobile Waste Tire Processor operator must immediately notify the Solid Waste and Materials Management Program within the Colorado Department of Public Health and Environment in the event

of a fire or other emergency involving waste tires. Within two weeks of this notification, the facility must submit a written report describing the emergency to the Solid Waste and Materials Management Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the problems generated by the emergency.

(E) A Mobile Waste Tire Processor must not lease or own the property on which the processing occurs. Persons who own or lease the property on which they process waste tires are Waste Tire Processors and are not Mobile Waste Tire Processors.

(F) A Mobile Waste Tire Processor must not accept or accumulate waste tires unless also registered as a Waste Tire Processor at the property on which the processing occurs.

(G) A Mobile Waste Tire Processor must receive permission from the local governing authority prior to beginning to process waste tires at the location for any period of time.

(H) A Mobile Waste Tire Processor must notify the Department fourteen (14) days prior to beginning processing, the location where mobile processing will occur, the dates of processing, and the number of days processing at the site.

(I) A Mobile Waste Tire Processor must not process waste tires at a location for more than thirty (30) consecutive days unless the Mobile Waste Tire Processor:

(1) Is registered as a Waste Tire Processor at that location; or
(2) Receives Departmental approval to process for more than thirty (30) consecutive days at the location and remains in compliance with all state and local environmental requirements at the location of mobile processing.

(J) Mobile Waste Tire Processors must comply with their Engineering Design and Operations Plan (EDOP).

10.7.3 MOBILE WASTE TIRE PROCESSORS REGISTRATION REQUIREMENTS

(A) No person shall operate as a Mobile Waste Tire Processor without having received a Certificate of Registration from the Department.

(B) Applications for Certificates of Registration must be submitted on Form WT-1 or WT-1M to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for operating as a Mobile Waste Tire Processor must include:

(1) The business name of the Mobile Waste Tire Processor and any other names under which the Mobile Waste Tire Processor may do business;

(2) The permanent business address of the Mobile Waste Tire Processor;

(3) A business telephone number(s);

(4) The name and address of the responsible officer of a corporate Mobile Waste Tire Processor, or the owner(s) of a Mobile Waste Tire Processor operating a proprietorship or a partnership;

(5) The signature and date of signature of the Mobile Waste Tire Processor applicant; and

(6) The types of mobile processing equipment the Mobile Waste Tire Processor uses to process waste tires in Colorado.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the permanent address of the Mobile Waste Tire Processor and made available for inspection.

(E) A Certificate of Registration is not transferable by the Mobile Waste Tire Processor to whom it was issued to any other person or entity.

(F) The Certificate of Registration for a Mobile Waste Tire Processor is valid from the date of issuance to March 15 of the year indicated on the Certificate of Registration.

(G) A Mobile Waste Tire Processor is not authorized to mobile process waste tires after the March 15 expiration date unless the Mobile Waste Tire Processor has applied to renew the Certificate of Registration prior to expiration and has received a new Certificate of Registration as a Mobile Waste Tire Processor from the Department and Mobile Waste Tire Processor decals, pursuant to section 10.7.4 below.

(H) All Mobile Waste Tire Processors who wish to continue mobile processing waste tires must submit application for renewal no later than February 1.

(I) A Waste Tire Mobile Processor who has previously filed an application for a Certificate of Registration as a Waste Tire Mobile Processor (Form WT-1 or WT-1M) is required to notify the Department in writing whenever changes occur to the following:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number; or

(7) The Waste Tire Mobile Processor is no longer mobile processing waste tires.

(J) The Department may cancel a Certificate of Registration of a person who no longer mobile processes waste tires.

10.7.4 MOBILE WASTE TIRE PROCESSOR DECAL

(A) No person shall mobile process waste tires in Colorado without having received a Mobile Waste Tire Processor decal. An application for a Certificate of Registration pursuant to section 10.7.3 above, shall also serve as an application for a Mobile Waste Tire Processor decal(s). A Mobile Waste Tire Processor must submit an updated application for a Certificate of Registration within fifteen (15) days after the Mobile Waste Tire Processor purchases new mobile processing equipment or rents or leases mobile processing equipment.

(B) Mobile Waste Tire Processors will receive from the Department Mobile Waste Tire Processor decal(s) for each type of mobile processing equipment with their Certificate of Registration. Each decal will have a unique number.

(C) Each Mobile Waste Tire Processor decal will be valid until March 15 of the year indicated on the vehicle decal and will have a unique number. Prior to the expiration date, a Mobile Waste Tire Processor must submit a new application for a Certificate of Registration pursuant to section 10.7.3 above.

(D) A Mobile Waste Tire Processor decal must be affixed to the mobile processing equipment. If the decal cannot be affixed to the mobile processing the equipment, the operator must have the decal available at all times for inspection.

(F) A Mobile Waste Tire Processor decal is not transferable by the Mobile Waste Tire Processor to whom it was issued to any other person or entity and must not be used for any vehicle not listed by the Registered Mobile Waste Tire Processor on its application for a Certificate of Registration as a Mobile Waste Tire Processor.

10.7.5 MOBILE WASTE TIRE PROCESSOR MANIFEST REQUIREMENTS

(A) No person may accept waste tires for mobile processing without completing a paper or electronic manifest to section 10.7.5 of these Regulations.

(B) Paper or electronic manifests for all waste tires shipped, accepted and/or processed by a Mobile Waste Tire Processor must be maintained on-site at the principal business address as identified on the Certificate of Registration and available for inspection for three (3) years from the date of delivery.

(C) At the conclusion of the mobile processing at the location, the Mobile Waste Tire Processor must create a paper or electronic manifest for waste tires that are processed. Such persons must use the Uniform Mobile Waste Tire Processor Manifest Form (Form WT-7), available at the Department's website. Each manifest will have a unique number. The completed Uniform Mobile Waste Tire Processor Manifest must contain the following information:

(1) The name, address, telephone number, and Certificate of Registration number and decal number, if applicable, of the location where waste tires were processed;

(2) The quantity of waste tires processed at each location as measured by:

(a) The actual number of waste tires by category (e.g. passenger car/light duty truck tires, semi-truck tires, etc); or

(b) The weight of waste tires measured in tons;

(3) The name, address, telephone number and Certificate of Registration number of the Mobile Waste Tire Processor and the Mobile Waste Tire Processor decal number of the equipment used to process the waste tires;

(4) The date(s) of processing;

(5) The signatures, under penalty of perjury, of the responsible party at the location where waste tires were processed and the mobile processor; and

(6) If the waste tires originated from an illegal waste tire site or from a private property.

D) Mobile Waste Tire Processors must:

(1) Make a copy of any paper or electronic Uniform Waste Tire Manifest available to the Department upon request.

(2) Maintain all manifests at the permanent business address of the Mobile Waste Tire Processor and available for inspection for three (3) years from the date of processing.

(3) Provide a copy of the paper or electronic Uniform Mobile Waste Tire Processor Manifest Form to the Waste Tire Generator/source of waste tires processed within thirty (30) days of completion of mobile processing.

10.7.6 MOBILE WASTE TIRE PROCESSOR FINANCIAL ASSURANCE

All Mobile Waste Tire Processors must establish and maintain financial assurance in the amount of ten thousand dollars ($10,000.00), unless they maintain financial assurance as a Waste Tire Processor, Waste Tire Collection Facility or a Waste Tire Monofill.

10.7.7 ANNUAL REPORT

(A) All Mobile Waste Tire Processors must submit an annual report to the Department and local governing body having jurisdiction by April 1st of each year on the Mobile Waste Tire Processor Annual Reporting Form (Form WT-8). The annual report must include the amount, by actual count or by actual weight in tons, of waste tires processed at each mobile processing location during the previous year.

(B) A Mobile Waste Tire Processor may claim that information or data submitted in the Waste Tire Annual Report should be withheld as Confidential Business Information ("CBI") or Trade Secret. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

10.7.8 MOBILE WASTE TIRE PROCESSOR SELF-CERTIFICATION

(A) The Department may require Mobile Waste Tire Processors to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) Any Mobile Waste Tire Processor who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide Mobile Waste Tire Processors a reasonable amount of time to complete and return a checklist. At a minimum, the Mobile Waste Tire Processor will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the Mobile Waste Tire Processor:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.7.9 MOBILE WASTE TIRE PROCESSOR ENGINEERING DESIGN AND OPERATIONS PLAN

(A) Each Mobile Waste Tire Processor must have an Engineering Design and Operations Plan, approved by the Department, which must, at a minimum, include all of the following:

(1) General:

(a) Nature of the activity conducted at each mobile processor site;

(b) The capacity and type of equipment to be used at each site;

(c) All methods of processing and storage;

(d) Means used to track inventory on a volume or weight basis;

(e) Security measures;

(f) How the Mobile Waste Tire Processor intends to implement the requirements listed in section 10.7.2 above; and

(g) Annual training requirements for all employees on all approved facility plans described in section 10.7.9, and how that training will be documented and verified.

(2) Emergency Response Plan which includes:

(a) General information including:

(i)The Mobile Processor's name, mailing address and telephone number; and
(ii) Potential emergencies and how the Mobile Processor will respond to these.

(b) An emergency contact list including the names and telephone numbers of the persons and appropriate agencies to be contacted in case of emergency, including:

(i) The Emergency Coordinator; and
(ii) Any additional numbers that may be needed.

(c) A description of emergency response procedures to be followed in the event of a fire or other emergency.

(3) Fire Prevention, Training and Firefighting Plan which:

(a) Includes means that are assumed to be used to extinguish fires;

(b) Designates an onsite Emergency Coordinator;

(c) States how the Mobile Waste Tire Processor will comply with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

10.8 - STANDARDS FOR WASTE TIRE COLLECTION FACILITIES

10.8.1 GENERAL

The requirements of this section 10.8 apply to facilities where ten (10) or more waste tires are stored awaiting pickup by a Registered Waste Tire Hauler or processed by a Mobile Waste Tire Processor.

10.8.2 GENERAL STANDARDS FOR WASTE TIRE COLLECTION FACILITIES

(A) Any person who owns or operates a Waste Tire Collection Facility must maintain all weather access roads to those areas of active operation and as necessary to meet the Fire Protection, Training and Firefighting Plan required by subsection 10.8.9(A)(3) of these Regulations.

(B) Any person who owns or operates a Waste Tire Collection Facility must collect litter in order to avoid a fire hazard or a nuisance condition and control the growth of vegetation to minimize potential fuel sources.

(C) Any person who owns or operates a Waste Tire Collection Facility must implement security measures to preclude unauthorized entry.

(D) Any person who owns or operates a Waste Tire Facility Collection Facility must place prominent signs in English and any other language predominant in the area surrounding the facility must be posted in public view at the entrance to each Waste Tire Collection Facility with the name of the facility, the hours which the facility is open for public use, a listing of the wastes accepted at the facility, and a phone number for a 24 hour emergency contact.

(E) Any person who owns or operates a Waste Tire Facility Collection Facility must maintain a working telephone at each Waste Tire Collection Facility.

(F) During all stages of operation of a Waste Tire Collection Facility, the facility must have an attendant who is responsible for site activities.

(G) A Waste Tire Collection Facility owner or operator must immediately notify the Solid Waste and Materials Management Program within the Colorado Department of Public Health and Environment in the event of a fire or other emergency involving waste tires. Within two (2) weeks of this notification, the owner or operator must submit a written report describing the emergency to the Solid Waste and Materials Management Program. This report must describe the origins of the emergency, the actions that have been taken, actions that are currently being taken or are planned, results or anticipated results of these actions, and an approximate date of resolution of the issues generated by the emergency.

(H) Any person who owns or operates a Waste Tire Collection Facility must arrange for the commercial hauling or mobile processing of waste tires only with a waste tire hauler or mobile processor who is currently registered pursuant to these Regulations.

(I) Any person who owns or operates a Waste Tire Collection Facility must ensure that all waste tires collected at its facility are delivered to a registered waste tire generator, waste tire hauler, another waste tire collection facility, waste tire monofill, waste tire processor, an approved beneficial user of whole waste tires, a municipal or county owned waste tire collection area, or to a municipal or privately owned solid waste landfill operating in compliance with the Act and the Regulations or processed by a mobile processing. An owner/operator of a Waste Tire Monofill may ship whole waste tires to an End User who end uses whole waste tires for fuel or energy recovery.

(J) Any person who owns or operates a Waste Tire Collection Facility that is not also registered as a Waste Tire Processor or Waste Tire Monofill must not have onsite at any one time more than seven thousand five hundred (7,500) waste tires.

(K) Any person who owns or operates a Waste Tire Collection Facility must comply with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(L) Any person who owns or operates a Waste Tire Collection Facility must comply with the facility's Engineering Design and Operations Plan (EDOP).

10.8.3 WASTE TIRE COLLECTION FACILITY REGISTRATION REQUIREMENTS

(A) No person shall operate a Waste Tire Collection Facility without having received a Certificate of Registration from the Department.

(B) Applications for Certificates of Registration must be submitted on Form WT-1 to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for operation of a Waste Tire Collection Facility must include:

1) The business name of the Waste Tire Collection Facility and any other names under which the Waste Tire Collection Facility may do business;

2) The principal business address of the Waste Tire Collection Facility;

3) A business telephone number(s);

4) The name and address of the responsible officer of a corporate Waste Tire Collection Facility, or the owner(s) of a Waste Tire Collection Facility operating a proprietorship or a partnership; and

5) The signature and date of signature of the Waste Tire Collection Facility applicant.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the facility and made available for inspection.

(E) A Certificate of Registration is not transferable by the owner or operator of a Waste Tire Collection Facility to whom it was issued to any other person or entity.

(F) An owner or operator of a Waste Tire Collection Facility who has previously filed an application for a Certificate of Registration as a Waste Tire Collection Facility (Form WT-1) is required to notify the Department in writing whenever changes occur to the following:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number;

(7) The owner or operator of a Waste Tire Collection Facility will be operating at a new location not registered with the Department; or

(8) The owner or operator is no longer operating a Waste Tire Collection Facility at the location registered with the Department.

(G)The Department may cancel a Certificate of Registration of an owner or operator who no longer operates a Waste Tire Collection Facility at their registered location.

10.8.4 WASTE TIRE COLLECTION FACILITY DECAL

(A) An application for a Certificate of Registration pursuant to section 10.8.3 above, shall also serve as an application for a Waste Tire Collection Facility decal.

(B) An owner or operator of a Waste Tire Collection Facility will receive a Waste Tire Collection Facility decal from the Department with its Certificate of Registration.

(C) Waste Tire decals will have a unique number.

(D) An owner or operator of a Waste Tire Collection Facility must post their Waste Tire Facility decal in a prominent location at the address used to store/accumulate tires and where the decal is visible to the Waste Tire Hauler or Mobile Waste Tire Processor.

10.8.5 WASTE TIRE COLLECTION FACILITY MANIFEST REQUIREMENTS

(A) No owner or operator of a Waste Tire Collection Facility may accept a shipment of ten (10) or more waste tires from a Waste Tire Hauler without an accompanying manifest properly completed pursuant to section 10.3.4 of these Regulations unless they comply with 10.1.3 (E).

(B) Manifests for all shipments of waste tires accepted by an owner or operator of a Waste Tire Collection Facility must be maintained on-site at that facility and available for inspection for three (3) years from the date of delivery.

(C) No owner or operator of a Waste Tire Collection Facility may offer a shipment of ten (10) or more waste tires without an accompanying manifest properly completed by the Waste Tire Hauler pursuant to section 10.3.4 of these Regulations.

(D) No owner or operator of a Waste Tire Collection Facility may offer waste tires for mobile processing without receiving a manifest properly completed by the Mobile Waste Tire Processor pursuant to section 10.7.5 of these Regulations.

(E) Manifests for all shipments of waste tires shipped off-site and accepted on-site by the owner or operator of a Waste Tire Collection Facility must be maintained on-site at that facility and available for inspection for three (3) years from the date of delivery.

10.8.6 WASTE TIRE COLLECTION FACILITY FINANCIAL ASSURANCE

All owners or operators of Waste Tire Collection Facilities must maintain financial assurance for any required reclamation and for closure and post-closure care of the Facility pursuant to section 1.8 of these Regulations.

10.8.7 ANNUAL REPORT

Any person who owns or operates a Waste Tire Collection Facility must submit an annual report to the Department and local governing body having jurisdiction by April 1 of each year on the Waste Tire Facility Annual Reporting Form (Form WT-5). The annual report must include, by actual count or by actual weight in tons, the amount of waste tires received at the facility, how many waste tires were shipped off-site from the facility for the preceding calendar year, and the total amount of waste tires accepted from unregistered waste tire haulers.

10.8.8 WASTE TIRE COLLECTION FACILITY SELF-CERTIFICATION

(A) The Department may require an owner or operator of a Waste Tire Collection Facility to furnish additional information concerning compliance with the regulatory requirements of 6 CCR 1007-2 using a self-certification process.

(B) An owner or operator of a Waste Tire Collection Facility who receives a Self-Certification Checklist from the Department must complete and return the checklist within the time specified in the instructions provided by the Department.

(C) The Department will provide the owner or operator of a Waste Tire Collection Facility a reasonable amount of time to complete and return a checklist. At a minimum, the owner or operator of a Waste Tire Collection Facility will have fourteen (14) days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department. The Department may provide an extension of time to complete and return the checklist upon request.

(D) The self-certification checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the Waste Tire Collection Facility:

"I, the undersigned facility representative, certify that:

i. I have personally examined and am familiar with the information contained in this submittal;
ii. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects; and
iii. I am fully authorized to make this certification on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

10.8.9 WASTE TIRE COLLECTION FACILITY ENGINEERING DESIGN AND OPERATIONS PLAN

(A) Any person who owns or operates a Waste Tire Collection Facility must have and comply with an Engineering Design and Operations Plan approved by the Department, which must, at a minimum, include all of the following:

(1) General:

(a) Nature of the activity conducted at the facility;

(b) The capacity and type of equipment to be used at the facility;

(c) All methods of storage;

(d) Means used to track inventory on a volume or weight basis;

(e) Security measures;

(f) How the facility intends to implement the requirements listed in section 10.8.2 above; and

(g) Annual training requirements for all employees on all approved facility plans described in this section 10.8.9, and how that training will be documented and verified.

(2) Emergency Response Plan which includes:

(a) General facility information including:

(i)The facility name, mailing address and telephone number;

(ii)The facility operator's name, mailing address and telephone number; and

(iii)The property owner's name, mailing address and telephone number.

(b) An emergency contact list including the names and telephone numbers of the persons and appropriate agencies to be contacted in case of emergency, including:

(i) The Emergency Coordinator;

(ii) The Facility Owner;

(iii) The Facility Operator;

(iv) The Local Fire Authority; and

(v) Any additional numbers that may be needed.

(c) Emergency Equipment available on site, including specific capabilities and uses.

(d) A map showing the location of fire lanes, tire pile configurations, fire hydrants, power supply, and emergency response equipment.

(e) A description of emergency response procedures to be followed in the event of a fire or other emergency.

(3) Fire Prevention, Training and Firefighting Plan which:

(a) Includes specification of the Facility's fire lane locations and widths;

(b) Includes means that are assumed to be used to extinguish fires;

(c) Designates a Facility Emergency Coordinator;

(d) Is written by a qualified professional in accordance with local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(e) Ensures the owner or operator of a Waste Tire Collection Facility complies with the applicable local fire codes or, where no code exists or the local code does not provide equivalent or greater level of fire protection, the fire code currently adopted by the Colorado Division of Fire Prevention and Control in the Department of Public Safety.

(4) Vector Control Plan which includes:

(a) Provisions for storage of tires in a manner which prevents the breeding and harborage of mosquitoes, rodents, and other vectors by any of the following means: (i) cover with impermeable barriers, other than soil, to prevent entry or accumulation of precipitation, or (ii) use of treatments or methods, such as pesticides, to prevent or eliminate vector breeding as necessary.

(b) Provisions ensuring that if pesticides are used in vector control efforts, they are used in accordance with the Pesticide Applicators Act, 35-10-101, C.R.S.

10.8.10 CLOSURE AND POST-CLOSURE CARE OF WASTE TIRE COLLECTION FACILITIES

(A) Any person who owns or operates a Waste Tire Collection Facility must close and maintain the closed facility in accordance with sections 2.5, 2.6, and 10.8 of these Regulations.

(B) Any person who owns or operates a Waste Tire Collection Facility must prepare a closure plan as part of an Engineering Design and Operations Plan and must describe the steps necessary to close the Waste Tire Collection Facility at any point during its active life and at the end of the facility's active life. The owner or operator of a Waste Tire Collections Facility must remove all solid waste and residual contamination to meet unrestricted use concentrations. The closure plan, at a minimum, must include the following information:

(1) Provisions for removal of all solid waste at the site, including:

(a) Proposed plans and procedures for sampling and testing soil based on visual identification of staining or other indications of residual contamination;

(b) Provisions for sampling and analyses of soil for potential hazardous characteristics and provisions for final disposal. Soils will need to meet unrestricted use concentrations or background levels whichever is greater; and

(c) A schedule for completing all activities necessary to satisfy the closure criteria of this section.

(2) The owner or operator of all Waste Tire Collection Facilities must submit a Closure Certification Report to the Department at the time of final closure. The report must summarize the document the closure activities, including any analytical results, needed to support the unrestricted use condition of the facility.

(3) At least sixty (60) days in advance of the proposed closure date, the owner or operator must notify the Department and the local governing authority of the proposed closure date.

(4) The owner or operator must notify the general public at least sixty (60) days in advance of the proposed closure by placing signs of suitable size at the entrance to the site and facility.

(5) The owner or operator of the facility must complete closure activities of the facility in accordance with the closure plan and within one hundred eighty (180) calendar days following the final receipt of waste tires. Extensions of the closure period may be granted by the Department if the owner or operator demonstrates that closure will take longer than one hundred eighty (180) calendar days and the owner/operator has taken and will continue to take all steps to prevent threats to human health and the environment.

(6) Closure Certification: Any person who owns or operates a Waste Tire Collection Facility must submit a closure certification report within sixty (60) calendar days of completion of closure activities which documents all the requirements and conditions of the closure plan have been

achieved. The Report must be signed and sealed by a Colorado registered professional engineer and is subject to review and approval by the Department.

10.9 - STANDARDS FOR END USERS

10.9.1 GENERAL

The requirements of this section 10.9 apply to End Users who end use more than ten (10) tons of tire-derived product or who end use more than ten (10) tons of whole waste tires for energy or fuel in any one calendar year.

10.9.2 GENERAL STANDARDS FOR END USERS

(A) End Users must arrange for the commercial hauling or mobile processing of waste tires only with a Waste Tire Hauler or Mobile Waste Tire Processor who is currently registered pursuant to these Regulations.

(B) An End User that is not also registered as a Waste Tire Processor, Waste Tire Collection Facility or Waste Tire Monofill must not have onsite at any one time ten (10) or more whole waste tires.

10.9.3 END USER REGISTRATION REQUIREMENTS

(A) End Users described in 10.9.1 must register with and receive a Certificate of Registration from the Department.

(B) Applications for Certificates of Registration must be submitted on Form WT-1 to the Solid Waste and Materials Management Program within the Hazardous Materials and Waste Management Division of the Department.

(C) Certificate of Registration applications for operation as an End User must include:

1) The business name of the End User and any other names under which the End User may do business;

2) The principal business address of the End User;

3) A business telephone number(s);

4) The name and address of the responsible officer of a corporate End User, or the End User operating a proprietorship or a partnership; and

5) The signature and date of signature of the End User applicant.

(D) The Department will issue a Certificate of Registration to the applicant after approval of the application. Certificates of Registration must be maintained at the facility and made available for inspection

(E) A Certificate of Registration is not transferable by the End User to whom it was issued to any other person or entity.

(F) An End User who has previously filed an application for a Certificate of Registration as an End User (Form WT-1) is required to notify the Department in writing whenever changes to the following occur:

(1) Ownership;

(2) Mailing address;

(3) Business name;

(4) Type of registration;

(5) Contact name;

(6) Phone number;

(7) End use is occurring at a new location not registered with the Department; or

(8) End use is no longer occurring at the location registered with the Department.

(G) The Department may cancel a Certificate of Registration of a person who is no longer an end user.

10.9.4 ANNUAL REPORT

(A) No End User may accept a shipment of waste tires from a Waste Tire Hauler without an accompanying manifest properly completed pursuant to section 10.3.4 of these Regulations.

(B) Manifests for all shipments of waste tires accepted by an End User must be maintained on-site at that facility and available for inspection for three (3) years from the date of delivery.

(C) No End User may offer a shipment of waste tires without an accompanying manifest properly completed by the Waste Tire Hauler pursuant to section 10.3.4 of these Regulations.

(D) No End User may offer more waste tires for processing without receiving a manifest properly completed by the Mobile Waste Tire Processor pursuant to section 10.7.5 of these Regulations.

(E) Manifests for all shipments of waste tires shipped off-site and accepted on-site by an End User must be maintained on-site at that facility and available for inspection for three (3) years from the date of delivery.

10.9.5 END USER REPORTING REQUIREMENTS

(A) End Users described in section 10.9.1 must submit an annual report to the Department and local governing body having jurisdiction by April 1st of each year on the Waste Tire Facility Annual Reporting Form (Form WT-5). The annual report must include the amount, by actual count or by actual weight in tons, of waste tires and tire derived product received at the End User's facility during the previous year, and how many waste tires were used to generate energy or fuel during the previous year.

(B) An End User may claim that information or data submitted in the Waste Tire Annual Report should be withheld as Confidential Business Information ("CBI") or Trade Secret. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

10.10 - STANDARDS FOR THE MANAGEMENT OF USED TIRES

10.10.1 GENERAL

The requirements of this section 10.10 apply to any person who commercially accumulates, stores, transports, or dispenses used tires.

(A) All persons who accumulate, store, transport, or dispense used tires must develop and maintain on site and in the vehicle used for transport written criteria for distinguishing waste tires from used tires. Such criteria must be made available for inspection.

(B) All persons who accumulate, store, transport, or dispense used tires must clearly identify waste tires and used tires using the criteria developed pursuant paragraph (A) above.

(C) All persons who accumulate, store, transport, or dispense used tires must develop and maintain on site and in the vehicle used for transport written criteria for distinguishing used tires being held for sale in Colorado from used tires being held for sale outside Colorado. Such criteria must be made available for inspection.

(D) All persons who accumulate, store, transport, or dispense used tires must clearly identify used tires being held for sale in Colorado and used tires being held for sale outside Colorado according to the criteria developed pursuant to paragraph (C) above.

(E) All persons who accumulate, store, transport, or dispense used tires must organize used tires for sale in a manner that allows the inspection of each individual tire.

(F) Any person may claim that information or data contained in their written criteria described in this section 10.10.1 should be withheld as Confidential Business Information ("CBI") or Trade Secret. The Department will hold such information contained as CBI/Trade Secret pursuant to section 7-74-102, C.R.S. and section 18-4-408(2), C.R.S. The burden of proving that the information or data is protected as CBI or Trade Secret shall be upon the party asserting the claim.

10.11 WASTE TIRE FEE ADMINISTRATION

10.11.1 Any person who sells new motor vehicle or new trailer tires must collect and remit to the Department monthly the Waste Tire Fee pursuant to section 1.7.6. This Waste Tire Fee applies to all new automobile, trailer, truck, motor home and motorcycle tires sold in Colorado.

10.11.2 Any person who has sold a new motor vehicle or new trailer tire in the previous twelve (12) months must submit to the Department monthly the applicable New Tire Fee Return Form available on the Department's website. The New Tire Fee Return Form must include, at a minimum, the following information:

(1) The account number;

(2) The time period (month/year) new tires were sold;

(3) The business name;

(4) The business mailing address;

(5) The business telephone number;

(6) The name of the business contact;

(7) The number of stores included in the New Tire Fee Return Form;

(8) If the New Tire Fee Return Form was amended;

(9) The number of tires sold (if applicable);

(10) The amount owed; and

(11) An authorized signature, title and date.

10.11.3 The payment of the Waste Tire Fee (if applicable) and the New Tire Fee Return Form must be delivered to the Department electronically or by hard copy and must be postmarked or submitted electronically by the 20th of each month for tires sold the previous month. Payments and forms received after the 20th of the month may be assessed a late fee of ten (10) percent in addition to the Waste Tire Fee.

10.11.4 Online payment of the Waste Tire Fee must be made by electronic check or credit card. Payments by mail must be by money order, cashier check or personal check. All other payment types, including cash payments or in-person payments will not be accepted.

10.11.5 The Department may deny a submittal made pursuant to this Section 10.11 if the Department determines a person has submitted an incorrect payment amount. In such cases, the Department will reimburse the incorrect payment and the person must resubmit the New Tire Fee Return Form with the correct payment within thirty (30) days.

10.11.6 Any person who aggregates monthly fees during a twelve (12) month period from multiple stores must annually submit to the Department the Annual New Tire Self Certification Form (Form WT-9) available on the Department's website. At a minimum, the person who sells new motor vehicle or new trailer tires will have fourteen (14) days from the date of receipt to return the checklist.

10.11.7 Any person who sells new motor vehicle or new trailer tires must retain and make available any documentation, including the receipt provided to customers, to ensure compliance with section 30-20-1403 (1)(a) C.R.S., of the sale of these tires for the Department to review. Documentation must be retained for three (3) years from the date of sale.

10.12 WASTE TIRE END USERS FUND

10.12.1 GENERAL RULES

A. General Rules of Eligibility:

1. The following are eligible to apply for the rebate from the End Users Fund (the "Fund"):

(a) Colorado End Users of Colorado-generated tire-derived products or Colorado waste tires who end use in Colorado;

(b) Colorado Retailers who sell certain Colorado-generated tire-derived products made in Colorado from Colorado waste tires; and

(c) Colorado Waste Tire Processors of Colorado waste tires who generate tire-derived products in Colorado and sell their tire-derived products to out-of-state End Users.

2. By February 1 of each year, all applicants who applied for a rebate in the previous calendar year must provide an estimated monthly forecast of the amount of waste tires they will process, tire-derived product they will sell and/or end use in the following calendar year. Such applicants who do not provide estimates will not be eligible to participate in the Fund in the following calendar year. All estimates shall be considered confidential business information.

3. A business or person who is required to be registered with the Secretary of State's office to conduct business in the State of Colorado must be in "Good Standing" to be eligible for the rebate.

4. Once the Department has paid a rebate or denied a rebate on a particular quantity of tire-derived product or whole waste tires used for energy or fuel, every part of that particular quantity of tire-derived product or whole waste tires is no longer eligible for payment of the rebate. This includes payments made before the adoption of these Rules.

5. When waste tires are processed at the location of an illegal disposal with funds from the Waste Tire Administration, Enforcement, and Cleanup Fund, neither the processing of those waste tires, the retail sale of the tire-derived product generated, or the end use of the tire-derived product created is eligible for a rebate from the End Users Fund. When waste tires are removed from the location of an illegal disposal with funds from the Waste Tire Administration, Enforcement, and Cleanup Fund and processed at a separate location not using funds from the Waste Tire Administration, Enforcement, and Cleanup Fund, the processing of those waste tires, the retail sale of the generated tire-derived product, and the end use of the tire-derived product created is eligible to receive a rebate from the End Users Fund so long as all the other eligibility requirements are met.

B. General Rules for End Users

1. To be eligible to receive a rebate for end using tire-derived product or whole waste tires to generate energy or fuel, a person must be currently registered with the Department as an End User.

2. The Department will pay the rebate to an End User only if the end use complies with all local requirements in the jurisdiction end use occurs.

3. Eligible and Ineligible End Uses. Table 10-12.01 states which end uses are eligible for which category of rebate and some potential uses that are ineligible.

4. Only waste tire bales end used in Colorado in an engineered, permanent structure that has been stamped and sealed by a Colorado Certified Professional Engineer are eligible for a rebate. To receive the End User rebate for the end use of tire bales, the applicant must submit the End Users Tire Bale Approval Form, available on the Department's website.

C. General Rules for Retailers

1. To be eligible to apply for a rebate, a Retailer must have a current Colorado retail sales tax license pursuant to section 39-26-103, C.R.S.

2. To be eligible for a retailer rebate, the retail sale must be to the ultimate consumer and the retailer must collect sales tax unless the customer is otherwise exempt from paying sales tax.

3. Eligible and Ineligible Retailers. Table 10-12.01 states which sales are eligible to receive the retailer rebate and some potential sales that are ineligible.

D. General Rules for Processors

1. Processors are eligible for a rebate for processing waste tires into tire-derived product only when they sell to an out of state End User and move the tire-derived product out of state.

2. To be eligible to receive a rebate for processing waste tires, a person must be currently registered with the Department as a Waste Tire Processor at the address at which that person claims processing of waste tires or as a Mobile Processor of waste tires pursuant to this Section 10.

3. Processors who process waste tires into tire-derived product in one (1) month and sell the tire-derived product in a subsequent month to an out-of-state End User are eligible for the processor rebate only after the tire-derived product is sold out of state and moved out of state. Such applicants must provide documentation to the Department that demonstrates the tire-derived product was sold out of state and moved out of state.

4. The Department will pay a Processor only if the end use complies with all local requirements in the jurisdiction in which it will be used.

5. Eligible Processes. Table 10-12.01 states when a Processor is eligible for a rebate and some instances when a Processor is not eligible for a rebate.

Table 10-12.01 Eligible End Uses, Processing and Retailing for the End Users Fund*

This table describes potential scenarios for waste tire processing, retailing and end use. This Table does not create new rights or eligibilities, but explains the rights and eligibilities established in statute.

Column breakdown explanation:
End User only (4A)- An End User who "uses a tire-derived product for a commercial or industrial purpose"
End User only (4B)- An End User who "uses a whole waste tire to generate energy or fuel"
End User only (4C)- An End User who "consumes tire-derived product or uses tire-derived product in its final application or in making new materials with a demonstrated sale to a third-party customer."
Retailer Only- Sells a tire-derived product for its intended final use.
Processer Only- Processes waste tires into a tire-derived product.
Not eligible for a rebate- Scenario does not qualify for a rebate under the current statute or regulations

	…then you may apply as a/an:					
Scenario; If you…	End User only (4A)	End User only (4B)	End User only (4C)	Retailer only	Processor Only	Not eligible for a rebate
Use tire-derived product (alternative daily cover) at a landfill permitted by the state and approved for use of tire shreds for alternative cover for municipal solid waste.	X					
Install tire-derived product for use as a cover material, as approved by the department prior to use.	X					
Construct walls, fences and/or barriers made from tire-derived product as aggregate on residential , commercial or public property. This does not apply to walls, fences or barriers made from tire bales.	X					
Install tire-derived products (tire chips or crumb rubber) for sport fields, such as football, baseball or soccer fields on residential, commercial or public property.	X					
Install tire-derived product (tire chips, rubber mulch, crumb rubber) for playground surfacing or base material for a playground surface on residential, commercial or public property.	X					
Use tire-derived product for energy recovery or a fuel substitute in cement kilns, biofuel plants, electric arc furnaces, or power plants.	X					
Install tire-derived product as landscape mulch or other type of landscape material on a residential, commercial or public property.	X					
Install tire-derived products (tire chips) on the installation of septic systems on residential, commercial or public property.	X					
Install tire-derived products (ground rubber) incorporated/blended into asphalt or concrete for highway or paving applications.	X					
Install tire-derived product in civil engineering projects (highway embankments, leachate cells at landfills, base material for roads, etc.).	X					
Install tire bales for a permanent engineered structure, stamped and sealed by a Colorado Certified Professional Engineer, that is allowed by state laws and regulations and local ordinances. This does not include fencing, windbreakers, or corrals.	X					
Install tire-derived product for highway safety products (crash barrels, guard rails, crash walls).	X					
Install tire-derived product as silage covers for a commercial or industrial purpose.	X					
End use steel derived from a processed waste tire. This does not include steel produced through pyrolysis.	X					
Use whole waste tires for energy recovery or a fuel substitute in cement kilns, biofuel plants, electric arc furnaces, or power plants.		X				
Use whole waste tires through the process of pyrolysis to create fuel to be used by a third party customer.		X				

Column breakdown explanation:
End User only (4A)- An End User who "uses a tire-derived product for a commercial or industrial purpose"
End User only (4B)- An End User who "uses a whole waste tire to generate energy or fuel"
End User only (4C)- An End User who "consumes tire-derived product or uses tire-derived product in its final application or in making new materials with a demonstrated sale to a third-party customer."
Retailer Only- Sells a tire-derived product for its intended final use.
Processer Only- Processes waste tires into a tire-derived product.
Not eligible for a rebate- Scenario does not qualify for a rebate under the current statute or regulations

	…then you may apply as a/an:					
Scenario; If you…	End User only (4A)	End User only (4B)	End User only (4C)	Retailer only	Processor Only	Not eligible for a rebate
Use whole waste tires through the process of pyrolysis to create syngas to be used in the industrial process of the pyrolysis facility. The percent of the weight of the waste tire used to produce syngas, not the total weight of the whole waste tires consumed, determines the rebate amount.		X				
Use whole waste tires through the process of pyrolysis to create syngas which is condensed into the liquid petroleum products derived from that same pyrolysis process. This final end liquid petroleum product is to be used by a third party customer.		X				
Use tire-derived product through the process of pyrolysis to create syngas to be used in the industrial process of the pyrolysis facility. The percent of the weight of the tire-derived product used to produce syngas, not the total weight of the tire-derived product consumed, determines the rebate amount.			X			
Use tire-derived product through the process of pyrolysis to create syngas which is condensed into the liquid petroleum products derived from that same pyrolysis process with a demonstrated sale to a third party customer.			X			
Perform pyrolysis on whole waste tires to make tire-derived products (recovered carbon steel) with a demonstrated sale to a third-party customer.			X			
Perform pyrolysis on tires shreds to make tire-derived products (recovered carbon steel) with a demonstrated sale to a third-party customer.			X			
Use tire-derived product (tire chips) that makes molded products (lawn furniture, deck boards, erosion control products, etc.) with a demonstrated sale to an in-state or out-of-state customer.			X			
Sell tire-derived products to a final in-state customer who will use the tire-derived product for its final intended use. Applicant charges sales tax for this transaction, or does not charge sales tax for this transaction because the consumer is an exempt organization (charity, government agency, or another tax-exempt entity).				X		
Sell tire-derived products to an out-of-state customer. Sales tax is charged for this transaction or sales tax is not charged for this transaction because the customer is an exempt organization (charity, government agency, or another tax-exempt entity).				X		
Sell tire-derived products to a commercial business, where sales tax is charged, or sales tax is not charged for this transaction because the customer is an exempt organization (charity, government agency, or another tax-exempt entity), and the commercial business will use the tire-derived product for its intended final use (e.g. landscape mulch installed on commercial property) and the tire-derived material will not be resold.				X		
Process whole waste tires into tire-derived products that are sold to an out-of-state End User.					X	

Column breakdown explanation:
End User only (4A)- An End User who "uses a tire-derived product for a commercial or industrial purpose"
End User only (4B)- An End User who "uses a whole waste tire to generate energy or fuel"
End User only (4C)- An End User who "consumes tire-derived product or uses tire-derived product in its final application or in making new materials with a demonstrated sale to a third-party customer."
Retailer Only- Sells a tire-derived product for its intended final use.
Processer Only- Processes waste tires into a tire-derived product.
Not eligible for a rebate- Scenario does not qualify for a rebate under the current statute or regulations

	…then you may apply as a/an:					
Scenario; If you…	End User only (4A)	End User only (4B)	End User only (4C)	Retailer only	Processor Only	Not eligible for a rebate
Process a whole waste tire, removing the steel, and then sell the steel to an out of state End User.					X	
Process a whole waste tire, removing the steel, and then sell the steel to an in state End User.						X
Sell tire-derived products to either an in state or out-of-state wholesaler or retailer who will then sell the tire-derived products directly to a final customer.						X
Use pyrolysis-created tire-derived products (recovered carbon, biofuel, steel) in state for a commercial or industrial purpose.						X
Process whole waste tires into a tire-derived product that is sold to a national distributer.						X
Sell whole waste tires.						X
Sell tire bales.						X
Bale waste tires.						X
Reuse any used or whole waste tire as a vehicle tire or trailer tire.						X
Burn a whole waste tire or tire-derived product without recovering the energy.						X
Use buffings generated from the recapping or retreading process.						X
Dispose of waste tires or tire-derived product.						X
Recap or retread a tire for use on a vehicle or trailer.						X
Create buffings from the recapping or retreading of a tire.						X
Use whole waste tires, upon CDPHE beneficial use approval, for erosion control, stormwater management, sound damping, grade fill, corals, fencing, home construction, and other approved uses.						X
Use any whole waste tire or tire-derived product out-of-state.						X

*An activity not covered by this Table may still be eligible for a rebate at the Department's discretion pursuant to these regulations and section 30-20-1401, C.R.S., *et seq* .

10.12.2 APPLICATION PROCEDURES

A. A person applying for a rebate must comply with all the provisions of this Section 10.12.2.

B. An applicant for a rebate must file a complete application on Department Form WT-07, providing at a minimum:

1. Applicant's name and address.

2. Name and location where end use, retail sale or processing occurred.

3. A description of the end use, retail sale or processing.

4. Certification the waste tires were Colorado-generated.

5. For End Users:
   (a) the source of waste tires or tire-derived product; and
   (b) the End User's Waste Tire Certificate of Registration number.

6. For Retailers:
   (a) a list of consumers the Retailer sold the tire-derived product to; and
   (b) proof the Retailer collected sales tax on the retail sale or that the retail sale was exempt from sales tax.

7. For Processors and Mobile Processors selling tire-derived product to out of state End Users:
   (a) a list of out of state End Users that purchased the tire-derived product; and
   (b) the Processor or Mobile Processor's Waste Tire Certificate of Registration number.

8. The amount of waste tires or tire-derived product processed, sold by a retailer, or end used, by weight in tons.

9. The time period in which the waste tires or tire-derived product were processed, sold by a retailer or end used.

10. Other supporting documentation required by the Department.

11. An authorized signature.

C. Timing of Rebate Applications:

1. Applications for rebates will be accepted no later than the stated due date on the application and/or Department's website.

2. Unless applying pursuant to 10.12.2 (D), applications will only be accepted for activities that occurred in the previous calendar month.

3. Applications received after the due date will be denied.

4. The Department will not accept adjustments for processed applications from prior calendar months.

5. An applicant can only receive a rebate for activities occurring in the current fiscal year.

D. An applicant's initial application in any state fiscal year (July 1 through June 30) must be for a minimum of ten (10) tons. Notwithstanding section 10.12.2(C)(2) of these Rules, to achieve this ten

(10) ton minimum, an applicant can consolidate several calendar months of tonnage to meet this minimum amount. After submitting an initial application for a minimum of ten (10) tons, an applicant is eligible to apply for any ton amount in subsequent months in that fiscal year.

E. The Department may deny a rebate to an applicant who has received funding from the Market Development Fund if paying from both funds will result in double paying for the same activity.

F. Applicants must provide weight tickets from a scale that meets the requirements of the Colorado Measurement Standards Act, section 35-14-101 – 35-14-134, C.R.S. to document weights of waste tires or tire-derived product end used, tire-derived product processed and sold out of state, or tire-derived product sold in a retail sale. Other forms of documentation may be acceptable on a case by case basis.

10.12.3 PROCESSING OF APPLICATIONS

The Department will review applications according to a four-step process: (1) review for completeness, (2) review for compliance with applicable laws and regulations, (3) review for eligible processes, retail sales and end uses, and (4) determination of a rebate amount.

A. **Completeness**: If an application is not complete or if supporting documentation is insufficient, then the Department will notify the applicant and grant the applicant a five (5) business day grace period to submit the missing information. The Department may defer paying rebates to all applicants until adequate information is received. If the applicant does not submit adequate information in the prescribed time period, then the Department may deny a rebate for that month.

B. **Compliance**: After the Department has determined all applications submitted in a given month are complete, it will conduct a compliance verification to ensure each applicant is in compliance with all applicable laws and regulations and was in compliance with all applicable laws and regulations during the time period for which they are seeking a rebate.

C. **Eligibility**: After compliance verification, the Department determines which applicants are eligible for rebates.

D. **Rebate amount**: The Department will calculate the amount of rebate per section 10.12.5 of these Regulations and notify each applicant of its determination.

10.12.4 APPEALS PROCESS

A. For approved applications, if an applicant believes the Department has made a calculation error in the response to an approved application, the applicant must notify the Department in writing within five (5) business days of receiving the Department's response. The notice must contain a copy of the application and the Department's response, a brief statement describing the believed error, and copies of any documents supporting the statement. The Department will review the notice and attached documents and may further investigate the matter.

1. If the Department concludes an error has been made and the Department has not yet paid the rebate that month, then the Department will reinstate the application and recalculate the payment before paying any rebates that month.

2. If the Department concludes an error has been made and the Department has already paid the rebate that month, then the Department will notify the applicant and reimburse the applicant from the next month's rebate money, as available, according to the following method: (1) The Department will determine what the applicant should have been paid had the Department not erred; (2) The Department will pay the applicant that amount from the next month's money; and (3) The next month's money will be reduced accordingly.

3. If the Department concludes no calculation error was made, then it will notify the applicant that its previous determination was not in error and is final. This determination is subject to appeal pursuant to section 24-4-106, C.R.S.

B. For denied applications: If an applicant believes his or her application was wrongly denied, then the applicant must, within five (5) business days of denial, submit the following to the Department: (1) a copy of the denied application and supporting documents, (2) the denial letter, (3) a statement explaining why the applicant believes the Department erred, and (4) all other information the applicant believes relevant.

1. If the Department concludes it erred in denying the application, and the Department has not yet paid the rebate that month, then the Department will reinstate the application and recalculate the payment before paying the rebate that month.

2. If the Department concludes it erred in denying the application and the Department has already paid the rebate that month, then the Department will notify the applicant and reimburse the applicant from the next month's money, as available, according to the following method: (1) The Department will determine what the applicant should have been paid had the Department not erred; (2) The Department will pay the applicant that amount from the next month's money; and (3) The next month's money will be reduced accordingly.

3. If the Department concludes no error was made, then it will notify the applicant that its previous determination was not in error and is final. This determination is subject to appeal pursuant to section 24-4-106, C.R.S.

10.12.5 REBATE AMOUNT

A. The Department will pay the rebate amount on a per-ton basis.

B. Beginning January 1, 2015, the amount of the rebate is forty-two dollars ($42) per ton.

C. If the tons approved for the rebate in any one month multiplied by the amount of the rebate in section 10.12.5(B) exceeds the balance of the Fund, then the Department shall reduce the per ton amount of the rebate that month to a rate that will not cause a deficit in the Fund.

10.12.6 ENFORCEMENT

A. A person who applies for a rebate is subject to a review by the Department at any time. Applicants must allow access to all records related to waste tire management activities during normal business hours for the purpose of determining compliance with these rules for five (5) years from the date of receiving a rebate.

B. If an applicant provides information that constitutes a trade secret, confidential personnel information, or proprietary commercial or financial information, in accord with section 24-72-204(3), C.R.S., then the applicant may request the Department withhold such documents from disclosure in the event the Department receives a request for records in accord with the Colorado Open Records Act, section 24-72-101 et seq. All such documents must be clearly marked with the term "Proprietary Information" on each appropriate page. Records marked as containing trade secret, confidential, personnel, or proprietary information that do not actually contain such information may be released pursuant to an Open Records Act request.

C. In addition to any other penalty imposed by law, any applicant who knowingly or intentionally provides false information to the Department when applying for a rebate shall be ineligible to receive any future rebates under these rules.

D. The Department may deny the rebate to any person who is out of compliance with any State or Federal environmental laws, rules or regulations.

5) Section 16.1.1 is being amended to read as follows:

SECTION 16

MATERIALS PROHIBITED FROM DISPOSAL

16.1 SCOPE AND APPLICABILITY

16.1.1 Purpose. These regulations apply to the management and disposal of materials prohibited from land disposal in a solid waste site and facility under authority of CRS Title 30, Article 20, Part 1 and Part 10 and CRS Title 25, Article 17, Part 3. These Section 16 regulations are classified into the following sub-categories:

16.2 Management of Residentially Generated Used Lead-acid Batteries

16.3 Management of Residentially Generated Used Oil

16.4 ~~Management and Disposal of Residentially Generated Waste Tires~~ [Reserved]

16.5 Management of Residentially Generated Waste Electronic Devices.

6) Section 16.1.2 is being amended by revising paragraph (A) to read as follows:

16.1.2 General Provisions

(A) Land disposal of residentially generated waste electronic devices, used lead-acid batteries~~,~~ and used oil ~~and waste tires~~ is prohibited. Land disposal includes, but is not limited to, placing, discarding, or otherwise disposing of these wastes:

****

7) Section 16.1.3 is being amended by revising paragraph (A) to read as follows:

16.1.3 Due Diligence Exemption

(A) **Individuals**

Individuals residing in areas without recycling facilities or collection facilities are given the opportunity to demonstrate a lack of reasonable recycling options. In order to exercise this option, the individual must conduct due diligence to establish that reasonable options are not available. A finding of due diligence shall be based, at a minimum, on an individual's inquiry into local recycling options accomplished by querying the local telephone directory and contacting the county or municipality of residence regarding the availability of local recycling facilities, collection centers, or collection events. In the event that due diligence is exercised and no reasonable recycling option is identified, an individual may dispose of used lead-acid batteries~~,~~ and/or used oil ~~and/or waste tires~~ in a solid waste disposal site and facility or transfer station. The individual must contact the intended recipient solid waste disposal site and facility or transfer station to make sure

that the facility will accept the used lead-acid batteries, and/or used oil~~, and/or waste tires~~. Nothing in this Section precludes any solid waste disposal site and facility or transfer station from refusing to accept these items on a site-specific basis.

****

8) Section 16.4 is being deleted and reserved as follows:

16.4 ~~MANAGEMENT AND DISPOSAL OF RESIDENTIALLY GENERATED WASTE TIRES~~ [RESERVED]

~~For purposes of this Section, waste tire shall refer to a whole tire, as defined in Section 1.2 of these Regulations and in CRS Title 30, Article 20, Part 10.~~

~~16.4.1 Waste Tire Disposal~~

~~(A) Land disposal of residentially generated waste tires is prohibited.~~

~~(B) A person or commercial tire hauler shall dispose of residentially generated waste tires by delivery to one of the following entities:~~

~~(1) A retailer engaged in waste tire collection or recycling;~~

~~(2) A wholesaler engaged in waste tire collection or recycling;~~

~~(3) A waste tire monofill that has a certificate of designation;~~

~~(4) A collection facility engaged in waste tire collection; or~~

~~(5) A recycling facility engaged in waste tire recycling.~~

~~16.4.2 Retail Disposal System~~

~~A retailer selling replacement tires in the State may not refuse to accept from customers, at the point of transfer, waste tires of the same general type and in a quantity at least equal to the number of new tires purchased. A retailer shall dispose of waste tires by delivery to one of the following:~~

~~(A) The agent of a tire wholesaler;~~

~~(B) A collection facility engaged in waste tire collection;~~

~~(C) A recycling facility engaged in waste tire recycling; or~~

~~(D) A waste tire monofill that has a certificate of designation.~~

~~16.4.3 Wholesale Disposal System~~

~~A wholesaler selling tires in the State may accept from customers, at the point of transfer, waste tires of the same general type and in a quantity at least equal to the number of new tires purchased, if offered by customers. A wholesaler shall dispose of waste tires by delivery of waste tires to:~~

~~(A) A waste tire monofill that has a certificate of designation;~~

~~(B) A collection facility engaged in waste tire collection; or~~

~~(C) A recycling facility engaged in waste tire recycling.~~

~~**16.4.4 Collection Facility Disposal System**~~

~~A collection facility shall dispose of waste tires by delivery to a waste tire monofill having a certificate of designation or to a recycling facility engaged in waste tire recycling.~~

~~**16.4.5 Waste Tire Management Standards**~~

~~[RESERVED]~~

~~**16.4.6 Household Hazardous Waste Collection Event Exemption**~~

~~Tires that are collected during any periodic household hazardous waste collection event (where such wastes are not accepted on a continuous basis) shall be exempt from the standards in 16.4.5 provided that the waste tires are transferred from the site within thirty (30) calendar days following each collection event.~~

~~**16.4.7 Waste Hauler Requirements**~~

~~Waste haulers must provide notice to their existing customers on or before July 1, 2007, as well as new customers thereafter, that the land disposal of residentially generated used lead-acid batteries, used oil and waste tires is prohibited beginning on July 1, 2007. The notice shall explain the disposal options available under Sections 16.2, 16.3 and 16.4 of these Regulations for these three waste types.~~

~~**16.4.8 Recordkeeping**~~

~~Retailers, wholesalers and collection facilities must keep records to demonstrate compliance with this Section. At a minimum, such records shall include documentation of waste types and volumes, annual reports if applicable, and shipping manifests or records of shipment. Records shall be maintained onsite for a minimum of 3 years, or as long as the material remains onsite, whichever is greater.~~

~~**16.4.9 Inspections**~~

~~The Department may inspect, in accordance with the provisions of § 30-20-113, C.R.S., retailers, wholesalers, collection facilities and recycling facilities to verify compliance with this Section of the Regulations. As an alternative to physically inspecting the above facilities, the Department may require the above facilities to complete and return a self-certification checklist.~~

9) Section 16.6 is being amended to read as follows:

16.6 Waste Characterization Plans

Each solid waste site and disposal facility shall amend its waste characterization plan to include waste acceptance procedures designed to minimize the disposal of residentially generated waste electronic devices, used lead-acid batteries~~,~~ and used oil~~, and waste tires~~. Such procedures shall be implemented no later than July 1, 2013. Solid waste sites and disposal facilities shall include these waste screening

procedures in the waste characterization and disposal plan required by Section 2.1.2(C). The prohibition on disposal of these waste types shall be incorporated into employee training required by Section 2.1.2(B)(3). Any solid waste disposal site and facility in substantial compliance with its waste characterization plan developed pursuant to section 30-20-110 (1) (g), and Section 2.1.2 of the Regulations, shall be deemed to be in compliance with this Section, so long as such waste characterization plan contains waste acceptance procedures to minimize the disposal of waste electronic devices, lead-acid batteries~~,~~ and used oil~~, and waste tires~~ consistent with the requirements of this Section.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission

Hazardous Materials and Waste Management Division

6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Revisions to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) – Deletion and Replacement of Existing Section 10 (Waste Tire Facilities and Waste Tire Haulers) with New Section 10 Regulations (Waste Tires), Revision of Section 16 Regulations (Materials Prohibited from Disposal) and the Associated Additions, Deletions and Revisions to Section 1.2 Definitions

Repeal of the Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4), Section 1 Rules for Reimbursements from the Processors and End Users Fund

Basis and Purpose

I. Statutory Authority

The amendments to 6 CCR 1007-2, Section 10: Waste Tires, Section 16: Materials Prohibited from Disposal and Section 1.2: Definitions, and the deletion of 6 CCR 1007-2, Part 4, the Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in sections 30-20-109, C.R.S. and 30-20-1401(2), C.R.S., and section 30-20-1405(3)(c), C.R.S. These regulations are a direct result of, and implementation of, House Bill (HB) 14-1352, passed by the legislature in 2014.

II. House Bill 14-1352

House Bill 14-1352 repealed and reenacted the State's waste tires laws, moving them into the Solid Waste Act ("the Act"). The HB 14-1352 also transferred all waste tire program regulatory authority to the Department of Public Health and Environment (the Department). The Department's existing solid waste enforcement authority applies to waste tires.

III. Purpose of revised regulations:

The purpose of revising Sections 1.2, 10 and 16 is to implement the requirements of HB 14-1352 by establishing waste tire rules going forward to replace those in effect as of July 1, 2014. Prior to the proposed revisions, Section 10 of the Solid Waste Regulations applied specifically to Waste Tire Facilities and Waste Tire Haulers. The proposed regulations were drafted using the existing framework and construct of the original regulations and include new standards for mobile waste tire processors, the management of used tires, and the administration of the waste tire fee. Section 10 will also include regulations pertaining to administration of the Waste Tire End Users Fund, which were previously located in the Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4).

Discussion of Regulatory Proposal

I. The Section 10 regulations require the addition, revision and deletion of some existing definitions. These changes, summarized below, will be incorporated into Section 1.2 of the Solid Waste Regulations (6 CCR 1007-2, Part 1).

The following new definitions are being added to Section 1.2:

1. Applicant
2. Authorized signature
3. Beneficial user
4. Buffings
5. Commission
6. Daily cover
7. Mobile Processor
8. Motor vehicle
9. Public project
10. Pyrolysis
11. Recapped or retreaded tire
12. Retailer (as used in section 10 of the Regulations)
13. Trailer
14. Used Tire

15. Waste Tire Bale
16. Waste Tire Cleanup Program
17. Waste Tire Generator
18. Waste Tire Processor

The following existing definitions are being modified in Section 1.2:

1. Collection facility
2. End User
3. Residentially generated
4. Retailer (as used in Section 16 of the Regulations)
5. Tire
6. Tire-Derived Product
7. Waste Tire
8. Waste Tire Collection Facility
9. Waste Tire Hauler
10. Waste Tire Monofill
11. Wholesaler

The following existing definitions are being deleted from Section 1.2, as these terms no longer appear or are irrelevant in the new Regulations:

1. Fleet Service Facility
2. Passenger tire equivalents
3. Processor
4. Tire (as used in Section 16 of the Regulations)
5. Waste Tire Facility

II. Section and Subsection Titles

The title of Section 10 was updated to incorporate all waste tire provisions within one section of the Regulations. A new title for Section 10.4 (Standards for Generators of Motor Vehicle and Trailer Waste Tires) was added to conform to HB 14-1352. New Sections 10.7 (Standards for Mobile Waste Tire Processors), 10.10 (Standards for Management of Used Tires), 10.11 (Waste Tire Fee Administration) and 10.12 (Waste Tire End Users Fund) were added to conform to HB 14-1352.

All references to waste tires were removed from Section 16 and Section 16 waste tire subsections that conform to HB 14-1352 were incorporated into Section 10.

III. Scope and Applicability (Section 10.1)

The updated Section 10.1 describes the applicability of Section 10, and now includes all persons who sell new motor vehicle or trailer tires.

Updated language was added to the existing subsection 10.1.3 exemptions. Previous exemptions in this subsection that were removed or updated and new exemptions that were added include:

1. Removed the exemption for the transport of used tires due to the addition of subsection 10.10 (Standards for Management of Used Tires).
2. Removed the exemption for transportation of waste tires by a private citizen.
3. Updated household hazardous waste roundup, community cleanup, other one-time waste tire collection event language was added to reflect new waste tire terminology.
4. Clarified the requirements for the beneficial use of waste tires.
5. Standardized the waste tire storage limits for owners/operators of solid waste landfills, transfer stations, and recycling facilities who separate waste tires out from the solid waste stream.
6. Standardized the waste tire storage limits for government entities that store waste tires as part of their road-side cleanup activities.
7. Added a provision and requirements for the acceptance of unmanifested waste tires from unregistered haulers.

IV. General Provisions (Section 10.2)

This section states operations that are covered by the multiple parts of Section 10 must comply with all applicable sections. As provided in Section 10.2.2, the Department's intent is to avoid imposing duplicate or overlapping obligations on entities that are covered by multiple parts of Section 10.This section also specifies the limitations on the disposal of waste tires and incorporates waste tire due diligence language that was previously in Section 16.

Persons registered pursuant to Section 10 historically have not paid annual fees (Annual Fee) as required in Section 1.7.3 because the Waste Tire Program and Waste Tire Administration, Enforcement, and Cleanup Fund, the End Users Fund and the Waste Tire Market Development Fund are funded by the $1.50 Waste Tire Fee. An exemption from the Annual Fees for persons registered pursuant to sections 10.3, 10.4, 10.6, 10.7, 10.8 or 10.9 was added for clarification. Waste Tire Monofills and solid wastes sites and facilities with a Certificate of Designation are not exempt from the Annual Fee requirement.

Language regarding the enforcement of Section 10 through the Department's enforcement authorities was added.

V. Standards for Waste Tire Haulers (Section 10.3)

This section was updated to include a provision allowing Waste Tire Haulers to pick up waste tires from an unregistered person or site exempted from Section 10 if a manifest is generated and the waste tires are delivered to an approved waste tire destination facility. Additionally, the time frame to notify the Solid Waste Program in the event of a fire or other emergency involving waste tires was updated and the waste tire storage limits were updated to reflect new storage limit requirements.

Waste Tire Hauler registration, decal, and manifest changes include:

1. Updated Certificate of Registration Form names.
2. Removed the $10,000 surety bond requirement.
3. Language was added regarding when a Waste Tire Hauler is required to notify the Department.
4. Removed revocation of the Certificate of Registration language.
5. Added language regarding cancellation of a Certificate of Registration if a person is no longer hauling waste tires.
6. Revised decal placement requirements.
7. Added decal requirement for contracted commercial freight carriers.
8. Updated manifest requirements by removing the requirement for the actual number of waste tires by category, allowing electronic manifests, requiring information about contracted commercial freight carriers, and accounting for waste tires that originated from an illegal waste tire site, private property, or a unregistered waste tire hauler, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers.
9. Added a thirty (30) day requirement for Waste Tire Haulers to provide a manifest copy to the generator/source of waste tires from date of delivery of waste tires to the destination facility.

Waste Tire Hauler annual report requirements were updated by removing the surety bond verification, removing the passenger tire equivalent language and requiring the reporting of the total amount of waste tires accepted from persons exempted from Section 10.

Self-certification language was added that allows the Department to require Waste Tire Haulers to furnish additional information concerning compliance with the regulatory requirements.

VI. Standards for Generators of Motor Vehicle and Trailer Waste Tires (Section 10.4)

The section's title was updated to incorporate the new term for Waste Tire Generators. Persons subject to this section will continue to include tire retailers, wholesaler and fleet service facilities that generate waste motor vehicle or trailer tires. Additionally, the updated applicability provides examples of the types of business that are sources of waste tires.

This section was updated to include: the updated storage limit of no more than fifteen hundred (1,500) waste tires on site at any one time; the ability for Waste Tire Generators to accept waste tires; and the requirement that a Waste Tire Generator who sells replacement tires must not refuse from a customer waste tires of the same general type and quantity.

Waste Tire Generator registration, decal, and manifest changes include:

1. Certificate of Registration application requirements were updated to include the requirement that any person who commercially generates motor vehicle or trailer waste tires must register as a Waste Tire Generator.
2. Language was added requiring a Waste Tire Generator to notify the Department if they are selling new tires.
3. Removed revocation of the Certificate of Registration language.
4. Added language regarding cancellation of a Certificate of Registration if a person no longer generates waste tires at their registered location.
5. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
6. Updated manifest requirements to allow Waste Tire Generators to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers, and to allow Waste Tire Generators to offer their waste tires for mobile processing. The change to the Waste Tire Hauler manifest requirements may result in a Waste Tire Generator not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the Waste Tire Generator's waste tires to the destination facility to provide a manifest copy to the Waste Tire Generator.

This section also replaced the requirement for fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry.

Self-certification language was added that allows the Department to require Waste Tire Generators to furnish additional information concerning compliance with the regulatory requirements.

With the removal of the Waste Tire Generator Certificate of Registration date and corresponding registration renewal requirements, the self-certification will be used to update Waste Tire Generator information and gather additional information concerning compliance with the regulatory requirements. Because the majority of Waste Tire Generators also sell new motor vehicle or new trailer tires, the Waste Tire Generator self-certification will also be used to determine compliance with the Waste Tire Fee requirements of section 1.7.6 (Waste Tire Fee) and 10.11(Waste Tire Fee Administration).

VII. Standards for Waste Tire Monofills (Section 10.5)

This section was updated to include Certificate of Designation requirements for a Waste Tire Monofill which include both an Engineering and Design and Operations Plan (EDOP) and a Waste Tire Inventory Reduction Plan. This section also replaced the requirement for fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry.

The 75%/three year rolling average requirement was replaced with the Waste Tire Inventory Reduction Plan requirement. The Waste Tire Inventory Reduction Plan requires that Waste Tire Monofill owners/operators must on an annual basis, for every one (1) tire received, end use at least two (2) waste tires, or process at least two (2) waste tires into tire-derived product. The owner/operator of a Waste Tire Monofill may claim Confidential Business Information (CBI) or trade secret for any information submitted in the Waste Tire Inventory Reduction Plan. The procedures for asserting CBI claims are established under Colorado law, and the Department does not intend to create any further burden on the owner/operator to show CBI status than that existing under current law.

The Regulation adopts the change to the statute concerning the dates after which an owner/operator of a Waste Tire Monofill must not place any waste tires into monofill storage (after January 1, 2018) and when Waste Tire Monofills must close (by July 1, 2024). Clarification regarding when a Waste Tire Monofill can ship whole waste tires to an end user was added.

Waste Tire Monofill registration, decal, and manifest changes include:

1. Updated Certificate of Registration application requirements.

2. Language was added regarding when an owner/operator of a Waste Tire Monofill is required to notify the Department.
3. Removed revocation of the Certificate of Registration language.
4. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
5. Added language regarding cancellation of a Certificate of Registration if a person no longer operates a Waste Tire Monofill at their registered location.
6. Updated manifest requirements to allow owners/operators of Waste Tire Monofills to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers, and to allow Waste Tire Monofills to offer their waste tires for mobile processing. The change to the Waste Tire Hauler manifest requirements may result in an owner/operator of a Waste Tire Monofill not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the waste tires to the destination facility to provide a manifest copy to the source of the waste tires.

Waste Tire Monofill annual reporting requirements were updated to allow the reporting of waste tires by actual count or by weight in tons. The owner/operator of the Waste Tire Monofill must report the total amount of waste tires accepted from unregistered waste tire haulers in the required annual report, and the owner/operator of a Waste Tire Monofill must report compliance with his/her Waste Tire Inventory Reduction Plan.

Self-certification language was added that allows the Department to require Waste Tire Monofills to furnish additional information concerning compliance with the regulatory requirements.

VIII. Standards for Waste Tire Processors (Section 10.6)

Unlike in the previous Regulation, this section applies only to Waste Tire Processors; End Users have their own separate requirements in Section 10.9. Waste tire processing is not subject to the Section 8 recycling requirements or annual fee requirements of Section 1.7.3. A Waste Tire Processor that recycles materials other than waste tires is subject to the requirements of Section 8 and the Section 1.7.3 Annual Fee for a recycling facility. This section also replaced the requirement for the fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry.

The 75%/three-year rolling average recycling rate still applies to waste tire processing. Every year, starting after an initial one-year accumulation period, Waste Tire Processors

must have, over the past three (3) years, processed 75% of the average of what the Waste Tire Processor had in inventory at the end of years one through two plus the amount of waste tires received in year three. A Waste Tire Processor that is also registered as a Waste Tire Monofill is exempted from this requirement, but the Waste Tire Monofill must comply with its Waste Tire Inventory Reduction Plan. The Waste Tire Inventory Reduction Plan requires that Waste Tire Monofill owners/operators must, on an annual basis, for every one (1) tire received, end use at least two (2) waste tires, or process at least two (2) waste tires into tire-derived product.

This section was updated to add a waste tire storage limit for a Waste Tire Processor's facility that is not also registered as a Waste Tire Monofill. The waste tire processing facility must not have at any one time more than the lesser of: a maximum of one hundred thousand (100,000) waste tires; the amount allowed by the local government; or the amount of waste tires anticipated in the Waste Tire Processors financial assurance instrument. Clarification regarding when a Waste Tire Processor can ship whole waste tires to an end user was added.

Waste Tire Processor registration, decal, and manifest changes include:

1. Updated Certificate of Registration application requirements.
2. Language was added regarding when a Waste Tire Processor is required to notify the Department
3. Removed revocation of the Certificate of Registration language.
4. Added language regarding cancelling a Certificate of Registration if a person no longer operates as a Waste Tire Processor at their registered location.
5. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
6. Updated manifest requirements to allow Waste Tire Processors to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers. The change to the Waste Tire Hauler manifest requirements may result in a Waste Tire Processor not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the waste tire waste tires to the destination facility to provide a manifest copy to the source of the waste tires.

Waste Tire Processor annual reporting requirements were updated to allow the reporting of waste tires by actual count or by weight in tons. A Waste Tire Processor must report the total amount of waste tires accepted from unregistered waste tire haulers and

document compliance with the 75%/three-year rolling average recycling rate in the annual report.

Self-certification language was added that allows the Department to require Waste Tire Processors to furnish additional information concerning compliance with the regulatory requirements.

IX. Standards for Mobile Waste Tire Processors (Section 10.7)

This section sets new standards for Mobile Waste Tire Processors. The general provisions of this section state that mobile waste tire processing is not subject to the Section 8 recycling requirements or the Annual Fee requirements of Section 1.7.3. Mobile Waste Tire Processors must meet general standards, including: processing waste tires only on property not leased or owned by the Mobile Waste Tire Processor, only processing waste tires that already exist on the property where waste tire mobile processing is to occur, obtaining permission from the local government prior to beginning waste tire processing, notifying the Department at least fourteen (14) days prior to beginning processing, and not processing waste tires at a location for more than thirty (30) consecutive days unless the location is registered as a Waste Tire Processor or Department approval is granted. The Mobile Waste Tire Processor must also develop and comply with an Engineering and Design and Operations Plan (EDOP).

Mobile Waste Tire Processor registration, decal, manifest, and annual reporting sections were added and include:

1. A registration system for Mobile Waste Tire Processors, including obtaining a Certificate of Registration which is valid until March 15th of the following year. The Certificate of Registration may be canceled if mobile waste tire processing no longer occurs.
2. A requirement to display a Department issued Mobile Waste Tire Processor decals.
3. A manifest system to ensure that waste tires processed by Mobile Waste Tire Processors are accounted for and that manifests (Form WT-7) are created and provided to the Waste Tire Generator/source within thirty (30) days of completion of mobile processing.
4. A requirement that all Mobile Waste Tire Processors establish and maintain financial assurance in the amount of $10,000, unless they maintain financial assurance as a Waste Tire Processor, Waste Tire Collection Facility or a Waste Tire Monofill.
5. A requirement to submit the Mobile Waste Tire Processor Annual Reporting Form (Form WT-7) by April 1st of each year.

Self-certification language was added that allows the Department to require a Mobile Waste Tire Processor to furnish additional information concerning compliance with the regulatory requirements.

X. Standards for Waste Tire Collection Facilities (Section 10.8)

This section was updated to replace the requirement for fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry. Clarification regarding when a Waste Tire Collection Facility is allowed to ship whole waste tires to an end user was added.

Waste Tire Collection Facility registration, decal, and manifest changes include:

1. Updated registration application requirements.
2. Language was added regarding when an owner/operator of a Waste Tire Collection Facility is required to notify the Department.
3. Removed revocation of the Certificate of Registration language.
4. Language was added regarding cancellation of a Certificate of Registration if a person no longer operates as a Waste Tire Collection Facility at their registered location.
5. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
6. Updated manifest requirements to allow the owners/operators of Waste Tire Collection Facilities to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers, and the allowance of Waste Tire Collection Facilities to offer their waste tires for mobile processing. The change to the Waste Tire Hauler manifest requirements may result in a Waste Tire Collection Facility not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the waste tires to the destination facility to provide a manifest copy to the source of the waste tires.

Waste Tire Collection Facility annual reporting requirements were updated to allow the reporting of waste tires by actual count or by weight in tons. The owner or operator of a Waste Tire Collection Facility must report the total amount of waste tires accepted from unregistered waste tire haulers in the required annual report.

Self-certification language was added that allows the Department to require Waste Tire Collection Facilities to furnish additional information concerning compliance with the regulatory requirements.

XI. Standards for End Users (Section 10.9)

The general provisions of this section apply to End Users who end use more than ten (10) tons of tire-derived product or who end use whole waste tires for energy or fuel in any one State fiscal year. The general provisions require that End Users use a registered Waste Tire Hauler or Mobile Waste Tire Processor for shipment or mobile processing of waste tires. This general provision does not apply to End Users who ship tire-derived product off site.

End User registration, manifest, and annual reporting sections were added and include:

1. A system for registering as an End User, including obtaining a Certificate of Registration. The Certificate of Registration may be canceled if end use no longer occurs at their registered location.
2. Requiring retention of manifests provided by a Waste Tire Hauler for shipment of waste tires. Manifests are not required for tire-derived product.
3. A requirement to submit the Waste Tire Facility Annual Reporting Form (Form WT-5) by April 1st of each year.

XII. Standards for the Management of Used Tires (Section 10.10)

New requirements were added which apply to any person who commercially accumulates, stores, transports, or dispenses used tires. These requirements also apply to Waste Tire Generators who sell used tires and used tire shops that sell new tires but do not generate waste tires. Written criteria that distinguish waste tires from used tires must be developed and maintained at the site where used tires are accumulated, stored, and/or dispensed and in any vehicle used to transport used tires. The written criteria must be provided to the Department upon request. Waste tires and used tires must be clearly identified, per the written criteria, and used tires must be organized in a manner that allows inspection of each individual used tire. The written criteria may be designated as Confidential Business Information (CBI) or trade secret.

XIII. Waste Tire Fee Administration (Section 10.11)

A new section was added for the administration of the Waste Tire Fee. Effective July 1, 2014, HB 14-1352 transferred all regulatory authority for the Waste Tire Fee from the

Department of Revenue (DOR) to the Department. The $1.50 fee is not a new fee. The fee is used for waste tire administrative functions, end user rebates, and grant funding.

The $1.50 fee must be collected on the sale of each new tire and applies to the sale of new motor vehicle tires and new trailer tires. New motor vehicle and new trailer tires include the following, but not limited to: all tires used on passenger cars, trucks and vehicles, low speed electric vehicles (per Section 30-20-1402, C.R.S.), motorcycles and motor scooters licensed to travel on roads, semi trucks and semi trailers, any trailer towed behind a vehicle, motor homes, mini vans, campers, buses, medium-duty trucks, fleet vehicles, new and used cars sold by a car retailer if existing tires are changed out for new tires, and online sales of new tires. The fee does not apply to retreaded tires, used tires, tires used for agricultural equipment (e.g., tractors, bailers, and harvesters), off-the-road (OTR) vehicles, (e.g., golf carts, All Terrain Vehicle (ATV), dirt bikes), Segways, wheelchairs, garden equipment, mining equipment, construction equipment, bicycles, airplanes, or toy vehicles.

XIV. Waste Tire End Users Fund (Section 10.12)

A new subsection was added to manage the End Users Fund rebate program and incorporate applicable rules for this program that currently exist in the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4), Section 1 Rules for Reimbursements from the Processors and End Users Fund. Section 1 of 6 CCR 1007-2, Part 4 will be repealed as part of this rulemaking because of incorporation of this new subsection into Section 10 of the Regulations.

Minor changes regarding application procedures, the appeals process, deadlines for applications, and processing of applications were made.

Major changes and additions to this program, as it existed in 6 CCR 1007 Part 4, include:

1. Retailers of tire-derived products are now eligible for a rebate from the End Users Fund.
2. Processors are only eligible for a rebate from the End Users Fund when they process waste tires into tire-derived products that they sell and move offsite to an out-of-state End User.
3. The rebate will only be paid one time for the end use, retail sale or processing of the tire-derived product.
4. An annual per ton rate will be used to determine the rebate for approved tons from the End Users Fund.

5. Processors, Retailers, and/or End Users are not eligible for a rebate if funding was provided by the Waste Tire Administration, Enforcement, and Cleanup Fund to clean up an illegal waste tire site.
6. An eligibility table (Table 10-12.01) was added to clarify eligibility for End Users, Retailers and Processors to participate in the End Users Fund.
7. Processing waste tires into tire bales, except when end used in an engineered, permanent structure stamped and sealed by a Colorado Certified Professional Engineer, is no longer eligible for a rebate.
8. The minimum amount of tons of waste tires end used to be eligible to participate in the End Users Fund was reduced from fifty (50) tons per fiscal year to ten (10) tons per fiscal year.
9. Language was adjusted regarding ineligibility to participate in the End Users Fund for those who knowingly or intentionally submit false information to the Department.
10. Language was added that states the Department may deny a rebate if an applicant is out of compliance with any State or Federal environmental law, rule or regulation.

Tire-derived products or whole waste tires that are being end used should have economic value. The Commission feels that End Users should provide, when requested by the Department, documentation which establishes that tire-derived products or whole waste tires were purchased or provide other proof that demonstrates that the tire-derived products or whole waste tires have economic value.

Description of Local Government Involvement in the Stakeholder Process

Executive Order D 2011-005 (EO5), "Establishing a Policy to Enhance the Relationship between State and Local Government" requires state rulemaking agencies to consult with and engage local governments prior to the promulgation of any rules containing mandates. The Department completed an EO5 – Internal Communication Form – Internal Conception Phase which was transmitted to local governments. The amended regulations will have little effect on local governments unless the local government generates, accumulates, stores, transports, dispenses, or processes waste tires, used tires or tire-derived product, sells new motor vehicle or trailer tires, or applies for a rebate from the End Users Fund.

Issues Encountered During Stakeholder Process:

1. Some stakeholders asked why the beneficial use requirements for waste tires are located in the Section 8 Recycling and Beneficial Use regulations instead of in the Section 10

Waste Tire regulations. Section 8 regulates recycling, a broad category that includes beneficial use. Waste tire processing is a form of recycling. However, the legislature has determined that because the waste tire stream presents unique challenges, requirements unique to waste tires are necessary. Although the legislature created unique requirements for waste tire generators, haulers, processors, end users, monofills and collection facilities, it did not create unique requirements for beneficial use of waste tires. Therefore, beneficial use of waste tires – an act distinct from the End Use of waste tires or tire-derived product – is still regulated in Section 8.

2. A question arose regarding whether warranty tires – that is, tires that a retailer returns to the wholesaler or manufacturer – are waste tires. The Commission feels that warranty tires and tires with a manufacturing defect that are returned to the wholesaler or manufacturer for credit or return do not fall under the definition of a waste tire because the manufacturer or wholesaler, rather than the retailer, ultimately makes the determination if the tire is usable or should be discarded.

3. Some stakeholders wanted to add tire retread businesses to the applicability list for Waste Tire Generators in Section 10.4. The Commission did not add tire retread businesses to the list because the Waste Tire Generator definition is not all inclusive. If a retread business makes the determination that a motor vehicle or trailer tire cannot be retreaded, then the tire is a waste tire. The retread business would therefore be a Waste Tire Generator subject to all the requirements of Section 10.4.

4. Some stakeholder asked whether it is possible for a corporation, business, or government agency that has registered under their corporation, business, or government agency with multiple Waste Tire Hauler registrations (e.g., corporation A has five (5) stores and each of these five (5) stores are registered as Waste Tire Haulers because they haul more than ten (10) waste tires at a time) to complete only one Commercial Waste Tire Hauler Annual Report Form (Form WT-4) for all of the Waste Tire Haulers registered under their corporation/business instead of completing a separate Form WT-4 for each Waste Tire Hauler location. Rather than addressing this situation in the Regulations, the Department will modify Form WT-4 to allow the completion of one Form WT-4 for corporations, businesses, or government agencies that have multiple Waste Tire Hauler registration locations. Each Waste Tire Hauler registration location must be listed and accounted for on the form.

5. Some stakeholders were concerned that under the previous regulations, parties who tracked tire amounts in tons rather than in actual counts could apply a formula to convert tonnage to estimated tire amounts in their annual report. Some stakeholders felt the conversion could lead to errors by the person completing the form. To address this

concern, the new regulation allows reporting by actual weight in tons. The Department will convert waste tire amounts reported in tons to an estimated tire count..

6. Some stakeholders expressed confusion over whether compliance with Section 10 requirements exempted parties from compliance with laws or regulations concerning certificates of designation (CDs). To address this concern Section 10.5 .1(A) makes clear that in addition to the Section 10 requirements, persons owning or operating a Waste Tire Monofill must maintain a CD pursuant to Section 1.3. Additionally Section 1.7.3, Section 1.8, Section 2 and Section 3 clearly state requirements for Solid Waste Disposal Sites and Facilities.

7. An issue arose during the stakeholder process concerning Section 30-20-1410, C.R.S. which prohibits the sale of used tires if the used tire would violate Section 42-4-228, C.R.S. tire safety standards. Section 42-4-228, C.R.S. requires tires driven on roads to be in a safe condition. Violation of Section 42-4-228, C.R.S. is a traffic offense and law enforcement officers enforce these requirements. Some stakeholders argued the Commission should adopt a robust used tire management regime, making the Hazardous Materials and Waste Management Division the regulator of tire safety in the State. Other stakeholders argued this section is overly broad because it prohibits common practices such as sales of certain used tires to jurisdictions without the Section 42-4-228, C.R.S. standards as well as the sale of certain used tires to be recycled by beneficial users, Waste Tire Processors and Waste Tire End Users. The Commission determines the purpose of Section 30-20-1410, C.R.S. is to assist the Department in distinguishing waste tires, which it regulates, from used tires, which it does not. As such, Section 10 does not adopt an elaborate used tire management regime. The Department will develop and make available guidance to help the used tire seller distinguish a waste tire from a used tire.

8. Some stakeholders expressed concern the Department would not collect the Waste Tire Fee from online retailers of new tires. The Commission believes that the Department has the authority to collect the Waste Tire Fee on online sales of new motor vehicle or new trailer tires from out of state parties that sell new motor vehicle or new trailer tires to persons who live in Colorado.

9. Some stakeholders asked why there are two Waste Tire Fee Forms on the Department website for submitting the Waste Tire Fee payment. The Department is accepting payment of the Waste Tire Fee either electronically or by mail. The Waste Tire Fee Form must be included with the payment. Two versions of the Waste Tire Fee Form are available online: one for online payment and one for payment by mail. The forms are identical except for the addition of the mailing address on the payment by mail form and the online form has a submit button for online submittal.

10. Stakeholders discussed reducing the minimum of fifty (50) tons per fiscal year to ten (10) tons per fiscal year for applicants to be eligible to apply for a rebate from the End Users Fund. The Commission decided to reduce the minimum number of tons to be eligible to apply for a rebate from fifty (50) tons to ten (10) tons to allow more participation in the End Users Fund. The Department and stakeholders agreed that allowing more low volume processors, retailers and/or end users of tire-derived products would stimulate more market development for these products.

    An applicant may apply for a rebate once they reach the combination of processing, retail sales or end use of ten (10) tons of tire-derived products or whole waste tires for fuel or energy recovery within the current state fiscal year. For example: an applicant who end uses two (2) tons in July, four (4) tons in August, zero (0) tons in September and four (4) tons in October can apply in November for a rebate for the entire ten (10) tons end used that fiscal year. In this example, the applicant would receive the rebate amount calculated for October. Each applicant must reach this minimum every state fiscal year prior to being eligible to participate in the End Users Fund. Once the minimum amount has been applied for, and approved by the Department, the applicant cannot combine applications going forward for that fiscal year; they must apply each month for any amount that is processed, sold by a retailer, or end used.

11. Stakeholders questioned which processing, retail sales, or end uses of tire-derived products and whole waste tires would be eligible for a rebate from the End Users Fund. The Department, working with the stakeholders, developed an eligibility table (Table 10-12.01) showing which processes, retail sales, or end uses of tire-derived products and whole waste tires are eligible for rebates. This table determines which activities are eligible for which category of end use, processor or retailer rebate pursuant to the End User, Processor, and Retailer definitions. The table also lists several scenarios which are not eligible for a rebate from the End Users Fund. This table does not create any new rights; it only specifies processes, retail sales and end uses that are eligible for rebates from the End Users Fund. The Department has the discretion to determine eligibility for any activity not included in the table.

12. Some stakeholders wondered what would happen if two or more applications that are deemed eligible for a rebate for the same tire-derived product or whole waste tires that are received at the same time by the Department. The Commission has determined that the Department should notify each applicant that more than one application was received for the same tire-derived product or whole waste tires and that the impacted applicants must notify the Department within two (2) business days of notification which application(s) would be withdrawn. If a notification is not received by the Department within two (2) business days all received applications will be denied.

13. Another issue was the change in eligibility for the end use of tire bales. The Department was recently audited by the Colorado Office of the State Auditor for the administration of the Waste Tire Processor and End User Program. One of the conclusions from the "Department of Public Health and Environment: Waste Tire Processor and End User Program June 2014 Performance Audit" was that tire bales should not be eligible for a rebate because they do not meet the following criteria:
    - Waste tires should be recycled or otherwise consumed and should not return to storage in Colorado. Tire bales were determined to be temporary usage of waste tires and do not permanently eliminate the need to manage the waste tires. For example, if the steel bands holding the tire bales together break, the resulting tire pile will have to be cleaned up and either recycled or disposed.
    - The cost to produce and/or purchase reimbursable waste tire products should be higher than the reimbursements offered by the program. The cost to produce and/or purchase a tire bale is typically less than the rebates from the End Users Fund. The auditors found the Department paid an average of $62 per ton for waste tires end used in Fiscal Year 2013. The audit found several examples in the reviewed applications for Fiscal Year 2013 where the tire bales were sold for between $10 to $15 per tire bale. Each tire bale weights approximately one ton.
    - The audit concluded those who process, sell, or end use tire bales do not need a financial incentive from the End Users Fund to make tire bales economically feasible.

    The audit recommended that only tire bales used in a permanent, engineered structural design approved by a professional engineer should qualify for rebate. Examples of these types of structures include houses, dams, or buildings where the tire bales are encased in another material such as concrete or steel.

    The Commission has determined that only tire bales end used in Colorado in an engineered, permanent structure that has been stamped and sealed by a Colorado Certified Professional Engineer will be eligible for a rebate. Uses such as windbreaks, corrals, or fencing are considered temporary and will not be eligible for a rebate from the End Users Fund.

    To be eligible for a rebate from the End Users Fund, an applicant will need to submit an End Users Tire Bale Approval Form, available on the Department's website, along with proof the structure was stamped and sealed by a Colorado Certified Professional Engineer.

This determination does not restrict the processing, selling or end use of tire bales, as long as the tire bales continue to be considered a beneficial use by the Department and local laws and ordinances allow for their end use in the location they are installed.

14. Stakeholders questioned why there is a requirement for applicants participating in the End Users Fund to provide estimated forecasts of future processing, retail sales or end use of tire-derived products or whole waste tires. Due to changes in HB 14-1352, the Department must set the same per ton rate for a twelve (12) month period. The same per ton rate is intended to provide more market certainty for applicants so they can better forecast their budgeting and use of tire-derived products. For the Department to be able to set a per ton rate, having forecast information from those actively participating the End Users Fund allows the Department a more accurate picture to set a rate that allows market stability. The Commission has determined that this information is needed for the Department to set a per ton rate that meets the requirements of HB 14-1352.

15. A few stakeholders expressed concern about the term "applicant" in section 10.12.6 which states that applicants who knowingly or intentionally provide false information to the Department are prohibited from receiving future rebates from the End Users Fund. Specifically, some stakeholders were concerned that their companies would be held liable for actions of "rogue employees." It is the intention of the Commission that only culpable parties be prohibited from receiving rebates under these Rules.

16. Some stakeholders questioned why pyrolysis is considered an end use and not a process.

    Senate Bill 13-252, Section 40-2-124 , C.R.S. defines pyrolysis:

    > "Pyrolysis" means the thermochemical decomposition of material at elevated temperatures without the participation of oxygen.

    Section 1.2 adopts this definition. For purposes of Section 10, pyrolysis of waste tires or tire-derived product means to convert waste tires or tire-derived product into other components with economic value – typically gas, oil and carbon based products. The Commission has determined that pyrolysis is an end use, and would be eligible from the End Users Fund based on Table 10-12.01.

17. Some stakeholders questioned - how materials created by the method of pyrolysis will be treated for the purposes of eligibility for a rebate from the End Users Fund. Pyrolysis is considered an end use, as defined in Section 30-20-1401(4) (c), C.R.S.:

    > Consumes tire-derived product or uses tire-derived product in its final application or in making new materials with a demonstrated sale to a third-party customer.

18. The Commission deems those companies who purchase materials from a company who used pyrolysis to create those materials to be not eligible for a rebate from the End Users Fund. Another issue arose regarding how a retailer was going to be defined for the purpose of eligibly for receiving a rebate from the End Users Fund. Per Section 30-20-1405 (2)(b), C.R.S., the Department shall use moneys in the End Users Fund to provide rebates to in-state:

> Retailers who sell tire-derived product…

The Commission has determined that retailers of tire-derived products are retailers who sell small quantities of tire-derived products to customers who will use the tire-derived product for its ultimate use. For example, a retailer selling landscape mulch made of processed waste tires to a residential customer who will install the landscape mulch on their own property is eligible to receive a rebate. Retailers will need to provide proof of retail sales tax being collected from the ultimate customer or provide proof that the ultimate customer is exempt from paying retail sales tax. Retailers of tire-derived products must have a current retail sales tax license to be eligible to participate in the End Users Fund.

19. Another issue encountered concerned a rebate for waste tires located at an illegal waste tire site that received funds from the Administration, Enforcement and Cleanup Fund. Specifically, if those tires are processed onsite, should the processing of those same waste tires also be eligible for a rebate from the End Users Fund? The Commission has determined such processing should not be eligible to receive a Processor rebate because the Processor is already receiving state money from another fund to process and remove the waste tires. This would be the same for Retailers who sell the tire-derived product processed from these illegal sites. Conversely, if a person receives money from the Administration, Enforcement and Cleanup Fund to remove waste tires from an illegal waste tire site and subsequently processes those waste tires offsite, they would be eligible for the Processor rebate (if sold to an out-of-state End User) because the Administration, Enforcement and Cleanup Fund would be funding only the removal of those waste tires, not the subsequent processing. End Users would be eligible for a rebate for the end use of those processed waste tires as long as they are not financially benefiting from the cleanup of the waste tires. The Commission feels that the Department should make every effort when awarding a grant to cleanup waste tires from an illegal waste tire site to ensure that the same waste tire is not eligible for both a rebate from the End Users Fund and reimbursement from the Administration, Enforcement and Cleanup Fund and the End Users Fund.

20. Factors used to determine the per ton rate of $42 for the next twelve (12) months beginning January 2015. The Commission considered several factors in determining setting the per ton rate:

- The audit findings from the Colorado Office of the State Auditor (Department of Public Health and Environment: Waste Tire Processor and End User Program June 2014 Performance Audit) stated that the Department should not pay rebates in excess of the cost of processing or end using tire-derived products. House Bill 14-1352 prohibits the Commission from setting a tiered per ton rate.

- The Department and stakeholders used a forecasting spreadsheet that included the following information:
  - Breakdown of approved tons over the last fiscal year by End User, Retailer and Processor. Tons approved that are not eligible under the current statute were removed.
  - Forecast of potential end use of tons from applicants who did not participate or were limited in their participation in the End Users Fund during the last fiscal year.
  - Projections of revenues based on the previous three years' historical rates.

Based on these factors, the Commission has determined that the Department will pay a rebate of $42 per ton for the next twelve (12) months.

Regulatory Alternatives

No other regulatory alternatives were evaluated.

Cost/Benefit Analysis

A cost-benefit analysis will be performed if requested by the Colorado Department of Regulatory Services.

Notice of Rulemaking Hearing

Tracking number

2014-01085

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-2 Part 4

Rule title

WASTE TIRE PROCESSOR AND END USER REIMBURSEMENT PROGRAM

Rulemaking Hearing

Date

11/18/2014

Time

09:30 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, Bldg. A, Sabin Conference Room

Subjects and issues involved

The regulations at 6 CCR 1007-2, Part 4 (Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program) are being repealed in conjunction with the proposed rulemaking for the deletion and replacement of the existing Section 10 Regulations (Waste Tire Facilities and Waste Tire Haulers) with new Section 10 regulations (Waste Tires). See Tracking Number 2014-01084.

Statutory authority

30-20-109, C.R.S.; 30-20-1401(2), C.R.S.; and 30-20-1405(3)(c), C.R.S.

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-2

PART 4 - REGULATIONS PERTAINING TO THE WASTE TIRE PROCESSOR AND END USER REIMBURSEMENT PROGRAM

Section 1 – Rules for Reimbursements from the Processors and End Users Fund

Repeal of the Part 4 Regulations pertaining to the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4)

1) 6 CCR 1007-2, Part 4 (Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program) is being repealed in its entirety as follows:

~~**PART 4 - REGULATIONS PERTAINING TO THE WASTE TIRE PROCESSOR AND END USER REIMBURSEMENT PROGRAM**~~

~~**Section 1 – Rules for Reimbursements from the Processors and End Users Fund**~~

~~**1.1 PURPOSE**~~

~~The purpose of these rules is to implement the provisions of section 25-17-202.5, C.R.S. The purpose of such partial reimbursements shall be to assist new and existing waste tire recycling technologies to become economically feasible and to thereby encourage the use of waste tires and reduce the storage of waste tires in Colorado.~~

~~**1.2 DEFINITIONS**~~

~~"Applicant" means any person or business seeking partial reimbursement under 25-17-202.5, C.R.S.~~

~~"Authorized signature" means the signature of an individual who has authority to sign on behalf of, and bind, an applicant.~~

~~"Buffings" the residual rubber material removed from the supporting structure of a waste tire or a retreaded or recapped tire.~~

~~"Daily cover" means using processed waste tires as an alternate cover placed upon exposed solid waste in a permitted solid waste facility to control disease vectors, fires, odors, blowing litter and scavenging, without presenting a threat to human health or the environment.~~

~~"Department" means the Colorado Department of Public Health & Environment.~~

~~"Economic value" is an attribute of a product, which is producing or capable of producing a profit, or is valued through a recognized medium of exchange.~~

~~"End use" or "End used" means:~~

~~a. For energy recovery: utilizing the heat content or other forms of energy from the burning or pyrolysis of waste tires or tire-derived product;~~

~~b. For other eligible uses where the tire-derived product is virtually indistinguishable from shredded or baled tires, the end use is the installation of the tire-derived product (e.g. landscape mulch, civil engineering projects, aggregate, etc.);~~

~~c. For other eligible uses where the tire-derived product is a product that needs no installation to be recognized as that product (e.g. ground mats and furniture), the end use is the manufacturing of the final end product.~~

~~"End User" means a person who uses a tire-derived product for a commercial or industrial purpose.~~

~~"HMWMD" means the Hazardous Materials and Waste Management Division.~~

~~"Partial reimbursement" means reimbursement from the Waste Tire Processors and End Users Fund.~~

~~"Processor" means a person who processes waste tires in Colorado for recycling or beneficial use.~~

~~"Pyrolysis" means thermal treatment of waste tires or tire-derived product to separate the waste tires or tire-derived product into other components with economic value. Pyrolysis differs from burning waste tires or tire-derived product for energy because burning uses the entire waste tire or tire-derived product and results in energy and residual waste. Conversely, pyrolysis involves thermal decomposition of organic compounds in an oxygen limited environment for the purpose extracting the waste tire's individual components – typically gas, oil and char products.~~

~~"Recapped or retreaded tire" means a previously worn tire which has gone through a remanufacturing process designed to extend its useful service life.~~

~~"Tire" means a tire for any passenger vehicle, including any truck, weighing less than fifteen thousand pounds, and for any truck, including any truck tractor, trailer, or semitrailer, weighing more than fifteen thousand pounds; except that "tire" does not include:~~

~~a. Tires that are recapped or otherwise reprocessed for use.~~

~~b. Tires that are used for:~~

~~1) Farm equipment exempt from sales and use taxes pursuant to section 39-26-716, C.R.S.; or~~

~~2) A farm tractor or implement of husbandry exempt from registration pursuant to section 42-3-104, C.R.S.~~

~~"Tire-derived Product" means matter that:~~

~~a. Is derived from a process that uses whole tires as a feedstock, including shredding, crumbing and chipping; and~~

~~b. Has been sold and removed from the facility of a processor.~~

"Waste Tire" means a tire that is no longer mounted on a motor vehicle and is no longer suitable for use as a tire due to wear, damage, or deviation from the manufacturer's original specifications. Waste tires include the following types of tires that are not organized for resale by size in a rack or a stack in a manner that allows the inspection of each individual tire: a repairable tire, scrap tire, altered waste tire, and a used tire. "Waste Tire" does not include a tire-derived product or crumb rubber.

1.3 ELIGIBILITY FOR PARTIAL REIMBURSEMENT

A. General Requirements:

1. Only Colorado-generated waste tires and tire-derived product created from Colorado-generated waste tires qualify for partial reimbursement.

2. The Department will not reimburse a processor for processing waste tires unless the processor has end-used the tire-derived product or unless the tire-derived product has been sold for an end use and moved off-site. In such cases, the Department will pay the processor only if the end use is allowed in the jurisdiction in which it will be used.

3. The Department will pay a processor only for Colorado waste tires the processor processes in Colorado.

4. The Department will pay a processor who processes waste tires in Colorado that are sold for an out-of-state end use only as a processor, not as an end user. In such cases, the Department will pay the processor only if the end use complies with all local requirements in the jurisdiction in which it will be used.

5. The Department will not reimburse an end user who end uses waste tires or tire-derived product outside the State of Colorado.

6. The Department will reimburse an end user only if the end use complies with all local requirements in the jurisdiction it was used.

7. The Department will not reimburse a processor for processing a waste tire into a feedstock that is then further processed into a tire-derived product. A processor is only eligible for processing a waste tire one time – that is, when he or she processes the waste tire into the final tire-derived product.

8. An end user cannot receive end use reimbursement for end using tire-derived product that was previously end used. This includes any tire-derived product that was previously denied reimbursement and any tire-derived product for which the end user failed to apply for funds at the time of end use.

9. Processors who process waste tires in one month and use the tire-derived product in a subsequent month are eligible for the processor reimbursement only after they use the tire-derived product. Processors who process waste tires in one month and sell the tire-derived product in a subsequent month are eligible for the processor reimbursement only after the tire-derived product is sold and moved offsite. Applicants must provide documentation to verify sale, use and moving offsite of tire-derived product.

10. Waste tires processed at the location of the illegal disposal with funds from the Waste Tire Cleanup Fund are not eligible to receive a processor reimbursement from the Processor and End User Fund. Waste tires removed from the location of the illegal disposal with funds from the Waste Tire Cleanup Fund and processed at a separate location are eligible to receive a processor reimbursement from the Processor and End User Fund.

11. The Department may deny reimbursements to any end user the Department determines has accumulated a commercially unreasonable quantity of waste tire end products.

B. Eligible Processes. Processes that are eligible include:

1. Stamping;

2. Stripping;

3. Shredding;

4. Pyrolysis;

5. Crumbing;

6. Baling for end use. To receive the processor reimbursement for processing waste tires into tire bales, the processor must submit the Tire Bale Processor/End User Approval Form, available on the Department's website; and

7. Other technologies for the conversion of waste tires into tire-derived product.

C. Ineligible Processing. Processes that are ineligible for a partial reimbursement include:

1. Recapping or retreading of waste tires or previously recapped tires; and

2. Creating buffings.

D. Eligible End Uses. The end uses of waste tires or tire-derived product that are eligible for partial reimbursement include, but are not limited to:

1. Civil engineering applications, meeting applicable American Society for Testing and Materials (ASTM) or similar standards, which utilize tire-derived product as a substitute for soil, sand, or aggregate in a construction project's land or surface applications, road bed base, embankments, fill materials for construction projects, daily cover at a permitted solid waste facility, and/or civil engineering applications as approved by the state or local jurisdictions;

2. Pyrolysis or burning of waste tires or tire-derived product for energy recovery or supplemental fuel;

3. Manufacturing of products such as molded rubber products, rubberized asphalt, or other products utilizing tire-derived product; and

4. Tire bales. To receive the end user reimbursement for using tire bales, the applicant must submit the Tire Bale Processor/End User Approval Form, available on the Department's website.

E. Ineligible End Uses. Uses that are not eligible for partial reimbursement include:

1. Reuse as a vehicle tire;

2. Burning without energy recovery;

3. Buffings generated from the recapping or retreading process used in the manufacturing of an end product;

4. Land filling for disposal; and

5. Any use of a whole waste tire, other than pyrolysis or energy recovery or supplemental fuel.

F. Eligible applicants:

1. A business or person who is required by law to be registered with the Secretary of State's office to conduct business in the State of Colorado must be in "Good Standing" to be eligible to apply for reimbursement.

2. To be eligible to receive a partial reimbursement for processing waste tires, a person must be currently registered with the HMWMD as a waste tire processor at the address at which that person claims processing of waste tires.

3. To be eligible to receive a partial reimbursement for end using tire-derived product, a person must be currently registered with the HMWMD as a waste tire end user at the address of the end user facility or business address.

4. To be eligible to receive a partial reimbursement for end using a whole waste tire for pyrolysis, energy recovery or supplemental fuel, a person must receive a beneficial use approval from the HMWMD.

1.4 APPLICATION PROCEDURES

A. A processor or end user is eligible for partial reimbursement for the processing of waste tires or the end use of waste tires or tire-derived product only if their application for partial reimbursement is complete and complies with all of the provisions of these rules.

B. An applicant's initial application in any state fiscal year (July 1 through June 30) must be for a minimum of 50 tons of either processed and/or end used waste tires or tire-derived product. The applicant cannot receive reimbursement for waste tires or tire-dervied product processed or end used in a previous fiscal year. After submitting an initial application for a minimum of 50 tons, the applicant is eligible to apply for any ton amount in subsequent months in that fiscal year.

C. Applicants must certify the processed waste tires, whole tires or tire-derived product are not being provided to a local government securing or having secured a grant from the Recycling Incentives Program (section 25-17-202.6(2)(b)(I), C.R.S.).

D. To be eligible as a Colorado-generated waste tire, the waste tire must be documented as such in a manner acceptable to the Department. Acceptable documentation must include a certifying statement signed by the applicant stating the waste tires are Colorado-generated in accordance with the requirements of Section 1.3 of these rules.

E. Applicants must provide weight tickets from a scale that meets the requirements of the Colorado Measurement Standards Act, section 35-14-101 – 35-14-134, C.R.S. to document weights of waste tires or tire-derived product processed or end used. Other forms of documentation may be acceptable on a case-by-case basis.

F. An applicant for partial reimbursement must file the appropriate Department form (Processor and End User Application), providing at a minimum:

1. Applicant's name and address.

2. Name and location where end use or processing occurred.

3. A description of the end use or processing.

4. For processors: a listing of end users that purchased the tire-derived product.

5. For processors: the Waste Tire Certificate of Registration number of the facility where the processing occurred.

6. For end users: source of waste tires or tire-derived product.

7. For end users: the Waste Tire Certificate of Registration number of the end user facility.

8. The amount of waste tires or tire-derived product processed or end used, by weight (in tons).

9. The time period in which the waste tires or tire-derived product were processed or end used.

10. Other supporting documentation required by the Department.

11. An authorized signature.

C. Applications for monthly partial reimbursement will be accepted no later than the stated due date on the application and/or website. Applications received after the due date will be considered late and partial reimbursement will not be considered for that calendar month. The Department will not accept adjustments for processed applications from prior calendar months. The Department will not accept combining previous calendar months with the current months' application except as defined in Section 1.4 (B), above.

1.5 PARTIAL REIMBURSEMENT RATE

A. The amount of the partial reimbursement for waste tires processed or end used may be up to $65.00 per ton.

B. Every month the Department will reimburse processors and end users of waste tires from the fund according to the following method:

1. The Department will pay end users twice as much per ton for each ton of waste tires used as it will pay processors for each ton of waste tires processed;

2. Any one waste tire is eligible for reimbursement one time for the processing of that waste tire and one time for the end use of that waste tire;

3. If using this method the end use reimbursement rate exceeds $65 per ton, then the excess funds will be distributed to the processors;

4. If using this method both the end use reimbursement rate and the processor reimbursement rate exceed $65 per ton, then the excess funds will remain in the fund to be distributed the following month.

C. Funds will be disbursed pro rata, based on the amount of revenue received in the preceding month made available to the Department for partial reimbursements, divided by the requests received by the date in Section 1.4 (G), above, as expressed in tons. Distribution of funds cannot exceed available balance at any time.

~~1.6 PROCESSING OF APPLICATIONS~~

~~The Department will review the Processor and End User Application by the first of the month following the application deadline as defined in Section 1.4 (G), above according to a four-step process: (1) review for completeness, (2) review for compliance with applicable laws and regulations, (3) review for eligible processes and end uses, and (4) determination of reimbursement amount.~~

~~A. **Completeness**: If an application is not complete, then the Department will notify the applicant and grant the applicant a 5 business day grace period to submit the missing information. The Department will defer partial reimbursement to all applicants until adequate information is received. If adequate information is not received in the prescribed time period, then the Department shall deny reimbursement for that month.~~

~~B. **Compliance**: After the Department has determined all applications submitted in a given month are complete, it will conduct a compliance verification to ensure each applicant both is in compliance with all applicable laws and regulations and was in compliance with all applicable laws and regulations during the time period for which they are seeking reimbursement.~~

~~C. **Eligibility**: After compliance verification, the Department determines which applicants are eligible for reimbursement based on their claimed processing and end use.~~

~~D. **Reimbursement amount**: The Department will calculate the amount of reimbursement per Section 1.5 of these Regulations and notify each applicant of its determination and distribute funds.~~

~~1.7 APPEALS PROCESS~~

~~A. For approved applications, if an applicant believes the Department has made a calculation error in the response to an approved application, the applicant shall notify the Department in writing within 10 business days of receiving the Department's response. The notice shall contain a copy of the application and the Department's response, a brief statement describing the believed error, and copies of any documents supporting the statement. The Department shall review the notice and attached documents and may further investigate the matter.~~

~~1. If the Department concludes an error has been made and the Department has not yet paid the monthly reimbursements, then the Department shall reinstate the application and recalculate the pro-rata payment before paying the monthly reimbursements.~~

~~2. If the Department concludes an error has been made and the Department has already made the monthly reimbursements, then the Department will notify the applicant and reimburse the applicant from the next month's reimbursement money, as available, according to the following method: (1) The Department will determine what the applicant should have been paid had the Department not erred; (2)The Department will pay the applicant that amount from the next month's reimbursement money; (3) The next month's reimbursement money will be reduced accordingly.~~

~~3. If the Department concludes no calculation error was made, then it will notify the applicant that its previous determination was not in error and is final. This determination is subject to appeal pursuant to section 24-4-106, C.R.S.~~

~~B. For denied applications: If an applicant believes his or her application was wrongly denied, the applicant shall, within 10 business days of denial, submit the following to the Department: (1) a copy of the denied application and supporting documents, (2) the denial letter, (3) a statement explaining why the applicant believes the Department erred, and (4) all other information the applicant believes relevant.~~

1. If the Department concludes it erred in denying the application, and the Department has not yet paid the monthly reimbursements, then the Department shall reinstate the application and recalculate the pro-rata payment before paying the monthly reimbursements.

2. If the Department concludes it erred in denying the application and the Department has already made the monthly reimbursements, then the Department will notify the applicant and reimburse the applicant from the next month's reimbursement money, as available, according to the following method: (1) The Department will determine what the applicant should have been paid had the Department not erred; (2) The Department will pay the applicant that amount from the next month's reimbursement money; (3) The next month's reimbursement money will be reduced accordingly.

3. If the Department concludes no error was made, then it will notify the applicant that its previous determination was not in error and is final. This determination is subject to appeal pursuant to section 24-4-106, C.R.S.

1.8 ENFORCEMENT

A. A processor or end user who applies for a partial reimbursement is subject to a review by the Department at any time. Applicants shall allow access to all records related to waste tire management activities during normal business hours for the purpose of determining compliance with these rules for five years from the date of partial reimbursement.

B. If information is provided by an applicant that constitutes a trade secret, confidential personnel information, or proprietary commercial or financial information, in accord with § 24-72-204(3), C.R.S., then the applicant may request the Department withhold such documents from disclosure in the event the Department receives a request for records in accord with the Colorado Open Records Act, § 24-72-101 et seq. All such documents must be clearly marked with the term "Proprietary Information" on each appropriate page. Records marked as containing trade secret, confidential, personnel, or proprietary information that do not actually contain such information may be released pursuant to an Open Records Act request.

C. In addition to any other penalty imposed by law, any applicant who provides false information to the Department when applying for a partial reimbursement shall be ineligible to receive any future partial reimbursement under these rules.

D. The Department may reasonably deny reimbursements to an applicant who is out of compliance with operational requirements of any state law or regulation.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission

Hazardous Materials and Waste Management Division

6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR

Revisions to the Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2, Part 1) – Deletion and Replacement of Existing Section 10 (Waste Tire Facilities and Waste Tire Haulers) with New Section 10 Regulations (Waste Tires), Revision of Section 16 Regulations (Materials Prohibited from Disposal) and the Associated Additions, Deletions and Revisions to Section 1.2 Definitions

Repeal of the Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4), Section 1 Rules for Reimbursements from the Processors and End Users Fund

Basis and Purpose

I. Statutory Authority

The amendments to 6 CCR 1007-2, Section 10: Waste Tires, Section 16: Materials Prohibited from Disposal and Section 1.2: Definitions, and the deletion of 6 CCR 1007-2, Part 4, the Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in sections 30-20-109, C.R.S. and 30-20-1401(2), C.R.S., and section 30-20-1405(3)(c), C.R.S. These regulations are a direct result of, and implementation of, House Bill (HB) 14-1352, passed by the legislature in 2014.

II. House Bill 14-1352

House Bill 14-1352 repealed and reenacted the State's waste tires laws, moving them into the Solid Waste Act ("the Act"). The HB 14-1352 also transferred all waste tire program regulatory authority to the Department of Public Health and Environment (the Department). The Department's existing solid waste enforcement authority applies to waste tires.

III. Purpose of revised regulations:

The purpose of revising Sections 1.2, 10 and 16 is to implement the requirements of HB 14-1352 by establishing waste tire rules going forward to replace those in effect as of July 1, 2014. Prior to the proposed revisions, Section 10 of the Solid Waste Regulations applied specifically to Waste Tire Facilities and Waste Tire Haulers. The proposed regulations were drafted using the existing framework and construct of the original regulations and include new standards for mobile waste tire processors, the management of used tires, and the administration of the waste tire fee. Section 10 will also include regulations pertaining to administration of the Waste Tire End Users Fund, which were previously located in the Regulations Pertaining to the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4).

Discussion of Regulatory Proposal

I. The Section 10 regulations require the addition, revision and deletion of some existing definitions. These changes, summarized below, will be incorporated into Section 1.2 of the Solid Waste Regulations (6 CCR 1007-2, Part 1).

The following new definitions are being added to Section 1.2:

1. Applicant
2. Authorized signature
3. Beneficial user
4. Buffings
5. Commission
6. Daily cover
7. Mobile Processor
8. Motor vehicle
9. Public project
10. Pyrolysis
11. Recapped or retreaded tire
12. Retailer (as used in section 10 of the Regulations)
13. Trailer
14. Used Tire

15. Waste Tire Bale
16. Waste Tire Cleanup Program
17. Waste Tire Generator
18. Waste Tire Processor

The following existing definitions are being modified in Section 1.2:

1. Collection facility
2. End User
3. Residentially generated
4. Retailer (as used in Section 16 of the Regulations)
5. Tire
6. Tire-Derived Product
7. Waste Tire
8. Waste Tire Collection Facility
9. Waste Tire Hauler
10. Waste Tire Monofill
11. Wholesaler

The following existing definitions are being deleted from Section 1.2, as these terms no longer appear or are irrelevant in the new Regulations:

1. Fleet Service Facility
2. Passenger tire equivalents
3. Processor
4. Tire (as used in Section 16 of the Regulations)
5. Waste Tire Facility

II. Section and Subsection Titles

The title of Section 10 was updated to incorporate all waste tire provisions within one section of the Regulations. A new title for Section 10.4 (Standards for Generators of Motor Vehicle and Trailer Waste Tires) was added to conform to HB 14-1352. New Sections 10.7 (Standards for Mobile Waste Tire Processors), 10.10 (Standards for Management of Used Tires), 10.11 (Waste Tire Fee Administration) and 10.12 (Waste Tire End Users Fund) were added to conform to HB 14-1352.

All references to waste tires were removed from Section 16 and Section 16 waste tire subsections that conform to HB 14-1352 were incorporated into Section 10.

III. Scope and Applicability (Section 10.1)

The updated Section 10.1 describes the applicability of Section 10, and now includes all persons who sell new motor vehicle or trailer tires.

Updated language was added to the existing subsection 10.1.3 exemptions. Previous exemptions in this subsection that were removed or updated and new exemptions that were added include:

1. Removed the exemption for the transport of used tires due to the addition of subsection 10.10 (Standards for Management of Used Tires).
2. Removed the exemption for transportation of waste tires by a private citizen.
3. Updated household hazardous waste roundup, community cleanup, other one-time waste tire collection event language was added to reflect new waste tire terminology.
4. Clarified the requirements for the beneficial use of waste tires.
5. Standardized the waste tire storage limits for owners/operators of solid waste landfills, transfer stations, and recycling facilities who separate waste tires out from the solid waste stream.
6. Standardized the waste tire storage limits for government entities that store waste tires as part of their road-side cleanup activities.
7. Added a provision and requirements for the acceptance of unmanifested waste tires from unregistered haulers.

IV. General Provisions (Section 10.2)

This section states operations that are covered by the multiple parts of Section 10 must comply with all applicable sections. As provided in Section 10.2.2, the Department's intent is to avoid imposing duplicate or overlapping obligations on entities that are covered by multiple parts of Section 10.This section also specifies the limitations on the disposal of waste tires and incorporates waste tire due diligence language that was previously in Section 16.

Persons registered pursuant to Section 10 historically have not paid annual fees (Annual Fee) as required in Section 1.7.3 because the Waste Tire Program and Waste Tire Administration, Enforcement, and Cleanup Fund, the End Users Fund and the Waste Tire Market Development Fund are funded by the $1.50 Waste Tire Fee. An exemption from the Annual Fees for persons registered pursuant to sections 10.3, 10.4, 10.6, 10.7, 10.8 or 10.9 was added for clarification. Waste Tire Monofills and solid wastes sites and facilities with a Certificate of Designation are not exempt from the Annual Fee requirement.

Language regarding the enforcement of Section 10 through the Department's enforcement authorities was added.

V. Standards for Waste Tire Haulers (Section 10.3)

This section was updated to include a provision allowing Waste Tire Haulers to pick up waste tires from an unregistered person or site exempted from Section 10 if a manifest is generated and the waste tires are delivered to an approved waste tire destination facility. Additionally, the time frame to notify the Solid Waste Program in the event of a fire or other emergency involving waste tires was updated and the waste tire storage limits were updated to reflect new storage limit requirements.

Waste Tire Hauler registration, decal, and manifest changes include:

1. Updated Certificate of Registration Form names.
2. Removed the $10,000 surety bond requirement.
3. Language was added regarding when a Waste Tire Hauler is required to notify the Department.
4. Removed revocation of the Certificate of Registration language.
5. Added language regarding cancellation of a Certificate of Registration if a person is no longer hauling waste tires.
6. Revised decal placement requirements.
7. Added decal requirement for contracted commercial freight carriers.
8. Updated manifest requirements by removing the requirement for the actual number of waste tires by category, allowing electronic manifests, requiring information about contracted commercial freight carriers, and accounting for waste tires that originated from an illegal waste tire site, private property, or a unregistered waste tire hauler, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers.
9. Added a thirty (30) day requirement for Waste Tire Haulers to provide a manifest copy to the generator/source of waste tires from date of delivery of waste tires to the destination facility.

Waste Tire Hauler annual report requirements were updated by removing the surety bond verification, removing the passenger tire equivalent language and requiring the reporting of the total amount of waste tires accepted from persons exempted from Section 10.

Self-certification language was added that allows the Department to require Waste Tire Haulers to furnish additional information concerning compliance with the regulatory requirements.

VI. Standards for Generators of Motor Vehicle and Trailer Waste Tires (Section 10.4)

The section's title was updated to incorporate the new term for Waste Tire Generators. Persons subject to this section will continue to include tire retailers, wholesaler and fleet service facilities that generate waste motor vehicle or trailer tires. Additionally, the updated applicability provides examples of the types of business that are sources of waste tires.

This section was updated to include: the updated storage limit of no more than fifteen hundred (1,500) waste tires on site at any one time; the ability for Waste Tire Generators to accept waste tires; and the requirement that a Waste Tire Generator who sells replacement tires must not refuse from a customer waste tires of the same general type and quantity.

Waste Tire Generator registration, decal, and manifest changes include:

1. Certificate of Registration application requirements were updated to include the requirement that any person who commercially generates motor vehicle or trailer waste tires must register as a Waste Tire Generator.
2. Language was added requiring a Waste Tire Generator to notify the Department if they are selling new tires.
3. Removed revocation of the Certificate of Registration language.
4. Added language regarding cancellation of a Certificate of Registration if a person no longer generates waste tires at their registered location.
5. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
6. Updated manifest requirements to allow Waste Tire Generators to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers, and to allow Waste Tire Generators to offer their waste tires for mobile processing. The change to the Waste Tire Hauler manifest requirements may result in a Waste Tire Generator not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the Waste Tire Generator's waste tires to the destination facility to provide a manifest copy to the Waste Tire Generator.

This section also replaced the requirement for fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry.

Self-certification language was added that allows the Department to require Waste Tire Generators to furnish additional information concerning compliance with the regulatory requirements.

With the removal of the Waste Tire Generator Certificate of Registration date and corresponding registration renewal requirements, the self-certification will be used to update Waste Tire Generator information and gather additional information concerning compliance with the regulatory requirements. Because the majority of Waste Tire Generators also sell new motor vehicle or new trailer tires, the Waste Tire Generator self-certification will also be used to determine compliance with the Waste Tire Fee requirements of section 1.7.6 (Waste Tire Fee) and 10.11(Waste Tire Fee Administration).

VII. Standards for Waste Tire Monofills (Section 10.5)

This section was updated to include Certificate of Designation requirements for a Waste Tire Monofill which include both an Engineering and Design and Operations Plan (EDOP) and a Waste Tire Inventory Reduction Plan. This section also replaced the requirement for fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry.

The 75%/three year rolling average requirement was replaced with the Waste Tire Inventory Reduction Plan requirement. The Waste Tire Inventory Reduction Plan requires that Waste Tire Monofill owners/operators must on an annual basis, for every one (1) tire received, end use at least two (2) waste tires, or process at least two (2) waste tires into tire-derived product. The owner/operator of a Waste Tire Monofill may claim Confidential Business Information (CBI) or trade secret for any information submitted in the Waste Tire Inventory Reduction Plan. The procedures for asserting CBI claims are established under Colorado law, and the Department does not intend to create any further burden on the owner/operator to show CBI status than that existing under current law.

The Regulation adopts the change to the statute concerning the dates after which an owner/operator of a Waste Tire Monofill must not place any waste tires into monofill storage (after January 1, 2018) and when Waste Tire Monofills must close (by July 1, 2024). Clarification regarding when a Waste Tire Monofill can ship whole waste tires to an end user was added.

Waste Tire Monofill registration, decal, and manifest changes include:

1. Updated Certificate of Registration application requirements.

2. Language was added regarding when an owner/operator of a Waste Tire Monofill is required to notify the Department.
3. Removed revocation of the Certificate of Registration language.
4. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
5. Added language regarding cancellation of a Certificate of Registration if a person no longer operates a Waste Tire Monofill at their registered location.
6. Updated manifest requirements to allow owners/operators of Waste Tire Monofills to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers, and to allow Waste Tire Monofills to offer their waste tires for mobile processing. The change to the Waste Tire Hauler manifest requirements may result in an owner/operator of a Waste Tire Monofill not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the waste tires to the destination facility to provide a manifest copy to the source of the waste tires.

Waste Tire Monofill annual reporting requirements were updated to allow the reporting of waste tires by actual count or by weight in tons. The owner/operator of the Waste Tire Monofill must report the total amount of waste tires accepted from unregistered waste tire haulers in the required annual report, and the owner/operator of a Waste Tire Monofill must report compliance with his/her Waste Tire Inventory Reduction Plan.

Self-certification language was added that allows the Department to require Waste Tire Monofills to furnish additional information concerning compliance with the regulatory requirements.

VIII. Standards for Waste Tire Processors (Section 10.6)

Unlike in the previous Regulation, this section applies only to Waste Tire Processors; End Users have their own separate requirements in Section 10.9. Waste tire processing is not subject to the Section 8 recycling requirements or annual fee requirements of Section 1.7.3. A Waste Tire Processor that recycles materials other than waste tires is subject to the requirements of Section 8 and the Section 1.7.3 Annual Fee for a recycling facility. This section also replaced the requirement for the fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry.

The 75%/three-year rolling average recycling rate still applies to waste tire processing. Every year, starting after an initial one-year accumulation period, Waste Tire Processors

must have, over the past three (3) years, processed 75% of the average of what the Waste Tire Processor had in inventory at the end of years one through two plus the amount of waste tires received in year three. A Waste Tire Processor that is also registered as a Waste Tire Monofill is exempted from this requirement, but the Waste Tire Monofill must comply with its Waste Tire Inventory Reduction Plan. The Waste Tire Inventory Reduction Plan requires that Waste Tire Monofill owners/operators must, on an annual basis, for every one (1) tire received, end use at least two (2) waste tires, or process at least two (2) waste tires into tire-derived product.

This section was updated to add a waste tire storage limit for a Waste Tire Processor's facility that is not also registered as a Waste Tire Monofill. The waste tire processing facility must not have at any one time more than the lesser of: a maximum of one hundred thousand (100,000) waste tires; the amount allowed by the local government; or the amount of waste tires anticipated in the Waste Tire Processors financial assurance instrument. Clarification regarding when a Waste Tire Processor can ship whole waste tires to an end user was added.

Waste Tire Processor registration, decal, and manifest changes include:

1. Updated Certificate of Registration application requirements.
2. Language was added regarding when a Waste Tire Processor is required to notify the Department
3. Removed revocation of the Certificate of Registration language.
4. Added language regarding cancelling a Certificate of Registration if a person no longer operates as a Waste Tire Processor at their registered location.
5. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
6. Updated manifest requirements to allow Waste Tire Processors to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers. The change to the Waste Tire Hauler manifest requirements may result in a Waste Tire Processor not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the waste tire waste tires to the destination facility to provide a manifest copy to the source of the waste tires.

Waste Tire Processor annual reporting requirements were updated to allow the reporting of waste tires by actual count or by weight in tons. A Waste Tire Processor must report the total amount of waste tires accepted from unregistered waste tire haulers and

document compliance with the 75%/three-year rolling average recycling rate in the annual report.

Self-certification language was added that allows the Department to require Waste Tire Processors to furnish additional information concerning compliance with the regulatory requirements.

IX. Standards for Mobile Waste Tire Processors (Section 10.7)

This section sets new standards for Mobile Waste Tire Processors. The general provisions of this section state that mobile waste tire processing is not subject to the Section 8 recycling requirements or the Annual Fee requirements of Section 1.7.3. Mobile Waste Tire Processors must meet general standards, including: processing waste tires only on property not leased or owned by the Mobile Waste Tire Processor, only processing waste tires that already exist on the property where waste tire mobile processing is to occur, obtaining permission from the local government prior to beginning waste tire processing, notifying the Department at least fourteen (14) days prior to beginning processing, and not processing waste tires at a location for more than thirty (30) consecutive days unless the location is registered as a Waste Tire Processor or Department approval is granted. The Mobile Waste Tire Processor must also develop and comply with an Engineering and Design and Operations Plan (EDOP).

Mobile Waste Tire Processor registration, decal, manifest, and annual reporting sections were added and include:

1. A registration system for Mobile Waste Tire Processors, including obtaining a Certificate of Registration which is valid until March 15th of the following year. The Certificate of Registration may be canceled if mobile waste tire processing no longer occurs.
2. A requirement to display a Department issued Mobile Waste Tire Processor decals.
3. A manifest system to ensure that waste tires processed by Mobile Waste Tire Processors are accounted for and that manifests (Form WT-7) are created and provided to the Waste Tire Generator/source within thirty (30) days of completion of mobile processing.
4. A requirement that all Mobile Waste Tire Processors establish and maintain financial assurance in the amount of $10,000, unless they maintain financial assurance as a Waste Tire Processor, Waste Tire Collection Facility or a Waste Tire Monofill.
5. A requirement to submit the Mobile Waste Tire Processor Annual Reporting Form (Form WT-7) by April 1st of each year.

Self-certification language was added that allows the Department to require a Mobile Waste Tire Processor to furnish additional information concerning compliance with the regulatory requirements.

X. Standards for Waste Tire Collection Facilities (Section 10.8)

This section was updated to replace the requirement for fencing of at least six (6) feet with the requirement to implement security measures that preclude public entry. Clarification regarding when a Waste Tire Collection Facility is allowed to ship whole waste tires to an end user was added.

Waste Tire Collection Facility registration, decal, and manifest changes include:

1. Updated registration application requirements.
2. Language was added regarding when an owner/operator of a Waste Tire Collection Facility is required to notify the Department.
3. Removed revocation of the Certificate of Registration language.
4. Language was added regarding cancellation of a Certificate of Registration if a person no longer operates as a Waste Tire Collection Facility at their registered location.
5. Removed the three (3) year expiration date for a Certificate of Registration and facility decal.
6. Updated manifest requirements to allow the owners/operators of Waste Tire Collection Facilities to accept more than ten (10) waste tires without a manifest, per the exemption added in subsection 10.1.3 for acceptance of waste tires from unregistered waste tire haulers, and the allowance of Waste Tire Collection Facilities to offer their waste tires for mobile processing. The change to the Waste Tire Hauler manifest requirements may result in a Waste Tire Collection Facility not receiving a properly completed Uniform Waste Tire Manifest from the Waste Tire Hauler at the time of waste tire pickup by the Waste Tire Hauler. The Waste Tire Hauler now has up to thirty (30) days from delivery of the waste tires to the destination facility to provide a manifest copy to the source of the waste tires.

Waste Tire Collection Facility annual reporting requirements were updated to allow the reporting of waste tires by actual count or by weight in tons. The owner or operator of a Waste Tire Collection Facility must report the total amount of waste tires accepted from unregistered waste tire haulers in the required annual report.

Self-certification language was added that allows the Department to require Waste Tire Collection Facilities to furnish additional information concerning compliance with the regulatory requirements.

XI. Standards for End Users (Section 10.9)

The general provisions of this section apply to End Users who end use more than ten (10) tons of tire-derived product or who end use whole waste tires for energy or fuel in any one State fiscal year. The general provisions require that End Users use a registered Waste Tire Hauler or Mobile Waste Tire Processor for shipment or mobile processing of waste tires. This general provision does not apply to End Users who ship tire-derived product off site.

End User registration, manifest, and annual reporting sections were added and include:

1. A system for registering as an End User, including obtaining a Certificate of Registration. The Certificate of Registration may be canceled if end use no longer occurs at their registered location.
2. Requiring retention of manifests provided by a Waste Tire Hauler for shipment of waste tires. Manifests are not required for tire-derived product.
3. A requirement to submit the Waste Tire Facility Annual Reporting Form (Form WT-5) by April 1st of each year.

XII. Standards for the Management of Used Tires (Section 10.10)

New requirements were added which apply to any person who commercially accumulates, stores, transports, or dispenses used tires. These requirements also apply to Waste Tire Generators who sell used tires and used tire shops that sell new tires but do not generate waste tires. Written criteria that distinguish waste tires from used tires must be developed and maintained at the site where used tires are accumulated, stored, and/or dispensed and in any vehicle used to transport used tires. The written criteria must be provided to the Department upon request. Waste tires and used tires must be clearly identified, per the written criteria, and used tires must be organized in a manner that allows inspection of each individual used tire. The written criteria may be designated as Confidential Business Information (CBI) or trade secret.

XIII. Waste Tire Fee Administration (Section 10.11)

A new section was added for the administration of the Waste Tire Fee. Effective July 1, 2014, HB 14-1352 transferred all regulatory authority for the Waste Tire Fee from the

Department of Revenue (DOR) to the Department. The $1.50 fee is not a new fee. The fee is used for waste tire administrative functions, end user rebates, and grant funding.

The $1.50 fee must be collected on the sale of each new tire and applies to the sale of new motor vehicle tires and new trailer tires. New motor vehicle and new trailer tires include the following, but not limited to: all tires used on passenger cars, trucks and vehicles, low speed electric vehicles (per Section 30-20-1402, C.R.S.), motorcycles and motor scooters licensed to travel on roads, semi trucks and semi trailers, any trailer towed behind a vehicle, motor homes, mini vans, campers, buses, medium-duty trucks, fleet vehicles, new and used cars sold by a car retailer if existing tires are changed out for new tires, and online sales of new tires. The fee does not apply to retreaded tires, used tires, tires used for agricultural equipment (e.g., tractors, bailers, and harvesters), off-the-road (OTR) vehicles, (e.g., golf carts, All Terrain Vehicle (ATV), dirt bikes), Segways, wheelchairs, garden equipment, mining equipment, construction equipment, bicycles, airplanes, or toy vehicles.

XIV. Waste Tire End Users Fund (Section 10.12)

A new subsection was added to manage the End Users Fund rebate program and incorporate applicable rules for this program that currently exist in the Waste Tire Processor and End User Reimbursement Program (6 CCR 1007-2, Part 4), Section 1 Rules for Reimbursements from the Processors and End Users Fund. Section 1 of 6 CCR 1007-2, Part 4 will be repealed as part of this rulemaking because of incorporation of this new subsection into Section 10 of the Regulations.

Minor changes regarding application procedures, the appeals process, deadlines for applications, and processing of applications were made.

Major changes and additions to this program, as it existed in 6 CCR 1007 Part 4, include:

1. Retailers of tire-derived products are now eligible for a rebate from the End Users Fund.
2. Processors are only eligible for a rebate from the End Users Fund when they process waste tires into tire-derived products that they sell and move offsite to an out-of-state End User.
3. The rebate will only be paid one time for the end use, retail sale or processing of the tire-derived product.
4. An annual per ton rate will be used to determine the rebate for approved tons from the End Users Fund.

5. Processors, Retailers, and/or End Users are not eligible for a rebate if funding was provided by the Waste Tire Administration, Enforcement, and Cleanup Fund to clean up an illegal waste tire site.
6. An eligibility table (Table 10-12.01) was added to clarify eligibility for End Users, Retailers and Processors to participate in the End Users Fund.
7. Processing waste tires into tire bales, except when end used in an engineered, permanent structure stamped and sealed by a Colorado Certified Professional Engineer, is no longer eligible for a rebate.
8. The minimum amount of tons of waste tires end used to be eligible to participate in the End Users Fund was reduced from fifty (50) tons per fiscal year to ten (10) tons per fiscal year.
9. Language was adjusted regarding ineligibility to participate in the End Users Fund for those who knowingly or intentionally submit false information to the Department.
10. Language was added that states the Department may deny a rebate if an applicant is out of compliance with any State or Federal environmental law, rule or regulation.

Tire-derived products or whole waste tires that are being end used should have economic value. The Commission feels that End Users should provide, when requested by the Department, documentation which establishes that tire-derived products or whole waste tires were purchased or provide other proof that demonstrates that the tire-derived products or whole waste tires have economic value.

Description of Local Government Involvement in the Stakeholder Process

Executive Order D 2011-005 (EO5), "Establishing a Policy to Enhance the Relationship between State and Local Government" requires state rulemaking agencies to consult with and engage local governments prior to the promulgation of any rules containing mandates. The Department completed an EO5 – Internal Communication Form – Internal Conception Phase which was transmitted to local governments. The amended regulations will have little effect on local governments unless the local government generates, accumulates, stores, transports, dispenses, or processes waste tires, used tires or tire-derived product, sells new motor vehicle or trailer tires, or applies for a rebate from the End Users Fund.

Issues Encountered During Stakeholder Process:

1. Some stakeholders asked why the beneficial use requirements for waste tires are located in the Section 8 Recycling and Beneficial Use regulations instead of in the Section 10

Waste Tire regulations. Section 8 regulates recycling, a broad category that includes beneficial use. Waste tire processing is a form of recycling. However, the legislature has determined that because the waste tire stream presents unique challenges, requirements unique to waste tires are necessary. Although the legislature created unique requirements for waste tire generators, haulers, processors, end users, monofills and collection facilities, it did not create unique requirements for beneficial use of waste tires. Therefore, beneficial use of waste tires – an act distinct from the End Use of waste tires or tire-derived product – is still regulated in Section 8.

2. A question arose regarding whether warranty tires – that is, tires that a retailer returns to the wholesaler or manufacturer – are waste tires. The Commission feels that warranty tires and tires with a manufacturing defect that are returned to the wholesaler or manufacturer for credit or return do not fall under the definition of a waste tire because the manufacturer or wholesaler, rather than the retailer, ultimately makes the determination if the tire is usable or should be discarded.

3. Some stakeholders wanted to add tire retread businesses to the applicability list for Waste Tire Generators in Section 10.4. The Commission did not add tire retread businesses to the list because the Waste Tire Generator definition is not all inclusive. If a retread business makes the determination that a motor vehicle or trailer tire cannot be retreaded, then the tire is a waste tire. The retread business would therefore be a Waste Tire Generator subject to all the requirements of Section 10.4.

4. Some stakeholder asked whether it is possible for a corporation, business, or government agency that has registered under their corporation, business, or government agency with multiple Waste Tire Hauler registrations (e.g., corporation A has five (5) stores and each of these five (5) stores are registered as Waste Tire Haulers because they haul more than ten (10) waste tires at a time) to complete only one Commercial Waste Tire Hauler Annual Report Form (Form WT-4) for all of the Waste Tire Haulers registered under their corporation/business instead of completing a separate Form WT-4 for each Waste Tire Hauler location. Rather than addressing this situation in the Regulations, the Department will modify Form WT-4 to allow the completion of one Form WT-4 for corporations, businesses, or government agencies that have multiple Waste Tire Hauler registration locations. Each Waste Tire Hauler registration location must be listed and accounted for on the form.

5. Some stakeholders were concerned that under the previous regulations, parties who tracked tire amounts in tons rather than in actual counts could apply a formula to convert tonnage to estimated tire amounts in their annual report. Some stakeholders felt the conversion could lead to errors by the person completing the form. To address this

concern, the new regulation allows reporting by actual weight in tons. The Department will convert waste tire amounts reported in tons to an estimated tire count..

6. Some stakeholders expressed confusion over whether compliance with Section 10 requirements exempted parties from compliance with laws or regulations concerning certificates of designation (CDs). To address this concern Section 10.5 .1(A) makes clear that in addition to the Section 10 requirements, persons owning or operating a Waste Tire Monofill must maintain a CD pursuant to Section 1.3. Additionally Section 1.7.3, Section 1.8, Section 2 and Section 3 clearly state requirements for Solid Waste Disposal Sites and Facilities.

7. An issue arose during the stakeholder process concerning Section 30-20-1410, C.R.S. which prohibits the sale of used tires if the used tire would violate Section 42-4-228, C.R.S. tire safety standards. Section 42-4-228, C.R.S. requires tires driven on roads to be in a safe condition. Violation of Section 42-4-228, C.R.S. is a traffic offense and law enforcement officers enforce these requirements. Some stakeholders argued the Commission should adopt a robust used tire management regime, making the Hazardous Materials and Waste Management Division the regulator of tire safety in the State. Other stakeholders argued this section is overly broad because it prohibits common practices such as sales of certain used tires to jurisdictions without the Section 42-4-228, C.R.S. standards as well as the sale of certain used tires to be recycled by beneficial users, Waste Tire Processors and Waste Tire End Users. The Commission determines the purpose of Section 30-20-1410, C.R.S. is to assist the Department in distinguishing waste tires, which it regulates, from used tires, which it does not. As such, Section 10 does not adopt an elaborate used tire management regime. The Department will develop and make available guidance to help the used tire seller distinguish a waste tire from a used tire.

8. Some stakeholders expressed concern the Department would not collect the Waste Tire Fee from online retailers of new tires. The Commission believes that the Department has the authority to collect the Waste Tire Fee on online sales of new motor vehicle or new trailer tires from out of state parties that sell new motor vehicle or new trailer tires to persons who live in Colorado.

9. Some stakeholders asked why there are two Waste Tire Fee Forms on the Department website for submitting the Waste Tire Fee payment. The Department is accepting payment of the Waste Tire Fee either electronically or by mail. The Waste Tire Fee Form must be included with the payment. Two versions of the Waste Tire Fee Form are available online: one for online payment and one for payment by mail. The forms are identical except for the addition of the mailing address on the payment by mail form and the online form has a submit button for online submittal.

10. Stakeholders discussed reducing the minimum of fifty (50) tons per fiscal year to ten (10) tons per fiscal year for applicants to be eligible to apply for a rebate from the End Users Fund. The Commission decided to reduce the minimum number of tons to be eligible to apply for a rebate from fifty (50) tons to ten (10) tons to allow more participation in the End Users Fund. The Department and stakeholders agreed that allowing more low volume processors, retailers and/or end users of tire-derived products would stimulate more market development for these products.

    An applicant may apply for a rebate once they reach the combination of processing, retail sales or end use of ten (10) tons of tire-derived products or whole waste tires for fuel or energy recovery within the current state fiscal year. For example: an applicant who end uses two (2) tons in July, four (4) tons in August, zero (0) tons in September and four (4) tons in October can apply in November for a rebate for the entire ten (10) tons end used that fiscal year. In this example, the applicant would receive the rebate amount calculated for October. Each applicant must reach this minimum every state fiscal year prior to being eligible to participate in the End Users Fund. Once the minimum amount has been applied for, and approved by the Department, the applicant cannot combine applications going forward for that fiscal year; they must apply each month for any amount that is processed, sold by a retailer, or end used.

11. Stakeholders questioned which processing, retail sales, or end uses of tire-derived products and whole waste tires would be eligible for a rebate from the End Users Fund. The Department, working with the stakeholders, developed an eligibility table (Table 10-12.01) showing which processes, retail sales, or end uses of tire-derived products and whole waste tires are eligible for rebates. This table determines which activities are eligible for which category of end use, processor or retailer rebate pursuant to the End User, Processor, and Retailer definitions. The table also lists several scenarios which are not eligible for a rebate from the End Users Fund. This table does not create any new rights; it only specifies processes, retail sales and end uses that are eligible for rebates from the End Users Fund. The Department has the discretion to determine eligibility for any activity not included in the table.

12. Some stakeholders wondered what would happen if two or more applications that are deemed eligible for a rebate for the same tire-derived product or whole waste tires that are received at the same time by the Department. The Commission has determined that the Department should notify each applicant that more than one application was received for the same tire-derived product or whole waste tires and that the impacted applicants must notify the Department within two (2) business days of notification which application(s) would be withdrawn. If a notification is not received by the Department within two (2) business days all received applications will be denied.

13. Another issue was the change in eligibility for the end use of tire bales. The Department was recently audited by the Colorado Office of the State Auditor for the administration of the Waste Tire Processor and End User Program. One of the conclusions from the "Department of Public Health and Environment: Waste Tire Processor and End User Program June 2014 Performance Audit" was that tire bales should not be eligible for a rebate because they do not meet the following criteria:
    - Waste tires should be recycled or otherwise consumed and should not return to storage in Colorado. Tire bales were determined to be temporary usage of waste tires and do not permanently eliminate the need to manage the waste tires. For example, if the steel bands holding the tire bales together break, the resulting tire pile will have to be cleaned up and either recycled or disposed.
    - The cost to produce and/or purchase reimbursable waste tire products should be higher than the reimbursements offered by the program. The cost to produce and/or purchase a tire bale is typically less than the rebates from the End Users Fund. The auditors found the Department paid an average of $62 per ton for waste tires end used in Fiscal Year 2013. The audit found several examples in the reviewed applications for Fiscal Year 2013 where the tire bales were sold for between $10 to $15 per tire bale. Each tire bale weights approximately one ton.
    - The audit concluded those who process, sell, or end use tire bales do not need a financial incentive from the End Users Fund to make tire bales economically feasible.

    The audit recommended that only tire bales used in a permanent, engineered structural design approved by a professional engineer should qualify for rebate. Examples of these types of structures include houses, dams, or buildings where the tire bales are encased in another material such as concrete or steel.

    The Commission has determined that only tire bales end used in Colorado in an engineered, permanent structure that has been stamped and sealed by a Colorado Certified Professional Engineer will be eligible for a rebate. Uses such as windbreaks, corrals, or fencing are considered temporary and will not be eligible for a rebate from the End Users Fund.

    To be eligible for a rebate from the End Users Fund, an applicant will need to submit an End Users Tire Bale Approval Form, available on the Department's website, along with proof the structure was stamped and sealed by a Colorado Certified Professional Engineer.

This determination does not restrict the processing, selling or end use of tire bales, as long as the tire bales continue to be considered a beneficial use by the Department and local laws and ordinances allow for their end use in the location they are installed.

14. Stakeholders questioned why there is a requirement for applicants participating in the End Users Fund to provide estimated forecasts of future processing, retail sales or end use of tire-derived products or whole waste tires. Due to changes in HB 14-1352, the Department must set the same per ton rate for a twelve (12) month period. The same per ton rate is intended to provide more market certainty for applicants so they can better forecast their budgeting and use of tire-derived products. For the Department to be able to set a per ton rate, having forecast information from those actively participating the End Users Fund allows the Department a more accurate picture to set a rate that allows market stability. The Commission has determined that this information is needed for the Department to set a per ton rate that meets the requirements of HB 14-1352.

15. A few stakeholders expressed concern about the term "applicant" in section 10.12.6 which states that applicants who knowingly or intentionally provide false information to the Department are prohibited from receiving future rebates from the End Users Fund. Specifically, some stakeholders were concerned that their companies would be held liable for actions of "rogue employees." It is the intention of the Commission that only culpable parties be prohibited from receiving rebates under these Rules.

16. Some stakeholders questioned why pyrolysis is considered an end use and not a process.

    Senate Bill 13-252, Section 40-2-124 , C.R.S. defines pyrolysis:

    > "Pyrolysis" means the thermochemical decomposition of material at elevated temperatures without the participation of oxygen.

    Section 1.2 adopts this definition. For purposes of Section 10, pyrolysis of waste tires or tire-derived product means to convert waste tires or tire-derived product into other components with economic value – typically gas, oil and carbon based products. The Commission has determined that pyrolysis is an end use, and would be eligible from the End Users Fund based on Table 10-12.01.

17. Some stakeholders questioned - how materials created by the method of pyrolysis will be treated for the purposes of eligibility for a rebate from the End Users Fund. Pyrolysis is considered an end use, as defined in Section 30-20-1401(4) (c), C.R.S.:

    > Consumes tire-derived product or uses tire-derived product in its final application or in making new materials with a demonstrated sale to a third-party customer.

18. The Commission deems those companies who purchase materials from a company who used pyrolysis to create those materials to be not eligible for a rebate from the End Users Fund. Another issue arose regarding how a retailer was going to be defined for the purpose of eligibly for receiving a rebate from the End Users Fund. Per Section 30-20-1405 (2)(b), C.R.S., the Department shall use moneys in the End Users Fund to provide rebates to in-state:

> Retailers who sell tire-derived product…

The Commission has determined that retailers of tire-derived products are retailers who sell small quantities of tire-derived products to customers who will use the tire-derived product for its ultimate use. For example, a retailer selling landscape mulch made of processed waste tires to a residential customer who will install the landscape mulch on their own property is eligible to receive a rebate. Retailers will need to provide proof of retail sales tax being collected from the ultimate customer or provide proof that the ultimate customer is exempt from paying retail sales tax. Retailers of tire-derived products must have a current retail sales tax license to be eligible to participate in the End Users Fund.

19. Another issue encountered concerned a rebate for waste tires located at an illegal waste tire site that received funds from the Administration, Enforcement and Cleanup Fund. Specifically, if those tires are processed onsite, should the processing of those same waste tires also be eligible for a rebate from the End Users Fund? The Commission has determined such processing should not be eligible to receive a Processor rebate because the Processor is already receiving state money from another fund to process and remove the waste tires. This would be the same for Retailers who sell the tire-derived product processed from these illegal sites. Conversely, if a person receives money from the Administration, Enforcement and Cleanup Fund to remove waste tires from an illegal waste tire site and subsequently processes those waste tires offsite, they would be eligible for the Processor rebate (if sold to an out-of-state End User) because the Administration, Enforcement and Cleanup Fund would be funding only the removal of those waste tires, not the subsequent processing. End Users would be eligible for a rebate for the end use of those processed waste tires as long as they are not financially benefiting from the cleanup of the waste tires. The Commission feels that the Department should make every effort when awarding a grant to cleanup waste tires from an illegal waste tire site to ensure that the same waste tire is not eligible for both a rebate from the End Users Fund and reimbursement from the Administration, Enforcement and Cleanup Fund and the End Users Fund.

20. Factors used to determine the per ton rate of $42 for the next twelve (12) months beginning January 2015. The Commission considered several factors in determining setting the per ton rate:

- The audit findings from the Colorado Office of the State Auditor (Department of Public Health and Environment: Waste Tire Processor and End User Program June 2014 Performance Audit) stated that the Department should not pay rebates in excess of the cost of processing or end using tire-derived products. House Bill 14-1352 prohibits the Commission from setting a tiered per ton rate.

- The Department and stakeholders used a forecasting spreadsheet that included the following information:
  - Breakdown of approved tons over the last fiscal year by End User, Retailer and Processor. Tons approved that are not eligible under the current statute were removed.
  - Forecast of potential end use of tons from applicants who did not participate or were limited in their participation in the End Users Fund during the last fiscal year.
  - Projections of revenues based on the previous three years' historical rates.

Based on these factors, the Commission has determined that the Department will pay a rebate of $42 per ton for the next twelve (12) months.

Regulatory Alternatives

No other regulatory alternatives were evaluated.

Cost/Benefit Analysis

A cost-benefit analysis will be performed if requested by the Colorado Department of Regulatory Services.

Notice of Rulemaking Hearing

Tracking number

2014-01086

Department

1000 - Department of Public Health and Environment

Agency

1007 - Hazardous Materials and Waste Management Division

CCR number

6 CCR 1007-3

Rule title

HAZARDOUS WASTE

Rulemaking Hearing

Date

11/18/2014

Time

09:30 AM

Location

Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, Bldg. A, Sabin Conference Room

Subjects and issues involved

This amendment to 6 CCR 1007-3, Part 261, Appendix IX is a proposed delisting of the wastewater treatment sludge (a F006 hazardous waste), generated from electroplaing operations at the Depuy Synthes facility in Monument, Colorado

Statutory authority

25-15-302(2), C.R.S.

Contact information

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission/Hazardous Materials and Waste Management Division

6 CCR 1007-3

HAZARDOUS WASTE

Proposed Depuy Synthes F006 Delisting

1) Appendix IX of Part 261 is amended by adding Delisting #009 to read as follows:

PART 261, APPENDIX IX – WASTES EXCLUDED UNDER §§ 260.20 AND 260.22

****

DELISTING #: 009

FACILITY: Depuy Synthes

ADDRESS: 1051 Synthes Avenue, Monument, Colorado 80132

WASTE: Wastewater treatment sludge from the on-site treatment of wastewater generated from electroplating operations (anodizing and chemical etching). EPA hazardous waste code F006 generated after the effective date of this delisting.

CONDITIONS: This delisting is valid only for the waste stream specified above and referenced in the delisting petition submitted on August 4, 2014 and under the following conditions:

a. Changes to Current Operations

1. Depuy Synthes must notify the Hazardous Materials and Waste Management Division (the Division) at least 30-days prior to implementing any major change to the electroplating processes at the Facility. A major change is any change including

alteration of the current wastewater treatment process or incorporating different chemicals or reagents into the process such that the composition of the wastewater treatment sludge is altered.

2. Depuy Synthes must notify the Division within 15-days after implementing any change to the wastewater treatment or electroplating processes that causes a significant change in the type or concentration of any hazardous constituent in the waste or causes the waste to exhibit a hazardous waste characteristic. A significant change is defined as an increase in the total waste concentration for any constituent identified below:

Constituent	Average Concentration (ppm)	2xs the Standard Deviation	Concentration Requiring Notification to the Division (Two Standard Deviations above the Average Concentration)
Arsenic	Non-detect	Non-detect	Detection
Barium	19.0	42.8	61.8
Cadmium	Non-detect	Non-detect	Detection
Chromium (Total)	6,170	13,585.4	19,755.4
Chromium VI	0.035	0.08	0.12
Copper	525.5	1,157.8	1,683.3
Cyanide (amendable)	Non-detect	Non-detect	Detection
Cyanide (free/reactive)	0.005	0.0002	0.0052
Lead	870.4	2,139.0	3,009.4
Mercury	0.11	0.04	0.15
Nickel	2,197	4,958.6	7,155.6
Selenium	Non-detect	Non-detect	Detection
Silver	1.53	3.44	4.97

A significant change also includes the detection of any additional Part 264, Appendix IX hazardous constituents that are not identified in the above table.

3. The Division reserves the right to re-evaluate and, if necessary, remove this approval or modify these conditions in the event that a significant change, as defined above, is reported by Depuy Synthes. In such case, the Division may remove this delisting or impose temporary requirements on the delisted waste until such time as an appropriate amendment to this delisting can be considered by the Solid and Hazardous Waste Commission.

b. Sampling Requirements

Depuy Synthes shall conduct annual verification sampling of the delisted waste in January of each year to monitor for any significant change in the type or concentration of any hazardous constituents in the delisted waste. Annual verification sampling shall be submitted to the Division within sixty (60) days of the sampling event for review against initial criteria and sampling methodology.

c. Storage Requirements

1. The delisted waste generated by Depuy Synthes may not be accumulated on-site for a period in excess of one year.

2. The volume of delisted waste accumulated on-site may not exceed 20 cubic yards at any given time.

3. The delisted waste must be stored in a container that is capable of being closed. The container must be marked or labeled to identify the contents as "delisted waste" and with an accumulation start date. The container must be kept closed except for when waste is being added to or removed from the container.

d. Recordkeeping Requirements

1. Depuy Synthes shall maintain records of the disposal or recycling of all delisted waste that documents that such activities are in accordance with the delisting petition.

2. Depuy Synthes shall maintain all records required by paragraph d.i above for a period of at least three years.

e. Disposal Requirements

The delisted waste shall be disposed in a landfill meeting the requirements of the Colorado Solid Waste Regulations (6 CCR 1007-2) or recycled at an appropriate metals reclamation facility.

2) Section 8.84 {Statement of Basis and Purpose for the Rulemaking Hearing of November 18, 2014} is added to Part 8 of the Regulations to read as follows:

Statement of Basis and Purpose
Rulemaking Hearing of November 18, 2014

8.84 **Basis and Purpose**

This amendment to 6 CCR 1007-3, Part 261, Appendix IX is made pursuant to the authority granted to the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

Amendment of Part 261, Appendix IX to Conditionally Delist F006 Hazardous Waste Generated by Depuy Synthes located at 1051 Synthes Avenue in Monument, Colorado 80132.

Appendix IX of Part 261 is being amended to conditionally delist F006 hazardous waste generated at Depuy Synthes in Monument, Colorado. This delisting will allow Depuy Synthes to dispose of this waste at a solid waste landfill meeting the requirements of the Colorado Solid Waste Regulations (6 CCR 1007-2) or a metals recycling facility provided it complies with the conditions of the delisting. The Solid and Hazardous Waste Commission (the "Commission") is requiring an annual verification sampling of the delisted waste and the results of that verification sampling must be submitted to the Division within sixty (60) days of the sampling event for review against initial delisting criteria and sampling methodology.

Depuy Synthes operates a manufacturing facility in Monument, Colorado for the production of surgical quality screws, plates and nails for medical use. After manufacturing, a finish is applied to the metal parts in one or more metal finishing operations including electro-polishing (chemical etching), anodizing, or chemical conversion coating (passivation). Rinse water from these metal finishing operations is treated on-site in a wastewater treatment unit to remove heavy metals prior to discharging the treated wastewater to the publicly owned treatment works (POTW). The process of treating the wastewater generates wastewater treatment sludge. Pursuant to the listing description at § 261.31, wastewater treatment sludge generated from electroplating operations is classified as F006 hazardous waste.

The basis for the F006 hazardous waste listing is described in Appendix VII of Part 261 of the hazardous waste regulations. Each listing is based on hazardous constituents that are typically contained in the waste described by the listing. The hazardous constituents that formed the basis for the F006 listing include cadmium, hexavalent chromium (Chromium VI), nickel and complexed cyanide.

Samples of the wastewater treatment sludge generated at Depuy Synthes were collected and submitted for analysis prior to submittal of the delisting petition. Four discrete samples of the wastewater treatment sludge were collected in accordance with a sampling and analysis plan

that was reviewed and approved by the Hazardous Materials and Waste Management Division at the Colorado Department of Public Health and Environment.

Analytical results of the wastewater treatment sludge indicate that the sludge does not exhibit any of the hazardous waste characteristics. Sample results confirmed that the sludge does not contain organic toxicity characteristic constituents above detection levels. In addition, the sludge does not exhibit the toxicity characteristic for the eight heavy metals. The waste also does not exhibit the hazardous waste characteristic of corrosivity, ignitability or reactivity.

Copper and nickel were also analyzed using the toxicity characteristic leaching procedure (TCLP). The results of that analysis indicate that these two constituents were present in the leachate well below the EPA Residential Soil Screening Levels.

Analytical results of the wastewater treatment sludge indicate that the petitioned sludge contains hazardous constituents that are a basis for listing a waste as a F006 hazardous waste. These constituents include nickel, chromium VI and cyanide. Based on the chemical analysis of the waste samples, the average total concentration for these constituents is as follows: 2,197 parts per million (ppm) nickel, 0.005 ppm cyanide and 0.035 ppm chromium VI. With the exception of nickel, these average total constituent constituents are below the EPA Residential and Industrial Soil Screening Levels. The total average concentration of nickel is below the EPA Industrial Soil Screening Level.

Other constituents detected in the waste samples include barium, copper, lead, mercury and silver. The average total concentration for these constituents is: 19.0 ppm barium, 525.5 ppm copper, 870.4 ppm lead, 0.11 ppm mercury and 1.53 ppm silver. The average total concentration for these constituents is below the EPA Residential Soil Screening Level with the exception of lead. The average total concentration for lead is 70.4 ppm above the EPA Industrial Soil Screening Level of 800 ppm. However, as a condition of this delisting, all waste will be disposed in a solid waste landfill or recycled at an appropriate metals reclamation facility.

Using the average total concentrations of the constituents in the waste, health risk calculations were determined for residential exposure to the waste. The risk calculations were determined using the EPA's Regional Screening Level Calculator, which utilizes current health based toxicity data obtained from EPA's Integrated Risk Information System (IRIS) and Health Effects Assessment Summary Tables (HEAST). The calculator was used to determine the risk associated with the waste for a residential soil exposure scenario that evaluated the carcinogenic and non-carcinogenic risk through ingestion, dermal and inhalation pathways.

A total carcinogenic risk of greater than 1×10^{-6} of one added cancer death per million exposed individually represents an unacceptable risk to human health, according to EPA risk assessment

guidance. The calculated carcinogenic risk for the wastewater treatment sludge is 1.42×10^{-7}. Therefore, this waste does not pose a carcinogenic risk.

The risk assessment calculations for the non-carcinogenic risk or cumulative total hazard quotient posed by the concentrations of detected metals in the waste were calculated at a level of 1.75. This level exceeds the hazard quotient index (HI) of 1 for the residential soil exposure scenario due to the presence of nickel. However, when nickel is excluded from the calculation the HI is reduced to 0.21. As a condition of this delisting, the wastewater treatment sludge will be disposed in a solid waste landfill or at a metals recycling facility.

This delisting is being granted under conditions specifying disposal, record keeping, storage and sampling requirements for the delisted sludge. Conditional delisting of the waste also prohibits any major changes to the metal finishing operations or wastewater treatment process without prior notification, evaluation, and approval by the Division.

This delisting does not apply to waste that demonstrates a "significant change" as defined in Delisting #009 in Part 261, Appendix IX—Wastes Excluded Under § 260.20 and 260.22(d), or if any of the conditions specified in Part 261, Appendix IX for this delisting are not met. Should either of these occur, the waste is and must be managed as a hazardous waste. While the Commission is approving this conditional delisting for this specific waste at this specific site, the findings and criteria associated with the approval are unique. Other petitions for delisting, even if similar in material or use, will be reviewed by the Division on a case-by-case basis.

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

Rule title

1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 11/14/2014

Effective date

11/14/2014

DEPARTMENT OF REVENUE

Division of Motor Vehicles – Driver's License Section

RULES FOR EXCEPTIONS PROCESSING

1 CCR 204-30, Rule 16

Basis, Purpose and Statutory Authority:

The statutory bases for this regulation are sections 13-15-101(5) (a), 13-15-102, 24-4-103, 42-1-204, 42,1-230, 42-2-107, 42-2-302 and 42-2-136 C.R.S. This regulation applies to documents issued under Title 42, Article 2, Parts 1, 2, 3, and 5.

The purpose of this rule is to set forth regulations for an Exceptions Process and identify the alternate documents the Department will accept. Exceptions Processing is the procedure the Department has established for persons who are unable, for reasons beyond their control, to present all the necessary documents required for a Colorado or Colorado Road and Community Safety Act driver's license, instruction permit, or identification card, and must rely on alternative documents. For applicants who are U.S. citizens, Exceptions Processing allows for alternative documents to be presented that establish identity, date of birth and U.S. citizenship in lieu of lawful presence. For applicants who cannot demonstrate lawful presence or for applicants who can demonstrate temporary or permanent lawful presence, Exceptions Processing allows for alternative documents to be presented that establish identity, and date of birth. For applicants who are homeless, Exceptions Processing allows for an alternative to establish residency.

1.0 Definitions

1.1 Applicant – Any natural person applying to the Department for a Colorado license or identification card, or a CO-RCSA document.

1.2 CO-RCSA – The Colorado Road and Community Safety Act, section 42-2-501, C.R.S.

1.3 Department – The Colorado Department of Revenue.

1.4 Document – An original document certified by the issuing agency, an amended original document certified by the issuing agency, or a true copy certified by the issuing agency, excluding miniature, wallet sized, or photocopies of documents.

1.5 Exceptions Processing – The procedure the Department has established for persons who are unable, for reasons beyond their control, to present all necessary documents and must rely on alternative documents to establish identity, date of birth or U.S. citizenship in lieu of lawful presence.

1.6 Full Legal Name – The applicant's first name, middle name(s), last name or surname, without use of initials or nicknames as it appears on the applicant's documents presented upon application.

1.7 Hearing – Hearing before a Department Administrative Hearing Officer.

1.8 Identification Card – A document issued by a Department of Motor Vehicles or its equivalent that contains the applicant's full legal name, full facial digital photograph, date of birth, and sex but does not confer upon the bearer the right to operate a motor vehicle.
1.9 Identity – The verifiable characteristics that when taken together make a person unique and identifiable. Evidence of identity includes proof of name, date of birth, and physical characteristics including a verifiable photograph.
1.10 Incomplete Application – An application that does not satisfy all the federal and state requirements for issuance of a Colorado driver's license, instruction permit, or identification card, or for issuance of a CO-RCSA identification document.
1.11 Lawful Presence – For the purposes of this rule, the status of a person who demonstrates U.S. citizenship.
1.12 License – A driver's license, minor driver's license, or instruction permit.
1.13 Minor Spelling Inconsistences – Slight variations in the spelling of a name such that the variations are similar in appearance or produce a phonetically similar or identical sound as pronounced.
1.14 SSOLV – The Social Security Online Verification system managed by the Social Security Administration.
1.15 Temporary Lawful Presence – A person whose authority to lawfully remain in the United States is temporary and who qualifies for a temporary identification document card.

2.0 Exceptions Processing Procedures

2.1 An applicant who has applied for a driver's license, instruction permit, or identification card and was unable to provide the required documents may request Exceptions Processing after being issued a Notice of Incomplete Application.
2.2 For applicants who are U.S. citizens, Exceptions Processing shall only be used to establish identity, date of birth and U.S. citizenship in lieu of lawful presence.
2.3 For applicants with permanent residency status and applicants who are applying for an identification document pursuant to CO-RSCA, Exceptions Processing shall only be used to establish identity and date of birth.
2.4 If an applicant submits any source document that reflects a name differing from the applicant's full legal name (for example through marriage, adoption, court order or other mechanism permitted by state law or regulation), the Department shall require evidence of the name change through the presentation of documents issued by a court, governmental body or other entity as determined by the Department.
2.5 The Department may resolve minor spelling inconsistencies in, or slight misspellings of, the spelling of a name through Exceptions Processing if the totality of the evidence gathered demonstrates the applicant's identify and the resolution is not contrary to the public interest.

2.6 Exceptions processing to establish identity and date of birth for U.S. citizens.

2.6.1 The following documents or combination of documents may be used to establish an applicant's identity and date of birth:

2.6.1.1 A U.S. Passport expired no more than 10 years.

2.6.1.2 A driver's license, instruction permit, or identification card issued by any state, including a state that does not require proof of lawful presence to obtain such document, that either has not expired or that expired within the last 10 years.

2.6.1.3 A military identification card or common access card expired no more than 10 years issued by the U.S. Department of Defense that bears a photograph of the applicant. Such identification cards include active duty, retiree, National Guard, and dependent identification cards.

2.6.1.4 A life, health, or other insurance record that bears the applicant's full legal name, date of birth and place of birth.

2.6.1.5 An identification card issued within the last 20 years by the Bureau of Indian Affairs or by a federally recognized Native AmericanTribe, and verified by the issuing authority, that bears a photograph ofthe applicant, provided the first and last name and date of birth match the first and last name and date of birth on the document presented by the applicant.

2.6.1.6 A Veteran's Administration card that bears a photograph of the Applicant and was issued within the last 20 years.

2.6.1.7 An identity card issued by the Federal Bureau of Prisons or any State Department of Corrections, verified by the issuing authority, provided the first and last name and date of birth match the first and last name and date of birth on the document presented by the applicant.

2.6.1.8 A valid individual Colorado (issued by the Department) or federal U.S. income tax return, with an applicant's copy of an Internal Revenue Service form W-2 or 1099. Validity shall be determined using the SSOLV system. If the social security number on the document provided is not validated by the SSOLV system, then the document shall be deemed invalid.

2.6.1.9 A Department record of a driver's license, instruction permit, or identification card that contains the applicant's facial digital photograph, signature, and fingerprint provided the image, signature and fingerprint match those of the applicant. For the applicant to utilize this provision and for the Department to access the record, the applicant must provide either their Social Security Number or a document identified in sections 2.7.1.1 through 2.7.1.9 of this regulation. The Social Security Number or the information on the document must match the information on the Department's record and be verified with the SSOLV.

2.6.1.10 An Affidavit of Identity that includes the name or names by which the applicant is known.

2.6.1.10.1 The affiant must present the affidavit in person, provides identification, and sign the affidavit in the presence of a Department employee.

2.6.1.10.2 The affiant must be an employee of a government or non-profit agency registered by the Department with proof of agency affiliation.

2.6.1.10.3 The Affidavit of Identity shall be used for applicants who can demonstrate U.S. Citizenship.

2.6.1.11 Any document that is secure and verifiable, pursuant to section 24-72-1.102(5), C.R.S., as determined by the Department, which establishes evidence of the applicant's identity or date of birth.

2.7 Exceptions processing for U.S. citizens using alternate documents to establish U.S. citizenship in lieu of lawful presence.

2.7.1 An applicant may use alternative documents to establish lawful presence, but only if the documents demonstrate U.S. citizenship.

2.7.1.1 The following documents or combination of documents may be accepted in support of an applicant seeking to establish U.S. Citizenship:

2.7.1.1.1 A certified Order of Adoption of the applicant bearing the seal or certification of the court of any state, political subdivision, or territory of the United States, or a certified Order of Adoption of that applicant bearing the seal or certification of the court where a valid adoption took place abroad, so long as the same adoption was the basis of the applicant's admission into the United States a legal permanent resident. Any adoption decree must include the date and location of the adoptee's birth.

2.7.1.1.2 A U.S. passport expired no more than 10 years.

2.7.1.1.3 A city issued birth certificate, hospital birth record, religious records (such as baptismal records) that include the name and date of birth.

2.7.1.1.4 Any of the documents listed in 2.6.1 that include a social security number may be used to verify a social security number.

2.7.1.1.5 Any secure and verifiable document that may serve to provide evidence of the applicant's lawful presence, if the document also demonstrates U.S. citizenship.

2.8 Exceptions processing to establish identity and date of birth for non-citizens with permanent lawful presence.

2.8.1 The following documents or combination of documents may be used to establish an applicant's identity and/or date of birth:

2.8.1.1 A driver's license, instruction permit, or identification card issued by any state, including a state that does not require proof of lawful presence to obtain such document, that either has not expired or that expired within the last 10 years.

2.8.1.2 A military identification card or common access card expired no more than 10 years issued by the U.S. Department of Defense that bears a photograph of the applicant. Such identification cards include active duty, retiree, National Guard, and dependent identification cards.

2.8.1.3 A life, health, or other insurance record that bears the applicant's full legal name, date of birth and place of birth.

2.8.1.4 A Veteran's Administration card that bears a photograph of the Applicant and was issued within the last 20 years.

2.8.1.5 An identity card issued by the Federal Bureau of Prisons or any State Department of Corrections, provided the first and last name and date of birth match the first and last name and date of birth on the document presented by the applicant.

2.8.1.6 A valid individual Colorado or federal Tax Return, with an applicant's copy of an Internal Revenue Service form W-2 or 1099. Validity shall be determined using the SSOLV system. If the social security number on the document provided is not validated by the SSOLV system, then the document shall be deemed invalid.

2.8.1.7 A Department record of a driver's license, instruction permit, or identification card that contains the applicant's facial digital photograph, signature, and fingerprint provided the image, signature and fingerprint match those of the applicant. For the applicant to utilize this provision and for the Department to access the record, the applicant must provide either their Social Security Number or a document identified in sections 2.7.1.1 through 2.7.1.9 of this regulation. The Social Security Number or the information on the document must match the information on the Department's record.

2.8.1.8 Any document that is secure and verifiable pursuant to section 24-72-1.102(5), as determined by the Department, which establishes evidence of the applicant's identity or date of birth.

2.9 Exceptions processing to establish identity and date of birth for applicants that cannot demonstrate lawful presence or applicants who can demonstrate temporary lawful presence.

2.9.1 The following documents or combination of documents may be used by an applicant to establish identity and/or date of birth:

2.9.1.1 A driver's license, instruction permit, or identification card issued by any state, including a state that does not require proof of lawful presence to obtain such document, that has not expired or that has expired within the last ten years.

2.9.1.2 A military identification card or common access card issued by the U.S. Department of Defense that contains a photograph of the applicant that has expired within the previous 10 years. Such identification cards include active duty, retiree, National Guard, and dependent identification cards.

2.9.1.3 A Veteran's Administration card issued within the last 20 years that bears a photograph of the applicant.

2.9.1.4 An identification card issued by the Federal Bureau of Prisons or any State Department of Corrections provided that the first and last name and date of birth match the first and last name and date of birth on the document presented by the applicant.

2.9.1.5 A life, health, or other insurance record that bears the applicant's name, date of birth, and place of birth

2.9.1.6 Any other document that is secure and verifiable pursuant to section 24-72.1-102(5), C.R.S., which may serve to provide evidence of the applicant's identity or identity as determined by the Department.

2.10 If the totality of evidence gathered through Exceptions Processing establishes the applicant's identity, date of birth, and U.S. citizenship,, the applicant shall be issued a Colorado or CO-RCSA driver's license, instruction permit, or identification card.

2.11 If the totality of evidence gathered through Exceptions Processing does not reasonably establish the applicant's identity, date of birth, and U.S. citizenship, the applicant shall be issued a Notice of Denial and thereafter may request a hearing with Hearings Section of the Department.

2.12 Proof of residency documents are waived, if an applicant provides a letter on letterhead, signed by the director of a homeless shelter, certifying that the individual is homeless and stays at the shelter.

3.0 Process for Translation

3.1 All documents provided to the Department by the applicant shall be in English or have been translated into English.

3.2 The original and corresponding translated documents shall be presented together at the time of application.

3.3 All documents translated must have the following included at the end (must be typed or electronically printed on the same page as the translation, not on separate pieces of paper or the translation will not be accepted by the Department):

3.3.1 An attestation that states: "I, [insert translator's full name], affirm that the foregoing is a complete and accurate translation from [insert foreign language] to the English language to the best of my ability. I further affirm that I am fully competent to translate from [insert foreign language] to the English language and that I am proficient in both languages."; and

3.3.2 The number and state of issuance of the translator's unexpired driver's license, instruction permit, or identification card.

3.4 All translated documents and information required by rule 3.3 shall be included in the applicant's permanent motor vehicle record.

3.5 Applicants are responsible for all costs of translation.

4.0 Denial of Application

4.1 Nothing in this regulation shall be construed to prevent the Department from denying an application on the basis that an applicant has presented documents that are fraudulent or that are not secure and verifiable pursuant to section 24-72.1-102(5), C.R.S.

4.2 Nothing in this regulation restricts or prohibits the Department from verifying any documents presented by an applicant.

4.3 An application shall be denied if the applicant presents fraudulent or altered documents or commits any other fraud in the application process. If the authenticity of a document cannot be verified, then the application may be considered incomplete and additional documentation may be required.

5.0 Hearing and Final Agency Action

5.1 An applicant who has received a Notice of Denial may, within 60 days of the date of the Notice of Denial, request a hearing on the denial by filing a written request for hearing with the Hearings Section of the Department at 1881 Pierce St. #106, Lakewood, CO 80214.

5.2 Hearings shall be held in accordance with the provisions of the State Administrative Procedure Act and the provisions of Title 42 of Colorado Revised Statutes.

5.3 The only issue at hearing shall be whether the applicant has satisfied federal and state requirement for the issuance of a Colorado or CO-RCSA driver's license, instruction permit, or identification card.

5.4 The hearing officer shall issue a written decision. If the hearing officer finds that the applicant has not satisfied state and federal requirements for the issuance of a Colorado or CO-RCSA driver's license, instruction permit, or identification card, then the denial shall be sustained. If the hearing officer finds that applicant has satisfied state and federal requirements for the issuance of a Colorado or CO-RCSA driver's license, instruction permit, or identification card, then the denial shall be rescinded and the Department shall issue a Colorado or CO-RCSA driver's license or, instruction permit, or identification card.

5.5 The decision by the hearing officer shall constitute final agency action, and is subject to judicial review as provided by section 24-4-106, C.R.S.

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State of Colorado
Department of Law

Office of the Attorney General

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Division of Motor Vehicles

on 09/25/2014

1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 09/25/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

October 08, 2014 14:51:54

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

CCR number

1 CCR 204-30

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1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 11/14/2014

Effective date

11/14/2014

DEPARTMENT OF REVENUE

Division of Motor Vehicles – Driver's License Section

RULES FOR APPLICATION FOR A COLORADO ROAD AND COMMUNITY SAFETY ACT IDENTIFICATION DOCUMENT § 42-2-501, C.R.S.

1 CCR 204-30, Rule 1

Basis, Purpose and Statutory Authority:

The statutory bases for this regulation are C.R.S. Title 24-4-103, 24-72.1-103, 42-1-204, and Title 42, Article 2, Parts 1, 2, 3, and 5. The purpose of this rule is to set forth regulations for the application of driver's licenses, minor driver's licenses, instruction permits and identification cards for individuals who cannot demonstrate lawful presence in the United States and for individuals who can demonstrate temporary lawful presence in the United States. These regulations establish the source documents that are acceptable to establish identity, date of birth, Colorado residency, and as applicable temporary lawful presence.

1.0 Definitions

1.1 Applicant – Any natural person applying to the Department for a Colorado identification document who can demonstrate temporary lawful presence in the U.S., or who cannot demonstrate lawful presence in the U.S.

1.2 CO-RCSA – The Colorado Road and Community Safety Act, section 42-2-501 C.R.S.

1.3 Department – The Colorado Department of Revenue.

1.4 Document – An original document certified by the issuing agency, an amended original document certified by the issuing agency, or a true copy certified by the issuing agency, excluding miniature, wallet sized, or photocopies of documents.

1.5 Exceptions Processing – The procedure the Department has established for persons who are unable, for reasons beyond their control, to present all necessary documents and must rely on alternative documents to establish identity, date of birth, or U.S. citizenship in lieu of lawful presence.

1.6 Full Legal Name – The applicant's first name, middle name(s), and last name or surname, without use of initials or nicknames as it appears on the applicant's documents presented upon application.

1.7 Hearing – Hearing before a Department Administrative Hearing Officer.

1.8 Identification Card – For the purpose of this rule, a document issued by a Department of Motor Vehicles or its equivalent that contains the applicant's full legal name, full facial digital photograph, date of birth, and gender, but does not confer upon the bearer the right to operate a motor vehicle.

1.9 Identity –The verifiable characteristics that when taken together make a person unique and identifiable. Evidence of identity includes proof of name, date of birth, and physical characteristics including a verifiable photograph.

1.10 Incomplete Application – An application for a CO-RCSA driver's license, instruction permit, or identification card that does not satisfy federal and state requirements for the issuance of a CO-RCSA driver's license, instruction permit, or identification card.

1.11 Individual Taxpayer Identification Number (ITIN) – A tax processing number issued by the Internal Revenue Service.

1.12 Temporary Lawful Presence – The status of a person whose authority to lawfully remain in the United States is temporary and who qualifies for a CO-RCSA driver's license, instruction permit, or identification card.

1.13 SAVE – The Department of Homeland Security Systematic Alien Verification for Entitlements system managed by the U.S. Citizenship and Immigration Services of the Department of Homeland Security.

2.0 Qualifications for CO-RCSA Identification Documents

2.1 Pursuant to section 42-2-506, C.R.S., individuals claiming to be temporarily lawfully present in the United States who apply for an identification document, must:

2.1.1 Provide documents that demonstrate the applicant's identity, date of birth, full legal name and temporary lawful presence, for example:

2.1.1.1 An unexpired foreign passport bearing a photograph of the applicant in conjunction with a valid, unexpired U.S. visa and I-94 showing class and expiration date that is verified using Systematic Alien Verification for Entitlements (SAVE).

2.1.1.2 A valid employment authorization document (EAD) including I-766, I-688, I-688A, and I-688B that is verified using SAVE.

2.1.2 In order to prove lawful presence the applicant can provide valid documentary evidence, verified using SAVE, that demonstrates the applicant:

2.1.2.1 Is an alien lawfully admitted for temporary residence in the United States;

2.1.2.2 Has conditional permanent resident status in the United States;

2.1.2.3 Has an approved application for asylum in the United States or has entered into the United States in refugee status;

2.1.2.4 Has a valid, unexpired non-immigrant visa or non-immigrant visa status for entry into the United States;

2.1.2.5 Has a pending application for asylum in the United States;

2.1.2.6 Has a pending or approved application for temporary protected status in the United States;

2.1.2.7 Has approved deferred action status; or

2.1.2.8 Provides a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

2.1.3 Present evidence of residency in Colorado.

2.2 Pursuant to section 42-2-505, C.R.S., applicants who apply for an identification document, who cannot demonstrate lawful presence in the United States, must:

2.2.1 Demonstrate residency in either of the following two ways:

2.2.1.1 Sign an affidavit that states that the applicant is currently a resident of Colorado; present evidence of residence in Colorado as provided in 2.3 below; and present a certified proof of Colorado income tax return filing (from the Department) for the immediately preceding year; or

2.2.1.2 Sign an affidavit that the applicant has continuously been a resident in Colorado for the immediately preceding 24 months, and present evidence of such residence in Colorado by providing:

2.2.1.2.1 In order to prove that the applicant has continuously resided in Colorado for the immediately preceding 24 months, the applicant must present three documents demonstrating: one for current residency (date on the document must not be older than 12 months from date of application), one for residency from one year prior (date on the document must later than 12 months, but not later than 23 months prior to the date of application), and one for residency from two years prior (date on the document must be later than 23 months, but not later than 30 months prior to the date of application).

2.2.2 Evidence of residence in Colorado shall be demonstrated by presenting documents that include the applicant's name and principal residence, which must include a street address, and the date of the document. Examples include, but are not limited to: utility bill, credit card statement, pay stub or earnings statement, rent receipt, telephone bill, or bank statement.

2.2.3 Provide documentation of the applicant’s ITIN.

2.2.4 Sign an affidavit affirming that the applicant has applied to be lawfully present within the U.S., or will apply to be lawfully present as soon as the applicant is eligible.

2.2.5 Provide documentation of the applicant’s identity and date of birth by presenting one of the following documents, translated into English, from the applicant’s country of origin:

2.2.5.1 A passport;

2.2.5.2 A consular identification card; or

2.2.5.3 A military identification document

2.2.6 The documents in 2.2.5 must contain the applicant's full legal name; the applicant's date of birth; the date the document was issued; the name of the country that issued the document; and a full facial photograph of the applicant.

2.2.7 The documents listed in 2.2.5 above will be accepted 10 years after the expiration date listed on the document. Documents without an expiration date will be accepted 10 years from their issuance date.

2.2.8 Applicants shall sign their name, under penalty of perjury, on all required affidavits and documents in the presence of a Department employee.

2.3 Applicants may use an interpreter during their application. The use of an interpreter will be arranged for by the applicant and any costs associated with the use of an interpreter will be the responsibility of the applicant.

2.4 Applicants may use an interpreter for the written test.

2.5 All interpreters for applicants applying for a CO-RCSA driver's license, minor driver's license, or instruction permit must be at least 16 years old and show an unexpired driver's license from any state in the United States.

2.6 All interpreters for applicants applying for a CO-RCSA identification card must be at least 16 years old and show unexpired identification document or a driver's license or instruction permit from any state in the United States

2.7 A Colorado street address must be displayed except as provided below:

2.7.1 An alternative address may be displayed for individuals for whom a State law, regulation, or DMV procedure permits display of an alternative address.

2.7.2 An alternative address may be displayed for individuals who satisfy any of the following:

2.7.2.1 If the individual is enrolled in a State address confidentiality program, which allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking, to keep, obtain and use alternative addresses; and provides that the address of such person must be kept confidential, or other similar program; or

2.7.2.2 If the individual's address is entitled to be suppressed under state or federal law or suppressed by a court order including an administrative order issued by a State or Federal court; or

2.7.2.3 If the individual is protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

2.7.3 In areas where a number and street name has not been assigned for U.S. mail delivery, an address convention used by the U.S. Postal Service is acceptable.

3.0 Process for Translation

3.1 All documents provided to the Department by the applicant shall be in English or have been translated into English.

3.2 The original and corresponding translated documents shall be presented together at the time of application.

3.3 All translated documents must have the following included at the end (must be typed or electronically printed on the same page as the translation, not on separate pieces of paper or the translation will not be accepted by the Department):

3.3.1 An attestation that states: "I, [insert translator's full name], affirm that the foregoing is a complete and accurate translation from [insert foreign language] to the English language to the best of my ability. I further affirm that I am fully competent to translate from [insert foreign language] to the English language and that I am proficient in both languages."; and

3.3.2 The number and state of issuance of the translator's unexpired driver's license, instruction permit, or identification card.

3.4 All translated documents and information required by rule 3.3 shall be included in the applicant's permanent motor vehicle record.

3.5 Applicants are responsible for all costs of translation.

4.0 Fee Structure

4.1 The cost for a CO-RCSA driver's license or a minor driver's license is $50.50, which includes an additional fee of $29.50. This is in addition to any other statutorily required fees, including but not limited to fees for instruction permits. The cost for a CO-RCSA identification card is $14.00, which includes an additional fee of $3.50.

5.0 Renewal

5.1 CO-RCSA driver's licenses and minor driver's license will expire three years after the date of issuance or 20 days after the 21st birthday of the applicant (whichever comes first).

5.2 CO-RCSA instruction permits and identification cards will expire three years after the date of issuance or on the 21st birthday of the applicant (whichever comes first).

5.3 Applicants must apply in person to renew a CO-RCSA identification document.

6.0 Process for Complete Application

6.1 When an applicant has completed the required application and established the standards set forth in this rule, an application will be printed; the applicant will be required to review and verify the information on the application by signing a "signature capture device"; a fingerprint will be captured; and a photograph of the applicant will be taken. The printed and signed application serves as a temporary

CO-RCSA driver's license, instruction permit, or identification card. The permanent CO-RCSA driver's license, instruction permit, or identification card will be mailed to the applicant at the address provided on the application.

7.0 Process for Incomplete Application

7.1 If an application is incomplete or the applicant has failed to provide documents verifiable by the Department for identity, date of birth, residency, or lawful presence, the Department may provide a Notice of Incomplete Application.

7.2 The Notice of Incomplete Application shall include a notation of the information that is incomplete, or of the documentation that is not verifiable. If the authenticity of a document cannot be verified, then an application may be considered incomplete and additional documentation may be required, or the applicant may be referred to Exceptions Processing. An applicant may return to the Department with the required additional documentation prior to being denied a CO-RCSA driver's license, instruction permit, or identification card.

8.0 Denial of Application

8.1 Nothing in this regulation shall be construed to prevent the Department from denying an application on the basis that an applicant has presented documents that are fraudulent or that are not verifiable.

8.2 Nothing in this regulation restricts or prohibits the Department from verifying any document presented by an applicant.

8.3 An application shall be denied if the applicant presents fraudulent or altered documents or commits any other fraud in the application process.

9.0 Hearing and Final Agency Action

9.1 An applicant who has received a Notice of Denial may, within 60 days of the date of the Notice of Denial, request a hearing on the denial by filing a written request for hearing with the Hearings Section of the Department at 1881 Pierce St. #106, Lakewood, CO 80214.

9.2 Hearings shall be held in accordance with the provisions of the State Administrative Procedure Act, and the provisions of Title 42 of the Colorado Revised Statutes.

9.3 The only issue at a hearing shall be whether the Applicant has satisfied federal and state requirements for the issuance of a CO-RCSA driver's license, instruction permit, or identification card.

9.4 The hearing officer shall issue a written decision. If the hearing officer finds that the applicant has not satisfied federal and state requirements for the issuance of a CO-RCSA driver's license, instruction permit, or identification card, then the denial shall be sustained. If the hearing officer finds that the applicant has satisfied requirements for the issuance of a CO-RCSA driver's license, instruction permit, or identification card, then the denial shall be rescinded and the Department shall issue a CO-RCSA driver's license, instruction permit, or identification card.

9.5 The decision by the hearing officer shall constitute final agency action, and is subject to judicial review as provided by section 24-4-106, C.R.S.

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State of Colorado
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Office of the Attorney General

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Division of Motor Vehicles

on 09/25/2014

1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 09/25/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

October 08, 2014 14:46:58

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Motor Vehicles

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1 CCR 204-30

Rule title

1 CCR 204-30 DRIVER'S LICENSE-DRIVER CONTROL 1 - eff 11/14/2014

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11/14/2014

DEPARTMENT OF REVENUE

Division of Motor Vehicles – Driver's License Section

RULES FOR THE APPLICATION FOR A DRIVER'S LICENSE, INSTRUCTION PERMIT, OR IDENTIFICATION CARD FOR U.S. CITIZENS AND INDIVIDUALS WHO CAN DEMONSTRATE PERMANENT LAWFUL PRESENCE AND COLORADO RESIDENCY

1 CCR 204-30, Rule 6

Basis, Purpose and Statutory Authority:

The statutory bases for this regulation are sections 24-4-103, 24-72.1-103, 42-1-204, 42-2-107, 42-2-108, and 42-2-302, C.R.S.

The purpose of this rule is to set forth regulations for the types of documents the Department will accept as proof of the applicant's identity, date of birth, social security number, address of principal residence in Colorado, and U.S. citizenship or permanent lawful presence when applying for a driver's license, instruction permit, or identification card. Additionally, this rule describes the process the applicant will be required to follow for completing the application and what will occur if an application is incomplete or denied, including the process the applicant may use to request a hearing if their application is denied.

1.0 Definitions

1.1 Applicant – Any natural person applying to the Department for a Colorado driver's license, minor driver's license, instruction permit, or identification card who is a U.S. citizen or who can demonstrate permanent lawful presence in the U.S. and residency in Colorado.

1.2 Department – The Colorado Department of Revenue.

1.3 Document – An original document certified by the issuing agency, an amended original document certified by the issuing agency, or a true copy certified by the issuing agency, excluding miniature, wallet sized, or photocopies of documents.

1.4 Driver's License – A driver's license, minor driver's license, or instruction permit.

1.5 Exceptions Processing – The procedure the Department has established for persons who are unable, for reasons beyond their control, to present all necessary documents and must rely on alternative documents to establish identity, date of birth or U.S. citizenship in lieu of lawful presence.

1.6 Full Legal Name – The applicant's first name, middle name(s), and last name or surname, without use of initials or nicknames as it appears on the applicant's documents presented upon application.

1.7 Hearing – Hearing before a Department Administrative Hearing Officer.

1.8 Identification Card – For the purpose of this rule, a document issued by a Department of Motor Vehicles or its equivalent that contains the applicant's full legal name, full facial digital photograph, date of birth, and sex, but does not confer upon the bearer the right to operate a motor vehicle.

1.9 Identity – The verifiable characteristics that when taken together make a person unique and identifiable. Evidence of identity includes proof of name, date of birth, and physical characteristics including a verifiable photograph.

1.10 Incomplete Application – An application for a Colorado driver's license, instruction permit, or identification card that does not satisfy federal and state requirement for the issuance of a Colorado driver's license, instruction permit, or identification card..

1.11 Lawful Presence – The status of a person who demonstrates U.S. citizenship or permanent lawful presence.

1.12 SAVE – The Department of Homeland Security Systematic Alien Verification for Entitlements system, managed by the U.S. Citizenship and Immigration Services of the Department of Homeland Security.

1.13 SSN – The Social Security Number issued by the U.S. Social Security Administration (SSA).

1.14 SSOLV – The Social Security Online Verification system managed by the SSA.

2.0 Proof of Identity, Date of Birth, and Lawful Presence

2.1 Every application for a Colorado driver's license, instruction permit, or identification card shall include the applicant's full legal name, date of birth, sex, SSN, and address of principal residence.

2.2 An applicant must provide source documents that are secure and verifiable as defined in section 24-72.1-102(5), C.R.S.

2.3 The following documents or combination of documents are acceptable to establish identity, date of birth, and lawful presence:

- 2.3.1 A valid unexpired Colorado driver's license, instruction permit, or identification card except that a Colorado driver's license, instruction permit, or identification card issued under the Colorado Road and Community Safety Act, section 42-2-501 et seq., C.R.S. is not acceptable.
- 2.3.2 A valid unexpired U.S. passport bearing the full legal name of the applicant.
- 2.3.3 A certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the applicant's state of birth.
- 2.3.4 A Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State (Form FS-240, DS-1350, or FS-545).
- 2.3.5 A valid, unexpired Permanent Resident Card (Form I-551) issued by the Department of Homeland Security (DHS) or the U.S. Immigration and Naturalization Service.
- 2.3.6 A Certificate of Naturalization issued by DHS (Form N-550 or N-570).
- 2.3.7 A Certificate of Citizenship issued by DHS (Form N-560 or N-561).
- 2.3.8 In addition to the documents listed in Section 2.3, the following documents may also be used to establish an applicant's identity and date of birth: A valid unexpired Real ID driver's license, instruction permit, or identification card

issued in compliance with the standards established by the federal Real ID Act and verified with the state of issuance and such other documents as determined by the Department consistent with the REAL ID Act.

2.4 If an applicant submits any source document that reflects a name differing from the applicant's full legal name (for example through marriage, adoption, court order or other mechanism permitted by state law or regulation), the Department shall require evidence of the name change through the presentation of documents issued by a court, governmental body or other entity as determined by the Department.

3.0 Social Security Requirements

3.1 An applicant must present his or her SSA account card; if the SSA account card is not available, the applicant may present any of the following documents bearing the applicant's SSN:

- 3.1.1 A W–2 form,
- 3.1.2 A SSA–1099 form,
- 3.1.3 A non-SSA–1099 form, or
- 3.1.4 A pay stub with the applicant's name and SSN on it.

3.2 An applicant's SSN shall be verified with the SSOLV.

4.0 Address of Principal Residence in Colorado

4.1 To document the address of principal residence in Colorado, an applicant must present at least two documents that include the applicant's name and principal residence. Examples include, but are not limited to: utility bill, credit card statements, pay stub or earnings statement, rent receipt, telephone bill, or bank statement.

4.2 A Colorado street address must be displayed except as provided below:

- 4.2.1 An alternative address may be displayed for individuals for whom a State law, regulation, or DMV procedure permits display of an alternative address.
- 4.2.2 An alternative address may be displayed for individuals who satisfy any of the following:
  - 4.2.2.1 If the individual is enrolled in a State address confidentiality program, which allows victims of domestic violence, dating violence, sexual assault, stalking, or a severe form of trafficking, to keep, obtain and use alternative addresses; and provides that the address of such person must be kept confidential, or other similar program; or
  - 4.2.2.2 If the individual's address is entitled to be suppressed under state or federal law or suppressed by a court order including an administrative order issued by a State or Federal court; or
  - 4.1.2.3 If the individual is protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.
- 4.2.3 In areas where a number and street name has not been assigned for U.S. mail delivery, an address convention used by the U.S. Postal Service is acceptable.

5.0 Process for Complete Application

5.1 When an applicant has completed the required application and established the standards set forth in this rule, an application will be printed; the applicant will be required to review and verify the information on the application by signing a "signature capture device"; a fingerprint will be captured; and a photograph of the applicant will be taken. The printed and signed application serves as the temporary Colorado driver's license, instruction permit, or identification card. The permanent Colorado driver's license, instruction permit, or identification card will be mailed to the applicant at the address provided on the application.

6.0 Process for Incomplete Application

6.1 If an application is incomplete or the applicant has failed to provide documents verifiable by the Department for identity, date of birth or lawful presence, the Department may provide a Notice of Incomplete Application.

6.2 The Notice of Incomplete Application shall include a notation of the reason for the decision that the application is incomplete. If the authenticity of a document cannot be verified, then an application may be considered incomplete and additional documentation may be submitted, or the applicant may be referred to Exceptions Processing. An applicant may return to the Department with additional documentation prior to being denied a Colorado driver's license, instruction permit, or identification card.

6.3 Any applicant who has received a Notice of Incomplete Application and believes he or she has provided sufficient documentation to establish identity, date of birth, and U.S. citizenship may request Exceptions Processing.

6.4 Any applicant who has received a Notice of Incomplete Application and believes he or she has provided sufficient documentation to establish identity, date of birth, and U.S. citizenship, may request a Notice of Denial and contest the decision through the process described in section 8.0 below.

7.0 Denial of Applications

7.1 Nothing in this regulation shall be construed to prevent the Department from denying an application on the basis that an applicant has presented documents that are fraudulent or that are not secure and verifiable pursuant to section 24.72.1-102(5), C.R.S.

7.2 Nothing in this regulation restricts or prohibits the Department from verifying any document presented by an applicant.

7.3 An application shall be denied if the applicant presents fraudulent or altered documents or commits any other fraud in the application process.

8.0 Hearing and Final Agency Action

8.1 An Applicant who has received a Notice of Denial may, within 60 days of the date of the Notice of Denial, request a hearing on the denial by filing a written request for hearing with the Hearings Section of the Department at 1881 Pierce St. #106, Lakewood, CO 80214.

8.2 Hearings shall be held in accordance with the provisions of the State Administrative Procedure Act and the provisions of Title 42 of the Colorado Revised Statutes.

8.3 The only issue at the hearing shall be whether the applicant has satisfied federal and state requirements for the issuance of a Colorado driver's license, instruction permit, or identification card.

8.4 The hearing officer shall issue a written decision. If the hearing officer finds that the applicant has not satisfied federal and state requirements for the issuance of a Colorado driver's license, instruction permit, or identification card, then the denial shall be sustained. If the hearing officer finds that the applicant has satisfied federal and state requirements for the issuance of a Colorado driver's license, instruction permit, or identification card, then the denial shall be rescinded and the Department shall issue the Colorado driver's license, instruction permit, or identification card.

8.5 The decision by the hearing officer shall constitute final agency action, and is subject to judicial review as provided by section 24-4-106, C.R.S.

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State of Colorado
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1 CCR 204-30

DRIVER'S LICENSE-DRIVER CONTROL

The above-referenced rules were submitted to this office on 09/25/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

October 08, 2014 14:47:27

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Revenue

Agency

Division of Gaming - Rules promulgated by Gaming Commission

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1 CCR 207-1 GAMING REGULATIONS 1 - eff 11/14/2014

Effective date

11/14/2014

BASIS AND PURPOSE FOR RULE 18

The purpose for Rule 18 is to establish criteria specifying minimum levels of cooperation and conditions for payment on contracts or formal agreements between the Colorado Limited Gaming Control Commission and any other governmental agency. The statutory basis for Rule 18 can be found in section 12-47.1-302, C.R.S., and 12-47.1-831, C.R.S.

RULE 18 CONTRACTS AND FORMAL AGREEMENTS BETWEEN THE COMMISSION AND OTHER STATE AGENCIES

47.1-1801 Criteria for contracts or formal agreements between the Colorado Limited Gaming Control Commission and other state agencies.

The Commission shall require from any state or governmental agency with which it is entering into a contract or formal agreement the following:

(1) Specific duties or services to be completed, including a specific time frame where applicable.

(2) Total cost of contract and/or agreement, including a detailed report listing number of FTE and associated costs; cost of capital equipment and other costs incurred in completing the contract or agreement.

(3) Annual written reports submitted to the Commission detailing activities for the most recent year, unless the contract or formal agreement requires more frequent reports. At the discretion of the Commission, such reports may include specific performance measure data applicable to the execution of the contract or agreement. In addition, the Commission may require periodic reports be made at scheduled Commission meetings.

(4) Quarterly financial reports detailing the fiscal status of the contract or agreement, including FTE status.

(5) Access to all records applicable to the contract or agreement. Such access shall be allowed following a request from the Commission. Only those records or reports previously agreed to be confidential shall be exempt from this requirement.

47.1-1802 Conditions of payment.

Payment by the Commission for any contract or agreement shall be made on a monthly basis following the receipt of a detailed statement from the applicable state agency or governmental entity, unless the contract or formal agreement specifies a different payment schedule. Payment may be conditioned upon the receipt of further detail or data concerning the statement.

47.1-1803 Budget preparation.

(2) To ensure a coordinated approach in the state's budgetary process and between the Office of State Planning and Budgeting, the Joint Budget Committee, and the Commission, the Commission requires the following from all agencies seeking funding from the limited gaming fund: *Eff 04/30/2007*

(a) Each such agency will be required to include its request for funding from the limited gaming fund in its departmental budget submission to the Office of State Planning and Budgeting and the Joint Budget Committee in the preceding fall, including any decision item requests for funding other than a continuation level. *Eff 04/30/2007*

(b) If the agency is requesting funding other than a continuation level, the budget request shall also be transmitted to the Commission by November 1. The agency shall make an informative presentation to the Commission in November, with the formal presentation made during the budget hearings pursuant to 47.1-1803 (1). *Eff 04/30/2007*

47.1-1804 Billing for services rendered.

State agencies performing services for the Commission must submit a detailed billing for services rendered on a monthly basis, unless the contract or formal agreement specifies a different billing schedule.

47.1-1805 Pre-conditions for seeking funding from the Commission.

(1) The Commission will entertain requests for funding directly from the limited gaming fund from any person, as that term is used in the Limited Gaming Act of 1991, only under the following conditions:

(a) The person must perform a gaming related service, either at the request of the Commission or as provided in the Limited Gaming Act of 1991, pursuant to a contract or other written agreement, as provided in this Rule 18. Any person performing a service or responsibility as specifically provided in the Limited Gaming Act of 1991 must nonetheless enter into a funding agreement with the Commission, as provided in 47.1-1801.

(b) In determining whether to fund any service or responsibility, the Commission shall consider the person's ability to secure funding for the purposes contemplated from other sources, including, but not limited to, the following criteria:

(i) Whether that person has the ability to request funds for such purposes from any other source, including the Colorado General Assembly or a Tribal Government; or

(ii) Whether that person is able to impose a tax or a fee; or

(iii) Whether that person is eligible to receive or receives funding for such purposes from other sources, such as the Colorado General Assembly, the Limited Gaming Act of 1991, a Tribal Government, or other statutory provisions.

(2) The Commission will not entertain requests for direct funding of gaming related impacts from the limited gaming fund. Gaming related impacts include, but are not limited to, those impacts identified in the Limited Gaming Act of 1991, sections 12-47.1-601 and 1601, C.R.S. (amended perm. 09/30/00)

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Opinion of the Attorney General rendered in connection with the rules adopted by the
Division of Gaming - Rules promulgated by Gaming Commission

on 09/18/2014

1 CCR 207-1

GAMING REGULATIONS

The above-referenced rules were submitted to this office on 09/22/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

October 03, 2014 10:26:24

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-3

Rule title

3 CCR 702-3 FINANCIAL ISSUES 1 - eff 11/15/2014

Effective date

11/15/2014

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-3

FINANCIAL ISSUES

Amended Regulation 3-2-2

INSIDER TRADING OF EQUITY SECURITIES OF A DOMESTIC STOCK INSURANCE COMPANY

Section 1 Authority

This regulation is promulgated pursuant to the authority of Section 10-1-109, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of Section 10-3-120, C.R.S., regarding the acquisition or disposition of equity securities of a domestic stock insurance company by a beneficial owner, director or officer.

Section 3 Applicability

This regulation is applicable to each domestic stock insurance company which has any class of equity security held of record by one hundred or more persons; provided, however, that this regulation shall not apply to any insurer which is registered or required to be registered, pursuant to the Securities Exchange Act of 1934, as amended.

Section 4 Definitions

A. "Insurer" means any domestic stock insurance company with an equity security subject to the provisions of Section 10-3-120, C.R.S., and not exempt thereunder.

B. "Officer" means a president, vice president, treasurer, actuary, secretary, controller and any other person who performs for the insurer functions corresponding to those performed by the foregoing officers.

C. "Equity security" means any stock or similar security; or any voting trust certificate or certificate of deposit for such a security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

D. Securities "held of record"

1. For the purpose of determining whether the equity securities of an insurer are held of record by one hundred or more persons, securities shall be deemed to be "held of record" by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the insurer, subject to the following:

a. In any case where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.

b. Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.

c. Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person.

d. Securities held by two or more persons as co-owners shall be included as held by one person.

e. Each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the insurer can establish that, if such securities were registered, they would be held of record, under the provisions of this regulation, by a lesser number of persons.

f. Securities registered in substantially similar names where the insurer has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.

2. Notwithstanding Paragraph 1:

a. Securities held, to the knowledge of the insurer, subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the record holders of the voting certificates, certificates of deposit, receipts or similar evidences of interest in such securities, provided however, that the insurer may rely in good faith on such information as is received in response to its request from a nonaffiliated insurer of the certificates or evidences of interest.

b. If the insurer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of Section 10-3-120, C.R.S., the beneficial owners of such securities shall be deemed to be the record owners thereof.

E. "Class" means all securities of an insurer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges.

Section 5 Transactions Exempted from the Operation of Section 10-3-120, C.R.S.

Any acquisition or disposition of any equity security by a director or officer of an insurer within six months prior to the date on which Section 10-3-120, C.R.S. first became applicable with respect to the equity securities of such insurer shall not be subject to the operation of Section 10-3-120(2), C.R.S.

Section 6 Filing of Statements

Initial statements of beneficial ownership of equity securities required by Section 10-3-120(1) shall be filed on Form 3 attached hereto. Statements of changes in such beneficial ownership required by Section 10-3-120(1) shall be filed on Form 4 attached hereto. All such statements shall be prepared and filed in accordance with the requirements of the applicable form. Reproduction of the attached forms is advised as the Division of Insurance will not maintain a supply thereof.

Section 7 Ownership of More than Ten Percent of an Equity Security

A In determining, for the purpose of Section 10-3-120(1) whether a person is the beneficial owner, directly or indirectly, of more than ten percent of any class of any equity security, such class shall be deemed to consist of the total amount of such class outstanding, exclusive of any securities of such class held by or for the account of the insurer or a subsidiary of the insurer; except that for the purpose of determining percentage ownership of voting trust certificates or certificates of deposit for equity securities, the class of voting trust certificates or certificates of deposit shall be deemed to consist of the amount of voting trust certificates or certificates of deposit issuable with respect to the total amount of outstanding equity securities of the class which may be deposited under the voting trust agreement or deposit agreement in question, whether or not all of such outstanding securities have been so deposited. For the purpose of this section, a person acting in good faith may rely on the information contained in the latest Annual Statement filed with the Commissioner with respect to the amount of securities of a class outstanding or in the case of voting trust certificates or certificates of deposit the amount thereof issuable.

B. In determining for the purpose of Section 10-3-120(1), C.R.S., whether a person is the beneficial owner, directly or indirectly, of more than ten percent of any class of equity securities, such person shall be deemed to be the beneficial owner of securities of such class which such person has the right to acquire through the exercise of presently exercisable options, warrants or rights or through the conversion of presently convertible securities. The securities subject to such options, warrants, right of conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing, in accordance with Subsection A, the percentage of outstanding securities of the class owned by that person, but shall not be deemed outstanding for the purpose of computing the percentage of the class owned by another person. This subsection shall not be construed to relieve any person of any duty to comply with Section 10-3-120(1), C.R.S., with respect to any equity securities consisting of options, warrants, rights or convertible securities which are otherwise subject as a class to Section 10-3-120(1), C.R.S.

Section 8 Disclaimer of Beneficial Ownership

Any person filing a statement may expressly declare therein that the filing of such statement shall not be construed as an admission that such person is, for the purpose of Section 10-3-120, C.R.S., the beneficial owner of any equity securities covered by the statement.

Section 9 Exemptions from Section 10-3-120(1) and (2), C.R.S.

A. During the period of 12 months following their appointment and qualification, securities held by the following persons shall be exempt from Section 10-3-120(1) and (2), C.R.S.

1. Executors or administrators of the estate of a decedent:

2. Guardians or committees for an incompetent; and

3. Receivers, trustees in bankruptcy, assigners for the benefit of creditors, conservators, liquidating agents, and other similar persons duly authorized by law to administer the estate or assets of other persons.

B. After the 12-month period following their appointment or qualification the foregoing persons shall be required to file reports with respect to the securities held by the estates which they administer under Section 10-3-120(1), C.R.S., and shall be liable for profits realized from trading in such securities pursuant to Section 10-3-120(2), C.R.S., only when the estate being administered is a beneficial owner of more than 10 percent of any class of equity security of an insurer subject to Section 10-3-120, C.R.S.

C. Securities reacquired by or for the account of an insurer and held by it for its account shall be exempt from Section 10-3-120(1) and (2), C.R.S. during the time they are held by the insurer.

Section 10 Exemption from Section 10-3-120, C.R.S., of Securities Purchased or Sold by Odd-Lot Dealers

Securities purchased or sold by an odd-lot dealer in odd lots so far as reasonably necessary to carry on odd-lot transactions or in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business, shall be exempt from the provisions of Section 10-3-120, C.R.S., with respect to participation by such odd-lot dealer in such transactions.

Section 11 Certain Transactions Subject to Section 10-3-120(1), C.R.S.

The acquisition or disposition of any transferable option, put, call, spread or straddle shall be deemed such a change in the beneficial ownership of the security to which such privilege relates so as to require the filing of a statement reflecting the acquisition or disposition of such privilege. Nothing in this section, however, shall exempt any person from filing the statements required upon the exercise of such option, put, call, spread or straddle.

Section 12 Ownership of Securities Held in Trust

A. Beneficial ownership of a security for the purpose of Section 10-3-120(1), C.R.S., shall include:

1. The ownership of securities as a trustee where either the trustee or members of his immediate family have a vested interest in the income or corpus of the trust,

2. The ownership of a vested beneficial interest in a trust, and

3. The ownership of securities as a settlor of a trust in which the settlor has the power to revoke the trust without obtaining the consent of all the beneficiaries.

B. In the event that ten percent of any class of any equity security of an insurer is held in a trust, that trust and the trustees thereof as such shall be deemed a person required to file the reports specified in Section 10-3-120(1), C.R.S.

C. No more than one report need be filed to report any holdings or with respect to any transaction in securities held by a trust, regardless of the number of officers, directors or ten percent stockholders who are either trustees, settlors, or beneficiaries of a trust, provided that the report filed shall disclose the names of all trustees, settlors and beneficiaries who are officers, directors or ten percent stockholders. A person having an interest only as a beneficiary of a trust shall not be required to file any such report so long as he relies in good faith upon an understanding that the trustee of such trust will file whatever reports might otherwise be required of such beneficiary.

D. As used in this section the "immediate family" of a trustee means:

1. A son or daughter of the trustee, or a descendant of either;

2. A stepson or stepdaughter of the trustee;

3. The father or mother of the trustee, or an ancestor of either;

4. A stepfather or stepmother of the trustee;

5. A spouse of the trustee.

For the purpose of determining whether any of the foregoing relations exists, a legally adopted child of a person shall be considered a child of such person by blood.

E. In determining, for the purposes of Section 10-3-120(1), C.R.S., whether a person is the beneficial owner, directly or indirectly, of more than ten percent of any class of any equity security, the interest of such person in the remainder of a trust shall be excluded from the competition.

F. No report shall be required by any person, whether or not otherwise subject to the requirement of filing reports under Section 10-3-120(1), C.R.S., with respect to his indirect interest in portfolio securities held by:

1. A pension or retirement plan holding securities of an insurer whose employees generally are the beneficiaries of the plan,

2. A business trust with over 25 beneficiaries.

G. Nothing in this section shall be deemed to impose any duties or liabilities with respect to reporting any transaction or holding prior to its effective date.

Section 13 Exemption for Small Transactions

A. Any acquisition of securities shall be exempt from Section 10-3-120, C.R.S., where:

1. The person effecting the acquisition does not within six months thereafter effect any disposition, otherwise than by way of gift, of securities of the same class; and

2. The person effecting such acquisition does not participate in acquisitions or in dispositions of securities of the same class having a total market value in excess of $3,000 for any six months' period during which the acquisition occurs.

B. Any acquisition or disposition of securities by way of gift, where the total amount of such gifts does not exceed $3,000 in market value for any six months' period, shall be exempt from Section 10-3-120(1), C.R.S., and may be excluded from the computations prescribed in Subsection A(2).

C. Any person exempted by Subsection A or B shall include in the first report filed by him/her after a transaction within the exemption a statement showing his acquisitions and dispositions for each six months' period or portion thereof which has elapsed since his last filing.

Section 14 Exemption from Section 10-3-120(2), C.R.S., of Transactions Which Need Not Be Reported Under Section 10-3-120(1), C.R.S.

Any transaction which has been or shall be exempted from the requirements of Section 10-3-120(1), C.R.S., shall, insofar as it is otherwise subject to the provisions of Section 10-3-120(2), C.R.S., be likewise exempted from Section 10-3-120(2), C.R.S.

Section 15 Exemption from Section 10-3-120(2), C.R.S., of Certain Transactions Effected in Connection with a Distribution

A. Any transaction of purchase and sale, or sale and purchase, of a security which is effected in connection with the distribution of a substantial block of securities shall be exempt from the provisions of Section 10-3-120(2), C.R.S., to the extent specified in this section as not comprehended within the purpose of said Section 10-3-120(2), C.R.S., upon the following conditions:

1. The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities;

2. The security involved in the transaction is:

   a. A part of such block of securities and is acquired by the person effecting the transaction, with a view to the distribution thereof, from the insurer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities; or

   b. A security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution; and

3. Other persons not within the purview of Section 10-3-120(2), C.R.S., are participating in the distribution of such block of securities on terms at least as favorable as those on which such person is participating and to an extent at least equal to the aggregate participation of all persons exempted from the provisions of Section 10-3-120(2), C.R.S., by this section. However, the performance of the functions of manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption which would otherwise be available under this section.

B. The exemption of a transaction pursuant to this section with respect to the participation therein of one party thereto shall not render such transaction exempt with respect to participation of any other party therein unless such other party also meets the conditions of this section.

Section 16 Exemption from Section 10-3-120(2), C.R.S., of Acquisitions of Shares of Stock and Stock Options under Certain Bonus, Stock Option or Similar Plans

Any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant or right) pursuant to a stock bonus, profit sharing, retirement, incentive, thrift, savings or similar plan, or any acquisition of a qualified or a restricted stock option pursuant to an employee stock purchase plan, by a director or officer of an insurer issuing such stock or stock option shall be exempt from the operation of Section 10-3-120(2), C.R.S., if the plan meets the following conditions:

A. The plan has been approved, directly or indirectly, (1) by the affirmative votes of the holders of a majority of the securities of such insurer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the State of Colorado, or (2) by the written consent of the holders of a majority of the securities of such insurer entitled to vote: provided however, that if such vote or written consent was not solicited substantially in accordance with the proxy rules and regulations prescribed by the National Association of Insurance Commissioners, if any, in effect at the time of such vote or written consent, the insurer shall furnish in writing to the holders of record of the securities entitled to vote for the plan substantially the same information concerning the plan which would be required by any such rules and regulations so prescribed and in effect at the time such information is furnished, if proxies to be voted with respect to the approval or disapproval of the plan were then being solicited, on or prior to the date of the first annual meeting of security holders held subsequent to the later of the date Section 10-3-120, C.R.S., first applies to such insurer, or the acquisition of an equity security for which exemption is claimed. Such written information may be furnished by mail to the last known address of the security holders of record within 30 days prior to the date of mailing. Four copies of such written information shall be filed with, or mailed for filing to the Commissioner not later than the date on which it is first sent or given to security holders of the insurer. For the purposes of this subsection, the term "insurer" includes a predecessor corporation if the plan or obligations to participate thereunder were assumed by the insurer in connection with the succession.

B. If the selection of any director or officer of the insurer to whom stock may be allocated or to whom qualified, restricted or employee stock purchase plan stock options may be granted pursuant to the plan, or the determination of the number or maximum number of shares of stock which may be allocated to any such director or officer or which may be covered by qualified, restricted or employee stock purchase plan stock options granted to any such director or officer, is subject to the discretion of any person, then such discretion shall be exercised only as follows:

    1. With respect to the participation of directors:

        a. By the board of directors of the insurer, a majority of which board and a majority of the directors acting in the matter are disinterested persons;

        b. By, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons; or

        c. Otherwise in accordance with the plan, if the plan (i) specifies the number or maximum number of shares of stock which directors may acquire or which may be subject to qualified, restricted or employee stock purchase plan stock options granted to directors and the terms upon which, and the times at which, or the periods within which, such stock may be acquired or such options may be acquired and exercised; or (ii) sets forth, by formula or otherwise, effective and determinable limitations with respect to the foregoing based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time, or similar factors.

    2. With respect to the participation of officers who are not directors:

a. By the board of directors of the insurer or a committee of three or more directors; or

b. By, or only in accordance with the recommendations of, a committee of three or more persons having full authority to act in the matter, all of the members of which committee are disinterested persons.

For the purpose of this subsection, a director or committee member shall be deemed to be a disinterested person only if such person is not at the time such discretion is exercised eligible and has not at any time within one year prior thereto been eligible for selection as a person to whom stock may be allocated or to whom qualified, restricted or employee stock purchase plan stock options may be granted pursuant to the plan or any other plan of the insurer or any of its affiliates entitling the participants therein to acquire stock or qualified, restricted or employee stock purchase plan stock options of the insurer or any of its affiliates.

3. The provisions of this subsection shall not apply with respect to any option granted, or other equity security acquired, prior to the date that Section 10-3-120(1), (2) and (3), C.R.S., first become applicable with respect to any class of equity securities of any insurer.

C. As to each participant or as to all participants the plan effectively limits the aggregate dollar amount or the aggregate number of shares of stock which may be allocated, or which may be subject to qualified, restricted, or employee stock purchase plan stock options granted, pursuant to the plan. The limitations may be established on an annual basis, or for the duration of the plan, whether or not the plan has a fixed termination date; and may be determined either by fixed or maximum dollar amounts or fixed or maximum numbers of shares or by formulas based upon earnings of the insurer, dividends paid, compensation received by participants, option prices, market value of shares, outstanding shares or percentages thereof outstanding from time to time, or similar factors which will result in an effective and determinable limitation. Such limitations may be subject to any provisions for adjustment of the plan or of stock allocable or options outstanding thereunder to prevent dilution or enlargement of rights.

D. Unless the context otherwise requires, all terms used in this section shall have the same meaning as in Section 10-3-120, C.R.S., and Section 4 of this regulation. In addition, the following definitions apply:

1. The term "plan" includes any plan, whether or not set forth in any formal written document or documents and whether or not approved in its entirety at one time.

2. The definition of the terms "qualified stock option" and "employee stock purchase plan" that are set forth in Sections 422 and 423 of the Internal Revenue Code of 1954, as amended, are to be applied to those terms where used in this section. The term "restricted stock option" as defined in Section 424 (b) of the Internal Revenue Code of 1954, as amended, shall be applied to that term as used in this section, provided however, that for the purposes of this section an option which meets all of the conditions of that Section, other than the date of issuance shall be deemed to be a "restricted stock option."

3. The term "exercise of an option, warrant or right" contained in the parenthetical clause of the first paragraph of this section shall not include (a) the making of any election to receive under any plan an award of compensation in the form of stock or credits therefore, provided, that such election is made prior to the making of the award: and provided further that such election is irrevocable until at least six months after termination of employment; (b) the subsequent crediting of such stock; (c) the making of any election as to a time for delivery of such stock after termination of employment,

provided that such election is made at least six months prior to any such delivery; (d) the fulfillment of any condition to the absolute right to receive such stock; or (e) the acceptance of certificates for shares of such stock.

Section 17 Exemption from Section 10-3-120(2), C.R.S., of Certain Transactions in Which Securities Are Received By Redeeming Other Securities

Any acquisition of an equity security (other than a convertible security or right to purchase a security) by a director or officer of the insurer issuing such security shall be exempt from the operation of Section 10-3-120(2), C.R.S., upon condition that:

A. The equity security is acquired by way of redemption of another security of an insurer substantially all of whose assets other than cash (or Government bonds) consist of securities of the insurer issuing the equity security so acquired, and which

1. Represented substantially and in practical effect a stated or readily ascertainable amount of such equity security;

2. Had a value which was substantially determined by the value of the equity security; and

3. Conferred upon the holder the right to receive the equity security without the payment of consideration other than the security redeemed;

B. No security of the same class as the security redeemed was acquired by the director or officer within six months prior to such redemption or is acquired within six months after such redemption;

C. The insurer issuing the equity security acquired has recognized the applicability of Subsection A of this section by appropriate corporate action.

Section 18 Exemption of Long Term Profits Incident to Sales within Six Months of the Exercise of an Option

A. To the extent specified in Subsection B of this section, the Commissioner hereby exempts as not comprehended within the purposes of Section 10-3-120(2), C.R.S., any transaction or transactions involving the purchase and sale, or sale and purchase, of any equity security where such purchase is pursuant to the exercise of an option or similar right either (1) acquired more than six months before its exercise, or (2) acquired pursuant to the terms of an employment contract entered into more than six months before its exercise.

B. In respect of transactions specified in Subsection A of this section, the profits inuring to the insurer shall not exceed the difference between the proceeds of sale and the lowest market price of any security of the same class within six months before or after the date of sale. Nothing in this section shall be deemed to enlarge the amount of profit which would inure to such insurer in the absence of this section.

C. The Commissioner also hereby exempts, as not comprehended within the purposes of Section 10-3-120(2), C.R.S., the disposition of security, purchased in a transaction specified in Subsection A of this section pursuant to a plan or agreement or merger or consolidation, or reclassification of the insurer's securities, or for the exchange of its securities for the securities of another person which has acquired its assets, or which is in control, as defined in Section 368 (c) of the Internal Revenue Code of 1954, of a person which has acquired its assets, where the terms of such plan or agreement are binding upon all stockholders of the insurer except to the extent that dissenting stockholders may be entitled, under statutory provisions or provisions

contained in the certificate of incorporation, to receive the appraised or fair value of their holdings.

D. The exemptions provided by this section shall not apply to any transaction made unlawfully by Section 10-3-120(3), C.R.S., or by any rules and regulations thereunder.

E. The burden of establishing market price of a security for the purpose of this section shall rest upon the person claiming the exemption.

Section 19 Exemption from Section 10-3-120(2), C.R.S., of Certain Acquisitions and Dispositions of Securities Pursuant to Merger or Consolidations

A. The following transactions shall be exempt from the provisions of Section 10-3-120(2), C.R.S., as not comprehended within the purpose of Section 10-3-120(2), C.R.S.:

1. The acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to said merger or consolidation, owned 85 percent or more of the equity securities of all other companies involved in the merger or consolidation except, in the case of consolidation, the resulting company;

2. The disposition of a security, pursuant to a merger or consolidation of an insurer which, prior to said merger or consolidation, owned 85 percent or more of the equity securities of all other companies involved in the merger or consolidation except, in the case of consolidation, the resulting company;

3. The acquisition of a security of an insurer, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to said merger or consolidation, held over 85 percent of the combined assets of all the companies undergoing merger or consolidation, computed according to their book values prior to the merger or consolidation as determined by reference to their most recent available financial statements for a 12-month period prior to the merger or consolidation.

4. The disposition of a security, pursuant to a merger or consolidation, of an insurer which, prior to said merger or consolidation, held over 85 percent of the combined assets of all the companies undergoing merger or consolidation, computed according to their book values prior to merger or consolidation, as determined by reference to their most recent available financial statements for a 12-month period prior to the merger or consolidation.

B. A merger within the meaning of this section shall include the sale or purchase of substantially all the assets of one insurer by another in exchange for stock which is then distributed to the security holders of the insurer which sold its assets.

C. Notwithstanding the foregoing, if an officer, director or stockholder shall make any purchase (other than a purchase exempted by this Section) of a security in any company involved in the merger or consolidation and any sale (other than a sale exempted by this Section) of a security in any other company involved in the merger or consolidation within any period of less than six months during which the merger or consolidation took place, the exemption provided by this Section shall be unavailable to such officer, director, or stockholder to the extent of such purchase and sale.

Section 20 Exemption from Section 10-3-120(2), C.R.S., of Transactions Involving the Deposit or Withdrawal of Equity Securities under a Voting Trust or Deposit Agreement

Any acquisition or disposition of any equity security involved in the deposit of such security under, or the withdrawal of such security from, a voting trust or deposit agreement, and the acquisition or disposition in connection therewith of the certificate representing such security, shall be exempt from the operation of Section 10-3-120(2), C.R.S., if substantially all of the assets held under the voting trust or deposit agreement immediately after the deposit or immediately prior to the withdrawal, as the case may be, consisted of equity securities of the same class as the security deposited or withdrawn: provided, however, that this section shall not apply to the extent that there shall have been either (a) a purchase of an equity security of the class deposited and a sale of any certificate representing an equity security of such class, or (b) a sale of an equity security of the class deposited and purchase of any certificate representing an equity security of such class (otherwise than in a transaction involved in such deposit or withdrawal or in a transaction exempted by any other provision of the regulations under Section 10-3-120(2), C.R.S.), within a period of less than six months which includes the date of the deposit or withdrawal.

Section 21 Exemption from Section 10-3-120(2), C.R.S., of Certain Transactions Involving the Conversion of Equity Securities

A. Any acquisition or disposition of an equity security involved in the conversion of an equity security which, by its terms or pursuant to the terms of the insurer's charter or other governing instruments, is convertible immediately or after a stated period of time into another equity security of the same insurer, shall be exempt from the operation of Section 10-3-120(2), C.R.S.: provided, however, that this section shall not apply to the extent that there shall have been either (1) a purchase of any equity security of the class convertible (including any acquisition of or change in a conversion privilege) and a sale of any equity security of the class issuable upon conversion, or (2) a sale of any equity security of the class convertible and any purchase of any equity security issuable upon conversion (otherwise than in a transaction involved in such conversion or in a transaction exempted by any other provision of the regulations under Section 10-3-120(2), C.R.S., within a period of less than six months which includes the date of conversion.

B. For the purpose of this section, an equity security shall not be deemed to be acquired or disposed of upon conversion of an equity security if the terms of the equity security converted require the payment or entail the receipt, in connection with such conversion, of cash or other property in connection with such conversion, of cash or other property (other than equity securities involved in the conversion) equal in value at the time of conversion to more than 15 percent of the value of the equity security issued upon conversion.

C. For the purpose of this section, an equity security shall be deemed convertible if it is convertible at the option of the holder or of some other person or by operation of the terms of the security or the governing instruments.

Section 22 Exemption from Section 10-3-120(2), C.R.S., of Certain Transactions Involving the Sale of Subscription Rights

A. Any sale of a subscription right to acquire any subject security of the same insurer shall be exempt from the provision of Section 10-3-120(2), C.R.S. to the extent prescribed in this section, as not comprehended within the purpose of Section 10-3-120(2), C.R.S., if:

1. Such subscription right is acquired, directly or indirectly, from the insurer without the payment of consideration;

2. Such subscription right by its terms expires within 45 days after the issuance thereof;

3. Such subscription right by its terms is issued on a pro rata basis to all holders of the beneficiary security of the insurer; and

4. A registration statement under the Securities Act of 1933 is in effect as to each subject security, or the applicable terms of any exemption from such registration have been met in respect to each subject security.

B. When used within this section the following terms shall have the meaning indicated:

1. The term "subscription right" means any warrant or certificate evidencing a right to subscribe to or otherwise acquire an equity security;

2. The term "beneficiary security" means a security registered pursuant to Section 12 of the Securities Exchange Act, to the holders of which a subscription right is granted;

3. The term "subject security" means a security which is the subject of a subscription right.

C. Notwithstanding anything contained herein to the contrary, if a person purchases subscription rights for cash or other consideration, then a sale by such person of subscription rights otherwise exempted by this section will not be so exempted to the extent of such purchases within the six month period preceding or following such sale.

Section 23 Exemption of Certain Securities from Section 10-3-120(3), C.R.S.

Any security shall be exempt from the operation of Section 10-3-120(3), C.R.S., to the extent necessary to render lawful thereunder the execution by a broker of an order for an account in which he has no direct or indirect interest.

Section 24 Exemption from Section 10-3-120(3), C.R.S., of Certain Transactions Effected in Connection with a Distribution

Any security shall be exempt from the operation of Section 10-3-120(3), C.R.S., to the extent necessary to render lawful thereunder any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, upon the following conditions:

A. The sale is represented by an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on his behalf intends in good faith to offset such sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling or soliciting dealer group of which the dealer is a member at the time of the sale, whether or not the security to be so acquired is subject to a prior offering to existing security holders or some other class of persons; and

B. Other persons not within the purview of Section 10-3-120(3), C.R.S., are participating in the distribution of such block of securities on terms at least as favorable as those under which such dealer is participating and to an extent at least equal to the aggregate participation of persons exempted from the provisions of Section 10-3-120(3), C.R.S., by this section. However, the performance of the functions of the manager of a distributing group and the receipt of a bona fide payment for performing such functions shall not preclude an exemption which would otherwise be available under this section.

Section 25 Exemption from Section 10-3-120(3), C.R.S., of Sales of Securities to be Acquired

A. Whenever any person is entitled, as an incident to his ownership of an issued security and without the payment of consideration, to receive another security "when issued" or "when distributed," the security to be acquired shall be exempt from the operation of Section 10-3-120(3), C.R.S., provided that:

1. The sale is made subject to the same conditions as those attaching to the right of acquisition, and

2. Such person exercises reasonable diligence to deliver such security to the purchaser promptly after his right of acquisition matures, and

3. Such person reports the sale on the appropriate form for reporting transactions by persons subject to Section 10-3-120(1), C.R.S.

B. This section shall not be construed as exempting transactions involving both a sale of a security "when issued" or "when distributed" and a sale of the security by virtue of which the seller expects to receive the "when issued" or "when distributed" security, if the two transactions combined result in a sale of more units than the aggregate of those owned by the seller plus those to be received by him pursuant to this right of acquisition.

Section 26 Arbitrage Transactions under Section 10-3-120(5), C.R.S.

It shall be unlawful for any director or officer of an insurer to effect any foreign or domestic arbitrage transaction in any equity security of such insurer, unless he shall include such transaction in the statements required by Section 10-3-120(1), C.R.S., and shall account to such insurer for the profits arising from such transaction, as provided in Section 10-3-120(2), C.R.S. The provisions of Section 10-3-120(3), C.R.S., shall not apply to such arbitrage transactions. The provisions of Section 10-3-120, C.R.S., shall not apply to any bona fide foreign or domestic arbitrage transaction insofar as it is affected by any person other than such director or officer of the insurer.

Section 27 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 28 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 29 Effective Date

This amended regulation shall become effective November 15, 2014.

Section 30 History

New regulation, effective on February 1, 1972
Amended effective December 31, 1992
Amended, effective November 15, 2014.

INSIDER TRADING REPORTING FORMS AND INSTRUCTIONS

STATE OF COLORADO
Commissioner of Insurance

FORM 3
INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES

Filed Pursuant to Section 10-3-120, C.R.S.

_____
[Name of insurance company]

_____
[Name of person whose ownership is reported]

_____
[Business address of such person; street, city, zone, state]

Relationship of such person to company named above.
(See instruction 5)
_____

Date of event which requires the filing of this state.
(See instruction 6)
_____

SECURITIES BENEFICIALLY OWNED

TITLE OF SECURITY (See instruction 7)	NATURE OF OWNERSHIP (See instruction 8)	AMOUNT OWNED BENEFICIALLY (See instruction 9)

REMARKS: (See instruction 10)

I affirm under penalty of perjury that the foregoing is full, true and correct.

_____
Signature

Date of statement: _____

FORM 3 - INSTRUCTIONS

1. PERSONS REQUIRED TO FILE STATEMENTS

A statement on this form is required to be filed by every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a Colorado domestic stock insurance company, or who is a director or an officer of such a company.

2. WHEN STATEMENTS ARE TO BE FILED

A. Persons who hold any of the relationships specified in Instruction 1 are required to file a statement within 10 days after assuming such relationship.

B. Statements are not deemed to have been filed with the Commissioner until they have actually been received by the Commissioner.

3. WHERE STATEMENTS ARE TO BE FILED

One signed copy of each statement shall be filed with the Commissioner of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202.

4. SEPARATE STATEMENT FOR EACH COMPANY

A separate statement shall be filed with respect to the securities of each company.

5. RELATIONSHIP OF REPORTING PERSON TO COMPANY

Indicate clearly the relationship of the reporting person to the company; for example, "Director," "Director and Vice President," "Beneficial owner of more than 10 percent of the company's common stock," etc.

6. DATE AS OF WHICH BENEFICIAL OWNERSHIP IS TO BE GIVEN

The information as to beneficial ownership of securities shall be given as of [insert month, day, year], or, in the case of persons who subsequently assume any of the relationships specified in Instruction 1, as of the date that relationship was assumed.

7. TITLE OF SECURITY

The statement of the title of a security shall be such as clearly to identify the security even though there may be only one class; for example, "Class A Common Stock," "$6 Convertible Preferred Stock," "5% Debentures Due 1965," etc.

8. NATURE OF OWNERSHIP

Under "nature of ownership," state whether ownership of the securities is "direct" or "indirect" If the ownership is indirect, i.e., through a partnership, corporation, trust or other entity, indicate in a footnote or other appropriate manner the name or identity of the medium through which the securities are indirectly owned. The fact that securities are held in the name of a broker or other nominee does not, of itself, constitute indirect ownership. Securities owned indirectly shall be reported on separate lines from those owned directly and also from those owned through a different type of indirect ownership.

9. STATEMENT OF AMOUNT OWNED

In stating the amount of securities beneficially owned, give the face amount of debt securities or the number of shares or other units of other securities. In the case of securities owned indirectly, the entire

amount of securities owned by the partnership, corporation, trust or other entity shall be stated. The person whose ownership is reported may, if he or she so desires, also indicate in a footnote or other appropriate manner the extent of his interest in the partnership, corporation, trust or other entity.

10. INCLUSION OF ADDITIONAL INFORMATION

A statement may include any additional information or explanation deemed relevant by the person filing the statement.

11. SIGNATURE.

If the statement is filed for a corporation, partnership, trust, etc., the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement. If the statement is filed for an individual, it shall be signed by him or specifically on his behalf by a person authorized to sign for him.

STATE OF COLORADO
Commissioner of Insurance

FORM 4
INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES

Filed Pursuant to Section 10-3-120, C.R.S.

_____
[Name of insurance company]

_____
[Name of person whose ownership is reported]

_____
[Business address of such person; street, city, state, zip code]

Relationship of such person to company named above.
(See instruction 5)

Statement for Calendar Month of _____ 20 ____

CHANGES DURING MONTH AND MONTH-END OWNERSHIP (See instruction 6)

TITLE OF SECURITY (See instr. 7)	DATE OF TRANSACTION (See instr. 8)	AMOUNT BOUGHT OR OTHERWISE ACQUIRED (See instr. 9)	AMOUNT SOLD OR OTHERWISE DISPOSED OF (See instr. 9)	NATURE OF OWNERSHIP (See instr. 10)	AMOUNT OWNED BENEFICIALLY AT END OF MONTH (See instr. 9)

REMARKS: (See instruction 11)

I affirm under penalty of perjury that the foregoing is full, true and correct.

_____
Signature

Date of statement: _____

FORM 4 - INSTRUCTIONS

1. PERSONS REQUIRED TO FILE STATEMENTS

Statements on this form are required to be filed by every person who at any time during any calendar month was directly or indirectly the beneficial owner of more than 10 percent of any class of equity security of a domestic stock insurance company, or a director or officer of the company which is the issuer of such securities, and who during such month had any change in his beneficial ownership of any class of equity security of such company.

2. WHEN STATEMENTS ARE TO BE FILED

Statements are required to be filed on or before the 10th day after the end of each month in which any change in beneficial ownership has occurred. Statements are not deemed to have been filed with the Commissioner until they have actually been received by him.

3. WHERE STATEMENTS ARE TO BE FILED

One signed copy of each statement shall be filed with the Commissioner of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202.

4. SEPARATE STATEMENT FOR EACH COMPANY

A separate statement shall be filed with respect to the securities of each company.

5. RELATIONSHIP OF REPORTING PERSON TO COMPANY

Indicate clearly the relationship of the reporting person to the company; for example, "Director," "Director and Vice President," "Beneficial owner of more than 10 percent of the company's common stock," etc.

6. TRANSACTIONS AND HOLDINGS TO BE REPORTED

Every transaction shall be reported even though purchases and sales during the month are equal or the change involves only the nature of ownership; for example, from direct to indirect ownership. Beneficial ownership at the end of the month of all classes of securities required to be reported shall be shown even though there has been no change during the month in the ownership of securities of one or more classes.

7. TITLE OF SECURITY

The statement of the title of the security shall be such as clearly to identify the security even though there may be only one class; for example, "Class A Common Stock," "$6 Convertible Preferred Stock," "5% Debentures Due 1965," etc.

8. DATE OF TRANSACTION

The exact date (month, day and year) of each transaction shall be stated opposite the amount involved in the transaction.

9. STATEMENT OF AMOUNTS OF SECURITIES

In stating the amount of the securities acquired, disposed of, or beneficially owned, give the face amount of debt securities or the number of shares or other units of other securities. In the case of securities owned indirectly, i.e., through a partnership, corporation, trust or other entity, the entire amount of securities involved in the transaction or owned by the partnership, corporation, trust or other entity shall be stated. The person whose ownership is reported may, if he so desires, also indicate in a footnote or other appropriate manner the extent of his interest in the transaction or holdings of the partnership, corporation, trust or other entity.

10. NATURE OF OWNERSHIP

Under "Nature of ownership," state whether ownership of the securities is "direct" or "indirect" If the ownership is indirect, i.e., through a partnership, corporation, trust or other entity, indicate in a footnote, or other appropriate manner, the name or identity of the medium through which the securities are indirectly owned. The fact that securities are held in the name of a broker or other nominee does not, of itself, constitute indirect ownership. Securities owned indirectly shall be reported on separate lines from those owned directly and from those owned through a different type of indirect ownership.

11. CHARACTER OF TRANSACTION

If the transaction was with the issuer of the securities, so state. If it involved the purchase of securities through the exercise of options, so state and give the exercise price per share. If any other purchase or sale was affected otherwise than in the open market, that fact shall be indicated. If the transaction was not a purchase or sale, indicate its character; for example, gift, 5% stock dividend, etc., as the case may be. The foregoing information may be appropriately set forth in the table or under "Remarks" at the end of the table.

12. INCLUSION OF ADDITIONAL INFORMATION

A statement may include any additional information or explanation deemed relevant by the person filing the statement.

13. SIGNATURE

If the statement is filed for a corporation, partnership, trust, etc., the name of the organization shall appear over the signature of the officer or other person authorized to sign the statement. If the statement is filed for an individual, it shall be signed by him or specifically on his behalf by a person authorized to sign for him.

John W. Suthers
Attorney General

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Chief Deputy Attorney General

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00856

Opinion of the Attorney General rendered in connection with the rules adopted by the
Division of Insurance

on 09/30/2014

3 CCR 702-3

FINANCIAL ISSUES

The above-referenced rules were submitted to this office on 10/01/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

October 08, 2014 14:45:54

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-3

Rule title

3 CCR 702-3 FINANCIAL ISSUES 1 - eff 11/15/2014

Effective date

11/15/2014

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-3

FINANCIAL ISSUES

Repealed and Repromulgated Regulation 3-2-1

PROXIES, CONSENTS AND AUTHORIZATIONS OF DOMESTIC STOCK INSURERS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, and 10-3-121(2), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of Section 10-3-121, C.R.S., regarding domestic stock insurers that solicit proxies, consents or authorizations in respect to any class of equity securities.

Section 3 Applicability

A. No domestic stock insurer that has any class of equity securities held of record by 100 or more persons, or any director, officer or employee of that insurer, or any other person, shall solicit, or permit the use of the person's name to solicit, by mail or otherwise, any proxy, consent or authorization in respect to any class of equity securities in contravention of this regulation and Schedules A and B, hereby made a part of this regulation. However, this regulation shall not apply to any insurer if ninety-five percent (95%) or more of its equity securities is owned or

controlled by a parent or an affiliated insurer and the remaining securities are held of record by less than 500 persons. A domestic stock insurer which files with the Securities and Exchange Commission with respect to any class of securities forms of proxies, consents and authorizations complying with the requirements of the Securities Exchange Act of 1934, as amended, and its applicable regulations, shall be exempt from the provisions of this regulation with respect to that class of securities.

B. Unless proxies, consents or authorizations in respect of any class of equity securities of a domestic insurer subject to Section 3A are solicited by or on behalf of the management of the insurer from the holders of record of the securities in accordance with this regulation and its schedules prior to any annual or other meeting of the security holders, the insurer shall file with the Commissioner and transmit to every security holder who is entitled to vote in regard to any matter to be acted upon at the meeting and from whom a proxy is not solicited a written information statement containing the information specified in Schedule C.

Section 4 Definitions

A. "Affiliate" means an "affiliate" of, or a person affiliated with a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

B. "Associate," used to indicate a relationship with any person, means:

1. A corporation or organization (other than the issuer or a majority owned subsidiary of the issuer) of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities;

2. A trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity; or

3. A relative or spouse of that person, or any relative of the spouse, who has the same home as the person or who is a director or officer of the issuer or any of its parents or subsidiaries.

C. "Beneficial owner" means a person who, directly or indirectly, through a contract, arrangement, understanding, relationship, or otherwise, has or shares:

1. Voting power including the power to vote, or the power to direct voting of, a security; or

2. Investment power which includes the power to dispose of, or to direct the disposition of, the security.

D. "Control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

E. "Issuer" means the issuer of the securities in respect of which a proxy is solicited.

F. "Last fiscal year" of the issuer means the last fiscal year of the issuer ending prior to the date of the meeting for which proxies are to be solicited.

G. "Officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policymaking functions for the insurer.

H. “Parent” of a specified person is an affiliate controlling the person directly or indirectly through one or more intermediaries.

I “Person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, or a government or political subdivision thereof. As used in this subsection, the term “trust” shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

J. “Proxy statement” means the statement required by Section 6, whether or not contained in a single document.

K. Solicitation:

1. The terms “solicit” and “solicitation” include:

a. A request for a proxy whether or not accompanied by or included in a form of proxy;

b. A request to execute or not to execute, or to revoke, a proxy; or

c. The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

2. The terms do not apply, however, to the furnishing of a form of proxy to a security holder upon the unsolicited request of the security holder, the performance by the issuer of acts required by Section 10, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

Section 5 Solicitations to Which Regulation Applies

Section 12 of this regulation shall apply to every solicitation that is subject to Section 3. Sections 4 through 11 and Section 13 of this regulation shall apply to every solicitation that is subject to Section 3 except the following:

A. A solicitation made otherwise than on behalf of the issuer where the total number of persons solicited is not more than ten (10).

B. A solicitation by a person in respect of securities carried in his name or in the name of his nominee (otherwise than as voting trustee) or held in his or her custody, if the person:

1. Receives no commission or remuneration for the solicitation, directly or indirectly, other than reimbursement of reasonable expenses;

2. Furnishes promptly to the solicited person a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who shall furnish copies thereof for that purpose and who shall, if requested, defray the reasonable expenses to be incurred in forwarding the material; and

3. In addition, does no more than impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy, or impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date.

C. A solicitation by a person in respect of securities of which it is the beneficial owner.

D. A solicitation through the medium of a newspaper advertisement which informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy and any other soliciting material and does no more than:

1. Name the issuer;

2. State the reason for the advertisement; and

3. Identify the proposal or proposals to be acted upon by security holders.

E. Any solicitation which the Commissioner finds for good cause should be exempted from this regulation or any part thereof.

Section 6 Information to Be Furnished To Security Holders

A. No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule A.

B. If the solicitation is made on behalf of the issuer and relates to an annual meeting of security holders at which directors are to be elected, each proxy statement furnished pursuant to Subsection A shall be accompanied or preceded by an annual report to security holders as follows:

1. The report shall contain, in comparative columnar form, such financial statements for the last two (2) fiscal years, prepared on a consistent basis, as will in the opinion of the management adequately reflect the financial position of the issuer at the end of each year and the results of its operations for each year. Consolidated financial statements of the issuer and its subsidiaries shall be included in the report if they are necessary to reflect the financial position and results of operations of the issuer and its subsidiaries, but in that case the individual statements of the issuer may be omitted. The Commissioner may, upon the request of the issuer, permit the omission of financial statements for the earlier of the two (2) fiscal years upon a showing of good cause.

2. The financial statements for the last two (2) fiscal years required by Subsection B(1) shall be prepared in a manner acceptable to the Commissioner.

3. The report shall include, in comparative columnar form, a summary of issuer's operations, or the operations of the issuer and its subsidiaries consolidated, or both as appropriate, for each of the last five (5) fiscal years of the issuer (or the life of the issuer and its predecessors, if less).

4. The report shall contain a brief description of the business or businesses done by the issuer and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the issuer and its subsidiaries.

5. The report shall identify each of the issuer's directors and officers and shall indicate the principal occupation or employment of each person and the name and principal business of any organization by which the person is so employed.

6. The report shall identify the principal market in which securities of any class entitled to vote at the meeting are traded, stating the range of bid and asked quotations for each quarterly period during the issuer's two (2) most recent fiscal years, and shall set forth each dividend paid during the two (2) year period.

7. Subject to the foregoing requirements, the report may be in any form deemed suitable by management and the information required by Subsections B(3) through B(6) may be presented in an appendix or other separate section of the report, provided that the attention of security holders is called to the presentation.

8. This Subsection B shall not apply, however, to solicitations made on behalf of the management before the financial statements are available if solicitation is being made at the time in opposition to the management and if the management's proxy statement includes an undertaking in bold face type to furnish the annual report to all persons being solicited, at least twenty (20) days before the date of the meeting.

C. Two (2) copies of the report sent to security holders pursuant to this section shall be mailed to the Commissioner, solely for the Commissioner's information, not later than the date on which the report was first sent or given to security holders or the date on which preliminary copies of solicitation material are filed pursuant to Section 9, whichever date is later.

D. If the issuer knows that securities of any class entitled to vote at a meeting with respect to which the issuer intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, bank or voting trustee, or their nominees, the issuer shall inquire of the record holder at least ten (10) days prior to the record date for the meeting of security holders whether other persons are the beneficial owners of the securities and, if so, the number of copies of the proxy and other soliciting material and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply these materials to beneficial owners. The issuer shall supply the record holder in a timely manner with additional copies assembled in a form and at a place the record holder may reasonably request, in order to address and send one copy to each beneficial owner of securities so held and shall, upon the request of the record holder, pay its reasonable expenses for mailing the materials to security holders to whom the material is sent.

Section 7 Requirements as To Proxy

A. The form of proxy shall:

1. Indicate in bold face type whether or not the proxy is solicited on behalf of the insurer's board of directors, and if not, by whom it is solicited;

2. Provide a specifically designated blank space for dating the proxy; and

3. Identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the issuer or by security holders.

No reference need be made to proposals as to which discretionary authority is conferred pursuant to Subsection C.

B. Proxy votes

1. Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of, or abstention with respect to, each matter or group of related matters referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not specified provided the form of proxy states in bold face type how it is intended to vote the shares represented by the proxy in each case.

2. A form of proxy which provides both for the election of directors and for action on other specified matters shall be prepared so as to clearly provide, by a box or otherwise, means by which the security holder may withhold authority to vote for any nominee for election as a director. The form of proxy which is executed by the security holder in a manner as not to withhold authority to vote for the election of all nominees shall be deemed to grant authority for all nominees for which a vote is not withheld, provided the form of proxy so states in bold-face type.

C. A proxy may confer discretionary authority to vote with respect to any of the following matters:

1. Matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting, if a specific statement to that effect is made in the proxy statement or form of proxy;

2. Approval of the minutes of the prior meeting if the approval does not amount to ratification of the action taken at that meeting;

3. The election of any person to any office for which a bona fide nominee is named in the proxy statement and the nominee is unable to serve or for good cause will not serve;

4. Any proposal omitted from the proxy statement and form of proxy pursuant to Sections 11 or 12;

5. Matters incident to the conduct of the meeting.

D. No proxy shall confer authority to vote for the election of any person to any office which a bona fide nominee is not named in the proxy statement, or to vote at any annual meeting other than the next annual meeting (or any adjournment thereof), to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders. A person shall not be deemed to be a bona fide nominee and shall not be named as such unless the person has consented to being named in the proxy statement and to serve if elected.

E. The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the securities represented by the proxy will be voted and that where the person solicited specifies by means of ballot provided pursuant to Subsection B a choice with respect to any matter to be acted upon, the securities will be voted in accordance with the specifications so made.

Section 8 Presentation of Information in Proxy Statement

A. The information included in the proxy statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings.

B. All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the issuer for inclusion in the issuer's proxy statement and form of proxy relating to that meeting, such date to be calculated in accordance with the provisions of Section 11A. If the date of the next annual meeting is subsequently advanced by more than thirty (30) calendar days or delayed by more than ninety (90) calendar days from the date of the annual meeting to which the proxy statement relates, the issuer shall, in a timely manner, inform security holders of the change, and the date by which proposals of security holders must be received, by any means reasonably calculated to so inform them.

Section 9 Material Required To Be Filed

A. Two (2) preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to security holders with the proxy (or the information statement pursuant to Schedule C) shall be filed with the Commissioner at least ten (10) days prior to the date final copies of the material are first sent or given to security holders, or a shorter period prior to that date as the Commissioner may authorize upon a showing of good cause.

B. Two (2) preliminary copies of any additional soliciting material relating to the same meeting or subject matter to be furnished to security holders after the proxy statement shall be filed with the Commissioner at least two (2) days (exclusive of Saturdays, Sundays and holidays) prior to the date copies of the material are first sent or given to security holders, or a shorter period prior to the date as the Commissioner may authorize upon a showing of good cause.

C. Two (2) definitive copies of the proxy statement, form of proxy and all other soliciting material (or the information statement) in the form in which the material is furnished to security holders, shall be filed with, or mailed for filing to, the Commissioner no later than the date the material is first sent or given to any security holder.

D. Copies of replies to inquiries from security holders requesting further information and copies of communications that do no more than request that forms of proxy previously solicited be signed and returned do not need to be filed pursuant to this section.

E. Despite the provisions of Subsections A and B of this section and of Section 14E, copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the Commissioner prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the Commissioner as required by Subsection C no later than the date the material is used or published. The provisions of Subsections A and B of this section and of Section 14E shall apply, however, to any reprints or reproductions of all or any part of such material.

F. Where any proxy statement, form of proxy or other material filed pursuant to this regulation is amended or revised, one of the copies of the amended or revised material filed pursuant to this regulation shall be marked to indicate clearly and precisely the changes.

Section 10 Mailing Communications for Security Holders

If the management of the issuer has made or intends to make any solicitation subject to this regulation, the issuer shall perform any of the following acts requested in writing with respect to the same subject matter or meeting by any security holder who is, or security holders who are, entitled to vote at least one percent of the votes entitled to be voted on the matter and who shall defray the reasonable expenses to be incurred by the issuer in the performance of the act or acts requested.

A. The issuer shall mail or otherwise furnish to a security holder, as promptly as practicable after the receipt of the request:

1. A statement of the approximate number of record owners and, to the extent known to the issuer, the approximate number of beneficial owners of any class of securities, any of whom have been or are to be solicited on behalf of the management, or any group of whom the security holder shall designate.

2. An estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to the owners.

B.

1. Copies of any proxy statement, form of proxy or other communication furnished by the security holder shall be mailed by the issuer to any of the security owners specified in Subsection A(1) as the security holder shall designate.

2. The material furnished by the security holder shall be mailed with reasonable promptness after receipt of the material to be mailed, envelopes or other containers therefor, and postage or payment for postage. The issuer need not, however, mail any material before the first day that solicitation is made on behalf of the issuer.

3. The issuer shall not be responsible for the proxy statement, form of proxy or other communication.

C. In lieu of performing the acts specified above, the issuer may, at its option, furnish promptly to a security holder a reasonably current list of the names and addresses of the record owners and, to the extent known to the issuer, the beneficial owners the security holder shall designate and a schedule of the handling and mailing costs if the schedule has been supplied to the issuer.

Section 11 Proposals of Security Holders

A If any holder or holders of an issuer's securities (hereafter referred to as the "proponent") notifies the issuer in writing not less than ninety (90) days before the issuer's annual meeting of his intention to present a lawful proposal for action at an upcoming meeting of the issuer's security holders and at the time of the notice the proponent is entitled to vote at least one percent of the votes entitled to be voted on the proposal, the issuer shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide for the specification of approval or disapproval of the proposal. The proxy statement shall also include the name and address of the proponent.

B. If the issuer opposes any proposal received from a proponent, it shall also, at the request of the proponent, include in its proxy statement a statement of the proponent of not more than two hundred (200) words in support of the proposal.

C. The issuer may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

1. The proponent has submitted more than one proposal in connection with a particular meeting.

2. The proposal is more than three hundred (300) words in length.

3. The proposal or the supporting statement is contrary to any section of this regulation or the schedules attached, including Section 12 which prohibits false or misleading statements in proxy soliciting materials.

4. The proposal relates to the enforcement of a personal claim or the redress of a personal grievance against the issuer, its management or any other person.

5. The proposal deals with a matter not significantly related to the issuer's business, a matter beyond the issuer's power to effectuate, a matter relating to the conduct of the ordinary business operations of the issuer or an election to office.

6. The proposal is counter to a proposal to be submitted by the issuer at the meeting, the proposal has been rendered moot or the proposal relates to specific amounts of cash or stock dividends.

7. The proposal is substantially duplicative of a proposal previously submitted to the issuer by another proponent, which proposal will be included in the management's proxy material for the meeting.

8. Substantially the same proposal has previously been submitted to security holders in the issuer's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding five (5) calendar years and received less than five percent (5%) of the total number of votes cast at the time of its most recent submission.

D. If the issuer intends to omit any proposal from its proxy statement or forms of proxy or both, it shall notify the proponent in writing of its intention at least ten (10) days before the issuer's preliminary proxy material is filed pursuant to Section 9A.

Section 12 False or Misleading Statement

No proxy statement, form of proxy, notice of meeting, information statement, or other communication, written or oral, subject to this regulation, shall contain any statement which at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the same meeting or subject matter which has become false or misleading.

Section 13 Prohibition of Certain Solicitations

No person making a solicitation which is subject to this regulation shall solicit any undated or postdated proxy or any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder subject to this regulation.

Section 14 Special Provisions Applicable To Election Contest

A. This section shall apply to any solicitation subject to this regulation by any person or group for the purpose of opposing a solicitation subject to this regulation by any other person or group with respect to the election or removal of directors at any annual or special meeting of security holders.

B. Participant or Participant in a Solicitation.

1. For purposes of this section the term "participant" and "participant in a solicitation" include:

a. The issuer;

b. Any director of the issuer, and any nominee for whose election as a director whose proxies are solicited;

c. Any other person, acting alone or with one or more other persons, committees or groups, in organizing, directing or financing the solicitation.

2. For the purposes of this section the terms "participant" and "participant in a solicitation" do not include:

a. A bank, broker or dealer who, in the ordinary course of business, lends money or executes an order for the purchase or sale of securities and who is not otherwise a participant;

b. Any person or organization retained or employed by a participant to solicit security holders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;

c. Any person employed in the capacity of attorney, accountant, or advertising, public relations or financial adviser, whose activities are limited to the performance of his duties in the course of such employment;

d. Any person regularly employed as an officer or employee of the issuer or any of its subsidiaries or affiliates who is not otherwise a participant; or

e. Any officer or director of, or any person regularly employed by any other participant, if such officer, director, or employee is not otherwise a participant.

C. Filing of Information Required by Schedule B.

1. No solicitation subject to this section shall be made by any person other than the issuer unless at least five (5) business days prior, or a shorter period as the Commissioner may authorize upon a showing of good cause, there has been filed with the Commissioner, by or on behalf of each participant in the solicitation, a statement in duplicate containing the information specified by Schedule B and a copy of any material proposed to be distributed to security holders in furtherance of the solicitation.

2. Within five (5) business days after a solicitation subject to this section is made by the issuer, or a longer period the Commissioner may authorize upon showing of good cause, there shall be filed with the Commissioner, by or on behalf of each participant in the solicitation other than the issuer, a statement in duplicate containing the information specified by Schedule B.

3. If any solicitation on behalf of the issuer or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation subject to this section in opposition, a statement in duplicate containing the information specified in Schedule B shall be filed with the Commissioner, by or on behalf of each participant in the prior solicitation, other than the issuer, as soon as reasonably practicable after the commencement of the solicitation in opposition.

4. If after the filing of the statements required by Subsections A, B and C of this section additional persons become participants in a solicitation subject to this section, there shall be filed with the Commissioner, by or on behalf of each such person, a statement in duplicate containing the information specified by Schedule B, within three (3) business days after the person becomes a participant, or a longer period the Commissioner may authorize upon a showing of good cause.

5. If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall be filed promptly with the Commissioner.

6. Each statement and amendment filed pursuant to this paragraph shall be part of the public files of the Commissioner.

D. Solicitations Prior to Furnishing Required Written Proxy Statement.

Notwithstanding the provisions of Section 6A, a solicitation subject to this section may be made prior to furnishing security holders a written proxy statement containing the information specified in Schedule A with respect to such solicitation, provided that:

1. The statements required by Subsection C of this section are filed by or on behalf of each participant in such solicitation.

2. No form of proxy is furnished to security holders prior to the time the written proxy statement required by Section 6A is furnished to these persons. However, this paragraph shall not apply where a proxy statement meeting the requirements of Schedule A has been furnished to security holders.

3. At least the information specified in Paragraphs 2 and 3 of the statements required by Subsection C to be filed by each participant, or an appropriate summary, are included in each communication sent or given to security holders in connection with the solicitation.

A written proxy statement containing the information specified in Schedule A with respect to a solicitation is sent or given security holders at the earliest practicable date.

E. Solicitations Prior to Furnishing Required Written Proxy Statement Filing Requirements. Two (2) copies of any soliciting material proposed to be sent or given to security holders prior to the furnishing of the written proxy statement required by Section 6A shall be filed with the Commissioner in preliminary form at least five (5) business days prior to the date definitive copies of such material are first sent or given to such persons, or such shorter period as the Commissioner may authorize upon a showing of good cause.

F. Notwithstanding the provisions of Sections 6B, two (2) copies of any portion of the annual report referred to in Section 6B which comments upon or refers to any solicitation subject to this section, or to any participant in any solicitation, other than the solicitation by the management, shall be filed with the Commissioner as proxy material subject to this regulation. This portion of the report shall be filed with the Commissioner, in preliminary form, at least five (5) business days prior to the date copies of the report are first sent or given to security holders.

Section 15 Solicitations and Materials Complying With NAIC Model Regulation and Schedules

Notwithstanding the foregoing sections, the Commissioner may permit the solicitation of proxies, consents or authorizations, provided that the manner of solicitation and the form of proxy, proxy statement and other documents used in the solicitation comply with the National Association of Insurance Commissioners' (NAIC) model regulation and schedules.

Section 16 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 17 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 18 Effective Date

This amended regulation shall become effective November 15, 2014.

Section 19 History

Effective February 1, 1972.
Amended, Effective December 31, 1992.
Amended, Effective November 15, 2014.

SCHEDULE A

Item 1.Revocability of Proxy

State whether or not the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limited, or is subject to compliance with any formal procedure, briefly describe the limitation or procedure.

Item 2. Dissenters' Rights of Appraisal

Outline briefly any rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect their rights. Where these rights may be exercised only within a limited time after the proposal's date of adoption, the filing of a charter amendment or other similar act, indicate whether the person solicited will be notified of the date.

Item 3. Persons Making the Solicitation

A. Solicitations not subject to Section 14

1. State if the solicitation is made by the issuer. Give the name of any director of the issue who has informed the issuer in writing that the director intends to oppose an action intended to be taken by the issuer and indicate the action which the director intends to oppose.

2. If the solicitation is made by someone other than by the issuer, state the names of the persons by whom and on whose behalf it is made.

3. If the solicitation is to be made by other than the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state:

    a. The material features of any contract or agreement for the solicitation and identify the parties; and

    b The cost or anticipated cost.

4 State the names of the persons who will bear the cost of solicitation, directly or indirectly.

B. Solicitations subject to Section 14

1. State who will make the solicitation and describe the methods employed to solicit security holders.

2. If regular employees of the issuer or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, and the manner and nature of their employment for this purpose.

3. If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state:

    a. The material features of any contract or arrangement for the solicitation and identify the parties;

b. The cost or anticipated cost; and

c. The approximate number of employees or employees of another person (naming the other person) who will solicit security holders.

4. State the total amount estimated to be spent and the total expenditures to date for or in connection with the solicitation of security holders.

5. State who will bear the cost of the solicitation. If reimbursement will be sought from the issuer, state whether the question of reimbursement will be submitted to a vote of security holders.

6. If a solicitation is terminated pursuant to a settlement between the issuer and another participant in the solicitation, describe the terms of the settlement, including the cost or anticipated cost to the issuer.

Item 4. Interest of Certain Persons in Matters to be Acted Upon

A. Solicitations not subject to Section 14. Describe briefly any substantial interest, direct or indirect, of each of the following persons in a matter to be acted upon, other than elections to office:

1. If the solicitation is made on behalf of the issuer, each current director or officer of the issuer;

2. If the solicitation is made for other than on the issuer's behalf, any person who would be a participant in a solicitation (except the issuer or an officer, director or nominee of the issuer);

a. Each nominee for election as a director of the issuer; and

b. Each associate of the foregoing persons.

B. Solicitations subject to Section 14. Describe briefly any substantial interest, direct or indirect, of each participant (except the issuer) in any matter to be acted upon at the meeting. Include, with respect to each participant, the information required by Items 2A, 2D, 3, 4B, and 4C of Schedule B.

Item 5. Voting Securities and Principal Holders Thereof

A. State for each class of voting securities of the issuer entitled to be voted at the meeting, the number of shares outstanding and the number of votes to which each class is entitled.

B. Give the date that the record of security holders entitled to vote at the meeting will be determined. If the right to vote is not limited to security holders of record on that date, indicate the conditions under which other security holders may be entitled to vote.

C. If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights:

1. Make a statement that they have these rights;

2. Describe the rights;

3 State the conditions precedent to the exercise of these rights; and

4. Indicate if discretionary authority to cumulate votes is solicited.

D. Furnish the following information as of the most practicable date, in substantially the tabular form indicated, with respect to:

1. A person or group of persons who is known to be the beneficial owner of more than five percent (5%) of any class of securities; and

2. All directors and nominees, naming them, and directors and officers of the issuer as a group, without naming them.

(1) Title of Class	(2) Name of Beneficial Owner	(3) Amount and Nature of Beneficial Ownership	(4) Percent of Class

E. If, to the knowledge of the person on whose behalf the solicitation is made, a change in control of the issuer has occurred since the beginning of its last fiscal year, state:

1. The name of the person or persons who acquired control;

2. The amount and the source of the consideration used by the person or persons,

3. The basis of the control;

4. The date and a description of the transactions that resulted in the change of control;

5. The percentage of voting securities of the issuer now beneficially owned directly or indirectly by the person or persons who acquired control; and

6. The identity of the person or persons from whom control was assumed. Describe any arrangements which may at a later date result in a change of control of the issuer.

Item 6. Directors and Executive Officers

If action is to be taken with respect to election of directors, furnish the following information, in tabular form to the extent practicable, about each person nominated for election as a director and each person whose term of office will continue after the meeting. However, if the solicitation is made on behalf of persons other than the issuer, the information required should only be furnished as to nominees of the persons making the solicitation.

A. Identification of directors and officers. List the names and ages of all directors and officers of the issuer and all persons nominated or chosen to become directors or officers. Indicate all positions and offices with the issuer held by each person; state the term of office as director or officer or both and any period during which the person served. Briefly describe any arrangement or understanding between the person and any other person or persons (naming the persons) pursuant to which the person was or is to be selected as a director, officer or nominee. The information regarding officers does not need to be furnished in proxy or information statements

provided that the information is furnished in a separate item in the issuer's annual report to stockholders.

B. Family relationships. State the nature of a family relationship not more remote than first cousin between a director, officer or person nominated or chosen by the issuer to become a director or officer. State the nature of any family relationship between any such person and an officer or director of any of the issuer's parent companies, subsidiaries or other affiliates.

C. Business experience. State the principal occupations and employment during the past five (5) years of each director and each person nominated or chosen to become a director or officer and the name and principal business of any corporation or other organization in which the occupations and employment were carried on.

D. Directorships. Indicate other directorships held by each director or person nominated or chosen to become a director.

E. Involvement in certain legal proceedings. Describe any legal proceedings that have occurred during the past five (5) years or which are pending that are material to an evaluation of the ability or integrity of any director or nominee for director or officer of the issuer.

F. Describe any of the following relationships that exist:

1. If the nominee or director is, or has within the last two (2) full fiscal years been an officer, director or employee of, or owns, or has within the last two (2) fiscal years owned, directly or indirectly, an equity interest in any firm, corporation or other business in excess of one percent:

    a. That has made payments to the issuer or its subsidiaries during the issuer's last full fiscal year or that proposes to make payments to the issuer or its subsidiaries during the current fiscal year in excess of one percent of the issuer's consolidated gross revenues for its last full fiscal year;

    b. To which the issuer or its subsidiaries were indebted at any time during the issuer's last fiscal year in an aggregate amount in excess of one percent of the issuer's total consolidated assets at the end of the fiscal year;

    c. To which the issuer or its subsidiaries have made payments during the entity's last fiscal year or to which the issuer or its subsidiaries propose to make payments during the entity's current fiscal year in excess of one percent of the entity's consolidated gross revenues for its last full fiscal year;

    d. In order to determine whether payments made or proposed to be made exceed one percent of the consolidated gross revenues of any entity other than the issuer for the entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director;

    e. In calculating payments for property and services the following may be excluded:

        (1) Payments where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a public utility at rates or charges fixed in conformity with law or governmental authority;

(2) Payments that arise solely from the ownership of securities of the issuer and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received;

f. In calculating indebtedness for purposes of Subparagraph (b) above, debt securities that have been publicly offered, admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered securities association may be excluded.

2. The nominee or director is a member or employee of, or is associated with, a law firm which the issuer has retained in the last two (2) full fiscal years or proposes to retain in the current fiscal year where fees paid or anticipated to be paid by the issuer are material to either the law firm, the issuer or both.

3. The nominee or director is a director, partner, officer or employee of any investment banking firm that has performed services for the issuer other than as a participating underwriter in a syndicate in the last two (2) full fiscal years or which the issuer proposes to have perform services in the current year; or

4. The nominee or director is a control person of the issuer (other than solely as a director of the issuer).

a. State whether or not the issuer has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the issuer has these committees, however designated, identify each committee member, state the number of committee meetings held by each committee during the last fiscal year and describe briefly the functions performed by the committees.

b. If the issuer has a nominating or similar committee, state whether the committee will consider nominees recommended by shareholders. If so, describe the procedures to be followed by shareholders in submitting the recommendations.

G. State the total number of meetings of the board of directors (including regularly scheduled and special meetings) that were held during the last full fiscal year. Name each incumbent director who, during the last full fiscal year, attended fewer than seventy-five percent (75%) of the aggregate of:

1. The total number of meetings of the board of directors (held during the period for which he has been a director); and

2. The total number of meetings held by all committees of the board on which he served (during the periods that he served).

H. If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the issuer on any matter relating to the issuer's operations, policies or practices, and if the director has furnished the issuer with a letter describing that disagreement and requesting that the matter be disclosed, the issuer shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement. If the issuer believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its views of the disagreement.

1. With respect to those classes of voting stock that participated in the election of directors at the most recent meeting where directors were elected:

a. State the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors; and

b. Disclose in tabular format, the percentage of total shares cast for and withheld from the vote for or, where applicable, cast against, each nominee, which, respectively, were voted for and withheld from the vote for, or voted against, the nominee.

2. When groups of classes or series of classes vote together in the election of a director or directors, they shall be treated as a single class for the purpose of Paragraph (1)(b).

Instructions:

1. Calculate the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors, referred to in Subsection J(1)(a), by dividing the total shares cast for and withheld from the vote for or, where applicable, voted against, the director for whom the highest aggregate number of shares was cast by the total number of shares outstanding that were eligible to vote as of the record date for the meeting.

2. No information need be given in response to Item 6J unless, with respect to any class of voting stock (or group of classes which voted together), five percent (5%) or more of the total shares cast for and withheld from the votes for or, where applicable, cast against any nominee were withheld from the vote for or cast against the nominee.

3. If an issuer elects less than the entire board of directors annually, disclosure is required for all directors if five percent (5%) or more of the total shares cast for and withheld from, the vote for or, where applicable, cast against an incumbent director were withheld from, or cast against, the vote for the director at the meeting where the person was most recently elected.

4. No information must be given in response to Item 6J if the issuer has previously furnished to its security holders a report of the results of the most recent meeting of security holders where directors were elected which includes:

   a. A description of each matter voted upon at the meeting and a statement of the percentage of the shares voting that were voted for and against each matter; and

   b. The information that would be called for by this Item 6J.

   c. If an issuer has previously furnished the results to its security holders, this fact should be stated in a letter accompanying the filing of preliminary proxy materials with the Commissioner.

Item 7. Remuneration of Directors and Officers

Furnish the following information if action is to be taken concerning (i) the election of directors; (ii) any bonus, profit sharing or other remuneration plan, contract or arrangement that a director, nominee for election as a director or officer of the issuer will participate; (iii) a pension or retirement plan where a person will participate; or (iv) the granting or extension to a person of any options, warrants or rights to purchase securities, other than warrants or rights issued to security holders on a pro rata bases. If the solicitation is made on behalf of persons other than the issuer, the information required need be furnished only as to nominees of the person making the solicitation and associates of the nominees.

A. Current remuneration. Furnish the information required in the table below, in substantially the tabular form specified, concerning all remuneration of the following persons and groups for

services in all capacities to the issuer and its subsidiaries during the issuer's last fiscal year or, in specified instances, certain prior fiscal years:

1. Five (5) officers or directors. Name each of the five (5) most highly compensated officers or directors of the issuer who have a total remuneration required to be disclosed in Columns C1 and C2 below that would exceed $50,000; and

2. All officers or directors. All officers and directors of the issuer as a group, stating the number of persons in the group without naming them.

3. Specified Tabular Format

(A) Name of individual or number of persons in groups	(B) Capacities in which served	(C) Cash and cash equivalent forms of remuneration		(D) Aggregate of contingent forms of remuneration
		(C-1) Salaries, fees, directors' fees, commissions, and bonuses	(C-2) Securities of property, insurance benefits or reimbursements, personal benefits	

4. Information to be Included. Columns C-1, C-2, and D of the table should contain with respect to each person or group of persons specified in Subparagraphs A(1) and A(2) of this Item 7 a dollar amount that reflects the total of all items of remuneration described in the heading to that column including, but not necessarily limited to, those items set forth in the subparagraphs of that column.

COLUMN C	**COLUMN D**
Include all cash and cash equivalent forms of remuneration received during the fiscal year and all amounts accrued during the fiscal year which, with reasonable certainty, will be distributed or vested in the future.	Include all contingent forms of remuneration, vesting and measurement of which is subject to future events. Report only amounts

COLUMN C-1	COLUMN C-2	
Salaries, Bonuses, Fees and Commissions	Securities, Property Insurance Benefits or Reimbursements, Personal Benefits	relating to the latest fiscal year, not amounts accrued in previous periods.
1. All cash remuneration distributed or accrued in the form of salaries, commissions, bonuses and fees for services rendered.	1. Spread between the acquisition price, if any, and fair market price of securities or property acquired under any contract, plan or arrangement.	1. Amount expensed for financial reporting purposes representing non-vested contributions, payments or accruals under any pension or retirement plans, annuities, employment contracts deferred
2. Compensation earned for services performed in the latest fiscal year even if it is deferred for future payment.	2. Cost of any life insurance premiums, health insurance premiums and medical reimbursement plans. Premiums for nondiscriminatory plans generally available to all salaried employees are excluded.	compensation plans including IRS qualified plans, unless the amount for the individual cannot be separated, in which case a footnote is required indicating the percentage that contributions to the plan bear to participants' total remuneration.
3. Payments received in the latest fiscal year but earned in prior years that were deferred until the latest year, if the amounts were not shown in an earlier proxy statement or annual report to stockholders.	3. Personal benefits (perquisites) not directly related to job performance, excluding benefits provided on a nondiscriminatory basis, valued on the basis of cost to the issuer of providing the benefits. a. If unreasonable effort or expense is required to determine the amounts of personal benefits, they may be omitted if their aggregate value does not exceed $10,000 for each officer.	2. The amount expensed for financial reporting purposes under any incentive plans (long-term income plans), such as stock appreciation rights, stock options, performance share plans, where payout is based on objective standards or stock values. In subsequent years, if the corporation credits compensation expense for financial reporting purposes as a result of a decline in the value of contingent compensation, Column D may be reduced by a

	b. If the amount of personal benefits exceed ten percent (10%) of the total remuneration or $25,000, whichever is less, the amount and a brief description of the benefits must be disclosed in a footnote. 4. Vested company contributions to thrift, profit, sharing, pension stock purchase and similar plans.	corresponding amount. A footnote explaining the action should be included 3. The amount expensed for financial reporting purposes for any non-vested contribution payment or accrual to stock purchase plans, profit sharing, and thrift plans whether or not they are qualified under the Internal Revenue Code.

5. Transactions with third parties. Item 7A, among other things, includes transactions between the issuer and a third party when the primary purpose of the transaction is to furnish remuneration to the persons specified in Item 7A. Other transactions between the issuer and third parties in which persons specified in Item 7A have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interest of management and others in certain transactions. Item 7A does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; these transactions should be disclosed pursuant to these other disclosure requirements, and not as a note to the remuneration table presented pursuant to Item 7A.

6. Other permitted disclosure. The issuer may provide additional disclosure through a footnote to the table, through additional columns or otherwise, describing the components of aggregate remuneration in greater detail as is appropriate.

B. Proposed remuneration.

1. Briefly describe all remuneration payments proposed to be made in the future, pursuant to any existing plan or arrangement to the persons and groups specified in Item 7A. As to defined benefit or actuarial plans with respect to amounts not included in the table, include a separate table showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications.

2. Information does not need to be furnished with respect to any group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of officers or directors of the issuer and that are available generally to all salaried employees.

C. Remuneration of directors. Describe any standard or special arrangements, stating amounts, by which directors of the issuer are compensated for services as a director.

D. Options, warrants or rights.

Furnish the information required by the following table for all options to purchase securities from the issuer or its subsidiaries that were granted to or exercised by the persons and groups specified in Item 7A since the beginning of the issuer’s last fiscal year and as to all options held by these persons as of the latest practicable date:

The following tabulation shows as to certain directors and officers and as to all directors and officers as a group:

1. The amount of options granted since the beginning of the issuer’s last full fiscal year;

2. The amount of shares acquired since that date through the exercise of options;

3. The amount of shares of the same class sold during the period; and

4. The amount of shares subject to all unexercised options held as of the most recent possible date.

Title of Securities	Name	Name	Name	All directors and officers as a group
Granted-20[ ] to date:				
Number of shares				
Average per share option price	$	$	$	$
Exercised-20[ ] to date:				
Number of shares				
Aggregate option price of options exercised	$	$	$	$
Aggregate market value of shares on date options exercised	$	$	$	$
Sales-20[ ] to date:				
Number of shares				
Unexercised at 20[ ]:				
Number of shares				**
Average per share option price	$	$	$	$

In addition, during the period employees were granted options for ____ shares at an average price per share of $____.

**Sales by directors and officers who exercised options during the period 20[ ] to date.

Instructions:

A. All figures should be adjusted, where applicable, in accordance with the terms of the options to reflect stock splits and to give effect to share dividends.

B. Other tabular presentations are acceptable if they include the necessary data. Tabular presentation may not be needed if only a very few options have been granted

1. Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed $10,000 for any officer or director named in answer to Item 7A, or $40,000 for all officers and directors as a group, this Item need not be answered with respect to options granted to a person or group.

2. Where the total market value on the dates of purchase of all securities purchased through the exercise of options during the period specified does not exceed $10,000 for a person or $40,000 for a group, this item does not need to be answered with respect to options exercised by a person or group.

3. Where the total market value as of the latest practicable date of the securities called for by all options held at the time does not exceed $10,000 for a person or $40,000 for a group, this item does not need to be answered with respect to options held as of the specified date by a person or group.

a. The term “options” as used in Subsection D includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given.

b. The extension, regranting or material amendment of options shall be deemed the granting of options within the meaning of this paragraph.

c. If the options relate to more than one class of securities, the information shall be given separately for each class.

E. Indebtedness of management.

1. State for each director or officer of the issuer, each nominee for election as a director, and each associate of a director, officer or nominee who was indebted to the issuer or its subsidiaries at any time since the beginning of the last fiscal year of the registrant:

a. The largest aggregate amount of indebtedness outstanding at any time during the period,

b. The nature of the indebtedness outstanding and the transaction in which it was incurred,

c. The amount outstanding as of the latest practicable date; and

d. The rate of interest paid or charged.

2. Subsection E does not apply to:

a. Any person whose aggregate indebtedness did not exceed $10,000 or one percent of the issuer's total assets, whichever is less, at any time during the period specified; or

b. Indebtedness under an insurance policy.

F. Transactions with management.

1. Describe briefly any transaction since the beginning of the issuer's last fiscal year or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming the person and stating the relationship to the issuer, the nature of the interest in the transaction and, where practicable, the amount of the interest.

a. A director or officer of the issuer;

b. A nominee for election as a director;

c. A security holder who is known to the issuer to own of record or beneficially more than ten percent (10%) of any class of the issuer's voting securities; and

d. A relative or spouse of any of the foregoing persons, or any relative of the spouse, who has the same home as the person or who is a director or officer of a parent or subsidiary of the issuer.

2. Also, describe briefly any material legal proceedings in which a person is an adverse party to the issuer or any of its subsidiaries or has an adverse material interest to the issuer or any of its subsidiaries.

3. Information does not need to be given in response to this Item 7F as to any remuneration or other transaction reported in response to Item 7A, B, C, D or E, or as to any transaction with respect to which information may be omitted pursuant to these items.

4. Information does not need to be given in answer to this Item 7F for any transaction where:

a. The rates or charges involved in the transaction are determined by competitive bids, or at rates or charges fixed in conformity with law or governmental authority;

b. The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

c. The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $40,000; or

d. The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

5 It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation or other entity, which engages in a transaction with the issuer or its subsidiaries, may have an indirect interest in the transaction by reason of the position or

relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 7F where:

a. The interest arises only (i) from the person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by the person and all other persons specified in Item 7F of less than a ten percent (10%) equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both the position and ownership;

b. The interest arises only from the person's position as a limited partner in a partnership in which he and all other persons specified in Item 7F had an interest of less than ten percent (10%); or

c. The interest of the person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the issuer or any of its subsidiaries and the transaction is not material to the other person.

Instructions:

In describing any transaction involving the purchase or sale of assets by or to the issuer or any of its subsidiaries, other than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two (2) years prior to the transaction, the cost to the seller. Indicate the principle followed in determining the issuer's purchase or sale price and the name of the person making the determination.

Information shall be furnished in answer to this Item with respect to transactions not excluded above which involve remuneration from the issuer or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of these persons arises solely from the ownership individually and in the aggregate of less than ten percent (10%) of any class of equity securities of another corporation furnishing the services to the issuer or its subsidiaries.

G. Transactions with pension or similar plans.

1. Describe briefly any transactions since the beginning of the issuer's last fiscal year, or any presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the issuer, or any of its parents or subsidiaries was or is to be a part, in which any of the persons specified in Item 7F or the issuer or any of its subsidiaries had or is to have a direct or indirect material interest naming the person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of the interest.

2. Information does not need to be given in answer to Subsection G with respect to:

a. Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

b. Payment of remuneration for services not in excess of five percent (5%) of the aggregate remuneration received by the specified person during the issuer's last fiscal year from the issuer and its subsidiaries; or

c. Any interest of the issuer or any of its subsidiaries that arises solely from its general interest in the success of the plan.

Instructions:

Subparagraph 3 to Item 7F shall apply to this Item 7G.

Without limiting the general meaning of the term “transaction” there shall be included in the answer to this item any remuneration received or any loans received or outstanding during the period, or proposed to be received.

Item 8. Matters Related to Accounting

If the solicitation is made on behalf of the issuer and relates to an annual meeting of security holders at which directors are to be elected, or financial statements are included, furnish the following information:

A. State if the issuer’s financial statements are not certified by independent public or certified accountants.

B. State if the board of directors has no audit or similar committee.

C. If the issuer’s financial statements are certified by independent public or certified accountants, state that fact and provide the following information:

1. The name of the principal accountant selected or being recommended to shareholders for election, approval or ratification for the current year. If no accountant has been elected or recommended, so state and briefly describe the reasons.

2. The name of the principal accountant for the fiscal year most recently completed if different from the accountant selected or recommended for the current year or if no accountant has been elected or recommended for the current year.

3. State if a change or changes in accountants have taken place since the date of the proxy statement for the most recent annual meeting of shareholders. If, in connection with the change, a material disagreement in connection with financial disclosure between the accountant and issuer has occurred, the disagreement shall be described. Prior to filing the preliminary proxy materials with the Commissioner that contain or amend the description, the issuer shall furnish the description of the disagreement to the accountant with whom the disagreement has occurred. If that accountant believes that the description of the disagreement is incorrect or incomplete, the accountant may include a brief statement, not to exceed 200 words, in the proxy statement presenting his or her view of the disagreement. This statement shall be submitted to the issuer within ten (10) business days of the date the accountant receives the issuer’s descriptions.

4. The proxy statement shall indicate whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year are expected to be present at the stockholders’ meeting with the opportunity to make a statement if they desire to do so and whether or not the representatives are expected to be available to respond to appropriate questions.

5. If a change in accountants has taken place since the date of the proxy statement for the most recent annual meeting of shareholders, state whether the change was recommended or approved by:

(a) An audit or similar committee of the board of directors, if the issuer has this committee; or

(c) The board of directors, if the issuer has no committee.

D. For the fiscal year most recently completed, describe each professional service provided by the principal accountant and state the percentage relationship that the aggregate of the fees for all nonaudit services bear to the audit fees and, except as provided below, state the percentage relationship that the fee for each nonaudit service bears to the audit fees. Indicate whether, before each professional service provided by the principal accountant was rendered, it was approved by, and the possible effect on the independence of the accountant was considered by:

1. An audit or similar committee of the board of directors; and

2. The board of directors for a service not approved by an audit or similar committee.

Instructions:

For purposes of this subsection, all fees for services provided in connection with the audit function (e.g. reviews of quarterly reports) may be computed as part of the audit fees. Indicate which services are reflected in the audit fees computation.

If the fee for any non-audit service is less than three percent (3%) of the audit fees, the percentage relationship does not need to be disclosed.

Each service should be specifically described. Broad general categories such as “tax matters” or “management advisory services” are not sufficiently specific.

Describe the circumstances and give details of any services provided by the issuer’s independent accountant during the latest fiscal year that were furnished at rates or terms that were not customary.

Describe any existing direct or indirect understanding or agreement that places a limit on current or future years’ audit fees, including fee arrangements that provide fixed limits on fees that are not subject to reconsideration if unexpected issues involving accounting or auditing are encountered. Disclosure of fee estimates is not required.

Item 9. Bonus, Profit Sharing and Other Remuneration Plans: Pension and Retirement Plans

If action is to be taken with respect to any bonus, profit sharing or other remuneration plan or any pension or retirement plan, furnish the following information:

A. Describe briefly the material features of the plan, identify each class of persons who will participate, indicate the approximate number of persons in each class and state the basis of the participation.

B. Furnish the information, in addition to that required by this item and Item 7, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other remuneration or incentive plans, now in effect or in effect within the past five (5) years, for:

1. Each director or officer named in answer to Item 7A who may participate in the plan to be acted upon;

2. All present directors and officers of the issuer as a group, if any director or officer may participate in the plan; and

3. All employees, if employees may participate in the plan.

C. If the plan to be acted upon can be amended otherwise than by a vote of stockholders, to increase the cost thereof to the issuer or to alter the allocation of the benefits as between the directors and officers on the one hand and employees on the other, state the nature of the amendments which can be made.

D. With regard to any bonus, profit sharing or other remuneration plan, on which action is to be taken, furnish the following information:

1. State separately the amounts which would have been distributable under the plan during the last fiscal year of the issuer:

   a. To directors and officer, and

   b. To employees if the plan had been in effect.

2. State the name and position with the issuer of each person specified in Item 7A who will participate in the plan and the amount each person would have received under the plan for the last fiscal year of the issuer if the plan had been in effect.

E. With regard to any pension or retirement plan on which action is to be taken, furnish the following information:

1. State:

   a. The approximate total amount necessary to fund the plan with respect to past services, the period over which the amount is to be paid and the estimated annual payments necessary to pay the total amount over the period;

   b. The estimated annual payment to be made with respect to current services; and

   c. The amount of the annual payments to be made for the benefit of directors and officers, and

   d. Employees.

2. State:

   a. The name and position with the issuer of each person specified in Item 7A who will be entitled to participate in the plan;

   b. The amount which would have been paid or set aside by the issuer and its subsidiaries for the benefit of the person for the last fiscal year of the issuer if the plan had been in effect; and

   c. The amount of the annual benefits estimated to be payable to the person in the event of retirement at normal retirement date.

Instructions:

A. If action is to be taken with respect to the amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

B. The following instruction shall apply to Subsection B:

1. Information need only be given with respect to benefits received or set aside within the past five (5) years.

2. Information does not need to be included as to payments made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits.

3. If action is to be taken with respect to any plan in which directors or officers may participate, the information called for by Item 7D shall be furnished for the last five (5) fiscal years of the issuer and any period after the end of the latest fiscal year, in aggregate amounts for the entire period for each person and group. If any named person, or any other director or officer, purchased securities through the exercise of options during period, state the aggregate amount of securities of that class sold during the period by the named person and by the named person and other directors and officers as a group. The information called for by this instruction is in lieu of the information since the beginning of the issuer's last fiscal year called for by Item 7D. If employees may participate in the plan to be acted upon, state the aggregate amount of securities called for by all options granted to employees during the five (5) year period and, if the options were other than "restricted" or "qualified" stock options or options granted pursuant to an "employee stock purchase plan," as the quoted terms are defined in Sections 422 through 424 of the Internal Revenue Code, state that fact and the weighted average option price per share. The information called for by this instruction may be furnished in the form of the table set forth in Item 7D.

C. If the plan to be acted upon is set forth in a written document, three (3) copies shall be filed with the Commissioner at the time preliminary copies of the proxy statement and form of proxy are filed.

D. The information called for by Subsection E(1)(c) or E(2)(b) of this Item 9 does not need to be given as to payments made on an actuarial basis pursuant to any group pension plan that provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service.

Item 10. Options, Warrants or Rights

If action is to be taken with respect to the granting or extension of any options to purchase securities of the issuer or any subsidiary, furnish the following information:

A. State:

1. The title and amount of securities called for or to be called for by the options;

2. The prices, expiration dates and other material conditions upon which the options may be exercised;

3. The consideration received or to be received by the issuer or subsidiary for the granting or extension of the options;

4. The market value of the securities called for or to be called for by the options as of the latest practicable date; and

5. In the case of options, the federal income tax consequences of the issuance and exercise of the option to the recipient and to the issuer.

1. State separately the amount of options received or to be received by the following persons, naming each person:

   (a) Each director or officer named in answer to Item 7A;

   (b) Each nominee for election as a director of the issuer;

   (c) Each associate of the directors, officers, or nominees; and

   (d) Each other person who received or is to receive ten percent (10%) or more of the options.

2. State the total amount of the options received or to be received by all directors and officers of the issuer as a group, without naming them.

B. Furnish the information, in addition to that required by this item and Item 7, necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five (5) years, for:

1. Each director or officer named in answer to Item 7A who may participate in the plan to be acted upon;

2. All present directors and officers of the issuer as a group, if any director or officer may participate in the plan; and

3. All employees, if employees may participate in the plan.

Instructions:

A. For the purpose of this Item 10 the term option includes any option, warrant or right.

B. Paragraphs B and C do not apply to warrants or rights to be issued to security holders on a pro rata basis.

C. Instruction 2 to Item 9 shall also apply to Paragraph C of this item.

D. If the options described in answer to this item are issued pursuant to a plan which is set forth in a written document, three (3) copies shall be filed with the Commissioner at the time preliminary copies of the proxy statement and form of proxy are filed.

Item 11. Authorization or Issuance of Securities Otherwise than for Exchange

If action is to be taken with respect to the authorization or issuance of any securities otherwise than for exchange for outstanding securities of the issuer, furnish the following information:

A. State the title and amount of securities to be authorized or issued.

B. If the securities are other than additional shares of common stock of a class outstanding, furnish a brief summary of the following, if applicable: dividend, voting, liquidation, preemptive and conversion rights, redemption and sinking fund provisions, interest rate and date of maturity.

C. Describe briefly the transaction in which the securities are to be issued, including a statement as to:

1. The nature and approximate amount of consideration received or to be received by the issuer, and

2. The approximate amount devoted to each purpose, as far as is determinable, for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction in which the securities are to be issued, state the reason, indicate the purpose of the authorization of the securities, and state whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to issuance.

D. If the securities are to be issued otherwise than in a general public offering for cash, state the reasons for the proposed authorization or issuance and the general effect upon the rights of existing security holders.

Item 12. Modification or Exchange of Securities

If action is to be taken with respect to the modification of any class of securities of the issuer, or the issuance or authorization for issuance of securities of the issuer in exchange for outstanding securities of the issuer, furnish the following information:

A. If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be so issued, the title and amount of outstanding securities to be exchanged therefor and the basis of the exchange.

B. Describe any material differences between the outstanding securities and the modified or new securities.

C. State the reasons for the proposed modification or exchange and the general effect upon the rights of existing security holders.

D. Furnish a brief statement as to arrears in dividends or as to defaults in principal or interest in respect to the outstanding securities which are to be modified or exchanged and other information appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

E. Outline briefly any other material features of the proposed modification or exchange. If the plan of proposed action is set forth in a written document, file copies thereof with the Commissioner at the time the preliminary proxy material is filed.

Item 13. Mergers, Consolidations, Acquisitions and Similar Matters

Furnish the following information if action is to be taken with respect to any plan for (i) the merger or consolidation of the issuer into or with another person or of another person into or with the issuer; (ii) the acquisition by the issuer or any of its security holders of securities of another issuer; (iii) the acquisition by the issuer of another going business or of the assets thereof; (iv) the sale or other transfer of all or any substantial part of the assets of the issuer; or (v) the liquidation or dissolution of the issuer:

A. Outline briefly the material features of the plan. State the reasons therefor and the general effect thereof upon the rights of existing security holders. If the plan is set forth in a written document, file three (3) copies thereof with the Commissioner at the time preliminary copies of the proxy statement and form of proxy are filed.

B. Furnish the following information as to the issuer and each person which is to be merged into the issuer or into or with which the issuer is to be merged or consolidated or the business or assets

that are to be acquired or which is the issuer of securities to be acquired by the issuer in exchange for all or a substantial part of its assets or to be acquired by security holders of the issuer. What is required is information essential to an investor's appraisal of the action proposed to be taken.

1. Describe briefly the business of the person.

2. State the location and describe the general character of the plants and other important physical properties of the person. The description is to be given from an economic and business standpoint, as distinguished from a legal standpoint. Portfolio or investment assets of an insurer do not need to be disclosed.

3. Furnish a brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the issuer or of the person, and as to the effect of the plan thereon and other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

4. Furnish a tabulation in columnar form showing the existing and the pro forma capitalization.

5. Furnish in columnar form for each of the last five (5) fiscal years a historical summary of earnings and show per share amounts of net earnings, dividends declared for each year and book value per share at the end of the latest period.

6. Furnish in columnar form for each of the last five (5) fiscal years a combined pro forma summary of earnings, as appropriate in the circumstances, indicating the aggregate and pre-share earnings for each year and the pro forma book value per share at the end of the latest period. If the transaction establishes a new basis of accounting for assets of any of the persons included, the pro forma summary of earnings shall be furnished only for the most recent fiscal year and interim period and shall reflect appropriate pro forma adjustments resulting from the new basis of accounting.

7. To the extent material for the exercise of prudent judgment in regard to the matter to be acted upon, furnish the historical and pro forma earnings data specified in (5) and (6) above for interim periods of the current and prior fiscal years, if available.

Instructions:

Subparagraph B of this Item 13 shall not apply if the plan described in answer to Paragraph A involves only the issuer and one or more of its totally-held subsidiaries.

C. As to each class of securities of the issuer, or of any person specified in Paragraph B, which is admitted to dealing on a national securities exchange or with respect to which a market otherwise exists, and that will be materially affected by the plan, state the high and low sale prices (or, in the absence of trading in a particular period, the range of the bid and asked prices) for each quarterly period within two (2) years. This information may be omitted if the plan involves merely the liquidation or dissolution of the issuer.

Item 14. Financial Statements

A. If action is to be taken with respect to any matter specified in Items 11, 12, or 13, furnish financial statements of the issuer and its subsidiaries complying with the requirements of Section 4B(1),

(2) and (3) of the regulation including schedules of supplementary profit and loss information. The statements may be omitted with respect to a plan described in answer to Item 13 if the plan involves only the issuer and one or more of its totally-held subsidiaries.

B. If action is to be taken with respect to any matter specified in Item 13B, furnish for each person specified, other than the issuer, financial statements complying with the requirements of Section 4B(1), (2) and (3) of the regulation.

C. The Commissioner may, upon the request of the issuer, permit the omission of any of the statements herein required where the statements are not necessary for the exercise of prudent judgment in regard to any matter to be acted upon, or may permit the filing in substitution of appropriate statements of comparable character. The Commissioner may also require the filing of other statements in addition to, or in substitution for, the statements required in any case where the statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise material for the exercise of prudent judgment in regard to any matter to be acted upon. In the usual case, financial statements are deemed material to the exercise of prudent judgment where the matter to be acted upon is authorization or issuance of a material amount of senior securities, but are not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger or consolidation, acquisition or similar transaction.

C. The proxy statement may incorporate by reference any financial statements contained in an annual report sent to security holders with respect to the same meeting as that to which the proxy statement relates, provided the financial statements substantially meet the requirements of this item.

Item 15. Acquisition or Disposition of Property

If action is to be taken with respect to the acquisition or disposition of any property, furnish the following information:

A. Describe briefly the general character and location of the property.

B. State the nature and amount of consideration to be paid or received by the issuer or any subsidiary. To the extent practicable outline briefly the facts bearing upon the question of the fairness of the consideration.

C. State the name and address of the transferor or transferee, as the case may be, and the nature of any material relationship of the person to the issuer or an affiliate of the issuer.

D. Outline briefly any other material features of the contract or transaction.

Item 16. Restatement of Accounts

If action is to be taken with respect to the restatement of any asset, capital or surplus account of the issuer, furnish the following information:

A. State the nature of the restatement and the date as of which it is to be effective.

B. Outline briefly the reasons for the restatement and for the selection of the particular effective date.

C. State the name and amount of each account (including any reserve accounts) affected by the restatement and the effect of the restatement thereon. Tabular presentation of the amounts shall be made when appropriate, particularly in the case of recapitalizations.

D. To the extent practicable, state whether and the extent, if any, to which the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 17. Action with Respect to Reports

If action is to be taken with respect to any report of the issuer or of its directors, officers or committees or any minutes of meetings of its stockholders, furnish the following information:

A. State whether or not the action is to constitute approval or disapproval of any of the matters referred to in the reports or minutes.

B. Identify each of the matters which it is intended will be approved or disapproved and furnish the information required by the appropriate item or items of this schedule with respect to each matter.

Item 18. Matters Not Required to be Submitted

If action is to be taken with respect to any matter which is not required to be submitted to a vote of security holders, state the nature of the matter, the reasons for submitting it to a vote of security holders and what action is intended to be taken by the management in the event of a negative vote on the matter by the security holders.

Item 19. Amendment of Charter, Bylaws or Other Documents

If action is to be taken with respect to any amendment of the issuer's charter, bylaws or other documents as to which information is not required above, state briefly the reasons for and general effect of the amendment.

Note: Where the matter to be acted upon is the classification of directors, state whether vacancies which occur during the year may be filled by the board of directors to serve only until the next annual meeting or may be so filled for the remainder of the full term.

Item 20. Other Proposed Action

If action is to be taken with respect to any matter not specifically referred to above describe briefly the substance of each matter in substantially the same degree of detail as is required by Items 5 to 19.

Item 21. Vote Required for Approval

As to each matter that is to be submitted to a vote of security holders, other than elections to office or the selection or approval of auditors, state the vote required for its approval.

SCHEDULE B

INFORMATION TO BE INCLUDED IN STATEMENTS FILED BY OR ON BEHALF OF A PARTICIPANT (OTHER THAN THE ISSUER) IN A PROXY SOLICITATION IN AN ELECTION CONTEST

Item 1. Issuer

State the name and address of the Issuer.

Item 2. Identity and Background

A. State the following:

1. Your name and business address,

2. Your present principal occupation or employment and the name, principal business and address of any corporation or other organization in which the employment is carried on.

B. State the following:

1. Your residence address,

2. Information as to all material occupations, positions, offices or employments during the last ten (10) years, giving starting and ending dates of each and the name, principal business and address of any business corporation or other business organization in which each occupation, position, office or employment was carried on.

C. State whether or not you are or have been a participant in any other proxy contest involving this company or other companies within the past ten (10) years. If so, identify the principals, the subject matter and your relationship to the parties and the outcome.

D. State whether or not, during the past ten (10) years, you have been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. A negative answer to this sub-item does not need to be included in the proxy statement or other proxy soliciting material.

Item 3. Interest in Securities of the Issuer

A. State the amount of each class of securities of the issuer that you own beneficially, directly or indirectly.

B. State the amount of each class of securities of the issuer that you own of record but not beneficially.

C. State with respect to all securities of the issuer purchased or sold within the past two (2) years, the dates when they were purchased or sold and the amount purchased or sold on each date.

D. State if any part of the purchase price or market value of any of the securities specified in Subsection C is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding securities. Indicate the amount of the indebtedness as of the latest practicable date. If funds were borrowed or obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker or dealer, briefly describe the transaction and state the names of the parties.

E. State whether or not you are a party to any contracts, arrangements or understandings with any person with respect to any securities of the issuer including but not limited to joint ventures, loan or option arrangements, puts or calls guarantees against losses or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. If so, name the persons with whom some contracts, arrangements or understandings exist and give the details thereof.

F. State the amount of securities of the issuer owned beneficially, directly or indirectly, by each of your associates and the name and address of each associate.

G. State the amount of each class of securities of any parent, subsidiary or affiliate of the issuer that you own beneficially, directly or indirectly.

Item 4. Further Matters

A. Describe the time and circumstances under which you became a participant in the solicitation and state the nature and extent of your activities or proposed activities as a participant.

B. Describe briefly, and where practicable state the approximate amount of any material interest, direct or indirect, of yourself and of each of your associates in any material transactions since the beginning of the company's last fiscal year, or in any material proposed transactions, to which the company or any of its subsidiaries or affiliates was or is to be a party.

C. State whether or not you or any of your associates have any arrangement or understanding with any person:

1. With respect to any future employment by the issuer or its subsidiaries or affiliates; or

2. With respect to any future transactions to which the issuer or any of its subsidiaries or affiliates will or may be a party.

If so, describe the arrangement or understanding and state the names of the parties.

Item 5. Signature

The statement shall be dated and signed in the following manner:

I certify that the statements made in this statement are true, complete and correct to the best of my knowledge and belief.

_____ _____

(Date) (Signature of participant or authorized representative)

SCHEDULE C

INFORMATION REQUIRED IN INFORMATION STATEMENT

Note: Where any item, other than Item 5, calls for information with respect to any matter to be acted upon at the meeting, the item need be answered only with respect to proposals to be made by the issuer.

Item 1. Information Required by Items of Schedule A

Furnish the information called for by all of the items of Schedule A (other than Items 1, 3 and 4) that would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting.

Item 2. Statement That Proxies Are Not Solicited

The following statement shall be set forth on the first page of the information statement in bold face type:

"WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY."

Item 3. Date, Time and Place of Meeting

State the date, time and place of the meeting of security holders, unless the information is otherwise disclosed in material furnished to security holders with the information statement.

Item 4. Interest of Certain Persons in or Opposition to Matters to Be Acted Upon

A. Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

1. Each person who has been a director or officer of the issuer at any time since the beginning of the last fiscal year;

2. Each nominee for election as a director of the issuer;

3. Each associate of the foregoing persons.

B. Give the name of any director of the issuer who has informed the management in writing that he intends to oppose any action to be taken by the management at the meeting and indicate the action that he intends to oppose.

Item 5. Proposals by Security Holders

If any security holder entitled to vote at the meeting has submitted to the issuer, not less than 90 days before the issuer's annual meeting, a proposal that is accompanied by notice of the security holder's intention to present the proposal "for action at the meeting, make a statement to that effect, identify the proposal" and indicate the disposition proposed to be made of the proposal by the management at the meeting.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00855

Opinion of the Attorney General rendered in connection with the rules adopted by the
Division of Insurance

on 09/30/2014

3 CCR 702-3

FINANCIAL ISSUES

The above-referenced rules were submitted to this office on 10/01/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

October 08, 2014 14:45:09

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Insurance

CCR number

3 CCR 702-3

Rule title

3 CCR 702-3 FINANCIAL ISSUES 1 - eff 01/01/2015

Effective date

01/01/2015

DEPARTMENT OF REGULATORY AGENCIES

DIVISION OF INSURANCE

3 CCR 702-3

FINANCIAL ISSUES

New Regulation 3-2-8

INTERNAL CONTROLS RELATED TO DERIVATIVES

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109(1), and 10-3-243(3), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of Section 10-3-243, C.R.S., regarding domestic insurers that enter into derivative transactions.

Section 3 Applicability

Any domestic insurer that enters into derivative transactions.

Section 4 Definitions

A. "Business Entity" includes a sole partnership, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy or similar form of business organization, whether for-profit or not-for-profit.

B. "Qualified clearinghouse" means a clearinghouse for, and subject to the rules of a qualified exchange or a qualified foreign exchange, which clearinghouse provides clearing services, including acting as a counterparty to each of the parties to a transaction such that the parties no longer have credit risk as to each other.

C. "Qualified exchange" means:

1. A securities exchange registered as a national securities exchange or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. §§ 78 *et seq.*) as amended;

2. A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission or any successor thereof;

3. Private Offerings, Resales and Trading through Automated Linkages (PORTAL);

4. A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 CFR Part 230, as amended; or

5. A qualified foreign exchange

D. "Qualified foreign exchange" means a foreign exchange, board of trade or contract market located outside the United States, its territories or possessions:

1. That has received regulatory comparability relief pursuant to Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 CFR Part 30);

2. That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief pursuant to Commodity Futures Trading Commission Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30) as to futures transactions in the jurisdiction where the exchange, board of trade or contract market is located; or

3. Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, but an exchange, board of trade or contract maker that qualifies as a "qualified foreign exchange" only under this paragraph shall only be a "qualified foreign exchange" as to foreign stock index futures contracts that are the subject of such no-action relief under this paragraph.

Section 5 Guidelines and Internal Control Procedures

A. Before engaging in a derivative transaction, an insurance company shall establish written guidelines, approved by the Commissioner which shall be used for effecting and maintaining derivative transactions. The guidelines shall:

1. Specify insurance company objectives for engaging in derivative transactions and derivative strategies and all applicable risk constraints, including credit risk limits;

2. Establish counterparty exposure limits and credit quality standards;

3. Identify permissible derivative transactions and the relationship of those transactions to insurer operations; for example, a precise identification of the risks being hedged by a derivative transaction; and

4. Require compliance with internal control procedures.

B. An insurer shall have a written methodology for determining whether a derivative instrument used for hedging has been effective.

C. An insurer shall have written policies and procedures describing the credit risk management process and a credit risk management system for over-the-counter derivative transactions that measures credit risk exposure using the counterparty exposure amount.

D. An insurer's board of directors shall:

1. Approve the written guidelines, methodology and policies and procedures required by subsection A, B, and C respectfully, of this section and the systems required by subsections B and C of this section; and

2. Determine whether the insurer has adequate professional personnel, technical expertise and systems to implement investment practices involving derivatives.

3. Review whether derivative transactions have been made in accordance with the approved guidelines and consistent with stated objectives.

4. Take action to correct any deficiencies in internal controls relative to derivative transactions.

Section 6 Commissioner Approval

Written documentation explaining the insurer's internal guidelines and controls governing derivative transactions shall be submitted for approval to the Commissioner. The Commissioner shall have the authority to disapprove the guidelines and controls proposed by the insurer if the insurer cannot demonstrate that the proposed internal guidelines and controls would be adequate to manage the risks associated with the derivative transactions the insurer intends to engage in.

Section 7 Documentation Requirements

An insurance company shall maintain documentation and records relating to each derivative transaction, such as:

A. The purpose or purposes of the transaction;

B. The assets or liabilities to which the transaction relates;

C. The specific derivative instrument used in the transaction;

D. For over-the-counter derivative instrument transactions, the name of the counterparty and the market value; and

For exchange traded derivative instruments, the name of the exchange and the name of the firm that handled the trade and the market value.

Section 8 Trading Requirements

Each derivative instrument shall be:

A. Traded on a qualified exchange;

B. Entered into with, or guaranteed by, a business entity;

C. Issued or written with the issuer of the underlying interest on which the derivative instrument is based; or

D. Entered into with a qualified foreign exchange.

Section 9 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 10 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 11 Effective Date

This regulation shall become effective on January 1, 2015.

Section 12 History

New Regulation, effective January 1, 2015

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State of Colorado
Department of Law

Office of the Attorney General

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Opinion of the Attorney General rendered in connection with the rules adopted by the
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on 09/22/2014

3 CCR 702-3

FINANCIAL ISSUES

The above-referenced rules were submitted to this office on 09/22/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

October 08, 2014 14:46:13

John W. Suthers
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by Daniel D. Domenico
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Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Public Utilities Commission

CCR number

4 CCR 723-6

Rule title

4 CCR 723-6 RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE 1 - eff 11/14/2014

Effective date

11/14/2014

* * *

[indicates omission of unaffected rules]

6007. Financial Responsibility.

(a) Financial responsibility requirements:

(I) Motor vehicle liability coverage. Every motor carrier shall obtain and keep in force at all times motor vehicle liability insurance coverage or a surety bond providing coverage that conforms with the requirements of this rule. Motor vehicle liability means liability for bodily injury and property damage. Coverage shall be combined single limit liability. The minimum level for public entities, as defined in § 24-10-103(5), C.R.S., shall be the maximum amount per § 24-10-114(1), C.R.S. The minimum levels for all other motor carriers shall be:

Type of Carrier	**Vehicle Seating Capacity or GVWR**	**Minimum Level**
Motor Carriers of Passengers	8 or less	$ 500,000
	9 through 15	$1,500,000
	16 through 32	$3,000,000
	33 or more	$5,000,000
Public Entities	Any	The maximum amount per § 24-10-114(1), C.R.S.
Movers	10,000 pounds or more GVWR	$ 750,000
	Less than 10,000 pounds GVWR	$ 300,000
Towing Carriers	Any GVWR	$ 750,000

* * *

[indicates omission of unaffected rules]

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State of Colorado
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Office of the Attorney General

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4 CCR 723-6

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

The above-referenced rules were submitted to this office on 10/01/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

October 15, 2014 14:46:19

John W. Suthers
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by Daniel D. Domenico
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Permanent Rules Adopted

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-3

Rule title

4 CCR 725-3 MORTGAGE LOAN ORIGINATORS AND MORTGAGE COMPANIES 1 - eff 11/14/2014

Effective date

11/14/2014

[THIS PAGE NOT FOR PUBLICATION IN THE CODE OF COLORADO REGULATIONS]

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
MORTGAGE LOAN ORIGINATORS AND MORTGAGE COMPANIES
4 CCR 725-3

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
September 17, 2014

CHAPTER 2: Requirements for Licensure

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Board of Mortgage Loan Originators (the "Board") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Board.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Board of Mortgage Loan Originators is Part 9 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the Mortgage Loan Originator Licensing and Mortgage Company Registration Act.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to amend or repeal existing rules with respect to the requirements for licensure and ensures that mortgage loan originators and mortgage companies are familiar with current regulations.

Proposed New, Amended and Repealed Rules

Deleted material is shown ~~struck through~~, and new material is shown in ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/.

CHAPTER 2: REQUIREMENTS FOR LICENSURE

2.23 Errors and Omissions Insurance

Mortgage loan originators may obtain errors and omissions coverage from the qualified insurance carrier contracted with the Board of Mortgage Loan Originators to offer licensees and license applicants a group policy of insurance or licensees and applicants may obtain errors and omissions coverage independent of the group plan. Mortgage loan originators are deemed compliant with the errors and omissions insurance requirements if their errors and omissions insurance meets the requirements defined in one of the following options:

A. Mortgage loan originators, at a minimum, may acquire and maintain individual errors and omissions insurance in their own name with the following terms of coverage:

1. The contract and policy are in conformance with all relevant Colorado statutory requirements;

2. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;

3. Coverage shall encompass all types of transactions conducted by the mortgage loan originator and shall be in the individual mortgage loan originator's name;

4. Coverage is for not less than $100,000 for each licensed individual per covered claim, with an annual aggregate limit of not less than $300,000 per licensed individual, not including costs of investigation and defense; and

5. Coverage contains a deductible no greater than $1,000, or a deductible no greater than $20,000 for policies that primarily insure reverse mortgage transactions.

6. Prior acts coverage shall be offered to licensees with continuous past coverage.

B. Mortgage loan originators who are employees or exclusive agents for companies with less than 20 individuals who are required to be licensed pursuant to the current Colorado mortgage loan originator licensing laws and who do not work for more than one company, may, at a minimum, operate under the company's errors and omissions insurance policy if the policy meets the following terms of coverage:

1. The contract and policy are in conformance with all relevant Colorado statutory requirements;

2. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;

3. Coverage shall include all activities contemplated under current Colorado mortgage loan originator licensing laws and states this in the policy;

4. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company or by all mortgage loan originators who are exclusive agents of the company;

5. Coverage is for not less than $1,000,000 per covered claim, with an annual aggregate limit of not less than $1,000,000, not including costs of investigation and defense; and

6. Coverage contains a deductible no greater than $50,000.

7. Prior acts coverage shall be offered to licensees with continuous past coverage.

C. Mortgage loan originators who are W-2 employees or exclusive agents for companies with 20 or more employees and who do not work for more than one company, may, at a minimum, operate under the company's errors and omissions insurance policy if the policy meets the following terms of coverage:

1. The contract and policy are in conformance with all relevant Colorado statutory requirements;

2. Coverage includes all acts for which a mortgage loan originator license is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage;

3. Coverage shall include all activities contemplated under current Colorado mortgage loan originator licensing laws and states this in the policy;

4. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company or by all mortgage loan originators who are exclusive agents of the company;

5. Coverage shall encompass all types of transactions conducted by all of the mortgage loan originators employed at the company;

6. Coverage is for not less than $1,000,000 per covered claim, with an annual aggregate limit of not less than $2,000,000 not including costs of investigation and defense; and

7. Coverage contains a deductible no greater than $100,000.

8. Prior acts coverage shall be offered to licensees with continuous past coverage.

2.24 Regarding company errors and omissions insurance policies, the company shall provide the Board, or an authorized representative of the Board, with any and all requested errors and omissions insurance policies relevant to Rule 2.23 or current Colorado mortgage loan originator licensing laws and shall verify and provide adequate proof regarding the timeline of employment for each individual operating under such company policy. Failure on the part of the company to provide such information shall result in non-compliance regarding the errors and omissions insurance requirement for individual licensees operating under the company's errors and omissions insurance policy.

2.25 Mortgage loan originators shall be required to provide proof of continuous errors and omissions insurance coverage and that all required information is current. The mortgage loan originator may update all required information electronically on the Division of Real Estate's website.

2.26 Any licensee who so fails to obtain and maintain an errors and omissions insurance coverage in accordance with Board rules or fails to provide proof of continuous coverage shall be subject to disciplinary action.

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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00818

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Division of Real Estate

on 09/17/2014

4 CCR 725-3

MORTGAGE LOAN ORIGINATORS AND MORTGAGE COMPANIES

The above-referenced rules were submitted to this office on 09/17/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

October 03, 2014 10:23:52

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Permanent Rules Adopted

Department

Department of Public Health and Environment

Agency

Health and Environmental Information and Statistics Division - promulgated by Colo Bd of Health

CCR number

5 CCR 1006-2

Rule title

5 CCR 1006-2 MEDICAL USE OF MARIJUANA 1 - eff 11/14/2014

Effective date

11/14/2014

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Health and Environmental Information and Statistics Division

MEDICAL USE OF MARIJUANA

5 CCR 1006-2

Adopted by the Board of Health on September 16, 2014

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

[Publication Instructions: Replace entire current existing text with the following text.]

Regulation 1: Establishment and confidentiality of the registry for the medical use of marijuana

A. The Colorado Department of Public Health and Environment ("the department") shall create and maintain a confidential registry ("the registry") of patients who have applied for and are entitled to receive a registry identification card.

1. All personal medical records and personal identifying information held by the department in compliance with these regulations shall be confidential information.

2. No person shall be permitted to gain access to any information about patients in this registry, or any information otherwise maintained in the registry by the department about physicians and primary care-givers of patients in the registry, except for authorized employees of the department in the course of their official duties and authorized employees of state and local law enforcement agencies which have stopped or arrested a person who claims to be engaged in the medical use of marijuana and in possession of a registry identification card issued pursuant to regulations two and three, or the functional equivalent of the registry identification card.

    a. Department employees may, upon receipt of an inquiry from a state or local law enforcement agency, confirm that a registry identification card has been suspended when a patient is no longer diagnosed as having a debilitating medical condition.

    b. Authorized department employees may respond to an inquiry from state or local law enforcement regarding the registry status of a patient or primary care-giver by confirming that the person is or is not registered. The information released to state and local law enforcement must be the minimum necessary to confirm registry status.

    c. Authorized state and local law enforcement employees shall validate their inquiry of a patient or primary care-giver by producing the registry identification card number of a patient, or name, date of birth, and last four digits of the individual's social security number of the individual under inquiry if the person does not have a registry identification card.

    d. Authorized department employees may confirm a waiver for homebound or minor patients' transportation of medical marijuana from a medical marijuana center or a waiver for a primary care-giver serving more than five patients, upon state or local law enforcement inquiry. The minimum necessary information shall be communicated to confirm or deny a waiver.

3. The department may release information concerning a specific patient to that patient with the written authorization of such patient.

4. Primary care-givers and potential primary care-givers may authorize the inclusion of their contact information in the voluntary caregiver registry maintained by the department to allow authorized department staff to release their contact information to new registry patients only in accordance with Regulation 9(c) below.

B. Any officer or employee or agent of the department who violates this regulation by releasing or making public confidential information in the registry shall be subject to any existing statutory penalties for a breach of confidentiality of the registry.

C. Definitions

1. An "adult applicant" is defined as a patient eighteen years of age or older.

2. A "minor applicant" is defined as a patient less than eighteen years of age.

3. “Council” means the medical marijuana scientific advisory council appointed by the executive director of the Colorado department of public health and environment per requirements established in section 25-1.5-106.5, C.R.S.

4. “Grant program” means the Colorado medical marijuana research grant program created in section 25-1.5-106.5, C.R.S. to fund research intended to ascertain the efficacy of administering marijuana and its component parts as part of medical treatment.

5. "Primary care-giver" or “primary caregiver” means a person other than the patient and the patient’s physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition

6. "Significant responsibility for managing the well-being of a patient" means, in addition to the ability to provide medical marijuana, regularly assisting a patient with activities of daily living, including but not limited to transportation or housekeeping or meal preparation or shopping or making any necessary arrangement for access to medical care or other services unrelated to medical marijuana. The act of supplying medical marijuana or marijuana paraphernalia, by itself, is insufficient to constitute "significant responsibility for managing the well-being of a patient."

Regulation 2: Application for a registry identification card

A. In order to be placed in the registry and to receive a registry identification card, an adult applicant must reside in Colorado and complete an application form supplied by the department, and have such application notarized and signed and include the fee payment. The adult applicant must provide the following information with the application:

1. The applicant’s name, address, date of birth, and social security number;

2. At the time of application, the patient will indicate whether he or she will utilize a primary care-giver or a medical marijuana center. Minor patients must have a primary care-giver on record. Patients who are designated by their physician as homebound may request a waiver to list both a primary care-giver and a medical marijuana center. If the primary care-giver is not growing medical marijuana for the patient, the patient may designate a medical marijuana center to grow his/her marijuana plants.

   a. If a care-giver is selected on the application, the patient will identify the care-giver’s name and address. This information will be entered into the patient’s record and reflected on the registration card.

b. If a medical marijuana center is selected on the application, the patient's record will reflect the patient has designated a medical marijuana center to grow his/her marijuana. Specific medical marijuana center information will not be reflected on the registration card nor in the patient record.

3. Written documentation from the applicant's physician that the applicant has been diagnosed with a debilitating medical condition as defined in regulation six and the physician's conclusion that the applicant might benefit from the medical use of marijuana;

4. A statement from the physician if the patient is homebound, if applicable;

5. The name, address, and telephone number of the physician who has concluded the applicant might benefit from the medical use of marijuana; and

6. A copy of a secure and verifiable identity document, in compliance with the Secure and Verifiable Document Act, C.R.S. §24-72.1-101 et seq., for the patient and primary care-giver, if any is designated.

7. Proof of residency must be established at time of application. Proof of residency must contain a photograph and date of birth, the following can be used to establish Colorado residency:

   a. Valid state of Colorado driver's license;

   b. Valid state of Colorado identification card; or

   c. Any other valid government-issued picture identification that demonstrates that the holder of the identification is a Colorado resident.

   d. No combination of identification or documents may be used to establish residency.

8. Applicants who are unable to provide the above-required proof of identification and/or residency paperwork may submit a request for a documentation waiver. When evaluating a request for waiver of the above proof of residency requirements, the department will consider the totality of the valid documentation. Some factors that may be considered when determining residency include:

   a. Whether the applicant can document that his primary or principal home or place of abode is in Colorado;

   b. Whether the applicant can provide evidence of Colorado business pursuits, place of employment, or income sources,

   c. Whether the applicant can document Colorado residence for income or other tax purposes;

   d. If the applicant can document the age, residence of parents, spouse and children, if any;

   e. The situs of the applicant's personal and real property;

   f. The existence of any other residences outside of Colorado and the amount of time spent at each such residence;

   g. Any motor vehicle or vessel registration, or;

   h. Recent property tax receipts, recent income tax returns where a Colorado mailing address is used as the primary address, current voter registration cards, or other similar public records.

B. In order for a minor applicant to be placed in the registry and to receive a registry identification card, the minor applicant must reside in Colorado and a parent residing in Colorado must consent in writing to serve as the minor applicant's primary care-giver. Such parent must complete an application form supplied by the department, and have such application notarized, signed and include fee payment. The parent of the minor applicant must provide the following information with the application:

1. The applicant's name, address, date of birth, and social security number;

2. Written documentation from two of the applicant's physicians that the applicant has been diagnosed with a debilitating medical condition as defined in regulation six and each physician's conclusion that the applicant might benefit from the medical use of marijuana;

3. The name, address, and telephone number of the two physicians who have concluded the applicant might benefit from the medical use of marijuana;

4. Consent from each of the applicant's parents residing in Colorado that the applicant may engage in the medical use of marijuana;

5. Documentation that one of the physicians referred to in (iii) has explained the possible risks and benefits of medical use of marijuana to the applicant and each of the applicant's parents residing in Colorado; and

6. Indicate if a medical marijuana center has been designated to grow for the patient.

C. To maintain an effective registry identification card, a patient must annually resubmit to the department, at least thirty days prior to the expiration date, but no sooner than sixty days prior to the expiration date, updated written documentation of the information required in paragraphs A and B of this regulation.

D. A patient may change his or her primary care-giver with the department no more than once per month. A patient may change his or her primary care-giver by submitting such information on the form and in the manner as directed by the department within ten days of the change occurring. The department does not process patient requests to change his or her designated medical marijuana center; a patient wishing to change his or her designated medical marijuana center should reference the requirements established by the department of revenue's marijuana enforcement division.

E. Rejected applications. Rejected applications shall not be considered pending applications, and shall not be subject to the requirement in the Constitution that applications be deemed approved after thirty-five days. The department may reject as incomplete any patient application for any of the following reasons:

1. If information contained in the application is illegible or missing;

2. If the application is not notarized; or

3. The physician(s) is/are not eligible to recommend the use of marijuana.

4. An applicant shall have (60) days from the date the department mails the rejected application to make corrections and resubmit the application.

F. Denied applications. The department may deny an application for any of the following reasons:

1. The physician recommendation is falsified;

2. Any information on the application is falsified;

3. The identification card that is presented with the application is not the patient's identification card;

4. The applicant is not a Colorado resident;

5. If the department has twice rejected the patient's application, and the applicant's third submission is incomplete.

If the department denies an application, then the applicant may not submit a new application until six months following the date of denial and may not use the application as a registry card. If the basis for denial is falsification, law enforcement shall be notified of any fraud issues.

G. The department may revoke a registry identification card for one year if the patient has been found to have willfully violated the provisions of article xviii, section 14 of the Colorado Constitution or C.R.S. § 25-1.5-106.

H. A patient who has been convicted of a criminal offense under article 18 of title 18, C.R.S., sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to the division of youth corrections shall be subject to immediate renewal of his/her registry identification card. Such patient may only reapply with a new physician recommendation from a physician with whom the patient has a bona fide relationship.

1. The patient shall remit the registry card to the department within 24 hours of the conviction/sentence/court order.

2. The patient may complete and submit a renewal application for a registry card including a new recommendation from a physician with a bona fide relationship.

I. Appeals. If the department denies an application or, suspends or, revokes a registry identification card, the department shall provide the applicant/patient with notice of the grounds for the denial, suspension, or revocation, and shall inform the patient of the patient's right to request a hearing. A request for hearing shall be submitted to the department in writing within thirty (30) calendar days from the date of the postmark on the notice.

1. If a hearing is requested, the patient shall file an answer within thirty (30) calendar days from the date of the postmark on the notice.

2. If a request for a hearing is made, the hearing shall be conducted in accordance with the state Administrative Procedures Act, § 24-4-101, et seq., C.R.S.

3. If the patient does not request a hearing in writing within thirty (30) calendar days from the date of the notice, the patient is deemed to have waived the opportunity for a hearing.

Regulation 3: Verification of medical information; issuance, denial, revocation, and form of registry identification cards

A. The department shall verify medical information contained in the patient's application within thirty days of receiving the application. Verification of medical information shall consist of determining that there is documentation stating the applicant has a current diagnosis with a debilitating medical condition as defined in regulation six, by a physician who has a current active, unrestricted and unconditioned license as defined in Regulation 8 to practice medicine issued by the State of Colorado, which license is in good standing, and who has a bona fide physician patient relationship with the patient as defined in regulation eight.

B. No more than five days after verifying medical information of the applicant, the department shall issue a serially numbered registry identification card to the patient. The card shall state the following:

i) The patient's name, address, date of birth, and social security number;

ii) That the patient's name has been certified to the department as a person with a debilitating medical condition, whereby the person may address such condition with the medical use of marijuana;

iii) The date of issuance of such card and the date of expiration, which shall be one year from the date of issuance;

iv) The name and address of the patient's primary care-giver, if any is designated at the time of application;

v) How to notify the department of any change in name, address, medical status, physician, or primary care-giver.

C. Except for minor applicants, where the department fails within thirty-five days of receipt of application to issue a registry identification card or fails to issue verbal or written notice of denial of such application, the patient's application for such card will be deemed to have been approved. "Receipt" shall be deemed to have occurred upon delivery to the department or deposit in the United States mail. No application shall be deemed received prior to June 1, 2001.

D. The department shall deny the application if it determines that information has been falsified or it cannot verify the medical information as provided in paragraph A of this regulation. A patient whose application has been denied by the department may not reapply during the six months following the date of denial. The denial of a registry identification card shall be considered a final agency action.

E. In addition to any other penalties provided by law, the department shall revoke for a period of one year the registry identification card of any patient found to have willfully violated the provisions of Section 14 of Amendment 20 of the Colorado Constitution or the implementing legislation of Section 14.

Regulation 4: Change in applicant information

A. When there has been a change in the name, address, physician or primary care-giver of a patient who has been issued a registry identification card, that patient must notify the department within ten days by submitting a completed and notarized Change of Address or Care-giver form as prescribed by the Department. A patient who has not designated a primary care-giver at the time of application to the department may do so in writing at any time during the effective period of the registry identification card, and the primary care-giver may act in this capacity after such designation. The Department shall not issue a new registry identification card to the patient on the sole basis of a new or change of primary care-giver.

B. A patient who no longer has a debilitating medical condition as defined in regulation six shall return his registry identification card to the department within twenty-four hours of receiving such information by his or her physician.

Regulation 5: Communications with law enforcement officials about patients in the registry

A. Authorized employees of state or local law enforcement agencies shall be granted access to the information contained within the department's registry only for the purpose of verifying that an individual who has presented a registry identification card to a state or local law enforcement official is lawfully in possession of such card. The department shall report to authorized state or local law enforcement officials whether a patient's registry identification card has been suspended because the patient no longer has a debilitating medical condition.

B. Authorized employees of state or local law enforcement agencies shall immediately notify the department when any person in possession of a registry identification card has been determined by a court of law to have willfully violated the provisions of this section 14 of the Colorado constitution or its implementing legislation, or has pled guilty to such offense.

Regulation 6: Debilitating medical conditions and the process for adding new debilitating medical conditions

A. Debilitating medical conditions are defined as cancer, glaucoma, and infection with or positive status for human immunodeficiency virus. Patients undergoing treatment for such conditions are defined as having a debilitating medical condition.

B. Debilitating medical condition also includes a chronic or debilitating disease or medical condition other than HIV infection, cancer or glaucoma; or treatment for such conditions, which produces for a specific

patient one or more of the following, and for which, in the professional opinion of the patient's physician, such condition or conditions may reasonably be alleviated by the medical use of marijuana: cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis.

C. Patients who have had a diagnosis of a debilitating medical condition in the past but do not have active disease and are not undergoing treatment for such condition are not suffering from a debilitating medical condition for which the medical use of marijuana is authorized.

D. The department shall accept physician or patient petitions to add debilitating medical conditions to the list provided in paragraphs A and B of this regulation, and shall follow the following procedures in reviewing such petitions.

1. Receipt of petition; review of medical literature. Upon receipt of a petition, the executive director, or his or her designee, shall review the information submitted in support of the petition and shall also conduct a search of the medical literature for peer-reviewed published literature of randomized controlled trials or well-designed observational studies in humans concerning the use of marijuana for the condition that is the subject of the petition using PUBMED, the official search program for the National Library of Medicine and the National Institutes of Health, and the Cochrane Central Register of Controlled Trials.

2. Department denial of petitions. The department shall deny a petition to add a debilitating medical condition within (180) days of receipt of such petition without any hearing of the board in all of the following circumstances:
   a. If there are no peer-reviewed published studies of randomized controlled studies nor well-designed observational studies showing efficacy in humans for use of medical marijuana for the condition that is the subject of the petition;

   b. If there are peer-reviewed published studies of randomized controlled trials or well-designed observational studies showing efficacy in humans for the condition that is the subject of the petition, and if there are studies that show harm, other than harm associated with smoking such as obstructive lung disease or lung cancer, and there are alternative, conventional treatments available for the condition;

   c. If the petition seeks the addition of an underlying condition for which the associated symptoms that are already listed as debilitating medical conditions for which the use of medical marijuana is allowed, such as severe pain, are the reason for which medical marijuana is requested, rather than for improvement of the underlying condition; or

   d If a majority of the ad hoc medical advisory panel recommends denial of the petition in accord with paragraph (3) of this section D.

3. Medical marijuana scientific advisory council.

   a. The medical marijuana scientific advisory council shall perform all of the following duties:
      i. Objectively evaluate research proposals and provide a peer review process that guards against funding research that is biased in favor or against particular outcomes for proposals submitted for the Colorado medical marijuana research grant program;

      ii. Provide policy guidance in the creation and implementation of the Colorado medical marijuana research grant program and in scientific oversight and review, and;

      iii. Review petitions to add a debilitating medical condition to the registry and make a denial or approval recommendation to the department.

   b. The medical marijuana scientific advisory panel council will review petitions to add debilitating medical conditions if the conditions for denial set forth in paragraphs (2)(A),(B) and (C) of this section d are not met. When reviewing petitions to add debilitating medical conditions to the

registry, the ad hoc member of the council may be replaced by an ad hoc physician in the field relevant to the petition. Such individual may be recommended by the petitioner.

c. The council shall review the petition information presented to the department and any further medical research related to the condition requested, and make recommendations to the executive director, or his or her designee, regarding the petition.

d. Within (120) days of receipt of a petition to add a debilitating medical condition, the department shall petition the board for a rulemaking hearing to consider adding the condition to the list of debilitating medical conditions if the council recommends approval of the petition to add the condition.

4. Final agency action. The following actions are final agency actions, subject to judicial review pursuant to C.R.S. § 24-4-106:

a. Department denials of petitions to add debilitating medical conditions.

b. Board of health denials of rules proposed by the department to add a condition to the list of debilitating medical conditions for the medical marijuana program

Regulation 7: Determination of fees to pay for administrative costs of the medical use of marijuana program

A. Application fee. Effective February 1, 2014, the department shall collect fifteen dollars from each applicant at the time of application to pay for the direct and indirect costs to administer the medical use of marijuana program, unless the applicant meets the criteria set forth in section (b) of this Regulation (7) establishing indigence. Such fee shall not be refundable to the applicant if the application is denied or revoked or if the patient no longer has a debilitating medical condition. The amount of the fee shall be evaluated annually by the department to ensure compliance with the applicable statutes and the fee meets the actual Medical Marijuana Registry expenses. The department shall propose modifications to the board, as appropriate. If the patient provides updated information at any time during the effective period of the registry identification card, the department shall not charge a fee to modify the registry information concerning the patient.

B. Indigence fee waiver. Any individual submitting an application for the registry may request an indigence fee waiver if he or she submits at the time of application a copy of the applicant's state tax return certified by the department of revenue that confirms that the applicant's income does not exceed one hundred eighty-five percent of the federal poverty line, adjusted for family size.

C. Notification of indigent status. Individuals who meet the indigence standard after they have been approved for the medical marijuana registry may complete a form, to be determined by the department, notifying the department of their status and supplying a copy of the applicant's state tax return certified by the department of revenue that confirms that the applicant's income does not exceed one hundred eighty-five percent of the federal poverty line, adjusted for family size. Upon receipt and confirmation of the information, the department shall issue a new medical marijuana registry card for the remaining term of the current card noting said indigent status for tax exemption purposes.

Regulation 8: Physician requirements; reasonable cause for referrals of physicians to the Colorado Medical Board; reasonable cause for department adverse action concerning physicians; appeal rights

A. **Physician Requirements.** A physician who certifies a debilitating medical condition for an applicant to the medical marijuana program shall comply with all of the following requirements:

1. **Colorado license to practice medicine.** The physician shall have a valid, unrestricted Colorado license to practice medicine, which license is in good standing.

a. for the purposes of certifying a debilitating medical condition of an applicant and

recommending the use of medical marijuana for the medical marijuana program, "in good standing" means:

i. The physician holds a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school.

ii. The physician holds a valid license to practice medicine in Colorado that does not contain a restriction or condition that prohibits the recommendation of medical marijuana or for a license issued prior to July 1, 2011, a valid, unrestricted and unconditioned; and

iii. The physician has a valid and unrestricted United States Department of Justice federal drug enforcement administration controlled substances registration.

2. **Bona fide physician patient relationship.** A physician who meets the requirements in subsection A.1 of this Regulation 8 and who has a bona fide physician-patient relationship with a particular patient may certify to the state health agency that the patient has a debilitating medical condition and that the patient may benefit from the use of medical marijuana. If the physician certifies that the patient would benefit from the use of medical marijuana based on a chronic or debilitating disease or medical condition, the physician shall specify the chronic or debilitating disease or medical condition and, if known, the cause or source of the chronic or debilitating disease or medical condition.

a. "Bona fide physician-patient relationship", for purposes of the medical marijuana program, means:

i. A physician and a patient have a treatment or counseling relationship, in the course of which the physician has completed a full assessment of the patient's medical history and current medical condition, including an appropriate personal physical examination;

ii. The physician has consulted with the patient with respect to the patient's debilitating medical condition before the patient applies for a registry identification card; and

iii. The physician is available to or offers to provide follow-up care and treatment to the patient, including but not limited to patient examinations, to determine the efficacy of the use of medical marijuana as a treatment of the patient's debilitating medical condition.

b. A physician making medical marijuana recommendations shall comply with generally accepted standards of medical practice, the provisions of the medical practice act, § 12-36-101 *et seq.*, C.R.S, and all Colorado Medical Board rules.

c. The "appropriate personal physical examination" required by paragraph A.2.a.i of this Regulation 8 may not be performed by remote means, including telemedicine.

3. **Medical records.** The physician shall maintain a record-keeping system for all patients for whom the physician has recommended the medical use of marijuana. Pursuant to an investigation initiated by the Colorado medical board, the physician shall produce such medical records to the Colorado Medical Board after redacting any patient or primary caregiver identifying information.

4. **Financial prohibitions.** A physician shall not:

a. Accept, solicit, or offer any form of pecuniary remuneration from or to a primary caregiver, distributor, or any other provider of medical marijuana;

b. Offer a discount or any other thing of value to a patient who uses or agrees to use a particular primary caregiver, distributor, or other provider of medical marijuana to procure medical marijuana;

c. Examine a patient for purposes of diagnosing a debilitating medical condition at a location where medical marijuana is sold or distributed; or

d. Hold an economic interest in an enterprise that provides or distributes medical marijuana if the physician certifies the debilitating medical condition of a patient for participation in the

medical marijuana program.

B. **Reasonable cause for referral of a physician to the Colorado Medical Board.** For reasonable cause, the department may refer a physician who has certified a debilitating medical condition of an applicant to the medical marijuana registry to the Colorado Medical Board for potential violations of sub-paragraphs 1, 2, and 3 of paragraph A of this rule.

C. **Reasonable cause for department sanctions concerning physicians.** For reasonable cause, the department may sanction a physician who certifies a debilitating medical condition for an applicant to the medical marijuana registry for violations of paragraph A.4 of this rule. Reasonable cause shall include, but not be limited to:

1. The physician is housed onsite and/or conducts patient evaluations for purposes of the medical marijuana program at a location where medical marijuana is sold or distributed, such as a medical marijuana center, optional grow site, medically infused products manufacturer, by a primary care-giver, or other distributor of medical marijuana.

2. A physician who holds an economic interest in an entity that provides or distributes medical marijuana, such as a medical marijuana center, an infused products manufacturer, an optional grow site, a primary care-giver, or other distributor of medical marijuana.

3. The physician accepts, offers or solicits any form of pecuniary remuneration from or to a primary care-giver, medical marijuana center, optional grow site, medically infused product manufacturer, or any other distributor of medical marijuana.

4. The physician offers a discount or any other thing of value, including but not limited to a coupon for reduced-price medical marijuana or a reduced fee for physician services, to a patient who agrees to use a particular medical marijuana center, primary care-giver, or other distributor of medical marijuana.

D. **Sanctions.** For reasonable cause, the department may propose any of the following sanctions against a physician:

1. Revocation of the physician's ability to certify a debilitating medical condition and recommend medical marijuana for an applicant to the medical marijuana registry; or

2. Summary suspension of the physician's ability to certify a debilitating medical condition or recommend medical marijuana for an applicant to the medical marijuana registry when the department reasonably and objectively believes that a physician has deliberately and willfully violated section 14 of article xviii of the state constitution or § 25-1.5-106, C.R.S. and the public health, safety and welfare imperatively requires emergency action.

E. **Appeals.** If the department proposes to sanction a physician pursuant to paragraph c of this rule, the department shall provide the physician with notice of the grounds for the sanction and shall inform the physician of the physician's right to request a hearing.

1. A request for hearing shall be submitted to the department in writing within thirty (30) calendar days from the date of the postmark on the notice.

2. If a hearing is requested, the physician shall file an answer within thirty (30) calendar days from the date of the postmark on the notice.

3. If a request for a hearing is made, the hearing shall be conducted in accordance with the state administrative procedures act, § 24-4-101 *et seq.* , C.R.S.

4. If the physician does not request a hearing in writing within thirty (30) calendar days from the date of the notice, the physician is deemed to have waived the opportunity for a hearing.

Regulation 9: Primary care-giver-patient relationship and primary care-giver rules

A. A patient who designates a primary care-giver for him or herself cannot also be a primary care-giver to another patient.

B. A person shall be listed as a primary care-giver for no more than five patients in the medical marijuana registry at any given time unless a waiver as set forth in Regulation Ten has been granted for exceptional circumstances.

C. An existing primary care-giver may indicate to the department at the time of registration on a form to be developed by the department if the primary care-giver is available to serve more patients. An individual who is not a registered primary care-giver, but who would like to become one may submit contact information to the registry. The primary care-giver or prospective primary care- giver shall waive confidentiality to allow release of contact information to physicians or registered patients only. The department may provide the information but shall not endorse or vouch for any primary care-giver or prospective primary care-giver.

D. A primary care-giver if asked by law enforcement shall provide a list of registry identification numbers for each patient. If a waiver has been granted for the primary care-giver to serve more than five patients, this will be noted on the department record of primary care-givers and will be available for verification to law enforcement upon inquiry to the department.

E. A primary care-giver shall have his/her primary registration card available on his/her person at all times when in possession of marijuana and produce it at the request of law enforcement. The only exception to this shall be when it has been more than thirty-five days since the date the patient filed his or her medical marijuana application and the department has not yet issued or denied a registry identification card. A copy of the patient's application along with proof of the date of submission shall be in the primary care-giver's possession at all times that the primary care-giver is in possession of marijuana. The primary care-giver may redact all confidential patient information from the application other than the patient's name and date of birth.

F. A patient may only have one primary care-giver at a time. If a patient does not require care-giver services other than the provision of medical marijuana, then the patient shall not designate a primary care-giver.

G. A designated primary care-giver shall not delegate the responsibility of provision of medical marijuana for a patient to another person.

H. A primary care-giver shall not join together with another primary care-giver for the purpose of growing marijuana. Any marijuana grows by a care-giver shall be physically separate from grows by other primary care-givers and licensed growers or medical marijuana centers, and a primary care-giver shall not grow marijuana for another primary care-giver. If two or more care-givers reside in the same household and each grows marijuana for their registered patients, the marijuana grows must be maintained in such a way that the plants and/or ounces grown and or maintained by each primary care-giver are separately identified from any other primary care-givers plants and/or ounces.

I. A primary care-giver shall not establish a business to permit patients to congregate and smoke or otherwise consume medical marijuana.

J. A primary care-giver shall not:

1. Engage in the medical use of marijuana in a way that endangers the health and well-being of a person;

2. Engage in the medical use of marijuana in plain view of or in a place open to the general public;

3. Undertake any task while under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice;

4. Possess medical marijuana or otherwise engage in the use of medical marijuana in or on the grounds of a school or in a school bus;

5. Engage in the use of medical marijuana while:

    a. In a correctional facility or a community corrections facility;

    b. Subject to a sentence to incarceration; or c. In a

        vehicle, aircraft, or motorboat;

6. Operate, navigate, or be in actual physical control of any vehicle, aircraft, or motorboat while under the influence of medical marijuana; or

7. Provide medical marijuana if the patient does not have a debilitating medical condition as diagnosed by the person's physician in the course of a bona fide physician-patient relationship and for which the physician has recommended the use of medical marijuana.

K. A primary care-giver may charge a patient no more than the cost of cultivating or purchasing the medical marijuana, and may also charge for care-giver services. Such care-giver charges shall be appropriate for the care-giver services rendered and reflect market rates for similar care-giver services and not costs associated with procuring the marijuana.

L. A primary care-giver shall have significant responsibility for managing the well-being of a patient with a debilitating condition. The relationship between a primary care-giver and patient is to be a significant relationship that is more than provision of medical marijuana or medical marijuana paraphernalia. Services beyond the provision of medical marijuana that may be provided by the primary care-giver include, but shall not be limited to, transportation or housekeeping or meal preparation or shopping or making arrangements for access to medical care or other services unrelated to medical marijuana. If patients do not require care-giver service other than the provision of medical marijuana, then the patients shall not designate a primary care-giver.

Regulation 10: Waiver for primary care-givers to serve more than five patients

A. In exceptional circumstances, a waiver may be granted by the department for the purpose of allowing a primary care-giver to serve more than five patients. A separate waiver application will be required by each patient seeking to use a primary care-giver who is already at the five patient limit. If the department does not act upon the waiver application within 35 days, the waiver shall be deemed approved until acted upon by the department.

B. Waiver applications shall be submitted to the department on the form and in the manner required by the department.

C. The patient and primary care-giver shall provide the department such information and documentation as the department may require validating the conditions under which the waiver is being sought.

D. In acting on the waiver application, the department shall consider at a minimum all of the following:

1. The information submitted by the patient applicant;

2. The information submitted by the primary care-giver;

3. County-wide prohibitions on medical marijuana centers;

4. The proximity of medical marijuana centers to the patient;

5. Whether granting the waiver would either benefit or adversely affect the health, safety or welfare of the patient; and

6. What services beyond providing medical marijuana the patient applicant needs from the proposed primary care-giver.

E. The department may specify terms and conditions under which any waiver is granted, and which terms and conditions must be met in order for the waiver to remain in effect.

F. The term for the waiver shall be one year unless the care-giver reduces the number of patients he or she serves during that year to five or fewer, at which time the waiver shall expire. The care-giver shall notify the department in writing when he or she no longer provides care-giver services to a patient.

G. At any time, upon reasonable cause, the department may review any existing waiver to ensure that the terms and conditions of the waiver are being observed and or that the continued existence of the waiver is appropriate.

H. The department may revoke a waiver if it determines that any one of the following is met:

1. The waiver jeopardizes the health, safety and welfare of patients;

2. The patient applicant or care-giver has provided false or misleading information in the application;

3. The patient applicant or care-giver has failed to comply with the terms or conditions of the waiver;

4. The conditions under which a waiver was granted no longer exist or have materially changed; or

5. A change in state law or regulation prohibits or is inconsistent with the continuation of the waiver.

I. The department will provide notice of the revocation of the waiver to the registered patient and the care-giver at the time the waiver is revoked.

J. Appeals. If the department proposes to deny, condition, revoke or suspend a waiver for a primary care-giver to serve more than five patients, the department shall provide the patient with notice of the grounds for the action and shall inform the patient of the patient's right to request a hearing.

1. A request for hearing shall be submitted to the department in writing within thirty (30) calendar days from the date of the postmark on the notice.

2. If a hearing is requested, the patient shall file an answer within thirty (30) calendar days from the date of the postmark on the notice.

3. If a request for a hearing is made, the hearing shall be conducted in accordance with the state Administrative Procedures Act, § 24-4-101 *et seq.*, C.R.S.

4. If the patient does not request a hearing in writing within thirty (30) calendar days from the date of the notice, the patient is deemed to have waived the opportunity for a hearing.

Regulation 11: Waiver for primary care-givers to deliver medical marijuana products from a medical marijuana center.

A. If the physician recommending the marijuana checks on the recommending form that the patient is homebound, a waiver will be granted allowing a designated primary care-giver to transport marijuana from a medical marijuana center to the patient.

B. The term for the waiver shall be the same as the effective dates of the patient's registry identification card.

C. At any time, upon reasonable cause, the department may review any existing waiver to ensure that the terms and conditions of the waiver are being observed and or that the continued existence of the waiver is appropriate.

D. The department may revoke a waiver if it determines that any of the following are met:

1. The waiver jeopardizes the health, safety and welfare of patients;

2. The patient applicant has provided false or misleading information in the application;

3. The patient applicant has failed to comply with the terms or conditions of the waiver;

4. The conditions under which a waiver was granted no longer exist or have materially changed; or

5. A change in state law or regulation prohibits or is inconsistent with the continuation of the waiver.

E. Primary care-givers for minors shall have a waiver for transportation automatically granted as part of a successful application process if the patient application indicates that the minor's primary care- giver will be purchasing medical marijuana from a medical marijuana center. The term of the waiver will coincide with the term of the registry identification card.

F. The department will provide notice of the revocation of the waiver to the patient and the primary care-giver at the time the waiver is revoked.

G. Appeals. If the department proposes to deny, condition, revoke or suspend a waiver for a primary care-giver to deliver medical marijuana products to a homebound patient, the department shall provide the patient with notice of the grounds for the action and shall inform the patient of the patient's right to request a hearing.

1. A request for hearing shall be submitted to the department in writing within thirty (30) calendar days from the date of the postmark on the notice.

2. If a hearing is requested, the patient shall file an answer within thirty (30) calendar days from the date of the postmark on the notice.

3. If a request for a hearing is made, the hearing shall be conducted in accordance with the state Administrative Procedures Act, § 24-4-101 *et seq.* , C.R.S.

4. If the patient does not request a hearing in writing within thirty (30) calendar days from the date of the notice, the patient is deemed to have waived the opportunity for a hearing.

Regulation 12: Patient Responsibilities.

A. A patient shall provide his/her care-giver with a copy of his/her application, physician certification and registration card, once issued. A copy of the patient's application and registration card shall be in the primary care-giver's possession at all times that the primary care-giver is in possession of marijuana. The patient may obscure or redact the mailing address and social security number on the copy of the application or registration card given to the primary care-giver.

B. When a patient changes his or her primary care-giver, the patient shall submit notice of the change on the form and in the manner as directed by the department. The patient shall give a copy of the submitted form to the primary care-giver. The patient may obscure or redact the mailing address and social security number on the copy of the form given to the primary care-giver.

C. A patient shall not:

1. Engage in the medical use of marijuana in a way that endangers the health and well-being of a person;

2. Engage in the medical use of marijuana in plain view of or in a place open to the general

public;

3. Undertake any task while under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice;

4. Possess medical marijuana or otherwise engage in the use of medical marijuana in or on the grounds of a school or in a school bus;

5. Engage in the use of medical marijuana while:

   a. In a correctional facility or a community corrections facility;

   b. Subject to a sentence to incarceration;

   c. In a vehicle, aircraft, or motorboat; or

   d. As otherwise ordered by the court.

6. Operate, navigate, or be in actual physical control of any vehicle, aircraft, or motorboat while under the influence of medical marijuana; or

7. Use medical marijuana if the patient does not have a debilitating medical condition as diagnosed by the person's physician in the course of a bona fide physician-patient relationship and for which the physician has recommended the use of medical marijuana.

D. A patient who no longer has a debilitating medical condition shall return his or her registry identification card to the department within twenty-four hours of receiving such diagnosis by his or her physician.

E. A patient shall notify the department if convicted of a criminal offense under article 18 of title 18, C.R.S., sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to the division of youth corrections. The patient shall be subject to immediate renewal of his/her registry identification card. Such patient may only reapply with a new physician recommendation from a physician with whom the patient has a bona fide relationship.

   1. The patient shall remit the registry card to the department within 24 hours of the conviction/sentence/court order.

   2. The patient may complete and submit a new application for a registry card including a new recommendation from a physician with a bona fide relationship.

F. A patient shall not establish a business to permit other patients to congregate and smoke or otherwise consume medical marijuana.

Regulation 13: Subpoenas for Registry Information

A. The department shall require that a fee be paid to the department for any subpoena served. The fee shall be paid at the time of service of any subpoena upon the department plus a fee for meals and mileage at the rate prescribed for state officers and employees in Section 24-9-104, C.R.S. for each mile actually and necessarily traveled in going to and retuning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the department for each day of attendance to cover the expenses of the person named in the subpoena.

B. The subpoena fee is $200 for the first (4) hours of appearance or on-call or travel time to court, excluding mileage, meals and lodging which shall be paid at state employee per diem rates. Beyond the first (4) hours, the subpoena fee shall be the actual hourly rate of the witness employee.

C. The subpoena fee shall not be applicable to any federal, state or local governmental agency, or to a

patient who has been determined to be indigent under the department.

Regulation 14: Colorado medical research grant program

A. Procedures for grant application to the grant program

1. Grant application contents.

a. At a minimum, all applications shall be submitted to the department in accordance with these rules and shall contain the following information:

i. A description of key personnel, including clinicians, scientists, or epidemiologists and support personnel, demonstrating they are adequately trained to conduct this research.

ii. Procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

iii. Protocols suitable for research on marijuana as medical treatment including procedures for collecting and analyzing data and statistical methods to be used to assess significant outcomes.

iv. Demonstration that appropriate protocols for adequate patient consent and follow-up procedures are in place.

v. A process for a grant research proposal approved by the grant program to be reviewed and approved by an institutional review board that is able to approve, monitor, and review biomedical and behavioral research involving human subjects.

2. Timelines for grant application.

Grant applications may be solicited on dates determined by the department.

B. Criteria for selecting entities

1. The following criteria shall be used for selecting potential grantees:

a. The applicant submits a completed application in accordance with the requirements in Section A.1;

b. The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.

c. The researchers' expertise in the scientific substance and methods of the proposed research and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.

d. The applicant has the capacity to adequately administer and implement the grant including the capacity to meet its responsibilities delineated in Section C.

2. The council shall submit recommendations for grants to the state board of health, which shall approve or disapprove of grants submitted by the council. If the state board of health disapproves a recommendation, the council may submit a replacement recommendation within thirty days.

3. The state board of health shall award grants to the selected entities, specifying the amount and duration of the award, which cannot exceed three years without renewal.

C. Grantee reporting

1. Progress reports. Grantees shall be responsible for ongoing reporting consisting of the following:

    a. Quarterly progress reports

    b. Annual updates which may replace the fourth fiscal quarter report

    c. Final report at the end of the grant cycle.

2. At a minimum, all progress reports, annual updates and final reports shall include the numbers of patients enrolled in each study and any scientifically valid preliminary findings.

3. All progress reports, annual updates and final report shall be submitted to the Colorado medical marijuana research grant program. Reports shall be submitted electronically in any word processing software program compatible with Microsoft Word 2007 or higher format.

4. Grantees who fail to submit any of the required reports may be terminated from the grant program for non-performance. In the event that grantees fail to submit a final report after the conclusion of their grant, future applications of the grantee may be denied based on prior non-performance.

John W. Suthers
Attorney General

Cynthia H. Coffman
Chief Deputy Attorney General

Daniel D. Domenico
Solicitor General

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Colorado Judicial Center
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State of Colorado
Department of Law

Office of the Attorney General

Tracking number: 2014-00743

Opinion of the Attorney General rendered in connection with the rules adopted by the
Health and Environmental Information and Statistics Division - promulgated by Colo Bd of Health

on 09/16/2014

5 CCR 1006-2

MEDICAL USE OF MARIJUANA

The above-referenced rules were submitted to this office on 09/23/2014 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

October 03, 2014 10:25:04

John W. Suthers
Attorney General
by Daniel D. Domenico
Solicitor General

Terminated Rulemaking

Department

Department of Revenue

Agency

Taxpayer Service Division - Tax Group

CCR number

1 CCR 201-9

Tracking number

2014-01018

Termination date

10/03/2014

Reason for termination

rule needs to go through a workshop before being filed

Terminated Rulemaking

Department

Department of Regulatory Agencies

Agency

Division of Real Estate

CCR number

4 CCR 725-4

Tracking number

2014-01029

Termination date

10/10/2014

Reason for termination

Duplicate entry (see 201401030)

Calendar of Hearings

Hearing Date/Time	Agency	Location
11/12/2014 09:00 AM	Division of Workers' Compensation	633 17th St, Denver CO 80214
11/12/2014 09:00 AM	Division of Workers' Compensation	633 17th St. Denver, CO 80214
11/12/2014 10:00 AM	Colorado State Board of Education	CDE, State Board Room, 201 E. Colfax Avenue, Denver, CO 80203
11/12/2014 11:00 AM	Colorado State Board of Education	Colorado Department of Education, State Board Room, 201 E. Colfax Ave, Denver, CO 80203
11/12/2014 01:00 PM	Colorado State Board of Education	CDE, State Board Room, 201 E. .Colfax Ave.; Denver, CO
11/12/2014 01:30 PM	Colorado State Board of Education	Colorado Department of Education, State Board Room, 201 E. Colfax Ave., Denver, CO 80203
11/12/2014 02:00 PM	Colorado State Board of Education	Colorado Department of Education, State Board Room, 201 E. Colfax Ave., Denver, CO 80203
11/12/2014 02:30 PM	Colorado State Board of Education	Colorado Department of Education, State Board Room; 201 E. Colfax Ave, Denver, CO 80203
11/13/2014 08:30 AM	Colorado Parks and Wildlife (405 Series, Parks)	Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807
11/13/2014 08:30 AM	Colorado Parks and Wildlife (405 Series, Parks)	at Burlington Community and Education Center, 340 S 14th St, Burlington, CO 80807
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11/13/2014 01:30 PM	Transportation Commission and Office of Transportation Safety	CO Department of Transportation Headquarters Auditorium, 4201 E. Arkansas Ave., Denver, CO 80222
11/14/2014 09:00 AM	Medical Services Board (Volume 8; Medical Assistance, Children's Health Plan)	303 East 17th Avenue, 7th Floor, Denver, CO 80203
11/14/2014 09:30 AM	State Personnel Board and Division of Human Resources	1525 Sherman St. Room 513, Fifth Floor, Denver, CO 80203
11/18/2014 09:30 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, Bldg. A, Sabin Conference Room
11/18/2014 09:30 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, Bldg. A, Sabin Conference Room
11/18/2014 09:30 AM	Hazardous Materials and Waste Management Division	Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, Bldg. A, Sabin Conference Room
11/18/2014 01:00 PM	Motor Vehicle Dealer Board	Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado
11/18/2014 01:00 PM	Motor Vehicle Dealer Board	Department of Revenue offices, Entrance B, Room 110, Board Commission Meeting Room, 1881 Pierce Street, Lakewood, Colorado.
11/19/2014 08:00 AM	Lottery Commission	Colorado Lottery Office
11/20/2014 09:00 AM	Air Quality Control Commission	Colorado Dept of Public Health and Environment, 4300 Cherry Creek Drive South, Sabin Conference Room, Denver, CO 80246
11/20/2014 09:30 AM	Division of Gaming - Rules promulgated by Gaming Commission	17301 W Colfax Ave., Suite 135, Golden, CO 80401
11/21/2014 10:00 AM	Peace Officer Standards and Training Board	1300 Broadway, 1st Floor, Denver CO 80203
11/24/2014 09:00 AM	Division of Professions and Occupations - State Electrical Board	1560 Broadway, Suite 1250-C, Denver CO 80202
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246

Calendar of Hearings

Hearing Date/Time	Agency	Location
12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Confence Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
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12/08/2014 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/08/2014 11:45 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/08/2014 01:30 PM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246
12/15/2014 09:00 AM	Oil and Gas Conservation Commission	1120 Lincoln Street, Suite 801, Denver, CO 80203
01/12/2015 10:00 AM	Water Quality Control Commission (1002 Series)	Florence Sabin Conference Room, CDPHE, 4300 Cherry Creek Drive South, Denver, CO 80246