

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF CHANGES TO THE RULES) CAUSE NO. 1R
OF PRACTICE AND PROCEDURE OF THE OIL)
AND GAS CONSERVATION COMMISSION OF) ORDER NO. 1R-114
THE STATE OF COLORADO)

REPORT OF THE COMMISSION

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

DEFINITIONS
(100 SERIES)

BASE FLUID shall mean the continuous phase fluid type, such as water, used in a hydraulic fracturing treatment.

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.

HEALTH PROFESSIONAL shall mean a physician, physician assistant, nurse practitioner, registered nurse, or emergency medical technician licensed by the State of Colorado.

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.

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.

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.

GENERAL RULES
(200 SERIES)

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.
- 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 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 Commission's or the Director's written request 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.

A. If the Commission determines, as of January 1, 2013, that:

(i) The chemical disclosure registry does not 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; and

(ii) There is no reasonable assurance that the registry will allow for such searches by a date certain acceptable to the Commission,

Then the provisions of subsection 205A.b.(3)(B) below shall apply.

B. Beginning February 1, 2013, any operator who posts a chemical disclosure form on the chemical disclosure registry shall also submit the form to the Commission in an electronic format acceptable to the Commission. As soon thereafter as

practicable, the Commission shall make such forms available on the Commission's website in a manner that allows the public to search the information and sort the forms by geographic area, ingredient, chemical abstract service number, time period and operator, as practicable.

(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.

DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT (300 SERIES)

RULE 305.E.(1).A CONTENT OF NOTICES.

A. Landowner Notice. The landowner notice shall include the Form 2A itself (without attachments), a copy of the information required under Rule 303.d.(3).B, 303.d.(3).C, 303.d.(3).E, the COGCC's information sheet on hydraulic fracturing treatments and any additional information the operator deems appropriate and inform the recipient that the complete application (including attachments) may be reviewed on the COGCC website and that he or she may submit comments to the Director, as provided on the COGCC website. The operator need not provide the COGCC's information sheet on hydraulic fracturing treatments where hydraulic fracturing treatments are not going to be applied to the well in question. For the surface owner, this notice shall include a copy of the COGCC Informational Brochure for Surface Owners, a postage-paid, return-addressed post card whereby the surface owner may request consultation pursuant to Rule 306, and, where the oil and gas location is not subject to a surface-use agreement, a copy of the COGCC Onsite Inspection Policy (See Appendix or COGCC website).

RULE 316C. NOTICE OF INTENT TO CONDUCT HYDRAULIC FRACTURING TREATMENT.

Operators shall give at least 48 hours advance written notice to the Commission of a hydraulic fracturing treatment at any well. Such notice shall be provided on a Form 42 notice of hydraulic fracturing treatment. The Commission shall provide prompt electronic notice of such intention to the relevant local governmental designee (LGD).

**RULES OF PRACTICE AND PROCEDURE
(500 SERIES)**

523.c. BASE FINE SCHEDULE

Rule 523c. Base fine schedule

Base fine schedule. The following table sets forth the base fine for violation of the rules listed

Rule Number 205A

Base Fine \$1000

Attached, as **Exhibit A**, is a statement giving the basis and purpose of the revisions and such statements are incorporated herein by reference.

DONE AND PERFORMED by the Oil and Gas Conservation Commission of the State of Colorado this 13th day of December, 2011.

IN THE NAME OF THE COLORADO
OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By 
Peter J. Gowen, Acting Secretary

Dated at Suite 801
1120 Lincoln Street
Denver, Colorado 80203
December 13, 2011

Exhibit A

Proposed Statement of Basis, Specific Statutory Authority, and Purpose

AMENDMENTS TO 100 SERIES DEFINITIONS, 200 SERIES GENERAL RULES, 300 SERIES DRILLING, DEVELOPMENT, PRODUCTION AND ABANDONMENT RULES and 500 SERIES PRACTICE AND PROCEDURE RULES

2 CCR 404-1

This statement sets forth the basis, specific statutory authority, and purpose for the new rules and amendments to Rules 100, 205, 305, 316 and 523 of the Rules of the Colorado Oil and Gas Conservation Commission promulgated by the Colorado Oil and Gas Conservation Commission ("Commission" or "COGCC").

In adopting the new rules and amendments, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began in the fall of 2011 and informally began in the summer of 2011. The new rules and amendments were initially discussed with representatives of the oil and gas industry and conservation community during informal meetings in August 2011. These discussions continued during September 2011, and the Commission staff held work sessions with these groups during October 2011 to help develop the proposed rules. The administrative record includes the proposed rules and recommended modifications and alternatives; public comments, testimony, and exhibits; and one day of public and party hearings.

Statutory Authority

The new rules and amendments are based on: 1) general Commission jurisdiction and rulemaking authority granted in section 34-60-105 (1) C.R.S; and 2) specific statutory authority of sections 34-60-106(2), 34-60-106(4) and 34-60-106(10) C.R.S. The Commission adopted the following statement of basis and purpose consistent with section 24-4-103(4), C.R.S., of the Administrative Procedure Act. This statement is incorporated by reference in the rules adopted. The rulemaking hearing for these new rules and amendments was held by the Commission on December 5, 2011. These amendments become effective twenty days after publication in the *Colorado Register*.

Basis and Purpose

INTRODUCTION

A major reason for adopting the new rules and amendments was to address concerns regarding hydraulic fracturing. Members of the public have expressed interest in learning the identity of chemicals in hydraulic fracturing fluids. Many oil and gas operators are currently providing such information through the FracFocus.org website, and several other states have adopted or are adopting similar regulations.

Hydraulic fracturing, commonly referred to as *fracing*, is the process of creating small cracks, or fractures, in underground geological formations providing pathways to allow oil and natural gas to flow into the wellbore and thereby increase production. Prior to initiating hydraulic fracturing, engineers and geoscientists study and model the physical characteristics of the hydrocarbon bearing rock formation, including its permeability, porosity and thickness. Using this information, they design the process to keep the resulting fractures within the target formation. In Colorado, the target formation is often more than 7,000 feet below the ground surface and more than 5,000 feet below drinking water aquifers.

To fracture the formation, fracturing fluids are injected down the well bore and into the formation. These fluids typically consist of water, sand, and chemical additives. The pressure created by injecting the fluid opens the fractures. Sand is carried into the fractures by the fluid and keeps the fractures open to increase the flow of oil or natural gas to the well bore. The chemicals serve a variety of purposes, including increasing viscosity, reducing friction, controlling bacteria, and decreasing corrosion. Following the treatment, much of the fracturing fluid flows back up the well bore and is collected at the surface in tanks or lined pits.

Fracture treatment of oil and gas wells in Colorado began in the 1970s and has evolved since then. Most of the hydrocarbon bearing formations in Colorado would not produce economic quantities of hydrocarbons without hydraulic fracturing.

The Commission Staff believes the new rules and amendments will significantly increase the transparency of hydraulic fracturing operations. The proposed rules require service companies and vendors to disclose all known chemicals in hydraulic fracturing fluids to operators and require operators to disclose such chemicals to the public via the website FracFocus.org or, with respect to an operator's trade secrets, directly to the Commission or health professionals. FracFocus.org is a hydraulic fracturing chemical registry website created by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.

The new rules and amendments reflect staff discussions with those intergovernmental organizations, as well as other states, industry associations, individual operators, and conservation groups. Although states have taken different approaches to disclosure, and the industry and conservation groups disagree on several issues, the Commission believes the proposed new rules and amendments strike a responsible balance.

The following discussion summarizes the new rules and amendments and explains their purpose.

IDENTIFICATION AND EXPLANATION OF AMENDMENTS

The new rules and amendments make substantive amendments and additions to the Rules and Regulations of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1 ("Commission Rules"). The general authority for adoption of these rules is set out in the Statutory Authority section set forth above and is generally applicable to all the new rules and amendments. The most specific authority and a summary of the purpose for each rule change are set forth below. References to particular factors or testimony are intended to be illustrative and not comprehensive.

100 Series Definitions

The Commission's 100 Series Rules contain many definitions that occur throughout the Commission Rules and throughout the Oil and Gas Conservation Act, § 34-60-100 C.R.S. *et seq.*

Amendments

The following definitions were substantively amended:

Chemical(s)

Basis: The statutory basis for this amendment is § 34-60-106 (2)(d) C.R.S.

Purpose: The purpose of this amendment is to clarify the scope of disclosure obligations under the new and amended rules. Under the proposed Colorado rule, all chemicals used in hydraulic fracturing treatments must be disclosed irrespective of whether the chemical is listed on a Material Safety Data Sheet pursuant to the federal Occupational Safety and Health Act.

Trade Secret

Basis: The statutory basis for this amendment is § 34-60-106 (2)(d) C.R.S.

Purpose: The purpose of this amendment is to conform the definition of trade secret in the rules to the statutory definition set forth in the Uniform Trade Secrets Act, § 7-74-102(4).

The following definitions were added:

Base Fluid; Chemical Abstracts Service; Chemical Abstracts Service Number or CAS Number; Chemical Disclosure Registry; Chemical Family; Health Professional; Hydraulic Fracturing Additive; Hydraulic Fracturing Fluid; Hydraulic Fracturing Treatment; Proppant; and Total Water Volume.

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: These definitions are necessary as terms of art to give meaning to Colorado's disclosure regime.

200 Series Rules

Amendments to 200 Series Rules: Rule 205., Access to Records

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: Rule 205 requires operators, among other things, to maintain chemical inventories for chemical substances brought to a well site for use downhole. Under amended Rule 205, chemicals used for hydraulic fracturing treatments are exempted from this requirement and are instead addressed in new Rule 205A, which requires the public disclosure of chemicals used in hydraulic fracturing. Public disclosure under Rule 205A would be limited to hydraulic fracturing fluids, while other chemical products used downhole, other than hydraulic fracturing fluids, would continue to be inventoried and disclosed upon request to the Commission and health professionals under Rule 205. Operators will still need to maintain inventories of fuel regardless of whether such fuel is used in connection with hydraulic fracturing treatments or other activities. Further, if diesel or other fuel is used as a hydraulic fracturing fluid, such use shall be disclosed pursuant to Rule 205A.

Additions to 200 Series Rules: Rule 205A., Hydraulic Fracturing Chemical Disclosure

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: New Rule 205A would require public disclosure of hydraulic fracturing chemicals using the FracFocus.org website, which has been voluntarily used by numerous Colorado operators to report information on about 50% of the wells hydraulically fractured in Colorado this year. It is similar to regulations recently proposed in Texas. Other states have similarly adopted or are considering adopting regulations mandating the public disclosure of hydraulic fracturing chemicals through the FracFocus.org website.

Rule 205A, Subpart a: Applicability. Rule 205A provides that the new fracturing chemical disclosure requirements will apply to all hydraulic fracturing treatments performed on or after April 1, 2012. As previously noted, many Colorado operators are already submitting information to the FracFocus.org website. Therefore, the COGCC staff believes that it is feasible and fair for Rule 205A to apply to all treatments performed on or after April 1, 2012. If an operator finds that, despite diligent efforts, it is unable to satisfy the requirements of Rule 205A beginning April 1, 2012, then it may seek a temporary variance under Rule 502.b(1).

Rule 205A, Subpart b: Required Disclosures. Rule 205A imposes disclosure obligations on suppliers, service companies, and operators. The supplier or service company must, as soon as possible within 30 days following the conclusion of a hydraulic fracturing treatment, furnish the operator of the well with the information necessary for the operator to meet its disclosure obligations. Provided, however, vendor and service providers need not provide information claimed to be a trade secret to operators. The operator must, within 60 days following the conclusion of a hydraulic fracturing treatment, complete and post the chemical registry disclosure form with FracFocus. The FracFocus form includes information about the well, the volume of water used, and the chemicals and their concentrations. The Commission acknowledges concerns expressed by industry that certain formats for disclosure may present the possibility of competitors "reverse engineering" proprietary formulas for hydraulic fracturing additives. Accordingly, the rule permits operators to report the required information in a format that does not link chemical ingredients (including chemical names, CAS numbers and concentrations) to their respective hydraulic fracturing additive. If a chemical is entitled to trade secret protection, then the operator must still provide information on its chemical family. The supplier, service company, or operator, as applicable, must also provide the identity of a trade secret chemical to a health professional that satisfies certain conditions (immediate disclosure is required in medical emergencies).

At the time of claiming that a chemical, concentration, or both is a trade secret, the vendor, service provider or operator must file with the Commission a Claim of Entitlement, Form 41, containing the claimant's name, authorized representative, mailing address, and phone number. Among other things, this is intended to assist

the Commission and health professionals in promptly obtaining trade secret information where appropriate.

FracFocus currently allows the public to search and sort information by well, geographic area and operator, but not by ingredient, chemical abstract service number or time period. In the event FracFocus does not permit searching and sorting by ingredient, chemical abstract service number and time period by January 1, 2013, and there is no reasonable assurance that FracFocus will allow for such searches by a date certain acceptable to the Commission, then the proposed rules require operators to also file their disclosure reports with the Commission by February 1, 2013. As soon thereafter as practicable, the Commission will make the forms available on the Commission's website in a manner that enables the public to search and sort them by geographic area, ingredient, chemical abstract service number, time period, and operator, as practicable.

The requirement that information claimed to be a trade secret be disclosed to health professionals under certain circumstances is patterned after existing Rule 205. In addition, most other states have required or are proposing to require similar disclosure, and several of them have patterned their requirements after Rule 205 as well. The Commission staff believes that this type of disclosure is generally well accepted and just as appropriate for hydraulic fracturing chemicals as for other downhole chemicals.

Rule 205A, Subpart c: Disclosures Not Required. Rule 205A will not require suppliers, service companies or operators to disclose chemicals which are not disclosed to them, were not intentionally added to the hydraulic fracturing fluid, or occur incidentally or are otherwise unintentionally present. This part of Rule 205A is similar to the proposed Texas disclosure rule and is intended to ensure that requiring disclosure of all chemicals will not impose unfair or unreasonable burdens on companies.

Rule 205A, Subpart d: Trade Secret Protection. As previously noted, Rule 205A will protect information claimed to be a trade secret from disclosure. Under the Commission Rules, a trade secret is defined as "any confidential formula, pattern, process, device, information, or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it." Unless the information is entitled to protection as a trade secret, information submitted to the Commission or posted through FracFocus is public information.

The Colorado Open Records Act, the Colorado Uniform Trade Secrets Act, all other states that require hydraulic fracturing chemical disclosure and the FracFocus website protect trade secrets. The trade secret provisions of the proposed rule are patterned after existing Rule 205, which was the subject of extensive comment, review, and deliberation by the Commission in 2008. It allows suppliers, service companies, and operators to withhold trade secret information. But they must still provide such information to the Commission if the Commission determines the information is necessary to respond to a spill, release, or complaint.

Trade Secret Challenges Whether and under what circumstances a vendor, service company or operator's use of the trade secret provisions of Rule 205A could be challenged was the subject of much discussion during the rulemaking.

Section 114 of the Oil and Gas Conservation Act provides: "In the event the commission fails to bring suit to enjoin any actual or threatened violation of this article, or of any rule, regulation, or order made under this article, then any person or party in interest adversely affected and who has notified the commission in writing of such violation or threat thereof and has requested the commission to sue, may, to prevent any or further violation, bring suit for that purpose in the district court of any county in which the commission could have brought suit. If, in such suit, the court holds that injunctive relief should be granted, then the commission shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the complaining party." § 34-60-114, C.R.S. This allows an adversely affected individual to notify the COGCC if they believe that a trade secret claim is invalid. The COGCC could issue an order

requiring the claimant to substantiate the validity of its claim. If the COGCC declines to act, or if the adversely affected individual disagrees with a COGCC determination that a claim is valid, then such individual could seek judicial review.

In addition, Rule 522.(a)(1) authorizes any person who may be directly and adversely affected or aggrieved as a result of an alleged violation of any COGCC Rule to file a complaint requesting that the Director issue a Notice of Alleged Violation (NOAV). If the Director, after investigating the complaint, decides not to issue an NOAV, the complainant may file an application to the COGCC requesting the COGCC to enter an Order Finding Violation. Such a proceeding could be resolved without disclosure of the chemical identity or concentration. The issue would be whether the claimant can substantiate that the information constitutes a trade secret as defined in Rule 100.

For purposes of determining public challenges to trade secret designation under Section 114 of the Oil and Gas Conservation Act and under Commission Rule 522, the COGCC believes the question of whether someone has been directly and adversely affected or aggrieved should be broadly construed.

The Commission determined that the foregoing statutory and regulatory provisions allowed the COGCC, in its discretion, to receive, investigate, assess and determine claims that a vendor, service company or operator has improperly claimed a trade secret. The COGCC's exercise of these powers will be utilized on a case-by-case basis. In some circumstances, the COGCC may exercise its authority to investigate and challenge a trade secret claim. In other circumstances, the COGCC may abstain from such a challenge to allow for immediate resolution by a court, which should have more experience, and better procedural tools and protections.

Designation of Trade Secrets Whether the COGCC should review and approve trade secret claims was likewise the subject of much discussion during the rulemaking. The Commission considered and rejected a trade secrets regime that would have required the COGCC to review and approve all trade secret claims. Such a regime raised a number of concerns, including the COGCC's general lack of experience in evaluating trade secret claims, the risk of inadvertent disclosure, and the reprioritization of COGCC objectives and reallocation of COGCC resources, potentially at the expense of other priorities, many of which directly or indirectly involve environmental protection.

Additionally, the Commission was also concerned that a review and approval process would enable any person to request, under the Colorado Open Records Act, all documents concerning a trade secret designation from the COGCC, including the identity or concentration of the chemical and any internal staff documents evaluating the trade secret claim. In the event of such a request, the COGCC would be obligated to either disclose such information to the requesting party, or withhold it as a trade secret. Under the latter scenario, the requesting party could sue the COGCC in district court to challenge the trade secret designation. Although the trade secret claimant would likely intervene in the lawsuit to preserve the confidentiality of the information, the COGCC would nonetheless be a party and would have to devote resources to the litigation. Further, the requesting party could be entitled to its attorneys' fees and costs from the COGCC under CRS § 24-72-204(5). The Commission wished to avoid these risks.

Rule 205A.b.(2).B. provides, among other things, that a vendor, service provider, or operator, as applicable, "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 Commission has adopted a Form 41, Claim of Entitlement, for this purpose. A copy of Form 41 is attached as Appendix IX to these Rules and may be modified only through the Commission's rulemaking procedures as provided in Rule 529.

The Commission also notes that, in the event of a spill or release of a trade secret chemical, or for purposes of investigating a complaint alleging such a spill or release, the COGCC Director can demand the trade secret information. The COGCC, in turn, may disclose this information to its Commissioners, certain county officials, and the Colorado Department of Public Health and Environment.

The Commission expects the Director to issue a report identifying, among other relevant information, the number of trade secret claims made under Rule 205A and identifying the vendors, service providers and operators making such claims. The Commission expects the Director to issue such a report within twelve months of the effective date of the proposed rules.

The Commission considered the foregoing issues carefully and determined that the proposed rules reflect an appropriate policy choice balancing numerous interests.

Rule 205A, Subpart e: Incorporated Material. This is boilerplate language that Colorado law requires where a regulation incorporates by reference material published elsewhere, e.g., the OSHA regulations.

300 Series Rules

Additions to 300 Series Rules:

Rule 305.e.(1).A, Landowner Notice.

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: An operator making application for approval of an Oil and Gas Location Assessment, Form 2A, must provide the surface owner and owners of surface property within five hundred (500) feet of the proposed oil and gas location with various information. These information requirements are broadened under the amendment to include a new COGCC information sheet on hydraulic fracturing. This information sheet will, among other things, advise surface owners that most wells in Colorado are hydraulically fractured, provide general information on hydraulic fracturing treatments, and offer instruction in the collection of baseline water samples if the surface owner is concerned about potential impacts from hydraulic fracturing. However, such notice will not be required if hydraulic fracturing treatments are not going to be applied to the well in question.

Rule 316C., Notice of Intent to Conduct Hydraulic Fracturing Treatment.

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: New Rule 316C will require operators to provide the Commission with 48 hours advance written notice of their intention to hydraulically fracture a well. The COGCC shall then provide prompt electronic notice of such intention to the relevant local governmental designee. The COGCC staff would develop a new form for this purpose, which would be designated Form 42, Notice of Hydraulic Fracturing Treatment. This notification would assist the COGCC in arranging inspections to observe hydraulic fracturing where appropriate.

500 Series Rules

Addition to 500 Series Rules: Rule 523C., Base Fine Schedule.

Basis: The statutory basis is § 34-60-106 (2)(d) C.R.S.

Purpose: Amended Rule 523C was proposed in order to establish a base line fine for violations of the new and amended rules. A fine of \$1000 per day, subject to adjustment by the Commission, is consistent with the fines imposed by the Commission for violations of the majority of the Commission's Rules.

CONCLUSION

The new rules and amendments are expected to increase the transparency of hydraulic fracturing operations in the State of Colorado and, at the same time, afford appropriate protections for vendor, service provider and operator trade secrets. The new rules and amendments are also expected to increase the Commission Staff's ability to inspect and oversee hydraulic fracturing operations.

APPENDIX IX

FORM 41

Form 41

Section A - Classification of Entity Asserting Trade Secret Claim

Operator Vendor Service provider Other - specify in detail: _____

Section B – Entity Asserting Trade Secret Claim

The entity below submits this form to claim that it is entitled under COGCC Rule 205A to withhold certain information from disclosure as a trade secret:

Entity name: _____

Street Address: _____

City/State/Zip Code: _____

Contact person: _____

Contact phone: _____ Contact fax: _____

Contact email: _____

Section C – Claim of Entitlement to Trade Secret Protection

Rule 205A requires disclosure of all chemicals intentionally added to base fluid as part of a hydraulic fracturing treatment, as well as the maximum concentrations and (if applicable) CAS numbers for those chemicals, except in those limited situations where the specific identity or concentration of a chemical are permitted to be withheld as a trade secret. For purposes of Rule 205A, the term "trade secret" is defined in the COGCC Series 100 Definitions.

The Entity identified in Section B claims that the (____) identity or (____) maximum concentration, or (____) both, of the following chemical qualifies as a trade secret:

_____ (Chemical identifier). You may use a descriptive label, such as "Company TS1," for a chemical identifier in lieu of identifying the chemical. This chemical identifier may be used to reference the chemical in subsequent disclosures filed with the Chemical Disclosure Registry.

In order to claim that information is entitled to protection as a trade secret, you must check all the affirmations below and submit specific information regarding each of the following (can be attached on separate pages).

- 1. The entity holding the trade secret information has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a state or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures, or disclosure has otherwise been limited such that the information is not readily available to competitors.
- 2. The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.
- 3. Disclosure of the information is likely to cause harm to the competitive position of the entity holding the trade secret information.
- 4. The information is not readily discoverable through reverse engineering.

CERTIFICATION

This form must be signed by an authorized agent of the entity identified in Section B.

I declare under penalty of perjury that this report has been examined by me and to the best of my knowledge is true, correct and complete.

Signature

Name and title