Statement of Basis, Specific Statutory Authority, and Purpose
New Rules and Amendments to Current Rules of the
Colorado Oil and Gas Conservation Commission, 2 C.C.R. § 404-1

Cause No. 1R Docket No. 210600097
Financial Assurance Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments ("Financial Assurance Rulemaking") to the Colorado Oil and Gas Conservation Commission ("Commission" or "COGCC") Rules of Practice and Procedure, 2 C.C.R. § 404-1 ("Rules").

Unless otherwise specified, the new rules and amendments become effective on April 30, 2022.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began on June 15, 2021, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State for revisions to its 200, 300, 400, 500, 700, 800, and 900 Series Rules and related 100 Series definitions. This record includes public comments, written prehearing statements, written prehearing testimony, and oral testimony and comments provided during public hearings and Commission deliberations. In the event that any portion of this Statement of Basis and Purpose conflicts with the express language of a Rule amended or adopted as part of the Financial Assurance Rulemaking, the Rule will control.

Background

In the Financial Assurance Rulemaking, the Commission revised its Rules to align with the statutory amendments adopted in Senate Bill 19-181. The Financial Assurance Rulemaking fulfills the Commission's statutory obligation to undertake a rulemaking to "require every operator to provide assurance that it is financially capable of fulfilling every obligation imposed by this article 60 as specified in rules adopted on or after April 16, 2019." C.R.S. § 34-60-106(13).

Additionally, the Commission improved the clarity of its Rules by continuing its ongoing efforts to group related Rules together in the same Series and by re-ordering Rules within its 700 Series Rules to follow a more logical, sequential order. The Commission also eliminated duplicative, outdated, and unnecessary Rules. And the Commission used clearer language, eliminated typographic errors, and ensured consistency throughout its Rules.

Statutory Authority

A. Senate Bill 19-181

On April 16, 2019, Governor Polis signed Senate Bill 19-181 into law. Senate Bill 19-181 changed the Oil and Gas Conservation Act's (the "Act") legislative declaration from directing the Commission to "[f]oster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of environment and wildlife resources," C.R.S. § 34-60-102(1)(a)(I) (2018), to directing the Commission to "[r]egulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, and welfare, including protection of the environment and wildlife resources," C.R.S. § 34-60-102(1)(a)(I) (2020). In sum, the General Assembly changed the term "foster" to "regulate;" removed the terms "responsible," "balanced," and "utilization;" and changed the phrase "in a manner consistent with protection of" to "in a manner that protects."

Consistent with these changes to the Act's legislative declaration, Senate Bill 19-181 also added a new mandate that "[i]n exercising the authority granted by this article 60, the Commission shall regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and shall protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations." C.R.S. § 34-60-106(2.5)(a).

Another fundamental change enacted by Senate Bill 19-181 is a transition to a Commission staffed by five full-time professionals. Previously, the Commission was a nine-member volunteer body that met periodically. Senate Bill 19-181 made several structural changes to the Commission. C.R.S. § 34-60-104.3(2). The full-time Commission provisions of Senate Bill 19-181 became effective on July 1, 2020. *See id.* In the Financial Assurance Rulemaking, the Commission revised several of its Rules to account for the transition to a full-time Commission, which allows for additional Commission-level oversight of financial assurance matters that were previously addressed by Staff.

B. Financial Assurance

Senate Bill 19-181 specifically required the Commission to conduct several rulemakings to address various topics. The Commission addressed many of these topics in prior rulemakings, including its 2019 500 Series Rulemaking, 2019 Flowline Rulemaking, 2020 Wellbore Integrity Rulemaking, 2020 Mill Levy Rulemaking, and 2020 Mission Change Rulemakings (which separately addressed the 200–600 Series and 800/900/1200 Series Rules).

Senate Bill 19-181 also required the Commission to conduct a rulemaking to update its financial assurance rules. This Financial Assurance Rulemaking fulfills that statutory obligation. Specifically, Senate Bill 19-181 provides that:

> The commission shall require every operator to provide assurance that it is financially capable of fulfilling every obligation imposed by this article 60 as specified in rules adopted on or after April 16, 2019. The rule-making must consider: Increasing financial assurance for inactive wells and for wells transferred to a new owner; requiring a financial assurance account, which must remain tied to the well in the event of a transfer of ownership, to be fully funded in the initial years of operation for each new well to cover future costs to plug, reclaim, and remediate the well; and creating a pooled fund to address orphaned wells for which no owner, operator, or responsible party is capable of covering the costs of plugging, reclamation, and remediation.

C.R.S. § 34-60-106(13). In addition to this rulemaking directive, Senate Bill 19-181 made minor typographical amendments to all six subsections of Subpart 13. *Compare* C.R.S. § 34-60-106(13)(a)–(f) (2018) *with* C.R.S. § 34-60-106(13)(a)–(f) (2020). The General Assembly did not substantively revise those subsections except to clarify that financial assurance must cover every obligation imposed by the Act, rather than only obligations imposed by specific subsections of Section 106.

The Financial Assurance Rulemaking fulfills the Commission's statutory obligation under C.R.S. § 34-60-106(13) because it requires every operator to provide assurance that it is capable of fulfilling every obligation imposed by the Act and the Commission's Rules. Additionally, the Commission considered, and in some cases adopted, regulations addressing the topics listed below. Because C.R.S. § 34-60-106(13) only requires the Commission to "consider" adopting the specific regulations discussed below, in some cases the Commission did not adopt the specific rule discussed by the statute, or adopted a variation on that Rule. *See Fed. Energy Reg. Comm'n v. Mississippi*, 456 U.S. 742, 761–66 (1982) (holding that statute requiring state agencies to "consider" adopting federal standards did not actually require states to do adopt the federal standards); *U.S. Sugar Corp. v. Envtl. Prot. Agency*, 830 F.3d 579, 623–24 (D.C. Cir. 2016) (holding that statute providing that agency "may consider" adopting an alternative emission standard did not require agency to adopt a specific alternative standard).

1. *<u>Increasing financial assurance for inactive wells and for wells transferred to a new owner</u>.*

The Commission considered imposing financial assurance for inactive wells and for wells transferred to a new owner. Ultimately, the Commission approached the issue through a more protective approach: by requiring single well financial assurance for low producing wells (which encompasses more wells in Colorado than only inactive wells) and addressing operator risk through a framework approach to financial assurance plans for all operators (instead of waiting for wells to be transferred to assess risk).

The Commission also revised transfer requirements in Rule 218 to require operators to identify low producing and inactive wells proposed for transfer, and provide single well financial assurance for transferred low producing wells. Consistent with these requirements and based on the risk presented by an operator's asset portfolio, certain financial assurance plan Options require operators to maintain single well financial assurance to cover the full cost of plugging, abandoning, and reclaiming wells, with a focus on inactive and transferred wells in certain Options. Additionally, the Commission revised its definition of inactive well in order to avoid challenges with the implementation of its prior definition.

The Commission adopted a new definition of Single Well Financial Assurance, which is intended to allow for a more tailored identification of costs to plug, abandon, and complete reclamation on wells based on their unique circumstances. The definition of Single Well Financial Assurance allows for operators to make a showing of the demonstrated cost of plugging, abandonment, and reclamation of a particular well. Alternatively, operators may rely upon the Commission's estimated costs of plugging, abandonment, and associated reclamation set forth in the rule. The Commission's estimated costs are based on Staff's recent review of extensive, long-term data from the Commission's expenditures to plug, abandon, remediate, and reclaim oil and gas locations through its Orphaned Well Program and on information submitted by parties to the rulemaking.

In Rules 434.c and d, the Commission adopted comprehensive new standards to require and incentivize plugging of inactive wells, including some financial assurance requirements. Rule 434.c gives operators four options for wells that have been inactive for more than six months: plug the well, return it to production, provide the Director with information on the operator's inactive wells and pay increased financial assurance, or designate the well as out of service. Rule 434.d creates an Out of Service Designation and plugging list, which contains wells that an operator will commit to plugging in a specified timeframe.

2. *Requiring a financial assurance account, which must remain tied to the well in the event of a transfer of ownership, to be fully funded in the initial years of operation for each new well to cover future costs to plug, reclaim, and remediate the well*.

In Rules 702.d.(3) and (4), the Commission created the ability for operators to submit Option 3 or 4 financial assurance plans to use, among other things, a sinking or third-party trust fund, which would be a financial assurance account that would be funded over time to provide up to single well financial assurance for every well. Any operator that does not qualify for Option 1 or 2 financial assurance plans pursuant to Rules 702.d.(1) or (2) can submit an Option 3 or 4 financial assurance plan.

The Commission determined that single well financial assurance for all wells is an appropriate requirement for operators whose asset portfolio is closer to retirement based on overall production levels, and the operator is therefore unable to qualify for blanket bonding under Options 1 and 2. Under the Option 3 and 4 structures, the operator is required to build up financial assurance over time until it reaches its financial assurance amount for all of its wells. This will both incentivize operators to plug wells, to avoid having to pay into the sinking or trust fund for them, and also provide additional financial assurance to the Commission at a rate that will not pose such a financial hardship to operators that the operators orphan their wells.

To avoid complexity with transfers, the Commission chose not to tie the sinking fund or third-party trust fund to individual wells, but rather to an operator's overall operations. This will significantly improve administration of the rules, and better tie financial assurance to the actual source of the risk to the state—the possibility of an individual operator's inability to comply with its obligations—rather than a specific well which could be transferred to a more solvent operator. The Commission did not require the sinking fund or third-party trust fund to be funded in the initial years of a well's operation, but rather provided an annual funding requirement for all Option 3 and 4 operators to reach the amount of financial assurance that must be paid into the funds.

Finally, the Commission chose not to require that the sinking fund or trust fund cover the cost of remediation, because it determined that financial assurance for remediation costs was best addressed through the general liability insurance pursuant to Rule 705.b, and through case-by-case determinations for individual remediation projects pursuant to Rule 703.b.

3. *Creating a pooled fund to address orphaned wells for which no owner, operator, or responsible party is capable of covering the costs of plugging, reclamation, and remediation*.

In Rule 205.c, the Commission created a new pooled fund to address orphaned wells. The Commission adopted a new annual registration fee, which is intended to raise $10,000,000 in each of the first two years the fee is collected. The fees will be deposited into the pooled fund, and may be used by the Director solely to address orphaned sites.

The Commission intends to revisit the fee amount in two years to ensure it is adequate to meet the needs of the Orphan Well Program and may engage in rulemakings to make necessary adjustments to the fee and, separately, reducing the mill levy pursuant to Rule 217. Over the long term, the Commission's intent is to shift funding for the Orphaned Well Program from the mill levy on production to a pooled fund that is funded by an annual registration fee assessed in a manner with more predictable volatility. The number of wells in the state does not fluctuate to the same degree or depend on market conditions as heavily as the mill levy. Over time, this reduction in volatility will ensure that the Orphaned Well

Program is fully funded through the pooled fund and can successfully fulfill its role of plugging, abandoning, reclaiming, and remediating orphaned facilities.

As discussed in more detail below, the Commission intends to encourage creation of an enterprise by the General Assembly to collect and administer the annual registration fee. If the General Assembly passes legislation creating such enterprise, the Commission anticipates it may need to conduct a follow-up rulemaking to amend Rule 205.c to be consistent with legislation.

E. Specific Statutory Authority

In addition to the statutory language quoted above, the Commission's authority to promulgate amendments to the Rules is derived from the following sections of the Act:

- C.R.S. § 34-60-102 (Legislative declaration)
- C.R.S. § 34-60-103 (Definitions);
- C.R.S. § 34-60-104.5 (Duties of the Director);
- C.R.S. § 34-60-105 (Powers and authority of the Commission);
- C.R.S. § 34-60-106 (Specific Commission duties, including Financial Assurance);
- C.R.S. § 34-60-108 (Procedural rules);
- C.R.S. § 34-60-120 (Authority over federal lands and minerals);
- C.R.S. § 34-60-121 (Enforcement);
- C.R.S. § 34-60-122 (Calculation of expenses);
- C.R.S. § 34-60-124 (Oil and gas conservation and environmental response fund);
- C.R.S. § 34-60-127 (Reasonable accommodation of surface owners); and
- C.R.S. § 34-60-131 (Local government preemption).

Stakeholder and Public Participation

The Commission initiated the informal stakeholder and public participation process for the Financial Assurance Hearing during its weekly hearing on February 10, 2021. The Commission released a list of questions about financial assurance-related topics to the public on its website. The Commission also instructed its Hearings Staff to convene an informational docket for interested members of the public to provide information.

On February 24, 2021, the Commission, on its own motion, issued notice and applied for an informational docket hearing pursuant to Rules 503.a and 904.c. The hearing was noticed for March 31, 2021. Members of the public were given the option to participate by submitting written and oral comment. Interested Persons were given the option of submitting written statements and presenting oral statements.

On March 15, 2021, 31 Interested Persons (including organizations and individuals, some of whom filed jointly) filed written statements. On March 17, 2021, the Commission's Hearing Officer issued a Pre-Hearing Order, allocating time for the Interested Persons to present to the Commission at its informational docket hearing. The Commission conducted the informational docket hearing during business hours on March 31 and April 1, 2021. It also received oral public comment from individuals who did not submit written materials at a 6:00 p.m. hearing on March 31 to accommodate members of the public who were unavailable to provide comment during ordinary business hours.

After the conclusion of the Financial Assurance Informational Docket, the Commissioners presented a list of additional and follow-up questions to Staff. Staff presented its responses to those questions at the Commission's May 5, 2021 meeting. Among other things, Staff presented data about average costs borne by its Orphaned Well Program, bond claims, stripper wells, reclamation costs, and emissions from idle and plugged wells. Staff also identified additional questions that the Commission could pose to industry stakeholders and regulators from other states for matters where Staff lacked access to information required to answer the Commission's questions. Staff and stakeholders presented responses to the Commission's additional informational questions at the Commission's May 26, 2021 hearing.

Throughout the course of the informal stakeholder process, individual Commissioners and Staff met with interested persons to discuss topics relevant to the Financial Assurance Rulemaking.

The formal stakeholder process began on June 15, 2021, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State. The Notice of Rulemaking included the proposed Draft Financial Assurance Rules and a Draft Statement of Basis and Purpose. The Commission Noticed the Rulemaking to begin on September 21, 2021. Commission Staff held a Financial Assurance Rulemaking Stakeholder Meeting on June 16, 2021, where the Director presented information to the public regarding rulemaking participation opportunities and the substance of the June 15 Proposed Draft Rules.

Also on June 16, 2021, the Hearing Officer issued a Case Management Order establishing filing deadlines. The June 16 Case Management Order set a June 23, 2021 deadline to file a request for party status, and 93 parties filed applications by that date. On June 25, 2021, the Hearing Officer conducted a prehearing conference.

On July 7, 2021, American Petroleum Institute Colorado and Colorado Oil and Gas Association submitted for consideration a Joint Motion to Extend the Time for Filing Prehearing and Responsive Statements, which was then corrected the following day. No party opposed the relief requested in the Motion. On July 9, 2021, the Hearing Officer issued the First Amended Case Management Order, extending the deadlines for parties to file prehearing and responsive statements.

Following Commission discussions at its July 9, 2021 Work Session and July 14, 2021 Commission Meeting, the Commission voted to vacate the September 21–October 28, 2021 Financial Assurance Rulemaking hearing dates and adjust the filing deadlines for written statements. At the July 14 Commission Meeting, the Commission stated its intent to allow an opportunity for the public and parties to the Rulemaking to comment on the draft rules attached to the June 15, 2021 Notice of Rulemaking. The Commission also voted to reschedule the Financial Assurance Rulemaking hearing to commence on October 26, 2021, with final deliberations to take place no later than February 7, 2022.

On July 15, 2021, the Hearing Officer issued an Order Vacating the Hearing Dates and Setting Deadline for Written Comments on June 15 Proposed Draft Rules. On July 29, 2021, the Hearing Officer issued a Case Management Order rescheduling the hearing dates and filing deadlines in accordance with the schedule agreed upon during the Commission's July 14 hearing. The July 29 Case Management Order also set a September 10, 2021 deadline for additional parties to file for party status.

Parties to the Rulemaking and the public submitted written comments on the June 15 Proposed Draft Rules on July 30, 2021.

On August 31, 2021, the date originally contemplated for Commission Staff to release an updated draft of proposed rules, Commission Staff filed an Amendment to Notice of Rulemaking Hearing with the Colorado Secretary of State to postpone the Financial Assurance Rulemaking hearing to begin on November 9, 2021, with final deliberations to remain unchanged and take place no later than February 7, 2022. Commission Staff also filed a Notice in the Commission eFiling System requesting the Hearing Officer to issue an updated case management order to revise the rulemaking schedule in accordance with Staff's proposed schedule. On September 10, 2021, the Hearing Officer issued a First Amended Case Management Order reflecting these changes to the schedule for the Financial Assurance Rulemaking Schedule and associated filing dates for prehearing statements, responses, and pre-filed written testimony.

On October 8, 2021, the Commission's Staff released a revised draft of the proposed Financial Assurance Rules, and redline comparisons against the June 15 Proposed Draft Rules. The revised draft responded to feedback that parties and the public provided in their July 30 written comments. As of October 19, 2021, 103 parties had filed applications for party status.

On October 29, 2021, the Commission's Staff released a revised draft of this Statement of Basis and Purpose, reflecting the October 8 Draft Rules. On the same day, the Commission's Staff timely submitted a combined Cost-Benefit and Regulatory Analysis for the Financial Assurance Rulemaking to the Department of Regulatory Affairs. The combined Cost-Benefit and Regulatory Analysis was also released to the parties and posted on the Commission's website. The Commission was required to prepare the Cost-Benefit Analysis because it received a timely request for a cost-benefit analysis for the Financial Assurance Rulemaking pursuant to C.R.S. § 24-4-103(2.5)(a). In addition to engagement with stakeholders and review of parties' written filings, the process of preparing the Cost-Benefit and Regulatory Analysis allowed the Commission's Staff to more comprehensively examine and consider the costs and benefits of many Rules amended in the Financial Assurance Rulemaking, and this analysis informed some of the revisions that the Commission's Staff proposed to certain Rules.

Parties filed prehearing statements for the Financial Assurance Rulemaking on November 2, 2021.

On November 9 and 10, 2021, the Commission convened the Financial Assurance Rulemaking hearing to receive public comment and prehearing presentations from the parties on the October 8 Draft Rules. The Commissioners had the opportunity to discuss the parties' prehearing statements, and did not engage in deliberations on the Rules during the two-day hearing.

On November 10, 2021, the Commission also considered a joint motion filed by two parties to place a temporary moratorium on pending and new applications for transfers of well ownership until the effective date of the Rules. Pursuant to the Case Management Order in effect at the time of filing, motions were prohibited unless the Hearing Officer granted leave to submit a motion. The request for leave and motion were both filed on October 7, 2021, and the Hearing Officer granted the request for leave and set forth a briefing schedule on October 8, 2021. Parties in opposition were given until October 20, 2021 to file a response, and parties in support of the motion were given until October 27, 2021 to file a reply. Following a review and discussion of the filings, the Commission voted unanimously to deny the motion.

On December 7, 2021, the Commission's Staff released a revised draft of the proposed Financial Assurance Rules, and a redline comparison against the October 8 Draft Rules. These revised drafts responded to feedback that parties provided in their prehearing statements and November 9 and 10 prehearing presentations to the Commission.

On January 7, 2022, the parties filed responses to prehearing statements.

On January 20–21, 2022 the Commission received public comment on the December 7 Draft Rules. On January 25–28, 2022, the Commission receive presentations from Commission Staff and parties to the Rulemaking on the December 7 Draft Rules. On January 31, 2022 and February 1, 2022, the Commission deliberated and provided Commission Staff with direction on revisions to the December 7 Draft Rules.

On February 11, 2022, Commission Staff released revised Rules based on upon Commission direction. On February 14, 2022, the Commission Staff presented the proposed rule revisions to the Commission. On February 17 and 18, 2022, the Commission received presentations from parties on the February 11 revised Rules. On February 22 and 23, 2022, the Commission deliberated and made interim final decisions on the Rules, providing direction to Staff to revise the Rules. On February 25, 2022, Staff released Rules revised pursuant to the Commission decisions.

On March 1, 2022, the Commission deliberated and unanimously voted to adopt the Rules and the Statement of Basis and Purpose, subject to any typographical and conforming edits.

Identification of New and Amended Rules

Consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission has revised, reorganized, and added to Rules 205, 211, 217, 218, 223, 304, 306, 413, 434, 436, 503, 504, 505, 810, 907, 912, and 913 and its 700 Series Rules. Additionally, the Commission has revised several definitions in its 100 Series Rules, added several new definitions to its 100 Series Rules, removed several definitions from its 100 Series Rules, and made necessary conforming edits to the Commission's Rules.

To assist stakeholders in identifying how the 700 Series Rules have been amended, moved, and removed, a table cross-referencing the Commission's prior and newly adopted 700 Series Rules is attached as Attachment 1 to this Statement of Basis and Purpose.

Amendments and Additions to Rules

Throughout Financial Assurance Rulemaking, the Commission made minor edits, conforming changes, and clarifications to improve clarity and consistency. Among other things, these changes include:

- Phrasing regulatory language in active voice, rather than passive voice, to clarify the responsible entity;

- Capitalizing all terms defined in the 100 Series to signal to stakeholders that the term has a definition;

- Reorganizing the 700 Series Rules and moving some Rules between Series to ensure that all Rules addressing the same topic are located in the same Series, and making the 700 Series proceed in a logical, sequential order that better reflects the lifecycle of financial assurance;

- Eliminating outdated and unnecessary Rules and provisions of Rules that reflect practices or requirements that are no longer in use;
- Eliminating Rules and provisions of Rules that unnecessarily duplicate other Rules;
- Streamlining internal cross-references within the Rules;
- Consistently using the term "will" instead of "shall" or "must";
- Using consistent terminology to refer to key entities such as the Commission, the Director, operators, and local governments;
- Using consistent terminology to refer to the Commission's Forms;
- Using consistent formatting conventions throughout the Rules; and
- Correcting typographic errors.

Retroactivity

The Commission intends for its Financial Assurance Rules to apply beginning on April 30, 2022. The Commission revised financial assurance requirements for numerous existing facilities, including all wells statewide. Colorado courts recognize that agencies may permissibly revise financial assurance requirements that apply to existing facilities and apply them retroactively because participants in highly regulated industries are expected to be aware of the risk of further regulations and because the public health and environmental risks posed by inadequate financial assurance outweigh the financial interests of regulated industry. *See Colo. Dep't of Pub. Health & Env't v. Bethell*, 60 P.3d 779, 785 (Colo. App. 2002). The Commission determined that it was necessary to apply its revised financial assurance requirements to existing facilities in order to comply with the revised statutory requirement of C.R.S. § 34-60-106(13), and to fulfill its obligation to protect and minimize impacts to public health, safety, welfare, the environment, and wildlife resources, C.R.S. § 34-60-106(2.5)(a).

To accommodate operators during the transition period, the Commission adopted a phased in compliance schedule in Rule 702.b.(1). The compliance schedule provides operators with a staggered timeline, based on the number of wells operated in the State of Colorado, to submit a financial assurance plan demonstrating the operator's plan for complying with the new financial assurance rules. Pursuant to Rules 702.d.(1).B, 702.d.(2).B, 702.d.(5).B, and 702.d.(6).B, the Commission intends for operators to provide their new financial assurance amount to the Commission as soon as practicable, but no later than 90 days from the date the Commission approves their financial assurance plan. Operators subject to financial assurance plans under Rules 702.d.(3) and 702.d.(4) will contribute their financial assurance amounts over time, rather than providing an up-front lump sum. Additionally, Rule 702.f allows an operator to credit any existing financial assurance towards its new financial assurance obligations.

Applicability to Pending Permit Applications

Pursuant to C.R.S. § 24-4-104.5(2)(a), the Commission intends for all Rules adopted and amended in the Financial Assurance Rulemaking to apply to all applications that were pending as of April 30, 2022, the effective date of the Rules. This is consistent with the General Assembly's intent, as expressed in Section 19 of Senate Bill 19-181, which states that "[t]his act applies to conduct occurring on or after the effective date of this act, including determinations of applications pending on the effective date." For example, if an operator has an oil and gas development plan ("OGDP") application pending on April 29, 2022, it must comply with the revised financial assurance requirements prior to the Director recommending approval of the application pursuant to Rule 306.a.(5). Additionally, any Form 9, Transfer of Operatorship pending on April 29, 2022 must comply with the requirements adopted in this Financial Assurance Rulemaking prior to receiving the Director's or Commission's approval pursuant to Rule 218.g.

100 Series Rules--Definitions

The Commission revised existing 100 Series definitions, removed existing 100 Series definitions, or adopted new definitions of the terms listed below.

Cash Bond

The Commission adopted a new definition of Cash Bond to provide better clarity about permissible forms of financial assurance. The Act expressly permits financial assurance to be in the form of "[a] letter of credit, certificate of deposit, or other financial instrument." C.R.S. § 34-60-106(13)(d). However, it does not expressly enumerate cash or currency as one such financial instrument. Because of the ease of holding cash bonds and accessing cash bonds, the Commission has long preferred cash bonds as a type of financial assurance. Accordingly, the Commission adopted a new definition of Cash Bond and expressly identified it as a type of financial assurance.

The Commission's definition of Cash Bond includes all forms of liquid and semi-liquid currency, including actual cash (or currency otherwise provided in the form of a check or other method), as well as interest-earning accounts such as money market accounts and certificates of deposit. The Commission's definition of Cash Bond encapsulates all forms of liquid United States currency in which an operator provides the actual dollar amount of financial assurance it is required to provide to the Commission. That makes a Cash Bond distinct from a surety bond or letter of credit, in which a third-party entity holds or guarantees funds on behalf of the operator to the benefit of the Commission, and the Commission does not actually hold the operator's financial assurance funds unless and until it accesses an operator's bond. Because Cash Bonds are liquid, they are also distinct from the Commission's less-preferred forms of financial assurance such as liens and security interests in real property, which require the Commission to foreclose upon property and liquidate it in order to access the financial assurance funds if the operator fails to fulfill its obligations under the Act.

The Commission holds Cash Bonds in the state treasury for the benefit of operators and for the benefit of the people of Colorado. Like other forms of financial assurance, the Commission may expend the financial assurance only if an operator fails to perform its plugging and abandonment, reclamation, or remediation obligations under the Act and the Commission's Rules. The Commission cannot expend the funds for other reasons, such as funding personnel costs or other matters that are funded through the Commission's general budget. Rather, the funds can be expended only following a formal Commission hearing to access the bond initiated pursuant to Rule 706.

Although there are limitations on the Commission's ability to spend the funds held as a Cash Bond, the operator that provides the Cash Bond also has a very limited interest in the Cash Bond. Because the operator provides the funds to serve as assurance to the Commission and the State of Colorado that it will be capable of complying with its regulatory and statutory obligations to plug and abandon its wells, reclaim its oil and gas locations, and remediate any spills or releases, the operator has no interest in the funds under either property law or contract law. The operator's sole interest in the funds is a contingent reversionary interest. A Cash Bond will revert to the operator that provided it only if the Director determines pursuant to Rule 706 that the operator has fully complied with all of its plugging and abandonment, reclamation, and remediation obligations, abandoned its permits to drill, or another operator has acquired the assets subject to the bond and provided sufficient replacement financial assurance pursuant to Rule 218. As discussed below, pursuant to Rule 706.a, a component of the operator's contingent reversionary interest is any interest accrued on the Cash Bond while it is invested.

The Commission's prior 100 Series definition of financial assurance referred to Cash Bonds as cash collateral. This led to the unintended consequence of confusion in bankruptcy proceedings as to whether cash bonds were intended to be considered cash collateral under 11 U.S.C. § 363(a). Accordingly, the Commission changed the term "cash collateral" to "Cash Bond" in the 100 Series definition of Financial Assurance, and also clarified in the definition of Cash Bond that Cash Bonds are not intended to be considered as cash collateral within the meaning of federal bankruptcy statutes.

Financial Assurance

The Commission revised its definition of Financial Assurance in multiple ways.

First, the Commission revised the list of types of Financial Assurance to better match the types of Financial Assurance enumerated in the Act, C.R.S. § 34-60-106(13)(a)–(f). This is consistent with the Commission's revised Rule 701, which enumerates permissible types of Financial Assurance and establishes procedures for operators to utilize each type.

Second, as noted above, the Commission changed the term "cash collateral" to the newly defined term "Cash Bond," to clarify that cash bonds are not intended to be considered as cash collateral within the meaning of 11 U.S.C. § 363(a) in bankruptcy proceedings.

Third, the Commission removed the term "certificate of deposit" from the definition, because certificates of deposit are included in the new 100 Series definition of Cash Bond.

Fourth, the Commission removed the term "guarantee" as a form of Financial Assurance. The Commission made conforming edits to other language in the definition to clarify that Rule 701 establishes the types of Financial Assurance that are acceptable to ensure that an operator is able to perform its obligations under the Act and the Commission's Rules.

Finally, the Commission removed language discussing the purpose of general liability insurance for addressing third-party liability. The Commission determined that this language is unnecessary, and that the purpose of liability insurance pursuant to Rule 705 did not need to be enumerated in a regulatory definition.

Inactive Well

The Commission revised its definition of Inactive Well to address challenges that arose in the course of implementing its prior definition, and to better reflect the new array of regulatory standards that the Commission adopted for Inactive Wells throughout the Financial Assurance Rulemaking.

The Commission's prior definition included shut-in wells from which no production was sold for a period of 12 consecutive months, and wells that were temporarily abandoned for a period of six consecutive months. By tying the definition to any level of production that was sold, the definition inadvertently excluded wells that were no longer producing in significant volumes, but still had occasional sales, including potential sales from hydrocarbons stored on-site in tanks. The Commission addressed these issues with its new definition of Inactive Well.

First, rather than requiring that a well have no production sold, the Commission adopted a definition that focuses on a well's operations—that is, whether the well has produced or been utilized—over a period of consecutive months. The Commission determined that a definition focusing on the operational aspect of production rather than production sold would accurately capture those wells that are within the risk profile of wells that are at the end of their useful productive life. Because operators already must report the monthly production of each of their wells every month through a Form 7, Operator's Monthly Report of Production, it will be relatively straightforward for both an operator and the Commission to determine whether a well meets the definition of Inactive based on the most recent production reports for the well.

The Commission recognized that is it possible for operators to produce wells solely to avoid meeting the Inactive Well definition. To ensure that wells are classified appropriately, the Commission adopted Rules 434.c.(2).B and C, which allow for the Director to designate a well as inactive or allow an operator to request an exception from the designation of a well as inactive. Rule 434.c is discussed further below.

Second, the Commission adopted a definition of Inactive Well that categorizes wells based on each well's type and official status. This approach is intended to provide clarity around what classifications and types of wells meet the definition of Inactive. The Commission had not experienced similar difficulties with implementing its definition of inactive injection wells. Accordingly, the Commission maintained its prior definition, but changed the term "injection well" in the definition to instead refer to Class II UIC Well. All of the injection wells that the Commission has jurisdiction to regulate are Class II UIC wells. The Commission also clarified that certain wells, based on date of completion, purpose used, designation as out of service, or other classification, do not qualify as Inactive Wells.

Letter of Credit

The Commission adopted a new definition of Letter of Credit to better define the types of financial assurance permitted under the Act and the Commission's Rules. The use of the term Letter of Credit in the Commission's Rules refers only to irrevocable Letters of Credit. The Commission will not accept a revocable letter of credit as a form of Financial Assurance.

A Letter of Credit is distinct from a surety bond in that it is a guarantee by a third party entity of an operator's creditworthiness, rather than an actual financial instrument. Additionally, the Commission is the beneficiary of the Letter of Credit, while it is an obligee of a surety bond. As discussed below in Rule 701.a, a Letter of Credit carries greater risk for the Commission than a surety bond, and is therefore not a form of preferred financial assurance.

For a more detailed description of when the Commission may call and spend a Letter of Credit, see the discussion of similar language in the 100 Series definition of Cash Bond, above.

Low Producing Well

The Commission adopted a new definition of Low Producing Well, in concert with its revised definition of Inactive Well. Much of the Commission's focus in the Financial Assurance Rulemaking was on identifying wells that pose financial risks to the Commission and the public because it is more likely that an operator will orphan the well. The Commission recognizes that inactive wells—wells that are no longer producing—pose the greatest risks in many cases. But the Commission also recognizes that there are wells that pose some lesser risk because their production has declined to lower levels, but they will continue some level of production for some time.

Because the Commission is adopting rules that treat wells differently depending on their risk profile and anticipated time to retirement, the Commission determined that it was necessary to adopt a new definition of Low Producing Well to identify those wells with a lower risk profile than Inactive Wells, but still some higher risk profile than a well producing at a higher level. The Commission clarified that a Low Producing Well does not mean a Class II UIC Well that is not an Inactive Well, a well used for the purpose of monitoring or observing an oil or gas reservoir, or a Stratigraphic Well.

The Commission determined that wells with an average daily production of 2 BBL per day or 10 MCF per day of gas over the previous twelve months was a reasonable threshold for identifying Low Producing. These thresholds reflect a level where the well is still producing in sufficient quantities to potentially be profitable, but may be at the point in its decline curve where it will become inactive at some point in the relatively near future. This allows the Commission to revisit a well's status prior to it becoming inactive. In determining whether a well qualifies as low producing, the intent is to calculate average daily production with twelve months of data.

In the definition of Low Producing Well, the Commission also specified when barrel of oil equivalent ("BOE") or cubic feed of natural gas equivalent ("MCFE") should be used to classify a well as low producing. The Commission used an industry-standard gas-to-oil ratio ("GOR") in the definition. This requirement is necessary to prevent operators of oil wells from circumventing the definition by converting oil production to MCFE.

Operator

The Commission moved the definitions of Selling Operator, Buying Operator, and Prior Operator from prior Rules 218.a.(2)–(4) to the 100 Series. The Commission did so because in the Financial Assurance Rulemaking, it adopted regulations using those terms in Rules other than Rule 218.

The Commission did not substantively change the definition of Operator, or of Selling Operator, Buying Operator, or Prior Operator in the Financial Assurance Rulemaking.

Orphaned Well

The Commission restyled its prior definition of Orphan Well in the new defined term Orphaned Well. Several stakeholders questioned whether the continued use of the term "unwilling" in the definition is consistent with an Operator's responsibility to comply with all its obligations under the Act and the Commission's Rules. The Commission clarified that the term "unwilling" refers to an operator that has lost all of its rights to conduct oil and gas operations in Colorado. An Operator has orphaned a Well when it is unable or unwilling to Plug and Abandon that Well.

Orphaned Site

The Commission revised the definition of Orphaned Site to better reflect that it includes oil and gas locations, and oil and gas facilities. The Commission also clarified that that an Orphaned Site may or may not have associated Orphaned Well(s). The Commission's Orphaned Well Program addresses a wide array of plugging, abandonment, reclamation, and remediation projects, which occur at a variety of different sites where oil and gas operations have occurred in the past. The Commission intends for the definition of Orphaned Site to encompass the full array of oil and gas operations orphaned by an operator that can be addressed by its Orphaned Well Program.

The Commission also revised the definition of Orphaned Site to reflect that it is a site where no operator with unaccessed financial assurance or an active Form 1 exists. The Commission will only expend funds collected pursuant to Rule 205.c to address Orphaned Sites for which there is no active operator, no available financial assurance, and no responsible party.

Further, the Commission revised the definition to remove language about significant adverse environmental impacts. Orphaned Sites may not always have significant adverse environmental impacts, and may require only straightforward plugging and abandonment, site decommissioning, or reclamation. Additionally, the Commission simplified references to identifying responsible parties in the definition. The definition of Responsible Party, along with Rule 525, already provide adequate guidelines for determining whether a responsible party exists. The Commission determined that providing additional guidelines in the definition of Orphaned Site would lead to undue confusion and was unnecessary.

Out of Service Well

The Commission adopted a new definition of Out of Service Well to describe a well that an operator will not return to production and has added to its plugging list pursuant to Rule 434.d. As part of its overall efforts to incentivize operators to more rapidly plug, abandon, and reclaim wells that are no longer economically viable, the Commission determined it was necessary to create a new classification for wells that are no longer actively producing, and that an operator intends to plug. The Commission therefore tied the definition of an Out of Service Well to the well's inclusion on the operator's Form 6A, Out of Service Designation and Plugging List pursuant to Rule 434.d, which is discussed below.

Plugging and Abandonment

The Commission revised its definition of Plugging and Abandonment to clarify that it does not include reclamation and remediation activities. The Commission revised its Rules to ensure that the term "plugging and abandonment" is used to refer to actually plugging a well and the associated site decommissioning and removal of production facilities. The terms "reclamation" and "remediation" are separately used to refer to the process of restoring an oil and gas location to its original state pursuant to the Commission's 1000 Series Rules, and to cleaning up any spills and releases or other sources of contamination pursuant to the Commission's 900 Series rules, respectively.

The Commission also revised the definition by changing the term "cementing" to "permanent plugging," in recognition that there may be other equally or more effective methods of permanently plugging that do not involve cement.

The Commission also made minor changes to the wording of the definition of Plugging and Abandonment to improve clarity and for consistency with changes made in the Mission Change Rulemakings to reflect Senate Bill 19-181's changes to the Commission's mission and statutory authority.

Plugging List

The Commission adopted a new definition of Plugging List to reflect the list of Out of Service Wells resulting from an approved Form 6A, Out of Service Designation.

Reclamation

The Commission made minor changes to the wording of the definition of Reclamation to improve clarity and for consistency with changes made in the Mission Change Rulemakings to reflect Senate Bill 19-181's changes to the Commission's mission and statutory authority.

Also consistent with the Commission's Mission Change Rulemaking, the Commission removed the cross-reference to the Rule 502 variance process in the definition of Reclamation. As discussed in the Statement of Basis and Purpose for the 200–600 Mission Change Rulemaking, including cross-references to the Rule 502 variance process in some rules but not others created unnecessary confusion about which Rules are subject to the variance process. *See* COGCC, *Statement of Basis, Specific Statutory Authority, and Purpose, Cause No. 1R Docket No. 200300071, 200–600 Mission Change, Cumulative Impacts, and Alternative Location Analysis Rulemaking* at 177 (Nov. 23, 2020) ("200–600 SBP"). The Commission intends for all of its Rules to be subject to the Rule 502 variance process, unless otherwise specified in the text of the Rule.

Related Operators

The Commission adopted a new definition of Related Operators to identify those parent and subsidiary operators who are consolidated for purposes of determining Rule 702 Financial Assurance and Rule 705 General Liability Insurance obligations.

Remediation

The Commission included the 100 Series definition of the term Remediation in the notice for the Financial Assurance Rulemaking as a reference, because it is an important term that is used frequently in the Financial Assurance Rules. However, the Commission did not revise the definition.

Shut-In Well

Consistent with changes made to the definition of Inactive Well, the Commission revised the definition of a Shut-In Well to clarify that a Shut-In Well is not currently producing or injecting.

Single Well Financial Assurance

The Commission adopted a new definition of Single Well Financial Assurance in an effort to allow for a more accurate identification of the cost of plugging, abandoning, and reclaiming a well and its associated oil and gas location. The definition allows for operators to make a demonstration on the appropriate amount of financial assurance based on a cost estimate of plugging, abandonment, and reclamation for the particular well at issue, or to utilize the Commission's cost estimates as set forth in the definition. The Commission's cost estimate equation takes into account the depth of the particular well for which the single well financial assurance will be tied, sets an estimated cost for reclamation of an entire location, and then divides that estimated reclamation cost by the number of wells on the location.

The Commission recognized that plugging, abandonment, and reclamation costs may vary widely between oil and gas locations. In setting the estimated amount for single well financial assurance, the Commission determined it was reasonable and necessary to set an amount that would be sufficient for many wells and locations, but may not be sufficient for the costliest plugging, abandonment, or reclamation projects. The Commission determined that it would not be reasonable to set an estimated amount equal to the costliest plugging, abandonment, or reclamation operations, because information in the record demonstrated that most plugging, abandonment, or reclamation projects would be far less costly. It would not be equitable for the Commission to require operators to submit a high amount of financial assurance where there was no reasonable expectation that such amount of financial assurance would be necessary. Further, Commission recognized that, even where financial assurance is insufficient, the annual registration fee adopted in Rule 205.c, significantly reduces the risk that taxpayer funds will be necessary to plug, abandon, or reclaim an orphaned well. Rule 205.c is discussed in more detail below.

The Commission determined that the most reliable data presented at hearing demonstrated that a $100,000 location reclamation cost would be sufficient to reclaim the majority of oil and gas locations in Colorado. Similarly, information presented to the Commission at hearing demonstrated that $10,000 would be sufficient to plug and abandon a well with a total depth of 4,000 feet or less, $30,000 for a well drilled to between 4,000 and 8,000 feet, and $40,000 for a well drilled to more than 8,000. In setting the footages for plugging and reclamation costs, the Commission intended to set footage ranges that encompassed the most common well depths in Colorado.

Stakeholders proposed Single Well Financial Assurance definitions that set forth a variety of factors to tailor the financial assurance amount to the unique characteristics of a well or well site. While the Commission recognized that each well or well site has different characteristics, the Commission determined that these widely-varying characteristics make it difficult, if not impossible, to set accurate and tailored financial assurance amounts in advance. Ultimately, the Commission chose a definition of Single Well Financial Assurance that promotes ease of administration and certainty for operators and other stakeholders, and minimizes the risk that taxpayer or orphan well program funds will be necessary to plug, abandon, or reclaim orphaned wells.

Where operators use demonstrated costs of plugging, abandonment, and reclamation, the Commission intends for operators to include all relevant costs and information in their Single Well Financial Assurance proposal, including but not limited to: known remediation issues; areas of initial and total disturbance for the oil and gas location and any associated offsite facilities; number of wells at the oil and gas location; whether the oil and gas location has cut-and-fill slopes and, if so, the slope ratio of both the cut slope and the fill slope; whether the oil and gas location has sandy soils; whether any salt kills have occurred at the oil and gas location; whether the oil and gas location is in high priority habitat; and whether topsoil has been salvaged at the oil and gas location. The Commission also expects operators will support their demonstrated costs with, for example, three years of invoices from past plugging, abandonment, or reclamation operations, where possible, or a third-party estimate of plugging, abandonment, and reclamation costs. The Commission acknowledges that supporting evidence operators may provide to support their demonstrated costs may include confidential information as described in Rule 223.b.(11). Based on a review of evidence in the administrative record, the Commission determined that these factors are most likely to drive remediation and reclamation costs. The Commission recognizes that reclamation costs are primarily determined at a location level, not a well level. By taking these factors into account, the Commission will be able to more appropriately tailor the amount of financial assurance required for each well.

The Commission also noted that, one of the intended purposes of providing the Director with discretion to request a hearing to amend an operator's financial assurance plan in Rule 707.a.(2) is to allow the Director to raise situations where the Single Well Financial Assurance calculation does not adequately capture extraordinary reclamation costs for Commission review.

The Commission recognizes that costs change over time. Accordingly, the Commission provided that the amount may be adjusted by inflation, based on guidance or other procedures that Staff develop pursuant to Rule 707.a.(1).A in the course of annual review of financial assurance. The Commission intends for Staff to provide transparent guidance or other public information about any inflation adjustments required over time.

Spud

The Commission adopted a new definition of Spud to clarify that it refers to the initiation of drilling a well's surface hole. The Commission does not intend for operators to pay an annual registration fee for wells that have not yet been Spud pursuant to Rule 205.c, because in most cases, such wells are associated with little to no surface disturbance, and therefore pose lower risks to the Commission's Orphaned Well Program if an operator orphans the oil and gas location. It was accordingly necessary to adopt a definition of Spud to provide a single understanding of a term that is commonly used in the oil and gas industry, in the context of its specific use in the Commission's Rules.

Spud Date

Consistent with adopting a new definition of Spud, the Commission adopted a separate definition of Spud Date. The Commission's Rules occasionally refer to both the date a well is spud and the action of spudding a well, and accordingly a separate definition of Spud Date was necessary.

Surety Bond

The Commission adopted a new definition of Surety Bond to better define the types of financial assurance permitted under the Act and the Commission's Rules. A Surety Bond refers to a financial instrument that exists, between a third party (sometimes called the surety, surety company, bond company, or issuer) and the Commission. The Commission is the obligee of the Surety Bond, which serves as a formal instrument guaranteeing that the third party will provide the full amount of financial assurance required by the Act and the Commission's Rules in the event that an operator—the principal—defaults on its obligations and the Commission must access the bond pursuant to Rule 706. Essentially, a Surety Bond transfers the risk of the principal's performance to the surety company.

A letter of credit is distinct from a surety bond in that it is a guarantee by a third party entity of an operator's creditworthiness, rather than an actual financial instrument. Additionally, the Commission is a beneficiary of a letter of credit rather than an obligee. Because surety bonds are formal financial instruments, they are among the preferred forms of financial assurance under Rule 701.

For a more detailed description of other the aspects of the definition of Surety Bond, including when they may be called and spent by the Commission, and the nature of the operator's contingent reversionary interest, see the discussion of related provisions in the 100 Series definition of Cash Bond, above.

Surety Company

The Commission adopted a new definition of Surety Company to accompany its separate definition of Surety Bond. A Surety Company refers to a company duly-licensed to write surety business in the State of Colorado.

Suspended Operations Well

Because the term Suspended Operations Well is used to describe wells that must pay an annual registration fee pursuant to Rule 205.c, the Commission revised and updated the 100 Series definition of the term to improve clarity and readability. The Commission further clarified that the term Suspended Operations Well refers to a well that has been spud, but where drilling operations are suspended prior to reaching total depth. The Commission also eliminated a confusing reference to the surface casing in the definition. The Commission does not intend for the term "casing string" to refer to a conductor.

Third-Party Trust Fund

The Commission adopted a new definition of Third-Party Trust Fund to set the requirements for trust funds that would ensure the funds in the trust are managed appropriately. The Commission intends for the Director and Staff to work with stakeholders to develop documents creating the trust that may be used by operators and meet the Commission's requirements.

Temporarily Abandoned Well

Because the term Temporarily Abandoned is used frequently in the Financial Assurance Rulemaking, the Commission revised the definition to improve clarity. The Commission added substructure to the definition to improve readability. Consistent with changes to the definition of Inactive Well and Shut-In Well, the Commission also clarified that a temporarily abandoned well is neither currently producing nor permanently plugged. The Commission further clarified that a temporarily abandoned well is a well which is incapable of production or injection without a downhole intervention or other equipment.

Used or Useful

In the 200–600 Mission Change rulemaking, the Commission committed to revisiting the definition of the term "used or useful" in the Financial Assurance Rulemaking, because the term was tied to concepts related to financial assurance, orphaned wells, and the risk profile for wells nearing the end of their economic viability. *See* 200–600 SBP at 35.

Accordingly, in the Financial Assurance Rulemaking, the Commission determined that it was appropriate to adopt a new definition of the term Used or Useful. The term Used or Useful has been used in the Commission's 200 Series Rules since 1954. However, the Commission has never specifically defined the term. Based on the Commission's review of relevant data in the administrative record related to orphaned wells, the Commission adopted a definition that recognizes indicators that a well, or an oil and gas location or oil and gas facility with or without associated wells, is no longer used or useful, and therefore should be eligible for an application from the Director or a Relevant Local Government to plug the well, or close the associated location, pursuant to Rule 211.

A well, or an oil and gas location or oil and gas facility with or without associated wells, is no longer used or useful if it has two core characteristics. First, a well that is not currently being used is not "used." Of course, not all wells that are not currently being used are no longer "useful." Some wells might be temporarily shut-in for maintenance, pipeline capacity issues, temporary economic considerations, or other factors. Second, a well that does not have an identified future beneficial use is no longer useful. The Commission recognizes that there may be scenarios where a well may be repurposed for a use other than hydrocarbon production, such as an injection well, a carbon sequestration well, geothermal well, or geothermal coproduction well. The Commission determined that these repurposed uses are beneficial, and intends to allow future beneficial use to be a consideration for the "useful" determination. Accordingly, if an operator presents relevant evidence indicating an identified future beneficial use, the Commission may consider such information to identify whether the well continues to be used or useful. Both components of the definition are important, and they are intended to be inclusive, not mutually exclusive.

The Commission recognizes that the used or usefulness of each well is different, and in some cases may relate as much to the financial characteristics of the well's operator as actual production trends at a well. Accordingly, the Commission identified a non-exclusive list of factors that it determined are relevant to identifying whether a well continues to be used or useful.

First, the Commission determined that production trends are highly relevant in determining whether a well continues to be used or useful. Production is the primary, and often only, source of revenue from a well. Therefore, declining production over time, or zero production, is a strong indicator that a well is no longer used or useful. While a well can potentially be re-completed, or a different formation is completed in the same well, in general in the Commission's experience, a well declines in production prior to an operator plugging and abandoning, or orphaning, it.

Second, the Commission determined that the ratio between a well's gross revenue and plugging, abandonment, remediation, and reclamation costs is an indicator of whether a well continues to be used or useful. All wells must be plugged, abandoned, and reclaimed pursuant to the Act and the Commission's Rules. Some wells must also be remediated to clean up contamination or spills and releases. Thus, when the costs of conducting these required activities exceeds the revenue actually generated by the well, it is a strong indicator that the well is no longer used or useful. The Commission recognizes that it is important to review gross revenue over time. Accordingly, it intends to consider a relevant timeframe that factors in the remaining production from a well (if any). The Commission will also consider an operator's total number of wells and production from those wells over a recent timeframe (likely the last five years). Finally, the Commission will consider an annual average of the operator's gross revenue over a five year period. The Commission would review the operator's gross revenue from the well in conjunction with the status of the operator's financial assurance for the well.

Third, the Commission identified an operator's failure to use or develop a facility as an indication that the well is no longer used, and that it may also no longer be used or useful. In some cases, the Commission has encountered situations where an operator obtains a permit, partially constructs a location, or partially drills a well but does not complete the process so as to generate revenue from a completed well and is not using the facility. This situation would be an example of one in which an operator fails to use or develop the facility, which indicates that the facility is no longer economic for the operator to complete or develop, and therefore that it is no longer used or useful.

Fourth, the Commission determined that remaining economic viability is a factor that may indicate the used or usefulness of a well. The Commission recognizes that many varying factors determine the economic viability of a well, including price uncertainty and cost variability. Accordingly, the Commission will consider relevant financial evidence from the operator to help identify whether the well continues to be economically viable, and ultimately used or useful.

Finally, the Commission recognizes that other factors not listed in the 100 Series definition of Used or Useful may also be relevant in determining whether a well is Used or Useful pursuant to Rule 211. Accordingly, in subpart e of the definition, the Commission included a catch-all for other relevant evidence, which the Commission recognizes may vary on a case-by-case basis.

The elements of the definition of Used or Useful are intended to be the criteria that the Commission will weigh when determining whether a well and/or location are no longer useful in a well or location closure hearing pursuant to Rule 503.g.(12), initiated by the Director or a relevant local government pursuant to Rule 211. The elements are also what an operator would be required to show, as an affirmative defense, in such a hearing. The Commission will entertain arguments from an operator about why a well or location is indeed still used or useful, based on the elements listed in the definition.

Waiting on Completion Well

Because the term Waiting on Completion Well is used to describe wells that must pay an annual registration fee pursuant to Rule 205.c, the Commission revised and updated the 100 Series definition of the term to improve clarity and readability. The Commission first clarified that a Waiting on Completion Well has been drilled to total depth. This is to clarify that a Waiting on Completion Well is distinct from a Suspended Operations Well, which has not yet been drilled to total depth. The Commission also simplified the definition by removing references to methods of completing and stimulating a well, and instead used the defined term Stimulated, based on the 100 Series definition the Commission adopted in its recent Wellbore Integrity Rulemaking. Finally, the Commission removed a reference to "hydrocarbon" formation, to clarify that the definition applies to both production and injection wells.

Well

Because the Commission clarified many of its well status definitions in the Financial Assurance Rulemaking, the Commission also updated, simplified, and clarified its definition of Well. The Commission removed unnecessary language, and adjusted references to use terms defined in the 100 Series as much as possible.

The Commission also clarified that the term "gas" includes non-hydrocarbon gases such as carbon dioxide and helium. Some questions have arisen about the Commission's regulatory jurisdiction over helium. Consistent with Colorado law, the Commission determined that clarifying its jurisdiction through the definition of "well" would help resolve those questions and streamline compliance. *See* C.R.S. § 34-60-103(5); *Hoff v. Girdler Corp.*, 88 P.2d 100, 101 (Colo. 1939); *CO2 Comm., Inc. v. Montezuma Cty.,* 2021 COA 36, 1 (Colo. App. 2021); *Hudgeons v. Tenneco Oil Co.*, 796 P.2d 21, 22–23 (Colo. App. 1990); *see also Exxon Corp. v. Lujan*, 970 F.2d 757, 762 (10th Cir. 1992); *Aulston v. United States*, 915 F.2d 584, 589 (10th Cir. 1990); *N. Nat. Gas Co. v. Grounds*, 441 F.2d 704, 715 (10th Cir. 1971).

200 Series – General Provisions

Rule 205.

Rule 205.a

The Commission revised Rule 205.a.(3) by adding the term "immediately" to ensure that operators promptly report changes of address, and for consistency with Rule 205.b.(3).

The Commission also removed references to refiners and gasoline and other extraction plant operators, and replaced them with a reference to gatherers. The Commission does not regulate any activities by refineries or gasoline or extraction plant operators, and accordingly such entities are not required to register as operators with the Commission. However, the Commission does have limited jurisdiction to regulate exploration and production waste spills and releases from gas gathering lines, and accordingly updated Rule 205 to codify the expectation that such entities file a Form 1 to register as operators.

Rule 205.b

The Commission revised Rule 205.b.(3) by moving the term "reported" within the sentence for consistency with Rule 205.a.(3).

Rule 205.c

The Commission adopted a new Rule 205.c, which creates a new Form 1B, Annual Registration, and a new annual registration fee that will fund the new pooled fund for addressing orphaned sites.

Previously, the Commission required operators to register with the Commission only once by filing a Form 1. As a result, the Commission's internal records of active oil and gas operators have at times been out of date or not reflected key changes. In the recent 200–600 Mission Change Rulemaking, the Commission codified the new Form 1A, Designation of Agent process to ensure that Staff have up-to-date contact information for all registered operators. The new Form 1B will complement that process and ensure that the Commission has accurate and up-to-date records of both active operators and the number of active wells by requiring annual registration.

Rule 205.c.(1) requires all operators that have filed a Form 1 and operate at least one well (including a well that is currently Temporarily Abandoned or Shut-In) to file a Form 1B each year. The Form 1B must be filed by no later than April 30 of each calendar year. The Commission determined that April 30 is an appropriate date because it will allow operators sufficient time to inventory the number of wells and their status as of December 31 of the prior calendar year, while still affording the Commission sufficient time to review and process the Form 1B prior to the end of the Fiscal Year on June 30. Due to the April 30, 2022 effective date of the Rules, the Commission set the due date for the initial Form 1B at August 1, 2022.

Rule 205.c.(3) establishes an annual registration fee, which operators must remit with their Form 1B. The Commission's overarching goal in setting the fee was to generate $10,000,000 in each of the first two years the fee is collected. In consideration of the long term trends of operators orphaning facilities and other factors, the Commission anticipates that the number of orphaned sites will increase over time. $10,000,000 per year in annual revenue will allow the Orphaned Well Program to increase its capacity to address orphaned wells, concurrent with the anticipated expansion in the number of facilities becoming orphaned. The $10,000,000 goal is thus necessary and reasonable.

The Commission also recognized that three factors, which will impact the funding requirements to address orphaned wells, may evolve over the next two years and thereafter. First, changes in federal funding. Second, the number of orphan wells in the orphan well program. Third, Staff's ability to obtain contractors to perform the necessary work. Depending on how these factors change, or as the Commission learns more about these factors, over the next two years, the Commission may alter the annual funding goal in the future – and therefore the fee. In recognition that funding needs of the Orphaned Well Program may change over time, but that yearly changes may create unnecessary uncertainty and would not allow for sufficient time to assess whether changes would be necessary, the Commission adopted Rule 205.c.(3).D to limit any changes to Annual Registration Fee to no more frequent than biennial, or every two years.

Should the Commission's estimate of the costs necessary to fund the Orphaned Well Program prove to be inaccurate based on the orphan well backlog or other factors, the Commission intends to biennially consider the fee, fund, and orphan well backlog, and may commence another rulemaking to increase or decrease the annual registration fee, as appropriate. Additionally, during the biennial fee evaluation, the Commission intends to review the concept of excusing operators in Options 3 and 4 (discussed below), who have fully funded single well financial assurance, from paying the fee.

To make the fee amount equitable between operators, the Commission adopted two different fees based on levels of production across an operator's entire portfolio. Operators with a daily average per-well production of greater than 15 BOE or 22 MCFE will pay $225 per well. Operators with a daily average per-well production of less than or equal to 15 BOE or 22 MCFE will pay $125 per well. The Commission determined it would be equitable for operators with a higher average level of production to pay a higher fee because those operators would generate more revenue, and thus could more easily absorb the higher fee.

In the definition of Low Producing Well, the Commission also specified when barrel of oil equivalent ("BOE") or cubic feet of natural gas equivalent ("MCFE") should be used to classify a Well as Low Producing. The Commission used an industry-standard GOR in the definition. This requirement is necessary to prevent operators of oil wells from circumventing the definition by converting oil production to MCFE.

The Commission further determined that the $225 and $125 fees are reasonable because they are relatively low compared to the average annual revenue from a typical well. For example, even a stripper well that is exempt from paying severance taxes produces up to 15 barrels of oil per day or up to 90 thousand cubic feet (MCF) of natural gas per year. Assuming a conservatively low price of $40 per barrel of oil and $2 per MCF of natural gas, a stripper oil well could generate $219,000.00 in total revenue per year, and a stripper gas well could generate up to $65,700 in total revenue per year.

To further reduce any unnecessary financial burdens on operators, the Commission intends to consider making reductions to the mill levy associated with funding the Orphan Well Program in a future rulemaking. The Commission determined that it is premature to revise the mill levy in the Financial Assurance Rulemaking, because the budgetary effects of the new annual registration fee will not be realized until the fall quarter of 2022. If the Commission reduced the mill levy in the Financial Assurance Rulemaking, it could have the effect of unduly limiting the agency's revenues and constraining its operating budget. However, in the future, the Commission intends to make appropriate adjustments. Considering these future changes to the mill levy, the annual registration fee may not be a net loss for all operators, and in fact some operators will pay less to the Commission through the annual registration fee than they previously paid through the mill levy.

The fee is levied based on the number of wells that an operator operated as of December 31 of the previous calendar year. To ensure that operators pay the appropriate fee for the correct number of wells, Rule 205.c.(4).A. requires operators to list all of their wells, including the well status as of December 31. In addition to ensuring that operators pay the appropriate fee, this information will also allow the Commission to ensure that its records of the number of wells in Colorado, as well as their current status, are up-to-date and accurate. Having up-to-date information on these topics is critical to the Commission's budgeting, planning, resource allocation, and policymaking abilities.

To ensure that the Commission has the most accurate information regarding an operator's insurance, Rule 205.c.(4).B requires that operators inform the Commission of any renewals or changes to an operator's insurance.

The Commission intends for operators to pay the annual registration fee for every well that has been spud until the well is plugged. The only wells that an operator need not pay the fee for are wells that have not yet been spud (for example, a well approved on a Form 2, Application for Permit to Drill but where construction has not yet commenced), and wells that have been permanently plugged subject to the Commission's approval of a Form 6, Well Abandonment Report – Subsequent Report of Abandonment. The Commission recognizes that the December 31 deadline may result in operators submitting a high volume of Form 6 – Subsequent Report of Abandonment for Staff review and approval close to the end of the year, which coincides with multiple state holidays. The Commission does not intend to burden Staff with a high volume of forms to review, and recognizes that Staff may not be able to review or approve any Form 6 – Subsequent Report of Abandonment reports submitted after December 1 of each year prior to the December 31 deadline. Rather, the Commission encourages operators to submit such forms promptly to afford Staff adequate time for review.

The Commission determined that this is a reasonable range of wells to levy a registration fee on because all such wells may pose some risk of costs to the Commission's Orphaned Well Program if an operator orphans the wells. Less risk exists prior to spudding a well, because if the location was orphaned, there would be no plugging for the Commission to perform, and likely fewer requisite reclamation and remediation activities. Similarly, less risk exists for the Orphaned Well Program after a well is properly plugged subject to the Commission's approval, because all that might remain to be accomplished at the facility would be remediation, reclamation, and site decommissioning.

Although Senate Bill 19-181 required the Commission to consider adopting a pooled fund to address orphan wells, C.R.S. § 34-60-106(13), it did not specify how the Commission should structure and fund the pooled fund. In addition to C.R.S. § 34-60-106(13) instructing the Commission to consider creating a pooled fund, the Commission also has statutory authority to levy fees under numerous other provisions of the Act, including C.R.S. §§ 34-60-106(1)(f)(B)(II), (7)(a), (7)(b), and (16). The Commission does not intend for the annual registration fee adopted in this Financial Assurance Rulemaking to be the only fee adopted pursuant to C.R.S. § 34-60-106(7)(b), and intends to address potential additional fees in its forthcoming Fees Rulemaking, which is also directed by Senate Bill 19-181.

Based on stakeholder feedback, advice of its own Staff, and the administrative record, the Commission determined that levying a per-well annual registration fee would be the most equitable and effective manner of funding the pooled fund.

First, the Commission determined that levying a per-well fee is reasonably related to the financial liabilities posed to the state by orphaned wells, because it is impossible to determine which wells operators will ultimately orphan. Too many factors influence whether an operator will orphan a facility, which cannot readily be predicted until the operator is already so in danger of orphaning its assets that the Commission is unable to levy a fee directly on those locations. Accordingly, the Commission determined that a per-well fee was the alternative to fund the Orphaned Well Program that is most reasonably related to the actual direct and indirect costs the Commission will incur in plugging, abandoning, and reclaiming orphaned sites.

Second, other alternatives for funding the pooled fund, such as levying fees on production, run the risk of being duplicative with existing fees and taxes levied on production such as the mill levy and severance tax, and might raise questions about the source of the Commission's statutory authority. To avoid raising unnecessary legal questions, the

Commission determined that levying an annual registration fee on a per-well basis was more appropriate.

Third, a production-based method of funding the pooled fund would create additional risks and budgeting challenges due to the volatility of oil and gas prices and fluctuation in production rates over time. The Commission's budget is challenging to manage because of these fluctuations over time. The Commission intends to insulate the pooled fund from market volatility through funding using a steadier metric that changes more slowly over time—the number of wells in Colorado. Steadier funding will ensure that its Orphaned Well Program is able to maintain a steady pace of addressing orphan wells over time.

Fourth, the Commission determined that a per-well fee would be easier to administer, because the Commission already has detailed records of well numbers, and it will enable the Commission to avoid unnecessary disputes over production metrics.

Finally, the Commission determined that levying a per-well registration fee was more equitable than other methods of funding the pooled fund. Because most new wells drilled in Colorado are subject to a steep decline curve, funding the pooled fund through a production-based metric would result in newer wells contributing to a higher percentage of the fund, even though those newer wells are at less risk of an operator orphaning them. Additionally, a production-based metric would not be equitably distributed among operators. A well-based fee is therefore more targeted to the facilities that pose risks of an operator orphaning them and is more equitably distributed among operators.

Rule 205.c.(5) limits the Director's authority to expending funds raised by the Annual Registration Fee to addressing orphaned wells and site. The Commission intended for this authorization to include reimbursing or providing grants to relevant local governments and other persons for reasonable costs expended to address orphaned wells and sites. The Commission also instructed Commission Staff to ensure that local governments and the public are aware of the possibility of reimbursement or grants.

The new Annual Registration Fee is intended to address the liabilities presented to the State of Colorado by an operator orphaning wells and sites. The purpose of the Annual Registration Fee is not to raise general revenue to fund the Commission's operations. The Commission's operating budget will continue to be funded by the mill levy. And Rule 205.c.(4) prohibits the Commission from using the funds for any purpose other than addressing orphaned sites. Rather, the primary, and indeed sole, purpose of the Annual Registration Fee is to fund the reasonably-calculated direct and indirect costs of administering the Orphaned Well Program. *See generally Colo. Union of Taxpayers Found. v. City of Aspen*, 418 P.3d 506, 515 (Colo. 2018). Rule 205.c.(4) ensures that the fund will be appropriately spent only for purposes of addressing orphaned sites by requiring the annual registration fee may only be spent for this purpose. Accordingly, in an effort to provide transparency, the Commission required the Director to report annually, by September 1 of each year, on the status of the pooled fund, and include information related to the progress of addressing orphaned sites and the fees and expenditures of the prior fiscal year. This language confirms many of the same reporting requirements imposed pursuant to Governor Hickenlooper's 2018 Executive Order D-2018-012.

Finally, the Commission allowed operators to be consolidated for purposes of financial assurance and insurance pursuant to Rules 702 and 705, respectively. The Commission intends for every operator that operates wells in Colorado as a separate legal entity to file its own Form 1B given the need for the identified wells to include the accurate operator, whether or not that operator consolidated for purposes of financial assurance and insurance.

In discussions with parties and other stakeholders, the Commission determined that it would be appropriate and beneficial for the funds raised by the fee to be administered by an enterprise, in part to ensure that funds raised would be permanently available for plugging, abandoning, and reclaiming orphaned wells. However, the General Assembly must create the enterprise. The Commission therefore intends to encourage development of legislation creating an enterprise. The Commission recognizes that, should the General Assembly pass enterprise legislation, the Commission may need to conduct a follow-up rulemaking to conform Rule 205 to that legislation.

Rule 211.

The Commission significantly revised Rule 211 in its recent 200–600 Mission Change Rulemaking, but also committed to making further updates by adopting a 100 Series definition of the term Used or Useful. *See* 200–600 SBP at 35.

In the Financial Assurance Rulemaking, the Commission adopted a definition of the term Used or Useful, as discussed above.

The Commission also revised Rules 211.a and 211.b based on the clarified and revised 100 Series definitions of the terms Plug and Abandon, Reclamation, and Remediation. The Commission ensured that each term was used properly in Rule 211 to clarify that an operator subject to an order under Rule 211 must plug abandon, reclaim, and remediate the well or oil and gas location subject to the order, rather than solely plugging and abandoning the well.

Finally, the Commission revised its 500 Series Rules to create procedures for Commission hearings that require an operator to plug and abandon a well or close a location. The Commission therefore added a cross reference to Rule 503.g.(12) in Rules 211.a and 211.b.

Rule 217.

The Commission included Rule 217, governing the mill levy, in the notice for the Financial Assurance Rulemaking in order to properly notify interested stakeholders that it could become relevant or subject to change during the Rulemaking. As discussed above, because the Commission adopted an annual registration fee in Rule 205, in the future, the

Commission may decide to lower the mill levy in order to properly balance its budget. However, the Commission chose not to do so in the Financial Assurance Rulemaking given its present budgetary considerations, and therefore did not revise Rule 217.

Rule 218.

To implement Senate Bill 19-181's instruction that the Commission consider increasing financial assurance for inactive wells and for wells transferred to a new owner, the Commission substantially amended Rule 218, governing transfer of operatorship.

Rule 218.a

In the Financial Assurance Rulemaking, the Commission adopted and amended several Rules besides Rule 218 that use the terms "Selling Operator" and "Buying Operator." Accordingly, the Commission moved the definitions of those terms, along with the definition of Prior Operator, from Rule 218.a to its 100 Series Definitions. The Commission did not substantively revise any of the definitions.

Some stakeholders questioned whether an OGDP that has passed completeness should be included as part of Rule 218.a's list of transferable items. The items in Rule 218.a are meant to be comprehensive, but not necessarily exhaustive. Therefore, the Commission recognized that an ODGP may be transferred. However, OGDP applications may be at any point in the Commission's process when a transfer occurs, and the Commission did not intend to set any additional specific requirements for an OGDP to be transferrable. Therefore, the Commission did not add OGDP applications to the list in Rule 218.a, but acknowledged that Staff will work with buying and selling operators through existing processes to help determine whether the OGDP in question may be transferred.

Rule 218.b

The Commission amended Rule 218.b, which governs the informational requirements for the Form 9, Transfer of Operatorship – Intent, to facilitate single well financial assurance for certain transferred low producing wells transferred after April 30, 2022.

Rule 218.b.(3)

Rule 218.b.(3) requires the selling operator to populate the Form 9 – Intent with a complete list of items that are proposed for transfer.

Because the Commission adopted requirements that are specific to low producing, inactive, and out of service wells that are subject to a transfer, the Commission adopted a new Rule 218.b.(3).A requiring the selling operator to specifically identify all low producing, inactive, and out of service wells that are proposed for transfer and related informational requirements. In new Rule 218.b.(3).B, the Commission required the selling operator to provide certain information related to low producing and inactive wells, and their associated oil and gas locations. This will enable Staff to process each Form 9 – Intent and ensure compliance with the newly adopted Rules governing transfer of inactive wells and out of service wells. It will also ensure that the selling operator and buying operator are each fully aware of the nature of the transaction, including which transferred wells may be less economically viable or are precluded from producing.

The Commission reviewed extensive data and analysis by Staff in the administrative record related to the costs of plugging, abandoning, and reclaiming oil and gas wells and their associated locations. The list of factors the Commission codified in Rule 218.b.(3).B are known to drive higher reclamation costs. By including these factors on the Form 9 – Intent, it will enable Staff to conduct a desktop review to identify which low producing and inactive wells proposed for transfer, if any, are likely to have above-average reclamation costs and therefore require increased financial assurance. The Commission developed this list of factors based on the analysis Staff conducted in the administrative record. The Commission requested that Staff provide information on reclamation costs at its May 5, 2021 hearing. The Commission's reclamation experts and financial analysis experts compiled cost data based on multiple sources. First, Staff used its extensive expertise with reviewing invoices for reclamation projects associated with the Orphaned Well Program. Second, Staff reviewed typical contractor pricing for key services related to reclamation. Staff consulted directly with multiple contractors to ensure that the prices they were reviewing were current. Finally, Staff cross-checked price estimates in the RS Means Heavy Construction Costs database. Staff considered contractor pricing statewide, and reviewed invoices from contractors throughout the state. The Commission therefore determined that Staff's reclamation cost estimates reflect a reasonable statewide estimate, factoring in variability among basis.

The factors that drive increased reclamation costs the Commission identified based on Staff's analysis include the area of disturbance at an oil and gas location, whether the oil and gas location has cut and fill slopes (and the ratio of those slopes), whether the location has sandy soils, whether the location is within High Priority Habitat or 2,000 feet of a specified building within a disproportionately impacted community, and whether an operator has properly salvaged topsoil at the location. Additionally, based on Staff's extensive reclamation experience, the Commission determined that whether a salt kill has occurred is a relevant factor that may drive significantly increased reclamation costs, although Staff did not have sufficient data to quantify the magnitude of this increase. Finally, the Commission included the number of wells at an oil and gas location, including how many are proposed for transfer and how many are low producing or inactive, as one of the factors that must be included on the Form 9 – Intent. The Commission recognizes that reclamation costs are primarily determined at a location level, not a well level. Accordingly, the Commission required operators to provide information at the location level in Rule 218.b.(3).B.

When operators provide the area of initial total disturbance for the oil and gas location in Rule 218.b.(3).B.i, the Commission intends for operators to use the total final reclamation area, without subtracting the interim reclamation area. Based on the Commission's and Staff's experience, reclamation costs are driven by the total area, because some reclamation work is usually still conducted outside the bounds of an interim reclamation area when a site reaches final reclamation.

Among the factors listed in Rule 218.b.(3).B is whether an oil and gas location is within high priority habitat. The Commission included this factor because sometimes habitat-related considerations may increase reclamation costs, particularly if additional steps are necessary to ensure that an area is reclaimed to meet the specific habitat needs of a high priority species. This is particularly true in aquatic and riparian areas. While not all locations in high priority habitat have higher reclamation costs than a typical location, some do.

In addition, Rule 218.b.(3).B also requires operators to identify whether an oil and gas location is within 2,000 feet of a school facility, child care center, high occupancy building unit, or residential building unit within a disproportionately impacted community. This information will allow the Commission to track whether a low producing or inactive well that has been proposed for transfer is situated near a sensitive human receptor within a disproportionately impacted community. Including information on the list of factors that must be provided in Rule 218.b.(3).B will allow the Commission's Staff to conduct a desktop review and easily identify whether a location may have above average reclamation costs because of the nature of the high priority habitat or proximity to a disproportionately impacted community where the location is located.

In Rule 218.b.(3).C, the Commission required selling operators to identify the date by which each out of service well proposed for transfer will be plugged. The Commission further clarified that transferring the well cannot change the plugging deadline, unless the buying operator files a revised Form 6A pursuant to Rule 434.d.(9).A. The Commission included this requirement in order to ensure the timely plugging and abandonment of out of service wells and reduce any potential risks to the State, but also recognize that the buying operator should have an opportunity to request amendments to the plugging deadlines as a result of the transfer where the buying operator also has a plugging list.

Rule 218.b.(5)

In Rule 218.b.(5), the Commission adopted procedures for providing single well financial assurance for certain wells subject to transfer. Rule 218.b.(5) requires the selling operator to identify the amount of financial assurance that the buying operator will need to provide for the transferred items. The Commission revised the Rule to provide that all low producing wells transferred after April 30, 2022—the effective date of the Rules—will provide single well financial assurance to account for the cost of plugging, abandoning, and reclaiming those wells. The Commission required single well financial assurance for most transferred low producing wells because, in the Commission's experience and based on information and argument from stakeholders, transferred low producing wells are one of the most likely, if not the most likely, category of wells to be orphaned.

The Commission adopted three exceptions to this Rule. First, any wells designated as out of service. Second, the buying operator submitted a financial assurance plan that accounts for the transfer of low producing wells and single well financial assurance will not be required under that plan. Third, if the buying operator submitted a financial assurance plan under Rules 702.d.(3) or (4), the timeline for contributions of financial assurance will not change. The Commission adopted the second and third exceptions in recognition that the Commission's overarching financial assurance Option framework can address low producing wells given the enhanced degree of Commission oversight and production-based thresholds.

The Commission also recognized that some wells will have higher costs—potentially significantly higher costs—based on the analysis conducted by Staff. Rather than attempting to provide a prescribed step-up method or other set of fixed numbers for how much financial assurance may be increased based on the reclamation factors, the Commission recognized that costs may be highly variable, and that additional resources may be required beyond a single well financial assurance. Rule 218.b.(5).D therefore allows the Director, selling operator, or buying operator to request the Commission determine that a different amount of financial assurance is necessary in the course of reviewing an operator's Form 9 – Intent. The financial assurance hearing process as set forth in Rule 503.g.(11) will ensure proper oversight and due process in the event of a disagreement over the amount of financial assurance required.

Because the amount of financial assurance that an operator may be required to provide could be a determinative factor in the operator deciding whether to engage in the transaction, the Commission recognizes that the parties to a transaction may wish to know the amount of required financial assurance early in the process and potentially prior to submitting the Form 9 – Intent. Accordingly, the Commission intends for Staff to be available to consult with buying and selling operators about the estimated amount of required financial assurance prior to the submission of a Form 9.

Transferred low producing wells are not the only facilities for which the buying operator must provide financial assurance. Accordingly, in Rule 218.b.(5).B, the Commission required operators to list all of the other forms of financial assurance that will be provided pursuant to the Commission's 700 Series Rules.

In Rule 218.b.(5).C, the Commission required the selling operator to identify the type or types of financial assurance that the buying operator will provide on the Form 9 – Intent. Particularly if an operator intends to provide a type of financial assurance other than a cash bond or surety bond, it may influence the Director's or Commission's review of the Form 9 application.

Finally, in Rule 218.b.(6), the Commission required the selling operator to estimate the impact of the transaction on the selling operator's financial assurance plan. This will help the Commission ensure that the selling operator remains in compliance with its financial assurance obligations following the transaction.

Rules 218.d & e

The Commission adopted a new Rule 218.d to clarify that the buying operator and selling operator must submit revised financial assurance plans prior the date of transfer. As discussed above, Rule 218.b.(5) requires that the selling operator notify the Commission of the estimated amount of financial assurance that the buying operator would submit prior to the anticipated date of transfer. New Rule 218.d ensures that the buying and selling operators will consider and understand their financial assurance obligations prior to transferring assets, and also ensures that Staff has information regarding the buying and selling operators intention for financial assurance prior to transfer.

The Commission also adopted new Rule 218.e to require the buying operator to submit financial assurance consistent with the buying operator's revised financial assurance plan prior to transfer. The Commission adopted Rule 218.e to avoid situations where a buying operator fails to submit financial assurance after transfer of assets has already occurred. The Commission recognized that, should the buying operator submit a financial assurance plan for Commission approval, the Commission hearing may not take place before the date of transfer. In that case, the Commission intends for the buying operator to submit financial assurance consistent with its financial assurance application to the Commission.

Rule 218.f

The Commission moved prior Rule 218.d to Rule 218.f, but did not substantively revise the Rule.

Rule 218.g

The Commission moved prior Rule 218.f to Rule 218.g, and revised Rule 218.g.(4) to reflect that a Commission hearing may be required for transfers where a buying operator seeks a Commission hearing because it seeks a determination of a different amount of financial assurance it is required to provide under Rule 218.b.(5).D. Accordingly, the Commission provided that the Director cannot approve a Form 9 – Intent or Subsequent until after such a Commission hearing occurs.

Rule 218.h

The Commission moved prior Rule 218.g to Rule 218.h, and revised Rule 218.h.(3) to reflect that the buying operator must provide both the amount *and* type of financial assurance it is required to provide, and that the amount may be established either by the Commission's

Rules, or alternatively by a Commission order in the event of the Commission holding a financial assurance hearing regarding the proposed transfer.

Rule 218.i

The Commission adopted new Rule 218.i to separate rules regarding the consequences of a selling operator or buying operator's failure to comply with regulations from other sections of Rule 218, and to adopt new requirements for instances where no operator has provided satisfactory financial assurance for the transfer. The Commission adopted Rule 218.i.(2) to authorize the Director to file an application, and request an expedited hearing on the application, where neither the selling operator nor the buying operator submits satisfactory financial assurance for the transferred wells. While the Commission cannot decide applications in advance, the Commission intended to provide the Director with the opportunity to request all available relief in that application, including a Commission order orphaning the transferred wells and foreclosing on the selling operator's financial assurance. In other circumstances, the Commission expects that an operator's failure to comply with Rule 218 will be addressed by the Director through enforcement.

Generally, the Commission intends for a selling operator to remain obligated to comply with all Commission rules, including the financial assurance rules, until the Director approves the Form 9 – Intent and Form 9 – Subsequent pursuant to Rule 218.g. This intent is also articulated in the changes to the 700 Series rules.

Rule 223.

Rule 223.b

Rule 223.b specifies examples of confidential information. The list of categories of potentially confidential information in Rule 223.b is not intended to be exclusive, and determinations of confidentiality will be made on a case-by-case basis. Because the revised 700 Series Rules may require operators to submit certain types of financial information to the Commission which may be confidential, the Commission adopted a new Rule 223.b.(11) recognizing non-public and confidential financial information submitted as part of a Financial Assurance Plan pursuant to Rule 702, or as part of a demonstration of costs for single well financial assurance, as an additional category of confidential information.

<u>300 Series – Permitting Process</u>

Rule 304.

The Commission updated a cross-reference in Rule 304.b.(2).B.ix, to the 700 Series Rules regarding surface owner protection bonds.

Rule 306.

Rule 306.a specifies when the Director may issue a recommendation to the Commission to approve or deny a proposed oil and gas development plan. Rule 306.a.(5) requires the Director to ensure that an operator is in compliance with all financial assurance requirements prior to making a recommendation. Consistent with adding the new Form 1B, Annual Registration fee in Rule 205.c, the Commission required the Director to verify that an operator has submitted, and is in compliance with and paid, all required annual registration fees prior to making a recommendation on a proposed oil and gas development plan.

The Commission instructed the Director to include a condition of approval on every approved oil and gas development plan that the operator must submit any required additional financial assurance to the Commission before commencing construction.

400 Series – Operations and Reporting

Rule 413.

Rule 413

Rule 413 establishes procedural and substantive requirements for the Form 7, Monthly Report of Operations.

The Commission moved part of prior Rule 707.b to Rule 413.a.(1) but did not substantively revise the Rule. Prior Rule 707.b required operators to identify and list all shut-in wells and temporarily abandoned wells on their Form 7. Because this is an operational standard, the Commission determined that it was appropriate to move to the 400 Series as part of its broader efforts to consolidate all Rules pertaining to the same topic within the same Rule Series. The Commission determined that consolidating operational rules pertinent to the Form 7 with other Rules governing the Form 7 will facilitate easier compliance by operators.

Consistent with this change, the Commission also made minor, non-substantive edits to Rule 413 to improve readability. It broke Rule 413.a into two subparts, one pertaining to reporting for wells and the other pertaining to reporting formations. The Commission clarified that as part of its Form 7, all drilling wells, shut-in wells, suspended operations wells, temporarily abandoned wells, and waiting on completion wells must be identified. The Commission also removed passive voice from each subsection. Finally, the Commission moved fluid volume reporting requirements from Rule 413.a to Rule 413.b to consolidate requirements related to similar topics in the same subsections of Rule 413.

Rule 434.

Rule 434 establishes engineering and administrative standards for plugging and temporarily abandoning wells. Prior to the Financial Assurance Rulemaking, the Commission did not establish deadlines for plugging inactive wells. Consistent with its intent to minimize financial risks to the State of Colorado by incentivizing timely plugging and abandonment of inactive wells, the Commission revised Rule 434 to require operators to either plug or provide single well financial assurance for a certain subset of inactive wells.

Rule 434.b

The Commission revised and reorganized Rule 434.b, governing temporary abandonment, to improve clarity.

First, the Commission moved part of prior Rule 707.b to Rule 434.b.(1), but did not substantively revise the Rule. Prior Rule 707.b required operators to file a Form 4, Sundry Notice within 30 days of removing equipment from a well to render it temporarily abandoned. The purpose of the Form 4 filing is to notify the Commission's Staff that the temporary abandonment has occurred to ensure that the Commission's records are accurate and up-to-date. Because this is an operational standard, the Commission determined that it was appropriate to move to the 400 Series Rules, and specifically to Rule 434, which establishes the operational and engineering requirements for temporary abandonment. This is consistent with the Commission's broader efforts to consolidate all Rules pertaining to the same topic within the same Rule Series, which will facilitate compliance by operators. The Commission also revised the language of Rule 434.b.(1) to clarify that an operator always must file a Form 4 within 30 days of temporarily abandoning a well, rather than implying that filing the Form 4 is contingent on the timing of equipment removal.

Second, the Commission reordered and clarified the language of Rule 434.b:

- The Commission moved all requirements for the first six months of temporary abandonment to Rule 434.b.(2). The Commission also revised the requirements to eliminate passive voice and improve clarity. The Commission also added a cross-reference in Rule 434.b.(2).E to remind operators of their obligation to properly report wells as temporarily abandoned on their monthly Form 7 reports pursuant to Rule 413.a.(1).

- The Commission similarly moved all requirements for extensions of temporarily abandoned status beyond six months to Rule 434.b.(3), and revised the requirements to eliminate passive voice and improve clarity. The Commission also added cross-references to remind operators of their obligations with respect to wells in a temporarily abandoned status beyond six months. The Commission also clarified that the Form 4 should serve three purposes: request the extension of time, state the reason for the operator's request, and explain the operator's plans for future operation. Additionally, the Commission intends for the Form 4 to ensure that it has up-to-date records on temporarily abandoned wells.

Rule 434.c

The Commission adopted a new Rule 434.c that requires operators to timely plug and abandon inactive wells. As part of the Financial Assurance Rulemaking, the Commission reviewed a wide range of policy options proposed by stakeholders, as well as best practices from other jurisdictions, for minimizing the financial risks to the agency posed by operators orphaning their wells. The Commission observed that one practice employed by other states to minimize financial risk is creating more robust incentives and regulatory requirements for operators to plug wells that are no longer producing. *See, e.g.*, 16 Tex. Admin. Code §§ 3.14(b)(2); 3.15(a)(5)–(6), (e). Based on its review of these policies from other jurisdictions, as well as its review of stakeholder proposals and other evidence in the administrative record, the Commission determined that it was appropriate to adopt similar requirements for timely plugging of inactive wells in Colorado.

Rule 434.c.(1)

Rule 434.c.(1) gives operators four options for wells that remain inactive for six months: plug them, return them to production, "bond up" based on certain criteria by providing additional financial assurance, or designate the well as out of service. The Commission determined that these four options each provide equal levels of protection to the State of Colorado from the risks posed by operators orphaning inactive wells, while also providing operators with flexibility to determine an appropriate path to address inactive wells that is consistent with their individual business models.

The Commission intends for a well to "become inactive" when it has not produced for a certain period of consecutive months. The Commission intends for Staff to issue guidance, and explore the possibility of creating an automated system, to facilitate operator compliance with the process of determining when a well must comply with Rule 434.c based on its monthly production reports.

By using the defined term Plug and Abandon in Rule 434.c.(1), the Commission intends to refer to an operator having submitted a Form 6 – Subsequent Report of Abandonment for the well pursuant to Rule 435.b. If the operator has submitted the Form 6 – Subsequent Report of Abandonment by the required date, but the Director has not yet approved the form, the operator will not be deemed to be noncompliant.

By using the phrase bringing a well back to production in Rule 434.c.(1).A, the Commission intends to refer to an operator returning a well to production status, and the well therefore no longer meets the definition of an inactive well.

Rule 434.c.(2)

In Rule 434.c.(2), the Commission created new procedures for operators to "bond up" as an alternative to plugging or producing an inactive well within six months. The Commission created a new Form 5B, Inactive Well Notice, that will create an administrative process for operators and Staff to process operators' requests.

On the Form 5B, the operator must provide information about the inactive well. The Commission identified the information set forth in Rule 434.c.(2) based on its experience in identifying operators that are at higher risk of orphaning their assets and creating liability for the State of Colorado through its Orphaned Well Program. The information includes the reason why the well is inactive and the financial assurance Option and most recent Commission order approving the operator's financial assurance. The Commission determined that there is no single quantitative threshold for any one risk factor at which point an operator would be deemed "high risk" and therefore required to provide a higher per-well bond, but rather intends for Staff to exercise discretion, based on their extensive experience, to determine when such a requirement is appropriate. The Commission also recognizes that operators may leave wells inactive for a variety of reasons, and that certain reasons such as a legitimate maintenance issue or a contractual dispute with a pipeline operator, are not an indication that a well is uneconomic or any financial risk factors for the operator, but rather simply a normal part of doing business. Accordingly, the Commission intends for Staff to consider the reason why a well is inactive as part of its evaluation of the amount of financial assurance required for a well.

In Rule 434.c.(2).B, the Commission authorized the Director to designate any well as inactive. The Commission intended to provide the Director with the ability to review the operations of a well and determine if that well meets the language and intent of the inactive well definition. An operator may apply to the Commission for an expedited hearing on the Director's determination.

In recognition that a well that conforms to the language of the inactive well definition still may not meet the intent of the definition, the Commission adopted Rule 434.c.(2).C to allow an operator to request an exception for good cause. The exception request will be reviewed and decided administratively by the Director under the guidelines set by Rule 434.c.(2).C.

Rule 434.d

In Rule 434.d, the Commission created new procedures for operators to designate a well as out of service and add it to their enforceable plugging list as an alternative to plugging, producing, or "bonding up" an inactive well within six months. Operators can also add wells that are not inactive to the list. The Commission created a new Form 6A, Out of Service Designation, that will allow an operator to designate a Well as Out of Service and be placed on the operator's plugging list. As discussed above, the Commission adopted a new 100 Series definitions of Out of Service Status to designate wells that an operator no longer intends to produce, and instead intends to plug and abandon, and plugging list to account for the wells that are submitted via an operator's Form 6A.

To designate a well as out of service and add it to its plugging list, an operator must file a Form 6A providing each well's API number, name, number, and the date the well ceased or will cease production; whether each well is located within 2,000 feet of a sensitive human receptor or within a disproportionately impacted community; whether a well is within wildlife habitat identified by Rule 1202.c, the total number of wells the operator has plugged and abandoned during the previous 12 months; evidence that the operator is financially capable of plugging each well on its plugging list; and whether the operator has not repaired a detected a leak at an out of service well. The Commission recognizes that a wide variety of evidence may serve to demonstrate financial capability, and could include, but is not limited to, financial statements and models.

Rule 434.d.(4)

In Rule 434.d, the Commission adopted deadlines for operators to plug and abandon, commence reclamation, and commence investigation, remediation, and closure for each out of service well on the plugging list. The Commission directed operators to prioritize plugging and abandoning those out of service wells located within 2,000 feet of a school facility, child care center, high occupancy building unit, or residential building unit located within a disproportionately impacted community in Rule 434.d.(4).A. The Commission recognizes that environmental justice is an important concern and that disproportionately impacted communities have historically experienced an unequal share of the adverse impacts caused by oil and gas and industrial operations. Consistent with the Commission's other Rules intended to mitigate adverse impacts of oil and gas operations on disproportionately impacted communities, the Commission intends to ensure that operators make timely and meaningful progress addressing those out of service wells near sensitive human receptors within these communities. The Commission also encourages operators to communicate in a clear and timely manner with the public when plugging and abandoning wells in proximity to sensitive receptors in disproportionately impacted communities, to avoid any unnecessary concern regarding plugging and abandonment operations and to provide the public with the opportunity to express views or ask questions of the operator.

In Rule 434.d.(4).B, the Commission adopted a scaled timeline for operators to plug and abandon out of service wells. The Commission recognized that a greater number of out of service wells will require additional time to plug and abandon. In Rule 434.d.(4).C, the Commission adopted a four-year deadline for operators to plug and abandon all designated out of service wells on a Form 6A, if the operator submitted the Form 6A after December 31, 2023. The longer time-frames in Rule 434.d.(4).B reflect the Commission's desire to encourage operators to initially designate wells as out of service and use a rolling deadline going forward. If an operator has a well on its plugging list that is associated with a spill or release, or is on a delayed repair list, the operator should prioritize plugging work at that well or location.

<u>Rule 434.d.(5)</u>

In Rule 434.d.(5), the Commission acknowledged that certain wells may require depressurization measures immediately prior to plugging and abandonment. In order to encourage operators of these types of wells to utilize the plugging list in Rule 434.d, the Commission adopted an exception so that operators could completely and safely clear their equipment.

<u>Rule 434.d.(6)</u>

The Commission adopted Rule 434.d.(6) to specify that a well is removed from an operator's plugging list in one of three ways. First, if an out of service well is transferred to another operator. Second, if an out of service well is repurposed for beneficial use other than hydrocarbon production. Third, after the Director approves the well's Form 6 – Subsequent Report of Abandonment, and to clarify that an operator must still comply with all reclamation requirements even if a well is removed from the operator's plugging list. The Commission encourages the Staff to explore a process for batch review of Form 6 –

Subsequent Report of Abandonment, in order to efficiently remove wells from an operator's plugging list.

Rule 434.d.(7)

In Rule 434.d.(7), the Commission created a new Form 6B, Annual Out of Service Wells Report. The Commission intends for the annual out of service wells report to be an opportunity for operators to share information on four enumerated items related to the ongoing progress of work to plug wells and address locations listed on the operator's Form 6A. The Form 6B is not intended impact which wells are or are not on an operator's plugging list. The Commission also included three informational requirements related to the status of out of service wells nearby sensitive human and wildlife receptors, the operator's compliance with plugging and abandonment timelines, and whether the operator has not repaired detected a leak at an out of service well. This information will be helpful for the Commission to monitor the effectiveness of the out of service list, the operator's progress towards the plugging deadline, and to evaluate whether future changes to the Form 6A and associated timeframes to plug and abandon may be necessary.

Rule 434.d.(8)

Under Rule 434.d.(8), the Commission determined that the Director may require additional information from an operator in order to show that the operator is financially and operationally capable of timely plugging the wells on the operator's plugging list. Pursuant to Rule 434.d.(8).B, if, the Director has reasonable cause to believe an operator lacks the financial and operational ability to timely plug the wells on its out of service list or the operator is not making substantial progress toward its plugging and abandonment obligations, the Director may either request additional financial assurance on some or all of the wells proposed as out of service, or file an application for a financial assurance hearing to provide the Commission with oversight of the operator's out of service list. In authorizing the Director to take action based upon an operator's failure to make progress toward its obligations, the Commission did not intend prescribe specific milestones to be met by the operator, but did intend to provide a process that ensures that an operator is making progress on its plugging list and is on track to meet its plugging deadline. This will ensure operators have the resources necessary to meet their obligations to the Commission and help safeguard against the possibility that an operator unreasonably delays its plugging work or otherwise attempts to avoid its obligations under Rule 434.d. To ensure proper oversight and due process, the Commission also provided in Rule 434.d.(8).C that if an operator disagrees with the Director's request for additional financial assurance, the operator may seek a Commission hearing pursuant to Rule 503.g.(11).

Rule 434.d.(9)–(10)

The Commission added new Rule 434.d.(9) to address situations where an out of service well may be transferred to another operator or repurposed for a beneficial use other than hydrocarbon production. Subsection A provides that if an operator transfers an out of service well to another operator, the new operator must either plug and abandon the well or repurpose it for a beneficial use based on the original date the well was added to the transferring operator's Form 6A. The addition of an out of service well to an operator's Form 6A represents a commitment from the operator that there will be no future production from that well. Accordingly, it is the Commission's intent to ensure that transfers of out of service wells maintain the associated timeframes from the Form 6A. Pursuant to subsection B, an operator may repurpose an out of service well for an identified beneficial use, subject to the Director's written approval. The Commission recognizes that, occasionally, an operator may want to repurpose an out of service well for a beneficial use other than hydrocarbon production, such as an injection well or a geothermal, geothermal co-production, or water supply well. Accordingly, if an operator presents relevant evidence indicating an identified future beneficial use other than hydrocarbon production, the Commission granted the Director the discretion to review and approve such information.

Additionally, to mitigate the risks of wells that are in out of service status for more than the timeframes approved by the Director pursuant to Rule 434.d.(4), the Commission required the operator to provide a single well financial assurance for any such wells in Rule 434.d.(10). In these circumstances, the Director also may pursue enforcement for the failure to comply with the plugging deadline.

Rule 434.d.(11)

The Commission intends for operators to perform wellbore integrity tests for out of service status wells on the same schedule or frequency as for temporarily abandoned or shut-in status wells which are not also out of service wells. The Commission determined that operators must continue to conduct Bradenhead monitoring and testing on each out of service well. If such well is not equipped with Bradenhead access, the well must pass mechanical integrity tests. Furthermore, the Commission determined that when the Director has reasonable cause to believe an out of service poses a particular risk to public health, safety, welfare, the environment, or wildlife resources, the operator may be required to perform a mechanical integrity test. Finally, the Commission required operators to conduct an audio-visual-olfactory ("AVO") or other inspection of each out of service well annually to confirm integrity of the wellhead, and specified which facilities must be inspected when an operator conducts an AVO inspection.

Rule 434.d.(12)

The Commission moved portions of prior Rule 434.b.(3) providing an exception for gas storage wells to Rule 434.d.(12). The Commission does not intend for Rule 434.c to apply to gas storage wells, which the Commission considers to be active until such time as the well is physically plugged.

Rule 436.

Consistent with its efforts to consolidate all Rules relating to the same topic within the same Rule Series, the Commission moved prior Rules 436.g.(1)–(5), governing the release of financial assurance for seismic operations, to Rule 703.b.(3). The Commission also updated the cross-reference to Rule 703.b in Rule 436.g.

Rule 503.

Rule 503.g

The Commission revised Rule 503.g to add two new categories of hearing application.

First, Rule 503.g.(11) authorizes operators, the Commission, the Director, or a third-party holder of financial assurance to initiate a financial assurance hearing by filing an application with the Commission. If the Director initiates a financial assurance hearing, she will be the proponent of the Commission order and therefore bear the burden of proof. The Commission may also commence a financial assurance hearing on its own motion pursuant to Rule 503.a. If either the Director or Commission institutes a financial assurance hearing, the Secretary will be required to provide appropriate notice. However, the Commission clarified that in situations where the Commission or Director initiates a financial assurance hearing, the operator that is the subject of the hearing will nevertheless be required to compile all necessary information and submit it into the docket for the hearing, as appropriate.

Second, Rule 503.g.(12) authorizes certain applicants to file an application to request the Commission order plugging and abandonment of a well or closure an oil and gas location or oil and gas facility pursuant to Rule 211. The Director may file an application to plug and abandon any well or close any oil and gas location pursuant to Rule 211. The relevant local government or surface owner may file such application to plug and abandon a well or close an oil and gas location, but the application must include the information listed in Rules 503.g.(12)B.(i)–(iii). An application that does not include the information in Rules 503.g.(12)B.(i)–(iii) may be dismissed upon motion by a person admitted under Rule 507, or by the Commission's motion. Rule 503.g.(12) intentionally limits the parties that may permissibly file such applications to the Director, relevant local government, or surface owner. An application filed by any other party will be summarily dismissed and will not be assigned a docket number.

As discussed below, only CDPHE, CPW, or a relevant local government may file a petition pursuant to Rule 507 to participate formally as a party in a hearing on an operator's financial assurance plan. The Commission welcomes informal input on financial assurance plans through public comment, but given the complexity of the information required in a financial assurance plan, written public comments will be more helpful to the Commission than oral comments.

Rule 503.h

The Commission revised Rule 503.h to clarify that the purpose of the Rule is to designate specific categories of hearings in which a decision must be made by the Commission in the first instance, rather than a Hearing Officer or Administrative Law Judge issuing a recommended order for the Commission's consideration.

Because of the significant importance of both financial assurance hearings, and well and location closure hearings, the Commission determined that it is not appropriate to assign those matters to hearing officers or administrative law judges. Accordingly, the Commission added those hearings to the list of matters that will not be assigned to a hearing officer and will instead be heard directly by the Commission. However, this does not preclude a hearing officer or administrative law judge from presiding over preliminary matters such as issuing case management orders, overseeing discovery disputes, and other matters as necessary. The Commission itself will, however, be the final deciding entity for all merits disputes in these matters, and will not rely on a hearing officer recommended order on the merits.

Rule 504.

The Commission corrected a typographical error in Rule 504.a.(2).B by adding the missing words "in the City and County of Denver and a newspaper of general circulation." These words were inadvertently deleted from the Rule in a previous rulemaking.

<u>Rule 504.b</u>

Consistent with adopting two new hearing application types in Rule 503.g, the Commission adopted unique notice procedures for each of the new hearing types.

First, in Rule 504.b.(10), the Commission adopted notice requirements for financial assurance hearings. The Commission intends for notice of financial assurance hearings to always be provided to the operator and the Director. However, because multiple parties may file applications for financial assurance hearings, and those hearings may address a range of topics, in Rules 504.b.(10).A–E, the Commission identified specific parties who must be noticed for applications filed by an operator, the Commission on its own motion, the Director, a surface owner, and a third-party provider of financial assurance seeking reinstatement, respectively.

Second, in Rule 504.b.(11), the Commission adopted notice requirements for well and location closure hearings pursuant to Rule 211. If the Director files an application for such a hearing pursuant to Rule 503.g.(12), the Director must provide notice to the operator. If the relevant local government or surface owner files an application for such a hearing pursuant to Rule 503.g.(12), the applicant must provide notice to both the operator and the Director.

The Commission intends for the specific government agencies listed in Rules 504.c–f to receive notice of relevant financial assurance and well and location closure hearings, including the U.S. Bureau of Land Management ("BLM") for hearings that implicate federal surface and/or mineral estate.

Rule 505.

The Commission revised Rule 505 and Rule 505.a to correct a typographic error. The typographic error inadvertently required the submission of sworn testimony in a broader range of proceedings than the Commission had intended.

Rule 505.f

The Commission adopted a new Rule 505.f, governing the evidence in financial assurance hearings. Because of the wide range of topics that can be addressed through financial assurance hearings, the Commission did not adopt a fixed evidentiary requirement that applies in all financial assurance hearings, such as sworn testimony addressing a particular topic. However, the Commission provided that parties to the proceeding may be required to submit evidence by the Commission, its Hearing Officer, or Administrative Law Judge, as appropriate.

Rule 505.g

The Commission adopted a new Rule 505.g, governing the evidence in well location and closure hearings pursuant to Rules 211 and 503.g.(12). The Commission determined it was unnecessary for such hearing applications to be supported by sworn testimony. However, the Commission required the applications to include all evidence necessary for the Commission to decide the matter.

700 Series – Financial Assurance

The Commission reorganized, revised, and amended its prior 700 Series Rules to follow a more logical, sequential order. The Commission also eliminated duplicative, outdated, and unnecessary components of its prior 700 Series Rules. And the Commission used clearer language, eliminated typographic errors, and ensured consistency throughout its 700 series Rules. To assist stakeholders in identifying how the 700 Series Rules have been amended, moved, and removed, a table cross-referencing the Commission's prior and newly adopted 700 Series Rules is attached as Attachment 1 to this Statement of Basis and Purpose.

Rule 701.

The Commission moved prior Rule 702, governing types of financial assurance, to Rule 701.

Rule 701.a

In Rule 701.a, the Commission revised prior Rule 702, which established only a surety bond as an approved method of financial assurance. Consistent with its prior practice, in Rule 701.a the Commission clarified that both a cash bond and a surety bond, as those terms are defined in the Commission's 100 Series Rules, are preferred forms of financial assurance. The Commission intends for Staff to accept both cash bonds and surety bonds as financial assurance administratively, without requiring a Commission hearing.

The Commission determined that it was appropriate to codify this practice because both cash bonds and surety bonds provide a high degree of certainty that the Commission will be able to obtain the funds covered by the bond in the event it must access an operator's financial assurance pursuant to Rule 706. Specifically, a cash bond is held in a Colorado Department of Treasury account, with the state acting in a fiduciary position for the operator. A surety bond is held by a third-party issuing entity, but the Commission is designated as the obligee.

Rule 701.b

In Rule 701.b.(1), the Commission revised prior Rule 702 to clarify procedures for operators to provide alternative types of financial assurance that are not cash bonds or surety bonds. The Commission maintained the requirement that an operator obtain the Commission's permission to use an alternative type of financial assurance that is permitted by the Act, C.R.S. § 34-60-106(13)(A)–(F), but clarified that procedurally, an operator seeking such permission must file a hearing application pursuant to Rule 503.g.(11). The Commission also maintained the standard of providing "equivalency" of alternative forms of financial assurance from prior Rule 702, but clarified that the protection provided must be equivalent to either a cash bond or a surety bond, rather than solely a surety bond.

In Rule 701.b.(2), the Commission codified its October 28, 2002 Policy on Guarantees of Performance as Financial Assurance ("Policy"). Guarantees of performance, also known as "self-bonding" are a form of financial assurance that are permitted by the Act, though only with the "Commission's approval," and with other restrictions, including annual review and the operator's demonstration, to the Commission's satisfaction, that its net worth is sufficient. C.R.S. § 34-60-106(13)(a).

Since the Commission adopted the Policy in 2002, it has been the Commission's formal position that guarantees of performance are a "less desirable form" of financial assurance due to negative financial events involving major companies, including but not limited to bankruptcies and questionable accounting practices. *See* 2002 Policy at 1. The Commission continues to support the position it took in the 2002 Policy, and determined that it was appropriate to codify that policy into its Rules as part of the Financial Assurance Rulemaking, given its statutory directive to "require every operator to provide assurance that it is financial capable of fulfilling every obligation imposed by [the Act and the Commission's Rules]." C.R.S. § 34-60-106(13).

Specifically, in Rule 701.b.(2), the Commission codified the presumption that it would not accept guarantees of performance as a form of financial assurance. It also codified the 2002 Policy's requirement for annual review of each guarantee of performance that is accepted by the Commission, which is also a statutory requirement. *See* C.R.S. § 34-60-106(13)(a). The Commission added a new requirement that guarantees of performance must be supported by a personal guarantee of a corporate officer of the operator providing the financial assurance. The Commission determined that such a personal guarantee is necessary to ensure that some entity remains liable in the event of default or other financial distress encountered by the corporate entity providing the guarantee of performance. The Commission intends for Staff and attorneys to take all necessary actions to hold the individual corporate officer(s) personally liable in the event of a default of a guarantee of performance, including but not limited to foreclosing upon or otherwise initiating legal action to obtain any and all personal property, bank accounts, other financial instruments, and real property owned by the individual corporate officer.

The Commission added a new exception from the presumption against guarantees of performance for local governments that are also operators. Because local governments, by their nature, are more financially secure than a corporate entity, the Commission determined that it was appropriate to exempt them from the requirement. Additionally, very few local governments operate a very small fraction of the wells in Colorado. Accordingly, the Commission will be able to determine, on a case-by-case basis, whether a specific local government poses unique financial risks such that it should not be permitted to provide a guarantee of performance. If a local government does pose unique or undue risks, such as being at risk of bankruptcy or otherwise being financially insecure, the Commission may reject the local government's request to utilize a guarantee of performance as a form of financial assurance.

In Rule 701.b.(2).A, the Commission added a new requirement that the operator seeking to provide a guarantee of performance must demonstrate its net worth through financial statements accompanied by an unmodified opinion from an independent auditor. An "unmodified opinion" is the technical term for clean opinion issued in an audit of an entity's financial statements. The American Institute of Certified Public Accountants' auditing standards require the auditor to modify their opinion in instances where the auditor concludes that based on the evidence obtained the financial statements as a whole are materially misstated, or the auditor is unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement.

Both the 2002 Policy and the Act require an operator to demonstrate its net worth in order to use a guarantee of performance as financial assurance, but neither specify how an operator should do so. Because of the high degree of risk posed by guarantees of performance, the Commission determined that it was necessary for the operator to demonstrate its net worth through financial statements receiving an unmodified opinion from an independent auditor. The Commission intends for such an auditor to be independent in fact and in appearance from the operator, and to be fully licensed under the relevant jurisdiction where the auditor provides services.

In Rule 701.b.(2).B, the Commission codified the 2002 Policy's requirement that the operator's net worth be 20 times the estimated amount necessary for the operator to plug and abandon and reclaim all of its oil and gas wells and locations in Colorado. The Commission determined that this aspect of the 2002 Policy has been effective since its inception, and there was therefore no reason to deviate from the standard established by the 2002 Policy in the Financial Assurance Rulemaking.

In Rule 701.b.(2).C, the Commission added a new requirement that if an operator seeks to provide a guarantee of performance as a form of financial assurance to the Commission, it may not provide a guarantee of performance as a form of financial assurance to any other government agency. The Commission recognizes that even a solvent corporate entity with a high net worth could potentially default on its obligations if it provides a guarantee of performance to multiple agencies based on the same net worth. Moreover, some corporate entities operate in many jurisdictions, including other states and nations, and in different industries, each of which may have individual financial assurance requirements, and it is unduly burdensome for the Commission to track the complexities of such operations. Accordingly, the Commission determined that it is necessary and reasonable for the Commission to be the only entity to which an operator provides a guarantee of performance, should an operator seek to do so.

Rule 701.c

In Rule 701.c, the Commission clarified its own interest, and an operator's interest, in all forms of financial assurance. Because the Commission's prior Rules did not explain the Commission's and operator's legal interest in financial assurance during the period while the financial assurance is in place, questions have arisen in various contexts about each entity's intended interest. The Commission determined that it was therefore necessary to clarify each entity's interest to better elucidate the regulatory intent in the future.

Consistent with the new 100 Series definitions of Cash Bond, Surety Bond, and Letter of Credit, in Rule 701.c.(1) the Commission explained that it may expend all forms of financial assurance if an operator fails to perform its plugging and abandonment, reclamation, or remediation obligations under the Act and the Commission's Rules. The Commission cannot expend the funds for other reasons, such as funding personnel costs or other matters that are funded through the Commission's general budget. Rather, the funds can be expended only following a formal Commission hearing to access the bond initiated pursuant to Rule 706. The Commission holds cash bonds, in particular, in a fiduciary manner, through a trust-like relationship. Accordingly, while the funds are not the property of the State of Colorado until they are formally accessed pursuant to Rule 706, the funds are also not the property of the operator—rather they are held for the mutual benefit of both the operator and the State.

Also consistent with the new 100 Series definitions of Cash Bond, Surety Bond, and Letter of Credit, in Rule 701.c.(2) the Commission explained the operator's limited interest in financial assurance that it provides to the Commission. Because the operator provides the funds to serve as a guarantee to the Commission and the State of Colorado that it will be capable of complying with its regulatory and statutory obligations to plug and abandon its wells, reclaim its oil and gas locations, and remediate any spills or releases, the operator has no interest in the funds under either property law or contract law. The operator's sole interest in the funds is a contingent reversionary interest. Financial assurance will revert to the operator that provided it only if the Director determines pursuant to Rule 706 that the operator has fully complied with all of its plugging and abandonment, reclamation, and remediation obligations, abandoned its permit(s), or another operator has acquired the assets subject to the bond and provided sufficient replacement financial assurance pursuant to Rule 218. As discussed below, pursuant to Rule 706.a, a component of the operator's contingent reversionary interest is any interest accrued on a cash bond while it is invested.

<u>*Rule 701.d*</u>

In Rule 701.d, the Commission prohibited bond riders. A bond rider refers to the practice of one operator "riding" on another operator's bond—meaning that the operator riding on the bond relies on financial assurance provided by a different operator in lieu of providing its own financial assurance. The Commission's prior 700 Series Rules neither expressly allowed nor expressly prohibited bond riders. The Commission's Staff initially allowed bond riders in limited instances, such as in the event of a name change or a transfer of a limited number of assets. But over time, the use of bond riders has become a liability to the state. For example, in many cases, multiple operators are riding on a single bond. In other cases, some current operators are riding on financial assurance provided by an entity that no longer exists. Because of these liabilities, the Commission determined that it was appropriate to prohibit bond riders in the future, with limited exceptions, and to require all operators with existing bond riders to promptly remedy any liability posed by their present financial situation.

Accordingly, in Rule 701.d.(1), the Commission prohibited new bond riders, with two narrow exceptions. First, in instances where an operator changes its name without any associated transfer of assets. So long as the entity with the new name has access to the financial instruments provided under its prior name, the Commission determined that a rider may be permitted in such a situation. Second, in instances where a transfer of assets results in the change in the amount of financial assurance that an operator provides. In such a situation, the total amount of financial assurance due is unlikely to change, and so long as both the selling operator and buying operator involved in such a transaction provide the appropriate amount of financial assurance, a rider may be appropriate. The Commission intends for Staff to review requests for future bond riders carefully, and to deny any request that poses undue liability to the State of Colorado.

In Rule 701.d.(2), the Commission required all existing operators whose financial assurance is partially or entirely provided through bond riders to submit a financial assurance plan addressing the liability posed by the rider. In limited instances, an operator may continue to rely on financial assurance provided by a rider—for example, where the rider solely resulted in a name change and the operator still has access to the relevant financial assets. However, for the most part, the Commission intends for operators to remedy any deficiencies posed by current riders by providing their own financial assurance, rather than continuing to rely on financial assurance provided by another entity.

The Commission recognizes that the term "bond rider" is sometimes also used to refer to an amendment to a financial assurance instrument—for example an operator providing increased financial assurance as a result of a well becoming inactive. The Commission does not intend to prohibit this practice in Rule 701.d. The Commission intends only to prohibit the practice of one operator relying on financial assurance provided by a different operator.

Rule 701.e

The Commission adopted a new Rule 701.e, which creates a new Form 3A, Financial Assurance, and establishes when an operator must file a Form 3A. The Commission previously relied upon the Form 3, Performance Bond as the primary form for operators to submit, change, and otherwise address matters related to financial assurance for many years. However, the Commission's prior 700 Series Rules did not reference the financial assurance forms. Accordingly, the Commission adopted a new Rule describing the purpose of the new Form 3A and when it must be submitted. The Commission also named the Form 3A as "Financial Assurance" to better reflect the purpose for which the form will be used, which is to submit financial assurance.

Rule 702.

Rule 702 establishes the financial assurance requirements for plugging, abandonment, and reclamation of oil and gas wells, oil and gas locations, and associated oil and gas facilities. The purpose of the Rule, like prior Rule 706, is to protect public health, safety, welfare, the environment, and wildlife resources, as well as air, water, soil, and biological resources, by ensuring that operators have the financial capability to fulfill all of their obligations under the Act and the Commission's Rules. *See* C.R.S. § 34-60-106(2.5)(a), (13). Specifically, Rule 702 is intended to ensure that operators are capable of fulfilling their obligation to plug and abandon wells pursuant to the Commission's 400 Series Rules, to fully reclaim oil and gas locations pursuant to the Commission's 1000 Series Rules, and to properly clean up and abandon oil and gas facilities such as tanks and flowlines pursuant to the Commission's 600 and 1100 Series Rules. Although the Commission removed language related to the purpose of the 700 Series from prior Rules 701 and 706, the Commission still intends to use financial assurance as a tool to ensure that operators fulfill all of their plugging, abandonment, and reclamation obligations under the Act and the Commission's Rules.

<u>*Rule 702.a*</u>

The Commission moved prior Rule 702.b, which provides exceptions to the Commission's ordinary 700 Series financial assurance requirements, to Rule 702.a. The Commission revised the Rule to frame it as providing a positive statement of applicability—what Rule 702 covers—rather than an inverse statement of exception.

Consistent with its intent for financial assurance to be submitted at the permitting stage, the Commission revised Rule 702.a to clarify that all references to "Wells" in Rule 702 includes wells that have been permitted—meaning subject to an approved Form 2—but not yet spud. Operators need not continue to provide financial assurance for wells that had approved Form 2s that expired before the operator spud the well. Operators may also submit a Form 4 to formally abandon the permit and request release of the applicable financial assurance pursuant to Rule 706.a.(5) before the permit expires.

Also in Rule 702.a, the Commission modified its longstanding practice to exempt federal wells from financial assurance requirements. The Commission maintained this exemption, but only until the earlier of 90 days after the effective date of a rule adopted by the BLM updating federal bonding requirements or October 15, 2023. After whichever date applies, the exemption will expire, and all Operators who operate well subject to federal bonding requirements will file a revised financial assurance plan. Based upon which Option applies, the Commission or Director will determine whether the financial assurance required by the federal government is substantially equivalent to the financial assurance required by the Commission's rules. As stated in Rule 702.a, the Commission's intends to examine required federal bonding to determine if the amount of bonding required would meet the statutory requirement in the Act that an operator is financially capable of meeting all obligations in the Act and Commission Rules, and the Commission will not impose financial assurance requirements beyond that amount. The Commission does not intend to limit what may be considered to determine substantial equivalency, and may also consider local government financial assurance requirements.

The Commission has legal authority to require financial assurance for oil and gas wells on federal lands and minerals if necessary to protect the environment. *See, e.g.*, *Bd. of Cty. Comm'rs of Gunnison Cty. v. BDS Int'l, LLC.*, 159 P.3d 773 (Colo. App. 2006); *see also, generally Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987); *United States v. Massachusetts*, 493 F.3d 1, 20–23 (1st Cir. 2007); *Massachusetts v. U.S. Dep't of Transp.*, 93 F.3d 890, 895 (D.C. Cir. 1996); *Ree-Co Uranium L.P. v. N.M. Mining Comm'n* No. 9-CV-881 WJ/ACT, 2010 WL 11601223 (D.N.M. May 11, 2010); *State ex rel. Andrus v. Click*, 554 P.2d 969, 973–94 (Idaho 1976).

During the upcoming BLM rulemaking, Staff will engage with BLM to develop a clear and systematic approach to management of financial assurance for federal wells and locations, as appropriate, prioritizing the Commission's principle objectives, which are to implement the Act and avoid double-bonding. It is the Commission's intent that if federal financial assurance is substantially equivalent to the Commission's financial assurance requirements for the Operator, to avoid double-bonding, the Commission will defer to the federal government and the Operator will not be required to also provide financial assurance to the Commission, and in some cases, the Operator may be credited for the financial assurance paid to the federal government. Similarly, the Commission may require an Operator to provide financial assurance to the Commission to ensure substantial equivalency.

Prior Rule 702.b also exempted situations where an operator provided financial assurance to an Indian (tribal) agency for operations solely regulated by that agency. However, the Commission does not have jurisdiction over wells oil and gas wells within Indian Country, with the limited exception of oil and gas wells operated by non-Indians 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. C.R.S. § 34-60-105(4); Rule 201.d. Accordingly, the Commission determined that maintaining the language about financial assurance provided to tribal agencies from prior Rule 702.b would create unnecessary confusion about the scope of the Commission's jurisdiction. Thus, the Commission removed the language from Rule 702.a. The removal of this language does not imply, in any way, that the Commission intends to exercise jurisdiction over tribal lands or minerals.

Rule 702.b

In Rule 702.b, the Commission adopted a new system of financial assurance plans to determine the amount and type of financial assurance that operators must provide to ensure that they can to plug, abandon, and reclaim their wells and oil and gas locations.

Rule 702.b transitions from a system of financial assurance that is wholly overseen by Staff to a system that combines Staff review with Commission oversight. For these Options that require a Commission hearing, financial assurance plans are submitted by operators in conjunction with a financial assurance hearing application. The Commission also clarified that only an owner, surface owner, and specific types of governmental entities have standing to file petitions to participate in financial assurance hearing applications. Where an operator chooses a financial assurance plan Option that requires a Commission hearing, financial assurance plans will be initially reviewed by Staff, then by the Commission.

In Rule 702.b, the Commission renamed the Form 3 from "Performance Bond" to "Financial Assurance Plan." The Form 3 will serve as the vehicle for which an operator will provide its financial assurance plan as part of its application for a financial assurance hearing pursuant to Rule 503.g.(11). The Commission intends for Staff to make appropriate updates and modifications to the Form 3 to reflect the changes adopted in the Financial Assurance Rulemaking.

Rule 702.b outlines when operators must or may submit financial assurance plans. Rule 702.b.(1).A establishes a transition period for existing operators to submit initial plans to the Commission, providing a staggered submission timeline based on the number of wells operated. Rule 702.b.(1).B requires new operators to file a financial assurance plan when the operator registers with the Commission.

In Rule 702.b.(1).C.i, the Commission delegated approval of certain initial and revised financial assurance plans to the Director. In using the word "initial," the Commission intended to identify the first financial assurance plan submitted by an operator under these rules. By using the word "revised," the Commission intended to identify any financial assurance plan an operator files to change its approved "initial" plan.

Rules 702.d.(1)–(4) set terms for financial assurance plans, which if unmodified, are approvable without further Commission review. The Act authorizes the Commission to delegate its authority and assign functions to the Director. C.R.S. § 34-60-104.5(2)(e). Pursuant to this authority, the Commission determined it was appropriate and reasonable to delegate review of unmodified financial assurance plans under Rule 702.d.(1)–(4) to the Director. If the Director approves a financial assurance plan pursuant to Rule 702.b.(1).C, such approval constitutes final agency action pursuant to C.R.S. § 34-60-111. However, even if the operator's proposed plan satisfies the requirements for Director approval, Rule 701 may require a Commission hearing if the operator proposes to rely upon type of financial assurance that requires a Commission hearing.

In order to provide due process and an opportunity for the Commission to review any denial by the Director, in Rule 702.b.(1)C.i, the Commission provided an opportunity for operators to submit an application for a Commission hearing on the Director's denial. In order to preserve the efficiency of the Commission's processes, the Commission also limited standing to formally protest a financial assurance hearing to CDPHE, CPW, or the relevant local government with jurisdiction over the wells subject to the operator's financial assurance plan. The public may still participate in the Commission's financial assurance process through public comment under Rule 512.

Under Rule 702.b.(1).C.ii, any plan which does not qualify for Director review under Rule 702.b.(1).C.i, may be approved only by the Commission following a hearing. As with hearings following a Director denial, the Commission also limited standing to formally protest a financial assurance hearing to CDPHE, CPW, or the relevant local government with jurisdiction over the wells subject to the operator's financial assurance plan.

Rule 702.b.(2) allows operators to file revised financial assurance plans if the Operator believes a change in circumstance warrants a change in its financial assurance plan. The Commission created the same review structure for revised financial assurance plans as for initial financial assurance plans in Rule 702.b.(2). The Commission intends for change in circumstance to include any change that would alter the Option for which the operator qualifies under Rule 702.c or that would change the amount of financial assurance the operator is required to submit to the Commission. Such changes include, but are not limited to, an asset transfer, an operator shutting-in a field, an operator losing midstream capacity, or where an operator's wells experience a drop in production.

The Commission recognized that, where an operator files a revised financial assurance plan, that operator will have a financial assurance plan in effect while the Commission or Director reviews the revised plan. The Commission must rescind the current financial assurance plan before either the Commission or the Director approves the revised plan. For purposes of administrative efficiency, the Commission may rescind the current plan in the same proceeding as review of the revised plan. Where an operator submits a revised plan that may be approved by the Director, and the current plan was also approved by the Director, the operator must submit an application to the Commission to rescind the current plan. The Commission intends to follow a process whereby the Commission will consider at hearing rescinding the current plan, but only after the Director informs of the result of her review of the operator's revised plan.

Finally, in Rule 702.b.(3), the Commission authorized the Director to require an operator to submit a revised financial assurance plan and file an application for a Commission hearing on that plan based on the Director's annual review pursuant to Rule 707.b.

Rule 702.c

Rule 702.c establishes six Options for financial assurance plans. All operators, will fall into at least one of the Options identified by Rule 702.c. The Commission established the Options in Rules 702.c.(1)–(6) based on characteristics that are related to an operator's financial health and the risk of an operator orphaning its assets. These factors include the operator's average daily per-well production, whether the operator has reported zero production from its wells during the preceding 12 months, and whether the operator is a public company. The Commission also provided an avenue for operators to propose a plan based on its unique circumstances in Rule 702.c.(5). Ultimately, the Option that an operator falls within determines the type of financial assurance plan it must file pursuant to Rule 702.d.

Based on the per-well production levels set in Rule 702.c calculated as described in the rule, operators may submit financial assurance plans under Options 1–4 based on their average daily, per-well production levels over the prior 12 months. Importantly, wells that are designated as out of service are not included when calculating the daily per-well average. Similarly, Class II UIC wells that are not inactive, and wells used for the purpose of monitoring or observing an oil or gas reservoir, or stratigraphic wells are not intended to be included when calculating the daily per-well average. The Commission elected to use a daily per-well production level as the criteria given that production equates to the volume of the commodity that can be sold and, when considered across the operator's entire portfolio, allows some insight into the operator's overall financial health. Generally, the Commission determined that operators with higher average daily per-well production are at a lower risk of orphaning their wells and are therefore required to provide a lower amount of financial assurance. This inverse relationship between production and risk cascades through the different Options.

The Commission recognizes that a variety of circumstances may influence the appropriate amount of financial assurance. Accordingly, Rule 702.c.(5) provides that, where circumstances prevent an operator from meeting the requirements of 702.d.(1)–(4), or other exceptional or unreasonable or unnecessary circumstances, an operator may file a financial assurance application that meets the criteria of Rule 702.d.(5) ("Option 5"). In creating Option 5, the Commission stressed that it was not intended to be a process whereby an operator may attempt to use Option 5 for the sole reason of paying less financial assurance than provided for in other Options. The Commission intended that Option 5 to be available only in these circumstances, and the Commission left itself with broad discretion to consider a variety of factors when presented with an Option 5 financial assurance application. In considering a proposed Option 5 plan, the Commission intends for operators to submit the following information, and any other information the Commission or the operator consider to be relevant: the operator's financial condition or circumstances; the operator's history of compliance, especially compliance with well integrity requirements and timely payment of royalties, the lack of any adjudicated major violations under Rule 525.c in the three years immediately preceding the Option 5 application, and the operator's plugging and abandonment activities. The Commission has the discretion to require submittal of this information for any other financial assurance plan Option.

In Rule 702.c.(7), the Commission allowed parent and subsidiary operators to consolidate for determination Option eligibility, but only if the parent operator guarantees all financial assurance obligations for itself and consolidated subsidiary entities. The Commission intended to provide operators with flexibility to consolidate where the parent operator controls the subsidiary operator and guarantees all financial assurance obligations. The

Commission also required that, to qualify for consolidation, a parent operator must consolidate with all of the parent's subsidiary operators.

Rule 702.d

Rule 702.d governs the contents of financial assurance plans. This includes the amount of financial assurance that an operator must provide to ensure that it will be financially capable of fulfilling its statutory and regulatory obligations under the Act and the Commission's Rules.

Rule 702.d.(1)

Rule 702.d.(1) establishes the requirements for financial assurance plans for Option 1, which are operators with the highest levels of average daily per-well production. The informational requirements for an Option 1 financial assurance plan include basic information that will allow the Commission and Staff to verify that an operator falls within Option 1, including information about the status of all wells across the operator's portfolio, the number of wells the operator plugged and abandoned during each of the preceding three years, and the operator's plans for asset retirement of its oil and gas operations. When reviewing an operator's asset retirement plan, the Director will examine an operator's reasons for maintaining inactive wells and the timing of the operator's plan to retire assets.

The other informational requirements for an Option 1 plan pertain to the amount and type of financial assurance that the operator will provide. The Commission adopted a system of blanket bonds based on the number of wells that an operator operates. Rule 702.d.(1).B requires operators identify the amount of financial assurance that will be provided to the Commission as soon as practicable but no later than 90 days from approval of the financial assurance plan. This requirement is repeated in Rules 702.d.(2).B, 702.d.(5).B, and 702.d.(6).B.

In Option 1, the blanket bond will cover low producing wells up to 10% of the operator's total number of wells, which includes Class II UIC wells that are inactive, but excludes out of service wells. The operator must provide single well financial assurance for any low producing well that exceeds the 10% threshold. The Commission determined it was necessary and reasonable to allow the blanket bonds to cover some of the operator's low producing wells because Option 1 operators present a lower risk of orphaning wells. In calculating the blanket bond for Option 1, Class II UIC wells that are not inactive wells, wells used for the purpose of monitoring or observing an oil or gas reservoir, or stratigraphic wells will be included. However, inactive Class II UIC wells should be included in low producing well counts and subject to the low producing well single well financial assurance requirements. This expectation applies for Options 2, 5, and 6 as well.

The Option 1 financial assurance plan must also identify other types of financial assurance that the operator will provide, including financial assurance for inactive, out of service, and transferred wells pursuant to Rules 218 and 434, and for other oil and gas facilities and operations pursuant to Rules 703 and 704.

Finally, Option 1 financial assurance plans must include a certification that the operator is capable of meeting all obligations imposed by the Act and Commission's Rules, to be signed by a corporate officer and accompanied with financial statements demonstrating the operator's net worth as of the date the application was filed with the Commission. The Commission determined it was necessary and reasonable to include this requirement for Option 1 plans to ensure that the plan meets the requirements of C.R.S. § 34-60-106(13). For the same reason, all Options require the same certification.

<u>*Rule 702.d.(2)*</u>

Rule 702.d.(2) establishes the requirements for Option 2 financial assurance plans. Option 2 operators have lower average daily per-well production than Option 1 operators. However, Option 2 operators are still relatively low risk, and therefore may submit blanket bonds based on the number of wells the operator operates, though at a higher amount than Option 1 operators. In calculating the blanket bond for Option 2, Class II UIC wells that are not inactive wells, wells used for the purpose of monitoring or observing an oil or gas reservoir, or stratigraphic wells will be included.

Because operators who qualify for Option 2 present a higher risk than operators who qualify for Option 1, the Option 2 blanket bonds cover low producing wells up to 5% of the operator's total number of wells, which includes Class II UIC wells that are inactive, but excludes out of service wells. As with Option 1, the Option 2 financial assurance plan must also identify other types of financial assurance that the operator will provide, including financial assurance for inactive, out of service, and transferred wells pursuant to Rules 218 and 434, and for other oil and gas facilities and operations pursuant to Rules 703 and 704. The informational requirements for Option 2 financial assurance plans are the same as for Option 1.

<u>*Rule 702.d.(3)*</u>

Rule 702.d.(3) establishes the requirements for Option 3 financial assurance plans. Based on the daily per-well production threshold, the Commission required Option 3 operators to provide single well financial assurance for all of the operator's wells, subject to approved exceptions for transferred inactive wells under Rule 218.g or Director approval of alternative amounts under 434.d. The informational requirements for Option 3 plans is the same as for Options 1 and 2.

To allow Option 3 operators sufficient time to generate revenue to comply with the bonding requirement, Rule 702.d.(3) requires Option 3 operators submit a percentage of the total amount of required financial assurance each year until the operator meets or exceeds their total required financial assurance amount. The presumptive yearly contribution amount is five percent of the total amount (*i.e.*, 100%) of required financial assurance, though this amount is only presumptive and Rule 702.d.(3) also provides that the any financial assurance plan submitted under Option 3 should require that the total contributed amount will increase each year when considering contributions from prior year or years. The Commission recognized that, depending on the field life of an Option 3 operator's oil and gas operations, the yearly amount contributed may need to be adjusted based upon the increase or decrease in risk. Therefore, Rule 702.d.(3).C.i provides the Commission with the ability to adjust the contribution timeline.

The Commission recognized that operators will have varying circumstances, and any number of factors may influence the cost of plugging, abandonment, and reclamation for any given well, including but not limited to well depth, soil type, location size, and topsoil preservation. Accordingly, the Commission intends for Option 3 operators, subject to the Director's approval of a Form 6 – Subsequent Report of Abandonment, to receive a credit towards the operator's total financial assurance amount, for any well the operator plugged and abandoned. However, to avoid unwarranted and excessive reductions in financial assurance, an Option 3 operator may not receive a credit for plugging, abandoning and reclaiming out of service wells on the operator's plugging list.

Finally, once an Option 3 operator has contributed its full financial assurance amount, including any credit for plugged and abandoned wells, the operator may request release of single well financial assurance for any well which the operator has fully plugged and abandoned, and reclaimed. The release provided for in Option 3 complements the release of financial assurance an operator may request pursuant to 706.a.

Rule 702.d.(4)

Rule 702.d.(4) establishes the requirements for Option 4 financial assurance plans. Option 4 operators have the highest risk of orphaning their wells because they either do not meet the production thresholds of Options 1 through 3, are not a public company, or report zero production from their wells during the prior 12 months. Accordingly, similar to Option 3, the Commission required Option 4 operators to provide financial assurance that matches the demonstrated cost of plugging, abandoning, and reclaiming the operator's wells and associated oil and gas locations, subject to approved exceptions for transferred inactive wells under Rule 218.g or Director approval of alternative amounts under 434.d. The informational requirements for Option 4 plans is the same as all other Options.

The Option 4 plan is similar in many respects to Option 3 plans, though Rule 702.d.(4) creates a presumptive contribution amount of ten percent of the total amount of required financial assurance each year until the operator meets or exceeds their total required financial assurance amount, which would presumptively occur in ten years (or less if the operator is actively plugging and reclaiming its wells and locations). The Commission doubled the presumptive yearly contribution amount based on the relatively low average, daily per-well production creating concern about the operator's assets. As with Option 3, Option 4 operators may receive a credit for plugging and abandoning wells, but not for plugging, abandoning, and reclaiming out of service wells on the operator's plugging list.

Rule 702.d.(5)

The informational requirements for Option 5 plans are the same as all other Options, with some exceptions. Unlike the other Options, Option 5 allows operators to submit a unique financial assurance plan, though that plan must address all wells, including low producing wells, out of service wells, transferred wells, and other facilities as is required with financial assurance plans under other Options. The Commission intends that the operator will meet the single well financial assurance obligations of its low producing wells based on the production threshold and all allowances of the standard Option structure. The Commission also intends for an operator seeking an Option 5 plan to provide support and justification for such request. Additionally, the certification of financial capability must include an unmodified opinion by an independent auditor that supports the certification.

Rule 702.d.(6)

Option 6 allows operators who are private companies and meet the Option 1 production requirement, or who are public companies subject to the reporting requirements of the Securities Exchange Act of 1934 and meet the production requirement set in Rule 702.c.(6), to submit a blanket bond of $40,000,000. The Commission determined that operators who qualify for Option 6 are likely the largest operators in Colorado and present a low level of risk of orphaning wells, and therefore a blanket bond that was not tied to the number of wells operated was reasonable. The Commission also recognized that other states with significant oil and gas development, including Alaska and California, employ this high-amount comprehensive bond strategy with success.

Due to the low level of risk of orphaning presented by operators who qualify for Option 6, and the high amount of the blanket bond, the Commission determined it was reasonable to allow the Option 6 blanket bond to cover low producing wells up to 25% of the operator's total number of wells, which includes Class II UIC wells that are inactive, but excludes out of service wells. The operator will provide single well financial assurance for any low producing well that exceeds the 25% threshold.

The informational requirements for Option 6 plans are the same as all other Options.

Rule 702.e

In Rule 702.e, the Commission established a procedure for both Director and Commission review of operators' financial assurance plans. Where a hearing is required, the Commission intends for the system to be similar to the OGDP review process, in which Staff first reviews a plan, then makes a recommendation to the Commission about the plan to consider in the course of a hearing.

Rule 702.e.(1)

Rule 702.e.(1) provides the process for Director review and approval or denial of Options 1 and 2 financial assurance plans. Rules 702.e.(1).A and B set the standard of review for the Director, and authorize the Director to apply necessary and reasonable conditions of approval. Rule 702.e.(1).C authorizes the Director to request additional information from the operator where a financial assurance plan is incomplete or deficient, or where the Director requires more information to make a decision. The Commission intends for the Director and Staff to use their substantial expertise in financial assurance, plugging and abandonment costs, remediation, reclamation, and familiarity with the operator's overall operations compliance to exercise appropriate judgment and discretion when making a decision.

Rule 702.e.(2)

Rule 702.e.(2) provides the process for Commission review of financial assurance plans. Under 702.e.(2).A, the Director will first review an operator's financial assurance plan. The Director's review will include procedural matters, including verifying that a plan is complete and complies with all substantive requirements of Rule 702.d. If an operator's plan is incomplete, fails to meet the requirements of Rule 702.d, or more information is necessary for any other reason, Rule 702.e.(2)A.iii provides that the Director may request additional information from the operator. The operator must provide the Director with the additional information in order for the Director to make a recommendation to the Commission, and for the Commission to consider the financial assurance plan.

The Director's review also includes a substantive component, as to whether the operator's financial assurance plan demonstrates that the operator will provide adequate financial assurance to comply with all of its obligations under the Act and the Commission's Rules. The Commission intends for Staff to use their substantial expertise in financial assurance, plugging and abandonment costs, remediation, reclamation, and familiarity with the operator's overall operations compliance to exercise appropriate judgment and discretion when making a recommendation.

Rule 702.e.(2).B governs the timing of the Commission's review of financial assurance plans. The Commission cannot review a plan until the Director makes a recommendation, and all appropriate notice and process requirements of the 500 Series Rules have been met.

Like the Director, the Commission may approve or deny a financial assurance plan based on whether the plan complies with Rule 702's substantive requirements, and whether it demonstrates that the operator will provide adequate financial assurance to fulfill all of its obligations under the Act and the Commission's Rules. The Commission intends to exercise its judgment and substantial experience, as appropriate, in making this determination, consistent with the requirements of the Act and its Rules. The Commission may also approve a financial assurance plan subject to conditions of approval, which will be binding and enforceable terms of the plan that the operator must fulfill.

Rule 702.e.(2).E provides that the Commission may require an operator to submit additional information or evidence in support of its plan, if necessary, for the Commission's consideration of the plan. The evidence may include confidential financial information, which would be kept confidential pursuant to Rule 223.b.(11). Rule 702.e.(2).E is intended to work in harmony with Rule 505.f, governing evidence in financial assurance hearings. Although the Commission alone will make a merits ruling in a financial assurance hearing pursuant to Rule 503.h.(5), if the Commission assigns a hearing officer or administrative law judge to preside over procedural or other matters, the operator must provide any evidence requested or required by the hearing officer or administrative law judge.

Rule 702.e.(2).F discusses the content of the Commission's order memorializing its decision in a financial assurance hearing. After the conclusion of all quasi-adjudicatory hearings, the Commission issues an order memorializing its decision. The contents of such orders vary between hearings, as is appropriate. Rule 702.e.(2).F is not intended to limit what the Commission may include in its orders in any way. Rather, it is intended to provide notice to the public about what types of matters the Commission may choose to address in its order for any given financial assurance hearing. These topics include, but are not limited to, establishing deadlines for compliance, requiring periodic progress reports from an operator, and requiring an operator to re-submit its financial assurance plan after a certain amount of time.

Deadlines are an important component of plans, and the Commission may determine it is necessary to establish an enforceable deadline for an operator to provide financial assurance in certain amounts (which could be done over time, rather than as a lump sum payment), or to plug, abandon, remediate, or reclaim specific oil and gas wells, locations, or facilities.

Additionally, the Commission may determine that additional oversight is necessary based on an operator's risk profile or other factors, which may warrant periodic progress reports from an operator.

The Commission recognizes that an operator's risk profile and appropriate financial assurance structure may change over time, and that periodic revisitation of an operator's plan could be warranted, particularly if it is likely that an operator will move between Options in the near future based on its percentage of inactive wells. Accordingly, the Commission may require an operator to resubmit a new financial assurance plan, or seek renewal of its plan, at a specific future date.

Finally, one of the core issues that the Commission will consider in the course of reviewing an operator's financial assurance plan is the amount of financial assurance that the operator must provide. Depending on numerous factors, including the operator's overall financial health and risk profile, the Commission may determine that either more or less financial assurance is necessary and reasonable. Accordingly, Rule 702.e.(2).F.iv notifies stakeholders that one matter the Commission order may address is the amount of financial assurance that the operator must provide, and that the amount may be differ from the amount required by Rules 702, 703, and 704.

Rule 702.f

In Rule 702.f, the Commission identified a process for transitioning from the financial assurance requirements of its prior Rules to the new financial assurance requirements adopted in the Financial Assurance Rulemaking. The primary mechanism for doing so is the requirement for existing operators to submit financial assurance plans by no later than the staggered deadlines based on operator well counts provided for in Rule 702.b.(1). Additionally, the Commission clarified in Rule 702.f that it intends to apply any financial assurance currently held by an operator toward its new financial assurance obligations; however, an individual operator may request, through its financial assurance plan, to submit different instruments compliant with the 700 Series.

Rule 703.

In Rule 703, the Commission consolidated all of its prior Rules that addressed financial assurance requirements for oil and gas facilities and operations that are not wells into a single Rule, and also standardized the format of each requirement. The Commission determined that this consolidation will make its Rules more readable and facilitate compliance. Additionally, standardizing the format of each type of financial assurance to address when it must be submitted, the amount that must be provided, and when it will be returned to operators will improve transparency and provide better clarity for operators.

Rule 703.a

The Commission moved prior Rule 704, governing financial assurance for centralized exploration and production ("E&P") waste management facilities, to Rule 703.a. Consistent with other subsections of Rule 703, the Commission amended the Rule to specify when such financial assurance must be submitted, the amount of the financial assurance, and when it will be released. The Commission did not substantively revise Rules 703.a.(1) or (2), addressing when financial assurance must be provided for centralized E&P waste management facilities, and how that amount is determined, except to provide that the amount may be periodically adjusted for inflation during the Director's annual review pursuant to Rule 707.a.(1).A.

Prior Rule 704 did not specify when financial assurance provided for a centralized E&P waste management facility would be released. The Commission intends to release financial assurance back to an operator when the operator fully reclaims and remediates a centralized E&P waste management facility, even if the operator has other active oil and gas operations at other locations in the State of Colorado that have not yet been fully plugged, abandoned, reclaimed, and remediated. Accordingly, in Rule 703.a.(3), the Commission articulated the conditions under which financial assurance will be released to the operator, which includes upon an approved transfer of assets and when the centralized E&P waste management facility is closed pursuant to Rule 913.h. Additionally, the Commission specified in Rule 703.a.(3).C that if an operator provides financial assurance for a centralized E&P waste management facility, but files a Form 4 to formally abandon its approved permit without actually constructing the facility, it can receive the financial assurance back, though only after the site is inspected by the Commission's Staff to verify that construction did not occur.

The Commission also removed unnecessary language from prior Rule 704 that related to compliance deadlines that have since passed. It also removed unnecessary language from prior Rule 704 clarifying that the Rule did not apply to multi-well pits or underground injection wells. Because the Commission's 100 Series definitions of Centralized E&P Waste Management Facility, Multi-Well Pit, and Class II UIC Well are clearly mutually exclusive, the Commission determined that such language was unnecessary.

Rule 703.b

The Commission moved much of prior Rule 913.i to Rule 703.b, which allows the Director to require an operator to provide additional financial assurance to address the scope of required remediation activities based on Staff's review of the adequacy of the operator's environmental liability insurance pursuant to Rule 913.e.(4) and overall financial assurance. If the Director determines that either the insurance or financial assurance is inadequate to address the scope of remediation activities contemplated at the site, Rule 703.b.(1) allows the Director to require an operator to provide financial assurance, or additional financial assurance, as a condition of approval of the Form 27. Although the reasons that an operator's environmental liability insurance or overall financial assurance is inadequate may vary, reasons include that the remediation project is anticipated to cost more than the operator's insurance coverage (for example, a project that costs $6,000,000 and the operator carries only $5,000,000 in environmental liability insurance) or financial assurance will cover, or that the operator was denied coverage by their insurer for the specific remediation project at issue.

Rules 703.b.(1).A and B provide for procedural components. In order to ensure that due process requirements are met, an operator who disagrees with the Director's determination may request a Commission hearing. The operator may commence remediation activities while its application for a hearing is pending, subject to the Director's conditional approval of a Form 27. The Commission recognized that the hearing process should not delay remediation.

In Rule 703.b.(3), the Commission revised prior Rule 913.i to reflect that the financial assurance released after remediation activities are fully completed may be either financial assurance specific to the remediation activity held pursuant to Rule 703.b.(1), or any other form of financial assurance required by the Commission's 700 Series Rules. The

Commission also revised Rule 703.b.(3) to clarify that remediation activities must meet the standards of the approved Form 27 workplan and Rule 913.h before financial assurance will be released.

Rule 703.c

The Commission moved prior Rule 705, governing financial assurance for seismic operations, to Rule 703.c. Consistent with other subsections of Rule 703, the Commission amended the Rule to specify when such financial assurance must be submitted, the amount of the financial assurance, and when it will be released. The Commission did not substantively revise Rules 703.c.(1) or (2), addressing when financial assurance must be provided for seismic operations, and the amount of that financial assurance, except to provide that the amount of financial assurance may be periodically adjusted for inflation pursuant to Rule 707.a.(1).A. The Commission moved prior Rules 436.g.(1)–(5), governing release of financial assurance for seismic operations, to Rule 703.c.(3). The Commission revised the order of the subsections to better reflect the sequence of steps that must occur for financial assurance to be released, but did not substantively revise the requirements.

Rule 703.d

The Commission moved prior Rule 711, governing financial assurance for gas gathering, gas processing, and gas underground gas storage facilities to Rule 703.d. Consistent with other subsections of Rule 703, the Commission amended the Rule to specify when such financial assurance must be submitted, the amount of the financial assurance, and when it will be released.

Prior Rule 711 did not specify when financial assurance for gas gathering, processing, and underground storage facilities must be submitted. Accordingly, the Commission clarified in Rule 703.d.(1) that such financial assurance must be provided concurrently with the operator submitting a Form 12, Gas Facility Registration/Change of Operator.

Consistent with its prior practice, the Commission does not require financial assurance for interstate gas storage facilities, and will continue to only require financial assurance for intrastate gas storage facilities. The sole purpose of this financial assurance is environmental protection and restoring the state's land—to cover the costs of reclaiming and remediating any spill or release from such a facility. It is unrelated to safety concerns.

In Rule 703.d.(2), the Commission specified the amount of financial assurance that operators of gas gathering, gas processing, and underground gas storage facilities must provide. Gas gathering, gas processing, and underground gas storage facilities pose unique risks and challenges for the Commission. Because the Commission has more limited jurisdiction over each category of facility than the other facilities it regulates, the Commission is not able to oversee a comprehensive suite of spill-prevention, integrity, and safety measures for the facilities in the same way that it regulates other oil and gas operations, such as flowlines. However, the Commission does have jurisdiction to address spills and releases from these gas facilities when they occur. Accordingly, consistent with prior Rule 711, the sole purpose of Rule 703.d.(2) is to provide financial assurance to ensure compliance with the Commission's 900 Series Rules in the event of a spill or release. When such spills and releases do occur, they can be very costly. Gas gathering systems are almost always buried belowground, and for this reason it is possible for spills and releases to go undetected for some time. Additionally, some gas gathering systems and gas storage facilities transport or process very high volumes of hydrocarbons. And finally, when spills or releases reach groundwater, although this is a rare occurrence, they can be very costly to clean up. Accordingly, the Commission determined it was appropriate to increase the financial assurance for these gas facilities from a $50,000 blanket bond to $100,000 per facility. While this amount is still less than the typical costs of cleaning up a spill or release from a gas gathering facility or gas processing facility, it will provide more financial assurance to protect the State of Colorado in the event that an operator abandons a remediation project and the liability must be assumed by the Commission. The Commission determined that this approach of requiring financial assurance at an amount less than the full cost of remediating a spill or release was appropriate in this instance because spills and releases do not happen at every facility. The Commission intends for each facility that must file a Form 12 to provide individual financial assurance. Thus, each Form 12 should be accompanied by $100,000 in financial assurance.

In Rule 703.d.(2).B, the Commission maintained the exception for small gas gathering and processing systems to provide a lower amount of financial assurance from prior Rule 711, because they pose lower remediation risks.

As with other forms of financial assurance, the amount of financial assurance required for a gas gathering, gas processing, or underground gas storage facility may be periodically adjusted for inflation pursuant to Rule 707.a.(1).A.

The Commission adopted a new Rule 703.d.(2).C, which allows the Director to request additional financial assurance for a gas gathering, gas processing, or underground storage facility based on the operator's compliance record, number or severity of spills requiring remediation, and other relevant evidence. To ensure proper oversight and due process, the Commission also provided that an operator who disagrees with the amount of financial assurance that it is required to provide may file an application for a Commission hearing to review the Director's decision pursuant to Rule 503.g.(11).

Prior Rule 711 did not specify when financial assurance provided for a gas gathering, gas processing, or underground gas storage facility would be released. In Rule 703.d.(3), the Commission clarified that it will release financial assurance for such a facility back to an operator when the operator transfers the facility, or fully decommissions the facility and has fully remediated any spills or releases for the facility, as indicated by an approved Form 27. Consistent with current practice, the Commission intends for Staff to conduct inspections prior to releasing the financial assurance after final closure, and may determine that it is appropriate to conduct inspections prior to releasing financial assurance at the time of a transfer based on a review of the individual circumstances of the transfer.

Rule 703.e

The Commission moved prior Rule 712, governing financial assurance for produced water transfer systems, to Rule 703.e. Consistent with other subsections of Rule 703, the Commission amended the Rule to specify when such financial assurance must be submitted, the amount of the financial assurance, and when it will be released.

Prior Rule 712 did not specify when financial assurance for produced water transfer systems must be submitted. Accordingly, the Commission clarified in Rule 703.e.(1) that such financial assurance must be provided concurrently with the operator submitting a Form 44, Flowline Report, to register the system.

Like gas gathering, gas processing, and underground gas storage facilities in Rule 703.d, the Commission determined it was appropriate to increase the financial assurance required for produced water transfer systems from a $50,000 blanket bond to $50,000 per facility. The Commission determined that a per facility amount was more appropriate to provide an adequate guarantee to the state that an operator will have the capacity to remediate any spills or releases from a produced water transfer system. While the Commission recognizes that the costs of remediation of such a spill or release may vary significantly, it determined that $50,000 was a reasonable estimate of typical remediation costs, based on the experience of its Environmental Unit Staff.

In Rule 703.e.(2).B, the Commission maintained the exception for small produced water transfer systems to provide a lower amount of financial assurance from prior Rule 712, because they pose lower remediation risks.

As with other forms of financial assurance, the amount of financial assurance required for a produced water transfer system may be periodically adjusted for inflation pursuant to Rule 707.a.(1).A.

Prior Rule 712 did not specify when financial assurance provided for a produced water transfer system would be released. In Rule 703.e.(3), the Commission clarified that it will release financial assurance for such a produced water transfer system back to an operator when the operator transfers the facility, or fully decommissions the system and any remediation projects for the facility are closed pursuant to Rule 913.h, as indicated by an approved Form 27. Consistent with current practice, the Commission intends for Staff to conduct inspections prior to releasing the financial assurance after final closure, and may determine that it is appropriate to conduct inspections prior to releasing financial assurance at the time of a transfer based on a review of the individual circumstances of the transfer.

<u>Rule 703.f</u>

The Commission moved prior Rule 713, governing financial assurance for commercial disposal facilities, to Rule 703.f. Consistent with other subsections of Rule 703, the Commission amended the Rule to specify when such financial assurance must be submitted, the amount of the financial assurance, and when it will be released. Rule 703.f is specifically intended to provide financial assurance for remediation projects to address spills and releases from the surface facilities appurtenant to a commercial disposal well. Commercial disposal wells themselves remain subject to the same financial assurance requirements as all other wells to address plugging and abandonment and reclamation costs pursuant to Rule 702.

Prior Rule 713 stated that financial assurance must be in place before an operator injected E&P waste into a commercial injection well, but did not specify how and when an operator should submit such financial assurance. Accordingly, the Commission clarified in Rule 703.f.(1) that such financial assurance must be provided concurrently with the operator submitting an application for a new commercial disposal well pursuant to Rule 810.a.

Rule 703.f.(2) increases the amount of financial assurance required for a commercial disposal facilities from $50,000 to $100,000 per facility. Commercial disposal facilities process high volumes of E&P waste. Accordingly, the Commission determined that remediation costs associated with spills and releases at such facilities are generally higher than $50,000, and that $100,000 in financial assurance is a more appropriate amount for those facilities. As with other forms of financial assurance, the amount of financial assurance required for a commercial disposal facility may be periodically adjusted for inflation pursuant to Rule 707.a.(1).A.

Prior Rule 713 did not specify when financial assurance provided for a commercial disposal facility would be released. In Rule 703.f.(3), the Commission clarified that it will release financial assurance for such a commercial disposal facility back to an operator when the operator transfers the facility, or fully plugs, abandons, reclaims, and remediates the well(s) and its associated surface facilities and the facility is closed pursuant to Rule 913.h.

Rule 704.

The Commission moved prior Rule 703, which governs surface owner protection bonds and implements a specific provision of the Act, C.R.S. § 34-60-106(3.5), to Rule 704. The Commission increased the amount of individual and blanket surface owner protection bonds. The Commission also added substructure, revised language to remove passive voice, and clarified procedural details.

Rule 704.a specifies when surface owner protection bonds are required, identifies the requisite amount of financial assurance, and provides exception for State Land Board lands. To ensure that the amount of amount of financial assurance required by Rule 704.a.(1)

continues to be a "reasonable security" within the meaning of the C.R.S. § 34-60-106(3.5), the Commission doubled the amount individual bonds (from $2,000 to $4,000 per well for non-irrigated land and from $5,000 to $10,000 for irrigated land), and quadrupled the blanket bond amount (from $25,000 to $100,000). The Commission maintained the blanket bond option for operators to provide certainty for operators who relied upon blanket bonding under the prior Rule 703.

In Rule 704.b, the Commission more clearly articulated the procedures for a surface owner to access a surface owner protection bond. Prior Rule 703 noted that a surface owner must file an application pursuant to the 500 Series Rules, but provided little other procedural detail. Accordingly, the Commission added a cross-reference to the specific type of hearing application that a surface owner should file—a financial assurance hearing pursuant to Rule 503.g.(11).

In Rule 704.b.(1), the Commission also clarified that the surface owner, who would be the proponent of the Commission's order in such a hearing, will bear the burden of proof, as is standard practice for all Commission Hearings.

In Rule 704.b.(2), the Commission maintained the standard from prior Rule 703 governing the relief that the Commission may provide in such a hearing, which may include a monetary award of a greater amount than was provided through the surface owner protection bond. The Commission revised the wording of this provision for clarity, but did not substantively revise the standard.

Prior Rule 703 did not specify when a surface owner protection bond would be released. In Rule 704.c, the Commission articulated the situations in which both a blanket bond and an individual bond would be released. These include plugging, abandonment, and reclamation of all relevant facilities, transfer of all relevant facilities, abandonment of the applicable permit(s) without actually conducting any surface disturbance (as verified by a Commission inspection and subject to an approved Form 4), and, importantly, the operator entering into a surface use agreement with the surface owner. One of the core purposes of Rule 704 is to incentivize operators to enter into surface use agreements, leases, or other agreements with surface owners. In the Commission's experience, such agreements are mutually beneficial and provide important opportunities for operators and surface owners to negotiate and collaboratively work together towards common goals. Accordingly, the Commission determined that it was important to clarify in its Rules that surface owner protection bonds will be released if an operator is able to enter into relevant agreements with the relevant surface owners. The Commission determined that this will provide an additional financial incentive for operators to enter into such agreements.

Rule 705.

The Commission expanded upon its prior insurance requirements in Rule 705, including by adding a new requirement that operators maintain environmental liability insurance.

In Rule 705.a, the Commission allowed parent and subsidiary operators to consolidate for purposes of fulfilling insurance obligations, but required adequate coverage and that the policy names both the parent and subsidiary operators. As with the consolidation option for financial assurance, the Commission required that parent operators consolidate with all subsidiary operators.

The Commission moved prior Rule 708, governing general liability insurance, to Rule 705. The Commission broke prior Rule 708 into two subsections, Rules 705.b and c.

In 705.b, the Commission made multiple changes to the first sentence of former Rule 708. First, the Commission added that general liability coverage must also include sudden or accidental pollution that required remediation. Second, the Commission disallowed exclusions for claims arising from operator-caused seismicity, but provided that policies for disposal wells may exclude claims for operator-caused seismicity. Third, the Commission provided that insurance may be provided through a single or multiple policies. Fourth, the Commission increased the minimum amount of coverage from $1,000,000 to $5,000,000.

In 705.c, the Commission made one change to the second sentence of former Rule 708. The Commission added that it must be a "scheduled person or organization" in addition to being a "certificate holder" in the operator's general liability insurance policy.

The Commission adopted a new Rule 705.d to clarify how operators can demonstrate compliance with the general liability insurance requirements of Rule 705. The Commission intends for new operators to demonstrate their compliance by providing information about their insurance coverage, including the company providing the policy and the amount of the policy, when they file a Form 1.

The Commission adopted a new Rule 705.e to ensure that the Commission receives timely updates about any changes in an operator's general liability insurance policy. The Commission intends for operators to provide information about significant changes such as renewals, changes in insurer, or other matters on their Form 1B, Annual Registration.

Rule 705.b

The Commission's Approach to Requiring Financial Assurance for Remediation

The Commission increased the coverage for general liability insurance to $5,000,000, and explained that such insurance must cover sudden or accidental pollution. The Commission previously required financial assurance for only a small category of remediation projects, including remediation of the facilities addressed by Rule 703. However, the Commission recognizes that a critical part of Senate Bill 19-181's mandate that the Commission "require every operator to provide assurance that it is financially capable of fulfilling every obligation imposed by [the Act and the Commission's Rules]" is to ensure that operators are financially capable of fulfilling all their remediation obligations pursuant to the Act and the Commission's 900 Series Rules. Moreover, when operators orphan their oil and gas wells, locations, and facilities so that they become liabilities to the State of Colorado, a significant amount of the costs borne by the Commission's Orphaned Well Program relate to remediation. While not every orphaned site has contamination that requires remediation, when sites do require remediation the costs of those remediation activities can often dominate the overall costs of plugging, abandoning, and reclaiming the orphaned site.

While requiring financial assurance for remediation is important, it also poses unique challenges because of its uncertain nature. Some oil and gas wells, locations, and facilities never have spills or releases that must be remediated. And even when spills and releases do occur, they vary widely in scope, nature, and volume. Remediation costs therefore vary widely. A small volume spill of produced water with limited hydrocarbon content may require less than $1,000 to clean up, while remediating the most expensive spills of large volumes of hydrocarbons that reach groundwater may cost as much as $25,000,000.

Accordingly, the Commission determined that the best approach to address financial assurance for remediation is to require operators to maintain sufficient general liability insurance covering sudden and accidental pollution to address the vast majority of remediation projects that an operator must complete. The Commission reviewed input from stakeholders and other evidence in the administrative record, and determined that this approach has been successfully employed. The principal advantage of an insurance-based approach is that it provides financial certainty that funds will be available to address remediation issues as they arise, without requiring a complex administrative system that must be overseen by Staff to determine appropriate financial assurance for remediation projects on a case-by-case-basis.

Although the Commission adopted an increased insurance requirement to cover sudden and accidental pollution to address remediation, nothing in Rule 705 precludes the Commission from requiring other types of financial assurance for remediation projects on a case-by-case basis. As discussed below, Rules 703.b and 913.i allow the Director to require financial assurance for individual remediation projects in the course of reviewing a Form 27. The Commission also intends for Staff to continue requiring financial assurance as a condition of approval on Forms or other applications that involve significant remediation work. The Commission recognizes that the amount of coverage provided by an insurance policy may be insufficient to address the costs of remediation in some cases, that insurers may deny an operator's claim, or that other circumstances may arise where additional or different forms of financial assurance are necessary to ensure that an operator has the financial capability of carrying out its remediation obligations under the Commission's 900 Series Rules. Additionally, nothing in Rule 705 precludes the Commission from requiring additional financial assurance for individual remediation projects, based on the facts and circumstances of each individual project, as a term of an administrative order on consent ("AOC") in an enforcement case. The Commission has frequently required remediation as a term of an AOC that involves remediation work in the past, and this has proven to be a successful tool to ensure that operators complete the required remediation work in a timely manner, and to limit liability to the State of Colorado if Staff believe there is a risk that an operator may orphan its assets.

Rule 705.b & c

In Rule 705.b, the Commission required all operators to maintain general liability insurance. The insurance policy should cover sudden or accidental pollution events that require remediation. The Commission also adopted a requirement that the insurance cover at least $5,000,000 per occurrence. The Commission determined that $5,000,000 per occurrence is an appropriate amount, given typical remediation costs. Additionally, requiring coverage per occurrence ensures that an operator will be insured for each spill and release that occurs at all of their oil and gas locations, or if multiple spills occur within a short period of time at the same facility. Further, the record for this Financial Assurance Rulemaking demonstrated that damage or harm to neighboring properties is likely to exceed the previous $1,000,000 minimum coverage limit, especially for catastrophic events, and that coverage with a minimum limit of $5,000,000 is commonly issued to operators.

As the requirement to maintain general liability insurance is a precondition to operating in Colorado, the Commission intends for operators to submit evidence of insurance that meets Rule 707's requirements when operators submit their first Form 1B in accordance with Rule 205.c.

In Rule 705.c, the Commission required that it be made a "scheduled person or organization" in addition "certificate holder" to ensure that the Commission receive advance notice if an operator's insurance is cancelled.

Rules 705.d & e

As with general liability insurance coverage in Rule 705.b, in Rules 705.d and e, the Commission required new operators to provide initial information about their environmental liability insurance on their Form 1, and all operators to provide annual updates about changes to their environmental liability insurance coverage on their annual Form 1B. The Commission intends for existing operators to demonstrate their initial compliance with Rule 705.b on the first Form 1B that the operator files pursuant to the newly adopted Rule 205.c, which must be filed by no later than August 1, 2022.

Rule 705.f

In Rule 705.f, the Commission included a cross-reference to the requirement that operators provide information about their environmental liability insurance coverage on the form that the operator files to close a spill or release pursuant to Rule 912.b.(6), which may be either a Form 19 – Spill/Release Report Supplemental, or a Form 27, Site Investigation and Remediation Workplan. This will provide Staff with an opportunity to assess whether additional financial assurance may be necessary to ensure that an operator is capable of performing all of its remediation obligations.

Rule 706.

The Commission consolidated its prior Rules pertaining to the termination of financial assurance—either through release or access—into Rule 706.

<u>*Rule 706.a*</u>

The Commission moved prior Rule 709, which specified procedures for release of financial assurance, to Rule 706.a, and also added details to improve transparency and clarity. Among other things, the Commission specified that to request a release of financial assurance, an operator must submit a Form 3A formally requesting the release and demonstrating which of the requisite conditions for release have been met.

Consistent with its current practice, when the Commission releases an operator's cash bond, any accrued interest will also be released to the operator. The Commission recognizes that certificates of deposit and money market accounts meet the definition of cash bonds, but in most cases interest from those forms of cash bonds will already have been paid to the operator, rather than accrued into the state treasury. Accordingly, the provision about interest in Rule 706.a applies only to forms of cash bonds where the state treasury holds accrued interest while the cash bond is in place, and the operator has not already received the accrued interest from the cash bond.

Rule 706.a outlines five scenarios in which an operator's financial assurance would be partially or entirely released: full compliance, transfer of operatorship, final closure of a specific facility, plugging an inactive well, and abandonment of a permit without construction.

First, if an operator reaches full compliance with all of its obligations under the Act and the Commission's Rules by plugging, abandoning, reclaiming, and remediating all of its oil and gas wells, locations, and facilities, subject to final approval by the Director, the Director may release the operator's financial assurance pursuant to Rule 706.a.(1). This option is intended for operators who no longer intend to conduct oil and gas operations in Colorado, and therefore no longer need financial assurance.

Second, if an operator transfers all of its assets to another operator subject to an approved Form 9 – Subsequent, and the buying operator provides the required financial assurance for those assets, the Director may release the operator's financial assurance pursuant to Rule 706.a.(2). The Director may also release part of an operator's financial assurance if some, but not all, of the operator's assets are transferred. However, the Director may also require a selling operator to file a new financial assurance plan pursuant to Rule 706.b in order to determine the new amount of financial assurance that the selling operator must provide for its remaining assets.

Third, if an operator complies with the requirements for release of a specific type of financial assurance governed by Rules 703 or 704, the Director may release the applicable financial assurance for that facility or operation pursuant to Rule 706.a.(3).

Fourth, when an operator plugs, abandons, and reclaims a well that has an associated single well financial assurance, the Director may release any financial assurance required for that well. The Director may hold such financial assurance until the oil and gas location where the well is located passes final reclamation. The financial assurance for a well that has an associated single well financial assurance will not be released when an operator plugs the well without completing reclamation.

Finally, if an operator provides financial assurance for an individual facility at the permitting phase, but never actually constructs the facility, the Commission will release the financial assurance to the operator if the operator submits a Form 4, formally abandoning the permit and a field inspection performed by the Commission's Staff confirms no disturbance or construction occurred. Rule 706.a.(5) codifies a longstanding Commission practice, and also provides clarity and transparency to operators about the appropriate administrative procedure to follow to abandon a permit. Once an operator abandons a permit and requests release of the associated financial assurance, the operator forfeits all rights conveyed by the permit.

Rule 706.b

The Commission moved the procedures for accessing an operator's financial assurance from prior Rule 709 to Rule 706.b. The Director may access an operator's financial assurance if the operator defaults on its statutory and regulatory obligations to plug, abandon, remediate, and reclaim its oil and gas wells, oil and gas locations, or other oil and gas facilities. If the Director initiates a proceeding to access an operator's financial assurance, she must also suspend the Operator's Form 1 and Form 10, Certificate of Clearance. The Commission only intends the Director to access financial assurance from operators that the Director has determined should no longer be licensed to operate in Colorado, because they have defaulted on their regulatory and statutory obligations. Concurrently with suspending the operator's Form 1 and Form 10, the Commission required the Director to file an application for a financial assurance hearing pursuant to Rule 503.g.(11). Only the Commission may issue a final order accessing an operator's financial assurance following a hearing that is fully compliant with the Commission's 500 Series Rules.

Rule 706.b.(1) establishes the procedures for financial assurance hearings to access an operator's financial assurance. The Director, as the proponent of the Commission's Order, bears the burden of proof. Consistent with Rule 504.b.(10).C, the Secretary must provide notice of the hearing to the operator and any applicable third-party providers of financial assurance. The operator, those third-party providers of financial assurance, and any other person who meets the definition of Affected Person pursuant to Rule 507 may petition to participate in the hearing pursuant to Rule 507. However, if no petition is filed, the matter may be treated as uncontested and resolved on the Commission's consent agenda pursuant to Rules 508 and 519. In the Commission's experience, this is not uncommon, because when an operator's financial assurance is accessed, that operator will often no longer have any remaining operations, staff, or corporate infrastructure to appear at a hearing. Consistent with prior Rule 709, Rule 706.b.(3) also acknowledges the range of relief that the Commission may choose to include in its order if it rules in the Director's favor. Such relief may include permanent revocation of the operator's right to conduct oil and gas operations in Colorado, if appropriate.

Rule 706.b.(2) establishes processes for the Director to access financial assurance if the Commission issues an order authorizing the Director to do so. For cash bonds, the Director need only transfer the operator's cash bond, which is typically held in a Department of Treasury account, to the Oil and Gas Conservation and Environmental Response Fund ("OGCERF"), for expenditure by the Commission's Orphaned Well Program. For surety bonds, letters of credit, or any other financial instrument held by a third party, the Commission will call the bond and transfer the funds to the OGCERF. Such third party will have received notice of the Commission hearing, and an opportunity to participate in the hearing as an interested person. For liens or otherwise secured real or personal property, the Director will foreclose upon the lien and transfer the funds obtained from selling the asset to the OGCERF. The Commission intends for the Director to take all necessary actions to obtain and liquidate secured assets, including filing suit, if necessary. Finally, for any other form of financial assurance, including but not limited to guarantees of performance, the Commission intends for the Director to take any other action necessary to liquidate and transfer assets to the OGCERF. As discussed above, for guarantees of performance this may include pursuing real property, personal property, or financial assets of any individual corporate officer who provides a personal guarantee pursuant to Rule 701.b.(2).

Rule 706.c

The Commission moved the portions of prior Rule 709.a governing recalcitrant bond providers to Rule 706.c. Although the Commission does not regulate the conduct of third-party providers of financial assurance, the Commission has long recognized that it must have regulatory requirements in place to ensure that the Director is able to obtain financial assurance held by such third-party providers. Accordingly, the Commission maintained the portion of prior Rule 709.a allowing the Director to designate any third-party provider of financial assurance that refuses to comply with a Commission order as an unacceptable provider from whom no additional financial assurance will be accepted.

Prior Rule 709.a provided that an unacceptable provider could apply for and seek an order of reinstatement, but did not establish procedures for doing so. Accordingly, in Rule 706.c.(1), the Commission established procedures for unacceptable providers to seek reinstatement, consistent with related changes to Rules 503.g.(11) and 504.b.(10).E. The Commission also maintained the provision of prior Rule 709.a stating that the Commission may file suit, as authorized by the Act, to recover financial assurance, if necessary.

The Commission revised Rule 706.c to instruct the Director to maintain the list of unacceptable financial assurance providers on the Commission's website. This will improve transparency for operators and ensure that they only choose financial assurance providers that are acceptable to the Commission.

Rule 706.d

The Commission moved prior Rule 709.b to Rule 706.d, but did not substantively revise the Rule except to remove unnecessary language regarding the liability of third-party providers of financial assurance. The Commission's intent in retaining the language in 706.d. was to assure surety providers that the Commission will not retain funds from claimed financial assurance if those funds are not needed to meet the purpose of the financial assurance – to plug and abandon, and reclaim, any of the operator's orphaned wells or sites.

Rule 706.e

The Commission adopted a new Rule 706.e to provide for a process whereby an operator could apply to the Commission for release of its financial assurance in the event the Director or Commission fail to timely release all or part of the operator's financial assurance after the operator complies with Rule 706.a. The Commission intends for "timely release" to include a requirement of reasonability and include the requirement that the operator communicate with the Director or Staff in good faith before filing an application.

Rule 707.

The Commission adopted a new Rule 707, governing periodic and annual review of financial assurance. The Commission recognizes that the amount of financial assurance that is appropriate for an operator is not static, and that periodic review by both the Director and Commission is crucial to adequately protecting the State of Colorado, and also to providing relief to operators where appropriate.

Rule 707.a

The Commission adopted a new Rule 707.a, requiring the Director to conduct annual review of an operator's financial assurance. The Commission intends for the Director to review each operator's financial assurance to confirm that operators are in compliance with their approved financial assurance plans and that the operator continues to meet the eligibility requirements for the Option under which the financial assurance plan was approved at least once every fiscal year beginning one year from the date operators must submit their initial financial assurance plans—July 1, 2023. This phased-in implementation date will allow the Commission and Staff time to review and approve or deny all operators' initial financial assurance plans over the course of late 2022 and early 2023. The Director must document the results of her review in writing and make the results available to the public.

Rule 707.a.(1)

In Rule 707.a.(1).A, the Commission adopted a new requirement that the Director's annual review include whether to adjust an operator's financial assurance for inflation. The Commission did not adjust financial assurance for inflation under its prior Rules. As a result, in some cases, the amount of financial assurance that operators were required to provide became outdated due to inflationary pressures on the economy over time. Many other state agencies have addressed the same issue and adopted regulations that adjust financial assurance inflation. *See. e.g.*, 5 C.C.R. § 1002-61:61.13(h)(7) (commercial swine feeding operations); 6 C.C.R. § 1007-1:18.3.8.3 (radioactive source material milling); 6 C.C.R. § 1007-1:3.9.5.8 (radioactive materials handling); 6 C.C.R. §§ 1007-3:255.12(b), (c) & 266.13(b), (c) (hazardous waste facilities).

Accordingly, the Commission determined that it was necessary to adjust all financial assurance amounts for inflation. As a mechanism for doing so, the Commission intends for Staff to consider whether inflation warrants adjusting an operator's financial assurance as part of the annual review required by Rule 707.a.(1). The Commission intends for Staff to rely on the U.S. Bureau of Labor & Statistics Consumer Price Index for the Denver Core Based Statistical Area as the primary metric of inflation, but to rely on other sources as appropriate, particularly for operators whose operations are concentrated in areas outside the Denver metropolitan area. The Commission does not intend for Staff to be required to adjust an operator's financial assurance for inflation every single year, but rather to periodically revisit the question as inflationary pressures on the economy play out over the long term. In years when the Director determines that an inflation adjustment is necessary, the Commission intends that adjustment to be applied as equally as possible to all operators.

The Commission intends for Staff to issue guidance on how the inflation adjustments required by Rule 707.a.(1) will be implemented.

In Rule 707.a.(1).B, the Commission provided that the Director's annual review should include a review of the operator's insurance coverage and whether the operator's environmental liability insurance is sufficient to address the operator's remediation obligations pursuant to the Commission's 900 Series Rules. The Commission intends for its Financial Assurance Staff to conduct this review in concert with its Environmental Unit Staff, who will receive annual updates as part of an operator's quarterly Form 27 report pursuant to Rule 913.e.(4).

In 707.a.(1).C, the Commission provides that the Director's annual review should include verification that the financial assurance instruments exist, verification of balances, and confirmation the Commission may access the funds. The Commission intends for its Financial Assurance Staff to ensure each year that Staff conduct a review designed to ensure that fundamental requirements of every financial assurance plan to a level of detail that is sufficient to ensure that Staff will discover any need to conduct a more thorough review. The Commission does not intend for the review required by Rule 707.a.(1).C to be a comprehensive review. The Commission's expectation is that for any bond submitted under Option 6—Rule 702.c.(6)—every five years the Director will conduct a more in-depth review of the Option 6 financial assurance plan than is required by Rule 707.a.(1).C.

In Rule 707.a.(1).D, the Commission established the procedure for the Director to require an operator to provide additional financial assurance based on her annual review. An operator will be provided with notice of any change in amount, including an increase due to inflation pursuant to Rule 707.a.(1).A, as well as a reasonable amount of time to cure any deficiency in the amount.

If the Director's annual review reveals a significant deficiency or other issue with the operator's financial assurance or financial assurance plan, Rule 707.a.(1).D allows the Director to require the operator to file a revised financial assurance plan for the Commission's review pursuant to Rule 702.b. The Commission recognizes that an operator's financial situation or operational profile may change over time, and accordingly such a periodic review of an operator's plan may be necessary. Among other things, the Commission intends for the Director to require an operator to file a revised financial assurance plan if the Director's annual review indicates that the operator has moved between the Options established in Rule 702.c. For example, the Director could require an operator to file a revised plan if the operator plugged a lower or higher percentage of its total well portfolio.

The Commission intends for the Director's review to include a review for circumstances not identified in Rule 707.a, including but not limited to, a lack of responsiveness to communication from the Staff or Director, failing to comply with wellbore integrity rules or a lack of wellbore integrity for an of the operator's wells, and failing to make timely royalty payments. In the Commission's and Staff's experience, any of the above circumstances indicate that an operator is at higher risk for orphaning wells and may require increased financial assurance to mitigate that risk. The above list of circumstances is not exclusive, and the Director has the discretion to investigate any set of facts or circumstances which indicate an operator presents a higher risk of orphaning wells.

In Rule 707.a.(1).E, the Commission established that an operator may seek a financial assurance hearing before the Commission if it disagrees with the Director's determination that it must provide a greater amount of financial assurance as a result of the annual review.

Rule 707.a.(2)

The Commission moved prior Rule 702.a, governing the Director's discretionary review of an operator's financial assurance, to Rule 707.a.(2). The Commission revised the Rule to provide references to the new financial assurance hearing application process in Rule 503.g.(11), and to the new financial assurance plans, but did not substantively revise the Rule.

Rule 707.b

The Commission adopted a new Rule 707.b, governing its own review of financial assurance. Consistent with Senate Bill 19-181 transitioning to a full-time Commission, the Commission determined that it was appropriate to increase its level of oversight over financial assurance, given its additional capacity. *See* C.R.S. § 34-60-104.3.

Rule 707.b.(1)

In 707.b.(1), the Commission clarified a corresponding procedural requirement that where a Commission-approved financial assurance plan requires regular review, the operator must timely file an application for a hearing pursuant to Rule 503.g.(11). The operator would then be required to provide basic information into the e-filing docket for the hearing that addresses its future plans for its inactive wells, a demonstration of its financial capacity to plug, abandon, and reclaim its low producing wells, and any other information that Staff or the Commission deem to be relevant.

Rule 707.b.(2)

In addition to its annual oversight, the Commission adopted new procedures for financial assurance hearings commenced on its own motion pursuant to Rule 707.b.(2). Rule 503.a allows the Commission to commence a hearing on any matter pursuant to its own motion, and the Commission adopted Rule 707.a.(2).A to clarify the Commission intends to exercise this option to ensure that an operator's financial assurance meets all applicable requirements. The Commission also determined that it would provide greater transparency to operators and other stakeholders to provide additional procedural guidance for such hearings related to financial assurance.

The following list is not intended to be exclusive—the Commission may choose to commence a financial assurance hearing for additional reasons not listed below. Additionally, the following list is not intended to be automatic—the Commission will likely not choose to commence a financial assurance hearing in most situations that meet the criteria listed below. Rather, the Commission's choice to commence a hearing will be based on the individual judgment and experiences of each Commissioner, who will become increasingly familiar with financial assurance risk factors over time. Circumstances that may lead the Commission to commence a financial assurance hearing on its own motion include one or more of the following occurring within the course of a year:

- **Enforcement** – an operator is subject to multiple orders finding violation pursuant to Rule 523.d.(2);
- **Payment of Proceeds** – the Commission finds an operator delinquent in multiple payment of proceeds hearings pursuant to Rule 523.g.(5);
- **Complaints** – an operator is subject to multiple complaints from members of the public that lead to an enforcement action by the Commission demonstrating a pattern of compliance challenges;
- **Unpaid Penalties** – an operator is currently delinquent in paying penalties owed pursuant to an order finding violation or administrative order on consent;
- **Overdue Wellbore Integrity Tests** – an operator has failed to conduct multiple required mechanical integrity tests pursuant to Rule 417 or bradenhead tests pursuant to Rule 419;
- **Overdue Monthly Reports of Operations** – an operator has failed to file Form 7s required by Rule 413 for a high percentage of its wells or in multiple months;
- **Overdue Levy Payments** – an operator has failed to make timely mill levy payments pursuant to Rule 217 for one or more quarters;
- **Overdue Annual Registration Fees** – an operator has failed to pay part or all of its required annual registration fee pursuant to Rule 205.c; or
- **Stalled Remediation Projects** – an operator has failed to initiate or complete remediations of spills or release of E&P waste within the timeframes required by the Commission's 900 Series Rules.
- **A Lack of Responsiveness** – an operator repeatedly fails to respond to communications from Staff or fails to act in response to a corrective action required by Staff.

Rule 707.b.(2).B establishes the procedure for a financial assurance hearing commenced on the Commission's own motion. The Secretary will provide notice of the hearing to an operator pursuant to Rule 504.b.(10).B. It will be the operator's responsibility to provide any evidence or information required for the hearing, which will be identified in the notice for the hearing, consistent with Rule 505.f. Such evidence might include evidence relevant to the operator's financial situation, the production status and volume of the operator's wells, and whether the operator's current financial assurance is sufficient. Finally, the Commission may require the operator to submit or modify an existing financial assurance plan pursuant to Rule 702.d as a component of the hearing.

<u>Rule 707.b.(3)</u>

Rule 707.b.(3) outlines potential topics that might be included in the Commission's order memorializing a financial assurance hearing conducted as part of the annual review pursuant to Rule 707.b.(1), or on the Commission's own motion pursuant to Rule 707.b.(2). After the conclusion of all quasi-adjudicatory hearings, the Commission issues an order memorializing its decision. The contents of such orders vary between hearings, as is appropriate. Rule 707.b.(3) is not intended to limit what the Commission may include in its orders in any way. Rather, it is intended to provide notice to the public about what types of matters the Commission may choose to address in its order for any given financial assurance hearing. These topics include, but are not limited to, requiring an operator to provide additional financial assurance based on the operator's individual financial circumstances and whether those circumstances, in the Commission's judgment, potentially pose a risk to the State of Colorado that the operator will orphan its assets and the Commission will be liable to plug, abandon, reclaim, and remediate them through its Orphaned Well Program.

<u>800 Series – Underground Injection for Disposal and Enhanced Recovery Projects</u>

Rule 810.

The Commission revised cross-references to the 700 Series in Rule 810.a.(2), governing financial assurance for commercial Class II underground injection control wells and their associated surface facilities.

900 Series – Environmental Impact Prevention

Rule 907.

The Commission updated cross-references to its 700 Series Rules in Rules 907.d and 907.h.(1).B, governing financial assurance for centralized exploration & production ("E&P") management facilities. The Commission also revised Rule 907.d clarify that the operating permit for a centralized E&P waste management facility refers to a Form 28. Finally, the Commission revised Rule 907.h.(2) to clarify that a final closure plan for a centralized E&P waste management facility may include reclamation activities.

Rule 912.

Rule 912.b.(6)

Consistent with its approach to addressing financial assurance for remediation through environmental liability insurance in Rule 705.b, the Commission adopted a new Rule 912.b.(6).C requiring operators to demonstrate that they carry sufficient environmental liability insurance when submitting either a Form 19, Spill/Release Report – Supplemental or Form 27, Site Investigation & Remediation Workplan to close a spill pursuant to Rule 912.b.(6). This will enable the Commission to verify that the operator is financially capable of conducting all required remediation activities at the key juncture of reviewing the operator's plans for long-term remediation of a spill or release.

Rule 913.

Rule 913.e

Consistent with Rules 705.b and 912.b.(6), the Commission adopted a new Rule 913.e, which requires operators to identify whether their general liability insurance is adequate to cover the costs of all anticipated remediation activities on at least one of their quarterly supplemental Form 27 reports each year. The Commission determined that this annual reporting mechanism is necessary because the adequacy of general liability insurance may change over time, as remediation projects become more costly. Additionally, if an insurer denies an operator's environmental liability insurance claim, that would be relevant information for the operator to report, as it may influence the Director's decision about whether to require an operator to provide some form of financial assurance for remediation activities.

The Commission intends for the annual reports submitted with the Form 27 to inform its Environmental Unit Staff as to whether to require additional financial assurance during the annual review of an operator's financial assurance pursuant to Rule 707.a.(1).B, and in review of the Form 27 pursuant to Rule 913.i.

ATTACHMENT 1

COGCC Financial Assurance Rulemaking Reorganization Crosswalk

As part of the Financial Assurance Rulemaking, the Colorado Oil and Gas Conservation Commission has reorganized its 700 Series Rules. This reorganization improved clarity for all stakeholders by continuing the Commission's efforts to group similar topics together in the same Rules and Rule Series. Additionally, the order of the Rules within the 700 Series is now in a more logical, sequential order that better reflects the sequential financial assurance process. The Tables below show both the prior and reorganized Rule numbers.

Prior Rule Number	Reorganized Rule Number
701	*Removed*
702	503.g.(11), 504.b.(10).A, 701, 702.a, 707.a.(2)
703	504.b.(10).D, 703.b, 704
704	703.a
705	703.c
706	702.b, 702.c, 702.d
707	218.b, 218.e, 218.g, 413.a, 434.b, 702.c, 702.d, 707
708	705
709	205.a, 218.g, 306.a, 503.g.(11), 504.b.(10).C & E, 706, 707
710	*Removed*
711	703.d
712	703.e
713	703.f