APPENDIX B

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. 200300071
200–600 Mission Change, Cumulative Impacts,
and Alternative Location Analysis Rulemaking

This statement sets forth the basis, specific statutory authority, and purpose for amendments ("200–600 Mission Change 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 January 15, 2021.

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began on March 15, 2020, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State for revisions to its 200, 300, 400, 500, and 600 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.

Background

In the 200–600 Mission Change Rulemaking, the Commission revised its Rules to align with the statutory amendments adopted in Senate Bill 19-181. The 200–600 Mission Change Rulemaking fulfills the Commission's statutory obligation to undertake three specific rulemakings: one to implement changes to the agency's mission, one to evaluate and address potential cumulative impacts, and one to adopt an alternative location analysis process. Because each of these topics are fundamentally interrelated, the Commission chose to address all three topics in the same rulemaking process. The 200–600 Mission Change Rulemaking occurred simultaneously with a separate but closely related Mission Change Rulemaking, in which the Commission revised its 800, 900, and 1200 Series Rules, related 100 Series definitions, two related 300 Series provisions, and one related 500 Series provision ("800/900/1200 Mission Change Rulemaking").

Additionally, in the 200–600 Mission Change Rulemaking the Commission revised its Rules to comply with several other statutory changes made by Senate Bill 19-181, including provisions relating to the role of local governments, the transition to a full-time Commission, and revisions to several statutory definitions.

Finally, the Commission improved the clarity of its Rules by grouping related Rules together in the same Series and by re-ordering Rules within Series 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. Mission Change.

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).

To implement this change in the Commission's mission, the General Assembly required the Commission to undertake a rulemaking to ensure that the Commission's regulations are consistent with the revised legislative declaration and C.R.S. § 34-60-106(2.5)(a). Several subsections of Senate Bill 19-181 reference "rules required to be adopted by section 34-60-106(2.5)(a)." C.R.S. §§ 34-60-104(1)(b), 34-60-104.3(5), 34-60-106(1)(f)(III).

B. Cumulative Impacts.

Senate Bill 19-181 also directed the Commission to adopt rules, in consultation with the Colorado Department of Public Health and Environment to "evaluate and address the potential cumulative impacts of oil and gas development." C.R.S. § 34-60-106(11)(c)(II). Because evaluating and addressing potential cumulative impacts is inextricably tied to many of the Commission's other Rules that were subject to revisions in the 200–600 Mission

Change Rulemaking, the Commission chose to revise its Rules to evaluate and address cumulative impacts as part of the 200–600 Mission Change Rulemaking.

C. Alternative Location Analysis.

Senate Bill 19-181 further directed the Commission to "adopt an alternative location analysis process and specify criteria used to identify oil and gas locations and facilities proposed to be located near populated areas that will be subject to the alternative location analysis process." C.R.S. § 34-60-106(11)(c)(I). Like cumulative impacts, the alternative location analysis process is closely related to issues central to the 200–600 Mission Change Rulemaking, including revising the Commission's Rules to recognize local government siting authority, and revising the Commission's permitting and location assessment rules to better protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources. Accordingly, the Commission also chose to adopt an alternative location analysis process as part of the 200–600 Mission Change Rulemaking.

D. Other Statutory Changes.

Although Senate Bill 19-181 specifically required the Commission to conduct rulemakings to address the agency's new mission, cumulative impacts, and alternative location analysis, Senate Bill 19-181 also revised many other statutory provisions without requiring specific rulemakings to implement those statutory changes. Key statutory changes include the role of local governments, the transition to a full-time Commission, and revising important definitions. Accordingly, the Commission revised its Rules to reflect many of those changes in the 200–600 Mission Change Rulemaking.

1. Local Governments.

Senate Bill 19-181 substantially revised the role local governments play in regulating the siting and surface impacts of oil and gas facilities. Among other things, Senate Bill 19-181 specified that nothing in the Act "alters, impairs, or negates the authority of . . . a local government to regulate oil and gas operations pursuant to section 29-20-104." C.R.S. § 34-60-105(1)(b)(V). Further, Senate Bill 19-181 requires that when applying for permits to drill from the Commission, operators must prove that they have "filed an application with the local government with jurisdiction to approve the siting of the proposed oil and gas location and the location government's disposition of the application; or the local government with jurisdiction does not regulate the siting of oil and gas locations." *Id.* § 34-60-106(1)(f)(I)(A). Senate Bill 19-181 included a similar provision requiring applicants to submit a disposition from the local government with siting jurisdiction (or evidence that the local government with jurisdiction does not regulate oil and gas location siting) when submitting a spacing application. *Id.* § 34-60-116(1)(b)(I)–(II). Finally, Senate Bill 19-181 adds a new section to Article 60 entitled "No land use preemption," which provides that "[l]ocal governments and state agencies, including the commission and agencies listed in section 34-60-105(1)(b), have regulatory authority over oil and gas development, including as specified in section 34-60-

105(1)(b). A local government's regulations may be more protective or stricter than state requirements." *Id.* § 34-60-131.

In addition to amending the Act, Senate Bill 19-181 also revised the Local Government Land Use Control Enabling Act by authorizing local governments to "regulat[e] the surface impacts of oil and gas operations in a reasonable manner to address matters specified in this subsection (1)(h) and to protect and minimize adverse impacts to public health, safety, and welfare and the environment." C.R.S. § 29-20-104(1)(h). Among other things, the General Assembly specified that local governments have authority over land use, location and siting of oil and gas facilities, impacts to public facilities and services, water quality, water source, noise, vibration, odor, light, dust, air quality, land disturbance, reclamation, cultural resources, emergency preparedness, security, and traffic issues related to oil and gas development. *Id.* § 29-20-104(1)(h)(I)–(IV).

In the 200–600 Mission Change Rulemaking, the Commission revised several of its Rules, and adopted new Rules, that reflect the changes to local government statutory authority and recognize the role that local governments play in approving the siting of oil and gas facilities. The Commission implemented Senate Bill 19-181's framework of co-equal, independent siting authority for both the Commission and local governments, in recognition that operators must obtain siting approval from both the Commission and a local government. The Commission adopted a process that allows each entity with jurisdiction over facility siting—the Commission and local government—to work together on siting decisions in a manner that recognizes their dual authority. Through the framework established in the adopted Rules, the Commission intends to implement this process by facilitating consultation and coordination between the Commission, local governments, operators, and other stakeholders to identify locations that meet the requirements of both permitting regimes, including the protection of public health, safety, welfare, the environment, and wildlife resources. Numerous Rules adopted by the Commission in the 200–600 Mission Change Rulemaking are intended to facilitate the permitting process in recognition of the co-equal authority of local governments, while minimizing unnecessary burdens on operators, who must obtain permits from both the Commission and a local government before conducting new operations.

The revisions to the Commission's Rules in the 200–600 Mission Change Rulemaking specifically implement Senate Bill 19-181's addition of the new section 131 to Article 60 providing that "[a] local government's regulations may be more protective or stricter than state requirements." C.R.S. § 34-60-131. This statutory provision provides that local governments may adopt regulations that are different than the Commission's Rules without those regulations being preempted, even if the local regulations are more protective or stricter than the state standards. Thus, a local government may adopt its own standards to address the same surface impacts, and operators may therefore be required to comply with a more protective local government standard. Nothing in the text of Senate Bill 19-181 expressly prohibits a local government from adopting a less strict or less protective standard that the Commission. However, should such a circumstance arise, an operator

would nevertheless be required to also comply with the Commission's more protective standard. This is the nature of co-equal and independent authority: operators must comply with both local and state regulations of surface impacts, regardless of which is more protective.

2. Full-Time Commission.

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 meets 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.* Because the 200–600 Mission Change Rulemaking occurred after the full-time Commission was seated on July 1, 2020, the Commission revised several of its Rules to account for the transition to a full-time Commission.

3. Revised Definitions.

Finally, Senate Bill 19-181 revised several statutory definitions of terms used in the Act. In the 200–600 Mission Change Rulemaking, the Commission has revised several of its Rules to account for these revised definitions.

First, Senate Bill 19-181 revised the definition of "waste." C.R.S. § 34-60-103(11)–(13). The General Assembly added a new clause to the definition specifying that waste "does not include the nonproduction of oil or gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the Commission." *Id.* § 34-60-103(13)(b); *see also id.* §§ 34-601-103(11)(b), (12)(b). In the 200–600 Mission Change Rulemaking, the Commission revised several of its Rules to account for the revised definition.

Second, Senate Bill 19-181 amended the definition of "minimize adverse impacts," a term used both to describe the Commission's new mission, C.R.S. § 34-60-106(2.5)(a), and the powers of local governments, *id.* § 29-20-104(1)(h). Previously, the definition of "minimize adverse impacts" directed the Commission to avoid adverse impacts only "wherever reasonably practicable" and "tak[ing] into consideration cost-effectiveness and technical feasibility." *See* C.R.S. § 34-60-103(5.5) (2018). Under the new definition, minimize adverse impacts means "to the extent necessary and reasonable to protect public health, safety, and welfare, the environment, and wildlife resources." C.R.S. § 34-60-103(5.5) (2020). The new definition of "minimize adverse impacts" now specifically excludes considerations of cost-effectiveness and technical feasibility, and replaces "wherever reasonably practicable" with "to the extent necessary and reasonable." In the 200–600 Mission Change Rulemaking, the Commission has revised several of its Rules to match the revised definition.

One of the key operative statutory provisions where the revised definition of "minimize adverse impacts" appears is C.R.S. § 34-60-106(2.5)(a). Prior to Senate Bill 19-181, Section 106 of the Act provided that:

> The commission has the authority to regulate . . . Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, *taking into consideration cost-effectiveness and technical feasibility*.

C.R.S. § 34-60-106(2)(d) (2018) (emphasis added)

As amended by Senate Bill 19-181, Section 106 of the Act provides that:

> In 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) (2020). Thus, in addition to using the defined term "minimize adverse impacts," the revised version of C.R.S. § 34-60-106(2.5)(a) does not include the phrase "cost-effectiveness and technical feasibility."

As discussed above, one of the primary purposes of the 200–600 Mission Change Rulemaking is to implement the changes to the Commission's mission and statutory authority in C.R.S. § 34-60-106(2.5)(a). *See* C.R.S. §§ 34-60-104(1)(b), 34-60-104.3(5), 34-60-106(1)(f)(III) (referencing "rules required to be adopted by section 34-60-106(2.5)(a)"). Accordingly, throughout the 200–600 Mission Change Rules, the Commission added the phrase "protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources." The Commission intends for all references to this phrase to serve as direct references to the entirety of C.R.S. § 34-60-106(2.5)(a). The Commission omitted components of the full statutory language ("regulate oil and gas operations in a reasonable manner to" and "protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations") to make the Commission's Rules more readable and understandable. The omission of each of these clauses does not in any way indicate that the Commission or the Director will not consider all factors listed in C.R.S. § 34-60-106(2.5)(a), including regulating in a "reasonable manner" and protecting "against adverse environmental impacts on any air, water, soil, or biological resource" when making decisions pursuant to the Commission's Rules.

Many stakeholders commented on the role that the Commission's Rules play in protecting biological resources. Senate Bill 19-181 did not substantially change the Commission's authority to protect and minimize adverse impacts to biological resources.

As seen above, consistent with changes to the definition of "minimize adverse impacts," Senate Bill 181 removed consideration of cost-effectiveness and technical feasibility from the operative statutory clause providing the Commission with authority to regulate oil and gas operations in a manner to protect various resources, including biological resources. However, Senate Bill 19-181 did not create a wholesale new mandate for the Commission to adopt regulations requiring the protection of biological resources, or otherwise substantially change the role of protecting biological resources within the broader scheme of the Commission's regulations.

Consistent with the limited scope of the statutory change, in the 200–600 Mission Change Rulemaking, the Commission maintained and strengthened many of its existing Rules that are intended to protect biological resources, but did not make significant changes to its approach to protecting biological resources. For example, both the Commission's prior Rules and Rules adopted in the 200–600 Mission Change Rulemaking require operators to identify wetlands and reference areas for vegetative communities on Form 2A applications. *Compare* prior Rule 303.b.(3).G.ii (reference areas) & S (wetlands) *with* Rule 304.b.(9).B (reference areas) & (14) (wetlands). The Commission clarified and expanded the standards for reference area identification, by requiring operators to submit a table identifying the dominant vegetation within the reference area in Rule 304.b.(9).B.iii, and to take reference area photographs during peak growing season to clearly depict vegetation cover and density in Rule 304.b.(6).B.ii. Moreover, in Rule 606.c, the Commission clarified and expanded upon drilling and production-stage weed control requirements, including by adding new definitions of Undesirable Plant Species and Noxious Weeds in the 100 Series Rules. The Commission's 1200 Series Rules and related provisions in the 300 Series Rules, which were amended in the 800/900/1200 Mission Change Rulemaking, are explicitly intended to protect wildlife, which are a form of biological resources. Additionally, many of the Commission's 1000 Series Reclamation Rules, which were not revised during the 200–600 or 800/900/1200 Mission Change Rulemakings, are explicitly intended to protect biological resources and to restore vegetative communities through interim and final reclamation. *See* Rules 1003 & 1004.

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. § 25-8-202 (Implementing agencies must protect present and future beneficial uses of groundwater);
- 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 powers and duties of the Commission);
- C.R.S. § 34-60-107 (Prohibiting waste);
- C.R.S. § 34-60-108 (Procedural rules);
- C.R.S. § 34-60-110 (Subpoena power);
- C.R.S. § 34-60-116 (Pooling);
- C.R.S. § 34-60-117 (Protection of correlative rights);
- C.R.S. § 34-60-118 (Unit operations);
- 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)
- C.R.S. § 34-60-128 (Habitat stewardship and consultation with Colorado Parks and Wildlife);
- C.R.S. § 34-60-130 (Spill reporting); and
- C.R.S. § 34-60-131 (Local government preemption).

Stakeholder and Public Participation

The 200–600 Mission Change Rules are the product of a robust stakeholder process. Shortly after the passage of Senate Bill 19-181, during the summer of 2019, Commission Staff began regularly meeting with stakeholders and accepting public comments about the Mission Change, Cumulative Impacts, and Alternative Location Analysis Rulemakings. Based on this stakeholder input and Staff's collective decades of experience with administering the prior Rules, on November 1, 2019, the Commission published a Mission Change Whitepaper, providing an outline and discussion of some, but not all, of the larger conceptual Rule changes under consideration. After publication of the Whitepaper, Commission Staff

continued meeting with stakeholders to receive feedback on Staff's proposed conceptual rule changes. Based on this feedback, on January 22, 2020, Commission Staff released a "straw dog" draft of revisions to the 300 and 500 Series Rules to the public. On February 7, 2020, Commission Staff released a "straw dog" draft of revisions to the 200, 400, 600, 800, and 900 Series Rules to the public. On February 24, 2020, Commission Staff released a "straw dog" draft of revisions to additional parts of the 300 and 900 Series Rules to the public.

Additionally, because much of the Mission Change Rulemaking involves areas where the Commission regulates activities in close coordination with other state agencies, Commission Staff met with staff from Colorado Parks and Wildlife ("CPW"), the Colorado State Land Board, the Air Pollution Control Division ("APCD"), the Water Quality Control Division, and the Hazardous Materials and Waste Management Division. Staff from each of these agencies provided valuable input that helped shape the Commission's Rules to avoid inconsistencies and duplication with areas regulated by other state agencies. The Commission's Staff also met with staff from federal regulatory agencies including the Bureau of Land Management ("BLM") and the Environmental Protection Agency ("EPA").

On December 16, 2019, the Commission announced it would undertake the rulemaking for the Mission Change, Cumulative Impacts, and Alternative Location Analysis in April and May 2020. On March 15, 2020, the Commission issued a draft of the proposed 200, 300, 400, 500, and 600 Series Rules and related 100 Series definitions with its Notice of Rulemaking, along with an initial draft of this Statement of Basis and Purpose. Due to the outbreak of COVID-19 in Colorado, the Commission paused the 200–600 Mission Change Rulemaking at its March 25, 2020 public hearing. At its April 29, 2020 public hearing, the Commission commenced the 200–600 Mission Change Rulemaking, and voted to continue the 200–600 Mission Change Rulemaking hearing to August 24, 2020 through September 10, 2020. The Commission also voted to authorize the hearing to be conducted partially or entirely through electronic means, as appropriate.

On April 28, 2020, the Commission's Hearing Officer conducted a prehearing conference. On May 4, 2020, the Commission's Hearing Officer issued a Case Management Order, identifying deadlines for party submissions and other procedural matters. Among other things, the initial Case Management Order authorized parties to provide initial redlines and Initial Party Input statements about each of the proposed 200, 300, 400, 500, and 600 Series Rules, in addition to subsequent prehearing statements, response statements, and pre-filed written testimony.

The Hearing Officer issued an Amended Case Management Order on June 25, 2020. The Amended Case Management Order increased the page limit for party prehearing statements to 14 double-spaced pages per Rule Series, and clarified procedures for interested persons to provide oral public comment at the rulemaking hearing. The Hearing Officer also notified the parties that a related petition for rulemaking had been filed by Our Children's Trust, and would be considered and acted upon by the Commission in the 200–600 Mission Change Rulemaking, as required by the Administrative Procedure Act. C.R.S.

§ 24-4-103(7). The Hearing Officer afforded parties the opportunity to provide six page written responses to the Rulemaking petition in both the 200–600 and 800/900/1200 Mission Change Rulemakings. On July 1, 2020, the Hearing Officer issued a Second Amended Case Management Order, extending the deadline for parties to file responses to the rulemaking petition, allowing parties to file a single consolidated response in both the 200–600 and 800/900/1200 Mission Change Rulemaking dockets, and increasing the page limit for such responses to 15 total pages.

On June 26, 2020, the Commission's Staff released revised drafts of the proposed 200, 300, 400, 500, and 600 Series Rules, and redline comparisons against the March 15, 2020 proposed Rules. These revised drafts responded to feedback that parties provided in their Initial Party Input.

Parties filed their prehearing statements on each of the proposed 200 through 600 Series Rules on July 13, 2020.

On July 30, 2020, the Hearing Officer issued an order denying one party's motion to designate initial witnesses, because the Commission has no duty under the Administrative Procedure Act to allow any specific party any specific number of hearing witnesses, *see* C.R.S. § 24-4-103(4)(a), and because Rule 529 explicitly allows the Commission discretion to limit witness testimony and presentations at rulemaking hearings in order to avoid repetitive testimony.

Parties filed their responses to other parties' prehearing statements on July 31, 2020.

On August 7, 2020, the Hearing Officer issued a Final Prehearing Order allocating time for party presentations at the upcoming hearing. Parties filed their consolidated responses to the related rulemaking petition that same day.

Parties filed their pre-filed written testimony on August 14, 2020.

Also on August 14, 2020, the Commission's Staff timely submitted a Cost-Benefit Analysis for the 200–600 Mission Change Rulemaking to the Department of Regulatory Affairs, released the Cost-Benefit Analysis to the parties, and posted the Cost-Benefit Analysis on the Commission's website. The Commission was required to prepare the Cost-Benefit Analysis because American Petroleum Institute Colorado ("API") timely requested a cost-benefit analysis for the 200–600 Mission Change Rulemaking pursuant to C.R.S. § 24-4-103(2.5)(a).[1] In addition to engagement with stakeholders and review of parties' written filings, the process of preparing the Cost-Benefit Analysis allowed the Commission's Staff to more comprehensively examine and consider the costs and benefits of many rules amended in the 200–600 Mission Change Rulemaking, and this analysis informed some of the revisions that the Commission's Staff proposed to certain Rules.

[1] API did not request a cost-benefit analysis of the 500 Series Rules.

On August 17, 2020, the Commission's Staff released revised drafts of the proposed 200, 300, 400, 500, and 600 Series Rules, and redline comparisons against the June 26, 2020 proposed Rules. These revised drafts responded to feedback that parties provided in their prehearing statements and responses. On August 20, 2020, the Commission's Staff released a revised draft of this Statement of Basis and Purpose, reflecting the June 26 and August 17 draft Rules, and addressing issues raised in party prehearing statements and responses.

In the Notice of Rulemaking, the Commission invited stakeholders to participate formally as parties or informally by submitting oral or written comments. The Commission also created online portals through which anyone could submit written comments regarding the 200–600 Mission Change Rulemaking. And the Commission's Staff continued to meet with stakeholders throughout the duration of the Mission Change Rulemaking process, beginning prior to the release of the Mission Change Whitepaper, and continuing through the commencement of the rulemaking hearing. Members of the public filed written public comments pursuant to prior Rule 510 on August 14, 2020. And 86 members of the public provided oral comments during the Commission's 200–600 Mission Change Rulemaking Hearing on August 24, 2020, for a total of 5.5 hours of public comment.

The Commission conducted the 200–600 Mission Change Rulemaking from August 24 through September 28, 2020, virtually. The Commission divided the 200–600 Mission Change Rulemaking hearing into separate segments for each Rule Series. The Commission conducted a hearing on the 300, then 500, then 400, then 600, and finally 200 Series. For each Series, the Commission first heard a presentation by its Staff. Next, parties to the rulemaking provided presentations, and the Commissioners were afforded an opportunity to question the parties on their written filings and oral presentations. Parties and Staff were then afforded the opportunity to provide closing statements, again with the opportunity for Commissioners to ask questions. Finally, the Commissioners identified the issues they wished to address in each Series, and conducted deliberations about each Series. At the close of deliberations, the Commission provided specific directions for regulatory changes, and changes to this Statement of Basis and Purpose, to its Staff. Staff presented changes to the proposed Rules based on this direction from the Commission on September 18, 2020. Parties presented responses to Staff's revised draft rules on September 24, 2020. The Commission deliberated about Staff's September 18 draft Rules on September 24 and 25, 2020. Staff presented final revised draft Rules based on the Commission's September 24–25 deliberations on September 28, 2020. On September 28, 2020, the Commission voted unanimously to give preliminarily final approval to the 200–600 Series Rules, as well as conforming edits to the 100 Series, subject to any conforming edits made based on the 800/900/1200 Series Rulemaking and the correction of proofreading errors. The Commission instructed its Staff to update the draft proposed Statement of Basis and Purpose. The same day, the Commission also closed the record for the Mission Change Rulemaking.

On November 10, 2020, the Commission re-opened the record to consider conforming edits to the 200–600 Series Rules based on the 800/900/1200 Mission Change Rulemaking and the correction of typographic errors and continued the 200–600 Mission Change Rulemaking

to November 20, 2020. On November 10, 2020 Staff provided an updated version of this Statement of Basis and Purpose to the Commission and the Parties. On November 16, Staff provided final versions of all Rule Series to the Commission and the Parties. On November 20, 2020, the Commission continued the 200–600 Mission Change Rulemaking to November 23, 2020. On November 23, 2020, the Commission unanimously voted to approve the 200–600 Series Mission Change Rules and this Statement of Basis and Purpose.

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 the regulations in its 200, 300, 400, 500, and 600 Series Rules. Additionally, the Commission has revised several definitions in its 100 Series Rules, added several new definitions to its 100 Series Rules, and removed several definitions from its 100 Series Rules.

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

Amendments and Additions to Rules

Throughout the 200–600 Series Rules, 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 Rules between and within Series to ensure that all Rules addressing the same topic are located in the same Series, and making each Series proceed in a logical, sequential order that reflects the order of the practices the Series regulates;
- 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;
- Ensuring that the Rules comply with the incorporation by reference provision of the Administrative Procedure Act, C.R.S. § 24-4-103(12.5);
- 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, other agencies, 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 revised Rules to be prospective—applying to new operations after January 15, 2021—unless otherwise specified in the text of a Rule or this Statement of Basis and Purpose. The Commission specifically identified which Rules apply retroactively, and therefore would require retrofitting existing facilities, in a limited number of instances. However, Rules that involve activities that occur at an existing facility after January 15, 2021, rather than specifying construction or equipment standards, are, in fact, intended to apply to existing facilities. Finally, when an existing oil and gas facility is significantly changed or modified, then the Commission's new Rules apply, which may require an operator to retrofit existing equipment.

Throughout the course of the 200–600 Series Mission Change Rulemaking, many stakeholders raised questions about which Rules are operational standards that involve activities that occur at an existing facility, and thus apply retroactively, as opposed to Rules that apply only prospectively because they would require retrofitting existing facilities if applied retroactively. Among the Rules that are operational standards that apply to activities at existing facilities are the Commission's nuisance Rules (Rules 423 through 427), Rule 603.c.(1)–(3) (governing well servicing operations), Rule 610 (governing fire safety), and Rule 612 (hydrogen sulfide safety standards). The Commission emphasizes that many Rules not listed in this paragraph are operational standards that apply to activities at existing facilities, and the absence of a Rule from this paragraph is not intended to mean that the Rule does not apply retroactively. Additionally, some Rules discussed in this paragraph may include subsections that do not apply retroactively. For example, although the operational standards in Rules 423.b–e apply to existing facilities, Rule 423.a requires the submission of a noise mitigation plan only for newly proposed oil and gas locations, and does not apply retroactively to all existing oil and gas locations.

Applicability to Pending Permit Applications

Pursuant to C.R.S. § 24-4-104.5(2)(a), the Commission intends for all Rules it adopted and amended in the 200–600 Mission Change Rulemaking to apply to all permit applications that were submitted and deemed complete, but not yet approved or denied as of January 15, 2021, 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."

The Commission intends for its Staff to issue guidance detailing the procedures that operators with in-process, on-hold, or delayed permit applications may follow to replace their permit applications as necessary to comply with all Rules adopted and amended in the 200–600 Mission Change Rulemaking. The Commission intends for operators to notify Staff by March 1, 2021 about which pending permit applications they intend to replace to comply with the newly-adopted and amended Rules. Operators will have 6-months from the effective date of the 200-600 Mission Change Rules to submit new Form 2As and Form 2s for any in-process, on-hold, or delayed permit application.

The Commission made the following findings to support its determination that all Rules it adopted and amended in the 200–600 Mission Change Rulemaking apply to all pending permit applications:

First, the 200–600 Mission Change Rules materially affect the health and safety of the public. C.R.S. § 24-4-104.5(2)(a)(I)(A). The purpose of the 200–600 Mission Change Rulemaking is to implement Senate Bill 19-181's changes to the Commission's mission and statutory authority. Senate Bill 19-181 changed the Commission's mission 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). Senate Bill 19-181 also instructed 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). Thus, the entire purpose of the 200–600 Mission Change Rulemaking is to adopt rules that materially affect—and protect—public health and safety. Numerous specific Rules adopted by the Commission in the 200–600 Mission Change Rulemaking are explicitly focused on public health and safety. The list below is not exclusive, and numerous Rules beyond those listed below are intended to protect public health and safety.

- Rules 304, 306, and 307 implement new procedures for processing and permitting oil and gas surface locations to explicitly contemplate, among other things, the public health implications of facilities being located in close proximity to occupied buildings.

- Rules 305 and 308 extend considerations of public health and safety to decisions the Commission makes about subsurface mineral development.

- Rules 303.a.(5) and 314 provide tools for the Commission to evaluate and address cumulative impacts to public health.

- Rule 604 expands setbacks from residential building units, high occupancy building units, and schools to protect the health of the people using those buildings.

- The entire 600 Series Rules are intended to protect public safety.

Second, the continued application of the Commission's Rules that were in effect as of the date permit applications were submitted could potentially result in critical safety measures not being applied to the oil and gas location if the permit applicant does not comply with the Rules adopted and amended in the 200–600 Mission Change Rulemaking. *See* C.R.S. § 24-4-105.5(2)(a)(I)(B). Several 600 Series Rules are explicitly intended to prevent unsafe situations that could otherwise arise, and to provide better procedures for responding to emergency situations, natural disasters, and accidents that otherwise could pose safety risks and have adverse impacts to public welfare. The list below is not exclusive.

- Rules 201.b and 602.a expand the requirement for operators to ensure that their employees, contractors, and subcontractors comply with all Rules, including training employees, contractors, and subcontractors with procedures for safe conduct.

- Rule 602.d requires operators to establish and maintain an operations safety management program for all oil and gas operations that provides procedures for preventing and addressing safety risks.

- Rule 602.j expands the requirements for functioning emergency response plans to provide effective safety management in emergency situations.

- Rule 603.c expands safety standards for blowout prevention equipment and well servicing operations.

- Rule 606.a expands the list of items and equipment that cannot be stored at an oil and gas location to prevent unnecessary safety risks.

- Rules 608.a.(3), 608.a.(5), 608.a.(9), 608.d, and 610 are intended to protect the public from safety risks posed by fires. Among other things, these Rules update fire code standards, prohibit ignition sources within secondary containment areas, require tank gauge hatches to be closed, and update static charge and lightning safety standards.

- Rule 609.b adopts periodic inspection standards for in-service tanks and other storage vessels to identify and mitigate potential safety risks.

- Rule 612 expands and strengthens standards to identify, minimize, and respond to potentially significant and fatal safety risks posed by highly explosive hydrogen sulfide gas.

Third, compliance with the adopted and amended 200–600 Mission Change Rules is necessary to ensure that the Commission and all permits it issues will be in compliance with

the requirements of federal law and regulations. *See* C.R.S. § 24-4-105.5(2)(a)(II). Several Rules adopted in the 200–600 Mission Change Rulemaking are intended to ensure compliance with federal laws and regulations. The list below is not exclusive, and Rules beyond those identified here are also intended to ensure compliance with federal laws and regulations.

- Rules 301.f and 303.a.(6) provide procedures for coordination with federal agency permitting processes.

- Rule 304.e.(2) allows operators to submit substantially equivalent information developed through a federal permitting process in lieu of information that otherwise would be required pursuant to Rules 304.b and c.

- Rule 305.a.(2).M clarifies that operators must comply will all applicable federal unit agreement or communitization agreement requirements when developing federally-owned or managed minerals.

- Rule 306.b.(2).B requires the Director to consider environmental analyses, stipulations, and conditions of approval conducted pursuant to federal permitting processes prior to recommending additional conditions of approval for an oil and gas development plan.

- Rule 314.f.(4).D requires operators to consult with appropriate federal agencies when proposing a comprehensive area plan that involves federal surface or mineral estate.

- Rule 423.b.(4) requires consultation with federal agencies, where applicable, to determine appropriate maximum applicable noise levels in high priority wildlife habitat.

- Rule 425.b allows facilities on federal lands to comply with federal painting and orientation standards, to the extent those standards are different than the Commission's visual impact mitigation Rules.

- Rule 436.e.(1) requires seismic operations to comply with all applicable federal rules, rather than being limited to compliance with federal Bureau of Alcohol, Tobacco, and Firearms rules.

- Rule 507.a.(1) guarantees affected person status to all federal agencies with jurisdiction over issues relevant to a Commission hearing.

Finally, compliance with the adopted and amended 200–600 Mission Change Rules is necessary to ensure that the Commission and all permits it issues will not be in conflict with state statutes. *See* C.R.S. § 24-4-105.5(2)(a)(III). The 200–600 Mission Change Rulemaking was conducted to specifically implement three rulemakings required by Senate Bill 19-181: the Mission Change, § 34-60-106(2.5)(a), cumulative impacts, C.R.S. § 34-60-106(11)(c)(II), and alternative location analysis rulemakings, C.R.S. § 34-60-106(11)(c)(I). Additionally,

numerous Rules adopted in the 200–600 Mission Change Rulemaking implement other specific statutory changes made by Senate Bill 19-181. The list below is not exclusive, and compliance with Rules beyond those identified here is necessary to avoid potential conflicts with Senate Bill 19-181.

- Rules 201.c, 215, 301.f, 302, 303.a.(6), 422, and 507.a.(1) implement Senate Bill 19-181's changes to the role local governments play in regulating the siting and surface impacts of oil and gas facilities, and the changes in the relationship between local governments and the Commission. C.R.S. §§ 29-20-104(1)(h), 30-15-401(1)(m), 34-60-105(1)(b)(V), 34-60-106(1)(f)(I)(A), 34-60-106(15), 34-60-116(1)(b)(I)–(II), & 34-60-131.

- Rules 202, 203, 209.b, 307, 502, 503, 507, 508, 509, 510, 511.a, 513, 519, 520, and 530 implement Senate Bill 19-181's transition from a volunteer to full-time Commission by revising practices and procedures to accommodate the full-time Commission. C.R.S. §§ 34-60-104(2), 34-60-104.3, 34-60-104.5(2)(d).

- Rules 201.d, 304.b.(2).A.iii, 504.e, and 507.a.(1) implement Senate Bill 19-181's clarification that neither the Commission nor local governments may regulate the activities of federally recognized Indian tribes or conduct on any lands or minerals within the exterior boundaries of the Southern Ute Indian Reservation, except where both the surface and mineral states are owned in fee by a non-tribal entity. C.R.S. § 34-60-105(4).

- Rules 302.b, 302.c, 304.b.(1), and 305.a.(2).A implement Senate Bill 19-181's requirement that operators demonstrate that they have filed an application for siting approval with a local government and provide the Commission with the disposition of that application, if applicable. C.R.S. § 34-60-106(1)(f)(I)(A).

- Rule 304.b.(2) implements Senate Bill 19-181's requirement for the Commission to adopt an alternative location analysis process. C.R.S. § 34-60-106(11)(c)(I).

- Rules 303.a.(5), 304.c.(19), 314, 423.d, 424.f, 426.e, 427.e, and 603.d implement Senate Bill 19-181's requirement for the Commission to adopt regulations to evaluate and address the potential cumulative impacts of oil and gas development. C.R.S. § 34-60-106(11)(c)(II).

- Rule 305.b.(1) implements Senate Bill 19-181's requirement that Commission orders establishing drilling and spacing units are subject to C.R.S. § 34-60-106(2.5). C.R.S. § 34-60-116(3)(a).

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. The purpose of adopting, amending, or eliminating each definition is discussed below alongside the specific Rules in which the definitions apply.

Affected Person

CDPHE

Chemical Inventory

Classified Water Supply Segment

Confining Layer

Comprehensive Area Plan

CPW

Day

Director's Recommendation

Disproportionately Impacted Community

Drilling and Spacing Unit

EPA

Formal Consultation Process

Geologic Hazard

Governmental Agency

High Occupancy Building Unit

Material Safety Data Sheet

Noxious Weed

Oil and Gas Development Plan

Principal Agent

Protestant

Proximate Local Government

Public Water System

Refile

Relevant Local Government

Residential Building Unit

Surface Water Supply Area

Undesirable Plant Species

Well Records

Working Pad Surface

200 Series – General Provisions

To improve clarity for operators, local governments, and the public, the Commission consolidated all of its generally-applicable Rules into the 200 Series. Under the Commission's prior Rules, generally-applicable provisions were located in the 200, 300, and 600 Series.

Rule 201.

Rule 201.a

The Commission revised Rule 201.a, which describes the general scope and purpose of the Commission's Rules, consistent with the changes Senate Bill 19-181 made to the Commission's mission and statutory authority. Revised Rule 201.a reflects the Commission's new statutory directive to "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). As discussed above, one of the primary purposes of the 200–600 Mission Change Rulemaking is to implement the changes to the Commission's mission and statutory authority in C.R.S. § 34-60-106(2.5)(a). Rule 201 was one of the many Rules where the Commission referenced § 34-60-106(2.5)(a) by using the phrase "protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources." In most other cases, the Commission omitted the other components of the language in C.R.S. § 34-60-106(2.5)(a) for the sake of brevity, although the Commission fully intends for the all uses of the phrase "protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources" to serve as a reference to the entirety of § 34-60-106(2.5)(a). However, because Rule 201.a serves a unique purpose in describing the general scope and purpose of the Commission's Rules, the Commission included the entirety of the language in § 34-60-106(2.5)(a) in Rule 201.a.

The Commission also clarified that its Rules apply throughout the State of Colorado, except as specified in Rule 201.d.

Rule 201.b

The Commission moved prior Rule 320, governing compliance, to Rule 201.b. The Commission expanded the scope of the Rule to cover not only plugging and abandoning a well, but also all other oil and gas operations at oil and gas locations and oil and gas facilities, as those terms are defined in the Commission's 100 Series Rules. The Commission also narrowed the scope of the Rule to cover only operators, rather than owners, because operators, not owners, are responsible for complying with the Commission's substantive Rules, unless otherwise specified that an owner bears responsibility. Consistent with Senate Bill 19-181's changes to the statutory definition of "minimize adverse impacts," the

Commission removed language from prior Rule 320 that stated that operators are responsible for compliance with the Commission's Rules regardless of the cost to comply. Under the revised definition of "minimize adverse impacts," the Commission expects operators to comply with all of its Rules, regardless of the costs of compliance, and therefore including this clarifying language in some, but not all Rules, is no longer necessary.

In Rule 201.b, the Commission also clarified that all operators are responsible for complying with all of the Commission's Rules, and also for ensuring compliance by their contractors and subcontractors. Because contractors and subcontractors frequently perform the on-the-ground work at oil and gas facilities, the Commission determined that it was crucial to explain in its regulations that operators are liable for ensuring that their contractors and subcontractors comply with the Commission's Rules. Addressing responsibility for actions taken by contractors and subcontractors also implements recommendations from the State Oil and Gas Regulatory Exchange ("SOGRE"). SOGRE released a Peer Assessment of Colorado's wellbore integrity regulations in 2019. Senate Bill 19-181 directs the Commission to "consider incorporating recommendations from [SOGRE]" in the Commission's Wellbore Integrity Rulemaking. C.R.S. § 34-60-106(18). The Commission addressed nearly all of SOGRE's recommendations in its recent Wellbore Integrity Rulemaking. However, the Commission determined that it was more appropriate to address SOGRE elements 64, 65, 99, and 100, all of which pertain to operators' general oversight of contractors and subcontractors, in the 200–600 Mission Change Rulemaking.

Rule 201.c

The Commission revised Rule 201.c to reflect Senate Bill 19-181's statutory changes to the authority of local governments and the relationship between the Commission's authority and local government authority. Prior Rule 201 stated that the Commission's Rules did not constrain the land use authority of local governments, so long as there was no operational conflict between the Commission's Rules and a local government rule. The term operational conflict is a legal term of art for state preemption of local regulations. *See City of Fort Collins v. Colo. Oil & Gas Ass'n*, 369 P.3d 586, 592 (Colo. 2016). The Commission removed the term operational conflict from Rule 201.c, consistent with Senate Bill 19-181 granting local governments authority to regulate surface impacts of oil and gas operations, *see* C.R.S. § 29-20-104(1)(h), and adding a new provision entitled "No land use preemption," which states that local governments and state agencies both have regulatory authority over oil and gas development, C.R.S. § 34-60-131. However, the same statutory provision also provides that "a local government's regulations may be more protective or stricter than state requirements." *Id.* Consistent with this statutory mandate, in Rule 201.c, the Commission explained that operators must adhere to local government regulations that are more protective or stricter than the Commission's Rules.

Rules 201.d & 201.e

The Commission added substructure to Rules 201.d and 201.e to improve clarity but did not substantively revise either Rule.

Rule 201.f

The Commission revised Rule 201.f, governing severability, to be clear that it is the Commission's intent that if any portion of its Rules are overturned by a court for any reason, the Commission intends for the rest of its Rules to remain in full force and effect. *See People v. Montour*, 157 P.3d 489, 502 (Colo. 2007) (explaining that in the analogous context of statutory interpretation, the appropriate remedy when part of a statute is declared unconstitutional is determined by looking to legislative intent). To fully convey the Commission's intent that the remaining portion of its Rules remain effective if any other portion of the Rules are found to be invalid, the Commission added the terms "unconstitutional" and "otherwise enjoined or overturned through judicial review" to Rule 201.f.

Rule 201.g

The Commission moved prior Rule 205A.e, governing incorporation by reference, to Rule 201.g. The Commission intends for Rule 201.g to provide guidelines for the public on the availability of all materials incorporated by reference throughout the Commission's Rules, consistent with the Administrative Procedure Act, C.R.S. § 24-4-103(2.5). In each Series of the Commission's Rules, the Commission has provided a list of all materials incorporated by reference, either in a catch-all provision at the beginning of the Series, or through a specific incorporation each time a reference is mentioned in a Rule.

Rule 202.

Consistent with Senate Bill 19-181 creating a full-time Commission, C.R.S. § 34-60-104.3, the Commission revised Rule 202, which governs the role of the Director. The Commission clarified that the Director is responsible for all Commission Staff functions. The Commission clarified that the Director will oversee all Staff of the Commission. Consistent with this clarification, the Commission intends for all references to "the Director" in the Commission's Rules to be used synonymously with references to the Commission's Staff. The Commission also clarified that the Director serves as the custodian of the Commission's records, meaning that the Director will oversee and administer all of the Commission's Rules that require the submission or reporting of information to the Commission. The Commission also removed a provision from prior Rule 202 allowing the Director herself to serve as a Hearing Officer. Because Senate Bill 19-181 expanded the authority of Hearing Officers to issue recommended orders, along with establishing the full-time Commission, it will no longer be necessary for the Director to serve as a Hearing Officer. *See* C.R.S. §§ 34-60-106(6), 34-60-108.

Rule 203.

The Commission did not make any substantive changes to Rule 203.

Rule 204.

The Commission changed the title of Rule 204 to clarify that it governs the Director's inspection powers. The Commission removed a reference to the Director's "authorized deputies," consistent with the revisions to Rule 202 to clarify that all references to the Director in the Commission's Rules also serve as references to the Commission's Staff. Additionally, the Commission changed a reference to oil and gas properties, which is a confusing term not defined in the 100 Series, to instead reference several terms that are defined by the 100 Series: oil and gas location and oil and gas facility. The Commission also added language clarifying that the Director's inspection powers include the power to inspect any records associated with the enumerated list of facilities and operations to determine compliance with the Commission's Rules. The Commission revised confusing language to clarify that the Commission's inspectors must report all findings of a Commission Rule violation to the Commission.

Consistent with the Commission's prior practice, the Commission's field inspectors will adhere to all federal land management requirements when conducting inspections on federal surface estate, including only using non-motorized travel to access areas where motorized travel is not permitted, such as wilderness study areas. The Commission's field inspection Staff will also continue to coordinate with federal land management agencies to obtain access to any restricted federal surface areas, such as areas behind locked gates or fences.

The Colorado Court of Appeals recently addressed the constitutionality of Rule 204, and held that prior Rule 204 is constitutional and does not violate the Fourth Amendment to the United States Constitution or Article II, § 7 of the Colorado Constitution. *See Maralex Resources, Inc. v. Colo. Oil & Gas Conservation Comm'n*, 428 P.3d 657, 662 (Colo. App. 2018), *cert. denied*, No. 18 SC 315 (Colo. 2018). The *Maralex* Court held that the oil and gas industry is a closely regulated industry, that the Commission's Rules further the public interest, that searches by Commission inspectors are necessary for the safe and efficient operation of oil and gas facilities, and that the Commission conducts inspections with sufficient frequency to put inspected entities on notice. *Id.* at 662–64. Additionally, the *Maralex* Court noted with approval that "Rule 204 imposes a reasonableness requirement that circumscribes COGCC's authority to conduct random inspections." *Id.* at 665. Consistent with the *Maralex* Court's decision, the Commission maintained the reasonableness requirement in Rule 204, and did not make any substantial changes to Rule 204 that would impact the *Maralex* Court's decision about the constitutionality of Rule 204. Accordingly, the Commission determined that the revised version of Rule 204 remains constitutional and consistent with the Colorado Court of Appeals' decision in *Maralex*.

Rule 205.

The Commission moved prior Rule 302 to Rule 205.

Rule 205.a

The Commission did not substantively revise Rule 205.a.

Rule 205.b

In Rule 205.b, the Commission clarified the points of contact that operators may designate on a Form 1A, Designation of Agent. The Commission codified its existing practice of requiring operators to designate a Principal Agent as the operator's main point of contact. The Commission added a definition of Principal Agent in the 100 Series. The new definition clarifies the role that Principal Agents will play, which includes accepting and being served with notice from the Commission or other persons required to provide notice by the Act or the Commission's Rules. The Commission also authorized operators to designate one or more additional agents who may serve as the operator's representative.

Prior Rule 302.c included provisions requiring operators to register with local governments. The Commission removed this provision, because it is no longer necessary in light of statutory changes made by Senate Bill 19-181. Under C.R.S. § 29-20-104(1)(h), local governments have authority to regulate the surface impacts of oil and gas development, and may adopt their own registration provisions as appropriate pursuant to their expanded authority. The Commission also revised Rule 215 to ensure that local governments receive required notifications of activities subject to their jurisdiction.

Rule 206.

The Commission consolidated recordkeeping provisions in prior Rules 301 and 205 into Rule 206.

Rule 206.a

In Rule 206.a, the Commission revised a portion of prior Rule 301, to clarify that an operator must submit any information that the operator is required to maintain by the Commission's Rules to the Director upon request, or automatically as specified by a Rule. The Commission requires information to be submitted in a format specified by the Commission's Staff, which means an electronic (digital) format, unless a non-electronic format is specifically authorized by the Commission's Rules or by the Commission's Staff on a case by case basis. The Commission determined that technological improvements over the past several decades have made electronic recordkeeping and transmission a standard practice for most operators, and that these technological changes enable operators to more readily store records, and to submit information in a more timely and readily-viewable manner.

Accordingly, the Commission determined it was appropriate to require operators to submit information at the time specified by a Commission Rule or by the Commission's Staff, rather than identifying a specific timeframe for all submissions, which could be too short or too long, depending on the circumstances. If an Operator is unable to provide a document within the timeframe specified by a Commission Rule or by the Commission's Staff because the document is in the possession of a third party who is not the operator, the Commission provided the Director with discretion to extend the response time. However, the Director is not required to extend the response time and may determine whether an extension of time is reasonable on a case by case basis.

Consistent with its prior practice, the Commission intends for its Staff to protect confidential information pursuant to all applicable statutes and Rules, including Rule 223.

Rule 206.b

The Commission revised Rule 206.b to clarify that the recordkeeping requirements apply to all persons and entities subject to regulation by the Commission's Rules. The Commission added a catch-all requirement that all such persons keep accurate and complete records, to be clear that there is a requirement for records to be accurate and complete, even if a specific Commission Rule does not apply. Additionally, the Commission clarified that the Director and the Commission itself may have access to all records kept pursuant to the Commission's Rules upon request, and within the timeframe specified in Rule 206.a, unless a different timeframe is specified for a specific category of record in a different Commission Rule. The Commission also enumerated several specific categories of records that operators and other persons must maintain in Rule 206.b.(1)–(5). This list is not intended to be exhaustive, and accordingly in Rule 206.b.(6), the Commission provided a catch-all requirement for all records and reports related to oil and gas operations that the Commission regulates as may be requested by the Director or Commission.

Rule 206.c

The Commission moved the portions of prior Rule 301 that addressed Well Records to Rule 206.c, and consolidated them with prior Rule 205.g, which also addressed Well Records. The Commission also added a new definition of Well Records in the 100 Series. The Commission determined that providing a definition in the 100 Series would be clearer for operators than attempting to list the full category of records that qualify as Well Records in the text of Rule 206.c. The 100 Series definition of Well Records clarifies that Well Records include cementing records, such as the type and volume of cement used, and records of all alterations to cement. The Commission also moved portions of prior Rule 308C to Rule 206.c.(1), governing the confidentiality of Well Records. The Commission recognizes that certain geological and geophysical information about wildcat or exploratory wells must be kept confidential pursuant to C.R.S. § 34-60-106(1)(b), and may also meet the definition of confidential geological or geophysical data under the Colorado Open Records Act, C.R.S. § 24-72-204(3)(a)(IV). Accordingly, the Commission outlined a process for operators to

request that Well Records for wildcat or exploratory wells, including Form 5, Drilling Completion Reports, Form 5A, Completed Interval Reports, and Form 7, Month Operations Reports, be treated as confidential by submitting a Form 4, Sundry Notice. If the Director agrees that the information should be treated as confidential and approves the Form 4, then the Director will keep the information confidential for 6 months from the date the wildcat or exploratory well is completed, unless the operator waives its right to confidentiality in writing and authorizes the Director to make the information public at an earlier date. The Commission determined that Rule 206.c.(1) appropriately balances the need to keep geological information about wildcat wells confidential with the public's right to obtain records of oil and gas development activities.

Rule 206.d

The Commission consolidated and streamlined the requirements for chemical products records in prior Rules 205.c–f into a single Rule 206.d governing chemical inventories. The purpose of Rule 206.d is to ensure that operators maintain and timely update, and that the Commission can access a chemical inventory documenting all chemical products stored in large volumes at an oil and gas location. In the event of an accident, emergency, or significant environmental impact, it is important for the operator and the Commission to understand which chemicals are present at the location in order to ensure the safety of workers and the general public and to communicate with emergency responders and medical professionals, as necessary.

Prior Rule 205.b required operators to maintain Material Safety Data Sheets for all chemical products brought to a well site. The federal Occupational Safety and Health Administration has a similar regulatory requirement. *See* 29 C.F.R. § 1910.1200(g)(1). To ensure consistency with the Act's restrictions on the Commission adopting rules regarding practices regulated under the federal Occupational Safety and Health Act, C.R.S. § 34-60-106(10), the Commission removed the requirement for operators to maintain Material Safety Data Sheets at oil and gas locations. Consistent with this change, the Commission removed the definition of Material Safety Data Sheet from its 100 Series Rules. Operators are nevertheless required to maintain a chemical inventory pursuant to Rule 206.d.(3), and the Commission does not intend for this revision to prior Rule 205.b to interfere in any way with an operator's obligation to provide chemical inventory records to the Commission's Staff upon request pursuant to Rule 206.b.(1).

In Rule 206.d.(2), the Commission required that operators maintain a Chemical Inventory identifying all chemicals used or stored at an oil and gas location, and as appropriate, indicate in the inventory whether the chemicals are used downhole. The Commission expects Operators to update their Chemical Inventory on a quarterly basis. The Commission revised the 100 Series definition of Chemical Inventory to remove a reference to material safety data sheets, consistent with removing the definition of material safety data sheets from the 100 Series, as discussed above.

Rule 206.e

The Commission adopted a new Rule 206.e, governing transfer of records. Previously, the Commission encountered challenges with the varying procedures that operators used for transferring records when a facility changed ownership. In some cases, it proved challenging for the Commission or Director to determine whether a facility was in compliance with the Commission's Rules, because relevant records were not transferred to a new owner or operator. In some cases, it was difficult to determine the responsible party for remediation where environmental contamination had occurred at a facility that had changed ownership in the past. To prevent similar challenges from arising in the future, and consistent with new Rule 218, Form 9, Transfer of Operatorship, the Commission determined that it is necessary to require all operators to transfer all records and reports that the operator is required to maintain under the Commission's Rules to any subsequent owner or operator. Rule 206.e will ensure that the party that currently operates a facility will have access to all pertinent records about operations at the facility, and will be able to provide such records to the Director upon request, pursuant to Rule 206.a. Although some records are submitted to the Commission, it is important for the current operator to maintain a copy of those records so that the current operator has timely access to all information about their own facility, and because maintaining multiple copies of the records provides a safeguard in the event that the records are lost by either the Commission or the operator. The Commission intends for transferred documents to include not only any specific form or report submitted to the Commission, but also any supporting or underlying documents or records that were relied upon to create the form or report. Thus, all records, including electronic records on file with the Commission, must be transferred. This ensures that, should the Commission's electronic filing system ("eForms") or information and data system ("COGIS") ever experience downtime or a loss of data, the present operator of record would have access to all pertinent information about their own facility.

Rule 206.f

The Commission consolidated and streamlined its prior Rules governing maintenance of records, including Rule 205.f, into Rule 206.f. Previously, the Commission did not have a standard Rule governing record maintenance. As a result, operators employed different practices for record maintenance, and in some cases operators no longer maintained a record that the Commission's Staff requested. Because oil and gas facilities are in operation for a long period of time, and particularly because contamination that may require remediation may not be discovered for a long period of time after the contamination initially occurs, the Commission determined that it is important to develop a uniform and universal records retention standard. The Commission determined that 5 years is a reasonable time period for records retention where a different duration is not otherwise specified by a Commission Rule. For well records and chemical inventories, the Commission determined that it is necessary for operators to maintain each category of records for 5 years after plugging and abandonment of a well, or closure of an oil and gas location. Well records and chemical inventories often provide crucial information to determine the source and cause of

environmental contamination. Accordingly, maintaining these records for 5 years after a well is plugged or a location is closed is important for determining the cause of later-discovered contamination.

Rule 207.

The Commission moved prior Rule 206 to Rule 207. The Commission revised Rule 207 to clarify that it applies to all reports that must be submitted under any of the Commission's Rules, rather than attempting to enumerate specific categories of persons who may be required to submit reports. The Commission also added a requirement that reports be timely filed. Finally, the Commission clarified that reports must comply with all requirements in the Commission's Rules or otherwise adopted by the Director or Commission through guidance, policies, or Commission orders.

Rule 208.

The Commission moved prior Rule 205A to Rule 208. The Commission removed an outdated reference in prior Rule 205A.a, which set an effective date that has now passed.

Rule 208.a

In Rule 208.a, the Commission consolidated the distinct chemical disclosure requirements for different entities into a single rule that governs disclosure requirements for the Director, Commission, relevant local government, other governmental agencies, emergency responders, and health professionals. The Commission required regulated entities to provide a list of chemical constituents, identities, and concentrations contained in a chemical product to all such persons. The Commission determined that a streamlined and single requirement for disclosure to all entities that may have a need to learn about chemicals used on an oil and gas location would be clearer for all parties involved. However, the Commission also sought to ensure that chemical disclosures were only made to parties with a legitimate need to learn about chemicals used. Accordingly, in Rule 208.a.(1), the Commission clarified the circumstances when chemical disclosure may be required, which includes as the result of a spill or release, a complaint, or when otherwise necessary to protect public health, safety, welfare, the environment, or wildlife resources. Additionally, in Rule 208.a.(2), the Commission clarified that health professionals may only request disclosure of chemical product constituents for the purpose of diagnosis or treatment of an individual who was exposed or may have been exposed to a chemical used at an oil and gas location.

Rule 208.b

The Commission consolidated and clarified prior Rules 205.d, 205.f, 205A.b.(2).C–D, and 205A.d, which all related to the confidentiality of chemical products into a single Rule 208.b. Rule 208.b requires operators, vendors, or service provider to submit a Form 41, Trade

Secret Chemicals to designate any information provided pursuant to Rule 208.a as a trade secret chemical. Upon receipt of the Form 41, the Director will review the proposed trade secret designation. If the Director agrees and approves the Form 41 trade secret designation, then the Director will treat the information as confidential pursuant to the Colorado Open Records Act trade secret provision, C.R.S. § 24-72-204(3)(a)(IV), and it will be exempt from disclosure on the chemical disclosure registry form.

Rule 208.b.(1) specifies the informational requirements for a Form 41, which were listed in prior Rule 205A.b.(2).C.

Rule 208.b.(2) addresses procedural requirements that apply if the Director disagrees with a party's classification of information as a trade secret. In such a circumstance, the Commission intends for the Director to treat the information as a public record. Should the Director disagree with the party's classification of information as a trade secret, the Commission required the Director to notify and confer with the party that submitted the Form 41 before disclosing the information. Because the Commission does not have procedures to conduct *in camera* review of confidential information, the Commission intends to delegate its authority to designate information as confidential to the Director. Therefore, the Director's determination of confidentiality pursuant to Rule 208.b constitutes final agency action and may be subject to judicial review. Appeals may be made directly to district court, rather than to the Commission.

Rule 208.c

In Rule 208.c, the Commission revised portions of prior Rule 205A.b, governing hydraulic fracturing chemical disclosure. Rule 208.c, like prior Rule 205A.b, requires vendors, service providers, or (should the operator have access to the information) operators to submit information to the FracFocus Chemical Disclosure Registry. The Commission revised the wording of Rule 208.c. to improve clarity and incorporate terms defined in the 100 Series, but made few changes to the substance of the Rule. As noted above, the Commission moved provisions related to trade secret classification to Rule 208.b. As also noted above, the Commission moved provisions related to disclosure to health professionals to Rule 208.a. And the Commission removed provisions relating to liability for inaccurate information in prior Rule 205A.c ("disclosures not required"), consistent with Rule 201.b governing liability, and Rules 206.b and 207, requiring all operators to maintain and submit accurate records.

Rule 209.

The Commission moved prior Rule 207 to Rule 209.

Rule 209.a

Consistent with Senate Bill 19-181's changes to the Commission's statutory authority and mission, the Commission revised Rule 209.a to clarify that the Commission authorizes the

Director to require operators to perform any tests or surveys necessary and reasonable to protect public health, safety, welfare, the environment, and wildlife resources. The Commission also revised confusing language about the timeframe for conducting required tests and surveys, explaining that the Director will designate the timeframe for conducting the test or survey on a case by case basis, unless the Commission's Rules otherwise designate a timeframe.

Some stakeholders raised questions about what types of tests and surveys the Commission authorized the Director to require operators to perform pursuant to Rule 209.a. Consistent with the Commission's practice under prior Rule 207, the Commission intends for the Director to continue to exercise her delegated discretion to require tests and surveys in situations where there is evidence of potential and imminent risks to public health, safety, and the environment that require investigation. For example, the Commission's Staff have required operators to sample pits, fluids, tanks, and install groundwater monitoring wells. Under prior Rule 207, the Commission's Staff have also required operators to investigate whether there were impacts to groundwater in situations where the operator stimulated a horizontal well without conducting the requisite prior remediation on an offset well. Finally, the Commission's Staff have previously required operators to perform mechanical integrity tests where there is potential evidence of wellbore integrity issues. The Commission does not intend for these examples to be an exclusive list of the categories of tests and surveys that may be required pursuant to Rule 209.a, but rather to provide the regulated community with a general sense of Rule 209.a's purpose.

Rule 209.b

The Commission adopted new Rule 209.b, which provides for an expedited appeal process if the Director requires an operator to conduct a test or survey pursuant to Rule 209.a, or if the Director requires an operator to shut-in for operating a transferred well without the Director's approval of a Form 9, Transfer of Operatorship – Intent & Subsequent pursuant to Rule 218.g. If an operator disagrees with the Director's requirement to conduct a test or survey or shut-in a well, the operator must comply with the Director's requirement until otherwise instructed by the Commission. However, the operator may appeal that decision to the Commission on an expedited basis, and the matter will be heard by the Commission at its next regularly-scheduled meeting, without prior assignment to an Administrative Law Judge. It is likely that the Commission's next regularly scheduled hearing will occur much sooner than a matter could be addressed by an Administrative Law Judge or Hearing Officer. Expediting the appeal process by removing an intermediate appellate step also ensures that operators may receive a final decision from the Commission sooner if they choose to appeal the Director's decision. Consistent with C.R.S. §§ 34-60-106(2.5) & 34-60-121(4), the Commission provided that the standard of review for the Director's action will be whether the Director had reasonable cause to determine that an operator's action impacted or threatened to impact public health, safety, welfare, the environment, or wildlife resources, and that the action required by the Director was necessary and reasonable to address the impacts or threatened impacts.

The Commission adopted a similar expedited appeal process for other situations in which imminent threats to public health, safety, welfare, the environment, or wildlife resources may necessitate that the Director require an operator to take immediate action to address the threat, without sufficient time for a Commission hearing. Other examples of the expedited appeal process provided by Rule 209.b include Rules 602.f and Rule 901.a. Although the Commission anticipates that it will meet frequently as part of the transition to a full time Commission, the time required for five individual Commissioners, Commission Staff, and impacted parties to assemble and undergo formal hearing procedures may in some cases be too long to allow an ongoing threat to public health, the environment, or wildlife to continue. For example, a sudden well control issue, spill, leak, fire, or other impact could occur overnight or during a weekend, and it may be necessary for the Director to require an operator to conduct tests and surveys prior to the full Commission being able to assemble. The Commission believes it struck the balance appropriate for its full-time status by authorizing the Director to require immediate tests and surveys pursuant to 209.a, but affording operators an expedited hearing process in Rule 209.b.

To ensure due process, even if an operator does not appeal the Director's action pursuant to Rules 209.a or 218.g to the Commission, the Commission will nevertheless receive a report about the Director's action at its next regularly scheduled hearing. If the Commission has questions about the Director's action, it may ask those questions and otherwise review the Director's action in the context of this report.

Some stakeholders questioned whether Rule 209 provides too much discretion to the Director. The Commission believes that it has delegated an appropriate degree of discretion to the Director in Rule 209. The Act provides that the Commission may not make any orders without a hearing. C.R.S. § 34-60-108. Rule 209.b provides for a direct, expedited appeal to the Commission itself any time that the Director requires an operator to conduct a test or survey pursuant to Rule 209.a, which ensures swift and direct Commission oversight over the Director's decision. Additionally, the Act delineates the Director's powers in C.R.S. § 34-60-104.5. Among other things, the Act authorizes the Director to administer the Act, enforce the Commission's Rules, and implement the Commission's orders. C.R.S. § 34-60-104.5(2). In adopting Rule 209.a, the Commission determined that it was appropriate to delegate its statutory authority to the Director to require operators to take immediate action to conduct tests or surveys necessary and reasonable to prevent, mitigate and remediate immediate threats to public health. *See* C.R.S. § 34-60-106(2.5), (10). Because the Act expressly contemplates that the Commission will delegate implementation powers to the Director, C.R.S. § 34-60-106(2), this is a permissible delegation. *See Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1190 (10th Cir. 2014); *Manka v. Tipton*, 805 P.2d 1203, 1205–06 (Colo. App. 1991). The Commission provided reasonable constraints on the authority delegated to the Director by specifying the "reasonable cause" standard of proof, limiting the situations where the Director can require an operator to conduct a test or survey to situations where doing so is necessary and reasonable to protect public health, safety, welfare, the environment, or wildlife resources, and specifying a timeframe for operators to take action. *See, e.g., Fremont Re-1 Sch. Dist. v. Jacobs*, 737 P.2d 816, 818–19 (Colo. 1987);

Colo. Motor Vehicle Licensing Bd. v. Northglenn Dodge, Inc., 972 P.2d 707, 713 (Colo. App. 1998).

Some stakeholders also suggested that Rule 209 violates the responsible party provisions of the Act. C.R.S. §§ 34-60-124(6)(b) & (7). The Commission does not agree with those stakeholders because Rule 209.a and b are intended to constitute a responsible party determination. Rule 209 provides that the Director may order an operator to conduct tests and surveys, but only if the Director has reasonable cause to determine that the operator's misconduct impacts or threatens to impact public health, safety, welfare, the environment, or wildlife resources. Thus, Rule 209.a effectively requires the Director to make an evidence-based determination that an operator has violated the Act, C.R.S. § 34-60-106(2.5)(a), prior to ordering the operator to conduct a test or survey. The Act defines a responsible party as an operator who conducts an activity that, among other things, violates the Act. C.R.S. § 34-60-124(8). Even though Rule 209.a is not a formal enforcement action, Rule 209.b provides that the Commission would then review the Director's responsible party determination by applying the same statutory reasonable cause standard that would apply in an enforcement hearing. C.R.S. § 34-60-121(4).

Some stakeholders also suggested that Rule 209 violates provisions in the Administrative Procedure Act that require operators to receive notice of an agency's intent to modify, limit, suspend, or revoke a permit, and a reasonable opportunity to comply with lawful requirements. C.R.S. § 24-4-104(3)(a). The Commission does not agree with these stakeholders, because the opportunity for a Commission hearing provided by Rule 209.b means that an operator will receive formal notice, and a period of time to cure any potential violation of the Act or a Commission Rule, prior to any actual modification of the operator's permit. Only the Commission can modify a permit issued by the Commission—the Director cannot modify such a permit unilaterally by her own action. Additionally, the Administrative Procedure Act provides that permits may be summarily suspended when an agency has reasonable grounds to determine that public health, safety, or welfare imperatively require emergency action. C.R.S. § 24-4-104(4)(a). This provision of the Administrative Procedure Act is consistent with the Commission's intent that Rule 209.a be used only in rare situations where the Director has evidence of potential and imminent risks to public health, safety, and the environment that require immediate investigation.

The Commission takes seriously its constitutional and statutory obligation to afford due process to all parties appearing before it, and Rule 209 provides all parties with due process. Operators may challenge the Director's decision at a Commission hearing, and no action ordered by the Director will become final until it is approved by the Commission after a hearing or unless the operator chooses not to appeal the Director's decision. Any concerns about the Director's discretion to require tests and surveys pursuant to Rule 209 would apply with equal force to prior Rule 207.a. The Commission does not believe that prior Rule 207.a resulted in any due process concerns or violations. Moreover, in Rule 209.b, the Commission afforded clearer and more specific procedural rights to operators than were provided by prior Rule 207.a, which did not specify appellate procedures. Finally, Senate

Bill 19-181 provides the Commission with more stringent statutory authority to require operators to conduct tests and surveys if necessary to investigate immediate threats to public health, safety, welfare, the environment, and wildlife resources, C.R.S. § 34-60-106(2.5)(a), than existed in 1952, when the Commission first adopted prior Rule 207.a (which was Rule 209 at the time it was adopted).

Rule 209.c

The Commission revised Rule 209.c in the Wellbore Integrity Rulemaking and did not make additional changes to the Rule in the 200–600 Mission Change Rulemaking.

Rule 210.

The Commission moved prior Rule 208 to Rule 210.

Rule 210.a

The Commission revised Rule 210.a to clarify that both the Director and Commission are authorized to require operators to take corrective action. Consistent with Senate Bill 19-181's changes to the Commission's statutory authority and mission, the Commission clarified that both the Director and Commission may require operators to take corrective action if necessary to protect or minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

Rule 210.a has the same purpose as prior Rule 208: allowing operators to resolve issues without going through a formal enforcement process. The Commission believes that allowing the corrective action process provides beneficial incentives for operators to resolve issues promptly, and reduces the time and expense for all parties involved in resolving compliance issues. Simply put, it is more efficient for an operator to correct or cure a potential regulatory violation, and provides more rapid benefits to public health, safety, welfare, the environment, and wildlife resources from a condition being corrected, without first undergoing a lengthy formal enforcement process. Accordingly, the Commission chose to maintain prior Rule 208's corrective action process in the 200–600 Mission Change Rulemaking.

Some stakeholders suggested that Rule 210.a also violates provisions in the Administrative Procedure Act that require operators to receive notice of an agency's intent to modify, limit, suspend, or revoke a permit, and a reasonable opportunity to comply with lawful requirements. C.R.S. § 24-4-104(3)(a). The Commission does not agree with those stakeholders because Rule 210 corrective actions are the primary mechanism that the Commission has used, for many years, to *provide* operators with notice and an opportunity to comply with applicable requirements prior to commencing a formal enforcement action. Indeed, Rule 210.a is consistent with C.R.S. § 34-60-121(1)(c)(I)(A) & B, which explicitly contemplate that a corrective action could be taken before an enforcement matter is

resolved. The purpose of Rule 210.a is to allow the Director to notify operators of potential violations of the Act, a Commission Rule, order, or permit, and give the operator an opportunity to cure the potential violation prior to the Commission taking any action to formally revoke, suspend, modify, or limit the operator's permit. Particularly because only the Commission, and not the Director, may modify a permit, the Commission does not agree that Rule 210.a violates the Administrative Procedure Act, and in fact Rule 210.a is explicitly intended to provide a mechanism of compliance with the Administrative Procedure Act.

Pursuant to C.R.S. § 34-60-121(4), to require that a corrective action be taken, the Director or Commission must have reasonable cause to believe that a violation of the Commission's Rules has occurred. The Commission determined that "reasonable cause" was the appropriate standard because it aligns with the use of the term "cause" in C.R.S. § 34-60-121(4), and because the "reasonable cause" standard in prior Rule 901.c has afforded operators sufficient due process under the Commission's prior Rules. The Commission determined that adopting a higher evidentiary standard would not be consistent with Senate Bill 19-181's clear directive that the Commission protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources. Because the cause of an imminent threat to public health or the environment that requires corrective action may not always be simple to conclusively identify during a short timeframe, imposing a higher evidentiary standard would unnecessarily constrain the Director's and Commission's ability to respond to imminent environmental threats. For the same reasons discussed above for Rule 209.a, the Commission determined that incorporating the "reasonable cause" standard into Rule 210 ensures compliance with the responsible party provisions of the Act. C.R.S. §§ 34-60-124(6)–(8).

Understanding that the situations where corrective actions may be necessary will vary, the Commission also clarified that the Director or Commission may exercise their discretion to determine the manner in which the condition requiring corrective action must be remedied. The Commission intends for such discretion to be used only where certain technologies or techniques are known to be most effective, or where specific technologies or techniques previously employed by an operator have been unsuccessful.

Consistent with its current practice, the Commission will continue to ensure that the timing of any corrective action requirements for operations on federal lands do not conflict with any federal standards or negatively impact any other resources that are managed on federal lands. For example, if an oil and gas location is subject to a federal timing stipulation intended to protect wildlife, the Commission will not require an operator to complete the corrective action during times prohibited by the federal stipulation.

Rule 210.b

In Rule 210.b, the Commission added a provision requiring operators to submit a Field Inspection Report Resolution Form ("FIRR") to the Director upon completion of a corrective

action required by a field inspection report. Although the Commission's Staff have used FIRRs as a standard practice for many years, the Commission's Rules previously did not specifically address FIRRs.

Rule 211.

The Commission moved portions of prior Rule 208 to Rule 211.

Rule 211.a

Prior Rule 208 authorized the Commission to require the proper plugging and abandonment of a wells when it was no longer used or useful. Consistent with Senate Bill 19-181's changes to the Commission's statutory authority and mission, the Commission clarified that the Commission may also require an operator to plug and abandon a well if necessary to protect or minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and protect against adverse environmental impacts on any air, water, soil, or biological resource. The Commission has rarely required operators to plug and abandon wells pursuant to prior Rule 208, and intends to continue exercising its discretion under Rule 211.a only in rare instances where doing so is necessary to protect or minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

Prior Rule 208 did not specify who was required to take action. Accordingly, in Rule 211.a, the Commission clarified that operators may be required to plug and abandon a well.

Some stakeholders raised questions about the meaning of the term "used or useful," or suggested parameters for defining whether a well is no longer "used or useful." The term "used or useful" has been part of the Commission's 200 Series Rules since 1954. However, because of uncertainty raised by stakeholders, the Commission intends to define this term, and make any other appropriate revisions to Rule 211 in its forthcoming Financial Assurance Rulemaking.

To ensure that operators are afforded due process and affected stakeholders may engage in any required plugging or abandonment procedures, the Commission specified that a hearing pursuant to Rule 503 is required prior to an operator being required to plug and abandon a well pursuant to Rule 211.a. A relevant local government or mineral owner[2] may petition

[2] This Statement of Basis and Purpose uses the term "mineral owner(s)" throughout. Numerous rules use the defined term "Owner" as well as other categories of mineral rights, including leased mineral owners, which may not be encompassed by the defined term "Owner." The Commission cautions operators and the public as a whole that a Rule reference to an "Owner" may encompass a variety of mineral rights and each rule should be reviewed carefully to determine which of those rights are included in the Rule. Should it become necessary in the future, the Commission or Staff may issue guidance

the Commission for such a hearing pursuant to Rule 507. For actions involving federally-owned minerals, the Commission recognizes that it is particularly important for the Commission's Staff to coordinate with the BLM when exercising the authority provided by Rule 211.a. Additionally, the Secretary will provide appropriate notice of any hearing regarding plugging and abandoning a well required by Rule 211.a to potentially interested parties, including relevant local governments, pursuant to Rule 504. As with all Commission hearings that may implicate modifications of an operator's permit pursuant to C.R.S. § 24-4-104(3)(a), the operator would also receive notice of the hearing, and an opportunity to correct any potential statutory or regulatory violations prior to the hearing.

Rule 211.b

In Rule 211.b, the Commission adopted a new Rule specifying that it may require closure of an oil and gas location or oil and gas facility if the location of the facility is no longer used or useful. The Commission intends for the same procedures to apply to Rule 211.b as apply to Rule 211.a, except that a surface owner, rather than a mineral owner, may request a hearing pursuant to Rule 507.

Rule 212.

The Commission moved prior Rule 209 to Rule 212 but did not make substantive changes to the Rule. The Commission revised Rule 212 in the Wellbore Integrity Rulemaking and did not make any further changes to the Rule, except to capitalize terms defined in the Commission's 100 Series Rules.

Rule 213.

The Commission moved portions of prior Rule 301 to Rule 213.

Rule 213.a

Previously, the Commission did not have a single, standard Rule addressing notices to the Director or Commission. Instead, various Rules provided different standards for such notice. In Rule 213.a, the Commission adopted a catch-all provision explaining that operators must provide notice consistent with the timeframe and format provided in other parts of the Commission's Rules. Whenever the Commission's Rules state that notice will be provided to the Commission or Director, the Commission intends that the notice will be provided to the Commission's Staff through the appropriate Form specified by the Rule, or through direct verbal or written notice to the appropriate Commission Staff person if no Form is specified.

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regarding which rights are included in a reference to an owner in a Rule notwithstanding the terminology used in the Statement of Basis and Purpose.

Rule 213.b

In Rule 213.b, the Commission revised prior Rule 301's requirements for providing notice during emergencies. Prior Rule 301 allowed operators to provide oral, rather than written notice, to the Director if providing written notice might unduly delay operations. Consistent with Senate Bill 18-181's changes to the Commission's statutory authority and mission, in Rule 213.b.(1), the Commission limited the situations where oral notice is permissible to emergencies where the delay caused by notifying the Commission's Staff might endanger public health, safety, welfare, the environment, or wildlife resources. The Commission does not intend for the process of providing notice to in any way delay the operator taking action to remedy the emergency condition, as appropriate. In Rule 213.b.(2), the Commission clarified that the Director may approve emergency operations through oral approval. However, if the Director provides oral approval, operators must follow up by providing the same information to the Director in writing at the earliest possible time, but in no less than 3 days, unless a different Commission Rule specifies a different timeframe. For example, Rule 912 specifies timeframes for reporting spills and releases, and the Commission intends for the more specific timeframes in Rule 912 govern over the more general timeframes in Rule 211.b.(2). Finally, prior Rule 301 required operators to notify the Director when public health or safety were in jeopardy. Consistent with Senate Bill 19-181's changes to the Commission's statutory authority and mission, in Rule 213.b.(3), the Commission expanded this provision by requiring operators to immediately notify the Director, relevant and proximate local governments, and the surface owner of threats to public health, safety, welfare, the environment, or wildlife resources.

Some stakeholders suggested that Rule 213.b.(3) is redundant or unnecessary. The Commission believes that Rule 213.b.(3) is necessary because it applies in situations where notice is not otherwise required by the Commission's Rules, but a threat to public health, safety, welfare, the environment, or wildlife resources nevertheless exists, and there is a need for the Commission's Staff, local governments, and the surface owner to be informed of the threat.

Rule 214.

The Commission moved prior Rule 211 to Rule 214, but did not make substantive changes to the Rule.

Rule 215.

The Commission moved prior Rule 214 to Rule 215.

Rule 215.a

To reflect changes in communications technology, the Commission removed prior Rule 214's requirement for local governments to provide the Commission with a facsimile number for

local governmental designees. The Commission also expanded the list of responsibilities held by local governmental designees. First, in Rule 215.a.(1), the Commission specified that local governmental designees must provide comments upon Form 2A, Oil and Gas Location Assessment Applications for which the local government is a relevant or proximate local government. Second, the local governmental designee must ensure that appropriate staff within a local government receive appropriate notices and information. Finally, consistent with the Commission's 2019 Flowline Rulemaking, the Commission specified that local governmental designees must submit any necessary confidentiality agreements to request access to Geographic Information System ("GIS") data related to flowline and gathering line location information.

Rule 215.b.

The Commission adopted a new Rule 215.b, which creates an option for local governments that have not identified a local governmental designee to provide an electronic mail address for receiving notice. This option ensures that local governments who do not choose to identify a local governmental designee, but nevertheless wish to receive notifications from the Commission, have a clear method of receiving notice.

Rule 215.c

The Commission adopted a new Rule 215.c, which specifies procedures for the Commission's Staff to notify local governments that have neither designated a local governmental designee pursuant to Rule 215.a, nor specified an electronic mail address for receiving notice pursuant to Rule 215.b. In such an instance, the Commission's Staff will continue their prior practice of using reasonable best efforts to identify the appropriate contact person to receive notice pursuant to the Commission's Rules. Recognizing the large number and variety of roles served by special districts, the Commission does not intend Rule 215.c to cover special districts. Rather, any special district that wishes to receive notice must affirmatively request notice through either the mechanism provided by Rule 215.a or 215.b.

Rule 216.

The Commission moved prior Rule 215 to Rule 216.

Rules 216.a & 216.b

The Commission revised Rules 216.a and 216.b during its 2019 Flowline Rulemaking and did not make substantive changes to these provisions.

Rule 216.c

The Commission revised Rule 216.c by simplifying the Rule's language and clarifying that accuracy values should be reported in meters, but where this option is not available, then a position dilution of precision of less than 6 is also acceptable.

Rule 217.

The Commission moved prior Rule 310 to Rule 217. The Commission clarified that levy payments must be remitted when a Form 8, Conservation Levy is filed.

The Commission made additional revisions to Rule 217 in its recent Conservation Levy Rulemaking.

Rule 218.

The Commission moved prior Rule 312 to Rules 218 and 219. Under prior Rule 312, operators filed a Form 10, Certificate of Clearance/Change in Operator for Commission approval of two different things: a certificate of clearance to transport oil or gas off the oil and gas location, and a change in operator. Recognizing the different purposes that these forms serve, the Commission divided the form into two different forms: a Form 9, Transfer of Operatorship, governed by Rule 218, and a Form 10, Certificate of Clearance, governed by Rule 219.

In Rule 218, the Commission created a new Form 9, Transfer of Operatorship. Although prior Rule 312 required operators to provide notice to the Commission of changes of operator, no prior Commission Rule provided clear criteria for informing the Commission about relevant details when ownership of a facility changed. Consistent with the changes Senate Bill 19-181 made to the Commission's mission and statutory authority, the Commission determined that it is necessary to adopt clear standards for informing the Commission when facilities change ownership or operatorship, in order to protect public health, safety, welfare, the environment, and wildlife resources. Changing ownership of a facility has created confusion over whether an original or subsequent operator is responsible for remediating environmental contamination. Additionally, gaps in recordkeeping relating to changes in ownership may pose risks to public safety if a subsequent operator and the Commission are unaware of relevant site characteristics. For example, if a subsequent operator is unaware of on-site, but not necessarily visible, related facilities, such as a pit, the operator might not be able to take appropriate and required remediation or reclamation actions. Finally, providing clear requirements for permit transfer benefits operators by improving transparency and ensuring that the Commission can promptly review and process changes in operatorship.

The Commission does not intend for Rule 218 to override the responsible party provisions of the Oil and Gas Conservation Act. The Act's responsible party provisions are found in C.R.S. § 34-60-124, which creates the Oil and Gas Conservation and Environmental Response Fund, also known as the "Orphan Well Fund." The Act defines a responsible party as an operator who conducts an activity that violates the Act, a regulation, Commission order, or permit in a manner that causes or threatens to cause a significant adverse impact to any air, water, soil, or biological resource. C.R.S. § 34-60-124(8). The Act further authorizes the Commission to require responsible parties to conduct investigation or monitoring activities, C.R.S. § 34-60-124(6)(b), and to issue an order requiring a responsible party to perform mitigation activities, C.R.S. § 34-60-124(7). Because Rule 218 improves recordkeeping at the time when oil and gas facilities, which may have associated remediation issues, are transferred, it will improve the Commission's understanding of which operators may be a responsible party in any given circumstance. Rule 218 also encourages operators to work with one another at the time a facility is transferred to specifically identify which facilities are being transferred, which will also reduce confusion about responsibility for future remediation projects. Thus, Rule 218 may alleviate the need for some future determinations by the Commission that an operator is a responsible party. However, nothing in the text of Rule 218 is intended to override the responsible party provisions of the Act.

Rule 218.a

In Rule 218.a, the Commission adopted several definitions applicable to Rule 218.

First, the Commission adopted a definition of "Transferable Items," which include certain types of permits (Form 2, Applications for Permits to Drill; Form 2A; Form 15, Pit Permits; and Form 28, Centralized E&P Waste Management Facility Permits), and other categories of physical assets and outstanding liabilities. The Commission intends for the term "Transferable Items" to mean any item that meets the criteria in Rule 218.a.(1).A–K that is listed in the Commission's database ("COGIS") as related to another listed item. For the purposes of Rule 218, the Commission intends for the term "related" to mean transferable items that are:

- Physically co-located;
- Functionally connected; or
- Otherwise associated in the Commission's records with a Transferable Item, including but not limited to active complaints, investigations, unresolved spills or releases, inspections, corrective actions, enforcement actions, open remediation projects, or Commission orders.

For example, if there is a pit listed as related to an oil and gas location in the Commission's database, then the pit would be considered a Transferable Item, and a Form 9 would need

to clarify whether the selling operator, a prior operator, or the buying operator holds responsibility for the pit after the transfer. The instructions for the Form 9 – Intent and Subsequent will explain how the Commission intends for Operators to identify related facilities on their Form 9 – Intent and Subsequent. The Commission does not intend for every Transferrable Item owned by a selling operator to be listed on the Form 9, unless the selling operator proposes to transfer all assets and liabilities that it owns as part of the transaction. For example, if a selling operator holds an approved Form 2A permit for 10 oil and gas locations, but only proposes to sell 4 of those locations as part of a transaction, then the Form 9 would list only those 4 oil and gas locations and all physically co-located, functionally connected, or otherwise associated items that are listed as related to those 4 locations in the Commission's records.

Some stakeholders suggested that pending permit applications be included in the list of Transferable Items. A pending permit application is not an actual license to conduct the activity requested in the application. Therefore, the Commission does not consider it to be a Transferable Item. There is no constitutionally protected property interest in a permit application, because there is no guarantee that a permit will be granted when an application is submitted. *See Crown Point I, LLC v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1216 (10th Cir. 2003); *see also Hillside Cmty. Church v. Olson*, 58 P.3d 1021, 1026 (Colo. 2002) ("[T]here can be no property right in mere procedure."). The Commission intends that the buying operator will file appropriate permit applications that are consistent with that operator's drilling, development, and operational plans. Nothing prevents a buying operator from filing a permit application previously submitted by the selling operator. Additionally, the selling operator may file one Form 9 that does not include all transferred assets, and then later file another Form 9 for other assets subject to a transfer after a pending permit application has been approved.

Second, the Commission adopted a definition of "Selling Operator." The Commission uses the term Selling Operator to refer to the current operator of record for a transferrable item. The Selling Operator files the Form 9 – Intent.

Third, the Commission adopted a definition of "Buying Operator." The Commission uses the term Buying Operator to refer to the operator to whom a transferrable item is proposed to be transferred. The Buying Operator files the Form 9 – Subsequent.

Finally, the Commission adopted a definition of "Prior Operator." The Commission uses the term Prior Operator to describe an operator that is not the Selling Operator which previously was an operator of record for any transferrable item. A single permit (or other transferrable item) may have more than one Prior Operator if ownership or operatorship has transferred multiple times.

Rule 218.b

To notify the Commission about a proposed transfer of operatorship, the selling operator must file a Form 9 – Intent. Rule 218.b lists the several types of information that the Commission determined is necessary for its Staff to obtain in order to timely process a transfer of operatorship, recognizing that information submitted at the Form 9 – Intent stage may be preliminary, and that the final details of a transaction will be submitted on the Form 9 – Subsequent. The Commission thus recognized that information provided on the Form 9 – Intent may change after the Form 9 – Intent is submitted to the Commission, and that the information on the Form 9 – Intent should therefore reflect the selling operator's current understanding of that information at the time of submission. The Commission required that the selling operator submit the Form 9 – Intent no less than 30 days prior to the anticipated closing date of a transaction to allow Commission Staff adequate time to review the information, which may be voluminous if an operator proposes to transfer numerous facilities at the same time. However, the Commission recognizes that in some cases, a transaction may be negotiated from start to finish in less than 30 days, and in such a case, the Commission required operators to submit the Form 9 – Intent "as soon as practicable," even if that is less than 30 days prior to the anticipated closing date.

Among other information, a Form 9 – Intent must identify the name of the buying operator, the anticipated transfer date, and the estimated amount of financial assurance that the buying operator will be required to submit prior to the anticipated date of transfer in order to comply with the Commission's 700 Series Rules.

In Rule 218.b.(3), the Commission required the selling operator to identify on the Form 9 – Intent a complete list of transferable items that the selling operator anticipates will be transferred. The Commission recognizes that this proposal is not final, and that this information may change prior to the closing date of the transaction. However, receiving an anticipated list on the Form 9 – Intent will allow Commission Staff to commence processing the Form 9 at an early date, which will facilitate timely review of the Form 9 – Intent and Subsequent.

In Rule 218.b.(4), the Commission required the selling operator to provide a complete list of any transferable items that the selling operator does *not* intend to transfer, but are listed as related in the Commission's records. This is an important requirement, because it will provide certainty to the Commission's Staff, as well as the buying operator, about the full range of transferrable items, including but not limited to open spills and releases and open remediation projects, that are subject to the proposed transfer of operatorship.

To ensure that both the selling operator and the buying operator are fully apprised of the items proposed for transfer, in Rule 218.b.(6), the Commission required the Form 9 – Intent to include an attached attestation from both the selling operator and the buying operator, attesting to the contents of the Form 9 – Intent.

Finally, recognizing that some transactions may involve confidential information, in Rule 218.b.(7), the Commission provided that the selling operator may designate information on the Form 9 – Intent as confidential. This confidentiality would apply in situations in which the parties to the proposed transaction agree to keep terms of the proposed transaction confidential. In such a case, the Commission would keep the Form 9 – Intent and associated information confidential until the Form 9 – Subsequent is filed, consistent with the Colorado Open Records Act and Rule 223. *See* C.R.S. § 24-72-204(3)(a)(IV). Treating the information on the Form 9 – Intent as confidential pursuant to the Colorado Open Records Act will not prevent the Director from sharing any necessary information with other Colorado state government entities, including the Colorado State Land Board, if the Colorado State Land Board is a mineral owner for any mineral interests subject to transfer. Upon sharing any necessary information, the Commission Staff will inform the other Colorado state government entity that the Commission is keeping that information confidential.

Rule 218.c

In Rule 218.c, the Commission specified that the selling Operator must pay a filing fee when submitting a Form 9.

Rule 218.d

In Rule 218.d, the Commission adopted requirements for Form 9 – Subsequent, which the buying operator will use to inform the Commission about whether a transfer subject to a Form 9 – Intent actually occurred. If a transaction does become final, it is the responsibility of the buying operator to submit a Form 9 – Subsequent within 7 days of the closing of the transaction. The informational requirements for the Form 9 – Subsequent are similar to information requirements for the Form 9 – Intent, but reflect that the buying operator will have a greater degree of certainty about the information on the form, because the transaction will be final.

In Rule 218.d.(1).A, the Commission required the selling operator to specify the effective date of the transfer of operatorship (which may be different than the date of the closing in some circumstances).

In 218.d.(1).B, the Commission required the Form 9 – Subsequent to specify what transferrable items were transferred, and whether the selling operator, the buying operator, or a prior operator is responsible for each transferrable item and any items that are listed as related to that item in the Commission's database. Rule 218.d.(1).B.i requires the selling operator to specify what items were transferred even if those items were not listed in the Form 9 – Intent. To facilitate timely processing of the Form 9 – Subsequent, Rule 218.d.(1).B.iii requires the selling operator to specifically identify any transferrable items that were initially identified as being proposed for transfer on the Form 9 – Intent, but were not ultimately transferred, and whether the selling operator or a prior operator are responsible for compliance for each such transferrable item that was not transferred.

The Commission believes that Rule 218.d.(1).B's clarifying responsibility for both transferred items and related items that were not transferred will provide substantial benefits for all regulated entities and the Commission itself, and help alleviate confusion about which operator is responsible for remediation and reclamation. To further ensure that both the selling operator and buying operator are fully informed and in agreement about what transferrable items were and were not transferred, in Rule 218.d.(1).C, the Commission required both the selling and buying operator to attest to the contents of the Form 9 – Subsequent, and for the selling operator to specifically attest that it remains responsible for any relevant transferrable items.

The Commission recognizes that, consistent with Senate Bill 19-181's expansion of local government regulatory authority over oil and gas operations, local governments may have important interests implicated by proposed transfers of operatorship. The Commission accordingly intends for operators to inform all relevant local governments with jurisdiction over the surface location where a transferable item is located about a completed transaction. To avoid the complexities inherent in the Commission's Staff acting as conduits for confidential information, the Commission intends for the buying operator to notify the relevant local government(s) directly. To ensure compliance with the local government notification requirement, Rule 218.d.(1).C.iii requires the selling operator to submit an attestation signed by the buying operator certifying that the buying operator notified the relevant local government(s) as an attachment to the Form 9 – Subsequent.

In Rule 218.d.(1).D, the Commission provided a default assumption that after the date of transfer the buying operator will be responsible for complying with the Commission's Rules, the Act, and all permit terms and conditions of approval for the transferred assets. To ensure that the buying operator is aware of these responsibilities, the Commission required the Form 9 – Subsequent to include an acknowledgement of this responsibility. Additionally, the buying operator must acknowledge that it may become responsible for compliance based on future activities that occur at a facility. Finally, the buying operator must acknowledge that for a transferable item that is related in the Commission's records, but was not listed on the Form 9 – Intent or Subsequent, the Commission will assume that the buying operator is responsible. The Commission determined that it was appropriate to adopt a standard rule to clarify liability for ongoing responsibility, including responsibility for environmental remediation and reclamation, because the Commission has encountered challenges in the past with identifying the party that is responsible for remediation when ownership of a contaminated location has changed. To ensure that there is always a party, with current financial assurance, that is capable of remediating any environmental damage caused by an oil and gas operation and of reclaiming an oil and gas location, the Commission determined it was necessary to create a presumption of liability in the buying operator.

If a transaction subject to a Form 9 – Intent is terminated or otherwise does not occur, Rule 218.d.(2) specifies that it is the responsibility of the selling operator to inform the Commission in writing within 7 days. Upon receipt of this written notice, the Commission's Staff will withdraw the Form 9 – Intent.

Rules 218.e

To ensure prompt review and processing of Form 9s, in Rule 218.e, the Commission provided that the Director will approve a Form 9 – Intent and Subsequent within 45 business days of when several conditions are met. Although the Commission intends for its Staff to commence review of a Form 9 – Intent upon its submission, the Form 9 – Intent will not be approved or denied until after receipt and review of the Form 9 – Subsequent.

One condition is the Director's determination that the Form 9 – Intent and Subsequent are complete and fully compliant with Rule 218. Another condition is that the buying operator has provided the requisite financial assurance necessary to comply with all of the Commission's Rules, including Rule 706 governing financial assurance for open remediation projects.

Additionally, the Director will not approve the Form 9 – Intent or Subsequent until the Director has determined that all permits subject to the transfer are fully compliant with the current version of the Commission's Rules. The Commission determined that it is necessary for the Director to conduct a compliance review as part of processing a Form 9 pursuant to Senate Bill 19-181's changes to the Commission's mission and statutory authority, because compliance with the Commission's current Rules is necessary to protect public health, safety, welfare, the environment, and wildlife resources. If an oil and gas location or operation authorized under a permit proposed for transfer is not in compliance with the Act, the Commission's current Rules, or any applicable permit terms and conditions of approval, then the Commission intends for the responsible party (which may be a prior operator, the selling operator, or buying operator) to submit a plan for bringing that location or permit into compliance. The Director may approve a Form 9 – Intent and Subsequent based upon receipt of such a plan, even if the specific elements of the plan have not yet been carried out and will be performed at some point in the future. The Commission intends for compliance plans submitted pursuant to Rule 218.e.(2) to be binding and enforceable documents.

Rule 218.f

In Rule 218.f, the Commission explained that if a Form 9 – Intent or Subsequent fails to satisfy the criteria of Rules 218.b or 218.d, the Director may deny the Form 9, and the selling operator will remain liable for all operations under the permits proposed for transfer. Additionally, the Director may deny a Form 9 – Intent or Subsequent if the selling operator did not remit the required filing fee or the buying operator did not submit the required financial assurance. If the buying operator does not submit a Form 9 – Subsequent within 120 days of the anticipated transfer date, the Director may also deny the Form 9 – Intent, and all permits proposed for transfer will remain with the selling operator. The Commission intends for its Staff to work with operators to ensure that Form 9s are complete and include all required information. However, if an operator refuses to provide necessary information pursuant to Rules 218.b or 218.d, or remit the filing fee pursuant to Rule 218.c, the Director has discretion to deny the proposed transfer of operatorship.

Rule 218.g

To ensure that operators comply with the requirement to submit a Form 9, in Rule 218.g, the Commission provided that if an operator operates a well for more than 60 days without obtaining the Director's approval of a Form 9 – Intent or Subsequent, the Director may require the operator to shut-in the transferred well until the Director approves a complete Form 9 – Intent and Subsequent for the well. As is the case for all shut-ins, the Director expects the operator shutting in the wells to comply with all temporary abandonment safety requirements provided by Rule 434.b. To ensure adequate procedural safeguards, as discussed above, if an operator objects to the Director's shut-in order, the operator may appeal the Director's decision to the Commission through an expedited process under the procedures outlined in Rule 209.b.

Rule 218.h

Similarly, in Rule 218.h, the Commission provided that the Director may not approve a Form 10 authorizing oil or gas to be transported off of the oil and gas location, until all requirements of Rule 218 are met and the Director has approved a Form 9 – Intent and Subsequent for the well.

Rule 218.i

In Rule 218.i, the Commission clarified that a Form 9 is not required for changes of operators of gas gathering systems, gas processing plants, and underground gas storage facilities that are subject to Rule 220.c.

Rule 219.

As discussed above, the Commission moved the components of prior Rule 312 that addressed the Form 10, Certificate of Clearance to transport oil or gas, to Rule 219.

Rule 219.a

The Commission moved prior Rule 312.e to Rule 219.a. The Commission clarified that it is the producing operator's obligation to provide notice of the approved Form 10 to the transporter or gatherer in Rule 219.g. The Commission removed language from prior Rule 312.g regarding notice to local governmental designees. Local governments may indicate the types notices they would like to receive pursuant to Rule 302.f. Finally, the Commission provided additional clarity by changing the term "volume" to the term "Fluid," which the Commission defined in the 800/900/1200 Mission Change Rulemaking.

Rule 219.b

In Rule 219.b, the Commission streamlined the language of prior Rule 312.a, but did not substantively change the Rule. The Commission intends for operators to file a Form within 30 days of the initial sale of any oil or gas from any oil or gas well.

Rule 219.c

In Rule 219.c, the Commission consolidated language from prior Rules 312.a & c relating to change of oil transporters and gas gatherers, and moved language from prior Rule 312.a relating to transfer of operatorship to Rule 218. The Commission intends for operators to file a Form 10 within 30 days of changing the transporter or gatherer for a well, even if the change is only temporary. However, consistent with prior Rule 312, operators need not file a Form 10 for temporary use of oil for well-treating or stimulation.

Rule 219.d

In Rule 219.d, the Commission required operators to file a new Form 10 within 30 days of the Director approving a Form 9. This will ensure that the Commission has up to date information about the entities authorized to transport oil or gas from every well.

Rule 219.e

To improve clarity, the Commission moved the requirement to pay a filing fee with a Form 10 from prior Rule 312.a to its own, standalone rule, Rule 219.e.

Rule 219.f

The Commission moved prior Rule 312.f to Rule 219.f, but did not substantively change the Rule. The Commission changed the word "revoked" in Rule 219.f.(3) to "suspended" to align with parallel language governing revocation of a Form 10 in Rules 525.d.(2) and 709.c.

Rule 219.g

The Commission moved prior Rule 312.f to Rule 219.g and clarified its wording, but made no substantive changes, except to provide that operators may provide approved Form 10s to transporters and gatherers through any means, including electronic mail, rather than only via mail.

Rule 220.

The Commission moved prior Rule 313B to Rule 220.

Rule 220.a

The Commission clarified confusing and redundant language in Rule 220.a, and made clear that all location descriptions must include both the facility's latitude and longitude (measured at the southeast corner of the facility) and legal location (quarter-quarter, section, township, range, and county).

Consistent with prior Rule 401.b.(5), the Commission adopted a new Rule 220.a.(5), requiring the operator of an underground gas storage facility to submit a certification of federal approval of the facility, if a federal approval was required.

Consistent with the 2019 Flowline Rulemaking, the Commission adopted requirements in Rule 220.a.(6) for operators to provide GIS data about the location of gathering systems, as well as relevant attributes of gathering systems such as fluid type, pipe material type, and pipe size. The Commission applied the same confidentiality provisions for gathering system location data as it adopted for flowline GIS data in Rule 1101.e, including that disclosure will only occur at the mapping scale specified in Rule 1101.e.

Rule 220.b

The Commission combined prior Rules 313B.b and 313B.c into Rule 220.b, and removed unnecessary language relating to deadlines that have already passed. All gas gathering systems, gas processing plants, gas compressor stations, and underground storage facilities must submit annual Form 12, Gas Facility Registrations, by May 1st to report the addition or removal of any gathering pipelines and, for underground storage facilities, a change in capacity greater than 10%, during the previous calendar year. Operators need not submit a Form 12 if no changes occurred during the prior calendar year.

Rule 220.c

The Commission clarified confusing wording in prior Rule 313B.c. The Commission intends for either the prior or new operator of a gas gathering system, gas compressor station, gas processing plant, or underground gas storage facility to submit a new Form 12 within 30 days of the facility changing ownership, with appropriate documentation confirming that ownership has changed attached to the form. Appropriate documentation may include a redacted document confirming sale or transfer of ownership.

Rule 220.d

The Commission moved prior Rule 401.b.(5) to Rule 220.d. The Commission also clarified what is classified as a gas storage project by adding a reference to the 100 Series definition of a gas storage well. Rule 220.d explains that the Commission does not regulate gas storage operations under its 800 Series Rules. To ensure that the Commission has accurate records of all underground activities that may impact the Commission's decisions about other oil

and gas operations, the Commission specified in Rule 220.a.(5) that operators of gas storage projects must submit copies of any applicable federal approvals to the Commission.

Rule 221.

The Commission moved prior Rule 334 to Rule 221. The Commission clarified confusing language, and specified that the requirement only applies to vehicles using public highways and roads for the purpose of oil and gas operations.

Rule 222.

The Commission moved prior Rule 336 to Rule 222. The Commission did not substantively change the language in Rule 222.a, and made no substantive changes to Rule 222.b.

Rule 223.

The Commission moved portions of prior Rule 308C to Rule 223.

Rule 223.a

The Commission updated its procedural standards for processing information an operator believes to be confidential. Under Rule 223.a, an operator (or any other person) who submits information to the Commission may designate all or part of the information as confidential, by clearly including words "confidential" on pages containing the information.

The person submitting the information should confer with the Commission's Staff prior to submitting confidential information. If the Director determines that the information meets the definition of confidential under the Colorado Open Records Act, C.R.S. §§ 24-72-202 & 24-72-204, then the Commission and all other state agencies with whom the information is shared will treat the information as confidential pursuant to the Colorado Open Records Act. However, if the Director determines that the information meets the definition of confidential, the conferral process provided by Rule 223.a requires the Director to notify the operator of this determination prior to the operator actually supplying it to the Director. Operators need not submit information that the Director has identified as confidential unless otherwise required to do so by a Commission Rule.

For any confidential information that is submitted, the person submitting the information must submit both a redacted and a non-redacted version, unless the Commission's Staff confirms orally or in writing that submitting a non-redacted version is unnecessary. When the confidential information is submitted as part of a Form, the Commission intends for the information to be supplied as an attachment to the Form, not on the Form itself, which will facilitate easier processing and protection of the information by the Commission's Staff.

Because the Commission does not have procedures to conduct *in camera* review of confidential information, the Commission intends to delegate its authority to designate information as confidential to the Director. Therefore, the Director's determination of confidentiality pursuant to Rule 223.a constitutes final agency action and may be subject to judicial review.

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. For example, where applicable, the Commission's Staff will coordinate with CPW and any relevant federal agencies, such as BLM and the U.S. Fish and Wildlife Service, to protect the confidentiality of sensitive wildlife habitat information. The Commission instructs its Staff to create guidance about certain categories of frequently-submitted information that will always be considered confidential, including but not limited to monetary values on a surface use agreement, personal medical information on an accident report, engineering and drilling methods, and any bank account numbers submitted pursuant to financial assurance processes.

Rules 304.c.(12), 314.e.(3).C, and 903.e all require the submission of information relevant to gathering line and other midstream infrastructure as part of a gas capture plan or comprehensive area plan. Recognizing the confidentiality concerns that may pertain to this information, the Commission specified in Rule 223.b.(3) that monetary amounts, payments, or personal information disclosed in a right of way or easement agreement are considered confidential. The Commission similarly specified that information concerning ongoing commercial negotiations for potential or planned routing of midstream gathering systems is confidential in Rule 223.b.(4). This does not mean that operators are exempted in any way from their obligations to submit this information to the Commission's Staff pursuant to Rules 304.c.(12), 314.e.(3).C, and 903.e. However, when the Commission's Staff receives this information, the Commission intends for it to be treated as confidential, consistent with Rule 223.a.

300 Series – Permitting Process

The Commission substantially revised its 300 Series Rules. The Commission's prior 300 Series Rules addressed several different and relatively unrelated topics. These included some generally-applicable Rules that the Commission moved to the 200 Series, some Rules related to operations that the Commission moved to the 400 Series, some Rules related to safety that the Commission moved to the 600 Series, some Rules pertaining to underground injection that the Commission moved to the 800 Series, and some Rules relating to environmental impacts that the Commission moved to the 900 Series. The prior 300 Series Rules also included several permitting Rules that the Commission maintained in the 300 Series, but substantially revised to implement Senate Bill 19-181's changes to the Commission's mission and statutory authority. Changes to the Commission's prior Rules are listed in the "Crosswalk" attached to this Statement of Basis and Purpose in Attachment A.

For the most part, this Statement of Basis and Purpose describes changes made to the Commission's prior Rules in the section of the document that discusses the prior Rule's new location. Accordingly, the discussion of the 300 Series in this Statement of Basis and Purpose describes the Rules that are currently in the 300 Series, rather than describing the Commission's prior 300 Series Rules.

Best Practices for Community Engagement Guidance

The Commission is fully committed to adhering to best practices for community engagement in its permitting process. The Commission intends for its permitting processes to be transparent, publicly accessible, broadly noticed, and to provide an opportunity for all affected persons to participate. The Commission recognizes that this requires affirmatively shaping its internal processes to ensure that all Coloradans have equitable opportunities to engage in the permitting process. This involves how information is provided on the Commission's website and in individual conversations with individual community members by the Commission's Staff. Additionally, the Commission recognizes the necessity of anticipating and avoiding potential barriers to engagement, including the timing of hearings, the location of hearings, and the language that information is provided in. The Commission firmly believes that its decisions are best when they are fully informed by robust participation from the communities most impacted by those decisions, and intends for its procedures to facilitate that robust participation in every way possible.

Consistent with this intent, the Commission directs its Staff to create a Best Practices for Community Engagement guidance document. The Commission intends for this guidance document to address both permitting and hearing procedures. The Commission intends for the Best Practices for Community Engagement guidance to be revisited and updated on an ongoing basis, so that the Commission and its Staff may continuously improve the document based on their experiences in implementing it. The Commission welcomes feedback from the public about the Best Practices document, recognizing that a community-driven process

for identifying appropriate procedures will result in the creation of a more effective set of practices and procedures. Receiving a diversity of input from the community will ensure that the Commission's practices and procedures are tailored to the wide-ranging needs and interests of all Coloradans.

Additionally, the Commission intends for the Best Practices document to reflect ideas and procedures that are already employed by other agencies. The Commission recognizes that it may learn from other state agencies, as well as federal agencies, local governments, and tribal governments about practices that are already being employed to encourage robust community engagement. Specifically, the Commission intends for its Staff to continue engaging with the Colorado Department of Public Health and Environment's ("CDPHE") Office of Health Equity and the Climate Equity team within the Air Quality Control Commission's ("AQCC") Climate Change Unit. The Commission appreciates the input that these CDPHE experts provided in shaping the 200–600 Series Mission Change Rulemaking relevant to disproportionately impacted communities, and intends for the collaborative, mutual learning between CDPHE's Staff and the Commission's Staff to continue into the future. The Commission specifically intends for its Staff to seek input into the Best Practices document from CDPHE's Health Equity and Climate Equity staff, both when it is initially created and on an ongoing basis.

Rule 301.

In Rule 301, the Commission adopted general requirements for approval, denial, changes, and fees for oil and gas operation permits.

Rule 301.a

In Rule 301.a, the Commission specified standards for approval of a permit, consistent with Senate Bill 19-181's changes to the Commission's statutory authority and mission. *See* C.R.S. §§ 34-60-102(1)(a)(I), (b); 34-60-103(5.5), (11)(b), (12)(b), (13)(b); 34-60-106(2.5)(a). Senate Bill 19-181 made protecting and minimizing adverse impacts to public health, safety, welfare, the environment, and wildlife resources a paramount consideration in all of the Commission's permitting decisions. Accordingly, the Commission adopted Rule 301.a, which provides that the Commission (and where applicable, the Director) will approve permits for oil and gas operations only if the operation protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

The references to the Director in Rule 301.a do not indicate that the Director has complete authority over all permitting decisions, but rather recognize that there are a discrete subset of permits, including Form 2 Permits to Drill; Form 15, Pit Permits; Form 20, Seismic Operations Permits; Form 28, Centralized E&P Waste Management Facility Permits; Form 31, Underground Injection Formation Permits; and Form 33, Injection Well Permits, that may be approved administratively by the Director.

As discussed above, one of the primary purposes of the 200–600 Mission Change Rulemaking is to implement the changes to the Commission's mission and statutory authority in C.R.S. § 34-60-106(2.5)(a). Rules 301.a & b are some of the many Rules where the Commission referenced § 34-60-106(2.5)(a) by using the phrase "protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources." In most other cases, the Commission omitted the other components of the language in C.R.S. § 34-60-106(2.5)(a) for the sake of brevity, although the Commission fully intends for the all uses of the phrase "protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources" to serve as a reference to the entirety of C.R.S. § 34-60-106(2.5)(a). However, because Rules 301.a & b serve unique purposes in describing the general requirements for approval and denial of permits pursuant to the Commission's Rules, the Commission included the entirety of the language in C.R.S. § 34-60-106(2.5)(a) in Rules 301.a & b.

Rule 301.b

In Rule 301.b, the Commission specified standards for denying a permit application. Previously, the Commission's Rules did not consistently provide standards for denial of permit applications. Accordingly, the Commission codified a clear standard for when a permit application would be denied. First, the Commission may deny permit applications in any circumstance where the permit application does not meet the criteria of the Commission's Rules. Second, the Commission may deny permit applications that do not comply with the Oil and Gas Conservation Act. Although many provisions of the Act are relevant to permit applications, pursuant to Senate Bill 19-181's changes to the Commission's statutory authority and mission, the Director or Commission may deny a permit application in any circumstance where a permit application meets the criteria of the Commission's Rules, but does not protect and minimize adverse impacts to public health, safety, welfare, the environment, or wildlife resources as contemplated by the statute. *See* C.R.S. § 34-60-106(2.5)(a).

Should the Director deny any permits that are reviewed administratively, including Form 2s, Form 15s, Form 20s, Form 28s, Form 31s, and Form 33s, the permit applicant may appeal the Director's decision to the Commission pursuant to Rule 503.g.(10).

Rule 301.c

In Rule 301.c, the Commission specified a procedure for changing already-approved oil and gas development plans. The Commission intends for significant and substantive changes to oil and gas development plans, such as a proposed change in location, to undergo more thorough review, including Commission approval, and potentially consultation with CPW and CDPHE. However, more minor or purely administrative changes, such as changing an operator's phone number, may be approved by the Director. Substantive changes will require the submission of an amended permit application for the proposed operation. The Commission did not specifically authorize a formal public comment process for purely

administrative changes to oil and gas development plans. However, the Commission will allow for informal input from the public about a proposed change that may shape the Director's determination of whether a change is significant and requires formal Commission approval, which will allow for greater, formalized public input.

Rule 301.d

In Rule 301.d, the Commission revised prior Rule 303.a.(4), governing filing fees for permit applications. The Commission intends for operators to pay filing fees at the time they submit any type of permit application governed by the 300 Series Rules. As required by Senate Bill 19-181, the Commission will revisit the substance of all of its Rules governing fees in a future rulemaking. *See* C.R.S. § 34-60-106(7)(b). The Commission did not increase fees or fines in the 200–600 Mission Change Rulemaking. *See* C.R.S. § 24-4-103(3)(a.5).

Rule 301.e

Numerous stakeholders raised concerns with the Director's ability to request additional information from operators. To address these concerns, the Commission adopted a new Rule 301.e codifying the longstanding practice that the Commission and its Staff may request additional information from operators when necessary for the Commission to determine whether to approve or deny a permit, or to satisfy the informational requirements of the permit application. Consistent with current practice, the Commission's Staff will explain the reason for the request in writing, and provide a reasonable timeframe for operators to supply the information, when making such a request.

Rule 301.f

The Commission has long had a productive and cooperative relationship with its partners in the federal government and local governments, and it anticipates that these partnerships will continue after the 200–600 Mission Change Rulemaking. This is particularly true for the Commission's relationship with the federal government. Although Senate Bill 19-181 change the nature of the Commission's relationship with local governments, it did not alter the legal relationship between the federal government and the Commission. The Commission intends to continue working closely with its federal agency partners, including BLM and the United States Forest Service after the 200–600 and 800/900/1200 Mission Change Rulemakings, and to continue to develop its relationship as a co-permitting authority with local governments.

Throughout the course of the 200–600 Mission Change Rulemaking, numerous stakeholders raised questions about the mechanics of how the Commission and its Staff would coordinate with other governmental entities with permitting authority—local governments and the federal government—under the revised permitting system in the 300 Series. Accordingly, the Commission adopted a new Rule 301.f that describes the general objectives of coordination and includes procedures that the Commission's Staff will follow when the

Commission's location permitting process occurs concurrently with or subsequent to a federal or local permitting process. Rule 301.f provides the mechanics for how the Commission intends to implement the co-equal and independent siting authority that Senate Bill 19-181 conferred to both the Commission and local governments in Senate Bill 19-181.

The Commission intends for the collaboration and coordination required by Rules 301.f and 303.a.(6) to be robust and continuing building on the productive, two-way relationship to share information between local and federal governments and the Commission. The Commission intends for local government staff to be able to reach out directly to the Commission's oil and gas location assessment Staff to coordinate this engagement. By creating a direct pathway for informal and formal dialogue between agencies, the Commission believes that both agencies may learn from one another, and that this open line of communication will lead both agencies to improve their own permitting processes.

Rule 301.f.(1) describes the purpose of Rule 301.f, which is to recognize the siting and permitting authority that the Commission shares with both the federal government and local governments. The nature of the relationship between the Commission and the federal government is different than the relationship between the Commission and local governments, and those relationships are each discussed in more detail in other sections of this Statement of Basis and Purpose. Regardless of these differences, the Commission intends to continue to work collaboratively with its partners in both the federal government and local governments, in a manner that allows the Commission, federal agencies, and local governments to each utilize its unique expertise in a coordinated, efficient manner that does not result in unnecessary delays or inefficiencies for the Commission, operators, or federal or local government partners.

Rule 301.f.(2) acknowledges the opportunity for concurrent permitting. Although the Commission does not have authority to *require* operators to engage in concurrent state and federal or state and local permitting processes, it encourages operators to do so whenever possible. The Commission recognizes that concurrent permitting processes provide maximum efficiency because they avoid conflicting permit outcomes by allowing operators to work with the agencies involved to identify any issues or discrepancies in order to ensure that the proposed location for a permit meets the standards of each permitting authority. In Rule 303.a.(6).A, the Commission specified procedures to ensure maximum efficiency in concurrent permitting processes that involve oil and gas development plans.

Rule 301.f.(3) allows a relevant local government or federal agency to initiate a pre-application consultation process with the Commission and an operator prior to the operator submitting an oil and gas development plan or Form 2A, Oil and Gas Location Assessment Application. The purpose of the pre-application consultation process is to allow the Commission's Staff to engage with local government or federal agency staff and the operator to discuss factors relevant to avoiding, minimizing, and mitigating adverse impacts to public health, safety, welfare, the environment, and wildlife resources, including siting and

appropriate best management practices. Additionally, the pre-application consultation process should also provide a venue for the Commission's Staff, local government and federal agency staff, and the operator to share information about the anticipated timeline for the local, federal, and Commission permitting process and opportunities to collaborate within those processes. The Commission determined that this type of collaborative pre-application consultation will facilitate operators identifying proposed oil and gas locations that are likely to meet local government, federal agency, and Commission standards. Moreover, pre-application consultation will build and further strengthen critical relationships between the Commission's Staff and local government and federal agency staff as each level of government works to better refine their mutual understanding of each other's permitting and siting practices, expectations, and processes.

Rule 301.f.(4) describes procedures for sequential permitting. Sequential permitting is less likely to result in an efficient use of state government, local government, federal government, and the operator's own resources, because a sequential permitting process forecloses resolving differences during the permitting process. In such a circumstance, the operator might be in a position in which it obtains permits that include irreconcilable conflicts. This might result in the operator having to engage in a second round of permitting at the local or federal level. The Commission recognizes that it is important to provide procedures to avoid such an outcome.

Accordingly, in Rule 301.f.4.(A), the Commission adopted a process for operators to prepare an alternative location analysis that meets the criteria of Rule 304.b.(2).C during the course of a local government or federal government permitting process that occurs prior to the operator submitting a permit application to the Commission. Should an operator do so, the Commission's Staff would then participate in a formal consultation process with the operator and the local government or federal permitting agency about the proposed alternative locations.

Pursuant to Rule 301.f.(4).B, this formal consultation process would allow the Commission's Staff to identify whether the proposed location or any alternatives identified by the operator are likely approvable under the Commission's Rules, and to share Staff's expertise about the relative merits of each proposed alternative location for avoiding adverse impacts to public health, safety, welfare, the environment, and wildlife resources. The intended scope of the Commission's engagement in such a formal consultation process is to address siting considerations, unlike the pre-application consultation initiated by a local government pursuant to Rule 301.f.(3) which may also address specific best management practices or conditions of approval that should be applied.

Additionally, pursuant to Rule 301.f.(4).C, a local government or federal agency may request that the Commission's Staff participate through the formal consultation process as a referral agency. This allows not only the operator, but also a relevant local government or federal agency to initiate the formal consultation process contemplated by Rule 303.f.(4). In such an event, the Commission intends for the Director to require an operator to provide an

alternative location analysis that meets the criteria of Rule 304.b.(2) to facilitate a review of potentially appropriate locations for proposed oil and gas developments. The Commission intends for this process to be used to identify potential issues that might arise if an operator proposed the oil and gas locations subject to the local government or federal agency permitting process, to avoid the undesirable (and unlikely) outcome of an operator receiving siting approval from a local government or federal agency but not receiving approval for the same location from the Commission. However, the Commission does not intend any representations, statements, or comments made by its Staff during a formal consultation process pursuant to Rule 301.f.(4) to bind the Commission or the Director to a future decision. After a complete review of an oil and gas development plan application or a Form 2A submitted in compliance with the Commission's Rules, the Commission or Director may ultimately choose to deny a location that the Commission's Staff indicated support for or did not express concerns about during a Rule 301.f.(4) formal consultation process. No statements made during a Rule 301.f.(4) preapplication formal consultation process are intended to bind or otherwise override the Director or Commission's ability to ultimately make a decision to approve, deny, or conditionally approve a permit application pursuant to Rules 306 and 307.

In Rule 303.a.(6).B, discussed below, the Commission specified additional procedures to ensure maximum efficiency in sequential permitting processes that involve oil and gas development plans.

Rule 302.

Senate Bill 19-181 significantly revised the statutory authority of local governments over the surface impacts of oil and gas development. *See* C.R.S. § 29-20-104(1)(h). Senate Bill 191-181 also changed the relationship between the Commission and local governments in several ways. *See* C.R.S. §§ 34-60-105(1)(b)(V), 34-60-106(1)(f)(I)(A), 34-60-116(1)(b)(I)–(II), 34-60-131.

Consistent with these statutory changes, the Commission consolidated Rules pertaining to local governments into a single Rule 302, and also adopted several new provisions in Rule 302 to reflect the new, broader authority of local governments and the changed relationship between local governments and the Commission, in which local governments and the Commission have co-equal and independent authority over oil and gas location siting and the regulation of surface impacts. Rule 302 implements this dual, independent authority.

Rule 302.a

In Rule 302.a, the Commission clarified that nothing in the Commission's Rules is intended to restrict local governments' statutory authority to regulate surface oil and gas operations in a manner that is more protective or stricter than the Commission's Rules. Consistent with its statutory authority, the Commission's intent is for its Rules to set a minimum standard, or "floor," while local government regulations may provide stronger protections,

or a "ceiling." If a local government adopts a regulation that is less protective or strict than the Commission's Rules, an operator would still be obligated to comply with the Commission's more protective or stricter Rule. *See* C.R.S. § 34-60-131. No matter what standards a local government adopts, operators must comply with the Commission's Rules.

Rule 302.b

In Rule 302.b, the Commission adopted a procedure for the Commission to align its permitting process with local government siting decisions. When an operator applies for a permit from the Commission, Senate Bill 19-181 requires that operator to demonstrate that it has "filed an application with the local government with jurisdiction to approve the siting of the proposed oil and gas location and the local government's disposition of the application; or the local government with jurisdiction does not regulate the siting of oil and gas locations." C.R.S. § 34-60-106(1)(f)(I)(A).

Rule 302.b implements this statutory provision. It requires operators to certify on their oil and gas development plan application (or drilling and spacing unit application or Form 2A, where applicable), that the local government with jurisdiction over siting the proposed oil and gas location has reached one of four categories of siting disposition: (1) the local government does not regulate the siting of oil and gas locations; (2) the local government regulates siting and has denied the siting of the proposed oil and gas location; (3) the local government regulates siting and the proposed oil and gas location does not meet any of the criteria listed in Rule 304.b.(2).B; or (4) the local government regulates siting and the proposed oil and gas location meets one or more of the criteria listed in Rule 304.b.(2).B. Neither Rule 302.b.(3) nor Rule 302.b.(4) require that a local government has already approved a proposed location, in recognition that the local government permitting process may occur both prior to or concurrently with the Commission's permitting process.

Rule 302.c

Rule 302.c specifies what the Director will do based on the information that the operator certifies in Rule 302.b.

For local government siting dispositions pursuant to Rule 302.b.(1), the Director will conduct its own independent siting review, because the relevant local government does not conduct its own siting reviews.

For local government siting dispositions pursuant to Rule 302.b.(2), the Commission will not approve the proposed oil and gas location without a hearing before the Commission, rather than an Administrative Law Judge or Hearing Officer. The Commission recognizes that an operator may not lawfully commence operations without requisite permitting approval from both a local government and the Commission. However, consistent with Senate Bill 19-181's co-equal, independent siting authority framework Rule 302.c.(2)

provides the Commission may process and issue a decision on a permit application where the local government with siting authority denied a permit application for the same location.

For local government siting dispositions pursuant to Rule 302.b.(3), the Commission determined that the Commission's Rules provide adequate safeguards to reasonably ensure that the relevant local government's approved location provides protections adequate to comply with the Act. In that situation, the Director would defer to the relevant local government's approved site, and the operator would likely not be required to conduct an alternative location analysis (unless specifically requested to do so by the Commission, the Director, or the Southern Ute Indian Tribe pursuant to Rule 304.b.(2).A.ii or iii). However, even proposed oil and gas locations that meet Rule 302.b.(3) will be subject to the same procedural requirements for approval of an oil and gas development plan as any other proposed oil and gas location, including the standard Form 2A analysis to identify appropriate best management practices and conditions of approval to protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

For local government siting dispositions pursuant to Rule 302.b.(4), operators must submit an alternative location analysis pursuant to Rule 304.b.(2).

The Commission determined that the siting process provided by Rules 302.b and 302.c robustly implement Senate Bill 19-181's provision allowing local governments siting authority over oil and gas operations, while also recognizing the Commission's coequal siting authority and implementing Senate Bill 19-181's requirement that the Commission's Rules continue to establish the minimum necessary protections for public health, safety, welfare, the environment, and wildlife resources. C.R.S. § 34-60-131. The Commission determined that Rules 302.b and 302.c, coupled with the procedures in Rules 301.f and 303.a.(6), will provide significant efficiencies in identifying locations for operations by eliminating potentially duplicative location review by local governments and the Commission. At the same time, Rules 302.b and 302.c guarantee that all proposed oil and gas locations are subject to review for potential impacts. Moreover, they ensure that all proposed oil and gas locations undergo a thorough public process in which relevant input from all key stakeholders will be evaluated to ensure that approved locations avoid, and where not possible to avoid, minimize and mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

Rule 302.d

In Rule 302.d, the Commission required operators to indicate on their Form 2As whether a proposed oil and gas location is in an area of state interest pursuant to C.R.S. § 24-65.1-108. That statute, often referred to as "HB 1041," confers unique powers to local governments in areas that have been designated as areas of state interest. Because some of HB 1041's provisions may impact the timeframe for components of the Director's review of certain permit applications, the Commission determined that it is important for the Director to be informed about whether a permit application is in an area of state interest at the time the

operator submits the application. In Rule 308.b.(9), the Commission similarly required operators to notify the Director about whether a proposed oil and gas location is in an area of state interest when submitting a Form 2 application.

Rule 302.e

In Rule 302.e, the Commission required advance notice to relevant local governments and proximate local governments prior to an operator submitting an oil and gas development plan application. Because of the important role that local governments play in siting decisions, it is important for them to be fully notified about pending permit applications.

The Commission also added a definition of Proximate Local Governments in the 100 Series. Because the impacts of oil and gas operations do not necessarily respect jurisdictional boundaries, the Commission determined that it is necessary for local governments in close proximity to a proposed oil and gas location to have a defined role in state permitting decisions.

Rule 302.f

In Rule 302.f, the Commission adopted formal procedures for tracking when local governments have waived certain statutory rights or rights created by the Commission's Rules. To avoid creating unnecessary burdens on local governments, the Commission intends to maintain a database listing which local governments have certified that they do not regulate the siting of oil and gas locations. The list will be posted on the Commission's website. The Commission will also create an opt-out system for local governments to certify the types of notices that they want to receive, and do not want to receive, pursuant to the Commission's Rules. This will allow local governments to choose to receive the types of notifications they believe are important, while not being overwhelmed with types of notifications they do not believe are necessary. Recognizing that local governments' preferences for notification and for addressing land use decisions may change over time, the Commission also provided that local governments may change their waiver decisions at any time.

Rule 302.g

In Rule 302.g, the Commission adopted a formal consultation process for local governments. Both relevant and proximate local governments may formally request consultation with the Director and operator about proposed oil and gas development plans within 45 days of receiving notice. Although local governments have an increased role in siting decisions, it is crucial to allow for consultation. This is especially important because not all local governments will choose to regulate siting. Potential topics for local consultation include, but are not limited to, conformance to local government planning documents, including any adopted master plans. Separate from the consultation allowed by Rule 302.g, local governments may request a local public hearing pursuant to Rule 511.

The Commission defined the term Formal Consultation Process in the 100 Series to clarify the meaning of this important term. The definition requires the parties to the Formal Consultation Process to both solicit and receive meaningful input that can be incorporated into the decision at issue. A formal consultation process likely involves more than one point of contact, and should involve multiple meetings to allow a back-and-forth discussion of feedback that is received.

Rule 303.

In Rule 303, the Commission adopted new procedural requirements for Oil and Gas Development Plans. Under the Commission's prior Rules, there were multiple types of permit applications that operators were required to submit for new oil and gas operations, each of which was processed through different procedures. This created confusion for both the general public and operators, and also created challenges with efficiently processing permit applications. To address these issues, the Commission adopted a single-permit system. The new single permit is called an Oil and Gas Development Plan, a term that the Commission defined in the 100 Series.

A proposed Oil and Gas Development Plan may include applications for multiple oil and gas locations—in other words, it may include multiple Form 2As. The Commission determined that allowing operators to simultaneously seek approval of multiple oil and gas locations in the same area may provide an important tool for considering cumulative impacts, centralizing infrastructure, and providing a single, streamlined process for the operator, local governments, and the public. However, the Commission intends for operators to apply for a Comprehensive Area Plan ("CAP") under Rule 314 when planning to develop an especially large area. If the Director believes that it would be more appropriate for an operator to submit an application as a CAP rather than an Oil and Gas Development Plan, the Director may meet with the operator pursuant to Rule 303.a.(8). If the Commission believes that it would be more appropriate for an operator to submit an application as a CAP rather than an Oil and Gas Development Plan, the Commission may instruct the Director to meet with the operator pursuant to Rule 314.a.(3).

Rule 303.a

Rule 303.a lists the components that operators must submit with an oil and gas development plan application. Oil and gas development plans have three main components: an application for a drilling and spacing unit, a Form 2A, and a Form 2B, Cumulative Impacts Data Identification. Form 2As and drilling and spacing unit applications are both permitting processes that existed under the Commission's prior Rules, though each has been modified as discussed further below. Consistent with Rule 301.e, in Rule 303.a.(4), the Commission specified that when the Director determines it is necessary and reasonable to request additional relevant information in order to process an oil and gas development plan

application, the Commission's Staff will provide the reason for such a request to the operator in writing.

Cumulative Impacts

A crucial component of the 200–600 Mission Change Rulemaking is the Commission implementing Senate Bill 19-181's requirement that the Commission promulgate regulations to "evaluate and address the potential cumulative impacts of oil and gas development." C.R.S. § 34-60-106(11)(c)(II). In consultation with CDPHE, the Commission developed a multi-pronged approach to evaluate and address cumulative impacts in both the 200–600 and 800/900/1200 Mission Change Rulemakings.

At the more granular level, in Rule 303.a.(5), the Commission created a new Form 2B to collect data about cumulative impacts from each newly proposed oil and gas development plan. This information will populate a database that can be used to evaluate cumulative impacts. Additionally, operators must submit a cumulative impacts plan as an attachment to a Form 2A pursuant to Rule 304.c.(19), in which operators must demonstrate their plans to address cumulative impacts of each proposed oil and gas location by avoiding, minimizing, and mitigating those impacts. The Commission intends for its Staff to critically evaluate the information submitted both on the Form 2B pursuant to Rule 303.a.(5) and in cumulative impact plans pursuant to Rule 304.c.(19) to verify that operators are making robust and thorough efforts to meaningfully address cumulative impacts to relevant resources. This evaluation will inform the Director's recommendation pursuant to Rule 306. The Commission will evaluate the operator's cumulative impacts plan and the Director's recommendation about whether that plan is sufficient in the course of reviewing and determining whether to approve or deny each oil and gas development plan pursuant to Rule 307.

At a broader level, in Rule 904.a, the Commission created a process for annual reporting by its Staff about information gathered in the database each year, and other information relevant to evaluating the cumulative impacts of oil and gas development compiled by other agencies and research institutions. Rule 904.c also allows the Commission to convene an informational docket on its own motion to solicit information relevant to evaluating and addressing cumulative impacts. Based on the information in this annual report or gathered through an informational docket, the Commission may determine that it is necessary and reasonable to undertake further regulatory efforts to evaluate or address cumulative impacts to specific resources at a later date. Additionally, pursuant to Rule 904.b the Commission may determine that studies are necessary to evaluate and address cumulative impacts, and require operators to participate in those studies as a condition of approval for an oil and gas development plan.

Some stakeholders suggested that the Commission impose filing fees to fund studies about cumulative impacts. The Commission may choose to do so at a later date. Indeed, Senate Bill 19-181 requires the Commission to "by rule establish the fees for the filing of

applications in amounts sufficient to recover the Commission's reasonably foreseeable direct and indirect costs in conducting the analysis . . . necessary to assure that permitted operations will be conducted in compliance with all applicable requirements of this Article 60." C.R.S. § 34-60-106(7)(b). The Commission fully intends to conduct a rulemaking to implement this provision of the Act in the near future. The Commission believes that setting a filing fee at a level sufficient to cover the costs of funding studies to evaluate and address cumulative impacts would very likely be consistent with C.R.S. § 34-60-106(7)(b). However, the Commission chose not to adopt such a regulation in the 200–600 Mission Change Rulemaking because the Administrative Procedure Act requires the Commission to notify the General Assembly when noticing a rulemaking that increases fees. C.R.S. § 24-4-103(3)(a.5). Because the Commission did not provide this notification for the 200–600 Mission Change Rulemaking, the Commission determined that it was more appropriate to defer considering filing fee regulations to a future rulemaking.

Rule 303.a.(5)

Rule 303.a.(5) is the cornerstone of the Commission's broader approach to evaluating and addressing cumulative impacts. As Rule 303.a.(5).A explains, the Rule is intended to be a first step towards developing the Cumulative Impacts Data Evaluation Repository ("CIDER"), a baseline dataset that can be used to facilitate the Commission's ongoing efforts to evaluate the cumulative impacts of oil and gas operations in Colorado. Consistent with Rule 904, which requires the Director to provide an annual report on data gathered in CIDER, the Commission intends to use data from CIDER, in cooperation with CDPHE and other partners, to undertake basin-wide, statewide, and other studies to evaluate cumulative impacts to relevant resources at appropriate scales. Although it is beyond the purview of the 200–600 Mission Change Rulemaking for the Commission to identify every possible cumulative impacts evaluation that CIDER data may be used for, the Commission intends for the types of evaluations that might be conducted to include coordinating with CDPHE to evaluate statewide cumulative greenhouse gas emissions from oil and gas operations, coordinating with CDPHE to evaluate ozone precursor emissions from oil and gas operations in the Denver-Julesburg Basin, and coordinating with CPW to evaluate cumulative impacts on wildlife resources in various regions and at various scales.

Together, Rules 303.a.(5) and 904 implement the *evaluation* component of the Commission's statutory mandate to "evaluate and address the potential cumulative impacts of oil and gas development." C.R.S. § 34-60-106(11)(c)(II). Other Commission Rules adopted in the 200–600 Mission Change Rulemaking are intended to *address* cumulative impacts. These Rules include Rule 314, governing CAPs, which provide a tool for landscape-level planning that can be used to address cumulative impacts to various resources by facilitating consolidation of infrastructure, electrification, and intentionally phased timing of development. Rule 304.c.(19) requires operators to submit a cumulative impacts plan if the Director determines that doing so is necessary to address cumulative impacts of a proposed oil and gas development plan. Similarly, Rules 603.d and e, governing well consolidation and development from existing locations, set statewide standards for operators to consolidate

new development onto multi-well pads and existing wellpads, which are key tools the Commission identified to address cumulative impacts caused by surface disturbance, such as habitat fragmentation. Additionally, Rules 423, 424, 426, and 427 provide substantive standards to address cumulative noise, light, odor, and dust impacts, respectively. The Commission was able to set substantive standards to address cumulative impacts to these resources in the 200–600 Mission Change Rulemaking because such cumulative impacts are on a more localized scale. For other, more complex resources that oil and gas operations may contribute to cumulative impacts across broader scales, such as air, water, and wildlife resources, the Commission determined that gathering more information was necessary prior to adopting substantive standards. The Commission does not intend for the 200–600 Mission Change Rulemaking to be the final, or only, rulemaking to implement Senate Bill 19-181's mandate to evaluate and address cumulative impacts. C.R.S. § 34-60-106(11)(c)(II). Rather, consistent with Rule 904, the Commission will continue to coordinate with CDPHE and other partners to evaluate data in the CIDER database and may undergo additional rulemakings in the future should those evaluations indicate that additional regulations to address cumulative impacts are necessary.

Rule 303.a.(5).B identifies the substantive criteria for a Form 2B. Recognizing that Form 2Bs are a new submission requirement, the Commission intends for its Staff to promptly develop the Form and issue guidance to operators about what information should be included on a Form 2B. The purpose of a Form 2B is to gather information about the *incremental* impacts of a proposed oil and gas development plan, which can subsequently be used, in combination with other data in CIDER and otherwise available to the Commission from other sources, to evaluate *cumulative* impacts.

Because the purpose of a Form 2B is to gather data for the Commission's CIDER database, the Form 2B is generally intended to be a tool for operators to submit quantitative information. However, the Commission recognizes that qualitative information about certain categories of impacts may also be valuable to include in the CIDER database. Accordingly, the Form 2B will include both types of data. Additionally, the Form 2B may describe impacts that are both adverse and beneficial. For example, if an operator intends to perform compensatory mitigation to offset potential impacts on wildlife habitat, the Form 2B might represent the proposed incremental contribution to overall wildlife habitat as a beneficial impact, rather than an adverse impact. Finally, the Commission used the defined term "oil and gas operations" in Rule 303.a.(5).B because it intends for the Form 2B to gather data about not only proposed oil and gas locations, but also about the incremental impacts of associated operations that are under the Commission's jurisdiction, such as access roads and flowlines.

Although the purpose of the Form 2B is to *evaluate* cumulative impacts, the Form 2B is also intended to encourage operators to consider options for *addressing* the incremental contribution of their proposed oil and gas operations to cumulative impacts on various resources. To facilitate this consideration, the Commission also provided that operators may include on the Form 2B measures they plan to take to avoid, minimize, or mitigate any

adverse impacts. The Commission does not intend for the Form 2B to duplicate other documentation, such as the cumulative impacts plan submitted with a Form 2A pursuant to Rule 304.c.(19), in which operators will also describe numerous best management practices that will be adopted to avoid, minimize, or mitigate adverse impacts. Rather, the Commission intends for operators to use the Form 2B to provide information about any measures the operator is taking to address adverse impacts that are identified on the Form 2B, but are not discussed elsewhere in an oil and gas development plan application. For example, if an operator elects to conduct some form of compensatory mitigation not otherwise required by the Commission's Rules, such as plugging and abandoning nearby wells to mitigate potential adverse impacts to air, water, soil, or biological resources, the operator could describe this mitigation action on the Form 2B.

The Commission tailored the categories of resources and data that will be gathered through a Form 2B to require operators only to submit data that is necessary and reasonable for building a baseline dataset in CIDER. Because the CIDER reporting requirement is a new Rule, the Commission intends for its Staff to promptly issue guidance addressing methods for collecting, processing, and reporting the data, including acceptable methods for estimating emissions pursuant to Rule 303.a.(5).B.i & ii.

In Rule 303.a.(5).B.i, the Commission required operators to submit estimated emissions of specific pollutants. Based on consultation with CDPHE, the Commission carefully selected a necessary and reasonable set of indicator pollutants that are particularly relevant to impacts on public health and the environment, because of their direct health impacts, role in tropospheric ozone formation, and contribution to climate change. Specifically, the Commission required operators to estimate emissions of nitrogen oxides, carbon monoxide, and volatile organic compounds because they each contribute to tropospheric ozone formation and independently have adverse health impacts in high concentrations. The Commission required operators to estimate emissions of carbon dioxide, ethane, methane, and nitrous oxide because they are all greenhouse gases that contribute to climate change.

Because the pre-production phase often has high levels of emissions that may pose unique and greater risks to public health, the Commission intends for operators to estimate emissions during the entire pre-production phase of a proposed oil and gas development plan (including all oil and gas locations within the oil and gas development plan). Additionally, to understand emissions on an ongoing basis, the Commission intends for operators to estimate annual emissions during the first full year of production within the proposed oil and gas development plan. The Commission determined that obtaining data from the first year of emissions is reasonable because emissions tend to be higher during the first year of production. Additionally, AQCC regulations require operators to report annual estimates of emissions during future years of production. Thus, the Commission and AQCC's regulations work together, because Rule 303.a.(5).B.i provides an estimate of pre-production and peak production emissions prior to a site being permitted, and the AQCC gathers data on the same emissions after they actually occur on an annual basis. This will inform both agencies' permitting decisions prior to a location being constructed, while also

gathering meaningful data for evaluation and comparison after the emissions actually occur.

Because emissions from both stationary and mobile sources emit pollutants that impact public health both through direct inhalation and by contributing to tropospheric ozone formation and climate change, the Commission intends for operators to estimate emissions from both stationary and mobile sources. Specifically, one of the largest contributors to emissions during the drilling and completion phases are drill rig engines and frac fleet engines. The Commission intends for operators to include emissions from non-road engines used to power drill rigs and frac pumps in the emissions estimates submitted pursuant to Rule 303.a.(5).B.i.

Some stakeholders claimed that the Commission lacks legal authority to require reporting of emissions from mobile sources and non-road engines. The Commission does not agree with these stakeholders. The Oil and Gas Conservation Act requires that "[i]n consultation with the department of public health and environment, evaluate and address the potential cumulative impacts of oil and gas development." C.R.S. § 34-60-106(11)(c)(II). Rules 303.a.(5).B.i & ii do exactly that: they establish a critical tool for the Commission to evaluate cumulative impacts of oil and gas development on air quality, public health, and the climate, and they were developed in close coordination CDPHE. Additionally, the Act requires the Commission to "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 [to] 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). Understanding emissions from all sources that fall within the definition of "oil and gas operations," which include mobile sources and non-road engines, is necessary to achieve this statutory goal because of the impact those emissions have on public health and the environment, as well as air resources. Moreover, nothing in the federal Clean Air Act or any other statutes precludes the Commission from gathering data about estimated emissions from oil and gas operations, including mobile sources and non-road engines. Federal courts have recognized that the Clean Air Act authorizes states to address emissions from mobile sources indirectly in the context of a siting or permitting decision, which is exactly what Rules 303.a.(5).B.i & ii do. *Nat'l Ass'n of Homebuilders v. San Joaquin Valley Unified Air Pollution Ctrl. Dist.*, 627 F.3d 730, 733–37 (9th Cir. 2010); *see also Jensen Family Farms, Inc. v. Monterey Bay United Air Pollution Ctrl. Dist.*, 644 F.3d 934, 940 (9th Cir. 2011) (upholding regulations requiring registration and fee payments for diesel engines because they "do not impose any requirements on manufacturers" and do not "threaten an anarchic patchwork of federal and state regulatory programs" (quotations omitted)). Moreover, Rules 303.a.(5).B.i & ii are not emissions standards—they neither limit emissions from mobile sources and non-road engines nor establish technology standards for these sources of emissions. They merely require operators to estimate emissions from those sources, which the Commission may consider on a case by case basis when evaluating oil and gas development plan permit applications pursuant to Rules 304.c.(19) and 307, and

more broadly as part of the CIDER database's aggregate data on emissions pursuant to Rule 904.

The Commission recognizes that it is not the only agency that regulates cumulative greenhouse gas emissions from the oil and gas sector, and that the AQCC is engaging in a robust stakeholder process about the AQCC's Greenhouse Gas Reporting and Emission Reduction Requirement rulemaking to implement House Bill 19-1261. Because of the important synergies between that rulemaking and the Commission's Rules, the Commission intends for either an individual Commissioner or the Commission's Staff, or both, to engage in the AQCC stakeholder process. This will allow valuable information sharing between the two agencies so that each is apprised of the other's regulatory efforts and other tools to reduce greenhouse gas emissions from the oil and gas sector.

In Rule 303.a.(5).B.ii, the Commission adopted requirements for operators to provide quantitative and qualitative information about incremental adverse impacts to public health caused by proposed oil and gas operations. This includes quantitative emissions estimates of both total hazardous air pollutants in Rule 303.a.(5).B.ii.aa and of specific hazardous air pollutants known to have particularly harmful human health impacts that are known to be emitted by oil and gas operations in Rule 303.a.(5).B.ii.bb. The Commission intends for operators to use similar methods for estimating the hazardous air pollutants listed in Rules 303.a.(5).B.ii.bb as the methods used to estimate emissions of other air pollutants in Rules 303.a.(5).B.i. Specifically, the Commission intends for operators to estimate emissions from all sources within an oil and gas development plan during both pre-production activities and during the first year of production, and for these emissions estimates to include both stationary and mobile sources (including non-road engines).

Rule 303.a.(5).B.ii.cc requires operators to qualitatively evaluate potential health risks posed by the emissions estimated in Rule 303.a.(5).B.ii.aa & bb. The Commission does not intend for Rule 303.a.(5).B.ii.cc to require operators to model or quantitatively calculate health risks, but rather to provide a description of potential acute or chronic and short- or long-term health risks that may be posed by emissions of those pollutants to people living or working in close proximity to the emission sources.

In Rule 303.a.(5).B.ii.dd, the Commission required operators to state whether the proposed oil and gas development plan includes any oil and gas locations within a disproportionately impacted community. This is crucial information that will allow the Commission to track whether oil and gas facilities are disproportionately concentrated within these communities over time. A core premise of the Commission's Rules intended to address disparate health outcomes within disproportionately impacted communities is the understanding that these communities have historically borne an unfair burden of pollution sources, while receiving fewer environmental benefits. By tracking the frequency with which new oil and gas locations are sited in disproportionately impacted communities, the Commission intends both to contribute to its own understanding of these historic and ongoing patterns, and to

simultaneously empower members of such communities, and the Commission itself, to address disparities during individual permitting processes.

In Rule 303.a.(5).B.iii, the Commission required operators to report information about impacts to water resources, including both quantitative and qualitative information about water quality and water quantity. Rules 303.a.(5).B.iii.aa–cc are all intended to provide data about potential impacts to water quality. Rules 303.a.(5).B.iii.dd–ee are intended to provide data about impacts to water quantity, and specifically about water reuse and recycling, including methods of recycling or reusing water and the volume of recycled and reused water the operator intends to use. Tracking quantitative and qualitative data about produced water reuse and recycling in the CIDER database is one of many regulatory provisions the Commission adopted in the 200–600 and 800/900/1200 Mission Change Rulemakings to incentivize reuse and recycling of produced water. Gathering data about produced water reuse and recycling will facilitate the Commission identifying trends and best practices for operators who are reusing and recycling higher volumes of produced water, while also working with operators who are reusing and recycling less water to increase the percentage of reused and recycled water they use. The Commission intends for the data reported pursuant to Rule 303.a.(5).B.iii.ee to be the same as the data reported on the water plan pursuant to Rule 304.c.(18).A and C, except that the data reported pursuant to Rule 303.a.(5).B.iii.ee will be for the entire oil and gas development plan, while Rule 304.c.(18).A and C apply only to individual oil and gas locations. The Commission intends Rule 303.a.(5).B.iii.ee to work in concert with Rule 904.a.(1), which requires the Director to report on water quantity data, including a comparison of estimated water quantity values gathered in CIDER and actual water quantity values reported in Rule 431.b.

Rule 303.a.(5).B.iv requires operators to submit quantitative information about potential impacts to wildlife resources, including both terrestrial and aquatic species and the ecosystems that support them. Although the Commission recognizes that both qualitative and quantitative information provide value, Rule 303.a.(5).B.iv establishes a preference for quantitative information over qualitative information. This is because quantitative data is more readily aggregated across oil and gas development plans in the CIDER database, and provides more opportunities for comparisons between oil and gas development plans. The Commission therefore prefers quantitative data about wildlife to be submitted, and that operators should only submit qualitative information in unusual and rare circumstances where quantitative information is not available.

Based on consultation with CPW, in Rules 303.a.(5).B.iv.aa and bb, the Commission required operators to submit information about impacted high priority habitat and total acreage of surface disturbance within one mile of a proposed working pad surface, broken down by land use. Examples of the types of land uses that might be identified pursuant to Rule 303.a.(5).B.iv.bb.1 include acreages of crop-land vs. non-cropland, whether such cropland is irrigated, and other data that may inform the Commission's broader analysis of appropriate reclamation considerations. Although many metrics are important to measuring and investigating potential cumulative impacts to wildlife resources, the

Commission determined that this information is particularly relevant because it will better inform the Commission's and CPW's understanding of habitat fragmentation, especially in sensitive habitats. Although wildlife are impacted in many ways by oil and gas development, habitat fragmentation is an especially significant, and readily quantifiable, impact that can be better understood through the data gathered in CIDER. Combined with information gathered about wellpad density under the Commission's 1200 Series Rules, Rule 303.a.(5).B.iv will allow the Commission and CPW to evaluate cumulative impacts of disturbance acreage and habitat fragmentation over time. Rule 303.a.(5).B.iv will gather baseline information that will allow the Commission and CPW to overlay geospatial information gathered by each agency to provide a more comprehensive picture of cumulative impacts to wildlife habitat over time. The standardized method of reporting data provided by Rule 303.a.(5).B.iv will significantly aid both agencies in compiling and reviewing information about habitat fragmentation.

Rule 303.a.(5).B.v requires operators to submit both quantitative and qualitative information about impacts to soil resources, which is important information to inform the Commission's Rules and other decisions related to reclamation or impacts on plans and biological resources.

Finally, Rule 303.a.(5).B.vi requires operators to submit information about incremental impacts to public welfare. The Commission recognizes that operators are already required to analyze certain information about noise, light, dust, and odor pursuant to the plans required by Rules 304.c.(2)–(5), 423.a, 424.a, 426.a, and 427.a. Accordingly, the Commission intends for the data submitted about impacts to these resources that are critical to public welfare on a Form 2B to be a qualitative evaluation that provides information not elsewhere apparent in the operator's oil and gas development plan application.

Rule 303.a.(5).B.vi.ee also requires operators to submit information about potential impacts to recreational and scenic values. The Commission recognizes that oil and gas operations may adversely impact public welfare by impacting other economic activities, including recreation and tourism. The Commission determined that it was necessary and reasonable to track data and other information about these impacts in the CIDER database to determine whether oil and gas operations are cumulatively impacting recreation opportunities and scenic values in any given area.

The Commission recognizes that understanding cumulative impacts requires information about past, present, and reasonably foreseeable future impacts. To better understand what impacts already exist in an area where oil and gas development is proposed, Rule 303.a.(5).C requires operators to provide information about surrounding oil and gas impacts on the Form 2B. Over time, this will create baseline data about the impacts of existing oil and gas infrastructure against which the Commission may compare the incremental impacts of a proposed oil and gas development plan. The Commission recognizes the importance of a baseline analysis of existing impacts to evaluating cumulative impacts, and intends for the CIDER database to be a crucial tool in establishing this baseline database. This type of

baseline database may inform not only the Commission's decisions about individual oil and gas development plan proposals, but also wider evaluations of the cumulative impacts of oil and gas development in a given region.

Rule 303.a.(5).C.i is specifically intended to gather baseline data about impacts from existing oil and gas facilities within a one mile radius of the working pad surface of oil and gas locations proposed within an oil and gas development plan. The Commission intends for this data to include facilities that have not yet been built but are subject to a submitted or approved permit, at either the local government or Commission level.

Rule 303.a.(5).C.ii is specifically intended to gather baseline data about the acreage of surface disturbance associated with existing, permitted, and proposed oil and gas locations within a one mile radius of the working pad surface of oil and gas locations within a proposed oil and gas development plan. Surface disturbance is not the only indicator of adverse impacts from oil and gas development, but is a particularly important metric for understanding impacts to wildlife (through habitat fragmentation), the environment (through topsoil), and public welfare (by precluding alternative land uses or by protecting aesthetics and recreation opportunities). The Commission intends for operators to use all available metrics to calculate the cumulative total acreage of surface disturbance, including both actual field observations and information in the Commission's database. Although the Commission believes its database should be sufficiently accurate for this estimate in most circumstances, the Commission also recognizes that there is no substitute for on-the-ground observations, particularly with respect to surface disturbance metrics.

Rule 303.a.(5).C.iii is specifically intended to gather baseline data about oil and gas wells within a one mile radius of the working pad surface of oil and gas locations within a proposed oil and gas development plan. Wells are a unique category of existing infrastructure, not only because of their role in oil and gas production, but also because of their lengthy history in Colorado, which reflects decades of distinct regulatory regimes. As a result, wells are among the most numerous oil and gas facilities. The Commission intends for Rule 303.a.(5).C.iii to capture information about every category of well, including wells that are no longer in use and have been plugged and abandoned. Legacy plugged and abandoned wells may contribute to cumulative impacts to subsurface resources such as groundwater.

Rule 303.a.(5).C.iv is specifically intended to gather baseline data about storage capacity for both hydrocarbons and produced water within a one mile radius of the working pad surface of oil and gas locations within a proposed oil and gas development plan. Storage capacity, whether in pits or tanks, is relevant to potential cumulative impacts to surface water and groundwater (through potential or actual spills and releases) and to air resources (through emissions from each category of facility). Rule 303.a.(5).C.iv will allow the Commission to better understand whether pits and tanks and other storage facilities are being concentrated in any specific areas.

The Commission recognizes that oil and gas operations are not the only category of activity that may contribute to cumulative impacts to a resource. For example, roads that are unrelated to oil and gas development also contribute to habitat fragmentation, which cumulatively impacts wildlife. Thus, gathering a baseline dataset about existing impacts from other categories of activities is important to creating an accurate baseline dataset in CIDER. However, the Commission also recognizes that nearly every human activity in an area may contribute to cumulative impacts, and that it is necessary to draw a line to prevent CIDER from including an ungainly and less useful amount of information about existing impacts in an area. Accordingly, in Rule 303.a.(5).D, the Commission required operators to identify existing industrial facilities within a one mile radius of the working pad surface of oil and gas locations within a proposed oil and gas development plan through either a map, aerial photo, or general description. The Commission determined that this is a necessary and reasonable requirement because industrial facilities are likely to have the most substantial impacts to public health, safety, welfare, the environment, and wildlife resources, which may relate to impacts from a proposed oil and gas facility and therefore create a cumulative impact. Additionally, this type of information about industrial activities is readily available to the public, and the Commission determined that it would not be overly burdensome for operators to supply this category of information.

Rule 303.a.(6)

The Commission adopted Rule 303.a.(6), governing permitting coordination notifications. Consistent with Rule 301.f, the purpose of Rule 303.a.(6) is to ensure that the Commission's Staff have up-to-date information about any concurrent local government or federal government permitting processes when permitting occurs concurrently, and has all final local government or federal government permit information when permitting occurs sequentially.

Rule 303.a.(6).A provides specific procedures for information submission during concurrent permitting processes. The purpose of Rule 303.a.(6).A is to ensure that the Commission's Staff has up-to-date information about ongoing developments in the local government and/or federal government permitting process, so that the Commission's Staff may modify their review of the oil and gas development plan application as appropriate. Consistent with Rule 301.f, which allows local governments and federal agencies to request that the Commission engage in their permitting processes, Rule 303.a.(6).A provides that relevant local governments and federal agencies may request that the Commission's Staff engage in the local government or federal agency permitting process. Thus, either operators or a relevant local government or federal agency may request that the Commission's Staff engage in the local or federal permitting process pursuant to Rule 303.a.(6).A.

Additionally, the information submission requirements in Rule 303.a.(6).A.ii are intended to facilitate the resolution of any potential differences or discrepancies between the governmental agencies' standards. If any operator believes that it is not possible to comply with both agencies' standards, or that compliance with different standards from the two

agencies might result in unintended consequences or non-compliance with one agency's or the other's regulations, the operator may notify the Commission's Staff pursuant to Rule 303.a.(6).A.ii, which will allow the Commission's Staff to work with the operator and the local government or federal agency to resolve the potential discrepancy or conflict.

Rule 303.a.(6).B provides specific procedures for information submission during subsequent permitting processes. The Commission determined that it is important for its Staff to have documentation about the local government or federal agency permitting approval, including any National Environmental Policy Act ("NEPA") analysis conducted by or for a federal agency, in order to facilitate swifter review of oil and gas development plan applications, and to avoid requesting duplicative information from operators throughout the permit review process. Rule 303.a.(6) works in concert with Rule 304.e, which allows operators to submit substantially equivalent information or plans developed through a local government or federal government permitting process in lieu of information or plans that the operator would otherwise be required to submit on a Form 2A. However, nothing in Rule 304.e precludes the Director or Commission from requiring additional information if the local or federal government permitting process is not equivalent. Additionally, Rule 303.a.(6).B.i provides special procedures for the unlikely event that the Director determines, based on an alternative location analysis, that it will recommend that the Commission deny a proposed oil and gas location that has already been approved by a local government. In such an event, the Director would notify the local government prior to issuing a recommendation pursuant to Rule 306, which could potentially facilitate swifter and more efficient resolution of the discrepancies between the Commission's and local government's review process prior to a hearing before the full Commission.

Rule 303.a.(7)

Under Rule 303.a.(7), one of the components of an oil and gas development plan application is a Form 2C, Oil and Gas Development Plan Certification that all the components of the application have been submitted. This is a new form that will be utilized solely to certify the submission of an oil and gas application and to identify the components of the application.

Rule 303.a.(8)

Rule 303.a allows operators to submit applications for multiple oil and gas locations as part of a single oil and gas development plan application. The Commission determined that this is appropriate to facilitate landscape level planning and to incentivize opportunities to avoid, minimize, and mitigate cumulative impacts through consolidating infrastructure. The Commission did not specify a maximum number of oil and gas locations that may be included within an oil and gas development plan, recognizing that the maximum appropriate number will vary based on a number of factors, including mineral ownership, surface land uses, topography, infrastructure, local government and federal government land use plans, and an operator's own business plans. In general, the Commission intends

for the decision about whether to submit an application for multiple oil and gas locations as an oil and gas development plan or a CAP to be a decision made by the operator proposing the development. However, the Commission recognizes that there is potential for abuse in not specifying a maximum number. Additionally, as discussed below, the Commission intends to strongly encourage operators to submit CAP applications wherever possible, because of the significant benefits that landscape level planning provides for consolidating infrastructure and minimizing cumulative impacts.

Accordingly, in Rule 303.a.(8), the Commission authorized the Director to request a meeting with an operator to evaluate whether an oil and gas development plan that includes multiple locations should be re-submitted as a CAP. Rule 303.a.(8) does not authorize the Director to *require* an operator to submit any specific type of hearing application, but is intended to foster a productive dialogue between operators and the Commission's Staff about whether an application is more appropriately submitted as an oil and gas development plan or CAP on a case by case basis. The Commission intends for such meetings to address a number of salient factors, including but not limited to the number of proposed locations (with more locations weighing in in favor of a CAP), the geographic scope (with a broader geographic area weighing in favor a CAP), and whether the operator has submitted multiple adjacent oil and gas development plan applications (which would also weigh in favor of a CAP).

Rules 303.b–d

Once the Director concurs that the application is indeed complete pursuant to Rule 303.b.(1), the Director will approve the Form 2C and issue a completeness determination. Several discrete or defined time-limited periods for public input and consultation begin at the time the Director approves the Form 2C and publishes the completeness determination on the Commission's website pursuant to Rule 303.d. At the time the Director publishes the completeness determination, the Commission's Staff will also notify other governmental entities with which consultation is required pursuant to Rules 302.g and 309.

The Director's completeness determination, signaled by approval of the Form 2C, is the beginning of the public comment period. The default public comment period is 30 days. The Commission determined that this is an appropriate amount of time for members of the public to review and provide feedback about proposed oil and gas development plans.

However, the Commission also recognizes that historically, residents of disproportionately impacted communities have often faced unique challenges in engaging with government processes, including the oil and gas permitting process. For example, disproportionately impacted communities are defined to include linguistically isolated communities, and residents who monolingually speak a language other than English may face barriers to meaningfully engaging in permitting processes. To accommodate these differences and facilitate participation in the Commission's processes by residents of disproportionately impacted communities, in Rule 303.d.(1).A.i, the Commission extended the default public comment period by an additional 15 days, for a total of 45 days, for proposed oil and gas

locations within 2,000 feet of a residential building unit, high occupancy building unit, or school within a disproportionately impacted community.

Rule 303.e

One of the timelines that begins when the Director approves the Form 2C and determines the application is complete is the timeline for operators to provide notice to key stakeholders pursuant to Rule 303.e. Operators must provide notice within 7 days of the Director issuing the completeness determination to these key stakeholders so that they may participate in the public comment, consultation, and review process for the oil and gas development plan. Some stakeholders suggested extending the period for operators to provide notice beyond 7 days. The Commission did not adopt this suggestion because it would require similarly extending the timeframe for public comment, consultation, and the Commission's Staff processing of Oil and Gas Development Plan applications, which is contrary to the Commission's intent to provide timely and efficient processing of permit applications.

Among the key stakeholders that must receive notice pursuant to Rule 303.e are federal agencies, including BLM, for proposed locations that involve federally-owned and managed surface and mineral estate. For proposed locations where a federal agency is a mineral owner, the federal agency must be noticed as a mineral owner pursuant to Rule 303.e.(1).A. For proposed locations where a federal agency is a surface owner, the federal agency must be noticed pursuant to Rule 303.e.(1).B. Because BLM manages minerals that are owned by other federal entities, or below surface estate managed by other federal agencies, the Commission specifically identified BLM as an entity that must receive notice any time a federal entity is a mineral owner in Rule 303.e.(1).D. However, Rule 303.e.(1).D is not intended to exclude other federal agencies (or BLM) from receiving notice as a surface or mineral owner pursuant to Rules 303.e.(1).A and B.

Another key stakeholder that must receive notice pursuant to Rule 303.e.(1).I is any public water system ("PWS") subject to the consultation requirements of Rules 411 and 309.g.

Some stakeholders suggested that water rights owners be included in the list of entities to receive notice pursuant to Rule 303.e.(1). The Commission determined that notice to water rights owners is not necessary because water rights are legal authorizations to use a certain quantity of water for beneficial use. If an operator seeks to use water in its operations, it would need to negotiate to use that water outside of the Commission's permitting process. Additionally, other Commission Rules protect water quality, including but not limited to the Commission's recently-adopted Wellbore Integrity Rules, Rule 411, the 900 Series Rules, and numerous provisions of the 300 Series Rules that require submission of information and plans that address water use, quality, and protection of riparian areas and wetlands. Impacted water rights owners may participate in Commission processes for proposed oil and gas development plans if they meet the definition of "affected person" in Rule 507.a, and they believe that there are impacts to their water rights that were not properly addressed by the Commission's permitting process.

Rule 303.e.(2) provides the minimum requirements for the substance of the notice. Several of those components, such as the hydraulic fracturing information sheet listed in Rule 303.e.(2).E, are documents that the Commission has already prepared and that are already part of the notice provided under the Commission's current Rules. Other documents, described in Rule 303.e.(2).C & 303.e.(2).D are explanations of the Commission's new permitting procedures. The Commission's Staff will prepare these documents so that they are available to operators by the effective date of the Mission Change Rulemaking.

Pursuant to Rule 303.e.(2).I, all written information an operator is required to by provide by Rule 303.e.(2) must be provided in languages other than English if more than 5% of the population of a census block group where at least one proposed oil and gas location is located speaks a language other than English. The Commission determined that adopting Rule 303.e.(2).I was necessary and reasonable to ensure that the critical information supplied by Rule 303.e.(2).I is fully comprehensible to members of a community in close proximity to the proposed oil and gas development plan. The Commission recognizes that linguistic barriers have historically posed challenges for community members to engage in government processes, including the Commission's own permitting processes, and intends for Rule 303.e.(2).I to be one tool to break down these historic barriers and to improve access to the Commission's permitting process for all Coloradans.

The Commission intends for the information to be supplied in each language spoken at home, according to U.S. Census Bureau data, by at least 5% of census block residents. The U.S. Census Bureau has readily available public information about languages spoken at home that should be readily accessible to operators. The Commission intends for its Staff to make additional information available to operators through guidance or the COGIS database.

Rule 303.e.(2).I applies to all languages spoken at home by at least 5% of a census block group. Thus, if 55% of the population of a census block speak English at home and 45% of the population of the same census block speak Spanish at home, the operator would be required to provide the information required by Rule 303.e.(2) in English and Spanish. And if 88% of the census block speaks English at home, 6% speaks Spanish at home, and 6% speak Somali at home, the operator would be required to provide the information in English, Spanish, and Somali.

Rule 304.

In Rule 304, the Commission substantially revised its requirements for Form 2A, Oil and Gas Location Assessment Applications. The Commission determined that Form 2As provide a useful tool for evaluating proposed oil and gas locations and identifying best management practices and conditions of approval to protect public health, safety, welfare, the environment, and wildlife resources. Accordingly, the Commission intends to continue utilizing Form 2As as part of the Commission's permitting review, though many components

of the revised Form 2A address new topics or have been substantially modified to allow more thorough review.

Rule 304.a

In Rule 304.a, the Commission adopted clear guidelines for when a Form 2A must be submitted. That includes surface disturbance at an existing working pad surface or oil and gas location if the surface disturbance is a significant change to or expansion of the site. Rule 304.a.(3) is intended to work in concert with Rule 301.c and 404.c, to ensure that operators appropriately notify the Commission's Staff about proposed changes to Form 2A that may be classified as a "significant change" to the design or operation of an oil and gas location and require submission of a new Form 2A.

The Commission also adopted a new definition of Working Pad Surface in its 100 Series Rules. The Commission adopted the definition to create a clearly delineated area for the purposes of measuring distances from oil and gas operations to other locations. The Commission's definition of working pad surface does not include off-location flowlines, crude oil transfer lines, produced water transfer systems, cut and fill slopes, access roads, stockpiles, landscaped areas, and stormwater controls that are not located on the improved surface where oil and gas operations take place. Working pad surfaces may be delineated by sound walls in some, though not all, cases.

Rule 304.b

Rule 304.b creates informational requirements for a Form 2A. An operator must submit all components of a Form 2A listed in Rule 304.b for the application to be considered complete, unless the proposed oil and gas location is within an approved CAP, and the Commission order approving the CAP explicitly waives one or more components of a Form 2A for locations within the CAP.

Rule 304.b.(1)

Rule 304.b.(1), in concert with Rules 302.b and 302.c, implements Senate Bill 19-181's requirement that operators demonstrate that they have filed an application for siting approval with a local government and provide the Commission with the disposition of that application, if applicable. C.R.S. § 34-60-106(1)(f)(I)(A).

Rule 304.b.(2)

In Rule 304.b.(2), the Commission adopted an alternative location analysis process, consistent with Senate Bill 19-181's requirement to "[a]dopt an alternative location analysis process and specify criteria used to identify oil and gas locations and facilities proposed to be located near populated areas that will be subject to the alternative location analysis process." C.R.S. § 34-60-106(11)(c)(I). The Commission intends for the alternative location

analysis process to be a key tool for avoiding adverse impacts by selecting appropriate oil and gas locations based on potential impacts to surrounding resources. When preparing the alternative location analysis, the operator will have selected a preferred location that is analyzed in the other components of the Form 2A. The alternative location analysis will document both the varying impacts associated with the operator's preferred location and alternative locations, which assists the Commission in understanding what impacts can be avoided, or must be incurred, if a particular location is selected.

The purpose of the alternative location analysis is to create a tool for the Commission, its Staff, and the operator to use to identify the best location to avoid adverse impacts to public health, safety, welfare, the environment, and wildlife resources. It can be used to identify which location should be assessed throughout the rest of the Form 2A process through the informational maps, drawings, and plans required by Rules 304.b and 304.c. If no locations that an operator proposes in an alternative location analysis are appropriate, Rule 304.b.(2).A.ii authorizes the Commission and Director to request that an operator analyze additional locations. If, ultimately, the Commission's Staff determine that none of the locations an operator proposes in an alternative location analysis adequately avoid adverse impacts to public health, safety, welfare, the environment, or wildlife resources, the Director may recommend that the Commission deny the proposed oil and gas location pursuant to Rule 306. Similarly, if the Commission determines that none of the proposed oil and gas locations analyzed in the alternative location analysis adequately avoid adverse impacts, the Commission may deny the proposed oil and gas location pursuant to Rule 307.

Because the alternative location analysis process is new, the Commission appreciates that the Commissioners, the Commission's Staff, operators, local governments, and other stakeholders will need to engage in an iterative process to determine how the process works, and the process may require continuous refinement. The Commission accordingly intends to revisit the alternative location analysis process, including regulatory requirements, guidance for its implementation, and best practices for operators. The Commission also intends for the data submitted to the Commission's CIDER database pursuant to Rule 303.a.(5) to inform the manner in which the Director and the Commission evaluate alternative locations. The Commission therefore instructs the Director to report back to the Commission within two years of the effective date of the 200–600 Series Mission Change Rulemaking about how the process of implementing Rule 304.b.(2) is working, and any necessary changes to the Rule that Staff would recommend based on their experience with that implementation.

Rule 304.b.(2).A

In Rule 304.b.(2).A, the Commission provided applicability criteria for the alternative location analysis process. The Commission intends for operators to conduct an alternative location analysis when any of the criteria in Rule 304.b.(2).B are met. The Commission authorized the Director to waive the alternative location analysis requirement when issuing the completeness determination pursuant to Rule 303.b. The Commission determined that

the Director may only waive the alternative location analysis requirement by making a formal determination when approving the Form 2C that conducting an alternative location analysis is not necessary to protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources. However, consistent with Senate Bill 19-181's requirement that the Commission's alternative location analysis apply to "oil and gas locations and facilities proposed to be located near populated areas," C.R.S. § 34-60-106(11)(c)(I), the Commission does not intend for the Director to waive the alternative location analysis requirement for any proposed oil and gas location that meets the requirements of Rule 304.b.(2).B.i–iii, which each require alternative location analyses in populated areas. Even if the Director waives the alternative location analysis requirement pursuant to Rule 304.b.(2).A.i, the Commission may nevertheless require an operator to conduct an alternative location analysis pursuant to Rules 304.b.(2).A.ii or 307.b.(3).

Rule 304.b.(2).A.i requires an operator to prepare an alternative location analysis for locations that meet the criteria in Rule 304.b.(2).B because the Commission determined that locations that meet the criteria in Rule 304.b.(2).B may require additional consideration of potential alternative locations to avoid impacts to various resources. The Commission determined that each of these criteria represent an important siting consideration, and that impacts to the relevant resources can be avoided through an alternative location analysis process, in addition to being mitigated through best management practices consistent with the Commission's Rules. The Commission's Staff will review the alternative location analysis, preferably in concert with a local government's concurrent review of alternative locations. In the event of sequential permitting processes, the Commission's Staff will also review permitting documents from the local government in the course of reviewing an alternative location analysis.

Additionally, Rule 304.b.(2).A.ii provides that an alternative location analysis may be required if the Director or Commission determines that it is necessary to evaluate whether a proposed oil and gas location reasonably protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

The Commission recognizes that indigenous populations are an important component of the 100 Series definition of disproportionately impacted community. Because of the limited nature of the Commission's jurisdiction over tribal lands and in recognition of the sovereign authority of tribal governments, to implement this component of the definition of disproportionately impacted community, in Rule 304.b.(2).A.iii, the Commission provided that alternative location analyses will be required for proposed oil and gas locations within the exterior boundaries of the Southern Ute Indian Reservation (and within the Commission's jurisdiction pursuant to Rule 201.d) if the Southern Ute tribal government either objects to the proposed location, or requests an alternative location analysis.

Rule 304.b.(2).B

The criteria in Rule 304.b.(2).B reflect the Commission's careful consideration about areas in which there are particularly likely to be adverse impacts to public health, safety, welfare, the environment, and wildlife resources that could potentially be avoided through the choice of an alternative location. The criteria in Rule 304.b.(2).B are modeled after the objective permitting criteria the Director adopted in May 2019 pursuant to C.R.S. § 34-60-106(1)(f)(III)(A).

Some stakeholders suggested that the Commission may only require an alternative location analysis in populated areas. The Commission does not agree with this interpretation of the Act. The Act requires the Commission to "[a]dopt an alternative location analysis process *and* specify criteria used to identify oil and gas locations and facilities proposed to be located near populated areas that will be subject to the alternative location analysis process." C.R.S. § 34-60-106(11)(c)(I) (emphasis added). The General Assembly's use of the term "and" indicates that it intended the Commission to adopt regulations that accomplish two things: (1) create an alternative location analysis process; and (2) develop criteria to identify proposed oil and gas operations that would be located near populated areas, which should be subject to that process. Rule 304.b.(2) as a whole implements the first clause of C.R.S. § 34-60-106(11)(c)(I), because it creates an alternative location analysis process: it specifies applicability, identifies locations where that process applies, and specifies the required contents of the analysis. Rules 304.b.(2).B.i–iii implement the second clause of C.R.S. § 34-60-106(11)(c)(I) because they identify proposed locations that are more likely to be near populated areas due to their proximity to residential building units, high occupancy building units, school facilities, child care centers, and designated outside activity areas, and makes those proposed locations subject to the alternative location analysis process. Indeed, the General Assembly's use of the term "subject to" in the second clause of the statutory provision suggests that the General Assembly intended for locations in populated areas to be only one category of locations that are "subject to" the broader alternative location analysis process, which would presumably also govern locations that are not near populated areas.

Moreover, Senate Bill 19-181 amended the definition of "minimize adverse impacts," which directs the Commission to "avoid adverse impacts from oil and gas operations" wherever that statutory term is used. C.R.S. § 34-60-103(5.5)(a). The alternative location analysis is the Commission's primary, and best, tool to avoid adverse impacts, because the most effective way to avoid adverse impacts is through siting decisions. Accordingly, C.R.S. § 34-60-103(5.5)(a) provides independent statutory authority for the Commission to adopt an alternative location analysis process as a tool for avoiding any category of adverse impacts, regardless of whether those impacts might otherwise occur in a populated area.

Rules 304.b.(2).B.i and ii require an operator to submit an alternative location analysis for proposed oil and gas locations within 2,000 feet of one or more residential building units, high occupancy building units, school facilities, or child care centers. Rules 304.b.(2).B.i and

ii are intended to work in concert with Rule 604 to ensure that operators and the Commission's Staff engage in a robust analysis to determine whether there is a viable alternative location that would avoid potential adverse impacts on residents and schools within 2,000 feet of a working pad surface.

Because of the importance of protecting the health of school children, the Commission does not intend to allow school governing bodies to waive the alternative location analysis requirement in Rule 304.b.(2).B.ii. Additionally, Rule 604.a.(3) prohibits new working pad surfaces within 2,000 feet of a school facility or a child care center. Accordingly, the Commission anticipates that Rule 304.b.(2).B.ii will be rarely used, and such an alternative location analysis will only be conducted if an operator requests a variance from Rule 604.a.(3) pursuant to Rule 502.

Rule 304.b.(2).B.vi requires an alternative location analysis for proposed oil and gas locations within close proximity to a PWS intake, including both surface water supply areas and locations within 2,640 feet of a groundwater under the direct influence of surface water ("GUDI") well or Type III well, as those terms are defined in Rule 411.b.(1). Consistent with Rule 411, and to facilitate a productive working relationship between operators and PWS administrators, Rule 304.b.(2).B.vi allows a PWS administrator to waive the alternative location analysis. This is intended to facilitate advance consultation between the operator and PWS administrator about a proposed oil and gas location, which may identify appropriate best management practices to protect the PWS intake that render an alternative location analysis less necessary.

Pursuant to Rule 304.b.(2).B.x, an alternative location analysis is required for proposed oil and gas locations within 2,000 feet of a residential building unit, high occupancy building unit, or school facility located within a disproportionately impacted community. Although this criterion overlaps with Rule 304.b.(2).B.i, the Commission maintained it as a separate criterion because the Commission recognizes that environmental justice is an important concern in selecting oil and gas locations. Not all communities surrounding oil and gas locations are the same. Some communities, especially low-income communities, communities of color, and tribal and indigenous communities, have historically borne a disproportionate burden of environmental harms, while receiving disproportionately fewer environmental and socioeconomic benefits.

100 Series Definition of Disproportionately Impacted Community

The General Assembly also recognized the importance of environmental justice when it adopted House Bill 19-1261, providing directives to the AQCC. The Commission accordingly adopted a new 100 Series definition of Disproportionately Impacted Community, that references the definition of Disproportionately Impacted Community in C.R.S. § 25-7-105(e)(III). Although the Commission used terminology from a statute governing a different agency in its definition of Disproportionately Impacted Community, the Commission does

not intend for its Rules to implement that statute, but rather solely intends to use terminology that is familiar to stakeholders because of its use by other agencies.

The new definition of Disproportionately Impacted Community includes four objective, measurable criteria for identifying areas that meet the definition.

First, Disproportionately Impacted Communities include individual census block groups in which more than 50% of the population meets the EPA's definition of a "minority population" in EPA's technical guidance for assessing environmental justice in regulatory analyses. The Commission recognizes that there are numerous benefits to utilizing a more granular and localized metric for identifying a Disproportionately Impacted Community, which is why the Commission used census block groups as the level of analysis for identifying a Disproportionately Impacted Community. The Commission chose to defer to the expertise of the EPA in considerations of environmental justice, rather than attempting to define on its own what areas are home to communities of color. The Commission therefore used the term "communities of color," which it recognizes is a more preferred term, in defining Disproportionately Impacted Communities, but used EPA's term, "minority population" to implement the technical definition of that term.

Second, and consistent with EPA's technical guidance, the Commission recognized that an absolute metric of minority population may not always indicate the presence of a Disproportionately Impacted Community. Communities with less than 50% total minority population may nevertheless be disproportionately impacted if a substantially greater proportion of the population in that area meets the definition of minority population compared to the area as a whole. Accordingly, the Commission also used a relative metric to identify Disproportionately Impacted Communities, by defining them as census block groups with a greater minority population than the total minority population of the county in which the census block group is located. For example, approximately 33% of the population of Weld County meets EPA's definition of minority population. If a census block group within Weld County has 45% minority population, that census block group would meet the definition of a Disproportionately Impacted Community based on the minority population relative to the county as a whole, even though it does not meet the 50% minority population threshold.

Third, to implement the "low-income" portion of the definition, the Commission adopted a criterion to reflect income levels within a census block group based on metrics developed by multiple expert federal agencies. A census block group will be considered a Disproportionately Impacted Community if the median household income in the census block group, as identified in the U.S. Census Bureau's American Community Survey ("ACS") 5-year rolling dataset, is below 200% of the federal poverty guideline for a household of three persons identified by the U.S. Department of Health and Human Services ("DHHS"). As with the definition of minority population, the Commission determined that it was appropriate to rely on the expertise of federal agencies with substantial experience in defining metrics of income, rather than attempting to define on its own what areas meet the

definition of "low-income." These federal definitions are widely used by other federal and state agencies to implement other statutory and regulatory requirements related to income. The Commission reviewed Colorado data from the ACS and other sources to determine that a household of three was the appropriate metric to use, because Colorado's average household size is 2.56 persons, and the nine counties with the highest level of oil and gas activity have an average household size of 2.65. The Commission chose the income-based metrics of what constitutes a Disproportionately Impacted Community based on consultation with stakeholders and CDPHE staff. The income-based definition is consistent with the communities of color-based definition because it is at the census block group level, rather than a census tract level.

Finally, the Commission recognizes that areas in which a higher proportion of the population does not speak or read fluent English have also faced historic barriers to engaging in government processes, including the Commission's permitting process. Accordingly, the Commission defined Disproportionately Impacted Communities as including census block groups in which 20% or more of the population is defined as linguistically isolated by the ACS 5-year rolling dataset. As with the other metrics of what constitutes a Disproportionately Impacted Community, the Commission chose to rely on the expertise of a federal agency—in this case, the ACS—in defining what constitutes a linguistically isolated community, rather than attempting to define on its own what areas meet the definition of "linguistically isolated." The Commission determined that a 20% threshold of linguistically isolated population was necessary and reasonable based on a review of available data about which Colorado census blocks would meet that threshold, and because it means that one in five residents would face barriers to engaging in a process conducted entirely in English.

Because the 100 Series definition of Disproportionately Impacted Community is a new definition, the Commission intends for its Staff to address how the definition will be implemented in guidance for the 300 Series. The Commission also recognizes that the data elements of the definition are complex, and therefore intends for its Staff to create GIS data layers for the Commission's COGIS database that will identify which census block groups meet the definition of a Disproportionately Impacted Community.

Both the DHHS poverty guideline and ACS 5-year dataset are updated annually. The Commission intends to use the most recent data available to better serve both operators and communities. However, the Administrative Procedure Act's incorporation by reference provision allows agencies only to incorporate by reference a current version of another agency's standard, and the Commission therefore cannot incorporate by reference future updates to those datasets into the Commission's Rules. C.R.S. § 24-4-103(12.5). Accordingly, the Commission intends to conduct an annual rulemaking to update the incorporations by reference in the 100 Series definition of Disproportionately Impacted Community to reflect the most recent versions of the ACS 5-year dataset and DHHS poverty guidelines.

Some stakeholders suggested adding specific categories of housing, such as mobile home parks and federally subsidized housing, to the list of categories of Disproportionately Impacted Communities that should require an alternative location analysis. The Commission did not adopt this suggestion, because the four criteria in the 100 Series definition of Disproportionately Impacted Community adequately address historically underrepresented populations and income, which are key indicators of Disproportionately Impacted Communities, and are likely in many cases to include the categories of housing identified by the stakeholders. Additionally, other criteria requiring an alternative location analysis are intended to address relatively densely populated areas, and provide better tools for addressing impacts to areas of relatively dense housing such as mobile home parks.

Rule 304.b.(2).C

In Rule 304.b.(2).C, the Commission specified the informational requirements for an alternative location analysis. The purpose of these informational requirements is to provide the Commission's Staff with the information necessary to evaluate the differences between alternative locations, and which alternative locations best avoid potential adverse impacts to public health, safety, welfare, the environment, and wildlife resources. The criteria in Rule 304.b.(2).C are intended to provide information that is not duplicative of other information already required to be submitted on a Form 2A, that will allow the Commission's Staff to assess which alternative locations best avoid impacts to key resources, while also still allowing the operator to access the targeted minerals.

The Commission did not specify a certain number of locations that must be assessed in an alternative location analysis, but instead required the alternative location analysis to address all potential alternative locations from which the targeted minerals can be accessed. In some situations, there may only be one or two locations that meet this standard. In other situations, there may be a larger number of potential locations that would still allow operators to access targeted minerals while avoiding various categories of adverse impacts. The Commission does not intend to limit operators to analyzing fewer alternatives than may be relevant in a given situation, or to mandate operators to analyze more alternatives than are necessary in a given situation.

Consistent with other Rules intended to provide additional information about proposed oil and gas locations within disproportionately impacted communities, Rule 304.b.(2).C.i.ff requires operators to identify the boundaries of census block groups that meet the definition of a disproportionately impacted community in maps submitted as part of the alternative location analysis. This will help inform the Commission and its Staff about whether alternative locations exist that may have less of an impact on a disproportionately impacted community.

Further consistent with this intent, Rule 304.b.(2).C.iii.bb requires additional information for proposed oil and gas locations within a disproportionately impacted community or within 2,000 feet of a census block group that meets the definition of a disproportionately impacted

community. To address the historic barriers that these communities have faced to participating in government processes, including the Commission's permitting process, Rule 304.b.(2).C.iii.bb.2 requires an operator to conduct outreach to the community prior to preparing the alternative location analysis and submitting it to the Commission. To verify compliance with this requirement, and to inform the Commission and its Staff about the community's views, Rule 304.b.(2).C.iii.bb requires the operator to specifically identify feedback and questions raised by community members, and the operator's response to those feedback and questions. The Commission intends for operators to meaningfully address concerns raised by residents of disproportionately impacted communities during this pre-application outreach process. Additionally, the Commission intends for operators to host public meetings to answer community questions at times and locations that are accessible to community members, and to provide child care and interpretation services whenever requested. The Commission encourages operators to host community meetings both prior to and after submitting an oil and gas development plan application, to ensure that the community has an opportunity for input at the outset of the process when decisions about appropriate locations are being made.

To specifically address the historic concentration of oil and gas facilities and other industrial sources of pollution in disproportionately impacted communities, the Commission determined that it is crucial to obtain information about existing oil and gas facilities within those communities. Accordingly, if an operator proposes an oil and gas location within 2,000 feet of a residential building unit or school in a disproportionately impacted community, Rule 304.b.(2).C.iii.cc requires the operator's alternative location analysis to list and describe the number of existing oil and gas locations, facilities, and wells that are already within 2,000 feet of any residential building unit or school near any location analyzed as part of the alternative location analysis. This will allow the Commission to determine whether the residents or schoolchildren that may be adversely impacted by a proposed location are already adversely impacted by existing facilities. This information is a crucial tool for the Commission to avoid, minimize, or mitigate adverse impacts within communities that may already bear a disproportionate share of adverse impacts caused by existing oil and gas operations.

Some stakeholders suggested that the Commission require operators to analyze a no-action alternative as part of their alternative location analysis. The Commission did not adopt this recommendation because the Commission's consideration of a permit application will always include a no action alternative—namely, denying the permit application. The Commission determined that it would not provide added value for operators to further analyze the consequences of an alternative that is already under consideration.

Rule 304.b.(2).D

In Rule 304.b.(2).D, the Commission authorized the Director to request additional information, or that the operator analyze additional locations, if necessary for the

Commission or Director to evaluate which alternative locations best avoid potential adverse impacts on public health, safety, welfare, the environment, and wildlife resources.

Rules 304.b.(3)–(17)

The remaining components of Rule 304.b include informational submission requirements for Form 2As. Many of these components are part of the Commission's prior Rules. However, consistent with Senate Bill 19-181's changes to the Commission's statutory authority and mission, *see* C.R.S. § 34-60-106(2.5)(a), the Commission has revised and expanded the informational submission requirements as appropriate to ensure that the Director has sufficient information to determine whether the conditions of approval for a proposed oil and gas development plan adequately protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

Rule 303.b.(3)

Consistent with the Commission's alternative location analysis process and other Rules intended to avoid, minimize, and mitigate adverse impacts to disproportionately impacted communities, the Commission added salient information about residential building units within these communities to the cultural distance table in Rule 304.b.(3).A. The Commission determined that it was important to obtain information not only about the boundaries of the disproportionately impacted community (which will be census block group boundaries), but also information about where people live and go to school within the block group. Because the residents of a disproportionately impacted community are the receptor that the Commission intends to protect, understanding where those residents live is important to the Commission's review of a Form 2A. Throughout this Statement of Basis and Purpose, the Commission used the term "receptor" to mean the subject of an impact or potential impaction, including people, wildlife, or property.

Rule 304.b.(7)

The Commission recognizes that some details of site planning may change between the time when an operator submits a Form 2A and when operations actually begin at an oil and gas location. Accordingly, the Commission specified that several of the drawings required by Rule 304.b.(7) may provide preliminary information. Should the final site layout change, operators may notify the Commission's Staff, as appropriate, pursuant to Rules 404.c, 405.b, and 406.b.

Some stakeholders suggested that irrigation ditches be added as a feature on the location drawing subject to Rule 304.b.(7). The Commission did not adopt this suggestion because the "visible improvements" referenced in Rule 304.b.(7).A already include irrigation ditches. Additionally, irrigation ditches fall within the 100 Series definition of Waters of the State, and therefore must be shown on the hydrology map pursuant to Rule 304.b.(7).E.

Several stakeholders raised questions about the preliminary process flow diagrams required by Rule 304.b.(7).D. The preliminary process flow diagrams are necessary for the Commission's Staff to understand the scope and scale of the operator's plans, and to determine whether the equipment planned for the location is reasonably appropriate. The Commission's Staff further needs to ensure that operators have developed reasonably detailed plans for all aspects of their operation, including waste management and identifying potential sources of spills and releases.

Rule 304.b.(7).F requires operators to provide a map of access roads. The Commission recognizes that access roads may be the source of numerous adverse impacts to public health, public welfare, and wildlife caused by truck traffic. Specifically, residents of homes in close proximity to an access road may experience noise, dust, light, and emissions impacts from truck traffic on the access road. Accordingly, Rule 304.b.(7).F requires the operator to identify residential building units within 2,000 feet of an access road on the Form 2A application. This information will inform the Commission's decisions about appropriate access road siting and any necessary and reasonable conditions of approval to mitigate dust, noise, light, and emissions to protect the health and welfare of nearby residents.

The Commission specifically intends for operators, in consultation with the relevant local government and local emergency response agencies, to plan access roads in a manner to allow emergency vehicles to access an oil and gas location in the event of an emergency. The Commission intends for information about emergency vehicle access to an oil and gas location to be provided to nearby residents as a component of the building unit owner and tenant consultation required by Rule 309.c. The Commission also intends for operators to address access roads and emergency vehicle access to the site in the emergency response plans that the operator develops in collaboration with local emergency response agencies pursuant to Rule 602.j.

Rule 304.b.(7).I requires operators to submit a geologic hazard map depicting geologic hazards within one mile of the proposed working pad surface (or a scaled map showing the full length of the geologic hazard if the hazard area is larger than one mile). The Commission determined that it is important for its Staff to evaluate potential risks posed by various geologic hazards, which range from erosion risks posed by steep slopes to natural faults and fractures within the subsurface.

Consistent with Rule 304.b.(7).I, the Commission adopted a new 100 Series definition of Geologic Hazard that incorporates the statutory definition in C.R.S. § 24-65.1-103(8). The statute in turn defines Geologic Hazards as phenomena that pose significant hazards to public health, safety, and property, including avalanches, landslides, rock falls, mudflows, unstable or potentially unstable slopes, seismic effects, radioactivity, and ground subsidence.

Some stakeholders suggested that the Commission adopt additional standards in Rule 304.b.(7).I to require consultation with the Colorado Geologic Survey. The Commission did

not adopt this suggestion because it determined that the information provided on a Form 2A, including the geologic hazard map provided by Rule 304.b.(7).I, is sufficient for its Staff to identify geologic hazards. Additionally, the Commission's Staff have significant expertise in geology, rendering such consultation unnecessary. At the time of the 200–600 Mission Change Rulemaking, the Commission's Staff includes numerous trained geologists, hydrologists, and geophysicists. Specifically, 47 staff (40% of total staff) have a bachelor's degree in geology or other earth sciences (not including environmental science or petroleum engineering), 20 staff (17% of total staff) have a master's degree in those fields, and 3 staff (3% of total staff) have a doctorate degree in related fields.

Consistent with the Commission's other 300 Series Rules intended to inform decisions about siting oil and gas locations within disproportionately impacted communities, Rule 304.b.(7).J requires operators to submit a disproportionately impacted communities map. This map is intended to supplement, rather than duplicate, the information about disproportionately impacted communities on the cultural distance table, because unlike the cultural distance table, it is a visual representation rather than a numeric value. The disproportionately impacted communities map may be either an aerial photo or a cartographic depiction of an area. It is intended to show the spatial relationship between the proposed oil and gas location and residential building units within the disproportionately impacted community. Additionally, the maps should show the boundary of the disproportionately impacted community to put the location of the residential building units and proposed oil and gas development plan in context. For example, in more rural areas, census block groups are geographically larger than in more urbanized areas. Because the residents of a disproportionately impacted community are the receptor that the Commission intends to protect, understanding where those residents live is important to the Commission's review of a Form 2A.

Rule 304.b.(14)

The Commission revised Rule 304.b.(14), governing wetland information, to reflect that operators should provide information about their compliance with any applicable permitting processes and substantive standards for protecting wetlands at the local and state level, in addition to the federal level.

Rule 304.c

In Rule 304.c, the Commission identified several plans that must be submitted with Form 2As. An operator must submit all components of a Form 2A listed in Rule 304.b for the application to be considered complete, unless the proposed oil and gas location is within an approved CAP, and the Commission order approving the CAP explicitly waives one or more components of a Form 2A for locations within the CAP. These plans are a crucial component of the Director's review of proposed oil and gas locations. They afford the operator an opportunity to identify best management practices the operator will implement to avoid, minimize, and mitigate adverse impacts to various natural resources and public welfare.

The Commission discusses the relevant details of each plan in the component of the Statement of Basis and Purpose that discusses the Commission's Rule detailing the requirements for each plan, except for several plans that are not substantively governed by other Commission Rules, which are discussed below.

Rule 304.c.(1)

Consistent with Rule 411, the Commission required operators to develop emergency spill response programs for any operations within close proximity to PWS intakes, regardless of whether that intake is a surface water intake or a GUDI well or Type III well.

Rule 304.c.(6)

In Rule 304.c.(6), the Commission required operators to submit a transportation plan. Recognizing that local governments play the primary role in transportation planning, the Commission allowed operators to submit any transportation plans or equivalent traffic planning documents that are submitted to local governments. If an operator does not submit a traffic management plan to a local government, then at the request of the Commission's Staff, the operator may be required to submit a transportation plan identifying information relevant to the Commission's decision about appropriate measures to avoid, minimize, and mitigate adverse impacts associated with traffic to and from an oil and gas location.

Rule 304.c.(10)

Rule 304.c.(10) requires operators to submit a hydrogen sulfide drilling operations plan. Consistent with Rule 612.d, if an operator submits the hydrogen sulfide drilling operations plan with its Form 2A application, the operator need not submit a duplicative plan for subsequent Form 2s.

Rule 304.c.(12)

Rule 304.c.(12) requires operators to submit a gas capture plan, consistent with Rule 903.e. Rule 903.e gives operators the option of either submitting a gas capture plan or providing a binding commitment to connect to a gathering line prior to the commencement of production operations. Operators may therefore submit either a gas capture plan or a written commitment to connect to a gathering line prior to the commencement of production operations pursuant to Rule 304.c.(12).

Rule 304.c.(13)

The Commission moved the requirement to submit a leak detection plan from prior Rule 604.c.(2).F to Rule 304.c.(13), which applies statewide rather than solely in designated setback locations. The Commission also renamed the leak detection plan as a "fluid leak

detection plan" to avoid confusion with APCD leak detection requirements. The Commission will continue to require operators to submit similar information under Rule 304.c.(13) as it did under prior Rule 604.c.(2).F, and intends for its Staff to issue guidance providing additional detail about the necessary components of a fluid leak detection plan.

Rule 304.c.(16)

Some stakeholders suggested that in addition to an interim reclamation plan, the Commission should also require a final reclamation plan to be submitted with a Form 2A. The Commission did not adopt this suggestion, because of the distinct roles interim and final reclamation play under the Commission's 1000 Series Rules. Interim reclamation occurs contemporaneously with the initial construction and ongoing operation of an oil and gas location. In contrast, final reclamation does not occur until final closure of an oil and gas location, which may be 20 or more years after an operator initially seeks approval of a Form 2A. Circumstances relevant to the reclamation are highly likely to change during the life of a location. Accordingly, the Commission determined that it is appropriate to require an interim reclamation plan at the time a Form 2A is submitted, but not a final reclamation plan.

Rule 304.c.(18)

The Commission adopted a new requirement for operators to submit a water plan in Rule 304.c.(18). The purpose of the plan is to identify the source of water used for drilling and completion operations. Tracking the quantity and source of water used in oil and gas operations will provide the Commission, its Staff, local governments, water districts, and the public with additional information about the impacts of oil and gas operations on water supplies.

Consistent with Rule 431.b.(3), which requires operators to track and report volumes of water actually reused and recycled on Form 5, Drilling Completion Reports and Form 5A, Completed Interval Reports, Rule 304.c.(18) is intended to provide additional incentives for operators to recycle and reuse produced water, and to provide the Commission with additional information about the volume of water that is reused and recycled. The Commission determined that tracking data about water reuse and recycling is necessary to better understand patterns about which operators are reusing and recycling water, geographic trends in where reuse and recycling occurs, and opportunities to further incentivize and break down barriers to reusing and recycling produced water. Accordingly, Rule 304.c.(18).C requires operators that are intending to reuse and recycle produced water to describe the source of the water, and anticipated volumes to be used. This quantitative information will be critical to understanding the total percentage of produced water that is being reused and recycled at a specific operation, and more broadly, in conjunction with Rules 303.a.(5).B.iii.ee and 904.a.(1), at broader scales within a basin or region.

Additionally, consistent with Rule 437, which prohibits the use of certain chemical additives in hydraulic fracturing fluids, Rule 304.c.(18).C requires operators to provide background concentrations of chemicals listed in Table 437-1. In order to determine whether the concentrations of the chemicals listed in Table 437-1 in produced water that is reused and recycled are in fact trace background concentrations, the Commission's Staff and operators will need a baseline metric to compare against. Rule 304.c.(18).C allows an operator to provide basic information about anticipated characteristics of background concentration of Table 437-1 chemicals in produced water that will be reused and recycled during the planning phase so that operators and the Commission's Staff have ready access to this information when ensuring compliance with Rule 437.b.

Finally, consistent with Rule 905.a.(3).I, the Commission required operators to provide the anticipated method of transporting reused or recycled produced water. The Commission recognizes that reusing and recycling produced water provides significant benefits for water quantity, and the ecosystems, wildlife, agricultural operations, and recreational industries that rely on healthy waterways, especially in areas of Colorado where water is scarcer. However, the Commission also recognizes that reusing and recycling produced water may increase truck traffic associated with transporting that water, which may have adverse impacts on wildlife (collisions), air resources (emissions), safety (traffic accidents), and public health and welfare (dust). Accordingly, the Commission encourages operators to reduce truck traffic associated with produced water reuse and recycling by using alternative transportation methods, such as pipelines, wherever possible. To better track and understand the frequency with which trucking, piping, and other methods of transportation are used, Rule 304.c.(18).D requires operators to provide information about those methods of transportation.

Throughout the 200–600 and 800/900/1200 Mission Change Rulemakings, the Commission sought to incentivize recycling and reuse of produced water, recognizing that while it provides significant environmental, public health, and wildlife benefits, it is not feasible or possible in every circumstance. The Commission therefore did not mandate that produced water be reused or recycled in every circumstance. However, to effectuate its intent that operators reuse and recycle produced water wherever possible, in Rule 304.c.(19).D, the Commission required that operators who intend to use fresh (meaning non-recycled or non-reused) water in their operations explain why they are not planning to use recycled or reused water. This will allow the Commission to evaluate the circumstances where fresh water is being used, identify barriers to produced water reuse and recycling, and work with operators to increase produced water reuse and recycling in the future.

Rule 304.c.(19)

Consistent with Senate Bill 19-181's requirement that the Commission adopt regulations to "evaluate and *address* cumulative impacts," C.R.S. § 34-60-106(11)(c)(II), Rule 304.c.(1() requires operators to submit plans documenting how they will address cumulative impacts to resources identified in Rule 303.a.(5). The Commission determined that these plans will

allow its Staff and the Commission itself to work with an operator to identify appropriate means to address any cumulative impacts identified on the Form 2B, which otherwise serves primarily a data gathering function. Addressing the cumulative impacts of individual locations proposed as part of an oil and gas development plan is particularly necessary because oil and gas development plans may include multiple locations, and as the number of locations associated with a proposed oil and gas development plan increases, the methods for identifying and avoiding, minimizing, and mitigating cumulative impacts associated with the proposed development also increases. As discussed above, the Commission determined that it would not require operators to submit a CAP application rather than an oil and gas development plan application at any specific threshold number of locations (although, pursuant to Rules 303.a.(8) and 314.a.(3), either the Commission or the Director may initiate a meeting with an operator to discuss whether submission of a CAP). However, because of this, the Commission's Staff must have tools available to work with operators to address the cumulative impacts of particularly large oil and gas development plans.

Rule 304.c.(19).A requires operators to describe anticipated cumulative adverse impacts to each resource. This is intended to be an estimate of both incremental adverse and beneficial impacts to each resource—a "net" estimate, rather than a "gross" estimate. Where possible, the operator should express the impacts quantitatively, rather than qualitatively.

Rule 304.c.(19).B requires operators to describe specific measures taken to avoid or minimize any incremental increase in adverse cumulative impacts. The Commission intentionally used the terms "avoid" and "minimize" in Rule 304.c.(19).B, consistent with the definitions of those terms adopted in the 800/900/1200 Mission Change Rulemaking. Examples of avoidance include steps taken during the planning process to prevent an adverse impact from occurring, such as selecting a location that is outside of a sensitive riparian area. Examples of minimization include steps taken during operations to reduce the severity of an impact, such as using a sound barrier to reduce off-location noise impacts.

Rule 304.c.(19).B provides an opportunity for an operator to catalog best management practices and other steps the operator has taken through the planning process, or intends to take throughout the course of proposed oil and gas operations to prevent and reduce impacts. For example, if an operator intends to reduce emissions by electrifying an oil and gas location through a grid connection, the operator could describe that effort in the cumulative impacts plan as a method of avoiding adverse impacts (for example, by using non-emitting zero bleed pneumatic devices rather than natural gas-emitting pneumatic devices) and minimizing adverse impacts (for example, by reducing particulate matter, carbon monoxide, and nitrogen oxides emissions from on-site engines). Providing a list of these measures in a single plan will allow the Commission and its Staff to fully evaluate the methods the operator proposes to use to reduce cumulative adverse impacts to various resources.

Rule 304.c.(19).C requires operators to identify any measures taken to mitigate or offset cumulative adverse impacts to any resource. The Commission used the term "mitigate

adverse impacts" in Rule 304.c.(19).C in a manner consistent with the definition of "mitigate adverse impacts" adopted in the 800/900/1200 Mission Change Rulemaking, except that the Commission intends for Rule 304.c.(19).C to extend beyond wildlife resources. Mitigation refers to taking an action to reduce an adverse impact to the same resource at some other location to compensate for an adverse impact to that resource from a proposed oil and gas operation. Examples of measures to mitigate or offset impacts might include plugging and abandoning an existing well to reduce emissions from that well to mitigate or offset an anticipated increase in emissions from proposed oil and gas operations.

Rule 304.c.(19).D requires operators to provide any additional information that the Commission's Staff, another state agency, a local government, or the operator itself deems reasonable and necessary to evaluate cumulative impacts. The Commission does not intend for the language used in Rule 304.c.(19).D to mean that an operator may be required to submit an unlimited range of information, but rather targeted information that is limited by the statutory term incorporated into the language: information that is "reasonable and necessary" to evaluate cumulative impacts. *See* C.R.S. § 34-60-103(5.5). The Commission intends for its Staff to engage with CDPHE and other partner agencies to develop guidance about the specific categories of information that might be deemed reasonable and necessary to evaluate cumulative impacts pursuant to Rule 304.c.(19).D. One such category is information about any barriers to electrification of a proposed oil and gas location, such as the result of any outreach an operator conducted to a utility about electrifying a site.

Rule 304.c.(20)

Rule 304.c.(20) requires operators proposing an oil and gas location within 2,000 feet of a residential building unit or school within a disproportionately impacted community to submit a community outreach plan. Consistent with the Commission's other Rules intended to avoid, minimize, and mitigate adverse impacts of oil and gas operations on disproportionately impacted communities, Rule 304.c.(20) is intended to ensure that residents of these communities are fully empowered to engage in the Commission's permitting process. Specifically, the community outreach plan must specify how an operator proposing a location intends to consult with, conduct outreach to, and engage with community members. The Commission intends for this engagement to be a meaningful, two-way street of dialogue with the operator listening to community members and taking all possible efforts to incorporate community feedback into their operational plans. The intent of the engagement documented by the community outreach plan is not merely for an operator to "check a box" that it has provided information to a community, but rather for the operator to demonstrate to the Commission that it has engaged in meaningful dialogue and consultation with community members, and taken affirmative steps to incorporate feedback from the community into its operational plans.

In addition to ensuring that residents of disproportionately impacted communities have the opportunity to meaningfully engage in the Commission's permitting process, the Commission also intends to take measures to avoid concentrating adverse impacts to public

health, safety, and welfare in disproportionately impacted communities. Accordingly, Rule 304.c.(20).A requires operators to document specific measures taken to directly mitigate adverse impacts in disproportionately impacted communities. An example of a mitigation measure might be funding creation or expansion of park or open space to compensate for loss of surface area that could otherwise be used for recreational purposes.

Consistent with Rule 303.e.(2).I, Rule 304.c.(20).B requires operators to certify that they have provided all written materials in languages spoken at home by at least 5% of the population in the census block group where a proposed oil and gas location is located, as well as any adjacent census block groups for proposed locations that are within 2,000 feet of the boundary of a census block group.

Finally, the Commission recognizes that written outreach may not always be the most effective method of engaging with community members, especially within disproportionately impacted communities. Accordingly, multiple Commission Rules, including Rules 309.c, 314.f.(3), and 511 afford community members, local governments, and operators the opportunity to initiate a public meeting about proposed oil and gas development so that operators can interact directly with community members to answer questions and incorporate feedback from the community into their operation plans. The Commission intends for operators who hold public meetings about proposed oil and gas locations within a disproportionately impacted community to be held at a location within or in close proximately to the community to facilitate access to the meeting. If necessary for public health, public meetings may be held virtually. The Commission intends for the meetings to be held at a time of day that is accessible to the maximum number of community members considering typical work schedules, which will likely be a weekday evening or a weekend in most circumstances. Additionally, the Commission intends for the operator to provide childcare and interpretation services at the meeting, if requested to do so by any community member, to facilitate participation by members of the community who would otherwise be unable to participate due to childcare obligations or language barriers. Interpretation services involve more than just translation of statements made by an operator, and should also include the ability for statements made by community members in languages other than English to be relayed back to the operator's representatives in English (unless the operator's representatives themselves speak the same language as the community member).

Rule 304.c.(21)

In Rule 304.c.(21), the Commission required operators to submit geologic hazard plans for proposed oil and gas locations within an area identified as a geologic hazard area pursuant to Rule 304.b.(7).I. The plan should describe any mitigation measures the operator intends to take to avoid, minimize, or mitigate risks posed by the geologic hazard, and be tailored to the specific category or categories of hazards identified. For example, if the geologic hazard map in Rule 304.b.(7).I identifies a hazard based on an unstable slope, the plan could identify measures the operator intends to take to control and minimize erosion.

Rule 304.d

In Rule 304.d, the Commission provided an "off-ramp" for lesser impact areas. The Commission recognizes that not all proposed oil and gas locations have equivalent impacts. Accordingly, the Commission adopted an option to apply more relaxed standards for areas where oil and gas operations are likely to have less impacts on public health, safety, welfare, the environment, and wildlife resources. For example, operations located several miles away from any inhabited dwellings or other areas of human use are very unlikely to pose odor-related concerns, and therefore an odor management plan may be unnecessary for those locations. Similarly, an operation to drill a single vertical well from a wellpad is likely to have less of an impact on public health, safety, welfare, the environment, and wildlife resources than a large, multi-well pad with several horizontal wells. Accordingly, for such circumstances where the impacted resource is not present or impacts are unlikely to be a concern, in Rule 304.d, the Commission provided a mechanism for operators to request that the Director exempt them from the informational requirements of Rule 304.b, or the plan requirements of Rule 304.c, based on the individual circumstances of the operator.

Rule 304.e

Rule 304.e allows operators to submit substantially equivalent information or plans developed through a local government or federal government permitting process in lieu of information that the operator would otherwise be required to submit on a Form 2A. This includes a plan, report, or information that analyzes alternative locations in a manner that is substantially equivalent to the alternative location analysis required by Rule 304.b.(2). The Commission intentionally used the term "land use" in Rule 304.e to recognize that the information operators submit may address not only facility siting, but also other land use considerations such as noise, dust, odor, light, and visual impacts.

Nothing in Rule 304.e prevents the Director from requesting that the operator nevertheless submit information that is specifically required on a Form 2A if the Director or Commission determines that the federal or local government permitting information is not, in fact, substantially equivalent. For example, the Commission or Director might require an alternative location analysis for a location on federal lands if the federal NEPA analysis did not analyze any alternative locations that might potentially avoid impacts to certain resources, but instead analyzed only an action and no action alternative for oil and gas operations at the same location. However, the Commission recognizes that in many cases, operators will prepare and submit very similar information to state, federal, and local government permitting entities, and intends to avoid or minimize unnecessary duplication of effort by operators in between the permitting processes.

Rule 305.

The Commission adopted a new Rule 305 governing drilling and spacing unit applications. Previously, the Commission processed drilling and spacing unit applications based on the

statutory requirements of C.R.S. § 34-60-116, pursuant to the procedures specified in the 500 Series Rules, but the Commission did not have a specific Rule governing drilling and spacing unit applications. To provide better clarify for operators and the general public, the Commission adopted Rule 305 to specify application procedures for drilling and spacing unit applications. All drilling and spacing units will continue to be reviewed by the Commission's Staff to ensure that they prevent waste, avoid the drilling of unnecessary wells, and protect correlative rights. Drilling and spacing units will also continue to be subject to a hearing before a Hearing Officer, Administrative Law Judge, or the Commission, consistent with prior practice. However, in Rule 305, the Commission adopted clear standards to explain these procedures and the substantive requirements for review of a drilling and spacing unit.

In addition to promulgating Rule 305, the Commission also adopted a new 100 Series definition of Drilling and Spacing Unit. Consistent with the statutory provisions of C.R.S. § 34-60-116, a Drilling and Spacing Unit is created by order of the Commission for one or more wells. The size, setback, and number of wells in a Drilling and Spacing Unit are determined by geologic and engineering testimony and protective of correlative rights. Drilling and Spacing Units may be any shape and configuration that is supported by evidence and is consistent with statutory requirements. The Act provides specific criteria for a Drilling and Spacing Unit, including that it will prevent waste, avoid the drilling of unnecessary wells, protect correlative rights, and not be smaller than the maximum area that can be efficiently and economically drained by a well. C.R.S. §§ 34-60-116(1), (2).

The Commission recognizes that in certain circumstances, it will be appropriate for a Drilling and Spacing Unit for a single well to overlap with an existing unit. The Commission's prior Rule 318A explicitly allowed this type of overlapping spacing unit, known as a Wellbore Spacing Unit, only in the Greater Wattenberg Area. However, the Commission recognizes that the geologic circumstances in which an overlapping spacing unit for a single well may be appropriate to prevent waste, protect correlative rights, and facilitate efficient development of minerals may exist not only in the Greater Wattenberg Area, but also in geologic formations throughout Colorado. Accordingly, as discussed further under Rule 402 below, the Commission removed the provisions limiting wellbore spacing units to the Greater Wattenberg Area in prior Rule 318A, and expanded them statewide by adding Wellbore Spacing Units to the 100 Series definition of Drilling and Spacing Unit as a specific subcategory of Drilling and Spacing Unit. Under this revised approach, all references to Drilling and Spacing Units in the Commission's Rules may also refer to Wellbore Spacing Units, and operators may file applications for Wellbore Spacing Units through the ordinary Drilling and Spacing Unit process where appropriate based on geologic and engineering evidence and consistent with statutory requirements for the prevention of waste and protection of correlative rights.

Rule 305.a

Rule 305.a.(2).A, in concert with Rules 302.b and 302.c, implements Senate Bill 19-181's requirement that operators demonstrate that they have filed an application for siting

approval with a local government and provide the Commission with the disposition of that application, if applicable. C.R.S. § 34-60-116(1)(b)(I)–(II).

Senate Bill 19-181 requires the Commission to consider public health, safety, welfare, the environment and wildlife resources when reviewing drilling and spacing unit applications. *See* C.R.S. § 34-60-116(1)(b)(3)(a). To implement this new statutory requirement, in Rule 305.a.(2).B, the Commission required that drilling and spacing unit applications include a certification that operations within the drilling and spacing unit will be conducted in a manner that protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

Previously, the Commission did not require drilling and spacing unit applicants to submit supporting documentation, such as leases, showing the applicant's acquisition of mineral interests within a proposed unit. The Commission relied on the applicant's sworn testimony and summary evidence of ownership when making such a determination, recognizing that the Commission's Staff are not responsible for resolving private contractual disputes. However, to facilitate review of drilling and spacing unit applications, and to provide clearer information for mineral owners and any other affected persons involved in a drilling and spacing unit hearing, in Rule 305.a.(2).L, the Commission adopted a new requirement for operators to provide supporting documentation that it owns at least a portion of a mineral tract. The Commission also revised Rule 303.a.(1) to clarify that this supporting documentation must be submitted as part of the drilling and spacing unit hearing application.

In Rule 305.a.(2).M, the Commission adopted a new requirement that operators certify that they will comply with any applicable federal unit agreement or communitization agreement requirements. The Commission continues to recognize that operators must adhere to applicable federal requirements for minerals that are unitized or communitized with federal minerals. *See Kirkpatrick Oil & Gas Co. v. United States*, 675 F.2d 1122, 1126 (10th Cir. 1982).

Rule 305.b

Consistent with C.R.S. § 34-60-116(1)(b)(3)(a), in Rule 305.b.(1), the Commission added protecting and minimizing adverse impacts to public health, safety, welfare, the environment, and wildlife resources to the list of criteria that the Director will consider when reviewing proposed drilling and spacing units.

Rule 306.

In Rule 306, the Commission adopted procedural requirements for the Director's review of a proposed oil and gas development plan.

To provide additional clarity about this important procedural step, the Commission defined the term Director's Recommendation in the 100 Series Rules.

Rules 306.a & 306.b

After all required application materials have been submitted and public review and comment has ended pursuant to Rule 306.a, the Director may issue a recommendation that the Commission approve or deny a proposed oil and gas development plan pursuant to Rule 306.b. As discussed above, consistent with Senate Bill 19-181's changes to the Commission's mission and statutory authority, the Director may recommend that the Commission deny a proposed oil and gas development plan that otherwise complies with the Commission's Rules if, in the Director's judgement, the proposed Oil and Gas Development Plan does not comply with the Act by adequately protecting and minimizing adverse impacts to public health, safety, welfare, the environment, and wildlife resources. If the Director recommends that the Commission deny a proposed oil and gas development plan, that recommendation will go directly to the Commission itself for a hearing, rather than receiving interlocutory review by a Hearing Officer or Administrative Law Judge, pursuant to Rule 307.a.

The Commission anticipates that, consistent with prior practice, in many cases, an oil and gas development plan may not be fully consistent with the Commission's Rules and the Act at the time it is submitted, but the Commission's Staff will be able to work with an operator to improve the application and ensure its consistency with the Commission's Rules and the Act, and the Director therefore will ultimately recommend that the Commission approve such an application subject to conditions of approval. The Commission intends for its Staff to continue their collaborative relationship with operators to improve permit applications so that they appropriately protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and may be approved subject to conditions of approval. The Commission recognizes that the efforts of its Staff are not always visible to the public, and intends to improve transparency around that process so that local governments, other government agencies, and members of the public may better understand the evolution of a permit application. Accordingly, the Commission intends for the Director's recommendation to reflect and demonstrate the evolution of an oil and gas development plan between the time it is submitted and the time the Director issues a recommendation to improve transparency and so that the public can fully understand changes made to a permit application over the course of the review process.

Some stakeholders suggested that Rule 306.b.(3) does not provide adequate notice or opportunity for operators to correct any deficiencies that may lead the Director to recommend that the Commission deny a proposed oil and gas development plan. The Commission does not agree with this suggestion because the Director's recommendation will only be issued at the conclusion of a process in which the Commission's Staff will engage in an ongoing and iterative dialogue with the operator throughout the process of reviewing the oil and gas development plan application. Consistent with prior practice, there will be numerous opportunities for the Commission's Staff to work with an operator to correct

deficiencies during the application review process. The Director will only be in the position of recommending denial if the Commission's Staff is unable to resolve significant issues with an operator throughout this iterative process. Even after the Director recommends denial, there will be time and opportunity during the pre-hearing process for the operator to correct any deficiencies in the proposed oil and gas development plan that may have led the Director to recommend denial.

Rule 306.c

When the Director's Recommendation has been issued, the Commission Staff will provide notice to the parties listed in Rule 306.c.

Some stakeholders raised questions about which surface owners will receive notice pursuant to Rule 306.c.(1). The Commission's Staff will provide notice of the Director's recommendation to the surface owners listed on the Form 2A, which includes all surface owners within the exterior boundaries of the oil and gas location or locations covered by the oil and gas development plan, as well as the surface owners of any off-location flowlines.

Consistent with the Commission's current practice, any person may sign up to receive notices of all hearing applications through the Commission's website. Because the Commission's consideration of the Director's recommendation on an oil and gas development plan requires a Commission hearing, signing up to receive notice of hearings provides a mechanism for members of the public to receive notice of the Director's recommendation even if they are not among the entities receiving notice pursuant to Rule 306.c.(1)–(10). Moreover, all hearing materials, including the Director's recommendation and oil and gas development plans subject to a hearing, will be posted on the Commission's website.

Rule 306.d

Consistent with its statutory obligation to establish a timely and efficient procedure for reviewing permit applications, C.R.S. § 34-60-106(11)(a)(I)(A), in Rule 306.d the Commission adopted standards for Commission oversight of its Staff's review of permit applications. If the Director's recommendation is not issued within 120 days of the completeness determination made pursuant to Rule 303.b.(1), an operator may request a hearing at which the Commission's Staff will provide an update about the status of reviewing the oil and gas development plan application and any reasons for the delay.

Recognizing that some of the review and consultation process will have been completed in advance for oil and gas development plans that are within and subject to an approved CAP, the Commission adopted a shorter 90 day timeframe for operators to request hearings before the Commission about the status of Staff review of those plans. Rule 306.d does not adopt a fixed deadline for the Director to issue a recommendation on all oil and gas development plans, because the Commission recognizes that oil and gas development plans will vary in size, scope, and complexity, and that a one-size-fits-all solution is not appropriate for

providing a review timeframe. However, the Commission determined that the approach adopted in Rule 306.d will provide sufficient incentives for its Staff to continue their diligent, timely, and efficient review of oil and gas development plan applications.

Rule 307.

In Rule 307, the Commission adopted procedural requirements for the Commissions' review of a proposed oil and gas development plan. Like the Director, consistent with Senate Bill 19-181's changes to the Commission's mission and statutory authority, the Commission may choose to deny a proposed oil and gas development plan that otherwise complies with the Commission's Rules if, in the Commission's judgement, the proposed oil and gas development plan does not comply with the Act by adequately protecting and minimizing adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

The Commission reviewing oil and gas development plans is a change from the Commission's prior practice, in which Form 2As were approved administratively by the Director, without necessarily being subject to Commission review. The Commission determined that the Senate Bill 19-181's changes to the Commission's mission and statutory authority warranted additional, Commission-level review of all components of oil and gas development plans, including Form 2As and Form 2Bs. Additionally, the transition to a Commission with full-time commissioners enables the Commission to spend more time reviewing individual permit applications, which would have been infeasible for the prior volunteer Commission. *See* C.R.S. § 34-60-104.3. Finally, the Commission's review of proposed oil and gas development plans affords operators and all affected persons with additional procedural rights to ensure that all interested parties receive due process.

Rule 308.

The Commission moved prior Rule 303.a to Rule 308. In Rule 308, the Commission specified procedural requirements for Form 2, Applications for Permits to Drill. The Commission revised some of the requirements for Form 2 applications in the Wellbore Integrity Rulemaking, but made relatively few substantive changes to the Form 2 procedural and substantive requirements in the 200–600 Mission Change Rulemaking.

Rule 308.b

During the Commission's recent Wellbore Integrity Rulemaking, stakeholders did not reach consensus about the appropriate standard for identifying Confining Layers on Form 2 applications. In Rule 308.b.(6), the Commission adopted a new requirement for casing and cementing plans submitted with a Form 2 to identify whether a Confining Layer exists. The Commission adopted a conforming definition of Confining Layer in its 100 Series rules.

The Act defines a "Pool" as a general structure containing a common accumulation of oil or gas, or both, that is completely separated by a Confining Layer from any other zone in

the structure. C.R.S. § 34-60-103(9). If a Confining Layer does not exist within the Pool to isolate oil, gas, or groundwater commingled with oil or gas, then the entire structure containing oil, gas, and groundwater is part of the pool. Thus, if a well is completed in such a pool with the intention of producing groundwater for drinking water or other uses, the well would potentially result in statutorily prohibited waste, *see* C.R.S. § 34-60-107, by dissipating reservoir energy or unreasonably diminishing the quantity of oil or gas that ultimately may be produced, *see* C.R.S. §§ 34-60-103(11)(a), (12)(a), 13(a)(II).

Groundwater is a produced fluid (more commonly referred to as "produced water") when it is brought to the surface during production of oil and gas from a well. Produced water is separated from oil and gas at the surface, but separation only removes free phase and emulsified hydrocarbons. Dissolved-phase hydrocarbons are still present in the produced water after upstream separation. The Commission's Rules encourage operators to recycle produced water for other oil and gas operations, including drilling and hydraulic fracturing. Waste that is not recycled or reused must be disposed as exploration and production waste pursuant to the Commission's 900 Series Rules.

In many formations that meet the statutory definition of a "Pool" throughout Colorado, groundwater has a total dissolved solids concentration of less than 10,000 milligrams per liter ("mg/L"), but also contains hydrocarbons. For this reason, groundwater in a pool is of limited use and quality. Production of groundwater from a pool would also result in production of oil, gas, or both, and therefore would be subject to the Commission's Rules governing oil and gas production wells, rather than the management of produced fluids.

Some stakeholders suggested that the Commission clarify the distinction between potentially usable groundwater and produced water. Although it is beyond the purview of this Statement of Basis and Purpose, and indeed the 200–600 Mission Change Rulemaking for the Commission to provide a comprehensive list of all such formations, the Commission has provided a few examples in this document as further clarification. These examples include the Williams Fork Formation, and more generally, the Mesaverde Group, which is the primary oil and gas producing section of the Piceance Basin. The overlying Wasatch G Sand is also produced in limited areas of the Piceance Basin.

For purposes of Rule 308.b.(6), when groundwater in any such pool has a total dissolved solids concentration of less than 10,000 mg/L, the distance between the oil and gas producing zone and groundwater with total dissolved solids concentration of less than 10,000 mg/L may be listed as "zero (0)" on the Form 2.

The Commission also recognizes that in certain areas, the Wasatch, Fort Union, Ohio Creek, Williams Fork, and Iles Formations are subject to aquifer exemptions for the injection or disposal of Class II waste through the Commission's implementation of the Underground Injection Control program, in part because those formations contain naturally-occurring hydrocarbons in addition to groundwater with limited quality and use. Operators may request that the Water Quality Control Commission ("WQCC") classify such pools with a

distance of zero to confining layers pursuant to its Regulation 42 to prevent the construction of water wells in those formations.

Rule 308.c

Unlike oil and gas development plans, the Commission determined that Form 2s should be subject to administrative review and approval by the Director, rather than review by the Commission. Because Form 2s involve purely downhole, subsurface considerations, the Commission determined that they should be solely reviewed by the Commission's Staff of expert geologists and engineers. Senate Bill 19-181 did not displace the Commission's role as the expert, and only, government body with authority over downhole engineering issues for oil and gas operations. To insulate the Commission's Staff of expert geologists and engineers from outside concerns, the Commission determined that administrative review of Form 2s based on solely technical and engineering considerations is appropriate. The exception to administrative review of a Form 2 is that, should the Director deny a Form 2, the Form 2 applicant may appeal that decision to the Commission. The Commission determined that this appeal right is necessary to ensure due process.

Some stakeholders also suggested that Form 2s be subject to a formal public comment process, akin to the process for public review and comment on an oil and gas development plan. For the reasons explained above, the Director determined that public comment on a Form 2 is unnecessary, and that decisions about Form 2s should be left to the Commission's expert Staff. However, consistent with prior practice, the Commission's Staff will add the proposed well locations for in-process Form 2s to the Commission's internal and external online mapping system while the Form 2 is being considered.

Consistent with the bifurcation between oil and gas development plans, which are focused on surface impacts, and Form 2s, which are focused on downhole impacts, the Commission removed some information relevant solely to surface impacts from the Form 2 information requirements in Rule 308.b.(1). However, consistent with Senate Bill 19-181's changes to the Commission's mission and statutory authority, C.R.S. § 34-60-106(2.5)(a), in Rule 308.c.(1).B, the Commission clarified that the Director must nevertheless ensure that any surface impacts associated with a well are mitigated with necessary and reasonable conditions of approval to protect public health, safety, welfare, the environment, and wildlife resources.

Consistent with Rule 306.d and its statutory obligation to establish a timely and efficient procedure for reviewing permit applications, C.R.S. § 34-60-106(11)(a)(I)(A), in Rule 308.c.(4), the Commission provided that operators may seek a hearing before the Commission if the Director does not complete review of a Form 2 application within 90 days of the operator submitting the Form 2. At such a hearing, the Commission's Staff will provide an update about the status of reviewing the Form 2 application and any reasons for the delay. Rule 308.c.(4) does not adopt a fixed deadline for the Director to complete review of all Form 2 applications, because the Commission recognizes Form 2s will vary in scope

and complexity, and that a one-size-fits-all solution is not appropriate for providing a review timeframe. However, the Commission determined that the approach adopted in Rule 308.c.(4) will provide sufficient incentives for its Staff to continue their diligent, timely, and efficient review of Form 2 applications.

Rule 309.

The Commission consolidated the consultation requirements of its prior Rules 305A, 305, and 306 into a single Rule 309. The Commission streamlined and revised the consultation procedures to provide a clearer and more straightforward process for all parties involved, while also ensuring that the Commission's consultation process complies with Senate Bill 19-181's changes to the Commission's mission and statutory authority.

Rule 309.a

Rule 309.a establishes the consultation obligation for all proposed oil and gas development plans. Unless otherwise specified in Rule 309, the consultation period will be 45 days. Notably, both CDPHE and CPW may extend the consultation period pursuant to Rules 309.e.(4).B & 309.f.(2).

However, the Commission also recognizes that historically, residents of disproportionately impacted communities have often faced unique challenges in engaging with government processes, including the oil and gas permitting process. For example, disproportionately impacted communities are defined to include linguistically isolated communities, and residents who monolingually speak a language other than English may face barriers to meaningfully engaging in permitting processes. To accommodate these differences and facilitate participation in the Commission's processes by residents of disproportionately impacted communities, in Rule 309.a, the Commission extended the default consultation period by an additional 15 days, for a total of 60 days, for proposed oil and gas locations within a disproportionately impacted community.

Rule 309.b

The Commission moved prior Rule 306.a to Rule 309.b. The Commission required that any surface owner waiver pursuant to Rule 309.a.(2) be in writing. Operators are not automatically required to submit such written surface owner waives to the Commission, but the Director may request copies of the waiver pursuant to Rule 206.a.

Rule 309.c

In Rule 309.c, the Commission added requirements for consultation with not only building unit owners, but also their tenants. The Commission determined that it is important for the people who actually reside, or operate businesses, near an oil and gas location to be consulted. Although building unit owners may in many instances adequately speak for and

represent the interests of their tenants, the Commission determined that it is critical for tenants to receive notice and be consulted as well. The Commission used the defined term "Formal Consultation Process" to reflect its intent that the building unit owner consultation be a two-way conversation, with an operator both presenting information and listening to the concerns voiced by community members, and meaningfully incorporating any feedback received from the building unit owner and tenant into its application or plans for operation.

To ensure that dialogue and consultation between an operator and building unit owners and tenants is truly a back-and-forth process, in Rule 309.c.(3), the Commission required operators to provide a written response to any concerns raised by building unit owners and tenants during the formal consultation process. This response-to-comment document will allow the Commission and its Staff to better understand concerns raised by nearby residents and whether the operator has made changes to meaningfully address those concerns. Because this information is critical to the Director's decision about whether to recommend approval or denial of a proposed oil and gas development plan, the operator must submit this response to comment document to the Director prior to the Director making her recommendation.

Like Rule 303.e.(2).I, Rule 309.c.(4) requires operators to provide all written and oral information during the 309.c consultation process in a language other than English if more than 5% of the population of a census block group where at least one proposed oil and gas location is located speaks a language other than English. The Commission determined that adopting Rule 309.c.(4) was necessary and reasonable to ensure that the critical information supplied during building unit owner and tenant consultation is fully comprehensible to the residents in close proximity to the proposed oil and gas development plan. The Commission recognizes that linguistic barriers have historically posed challenges for community members to engage in government processes, including the Commission's own permitting processes, and intends for Rule 309.c.(4) to be one tool to break down these historic barriers and to improve access to the Commission's permitting process for all Coloradans.

The Commission recognizes that nearby building unit owners and tenants may change between the time an oil and gas development plan is proposed and construction actually occurs. Accordingly, the Commission intends for the building unit owner and tenant consultation conducted pursuant to Rule 309.c to address plans for an operator to engage with a subsequent building unit owner or tenant if the current building unit owner or tenant has knowledge of a forthcoming intent to change residences.

Rule 309.e

The Commission did not adopt regulatory language for Rule 309.e in the 200–600 Mission Change Rulemaking, because it will address Rule 309.e in the 800/900/1200 Mission Change Rulemaking.

Rule 309.f

Rule 309.f governs consultation with CDPHE. The default timeframe for consultation with CDPHE is 45 days, like other consultation periods. However, recognizing that many of Senate Bill 19-181's changes to the Commission's mission and statutory authority, as well as the regulatory changes adopted by the Commission in the 200–600 and 800/900/1200 Mission Change Rulemakings implicate CDPHE's expertise, the Commission determined that it was appropriate to allow CDHPE to request to extend the timeframe for consultation by 60 days, for a total of 105 days (or 120 days within a disproportionately impacted community). The Commission intends for CDPHE to request an extension only where additional time is necessary to avoid, minimize, or mitigate adverse environmental impacts. Some stakeholders raised questions about the circumstances in which COGCC will reopen consultation with CDPHE pursuant to Rule 309.f.(2). The Commission anticipates that this will be a rarely used provision, and will only occur in the limited circumstances in which key information was missing from earlier permit application materials, or such significant changes occurred after consultation but before the Commission's final determination of approval or denial that necessitated further discussions with CDPHE.

Rule 309.g

Consistent with revisions to Rule 411, the Commission adopted a new Rule 309.g, governing consultation with PWSs. This Statement of Basis and Purposes discusses the purpose for that consultation in the discussion of Rule 411 below.

Rule 310.

The Commission moved prior Rule 303.k, governing the suspension of approved permits, to Rule 310 and modified it to include all forms of permits, including oil and gas development plans and their associated components.

Rule 311.

The Commission moved prior Rule 303.g, governing expiration of permits, to Rule 311.

Rule 311.a

In Rule 311.a, the Commission specified the timeframes when permits will expire. The Commission maintained the 3-year expiration period for Form 2As from prior Rule 303.g.(2), which the Commission made the expiration period for oil and gas development plans. The exception to the 3-year expiration period is oil and gas development plans that are subject to a CAP, which have an expiration period established pursuant to Rule 314.c. The Commission determined that extending the expiration period for oil and gas development plans that are subject to a CAP is an appropriate mechanism for incentivizing operators to complete CAPs, which are an important tool for analyzing cumulative impacts.

In Rule 311.a.(1)–(4), the Commission specified what criteria must be met for individual components of an oil and gas development plan to expire if some or all operations subject to the oil and gas development plan have not commenced within the 3-year expiration period. The Commission intends for the term "drilling operations" in Rule 311.a to refer to a drill bit being placed into the ground, not constructing a location. The purpose of Rule 311.a is not only to provide clarity about what operations must commence for a permit not to expire, but also to incentivize operators to only conduct surface disturbance and construct locations if the operator intends to drill a well at the location. This is important for the reclamation process under the Commission's 1000 Series Rules, and with Senate Bill 19-181's changes to the Commission's mission and statutory authority. *See* C.R.S. § 34-60-106(2.5)(a).
Some stakeholders suggested that the expiration period for other permits should not be tied to the expiration period for an oil and gas development plan. Because the Commission has adopted a revised permitting system in which the oil and gas development plan provides a broad umbrella that includes other categories of permits, the Commission did not adopt this suggestion. The Commission intends for oil and gas development plans to be the primary mechanism used for determining where operations should occur, and how to avoid, minimize, and mitigate the impacts of those operations.

Some stakeholders suggested that separate expiration periods were necessary for other categories of Commission permits, including Form 33s. The Commission determined that this was not necessary because Form 33s will generally be submitted in conjunction with a Form 2A, pursuant to Rule 803.b. Accordingly, the expiration period for the Form 2A in Rule 311.a adequately covers other types of Commission permits that must be submitted in conjunction with a Form 2A.

Rule 311.b

Consistent with prior Rules 303.g.(1) & (2), the Commission specified that extensions of oil and gas development plans, drilling and spacing units, Form 2s, and Form 2As will not be granted.

Rule 311.c

The Commission adopted a process for operators to Refile oil and gas development plans, drilling and spacing units, Form 2As, and Form 2s.

Consistent with this change, the Commission also adopted a new 100 Series definition of Refile. The definition of Refile applies to oil and gas development plans, and the following Commission permits: Form 2s, Form 2As, Form 15, and Form 20s.

The Refile process not only allows operators of a permitted facility or operation to re-submit an application either prior to or within 60 days of the permit expiring, but also provides the Commission with a mechanism of ensuring that the permit complies with all of the

Commission's current regulatory standards, and otherwise protects public health, safety, welfare, the environment, and wildlife resources.

Rule 311.d

In Rule 311.d, the Commission clarified that any location on which construction has occurred, but no wells are drilled prior to the expiration period, must be fully reclaimed pursuant to the Commission's 1000 Series Rules.

The Commission's intends for its Staff to process refiled permit applications within the 60 day window provided by Rule 311.c, in order to avoid an operator being required to commence reclamation operations while a refile permit is still being processed. Additionally, the Commission's 1000 Series Rules provide a three month window prior to the commencement of reclamation on cropland and six months on non-crop land, which further ensures that there will be sufficient time for the Commission's Staff to process refiled permit applications.

Rule 312.

In Rule 312, the Commission adopted a new Rule governing approval of subsequent operations at existing wells. The Commission's prior Rules had limited application to operations at existing wells after the well was initially drilled, which resulted in the Commission's Staff, local governments, and the public sometimes not having sufficient information about operations at existing wells. Rule 312 is intended to correct this deficiency by providing the Commission Staff with notice of subsequent well operations, and the opportunity to review, add any necessary conditions of approval, and approve or deny subsequent well operations.

The Commission intends for Rule 312 to be more than a notice requirement. The Commission's Staff has substantial experience and knowledge regarding regulatory compliance, safety, and best management practices for subsequent well operations, which the Commission intends for its Staff to share with operators in the course of reviewing and identifying conditions of approval for subsequent well operations.

Rule 312.a

Rule 312.a specifies that operators must provide notice to the Director through a Form 4 before conducting any type of subsequent well operation that involves heavy equipment, with the exception of routine well maintenance. The operator must obtain the Director's approval of the Form 4 prior to commencing the subsequent operations. The Commission intends for its Staff to issue additional guidance specifying those categories of non-maintenance subsequent well operations that involve heavy equipment, including a drilling rig, that require a Form 4 pursuant to Rule 312.a. Examples include, but are not limited to, certain categories of workovers, operations to subsequently commingle formations that

were not commingled during initial well completion, and completing waiting on completion wells 120 days or more after the initial release data. For each of these categories of subsequent operations, the Commission determined that it is necessary and reasonable for its Staff to be apprised of the operation to ensure that the operation adequately protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and also so that the Commission may, where appropriate, notify local governments, as well as appropriately respond to any complaints.

Rule 312.b

The Commission recognizes that there may be an immediate need for verbal approval of subsequent operations in circumstances where providing written notification and obtaining written approval may cause undue delays that could harm public health, safety, welfare, the environment, or wildlife resources. Upon receiving verbal notification from an operator, the Director will determine whether an emergency, risk of imminent harm, or other timing considerations (including rig schedules) warrant verbal approval, or if sufficient time exists for the operator to submit and obtain written approval through a Form 4.

Rule 312.c

Rule 312.c provides the informational requirements for a Form 4 notifying the Director of subsequent well operations. Because of the wide range of activities specified in Rule 312.a, the Commission did not provide detailed informational requirements in Rule 312.c, recognizing that a one-size-fits-all approach may not be appropriate. However, the Commission intends for the Form 4 to fully describe the details of the proposed operations.

Rule 312.d

Consistent with Senate Bill 19-181's changes to the Commission's mission and statutory authority, C.R.S. § 34-60-106(2.5)(a), in Rule 312.d the Commission provided the standards for the Director to apply when approving or denying a Form 4 notification of subsequent well operations.

Rule 312.e

Consistent with statutory surface owner notification requirements, C.R.S. § 34-60-106(14), and Rule 412, governing surface owner notification, in Rule 312.e the Commission required operators to provide surface owners with notice of the operations specified in Rule 312.a.

Rule 313.

The Commission moved the portions of prior Rule 333 that governed seismic operations permitting to Rule 313, and the portions of prior Rule 333 that provided substantive operational standards for seismic operations to Rule 436.

Consistent with Senate Bill 19-181's changes to the Commission's mission and statutory authority, *see* C.R.S. § 34-60-106(2.5), the Commission substantially revised the permitting requirements for seismic operations to provide better assurance that seismic operations will avoid and minimize adverse impacts to public health, safety, welfare, the environment and wildlife resources.

Rule 313.b

In Rule 313.b, the Commission updated and clarified the specifications for maps submitted with a Form 20, Permit to Conduct Seismic Operations.

Some stakeholders suggested that a reclamation plan is unnecessary when the majority of seismic operations are occurring on improved roads. However, in these cases, an abbreviated plan may be submitted, and the Commission's Staff would work with the operator to identify and mitigate any impacts associated with off-road geophone placement.

Rule 313.c

One of the main impacts of seismic operations is on traffic. The Commission recognizes that local governments have primary authority over traffic. Accordingly, the Commission will defer to local government traffic control plans submitted under Rule 313.c.

Rule 313.d

If a local government does not address traffic control for seismic operations, then Rule 313.d requires operators to obtain the Director's approval of a traffic control and load limits.

Rules 313.f, 313.g, & 313.h

Consistent with changes throughout the Commission's 300 Series Rules, the Commission adopted standards for changes to approved Form 20s, expiration of Form 20s, and refiles of Form 20s.

Rule 314.

In Rule 314, the Commission adopted Rules governing Comprehensive Area Plans ("CAPs"), a new, voluntary method for broader, landscape-level planning. Under prior Rule 216, operators could seek comprehensive drilling plans ("CDPs"). Because of the procedural complexities of the CDP process, and other factors, relatively few operators have applied for CDPs. Accordingly, the Commission decided to substantially revise the CDP process, both to create better incentives for operators to conduct broader, landscape-level planning, and to implement Senate Bill 19-181's requirement that the Commission "evaluate and address the potential cumulative impacts of oil and gas development." C.R.S. § 34-60-106(11)(c).

Rule 314.a

In Rule 314.a, the Commission articulated the purpose of CAPs. First, CAPs are intended to facilitate the evaluation of the cumulative impacts of oil and gas development over a broad geographic area, and to address those cumulative impacts by developing infrastructure and other planning tools throughout the area in a way that minimizes surface disturbance and other adverse impacts. Second, because CAPs are voluntary, they are intended to provide incentives for operators to conduct broad, landscape-scale planning by awarding exclusive operatorship rights over a large area to the operator (or operators) who propose a CAP.

As discussed above in the context of Rule 303.a.(8), the Commission intends to strongly encourage operators to submit CAPs wherever possible, because of the significant benefits that landscape level planning provides for consolidating infrastructure and minimizing cumulative impacts. The Commission will not require an operator to submit a CAP, nor did it empower the Director to do so. However, consistent with Rule 303.a.(8), which authorizes the Director to request a meeting with an operator to evaluate whether an oil and gas development plan that includes multiple locations should be re-submitted as a CAP, Rule 314.a.(3) gives the Commission similar authority to direct its Staff to meet with an operator about whether a CAP should be submitted. Rule 314.a.(3) does not authorize the Commission or Director to *require* an operator to submit any specific type of hearing application, but is intended to foster a productive dialogue between operators and the Commission's Staff about whether an application is more appropriately submitted as an oil and gas development plan or CAP on a case by case basis. The Commission intends for such meetings to address a number of salient factors, including but not limited to the number of proposed locations (with more locations weigh in in favor of a CAP), the geographic scope (with a broader geographic area weighing in favor a CAP), and whether the operator has submitted multiple adjacent oil and gas development plan applications (which would also weigh in favor of a CAP).

Consistent with Rule 309.e.(9), the Commission intends to only approve CAP applications from operators that own or have consent to develop a substantial percentage of minerals within the CAP. The Commission does not intend the CAP process to be used by minority mineral owners to secure the right to develop (and to exclude other operators from developing) minerals within the CAP's boundaries.

Rule 314.b

In Rule 314.b, the Commission described the rights conveyed under a CAP.

First, CAPs convey the exclusive right to develop the oil and gas formation or formations that are the subject of the CAP within the CAP's geographic boundaries, and the extended duration for permits within the CAP.

Second, oil and gas development plans, drilling and spacing units, Form 2As, and Form 2s within an approved CAP have default 6-year expiration periods, rather than the ordinary 3-year expiration period provided by Rule 311.a, unless the Commission adopts a different expiration period pursuant to Rule 314.c.

Third, because the CAP provides a tool for evaluating and addressing cumulative impacts, and operators must submit information about the cumulative impacts of a CAP pursuant to Rule 314.e.(10), operators need not submit Form 2Bs that otherwise would be required by Rule 303.a.(5) for proposed oil and gas development plans within a CAP.

Fourth, oil and gas development plans associated with a CAP will be subject to expedited review. Specifically, Rule 306.d provides that operators may seek a Commission hearing if the Director does not issue a recommendation to approve or deny an oil and gas development plan within 120 days of issuing a completeness determination. However, Rule 306.d provides less time—90 days—before an operator may seek a Commission hearing for a proposed oil and gas development plan associated with an already-approved CAP.

Fifth, CAPs may convey preliminary siting approval for future oil and gas location, if the operator submits additional information and conducts additional consultation. The Commission intends for preliminary siting approval to incentivize operators to submit CAP applications by reducing potentially duplicative filings with the Commission if an operator is able to identify appropriate oil and gas locations as part of the CAP application. However, preliminary siting approval pursuant to Rule 314 does not guarantee that the Commission or Director will ultimately approve or recommend approval of associated Form 2As within the CAP. The Commission and Director will review those future Form 2As on a case by case basis, taking into account potential changes in land use between the date the CAP was approved and the date the Form 2A was approved, as well as best management practices and conditions of approval that may be necessary and reasonable to protect public health, safety, welfare, the environment, and wildlife resources.

Not all CAPs will convey preliminary siting approval. An operator may file an application for a CAP without seeking preliminary siting approval, because the operator has not yet identified appropriate oil and gas locations within the proposed CAP. Additionally, even if an operator requests preliminary siting approval, the Commission may grant the CAP without conveying preliminary siting approval if the operator otherwise satisfies the requirements of Rule 314 but the Commission does not yet have sufficient information to determine that the preliminary locations proposed by the operator are appropriate.

Specifically, operators must submit the information required by Rule 314.e.(11), which includes alternative location analyses and other salient information about proposed oil and gas locations and local government land use plans. This information will provide a basis for the Commission to determine whether the proposed sites are appropriate, even without the fully detailed information that would be required at a later stage on a Form 2A. Accordingly, if an operator receives preliminary siting approval through a CAP, the operator need not

submit a duplicative alternative location analysis for a future Form 2A within the CAP. The Commission recognizes that CAPs may be long in duration, and that land uses may change during the duration of the CAP. Accordingly, when an operator submits a Form 2A for a location within a CAP that has preliminary siting approval, the operator must identify any land use changes that have occurred (including both planned and actual land uses) between the time when the CAP application was submitted and the subsequent Form 2A is submitted. However, even where an operator has received preliminary siting approval, Rules 304.b.(2)A.ii and 307.b.(3) provide the Commission or Director may require an alternative location analysis for a Form 2A when necessary to evaluate a proposed oil and gas location.

Sixth, the Commission clarified that approval of a CAP does not constitute approval of associated oil and gas development plans, drilling and spacing units, Form 2As, or Form 2s. Operators must seek approval for all such associated permits through the ordinary processes provided by the 300 Series Rules. However, as discussed above, in Rules 306.d and 308.c.(4), the Commission provided a shorter timeframe for applicants to request Commission hearings regarding any delays in the Commission's Staff review of permits associated with a CAP. Some stakeholders suggested adding an additional incentive to allow modifications to permits associated with a CAP to be made via a Form 4, rather than submitting a modified Form 2, Form 2A, or other form. The Commission did not adopt this change, because Rules 301.c, 304.a, and 404 already provide an efficient means for the Commission's Staff to identify which types of changes to approved permits require substantive Commission review. These Rules apply to all permits. The Commission intends for its Staff to include in their evaluation of proposed changes identified pursuant to Rule 301.c whether the proposed changes were considered as part of the Commission's approval of a CAP.

Rule 314.c

In Rule 314.c, the Commission specified the duration of a CAP, which is six years from the date of Commission approval, unless the Commission order approving the CAP specifies a different duration or the Commission extends the duration. The Commission determined that a six year duration was appropriate in most circumstances, although the Commission may determine that a different duration is appropriate on a case by case basis depending on the size of the CAP, infrastructure associated with the CAP, land use in an area, and other considerations.

As an added incentive for operators to apply for CAPs, in Rule 314.c.(1), the Commission clarified that it may approve a different—and potentially longer—duration for a CAP if the CAP application provides evidence, including a reasonable development schedule for completing the associated wells and building the associated infrastructure, that indicates a longer duration may be appropriate. Because one of the greatest benefits of a CAP is consolidating infrastructure, in Rule 314.c.(1).B, the Commission required an operator submitting a request for a CAP to last for a longer duration describe how infrastructure will

facilitate avoiding, mitigating, and minimize potential adverse impacts. The Commission specifically intends for the operator to specify how it will reduce emissions by developing gathering line infrastructure to prevent venting and flaring associated natural gas, pipeline infrastructure to convey produced water for reuse and recycling, and electrification infrastructure to minimize emissions. The Commission recognizes that each of these categories of infrastructure can significantly reduce emissions associated with oil and gas development, and intends for operators seeking a longer-duration CAP to plan to provide these types of beneficial infrastructure.

Recognizing the land use authority of local governments, Rule 314.c.(1).C requires an operator seeking a longer duration CAP to demonstrate that the proposed duration is consistent with the long-term land use plans of any relevant local governments. The Commission does not intend for a long-duration CAP to interfere with local government land use plans.

Finally, an operator seeking a longer-duration CAP should document any intended mitigation measures, including compensatory mitigation, to protect wildlife resources within the CAP. The Commission recognizes that long term disturbance in an area may be particularly harmful to wildlife and intends for operators to compensate for the disturbance to wildlife habitat accordingly.

Rule 314.c.(2) provides standards for extending an approved CAP. This allows the Commission to ensure that the operator is working diligently towards developing the minerals within the CAP. It also allows the Commission to ensure that the land uses within the CAP have not changed significantly since the CAP was approved, which might change the CAP's cumulative impacts. For example, if a new housing development is built within the CAP, then the Commission may require the operator to adopt additional protections against cumulative noise, light, or odor impacts, as appropriate.

Rule 314.d

Rule 314.d provides the procedure for an operator to electronically submit a CAP to the Director, and for the Director to review the CAP application to ensure that it is complete and includes all required information.

In Rule 314.d.(5), the Commission adopted an additional incentive for operators to file CAP applications—that operators may request, in their application, that the Commission put a hold on new oil and gas development plans and drilling and spacing unit applications while review of the CAP application is in process. The Commission intends to avoid a "race to permit" that might otherwise occur after an operator submits a CAP application, which could lead other operators to apply for permit applications to develop the same minerals while the CAP application review process is ongoing. However, the Commission does not intend for CAP applications to be used as a tool for operators to put indefinite holds on minerals that they do not intend to develop in an effort to prevent other operators from

developing the minerals. Accordingly, in Rule 314.d.(5), the Commission struck an appropriate balance between the competing goals of incentivizing operators to apply for CAPs and avoiding a "race to permit." Rule 314.d.(5) creates a mechanism that operators may appropriately use to ensure that minerals subject to a CAP application are not subject to separate permitting processes while the CAP application is being considered. But to achieve this objective, the operator must provide adequate evidence, and provide that evidence in a standalone hearing before the Commission that will occur while the rest of the CAP application is still being processed by the Commission's Staff. Because the hearing will be standalone, the operator's application for the CAP must include a separate hearing request seeking preliminary relief and an expedited hearing prior to the Commission's final decision on the CAP. Mineral owners within the CAP may protest the request for preliminary relief pursuant to Rule 507. Additionally, because mineral ownership is the central issue for such a preliminary hearing, the application for the preliminary hearing must include all mineral ownership information required by Rule 314.e.(9).

Rule 314.e

Rule 314.e provides the informational requirements for a CAP. Although many of these informational requirements are similar to the informational requirements for a Form 2A under Rules 304.b and 304.c, the Commission tailored the informational requirements for the CAP to uniquely match the broader scale of a CAP.

Specifically, many of the informational requirements for the CAP pertain to the CAP's cumulative impacts, and to the operator's plan to consolidate and appropriately develop infrastructure such as gathering lines and electricity access across a broader scale. The Commission's Staff will include instructions about how operators should evaluate and address cumulative impacts in CAP applications as part of the guidance the Commission's Staff prepares for cumulative impacts evaluations under Rule 303.a.(5). The Commission intends for the name, telephone number, and e-mail addresses provided for local government contacts in Rule 314.e.(1).B & C to be contact information for employees of the local government with whom the operator has been in contact, not general contact numbers or general email addresses.

Rule 314.e.(9)

In Rule 314.e.(9), the Commission required operators to demonstrate the location and percentage of minerals that the operator owns or has secured consent to develop within the CAP. Operators may make this demonstration either through a map or narrative description, and need not provide signed affidavits from unleased mineral owners or working interest owners within the CAP. Should the information an operator provides pursuant to Rule 314.e.(9) be in dispute, the disputing mineral or working interest owner may protest the CAP, or any subsequent drilling and spacing unit applications. Additionally, pursuant to Rules 303.a.(1) and 305.a.(2).L, operators must provide evidence of mineral ownership when submitting a drilling and spacing unit application.

The Commission did not set a quantitative threshold for mineral ownership in Rule 314.e.(9), which reflects the Commission's understanding that the appropriate amount of mineral ownership or working interest to secure a CAP may vary on a case by case basis. However, the Commission intends for a CAP applicant to own or have consent to develop a substantial percentage of the minerals within the CAP. Although it will vary on a case by case basis, the Commission anticipates that an appropriate ownership threshold would likely be within the range of 75% to 100%. The Commission does not intend to frequently approve CAP applications from operators with a minority interest, although there may be unusual circumstances that provide exceptions to this general rule, and that the Commission will consider those applications on a case by case basis.

The Commission will consider mineral ownership percentage and correlative rights as among the factors that are relevant to the decision about whether to approve or deny a CAP.

Rule 314.e.(10)

As discussed above, CAPs are one of the primary tools intended to implement Senate Bill 19-181's mandate that the Commission adopt regulations to evaluate and address cumulative impacts. C.R.S. § 34-60-106(11)(c)(II). Many of the requirements of Rule 314.e.(10) are intended to encourage collaborative opportunities for consolidating infrastructure and maximizing operational efficiency and other tools to address potential adverse cumulative impacts of oil and gas development within the CAP. Rule 314.e.(10) provides additional information about potential adverse and beneficial cumulative impacts from oil and gas development within the CAP. It is also intended to facilitate discussion between the Commission and operators about appropriate methods to mitigate adverse cumulative impacts through tools such as offsetting potential incremental adverse impacts by plugging and abandoning existing wells.

Additionally, Rule 314.b.(3) exempts oil and gas development plans that are subject to an approved CAP from the requirement to submit a Form 2B pursuant to Rule 303.a.(5). Accordingly, the Commission determined that it was necessary and reasonable to require analogous data to be submitted with a CAP application, in order to ensure that CIDER includes a more complete dataset. Thus, many of the specific informational requirements of Rule 314.e.(10) are similar to analogous provisions of Rule 303.a.(5).

Other informational requirements of Rule 314.e.(10) are different than the informational requirements of Rule 303.a.(5) because the cumulative impacts of a CAP occur at a broader, landscape-level scale, while the cumulative impacts of an oil and gas development plan are more likely to occur at a narrow, more localized scale. For example, for water resources, the Commission required operators to analyze cumulative erosion and sedimentation impacts, and to estimate total water usage from various and sources in Rules 314.e.(10).C.iv–v, because the cumulative impacts to those water resources may be more significant across the broader scale of the CAP. And in Rule 314.e.(10).F.i, the Commission required operators to analyze cumulative traffic impacts, which could be more significant over the broader scale

of the CAP. However, based on the comprehensive planning afforded through the CAP, the Commission intends to encourage operators to use traffic planning to reduce overall traffic impacts within the CAP boundaries.

Unlike Rules 303.a.(5).C & D, Rule 314.e.(10) does not require operators to provide data about existing oil and gas facilities or other existing industrial facilities. Instead, Rule 314.e.(3).L requires the operator to submit a map showing existing, permitted, and proposed oil and gas locations within the proposed CAP's boundaries. This information about existing infrastructure will be critical to the Commission fully evaluating the cumulative impacts of the CAP, which include past, present, and reasonably foreseeable future oil and gas development within the CAP's boundaries.

Rule 314.e.(11)

Rule 314.e.(11) establishes the informational requirements that an operator must satisfy to request preliminary siting approval as a component of a CAP application. The information in Rule 314.e.(11) is tailored to provide the basic information the Commission and its Staff would need to evaluate proposed siting of oil and gas locations within a proposed CAP. Most important in this analysis is an alternative location analysis for each location within the CAP. Alternative location analyses are the Commission's preferred tool to identify appropriate locations. Additionally, in Rule 314.e.(11).B, the Commission required operators to submit a tailored subset of the information that is required for a Form 2A, which provides the basic information about a proposed location, but not the more detailed information more relevant to conditions of approval and best management practices, that are also required by Rule 304.b. Additionally, as discussed above, the operator must submit information demonstrating either consent from relevant local governments within the CAP or consistency with the relevant local governments' long-term land use plans. As noted above, this reflects the Commission's recognition of local governments' land use authority, and that CAPs are not intended to override that authority.

If an operator intends to seek preliminary siting approval pursuant to a CAP, the Commission intends for the operator to consult with Staff about whether the informational requirements of Rules 304.b and 304.c are substantially satisfied, which will inform the Commission's decisions about whether components of Rules 304.b and 304.c are satisfied for future Form 2A applications.

Finally, because preliminary siting approval may impact the ability of nearby residents to participate in future permitting processes for locations subject to that preliminary approval, in Rule 314.e.(11).E. the Commission required operators to seek preliminary siting approval to provide notice of the CAP application to building unit owners and tenants within 2,000 feet of each proposed oil and gas location. The Commission determined that this is critical because pursuant to Rule 604.b.(2), the preliminary siting approval conferred by the CAP is one grounds for granting an exception to the ordinary 2,000 foot setback established by Rule 604.b. Accordingly, an operator must provide notice to every resident, including both

building unit owners and tenants, who live in close proximity to proposed oil and gas locations within a CAP, so that those residents may fully engage in the Commission's procedures for reviewing and approving or denying the CAP.

Rule 314.f

Rule 314.f provides the public review process for a CAP, which is similar to the public review process for oil and gas development plans. The public review process for a CAP includes providing notice to relevant parties, public comment, holding at least one public meeting, and consulting with local governments, CPW, CDPHE, and the relevant federal agency or agencies for any CAPs that include federally-owned or managed mineral or surface estate.

Consistent with Rule 303.e.(2).I, Rule 314.f.(3).B requires that all written and oral information an operator is required to be provided by Rule 314.f must be provided in languages other than English if more than 5% of the population of a census block group where at least one proposed oil and gas location is located speaks a language other than English. The Commission determined that this is necessary and reasonable to ensure that the critical information supplied by Rule 314.f.(3).B is fully comprehensible to members of a community that may be impacted by the CAP.

The Commission intends to allow the public meetings required by Rule 314.f.(3) to be held entirely virtually when necessary for public health reasons. However, the Commission intends that all public meetings required by Rule 314.f.(3) should always have the option for virtual or telephonic participation, in addition to in-person participation.

Rule 314.f.(4) establishes consultation requirements for CAP applications, which include consultation with local governments, CPW, CDPHE, and the federal government. As noted above, because preliminary siting approval has implications for long-term land use, if an operator seeks preliminary siting approval the operator must consult with all relevant local governments within the boundary of the CAP about whether the proposed oil and gas locations are consistent with each local government's land use plans.

Rule 314.g

Rule 314.g provides the standards for the Director's recommendation about whether to approve or deny the CAP. Consistent with Rules 306.d and 308.c.(4), operators may seek a hearing before the Commission if the Director does not issue a recommendation on a CAP within 180 days of issuing a completeness determination.

Some stakeholders suggested that Rule 314.g.(2).B does not provide adequate notice or opportunity for operators to correct any deficiencies that may lead the Director to recommend that the Commission deny a proposed CAP. The Commission does not agree with this suggestion because the Director's recommendation will only be issued at the conclusion of a process in which the Commission's Staff will engage in an ongoing and

iterative dialogue with the operator throughout the process of reviewing the CAP application. Consistent with prior practice, there will be numerous opportunities for the Commission's Staff to work with an operator to correct deficiencies during the application review process. The Director will only be in the position of recommending denial if the Commission's Staff is unable to resolve significant issues with an operator throughout this iterative process. Even after the Director recommends denial, there will be time and opportunity during the pre-hearing process for the operator to correct any deficiencies in the proposed CAP that may have led the Director to recommend denial.

Rule 314.h

Rule 314.h provides the standards for the Commission's final review and approval or denial of the CAP.

400 Series – Operations and Reporting

The Commission consolidated operational and reporting standards that were previously found in the Commission's 300, 600, 800, and 900 Series Rules into a single Rule Series governing operational and reporting requirements. The Commission determined that consolidating all operational requirements into a single rule series would improve clarity for operators, local governments, and other stakeholders about what standards apply to oil and gas operations.

The Commission moved the prior 400 Series Rules, which governed enhanced recovery projects and injection wells, to the 800 Series, and consolidated them with other Rules related to underground injection control wells that were in the prior 300 Series.

Rule 401.

The Commission moved prior Rule 318 to Rule 401, maintaining the default statewide subsurface mineral setbacks to protect correlative rights.

Throughout Rule 401, the Commission clarified confusing language. For example, in Rules 401.a and 401.b, the Commission changed references to "wells" to instead reference "well completions" to clarify that the well location rules apply to the subsurface location where the well is completed, not the surface location of the well. The Commission removed references to "producible" wells and used clearer terms such as "existing wells" and "well completions" to provide clearer direction to operators. In Rule 401.d, the Commission clarified that Rule 401 does not apply to either secondary or tertiary recovery projects, and that Rule 401.d.(2) refers to a limited subset of wells completed in fractured shale reservoirs in fields that were discovered prior to 1964, when the Rule was initially adopted.

In Rule 401.c, the Commission revised the language used to describe well completion exception locations to provide a clearer set of criteria, and to specify procedures for operators to submit exception requests. The Commission intends that when submitting a well completion exception location request, all operators demonstrate both that correlative rights will be protected, and that the mineral owner or lessor of the encroached-upon minerals consents to the exception location, which may take the form of a waiver from a lease owner, all lease owners within a unit, or mineral interest owners, depending on the ownership and lease status of the encroached-upon minerals. The Commission included both the protection of correlative rights and obtaining a waiver as separate criteria in Rule 401.c because the Director may not approve a proposed exception location that is not protective of correlative rights, even if the operator has obtained a waiver from the encroached upon mineral owner. Demonstrations that proposed exception locations will protect correlative rights must be supported by sufficient detail for the Director to evaluate the evidence. Consistent with prior practice, if an operator is unable to obtain a waiver, the operator may seek the Commission's approval of a variance or amendment of the order pursuant to Rules 502 or 504.b.

Some stakeholders suggested adding language to Rule 401 for specific spacing orders to provide an exception to Rule 401 standards. The Commission did not make changes to the language of Rule 401 based on this suggestion, because the mechanism of spacing orders issued by the Commission already provides operators with relief from the statewide mineral setback standards in Rule 401. The Commission intends for all existing spacing orders, including Order 1-299 for the Piceance Basin, to remain in effect.

Rule 402.

The Commission moved prior Rule 318A to Rule 402 and substantially revised the Rule. Prior Rule 318A provided a unique set of well location, spacing, procedural, and groundwater sampling rules for the Greater Wattenberg Area ("GWA"). The Commission determined that unique rules for the GWA were both no longer beneficial, and that several aspects of prior Rule 318A were inconsistent with the Commission's new mission.

First, the Commission determined that the unique well location and spacing and rules for the GWA are no longer beneficial to operators or the surrounding communities. The GWA surface location "windows" provided predictability for the surface locations of vertical and non-horizontal directional wells on agricultural lands. Because most wells in the GWA are now drilled horizontally, and many are in areas with more urban surface land uses, this aspect of the GWA rules is no longer beneficial. Accordingly, the Commission determined that the standard well location and drilling and spacing unit process in Rules 401 and 305, respectively, provides an adequate—and better—mechanism for well location and spacing in the GWA area. In addition, this allows operators to propose and the Commission authority to adjust subsurface setbacks based on the anticipated drainage by the proposed well or wells. As discussed above, the Commission adopted a new definition of "Drilling and Spacing Unit" in its 100 Series Rules that includes "Wellbore Spacing Units." The Commission recognizes that there are circumstances in which an overlapping spacing unit for a single well may be appropriate to prevent waste, protect correlative rights, and facilitate efficient development of minerals not only in the GWA area, but also statewide. Under the Commission's revised approach, operators may file applications for wellbore spacing units through the ordinary drilling and spacing unit process, where appropriate based on geologic and engineering evidence and consistent with statutory requirements for the prevention of waste and protection of correlative rights.

The elimination of the wellbore spacing unit concept from prior Rule 318A does not strand minerals, because the Commission's statutory obligation to protect correlative rights and prevent stranding of minerals applies statewide when the Commission establishes drilling and spacing units. Minerals that would previously have been subject to a wellbore spacing unit under prior Rule 318A will not be stranded because an operator can still propose a wellbore spacing unit, or propose reduced setbacks within a standard drilling and spacing unit, based on scientific evidence, to capture all minerals. For decades, the Commission's standard drilling and spacing unit process has functioned to allow efficient recovery of

minerals, protect correlative rights, and prevent stranding of minerals throughout the rest of the state, and it will continue to do so within the former GWA.

Second, the procedural Rules in prior Rule 318A were complex, and were sufficiently confusing to operators, mineral owners, and local governments that they engendered substantial controversy and litigation, which in turn required a substantial allocation of Staff, attorney, and Commission resources to resolve. The Commission determined that it is a better allocation of limited Staff, attorney, and Commission resources to apply a default statewide spacing and unitization system, rather than having unique and complex procedural rules for spacing and unitization in the GWA.

Third, prior Rule 318A.f substantially overlapped with, but varied in several ways, from groundwater testing standards that applied statewide under prior Rule 609, and to coalbed methane wells in prior Rule 608. The Commission consolidated the three different groundwater testing standards into a single groundwater testing protocol in new Rule 615 in order to ensure statewide uniformity and reduce confusion for operators, local government, and the public about which groundwater testing procedures apply in which circumstance.

Finally, the Commission determined that many of the procedural rules in prior Rule 318A were not fully consistent with the agency's revised mission to protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources and other statutory changes. In Senate Bill 19-181, the General Assembly revised C.R.S. § 34-60-116(3) by adding language to clarify that the Commission's orders establishing drilling units are subject to C.R.S. § 34-60-106(2.5). *See* C.R.S. § 34-60-116(3)(a). In turn, C.R.S. § 34-60-106(2.5)(a) provides 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." Thus, the Commission must consider protecting and minimizing adverse impacts to public health, safety, welfare, the environment, and wildlife resources when making decisions about drilling units. However, prior Rule 318A limited both the entities that could participate in wellbore spacing and unitization decisions, and also the grounds for objecting to those decisions. For example, prior Rule 318A.e.(5).A provided for notice to be sent only to mineral owners within a proposed wellbore spacing unit, but not to the relevant local government or surface owner. Yet in many cases, the relevant local government or surface owner may have been best positioned to provide feedback to the operator and the Commission about potential surface impacts associated with the wellbore spacing unit. Similarly, prior Rule 318A.e.(5).B limited the grounds for objecting to a proposed wellbore spacing unit to defects in the notice provided pursuant to prior Rule 318A.e.(5).A, that the operator proposing the wellbore spacing unit was not in fact the owner of the relevant minerals, or that the proposed wellbore spacing unit would cause waste or impair correlative rights. Although these are all important topics for the Commission to address, none of them necessarily

provide grounds for objections related to protecting and minimizing adverse impacts to public health, safety, welfare, the environment, or wildlife resources.

The Commission intends that wellbore spacing units approved under prior Rule 318A will remain in effect until they expire. Accordingly, in Rules 402.c., 402.d, and 402.e, the Commission explained the duration that such previously approved wellbore spacing units and associated approved Form 2, Applications for Permits to Drill, and Form 2A, Oil and Gas Location Assessment Applications will remain in effect.

Rule 403.

The Commission moved prior Rule 318B to Rule 403. Unlike prior Rule 317A, prior Rule 318B provided a procedurally simpler process that is more consistent with Senate Bill 19-181's changes to the Commission's statutory authority and mission. The Commission only made one substantive change to the Rule, which was eliminating prior Rule 318B.g, which exempted proposed oil and gas locations subject to prior Rule 318B from the surface owner notification provisions of prior Rule 305.e (now Rule 412). The Commission determined that this exemption was not fully consistent with the statutory requirements for surface owner notice in C.R.S. § 34-60-106(14), and reasonable accommodation of surface owners in C.R.S. § 34-60-127(1).

Rule 404.

The Commission moved prior Rule 307 to Rule 404.a, and removed unnecessary language.

Sundry notices are an important tool for operators to use to notify the Commission of changes, but further involvement by the Commission or Staff may be necessary when an operator proposes a change that may have substantive impacts on public health, safety, welfare, the environment, or wildlife resources. To ensure that the Commission or its Staff are appropriately notified and have an opportunity to review the extent of a proposed change, the Commission adopted several new regulations to clarify the relationship between Form 4, Sundry Notices and 300 Series Rules intended to address changes to approved oil and gas locations and oil and gas development plans, as well as plans intended to address nuisance impacts pursuant to Rules 423–427.

First, in Rule 404.b, the Commission clarified that operators must comply with Rule 301.c, which governs changes to approved oil and gas development plans, for any Form 4 that is submitted to propose a change to an approved oil and gas development plan. Rule 301.c instructs operators to file a Form 4 to notify Staff of any proposed changes to an approved oil and gas development plan, and creates a process for Staff to review the proposed changes and determine whether they are significant and require Commission approval or consultation with CDPHE or CPW, or instead are ministerial in nature and may be approved by Staff.

Second, in Rule 404.c, the Commission clarified that operators must comply with Rule 304.a, which governs changes to approved Form 2As, for any Form 4 that is submitted to propose a change to an approved Form 2A. Like Rule 301.c, Rule 304.a.(3), instructs operators to submit a Form 2A for any "significant change" to the design or operation of an oil and gas location.

Finally, in Rule 404.d, the Commission clarified that if an operator proposes a change to a previously approved noise, light, odor, or dust plan, Staff may only approve the proposed change if it is equally or more protective of public welfare. The Commission recognizes that at the time operators submit noise, light, odor, and dust plans with their Form 2A applications, the operator may not know the final details of site configuration, rig design, and other factors that could change prior to site construction and drilling. Accordingly, the Commission intends for operators to be able to submit proposed changes to such plans through the Form 2A process. Although the Commission does not intend for Rule 404.d to be a disincentive to operators proposing innovation protections as a component of their Form 2A applications, Commission does not intend for changes to the plans to involve any backsliding towards less protective standards. In all cases, a proposed change most provide at least the same amount of avoidance, minimization, or mitigation of adverse impacts from noise, light, odor, or dust as the plan that was initially approved as part of the Form 2A application.

Some stakeholders requested public comment opportunities on Form 4s. However, due to the high volume of Form 4s filed with the Commission on a daily basis, the Commission determined that allowing public comment on a Form 4 would be overly burdensome on the Commission's Staff. Additionally, because the Commission has crafted its Rules to ensure that Form 4s are filed only for administrative functions and non-substantive changes to previously-approved operations, the Commission determined that allowing public comments on a Form 4 would be unnecessary and provide limited benefit. For substantive changes, other Commission Rules, such as Rules 301.c and 304.a, require more detailed procedures, many of which implicate public comment.

Rule 405.

The Commission moved prior Rule 316C to Rule 405. The Commission changed the order of some of the types of Form 42, Field Operations Notice listed in the Rule for the purpose of better tracking the sequence of operations that occur at a typical well. The Commission did not substantively change the requirements for the types of Form 42 listed in the Rule unless discussed below.

The purpose of the Form 42 is to provide notice to the Director shortly before an activity occurs so that the Commission's Staff may determine whether oversight by field inspection personnel or other steps are necessary. The Commission therefore specified that no Form 42s may be submitted more than 2 weeks prior to the scheduled activity, unless another Commission Rule, such as Rule 1105.d.(1), requires a longer timeframe.

Additionally, the Commission specified that Form 42s that provide the Commission with prior notice of a forthcoming activity (as opposed to subsequent notice of an activity that has already occurred) must describe the estimated duration of the proposed activity. The Commission recognizes that understanding the duration of an activity that may result in increased activity at an oil and gas location could be particularly important for a local government wishing to notify its residents or respond to their inquiries. The Commission only intends for the durational requirement to apply to Form 42s providing notice of activities that last longer than one day. Because the duration of an activity may be uncertain at the time the Form 42 is submitted, the Commission intends to allow operators to provide a range, rather than an exact, duration (for example, 48 to 72 hours).

The Commission intends for its Staff to continue their current practice of automatically providing Form 42 notifications to other state agencies that are specifically interested in certain activities. To facilitate this ongoing practice, the Commission adopted regulatory language identifying certain categories of Form 42s that must be provided to certain agencies. However, the state agencies expressly listed in Rule 405 are not intended to be exclusive, and the Commission's Staff may automatically provide Form 42 notices to other state agencies at the request of those agencies, even if Rule 405 does not explicitly require Staff to do so. The Commission also recognizes the importance of providing information to the general public about activities occurring in the area where a person lives, works, or recreates. The Commission therefore instructs its Staff to work to expand transparency and to explore options for automatic notification about activities at an oil and gas location to persons who opt-in to receive such notice.

The Commission removed former Rule 316C.i, Notice of Site Ready for Reclamation Inspection, because the Commission now requires operators to submit Form 4s providing the same information, pursuant to Rules 1003.e.(3) and 1004.c.(4). Additionally, the Commission removed former Rule 316C.n, Notice of Inspection Corrective Actions Performed, because it was duplicative with the Field Inspection Report Resolution, which accommodates the submission of additional and more complete information.

Consistent with the changes to Rule 405, the Commission eliminated its prior 100 Series definition of the term Day. The Commission intends for the word Day to continue to refer to calendar Days, unless otherwise specified. However, in limited circumstances in which the Commission intends to refer to business Days, the Commission's Rules, such as Rule 405, will refer specifically to business Days.

Rule 405.a

The Commission added Rule 405.a, Notice of Intent to Conduct Seismic Operations, requiring operators to notify the Commission 2 business days prior to commencing seismic operations. The Commission will in turn provide prompt electronic notice to the relevant local government. Under prior Rule 333, operators were required to submit a Form 20, Notice of Intent to Conduct Seismic Operations explaining the operator's plans to conduct

seismic operations in general terms. However, approved Form 20s were in effect for a 6 month period, and there was no requirement for an operator to provide notice to the Commission immediately prior to commencing seismic operations. Consistent with the Commission's changes to its seismic operation regulations in Rules 313 and 436, the Commission determined that it was necessary for operators to notify the Commission's Staff immediately prior to conducting seismic operations so that Staff can determine whether an inspector should be on site or if other steps should be taken.

Some stakeholders requested that the Commission provide notice to a broader range of affected persons through the Form 42, Notice of Intent to Conduct Seismic Operations. The Commission did not adopt this request, because notice to affected persons, such as surface owners, is addressed by the separate notice provisions of Rule 436.a.

Rule 405.b

In Rule 405.b, consistent with other changes throughout Rule 405, the Commission changed the notice period for Form 42, Notices of Construction or Major Change from 72 hours to 2 business days. The Commission determined that additional time is necessary, particularly when the Form 42 is submitted shortly before the beginning of a weekend, for the Commission's Staff to evaluate the Form 42, Notice of Construction or Major Change to determine whether an inspector should be on site or if other steps should be taken prior to the commencement of construction of the major change. Additionally, the Commission added a requirement that the Commission will electronically transmit the Form 42, Notice of Construction or Major Change to relevant and proximate local governments, so that the relevant local government can similarly determine whether having an inspector on-site may be warranted. Finally, because of potential wildlife impacts from completion of Form 2 and 2A permit conditions within high priority habitat, the Commission intends for notices of permit condition completion to be sent automatically to CPW for locations within high priority habitat.

The Commission considers a major change to be a change to an approved oil and gas location that would require submission of a revised Form 2A pursuant to Rule 304.a.(2) or (3). In other words, a major change is also a significant change. In the event that an operator determines that such a change to a surface location is necessary, the Commission determined that it is necessary for its Staff to be informed of the change.

Rule 405.e

The Commission added Rule 405.e, Form 42, Notice of Move-in, Rig-Up to provide the Commission's Staff notice prior to an operator moving in and rigging up a drilling or workover rig. The Commission, in turn will provide notice to the relevant local government. Previously, the Commission required this form of notice through conditions of approval applied to most Form 2s approved in the Denver-Julesburg Basin. The Commission codified this form of notice and extended it statewide because it is necessary for Commission's Staff

to be aware of when an operator plans to bring a drilling rig or a workover rig on site to determine whether an inspector should be on site or if other steps should be taken. Consistent with prior practice, the Commission intends for this category of Form 42 to continue being automatically provided to the Division of Water Resources.

The Commission determined that Rule 405.e is necessary for numerous reasons. First, in areas subject to timing stipulations to protect wildlife, the Commission's Staff need to be informed about the presence of workover rigs to ensure compliance with wildlife protections. Second, understanding when rigs will be moved in allows the Commission's Staff to conduct routine inspections while downhole work is ongoing. Third, in more urban areas, the Commission's Staff frequently receive questions from members of the public when rigs appear at a location, so it is important for the Commission's Staff to be aware of when rigs are scheduled to move on site in order to respond to questions and complaints from the public.

Recognizing that operators sometimes must make relatively last-minute decisions for certain categories of activities that require rigs, the Commission structured Rule 405.e to provide three different notice timeframes. First, for operations involving a drilling rig, in Rule 405.e.(1) the Commission determined that it was reasonable to require 2 business days advance notice, because operators should be aware of drilling rig schedules at least 2 days in advance. Second, in Rule 405.e.(2), for planned operations involving a work-over rig, the Commission also determined that it was reasonable to require 2 business days advanced notice, because operators should be aware of workover rig schedules at least 2 days prior to planned activities. Finally, in Rule 405.e.(3), for unplanned operations involving a work-over rig, the Commission determined that it was reasonable to require notice within 1 day of rig deployment. The Commission determined that subsequent notice would be reasonable in the rare circumstance where an operator did not plan operations involving a work-over rig but was forced to bring one on-site to address an imminent threat to public health, safety, welfare, the environment, or wildlife resources. However, even in the event of an unplanned workover rig deployment, the Commission prefers operators to provide notice as soon as possible, even though operators have up to 1 business day to provide subsequent notice.

Rule 405.f

Consistent with changes to other Form 42s, the Commission changed the submission timeframe for a Form 42, Notice of Spud from 48 hours to 2 business days.

Rule 405.i

Several stakeholders raised questions about Rule 405.i, governing Form 42, Notice of Significant Lost Circulation. The Commission did not substantively revise Rule 405.i, which was prior Rule 316C.k. The Commission intends for its Staff to continue to implement Rule 405.i as it has in the past, and to consider whether additional guidance on the topic would be beneficial for operators.

Rule 405.k

Rule 405.k governs Form 42, Notice of Intent to Conduct Hydraulic Fracturing Operations. The Commission codified its current practice of automatically providing such notices to the APCD and the Division of Water Resources, due to potential impacts to air and water.

Rules 405.l & 405.m

The Commission revised Rules 405.l, Form 42, Notice of Plugging Operations and 405.m, Form 42, Notice of High Bradenhead Pressure During Stimulation, in the Wellbore Integrity Rulemaking, but did not revise either Rule in the 200–600 Mission Change Rulemaking aside from renumbering them consistent with other subparts of Rule 405.

Rule 405.o

The Commission added Rule 405.o, Form 42, Notice of Remedial Cementing Operations to provide the Commission's Staff 48 hours notice prior to an operator conducting remedial cementing operations. In the Wellbore Integrity Rulemaking, the Commission clarified and expanded requirements for remedial cementing operations. Consistent with these changes, the Commission determined that it was necessary for its Staff to have adequate notice prior to those operations being conducted to determine whether an inspector should be on site or if other steps should be taken.

Rule 405.q

The Commission added Rule 405.q, Form 42, Notice of H_2S at an Oil and Gas Location to notify the Commission's Staff within 48 hours of an operator receiving a laboratory gas stream analysis showing the presence of hydrogen sulfide. Consistent with changes made to the Commission's safety standards for hydrogen sulfide in Rule 612, the Commission determined it was necessary for its Staff to be notified when operators learn about hydrogen sulfide content in their gas stream in order to verify that operators comply with all requirements of Rule 612. Because some wildlife species are highly sensitive to hydrogen sulfide, the Commission intends for this notice to be automatically provided to CPW.

Rule 405.s

The Commission added Rule 405.s, Form 42, Notice of Well Liquids Unloading to provide the Commission's Staff with notice of an operator conducting liquids unloading. The Commission used the term "well liquids unloading" to refer to maintenance operations or other operations where there is intentional release of natural gas from the wellbore to the atmosphere in order to facilitate the unloading of liquids from the wellbore. This is sometimes referred to as "manual" unloading. This is the same context in which the AQCC regulations use the same term. The Commission does not intend for the term "well liquids unloading" to refer to the normal production cycle of a well, which may include intermittent

cycling or unloading of wellbore fluids, such as through the use of a plunger lift pump. The Commission's intent is to reduce venting associated with manual practices intended for well maintenance. These manual practices include swabbing. All well liquids unloading events, including swabbing, must be reported.

The Form 42, Notice of Well Liquids Unloading must be submitted at least 48 hours prior to conducting the well liquids unloading operation, unless providing notice 48 hours in advance would require the operator to conduct an alternative method of unloading (such as swabbing or other methods that might require a rig), or otherwise extend the unloading period in a manner that increases emissions. In such a circumstance, the operator must provide notice as soon as possible. The Commission intends for notice to be provided as soon as the operator is able to provide notice. Use of term "as soon as possible" is not intended to indicate that notice should be given immediately prior to unloading in most circumstances. The Commission intends that an operator would provide less than 2 hours notice only in rare and exceptional circumstances.

Like other Form 42 notices, receipt of the Form 42 will allow the Commission's Staff to determine whether it is appropriate to deploy field inspectors to observe the well liquids unloading event. It will also provide the Commission's Staff with better information about how frequent well liquids unloading events occur. The Commission intends for the Form 42 notice of well liquids unloading to be sent to the relevant local government, consistent with Rule 405.s. The Commission also intends for the notice of well liquids unloading to be shared with the APCD.

Rule 405.t

In Rule 405.t, the Commission codified the requirement in Rules 615.e.(4).C & D to submit a Form 42 – Water Sample Reporting to report the results of baseline groundwater sampling. Prior Rules 609.e and 609.f required submission of the same information, and Rules 615.e.(4).C & D carry forward this requirement and clarify the form that should be used to report the information.

Rule 406.

The Commission adopted a new Rule 406 governing oil and gas location construction.

Rule 406.a

Previously, the Commission addressed location construction through conditions of approval attached to Form 2As and Form 4s, but did not have a Rule providing specific requirements for location construction. As specified in Rule 406.a, although operators still must comply with all conditions of approval attached to Form 2As and any terms and conditions approved on a Form 4, the Commission adopted clear regulatory requirements to provide greater

transparency to operators, local governments, and the public about how location construction will be regulated.

Rule 406.b

Consistent with changes to Rule 405.b, in Rule 406.b, the Commission clarified that operators must submit a Form 42, Notice of Construction no less than 2 business days prior to commencing construction. As with other Form 42 notices, the Form 42, Notice of Construction should include an estimated duration for the proposed construction activity. Recognizing that construction may take some time, and that the exact timing may not be known at the time the Form 42 is submitted, the duration may be expressed as a range (for example, 21 to 25 days). Because both local governments and CPW may have interests impacted by the construction, the Commission intends for Form 42, Notices of Construction to be sent to relevant and proximate local governments and CPW.

Rule 406.c

In Rule 406.c, the Commission required operators to post an approved Form 2A in a prominent location on the oil and gas location. The Commission determined that posting the Form 2A and any related approved sundries on site is important for alerting the operators' employees, contractors, and subcontractors about any applicable requirements for site construction.

Rule 406.d

The Commission moved prior Rule 305.g, governing location signage, to Rule 406.d.

Rule 406.e

In Rule 406.e, the Commission codified and modified a prior policy, Notice to Operators: Procedures for Preset Conductors (2016). The Commission codified requirements for conductor placement and construction in order to provide clearer notice to operators, local governments, and the public about the safety, plugging, and reclamation standards that apply to conductors.

The Commission determined that it will no longer allow operators to preset conductors, because of the potential adverse impacts caused by preset conductors, which outweigh the sometimes minimal benefits preset conductors provide. Previously, some operators would preset conductors for wells that the operator never actually drilled, creating challenges for reclamation of sites that never actually produced oil or gas. Accordingly, in Rule 406.e.(4), the Commission required that if an operator does not drill a well within 3 months of setting a conductor in cropland, or 6 months within setting a conductor in rangeland, then the operator must plug the conductor and perform reclamation that meets the standards set by Rules 406.e.(4).A–F. The Commission determined that the 3 and 6 month periods for

cropland and rangeland, respectively, are sufficient to address the issue of conductors being preset for wells that an operator never drills. Reducing the timeframe would not resolve the problem that Rule 406.e is intended to address. Some stakeholders raised concerns with the 3 and 6 month time periods required by Rules 1003.b and 406.e.(4).A.–F in specific contexts. As with all of the Commission's Rules, if unique circumstances in an individual case require a variance from the Commission's Rules, and the variance is equally or more protective of public health, safety, welfare, the environment, and wildlife resources, an operator may seek a variance pursuant to Rule 502.

In Rule 406.e.(4).E, the Commission also required operators to provide photo documentation to demonstrate that conductors have been plugged.

Additionally, in Rule 406.e.(1), the Commission extended its guidance policy of securing conductors to also include securing cellars, which is necessary to protect people, livestock, and wildlife from accidental access. The Commission's inspectors have previously located living and deceased wildlife trapped in cellars on numerous occasions, and therefore the Commission determined that constructing, covering, and fencing conductors and cellars to exclude wildlife is a necessary step.

Rule 407.

In Rule 407, the Commission added a new Form 45, Location Construction Report. The Location Construction Report will provide details about the final location buildout to facilitate inspections, location closures, and reclamation. Location Construction Reports will describe the final, built-out location using GIS polygon data and as-built layout drawings that will aid the Commission Staff in understanding facility layout during field inspections and when reviewing other information about the facility. Additionally, the Location Construction Report will include a proposed schedule of anticipated operational phases, which, while subject to change, will provide greater transparency to local governments and the public and will assist the Commission's Staff in understanding requests for changes at the facility, any complaints received about the facility, and any other matters relevant to the facility, such as spills and releases and site investigations and remediation projects. Finally, consistent with changes to Rule 406.e, the Location Construction Report will include a description of all conductors on the site. The Commission intends for Rule 407 to be prospective, not retroactive, and thus will only apply to new oil and gas locations. However, a Form 45 will also be required to report significant modifications to an existing oil and gas location that require the submission of a revised Form 2A pursuant to Rules 304.a.(2) or (3).

Rule 408.

The Commission moved prior Rule 317 to Rule 408, renumbered each subsection, corrected typographical errors, and updated cross-references. The Commission revised Rule 408 in

the Wellbore Integrity Rulemaking, and made only four substantive changes in the 200–600 Mission Change Rulemaking.

First, the Commission moved prior Rule 317.a, governing blowout prevention equipment, to Rule 603.a.

Second, the Commission moved prior Rule 604.c.(2).B.i, which previously applied only in designated setback locations, to Rule 408.a, thereby requiring the use of closed loop drilling systems statewide. The Director also created an exception for when operators may use drilling pits instead of closed loop drilling systems in situations that pose minimal risks of groundwater and surface water contamination: when operators use only water-based bentonitic drilling fluids, the wellbore does not penetrate salt-bearing formations, pits are lined, the location is more than 2,000 feet from a building unit, and the pit is not in contact with shallow groundwater.

Third, the Commission removed references in Rule 408.e to prior Rule 317A, which set specific groundwater protection standards for the D-J Basin Fox Hills Protection Area. Based on the statewide groundwater protections the Commission adopted in the Wellbore Integrity Rulemaking, the Commission determined that prior Rule 317A, establishing unique protections for the Fox Hills aquifer, is no longer necessary. However, because the Commission did not put parties on notice that it planned to revise prior Rule 317A in the Wellbore Integrity Rulemaking, the Commission decided to remove prior Rule 317A in the 200–600 Mission Change Rulemaking instead, when it would have the opportunity to provide parties with appropriate notice of the change.

Finally, the Commission moved prior Rule 317.p, governing flaring notices, to Rule 903.a.

Rule 409.

The Commission moved prior Rule 315 to Rule 409. The Commission revised the wording of Rule 409 to match Senate Bill 19-181's changes to the Commission's mission and statutory authority. *See* C.R.S. §§ 34-60-102(1)(a)(I), 34-60-106(2.5)(a). Additionally, the Commission clarified that reservoir pressure tests should be reported on a Form 13, Bottom Hole Pressure, not a Form 4.

Rule 410.

The Commission moved prior Rule 321 to Rule 410, and renumbered each subsection and updated cross-references, but did not make substantive changes to the Rule. The Commission revised Rule 410 in the Wellbore Integrity Rulemaking.

Rule 411.

The Commission moved prior Rule 317B to Rule 411. The Commission made substantive changes to the Rule, including expanding its scope to cover public water system ("PWS") groundwater intakes from groundwater under the direct influence of surface water supply wells ("GUDI Wells") and PWS supply wells completed in Type III aquifers ("Type III Wells"). In addition to these substantive changes, the Commission also reorganized Rule 411 to improve clarity by organizing the Rule by categories of PWS (surface water supply areas and GUDI or Type III Wells) rather than by categories of requirements.

Like prior Rule 317B, Rule 411 is intended to provide additional protection to PWS if an incident on an oil and gas location could directly and rapidly impact the ability of the PWS to provide a safe drinking water source to its customers. At its core, the purpose of Rule 411 is to provide both information and substantive protections that are necessary to protect PWS from potential threats caused by surface spills and releases. Rule 411 is not intended to be the exclusive Commission Rule to protect all water resources from all potential sources of contamination. Many of the Commission's other Rules, including the Commission's 900 Series Rules and the Commission's recent Wellbore Integrity Rulemaking, are primarily intended to protect water from contamination.

When prior Rule 317B was adopted and implemented for surface water supply areas ("SWSA"), the Commission intended to conduct additional stakeholder outreach and evaluate similar protections for GUDI wells. *See* 2008 SBP at 33 (expressing "the Commission's intent that public water systems that utilize groundwater under the influence of surface water, seeps, and springs enjoy the protections under Rule 317B," and requesting that the Commission's Staff provide recommendations for appropriate means to protect such PWSs). Rule 411 adopts similar and appropriate protections for PWS which rely on GUDI wells due to potential impacts to their water supply if surface water in close proximity to the GUDI well is impacted by a spill or release. The Commission applied the same standards to protect Type III wells which are completed into Type III aquifers, which also may be relatively shallow and have a hydrologic nexus with surface waters.

The Commission revised Rule 411 through close consultation with CDPHE's Water Quality Control Division ("WQCD").

Rule 411.a

411.a.(1)

The Commission moved the definition of Surface Water Supply Area ("SWSA") from its 100 Series Rules to Rule 411.a.(1). Consistent with its broader structural changes to Rule 411, the Commission revised the definition of SWSA to better match the functional tools used to identify SWSAs: the buffer zones listed in Rule 411.a.(1).B, and five stream miles upstream from the PWS intake.

The Commission also revised its 100 Series definition of Classified Water Supply Segment to comply with the Administrative Procedure Act's incorporation by reference requirements, C.R.S. § 24-4-103(12.5), and to incorporate the most recent version of WQCC Regulation 31. Additionally, the prior definition of Classified Water Supply Segment included only perennial and intermittent streams. This reflects that WQCC Regulation 31 applies a distinct definition of ephemeral streams and drainages. *See* 5 C.C.R. § 1002-31:31.5(19). However, whether a stream is ephemeral, intermittent, or perennial does not bear on whether the stream is classified as a drinking water supply segment under WQCC regulations. *See* 5 C.C.R. § 1002-32–38. As a result, the maps of surface water supply areas that the WQCD supplied to the Commission in 2008, which have been the basis for implementing Rule 317B since that time, included some ephemeral streams. Thus, the Commission previously applied Rule 317B to all Classified Water Supply Segments, which included some ephemeral streams.

The Commission intends to continue applying the definition of a Classified Water Supply Segment in the same manner, by excluding ephemeral streams from the definition, but nevertheless providing substantive protections to ephemeral streams that the WQCC classifies as a surface water supply area. The Commission intends for the WQCD to supply updated maps of surface water supply areas to its Staff by the effective date of the 200–600 Mission Change Rulemaking. Additionally, as discussed below, Rules 411.a.(1).C and 411.a.(3) allow the Commission, WQCD staff, and PWS to determine whether additional protections are warranted for ephemeral streams on a case by case basis.

The Commission similarly revised the 100 Series definition of Public Water System ("PWS") to remove an unnecessary reference to Appendix VI, to comply with the Administrative Procedure Act's incorporation by reference requirements, and incorporate by reference the most recent version of the WQCC's Primary Drinking Water Regulations. The Commission also clarified that the use of the term "Public Water System" may refer either to the system itself (the pipes, conveyances, etc.), as well as the entity that administers the system (an administrator, board, or the staff of such a system).

Some stakeholders suggested adding the word "active" to the definition of an SWSA. The Commission did not adopt this suggestion because the WQCC defines a surface water supply well to include both active and inactive wells. PWS wells frequently cycle between periods of activity and inactivity, and it is possible that a public water intake system may be inactive at the time an operator applies for a permit, but active at the time the location at issue is developed.

The Commission consolidated prior Rule 317B's standards for identifying the locations of SWSAs into Rule 411.a.(1).A. SWSA buffer zones are measured from the ordinary high water mark of classified water supply segments to the nearest edge of the working pad surface. If it is unclear where the ordinary high water mark of the classified water supply segment is located, operators may be required to conduct field surveys to field-verify locations on the WQCD's maps of classified water supply segments.

Consistent with Table 1 in prior Rule 317B, Rule 411.a.(1).B identifies three categories of buffer zones around SWSAs: the internal, intermediate, and external buffer zones. The Commission expanded the internal buffer or prohibition zone from 300 feet to 1,000 feet from the ordinary high water mark. The Commission determined that expanding the internal and intermediate buffer zone was necessary and reasonable to implement Senate Bill 19-181's changes to the Commission's mission and statutory authority, C.R.S. § 34-60-106(2.5)(a), which prioritize the protection of public health and the environment. Spills and releases in close proximity to PWS intakes may pose significant risks to public health because contaminants could enter public water supplies prior to implementing even the most rapid spill response measures that would control the spill. A core purpose of Rule 411 is to provide notification to PWS of spills and releases in close proximity to PWS intakes, which allows the PWS to respond appropriately, and close off their intake if necessary. Expanding the internal buffer zone to 1,000 feet is necessary to accomplish these purposes, and thus better protect public health, because the Commission determined that contaminants released during larger volume spills or releases are highly unlikely to rapidly migrate 1000 feet. The Commission accordingly adopted the 1000 foot internal buffer to provide a reasonably protective margin of error to protect public health from potential spills and releases in close proximity to PWS intakes. Moreover, this change is consistent with stipulations identified in the Resource Management Plans for some Colorado BLM Field Offices, which have adopted and proposed no surface occupancy stipulations of 1000 feet or more for both surface and groundwater PWS intakes.[3]

While the default rule is that ephemeral streams will not be part of the definition of a SWSA unless specifically classified as being part of the area by the WQCC, the Commission recognizes that ephemeral streams may require protection on a case by case basis. Accordingly, in Rule 411.a.(1).C, the Commission provided that it may modify a buffer zone

[3] *See* BLM, Kremmling Field Office Approved Resource Management Plan at 11 (2015), https://eplanning.blm.gov/public_projects/lup/68543/89344/106850/KFO-ARMP-ROD-FINAL_Approved-20150618_508Compliant.pdf (prohibiting surface occupancy within 1,000 feet of a classified surface water supply stream, as measured from the average high-water mark of a water body within 5 miles upstream of a public water supply intake); BLM, Tres Rios Field Office Approved Resource Management Plan at H-8 (2015), https://eplanning.blm.gov/public_projects/lup/65211/78939/91216/Appendix_H_Oil_and_Gas_Leasing_Stipulations.pdf (same). Some BLM Field Offices have adopted even larger buffers around PWS intakes, including groundwater public supply wells. *See* BLM, White River Field Office, Record of Decision and Approved Resource Management Plan Amendment for Oil and Gas Development at Appendix 1-4 (2015), https://eplanning.blm.gov/public_projects/lup/65266/79043/91308/2015_Oil_and_Gas_Development_RMPA_ROD.pdf (prohibiting surface occupancy within 0.5 miles of certain groundwater public supply wells); *see also* BLM, Draft Eastern Colorado Resource Management Plan at 2–16 (2019), https://eplanning.blm.gov/public_projects/lup/39877/175066/214825/Volume-1_DRAFT_Eastern_Colorado_RMP.pdf (considering alternatives prohibiting surface occupancy within 0.5 miles of public groundwater supply wells).

to include an ephemeral stream as a component of reviewing an oil and gas development plan application, or in response to a hearing application. If an applicant wishes to request that the Commission consider protections for an ephemeral stream outside the context of an oil and gas development plan application, it may submit a hearing application under Rule 503.g.(10). The Commission determined that creating a separate category of hearing application for such a request was not necessary. The Commission would make such a modification if the proponent of the change—the Director, the PWS, or CDPHE—meet the burden of showing that doing so is warranted due to risks posed to the PWS intake from spills or releases. In making this determination, the Commission intends to consider all relevant factors, including best management practices employed by the operator to avoid, minimize, and mitigate potential spills and releases which could mean that modifications to the buffer zone are unnecessary.

411.a.(2)

One purpose of prior Rule 317B was to disincentivize locating oil and gas operations within SWSAs. Prior Rule 317B has effectively reduced new permitted locations within SWSAs. As a result of fewer new oil and gas locations being located within SWSAs, there have been fewer spills within SWSAs over time. The Commission determined that it is important to continue and broaden implementation of this successful policy.

Rule 411.a.(2), governing protections for SWSAs, implements this policy. Consistent with prior Rule 317B, Rule 411.a.(2).A prohibits surface occupancy in the internal buffer zone for an SWSA. Existing oil and gas facilities within the internal buffer zone must obtain the Director's approval by submitting a Form 2A or Form 4, as appropriate, to notify the Director of proposed surface disturbing activities, subsequent well operations, and significant changes to the facilities. This will allow the Commission's Staff to review the proposed operations and add conditions of approval that are necessary and reasonable to protect the SWSA. Consistent with the definition of "non-exempt linear feature" in prior Rule 317B.a.(5), if an operator proposes to construct infrastructure that is necessary for ongoing oil and gas operations in the internal buffer zone, such as access roads and pipelines, the Director's review of the operator's proposal will include evaluating whether the infrastructure and encroachment into the buffer zones is necessary for new or ongoing oil and gas operations.

In Rule 411.a.(2).A.iii, the Commission maintained the high bar for obtaining variances for operations within the internal buffer zone from prior Rule 317B.c.(1). Operators may only obtain such variances if the protections they propose are substantially equivalent to not siting the location within the buffer zone. In addition to consultation with CDPHE about such proposed variances, the Commission also adopted a new requirement that the operator consult the implicated PWS(s) about the proposed variance prior to the Commission hearing on the variance. The Commission intends to consider whether a PWS has waived a standard as one factor in whether to grant a variance to Rule 411 buffer zones. If the PWS waives a requirement of Rule 411, the Commission intends for the operator to present evidence of

that waiver as a component of the operator's variance hearing application. Such a waiver would create a presumption that a variance could be granted, but the operator would nevertheless have to demonstrate that best management practices and operating procedures would result in substantially equivalent protections of drinking water in order to obtain the variance.

The Commission moved the protections applicable to operations in the intermediate buffer zone of an SWSA from prior Rule 317B.d to Rule 411.a.(2).B and defined the intermediate buffer zone from 1,000 feet to 1,500 feet from the ordinary high water mark. The Commission also adopted some new standards for operations in the intermediate buffer zone of an SWSA, including performance of daily inspections and maintaining adequate spill response equipment at the oil and gas location during drilling and completion operations. The spill response equipment required by Rule 411.a.(2).B.iv may vary depending on the zone and the size of the classified water supply segment, and could include, but is not limited to, materials and equipment to control and contain a spill both before and after it intersects with surface water.

The Commission moved the protections applicable to operations in the intermediate buffer zone of an SWSA from prior Rule 317B.e to Rule 411.a.(2).C. The Commission revised the list of analytes to be consistent with statewide baseline sampling requirements in Rule 615 and Table 915-1, but otherwise made few substantive changes.

Prior Rule 317B.e.(2) included a caveat that sampling is required only when sufficient water exists in a classified water supply segment. The Commission determined that addressing this common sense principle in its regulatory text was unnecessary. The Commission of course recognizes that sampling may not always be possible in intermittent streams because of their intermittent nature. In the event sampling is required at a time when insufficient water exists in a classified water supply segment, the operator may notify the Commission's Staff, and the Commission's Staff will identify an appropriate timeframe for the operator to obtain a sample when there is water in the classified water supply segment.

Rule 411.a.(3)

The Commission adopted a new requirement for operators to consult with the PWSs for proximate SWSAs as part of the Form 2A review process. The Commission determined that direct consultation between operators and PWS administrators will facilitate a productive dialogue about potential best management practices for the operator to employ. The Commission also intends for the consultation process to establish the foundation for an ongoing working relationship between the PWS administrator and the operator. The primary purpose of Rule 411 is to protect PWS from potential contamination in the event of an emergency spill or release incident. Establishing a working relationship between operators and PWSs is crucial for facilitating rapid communication and response to an emergency spill or release that might impact the PWS.

Consistent with the changes to the definition of classified water supply segment and Rule 411.a.(1).C, the Commission provided that a component of the consultation should involve whether any ephemeral streams should be protected. Ephemeral streams would warrant protection if they are upstream of and in direct hydraulic communication with a SWSA, such that any spill or release impacting the ephemeral stream could readily impact a PWS intake. The Commission determined that it was appropriate for the consultation between an operator and the PWS to address the appropriate protections (such as a setback or other mitigation measure) for ephemeral streams, because operators and PWSs will be uniquely positioned to understand the specific risks posed to PWS intakes and effective measures to mitigate those risks on a case by case basis.

Rule 411.a.(4)

The Commission moved the spill and release notification and emergency response standards for SWSAs from prior Rule 317B.b to Rule 411.a.(4). The Commission also revised the Rule to improve clarity and effectiveness. For example, the Commission clarified that emergency response plans maintained pursuant to Rule 602.j should be the same as the emergency response plans maintained under Rule 411, rather than operators being required to maintain two separate emergency response plans.

Prior Rule 317B used confusing wording that did not achieve the desired outcome of notifying PWS administrations of operations or spills 15 miles upstream of their intake, because it required downstream notification only if an oil and gas location was sited in an SWSA buffer, and SWSAs were defined as being 5 miles upstream from an intake. Accordingly, the Commission corrected this discrepancy, and in Rule 411.a.(4) required operators within one-half mile of surface water to evaluate 15 stream miles downstream for PWS intakes and provide appropriate notice. As stated in Rule 411.a.(4).A, the Commission intends for Rule 411.a.(4).A to apply to both new and existing oil and gas locations.

Some stakeholders requested that the Commission supply detailed maps of stream segments 15 miles upstream of PWS intakes. The Commission determined that it is unnecessary to include this information in its mapping system, because the Commission intends for operators to take an active role in identifying and communicating with PWS administrators that could potentially be impacted by their operations, and determined that operators identifying potentially impacted PWS intakes will facilitate this constructive interaction.

Rule 411.b

In Rule 411.b, the Commission adopted new standards to protect GUDI and Type III wells. As discussed above, GUDI wells supply PWSs from groundwater wells that are completed in formations with a close hydrologic connection to surface water. As discussed above, Type III wells supply PWSs from groundwater wells are completed into unconsolidated or alluvial geologic materials, and therefore are likely to be relatively shallow formations and

particularly susceptible to spills and releases whether on the surface or from subsurface oil and gas facilities. Many GUDI wells are completed in Type III aquifers, and therefore there is some overlap between the two categories. However, because of their unique characteristics, the WQCC regulates GUDI wells distinctly, and the Commission maintained this distinction in its own Rules. Because of the potential for impacts at the surface to immediately affect both GUDI and Type III wells, the Commission determined that it is appropriate to afford GUDI and Type III wells similar, though distinct, protections as those that Rule 411.a provides for surface water intakes.

Rule 411.b.(1)

In Rule 411.b.(1), the Commission adopted a definition of a GUDI Well, which includes criteria for derived from the WQCC's definition.

The Commission defined Type III Wells in Rules 411.b.(1).(C) & (D). The Division of Water Resources (also known as the State Engineer's Office) administers the State Board of Examiners of Water Well Construction and Pump Installation Contractors regulations governing Type III aquifers. The Commission accordingly incorporated the Board's definition of a Type III Aquifer by reference in Rule 411.b.(1).C.

Rule 411.b.(2)

In Rule 411.b.(2), the Commission defined internal, intermediate, and external buffers zones at certain distances from GUDI wells and Type III wells. Because the location of PWS intakes is confidential, the Commission cannot supply public maps with the exact location of GUDI and Type III wells. However, the WQCD maintains the database of GUDI wells. Operators may request necessary information from the WQCD, potentially subject to a non-disclosure agreement, as appropriate. Additionally, on August 18, 2020, prior to the commencement of the 200–600 Mission Change Rulemaking hearing, the Commission's Staff released a public GIS layer showing the generalized location of each GUDI well. The Commission's Staff released a similar public GIS layer showing the generalized location of each Type III well the next day. The Commission obtained the data for the GIS map layer showing the generalized location of Type III wells from an analysis conducted by the Division of Water Resources of all PWS intakes provided by the WQCD. The Commission determined that this information will be sufficient for operators to identify whether a proposed oil and gas location might fall within a Rule 411.b.(2) buffer zone for a GUDI or Type III well, and thus conduct additional outreach to the Commission, the WQCD, the State Engineer's Office, or the PWS administrator to obtain more detailed information about the proximity of the proposed oil and gas location to any GUDI or Type III wells and whether the operator's planned siting encroaches on any buffer zones.

Rule 411.b.(3)

In 411.b.(3), the Commission adopted substantive protections for GUDI and Type III wells that closely match the substantive protections for SWSAs. However, the Commission did not adopt standards for existing oil and gas locations that are within a GUDI or Type III well buffer zone, because the Commission's prior Rule 317B did not apply to GUDI or Type III wells. The Commission only intends Rule 411.b.(3) to apply to new oil and gas locations for which a Form 2A is approved after January 15, 2021.

Additionally, the Commission did not require operators to conduct baseline water sampling within the external buffer zone of a GUDI or Type III well. Rule 615 already provides adequate baseline groundwater sampling for all oil and gas operations, and the Commission therefore determined that requiring additional sampling in Rule 411.b is unnecessary. Moreover, the Commission determined that baseline water sampling is unnecessary because the GUDI and Type III well operator is already responsible for maintaining the water quality of their PWS.

Rules 411.b.(4) & 411.b.(6)

In Rule 411.b.(4), the Commission adopted standards requiring operators to consult with PWS administrators about proposed oil and gas locations within the external buffer zone of a GUDI or Type III well for the same reasons discussed above for SWSAs.

Because GUDI and Type III wells may also be impacted by spills and releases into groundwater, in Rule 411.b.(4).B, the Commission adopted an additional requirement that the consultation between operators and GUDI or Type III well administrators address whether groundwater monitoring may be necessary. The Commission specified some criteria for when groundwater monitoring should be required, but intends for operators and PWS administrators to work together to identify appropriate circumstances when groundwater monitoring may be necessary. For Type III wells, groundwater monitoring may be an even more critical component of ensuring protection of the PWS, because potential impacts to groundwater from subsurface spills or releases may migrate over longer distances over longer periods of time if otherwise undetected. In Rule 411.b.(6), the Commission adopted standards for operators to report groundwater monitoring data if monitoring wells are required by Rule 411.b.(4).B.

Pursuant to Rule 411.b.(4).C, one topic the Commission intends for operators and PWS administrators to consult about is whether any protections are necessary for recharge facilities. The Commission uses the term "recharge facilities" to refer to engineered structures that enable recharge to a PWS. Recharge facilities are an important component of PWS infrastructure, and the Commission recognizes that it may be important to adopt measures to avoid, minimize, or mitigate potential impacts to those facilities on a case by case basis. If a PWS administrator believes that protections are necessary because of the proximity to a recharge facility, then the consultation process between the operator and the

PWS administrator should address appropriate protections, which may include setbacks or other mitigation measures.

Rule 411.b.(5)

In Rule 411.b.(5), the Commission adopted standards for spill and release notification and emergency response for GUDI and Type III wells. These standards mirror the standards for SWSAs, except that operators must notify GUDI and Type III well PWS administrators about additional categories of spills pursuant to Rule 912.b.(1), because GUDI and Type III wells may also be impacted by spills and releases into or with potential to reach groundwater.

Rule 412.

The Commission moved prior Rules 305.f and 305.h to Rule 412. Unlike the notice provisions in the 300 Series, which generally pertain to notice to surface owners and other entities of an operator applying for a permit, the surface owner notification provisions in Rule 412 are operational. Rule 412 serves to remind operators of their statutory obligation to notify surface owners in writing at least 30 days prior to commencing operations with heavy equipment pursuant to C.R.S. § 34-60-106(14).

Rule 412.a

The Commission did not make substantive changes to prior Rule 305.f, which became Rule 412.a, except for removing the prior Rule 305.f.(3).F requirement to provide surface owners with a copy of the COGCC Onsite Inspection Policy. The Commission will instead revise the COGCC Informational Brochure for Surface Owners to include this information.

The Commission revised Rule 412.a.(4) to cross-reference Rule 312, governing subsequent operations, although this does not represent a substantive change to the Rule.

Additionally, the Commission revised Rule 412.a.(5) to clarify that it applies to all potential disruptions of crop irrigation, regardless of time of year, and applies to disturbance of any agricultural activities, rather than solely crop irrigation.

Some stakeholders raised questions about how local governments may receive notice pursuant to Rule 412.a. The purpose of Rule 412.a is to implement the statutory requirement for operators to provide notice to surface owners, not local governments. However, local governments may adopt their own regulations to ensure they receive notice of operations at oil and gas locations. Additionally, through the Commission's new opt-in notice system for local governments, local governments may choose to receive Form 42 submissions pursuant to Rule 405, which generally provide equivalent notice for processes covered by Rule 412.a. Finally, the Commission required operators to provide the notice of subsequent operations pursuant to Rule 412.a.(4) to both the surface owner and the relevant

local government, recognizing the importance of local governments being aware of activities that involve rigs or heavy equipment.

Rule 412.b

The Commission revised prior Rule 305.h, which became Rule 412.b, in several ways.

First, the Commission included surface owners and tenants in the list of parties that must receive Move-In, Rig-Up ("MIRU") notices.

Second, the Commission changed the area in which operators must provide a MIRU notice from the 1,000 foot buffer zone defined by prior Rule 604.a.(2) to 2,000 feet of the working pad surface. Using the working pad surface as a reference point provides a clearer procedure for measuring distances. Additionally, the purpose of Rule 412.b is to provide public notice before a rig moves on site. Providing notice to a wider radius is more consistent with the purpose of the Rule, because it better communicates to nearby surface owners and residents what is happening on the site. Some stakeholders suggested increasing the 2,000 foot distance, while others suggested decreasing the distance. The Commission chose to adopt the 2,000 foot distance for several reasons. First, the purpose of the MIRU notice is to inform surface owners who can see a nearby rig, and rigs are readily visible from 2,000 feet away. Second, several of the Commission's Rules pertaining to noise, light, and odor in Rules 423, 424, and 426 use 2,000 foot radii because noise, light, and odor impacts are most likely to be experienced within a 2,000 foot radius. Accordingly, the Commission determined that it is appropriate to provide notice to surface owners and tenants who may be impacted by noise, light, and odor within that radius. Finally, the Commission determined that it is important to maintain consistency with the radii used for notifications throughout its Rules, and the 2,000 foot radius is the most appropriate radius to use for notifications in most cases.

Third, in Rule 412.b.(5).H, the Commission added a requirement that the MIRU notice include the anticipated duration that a rig will be on-site, as well as whether multiple drilling operations are planned. The Commission considers it to be crucial for nearby residents to be fully informed of as many details of anticipated drilling operations as possible. A drilling rig may have impacts such as noise, traffic, and visual disruptions that are important for nearby residents to be aware of. Rule 412 therefore works in concert with the advance consultation with nearby residents provided by Rule 309.c, which provides similar information during the oil and gas development plan consultation stage, by ensuring that nearby residents also receive notice shortly before drilling activity actually occurs. Accordingly, the Commission determined that providing a specific duration that a rig will be on site will allow nearby residents to plan for the drilling operation appropriately, and being informed about whether multiple drilling operations are occurring will similarly allow nearby residents an opportunity for advance planning. As with other notices with durational requirements, such as those in Rules 405 and 406.b, the Commission recognizes that an operator may not know the exact amount of time that a rig will be on site at the

time the MIRU is sent, and accordingly the duration may be expressed as a range (for example, 3 to 4 days).

Finally, the Commission clarified that operators may provide notice to physical addresses of parcels within 2,000 feet of the working pad surface, even if the surface owner does not necessarily reside at that physical address.

Rule 413.

The Commission moved prior Rule 309 to Rule 413. Throughout Rule 413, the Commission capitalized the term "Fluids" to specifically reference the new 100 Series Definition of the term adopted in the 800/900/1200 Mission Change Rulemaking.

Rule 413.a

In Rule 413.a, the Commission clarified that operators must report fluids produced during the flowback phase of a well on their Form 7, Monthly Report of Operations. Rule 413.a applies to any flowback operations commenced after the effective date of the 200–600 Mission Change Rulemaking, regardless of the date that the well was permitted. Through guidance, the Commission has previously required operators to include all fluids during flowback on Form 7 reports for several years. Rule 413.a codifies this guidance, and provides additional clarification about the scope of what must be reported on a Form 7 for operators, because of poor compliance with the guidance. In a related change, the Commission will revise the 100 Series definition of Flowback in the 800/900/1200 Mission Change Rulemaking to provide additional clarification for operators.

Rule 413.b

In Rule 413.b, the Commission clarified language about which kinds of produced fluids injected into a Class II underground injection control well must be reported on a Form 7.

Rule 413.c

In Rule 413.c, the Commission clarified that any non-produced fluids injected into a Class II underground injection control well that are not reported on a Form 7 pursuant to Rule 413.b must be reported on a Form 14, Monthly Report of Non-Produced Water Injected pursuant to Rule 808.b.

Rule 414.

The Commission moved prior Rule 308A to Rule 414, and renumbered each subsection and updated cross-references, but did not make substantive changes to the Rule. The Commission revised Rule 414 in the Wellbore Integrity Rulemaking.

Rule 415.

The Commission moved prior Rule 322 to Rule 415.

Consistent with Rule 312, which requires Operators to obtain the Director's approval prior to conducting non-maintenance subsequent well operations that involve heavy equipment, the Commission revised Rule 415 to reflect that Commission approval may be required prior to an operator conducting commingling at an existing well.

Rule 416.

The Commission moved prior Rule 308B to Rule 416 and renumbered its subsections. The Commission also revised Rule 416 in the Wellbore Integrity Rulemaking.

Rule 416.a

Because of ongoing confusion among operators about when to submit a Form 5A, Completed Interval Report, the Commission revised Rule 416.a to provide additional clarity by using defined terms and more specifically enumerating when a Form 5A must be submitted. The Commission intends for operators to submit a Form 5A any time the operator completes one of several enumerated operations that involve an objective formation, which includes, but is not limited to, "Stimulation," as that term is defined in the Commission's 100 Series Rules.

Rule 416.b

The Commission revised Rule 416.b to more clearly use the term "Stimulation," which was defined in the Commission's 100 Series Rules in the Wellbore Integrity Rulemaking.

Rule 417.

The Commission moved prior Rule 326 to Rule 417. The Commission changed references to underground sources of drinking water to instead reference other formations, consistent with changes made to isolating formations in the Wellbore Integrity Rulemaking.

Rule 417.a

In Rule 417.a.(5), the Commission added a requirement that the Commission's Staff be present to witness injection well mechanical integrity tests. Consistent with past Commission policy and because of the importance of mechanical integrity tests at injection wells, the Commission determined it was necessary for Staff to be on-site to witness the test.

Rules 417.b & c

The Commission did not make substantive changes to Rules 417.b and 417.c, which were revised during the 2019 Flowline Rulemaking and the Wellbore Integrity Rulemaking.

Rule 417.d

In Rule 417.d, the Commission revised the requirements for mechanical integrity tests at suspended operations wells and waiting on completion wells to clarify confusing language about when mechanical integrity tests must be performed at each category of well. Additionally, the Commission added requirements that each category of well perform mechanical integrity tests at 5-year intervals from the date of the initial mechanical integrity test was performed, if the well remains in suspended or waiting on completion status, to ensure that the well continues to maintain mechanical integrity.

Rule 417.f

In Rule 417.f, the Commission clarified that the requirements for wells that lack mechanical integrity apply to all wells, rather than providing separate standards for injection and non-injection wells.

Rule 418.

The Commission moved prior Rule 316B to Rule 418. The Commission removed duplicative language about Form 42s.

Rule 418.a

In Rule 418.a, the Commission clarified that the results of all mechanical integrity tests, including tests that show a lack of integrity, must be submitted on a Form 21, Mechanical Integrity Test within 30 days of the test. Form 21s for failed tests are necessary to establish a compliance schedule for repair or plugging pursuant to Rule 417.f.

Rule 418.b

In Rule 418.b, the Commission specified that a mechanical integrity test that shows that a well lacks integrity is considered a failed test.

Rule 419.

The Commission moved prior Rule 341 to Rule 419, and renumbered each subsection and updated cross-references, but did not make substantive changes to the Rule. The Commission revised Rule 419 in the Wellbore Integrity Rulemaking.

Rule 420.

The Commission moved prior Rule 314 to Rule 420, but did not make substantive changes to the Rule. The Commission revised Rule 420 in the Wellbore Integrity Rulemaking.

Rule 421.

The Commission moved prior Rule 603.h to Rule 421. For clarity, the Commission removed references to effective dates that had already passed.

Rule 422.

The Commission moved prior Rule 801 to Rule 422. Senate Bill 19-181 changed the regulatory relationship between the Commission and local governments by creating a co-equal, independent regulatory partnership, in which operators must comply with both state and local regulations governing surface impacts. Senate Bill 19-181 provides that local governments may "[r]egulat[e] the surface impacts of oil and gas operations in a reasonable manner . . . to protect and minimize adverse impacts to public health, safety, and welfare and the environment." C.R.S. § 29-20-104(1)(h). Senate Bill 19-181 expressly recognizes local government authority to regulate "noise, vibration, odor, light, dust, [and] . . . [a]ll other nuisance-type effects of oil and gas development." C.R.S. §§ 29-20-104(1)(h)(IV), (VI). However, Senate Bill 19-181 also was clear that "[a] local government's regulations may be more protective or stricter than state requirements," C.R.S. § 34-60-131, meaning that an operator must comply with a local government's regulations of nuisance-type effects if they are more protective or strict than the Commission's Rules.

The Commission revised prior Rule 801, which addressed the relationship between state and local government regulations of these nuisance-type effects to reflect these statutory changes. Rule 422 implements the co-equal, independent regulatory partnership by explaining that operators must comply with local government regulations of nuisance-type effects, which the Commission recognizes as including, but not being limited to, noise, lighting, visual impacts, odor, and dust impacts. However, if a local government's regulations are less protective or less strict than the Commission's requirements for each of these topics, then an operator must comply with the Commission's Rules addressing each topic, which are found in Rules 423 through 427.

Nothing in Rule 422 expands the Commission's authority to enforce violations of local government standards. The Commission only has authority to enforce its own Rules, not local government regulations.

Some stakeholders suggested that because noise, vibration, odor, light, dust, and other nuisance-types effects of oil and gas development are specifically enumerated in C.R.S. §§ 29-20-104(1)(h)(IV) & (VI), the General Assembly intended to confer local governments exclusive authority to regulate these categories of surface impacts. The Commission does

not agree with this suggestion, because it would apply with equal force to all of the other surface impacts enumerated in C.R.S. § 29-20-104(1)(h), which include, among other things, the location and siting of oil and gas facilities and locations, water quality, water source, air emissions, air quality, land disturbance, reclamation, cultural resources, emergency preparedness, and financial assurance. If the General Assembly had in fact intended to confer exclusive authority to local governments to regulate all of these categories of surface impacts, it would have needed to also amend numerous other statutes to strip the Commission's and other state agencies' authority to regulate air quality, water quality, water quantity, cultural resources, emergency preparedness, financial assurance, and other surface impacts of oil and gas development. The General Assembly did not do so in Senate Bill 19-181. To the contrary, Senate Bill 19-181 expanded the Commission's authority, as well as CDPHE's authority, to regulate these categories of surface impacts. Accordingly, the Commission interprets C.R.S. § 29-20-104(1)(h) as creating a co-equal, independent regulatory partnership between local governments and the Commission to regulate the surface impacts of oil and gas development. Senate Bill 19-181 does not confer exclusive authority to regulate surface impacts to either the state government or local governments. Rather, Senate Bill 19-181 recognizes that operators must comply with both the Commission's Rules and any local government's standards, including any more protective or stricter local government standards. C.R.S. § 34-60-131.

Rule 423.

The Commission moved prior Rule 802 to Rule 423 and substantially revised its requirements for mitigating noise impacts of oil and gas operations.

Rule 423.a

In Rule 423.a, the Commission adopted a new requirement for operators to submit noise mitigation plans as attachments to their Form 2As. Prior Rule 802.a explained that "operators should be aware that noise control is most effectively addressed at the siting and design phase." The Commission revised this prior Rule to ensure that all operators consider and address noise mitigation during the siting and design phase. The Commission determined that the information in the noise mitigation plan will be sufficient for operators to work with the Commission's Staff through the Form 2A process to ensure that the plan for mitigating noise is adequate and will enable the operator to comply with the substantive noise requirements of Rule 423. To assist operators in developing adequate noise mitigation plans, the Commission instructed its Staff to prepare guidance documents about the required contents for a noise mitigation plan.

The Commission recognizes that site design, rig contracts, and other factors may change between the time that an operator submits a Form 2A and the time when an oil and gas location is constructed and wells are drilled, completed, and brought into production. Accordingly, in Rule 423.a the Commission provided that an operator may identify one or more methods of compliance with the substantive noise standards of Rule 423 at the Form

2A stage. The permit applicant bears the burden of proving that all methods specified fully comply with the maximum permissible noise levels and other substantive standards in Rule 423. An operator may submit a Form 4 prior to conducting on-the-ground operations to notify the Commission's Staff about which option for compliance the operator ultimately selects. However, the operator must receive the Director's approval pursuant to Rule 404.d for any deviations from the plans approved through the Form 2A process, and all such deviations must provide equal or greater reductions in noise impacts.

Consistent with Rule 304.e, the Commission intends to allow operators to submit substantially equivalent information or plans for noise mitigation that the operator develops through a local government land use process or federal agency land use or permitting process in lieu of the noise mitigation plan required by Rule 423.a. The Commission intentionally used the term "land use" rather than "siting" in Rule 304.e to reflect that substantially equivalent local regulations may relate to any category of land use regulation, rather than solely "siting" of a facility. Whether a plan is substantially equivalent is a decision to be made by the Director or Commission, not the operator. The Commission intends for its Staff to review local government or federal plans or information submitted in lieu of a noise mitigation plan on a case by case basis to ensure they provide equivalent information. If the local or federal plan or information is not equivalent, then the Commission's Staff may require the operator to submit additional information or a full noise mitigation plan that meets the requirements of Rule 423.a.

The Commission required operators to include up to five components in their noise mitigation plans.

First, an explanation of how the operator will comply with the maximum permissible noise levels specified in Rule 423.b.(1) and Table 423-1, which must describe the methods operators will use to design acoustical mitigation measures or the types of equipment that the operator will use to minimize noise.

Second, estimated duration of each stage of operations, including drilling, completion, flowback, and production. Because the noise levels vary at different stages of operation, the Commission determined that it is exceptionally important for its Staff, local governments, and members of the public to be fully informed about the estimated duration of each stage of operations through the Form 2A application process. Additionally, operators must estimate the noise levels that are anticipated during each stage of operation as part of the noise mitigation plan pursuant to Rule 423.a.(2).

Third, references to topographical considerations that might impact noise propagation. The Commission recognizes that topography may have a significant impact on noise propagation.

Fourth, a description of the best management practices, and best engineering practices, the operator intends to implement for noise measuring and mitigation, and timeline for implementing these practices.

Finally, for oil and gas locations in close proximity—2,000 feet—to sensitive receptors, the plan must identify six points of compliance where monitors will be located. In Rule 423.a.(5), the Commission provided criteria for identifying such locations, that are intended to provide operators with regulatory certainty about monitoring procedures, prioritize monitoring locations in close and acoustically appropriate locations to sensitive receptors, and recognize the rights of surface owners to decline to allow monitors to be located on their property. The Commission specifically chose six monitors based on the principle of geometric circle packing, which provides that a hexagonal configuration provides the most efficient density of distributed coverage for surrounding areas.

The Commission determined that 2,000 feet is the appropriate distance to require noise monitoring because evidence in the administrative record demonstrates that 2,000 feet is a reasonable radius for noise perception in most circumstances. Specifically, in 2015, the Commission's Staff collaborated with Colorado State University to investigate noise impacts from oil and gas development and production activities.[4] Among other things, the study published based on this investigation in 2016 concluded that unmitigated completion operations had the potential to exceed noise limits (65 dBC) at a distance of up to 1,968 feet, and unmitigated drilling operations had the potential to exceed noise limits (65 dBC) at 1,754 feet.[5] The Commission therefore determined that a 2,000 foot radius provides a reasonable margin of error to protect public welfare, given potential violations of the Commission's noise standards at approximately this distance.

Rule 423.b

In Rule 423.b, the Commission delegated to the Director the discretion to require an operator to conduct a background ambient noise survey at a specific time and using a specific methodology as a condition of approval of a Form 2A. The Commission specified methods for developing a daytime and nighttime cumulative ambient noise level measurement. This baseline sound level metric will be used to determine applicable noise levels for the purposes of multiple components of Rule 423. The Commission intends for operators to take into account significant weather events when taking ambient measurements. Background ambient surveys should not be conducted during significant wind or weather events.

The Commission did not make substantive amendments to the maximum permissible dBA noise levels in Rule 423.b.(1) and Table 423-1, which are the same as the noise levels that meet the statutory definition of a public nuisance and the standards set by prior Rule 802.b.

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[4] Cameron Radtke, *Noise Characterization of Oil and Gas Operations*, Colo. State Univ. Dep't of Envtl. & Radiological Health Sci. (2016).

[5] *Id.* at 48.

See C.R.S. § 25-12-103(1). The standards in Table 423-1 apply unless another subsection of Rule 423 specifies otherwise. However, the Commission specified that the residential standard will also apply in rural areas and State Parks and State Wildlife Areas. All of these areas are quiet areas where additional noise could harm wildlife, as discussed below. Additionally, the Commission provided that the commercial standard will also apply in agricultural areas. Although agricultural areas are also quiet areas that may provide wildlife habitat, they are more likely to have noise disruptions caused by human agricultural activities than less populated rural areas, and accordingly the Commission determined that applying the commercial standard is appropriate.

Some stakeholders also suggested allowing rural areas to comply with commercial, rather than residential standards. The Commission did not adopt this suggestion, because in non-agricultural rural areas, there are likely few sources of noise, so the addition of more noise would be more disruptive to wildlife, nearby residents, and recreation than in an area with a higher background level of noise. Additionally, prior Rule 802.b set the same noise standard for residential and rural areas. The Commission determined it would not be consistent with Senate Bill 19-181's changes to the Commission's mission and statutory authority to allow an increase in noise in rural areas above the limits set by prior Rule 802.b.

In Rule 423.b, the Commission also added a new standard for maximum permissible db(C) ("C-scale"). Some activities at oil and gas facilities generate C-scale, or low-frequency, noise. The Commission has received numerous complaints from nearby residents related to C-scale noise. Accordingly, the Commission adopted maximum permissible C-scale noise levels, applicable in all zones. The Commission chose 60 db(C) as a maximum permissible daytime C-scale noise level, and 60 db(C) as a maximum permissible nighttime C-scale noise level based on published scientific data finding that 60 db(C) is the "desirable" standard for C-scale noise in residential areas at nighttime and for continuous (as opposed to intermittent) operations.[6]

The Commission determined that evidence in the administrative record, including the Broner & Merz (2011) study, support the C-scale noise limits adopted in Rule 423.b. However, the Commission also recognizes that additional study of C-scale noise from oil and gas operations and other industries may provide valuable information about the sources of C-scale noise, methods to mitigate that noise, and academic research into the impacts of C-scale noise on human health and public welfare. Accordingly, the Commission directs its Staff to continue reviewing academic literature and other studies regarding C-Scale noise, and to report the results of this investigation, including any proposed regulatory changes, if appropriate, to the Commission by no later than January 15, 2023.

In Rule 423.b.(1), the Commission also allowed the application of lower maximum permissible noise levels than would otherwise be indicated by the land use where a facility

[6] *See* N. Broner & S.K. Merz, *A Simple Outdoor Criterion for Assessment of Low Frequency Noise Emission*, 39 Acoustics Aus. 7, 13 tbl. 3 (2011).

is located, based on nearby land uses that are more sensitive to noise, or consultation with local governments, CDPHE, or CPW. In determining whether to require operators to comply with a lower maximum permissible noise level, the Commission intends for the Director to consider current land uses. Specifically in agricultural areas, the Commission intends for the Director to consider whether the land is used as cropland or grazing land. If an operator disagrees with the Director's and local government's determination that a lower maximum permissible noise level is appropriate, the operator may raise that concern with the Commission at the hearing on the proposed oil and gas development plan.

In Rule 423.b.(2), the Commission provided that, unless otherwise required by other subsections of Rule 423, maximum permissible A-scale noise levels for drilling and completion operations, including flowback, may increase by a fixed amount above the otherwise maximum permissible noise levels for both residential or rural and commercial or agricultural zones. The Commission determined that the relatively short duration of these activities warranted the fairly minimal increase in sound levels, particularly during daytime hours. Similarly, during flowback, maximum permissible C-scale noise levels may increase by 5 db(C) during both daytime and nighttime. The Commission determined that this is appropriate because evidence shows that 65 db(C) is the maximum recommended range for C-scale noise during nighttime and continuous operations in residential areas, and is the desirable range for daytime and intermittent operations in residential areas.[7] Thus, the 5 db(C) increase is still highly protective of public health and welfare, while accommodating a temporary increase.

Recognizing that local governments, not the Commission, are the entities with a statutory obligation to determine applicable land uses, the Commission revised Rule 423.b.(3) to provide that the basis for determining land use designation will be the relevant local government's land use or zoning designation. Additionally, the Commission provided that the Director may consult local governments, including both relevant and proximate local governments, about the applicable land use, based on applicable zoning or other considerations.

In Rule 423.b.(3).B, the Commission allowed operators to seek permission to apply a higher maximum permissible noise level if neither public welfare nor wildlife would be adversely impacted by louder activities than would otherwise be permitted in a specific area. In recognition of the importance of local authority over noise-related issues, the Director may only permit an operator to adhere to the higher maximum permissible noise level with the consent of the relevant local government, and proximate local government in locations where proximate local governments exist. The Commission chose not to *require* that the Director authorize a higher maximum permissible noise level if a relevant local government requests the higher maximum permissible noise level. The Commission recognizes the authority of local governments to identify appropriate noise standards within their jurisdiction. However, the Commission determined that it was appropriate to maintain

[7] *See* Broner & Merz, *supra* note 6, at 13 tbl. 3.

discretion for its Staff to apply the maximum permissible noise level identified in Table 423-1, even if a relevant local government requests a higher maximum permissible noise level, because the Commission has an independent statutory obligation to protect public health, public welfare, and wildlife.

In Rule 423.b.(4), the Commission adopted noise rules to mitigate impacts to wildlife by requiring operators operating within high priority habitat to consult CPW or expert federal agencies for federal lands to determine maximum applicable noise levels. The Commission recognizes that there is substantial scientific evidence that noise disturbs some wildlife species and negatively impacts those species, while benefiting other species.[8] These impacts may alter predator-prey relationships, and in turn alter ecosystem dynamics and services. Accordingly, the Commission determined that it is necessary to adopt noise standards to protect wildlife.

Some stakeholders suggested that the Commission expand Rule 423.b.(4) to apply within a 2,000 foot buffer of high priority habitat, consistent with the Rule as originally noticed on March 15, 2020. The Commission chose to eliminate the 2,000 foot buffer in the final version of Rule 423.b.(4) based on relevant changes to the concept of high priority habitat during the course of the 800/900/1200 Mission Change Rulemaking. High priority habitat is in fact itself established as a series of buffers around sensitive wildlife receptors, so adding an additional buffer to those buffers is unnecessary.

Some stakeholders also suggested adding consultation with CPW as a requirement to determine maximum applicable noise levels for State Parks and State Wildlife Areas in Rule 423.b.(4). The Commission did not adopt this suggestion because Table 423-1 already establishes a default noise standard for State Parks and State Wildlife Areas, so there is no need for further consultation with CPW.

In Rule 423.b.(5), the Commission provided that operators may exceed the maximum permissible noise levels specified in Rule 423.b.(1) and Table 423-1 if all affected surface owners and tenants consent in writing. The Commission recognizes that some surface owners and tenants may not object to noise. For example, in an already noisy industrial area, additional noise may not make a significant difference to other industrial land uses. Accordingly, the Commission provided surface owners and their tenants with the right to waive otherwise applicable noise requirements.

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[8] *See, e.g.*, N.J. Kleist, *Chronic anthropogenic noise disrupts glucocorticoid signaling and has multiple effects on fitness in an avian community*, Proc. Nat'l Acad. Sci. E648 (2018); C.D. Francis *et al.*, *Noise pollution alters ecological services: enhanced pollination and disrupted seed dispersal*, 279 Proc. Royal Soc'y 2727 (2012); C.D. Francis, *et al.*, *Behavioral responses by two songbirds to natural-gas-well compressor noise*, 74 Ornithological Monographs 36 (2012); C.D. Francis, *et al.*, *Are nest predators absent from noisy areas or unable to locate nests?*, 74 Ornithological Monographs 101 (2012).

In Rule 423.b.(6), the Commission maintained its prior Rule allowing maximum permissible noise levels to be exceeded for 15 minutes during any given hour, but limited such allowable exceedance to only one hour in a twelve-hour period.

In Rule 423.b.(7), the Commission adopted standards to minimize periodic, shrill, and impulsive noises that are within 1,000 feet of residential building units. The Commission chose the 1,000 foot radius based on its review of studies measuring where sound levels typically achieve 55 dB(A) or less.[9]

In Rule 423.b.(8), the Commission clarified that the persons who may submit noise complaints include local governments and surface owners or tenants of a property within 2,000 feet of an oil and gas facility. Prior Rule 802.b.(3) only allowed local governmental designees and property owners to submit noise complaints, but did not expressly recognize the right of tenants to do so. Prior Rule 802.b.(3) also did not specify a maximum distance from a facility from which a person could submit a noise complaint. As a result, the Commission received some noise complaints from persons located farther away from a facility than it would be physically possible for transmitted noise to be above allowable levels. Because receiving a complaint pursuant to Rule 423.b.(6) requires the Commission's Staff to undertake costly and time-consuming noise investigations pursuant to Rule 423.c, the Commission limited the distance at which such complaints could be submitted. If the Commission receives complaints from persons located farther than the maximum distance from a facility, the Commission's Staff may still investigate the complaint, but will not be required to do so pursuant to Rule 423.c.

Rule 423.c

In Rule 423.c.(1), the Commission added new requirements for noise monitoring during pre-production activities and temporary operations such as drilling, completion, recompletion, stimulation, and well maintenance, in residential areas or areas within 2,000 feet of a building unit. Consistent with the noise point of compliance monitor location procedures of Rule 423.a.(5), the Commission adopted this requirement to ensure that there is an accurate, continuous, and receptor-based noise metric during these activities, which are the noisiest activities at an oil and gas facility. The Commission limited the requirement for continuous noise monitoring to areas where many people live, and that are therefore most sensitive to noise. Although noise monitoring may be necessary in other areas in response to complaints, the Commission determined that continuous noise monitoring was not necessary in areas less likely to have receptors that are sensitive to high noise levels.

The Commission updated the technical noise monitoring requirements in Rule 423.c.(2)–(7) to match current technical practices, and to provide better clarity in areas that had previously caused confusion or were subject to different interpretations. In Rule 423.c.(2), the Commission created a separate standard for measuring sound levels from equipment

[9] *See* Radtke, *supra* note 4, at 55.

installed prior to the effective date of the 200–600 Mission Change Rulemaking, to maintain consistency with prior practice. The Commission chose five feet about ground level for sound measurement height in Rule 423.c.(4) because five feet is the acoustical engineering standard for noise monitor height.

In Rule 423.c.(8), the Commission adopted new requirements to provide that operators need not comply with other provisions of Rule 423 if a sensitive noise receptor comes into existence after an oil and gas location has already been permitted. Operators may be unable to anticipate that a nearby building unit would be built, or high priority habitat or a designated outside activity area would be designated after an oil and gas location has already been permitted or constructed. However, nothing in Rule 423.c.(8) is intended to alter or eliminate remedies available between private parties under the Colorado's common law of private nuisances.

In Rule 423.c.(9), the Commission required operators to maintain records to demonstrate compliance with the monitoring provisions of Rule 423.c. Consistent with Rule 206.f, the Commission intends for operators to maintain such records for at least 5 years.

Rule 423.d

In Rule 423.d, the Commission adopted cumulative noise standards, which are listed in Table 423-2. Consistent with Senate Bill 19-181 requiring the Commission to "evaluate and address the potential cumulative impacts of oil and gas development," C.R.S. § 34-60-106(11)(c)(II), the Commission recognized that noise impacts may be cumulative. There may be noise from multiple oil and gas facilities that impact the same receptor. Additionally, ambient noise from non-oil and gas sources may elevate noise levels at a receptor to levels that exceed the maximum permissible noise levels established in Rule 423.b, prior to any noise being created by an oil and gas facility.

Rules 423.d, 424.f, 426.e, and 427.e are intended address cumulative impacts to noise, light, odor, and dust, respectively. Although many of the Commission's Rules adopted in the 200–600 and 800/900/1200 Mission Change Rulemakings are intended to evaluate cumulative impacts, Rules 423.d, 424.f, 426.e, and 427.e are among the most targeted regulations intended to *address* cumulative impacts to individual resources. Rules 423.d, 424.f, 426.e, and 427.e each represent the Commission's first regulatory effort to address cumulative impacts, and the Commission determined that the administrative record fully supports each Rule. However, the Commission appreciated the thoughtful commentary from parties to the 200–600 Mission Change Rulemaking and other stakeholders about Rules 423.d, 424.f, 426.e, and 427.e, and recognizes that because of their novelty, the implementation of these cumulative impact regulatory standards should be an iterative work in process in collaboration with relevant stakeholders. Accordingly, the Commission instructs its Staff to prepare a presentation to the Commission about the implementation of Rules 423.d, 424.f, 426.e, and 427.e, to be given at a Commission hearing no later than July 15, 2021. The presentation may address any relevant topic, but should address the implementation of the

cumulative impacts Rules, guidance developed by Staff relevant to that implementation, case studies of implementation on an individual permitting basis, and recommendations for potential future regulatory changes, if any.

In Rule 423.d.(1), to account for these cumulative noise impacts, the Commission first specified that noise measurements, which will be taken at the noise points of compliance designated in a noise mitigation plan submitted pursuant to Rule 423.a.(5), must take into account ambient noise.

In Rule 423.d.(2), the Commission prescribed standards for new and substantially modified oil and gas locations where ambient noise levels already exceed the maximum permissible noise levels established by Rule 423.b. The Commission considers an oil and gas location to be substantially modified for the purposes of Rule 423 when a modification to a facility impacts overall noise levels at the location. For example, installing a new compressor at a location, which may substantially increase noise from the location, would be considered a substantial modification, but conducting ongoing periodic maintenance operations would not. Pursuant to Rule 423.d.(2), in areas where ambient noise levels already exceed maximum permissible noise levels, after the "Commencement of Production Operations," as defined in the Commission's 100 Series Rules by the 800/900/1200 Mission Change Rulemaking, operators may incrementally increase noise levels by a prescribed number of dB(A) or dB(C), depending on the time of day.

However, the Commission prescribed a maximum cumulative ambient noise level in Rule 423.d.(3) that may never be exceeded after the commencement of production operations. If an operator seeks to raise maximum cumulative ambient noise levels above this level, the Commission intends for the operator to coordinate its own operations, or with other operators, or with other sources of ambient noise in the area, to ensure that the operator's activities and the other noise-creating activities in the area do not raise ambient noise levels above the levels specified in Rule 423.d.(3).

Some stakeholders suggested that the Commission require continuous monitoring in any area that meets the criteria identified in Rule 423.d.(2). The Commission determined that this was unnecessary, because any location that meets the criteria of Rule 423.d.(2) and is in close proximity to sensitive receptors would already be required to conduct continuous noise monitoring pursuant to Rule 423.c.(1).

Rule 423.e

The Commission adopted a new Rule 423.e, which delegates discretion to the Director to require an operator to take immediate action to protect public welfare pursuant to the standards and procedures of Rule 901.a. Like other Rules intended to address imminent threats to public health, safety, welfare, the environment, and wildlife resources, such as Rules 209.b, 602.f, and 901.a, the Commission recognizes that persistent noise that adversely impacts public welfare may require immediate action on the part of an operator,

and that a multi-week enforcement process might impermissibly allow persistent and disruptive noise to impact public welfare by disturbing sleep and other activities. The Commission intends for the Director to exercise her discretion pursuant to Rule 423.e sparingly, and only where necessary to protect public welfare from imminent, harmful, and persistent noise impacts.

Rule 424.

The Commission moved prior Rule 803 to Rule 424, and substantially revised its requirements for mitigating light impacts of oil and gas operations. The Commission recognizes that light mitigation technologies and practices are changing over time, and that compliance with Rule 424 will require innovative strategies by operators. Additionally, the Commission recognizes that many local governments have substantial expertise in light mitigation ordinances, and may have best practices to share with operators, the Commission's Staff, and other local governments. And, because the revisions to Rule 424 are substantial, the Commission recognizes that both operators and the Commission's Staff may need to engage in an iterative learning process to identify technologies to achieve compliance, monitor lighting, and demonstrate compliance. Therefore, although the Commission determined that the regulations adopted in Rule 424 are necessary and reasonable and fully supported by evidence in the administrative record, the Commission nevertheless believes that additional exploration of light mitigation concepts will provide value to operators, local governments, and its Staff. Accordingly, the Commission directs its Staff to promptly convene a working group to address light mitigation technologies and practices. The working group may also develop guidance for implementing Rule 424, study light mitigation technologies and monitoring techniques, assist local governments in developing lighting regulations, and develop recommendations for regulatory changes to Rule 424, if appropriate. The Commission intends for the working group to include the Commission's Staff, representatives from interested local governments, operators, and representatives of any interested community groups. The Commission intends for the working group to report back to the Commission on its findings and any recommendations for regulatory changes, if any, by no later than January 15, 2023.

Rule 424.a

In Rule 424.a, the Commission adopted a new requirement for operators to submit light mitigation plans as attachments to their Form 2As. The Commission determined that developing light mitigation plans at the planning stage will ensure that all operators are able to comply with the substantive light mitigation requirements of Rule 424.

Consistent with Rule 304.e, the Commission intends to allow operators to submit substantially equivalent information or plans for light mitigation that the operator develops through a local government land use process or federal agency land use or permitting process in lieu of the light mitigation plan required by Rule 424.a. The Commission intentionally used the term "land use" rather than "siting" in Rule 304.e to reflect that

substantially equivalent local regulations may relate to any category of land use regulation, rather than solely "siting" of a facility. Whether a plan is substantially equivalent is a decision to be made by the Director or Commission, not the operator. The Commission intends for its Staff to review local government or federal plans or information submitted in lieu of a light mitigation plan on a case by case basis to ensure they provide equivalent information. If the local or federal plan or information is not equivalent, then the Commission's Staff may require the operator to submit additional information or a full light mitigation plan that meets the requirements of Rule 424.a.

The Commission specifically determined that it is necessary for its Staff to consider a plan at the Form 2A processing stage—understanding that the plan will be preliminary. The Commission recognizes that an operator may not know the final details of pre-production phase lighting design at the time it submits a Form 2A because some aspects of this design may be dependent on a drilling contractor's operational procedures. Accordingly, in Rules 424.a.(2).A, B, and C, the Commission provided that an operator may identify one or more methods of compliance with the substantive lighting standards of Rule 424 at the Form 2A stage. The permit applicant bears the burden of proving that all methods specified fully comply with the substantive standards in Rule 424. An operator may submit a Form 4 prior to conducting on-the-ground operations to notify the Commission's Staff about which option for compliance the operator ultimately selects. However, the operator must receive the Director's approval pursuant to Rule 404.d for any deviations from the plans approved through the Form 2A process, and all such deviations must provide equal or greater reductions in light impacts.

The Commission determined that providing for advanced planning—even if that planning includes multiple methods for compliance—is necessary and reasonable because key elements of the light mitigation plan are unlikely to change because they relate to oil and gas location design, rather than issues specific to a rig—for example, whether the location will employ a sound wall. Understanding the core elements of oil and gas location design at the Form 2A submission stage is crucial for the Commission's Staff to tailor one or more necessary and reasonable suites of mitigation measures and conditions of approval taking into account a range of resources that may be impacted and interactions between those mitigation measures. For example, the use of a sound wall is also an important light mitigation tool.

Some stakeholders suggested that the Commission require operators to submit a light mitigation plan shortly prior to rig deployment, rather than at the Form 2A stage. The Commission did not adopt this suggestion because the short timeframe might force its Staff to make rushed decisions to approve or deny a plan without adequate time for thoughtful consideration about how light mitigation fits within the broader scheme of mitigation measures required for the oil and gas development plan. Additionally, the option for the operator to submit one or more options for light mitigation will accommodate the range of possibilities that an operator might encounter due to variations in rig availability and other factors.

Rule 424.a.(1)

To ensure the validity of lighting plans that operators submit, the Commission required that all lighting plans be certified by a person with relevant expertise in light mitigation techniques and design. The Commission determined that certification by a person with relevant expertise is necessary for many reasons. First, the technically complex nature of providing the necessary information for a lighting plan, such as calculating total lux output from combined light fixtures, requires technical background and training in lighting technology. Second, the Commission's Staff have limited expertise in lighting technology, and therefore the Commission determined that independent certification of lighting plans will be valuable for the Commission's Staff.

Rule 424.a.(2)

The Commission provided specific standards for light mitigation plans to address in Rule 424.a.(2). As clarified in Rule 424.a.(2).A.iii, the Commission does not intend for the contents of a lighting plan to prevent an operator from using temporary portable lighting that was not discussed in a lighting plan when necessary for safety reasons while personnel are on-site, so long as the operator complies with the other substantive standards of Rules 424.

In addition to explaining how the operator will comply with Rule 424, and specifying the locations of lighting and sensitive receptors such as nearby buildings, the Commission instructed operators to develop distinct pre-production and post-production facility lighting plans, recognizing the distinctions between the lighting required for pre-production and production-phase activities. The purpose of pre-production lighting plans is to provide adequate lighting to ensure safety during active operations at an oil and gas location. The purpose of production-phase lighting plans, which are in effect when no personnel are onsite, is to protect public welfare by avoiding light pollution. Consistent with these purposes, the specific standards in Rules 424.a.(2).A and B are intended to provide the Commission's Staff with information necessary about whether pre-production lighting will be adequate to protect safety of onsite personnel, and production-phase lighting will adequately protect public welfare from unnecessary light pollution at nearby receptors.

The criteria for production phase facility lighting plans in Rule 424.a.(2).B were tailored to provide the Commission's Staff with necessary information to evaluate lighting plans. For example, the cut sheets for individual lighting fixtures required by Rule 424.a.(2).B.iii provide information about the output of and anticipated orientation for individual fixtures which may be important for assessing impacts on specific receptors, such as a road or building unit, while the combined lux output of all onsite fixtures required by Rule 424.a.(2).B.iv allows the Commission's Staff to assess total cumulative light impacts from a proposed oil and gas location during production.

Some of the mitigation techniques and information reported on a light mitigation plan, such as fixture orientation, are designed to minimize cumulative light impacts. The purpose of these requirements is to minimize overall cumulative light pollution, which is why other components of the Rule, such as 424.a.(2).B.iv and Rule 424.a.(2).D are focused on a receptor-based, 2,000 foot radius.

The Commission chose the 2,000 foot radius for lighting for consistency with other Commission Rules that use a 2,000 foot radius for other reasons, such as Rules 423 and 604. This provides the Commission and operators with certainty by using the same fixed radius for evaluating multiple categories of impacts to multiple resources and receptors. The Commission recognizes that light impacts may be experienced at distances greater than 2,000 feet, and also that if adequately mitigated, light may not adversely impact receptors at distances as far away as 2,000 feet. However, because 2,000 feet strikes a reasonable balance for lighting impacts, the Commission determined that 2,000 feet is a reasonable radius for requiring photometric monitoring and other aspects of light mitigation enforcement because of the benefits to all parties involved in maintaining consistent distances across different Commission Rules.

To assist operators in developing adequate light mitigation plans, the Commission instructed its Staff to prepare guidance documents about the required contents for a light mitigation plan.

Rule 424.b

In Rule 424.b, the Commission developed standard best management practices for lighting at all sites. The Commission required all facilities to direct site lighting downward and inward and to use the best available technology to reduce light pollution and obtrusive lighting outside the boundary of facilities. The Commission also identified best management practices to minimize light intensity that operators may apply on a case by case basis determining on the specific characteristics of a site. The Commission encourages lighting to use warmer color scales. Some stakeholders suggested, and the Commission concurred, that 3,000 degrees Kelvin is a reasonable maximum for lighting color. However, rather than specify a 3,000 degrees Kelvin maximum in Rule 424.b, the Commission determined that it was more appropriate for its Staff to work with operators to identify an appropriate maximum color temperature on a case by case basis.

Rule 424.c

In Rule 424.c, the Commission specified the requirements for pre-production and maintenance facility lighting. Consistent with its mandate to protect public safety, ensuring lighting is adequate for safety of all onsite personnel is the Commission's top priority during time periods when personnel are on-site, which includes many pre-production activities and later activities during the production phase, such as maintenance activities, when personnel will be on site.

Recognizing that it may not always be possible to balance the safety of onsite personnel with protecting nearby residents, drivers, and wildlife from lighting impacts, in Rule 424.c.(3), the Commission required operators to take all necessary and reasonable precautions to minimize lighting impacts on those receptors prior to the commencement of production operations.

Rule 424.d

In Rule 424.d, the Commission specified the requirements for production phase facility lighting when personnel are on-site. When personnel are on-site, light is necessary to protect the safety of personnel on or near the site. However, to avoid unnecessary light pollution that may adversely impact the welfare of nearby residents and other sensitive receptors, the Commission also adopted quantifiable lighting standards, setting maximum lumen output per square foot of a working pad surface. The Commission determined that using a quantifiable lighting standard is not only consistent with best practices of Colorado local governments, but also provides a clear guideline for operators, the Commission's Staff, and the public to use in determining whether the lighting levels from a facility are reasonable. The maximum lumen outputs in Rule 424.d.(2) are based on the land use in the area where the working pad surface is located. The Commission will employ a similar procedure to the procedure outlined and described in Rule 423.b.(3), above, to identify the appropriate land use designation of a given location.

Rule 424.e

In Rule 424.e, the Commission specified the requirements for production phase facility lighting when personnel are not on-site. When personnel are not on-site, lighting is not as important for safety, and therefore the Commission's primary intent is to limit the adverse impacts to public welfare. Accordingly, the Commission adopted a performance-based standard for operators to minimize site lighting when personnel are not on-site.

Some stakeholders suggested that the Commission adopt standards for continuous lighting that would be triggered by motion sensors. The Commission did not adopt this suggestion because in some cases such lights may be triggered by wildlife or other unintentional motions that may cause unnecessary light pollution that impacts the welfare of nearby residents or drivers.

Rule 424.f

In Rule 424.f, the Commission adopted cumulative lighting standards. Consistent with Senate Bill 19-181 requiring the Commission to "evaluate and address the potential cumulative impacts of oil and gas development," C.R.S. § 34-60-106(11)(c)(II), the Commission recognized that light impacts may be cumulative. There may be light from multiple oil and gas facilities that impact the same receptor. Accordingly, the Commission set a quantifiable maximum lighting level for nighttime light impacts from all oil and gas

facilities for certain categories of sensitive receptors—residential and high occupancy building units.

Rules 423.d, 424.f, 426.e, and 427.e are intended address cumulative impacts to noise, light, odor, and dust, respectively. Although many of the Commission's Rules adopted in the 200–600 and 800/900/1200 Mission Change Rulemakings are intended to evaluate cumulative impacts, Rules 423.d, 424.f, 426.e, and 427.e are among the most targeted regulations intended to *address* cumulative impacts to individual resources. Rules 423.d, 424.f, 426.e, and 427.e each represent the Commission's first regulatory effort to address cumulative impacts, and the Commission determined that the administrative record fully supports each Rule. However, the Commission appreciated the thoughtful commentary from parties to the 200–600 Mission Change Rulemaking and other stakeholders about Rules 423.d, 424.f, 426.e, and 427.e, and recognizes that because of their novelty, the implementation of these cumulative impact regulatory standards should be an iterative work in process in collaboration with relevant stakeholders. Accordingly, the Commission instructs its Staff to prepare a presentation to the Commission about the implementation of Rules 423.d, 424.f, 426.e, and 427.e, to be given at a Commission hearing no later than July 15, 2021. The presentation may address any relevant topic, but should address the implementation of the cumulative impacts Rules, guidance developed by Staff relevant to that implementation, case studies of implementation on an individual permitting basis, and recommendations for potential future regulatory changes, if any.

Rule 425.

The Commission moved prior Rule 804 to Rule 425. The Commission intends for its Staff to issue guidance addressing techniques for visual impact mitigation, and for the guidance to draw on visual impact mitigation standards adopted by local governments, where appropriate.

Rule 425.a

In Rule 425.a, the Commission maintained its prior Rule 804 standards for color-based visual impact mitigation, but provided additional flexibility to consider variations in landscapes by adding the language "unless the Commission approves an alternate method of visual impact mitigation." The Commission realizes there are rapidly advancing technologies that will allow the facilities to blend into the surrounding landscape. These situations will be taken into account on a case by case basis through variance requests pursuant to Rule 502.

The Commission changed its prior reference to "production facilities" to instead say "all permanent equipment at new and existing oil and gas facilities," to clarify the scope of its visual impact mitigation requirements. The Commission intends for Rule 425 to apply to permanent facilities, not temporary facilities. Additionally, the Commission changed its prior reference to "public highway" to also include "public . . . roads, or publicly-maintained

trails," to clarify that the visual impact standards apply to all facilities observable from any public road or trail, rather than only officially-designated highways. The Commission does not intend for its visual impact mitigation rules to apply to facilities only visible from a privately-owned road or trail.

The Commission recognizes that the color of a facility is not the only factor relevant to visual impacts. Based on the Commission's review of local government visual impact standards in the administrative record, the Commission determined that the orientation of a facility to reduce contrast with the surrounding landscape is also important for visual impact mitigation. This is particularly true in the Western Slope and other areas with complex topography. Accordingly, the Commission adopted Rule 425.a.(2), which provides that operators may be required to orient facilities to match the surrounding landscape if requested to do so during consultation with the relevant local government, surface owner, or building unit owner pursuant to Rules 302.g and 309. These entities will be best positioned to understand the unique topography of any area and likely visual impact receptors. The relationship between the likely receptor (for example, a home from which a proposed location will be visible) and the oil and gas location is crucial to mitigating visual impacts, and accordingly where multiple visual impact receptors may be present, the Commission intends for the operator to describe their efforts to use facility orientation to minimize impacts to all receptors on the Form 2A application.

Rule 425.b

In Rule 425.b, the Commission specified that oil and gas facilities on federal lands may comply with federal painting standards, to the extent those standards are different from the Commission's Rules. Consistent with adopting standards for facility orientation in Rule 425.a.(2), the Commission also required operators to adhere to federal standards for facility orientation. For locations on federally-owned surface, the Commission intends for the consultation with the federal agency surface owner required by Rule 309.b to address visual impact mitigation to ensure consistency between state and federal visual impact regulations.

Rule 425.c

The Commission adopted a new Rule 425.c, which requires operators to use best management practices to avoid, minimize, and mitigate visual impacts that are consistent with relevant local government regulations. This regulation reflects Senate Bill 19-181's changes to the Commission's relationship with local governments, and that many local governments have expertise in developing visual impact mitigation ordinances, not only for oil and gas facilities but also for all categories of development. Local governments are uniquely well situated to understand local topography, landscape colors, seasonal changes in landscape visualization, and other factors relevant to visual impact mitigation. The Commission therefore intends for operators to adhere to local government visual impact mitigation standards and for its Staff to require best management practices to avoid,

minimize, and mitigate visual impacts as conditions of approval wherever appropriate. The Commission intends for visual impact mitigation to be a component of consultation with local governments pursuant to Rule 302.g.

Rule 426.

The Commission moved prior Rule 805 to Rule 426, and substantially revised its requirements for mitigating odors from oil and gas operations. Most of the Commission's prior odor-related standards were related to air emissions. Though odor mitigation and air emissions mitigation are closely related topics, to improve clarity, the Commission consolidated all air emission mitigation requirements that were found in prior Rules 604, 805, and 912 into one rule—Rule 903. In adopting its odor rules, the Commission balanced both the protection of public welfare and the protection of public safety. Drilling muds may contribute to odor impacts, but the choice of drilling muds also implicates important safety issues related to well control. The Commission determined that Rule 426 strikes the appropriate balance of protecting both public safety and public welfare.

Rule 426.a

In Rule 426.a, the Commission adopted a new requirement for operators to submit odor mitigation plans as attachments to their Form 2As. Because the purpose of an odor mitigation plan is to avoid, minimize, and mitigate odor nuisances for residents and other persons near a proposed oil and gas location, the odor mitigation plan requirement only applies to proposed working pad surfaces that are within 2,000 feet of one or more building units or designated outside activity areas. The Commission determined that developing odor mitigation plans at the planning stage will ensure that all operators are able to comply with the substantive odor mitigation requirements of Rule 426. The Commission recognizes that odor mitigation practices necessarily vary on a site-by-site basis, depending on numerous site-specific criteria. Accordingly, rather than prescribing specific contents for all odor mitigation plans, the Commission intends for operators to develop plans on a site-specific basis that identify the best management practices the operator will use to mitigate odors. To assist operators in developing adequate odor mitigation plans, the Commission instructed its Staff to prepare guidance documents about the required contents for an odor mitigation plan.

The Commission recognizes that site design, drilling mud practices, and other factors may change between the time that an operator submits a Form 2A and the time when an oil and gas location is constructed and wells are drilled, completed, and brought into production. Accordingly, in Rule 426.a the Commission provided that an operator may identify one or more methods of compliance with the substantive odor standards of Rule 426 at the Form 2A stage. The permit applicant bears the burden of proving that all methods specified fully comply with all substantive standards in Rule 426. An operator may submit a Form 4 prior to conducting on-the-ground operations to notify the Commission's Staff about which option for compliance the operator ultimately selects. However, the operator must receive the

Director's approval pursuant to Rule 404.d for any deviations from the plans approved through the Form 2A process, and all such deviations must provide equal or greater reductions in odor impacts.

Consistent with Rule 304.e, the Commission intends to allow operators to submit substantially equivalent information or plans for odor mitigation that the operator develops through a local government land use process or federal agency land use or permitting process in lieu of the odor mitigation plan required by Rule 426.a. The Commission intentionally used the term "land use" rather than "siting" in Rule 304.e to reflect that substantially equivalent local regulations may relate to any category of land use regulation, rather than solely "siting" of a facility. Whether a plan is substantially equivalent is a decision to be made by the Director or Commission, not the operator. The Commission intends for its Staff to review local government or federal plans or information submitted in lieu of an odor mitigation plan on a case by case basis to ensure they provide equivalent information. If the local or federal plan or information is not equivalent, then the Commission's Staff may require the operator to submit additional information or a full odor mitigation plan that meets the requirements of Rule 426.a.

Rule 426.b

In Rule 426.b, the Commission instructed operators to minimize odors outside the boundaries of an oil and gas location. The Commission adopted this performance-based standard recognizing that odor mitigation will necessarily vary on a site-by-site basis.

Rule 426.c

In Rule 426.c, the Commission required operators to adhere to best management practices to minimize odors in areas with sensitive receptors, including within 2,000 feet of a building unit. The Commission chose not to require that operators use any specific best management practices in every instance or to list best management practices in the regulatory text, again recognizing that odor mitigation will necessarily vary on a site-by-site basis, and that odor mitigation technology changes over time. However, this does not mean that the Commission's Staff lack authority to require an operator to adhere to specific best management practices as a condition of approval or in response to an odor complaint. Rather, it reflects the Commission's understanding that flexibility is important to allow technology to evolve more quickly than the Commission's Rules can be updated. At the time of the 200–600 Mission Change Rulemaking, the Commission identified best management practices to minimize odors as including, but not being limited to, adding an odorant which is not a masking agent to drilling mud systems and/or fracturing fluids; adding chillers to drilling mud systems; using a filtration system to minimize odors from drilling and fracturing fluids; wiping down and internally flushing drill pipe during drilling operation trips out of a hole; increasing odorant concentration during peak hours, unless the odorant creates a separate odor; and using a low-odor drilling fluid. The Commission intends for its

Staff to issue guidance about best management practices to minimize odors, and to update these best management practices over time as technologies evolve.

Rule 426.d

In Rule 426.d, the Commission adopted specific requirements for odor complaints. Odor complaints have been challenging for the Commission's Staff to address in the past, in part because it is challenging to identify the source of an odor, and because the activities at an oil and gas facility that create odors tend to be intermittent and frequently may change or cease prior to the Commission Staff's being able to inspect the facility. To address these challenges, the Commission required operators to inform the Director about the activities occurring at an oil and gas facility at the time that an odor complaint was received. Additionally, the Commission authorized its Staff to require operators to take actions to reduce odors in response to a complaint, including, as appropriate, air monitoring. The Commission also recognized that air monitoring may be the best available technique for identifying the source of an odor, which is a distinct concern from determining whether air pollutants at a site pose a health risk.

The Commission's field inspection Staff will continue to adhere to policies and guidance governing response timeframes for complaints and endeavor to respond as quickly as appropriate to address odor complaints.

Rule 426.e

In Rule 426.e, the Commission adopted cumulative odor standards. Consistent with Senate Bill 19-181 requiring the Commission to "evaluate and address the potential cumulative impacts of oil and gas development," C.R.S. § 34-60-106(11)(c)(II), the Commission recognized that odor impacts may be cumulative. There may be odors from multiple oil and gas facilities that impact the same receptor. Unlike noise and light, where the source of the impact is clearer, in many cases it is difficult to determine the origin of a specific odor. Accordingly, in areas where a sensitive receptor, such as a building unit, may be exposed to odors from multiple oil and gas facilities, the Commission provided that the Commission or Director may require operators to adopt additional best management practices to mitigate odors.

Rules 423.d, 424.f, 426.e, and 427.e are intended address cumulative impacts to noise, light, odor, and dust, respectively. Although many of the Commission's Rules adopted in the 200–600 and 800/900/1200 Mission Change Rulemakings are intended to evaluate cumulative impacts, Rules 423.d, 424.f, 426.e, and 427.e are among the most targeted regulations intended to *address* cumulative impacts to individual resources. Rules 423.d, 424.f, 426.e, and 427.e each represent the Commission's first regulatory effort to address cumulative impacts, and the Commission determined that the administrative record fully supports each Rule. However, the Commission appreciated the thoughtful commentary from parties to the 200–600 Mission Change Rulemaking and other stakeholders about Rules 423.d, 424.f,

426.e, and 427.e, and recognizes that because of their novelty, the implementation of these cumulative impact regulatory standards should be an iterative work in process in collaboration with relevant stakeholders. Accordingly, the Commission instructs its Staff to prepare a presentation to the Commission about the implementation of Rules 423.d, 424.f, 426.e, and 427.e, to be given at a Commission hearing no later than July 15, 2021. The presentation may address any relevant topic, but should address the implementation of the cumulative impacts Rules, guidance developed by Staff relevant to that implementation, case studies of implementation on an individual permitting basis, and recommendations for potential future regulatory changes, if any.

Rule 427.

The Commission moved prior Rule 805.c to Rule 427. Although prior Commission Rule 805.c addressed dust impacts as a subset of odor impacts, the Commission recognized that dust impacts are distinct from odor impacts and determined that they should be addressed in their own Rule.

Rule 427.a

In Rule 427.a, the Commission adopted a new requirement for operators to submit dust mitigation plans as attachments to their Form 2As. The Commission determined that developing dust mitigation plans at the planning stage will ensure that all operators are able to comply with the substantive dust mitigation requirements of Rule 427.

The Commission recognizes that site design, access road design, truck fleet details, and other factors may change between the time that an operator submits a Form 2A and the time when an oil and gas location is constructed and wells are drilled, completed, and brought into production. Accordingly, in Rule 427.a the Commission provided that an operator may identify one or more methods of compliance with the substantive dust standards of Rule 427 at the Form 2A stage. The permit applicant bears the burden of proving that all methods specified fully comply with the substantive dust control and mitigation standards in Rule 427. An operator may submit a Form 4 prior to conducting on-the-ground operations to notify the Commission's Staff about which option for compliance the operator ultimately selects. However, the operator must receive the Director's approval pursuant to Rule 404.d for any deviations from the plans approved through the Form 2A process, and all such deviations must provide equal or greater reductions in dust impacts.

Consistent with Rule 304.e, the Commission intends to allow operators to submit substantially equivalent information or plans for dust mitigation that the operator develops through a local government land use process or federal agency land use or permitting process in lieu of the dust mitigation plan required by Rule 427.a. The Commission intentionally used the term "land use" rather than "siting" in Rule 304.e to reflect that substantially equivalent local regulations may relate to any category of land use regulation,

rather than solely "siting" of a facility. Whether a plan is substantially equivalent is a decision to be made by the Director or Commission, not the operator. The Commission intends for its Staff to review local government or federal plans or information submitted in lieu of a dust mitigation plan on a case by case basis to ensure they provide equivalent information. If the local or federal plan or information is not equivalent, then the Commission's Staff may require the operator to submit additional information or a full dust mitigation plan that meets the requirements of Rule 427.a.

Recognizing that dust impacts may be caused by traffic on access roads, the Commission instructed operators to consider dust from both access roads and the actual working pad surface when developing dust mitigation plans.

The Commission identified several specific components that must be included in a dust mitigation plan, including soil characteristics, proposed vehicle speed limits, characteristics of the site and access road, and dust mitigation and suppression plans. Identifying all of these components in a dust mitigation plan submitted with a Form 2A will allow the Commission's Staff to work with operators during the permitting stage to ensure that their dust mitigation plans are adequate.

Some stakeholders raised questions about Rule 427.a.(6), which requires operators to provide a plan for suppressing fugitive dust caused solely by wind. The Commission recognizes that sources other than wind, including truck traffic, may also cause fugitive dust. However, the Commission addressed these factors in other criteria in Rule 427.a, including Rules 427.a.(2), (4), (5), and (7).

To assist operators in developing adequate dust mitigation plans, the Commission instructed its Staff to prepare guidance documents about the required contents for a dust mitigation plan.

Rule 427.b

In Rule 427.b, the Commission set a clear standard that operators must minimize fugitive dust caused by their operations, and prevent dust originating from areas disturbed by their oil and gas operations from becoming windborne. Because the Act only provides the Commission with jurisdiction to regulate oil and gas operations, Rule 427.b applies only to lease access roads, not to publicly-owned and maintained roads that may be used as haul routes to access an oil and gas location.

Enforcing and addressing fugitive dust issues has proven challenging for the Commission's Staff in the past, in part due to a lack of regulatory clarity about what fugitive dust standards apply. To remedy this confusion, in Rule 427.b.(1), the Commission specified that, should an operator not comply with the dust mitigation requirements of Rule 427.b, the Director may require the operator to cease ongoing truck traffic or other operations that cause the fugitive dust, until corrective action is taken. Operators may use planning tools

through the dust mitigation plan required by Rule 427.a to identify criteria that may indicate that they should cease ongoing truck traffic or apply other dust mitigation measures. One available tool, which operators may use, but are not required to use, is to identify maximum allowable windspeeds at which fugitive dust mitigation methods may no longer be effective, and other tools such as reducing truck traffic may be necessary.

As with other Rules that may require immediate action on the part of an operator to address an imminent threat to public health, safety, welfare, the environment, and wildlife resources, in Rule 427.b.(1), the Commission provided that operators may seek an expedited appeal to the Commission pursuant to the procedures established in Rule 901.a.

In Rule 427.b.(2), the Commission further clarified that complying with the components of a dust mitigation plan does not relieve an operator from complying with the substantive requirements of Rule 427.b, if fugitive dust continues to be caused by the operator's oil and gas operations.

Rule 427.c

In Rule 427.c, the Commission specified the types of fluids that are acceptable to use as dust suppressants. Prior Rule 907.c.(2).D specified that flowback fluids could not be used as dust suppressants, but did not specifically address whether other types of potentially hazardous or contaminated materials could be used as dust suppressants. Accordingly, to prevent environmental contamination, the Commission specified that no produced water, exploration and production ("E&P") waste, hazardous waste, crude oil, solvents, or process fluids may be used as dust suppressants, and that operators may only use fresh water for dust suppression within 300 feet of a water body. Some stakeholders raised questions about the Commission's jurisdiction to regulate the use of dust suppressants on county roads. As discussed above, the Act limits the Commission's jurisdiction to regulating oil and gas operations, and accordingly Rule 427.c, like all of Rule 427, only applies to lease access roads, not to publicly-maintained roads that may also be used as haul routes.

Rule 427.d

In Rule 427.d, the Commission identified additional best management practices to control dust that may be required as conditions of approval in sensitive areas to protect public health and wildlife. The Commission intends for operators to work with the Commission's Staff to identify appropriate best management practices on a case by case basis.

Rule 427.e

In Rule 427.e, the Commission adopted cumulative dust standards. Consistent with Senate Bill 19-181 requiring the Commission to "evaluate and address the potential cumulative impacts of oil and gas development," C.R.S. § 34-60-106(11)(c)(II), the Commission recognized that dust impacts may be cumulative. There may be fugitive dust from multiple

oil and gas facilities that impact the same receptor. Accordingly, the Commission directed operators to work with the Commission's Staff to identify appropriate dust mitigation measures during the permitting process in areas that are likely to have cumulative dust impacts from truck trips at nearby facilities, particularly if the truck traffic at multiple facilities will use the same unpaved roads.

In Rule 427.e.(3), the Commission specifically instructed the Director and operators to consider whether sensitive receptors may be impacted by cumulative dust impacts from multiple sources that could harm the receptors, including plants and crops that might be buried by dust, or have their photosynthetic capacity significantly damaged by dust coverage.

Rules 423.d, 424.f, 426.e, and 427.e are intended address cumulative impacts to noise, light, odor, and dust, respectively. Although many of the Commission's Rules adopted in the 200–600 and 800/900/1200 Mission Change Rulemakings are intended to evaluate cumulative impacts, Rules 423.d, 424.f, 426.e, and 427.e are among the most targeted regulations intended to *address* cumulative impacts to individual resources. Rules 423.d, 424.f, 426.e, and 427.e each represent the Commission's first regulatory effort to address cumulative impacts, and the Commission determined that the administrative record fully supports each Rule. However, the Commission appreciated the thoughtful commentary from parties to the 200–600 Mission Change Rulemaking and other stakeholders about Rules 423.d, 424.f, 426.e, and 427.e, and recognizes that because of their novelty, the implementation of these cumulative impact regulatory standards should be an iterative work in process in collaboration with relevant stakeholders. Accordingly, the Commission instructs its Staff to prepare a presentation to the Commission about the implementation of Rules 423.d, 424.f, 426.e, and 427.e, to be given at a Commission hearing no later than July 15, 2021. The presentation may address any relevant topic, but should address the implementation of the cumulative impacts Rules, guidance developed by Staff relevant to that implementation, case studies of implementation on an individual permitting basis, and recommendations for potential future regulatory changes, if any.

Rule 428.

The Commission moved prior Rule 327 to Rule 428. The Commission clarified that a kick managed by shutting in the well constitutes a "significant" well control event during controlled drilling. The Commission also clarified that operators must submit Form 23, Well Control Reports, for both uncontrolled events and significant controlled events. Finally, the Commission clarified that operators may need to submit a Form 19, Spill/Release Report if a well control issue results in a reportable spill or release.

Rule 429.

The Commission moved prior Rule 328 to Rule 429. In Rules 429.a through 429.g, the Commission updated incorporations by reference of several industry standards for

measurement and recording, to reflect the most current version of the standard and to comply with the Administrative Procedure Act's incorporation by reference provisions. *See* C.R.S. § 24-4-103(12.5)(a).

Rule 429.i

Consistent with C.R.S. § 34-60-118.5, the Commission revised Rule 429.i, which provides that payees may submit a Form 37, Payment of Proceeds – Sales Volume Reconciliation requesting information about payment of proceeds or sales volume reconciliation at any time. The Commission may act to prohibit or terminate any abuse of the reconciliation process, such as the submittal by a payee of multiple repeated requests for sales volume reconciliation regarding the same well, or submitting information to the payee in a form that does not directly correspond to the Form 38, Payment of Proceeds Hearing Request responses, provided either payee or payor may submit such additional information that is intended in good faith to clarify the inquiry or to respond thereto. Such action by the Commission may include, but is not limited to, relieving the payor from its obligation to answer the request and limiting or prohibiting the payee's submittal of additional requests.

Rule 429.j

The Commission adopted a new Rule 429.j, governing meter calibration. To ensure that oil measurements are accurate, the Commission added new requirements for annual meter calibration, unless the Commission's Staff determines that more frequent calibration is necessary for a specific meter.

The Commission also added new calibration recordkeeping requirements in Rules 206.b.(3)–(4) and 429.j.(2). The Commission determined that it is crucial for the date of the latest meter calibration to be conspicuously posted on-site and legible so that it can be reviewed by the Commission's field inspectors. Accordingly, in Rule 429.j.(2), the Commission specified that the date of the latest meter calibration must be posted conspicuously on site at all times.

In Rule 429.j.(1), the Commission further specified procedures for operators to follow if two consecutive meter calibrations reveal greater than 2% margin of error, which creates a presumption that the meter is defective and must be recalibrated, repaired, or replaced.

Rule 430.

The Commission moved prior Rule 329 to Rule 430. In Rules 430.a, 430.b, 430.c, and 430.e, the Commission updated incorporations by reference of several industry standards for measurement and recording, to reflect the most current version of the standard and to comply with the Administrative Procedure Act's incorporation by reference provisions. *See* C.R.S. § 24-4-103(12.5)(a).

Rule 430.d

Consistent with changes to Rule 429.j, the Commission required legible copies of the date of the latest meter calibration to be available on-site at all times in Rule 430.d.(2). As with meter calibrations for oil wells discussed under Rule 429 above, the Commission determined that it is crucial for the date of the latest meter calibration to be available on-site so that it can be reviewed by the Commission's field inspectors.

Rule 430.g

Consistent with C.R.S. § 34-60-118.5, the Commission revised Rule 430.g, which provides that payees may submit a Form 37 requesting information about payment of proceeds or sales volume reconciliation at any time. The Commission may act to prohibit or terminate any abuse of the reconciliation process, such as the submittal by a payee of multiple repeated requests for sales volume reconciliation regarding the same well, or submitting information to the payee in a form that does not directly correspond to the Form 38 responses, provided either payee or payor may submit such additional information that is intended in good faith to clarify the inquiry or to respond thereto. Such action by the Commission may include, but is not limited to, relieving the payor from its obligation to answer the request and limiting or prohibiting the payee's submittal of additional requests.

Rule 431.

The Commission moved prior Rule 330 to Rule 431. The Commission changed the Rule's title to reflect that it covered both measurement and reporting of certain fluids, and broadened the list of fluids to include produced, reused, recycled, and injected water.

Rules 431.a

Consistent with prior practice, the Commission required all produced water volumes to be reported on a Form 7.

In Rules 431.a, the Commission also clarified that the Director may approve an alternate measurement method if measuring to the nearest ¼ inch of 100% capacity tables is infeasible or otherwise not advisable in a specific case.

Rule 431.b

The Commission added a new Rule 431.b governing the measurement and reporting of reused and recycled produced water. The Commission encourages operators to reuse and recycle produced water as part of its mission to minimize adverse environmental impacts by reducing water use. Reducing water use has benefits for ecosystems by keeping fresh water in surface waterways, and for agricultural, municipal, and domestic water users by making an increased water supply available for other uses. Reusing and recycling produced

water further minimizes adverse environmental impacts by decreasing the number of truck trips involved with drilling, completing, and stimulating a well, which in turn reduces air emissions, fugitive dust, noise, and safety issues associated with truck traffic.

Consistent with the Commission's intent to encourage the reuse and recycling of produced water, the Commission adopted specific measurement and reporting requirements for reused and recycled produced water to enable operators and the Commission's Staff to better track and evaluate produced water reuse and recycling. Consistent with current practice, the Commission intends for operators to report volumes of produced water that is reused or recycled on a Form 5, Drilling Completion Report, and Form 5A. The Commission specified that Form 5As should include the volume in barrels of three categories of fluids used in drilling and stimulating wells: total fluids, fresh water, and recycled or reused fluids. This will allow the Commission's Staff, operators, and the public to better understand what percentage of fluids are recycled or reused.

Rule 431.c

In Rule 431.c, the Commission required legible copies of the date of the latest meter calibration to be available on-site at all times. As with meter calibrations for oil and gas meters discussed under Rules 429.j and 430.d above, the Commission determined that it is crucial for the date of the latest meter calibration to be available on-site so that it can be reviewed by the Commission's field inspectors.

In Rule 431.c, the Commission also clarified that the Director may approve an alternate measurement method if measuring to the nearest ¼ inch of 100% capacity tables is infeasible or otherwise not advisable in a specific case.

Rule 432.

The Commission moved prior Rule 331 to Rule 432. The Commission did not make substantive changes to the hearing procedures in Rule 432.b, but clarified the wording so that the process for vacuum pump application approval and requesting a hearing on an application for a vacuum pump installation would be clearer to operators.

Rule 433.

The Commission moved prior Rule 332 to Rule 433, but did not make substantive changes to the Rule.

Rule 434.

The Commission moved prior Rule 319 to Rule 434, and renumbered each subsection and updated cross-references, but did not make substantive changes to the Rule. The Commission revised Rule 434 in the Wellbore Integrity Rulemaking.

Rule 435.

The Commission moved prior Rule 311 to Rule 435, and renumbered each subsection and updated cross-references, but did not make substantive changes to the Rule. The Commission revised Rule 435 in the Wellbore Integrity Rulemaking.

Rule 436.

The Commission moved prior Rule 333 to Rules 313 and 436. Prior Rule 333 addressed both the permitting of seismic operations, and set substantive requirements for the seismic operations themselves. Consistent with organizing its Rules more clearly into series that each address a single subject, the Commission moved all seismic permitting requirements to Rule 313, and all seismic operations requirements to Rule 436.

The Commission intends for operators to protect wildlife from potential adverse impacts of seismic operations. Although specific consultation with CPW is not required by Rule 436, the Commission intends for CPW to identify appropriate wildlife protection stipulations, including any necessary and reasonable timing stipulations, as part of the consultation process for Form 20 applications pursuant to Rule 313.b.(5).

Rule 436.a

In Rule 436.a, the Commission expanded the notice requirements for seismic operations. Prior Rule 333.b required operators to make a good faith effort to consult with surface owners, but did not require notice to all potentially impacted persons. As a result, the Commission has received numerous complaints from nearby residents who were unaware that seismic operations were scheduled to occur. Accordingly, in Rule 436.a, the Commission required operators to provide at least 72 hours notice prior to commencing seismic operations to all surface owners and tenants within the seismic project's boundaries. To better inform residents about what the seismic operations will entail, the Commission specified that the notice must include a description and schedule of work, contact information for the operator, and a description of safety precautions. The Commission encourages operators to coordinate notice through trusted organizations that already disseminate information to local residents, such as homeowners' associations and local governments.

Rule 436.b

In Rule 436.b, the Commission added new requirements for utility owner notice prior to seismic operations. Because seismic operations have potential to impact subsurface utilities, the Commission determined that notice to all subsurface utilities was necessary so that the owner of each utility could have an opportunity to identify and work with the seismic operator to mitigate any potential impacts. To facilitate this discussion, the Commission required seismic operators to consult with utility owners to determine safe

peak vibration limits and setbacks. Additionally, the Commission required operators to locate all subsurface utilities in order to ensure that seismic operations do not disrupt them prior to conducting seismic operations.

Rule 436.c

In Rule 436.c, to facilitate compliance with the surface owner, tenant, and utility notification requirements, the Commission required operators to maintain records demonstrating their compliance with Rules 436.a and 436.b.

Rule 436.d

In Rule 436.d, the Commission set vibration limits for seismic operations.

Rule 436.e

In Rule 436.e, the Commission updated its prior requirement for seismic operations that require the drilling of shotholes.

In Rule 436.e.(1), the Commission expanded the list of applicable requirements for storing explosives that operators must comply with to include all applicable local, state, and federal rules, rather than being limited to regulations of the federal Bureau of Alcohol, Tobacco, and Firearms.

In Rule 436.e.(2), the Commission clarified confusing wording to be clear that blasting must adhere to the minimum setback distances provided by Rule 436.e.(2) from building units and water sources.

In Rule 436.e.(3), the Commission updated references to Colorado 811.

The Commission clarified confusing wording in Rule 436.e.(4) and broke portions of the Rule out into subsections to make them more readable and clearer for operators, but did not make substantive changes. Requests for variances from Rule 436.e.(4), like all variance requests, must be filed as an application for a Commission hearing pursuant to Rule 502.

Rule 436.f

In Rule 436.f, the Commission made several changes to its Form 20A, Completion Report for Seismic Operations.

In Rule 436.f.(1), the Commission clarified that operators must submit a Form 20A if any portion of a seismic project is conducted.

In Rule 436.f.(2), the Commission added a requirement for operators to report the results of real-time monitoring required by Rule 436.d.(2). The Commission also clarified characteristics of maps submitted with a Form 20A. Maps must be of sufficient size and scale to show relevant characteristics, such townships/sections/ranges, local government boundaries, and high priority habitat. However, GIS data is only necessary for a limited number of mapped characteristics, including the project boundary, energy source points, and receiver locations.

In Rule 436.f.(3), the Commission clarified that a Form 20A map must include shotholes, that encounter artesian water. The Commission also removed a prior requirement to provide the latitude and longitude of every shothole.

In Rule 436.f.(4), the Commission required operators to submit a Form 20A certifying that no seismic operations were conducted in the event that a Form 20 expires prior to the operator actually conducting a seismic operation. The Commission further clarified procedures for refiled Form 20 applications.

Rule 436.g

In Rule 436.g, the Commission clarified that financial assurance supplied for a seismic operation will remain in effect until all conditions in Rule 436.g are met. This will enable the Commission to ensure that an operator has supplied sufficient financial assurance to mitigate and remediate any environmental or property damage caused by a seismic operation prior to releasing its bond. The Commission also added approval of a Form 20A to the list of conditions that must be satisfied before the financial assurance for a seismic operation is released, which will enable the Commission's Staff to ensure that all necessary remediation and reclamation has been completed. Finally, the Commission clarified that a site must have passed its final reclamation inspection prior to the financial assurance being released.

Rule 436.h

The Commission did not make substantive changes to the seismic reclamation requirements in Rule 436.h.

Rule 437.

The Commission adopted a new Rule 437 prohibiting the use of certain chemical additives in hydraulic fracturing fluid statewide. The Commission determined that it was necessary and reasonable to adopt this prohibition because of evidence in the administrative record indicating that these chemicals pose uniquely high risks to public health and the environment if accidentally spilled or released at the surface or below ground.[10]

[10] *See* J.D. Rogers *et al.*, *A framework for identifying organic compounds of concern in*

Rule 437.a

Rule 437.a prohibits the use of the chemical additives listed in Table 437-1 after the effective date of the 200–600 Mission Change Rulemaking. The Commission determined that the chemicals additives listed in Table 437-1 were the appropriate additives to prohibit statewide based on the study by Jessica D. Rogers *et al.* (2015), which identified compounds used as fracturing fluid additives with high mobility and persistence in the environment that posed the greatest risks to public health and the environment if spilled or released. Multiple local government jurisdictions have prohibited the use of a similar list of fracturing fluid additives based on the same study. Based upon an independent review of the study and the listed chemicals by the Commission's Staff with expertise in geochemistry and other relevant subject matter, the Commission determined that it was necessary and reasonable to prohibit most of the chemicals identified as posing risks by the Rogers *et al.* (2015) study. However, the Commission chose not to prohibit one chemical that was identified as posing risks by the Rogers *et al.* (2015) study—polysorbate 80. Polysorbate 80 is a polymer with a wide range of uses, including in some pharmaceuticals and food products. It is used as a surfactant in hydraulic fracturing fluid, and according to the FracFocus database, it is used more frequently in Colorado than the other additives identified in Table 437-1. Because of the relatively lower risks it poses to human health, and the frequency of its use, the Commission determined that it was inappropriate to prohibit the use of polysorbate 80 as a fracturing fluid additive during the 200–600 Mission Change Rulemaking.

Rule 437.b

The Commission intends for the chemical prohibition in Rule 437.a to apply only to chemical additives, but not base fluids, to allow for the reuse and recycling of produced water in drilling and hydraulic fracturing operations. Accordingly, in Rule 437.b, the Commission clarified that the prohibition on chemical additives listed in Table 437-1 does not apply to naturally occurring, trace amounts of those chemicals found in produced water.

Rule 437.c

As a method of verifying compliance with Rule 437.b, in Rule 437.c, the Commission required concentrations of chemicals listed in Table 437-1 in recycled produced water to be either below Table 915-1 standards or below naturally occurring, unconcentrated background levels, whichever is greater. This ensures that Rule 437.b's exception allowing for trace amounts of naturally occurring contaminants in reused and recycled produced water does not result in concentrating those contaminants at concentrations that may pose risks to public health or the environment.

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hydraulic fracturing fluids based on their mobility and persistence in groundwater, 6 Envtl. Sci. & Tech. Letters 158 (2015).

The Commission recognizes that there is a tradeoff between encouraging reuse and recycling of produced water and prohibiting the presence of chemicals above the thresholds in Table 915-1 or naturally occurring background levels in reused or recycled water. However, the Commission determined that the benefits of protecting public health, the environment, and drinking water supplies by prohibiting the use of the additives listed in Table 437-1 outweigh the foregone benefits of potentially reducing the amount of produced water that can be reused or recycled.

500 Series – Rules of Practice and Procedure

Consistent with changes made to Rule 507, throughout the 500 Series, the Commission changed references to Protestants and intervenors to instead reference petitioners. The Commission accordingly removed the definition of Protestant from its 100 Series Rules. Similarly, the Commission changed references to protests and interventions to instead reference petitions.

Throughout the 500 Series, consistent with Senate Bill 19-181 creating Administrative Law Judges to hear some matters, C.R.S. §§ 34-60-106(6), 34-60-108(9), the Commission added Administrative Law Judges, and, in some case, Hearing Officers, to the list of persons who may adjudicate or oversee a matter.

The Commission is fully committed to adhering to best practices for community engagement. The Commission intends for its proceedings, including hearings processes, to be transparent, publicly accessible, broadly noticed, and to provide an opportunity for any person who may be impacted to participate. Consistent with this intent, as discussed above, the Commission directs its Staff to create a Best Practices for Community Engagement guidance document. The Commission intends for this guidance document to address hearings procedures, as well as permitting procedures.

Rule 501.

Rule 501.a

The Commission did not substantively revise Rule 501.a.

Rule 501.b

The Commission did not substantively revise Rule 501.b. The Commission retains the authority under Rule 501.b to prevent a member of the public from making comments at any Commission hearing, including a local public hearing under Rule 511, that use harassing, abusive, or threatening language. *See, e.g.*, *Alward v. Golder*, 148 P.3d 424, 427–28 (Colo. App. 2006) (upholding as-applied First Amendment challenge to reasonable regulatory restraint on abusive language, and discussing other cases similarly upholding restraints on abusive and threatening language).

Rule 501.c

The Commission moved prior Rule 505 to Rule 501.c and updated some cross-references within the Rule, but did not make any substantive changes to the Rule.

Rule 501.d

Consistent with changes to the 300 Series, the Commission revised Rule 501.d to clarify that judicial review may be sought on a permit or final order approved by the Commission or Director, including oil and gas development plans and Form 2, Applications for Permits to Drill. If a person disagrees with the Director's decision about a matter subject to administrative approval or denial, that person may seek Commission review of the Director's decision pursuant to Rule 503.g.(10).

Rule 502.

The Commission moved components of prior Rule 502 to Rule 503, so that Rule 502 addresses only one topic: variances. Previously, many of the Commission's Rules specified that regulated entities may seek variances pursuant to Rule 502. To improve clarity and reduce duplication, the Commission removed many of these references. The Commission intends for all of its Rules to be subject to variances requested pursuant to Rule 502, unless otherwise specified within the Rule's text.

The Commission removed from Rule 502 the Director's authority to grant variance requests. Under prior Rule 502, either the Director or the Commission could grant a variance to a Rule. If a variance was granted by the Director, the Director had to report that variance to the full Commission at its next hearing. Vesting with the Commission exclusive authority to hear and approve variance requests provides greater transparency to the variance process. It also provides persons, including local governments, impacted by the proposed variance the opportunity to be heard by the Commission before a final decision on the variance is made. These changes, which will require more frequent Commission hearings on variance requests, are possible because Senate Bill 19-181 changed the Commission to a full-time, rather than a volunteer, body.

In revising the variance process, the Commission recognized that many variances brought to the Commission's Staff were for reclamation matters. For example, it is not uncommon for a surface owner to request that final reclamation of an oil and gas location be modified to allow for certain improvements – like a concrete slab—to remain on the surface rather than be removed and the affected land reclaimed. The Commission recognizes that a surface owner should have the right to request that its land be reclaimed in a manner that may vary from the Commission's Rules. The Commission believes that the process set forth in Rule 502 accommodates surface owners, affording them a transparent process to have their variance request heard and acted on by the Commission.

Rule 502.a

In Rule 502.a, the Commission specified that all requests for variances must be filed as an application with the hearings unit pursuant to Rule 503.g.(9).

Rule 502.b

While all variance requests must be applied for and heard by the Commission, Rule 502.b establishes that a variance from a ministerial matter or practice may be recommended for approval by the Director. Ministerial matters are generally procedural or paperwork requirements. For example, Rule 435.c requires operators to file a Form 6, Subsequent Report of Abandonment within 30 days of completion of re-plugging operations. If an operator were unable to file the Form 6 within 30 days due to an unforeseen emergency staffing shortage, the operator could seek a variance to file the Form 6 by a specified later date. The Commission recognizes that reclamation-related requests that result in no detrimental impacts to air, water, soil, and biological resources may be ministerial.

Ministerial matters are not substantive matters that may have material impacts to public health, safety, welfare, the environment, and wildlife resources. Some non-ministerial matters are procedural regulations with substantive impacts, including consultation periods, notice requirements, comment periods, and regulations intended to confer due process on a party proceeding before the Commission. While some reclamation-related variance requests would be considered ministerial, others that implicate habitat fragmentation, accelerated erosion, habitat conversion, vegetation changes, impacts to neighboring properties, and safety would likely not be considered ministerial.

For ministerial matters, if the Director determined the basis for the variance was reasonable, and that it satisfied the requirements of Rule 502.c, the Director could recommend that the variance be approved by the Commission. The Director's recommendation would result in a Hearing Officer preparing a draft order approving the variance which, pursuant to Rule 519.b, would be placed on the Commission's consent agenda for review and approval. Only uncontested matters may be placed on the Commissioner's consent agenda.

If a variance request is for something other than a ministerial matter or practice, Rule 502.b.(1) requires the applicant to present the request to the Commission at a hearing. The Commission intends to require its own approval for any variance that substantively implicates protection of public health, safety, welfare, the environment, or wildlife resources. As with a Director recommended variance, a Rule 502.b.(1) variance must satisfy the elements of Rule 502.c. Only the operator or an applicant authorized by the Commission's Rules may file an application seeking the Commission's approval of a variance.

Rule 502.c

The Commission moved the components of prior Rule 502.b.(1), governing what an operator or applicant must submit when seeking a variance, to Rule 502.c. To provide additional clarity to operators, the Commission broke the 502.c criteria into five separate subsections, each of which the operator must demonstrate in its variance application.

The Commission adopted a new criterion in Rule 502.c.(3) that the requested variance is necessary to avoid an undue hardship. The Commission adopted the term "undue hardship" to indicate an elevated burden of proof that applies for variance requests. The Commission used the term "undue hardship" because it is frequently used in local government variance rules and is thus commonly-understood with well-developed caselaw to guide its application. *See, e.g.*, *Bd. of Cty. Comm'rs of La Plata Cty. v. Moga*, 947 P.2d 1385, 1390 (Colo. 1997).

The Commission adopted another new criterion in Rule 502.c.(4), which specifies that granting a variance will result in no net adverse impacts. The no net adverse impacts framework for a variance is intended to be a standard for an operator to show that no additional harm to public health, safety, welfare, the environment, or wildlife resources will occur as a result of the variance being granted. An operator may demonstrate this by showing that the proposed variance has a lesser impact than would otherwise occur, or does not change the impact to a given resource from what would otherwise occur if the variance were not granted. In some cases, an operator's proposed variance might result in a greater adverse impact to a resource than would otherwise occur. In such a case, the operator could still propose the variance, so long as the greater adverse impact is offset by some form of compensatory mitigation. For example, an operator might propose a variance to Rule 903.d.(6), governing emissions of volatile organic compounds from pits, to allow a higher level of emissions. The operator could demonstrate that there were no *net* adverse impacts by offsetting the increased volatile organic compound emissions by plugging and abandoning a nearby well that was emitting volatile organic compounds, or otherwise taking emissions control measures not otherwise required by the Commission's Rules or regulations of other agencies. This example is only one possible method an operator could use to demonstrate that a variance would result in no net adverse impacts. The Commission does not intend to indicate a preference for any method an operator could use to meet Rule 502.c.(4).

The Commission intentionally used the terms "avoid, minimize, or mitigate" in Rule 502.c.(5) because operators may propose, among other things, public projects or other forms of compensatory mitigation to offset any adverse impacts that would be allowed by the variance. Examples of such compensatory mitigation include, but are not limited to, plugging nearby offset wells, or voluntary contributions towards a compensatory habitat mitigation project.

Rule 502.d

Pursuant to Rule 502.d, the Commission will continue to consult the EPA about any requested variances from the Commission's 800 Series Rules, which the Commission enacted pursuant to its delegated authority under the Safe Drinking Water Act. The Commission will also consult with CPW before granting variances pursuant to Rule 309.e.(2).E, and with CDPHE before granting variances pursuant to Rule 309.f.(1).A.ii.

Rule 502.e

The Commission added a new Rule 502.e, providing that granted variances will be posted to the Commission's website.

Rule 503.

The Commission moved prior Rule 502.a to Rule 503. To improve clarity, the Commission broke prior Rule 503 out into additional substructure.

The Commission updated cross-references and clarified confusing language in Rules 503.d, 503.e, 503.h., 503.i, 503.j, and 503.m, but did not make substantive changes to the Rules.

Consistent with changes to the local public hearing process in Rule 511, and with revisions to the Commission's 300 Series Rules that allow for additional public input on oil and gas development plans, the Commission eliminated prior Rule 503.f, which previously provided for similar, but less detailed, information to be released to the public about some permit applications.

Consistent with changes to the process for a person to petition to be a party to a Commission proceeding, the Commission removed prior Rule 503.i, which governed the process for protestants to receive notice of Commission proceedings.

Rule 503.a

The Commission revised Rule 503.a to clarify that the Commission may initiate proceedings upon any question which the Commission has jurisdiction and authority to address.

Rule 503.b

The Commission revised Rule 503.b to create the requirement that any request for the Commission to take any action must be made by filing an application (except for those initiated by the Commission's own motion pursuant to Rule 503.a). The Commission removed language from prior Rule 503 pertaining to recommended orders which are governed by Rule 510.c, and variances granted by the Director, consistent with the changes to Rule 502 discussed above.

Rule 503.c

In Rule 503.c, the Commission revised the criteria that must be included in all applications for a Commission hearing. The Commission also clarified that these are minimum criteria—applications may include additional information. Additionally, the Commission revised Rule 503.c to reflect that persons who are not operators may seek hearings before the Commission, and that applications may not involve geologic formations in all cases. Finally,

the Commission added several criteria, including a prayer for relief, contact information for the applicant's legal counsel (if the applicant is represented by counsel), the name of each interested party, and any other information required by the Commission's Rules.

Rule 503.e

The Commission did not substantively revise Rule 503.e in the 200–600 Mission Change Rulemaking. However, some stakeholders raised concerns about confidential information being made public pursuant to Rule 503.e. Information submitted pursuant to Rule 503.e will not be made public if it is deemed confidential pursuant to Rule 223.

Rule 503.f

The Commission revised Rule 503.f to use the newly-defined term Governmental Agency. As defined in the 100 Series, a Governmental Agency is any federal, state, tribal, or local governmental entity. The Commission intends for this definition to include all publicly-funded government entities, including federal agencies, tribal governments and tribal agencies, other Colorado state agencies, other states' governments, and municipal, county, and special district government entities within Colorado. Under revised Rule 503.f, Governmental Agencies are exempt from paying the Commission's docket fees.

Rule 503.g

The Commission revised and expanded Rule 503.g to create a list of application types that may be submitted to the Commission. Consistent with Senate Bill 19-181 creating a full-time Commission, the 200–600 and 800/900/1200 Mission Change Rulemakings have expanded the scope of matters that may be heard in Commission hearings. For example, the Commission added hearings on oil and gas development plans to the list of Commission hearing types in Rule 503.g.(1). Additionally, the Commission's prior Rules did not provide a comprehensive list of hearing types that may come before the Commission in a single Rule. Rule 503.g now provides that clarity, and also specifies procedures for seeking each type of hearing before the Commission, where applicable, or cross-references to other Commission Rules that include the procedural standards, where applicable. Among other things, Rule 503.g.(3) clarifies that while unitization applicants must satisfy the requirements in Rule 505, statutory pooling applicants must satisfy the requirements of *both* Rules 505 and 506.

Finally, prior Rule 503.b expressly limited the persons who could request many types of Commission hearings. For example, only a mineral owner or operator within the area of a proposed oil and gas development plan may submit an oil and gas development plan application, and only an owner or operator within a proposed or existing drilling and spacing unit may submit a drilling and spacing unit application. Consistent with changes to the definition of "Affected Person" in the 100 Series, and the process for identifying affected persons in Rule 507, the Commission removed several of these limitations.

Additionally, in Rule 503.g.(10), the Commission specified that any person may seek relief from the Commission pertaining to any matter not listed in Rule 503.g.(1)–(9). The Commission does not intend to include rulemaking petitions in the list of possible applications that can be filed for a Commission hearing pursuant to Rule 503.g. Petitions for rulemaking hearings may be filed by any person, and are governed by Rule 529.b, and by the Administrative Procedure Act, C.R.S. § 24-4-103(b)(7).

Rule 503.k

The Commission moved prior Rule 504 to Rule 503.k, explaining that all matters accepted for a Commission hearing will be assigned a docket number upon acceptance. The Commission intends for its hearings manager or other Staff in the hearing unit to accept or reject matters for hearing pursuant to the Commission's Rules, and to assign docket numbers as appropriate.

Rule 503.l

The Commission moved prior Rule 506.b, governing continuances, to Rule 503.l, and removed redundant language. The Commission intends for the Commission, Administrative Law Judges, and Hearing Officers to have full discretion to grant or deny requests for continuances beyond the applicant's first request for a continuance of an uncontested application.

Rule 503.n

The Commission revised Rule 503.n to clarify that service by mail is not necessary in all circumstances, because electronic service may also be sufficient in some cases, as provided by Rule 522.

Rule 504.

The Commission moved prior Rule 507 to Rule 504.

Rule 504.a

The Commission revised Rule 504.a.(2).A by removing prior Rule 507.a.(2)'s rebuttable presumption that notice was served properly. Because of the importance of notice for ensuring that all impacted parties are able to effectively participate in the Commission's processes, the Commission has shifted the burden of demonstrating that notice was adequately served by requiring most forms of notice to require delivery or receipt confirmation. *See, e.g.*, Rule 303.e.(3). Many of the Commission's prior Rules tied a party's ability to participate in a proceeding to whether the party received notice. In Rule 504.a.(2).A, the Commission also clarified that certificates of service should identify any mailed notices that were returned to an applicant as undeliverable.

The Commission specifically recognizes the importance of providing notice to mineral owners pursuant to Rule 504.a. Mineral owners, as the owners of the resources being developed, must be fully informed of hearing applications that impact their rights. Accordingly, the Commission intends for its Staff to explore the creation of a registry of mineral owners that can be used for notice purposes. Operators and the Commission may use the registry as another resource to identify mineral owners. The Commission instructs its Staff to initiate a working group of interested parties to work towards creating the mineral owner registry.

The Commission clarified in Rule 504.a.(2).B that notices must be posted in a newspaper of general circulation in the county of the affected land, unless that county has no newspapers, in which case a newspaper in an adjacent or otherwise nearby county may be sufficient.

The Commission intends to interpret the "last known address" standard in C.R.S. § 34-60-108(4) to include actual knowledge of an address. For example, if a mineral owner provides an updated address to the operator, then the operator would have actual knowledge that that address is the mineral owner's last known address.

The Commission adopted a new Rule 504.a.(3), codifying and expanding upon the Commission's system for allowing interested persons to receive notice of hearing applications through the Commission's general email notification list. This will allow persons who are potentially interested to opt-in to receiving notices of hearing applications, including notices of hearing applications for oil and gas development plans and CAPs. Opting-in to receive such notice does not confer affected person status.

For clarity, and consistent with the Commission's new definition of "Affected Person" in the 100 Series and Rule 507, the Commission clarified in Rule 504.a.(4) that receiving notice does not confer affected person status.

Rule 504.b

Consistent with the Commission's revised oil and gas development plan permitting process in the 300 Series, the Commission revised Rule 504.b.(10) by adding a new provision for providing notice of oil and gas development plans, and in Rule 504.b.(2) clarified the persons who must receive notice of drilling units, which includes leasehold interest owners and any unleased mineral owners. The Commission also clarified that for Rule 401.c well exception applications, notice must be provided to all mineral owners in the encroached-upon drilling unit. And the Commission deleted confusing language in Rule 504.b.(8) referencing the types of orders that may be imposed in an enforcement proceeding, which is not necessary as part of the Commissions notice obligations.

Consistent with changes to Rules 305, 401, and the Commission's prior practice, the Commission revised Rule 504.b.(5), governing changes to well completion setbacks. The Commission first specified that the applications governed by the Rule are intended to

change well *completion* setbacks—in other words, subsurface setbacks establishing limits on where a well can be completed to develop minerals—not surface *location* setbacks. The Commission clarified that notice must be served on mineral owners in both neighboring tracts *and* units. Finally, the Commission specified that if the operator themselves is a lessor of any neighboring tracts, then the operator must notify the owner from whom they are leasing the tract.

Relatedly, the Commission revised Rule 504.b.(6), which governs applications for well completion exceptions. The Commission clarified that the Rule only applies to applications for exceptions to Rules 401.a and 401.b, that are not otherwise addressed by Rule 401.c.

Consistent with changes to Rule 502, the Commission added Rule 504.b.(7), which requires that the Director and the relevant local government receive notice of all applications for variances. In addition to the Director and the relevant local government, Rule 504.b.(7) provides that the Secretary to the Commission may serve notice of the variance application on any necessary person. Identification of a necessary person may be made by the Director, or by the Secretary.

Rules 504.c & 504.d

The Commission also revised prior Rule 507.c, which governed notice to relevant local governments, CDPHE, and CPW. The Commission adopted distinct notice requirements for the Colorado State Land Board and CPW in Rules 507.c and 507.d, respectively.

Rule 504.e

The Commission added a new Rule 504.e, governing notice to tribal governments. The Commission does not have jurisdiction over minerals owned by the Southern Ute or Ute Mountain Ute tribal governments or tribal allottees. However, the Commission does have jurisdiction over non-Indians conducting oil and gas operations on lands within the exterior boundaries of the Southern Ute Indian Reservation where both the surface and oil and gas estates are owned by persons other than the Southern Ute Indian Tribe or a tribal allottee. As a sovereign government, it is crucial for the Southern Ute Indian Tribe to receive notice about all activities occurring within the exterior boundaries of the Tribe's reservation. Accordingly, in Rule 504.e, the Commission required hearing applicants to provide the Southern Ute tribal government notice of all applications for Commission hearings pertaining to such minerals. Although the Commission is unaware of any similar configuration of land and mineral ownership within the exterior boundaries of the Ute Mountain Ute Reservation, the Commission included the Ute Mountain Ute Tribe in Rule 504.e to clarify that, should such a situation ever arise in the future, the Ute Mountain Ute tribal government would receive appropriate notice of a Commission hearing. The Commission does not intend for Rule 504.e to in any way expand or change the Commission's limited jurisdiction within the exterior boundaries of the Southern Ute Indian Reservation.

Rule 504.f

The Commission adopted new Rule 504.f, requiring that BLM be provided notice of applications involving minerals owned or managed by BLM, and for any application where the BLM is a surface owner.

Rule 505.

The Commission moved portions of prior Rule 511.b to Rule 505, which governs evidence that must be submitted in support of an application for certain types of Commission hearings.

In Rule 505.a, the Commission specified the types of Commission hearing applications for which the specific forms of evidence discussed in Rule 505 are required, which include applications for oil and gas development plans, drilling units, pooling and unitization applications, payment of proceeds, and school and child care center setbacks. Other Commission Rules governing each type of application specify who may submit each form of application. In Rule 505.a.(1), the Commission clarified that the types of sworn written testimony may include other forms of facts or testimony not enumerated by Rule 505.a.(1), if required by the Commission's Rules. The Commission also clarified that geologic and engineering testimony are not required for statutory pooling applications.

Rule 506.

The Commission moved prior Rule 530 to Rule 506. The Commission only made two minor clarifications to the wording of 506. In Rule 506.a, the Commission clarified that the Commission, not the applicant, sets the hearing date. And in Rule 506.c.(1).B, the Commission clarified that the total sum of drilling and completion costs, including both the total cost and owner's share, must be provided in dollars.

To ensure that all mineral owners are able to fully understand the contents of the pooling brochure required by Rule 506.e, the Commission intends for its Staff to provide a Spanish language version of the brochure for use by operators and the general public. The Commission recognizes the importance of linguistically-accessible communication and does not intend for language to provide a barrier to engaging in the Commission's processes. The Commission also intends for its Staff to provide translated versions of the pooling brochure in languages other than English and Spanish, as appropriate, based on an operator's identification of any languages spoken by more than 5% of the population in a census block group in proximity to a proposed development, consistent with Rule 303.e.(2).I.

Rule 507.

The Commission moved portions of prior Rules 509 and 528 to Rule 507, and substantially revised the scope and purpose of the Rule to cover all contested hearing applications.

In Rule 507, the Commission adopted new standards for which parties will have standing in Commission proceedings. The Commission's prior Rules strictly limited standing to a subset of parties that was narrower than the parties who would otherwise have standing to participate under the default standard of the Administrative Procedure Act. Consistent with Senate Bill 19-181's changes to the Commission's mission and statutory authority, the Commission determined that it was necessary to broaden its standing requirements in order to provide for participation in Commission proceedings by all affected persons. The Commission recognizes that members of the public other than operators may be well-positioned to provide insight into potential public health, safety, welfare, environmental, and wildlife impacts of various Commission-approved actions. Additionally, Senate Bill 19-181 expanded the authority of local governments over surface impacts of oil and gas operations, and it is therefore necessary to provide broader standing to local governments to participate in Commission proceedings relevant to those surface impacts.

Consistent with the changes to Rule 507, the Commission removed the prior definition of Protestant from the 100 Series Rules. The Commission has replaced the concept of a Protestant with the concept of an affected person in Rule 507.

Rule 507.a

In Rule 507.a, the Commission adopted new requirements for determining which parties are Affected Persons, as defined in the 100 Series, and therefore have standing in its adjudicatory proceedings. The Commission based the standing provision of Rule 507.a upon the Administrative Procedure Act's provision governing standing in adjudicatory proceedings, C.R.S. § 24-4-105(2)(c). The Commission intends for caselaw addressing the scope of standing provided by C.R.S. § 24-4-105(2)(c) to be considered as persuasive authority for the Commission to reference when addressing questions of standing. For example, the Commission intends for caselaw governing representative standing of membership organizations to apply in its determination of Affected Person status. *See, e.g.*, *Buffalo Park Development Co. v. Mountain Mut. Reservoir Co.*, 195 P.3d 674, 688 (Colo. 2008) (citing *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333 (1977)).

Rule 507.a.(1)

In Rule 507.a.(1), the Commission adopted unique standing rules for federal agencies, state agencies, tribal governments, relevant local governments, and special districts with legal authority over issues relevant to the application at issue. For one of these entities to have legal authority over issues relevant to the application, it means that the entity has the authority to directly regulate the operator or its activities associated with the application. For example, a county that regulates the siting of oil and gas locations, but is 100 miles away from the jurisdiction in which the proposed oil and gas activities are proposed to occur would not be a governmental agency with legal authority over the application. Only the county that regulates the siting of the oil and gas location would be deemed an affected person. In another example, a PWS that acts as a consulting agency pursuant to Rule 309.g

would be an affected person because it plays a role in regulating the conduct of oil and gas operations, but a special district that merely exercises taxation authority such as the Scientific and Cultural Facilities District created by C.R.S. § 32-13-103 would not be an affected person because it does not regulate the conduct of oil and gas operations. These governmental entities will automatically be considered affected persons and have standing to participate in a Commission proceeding involving any such application. The Commission also intends for the Southern Ute Tribe to be automatically considered an affected person in any adjudicatory proceedings involving non-Indians conducting oil and gas operations on lands within the exterior boundaries of the Southern Ute Indian Reservation where both the surface and oil and gas estates are owned by persons other than the Southern Ute Indian Tribe or a tribal allottee.

Rule 507.a.(2)

In Rule 507.a.(2), the Commission adopted a standard that surface owners and residents (including both building unit owners and tenants) within 2,000 feet of a proposed working pad surface are affected persons for purposes of hearing applications for an oil and gas development plan. The Commission adopted this Rule to ensure that, consistent with Rule 604, the residents and other surface owners most likely to be impacted by a proposed oil and gas development plan are deemed affected persons for purposes of the hearing upon the proposed working pad surface. By eliminating ambiguity around whether such persons are affected persons, the Commission intends to streamline its process for identifying affected persons in a hearing, consistent with its findings in support of Rule 604 which demonstrate that such a person would likely be impacted by the proposed oil and gas operations. Rule 507.a.(2) conferring automatic affected person status does not convey additional procedural rights beyond those of any other affected person. The Commission retains discretion to manage its own hearing processes, as appropriate.

Although Rule 507.a.(2) is limited to surface owners and residents (including both owners and tenants), the Rule is not intended to indicate that the owner of a commercial or industrial building within 2,000 feet of a proposed working pad surface, or an employee who works at such a building, would not be an affected person. Rather, such a person would need to apply for affected person status pursuant to the Rule 507.a process and the Commission would evaluate whether they are an affected person on a case by case basis. Similarly, the default presumption that a surface owner or resident within 2,000 feet of a proposed working pad surface is an affected person is not intended to mean that such a person living more than 2,000 feet from the proposed working pad surface is *not* an affected person. Again, the Commission would evaluate the claims of such a person on a case by case basis, based on whether the person provided evidence to indicate that they may potentially be impacted by the proposed working pad surface.

Rule 507.a.(3)

In Rule 507.a.(3), the Commission identified what a person other than a governmental entity that meets the criteria of Rule 507.a.(1) must show in order to demonstrate that they are an affected person. As with all hearing applications, the proponent of the Commission order—namely, the person seeking affected person status—will have the burden of proof. The Commission based these requirements on relevant provisions of the Administrative Procedure Act, including the definition of "aggrieved" and "interested person" under C.R.S. § 24-4-102(3.5) & (6.2), and the standard for demonstrating that a person is adversely affected or aggrieved for purposes of judicial review under C.R.S. § 24-4-106(4). First, the person must explain what their interest is in the regulated activity. Second, the person must explain how their interest could be injured if the proposed activity is permitted. Finally, the person must explain why their interest is unique to themselves, and not held in common with other members of the public. The Commission recognizes that there are impacts of oil and gas development that impact all members of the public broadly, rather than a specific member of the public. For example, emissions of methane during the oil and gas development process contributes to climate change, and climate change impacts all persons worldwide. Similarly, oil and gas development also emits volatile organic compounds which may contribute to ozone formation that impacts the health of people throughout a region, or even in a downwind area hundreds of miles away. However, the Commission does not intend to classify persons affected by climate change or ozone formation who live in close proximity, or a significant distance away from a proposed oil and gas operation as affected persons, because under that definition, every member of the public could be considered an affected person. Rather, the Commission intends to consider persons directly impacted by an oil and gas operation as an affected person.

Rule 507.a.(4)

Because making an affected person determination may be complex in some circumstances, in Rule 507.a.(4), the Commission provided a non-exclusive list of factors that the Commission may consider when determining whether a person is an affected person. Recognizing that some impacts on the environment and on wildlife, such as climate change, might be considered to be held in common by the general public under Rule 507.a.(3).C, the Commission clarified in Rule 507.a.(4).D that a person with a unique interest in a natural resource or wildlife may be considered an affected person based on impacts to the natural resource or wildlife that that the person uses or enjoys. For example, all members of the public share some interest in ensuring the protection of wildlife. However, a hunter may have a unique interest in protecting deer in an area where she hunts, and a birdwatcher may have a unique interest in protecting birds in an area that she often visits to observe birds. Similarly, although all members of the public share some interest in preserving public lands, a mountain biker may have a unique interest in avoiding surface disturbance in an area of public lands where she frequently bikes.

Rule 507.b

In Rule 507.b, the Commission clarified that only a mineral owner and specific types of governmental entities have standing to file petitions to participate in drilling unit applications and pooling and unitization applications. The Commission recognizes that only a limited number of entities have an interest in these purely subsurface issues.

Rule 507.c

Consistent with recognizing that the relevant local government and various state agencies are automatically affected persons in Rule 507.a.(1), in Rule 507.c., the Commission provided that a petition to participate in an adjudicatory proceeding filed by a relevant local government, CDPHE, or CPW will automatically be granted.

Rule 507.d

In Rule 507.d, the Commission adopted a timeline and procedures for a person filing a petition to participate in an adjudicatory proceeding to provide notice to the Commission and the applicant who is seeking relief from the Commission in the adjudicatory proceeding.

Rule 507.e

In Rule 507.e, the Commission clarified that when a matter is continued pursuant to Rule 510.l, the Commission will have discretion to extend the deadline to file a petition to participate as an affected person in the continued matter, as appropriate.

Rule 507.f

In Rule 507.f, the Commission adopted a list of items that must be included in all petitions to participate in an adjudicatory proceeding as an affected person. In Rule 507.f.(3), the Commission provided that persons filing a petition may demonstrate that they meet the Rule 507.a definition of an affected person as part of such a petition. And in Rule 507.f.(8), the Commission required petitions to identify the name and contact information for petitioner's legal counsel, if the petitioner is represented by counsel. If the petitioner is not represented by legal counsel, then the petitioner may supply their own contact information.

Rule 507.g

In Rule 507.g, the Commission clarified its authority, and the authority of its Administrative Law Judges and Hearing Officers, to require a person to submit additional information in support of their petition, and to dismiss without prejudice any petition that fails to meet the requirements of Rule 507.f.

Rule 508.

The Commission moved prior Rule 511.a and portions of prior Rule 511.b to Rule 508. The Commission removed duplicative language regarding the right of an applicant to request an administrative hearing when the Director recommends denying an application. The Commission also clarified that requests for approval in an uncontested matter may be submitted to the Commission, Administrative Law Judge, or Hearing Offer, as applicable. If requests to approve an application are not approved, applicants may request a hearing before the Commission, Administrative Law Judge, or Hearing Offer.

Rule 509.

The Commission moved prior Rule 527 to Rule 509, and consolidated it with prior Rule 509.d, which also addressed prehearing conferences. The Commission made relatively few changes to the Rule besides updating terminology used to reflect new definitions and other changes in the 500 Series Rules.

Rule 509.b

The Commission added new Rule 509.b, governing case management orders. The Commission has long utilized case management orders as tools for identifying hearing dates, filing deadlines, discovery procedures, and other procedural matters. The Commission codified this practice to provide clarity for all parties involved with Commission hearings. Additionally, the Commission clarified that decisions about whether discovery will be permitted, and about the permissible scope of discovery, will be made as part of the case management order pursuant to Rule 509.b.(3).

Rule 509.g

The Commission revised Rule 509.g to clarify that a party's failure to appear for any hearing for which it formally received notice to appear, except for a rulemaking hearing, constitutes the party's agreement to any outcome reached during that hearing.

Rule 510.

The Commission consolidated portions of prior Rules 506, 509, 511, 522, 526, 528 into a single Rule 510 governing the conduct of hearings. Under the Commission's prior Rules, Rules governing the conduct of hearings were spread out between many 500 Series Rules that governed the substance of various matters that could be heard before the Commission. To improve clarity, the Commission consolidated all procedural rules governing hearings into a single Rule.

Rule 510.a

The Commission adopted a new Rule 510.a, specifying that the applicant, as the proponent of an order, will always bear the burden of proof. The Commission based Rule 510.a on the Administrative Procedure Act, C.R.S. § 24-4-105(7), and intends for caselaw interpreting C.R.S. § 24-4-105(7) to serve as persuasive authority in interpreting Rule 510.a. In some circumstances, the Commission's Staff will be the proponent of an order, for example in enforcement matters, and accordingly the Commission's Staff would bear the burden of proof in such a hearing.

Rule 510.b

The Commission moved part of prior Rule 506.a to Rule 510.b, which explains that no hearing may be held until the hearing applicant has complied with all notice, evidentiary, and other procedures.

Rule 510.c

Consistent with changes to Rule 509.b, the Commission added a new Rule 510.c, explaining that the procedural aspects of all hearings will be governed by case management orders entered by the Commission, Administrative Law Judge, or Hearing Officer, as appropriate.

Rule 510.d

The Commission moved prior Rules 526.a and 526.b to Rules 510.d.(1) and (2), governing the conduct of administrative hearings in uncontested matters, but did not make substantive changes to the Rules.

Some stakeholders raised concerns about administrative hearings occurring prior to a protest deadline. Administrative hearings are sometimes necessary for a Hearing Officer to conduct an on-the-record discussion about issues with an application. For example, an administrative hearing may be called to inquire as to why the applicant did not provide notice to a person who was required to receive notice, or that the Commission's Staff identified as having an interest in the application.

Rule 510.e

The Commission moved prior Rule 528.a to Rule 510.e. Prior Rule 528.a included a lengthy and complex list of the order in which components of a contested hearing must occur. Consistent with other changes to the Commission's Rules broadening the types of contested hearings that may occur, and other changes to the 500 Series, the Commission determined that specifically proscribing the exact process that each contested hearing must follow through a Rule is no longer appropriate. Accordingly, consistent with Rules 509.b and 510.c,

the conduct and process of each contested hearing will be determined on a case by case basis by a case management order going forward.

Rule 510.f

The Commission moved portions of prior Rule 522.e.(2).B–C to Rule 510.f. The Commission clarified the situations in which an order finding violation ("OFV") hearing may occur before the Commission, as well as the procedures that apply to OFV hearings, but otherwise made no substantive changes.

Rule 510.g

The Commission moved portions of prior Rule 522.b.(6), governing hearings in enforcement matters initiated by a complainant's petition for review, to Rule 510.g. The Commission removed prior Rule 522.b.(6).B, which prohibited discovery in enforcement matters initiated by a complainant's petition for review. The Commission replaced this Rule with a broader and clearer explanation in Rule 510.g.(1) that no party to a petition for review hearing may present any evidence or information that was not previously presented to the Director. The Commission intends for all hearings on petitions for review of enforcement to be constrained to evidence that was previously presented to the Director. Should the Commission, Administrative Law Judge, or Hearing Officer determine that additional evidence is necessary, it may remand the proceeding to the Director's enforcement staff.

Rule 510.h

Because rulemaking hearings are a unique form of hearing that may occur before the Commission, the Commission added new Rule 510.h to clarify that all rulemaking hearings must comply with the procedures in Rule 529.

Rule 510.i

The Commission moved prior Rule 528.e, governing witnesses, to Rule 510.i, but did not make substantive changes to the Rule.

Rule 510.j

The Commission moved prior Rule 509.e.(2), governing the participation of petitioners and affected persons in a hearing, to Rule 510.j.(1). The Commission revised the Rule's language to reflect new terminology in Rule 507, but otherwise did not substantively revise the Rule. The Commission moved prior Rule 528.f, which addressed the participation of multiple petitioners with aligned views in a hearing, to Rule 510.j.(2), but did not revise the Rule.

Rule 510.k

The Commission moved prior Rule 528.d, governing the closing of the record, to Rule 510.k, but did not make substantive changes to the Rule.

Rule 510.l

The Commission moved prior Rule 506.d, governing continuances of contested applications, to Rule 510.l, but did not make substantive changes to the Rule.

Rule 510.m

The Commission moved prior Rule 506.e, governing multiple-day hearings, to Rule 510.m, but did not make substantive changes to the Rule.

Rule 511.

The Commission moved prior Rule 508, governing local public forums, to Rule 511, governing local public hearings. Prior Rule 508 imposed complex procedural requirements for local public forums to occur, limiting the utility of the Rule for local governments seeking to hold a local public forum. The Commission substantively changed the purpose, structure, and requirements for local public hearings, to be consistent with Senate Bill 19-181's changes to the Commission's statutory authority and mission, as well as other changes to the Commission's 300 and 500 Series Rules. Additionally, Senate Bill 19-181's change to a full-time Commission creates more ability for Commissioners to attend local public hearings, because the Commissioners will be full-time state employees, rather than volunteers who only convene once every month.

Rule 511.a

Under Rule 511.a, any person may request a local public hearing. The Commission adopted this broad requirement because it intends for any person who may be impacted, including but not limited to a surface owner or a local government that has land use jurisdiction over an area where an oil and gas development plan or CAP is proposed, or jurisdiction over a nearby area consistent within the definition of a proximate local government, to be able to request a local public hearing. The Commission anticipates that all requests for a local public hearing from a relevant local government will be granted, although each request will be evaluated on a case by case basis.

The Commission intends for local public hearings to be held in close proximity to the community requesting the hearing, and to specifically be held on or near the location where oil and gas development is proposed when possible. Additionally, if a relevant local government specifies a preferred location for a local public hearing, the Commission intends for the hearing to be held at that location.

Rule 511.a also specifies the purpose of a local public hearing, which is to gather feedback from local community members and local government staff and elected officials about a proposed oil and gas development plan. Although other avenues for public comment and public participation about a proposed oil and gas development plan exist, the Commission intends for a local public hearing to provide an opportunity to the most impacted communities to share feedback with the Commission in a location and time that is convenient for the community members.

Although the Commission allowed any person to request a local public hearing pursuant to Rule 511.a, the Commission may not grant all requests for a local public hearing. For example, the Commission has discretion to deny a request for a local public hearing from a person who does not live near a proposed oil and gas development plan and does not qualify as an affected person pursuant to Rule 507.a. If the Commission receives duplicative requests for a local public hearing about the same proposed oil and gas development plan, or for other appropriate reasons, the Commission may from time to time need to deny requests for local public hearings.

Additionally, Rule 511.a authorizes the Commission to hold a local public hearing at the Commission's offices. The Commission intends for this provision to be used only where challenges, such as severe weather, time constraints, security, venue size, or venue availability are presented with identifying a proper location in the immediate vicinity of the proposed oil and gas development plan or CAP, or where the Commission's offices are reasonably proximate in location to the proposed oil and gas development plan or CAP. Additionally, local public hearings may be entirely virtual when appropriate for public health or other reasons.

Insofar as the Commission has discretion about whether to hold a local public hearing, the Commission may also initiate a local public hearing on its own motion. This situation might arise where, for example, a local government did not believe a local public hearing is necessary, but a large number of members of the affected public requested a local public hearing from the Commission.

Finally, in Rule 511.a the Commission specified that it has the discretion to designate a single Commissioner, Administrative Law Judge, or Hearing Officer to preside at a local public hearing. Recognizing that it may receive a high volume of requests for local public hearings, the Commission does not intend for all five Commissioners to attend every local public hearing.

Rule 511.b

In Rule 511.b, the Commission identified the procedural requirements for a local public hearing request. The Commission intends for these requirements to impose a minimal burden on a person that is requesting a local public hearing.

Rule 511.c

In Rule 511.c, the Commission identified the procedural requirements for the conduct of a local public hearing. Unlike a formal adjudicatory hearing held by the Commission on other matters, local public hearings are intended to be informal opportunities for the public to provide comment. Although the Commission will consider comments made at local public hearings as part of the administrative record for an oil and gas development plan, the Commission will not require witnesses to be sworn in or represented by counsel, as it would require during a formal adjudicatory proceeding.

Rule 511.d

In Rule 511.d, the Commission provided that the operator applying for a proposed oil and gas development plan or CAP may, but is not required to, participate in a local public hearing and present information about the proposed oil and gas development plan or CAP. The Commission's Staff will work with an operator to determine the appropriate scope for an operator's participation in a local public hearing on a case by case basis.

Rule 511.e

In Rule 511.e, the Commission created a process for recording local public hearings as part of creating the administrative record for a proposed oil and gas development plan or CAP application. Additionally, if not all Commissioners attend a local public hearing, then the absent Commissioners may, but are not required to, review the recording prior to making a decision about a proposed oil and gas development plan or CAP.

Rule 511.f

In Rule 511.f, the Commission identified the appropriate topics for discussion at a local public hearing. The Commission intends to allow the public to discuss all topics relevant to a proposed oil and gas development plan or CAP at a hearing.

Rule 512.

The Commission moved prior Rule 510, governing public comment, to Rule 512. Prior Rule 510 imposed numerous constraints on the subject matter of public comments. For instance, to provide public comment in adjudicatory proceeding one had to make the comment under oath and was then subject to cross-examination by the parties. The Commission determined that these and other restrictions on public comments were unnecessary, legally unwarranted, and inconsistent with Senate Bill 19-181's changes to the Commission's mission and statutory authority. Members of the public who are not parties to a Commission proceeding may be well-positioned to provide the Commission with information relevant to the protection of public health, safety, welfare, the environment, and wildlife resources. Accordingly, the Commission determined that it was appropriate to remove

procedural and substantive restrictions on public comments in order to avoid deterring members of the public from providing relevant information.

Rule 512.a

In Rule 512.a, the Commission adopted a Rule governing general public comments sessions, which will allow the public to address any matter during a time specified by the Commission for general public comment.

Rule 512.b

In Rule 512.b, the Commission adopted rules for public comments in adjudicatory proceedings. A timely and relevant public comment will be considered part of the administrative record for an adjudicatory proceeding. The Commission, Administrative Law Judge, or Hearing Officer will consider public comments in making an adjudicatory decision, though the weight given to any public comment will be at the discretion of the Commission, Administrative Law Judge, or Hearing Officer, as the triers of fact.

Some stakeholders suggested that the Commission require public commenters to make statements under oath and subject to cross-examination. The Commission did not adopt this suggestion because the law does not require comments at administrative hearings to be made under oath and subject to cross-examination in order to be included in an administrative record. *Colo. Dep't Rev. v. Kirke*, 743 P.2d 16, 20–21 (Colo. 1987); *see also Dep't of Rev. v. Rowland*, 408 P.3d 458, 463 (Colo. 2018) (applying the *Kirke* test); *Indus. Claims Appeals Office v. Flower Stop Mktg. Corp.*, 782 P.2d 13, 18 (Colo. 1989) (recognizing that *Kirke* is the proper standard for determining whether unsworn evidence can support an administrative agency's decision). Indeed, Rule 517.b.(2) incorporates the exact standard set by the Colorado Supreme Court in *Kirke*: that the Commission may consider evidence that would not be admissible under the Colorado Rules of Evidence if the evidence "possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs."

Rule 512.c

In Rule 512.c, the Commission clarified that parties to a proceeding may not provide public comments. Parties are restricted to the scope of written and oral input allowed by a case management order, and may not use the public comment process to provide additional testimony. Finally, a party to an adjudicatory proceeding may not object to a public comment. However, in considering public comments, the Commission, Administrative Law Judge, or Hearing Officer will give public comments the appropriate weight, understanding that the commenter was not subject to cross examination and was not sworn in.

Rule 513.

The Commission moved prior Rule 512 to Rule 513. Because Senate Bill 19-181 changed the number of voting Commissioners from 9 to 5, the Commission changed the number of Commissioners who must be present to form a quorum from 5 to 3 (a majority).

Rule 514.

The Commission moved prior Rule 516, governing conduct of the Commission, to Rule 514. The Commission updated terminology used in Rule 514 to reflect changes to other 500 Series Rules, re-ordered some provisions, and clarified confusing wording, but did not make substantive changes to the Rule.

Some stakeholders suggested amending Rule 514 to apply the standards of conduct to the Commission's Staff in addition to the Commissioners, Administrative Law Judges, and Hearing Officers. The Commission did not adopt this suggestion because the Commission's Staff are not acting in as judges in quasi-adjudicatory proceedings, and therefore applying standards for conduct in quasi-adjudicatory proceedings to Staff is not appropriate. Additionally, the Commission's Staff are already subject to numerous statutory standards for ethical conduct that apply to all public employees. *See, e.g.*, C.R.S. § 24-18-104.

Rule 515.

The Commission moved prior Rule 517, governing representation before the Commission, to Rule 515. The Commission updated cross-references and used consistent terminology.

Rule 515.a

In Rule 515.a, the Commission changed a reference to "pro se participants" to "participants who are not represented by legal counsel." The Commission determined that using plain English terms rather than a Latin legal term would be less confusing for members of the public who are not represented by an attorney. Where appropriate, the Commission may consider applying more lenient standards to participants who are not represented by legal counsel.

The Commission also clarified that Rule 515.a applies to persons representing themselves, and removed unnecessary language specifying the applicable rule that persons making oral or written statements pursuant to Rule 512 may do so without counsel.

Rule 515.b

The Commission clarified in Rule 515.b that any person, including persons appearing on behalf of a community group or organization, may make a Rule 512 oral or written statement. Rule 512 governs public comment in Commission proceedings. Rule 515.b

applies to persons who are not parties to a Commission proceeding, but wish to make a public comment on the issue before the Commission in that proceeding.

Rule 515.c

In Rule 515.c, the Commission removed a requirement for resident counsel to physically appear with non-resident counsel at a hearing. The Commission made this change to reduce the burden on attorneys serving as local counsel, and for consistency with the standard practice in most federal courts, which do not require local counsel to be present at a hearing where an attorney they sponsor appears *pro hac vice.*

Rule 515.d

The Commission revised Rule 515.d to remove its discretion to approve or deny representation by a corporate officer or director of a community organization or corporation in certain circumstances. The Commission instead used the term "will" to indicate that representation by such a corporate officer or director is non-discretionary, and will be allowed so long as the representation complies with the requirements of Rule 515.d.

Rule 515.e

The Commission revised Rule 515.e to remove the confusing Latin phrase "*pro hac vice*," and to clarify the circumstances when a non-attorney may permissibly appear before the Commission pursuant to Rules 515.a, b, and d.

Rule 516.

The Commission moved prior Rule 518, governing subpoenas, to Rule 516. The Commission clarified that the Secretary need not issue every subpoena—subpoenas may be directly issued by the Commission, Administrative Law Judge, or Hearing Officer.

Rule 517.

The Commission moved prior Rule 519, governing the procedural rules in proceedings that occur before the Commission, Administrative Law Judge, or Hearing Officer, to Rule 517.

Rule 517.a

The Commission intends for the Colorado Rules of Civil Procedure to apply in a circumstance not specifically addressed by a Commission Rule.

Rule 517.c

The Commission revised Rule 517.c.(1) to reflect that a tribal government's constitution and statutes may be judicially noticed. The Commission revised Rule 517.c.(2) to reflect that a local government's regulations or ordinances may be judicially noticed. To reflect technological advancements in information storage, the Commission revised Rule 517.c.(4) to allow judicial notice of any information in the Commission's files, regardless of whether that information is electronic or in hard copy.

Rule 517.d

The Commission moved a portion of prior Rule 518 to Rule 517.d, which clarified that the Commission, Administrative Law Judge, and Hearing Officer have the discretion to limit the scope of discovery, as appropriate, pursuant to Rule 509.b.(3).

Rule 518.

The Commission moved prior Rule 509.c, governing electronic filing, to Rule 518, but did not substantively change the Rule.

Rule 519.

The Commission moved prior Rule 531, governing the Commission's consent agenda, to Rule 519. The Commission did not substantively revise Rule 519, except by removing a reference to the Commission's next regularly-scheduled meeting in Rule 519.b. Because the full-time Commission will meet more frequently than the volunteer Commission, this regulatory provision was no longer necessary.

Rule 520.

The Commission moved prior Rule 532, governing Commission orders and decisions, to Rule 520.

Rule 520.a

The Commission revised Rule 520.a to clarify that a Hearing Officer's or Administrative Law Judge's decision about a motion to dismiss, or about a petition to be a party, is an interim decision, unless an application is dismissed in its entirety. Previously, confusion has arisen as to which types of Hearing Officer and Administrative Law Judge decisions are final, appealable decisions. The Commission sought to clarify that, consistent with the Administrative Procedure Act's definition of "initial decision," C.R.S. § 24-4-102(6), Hearing Officer and Administrative Law Judge orders on motions to dismiss a third party petitioner are not final actions, unless an application is dismissed in its entirety.

Rule 520.b

The Commission revised Rule 520.b to reflect that Hearing Officers and Administrative Law Judges will transmit the record to parties electronically, not in hard copy. The Commission also removed language from prior Rule 532.b regarding the timing of when a recommended order would be issued relative to the next regularly-scheduled Commission hearing. Because the full-time Commission will meet more frequently than the volunteer Commission, this language is unnecessary.

Rule 520.c

In Rule 520.c, the Commission added all persons whose petition to participate in a matter has been denied to the list of persons who may file an exception to the recommended order of a Hearing Officer or Administrative Law Judge. The Commission also added a reference to the statutory basis for the exception process, C.R.S. § 34-60-108(9). Finally, the Commission removed language from prior Rule 532.c.(1), governing the ordering of transcripts, because the Commission's standard practice is to automatically make a recording of a hearing available to the parties, without the party having to submit a request.

Rule 521.

The Commission moved prior Rule 533, governing the Commission entering orders, to Rule 521. The Commission revised Rule 521.b to clarify that not all Commission orders must be entered by the Secretary.

Rule 522.

The Commission moved prior Rule 521, governing service, to Rule 522.

Rule 522.a

The Commission created a new Rule 522.a, governing service of all documents that do not have a service process otherwise specified in Rule 522. The Commission created this catch-all Rule to be clear to all persons appearing before the Commission that all documents served, along with their supporting exhibits and attachments, must be electronically served on all persons who are listed as parties in the hearing docket.

Rules 522.b & 522.c

The Commission updated cross-references and used language consistent with other provisions in the 500 Series in Rules 522.b and 522.c, but did not make substantive revisions to either Rule.

Rule 522.d

The Commission revised Rule 522.d, governing petitions for review, consistent with changes to the Commission's other 500 Series Rules. First, the Commission clarified that the service of all petitions for review should be through the Commission's standard electronic filing system. Second, the Commission clarified that if a petitioner is unable to use the electronic filing system for any reason, they may instead serve their petition by certified mail, with return receipt requested. In all cases, a petition for review must be served on the relevant operator within 7 days of the time the Commission is filed.

Rule 522.e

In Rule 522.e, to reflect changes in communications technology, the Commission deleted prior Rule 521.e's provision allowing cease and desist orders to be served via facsimile. All cease and desist orders will be served electronically. The Commission removed language related to non-emergency orders, because pursuant to C.R.S. § 34-60-121(5), cease and desist orders may only be issued in emergency situations.

Rule 522.f

In Rule 522.f, the Commission clarified confusing language regarding the effective service date of materials served via certified mail.

Rule 522.g

In Rule 522.g, the Commission added a catch-all provision for service via first class mail. The Commission intends to move towards an entirely electronic filing system. Electronic filing is faster, generally less expensive, and more reliable than mail. However, recognizing that some parties may not have access to electronic means of service, the Commission specified requirements for identifying the date of service if first class mail is the only means of service available.

Rule 523.

The Commission moved prior Rule 522, governing enforcement, to Rule 523.

The Commission recognizes that the BLM and other federal agencies also have enforcement authority over oil and gas operations on federally-owned and managed mineral and surface estate. The Commission is committed to continuing to work with BLM and other federal agencies to implement both regulatory regimes—consistent with the existing memoranda of understanding between the agencies. If, in the course of an enforcement action, an operator identifies a concern with complying with both the Commission's Rules and any applicable BLM rules, the Commission intends for the operator to raise the issue with both BLM and the Commission to reach resolution.

Rule 523.a

The Commission revised Rule 523.a to reflect that the evidence supporting an enforcement action need not be physical. Electronic evidence, for example, an operator's failure to electronically file a timely Form 7, Monthly Report of Operations, may be sufficient.

Rule 523.b

The Commission revised Rule 523.b to reflect the types of violations that the Rule covers, which include violations of the Act, any Commission Rule, any Commission order, or a term of any approved Commission permit. The Commission also removed provisions relating to warning letters and inspection reports from prior Rule 522.c.(3), because the prior Rule limited the Commission's ability to identify a violation in a warning letter or inspection report without potentially waiving the Commission's ability to issue a Notice of Alleged Violation ("NOAV"). Rule 523.b allows the Commission to weigh an operator's response to a warning letter or inspection report before deciding whether to issue an NOAV.

Rule 523.c

In Rule 523.c, the Commission removed unnecessary language from prior Rule 522.d.(1) explaining how a penalty amount would be relayed to an operator. The Commission intends to continue relaying the proposed penalty amount as part of negotiating a resolution, but the NOAV must not be the vehicle for that type of communication. As a practical matter, NOAVs have not included proposed penalty amounts since the form was last updated.

Rule 523.d

The Commission revised Rule 523.d.(1) to more clearly explain the process for resolving enforcement actions through an administrative order by consent ("AOC") but did not make substantive changes to the Rule. The Commission made several changes to the wording of Rule 523.d.(1) to be clearer about the process for review and approval of AOCs.

The Commission added new Rule 523.d.(2).A.(ii), requiring that alleged violations resulting in the death or serious injury to a person cannot be resolved through an AOC and must be heard by a Hearing Officer or Administrative Law Judge. Matters involving death or serious injury are equally serious as the other matters for which Hearing Officer and Administrative Law Judge involvement were already required.

Rules 523.e & 523.f

The Commission clarified confusing wording relating to NOAVs in Rules 523.e and 523.f, but did not make substantive changes to either Rule.

Rule 524.

The Commission moved prior Rule 522.b, governing enforcement matters initiated by complainants, to Rule 524.

Rule 524.a

In Rule 524.a, consistent with changes to the definition of affected person in Rule 507, the Commission expanded the list of persons who may submit a complaint to include any person. And consistent with Rule 222, the Commission specified that complaints must be submitted on a Form 18, Complaint Report. The Commission also clarified that complaints may address not only a violation of the Act, but also a Commission Rule, Commission order, or the term of a Commission-approved permit. The Commission also clarified that the Director will consider validly-submitted complaints if the Director believes sufficient grounds exist to warrant an investigation, based on evidence submitted with the complaint or other evidence or information available to the Director.

Rule 524.b

In Rule 524.b, the Commission clarified that complainants will be informed about whether the Director has chosen to conduct an investigation after receiving the complainant's complaint. Complainants will be notified if the Director determines that no violation occurred and no investigation will be conducted. If the Director believes a violation occurred, then the Director will initiate enforcement action pursuant to Rule 523. And if a complaint results in an NOAV being issued, the Commission clarified that the complainant who initiated the investigation may review any draft proposed settlement terms before an AOC is signed and presented to an Administrative Law Judge or Hearing Officer.

Rules 524.c & 524.d

The Commission updated cross-references and clarified confusing language in Rule 524.c and 524.d, but did not make substantive changes to either Rule, except to clarify that the timeframe for a complainant to file a petition for review starts on the date the complainant is served with the Director's decision, not on the date that the complainant actually received the decision.

Rule 524.e

In Rule 524.e, the Commission substantially simplified the procedural requirements for filing petitions for review, and also removed complex and unnecessary procedural requirements for petition for review-initiated hearings. Petition for review-initiated hearings will be governed by case management orders pursuant to Rules 509.b and 510.c, which can be tailored to provide appropriate procedures on a case by case basis.

Rule 524.f

Finally, the Commission added new Rule 524.f, specifying the timeframe for a petition for review to be heard.

Rule 525.

The Commission moved prior Rule 523, governing enforcement penalties, to Rule 525, but made few substantive changes to the Rule. The Commission added the language "in Enforcement Matters" to the Rule's heading to provide additional clarity.

Rule 525.a

In Rule 525.a, the Commission clarified confusing wording to specify that the operators will be subject to orders imposing penalties only if the Commission itself finds that the operator has violated the Act, the Commission's Rules, a Commission order, or term of the operator's permit.

Rule 525.b

In Rule 525.b.(3).B, the Commission changed the term "damage" to "adverse impacts," consistent with Senate Bill 19-181's changes to the Commission's mission and statutory authority.

Rule 525.c

In Rule 525.c, the Commission added a cross reference to C.R.S. § 34-60-121(1)(a), to clarify the basis for the $15,000 daily maximum penalty. The Commission also revised Rule 525.c.(2).A to clarify that it covers damage to all potentially impacted natural and environmental resources, which includes fish, wildlife, and any other form of damage to ecosystems or contamination of environmental media, such as air, water, or soil. Consistent with Senate Bill 19-181's changes to the Commission's mission and statutory authority, *see* C.R.S. § 34-60-106(2.5)(a), the Commission added new Rule 525.c.(2).F, explaining that harm or threatened harm to the health, safety, or welfare of any persons will be considered in assessing penalties for violations.

Rule 525.d

In Rule 525.d.(1).C, the Commission added whether an operator engaged in an activity that resulted in death or serious injury of a person to the list of aggravating factors requiring a hearing. As discussed above, the Commission determined that causing death or serious injury is equally serious as the other factors of gross negligence, knowing and willful misconduct, and a pattern of violations already listed in Rule 525.d.

Rule 525.e

In Rule 525.e.(1), the Commission clarified confusing language. The Commission also removed the rebuttable presumption that voluntary disclosure will result in at least a 35% penalty reduction. Instead, the Commission left the amount of penalty reduction, if any, to be determined at the discretion of the Director on a case by case basis, as appropriate under the circumstances. The amount may exceed, or be less than, 35%, depending on the circumstances of the specific case. The Commission also revised the circumstances in which a penalty reduction may be applied, to clarify that it does not apply in circumstances where an operator learns about the violation due to an unrelated Commission inspection or NOAV. Relatedly, the Commission clarified in Rule 525.e.(2) that the Director will not consider a penalty reduction if a disclosure was made for fraudulent purposes.

Rule 525.g

The Commission revised Rule 525.g to clarify that the operator and Director may agree to an alternate method of penalties other than certified funds.

Rule 526.

The Commission moved prior Rule 524, governing responsible party status, to Rule 526.

The Commission substantially revised Rule 526 to clarify that the burden of proving responsible party status is not always on the Director. To clarify the burden of proof, the Commission specified that the Director must have evidence to support her allegations against an operator. This change is consistent with the statutory provision defining a "responsible party," C.R.S. § 34-60-124(8), which does not specify that the burden of proof shall be on the Director. If the Director initiates an enforcement proceeding against an operator, then the Director is the proponent of a Commission order, and she will bear the burden of proof, consistent with C.R.S. § 34-60-121 and Rule 510.a's general standard that the proponent of an application bears the burden of proof. As described in the regulatory text, the Director must provide evidence to support her case when she bears the burden of proof, like any other proponent of a Commission order.

However, if an operator wishes to raise an affirmative defense that a different person is in fact the responsible party, then the burden of proof will shift to the operator to show that the different person is the responsible party, rather than the burden being on the Director to show that the different person is *not* a responsible party. Specifically, the operator must present some credible evidence that a different person is a responsible party. The Commission will evaluate the credible evidence presented by the operator to evaluate whether that operator, or a different person, or both, are indeed a responsible party.

Rule 526.d

Should an operator raise this affirmative defense, pursuant to Rule 526.d, it must identify the person the operator believes is a responsible party, and serve that person with notice at the same time that it files its answer to an NOAV. If an operator subsequently discovers that another person is a responsible party after it files an answer to an NOAV, the operator must inform the Commission within 10 days of discovery.

Rule 526.e

In Rule 526.e, the Commission clarified that for the purposes of determining responsible party status, the Commission will not, and should not, intervene in private contractual or legal disputes between parties regarding assignments of liabilities or related issues such as estoppel. Such issues will be resolved between the parties or through the judicial system, as appropriate.

Relatedly, the Commission removed prior Rule 524.e, which created a rebuttable presumption against environmental liability for an operator who acquired an oil and gas location from another operator. As discussed above, in Rule 218, the Commission established a new presumption that liability for remediation rests with the operator that is the successor in interest and is currently registered with the Commission as the operator of the facility at issue.

Rule 526.f

In Rule 526.f, the Commission clarified how liability will be imposed when there are multiple responsible parties. Consistent with C.R.S. § 34-60-124(9), each responsible party will be liable for only their proportionate share, and will not be jointly and severally liable.

Rule 526.g

The Commission revised Rule 526.g to reflect that the Commission, an Administrative Law Judge, or a Hearing Officer may make a determination of responsible party status. Consistent with Senate Bill 19-181's changes to the Commission's statutory authority and mission, the Commission also revised the standard for proving responsible party status in Rule 526.f to match the revised statutory language. *See* C.R.S. § 34-60-106(2.5)(a). Some stakeholders suggested removing the term "significant" from Rule 526.g. The Commission did not adopt this change, because C.R.S. § 34-60-124(7) specifically references "significant adverse environmental impact[s]."

Rule 527.

The Commission moved prior Rule 525, governing permit-related penalties, to Rule 527. The Commission clarified confusing language but did not make substantive changes to the Rule.

Rule 528.

The Commission moved prior Rule 522.g, governing cease and desist orders, to Rule 528, but made few substantive changes to the Rule.

Rule 528.a

In Rule 528.a, the Commission clarified that the Director may issue a cease and order based on an operator's failure to take any authorized action, as opposed to only the operator's failure to take required corrective action.

Rule 528.e

In Rule 528.e, the Commission authorized the Director to amend or suspend an operator's permit that is associated with a cease and desist order, if the Director determines that such amendment is necessary to protect public health, safety, welfare, the environment, and wildlife resources. This provides the Director with the flexibility to respond to a situation that poses an imminent threat to public health, safety, welfare, the environment, or wildlife resources by amending a permit, without needing to go through the standard process for amending a permit, which might take too long in an emergency situation. The Commission also clarified that permits will not be amended or suspended without notice to the permittee and a hearing before the Commission.

Rule 529.

Rule 529 continues to govern rulemakings. The Commission made few substantive revisions to Rule 529.

Rule 529.a

In Rule 529.a, the Commission clarified that it retains the sole discretion about whether to conduct a rulemaking. This is consistent with the Administrative Procedure Act, which provides that "action on such [rulemaking] petition shall be within the discretion of the agency." C.R.S. § 24-4-103(7). Though any person may submit a petition for rulemaking, it is the Commission's decision whether to grant the petition and conduct the rulemaking. The Commission also has discretion to determine when it will decide whether to grant a petition

and conduct a rulemaking, in consideration of other rulemakings and the Commission's workload.

The Commission moved prior Rule 513, governing geographic area plans, to Rule 529.a. The Commission intends for rulemakings to be either statewide or more limited in scope, and thus the Commission may determine whether the Rules it adopts apply to a limited geographic area, such as a specific geological basin or field.

Rule 529.b

In Rule 529.b, the Commission adopted a new requirement that any rulemaking petitions specify the Commission's statutory authority to enact a proposed Rule. The Commission will not entertain rulemaking petitions that exceed the Commission's statutory authority.

Rule 529.d

The Commission moved regulatory requirements for the Commission to consult with CPW and CDPHE about rulemakings and basin-wide orders that implicate each agency's expertise from prior Rule 306 to Rule 529.d. Because the Commission's 300 Series Rules are limited to the permitting process, the Commission determined that it was more appropriate to place consultation provisions related to rulemakings in its 500 Series Rules. Specifically, the Commission moved prior Rule 306.c.(1).B, governing consultation with CPW about orders increasing basin-wide density, to Rule 529.d.(1). The Commission addressed the substance of Rule 529.d.(1) in its 800/900/1200 Mission Change Rulemaking, not in the 200–600 Mission Change Rulemaking. Similarly, the Commission moved prior Rule 306.d.(1).B, requiring consultation with CDPHE about orders increasing basin-wide density, to Rule 529.d.(3). Finally, the Commission adopted a new Rule 529.d.(2), requiring consultation with CDPHE about rulemakings that implicate public health, safety, welfare, the environment, and wildlife resources.

Rule 529.f

In Rule 529.f, the Commission clarified that it may limit oral testimony and presentations during a rulemaking hearing, at its discretion. The amount of time allocated for the hearing, the number of parties, and the scope of the subject matter may require the Commission to limit the time for oral testimony or presentations on a case by case basis.

Rule 529.g

Relatedly, in Rule 529.g, the Commission clarified that it may limits parties' participation in a rulemaking hearing to only pre-filed written testimony, or to oral testimony and presentations. The Commission will determine whether pre-filed written or oral testimony, or both, are most appropriate for a hearing on a case by case basis, as appropriate.

Rule 530.

The Commission moved prior Rule 515, governing *ex parte* communications, to Rule 530. Because Senate Bill 19-181 creates a full-time Commission with paid Commissioners whose sole job will be to serve as Commissioners, the Commission recognizes that changes may be necessary to the Commission's prior *ex parte* communication Rules. Accordingly, the Commission will revise Rule 530 to update its *ex parte* communication Rules in the near future. The Commission continues to consider it to be inappropriate for a party to communicate with a Commissioner about a matter that is yet to be filed.

600 Series – Safety and Facility Operations Regulations

The Commission reorganized some Rules within the 600 Series but did not make significant changes to the purpose or structure of the 600 Series.

Rule 601.

The Commission amended Rule 601 by using consistent wording for defined terms and to refer to the Commission's Rules. The Commission also moved the reference to the Occupational Safety and Health Administration's ("OSHA") regulations from prior Rule 212 to Rule 601 in order to consolidate all references to OSHA's regulations into a single Rule. The Commission expects operators to comply with all applicable OSHA regulations.

Rule 602.

The Commission substantively amended some, but not all, subsections of Rule 602.

The Commission also amended Rule 602 by adding blanket provisions requiring that Operators operate and maintain all oil and gas facilities in a safe manner. Although the prior 600 Series Rules included many specific safety requirements, the prior 600 Series Rules did not include a blanket requirement for operators to operate and maintain all oil and gas facilities in a safe manner. The Commission intends for this blanket requirement to ensure the safety of all oil and gas operations in situations where a more specific Rule does not apply.

Rules 602.a & 602.b

The Commission expanded the requirement in Rules 602.a and 602.b for operators to familiarize their employees with the Commission's Rules and the safe conduct of their job responsibilities to include ensuring that contractors and subcontractors receive adequate training and are aware of safety hazards at an oil and gas location. The Commission recognizes that it is not the responsibility of an operator to train the employees of the operator's contractors. However, because many workers in the oil and gas industry are contractors and subcontractors, the Commission believes it is crucial to ensure that the employees of contractors and subcontractors receive the same level of safety training as the employees of operators themselves. The Commission also specified minimum standards for safety training, replacing the prior version of Rule 602.a which did not specify any standards beyond that employers explain job responsibilities to their employees.

The Commission may adopt additional rules related to worker certification in the forthcoming Worker Certification Rulemaking required by Senate Bill 19-181. C.R.S. § 34-60-106(20).

Rule 602.d

The Commission added a new requirement in Rule 602.d. that operators create and maintain an operations safety management program for all oil and gas operations. Implementing an operations safety management program will ensure that operations are conducted with due regard for the preservation and conservation of property and the safety of employees, contractors, subcontractors, other persons subject to the operator's control that are on-location, and the general population in the area surrounding an oil and gas facility. Although process safety management is a term used in OSHA regulations, the Commission does not intend to adopt OSHA standards for its own operations safety management. OSHA exempts the upstream oil and gas sector from its process safety management rules, which reflects that the specifics of many of OSHA's process safety management rules may not clearly apply to oil and gas operations, given the intermittent and temporary nature of many of the activities in the sector. Similarly, although the terms the Commission used to describe the components of an operations safety management program—change management, operational practices and procedures, and pre-startup safety—are terms used in OSHA regulations, the Commission does not intend to adopt specific OSHA standards for these terms. Rather, the Commission has used terms that may be familiar to some operators in order to provide basic conceptual guidelines for important concepts that must be included in every operations safety management plan. An adequate operations safety management plan must establish operational practices and procedures for safety and include both a pre-startup safety checklist and a plan for managing changes. The Commission intends for its Staff to issue guidance about the components that must be included in an operations safety management program, recognizing that the specifics of each program will vary between operators and based on the individual circumstances of each operator.

Rule 602.e

Consistent with changes to Rules 602.a and 602.b, in Rule 602.e, the Commission added contractors and subcontractors to the list of persons who must report unsafe and potentially dangerous conditions.

Rule 602.f

The Commission adopted a new Rule 602.f, which authorizes the Director to order a safety shut-in of an oil and gas location in the event of a situation that presents an imminent threat to safety. Like other Commission Rules that address imminent threats, such as Rules 209.b, 423.e, 427.b.(1), and 901.a, in Rule 602.f, the Commission recognized that when a situation poses an imminent risk to public safety, there may not be time for a Commission hearing before an operator must be required to take action.

The Commission anticipates that Rule 602.f safety shut-ins will be very rare, because the immediate nature of a safety threat that would require a safety shut-in occurs only rarely in the Commission's experience.

Accordingly, the Commission authorized the Director to require immediate safety shut-ins for the duration of emergencies, until an expedited Commission hearing may be held pursuant to an expedited Commission hearing, as provided for by Rule 602.f. The hearing provisions of Rule 602.f are intended to provide similar procedural due process and other safeguards to other expedited hearings allowed by Rules 209.b and 901.a. If an operator does not appeal the Director's requirement for an immediate safety shut-in to the Commission, then the requirement will nevertheless be reported to the Commission at its next regularly scheduled hearing to ensure adequate Commission oversight.

Some stakeholders suggested that Rule 602.f is therefore redundant of Rule 528, and should not be adopted. The Commission did not adopt these stakeholders' suggestion, because Rule 528 contemplates a much longer timeframe that is insufficient to protect public safety from imminent threats, as Rule 528 codifies the statutory limit of holding a hearing no sooner than 15 days after a cease and desist order is issued (unless the operator requests an earlier hearing). *See* C.R.S. § 34-60-121(5)(b). By contrast, Rule 602.f addresses emergency safety measures that may need to be taken during the interim period prior to a cease and desist hearing being conducted.

Rule 602.g

In Rule 602.g, the Commission added several additional safety issues to those listed in prior Rule 602.c that must be reported to the Director and to a local government, including loss of well control, vandalism and terrorism, natural events that cause safety hazards, and any incident that damages land, structures, or property outside the oil and gas location.

The Commission also clarified that operators must report grade 1 gas leaks, as required by Rule 912.b.(1).D to remind operators about the separate reporting requirements for spills and releases in the 900 Series. Additionally, spills and releases of hazardous chemicals are not necessarily covered by Rule 912's spill and release requirements, which applies only to E&P waste, natural gas, and produced fluids. Accordingly, in Rule 602.g.(3), Commission required notification of hazardous chemical spills.

Finally, in Rule 602.g.(4), the Commission clarified that it intends for reportable injuries at oil and gas facilities to include death.

Some stakeholders raised questions about the meaning of the term "damage to lands" in Rule 602.g.(4).B. The Commission intends for this term to reference harm to soil resources, ecosystems, or cropland caused by oil and gas operations as a result of an accident or natural event. For example, damage to land would exist if a naturally-caused or human-caused fire spread from an oil and gas location to beyond the boundaries of the location. For another

example, damage to land would exist if an accident on-location resulted in a mist or particles spraying across off-location cropland.

Rule 602.h

The Commission did not substantively revise Rule 602.h, which requires operators to provide initial notification of a reportable safety event, followed by a Form 22, Accident Report within 3 days after the reportable safety event. The Commission intends for its Staff to amend the Form 22 to provide information about the type of firefighting foam that is used, if any. The Commission determined that this information is necessary and reasonable to understand any potential risks to surface water, groundwater, and soil resources that may be posed by per- and polyfluoroalkyl substances ("PFAS"), which are commonly used in firefighting foam.

Rule 602.j

In Rule 602.j., the Commission built on requirements it adopted in its recent Wellbore Integrity Rulemaking for operators to maintain a functioning emergency response plan, and added a new requirement that operators submit the emergency response plan as part of their oil and gas development plan applications. Under Rule 602.j, both new and existing oil and gas locations must have a functioning emergency response plan. Only new facilities must submit their emergency response plan to the Commission as an attachment to a Form 2A, Oil and Gas Location Assessment Application pursuant to Rule 304.c.(8). Existing facilities must maintain their emergency response plans, and may be required to submit them to the Commission upon request pursuant to Rule 206.b.(6)

The Commission intends for operators to coordinate and engage with local emergency response agencies in developing their emergency response plans. Once an initial emergency response plan has been developed, the operator must coordinate with the local emergency response agency to update the plan at the frequency identified by the local emergency response agency. Additionally, when the Director approves a Form 9, Transfer of Operatorship – Subsequent pursuant to Rule 218.e, the buying operator must coordinate with the local emergency response agency to update the emergency response plan, as appropriate.

The Commission has determined that conducting emergency response planning at the outset of planning to develop an oil and gas location is crucial to the safe operation of the oil and gas location. The Commission intends for its Staff to issue guidance about the components that must be included in an emergency response plan. The Commission intends for the guidance to specifically address how its Staff and operators should engage with and support local emergency response agencies, including in situations in which a local emergency response agency may not have access to all appropriate equipment or funding to address potential emergency situations that might arise.

Because emergencies, particularly natural disasters, may affect multiple oil and gas locations, the Commission also clarified that an operator's emergency response plan may cover multiple locations within a geographic area, so long as the relevant local emergency response agency or agencies consent to the scope of the plan.

Rule 602.m

In Rule 602.m, the Commission clarified that self-contained sanitary facilities must be physically secured to ensure that they are not knocked over by wind or other causes, which may result in potential spills or other issues. The Commission also clarified that operators are responsible for ensuring that waste remains contained within the sanitary facilities.

Rule 603.

The Commission substantively revised some, but not all, subsections of Rule 603.

Rule 603.a

In order to provide better clarity and consolidate all related Rules in the same Series, the Commission moved prior Rule 317.a, Blowout Prevention Equipment ("BOPE") standards from Rule 317.a. to Rule 603.a.

Rule 603.b

In Rule 603.b, the Commission clarified that rig floor safety valve requirements apply during all drilling and well servicing operations.

Rule 603.c

In Rule 603.c, the Commission added a new requirement for operators to conduct pressure checks prior to commencing well service operations, and to either remove pressure or ensure that the servicing operations may be safely conducted under pressurized conditions.

The Commission further specified that well servicing operations must be conducted using adequate BOPE and backup stabbing valves that have been pressure tested.

The Commission also added a safety standard for well servicing operations by incorporating API Recommended Practice ("RP") 54 by reference.

Additionally, in Rule 603.c.(18), the Commission adopted a statewide standard for BOPE during drilling operations by making prior Rules 604.c.(2).H & I, which previously applied only in designated setback locations, apply statewide, and increasing the number of trained personnel who must be on-site during drilling operations from 1 to 2. The Commission also

changed the required training certification from a minerals management certification to an International Association of Drilling Contractors ("IADC") certification.

Finally, the Commission moved prior Rule 603.c.(20), governing emergency response plans, which was adopted during the Wellbore Integrity Rulemaking, to Rule 602.j in order to consolidate all emergency-response planning rules into a single Rule.

Rule 603.d

In Rule 603.d, the Commission created a statewide requirement for operators to consolidate wells onto multi-well pads by making prior Rule 604.c.(2).E apply statewide. The Commission determined that consolidating new wells onto multi-well pads is crucial to protect public health, safety, welfare, the environment, and wildlife resources by minimizing surface impacts and habitat fragmentation, reducing truck trips, and consolidating infrastructure. Consistent with Senate Bill 19-181's change to the definition of minimize adverse impacts, the Commission changed language from prior Rule 604.c.(2).E about technological feasibility and economically practicability to instead specify that well consolidation should occur where necessary and reasonable. *See* C.R.S. § 34-60-103(5.5). If multiple operators consolidate wells pursuant to Rule 603.d to create multi-well pads that are shared between the operators, the Commission's Staff will consult with BLM and the operators to ensure there is a clear demarcation of which operator is responsible for reclamation and remediation obligations pursuant to both state and federal law.

Rule 603.e

In Rule 603.e, the Commission created a statewide requirement for operators to drill new wells from existing oil and gas locations wherever possible by making prior Rule 604.c.(2).V apply statewide. The Commission also clarified the process for seeking relief from this requirement in the event that an operator believes it is not possible to satisfy.

Rules 603.f, 603.g, 603.i, 603.j, & 603.n

In Rules 603.f, 603.g, 603.i, 603.j, and 603.n, the Commission created statewide requirements for pit level indicators, drill stem tests, loadlines, guy line anchors, and identifying plugged and abandoned wells, respectively, by expanding prior Rules 604.c.(2).K, L, O, Q, and U to apply statewide.

Rule 603.n requires operators to identify the location of the wellbore of a plugged and abandoned well with a permanent monument. This is one of many regulations and practices that the Commission intends for its Staff to use to identify and inspect existing and legacy oil and gas facilities. The Commission intends for its oil and gas location assessment specialists to consider existing oil and gas facilities in the process of considering proposed Form 2A applications for new oil and gas locations. The Commission intends for its compliance unit and field inspectors to continue to inspect existing facilities, and to

specifically review the existing field inspection protocol and update it as appropriate based on the changes made to the Commission's Rules in the 200–600 and 800/900/1200 Mission Change Rulemakings. Finally, the Commission intends for its integrity unit to continue to inspect and review existing flowline infrastructure, consistent with the Commission's 1100 Series Rules.

Rule 603.h

In Rule 603.h, the Commission created statewide fencing requirements by making prior Rule 604.c.(2).M apply statewide. The Commission intends for Rule 603.h to apply only to new sites, and not be retroactive to existing sites, unless there are major modifications to an existing site, or the Director determines that a fence is necessary based on subsequent changes in the surrounding land use, such as the construction of a new housing development near an existing oil and gas facility, if the Director determines that fencing is necessary to exclude unauthorized person. The Commission also clarified that the fencing requirements apply to all "Oil and Gas Locations" and "Oil and Gas Facilities," as defined in the 100 Series, rather than continuing to use the undefined term "well sites." However, fencing is required at all new locations statewide to exclude unauthorized persons from pumps and pits.

Rule 603.k

In Rule 603.k, the Commission created statewide requirements for tank specifications by making prior Rule 604.c.(2).R apply statewide. The Commission also revised the incorporation by reference of National Fire Protection Association ("NFPA") Code 30 to comply with the Administrative Procedure Act's incorporation by reference requirements, C.R.S. § 24-4-103(12.5), and updated the reference to the 2018 version of the standard.

Rule 603.l

In Rule 603.l, the Commission created statewide requirements for access roads by making prior Rule 604.c.(2).S apply statewide. The Commission also replaced the term "reasonable" with the term "stable" to describe the standard for access road maintenance. The Commission used the term stable to mean passable by all vehicles, and not eroding or washing out. The Commission also intends for its access road maintenance requirements to apply to all bridges, drainage culverts, and other associated components of access roads. The Commission will continue to coordinate with BLM and other federal surface management agencies when making decisions about access roads on federal lands.

Rule 603.m

In Rule 603.m, the Commission created statewide requirements for clearing well sites by making prior Rule 604.c.(2).T apply statewide. The Commission also provided that operators may obtain a reasonable extension of time for clearing a well-site by submitting a

Form 4, Sundry Notice to the Director, but the Director may not grant an extension in all circumstances.

Rule 603.o

In Rule 603.o, the Commission created statewide requirements for the design, construction, and maintenance of secondary containment by making prior Rules 604.c.(2).G and 604.c.(3).B apply statewide. Although Rule 603.o is only intended to apply to new oil and gas locations, the new secondary containment requirements apply to any oil and gas locations that undergo significant modifications, and such significant modifications may require operators to retrofit secondary containment at an existing oil and gas location.

In Rule 603.o.(3), the Commission used the term sealed connection, which means a mechanical or physical connection that is sealed through welding or a manufactured collar. The Commission intends for all equipment penetrating the liner, including flowlines and other pipelines, and electrical equipment to have a sealed connection. The Commission specified that liners must be sufficiently impervious that any discharge from a primary containment system will not escape the secondary containment before cleanup occurs.

For clarity, the Commission also moved prior Rule 605.a.(4), governing ignition sources within bermed areas, into Rule 603, in order to consolidate all berm-related provisions into a single Rule. The Commission also strengthened protections in the event of a spill or release by requiring that secondary containment be sufficiently sized to contain at least 150% of the volume of the largest single tank without containment, and restricting the number of tanks within a berm to two within 2,000 feet of a building unit. Each of these changes will help mitigate harm to public health and the environment in the event of a spill or release.

Some stakeholders questioned why the Commission adopted a 150% volume requirement. The Commission's prior Rules provided that containment must cover 100% of volume and a sufficient volume to account for precipitation, but this did not provide adequate clarity to operators, because it was unclear whether the term "precipitation" referred to a single rain event, a 10-year storm, a 100-year storm, or some other metric. The Commission determined that a fixed, quantitative standard was appropriate to provide greater clarity to operators and the Commission's Staff about what standard applies. Additionally, in the event of a catastrophic failure, the 150% standard provides an adequate margin of safety to prevent spilled materials from impacting the surrounding soil and groundwater.

The Commission removed prior Rule 604.c.(3).B.iv, which required that no more than 2 crude oil or condensate tanks be located within a single berm within 2,000 feet of a building unit. Although this is an important safety measure to mitigate the damage caused in the event of a tank fire, the Commission determined that such tank fires are uncommon, and will instead allow its Staff to determine whether to apply this requirement as a condition of

approval under specific, high-risk circumstances, rather than making it a default rule that applies statewide.

Some stakeholders have raised concerns about potential PFAS contamination at oil and gas locations. Although oil and gas operations, and the products produced by oil and gas operations, do not themselves contain PFAS, it is possible that some firefighting foams used at an oil and gas location could contain PFAS. The Commission determined that another reason why protective secondary containment standards in Rule 603.o are necessary is that they would help contain firefighting foams and E&P waste used at an oil and gas location and minimize infiltration into the surrounding soil or groundwater. Additionally, as noted above, the Commission intends for its Staff to revise the Form 22 to provide information about what type of firefighting foam is used, if any, to assist the Commission's Staff and CDPHE in determining whether PFAS contamination may be a concern after firefighting foam is used at a site.

Rule 604.

The Commission revised Rule 604's heading to be "Setbacks and Siting Requirements" to reflect the Commission's dual purpose in revising Rule 604.

Rules 604.a and 604.b have distinct purposes. Rule 604.a contains setbacks: the minimum distances a working pad surface or well must be located from buildings, public roads, above ground utility lines, railroads, surface property lines, school facilities, child care centers, and residential building units. Other than the exception in Rule 604.a.(4) for working pad surfaces within 500 feet of residential building units, no working pad surface may be located within the distances set by Rule 604.a. By contrast, Rule 604.b creates a presumptive 2,000 foot setback from residential building units, and provides siting requirements for exceptions to that standard that would allow a working pad surface to be located between 500 and 2,000 feet of a residential building unit or high occupancy building unit.

The Commission intends for Rule 604 to apply only prospectively and not retroactively. Consistent with Rule 602.l, Rule 604 does not apply to existing production facilities, including wells, flowlines, and oil and gas locations. The Commission does not intend for existing equipment at existing oil and gas locations to change location as a result of adopting Rule 604.

2,000 Foot Distance

In Rule 604.a.(3), the Commission increased the setback and prohibited new oil and gas locations 2,000 feet or less from a school facility or child care center. In Rule 604.b, the Commission adopted a presumptive 2,000 foot setback for residential building units and set additional siting requirements for proposed oil and gas locations between 500 and 2,000 feet from one or more residential building units or high occupancy building units.

Based on substantial evidence in the administrative record, the Commission determined that a 2,000 foot distance was necessary and reasonable to avoid, minimize, and mitigate potential impacts to public health and welfare. Senate Bill 19-181's changes to the Commission's mission and statutory authority direct the Commission to "regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health." C.R.S. § 34-60-106(2.5)(a). Senate Bill 19-181 also defined "minimize adverse impacts" to mean "to the extent necessary and reasonable to protect public health, safety, and welfare, the environment, and wildlife resources, to: (a) Avoid adverse impacts from oil and gas operations; and (b) Minimize and mitigate the extent and severity of those impacts that cannot be avoided." C.R.S. § 34-60-103(5.5). Senate Bill 19-181 thus required the Commission to first avoid any potential impacts, and then minimize and mitigate those potential impacts that cannot be avoided. While distance is not the sole or predominate method to avoid, mitigate, or minimize adverse impacts, it can avoid impacts or significantly reduce (i.e., mitigate) the severity of adverse impacts.

Throughout the course of developing the proposed 200–600 and 800/900/1200 Mission Change Rules, the Commission and the Commission's Staff reviewed the growing body of peer-reviewed scientific literature documenting potential health impacts that are likely attributable to proximity to oil and gas development. The Commission and the Commission's Staff each reviewed the substantial amount of scientific literature in the administrative record that was submitted by the parties as attachments to their prehearing statements and responses, as well as pre-filed written testimony from expert witnesses discussing that literature. The Commission's Staff also reviewed regulations in other states, and in local governments addressing appropriate setbacks to protect public health, including ongoing regulatory efforts in California to address the same topic. However, neither states nor local governments have reached a single consensus on appropriate setback distances to protect public health.

Evidence in the administrative record clearly supports the conclusion that there *are* health impacts that are highly likely to be attributable as a result of proximity to oil and gas development. The body of peer-reviewed scientific literature documenting potential health impacts that are likely attributable to proximity to oil and gas development is robust and growing. Peer-reviewed studies have identified a range of different adverse health outcomes with high degrees of statistical likelihoods, and that those adverse health outcomes are likely to occur at a variety of distances from oil and gas operations. However, the Commission determined that the scientific literature in the administrative record is not dispositive or conclusive with regard to an identified single, specific distance as the appropriate setback to protect public health.

The lack of scientific certainty about an appropriate setback to protect public health reflects the adolescent stage of scientific investigation into the health impacts attributable to proximity to oil and gas development. Despite the large number of peer-reviewed scientific studies addressing the topic, there remains wide variance in the methods, populations, areas, health outcomes, and distances investigated in the studies. The lack of scientific

certainty about an appropriate setback to protect public health is to be expected, because scientific inquiry into complex topics is not a rapid process. Scientific investigation into the potential health impacts of proximity to oil and gas development is rapidly evolving. The Commission appreciates the benefits of this rapid evolution, recognizing that over time a greater degree of scientific certainty may exist. The Commission therefore intends to review the evolving scientific investigation on an ongoing basis to evaluate whether the evidence continues to reflect that the distances set by Rule 604 are necessary and reasonable to protect public health and welfare.

However, the lack of scientific certainty is not, and should not, be a barrier to adopting policies and regulations or making decisions based on available scientific evidence, nor does it absolve the Commission of its obligation to adopt regulations that avoid, minimize, and mitigate potential adverse impacts. Policymaking frequently requires reviewing evolving scientific data and drawing conclusions that are supported by ongoing scientific investigations prior to the scientific community itself characterizing a body of evidence about a topic as presenting a high degree of scientific certainty. Regulators must decide everything from when a cosmetic product is safe for public distribution to when seatbelts must be worn on an airplane based on uncertain and evolving scientific information. It is for this reason that federal and state courts alike have held that expert agencies like the Commission must be afforded deference to their interpretation of complex scientific or technical matters when promulgating regulations to implement a statute. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 865 (1984); *Well Augmentation Subdist. of Cent. Colo. Water Conservancy Dist. v. City of Aurora*, 221 P.3d 399, 418 (Colo. 2009).

The Commission's choice of 2,000 feet is a conclusion based on the Commission's review of all the evidence in the administrative record, and on weighing the relative merits and critiques of each peer-reviewed scientific study. A core justification, though not the only justification, for the Commission's choice of 2,000 feet is the *Final Report: Human Health Risk Assessment for Oil and Gas Operations in Colorado*, published by CDPHE on October 17, 2019. The study used monitoring and modeling techniques to identify pollutant concentrations above acute health risk thresholds at distances of 2,000 feet from oil and gas facilities under some scenarios. The CDPHE study supports the Commission's cautious approach to protecting people's health and provides evidence that the Commission's choice of a 2,000-foot setback is appropriate. The Commission recognizes that, like all scientific studies, the CDPHE study has both advantages and disadvantages to its chosen methodologies. It provides one of the most robust and Colorado-specific sources of data about health impacts that are likely attributable to proximity to oil and gas development. However, like all scientific studies that employ monitoring techniques, it is limited by the quality and representativeness of the data gathered, and like all scientific studies that employ modeling techniques, it is limited by the uncertainty and assumptions inherent in the model. For these reasons, the Commission determined that it was not appropriate to rely *solely* on the CDPHE study as the basis for its decision to adopt a 2,000-foot setback in Rule 604. However, when considering the relative merits of the CDPHE study in conjunction with all evidence in the administrative record, the Commission determined that

the CDHPE study is one appropriate study to rely on as a basis for its decision to adopt a 2,000 foot setback in Rules 604.a.(3) and 604.b. The Commission also found it compelling that the short-term health impacts anticipated by the CDPHE study mirror complaints the Commission received in recent years from people living in proximity to oil and gas locations.

Although protecting public health was one reason that the Commission chose to adopt a 2,000-foot distance in Rules 604.a.(3) and 604.b, it was not the only reason. The Commission also chose the 2,000-foot setback because of its statutory mandate to protect and minimize adverse impacts to public welfare and public safety. C.R.S. § 34-60-106(2.5)(a). Each of the reasons discussed below is a standalone reason for the Commission's decision to adopt a 2,000-foot setback in Rules 604.a.(3) and 604.b.

First, as discussed above in Rule 423, the Commission Staff's review of the applicable literature demonstrated that most noise from oil and gas operations dissipates to a point that it is no longer disruptive to human receptors at 2,000 feet. Second, oil and gas operations result in substantial amounts of truck traffic. While the Commission has authority to regulate traffic on access roads, it has limited authority to regulate most aspects of traffic from oil and gas development. The Commission determined that a 2,000-foot distance is an important measure to protect the public safety from potential traffic impacts. Finally, oil and gas operations also result in a range of other adverse impacts to public welfare, including light, dust, and odors. The Commission determined that a 2,000-foot distance will provide better protections and better avoid and minimize adverse impacts from each of these categories of impacts.

For all these reasons, the Commission determined a 2,000-foot distance met the standard set by Senate Bill 19-181. The Commission's statutory mandate is to protect public health and welfare by first avoiding adverse impacts. Substantial evidence in the record demonstrated that a 2,000-foot distance would avoid a significant number of impacts and is therefore necessary, particularly for school facilities and child care centers. The Commission's choice of 2,000 feet is also reasonable for at least two reasons. First, the evidence in the administrative record did not demonstrate that a greater distance would result in any significantly greater avoidance of impacts. Second, in Rule 604.b, the Commission recognized that other regulatory tools may avoid, minimize, or mitigate impacts, and therefore provided additional requirements that an operator may meet to site a proposed working pad surface between 2,000 and 500 feet from a residential building unit. The Commission also recognized that there may be situations where an oil and gas location may be within 2,000 feet of a residential building unit and be protective of public health, safety, and welfare, the environment, and wildlife resources.

Rule 604.a

Rules 604.a.(1) and (2)

The Commission moved prior Rule 603.a, governing location requirements for wells, to Rule 604.a. The well location requirements are primarily intended to ensure that wells are located at a safe distance from structures to prevent any damage in the extremely unlikely event that a rig falls over. The Commission modified Rule 604.a to clarify that exception request letters should be submitted as an attachment to a Form 2, Application for Permit to Drill.

The Commission also revised both Rule 604.a.(1) and (2) to reflect the clearer distinction between permit applications involving subsurface issues and surface issues. The Commission therefore clarified that Rule 604.a.(1) applies at the time a well is drilled, rather than at the time of initial drilling. This reflects a recognition that surrounding land uses may change after initial drilling begins, but the safety provisions in Rule 604.a.(1) are intended to apply to any nearby structure when drilling occurs. By contrast, Rule 604.a.(2) is intended to be a planning rule. Accordingly, the Commission revised it to apply at the time a Form 2A is filed, which is a more appropriate time to consider distances from surface property lines than an independent decision at the time of initial drilling.

Rule 604.a.(3)

The Commission moved prior Rule 604.a.(6) to Rule 604.a.(3). Rule 604.a.(3) builds upon the Commission's prior school setback rule, which was developed through a robust and consensus-driven stakeholder process just over a year prior to when the Commission commenced the 200–600 Mission Change Rulemaking. However, the Commission amended prior Rule 604.a.(6) to reflect Senate Bill 19-181's changes to the Commission's mission and statutory authority. *See* C.R.S. § 34-60-106(2.5)(a). Additionally, consistent with its overall efforts to simplify setback calculations and procedures, the Commission used the defined term "Working Pad Surface" to clearly demarcate which part of an oil and gas location the 500-foot measurement will be taken from.

For the reasons discussed above and here, the Commission determined that a 2,000-foot setback from school facilities and child care centers that did not allow for any exceptions was necessary and reasonable to protect and minimize adverse impacts to public health and welfare. First, children have developing respiratory systems that may be more sensitive to some pollutants. Moreover, schools and child care centers are areas with high concentrations of especially sensitive receptors, and they are also areas where concentrated outdoor activity occurs. Second, noise impacts are especially important for the Commission to consider at schools and child care centers. Noise adversely impacts children's ability to learn, and schools and child care centers are therefore a uniquely important noise receptor to protect. The Commission accordingly determined that the importance of a quiet learning environment further supports its decision to extend the school setback to 2,000 feet. Third,

traffic impacts may pose significant safety risks, particularly if heavy truck traffic occurs near schools. Children are less able to observe traffic safety procedures than adults, and are more difficult for drivers to see because of their small stature and often rapid and erratic movements. Increased distance will reduce oil and gas development's contribution to congestion around schools during crowded pick-up and drop-off times. Accordingly, the Commission determined that increasing the school setback to 2,000 feet without exception will provide better protections and better minimize adverse impacts to schools and child care centers—which again are especially sensitive receptors—from each of these categories of impacts.

Earlier drafts of Rule 604 allowed school facilities or child care centers to waive the 2,000-foot setback. However, the Commission received information from stakeholders that school facilities and child care centers do not always have the necessary resources or expertise to determine if a waiver is appropriate. Therefore, because of the necessity of the 2,000-foot setback, the Commission did not provide the waiver opportunity in the final version of Rule 604.a.(3).

If a school facility or child care center disagrees with an Operator's measurement of the 2,000-foot setback, the Commission created a process in Rule 604.a.(3).A to resolve that disagreement. A disagreement is possible because the definition of school facility includes both indoor and outdoor areas. The Commission expects that its Staff will discover and work to resolve any issues with setback measurement with an operator before the Director issues a recommendation on a proposed oil and gas development plan pursuant to Rule 306.b. A school facility or child care center may also raise issues with setback measurement through public comment. However, if a school facility or child care center still disagrees with the setback measurement following the Director's recommendation, then it may raise that issue with the Commission at hearing. As the proponent of the proposed oil and gas development plan, the operator has the burden to show compliance with all the Commission's Rules, including the setback in Rule 604.a.(3).

Rule 604.a.(3).B provides that a hearing on the setback distance will be held at a location reasonably proximate to the lands affected by the proposed oil and gas development plan. The Commission concluded that, in order to ease the potential burden of travelling and participating in a hearing on representatives of a school facility or child care center, it was appropriate to hold a hearing on the setback distance reasonably near the school facility or child care center. However, the Commission's intent was only to ensure that the hearing on the setback distance be held reasonably near the school facility or child care center. The Commission may hold the hearing on the remainder of the proposed oil and gas development plan at the Commission's offices or other locations as appropriate.

Rule 604.a.(4)

The Commission moved the 500-foot setback from one or more building units from prior Rule 604.a.(1) to Rule 604.a.(4). In prior Rule 604.a.(1).A.i, the Commission allowed

exceptions to the 500-foot setback standard if all building unit owners within 500 feet of a proposed oil and gas location waived the setback requirement. The Commission retained the waiver, with five important clarifications and additions.

First, consistent with its overall efforts to simplify setback calculations and procedures, the Commission changed the measurement point from "Oil and Gas Location" to "Working Pad Surface" to clearly demarcate which part of an oil and gas location the 500 foot measurement will be taken from. Second, the Commission clarified that any document an operator intends to use to show what was previously called a waiver of the 500-foot setback must contain explicit written agreement to the proposed oil and gas location siting.

Third, the Commission added that tenants, in addition to building unit owners, must provide the explicit written agreement. As both owners and tenants may potentially be impacted by oil and gas development, the Commission concluded it was necessary and reasonable to require agreement from both.

Fourth, the Commission clarified that any written agreement consenting to a proposed oil and gas location within 500 feet must be based on "informed consent." Over the course of the 200–600 Mission Change Rulemaking, the Commission heard from numerous stakeholders that owners or tenants may not understand the effect of agreeing to a proposed oil and gas location within 500 feet. The Commission concluded that it was consistent with the intent of Rule 604.a.(4) to provide protections to public health and welfare to require that any person be informed as to potential impacts prior to agreeing to a proposed oil and gas location within 500 feet. Because oil and gas development may vary widely in size and activity, the Commission also concluded it was not appropriate to define "informed consent," but that it was appropriate to provide direction as to what information an operator must provide to an owner or tenant in order for an operator to obtain informed consent.

Caselaw in Colorado and elsewhere holds that informed consent requires that a person have a reasonable understanding of both risks and alternatives to any proposed action. The Commission therefore intends that, in order to obtain informed consent, an operator must provide a person with sufficient information so that the person has a reasonable understanding of the anticipated size, duration, and intensity of all phases of the proposed oil and gas operations at the proposed oil and gas location, of the potential impacts resulting from those oil and gas operations, and of the alternatives to not agreeing to a working pad surface within 500 feet. This list of the information to be provided to an owner or tenant is not exclusive, and only reflects the Commission's intent at the time of the 200–600 Mission Change Rulemaking. Depending on the circumstances, the Commission may find that more or less information is required to obtain informed consent. For example, if the owner or tenant has significant experience with oil and gas operations, the operator may not need to provide the same amount of information as would be required to obtain informed consent from a person who has no experience with oil and gas operations. Additionally, an operator may be required to provide information in a language other than English to an owner or tenant who is not fluent in English.

Fifth, the Commission clarified that a surface use agreement may also contain the required explicit written agreement, if that agreement is given with informed consent.

Rule 604.b

In Rule 604.b, the Commission adopted siting requirements for working pad surfaces proposed to be located between 500 and 2,000 feet from one or more building units or high occupancy building units. Consistent with its overall efforts to simplify setback calculations and procedures, the Commission used the defined term "Working Pad Surface" to clearly demarcate which part of an oil and gas location the measurement will be taken from. These siting requirements replace prior Rules 604.a.(1) and 604.a.(3), which governed exception zone setbacks and high occupancy building setbacks, respectively. The Commission revised the 100 Series definition of high-occupancy building unit to include multifamily dwellings, such as apartment buildings, townhomes, and condominiums with four or more units. The Commission determined that this is a reasonable definition based on its review of other state agencies and local government definitions of a multifamily dwelling. The Commission specifically based its definition on the Colorado Fair Housing Act's definition of a multifamily dwelling. C.R.S. § 24-34-502.2(4).

As stated above, the Commission determined that 2,000 feet is a reasonable distance based on evidence in the administrative record and its statutory mandate to protect and minimize adverse impacts to public health and welfare. Distance may avoid, minimize, or mitigate many potential adverse impacts to public health and welfare, and for that reason the Commission determined that oil and gas development should generally be located at least 2,000 feet from residential building units. Rule 604.b thus creates a presumption that no oil and gas location may be proposed within 2,000 feet of a building unit. However, the Commission recognized that distance alone does not directly address any specific potential impacts and that protective measures required by other Commission Rules which are targeted to a specific impact may provide equal or even greater protections than distance. The Commission also recognized that in some instances an operator may not be able to develop minerals and locate a proposed working pad surface 2,000 feet from all residential building units. Therefore, the Commission adopted Rule 604.b to provide operators with the ability to locate oil and gas facilities between 500 and 2,000 feet of residential building units, but only if one or more of the four enumerated requirements in Rule 604.b.(1)–(4) are met.

Rule 604.b requires the operator to demonstrate that one or more of the four requirements in Rule 604.b.(1)–(4) are met. Meeting a requirement in Rule 604.b.(1)–(4) does not absolve an operator of demonstrating compliance with all other Commission Rules. In order to obtain Commission approval for an oil and gas location within 2,000 feet of a residential building unit, an operator must both meet one of the four requirements in Rule 604.b.(1)–(4), and comply with all other Commission Rules.

The Commission also determined it was necessary and reasonable for a proposed oil and gas location to meet the additional siting requirements if the proposed working pad surface was proposed to be located between 500 and 2,000 feet from any single residential building unit or high occupancy building unit, rather than multiple residential building units. Because the Commission determined that the 2,000 foot distance is a presumptive default siting requirement to protect and minimize adverse impacts to public health and welfare, it is appropriate to apply the additional siting requirements in Rule 604.b.(1)–(4) any time an oil and gas location is proposed to be located in proximity to a residential building unit.

Rules 604.b.(1)–(3)

Rule 604.b.(1) provides that oil and gas facilities may be located between 500 and 2,000 feet of a residential building unit if the operator obtains explicit written agreement to the proposed location from every building unit owner and tenant within 2,000 feet of the proposed working pad surface. Rule 604.b.(1) carries forward the same concepts from Rule 604.a.(4) and requires informed consent.

Rule 604.b.(2) provides that oil and gas facilities may be located between 500 and 2,000 feet of a building unit if the location is approved through a CAP that includes preliminary siting approval pursuant to Rule 314.b.(5). As discussed in greater detail in the section of this Statement of Basis and Purpose for Rule 314, the Commission intends to encourage the use of CAPs, and Rule 604.b.(2) plays a part in meeting that goal. Further, as any proposed location that receives preliminary siting approval through the CAP process must still comply with all other Commission Rules, the Commission will ensure that those proposed locations will meet the standards set by the Act and the Commission's rules through the permitting process specific to that location. Rule 604.b.(2) also applies to proposed oil and locations within a comprehensive drilling plan approved under prior Rule 216.

Rule 604.b.(3) provides that a working pad surface may be located between 500 and 2,000 feet of a residential building unit if certain equipment is located more than 2,000 feet from all residential building units. The Commission equipment listed in Rule 604.b.(3) are the main on-site equipment through which produced hydrocarbons flow, and the Commission recognizes that they are therefore the primary sources of air pollutant emissions, noise, or other conditions that may cause adverse impacts to public health and welfare due to proximity. Rule 604.b.(3) therefore provides similar protections for public health and welfare as an oil and gas location with a working pad surface 2,000 feet from all residential building units. The Commission also intended to provide operators with the flexibility to design oil and gas locations to avoid, minimize, or mitigate those potential impacts, and to provide incentives to consolidate facilities.

Rule 604.b.(4)

Rule 604.b.(4) provides that a working pad surface may be located between 500 and 2,000 feet of a residential building unit if the Commission finds, after a hearing, that the proposed

oil and gas location and all terms and conditions of approval of a permit will provide "substantially equivalent" protections for public health, safety, welfare, the environment, and wildlife resources, including disproportionately impacted communities. Rule 604.b.(4) also provides that the Commission will base its finding of "substantially equivalent" protections on seven categories of information listed in Rule 604.b.(4).A–G. The Commission did not intend to limit what information it may consider in making a "substantially equivalent" finding, and therefore Rule 604.b.(4) provides that the list of seven categories of information is not exclusive.

Throughout Rule 604.b.(4), the Commission's intent is to reflect that distance is only one way to protect public health, safety, welfare, the environment, and wildlife resources. The Commission's Rules are intended to regulate to protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources. *See* C.R.S. § 34-60-106(2.5)(a). The Commission's Rules achieve the required protection in a variety of ways, including but not limited to alternative location analysis, considerations of facility design, adherence to best management practices, requiring use of specific control technologies, and permit conditions of approval. Depending on what type of impact is at issue, and the nature of the potential receptor that would be adversely impacted, all these methods to achieve protection may be equally effective or more effective than distance. For example, noise attenuates over distance, but employing a control technology such as a muffler or sound barrier may provide equivalent reductions in sound levels at any given receptor without changing the distance between the source and receptor. Rule 604.b.(4).A–G requires the Commission to consider information that reflects whether alternative methods of achieving protection are equal to or more effective to satisfy the relevant criteria when considering the specific characteristics of a proposed location.

By setting the "substantially equivalent" standard, the Commission did not intend to set a standard that requires the Commission to compare potential impacts of a proposed oil and gas location to an identical oil and gas location 2,000 feet from all residential buildings units. Such a standard may be unachievable and would elevate distance as the sole or predominate regulatory tool to protect and minimize adverse impacts. The Commission intends for all its Rules to set achievable standards, including Rule 604.b.(4). The Commission also does not intend to create a standard that elevates one method of protection over all other methods.

Under Rule 604.b.(4), the Commission will use the categories of information set forth in Rule 604.b.(4).A–G, as well as other relevant information appropriate to the proposed location, to review a proposed oil and gas development plan first for compliance with the Commission's Rules and then to determine whether additional conditions of approval are necessary to achieve the standard of protection set by Senate Bill 19-181 to protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources. The Commission also expects that it will refine this standard as it reviews oil and gas development plan applications under Rule 604.b.(4).

Under Rule 604.b.(4).A, the Commission will consider the Director's recommendation on an oil and gas development plan. The Commission's Staff will review all aspects of a proposed oil and gas development plan including distance to receptors and proposed best management practices. Following that review, the Director will issue a recommendation under Rule 306.b that assesses whether the proposed oil and gas development plan complies with the Commission's Rules and whether the plan adequately protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources. The Director's recommendation is therefore critical to the Commission's consideration under Rule 604.b.(4).

The Commission recognizes that a variety of factors may affect the extent and severity of potential impacts from oil and gas development. Rule 604.b.(4).B reflects the Commission's intent to consider those factors to determine the extent that the proposed oil and gas development plan avoids, minimizes, and mitigates adverse impacts. Physical characteristics above and below the surface may alter the potential for impacts as well as the severity of potential impacts. Different technologies may also be available to avoid, minimize, or mitigate impacts depending on local physical characteristics, the type of drilling, and the size of a proposed oil and gas location. The Commission adopted Rule 604.b.(4).B.i to consider these factors. Distance to human and wildlife receptors will also affect the extent and severity of potential impacts, as well as the location of those receptors in relation to topographical features or other aspects like prevailing winds. The Commission adopted Rule 604.b.(4).B.ii to consider the distance to and location of receptors. Finally, oil and gas development may vary widely in size of surface facilities, well direction and depth, drilling and completion techniques, and activity on or near the location. The Commission adopted Rule 604.b.(4).B.iii to consider these factors and the effect they may have on the extent or severity of potential impacts and opportunities to avoid, minimize, or mitigate those impacts. Further, by adopting Rule 604, the Commission intended to encourage consolidation of surface facilities, and the Commission will also consider opportunities to consolidate or minimize surface facilities as part of its analysis under Rule 604.b.(4).B.

Consistent with its intent in Rules 301.f, 302, and 303.a.(6) to coordinate with local governments who exercise their siting authority, the Commission adopted Rule 604.b.(4).C to consider a local government's siting decisions and permit terms.

The alternative location analysis process in Rule 304.b.(2) will aid the Commission in determining what constraints or opportunities exist in the siting process. As distance is an effective tool in avoiding, minimizing, or mitigating adverse impacts, and particularly in avoiding adverse impacts, the Commission adopted Rule 604.b.(4).D to consider alternatives to the proposed location as part of the Rule 604.b.(4) analysis.

In analyzing methods to avoid, minimize, and mitigate potential impacts, the Commission intends to consider potential impacts from a single proposed oil and gas location, as well how that proposed location fits with nearby locations and infrastructure. The oil and gas development plan process in the Commission's 300 Series Rules also provides operators with

opportunities to plan development on a broader scale than a single location. Viewing oil and gas development on a larger scale may also allow the Commission and operators to recognize additional opportunities to avoid, minimize, and mitigate potential impacts. The Commission therefore adopted Rule 604.b.(4).E to consider related oil and gas location siting and infrastructure proposed as part of the same oil and gas development plan.

Operators may be able to design an oil and gas location to avoid, minimize, or mitigate potential impacts to nearby building units. For, example an operator may be able to locate oil and gas facilities on a pad to maximize the distance from building units. The Commission adopted Rule 604.b.(4).F to consider a location's design.

Finally, evidence in the administrative record demonstrates that a lack of communication may increase concern about or result in the spread of inaccurate information in communities near a proposed oil and gas location. Consistent with Rules 304.c.(20), 309.c, and 511, the Commission adopted Rule 604.b.(4).G to encourage communication between operators and people who live and work near a proposed location before and during operations.

Rule 605.

The Commission consolidated the signage requirements found in prior Rules 210, 305.g, 603.e.(10)–(11) into a single Rule 605. The Commission also made several relatively minor changes to these Rules.

The Commission intends for its Staff to review best practices for providing information in languages other than English on signs, and to incorporate appropriate requirements for signage in the best practices for community engagement guidance document discussed above.

Rule 605.a

The Commission adopted a default oil and gas location sign rule for signs to be posted at the entrance to an oil and gas location in Rule 605.a, which must include the telephone number for local emergency services (which may be 911 or another number depending on the area).

Rule 605.b

The Commission revised the requirements for signs during drilling operations in Rule 605.b to clarify the timing for when such signs must be at an oil and gas location. Some stakeholders suggested striking Rule 605.b.(2) because persons on nearby roadways should already know the name of the roadway that they are on. While the Commission anticipates that this will usually be the case, the Commission did not adopt this suggestion, recognizing that there may be situations in which a sign identifying the name of the roadway will be useful.

Rule 605.c

The Commission clarified the timeframe when signs must be at a location during hydraulic fracturing and flowback.

Rules 605.d, 605.e, and 605.f

In Rule 605.d, the Commission clarified requirements for signs or markers that are installed at individual wellheads, which must include the well's API number. Only a single sign is necessary for multi-well locations. The Commission also added a new requirement to provide signage at wells, oil and gas locations, and centralized E&P waste management facilities known to be sources of hydrogen sulfide in Rules 605.d.(4), 605.e.(3), and 605.f.(2).

Rule 605.g

The Commission reduced the timeframe in Rule 605.g.(2) for replacing damaged or vandalized signs from 60 to 30 days, which the Commission determined is a reasonable timeframe to replace missing signs.

Rule 605.h

The Commission expanded the previous requirement to make tank battery signs legible from 100 feet away to apply to all tanks and containers in Rule 605.h.(2). The Commission intends for this to apply to all new tank signs, and to any tank signs that are later reapplied or modified.

Rule 606.

The Commission consolidated prior Rules 603.f and 604.c.(2).P into Rule 606.

Rule 606.a

To protect public safety, in Rule 606.a, the Commission expanded the list of unnecessary items and equipment that operators are not permitted to store or otherwise place at an oil and gas location, and clarified that the prohibition also applies to contractors.

The Commission clarified that surface owners are permitted to use portions of oil and gas locations for operations that are not related to the oil and gas operations, but only so long as the surface owner's use of the area does not interfere with safe oil and gas operations, prevent access to equipment, or interfere in any way with the reclamation process. Moreover, the surface owner's use cannot degrade the site. For example, a surface owner cannot store leaking equipment at an oil and gas location that may contaminate the soil and complicate remediation or reclamation activities.

Finally, in Rule 606.a.(3), the Commission clarified that the prohibition on storing unnecessary equipment at an oil and gas location does not apply to emergency response trailers and their associated equipment, even if the emergency response trailer is intended to be deployed at a different oil and gas location than the location where it is stored.

Rule 606.b

To protect public safety, in Rule 606.b, the Commission also clarified that no vehicle maintenance is permitted at an oil and gas location unless the maintenance is directly related to and immediately necessary for the continuation of oil and gas operations at the facility.

Rule 606.c

In Rule 606.c, the Commission clarified and expanded upon drilling and production-stage weed control requirements in Rule 1003.f.

The Commission added new definitions of Undesirable Plant Species and Noxious Weeds, terms used in Rules 1003.e.(1), 1003.f, and 1004.e, but not defined in the Commission's Rules. The new 100 Series definition of Noxious Weeds clarifies that the Commission uses the same definition of Noxious Weed that is found in the Noxious Weed Control Act, C.R.S. § 35-5.5-103(16). The new 100 Series definition of Undesirable Plant Species clarifies that these species include, but are not limited to plants that meet the definition of Noxious Weeds, and also include other species that pose risks to public safety, native ecosystems, cropland, and wildlife because of their potential to form monocultures, reduce species diversity, inhibit agricultural production, exacerbate erosion, or increase fire risk.

Some stakeholders suggested that because C.R.S. § 35-5.5-105 requires county commissions to adopt noxious weed management plans, the Commission is precluded from regulating noxious weeds. The Commission did not revise the definition of noxious weed in response to this suggestion for several reasons. First, nothing in C.R.S. § 35-5.5-105 grants county commissions *exclusive* authority to develop noxious weed management plans, or indeed to regulate noxious weeds. Certainly, C.R.S. § 35-5.5-105 is silent as to whether state agencies may regulate noxious weeds to achieve other statutory directives. Because the Act specifically instructs the Commission to "promulgate rules to ensure proper reclamation of the land and soil," regulations addressing noxious weeds are well within the Commission's statutory scope. Second, although the directive in C.R.S. § 35-5.5-105 that county commissions adopt noxious weed management plans is certainly an important component of the Noxious Weed Act, other portions of that statute also regulate the conduct of entities besides county commissions, including "all persons," C.R.S. § 35-5.5-104, and a state weed coordinator charged with developing integrated statewide noxious weed management plans and coordinating with local governments, C.R.S. § 35-5.5-117. The Noxious Weed Act clearly envisions a partnership between the state government and local governments in managing noxious weeds. Finally, by adopting a 100 Series definition of "Noxious Weed" that matches

the definition in the Noxious Weed Control Act, C.R.S. § 35-5.5-103(16), the Commission is bringing its Rules—which previously used the term noxious weed, but did not define it—more in harmony with the standards applied by local governments and other state agencies.

Rule 606.d

In Rule 606.d, the Commission amended prior Rule 603.f to provide additional specificity about trash removal requirements. First, the Commission cross-referenced Rule 906.c, which governs appropriate disposal of solid waste (non-hazardous and non-E&P waste) from oil and gas facilities. Second, the Commission prohibited burying and burning trash or other waste materials at an oil and gas location, which was previously allowed with the surface owner's consent. Finally, the Commission added specific requirements for trash receptacles to protect public safety, the environment, and wildlife from exposure to overflowing, leak-prone, or insecure trash receptacles. All trash receptacles must be designed, maintained, and operated to exclude wildlife.

Rule 607.

The Commission moved prior Rule 603.g to Rule 607 and made minor wording clarifications, but did not change the substance of the Rule.

Rule 608.

Rule 608.a

The Commission moved prior Rule 605.a to Rule 608.a and made several updates to the safety standards for tanks. The Commission also made several conforming edits to ensure the standards incorporated by reference in Rule 608.a conform to the Administrative Procedure Act's incorporation by reference requirements. *See* C.R.S. § 24-4-103(12.5).

Many stakeholders raised questions about whether Rule 608 applies retroactively. As with all of the Commission's Rules, Rule 608 applies prospectively, unless otherwise specified in the text of the Rule or in this Statement of Basis and Purpose.

In Rule 608.a.(1).B, the Commission updated the version of API Standard No. 650 to the 13th edition (2020).

Throughout Rule 608.a., the Commission clarified that the Rule applies to tanks used to store all types of produced fluids, rather than only tanks used to store crude oil. Recognizing that produced water tanks may be made of different materials than crude oil tanks, in Rule 605.a.(1).F, the Commission added the 2016 (4th edition) of API Standard No. 12P, Specification for Fiberglass Reinforced Plastic Tanks to the list of approved tank standards for produced water tanks.

The Commission made several changes to protect public safety from potential fires, including adding a requirement that production tanks with capacities greater than 60 gallons conform to the standards of NFPA Fire Code 30 (2018 edition) in Rule 608.a.(3), prohibiting ancillary equipment with potential ignition sources within the secondary containment area in Rule 608.a.(5), and clarifying that gauge hatches on crude oil tanks must be not only closed, but also latched and sealed when not actively being used by trained personnel in Rule 608.a.(9).

In Rule 608.a.(10).A, the Commission updated its tank venting standards by requiring all tank venting to adhere to API Standard 2000 (7th edition, March 2014). In Rule 608.a.(10).B, the Commission also updated its standards for tank vent lines to API RP 12R-1 (6th edition, March 2020).

The Commission moved prior Rule 805.b.(3).B.iv, governing backpressure systems at closed-top tanks, to Rule 608.a.(10).C The Commission moved other components of prior Rule 805.b, which governs green completions, to Rule 903.c, because those components of prior Rule 805 are primarily intended to reduce the escape of natural gas during well completion. However, prior Rule 805.b.(3).B.iv is primarily intended to protect public safety, and therefore the Commission determined that it was more appropriate to include the Rule in the 600 Series. Consistent with Senate Bill 19-181's changes to the definition of "minimize adverse impacts," the Commission removed language involving technical feasibility from prior Rule 805.b.(3).B.iv. The Commission also added a requirement for operators to properly and periodically test tank seals. The Commission further revised the rule to clarify that sealed tanks must be designed for a minimum of 4 ounces of backpressure, rather than requiring sealed tanks to utilize backpressure systems that consistent exert that amount of backpressure.

To protect wildlife, especially birds and bats, the Commission added a requirement in Rule 608.a.(13) that all tanks must be equipped with screens or other equipment to prevent access by wildlife.

Finally, in Rule 608.a.(14), the Commission required tanks undergoing change in service to be emptied, cleaned, and re-labeled to prevent inadvertent cross-contamination. If any waste is generated during the change in tank service, the Commission clarified that it must be managed according to Rule 906.

Rule 608.b

The Commission moved prior Rule 605.b to Rule 608.b. The Commission added API Specification 12J (8th edition 2008) as the standard for separation equipment design, construction, and maintenance. The Commission also clarified in Rule 608.b.(7) that stacks, vents, and other openings must be screened to prevent entry by all bird and bat species.

Rule 608.c

The Commission moved parts of prior Rule 605.c, governing special equipment to Rule 608.c. However, the Commission moved prior Rule 605.c.(4) to Rule 605, governing signage. And the Commission moved prior Rule 605.c.(3) to Rule 603.h, which provides statewide fencing requirements.

In Rule 608.c, the Commission clarified and simplified prior Rule 605.c to explain that the Rule governs special equipment that the Director may require an operator to use to protect safety. The Commission changed references to control valves in Rule 608.c to instead reference isolation valves, which provide better safety protections. The Commission also clarified that isolation valves may be electronic, rather than activated by a secondary gas source supply.

Rule 608.d

The Commission moved prior Rule 603.c to Rule 608.d. The Commission specified what static charge and lightning safety standards equipment must comply with by incorporating API RP 2003, by reference. The Commission intends for Rule 608.d to apply to all new and existing oil and gas facilities, which may require retrofit of some existing facilities that do not comply with API RP 2003.

Rule 608.e

The Commission moved prior Rule 605.d. to Rule 608.e and expanded the scope of the Rule to cover all production facilities and storage vessels. The Commission also added a requirement that all equipment at an oil and gas facility be engineered, operated, and maintained within the manufacturer's recommended specifications. Although the Commission previously included this requirement in some, but not all, Rules, the Commission intends for operators, their contractors, and subcontractors to always and only use and maintain equipment according to manufacturer specifications.

Rule 608.f

The Commission moved prior Rule 605.e to Rule 608.f, and strengthened the Rule's standards to ensure the safety and protect public health and the environment from buried or partially buried tanks.

First, in Rule 608.f.(1), the Commission clarified that the Rule applies to tanks used to store produced fluids, and is intended to prevent the leak or release of any fluids from buried or partially-buried tanks.

Second, in Rule 608.f.(2), the Commission clarified that double-walled tanks may be used in lieu of impermeable liners, and that impermeable liners must tie into whatever form of secondary containment is used.

Third, in Rule 608.f.(3), the Commission updated the standard for liners beneath buried and partially buried tanks by requiring that the liner be impermeable, extend to the surface, and tie into the tank battery's secondary containment liner. By requiring that the liner be impermeable and extend to and connect to the surface, the Commission intended to ensure that all spills and leaks from buried and partially buried vessels are fully contained and have no potential nexus to soil and groundwater.
Fourth, in Rule 608.f.(3), the Commission specified that buried and partially buried tanks must be tested for leaks at least annually. Prior Rule 605.e.(1) required only a test after installation and did not have a periodic testing requirement. The Commission also adopted recordkeeping requirements to document tests performed pursuant to Rule 605.e.(3).

Finally, in Rule 608.f.(4), the Commission clarified that operators must repair or replace the tank after discovering a leak to prevent future spills and release. The Commission reminded operators that any spills or leaks discovered must be reported, investigated, and remediated pursuant to Rule 912.

Rule 608.g

In Rule 608.g, the Commission added new requirements for fluid handling equipment that does not meet the definition of a tank or flowline, which includes temporary equipment. The Commission intends for its Staff to issue guidance about the types of fluid handling equipment and processes that are not tanks, which include, but are not limited to separators, knockouts, sand traps, and temporary storage tanks. Operators frequently use temporary fluid handling equipment during pre-production processes at oil and gas facilities, and because this equipment poses similar risks of spills and leaks, the Commission intended to ensure that this equipment is subject to the same safety standards as more permanent tanks.

In Rule 608.g, the Commission adopted a range of requirements, including the use of secondary containment equipment or a written spill contingency plan. The Commission specified minimum requirements for written spill contingency plans, which include periodic inspection and leak testing, taking corrective action to fix any leaks or other issues identified during inspections, and procedures for prompt removal, remediation, and reporting of discharge. The Commission intends for spill prevention control and countermeasure plans ("SPCC") to satisfy this requirement.

Rule 609.

In Rule 609, the Commission adopted new standards requiring operators to conduct periodic inspections of all oil and gas locations. Periodic inspections are a best management practice

that most operators already implement, and the Commission's prior Rules required inspections of some, but not all equipment. By standardizing a periodic inspection schedule, the Commission intends to protect public health, safety, welfare, the environment, and wildlife resources by ensuring that all equipment at oil and gas locations is operating properly and according to all manufacturer specifications.

Rule 609.a

In Rule 609.a, the Commission specified that when operators identify issues during an inspection, the operator must repair, replace, or remediate the issue as appropriate, and maintain documentation of any actions taken. The Commission also required operators to submit documentation of the results of tank system inspections to the Commission's Staff upon request, including inspections conducted pursuant to AQCC regulations pursuant to Rule 609.d.

Rule 609.b

In Rule 609.b, the Commission adopted requirements for inspections of in-service storage tanks and other process vessels. A tank is considered to be in service if all tank bottoms have not yet been evacuated, even if the tank has been disconnected from sources of crude oil, gas, or produced water.

The Commission adopted Rule 609.b because it recognizes that tanks and other storage vessels have the potential to leak, and that leaks from tanks and storage vessels may not always be readily identified through visual inspections on the surface. Accordingly, the Commission determined that there are significant public health, public safety, and environmental benefits to instituting standardized inspection schemes to identify potential leaks and other issues early, before they pose a problem or a more significant problem.

Rule 609.b requires all tanks and process vessels to be subject to periodic inspections. However, rather than specify a single standard for all tank inspections, the Commission elected to provide multiple standards for tank and process vessel inspection in recognition that different standards are necessary and reasonable to reflect the different sizes, manufacturing techniques, and purposes of tanks and process vessels employed in various stages of oil and gas operations. The Commission also recognizes that each of the standards incorporated by reference in Rule 609.b specify inspection intervals, and the Commission therefore did not independently specify inspection intervals in Rule 609.b.

Larger tanks that meet the requirements of Rule 609.b.(1) are required to comply with API Standard 653, and process vessels are required to comply with API Standard 510. However, for all other tanks, the Commission authorized operators to comply with either of two standards: API Standard 12R1 and Steel Tank Institute SP001. The Commission adopted both standards in recognition that not all tanks are the same, and intends for operators to adhere to the appropriate standard based on the appropriate specifications of each tank.

Thus, under Rule 609.b.(2), operators will have discretion to determine which standard is more appropriate based on the characteristics of each individual tank.

The Commission recognizes that the AQCC also has adopted requirements requiring periodic leak detection inspections of storage tanks. The Commission intends for its own inspection requirements to be additive of these requirements, because each type of inspection is designed to identify different types of issues that could cause harm to public health, safety, welfare, the environment, or wildlife resources. However, the Commission anticipates that operators may be able to combine site visits for each type of inspection, where appropriate, to minimize unnecessary travel, particularly to remote locations.
The Commission intends to allow operators to use their own personnel for tank inspections, unless the standard the operator is following requires certified personnel, and the operator's own personnel are not certified. However, the Commission anticipates that most inspections may be conducted by the operator's own staff.

Rule 609.c

The Commission adopted a new Rule 609.c to provide requirements for out of service tanks. Shutting in a well does not necessarily mean that a tank or pressure vessel will be considered to be in an out of service condition. The Commission does not intend for out of service tanks to be inspected pursuant to Rule 609.b, recognizing that such tanks pose fewer risks to public safety. However, to minimize adverse impacts to public safety and wildlife from tanks that are out of service, the Commission adopted specific standards that must be met for a tank or process vessel to be considered out of service. These standards are based on the standards that the Commission adopted for out of service flowlines in Rule 1101.a.(3). Among other things, an operator must depressurize and evacuate all hydrocarbons and produced water from the tank or vessel and test the interior of the tank or vessel to show that it is safe for the designated entry, cleaning, or repair work. Additionally, to protect wildlife resources, the Commission required operators to provide appropriate screening to exclude wildlife from openings in the out of service tanks and process vessels.

Rule 609.d

In Rule 609.d., the Commission adopted requirements for operators to conduct monthly audio-visual-olfactory ("AVO") inspections of all oil and gas facilities. The purpose of AVO inspections is to detect failures leaks, failures, spills, or releases, or signs that such events may have occurred. Signs of leaks include stressed vegetation, discolored soils, equipment emanating hissing sounds beyond normal operation, and noticeable hydrocarbon-like odors. The Commission recognizes that the AQCC requires monthly AVO inspections for all storage tanks statewide with volatile organic compound emissions greater than 2 tons per year, and more frequent inspections for storage tanks within the ozone nonattainment area. *See* 5 C.C.R. § 1001-9:I.E.2.c.(vii) & (ix); 1001-9:II.C.1.d. The Commission accordingly incorporated this standard by reference, and intends for its Rules to complement, rather than duplicate the AQCC's rules, by ensuring that operators conduct AVO inspections of all

oil and gas facilities when they visit sites to conduct AVO inspection of tanks. Consistent with this intent, in Rule 609.d, the Commission did not adopt its own independent recordkeeping requirements. However, consistent with Rule 609.a, operators may be required to submit to the Director, upon request, any records of AVO inspections the operators maintain pursuant to AQCC regulations.

Rule 610.

The Commission moved prior Rule 606A to Rule 610, and made several changes to the Commission's fire prevention and protection Rules.

Throughout Rule 610, the Commission clarified confusing language. In Rule 610.a., the Commission clarified that all gasoline-fueled engines must be shut down during fueling operations. In Rule 610.o, the Commission clarified that a fire watch is required for all welding, cutting, and hot work. In Rule 610.q, the Commission clarified that the personnel who must be familiar with the location of fire control equipment includes all employees, staff, contractors, and subcontractors.

Throughout Rule 610, the Commission also ensured that all incorporations by reference comply with the Administrative Procedure Act's incorporation by reference requirements. C.R.S. § 24-4-103(12.5). In Rule 610.b., the Commission formally incorporated by reference the Division of Oil and Public Safety's liquefied petroleum gas regulations. In Rule 610.i, the Commission formally incorporated by reference API RP 500 and API RB 500B standards for heaters at oil and gas locations. In Rule 610.p, the Commission formally incorporated by reference NFPA Standard 10 for portable fire extinguishers.

To protect public safety and reduce fire risks, the Commission strengthened several aspects of Rule 610. First, in Rule 610.d., the Commission removed an exception that previously allowed flammable liquid storage within 50 feet of wellbores. Second, in Rule 610.f, the Commission provided additional clarity on smoking restrictions by specifying locations and operations where smoking is prohibited, and added a numerical radius in which smoking is prohibited. Third, in Rule 610.g, the Commission added matches to the list of materials prohibited in "No Smoking or Open Flame" areas. Fourth, in Rule 610.h, the Commission added a catch-all requirement restricting open fires and ignition sources in all areas with potential for ignition of gas or vapors. Fifth, the Commission updated the API standard incorporated by reference in Rule 610.i to include the January 2014 errata to API RP 500.

The Commission moved prior Rule 604.c.(2).N, governing control of fire hazards, to Rule 610.k, and expanded it to apply statewide. The Commission also formally incorporated by reference API RP 500 and the national electrical code adopted by the State of Colorado. The Commission required that all electrical equipment installations within secondary containment areas adhere to API RP 500.

Some stakeholders have raised concerns about potential PFAS contamination at oil and gas locations. Although oil and gas operations, and the products produced by oil and gas operations, do not themselves contain PFAS, it is possible that some firefighting foams used at an oil and gas location could contain PFAS. Consistent with its statutory duty to protect public safety, C.R.S. § 34-60-106(2.5)(a), ensuring that fires at oil and gas location are responded to rapidly, effectively, and safely is the Commission's top priority. The Commission will coordinate with stakeholders to develop a guidance document for operators to implement if there is a risk that PFAS has been used to contain a fire that occurred at an oil and gas location.

Rule 611.

The Commission moved prior Rule 606B to Rule 611 but made no substantive changes to the Rule.

Rule 612.

The Commission substantially revised prior Rule 607, governing hydrogen sulfide gas, and moved it to Rule 612. Under prior Rule 607, the Commission required compliance BLM's Onshore Order 6, with relatively few state-specific requirements. Although the Commission continues to believe that Onshore Order 6 provides robust safety protections, consistent with its mission to protect public health, safety, welfare, the environment, and wildlife resources, the Commission believes that additional state-specific rules for hydrogen sulfide will benefit the safety of all Coloradans.

Rules 612.a, 612.g, 612.h, 612.i, & 612.j

The Commission adopted several statewide safety and notification standards for hydrogen sulfide.

In Rule 612.a, the Commission clarified that the scope of Rule 612 only extends to areas where oil and gas exploration and production is known or reasonably expected to contain hydrogen sulfide. The Commission recognizes that hydrogen sulfide gas is present, but not widely prevalent in some production basins. However, there are other production basins in Colorado where hydrogen sulfide gas is known to exist in higher quantities.

The Commission also adopted several statewide requirements for hydrogen sulfide safety. In Rule 612.a.(2), the Commission required operators to avoid uncontrolled releases and hazardous accumulations of hydrogen sulfide gas, and to mitigate harms whenever they cannot be avoided.

Relatedly, in Rule 612.h, the Commission required operators to obtain the Director's approval through a Form 4 prior to intentionally releasing hydrogen sulfide gas, unless there is an immediately operational safety need to release the hydrogen sulfide gas, and the

release poses no risk to public safety. The Commission also adopted best management practices for measuring, mitigating, and reporting hydrogen sulfide emissions by requiring all equipment to be maintained in good working order in Rule 612.j.

To further ensure safety, in Rule 612.g, the Commission required operators to report laboratory gas stream analysis revealing any concentration of hydrogen sulfide to the Director and any relevant local government within 48 hours by submitting a Form 42, Field Operations Notice – Notice of H_2S on an Oil and Gas Location pursuant to Rule 405.q. If a laboratory analysis reveals hydrogen sulfide concentrations above certain concentrations in the gas stream, headspace field measurement, or ambient air, then the operator must also report the findings to the Director on a Form 4 within 45 days. Finally, in Rule 612.i, the Commission adopted a requirement that operators must notify the Director, the relevant local government, and the local emergency response agency within 24 hours of an intentional release of hydrogen sulfide gas due to upset conditions or malfunctions.

Rule 612.b

In Rule 612.b, the Commission clarified procedures for calculating a radius of exposure. The Commission expects operators to use the Onshore Order 6 procedure for calculating radius of exposure, but to assume a 3,000 foot radius of exposure where insufficient data exists to calculate the radius according to Onshore Order 6 procedures. The Commission chose a 3,000 foot radius of exposure to provide an adequate margin of safety. The Commission also specified requirements for laboratory gas stream analysis for production gas hydrogen sulfide content. It is necessary to sample gas to determine whether gas meets the 100 parts per million threshold that triggers additional safety requirements, and accordingly necessary for the Commission to specify standardized testing procedures.

Rule 612.c

In Rule 612.c, the Commission adopted a new requirement for operators to submit hydrogen sulfide public protection plans whenever necessary to prevent risks to public safety. The Commission identified three such situations: first, if there is a building unit, high occupancy building unit, or designated outdoor activity area within the radius of exposure; second, if the radius of exposure is greater than 3,000 feet and includes a publicly-maintained road; and third, where the Director otherwise believes a plan is necessary to protect public health, safety, welfare, the environment, or wildlife resources. The Commission determined that these three provisions adequately address all potential circumstances where hydrogen sulfide could pose significant safety risks to the public.

Rule 612.d

In Rule 612.d., the Commission required operators proposing to drill wells in areas where hydrogen sulfide can reasonably be expected to be encountered to submit hydrogen sulfide drilling operations plans with their Form 2s. The Commission required hydrogen sulfide

drilling operations plans to comply with Onshore Order 6. Unlike public protection plans, which address safety of the general public, drilling operations plans ensure the safety of operators' staff, contractors, subcontractors, and any other persons who are on-site during the drilling process, including the Commission's inspectors. If an operator submits a hydrogen sulfide drilling operations plan with their Form 2A application for a location pursuant to Rule 304.c.(10), the operator need not submit a duplicate hydrogen sulfide operations plan for subsequent Form 2s for wells at that location, unless there are any significant and changes relevant to mitigating risks from hydrogen sulfide that arise after the approval of the Form 2A.

Rules 612.e & 612.f

In Rules 612.e and 612.f, the Commission defined and created standards for Designated H_2S Locations. The Commission defined Designated H_2S Location as any facility where the Operator ever measures gas stream concentrations of greater than 100 parts per million. The Commission required that any operations within Designated H_2S Location be in compliance with Onshore Order 6, and to have several safety protection measures, including adequate signage, hydrogen sulfide alarms, wind indicators, and fencing. Additionally the Commission required operations in Designated H_2S Locations to have a secondary means of well control, monitor storage tanks for hydrogen sulfide content, use equipment designed to withstand high hydrogen sulfide content, and conduct a laboratory analysis of the gas stream at least monthly for hydrogen sulfide content. The Commission determined that each of these best management practices is necessary to protect public safety in the limited subset of oil and gas operations with sufficiently high hydrogen sulfide contents to be defined as a Designated H_2S Location.

Rule 612.k

In Rule 612.j, the Commission adopted new requirements for temporarily abandoning wells with high hydrogen sulfide concentrations, including ongoing monitoring equipment to measure hydrogen sulfide contents in the gas stream over time.

Rule 613.

The Commission moved prior Rule 610 to Rule 613 but made no substantive changes to the Rule.

Rule 614.

The Commission moved prior Rule 608 to Rule 614. The Commission revised other portions of Rule 614 in the Wellbore Integrity Rulemaking, but otherwise made no substantive changes to the Rule. The Commission consolidated the water well sampling requirements from prior Rule 608.b into Rule 615.

Rule 614.a

In Rule 614.a, the Commission clarified that operators must conduct soil gas surveys at plugged and abandoned wells within a quarter mile of a proposed coalbed methane well, and removed language exempting wells were the operator could not obtain access. The Director expects the operators of all plugged and abandoned wells to cooperate with the proposed coalbed methane well operator to ensure access.

Rule 614.b

The Commission moved prior Rule 608.c, governing coal outcrop and coal mine monitoring, to Rule 614.b. The Commission made minor changes to update the wording of the Rule for clarity and consistency, but did not substantively revise the Rule.

Rule 614.d

The Commission maintained some coalbed methane well monitoring requirements in Rule 614.d.

Rule 615.

The Commission moved prior Rule 609 to Rule 615. The Commission expanded the scope of the Rule to include recompleted wells, coalbed methane wells regulated under prior Rule 608.b, wells in the Greater Wattenberg Area previously regulated under prior Rule 318A.f, and wells previously regulated under Commission orders for the Northern San Juan Basin. By consolidating all groundwater baseline sampling rules into a single Rule, the Commission intends to provide simpler and clearer standards for operators, local governments, and the general public, while also ensuring that groundwater throughout the state receives the same baseline protections. However, the Commission retained a portion of prior Rule 608.b.(1), that required collecting 2 samples around a conventional or plugged and abandoned well within a quarter mile of a proposed coalbed methane well. Retaining this provision does not change the requirement to collect samples from the 4 water wells closest to the coalbed methane well, but rather recognizes the potential for an existing wellbore to be a conduit for contamination to reach an aquifer.

Rule 615.a

In Rule 615.a, the Commission clarified that wells subject to a Form 2 approved prior to January 15, 2021 that are already subject to a groundwater sampling regime under a prior Commission Rule remain subject to the timing for groundwater sampling specified by the prior Rule, not new Rule 615. The Commission intends Rule 615 to be prospective, not retrospective. Therefore, wells spud prior to January 15, 2021 remain subject to the groundwater sampling regimes of prior Rules 318A.f, 608, and 609. The Commission directs

its Staff to issue guidance to this effect, and to maintain easily-accessible versions of each of these prior Rules on its website.

Some stakeholders suggested the Commission expand the monitoring well provisions of Rule 615.a.(3). The Commission did not adopt this suggestion because the purpose of Rule 615 is to provide detailed information about water quality in actively-used water, not to conduct broad baseline groundwater monitoring in an area. Many of the Commission's 900 Series Rules, including Rules 907, 914, and 915.e.(3).B authorize the Director to require operators to conduct additional groundwater monitoring and to drill monitoring wells, where appropriate.

Rules 615.b & 615.c

The Commission did not make substantive changes to Rules 615.b or 615.c, other than specifying in Rule 615.b.(2) that operators are required to sample well-maintained domestic water wells if any such wells are available.

Some stakeholders suggested changing the location of sampling wells governed by Rule 615.b to require wells to be downgradient. The Commission did not adopt these changes because not all contaminants of interest migrate downgradient, and the gradient may not be a relevant factor for determining appropriate sampling wells in all cases. For example, stray gas phase contaminants migrate along the path of least resistance, which might be undip based on buoyancy or may follow structural controls to move cross-dip. High-pressure free gas may migrate upwards or laterally based on the path of least resistance.

Rule 615.d

In Rule 615.d.(1), the Commission clarified that the timing for initial sampling must be within 12 months prior to spudding a well if no conductors are installed at the well.

In Rule 615.d.(2), the Commission substantially revised the timeframe for subsequent groundwater monitoring by requiring subsequent samples to be taken every 5 years for the life of an oil and gas well, and by requiring operators to take a post-abandonment sample within 6 to 12 months of plugging and abandoning an oil and gas well. The Commission extended the duration for groundwater monitoring as a precaution to protect public health, safety, welfare, the environment, and wildlife resources by ensuring that the Commission has longitudinal data demonstrating groundwater characteristics for the entire lifetime of a well, rather than only collecting data during the initial months that a well is operated. This data will enable to the Commission to answer any questions that may arise about potential groundwater contamination throughout the lifetime of a well, and provide assurance to water well owners, PWSs, and the general public that water supplies are not being contaminated by oil and gas operations. The collection and comparison of baseline conditions over time will provide data for statistically sound conclusions with respect to oil and gas operations' potential impacts on aquifers. A larger data set with more samples

provides a more statistically relevant dataset for trend analysis to determine whether background conditions are changing. Although the most important time for sampling may be at the end of a well's life, because it is impossible to predict when the end of a well's life will be in advance, the Commission determined that it is crucial to have periodic samples leading up to the time that a well is plugged to provide an adequate baseline to evaluate against the samples collected after a well is plugged.

In Rule 615.d.(4), the Commission authorized the Director to require additional groundwater sampling at any time based on information indicating a potential change in or impact to groundwater, rather than being constrained to circumstances where changes in water quality are identified during subsequent monitoring by the operator. This change is intended to afford the Commission's Staff the flexibility necessary to react to potential changes in groundwater quality and any other unexpected events that may require groundwater sampling.

Rule 615.e

The Commission eliminated the alternative analyte list for subsequent analyses previously included in Rule 615.e.(4), in favor of having all samples collected run for the same analytes. This will better facilitate reuse of samples collected as subsequent samples for one well to be used as first baseline samples for another well. Data continuity also improves the statistical relevance of the entire data set. The list of analytes is substantially consistent with past requirements, ensuring data continuity with the tens of thousands of samples already collected throughout the state.

In Rule 615.e.(5), the Commission revised its standards for dissolved gas detection. Detection of methane in groundwater is complex, because it is impossible to determine whether the methane is thermogenic or biogenic in origin without additional compositional analysis of related gas compounds. Biogenic methane is produced by bacteria and does not indicate that groundwater has been contaminated by underground oil and gas deposits or oil and gas operations, while thermogenic methane is indicative of either natural or anthropogenically-induced migration of oil and gas deposits into groundwater. Accordingly, conducting compositional analysis is necessary in order to determine the source of methane, and whether oil and gas development may be the source. The Commission therefore added standards for compositional analysis when methane is detected. The Commission also revised the requirements for reporting compositional analysis results that indicate the presence of thermogenic methane to the Director and water well owners by requiring the operator to submit a Form 42, Field Operations Notice – Water Sample Reporting.

The analytes identified in Rule 615.e are intended to be indicator species, not definitive metrics of contamination. They constitute a "health check" to identify if anything appears to be out of the ordinary, and unusual data may be investigated through subsequent monitoring. For this reason, the Commission did not adopt some stakeholders' suggestion to require sampling for a wider range of individual hydrocarbons. Analytes identified in

Rule 615.e, such as benzene, toluene, ethylbenzene, and xylenes and total petroleum hydrocarbons, already provide adequate indicators of hydrocarbon presence, and thus sampling for every possible hydrocarbon is unnecessary. Additionally, the Commission determined that it was not necessary to require sampling for Technically Enhanced Naturally Occurring Radioactive Materials ("TENORM"). Because TENORM is, by definition, naturally occurring, it will be identified in virtually every sample, and therefore is not an indicator species that can signal that additional monitoring may be necessary.

Rule 615.f

In Rule 615.f, the Commission specified that sampling results should be reported to the Director on a Form 43, Analytical Sample Submittal.

Rule 615.g

In Rule 615.g, the Commission provided that analytical results may be provided to local governments upon request. Areas subject to prior orders may still require that the results are also reported to the local government. It was not the Commission's intent to change the local government reporting requirement for existing wells.

Finally, the Commission removed provisions related to liability that were in prior Rule 609.g. The Commission determined that questions of liability should be resolved through the ordinary judicial process, and are outside the Commission's regulatory jurisdiction.

APPENDIX B

Our Children's Trust Petition for Rulemaking

On November 8, 2019, Our Children's Trust ("OCT") submitted a Petition for Rulemaking ("Petition") to the Commission pursuant to then-applicable Rule 529.

OCT's Petition

The OCT Petition expressed serious concerns regarding the impacts of oil and gas development, and provided evidence of air emissions resulting from oil and gas development, including greenhouse gases, as well as contributions to climate change. The Petition also provided evidence of negative impacts to health, safety, and welfare, the environment, and wildlife resources from air emissions, leaks, spills, truck traffic, poor wellbore integrity, improperly abandoned oil and gas equipment, and water consumption. The Petition addressed the negative impacts of climate change and argued that Colorado's energy systems must be decarbonized. Finally, the Petition argued that the oil and gas industry placed an economic burden on Colorado due to the severance tax rate and abandoned wells.

The Petition proposed rules to address OCT's concerns. First, the Petition proposed rules to address cumulative and direct impacts from oil and gas operations. Section 1 of the Petition's proposed rules required the Commission to conduct a periodic baseline assessment of all impacts on public health, the environment, and climate change from oil and gas operations. Section 2 required the Commission to create a climate recovery plan that sets biennial lifecycle greenhouse gas emission reduction targets for Colorado's oil and gas operations. Section 3 required all applications for oil and gas development to include total lifecycle greenhouse gas emissions resulting from proposed operations, information about how the proposed operations would directly and cumulatively impact public health, safety, welfare, the environment, and wildlife resources, and impact on the baseline assessment. Section 4 proposed rules that would prohibit the Commission from approving a permit application unless the application demonstrates there would be no negative impact on the baseline assessment, public health, safety, welfare, the environment, and wildlife resources from the proposed operations, and the application shows that it is in compliance with the proposed climate recovery plan. Section 4 proposed rules requiring operators to submit annual reports with information on operations, greenhouse gas emissions, and impacts to the proposed baseline assessment. The Petition also proposed a rule requiring the Commission to suspend all permitting until the rules proposed in the Petition were effective. Finally, the Petition proposed rules requiring the Commission to establish a climate adaption and mitigation program account, to be funded through fees from operators, which would be used to fund electric heating systems and renewable energy projects.

The Commission's Procedure to Address the Petition.

When OCT submitted its Petition, the Commission's rulemaking effort in this 200-600 Mission Change Rulemaking was substantially underway. In the summer and fall of 2019,

the Commission embarked on a statewide listening tour to hear from the public about several rulemakings required by Senate Bill 19-181: mission change, cumulative impacts, alternative location analysis, and flowlines. The Director and Commission's Staff also solicited input on policy and Rule changes from stakeholders. On November 1, 2019, the Commission's Staff released the Mission Change Whitepaper. The Whitepaper provided stakeholders and the public with their first look at the Commission Staff's proposed ideas and concepts to implement the provisions of Senate Bill 19-181.

The Administrative Procedure Act provides that while action on any petition is within the discretion of the agency, "when an agency undertakes rule-making on any matter, all related petitions for the issuance, amendment, or repeal of rules on such matter shall be considered and acted upon in the same proceeding." C.R.S. § 24-4-103(7). The Petition proposed rules to address cumulative impacts of oil and gas development, and to protect public health, safety, and welfare, the environment, and wildlife resources. The entire purpose of the 200-600 Mission Change Rulemaking is to adopt rules that protect public health, safety, and welfare, the environment, and wildlife resources as required by Senate Bill 19-181, as well as to adopt rules evaluating and addressing the potential cumulative impacts of oil and gas development. The Commission therefore concludes the Petition is related and it is necessary and appropriate for the Commission to consider and act upon the rules proposed in the Petition as part of this 200–600 Mission Change Rulemaking.

OCT was a party to the 200–600 Mission Change Rulemaking and submitted prehearing statements requesting that the Commission adopt the rules proposed in the Petition. On June 25, 2020, the Commission's Hearing Officer issued an Amended Case Management Order ("CMO") which notified all parties that the Commission would consider the Petition in this rulemaking. That Amended CMO also allowed the parties to file responses to the Petition. Fifteen parties filed such responses. During the 200–600 Mission Change hearing, OCT presented its arguments and proposed rules, and the 15 parties who filed written responses presented arguments in response to the OCT petition.

Further, because OCT was a party and requested the Commission adopt the rules proposed in the Petition in OCT's written submissions, the Commission was obligated to consider the rules proposed in the Petition regardless of whether the Commission would have granted the Petition, just as the Commission considers proposed rules suggested by all parties to every rulemaking. The question of whether to grant the Petition is thus moot, because the Commission has addressed the substantive regulations proposed by the Petition in the course of the 200–600 Mission Change Rulemaking (and related but distinct 800/900/1200 Mission Change Rulemaking).

Commission Response to OCT's Concerns and Proposed Rules

For the following reasons, the Commission declines to adopt the specific regulatory text proposed in the Petition, although the Commission adopted several Rules intended to address some similar concepts and concerns to those raised in the Petition. This Statement

of Basis and Purpose reflects the Commission's consideration of OCT's concerns and response to the rules proposed by the Petition. The Commission therefore relies on the entire Statement of Basis and Purpose as its consideration and response to the rules proposed by the Petition. However, the Commission included the following section in this Statement of Basis and Purpose to directly address the Petition.

Prior Rulemakings

In November 2019, after OCT submitted its Petition, the Commission held a rulemaking hearing to revise its flowline rules as required by Senate Bill 19-181. In the 2019 Flowline Rulemaking, the Commission amended its 1100 Series Rules to require location data for flowlines, required that the data be publicly available, enabled the Commission's Staff to conduct timely inspections when inactive flowlines or wells are returned to service, and improved protection of public health, safety, welfare, the environment, and wildlife resources by updating and strengthening the Commission's flowline abandonment Rules. The 2019 Flowline Rulemaking addressed OCT's concerns regarding emissions, leaks, and spills from flowlines, as well as concerns with abandoned flowlines.

In June 2020, the Commission updated its wellbore integrity rules, as required by Senate Bill 19-181. In the Wellbore Integrity Rulemaking, the Commission adopted its wellbore monitoring and testing rules by requiring bradenhead monitoring and testing, updated its standards to ensure that operators isolate groundwater, set safety and environmental protections during drilling and hydraulic fracturing operations, strengthened standards for casing and cementing, updated standards to prevent blowouts, and updated well plugging standards. The Wellbore Integrity Rulemaking addressed OCT's concerns regarding wellbore integrity and improperly abandoned wells.

To the extent necessary to address the Petition, the Commission adopts the Statements of Basis and Purpose for the 2019 Flowline Rulemaking and Wellbore Integrity Rulemaking.

Mission Change Rulemakings

The following discussion demonstrates the Commission's consideration of and decision on the rules proposed by the Petition, though it is not intended to be a complete discussion of all Commission Rules that are intended to address concerns raised by the Petition.

Rule 303.a.(5), which creates CIDER, is intended to create baseline dataset that can be used to facilitate the Commission's ongoing efforts to evaluate the cumulative impacts of oil and gas operations in Colorado. Additionally, in Rules 303.a.(5).B.i & ii, the Commission required operators to submit estimated emissions of specific pollutants. Based on consultation with CDPHE, the Commission carefully selected a necessary and reasonable set of indicator pollutants that are particularly relevant to impacts on public health and the environment, because of their direct health impacts, role in tropospheric ozone formation, and contribution to climate change. Finally, Rule 904, which was adopted in the

800/900/1200 Mission Change Rulemaking, requires the Director to provide an annual report to the Commission on data gathered in CIDER and CDPHE's ongoing efforts to reduce greenhouse gas emissions and implement House Bill 19-1261. The Commission intends to use data from CIDER, in cooperation with CDPHE and other partners, to undertake basin-wide, statewide, and other studies to evaluate cumulative impacts to relevant resources at appropriate scales. Together, Rules 303.a.(5) and 904 implement the Commission's evaluation of cumulative impacts, including cumulative impacts of greenhouse gases that contribute to climate change.

The discussion of Rule 303.a.(5) in this Statement of Basis and Purpose provides additional details and identifies additional Rules intended to address and evaluate cumulative impacts. Rule 303.a.(5) and related Rules respond to and address the same concerns that led OCT to propose its baseline assessment rule. The Commission also does not intend for the 200–600 Mission Change Rulemaking to be the final, or only, rulemaking to evaluate and address cumulative impacts, and the Commission will continue to coordinate with CDPHE and other partners to evaluate data in the CIDER database and other information salient to evaluating and addressing cumulative impacts.

Other Commission Rules adopted in the 200–600 Mission Change Rulemaking are intended to address cumulative impacts. These Rules include Rule 314, governing CAPs, Rule 304.c.(19), requiring operators to submit a cumulative impacts plan, and Rules 603.d and e, governing well consolidation and development from existing locations. Additionally, Rules 423, 424, 426, and 427 provide substantive standards to address cumulative noise, light, odor, and dust impacts, respectively.

The Commission also adopted Rules to reduce air emissions, including greenhouse gases. For example, numerous 300 Series Rules are intended to facilitate greenhouse gas emissions reductions, including Rules 303.a.(5).B.i, 304.c.(12), 304.c.(19), and 314.e. Many of these Rules are specifically intended to facilitate the capture of natural gas to avoid routine venting and flaring, and to facilitate electrification which results in significant emissions reductions. In drafting these Rules, the Commission's Staff worked closely with AQCC, which is conducting rulemakings to implement a statewide plan to reduce greenhouse gas emissions as directed by House Bill 19-1261. House Bill 19-1261 sets a goal of gradually eliminating statewide greenhouse gas emissions in approximately the next 50 years. In adopting and implementing Rules in this 200–600 Mission Change Rulemaking the Commission intends to work with AQCC's effort to reduce greenhouse gases, thereby addressing the Petition's concerns.

The Commission adopted Rule 604, which increased the distance oil and gas facilities must be located from school facilities and child care centers and set a presumptive distance of 2,000 feet from all building units. Rule 604 is intended to be another regulatory tool to avoid, minimize, and mitigate impacts on public health and welfare from air emissions, noise, light, dust, and other conditions.

Finally, the Commission completed the 200-600 Mission Change Rulemaking and 800/900/1200 Mission Change Rulemaking on the same day. The 800 Series Rules regulate underground injection control wells to avoid, minimize, and mitigate adverse impacts to groundwater and surface water. The 900 Series Rules regulate venting and flaring of natural gas and emissions from pits to protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and are specifically intended to reduce emissions of greenhouse gases and other air pollutants from oil and gas operations. The 1200 Series Rules are intended to protect and minimize adverse impacts to wildlife resources through planning, special protections for sensitive areas, and compensatory mitigation. These Rules also address concerns raised by the Petition, as discussed in the Statement of Basis and Purpose for that rulemaking, to which OCT is also a party.

The Petition proposes a rule that the Commission may not grant any permit unless an operator shows by "clear and convincing evidence" that a proposed oil and gas operation will not have any adverse impact on public health, safety, welfare, the environment, and wildlife resources. Senate Bill 19-181's changes to the Commission's mission and statutory authority direct the Commission to "regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health." C.R.S. § 34-60-106(2.5)(a). Senate Bill 19-181 also defined "minimize adverse impacts" to mean "to the extent necessary and reasonable to protect public health, safety, and welfare, the environment, and wildlife resources, to: (a) Avoid adverse impacts from oil and gas operations; and (b) Minimize and mitigate the extent and severity of those impacts that cannot be avoided." C.R.S. § 34-60-103(5.5). This standard demonstrates that the General Assembly recognized that some impacts are unavoidable, though unavoidable impacts should be minimized and mitigated. Adopting a rule that sets a no adverse impacts standard, as requested by OCT, would be contrary to the express language of Senate Bill 19-181 and that legislative intent.

It is not necessary or appropriate for the Commission to adopt the Petition's proposed rule that no new permits will be issued until the Rules adopted in the 200–600 Mission Change Rulemaking are effective. Senate Bill 19-181 provided the Director with a process to continue permitting, and with a process to delay decisions on permit applications which require additional consultation or analysis to ensure protection of public health, safety, and welfare or the environment until rules mandated by Senate Bill 19-181 are effective. C.R.S. § 34-60-106(1)(f). The Commission and its Staff have been implementing this process of delaying permitting decisions since the adoption of the statute. Further, Senate Bill 19-181 "applies to conduct occurring on or after the effective date of this act, including determinations of applications pending on the effective date," and therefore applies to any pending or subsequently filed application. Senate Bill 19-181 § 19. The Director thus must ensure that any permit applications pending on or submitted after April 16, 2019 meet the standards set by Senate Bill 19-181. The Commission therefore concluded that, pursuant to this authority, it is not necessary or reasonable to halt all permitting until the Mission Change Rulemakings Rules are effective because the Director has ensured and will continue

to ensure that either any permitted location meets the standards set by Senate Bill 19-181 or will delay a permit application until the Mission Change Rulemakings Rules are effective.

The General Assembly did not grant the Commission with the authority to adopt the Petition's proposed rule creating a climate adaptation and mitigation account. The Oil and Gas Conservation Act, as amended by Senate Bill 19-181, provides the Commission with authority to adopt permitting fees to cover the reasonably foreseeable direct and indirect costs of regulating oil and gas operations. C.R.S. § 34-60-106(7)(b). But it does not provide the Commission with the authority to create the fund proposed by the Petition which goes beyond the Commission's regulatory scope of regulating "oil and gas operations," *see, e.g.*, C.R.S. §§ 34-60-103(6.5), 34-60-106(2.5)(a), for example, by funding residential electric heating systems.

Finally, the Commission does not have the statutory or constitutional authority to alter the severance tax rate and therefore did not take action on the Petition's concerns with Colorado's tax on oil and gas production. The Commission is planning to hold a rulemaking in 2021 to address financial assurance, as directed by Senate Bill 19-181. *See* C.R.S. § 34-60-106(13). The Commission's current orphan well program is also addressing orphaned wells in Colorado. The Commission therefore determined it was not necessary to address the Petition's argument regarding the economic burden on Colorado posed by orphan wells in the 200–600 Mission Change Rulemaking.

Conforming Changes

All conforming changes are described in the "Amendments and Additions to the Rules" section above.

Effective Date

The Commission adopted the proposed amendments during its hearing held between August 24 and November 23, 2020. Pursuant to C.R.S. § 24-4-103(5), these amendments will become effective on January 15, 2021, unless otherwise specified in the Rule.

ATTACHMENT 1

COGCC Mission Change Rulemakings Reorganization Crosswalk

As part of its 200–600 and 800/900/1200 Mission Change Rulemakings, the Colorado Oil and Gas Conservation Commission has reorganized several series of its Rules. This reorganization improved clarity for all stakeholders by grouping all Rules addressing similar topics together in the same Series. Additionally, the order of the Rules within each Series is now in a more logical, sequential order that better reflects the sequential processes that occur on the ground. The Tables below show both the prior and reorganized Rule numbers

Prior Rule Number	Reorganized Rule Number
201	201
202	202
203	203
204	204
205	206; 208
205A	201; 208
206	207
207	209
208	210; 211
209	212
210	605
211	214
212	601
213	*Removed.*
214	215
215	216
216	314
301	206; 213
302	205; 302
303	301; 302; 303; 304; 308; 310; 311.
304	306
305A	302; 309
305	302; 306; 307; 309; 406; 412; 605
306	302; 309; 529
307	404
308A	414
308B	416
308C	206, 223
309	413
310	217

311	435
312	218; 219
313	*Removed*
313A	*Removed*
313B	220
314	420
315	409
316A	808
316B	418
316C	405
317	408; 603; 903
317A	*Removed*
317B	411
318	401
318A	402; 615
318B	403
319	434
320	201
321	410
322	415
323	909
324A	801; 902
324B	802
324C	805
324D	914
325	801; 803; 804; 806; 807; 809; 810
326	417
327	428
328	429
329	430
330	431
331	432
332	433
333	313; 405; 436
334	221
335	908
336	222
337	912
338	*Removed*
339	*Removed*
340	913
341	419
401	220; 811

402	811
403	803; 804; 811
404	803; 804; 811
405	803; 811
501	501
502	502; 503
503	503
504	503
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513	529
514	*Removed*
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517	515
518	516; 517
519	517
520	*Removed*
521	522
522	510; 523; 524; 528
523	525
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528	507; 510
529	529
530	506
531	519
532	520
533	521
601	601
602	602
603	421; 602; 603; 604; 605; 606; 607; 608
604	304; 408; 412; 603; 604; 606; 608; 610; 903
605	603; 605; 608
606A	610

606B	611
607	612
608	614; 615
609	615
610	613
801	422
802	423
803	424
804	425
805	426; 427; 608; 903
901	901
902	909
903	908
904	910
905	911; 913
906	912
907	427; 905
907A	906
908	907
909	911; 913
910	915
911	*Removed*
912	903
1201	304
1202	309
1203	1202
1204	1202
1205	1202

Reorganized Rule Number	**Prior Rule Number**
201	201; 205A; 320
202	202
203	203
204	204
205	302
206	205; 301; 308C
207	206
208	205; 205A
209	207
210	208
211	208
212	209
213	301

214	211
215	214
216	215
217	310
218	312
219	312
220	313B; 401
221	334
222	336
223	308C
301	303
302	302; 303; 305; 305A; 306
303	303
304	303; 605; 1201
305	n/a – new Rule
306	304; 305
307	305
308	303
309	305; 305A; 306; 1202
310	303
311	303
312	n/a – new Rule
313	333
314	216
401	318
402	318A
403	318B
404	307
405	316C; 333
406	305
407	n/a – new Rule
408	317; 604
409	315
410	321
411	317B
412	305; 604
413	309
414	308A
415	322
416	308B
417	326
418	316B
419	341

420	314
421	603
422	801
423	802
424	803
425	804
426	805
427	805; 907
428	327
429	328
430	329
431	330
432	331
433	332
434	319
435	311
436	333
437	n/a – new Rule
501	501; 505
502	502
503	502; 503; 504; 506
504	507
505	511
506	530
507	509; 528
508	511
509	509; 527
510	506; 509; 511; 522; 526; 528
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601	212; 601
602	602; 603
603	317; 603; 604; 605
604	603; 604
605	210; 305; 603; 605
606	603; 604
607	603
608	603; 604; 605; 805
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