

100 Series

Petition for Review shall mean the written request filed by a Complainant for Commission review of the terms of a final proposed Administrative Order by Consent pursuant to Rule 522.b.(4).

500 Series

503. ALL OTHER PROCEEDINGS COMMENCED BY FILING AN APPLICATION

- a. All proceedings other than those initiated by the Commission ~~or a variance requests~~request submitted ~~for to the~~ Director ~~approval, or a Petition for Review~~ shall be commenced by filing with the Commission the original, two hard copies, and an electronic copy of a typewritten or printed ~~petition which shall be titled~~ “application.” The application shall also be submitted on compatible electronic media. All operators’ applications should include the operator’s identification number. The application shall set forth in reasonable detail the relief requested and the legal and factual grounds for such relief. The original of the application shall be executed by a person with authority to do so on behalf of the applicant, and the contents thereof shall be verified by a party with sufficient knowledge to confirm the facts contained therein. With the exception of those from state and local government agencies, each application shall be accompanied by a docket fee established by the Commission (see Appendix III), except applications seeking an order finding violation or an emergency order.
- b. Applications to the Commission may be filed by the following applicants:
- (1) For purposes of applications for the creation of drilling units, applications for additional wells within existing drilling units, other applications for modifications to existing drilling unit orders, or applications for exceptions to Rule 318., only those owners within the proposed drilling unit, or within the existing drilling unit to be affected by the application, may be applicants.
 - (2) For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., only those persons who own an interest in the mineral estate of the tracts to be pooled may be applicants.
 - (3) For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., only those persons who own an interest in the mineral estate underlying the tract or tracts to be unitized may be applicants.
 - (4) For purposes of seeking an order finding violation, only the Director ~~or a party who made a complaint under Rule 522.~~ may be an applicant.

- (5) For purposes of seeking a variance from the Commission, only the operator, mineral owner, surface owner or tenant of the lands which will be affected by such variance, other state agencies, any local government within whose jurisdiction the affected operation is located, or any person who may be directly and adversely affected or aggrieved if such variance is not granted, may be an applicant.
- (6) For purposes of seeking a hearing pursuant to Rules 216.f.(4), 303.c.(2), or 303.j.(2), the operator seeking approval of the Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, may be the applicant.
- (7) For purposes of seeking a hearing on approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, under Rule 305.e.(2), any of the following may be the applicant:
- A. The operator;
 - B. The surface owner, solely to raise alleged noncompliance with Commission rules or statute, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and
 - C. The relevant local government, provided that the hearing shall be conducted in similar fashion as is specified in Rules 508.j, 508.k, and 508.l with respect to a public issues hearing. It shall be the burden of the local government to bring forward evidence sufficient for the Commission to make the preliminary findings specified in Rule 508.j at the outset of such hearing.
- (8) For purposes of seeking a hearing on provisions related to measurement pursuant to Rule 328 or 329, the mineral interest owner may be the applicant.
- (9) For purposes of seeking a hearing for an order limiting surface density pursuant to Rule 1202.d.(5), the operator shall be the applicant.
- (10) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (9) above, only persons who can demonstrate that they are directly and adversely affected or aggrieved by the conduct of oil and gas operations or an order of the Commission and that their interest is entitled to legal protection under the Act may be an applicant.

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522. PROCEDURES FOR ALLEGED VIOLATIONS

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b. Complainant's Rights and Responsibilities

- (1) The following persons (Complainant) may make a complaint to the Director requesting that an NOAV be issued:
 - A. The mineral owner;
 - B. The surface owner or tenant of the lands upon which the alleged violation occurred;
 - C. Other state agencies;
 - D. The local government with jurisdiction over the lands upon which the alleged violation took place; or
 - E. Any person who may be directly and adversely affected or aggrieved as a result of the alleged violation- and whose interest is entitled to legal protection under the Act.
- (2) The Director will investigate all complaints made pursuant to Rule 522.b.(1) to determine whether reasonable cause for an alleged violation exists. The Director will notify the Complainant of the determination pursuant to Rule 521.
 - A. If the Director determines no violation occurred, no further action will be taken by the Director. The Director's decision that reasonable cause for an alleged violation does not exist is not reviewable by a Complainant, except as provided by section 34-60-114, C.R.S.
 - B. If the Director determines a violation may have occurred, the Director may resolve the matter without seeking penalties pursuant to subpart 522.c.(1) or initiate an enforcement action seeking penalties pursuant to subpart 522.d.
- (3) If a complaint leads to issuance of an NOAV, a Complainant who has filed a written complaint on a Form 18, Complaint Report, will be given 14 days to comment on the terms of a draft proposed settlement of the NOAV, if any, pursuant to subpart 522.e.(1).

- ~~(4) A Complainant who has filed a written complaint on a Form 18, Complaint Report, may apply for an Order Finding Violation (OFV) hearing before the Commission pursuant to Rule 503 to hear the Complainant's objections to:~~
- ~~A. The Director's decision not to issue an NOAV for an alleged violation specifically identified in the written complaint; or (4) A Complainant who objects to the terms of~~
 - ~~B. The settlement terms in a final proposed Administrative Order by Consent (AOC) settling an alleged violation arising directly from the Complainant's written complaint. may file a Petition for Review with the Commission.~~
- ~~(5) Complainants must file an application~~A. In considering a Petition for an OFV hearing with Review, the standard of review is abuse of discretion.
- ~~B. Commission~~A Petition for Review will set forth in reasonable detail the legal arguments and facts the Complainant contends demonstrate the terms of a final AOC proposed by the Director constitute an abuse of discretion.
 - ~~C. A Petition for Review must be filed~~ within 28 days of notification of the ~~Director's decision not to issue an NOAV or of the settlement terms in a final proposed AOC. Applications~~Petitions filed later than 28 days following notification will not be ~~heard~~considered.
- ~~(6) The~~D. A Complainant must serve its OFV hearing applicationPetition for Review on the ~~alleged violator~~operator pursuant to Rule 521 within 7 days ~~of the~~following filing of the ~~application.~~Petition.
- ~~(7)E. The Complainant bears~~operator and the burden~~Director may file a response within 21 days after receipt of proof an OFV~~a Petition for Review.
- ~~(5) The Commission will consider a Petition for Review at the next regularly scheduled hearing initiated by~~not less than 30 days following filing of the Petition for Review.
- ~~A. No party to the Petition for Review hearing may present evidence or information that was not presented to the Director for consideration during negotiation of the proposed final AOC.~~
 - ~~B. It is the Complainant's burden to show the proposed settlement terms in the AOC constitute an abuse of discretion.~~
 - ~~i. If the Complainant meets this burden, the Commission may remand the matter to the Director for further proceedings, set~~

the matter for an Order Finding Violation Hearing, or order other such relief it deems just and reasonable.

ii. If the Complainant fails to meet this burden, the Commission will deny the Petition for Review, and will act on the final proposed AOC pursuant to Rules 522.e.(1)C and D.

C. The Commission's consideration of a Petition for Review will proceed as follows:

i. Determination if any Commissioner has a conflict;

ii. Introduction and background by Staff;

iii. Presentation by the Complainant regarding its threshold burden;

iv. Response by the operator, if any;

v. Response by Staff, if any;

vi. Rebuttal by the Complainant, if any; and

vii. Commission determination regarding whether the Complainant has met its burden of persuasion.

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e. Resolution of Enforcement Actions

(1) Administrative Order by Consent

An enforcement action may be provisionally resolved by agreement between the operator and the Director except as provided in subpart 522.e.(2).

- A. A proposed agreement to resolve an enforcement action will be memorialized in an Administrative Order by Consent (AOC) executed by the Director and the operator. An AOC will be noticed for review and approval by the Commission unless no penalties are recommended.
- B. A Complainant who has filed a written complaint on a Form 18, Complaint Report, will be informed of the terms of a draft proposed AOC resolving alleged violations arising directly out of their written complaint and will be given 14 days to comment on the draft settlement terms before the AOC is finalized and presented to the Commission for approval. A Complainant who objects to the finalized settlement terms proposed for an alleged violation arising

directly from their written complaint may file ~~an application~~ Petition for ~~a hearing~~ Review pursuant to Rule 522.b.(4), within 28 days of the Complainant receiving the finalized settlement terms of a proposed AOC.

- C. Administrative Orders by Consent that are not subject to a pending Complainant's Petition for Review will be docketed on the Commission's consent agenda and may be approved by motion without formal hearing. An approved AOC becomes a final order of the Commission subject to judicial review.
- D. If the Commission does not approve an AOC, the Commission will remand the matter to the Director for further proceedings.

(2) Order Finding Violation

- A. An enforcement action may not be resolved by the Director and must be heard by the Commission when:
 - i. The Director alleges the operator is responsible for gross negligence or knowing and willful misconduct that resulted in an egregious violation;
 - ii. The Director alleges the operator has engaged in a pattern of violations; or
 - iii. ~~A Complainant files a timely application for~~ When the Commission sets an OFV hearing pursuant to ~~Rule 522.b.(4)-5~~ B.i.

B. Commencing an OFV hearing

- i. The Director will commence an OFV hearing for enforcement actions governed by subpart 522.e.(2)A. by filing an Notice and Application for Mandatory OFV Hearing.
- ii. Order Finding Violation hearings for enforcement actions not governed by subpart 522.e.(2)A. are commenced by service of the NOAV and Notice and Application for Hearing. The Director is not required to file a separate application for an OFV hearing. An OFV hearing will commence on the date stated in the Notice and Application for Hearing, as amended by applicable pre-hearing orders, unless the parties have agreed to and executed an AOC not less than 7 days prior to the scheduled hearing date.
- iii. ~~A Complainant may file an application for an OFV hearing pursuant to Rule 522.b.(4).~~

~~iv.~~ The Commission may conduct an OFV hearing on its own motion, with notice pursuant to Rule 507, if it believes the Director has failed to enforce a provision of the Act, or a Commission rule, order, or permit.

C. OFV hearing procedures

i. OFV prehearing procedures are governed by Rule 527. The Director may convene a prehearing conference pursuant to Rule 527 within a reasonable time after serving a Notice and Application for Hearing.

ii. OFV hearings are *de novo* proceedings governed by Rule 528.

iii. If the Director initiates the OFV hearing, a Complainant may ~~participate as a non-party observer and may~~ submit a Rule 510 statement, or ~~may~~ move to intervene by permission of the Commission pursuant to Rule 509.

~~iv. If a Complainant initiates an OFV hearing pursuant to Rule 522.b.(4), the Director may intervene as a matter of right. (2)C.~~

(3) Rescinding an NOAV

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

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528. CONDUCT OF ADJUDICATORY HEARINGS.

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c. **Enforcement hearings.** In order to assure that all parties ~~against whom a fine or penalty may be imposed~~ are afforded due process of law, the Commission ~~shall, at any hearing, will~~ permit ~~the Director or the complainant pursuant~~ all parties to Rule 522.b.(4) an enforcement hearing to present evidence and argument, and to conduct cross-examination ~~required for a full disclosure of the facts~~. The enforcement matter shall be heard by the Commission *de novo* unless the operator waives its right to a *de novo* hearing prior to or at the Commission hearing. The order of presentation in a hearing for an enforcement matter shall be as follows, unless otherwise established by the Commission at the hearing:

(1) Determination of whether any Commission members have a conflict of interest;

(2) Opening statements by all parties;

(3) Presentation by the Director;

~~(4) Presentation by any complainant under Rule 522.b.(4);~~

~~(5)~~(4) Presentation by the operator;

~~(6)~~(5) Rebuttal by the Director;

~~(7)~~(6) Rebuttal by the respondent operator;

~~(8)~~(7) Closing statements ~~by the parties~~;

~~(9)~~(8) Finding regarding existence of violation;

~~(10)~~(9) If the Commission first determines by a preponderance of the evidence that a violation or violations exist, presentation by the Director of any recommended fine or permit-related penalty, and/or recommended corrective action/abatement to be taken by the operator;

~~(11) Response by any complainant under Rule 522.b.(4);~~

~~(12)~~(10) Presentation of statements under Rule 510, if any;

~~(13)~~(11) Response by the operator;

~~(14)~~(12) Rebuttal by the Director;

~~(15)~~(13) Closing statements ~~by all parties~~;

~~(16)~~(14) Closing of the record.

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100 Series

Petition for Review shall mean the written request filed by a Complainant for Commission review of the terms of a final proposed Administrative Order by Consent pursuant to Rule 522.b.(4).

500 Series

503. ALL OTHER PROCEEDINGS COMMENCED BY FILING AN APPLICATION

- a. All proceedings other than those initiated by the Commission, a variance request submitted to the Director, or a Petition for Review shall be commenced by filing with the Commission the original, two hard copies, and an electronic copy of a typewritten or printed "application." The application shall also be submitted on compatible electronic media. All operators' applications should include the operator's identification number. The application shall set forth in reasonable detail the relief requested and the legal and factual grounds for such relief. The original of the application shall be executed by a person with authority to do so on behalf of the applicant, and the contents thereof shall be verified by a party with sufficient knowledge to confirm the facts contained therein. With the exception of those from state and local government agencies, each application shall be accompanied by a docket fee established by the Commission (see Appendix III), except applications seeking an order finding violation or an emergency order.
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 - (2) For purposes of applications for involuntary pooling orders made pursuant to §34-60-116, C.R.S., only those persons who own an interest in the mineral estate of the tracts to be pooled may be applicants.
 - (3) For purposes of applications for unitization made pursuant to §34-60-118, C.R.S., only those persons who own an interest in the mineral estate underlying the tract or tracts to be unitized may be applicants.
 - (4) For purposes of seeking an order finding violation, only the Director may be an applicant.
 - (5) For purposes of seeking a variance from the Commission, only the

operator, mineral owner, surface owner or tenant of the lands which will be affected by such variance, other state agencies, any local government within whose jurisdiction the affected operation is located, or any person who may be directly and adversely affected or aggrieved if such variance is not granted, may be an applicant.

- (6) For purposes of seeking a hearing pursuant to Rules 216.f.(4), 303.c.(2), or 303.j.(2), the operator seeking approval of the Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, may be the applicant.
- (7) For purposes of seeking a hearing on approval of an Application for Permit-to-Drill, Form 2, or an Oil and Gas Location Assessment, Form 2A, under Rule 305.e.(2), any of the following may be the applicant:
 - A. The operator;
 - B. The surface owner, solely to raise alleged noncompliance with Commission rules or statute, or to allege potential adverse impacts to public health, safety, and welfare, including the environment and wildlife resources, that are within the Commission's jurisdiction to remedy; and
 - C. The relevant local government, provided that the hearing shall be conducted in similar fashion as is specified in Rules 508.j, 508.k, and 508.l with respect to a public issues hearing. It shall be the burden of the local government to bring forward evidence sufficient for the Commission to make the preliminary findings specified in Rule 508.j at the outset of such hearing.
- (8) For purposes of seeking a hearing on provisions related to measurement pursuant to Rule 328 or 329, the mineral interest owner may be the applicant.
- (9) For purposes of seeking a hearing for an order limiting surface density pursuant to Rule 1202.d.(5), the operator shall be the applicant.
- (10) For purposes of seeking relief or a ruling from the Commission on any other matter not described in (1) through (10) above, only persons who can demonstrate that they are directly and adversely affected or aggrieved by the conduct of oil and gas operations or an order of the Commission and that their interest is entitled to legal protection under the Act may be an applicant.

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b. Complainant's Rights and Responsibilities

- (1) The following persons (Complainant) may make a complaint to the Director requesting that an NOAV be issued:
 - A. The mineral owner;
 - B. The surface owner or tenant of the lands upon which the alleged violation occurred;
 - C. Other state agencies;
 - D. The local government with jurisdiction over the lands upon which the alleged violation took place; or
 - E. Any person who may be directly and adversely affected or aggrieved as a result of the alleged violation and whose interest is entitled to legal protection under the Act.
- (2) The Director will investigate all complaints made pursuant to Rule 522.b.(1) to determine whether reasonable cause for an alleged violation exists. The Director will notify the Complainant of the determination pursuant to Rule 521.
 - A. If the Director determines no violation occurred, no further action will be taken by the Director. The Director's decision that reasonable cause for an alleged violation does not exist is not reviewable by a Complainant, except as provided by section 34-60-114, C.R.S.
 - B. If the Director determines a violation may have occurred, the Director may resolve the matter without seeking penalties pursuant to subpart 522.c.(1) or initiate an enforcement action seeking penalties pursuant to subpart 522.d.
- (3) If a complaint leads to issuance of an NOAV, a Complainant who has filed a written complaint on a Form 18, Complaint Report, will be given 14 days to comment on the terms of a draft proposed settlement of the NOAV, if any, pursuant to subpart 522.e.(1).
- (4) A Complainant who objects to the terms of a final proposed Administrative Order by Consent (AOC) settling an alleged violation arising directly from

the Complainant's written complaint may file a Petition for Review with the Commission.

- A. In considering a Petition for Review, the standard of review is abuse of discretion.
 - B. A Petition for Review will set forth in reasonable detail the legal arguments and facts the Complainant contends demonstrate the terms of a final AOC proposed by the Director constitute an abuse of discretion.
 - C. A Petition for Review must be filed within 28 days of notification of the settlement terms in a final proposed AOC. Petitions filed later than 28 days following notification will not be considered.
 - D. A Complainant must serve its Petition for Review on the operator pursuant to Rule 521 within 7 days following filing of the Petition.
 - E. The operator and the Director may file a response within 21 days after receipt of a Petition for Review.
- (5) The Commission will consider a Petition for Review at the next regularly scheduled hearing not less than 30 days following filing of the Petition for Review.
- A. No party to the Petition for Review hearing may present evidence or information that was not presented to the Director for consideration during negotiation of the proposed final AOC.
 - B. It is the Complainant's burden to show the proposed settlement terms in the AOC constitute an abuse of discretion.
 - i. If the Complainant meets this burden, the Commission may remand the matter to the Director for further proceedings, set the matter for an Order Finding Violation Hearing, or order other such relief it deems just and reasonable.
 - ii. If the Complainant fails to meet this burden, the Commission will deny the Petition for Review, and will act on the final proposed AOC pursuant to Rules 522.e.(1)C and D.
 - C. The Commission's consideration of a Petition for Review will proceed as follows:
 - i. Determination if any Commissioner has a conflict;
 - ii. Introduction and background by Staff;

- iii. Presentation by the Complainant regarding its threshold burden;
- iv. Response by the operator, if any;
- v. Response by Staff, if any;
- vi. Rebuttal by the Complainant, if any; and
- vii. Commission determination regarding whether the Complainant has met its burden of persuasion.

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e. Resolution of Enforcement Actions

(1) Administrative Order by Consent

An enforcement action may be provisionally resolved by agreement between the operator and the Director except as provided in subpart 522.e.(2).

- A. A proposed agreement to resolve an enforcement action will be memorialized in an Administrative Order by Consent (AOC) executed by the Director and the operator. An AOC will be noticed for review and approval by the Commission unless no penalties are recommended.
- B. A Complainant who has filed a written complaint on a Form 18, Complaint Report, will be informed of the terms of a draft proposed AOC resolving alleged violations arising directly out of their written complaint and will be given 14 days to comment on the draft settlement terms before the AOC is finalized and presented to the Commission for approval. A Complainant who objects to the finalized settlement terms proposed for an alleged violation arising directly from their written complaint may file a Petition for Review pursuant to Rule 522.b.(4), within 28 days of the Complainant receiving the finalized settlement terms of a proposed AOC.
- C. Administrative Orders by Consent that are not subject to a pending Complainant's Petition for Review will be docketed on the Commission's consent agenda and may be approved by motion without formal hearing. An approved AOC becomes a final order of the Commission subject to judicial review.
- D. If the Commission does not approve an AOC, the Commission will remand the matter to the Director for further proceedings.

(2) Order Finding Violation

A. An enforcement action may not be resolved by the Director and must be heard by the Commission when:

- i. The Director alleges the operator is responsible for gross negligence or knowing and willful misconduct that resulted in an egregious violation;
- ii. The Director alleges the operator has engaged in a pattern of violations; or
- iii. When the Commission sets an OFV hearing pursuant to 522.b.(5)B.i.

B. Commencing an OFV hearing

- i. The Director will commence an OFV hearing for enforcement actions governed by subpart 522.e.(2)A. by filing an Notice and Application for Mandatory OFV Hearing.
- ii. Order Finding Violation hearings for enforcement actions not governed by subpart 522.e.(2)A. are commenced by service of the NOAV and Notice and Application for Hearing. The Director is not required to file a separate application for an OFV hearing. An OFV hearing will commence on the date stated in the Notice and Application for Hearing, as amended by applicable pre-hearing orders, unless the parties have agreed to and executed an AOC not less than 7 days prior to the scheduled hearing date.
- iii. The Commission may conduct an OFV hearing on its own motion, with notice pursuant to Rule 507, if it believes the Director has failed to enforce a provision of the Act, or a Commission rule, order, or permit.

C. OFV hearing procedures

- i. OFV prehearing procedures are governed by Rule 527. The Director may convene a prehearing conference pursuant to Rule 527 within a reasonable time after serving a Notice and Application for Hearing.
- ii. OFV hearings are *de novo* proceedings governed by Rule 528.
- iii. If the Director initiates the OFV hearing, a Complainant may submit a Rule 510 statement or move to intervene by permission of the Commission pursuant to Rule 509.a.(2)C.

(3) Rescinding an NOAV

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

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528. CONDUCT OF ADJUDICATORY HEARINGS.

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c. **Enforcement hearings.** In order to assure that all parties are afforded due process of law, the Commission will permit all parties to an enforcement hearing to present evidence and argument, and to conduct cross-examination. The enforcement matter shall be heard by the Commission de novo unless the operator waives its right to a de novo hearing prior to or at the Commission hearing. The order of presentation in a hearing for an enforcement matter shall be as follows, unless otherwise established by the Commission at the hearing:

- (1) Determination of whether any Commission members have a conflict of interest;
- (2) Opening statements by all parties;
- (3) Presentation by the Director;
- (4) Presentation by the operator;
- (5) Rebuttal by the Director;
- (6) Rebuttal by the operator;
- (7) Closing statements;
- (8) Finding regarding existence of violation;
- (9) If the Commission first determines by a preponderance of the evidence that a violation or violations exist, presentation by the Director of any recommended fine or permit-related penalty, and/or recommended corrective action/abatement to be taken by the operator;
- (10) Presentation of statements under Rule 510, if any;

(11) Response by the operator;

(12) Rebuttal by the Director;

(13) Closing statements;

(14) Closing of the record.

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