

**Statement of Basis, Specific Statutory Authority, and Purpose  
Amendments to Current Rules of the Colorado Oil and Gas  
Conservation Commission, 2 CCR 404-1**

**Cause No. 1R Docket No. 1407-RM-01  
Clean-up Rulemaking**

This statement sets forth the basis, specific statutory authority, and purpose for amendments to the Colorado Oil and Gas Conservation Commission (“Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Commission Rules”) promulgated by the Commission on July 28, 2014.

On January 19, 2012, Executive Order D 2012-002 (“Executive Order”) directed Colorado’s state agencies to undertake a periodic regulatory efficiency review of their rules. This “Clean-up Rulemaking” is part of that review and is designed to make Commission Rules easier to understand and more consistent, effective, and efficient.

In adopting these amendments to Commission Rules, the Commission relied on the entire administrative record for this rulemaking proceeding, which formally began on July 28, 2014.

**Stakeholder Participation**

The Commission solicited input from stakeholders May 21, 2014 and held a stakeholder meeting regarding the proposed changes on June 25, 2014. The Commission invited and accepted written and verbal comments from stakeholders regarding the proposed Clean-up Rules prior to and during the stakeholder meeting.

The Commission issued a Notice of Rulemaking Hearing concerning these amendments on June 12, 2014. Pursuant to the Notice of Rulemaking, any person or organization was invited to become a party to the rulemaking and submit prehearing statements and comments, including proposed alternative rules or amendments, and to respond to the prehearing statements and comments submitted by other Parties. The Commission Notice of Rulemaking also invited public participation through the Rule 510 comment process.

**Statutory Authority**

The Commission has authority to conduct this rulemaking pursuant to the Colorado Oil and Gas Conservation Act (“Act”), §§ 34-60-105, 34-60-106(2)(a), 34-60-106(2)(d), and 34-60-130, C.R.S.

## **Identification of New and Amended Rules**

100-Series Rules, 201A, 205A, 206, 207, 303, 308A, 308B, 309, 311, 316A, 316B, 317, 318A, 319, 321, 325, 327, 503, 506, 507, 509, 511, 518, 522, 527, 529, 602, 603, 606B, 608, 906. This list does not include numerous, minor changes to the Rules, which are included in the attached redline of the proposed Rules.

## **Overview of Purpose and Intent**

Under the Executive Order, all agencies must consider whether their rules should be modified or repealed based on whether the rule is:

- (1) Is necessary and does not duplicate existing rules;
- (2) Is written in plain language and is easy to understand;
- (3) Has achieved the desired intent and whether more or less regulation is necessary;
- (4) Can be amended to reduce any regulatory burdens while maintaining its benefits; and
- (5) Is implemented in an efficient and effective manner, including the requirements for the issuance of any permits or licenses.

Using the factors outlined in the Executive Order, the Commission recommends the following changes to its Rules.

Most of the proposed changes are designed to make Commission Rules more accurate and readable. Many of the changes simply correct typographical errors, grammar, or out-dated references. As a result, this group of proposed rule changes is called the “Clean-up Rulemaking.”

For those changes that require more explanation, this Draft Statement of Basis and Purpose explains the reasoning behind those changes in Sections B – E. These changes are intended to conform Commission Rules with current agency practices.

### **A. General Changes**

Many of the changes Commission staff recommended were numerous and non-substantive. These revisions occur throughout the Rules and are identified in the attached redline of the complete Rules.

#### ***1. Changing “Colorado Division of Wildlife” to “Colorado Parks and Wildlife”***

The Colorado Division of Wildlife (“CDOW”) changed its name to Colorado Parks and Wildlife (“CPW”) in 2011. Accordingly, references to this agency were changed in the Commission Rules.

## ***2. Updates and Clarification of Form Names***

Commission staff undertook a comprehensive review of the Rules to attempt to clarify references to COGCC forms that appear throughout the Rules. Staff found numerous inconsistent and incorrect references during the review, including references to forms that no longer exist. These changes ensure consistency and clarity when COGCC forms are referenced in the Rules.

## ***3. References to Other Rules and Statutes***

Because the Commission has engaged in several recent rulemakings, cross-references to previous versions of the Rules were updated in other parts of the Rules. In addition, a few statutes referenced in the Commission Rules have been amended since the Rules' initial promulgation. These references were corrected to the most recent version of the statutes and regulations.

## ***4. The "Rule of Seven"***

Starting January 1, 2012, the Colorado Supreme Court promulgated changes to the Colorado Rules of Civil Procedure and other procedural rules. The procedural rules have been revised to adopt a "Rule of Seven" where deadlines for filings are revised to create multiples of seven days. Current Commission Rules' filing and notice deadlines are in multiples of five in accordance with the prior version of the Colorado Rules of Civil Procedure. As a result of these changes, the Commission is revising its 500-Series Rules deadlines to be consistent the "Rule of Seven."

## ***5. Typographical Errors, Grammatical Corrections, and General Readability***

Staff has also suggested grammatical and spelling corrections to the Rules. In addition, some Rules have had slight adjustments to the wording order, deletions, or insertions that do not change the meaning, intention, or implementation of the Rule, but simply make it clearer. In addition, extraneous words were removed to make the Rules easier to understand.

### **B. 100 Series – Definitions**

#### ***1. Additions***

A definition of "Cement" was added to the Rules based on Commission experience that the term required more explanation.

## ***2. Deletions***

Four definitions were deleted because they were unnecessary due to the previous addition of the definition of “High Occupancy Building Unit:” “Educational Facility,” “Hospital, Nursing Home, Board and Care Facilities,” “Jail,” and “Assembly Building.”

The definition of “High Density Area” was also removed due to the previous addition of the definition of “Urban Mitigation Area.”

The definition of “Compliance Checklist” was removed due to the changes to Rule 206.

The definitions “Ancillary Facilities” and “Subsurface Disposal Facility” were deleted, because they are no longer used anywhere in the Rules.

## ***3. Clarifications***

The punctuation in the definition of “High Occupancy Building Unit” was changed from semicolons to commas to clarify that the additional requirement that the facility or institution serve 50 or more people applies to all previously listed building types, not only correctional facilities.

The reference to an outdated citation to the Environmental Protection Agency’s regulations (40 C.F.R. § 144.5B) was removed from the definition of “Dedicated Injection Well.”

### **C. 200 Series Rules – General Rules**

#### ***1. Rule 201A – Effective Date of Amendments***

Comment: This Rule has been unnecessary since the 2008 amendments became on effective on both federal and other land in 2009. The Commission intended Rule 201A to be deleted after this effective date and this Rule was included as “A” in order to keep the numbers of the subsequent Rules the same after it was removed.

#### ***2. Rule 205A – Ability to Search for Information***

Comment: This subsection needed to be updated from the deadlines of January and February 2013, which have passed and are no longer necessary. The amendment maintains the purpose of the Rule – ensuring a searchable chemical disclosure registry – but removes past deadlines.

### ***3. Rule 206 – Reports***

Comment: This amendment deletes the Rule 206.b. “Compliance Checklist.” The Form Checklist is burdensome to oil and gas operators without providing any meaningful benefit for protection of public health, safety, welfare, and the environment. The Commission expects operators to understand and operate in compliance with Commission Rules and procedures, which include comprehensive permitting, reporting, and follow-up inspections. These requirements are more thorough and effective in ensuring compliance than the generalized Compliance Checklist.

### ***4. Rule 207 – Test and Surveys***

Comment: The amendments to Rule 207.b. clarify that access and all associated valves for the bradenhead annulus should be readily visible for Commission staff inspection at all times in all Bradenhead Monitoring Areas established by Commission Order per Rule 207.b. and coalbed methane wells that are subject to bradenhead testing per Rule 608.e. This has previously been addressed by Commission Orders and Notices to Operators in the Piceance and San Juan Basins.

## **D. 300 Series Rules – Drilling, Development, Production and Abandonment**

### ***1. Rule 303 – Requirements for Form 2, Application for Permit-to-Drill, Deepen, Re-enter, or Recomplete, and Operate; Form 2A, Oil and Gas Location Assessment***

Comment: The addition of Rule 303.a.(6)B codifies the practice of requiring the attachment of a deviated drilling plan to an Application for Permit to Drill, Form 2. The language is the same as the clarification added to rule 321, which does the same thing. The purpose of these revisions is to clarify this long-standing requirement for all directional wells, which, prior to this change, was only documented on the Form 2 itself.

### ***2. Rule 308A – Form 5, Drilling Completion Report***

Comment: The amendment increases the filing requirement for a Preliminary Form 5 from 30 days to 90 days to accommodate operations with multiple rigs. The amendment changes the filing requirement for a Final Form 5 from 30 days after reaching total depth to 60 days after rig release to provide adequate time for operators to obtain all the required data. In the case of continuous drilling on a multi-well pad, all the Final Form 5s are required 60 days after rig release on the last well. This amendment codifies the acceptance, and preference, of a digital image log file in lieu of paper log copy and the submittal of both the digital image

log file and the digital data log file as an attachment to an electronically submitted Form 5; this is currently provided for in the Log Submittal Policy. It also codifies the requirement of contractor cement job summary for casing strings without a cement bond log as currently stated and required on the Form 5.

### ***3. Rule 308B – Form 5, Completed Interval Report***

Comment: The revisions to Rule 308B codify the requirement to report formation treatment details, including the fluid volumes, added to the Form 5A in June 2012. This change and the changes to Rules 309 and 316A clarify the reporting requirements for different fluid types.

### ***4. Rule 309 – Form 7, Operator’s Monthly Production Report***

Comment: The amendments to this Rule clarify that an Operator’s Monthly Report of Operations, Form 7, is required for every existing well, regardless of whether the well actually produced during the month. The amendments also clarify which injected fluids shall be reported on the Form 7 and which shall be reported on the Form 14, as described in Rule 316A. Injected “produced fluids” are reported on Form 7 while injected “non-produced fluids” must be reported on Form 14.

For the purpose of reporting injected fluids, “produced fluids” are any fluids that have been “produced” from a wellbore, regardless of whether they are naturally occurring formation fluids or fluids that were introduced into the well bore by mechanical means and subsequently “produced” from the wellbore. Similarly, “non-produced fluids” are any fluids that have never been in a wellbore.

### ***5. Rule 311 – Form 6, Well Abandonment Report***

Comment: This Rule was amended to clarify what is required in a Well Abandonment Report, Form 6, including a current wellbore diagram and a wellbore diagram showing the proposed plugging procedure; copies of any casing pressure test results and downhole logs run during plugging and abandoning; and as-built GPS data in accordance with the 2005 “As-Built Location Policy.” Commission staff has been adding these requirements as conditions of approval.

### ***6. Rule 316A – Form 14, Monthly Report of Non-Produced Water Fluids Injected***

Comment: This Rule was updated be consistent with the changes to Rule 308A and 309. The combined changes clarify that injected treatment fluids are reported on the Form 5A under Rule 308A, injected “produced fluids” are reported on Form 7 under Rule 309, and injected “non-produced fluids” must be reported on Form 14. This Rule was also updated to codify the requirement for Form 14A submittal and approval prior to injection.

## ***7. Rule 316B – Form 21, Mechanical Integrity Test***

Comment: To be consistent with other changes in the Rules, Rule 316B was changed to refer to “inactive wells” as a broader application than “shut-in wells.” An inactive well is defined in the 100-Series Rules as: (1) any shut-in well from which no production has been sold for a period of 12 consecutive months; (2) any well which has been temporarily abandoned for a period of 6 consecutive months; or (3) any injection well which has not been utilized for a period of 12 consecutive months.

## ***8. Rule 317 – General Drilling Rules***

Comment: Rule 317.c. was clarified to require a copy of the approved Oil and Gas Location Assessment, Form 2A, on active sites and removed the requirement for a Form 4, Sundry Notice, to document the spud of a well. Rule 317.d. was added to reflect the creation of Form 42, Field Operations Notice, which is now used to notify the Commission of the spudding of a well. Subsequent lettering in Rule 317 was adjusted to reflect these changes.

A sentence was added to Rule 317.e. requiring prior written approval from the Director on a Form 4, Sundry Notice, before pumping cement down the bradenhead access to the annulus between the production casing and surface casing. The Rule was also clarified to describe that a Drilling Completion Report, Form 5, and other documents are required as a condition of repair approvals.

## ***9. Rule 318A – Greater Wattenberg Area Special Well Location, Spacing and Unit Designation Rule***

Comment: Rule 318A.m. was clarified to reflect that the requirement for a wellbore to be 150 feet from an “existing or permitted or gas wellbore” also applies to producing, shut-in, temporarily abandoned, and abandoned wells.

## ***10. Rule 319 – Abandonment***

Comment: Rule 319.a.(1) was amended to allow for more flexibility in the types of additives that can be added to the cement, especially applicable to operators of deep wells in warmer areas. Rule 319.a.(5) was clarified in response to questions Commission staff has received. Rule 319.b. was also clarified by referring to Rule 326. Subsections (4) and (5) of Rule 319.b. were also removed as redundant after the references to Rule 326 were added earlier in the Rule.

## ***11. Rule 321 – Directional Drilling***

Comment: As in the additions to Rule 303.a.(6)B, these changes codify the practice of requiring the attachment of a deviated drilling plan to an Application for Permit to Drill, Form 2. The requirements are the same as those currently required for the

direction survey required to be submitted with the Drilling Completion Report, Form 5. The revision also clarifies the requirement for a well location plat to include all sections penetrated by a wellbore. The purpose of these revisions is to clarify this long-standing requirement for all directional wells, which, prior to this change, was only documented on the Form 2 itself.

### ***12. Rule 325 – Underground Disposal of Water***

Comment: This Rule was amended to provide more specificity regarding surface owner and mineral owner notice requirements for injection wells. Rule 325.l. is now consistent with Rule 325.n., which describes public notice requirements for injection wells.

### ***13. Rule 326 – Mechanical Integrity Testing***

Comment: The references to Form 14B were changed to Form 21 in Rule 326.a. The Form 21 instructions have contained the language added to 326.a.(1). In addition, redundant language in subpart (5) was removed. Rule 326.b. was amended to apply to “inactive wells,” which encompasses shut-in and temporarily abandoned wells. The language was also revised to make it easier to understand. Rule 326.e. was added to the Rule in order to accord with the current Form 21 and incorporate the September 9, 2013 Policy, “Practice and Procedures – Mechanical Integrity Tests.”

### ***14. Rule 327 – Loss of Well Control***

Comment: Rule 327 is now entitled “Well Control” to convey the expectation that operators’ maintain well control. In addition, the Rule was amended to provide a definition of a “significant event,” which better communicates when operators need to report by giving a pressure statement. It also provides guidance on how to report the event by using existing and well-established Forms instead of a “written report”.

### ***15. Rule 339 – COGCC Form 25 – Water Analysis Report***

Comment: This Rule was deleted, because the Commission no longer uses a Form 25, Water Analysis Report.

## **E. 500 Series Rules – Rules of Practice and Procedure**

### ***1. Rule 503 – All Proceedings Commenced by Filing an Application***

Comment: The Commission no longer needs an original and thirteen copies of filings. This is in part due to changes technology and practices. This change incorporates the Commission’s April 18, 2013, “Interim Policy for Number of Copies Required with Applications.” The requirement for an operator identification number



next to the applicant's name improves the efficiency of processing applications and reduces the chance for error.

## ***2. Rule 506 – Hearing Date/Continuance***

Comment: This Rule was adjusted to reflect current Commission practice regarding the granting of continuances. Section 34-60-106(6), C.R.S., allows the Commission to make “any determinations it is otherwise empowered to conduct or make by means of an appointed hearing officer . . .” and there is no requirement for written notice before continuing a matter in the Act. In addition, unnecessary language in the Rule was removed.

## ***3. Rule 507 – Notice for Hearing***

Comment: The changes to this Rule require the applicant assume the cost for mailing notices, even if the number of notices is less than 100. The applicant, instead of the Commission, must also now give notice to any person who has filed a request to be placed on the Commission hearing list. This change conforms Rule 507 with current Commission practice.

## ***4. Rule 509 – Protest/Interventions/Participation in Adjudicatory Proceedings***

Comment: The Commission no longer needs an original and thirteen copies of filings due to changes in technology and Commission practices. The changes to Rule 509 incorporate the Commission's April 18, 2013, “Interim Policy for Number of Copies Required with Applications.”

## ***5. Rule 511 – Uncontested Hearing Applications***

Comment: The Commission is revising its deadlines in the 500-Series Rules to be consistent with the “Rule of Seven” change to the Colorado Rules of Civil Procedure. The current deadline for testimony and exhibits regarding an application does not give Commission staff adequate of time to fully evaluate these materials prior to the hearing date due to the dramatic increase in applications observed in recent years. Twenty-one days is a reasonable time for the applicant to provide these materials in advance of the hearing and gives staff an appropriate amount of time to review the materials before recommending approval.

## ***6. Rule 518 – Subpoenas***

Comment: The proposed change will allow for the issuance of a subpoena by a Hearing Officer in addition to the Secretary. This practice is consistent with other administrative agencies, the Office of Administrative Courts, the Colorado Rules of Civil Procedures, and State Administrative Procedure Act. Under the APA, “any agency conducting a hearing shall have the authority [to] . . . sign and issue

subpoenas.” § 24-4-103(13), C.R.S. In addition, subpoenas may be issued by “any agency or any member, the secretary or chief administrative officer thereof, or, with respect to any hearing for which a hearing officer or an administrative law judge has been appointed, the hearing officer or administrative law judge.” § 24-4-103(14), C.R.S.

### ***7. Rule 520 – Time of Hearings and Hearing/Consent Agenda***

Comment: This proposed change will bring the rule consistent with current practices of the Commission. This is in part due to the dramatic increase in applications observed in recent years. Consent agenda has required ‘grouping’ in order to adequately process applications and provide information in a timely manner to the Commissioners.

### ***8. Rule 522 – Procedure to Be Followed Regarding Alleged Violations***

Comment: Rule 522.a.(5)A was revised to give the Commission more options to personally serve operators with Notices of Alleged Violation. It is modeled after § 7-90-704, C.R.S, but incorporates the Rule of Sevens. Under the current Rule, operators have refused to accept certified mail, holding up enforcement proceedings unnecessarily. Section 34-60-(4), C.R.S., requires that the “notice shall be served personally or by certified mail, return receipt, to the operator or the operator’s agent for service of process ...” The revision to Rule 522.c.(3) removes unnecessary language to make the Rule more readable.

### ***9. Rule 527 – Prehearing Procedures for Contested Adjudicatory Proceedings Before the Commission***

Comment: The revisions to Rule 527.f. create more incentive for operators to appear at scheduled prehearing conferences. Having this incentive is essential for encouraging the efficient disposition of agency matters. This is also consistent with the default procedures added to Rule 522, which are based on the APA, § 24-4-105(2)(b), C.R.S. Unnecessary language was also removed in subsection j.

### ***10. Rule 529 – Procedures for Rulemaking Proceedings***

Comment: The Act requires notice of a proposed rulemaking “at least twenty days” prior to the rulemaking hearing. § 34-60-108(2), C.R.S. The revision of the 21-day notice period is to update the Commission’s Rules with the “Rule of Seven.” In addition, it is still in within the boundaries of the Act.

The amendment to subsection d. incorporates the requirements of § 24-4-103(2), C.R.S. into Rule 529.d. (“When rule-making is contemplated, public announcement thereof may be made at such time and in such manner as the agency determines, and opportunity may be afforded interested persons to submit views or otherwise

participate informally in conferences on the proposals under consideration.”).

## **F. 600 Series Rules – Safety Regulations**

### ***1. Rule 602 - General***

Comment: This Rule is currently duplicative for oil and gas operators who also have to report injuries to the Occupational Safety and Health Administration (“OSHA”). In 2013, 80% of the reports submitted were regarding workplace injuries. This data does not provide any benefit to the fulfillment of the mission of the Commission. The Rule also conflicts with other Commission Rules. Rule 601 states that the Rules in the 600-Series Rules “do not apply to parties or requirements regulated under the Federal Occupational Safety and Health Act of 1970.” Rule 212 provides contact information, which has been updated in this rulemaking, for “Safety regulations regarding industry personnel” as “the U.S. Department of Labor, Occupational Safety and Health Administration.”

### ***2. Rule 603 – Drilling and Well Servicing Operations in High Density Area Rules***

Comment: The changes to 603.e.(1) and (2) are designed to make the Rule more readable. Rule 603.e.(6) was changed to quantity from "without pressure loss" to less than 10% in order to make the requirement clearer.

### ***3. Rule 606B – Air and Gas Drilling***

Comment: The term “burn pit” was changed to “flare pit” in this revision. “Flare pit” is a more accurate industry term and “burn pit” suggests the burning of trash or liquid hydrocarbons, which is prohibited by the Commission.

### ***4. Rule 608 – Coalbed Methane Wells***

Comment: Access to the bradenhead annulus and all associated valves should be readily visible for inspection by Commission staff at all times and in all Bradenhead Monitoring Areas established by Commission Order per Rule 207.b. and coalbed methane wells that are subject to bradenhead testing per Rule 608.e. This matter has been previously addressed on a piecemeal basis through Commission Orders and Notices to Operators in the Piceance and San Juan Basins.