

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

**Cause No. 1R Docket No. 1412-RM-03
Rulemaking to Implement HB 10-1235
Amendments to Rules 604c.(2)G., 605a.(1), and 605a.(4)**

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

On December 15-16, 2014, the Commission promulgated these Rules to implement amendments to § 24-4-103(12.5), C.R.S., enacted by the passage of House Bill 10-1235, which amended the “incorporation by reference” portion of the Colorado Administrative Procedure Act (“APA”).

In adopting amendments to Rules 604.c.(2)G., 605.a.(1), and 605.a.(4), the Commission relied upon the entire administrative record for this Rulemaking proceeding, which formally began on November 14, 2014.

Stakeholder and Public Participation

The Commission held a stakeholder meeting regarding the proposed Rules on November 18, 2014. The Commission invited and accepted written and verbal comments from stakeholders regarding the proposed amendments to Rules 604.c.(2)G., 605.a.(1), and 605.a.(4) during the stakeholder meeting.

The Commission encouraged public participation in the Rulemaking by allowing the public to comment on the proposed rules in advance of or during the hearing. As well, persons or organizations desiring to do so could participate in the Rulemaking as a party. Parties could submit prehearing statements and comments, including alternative rules or amendments, and respond to the prehearing statements and comments submitted by other parties.

The Commission issued a Notice of Rulemaking Hearing concerning the Rules on November 14, 2014.

Statutory Authority

The Commission’s authority to promulgate amendments to Rules 604c.(2)G., 605a.(1), and 605a.(4) is derived from the following sections of the Colorado Oil and Gas Conservation Act (“Act”), §§ 34-60-101 – 130, C.R.S.:

- Section 34-60-105(1), C.R.S. (Commission has the power to make and enforce rules);

- Section 34-60-106(2)(d), C.R.S. (Commission has 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.”)

Identification of New and Amended Rules

The Commission adopted amendments to Rules:

- 600-Series Rules: 604 and 605.

Overview of Purpose and Intent

The purpose of the Rules is to comply with the current requirements of the Administrative Procedure Act and to implement statutory changes to Section 24-4-103(12.5), C.R.S.

This Section requires that a reference in an agency rule “fully identifies the incorporated code, standard, guideline, or rule by citation and date, identifies the address of the agency where the code, standard, guideline, or rule is available for public inspection, and states that the rule does not include any later amendments or editions of the code, standard, guideline, or rule.” § 24-4-103(12.5)(a)(I), C.R.S.

It also requires that the rule containing a reference states “where copies of the code, standard, guideline are available for a reasonable charge from the agency adopting the rule and where copies are available from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline, or rule.” § 24-4-103(12.5)(a)(IV), C.R.S.

Amendments and Additions to Rules

The changes undertaken in this Rulemaking were to Rules 604 and 605.

Rule 604. Setback and Mitigation Measures for Oil and Gas Facilities, Drilling, and Well Servicing Operations.

604.c.(2)G. Berm Construction.

Subpart G. was amended to include a citation to the date, edition and availability of the API bulletin incorporated by reference in this subpart. The amended Rule also specifies that only the 5th Edition applies to the Rule.

Rule 605. Oil and Gas Facilities.

605.a. Crude Oil and Condensate Tanks.

Subpart (1) was amended to include a description of the public availability of the API and Underwriters Laboratories, Inc. standards incorporated by reference in this subpart.

Subpart (4) was amended to include an updated publication date for the referenced edition and the public availability of the API recommended practice incorporated by reference in this subpart. The amended Rule also specifies that only the 3rd Edition of the recommended practice applies to this Rule.

Effective Date

The Commission adopted the proposed amendments to implement HB 10-1235, which clarified and amended Rules 604 and 605, at its hearing on December 15-16, 2014, in Cause No. 1R, Docket No. 1412-RM-03. These amendments will become effective, per Section 24-4-103, C.R.S., twenty days after publication.