



## OPERATOR GUIDANCE

### Form 3 Financial Assurance

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#### Document Change Log

Change Date	Description of Changes
1/5/2023	Guidance drafted.
3/24/2023	Guidance issued.
4/10/2023	Updated SBP citations to include Option 5 matters

#### Rule Citation

Financial Assurance, including the Form 3 Financial Assurance Plan, is addressed by the 700 series COGCC Rules, which went into effect on April 30, 2022.

#### Purpose of Rule

The purpose of this rule is to ensure Colorado Oil and Gas Operators have a Financial Assurance Plan (Plan) that provides the Financial Assurance necessary to allow COGCC to properly plug and abandon wells and infrastructure and reclaim the land if wells or oil and gas facilities are orphaned. An overview of the Form 3 process can be found here: [Financial Assurance Plan Process Summary](#).

#### Guidance

The Form 3 is populated using information from COGCC's Colorado Oil and Gas Information System (COGIS), which by and large is information the Operators have provided to comply with the Rules. **If the information aggregated by the Form 3 is incorrect, the Operator will need to correct the COGIS data by submitting the Form associated with the incorrect data.**

This guidance addresses key aspects of the rules:

#### Rule 701. Types of Financial Assurance.

- a. The preferred types of Financial Assurance are cash bonds (including certificates of deposit) and surety bonds.
- b. If an Operator wants to use an alternative type of Financial Assurance referenced in § 34-60-106(13)(a)-(f), C.R.S., they must file an application for a hearing to obtain the Commission's approval before their Form 3 will be approved.
- d.(1) New Riders are prohibited with two very narrow exceptions:
  - A. The rider is documenting a name change with no transfer of assets; or,

- B. The rider is changing the amount of Financial Assurance with no transfer of assets.
- d.(2) Operators who wish to continue to rely upon existing Riders as part of their initial Plan must provide an analysis of the liability posed by such use and, by inference, how that liability will be mitigated.

#### **Rule 702. Financial Assurance for Plugging, Abandonment, and Reclamation**

- a. The Financial Assurance required is based on the Operator's number of wells that have an approved, unexpired Form 2 permit. The Financial Assurance covers, however, the cost of plugging and abandoning the well "and its associated Oil and Gas Location and Oil and Gas Facility" as well as site Reclamation.

The rules provide an exception for wells that "the Operator demonstrates that it has already provided or will provide Financial Assurance for the same Well, Oil and Gas Location, or Oil and Gas Facility to the federal government..." **This exception expires October 15, 2023 or sooner if the U.S. Bureau of Land Management adopts rules updating the federal bonding requirements.** Operators demonstrate which Wells are subject to federal Financial Assurance requirements by submitting a Form 3B.

- b. The Form 3 is the Financial Assurance Plan required by Rule 702.b. The rules place the Operator in one of four categories, or Options, based on the average daily "per-well" production of all their Wells (including Wells covered by federal Financial Assurance) over a preceding, rolling twelve month period. Operators who own subsidiary Operators may aggregate the production of all owned entities to determine their Option and file a single Form 3 Plan by filing a Form 1C.

The rules use the gas-to-oil ratio (GOR) of the production from all Wells to distinguish average daily production categories. GOR is the total gas produced in thousand cubic feet (MCF) divided by the total oil produced in barrels (BBL) multiplied by 1,000. The rules prescribe the use of a factor of 5.8 to convert MCF to BBL. If the GOR is 15,000 SCF/BBL or less, the Operator's production basis is barrels of oil equivalent (BOE). If the GOR is more than 15,000 SCF/BBL, the production basis is thousand cubic feet of gas equivalent (MCFE). The "average daily per-well" production categories are as follows:

Option	Production Categories	
	BOE	MCFE
Option 1	greater than 60 BOE	greater than 90 MCFE
Option 2	greater than 15 BOE and less than or equal to 60 BOE	greater than 22 MCFE and less than or equal to 90 MCFE
Option 3	greater than 2 BOE and less than or equal to 15 BOE	greater than 6 MCFE and less than or equal to 22 MCFE
Option 4	less than or equal to 2 BOE	less than or equal to 6 MCFE

Financial Assurance for Options 1 and 2 is a per well amount that is based on the number of wells operated. Option 1 or 2 plans are not required to provide the per well Financial Assurance for Wells designated as Out of Service. Operators can designate a Well as Out of Service by filing a Form 6A. The per well Financial Assurance requirements for Option 1 and 2 plans are shown below:

No. of Wells Operated	Required Per Well Financial Assurance	
	Option 1	Option 2
Less than 51 Wells	\$12,000	\$18,000
More than 50, but Less than 151	\$10,000	\$15,000
More than 150, but Less than 1,501	\$5,000	\$12,000
More than 1,500, but Less than 4,001	\$3,000	\$10,000
More than 4,000	\$1,500	\$8,000

Options 3 and 4 require the operator to provide Single Well Financial Assurance (SWFA) for all wells, including wells the Operator has designated as Out of Service. The amount of SWFA is either the Rule prescribed amount based on the Commission's estimated costs to plug, abandon, and reclaim Wells, Facilities, and Locations (shown below), or the Operator's demonstrated costs, subject to Director approval, to do the same. Wells are categorized based on total vertical depth (TVD). The Location based reclamation amount is divided by the number of wells on the Location and added to the SWFA required for each of the associated Wells.

Facility	Single Well Financial Assurance Amount
Location Reclamation	\$100,000/No. of Wells on Location
Well TVD is 4,000 feet or less	\$10,000
Well TVD is more than 4,000 feet and less than or equal to 8,000	\$30,000
Well TVD is more than 8,000 feet	\$40,000

Option 3 and 4 plans allow Operators to provide the required Financial Assurance over a period of years. Option 3 plans must submit 5% of the required Financial Assurance each year until they meet the required amount of Financial Assurance, while Option 4 plans must submit 10% of the required Financial Assurance each year. The rules allow Option 3 and 4 Operators to request a different annual contribution rate, but doing so requires the Operator to request a hearing for the Commission to approve the change.

In addition to the four prescribed Options, the rules allow the Operator to craft their own basis for a Financial Assurance Plan, designated as Option 5. Operators who select Option 5 must include a "justification for not pursuing a Financial Assurance Plan based on" Options 1 through 4 [Rule 702.d.(5).B].

Lastly, an Option 6 comprehensive plan option is available for Operators who meet the following criteria:

Comprehensive Option 6 Qualification Criteria	
Public Company subject to Securities Exchange Act of 1934, as amended	Avg daily production greater than 40 BOE or 60 MCFE
Private Company	Avg daily production greater than 60 BOE or 90 MCFE

Option 5 or 6 plans require a hearing before the Commission. The docket number of the hearing application must be included in the Form 3. Likewise, Option 3 or 4 Plans that request a change to the annual contribution percentage must also provide a valid docket number. If a valid docket number is not provided, the Form 3 will be returned to draft.

The Form 3 does the twelve-month average daily "per-well" production (ADP) analysis required to determine the Operator's Plan Options. The ADP used as the basis for the Form 3 is a snapshot taken on the date the Form 3 is created in eForms. This is very important to understand as an Operator's ADP may vary from month to month. The twelve-month period used as the basis of the ADP begins fifteen months prior to the date the Form 3 is initiated and ends three months prior to that same date. This twelve month period was selected as the most current, reliable period of data because production is reported on the Form 7, Monthly Report of Operations, and the Form 7 is not due until 45 days after the end of a month. Submitted reports may take up to 45 days for COGCC to review, which means production data may not be complete for 90 days or three months. As a result, COGCC uses the twelve month period that begins fifteen months before the Form 3 initiation.

The Form 3 also provides additional information required by the rules or useful in the Form 3 review. The Operator must:

- Provide the docket number of the hearing application, if a hearing is required (Always required for Options 5 & 6. Required for Options 3 & 4 if the Operator requests a modification to the Rule based annual contribution. Required for any Option that requests the use of Alternative Financial Assurance, which is anything other than Cash (including COD) or Surety Bonds.).
- Designate whether the Operator is a Public or Private company.
- Designate which Option the Operator is submitting by accepting the Option 1 through 4 determined by the Form 3; choosing Option 5; or, choosing Option 6, if the Form 3 determines that the Operator meets the Option 6 criteria.
- Provide an Asset Retirement Plan.
- Disclose the Type of Bonding that will be provided.
- Disclose whether the Plan will rely on existing Riders and, if so, provide an analysis of the liability presented by doing so, including how the liability will be mitigated.
- Indicate whether or not the Operator wants to use their costs as the basis for any Single Well Financial Assurance required and, if so, enter the amounts for plugging and abandoning wells by depth category, reclamation costs for a Location, and provide the supporting documentation required to justify using the demonstrated costs.
- Provide an Option 5 Justification, if that Option is selected.
- Provide a Certification of Financial Capability - this can be as simple as an attestation by a company officer on Operator letterhead.

### Rule 703. Financial Assurance for Other Oil and Gas Facilities & Operations

The Form 3 will identify the Operator's non-well facilities and assign the prescribed Financial Assurance:

Rule Subpart	Facility	Financial Assurance Required
a.	Centralized E&P Waste Management Facilities	An amount equal to the estimated cost necessary to ensure the proper Remediation, Reclamation, closure, and abandonment of the Facility
b.	Remediation Projects	An amount equal to the estimated cost necessary to ensure the proper Remediation, Reclamation, closure, and abandonment of the Project site.
c.	Seismic Operations	\$25,000 statewide blanket
d.	Gas Gathering, Gas Processing, and Underground Gas Storage Facilities	\$100,000 statewide blanket OR \$5,000 for each Facility less than 5 MMSCFD
e.	Produced Water Transfer Systems	\$50,000 for each Facility OR \$5,000 for each Facility less than 700 BBL/day
f.	Commercial Disposal Facilities	\$100,000 for each Facility

### Rule 704. Surface Owner Protection Bonds

As stated above, the Form 3 relies on information in COGIS. If an Operator had a Surface Owner Protection Bond when the revised Financial Assurance rules went into effect, then the Form 3 will include the new amount in the Financial Assurance required.

Surface Owner Protection Bond Amounts	
Non-irrigated Land	\$4,000 for each Well
Irrigated Land	\$10,000 for each Well
Statewide Blanket	\$100,000

If the Form 3 includes a Statewide Blanket bond requirement and the Operator believes it is not required, the Operator must show that each Facility has one of the following conditions in order for COGCC to agree to remove the requirement:

- the Surface Owner is part of the Mineral Ownership of the Facility;

- the Operator is the Surface Owner;
- the Operator has a Surface Use Agreement with the Surface Owner; or,
- the Surface Owner is the state and the Operator has a bond with the State Board of Land Commissioners.

COGCC has provided separate guidance regarding the use of a data query tool to make this analysis as efficient as possible. Please refer to ["Guidance - Operator - Surface Owner Bond Analysis"](#) to update the data being used by the Form 3 or needed to get a submitted Form 3 approved.

### Form 3 Operator Choices

The Plan is, by Rule, largely data driven. The Operator may choose:

1. The Form 3 creation date, which sets the production period that will be the basis of the twelve-month average daily "per-well" production, as discussed above. The average daily production establishes the Operator's Plan Options.
2. Which Plan Option to pursue:
  - a. the prescribed Option 1, 2, 3, or 4;
  - b. Option 5, which requires a Hearing; or,
  - c. if qualified, Option 6, which also requires a Hearing.
3. The Type of Financial Assurance. As discussed above, anything other than Cash Bonds (including Certificates of Deposit) or Surety Bonds will require a Hearing.
4. To request to use Rider(s).
5. To request approval of Demonstrated Costs as the basis for Single Well Financial Assurance.
6. To request an annual contribution amount that is different from the Rule prescribed amount, if they have chosen an Option 3 or 4 Plan.

### Form 3 Review

COGCC will use the following process to review the Form 3. A map of the process is available at this [link: Form 3 Process](#)

Form 3 Review			
Review Item	Condition	COGCC Action	Operator Response
Asset Retirement Plan	No plan has been provided	Return Form 3 to Draft	Modify Form 3 and resubmit OR Submit New Form 3
	Reasonable level of detail not provided	Add comment to review file for Commissioner	None Required

Form 3 Review			
Review Item	Condition	COGCC Action	Operator Response
		awareness.	
Certification of Financial Capability	Not provided	Return Form 3 to Draft	Modify Form 3 and resubmit OR Submit New Form 3
	Certification language is not clear	Add comment to review file for Commissioner awareness.	None Required
Redacted Documents	Confidential document submitted without a corollary Redacted document	Return Form 3 to Draft	Modify Form 3 and resubmit OR Submit New Form 3
Plan has wells that have been plugged and abandoned but not passed Final Reclamation	Locations have no Financial Assurance	Add comment to review file and address at next Annual Review	None Required
Plan is Option 5	Option 5 Justification is not provided	Return Form 3 to Draft	Modify Form 3 and resubmit OR Submit New Form 3
Plan relies on Alternative Type of Financial Assurance (something other than Cash/COD or Surety Bond)	Docket number provided is invalid	Return Form 3 to Draft	Modify Form 3 and resubmit OR Submit New Form 3
Plan is Option is 5 or 6	Docket number is valid	Review Plan and include findings in Director's Recommendation for hearing	Pursue Commission approval
Plan is Option 3 or 4 and Operator has amended the Rule based annual contribution			
Plan relies on Riders	Liability analysis is not sufficient or liability is not sufficiently mitigated	Deny Form 3 and Request Hearing to Approve Submitted Plan w/out Riders	Respond to Director's Hearing Application



Form 3 Review			
Review Item	Condition	COGCC Action	Operator Response
Plan proposes Operator Demonstrated Costs as basis for SWFA	Cost basis is insufficient or costs do not include all aspects of plugging, abandonment of facilities/flowlines, and reclamation of site.	Deny Form 3 and Request Hearing to Approve Submitted Plan w/out Demonstrated Costs	Respond to Director's Hearing Application
Option 5 Plan	Option 5 Justification is not provided	Return Form 3 to Draft	Modify Form 3 and resubmit OR Submit New Form 3
	Option 5 Justification is provided	Review justification and include analysis in Director's Recommendation for Hearing	None Required
Average Daily Per-Well Production	Error in the associated data	Deny Form 3	Submit New Form 3
Rule 703 Facilities	List of Facilities is not correct	None	Correct during the Form 3A submission
Rule 704 Coverage	Operator asserts Surface Owner Protection is not Required	Research in preparation for Form 3A	Correct during the Form 3A submission

### Rule 705. General Liability Insurance

Compliance with Rule 705 will be reviewed as part of the Annual Review, discussed below.

### Rule 706. Release or Claim of Financial Assurance

- a. The Commission will release Financial Assurance only in response to requests made by means of the Form 3C, Financial Assurance Release Request. This includes a simple replacement of one bond with another. One of the following conditions must be met before the Commission can release Financial Assurance:
  - (1) Full Compliance. The Director determines that an Operator has fully complied with all of its statutory and regulatory obligations for Plugging and

Abandonment, Remediation, and Reclamation of all Oil and Gas Facilities subject to the Operator’s control pursuant to the Commission’s Rules;

- (2) Transfer of Operatorship. The Director approves a Form 9 - Subsequent certifying that one or more Buying Operator(s) have filed sufficient replacement Financial Assurance for all Wells, Oil and Gas Locations, and Oil and Gas Facilities covered by the Financial Assurance for which the Operator has requested release;
- (3) Other Facilities and Operations. The Operator meets the requirements for release of Financial Assurance held for a specific category of facility or operation identified in Rule 703 or for release of a Surface Owner protection bond pursuant to Rule 704.c; or,
- (4) Single Well Financial Assurance for Wells. The Operator fully Plugs and Abandons and Reclaims a Well that has an associated Single Well Financial Assurance.
- (5) Abandonment of Permit without Construction. The Operator abandons a permit for a Well, Oil and Gas Location, or Oil and Gas Facility without disturbing the surface or otherwise constructing the applicable facility, and files a Form 4, Sundry Notice to formally request abandonment of the permit and a field inspection confirms no disturbance or construction occurred.

**Rule 707. Annual Review of Financial Assurance**

a.(1) In addition to the Initial Form 3 review, the Rules require the Director to review each plan at least annually. The Annual Review items and associated objectives are tabulated below. A map of the Annual Review process is available at this [link:Annual Discretionary Process](#). The result of the review must be posted on the COGCC Website. If the Director’s review determines that additional Financial Assurance is required, the Operator will be notified that a Revised Form 3 is required.

Form 3 Annual Review		
Review Item	Objective	Review Team
Form 3 Query	Determine if the Operator still qualifies for the previously approved Plan Option.	Finance
	Determine whether or not additional Financial Assurance is required based on the status of the Operator's Wells or Facilities.	

Form 3 Annual Review		
Review Item	Objective	Review Team
Form 6B Review	Determine if sufficient progress is being made plugging, abandoning, and reclaiming Out of Service Wells and, if not, recommend an amount of additional Financial Assurance required to address concerns.	Engineering
Reclamation Review	Determine whether additional Financial Assurance is required to meet specific Location needs.	Reclamation
Remediation Review	Determine whether additional Financial Assurance is required to meet specific Project needs.	Environmental
Gas Facility Review	Determine whether additional Financial Assurance is required to meet specific Facility conditions or compliance issues.	Environmental/ Integrity
Surface Owner Review	Determine whether additional Financial Assurance is required to meet Surface Owner Protection Bond concerns.	Finance
Financial Assurance Provider Review	Verify that all Financial Assurance instruments being relied upon by the Operator are still in force at the required balance, any required restrictions are still being applied, and that the Commission is authorized to access the funds.	Finance
General Liability Insurance Review	Verify that Operator has General Liability at a minimum amount of \$5,000,000 per occurrence	Finance

a.(2) The Rules also provide for the Director to request a hearing before the Commission to consider an increased amount of Financial Assurance based on a concern that an Operator has demonstrated a pattern of non-compliance with the Rules or other unique circumstance. The Annual Review section of the Rule also provides the Director an opportunity to adjust the required Financial Assurance for an operator due to inflation. Given that such a condition will more likely than not affect all Operators, the Director currently plans to pursue any adjustment for inflation by means of an application to the Commission. As a result, the Director may request a hearing to

request an increase in Financial Assurance as a result of Discretionary Review for one of the following reasons:

- inflation analysis, which likely affects all Operators;
- concerns regarding a pattern of non-compliance by a specific Operator; or,
- some other unique circumstance.

## Statement of Basis and Purpose Excerpts

The Statement of Basis and Purpose for the Financial Assurance Rules effective April 30, 2022 (SBP) provides the foundation for this part of the review.

### Single Well Financial Assurance - Operator's Demonstrated Costs

Page 20-21 of the SBP:

*"Where operators use demonstrated costs of plugging, abandonment, and reclamation, the Commission intends for operators to include all relevant costs and information in their Single Well Financial Assurance proposal, including but not limited to: known remediation issues; areas of initial and total disturbance for the oil and gas location and any associated offsite facilities; number of wells at the oil and gas location; whether the oil and gas location has cut-and-fill slopes and, if so, the slope ratio of both the cut slope and the fill slope; whether the oil and gas location has sandy soils; whether any salt kills have occurred at the oil and gas location; whether the oil and gas location is in high priority habitat; and whether topsoil has been salvaged at the oil and gas location. The Commission also expects operators will support their demonstrated costs with, for example, three years of invoices from past plugging, abandonment, or reclamation operations, where possible, or a third-party estimate of plugging, abandonment, and reclamation costs."*

### Rule 701.d - Bond Riders

Page 53-54 of the SBP:

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

*limited exceptions, and to require all operators with existing bond riders to promptly remedy any liability posed by their present financial situation.*

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

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

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

#### **Rule 702.c.(5) - Option 5 Justification**

Page 59 of the SBP:

*“Rule 702.c.(5) provides that, where circumstances prevent an operator from meeting the requirements of 702.d.(1)–(4), or other exceptional or unreasonable or unnecessary circumstances, an operator may file a financial assurance application that meets the criteria of Rule 702.d.(5) (“Option 5”). In creating Option 5, the Commission stressed that it was not intended to be a process whereby an operator may attempt to use Option 5 for the sole reason of paying less financial assurance than provided for in other Options. The Commission intended that*

*Option 5 to be available only in these circumstances, and the Commission left itself with broad discretion to consider a variety of factors when presented with an Option 5 financial assurance application. In considering a proposed Option 5 plan, the Commission intends for operators to submit the following information, and any other information the Commission or the operator consider to be relevant: the operator's financial condition or circumstances; the operator's history of compliance, especially compliance with well integrity requirements and timely payment of royalties, the lack of any adjudicated major violations under Rule 525.c in the three years immediately preceding the Option 5 application, and the operator's plugging and abandonment activities."*

The guidance cited above for Operator's demonstrated costs also seem relevant to an Operator's Option 5 cost basis:

#### **Rule 702.d - Asset Retirement Plan**

Page 60 of the SBP:

*"When reviewing an operator's asset retirement plan, the Director will examine an operator's reasons for maintaining inactive wells and the timing of the operator's plan to retire assets."*