



COGCC Update: Commission Approves Comprehensive Changes to 200-600 Series, and 800, 900, and 1200 Series Rules

By: [Jill Fulcher](#) and [Jim Martin](#)

On November 23rd, after months of prehearing filings, meetings, and hearings, the Colorado Oil and Gas Conservation Commission (Commission or COGCC) voted to unanimously approve significant and sweeping changes to the COGCC 200 through 600 Series and the 800, 900, and 1200 Series Rules as part of the Mission Change Rulemaking. The [amended Rules](#) will be effective on January 15, 2021. These rules modify the office and authority of the Director, create a new process for permitting oil and gas wells, locations, and facilities, change operational requirements, modify hearing procedures, change safety standards, establish significant restrictions on venting and flaring, and create significant operational buffers for wildlife. With changes to these rules now approved, the oil and gas industry is one step closer to obtaining regulatory certainty necessary to plan and execute oil and gas development.

The Mission Change Rulemaking is one of several rulemakings triggered by the passage of Senate Bill 2019-181 which, among other things, revised the Oil and Gas Conservation Act to change the Commission's mandate and provide new protections for public health, safety, and welfare resulting from oil and gas operations. The COGCC staff now face the task of developing the extensive guidance documents together with revised forms called for by these new rules.

During final deliberations, the Commission expressly stated that the new rules will apply to all pending permit applications with the COGCC. Any permits still pending as of January 15, 2021 (which have passed completeness review) must be refiled under the new permitting procedure (which includes submission of an Oil and Gas Development Plan). Operators have until March 1, 2021 to inform the COGCC of plans to replace pending permits with new filings, and six months from the effective date of the rules to re-file permits under the new procedure.

Below is a summary of some of the changes to the 200-600 Series and 800, 900, and 1200 Series Rules. Please contact [Jill Fulcher](#), [Jim Martin](#), or [Joby Rittenhouse](#) if you would like to discuss further.

200 Series

- Rule 210 provides authority to the Director to require corrective action to minimize adverse impacts to public health, safety, welfare, the environment, and wildlife.
- Rule 211 authorizes the Commission, after a hearing, to order a well be plugged and abandoned or that a location be closed.

- Rule 218 establishes a complex new process for transferring ownership of wells, facilities, and locations. Now operators will be required to provide advance notice of the transfer to the Director, including attestations regarding liability and financial assurance. If the transaction proceeds, the new operator must file a subsequent notice.

300 Series

- Rule 301 establishes a voluntary process by which a local government, the COGCC, and federal surface management agencies may concurrently review a permit application. Local governments, however, can insist upon sequential permitting.
- Rule 303 creates a consolidated permitting process for APDs, drilling and spacing units, and oil and gas development plans—all of which will now be submitted and reviewed together. Oil and Gas Development Plan applications will cover one or more locations. The Oil and Gas Development Plan submission must include an extensive analysis of cumulative impacts to air, public health, water, wildlife, soil, and public welfare which may result from the planned operations.
- Once the Director determines an Oil and Gas Development Plan application is complete, the application will be posted on the COGCC website for public comment.
- Rule 304.b.(2) requires operators to perform an alternative location analysis if, among other things, the working pad surface is within 2,000 feet of a residential building unit, high occupancy building unit, school facility, or child care center. An operator's alternative location analysis must include a review of all technically feasible alternative locations.
- Rule 304 also requires a noise, light, odor, and dust mitigation plan, a transportation plan, a waste management plan, a wildlife plan, a water plan, a cumulative impacts plan, among other things, for all Oil and Gas Development Plans.
- Rule 305 addresses requirements for drilling and spacing unit applications. Among other things, an applicant must now include documentation of mineral/leasehold ownership for at least one mineral tract in the proposed unit.
- Ultimately, the Director may recommend approval of an oil and gas development plan if the Director determines the plan complies with all Commission rules and in the Director's judgment minimizes adverse impacts. See Rule 306. The Commission can then review, approve, or deny the application. See Rule 307.
- Rule 314 creates a new process and incentives for the establishment of Comprehensive Area Plans (CAP) (previously known as Comprehensive Drilling Plans). Among other things, if a CAP is approved the associated Oil and Gas Development Plans, permits-to-drill, and spacing units will not expire for the life of the CAP.

400 Series

- There are new standards pertaining to noise, odor, lighting, dust, and visual impacts resulting from oil and gas operations. See Rules 423, 424, 425, 426, and 427.
- Rule 411.a establishes new rules for locations in surface water supply areas that surround public water system surface intakes. The rule establishes requirements for locations within internal, intermediate, and external buffer zones.

- Rule 411.b establishes similar buffer zones for Groundwater Under the Direct Influence of Surface Water and Type III Aquifer Wells.
- Rule 423 outlines what a noise mitigation plan must cover. Rule 424 does the same for lighting plans.

500 Series

- Ministerial variances may be recommended for approval by the Director but must ultimately be approved by the Commission. More substantive variance requests face a higher hurdle for approval and go straight to the Commission. See Rule 502.
- Under Rule 507, any surface owner or resident living within 2,000 feet of a proposed working pad surface is deemed an “affected person” for purposes of challenging an Oil and Gas Development Plan application.

600 Series

- Rule 604 mandates that no working pad surface will be located more than 500 feet and less than 2,000 feet from a residential building unit or high occupancy building unit unless a series of exceptions apply or the Commission finds, after hearing, that the proposed location and conditions of approval will provide substantially equivalent protections for public health, safety, welfare, the environment, and wildlife resources.

800 Series

- Rule 802 narrowed cases under which an operator can seek a UIC Aquifer Exemption for an underground disposal well. The new application procedures are found at Rule 803.
- The new requirements for enhanced recovery injection projects are found at Rule 811.

900 Series

- Environmental Impact Prevention rules now are consolidated in the 900 series.
- New Rule 901 gives the Director the authority to suspend operations or require immediate mitigation if the Director determines that an oil and gas operation is impacting or threatening to impact public health, safety, welfare, the environment, and wildlife.
- Rule 903 categorizes venting or flaring as “waste” and prohibits venting and flaring except in certain specified circumstances. For example, gas may be vented during Bradenhead tests, during upsets, during maintenance and well unloading. See Rule 903.d.(3)
- Operators flaring gas as of January 15, 2021 because of take-away capacity limitations may request permission to flare for up to one year, but must cease flaring by January 15, 2022.
- If an operator loses takeaway capacity, the operator may request permission to flare for no more than one year.
- Operators must measure or estimate the volume of gas vented or flared and report it monthly to COGCC as well as to mineral owners.

- Pits constructed after January 15, 2021 that are located within 2,000 feet of a residential building or within the Denver/North Front Range Nonattainment Area must limit emissions to two (2) tons per year. All other pits must limit emissions to 5 tons per year.
- After January 15, 2023, pre-existing pits must limit emissions to less than 5 tons per year unless the pit is used for recycling and reuse of produced water.
- Pursuant to Rule 903.e, on a Form 2A an operator must either commit to connecting to a gathering system or submit a gas capture plan.
- The new rules for closing a facility are found at Rule 911.

1200 Series

- Under Rule 1201, new locations outside of defined high priority habitat require a wildlife protection plan while proposed locations within high priority habitat require wildlife mitigation plans.
- Rule 1202.c establishes no surface occupancy (NSO) limits for certain high priority habitats. For example, 1202.c lists NSO setbacks for bald eagles, Gunnison sage grouse, and bighorn sheep production areas.
- In turn, Rule 1202.d sets density limitations for locations inside other forms of high priority habitat such as elk migration corridors.
- NSOs for different aquatic species were controversial. Ultimately, the Commission adopted tiered aquatic setbacks: a 500-foot setback applies for cutthroat trout crucial habitat and native fish, but Colorado Parks and Wildlife can waive the NSO in the area between 300 and 500 feet. Within the hard 300-foot setback, the Commission can grant a variance under certain conditions. A similar arrangement pertains for sportfish management areas.