

Statement of Basis, Specific Statutory Authority, and Purpose
and
Findings and Statement of Reasons for Temporary Rule

Temporary Amendment to the
Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-01

This statement sets forth the basis, specific statutory authority, and purpose for a temporary amendment to Rule 201A of the Rules and Regulations and Rules of Practice and Procedure (Rules) of the Colorado Oil and Gas Conservation Commission (COGCC or Commission).

Rule 201A concerns the effective date of rules adopted by the Commission on December 11, 2008. It provides that, unless otherwise specified in the rules, the amendments become effective on May 1, 2009 for federal land and April 1, 2009 for all other land. The temporary amendment of Rule 201A changes the effective date of such rules on federal land to July 1, 2009.

The rulemaking hearing for consideration of the temporary amendment to Rule 201A was held on April 14, 2009. The temporary amendment became effective immediately and will be in effect for not more than three (3) months from the adoption thereof. Accordingly, it will expire at midnight on June 30, 2009.

After amending Rule 201A through temporary rulemaking, the Commission anticipates conducting a regular rulemaking hearing to consider such amendment on a permanent basis on or before May 31, 2009.

Statutory Authority

Temporary amendment of Rule 201A is authorized by the State Administrative Procedure Act (APA), section 24-4-103(6), C.R.S.

The authority for the proposed amendment is House Bills 07-1298 and 07-1341, codified at sections 34-60-106 and 34-60-128, C.R.S., of the Oil and Gas Conservation Act (“Act”). Additional authority for the promulgation of these amendments is provided by sections 34-60-102, 34-60-103, 34-60-104, 34-60-105, and 34-60-108, C.R.S., of the Act.

Basis and Purpose

The Commission temporarily amended Rule 201A to delay the effective date of rule changes adopted in December 2008 on federal lands from May 1, 2009 to July 1, 2009. This delay was necessary to allow representatives of the COGCC, Colorado Department of Natural Resources, Executive Director’s Office (CDNR), and Colorado Department of Law, Office of the Attorney General (AGO) to continue discussions with the Bureau of Land Management, Colorado State Office (BLM), U.S. Forest Service, Rocky Mountain Region (USFS), U.S. Department of the Interior, Office of the Regional Solicitor (SOL), and U.S. Department of Agriculture, Office of the General Counsel, Mountain Region (OGC) concerning the applicability of the COGCC rules

on federal lands. The Commission anticipates that, based on these discussions, the COGCC will enter into a Memorandum of Understanding (MOU) with the federal government or will develop a Commission order or policy concerning the application of the COGCC's amended rules on federal land.

At the hearing, the Commission found that immediate adoption of the temporary amendment was imperatively necessary for the preservation of public health, safety, or welfare and that compliance with the procedural requirements for permanent rulemaking would be contrary to the public interest. See Section 24-4-103(6), C.R.S. Specifically, the Commission found that:

1. To ensure that the amended rules apply to activities on federal land in a timely and efficient manner, the Commission seeks to harmonize its regulation of such activities with the regulation of such activities by the federal government. By doing so, the Commission seeks to avoid redundant or duplicative regulation while ensuring appropriate protection of public health, safety, and welfare, including the environment and wildlife resources;
2. To this end, representatives of the State have met with representatives of the federal government to discuss application of the COGCC's amended rules to oil and gas activities on federal land;
3. It is anticipated that these discussions, if allowed to continue, will either result in an MOU between the COGCC and the federal government concerning the application of the COGCC's amended rules to oil and gas activities on federal land or the development of a Commission order or policy regarding this subject. In either event, such discussions should help to clarify the applicability of the COGCC's amended rules to oil and gas activities on federal land in a way that avoids or minimizes any potential redundancy or duplication;
4. The avoidance of such potential redundancy or duplication while discussions continue for an additional 61 days is in the best interests of the State;
5. Compliance with the procedural requirements for permanent rulemaking would result in the amended rules going into effect on federal land on May 1, 2009, before further discussions between the COGCC and the federal government concerning the application of the amended rules to oil and gas activities on federal land can take place. This could result in unnecessary redundancy or duplication that would jeopardize the preservation of public welfare and be inconsistent with the public interest;
6. Temporary amendment of Rule 201A to allow discussions between representatives of the State and the federal government to continue for an additional 61 days is thus imperatively necessary for the preservation of public health, safety, or welfare and compliance with the procedural requirements for permanent rulemaking would be contrary to the public interest.

The Commission expressly made this finding of imperative necessity without prejudice to its subsequent ability to implement the amended rules on federal land upon the expiration of the temporary rule at midnight on June 30, 2009 whether an MOU or Commission order or policy has been adopted or not. The finding of imperative necessity was made after careful consideration of competing considerations concerning (a) avoidance of potential duplication of regulatory requirements and potential redundancy, (b) the need to continue discussions with the federal government for an additional 61 days, and (c) protection of public health, safety, and welfare, including the environment and wildlife resources, in the conduct of oil and gas activities on federal lands.

For the foregoing reasons, and based on the foregoing findings, the Commission adopted a temporary amendment to Rule 201A that delays the effective date of its rule amendments on federal land until July 1, 2009.

At the hearing, the Commission also extended the “Interim Policy for APDs Submitted Between January 5, 2009 and Effective Date of the Rule Amendments Adopted December 11, 2008” (Interim Policy) to midnight on June 30, 2009 on federal land in Colorado, in order to prevent its May 1, 2009, expiration.