



COLORADO

Oil & Gas Conservation Commission

Rulemaking Process Guidebook

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INTRODUCTION

The Colorado Oil and Gas Conservation Commission (“Commission” or “COGCC”) is an administrative agency responsible for implementing the Colorado Oil and Gas Conservation Act, C.R.S. §34-60-101 et seq., as amended (the “Act”). The mission of the COGCC is to regulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, welfare, the environment and wildlife resources.

Adherence to our mission results in:

- The protection of public health, safety, welfare, environment and wildlife
- The efficient exploration and production of oil and gas resources
- Addressing cumulative impacts from oil and gas development
- Cooperative relationships between COGCC and local governments as well as state and federal agencies with oversight of oil and gas operations

The Colorado Oil and Gas Conservation Commission seeks to serve, solicit participation from, and maintain working relationships with all those having an interest in Colorado's oil and gas natural resources.

To ensure that the Commission’s mission is fulfilled, it is necessary to promulgate rules that implement the requirements of the Act. Commission staff serve an integral role in researching, drafting, and proposing rules for consideration by the Commission.

This Guidebook has been prepared to provide members of the public, including interested parties, information on the process, known as “rulemaking,” by which the Commission adopts these rules. The Commission offers this Guidebook to help the public understand rulemaking before the Commission. Members of the public who are interested in participating in the Commission’s rulemaking process are responsible for reviewing relevant statutes and rules that apply to the rulemaking process to understand their rights and responsibilities. More details regarding this process may be found in the Commission’s Rules of Practice and Procedure, 4 CCR 404-1, the Act, and the rulemaking provision of the State Administrative Procedure Act (“APA”), §24-4-103, C.R.S. The Commission’s rules may be found on the Commission’s website, <https://cogcc.state.co.us>. The Commission hopes that this Guidebook will help facilitate public involvement and improve the understanding of the rulemaking process.

This Guidebook is only intended to provide general information regarding the Commission’s rulemaking process. Many of the processes

discussed below are in the discretion of the Commission, and may be modified as circumstances require. Further, this Guidebook is not intended to be, nor is it, legal advice.

For further information regarding any of the topics addressed in the Guidebook, please contact the Commission Office at:

Colorado Oil and Gas Conservation Commission

1120 Lincoln Street, STE 801

Denver, Colorado 80203

Email: dnr_cogcc.rulemaking@state.co.us

Web: <https://cogcc.state.co.us>

Thank you.

PROCESS SUMMARY

As noted in the Introduction, the Commission is the administrative agency responsible for adopting and revising Colorado's oil and gas regulations, or "rules," through a process known as rulemaking. The rulemaking process provides all interested persons with the opportunity to become involved in the adoption of a rule. Thus, the Commission's rulemaking process includes requirements to provide notice of an upcoming rulemaking hearing, information regarding the effects of a proposed rule, opportunity to participate as a party to the rulemaking proceeding, and opportunity to provide comments on proposed rules.

I. Overview of the Rulemaking Process

The APA, Act, and the Commission's Rules of Practice and Procedure establish four general categories of rulemaking requirements:

- Requirements relevant to **proposing rules** for a Commission rulemaking. These requirements ensure that the Commission has heard from stakeholders and that other interested persons have information regarding the proposed rule.
- Requirements relevant to the **prehearing process**. These requirements ensure that all interested persons receive notice of the rulemaking and have the opportunity to comment. Among other things, this process affords interested persons an opportunity to learn more about the proposed rule and resolve any issues prior to the rulemaking hearing.
- Requirements relevant to the **rulemaking hearing**. These requirements ensure that the rulemaking proceeds in an efficient and orderly manner.
- Requirements imposed after the rulemaking hearing.

II. The Scope of the Rulemaking

Typically, COGCC staff propose new rules and revisions to existing rules. Prior to filing an application for a rulemaking, COGCC staff work to identify issues that require new rules or rule amendments. During this initial stage, staff may solicit input from stakeholders. Upon completion of this initial stage, staff will produce an outline of proposed rule changes, or draft rule language. The outline or draft rules are made available to the public and provide all stakeholders with insight into and detail concerning what rules COGCC staff are considering proposing or amending.

Staff's proposed rule changes are reviewed and discussed with the

public at stakeholder meetings. Stakeholders and members of the public can participate in these stakeholder meetings. At a stakeholder meeting, COGCC staff will receive feedback from the public on the proposed rule changes, and takes that feedback into consideration as it drafts rules. During this process, staff may also meet with individual stakeholders and stakeholder groups to understand the stakeholders' positions, ideas and concerns regarding staff's proposed rule changes.

III. Notice and Application for a Rulemaking Hearing

Once COGCC staff has completed identifying the scope of the rulemaking, it will file a notice of proposed rulemaking with the Colorado Secretary of State. The notice of rulemaking must include:

- a. the rules staff proposes amending or adding;
- b. a proposed Statement of Basis, Specific Statutory Authority and Purpose ("SBP"); and
- c. the date of the Commission rulemaking hearing.

The SBP explains why the Commission would adopt the proposed rule, a citation to the statutory authority under which the Commission would adopt the proposed rule, and the purpose of the proposed rule.

The notice of hearing is published in the Colorado Register, the newspaper and posted on the Commission's website for public review.

Staff also files an application for a rulemaking hearing with the Commission. The application is filed with the Commission's Hearings Unit. The rulemaking application is assigned a docket number and a hearing date is scheduled. A hearing officer is assigned to the docket. The hearing officer manages the prehearing process.

IV. The Prehearing Process

Before the Commission can consider staff's proposed rules, a prehearing process must occur. If interested persons want to participate in the prehearing process, they may do so, but they must sign-up to be a "party" to the rulemaking. Parties to a COGCC rulemaking have the opportunity to:

- a. file one prehearing statement before the hearing
- b. file one responsive prehearing statement before the hearing
- c. submit pre-filed written testimony
- d. make a brief oral presentation to the Commissioners at the rulemaking hearing

If you want to become a party to a rulemaking, you must complete a

Request for Party Status form. The Request for Party Status Form will be available to interested persons on the Commission's website. Once you complete the Request for Party Status form, you will be added to the rulemaking party list and receive email notices concerning dates for prehearing conferences, deadlines to file prehearing statements, responsive prehearing statements, pre-filed written testimony and other notices.

As a party you will be able to attend all prehearing conferences, submit a prehearing statement, a response statement and pre-filed written testimony. You will also have the opportunity to deliver a short presentation to the Commission during the course of the rulemaking hearing. The amount of time that a party has to make a presentation will depend upon how many parties there are to the rulemaking and whether parties agree to consolidate their presentations.

Typically there are two prehearing conferences: one soon after the notice of hearing is filed with the Secretary of State and one several weeks before the Commission rulemaking hearing. At the first prehearing conference the hearing officer will set the deadlines for all written submissions. At the second prehearing conference the hearing officer will decide all procedural matters necessary to coordinate the hearing process before the Commission, including the order of oral presentations and the time allotted for presentations.

It is important to know that because of the number of parties that participate in Commission rulemakings, the hearing officer is not able to reschedule a prehearing conference if a party is unable to attend. The dates for prehearing conferences will be announced and parties are encouraged to do their best to attend either in person or by phone. After each prehearing conference the hearing officer will issue a written order that details what was discussed and what was decided at the prehearing conference. If a party is unable to attend a prehearing conference, that party is not precluded from continued participation in the rulemaking process.

Frequently, multiple parties to a rulemaking share common policy and legal positions. When parties share common positions, these parties are strongly encouraged to group themselves together for purposes of filing prehearing statements and for presentation before the Commission at the rulemaking hearing. A hearing officer will not require parties to file joint prehearing statements. However, for purposes of ensuring an orderly and timely rulemaking hearing, the hearing officer has the discretion to group parties together and to allocate presentation time to be divided among those groups. So as to avoid having the hearing officer group together parties as he or she sees fit, parties are strongly encouraged to group themselves and propose to the hearing officer a reasonable amount of time for the

group presentation to the Commission at hearing.

We understand that parties want to ensure that they are heard at the rulemaking hearing. Parties should remember that the Commissioners will have the opportunity to read prehearing statements and pre-filed written testimony before the rulemaking hearing. Prehearing statements and pre-filed written testimony are critical pieces of information for the Commissioners and much time and effort should be devoted to making your arguments in your prehearing statement and pre-filed written testimony.

V. Prehearing Statements

All parties to Commission rulemakings will have the opportunity to file one prehearing and one responsive prehearing statement. The purpose of a prehearing statement is to provide your comments and concerns with staff's proposed rules. A party may also attach proposed revisions to staff's rules with their prehearing statements.

Responsive prehearing statements are filed after the prehearing statements. Through a responsive prehearing statement, a party has the opportunity to read and respond to other parties' prehearing statements. You may only file one responsive prehearing statement. This means that if you want to respond to eight parties, you must do so in one responsive prehearing statement - not eight separate responsive prehearing statements.

All prehearing statements are subject to page limitations. The page limits will be established in the hearing officer's prehearing order after the first prehearing conference. If a party exceeds the page limit, their prehearing statement will be rejected and they may be given a short amount of time to refile a prehearing statement that meets the page limit.

Prehearing and responsive prehearing statement are filed with the COGCC Hearings Unit and served on all parties to the rulemaking. When a party "serves" a document on another party it means that the filing party emails the filed document to all the other parties to the rulemaking. Your prehearing statement will also be posted on the COGCC's website and may be viewed and read by any member of the public.

While all parties will read your prehearing statements, the ultimate audience for your prehearing statements are the Commissioners who will consider staff's proposed rules at the hearing. The APA requires the Commission to make its decision based solely upon what is in the record for the rulemaking. The rulemaking record includes all

prehearing statements, responsive prehearing statements, and pre-filed written testimony, as well as oral presentations at hearing, but only if those submissions are within the scope of the proposed rules and the rulemaking topics noticed with the Secretary of State. If you decide to submit a prehearing statement or pre-filed written testimony that includes information or topics that are not related to the rulemaking topic noticed for hearing, the Commission will not consider that extraneous information at the rulemaking hearing. Therefore, make sure that your prehearing statements and pre-filed written testimony specifically address the topics noticed for rulemaking and do not discuss topics outside the scope of the rulemaking.

VI. Pre-filed Written Testimony

In addition to submitting a prehearing and a responsive prehearing statement, parties may submit pre-filed written testimony. An example of pre-filed written testimony can be found at the end of this Guidebook. The number of persons for which a party will be allowed to submit pre-filed written testimony will be determined by the hearing officer, as will the page limitations for the testimony. Rebuttal testimony by other parties is not permitted. As with a party's prehearing statement and responsive prehearing statement, the Commissioners will review all pre-filed written testimony and may ask witnesses questions about the testimony.

VII. What if I don't want to be a party, but still want to comment on staff's proposed rules?

You do not have to be a party to the rulemaking to submit written statements to the Commission on the proposed rules. You may instead submit a 510 statement, named so because Commission Rule 510 explains the process for submission of statements. There is no page limit for a 510 Statement, but persons who submit 510 Statements are encouraged to be as concise as possible as the Commission generally has a great deal of information to review prior to a rulemaking hearing. As with party prehearing statements, the maker of a 510 Statement is strongly encouraged to submit comments that are relevant to the rulemaking topic since the Commission may only consider information that is relevant to the issues noticed for rulemaking.

Information will be posted on the COGCC's website informing people of the deadline to make 510 statements and the email address to submit the statement. This deadline will ensure that the Commissioners have sufficient time to read all submissions.

VIII. The Rulemaking Hearing

Staff's proposed rules will be considered by the Commission at a formal hearing. At the hearing, there will be time for members of the public who were not parties, **and who did not submit a written 510 statement**, to make a two-minute public statement to the Commissioners. The Commission will do its best to accommodate public comment, but may not be able to hear from everyone since it must ensure sufficient time for the parties to make their presentations.

At the hearing, the parties may make a presentation to the Commission. The time that a party has to present will have been decided by the hearing officer at the final prehearing conference. Commissioners may ask the parties questions about statements made in prehearing statements, their pre-filed written testimony, or their presentations.

The COGCC staff is not a formal party to the hearing. Staff may present evidence and testimony, make recommendations to the Commission, and perform other duties as requested by the Commission to fulfill its role as staff.

Once all of the presentations have been made, and the Commissioners have asked all the questions they find to be necessary, the Commissioners will close the record. Once the Commissioners close the record, there will be no more presentations or statements from parties. The Commissioners, satisfied that they have the information necessary to make a decision, will begin deliberating among themselves on the rules. The Commissioners will consider the entirety of staff's proposed rules, party statements, pre-filed written testimony, relevant 510 testimony, and any party-proposed alternative rules when deciding what rules should be adopted. Ultimately, the Commission may approve or disapprove the rule or revision as proposed, or decide to make changes to the proposal as they deem necessary and appropriate, and adopt the proposal as changed.

The Commission's deliberations occur in public. The Commission may also receive legal advice or receive information on other topics in an Executive Session, to the extent permissible under the Colorado Open Meetings Law, C.R.S. § 24-6-402. Executive Sessions are closed to the public. The Commission will not make any decisions in Executive Session.

IX. What Happens After the Rulemaking Hearing

The Commission files each adopted rule, with the final SBP and an Attorney General's opinion, with the Secretary of State for publication in the Colorado Register within 20 days after adoption. Except for temporary or emergency rules, a rule typically becomes effective 20 days after publication in the Colorado Register.

Example of pre-filed written testimony.

BEFORE THE COLORADO OIL AND GAS CONSERVATION COMMISSION

DOCKET NO. 19-_____

**IN THE MATTER OF CHANGES TO THE RULES AND REGULATIONS OF THE OIL
& GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO.**

TESTIMONY AND ATTACHMENTS OF [NAME]

ON BEHALF OF

[ORGANIZATION/COMPANY NAME]

DATE

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1 **TESTIMONY OF [NAME]**

2 **I. INTRODUCTION AND BACKGROUND**

3 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

4 A. My name is [____]. My address is [_____].

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A.

7 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

8 A.

9 **Q. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES IN YOUR CURRENT**
10 **POSITION?**

11 A.

12 **Q. WOULD YOU PLEASE OUTLINE YOUR EDUCATIONAL AND PROFESSIONAL**
13 **BACKGROUND?**

14 A.

15 **II. PURPOSE OF TESTIMONY**

16 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

1 A. The purpose of my testimony is to present an overview of my organization's evaluation of the
2 COGCC's proposed rules.

3 **Q. DO YOU HAVE ANY EXHIBITS TO BE CONSIDERED WITH YOUR TESTIMONY?**

4 A. Yes. I have one exhibit. Exhibit 1 is my organization's proposed rule language of the
5 Commission to consider to including in its rules.

6 **III. SUMMARY OF TESTIMONY**

7 **Q. WOULD YOU SUMMARIZE THE MAIN POINTS OF YOUR TESTIMONY?**

8 A. The main points of my testimony are my organization 1) largely supports the COGCC's proposed
9 rule change; 2) proposes rule language that it believes improves the COGCC's proposed rule; and 3) asks
10 the Commission to promulgate the COGCC's proposal with the addition of our rule language in Exhibit 1.

11 **Q. WHAT DOES YOUR ORGANIZATION AGREE WITH IN THE COGCC'S PROPOSED**
12 **RULE?**

13 A.

14 **Q. WHAT DOES YOUR ORGANIZATION BELIEVE NEEDS TO BE CHANGED IN THE**
15 **COGCC'S PROPOSED RULE?**

16 A.

17 **Q. WHAT IS YOUR ORGANIZATION'S PROPOSED RULE LANGUAGE?**

18 A.

1 **Q. WHY DO YOU BELIEVE THAT YOUR PROPOSED RULE LANGUAGE IS**
2 **NECESSARY?**

3 A.

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 A. YES

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