

# *500 SERIES RULEMAKING*

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# *SB 19-181*

- Governor Polis signed SB 19-181 on April 16, 2019
- SB 19-181 sets a new mission for the COGCC
- SB 19-181 allows hearing officers (HOs) and administrative law judges (ALJs) to conduct hearings
- SB 19-181 sets new requirements for Spacing Unit and Pooling applications



# *What are the 500 Series Rules?*

- When and how to file a hearing applications, not permit applications
- How the Commission processes applications
- The process for protesting an application
- How hearings are conducted
- Enforcement of Commission Rules



# *500 Series Rulemaking Purposes*

- Revisions to the 500 Series Rules is necessary to incorporate the concept that ALJs and HOs can conduct hearings
- Prior to these SB 19-181 amendments, only the Commission could conduct hearings



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# Staff's Proposed Revisions to the 500 Series Rules



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- Global Amendments:
  - Vests ALJs and HOs with authority to conduct hearings on contested matters
  - Conforming changes to Rules 207, 303, 304, 318A, and 325
- Amends definition of *Commission* to include ALJs and HOs as the context requires.



# *Rule 503 - All Other Proceedings Commenced By Filing An Application*

- All hearing applications, except those specifically reserved for the Commission, are assigned to ALJs or HOs (503.c.).
- Applications assigned to ALJs and HOs include:
  - ◆ Orders Finding Violations
  - ◆ Spacing applications
  - ◆ Pooling applications
- Applications that remain with the Commission:
  - ◆ Comprehensive Drilling Plans
  - ◆ Applications for hearings pursuant to 303.j.(2)(Director withholding approval of a permit) and 604.a.(6)(school facility and child care center setbacks)
  - ◆ Variance requests pursuant to Rule 503.b.
  - ◆ Rulemaking proceedings



# *Rule 503 continued*

- ALJs or HOs may require additional information from applicant so as to process an application (503.c.)
- Commission, Director, ALJs or HOs may reject applications filed without merit (503.d.)
- Material amendments to an application may be dismissed (503.e.)





# *Rule 503 continued*

- Staff, as necessary, will evaluate hearing applications (503.h.)
- If a staff evaluation or recommendation is completed, it will be provided to the applicant and protestants (503.h.)



# *Rule 506 - Hearing Date/Continuance*

- Applications will not be heard by the ALJ or HO until all notice, evidentiary and other application requirements are complied with.  
(506.a.)



# *Rule 509 - Protests/Interventions/Participation in Adjudicatory Proceedings*

- Persons who may file applications include those who had the right to “file the application in the first instance.” (509.a.(1))



# *Rule 510.a.(2) - Statements at Hearing*

- The trier of fact is the decision maker regarding the weight to be given to public comment.
- Rule amendment clarifies this point.
- This addition does not eliminate public comment, or remove from the Commission the discretion to hear and take public comment.



# *Rule 515 -Ex Parte Communications*

- ALJs and HOs are subject to the Ex Parte Communication standards that Commissioners are subject to



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# *Rule 522- Procedures For Alleged Violations*

- Provides that ALJs and HOs may hear enforcement matters
  - ◆ Administrative Orders By Consent (AOC) (522.e.(1))
  - ◆ Orders Finding Violation (522.e.(2))
  - ◆ Complainant Petitions for Review (522.b.(5))
- Any ALJ or HO recommended order approving or denying an AOC is subject to the Exceptions process in Rule 523.



# *Rule 530- Involuntary Pooling Proceedings*

- Incorporates SB 19-181's provision that
  - ♦ involuntary pooling applications may only be filed by an "owner who owns, or has secured the consent of the owners of, more than forty-five (45) percent of the mineral interests to be pooled . . .", (530.a.) AND
  - ♦ Lease offers must be made in good faith (530.b., c.(2))



# *Rule 531- Consent Agenda*

- Provides that the Commission will still have a consent agenda
- For those recommended orders that have not become final before the next scheduled Commission hearing, the recommended order will be placed on the consent agenda





# *Rule 532- Decisions, Orders and Exceptions*

- When an ALJ or HO issues a recommended order, the recommended order along with the entire record is sent to the Commissioners and the parties
- Every ALJ or HO's recommended order is subject to an "exception", i.e. an appeal to the Commission
- Parties have 20-days from the date of the recommended order to file an exception with the Commission
- If no exception is filed, the recommended order becomes the final order of the Commission



# Staff's Recommended Edits to the May 15 Draft 500 Series Rules



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# *Rule 503.c. - All Other Proceedings Commenced By Filing An Application*

Unless the Commission otherwise orders, all matters submitted to the Commission for adjudication, except for those applications filed pursuant to Rules 503.b.(5), and (9) or 529, will automatically be assigned to an Administrative Law Judge or Hearing Officer. An assignment to an Administrative Law Judge or Hearing Officer shall encompass all issues of fact and law concerning the matter unless the Commission specifies otherwise in a written order. Notwithstanding the foregoing, the following will be considered by the Commission:

- (1) Approval of Comprehensive Drilling Plans filed pursuant to Rule 216;
- (2) Applications seeking a hearing pursuant to Rules 216.f.(4), 303.j.(2), or 604.a.(6);
- (3) Variance requests to the Commission filed pursuant to Rule 503.b; and
- (4) Rulemaking proceedings held in accordance with Rule 529.

*Blue = COGCC Staff proposed edits to May 15<sup>th</sup> version*



# *Rule 503.d. - All Other Proceedings Commenced By Filing An Application*

~~If the~~ The Commission, Director, Administrative Law Judge,  
or Hearing Officer ~~finds~~ may issue an order rejecting an  
application if the application is found to be without merit,  
~~the application may be rejected.~~ The rejection of an  
application shall be in writing and constitute a final agency  
order that is subject to judicial review.

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# *Rule 506.a. - Hearing Date/Continuance*

All applications will be docketed for hearing before the Commission, Administrative Law Judge, or Hearing Officer. The date of hearing will depend upon hearing availability, but will be set at the earliest practicable time.

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# Rule 506.b. - Hearing Date/Continuance

. . . The ~~Secretary~~ Commission, Administrative Law Judge or Hearing Officer will have the discretion to grant any motion for continuance. The ~~Secretary,~~ Commission, Administrative Law Judge, or Hearing Officer will have the discretion to grant subsequent requests for a continuance of an unprotested application. The Commission, ~~or Director,~~ Administrative Law Judge, or Hearing Officer may at any time ~~direct the Secretary to~~ discontinue granting continuances of an application or dismiss an application in a written order subject to an exception pursuant to Rule 532.

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# *Rule 509.b. - Protests/Interventions/Participation In Adjudicatory Proceedings*

The Commission, Director, Administrative Law Judge, or Hearing Officer or Secretary or the ~~Director~~ may require any additional information necessary pursuant to these rules to ensure the application, protest, or intervention is complete on its face.

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# *Rule 511.a. - Uncontested Hearing Applications*

If a matter is uncontested, the applicant may request, ~~and the Director may recommend,~~ approval without a hearing based on an Administrative Law Judge's or Hearing Officer's review of the merits of the verified application and the supporting exhibits.

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# *Rule 511.c.(2) - Uncontested Hearing Applications*

Sworn written testimony, of relevant witnesses verifying land, geologic, ~~and~~ engineering, public health, safety, welfare, environment and wildlife facts and accompanied by attachments or exhibits that adequately support and is specific to the relief requested in the application, along with resumes/curricula vitae for each witness;

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# *Rule 515.a.(5) - Ex Parte Communications*

(5) If staff is a party to an adjudicatory proceeding they are subject to the provisions of this Rule 515(a).

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# *Rule 521.d. - Service Under Rules 522 and 523*

*. . . Where sent by electronic copy, service is perfected once sent.*

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# *Rule 522.e.(1)A. - Procedures For Alleged Violations*

An AOC will be noticed for review and recommended approval by the Commission an Administrative Law Judge, or Hearing Officer unless no penalties are recommended

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# *Rule 522.e.(1)B. - Procedures For Alleged Violations*

A Complainant who has filed a written complaint on a Form 18, Complaint Report, Form 18, will be informed of the terms of a draft proposed AOC resolving alleged violations arising directly out of their written complaint and will be given fourteen (14) days to comment on the draft settlement terms before the AOC is finalized and presented to an Administrative Law Judge, or Hearing Officer ~~the Commission~~ for a recommended order approval ~~approving it~~

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# *Rule 522.e.(1)C. - Procedures For Alleged Violations*

~~Administrative Orders by Consent AOCs~~ that are not subject to a pending Complainant's Petition for Review will be reviewed by an ~~Administrative Law Judge or Hearing Officer for recommended approval~~ to issue a recommended order. A recommended AOC becomes the decision of the Commission within twenty (20) days after service upon the parties, or unless the Commission stays the recommended order on the AOC within that time or parties file an exception to the recommended order ~~upon its own motion.~~

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# *Rule 526.a. -Administrative Hearings in Uncontested Matters*

As to applications where there has been no protest or intervention filed with the Commission in accordance with Rule 509., and where the Administrative Law Judge or Hearing Officer has not issued a written recommended order approving the application ~~Director has not recommended approval based on the content of the verified application and supporting exhibits~~, the application may be heard administratively. prior to or on the date of the scheduled ~~Commission~~ hearing. . . . .

. . . . The administrative hearing may be conducted prior to the protest or intervention date, but no recommended order will issue ~~be entered by the Commission~~ until the Administrative Law Judge or Hearing Officer ~~it~~ has fully considered any timely and properly filed protest or intervention.

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# *Rule 526.b., c -Administrative Hearings in Uncontested Matters*

b. . . . If the Administrative Law Judge or Hearing Officer's recommended order is a recommends-denial or qualified approval of the application, the applicant will be entitled to file an exception. a hearing de novo at the next scheduled hearing of the Commission.

~~c. The Commission or Director may appoint Administrative Law Judges, or Hearing Officers from the Commission staff for the purpose of hearing uncontested matters, presiding at local public forums, or otherwise representing the Commission. The service of the Administrative Law Judges or Hearing Officers will be at the Director's discretion.~~

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# *Rule 528.a.(16) -Conduct of Adjudicatory Hearings*

Upon motion and for good cause shown, the Commission, ~~or~~ **Administrative Law Judge**, or Hearing Officer may permit surrebuttal;

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# *Rule 528.c.-Conduct of Adjudicatory Hearings*

c. Enforcement hearings. In order to assure that all parties are afforded due process of law, the Commission will permit all parties to an enforcement hearing to present evidence and argument, and to conduct cross-examination. The enforcement matter will be heard by the Commission, or Administrative Law Judge, or Hearing Officer ~~de novo unless the operator waives its right to a de novo hearing prior to or at the Commission hearing.~~

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# *Rule 530.a.-Involuntary Pooling Proceedings*

a. An application for involuntary pooling pursuant to §34-60-116, C.R.S., may be filed at any time by an owner who owns, or has secured the consent of the owners of, more than forty-five (45) percent of the mineral interests to be pooled within a drilling and spacing unit established by Commission order, prior to or after drilling of a well, but no later than ninety (90) days in advance of the hearing date for which the applicant proposes the matter be heard by the Commission, as per Rule 506.a. Mineral interests that are owned by a person who cannot be located by the applicant through reasonable diligence are not included for purposes of determining whether the forty-five (45) percent mineral interests threshold is met.

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# Rule 531.b.-Consent Agenda

(b) The Secretary ~~may~~ will place on the consent agenda those uncontested matters recommended by an Administrative Law Judge or Hearing Officer for approval if a recommended order has not become the final agency action pursuant to Rule 532.b. prior to the next regularly scheduled hearing of the Commission. ~~and those matters in which an Administrative Order by Consent (AOC) has been agreed to by the parties.~~

(1) All matters on the consent agenda may be presented individually or in groups. All matters within a group will be voted on together, without deliberation and without the necessity of reading into the record the individual items.

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# Rule 532.a., b.-Decisions, Orders and Exceptions

## a. Interim Decisions.

(1) Interim decisions are issued after an application is set for hearing, ~~but and~~ are not recommended orders ~~other than a decision~~ that may become a final decision of the Commission.

b. Recommended Orders. After due consideration of written statements, oral statements, the testimony, the evidence, and the arguments presented at hearing, the Administrative Law Judge, or Hearing Officer will make a written recommended order based upon evidence in the record, consistent with the Act and any rule, permit, or order made pursuant thereto.

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# *Rule 532.c.-Decisions, Orders and Exceptions*

(2) The Commission will conduct a review upon the same record before the Administrative Law Judge or Hearing Officer, and a de novo review of the law.

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# *Rule 533.a. - Commission Findings and Orders*

## 533. Commission Findings and Orders

a. After due consideration of written ~~statements, and~~ oral statements, the testimony, and the arguments presented at hearing before the ~~full~~ Commission, the Commission will make its findings and ~~written~~ order, based upon evidence in the record and, as appropriate, consistent with the Act and any rule, permit, or order made pursuant thereto.

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# *Questions?*



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