

## ISSUES SUBMITTAL FORM

Date: 12/17/2019

<b>ISSUE:</b>	<p><b>Should CPW regulations be amended to enable the Division and the Commission to more efficiently respond to citizen petitions for rulemaking?</b></p> <p><b>CPW's regulations concerning citizen petitions, W #1606 – W #1608, have proved to be inflexible and inefficient in the past and are recommended for revision as discussed below.</b></p>
---------------	---

**DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):**

Rulemaking is a multi-step process that typically starts with a “notice of proposed rulemaking” being filed with the Secretary of State. Rulemaking bodies, like the Commission, use the notice to define and limit the scope of a desired rulemaking hearing by specifying what rules or chapters will be open for rulemaking, but only *after* deciding to engage in rulemaking in the first instance.

Current Regulation W-1606(C) takes this decision away from the Commission by implying that the mere filing of a timely citizen petition for rulemaking obligates the Division to file a rulemaking notice with the Secretary of State for the next Commission meeting. This is concerning for numerous reasons. First, it “puts the cart before the horse” by presuming the Commission will want to make any regulatory change whatsoever. Second, it obligates Division staff to analyze the petition and determine what rules or chapters need to be included in the notice of proposed rulemaking, without the benefit of any direction from the Commission in doing so.

Current Regulation W-1607 grants citizen petitioners an opportunity to make an oral presentation to the Commission concerning their petition. This is concerning because it undermines CPW's ability to manage Commission meeting agendas. One citizen petition on the agenda can easily take thirty minutes or more to hear. Although an oral presentation at the petition stage may be helpful in some instances, it need not be guaranteed by rule.

Any person can petition any agency to engage in rulemaking. An agency's decision of whether or not to actually engage in rulemaking is reviewed under a highly differential standard. The amendments suggested in this issue paper are intended to maximize CPW's flexibility in responding to citizen petitions while retaining the public's ability to bring forward proposed regulatory changes. If the Commission chooses to revise CPW's regulations concerning citizen petitions, changes may necessitate a revision to the Commission's July 7, 2016 public rulemaking petitions policy.

**STATE LAW REQUIRES CPW TO SOLICIT INPUT FROM STAKEHOLDERS THAT MAY BE AFFECTED POSITIVELY OR NEGATIVELY BY THE PROPOSED RULES. THE FOLLOWING STAKEHOLDERS HAVE BEEN ADVISED OF AND INVITED TO PROVIDE INPUT ON THE REGULATORY CHANGES PROPOSED IN THIS ISSUE PAPER:**

**\*IT IS ASSUMED THAT ALL NECESSARY INTERNAL PARTIES HAVE BEEN NOTIFIED\*.**

**ALTERNATIVES: (POSSIBLE OUTCOMES or POSSIBLE REGULATIONS):**

1. **\*Preferred Alternative\*:** Adopt regulations similar to COGCC Rule 529, which requires petitioners to provide contact information, a copy of the proposed rule and a proposed statement of basis and purpose for the proposed rule. COGCC Rule 529 does not require COGCC staff to immediately notice the affected rules for rulemaking and does not automatically grant citizen petitioners the opportunity to make an oral presentation to the COGCC Commission concerning their petition. Citizens always have that right during public comment, however.
  
2. No action, status quo.

<b>Issue Raised by:</b>	<b>Director Dan Prenzlou</b>
<b>Author of the issue paper (if different than person raising the issue):</b>	<b>Jake Matter, Attorney General's Office</b>
<b>CC:</b>	
<b>APPROVED FOR FURTHER CONSIDERATION BY:</b>	<b>Dan Prenzlou</b>
<b>REQUIRES NEW SPACE IN THE BROCHURE?</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>ARE ADEQUATE STAFF AND FUNDING RESOURCES AVAILABLE TO IMPLEMENT?</b>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<b>REGION, BRANCH, OR SECTION LEADING IMPLEMENTATION</b>	<b>Research, Policy and Planning</b>
<b>RECOMMENDED FOR CONSENT AGENDA?</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

**Current Regulations**  
**Chapter W-6**

**ARTICLE III – CITIZEN PETITIONS**

**#1606 - Citizen Petition Requirements**

- A. Persons desiring to create, modify, or remove a Commission regulation pursuant to 24-4-103(7), C.R.S. must submit a citizen petition proposal for consideration. The petitioner shall have the burden of proof to demonstrate that the amendment should be adopted by the Commission. The petition shall be in writing, shall include the petitioner's name and adequate contact information, and shall contain a clear and concise statement of the basis and purpose behind the requested amendment. Each request shall also include appropriate additional evidence and documentation in support thereof. Petitions that do not meet these minimum requirements will be considered incomplete and will not be addressed by the Commission.
- B. Proposed amendments to a chapter that is opened annually based on the Division's regulatory calendar will only be considered when that chapter is open. For amendments to chapters that are not opened annually, the petition will be heard at the public meeting determined most appropriate by the Commission Chair.
- C. Any petition that is submitted late or without adequate time to be included in the applicable public rule-making notice will be held by the Division until that chapter reopens or the petition is scheduled to be heard by the Commission Chair.

**#1607 - Citizen Petition Public Presentations**

- A. A citizen petition presentation to the Commission will generally be limited to fifteen (15) minutes or less, unless otherwise determined appropriate by the Commission Chair.
- B. Each petitioner is strongly encouraged to present their own petition. If a petitioner is unable to attend or present their petition to the Commission, Division staff will present the petition but will not address questions on behalf of the petitioner.

**#1608 - Resubmission of Denied Petitions**

- A. Citizen petitions that are denied by the Commission may not be re-submitted for further consideration until after at least one full calendar year after Commission action and then only if new and substantial information has been developed and added to the petition. Re-submitted petitions must also comply with the timelines outlined in Commission Regulations #1606(B) and #1606(C).

# **COLORADO PARKS AND WILDLIFE COMMISSION POLICY**

Title: **PUBLIC RULEMAKING PETITIONS**  
Effective Date: July 8, 2016

## **I. AUTHORITY**

As a state rulemaking body, the Parks and Wildlife Commission is required by law to operate pursuant to section 24-4-103(7), C.R.S. This section gives any interested person the right to petition for the issuance, amendment, or repeal of a rule. The statute also states that the timeframe for action on such petitions shall be at the discretion of the agency. However, if the Commission chooses to postpone a petition, it is required to consider the petition when it next addresses related rulemaking matters.

## **II. POLICY STATEMENT**

The Parks and Wildlife Commission recognizes that public participation in decisions regarding the management of the state's wildlife and park resources is both desirable and necessary. A petition for rulemaking is one of the many methods available to the public to allow for active engagement in the rulemaking process. A standard procedure for the consideration of public petitions is essential to ensure fair and equitable treatment of such documents, and is intended to enable the public to be informed about the most effective manner in which to introduce petitions to the Commission's regulatory process. In addition, a uniform standard establishes the framework for the petitioner to set forth sufficient facts and supporting documentation to provide the Commission with the appropriate information to form the basis for Commission action.

## **III. IMPLEMENTATION**

Petitions presented to the Commission must include the petitioner's name and sufficient information to enable the Commission to make an initial determination about whether to accept the petition for further consideration. The petition should refer to the regulation proposed for modification, and should be submitted through the Division to the Commission. Petitioners may contact Division staff for related forms, assistance with the process, or any other information necessary for submission of a citizen petition.

Petitioners should be prepared to submit complete documentation in support of the rule changes proposed in their petition.

Once a petition is received, staff will recommend to the Commission the schedule for considering it, within the following guidelines:

- If the petition corresponds to a regulatory chapter which is scheduled for review by the Commission on an annual basis, the petition will be heard during the rulemaking hearings applicable to that chapter.
- If the petition corresponds to a regulatory chapter which is not scheduled for review by the Commission on an annual basis, the petition will be heard at the Commission's next possible regularly-scheduled hearing within the public notice requirements of the State Administrative Procedures Act.
- In order to maintain consistency in regulations and regulatory process, the Commission generally will not consider a citizen petition addressing a regulation passed, with full process, within the previous 12 months.
- In order to maintain consistency in regulations and regulatory process, petitions requesting reconsideration of five-year season structure decisions during the applicable five-year period are disfavored, and petitioners wishing to address such issues will generally be asked to participate in the Division's next applicable Five-Year Big Game Season Structure planning process.
- Resubmission of denied petitions will only be accepted after a full calendar year and only if new and substantial information has been added to the petition.

When a determination is made regarding the placement of a petition on a specific agenda, petitioners will be notified immediately of that decision, and will be made aware of their opportunity to testify in support of their petition.

Public petitions should initially be placed on the rulemaking agenda clearly separated from other rulemaking matters brought forward by staff. The agenda and rulemaking notice specifically will notice the petition for action by the Commission. Thus, the petitioner should understand that the Commission will either take action to move the petition forward or deny the petition.

At the initial hearing, the petitioner will be given an opportunity to present the petition. Staff may be requested to present its position on the petition to assist Commission deliberations. Any decision to support,

reject, or modify the petition will be made based upon the information placed in the record at the time of the hearing.

If the Commission accepts the petition for further consideration, the petitioner will be asked to work with staff to develop regulatory language and any other information or materials requested by the Commission. Within statutory guidelines, the Commission reserves the right to determine the schedule for moving the petition forward, including continuance beyond the regularly-scheduled two-step regulations process. Denial of a petition constitutes final action by the Commission.

Petitioners should be aware that signatures of supporters are not required for submission of a petition. Further, submission of multiple petitions asking for similar Commission action is disfavored, and such petitioners may be asked to coordinate their petitions.

### Citizen Petition Processes of Select Colorado Commissions

State Agency and Commission	Description of Citizen Petition Process	Notes
Colorado Department of Agriculture: Ag Commission (AC)	The citizen petition for rulemaking process is informal and there are no forms for the citizen to complete or submit. Petitioners contact staff, who conducts a pre-hearing discussion with the petitioner. Based on the discussion, staff makes recommendations to the Ag Commission. There is no citizen presentation to the Commission. The Commission reviews and approves all rules and regulations prior to being officially adopted by the Ag Commissioner.	During the last 20 years, CDA has received a total of two citizen petitions. Citizens provided a red-lined copy of the rules they sought to amend, staff discussed the citizen's needs in a pre-hearing, and staff made a recommendation to the Commission about adoption of the rule/amended rule. Contact: Jenifer Gurr
Colorado Department of Public Health and Environment: Air Quality Control Commission (AQCC)	The petitioner contacts the Commission and requests that the commission schedule a request for rulemaking hearing. Staff schedules the hearing for one of the Commission's monthly meetings. 30 days prior to the Commission meeting, petitioner must file a completed "petition for rulemaking" with the Commission which includes a draft of the proposed rule; a memorandum of notice; a statement regarding Federal regulations concerning the matter; a range of regulatory alternatives; a statement of basis; specific statutory authority for the rule; purpose for the rule; and an initial economic impact analysis. At the request for rulemaking meeting, the Commission decides whether to approve the request for rulemaking. If approved, a rulemaking hearing will be scheduled within three months after the request for rulemaking meeting takes place.	<a href="#">See the AQCC Rulemaking Process Guidebook for details.</a>
Colorado Department of Natural Resources: Oil and Gas Conversation Commission (COGCC)	A petition is submitted electronically via email and staff processes the request. Rules do not specify when or if staff must respond to the petition or that the petition must be presented for rulemaking to the Commission. As a matter of course, staff does respond to petitioners. Staff analyzes the petition to determine whether the Commission has the authority undertake the subject of the petition and whether staff has the capacity to work on the rulemaking. Applications for rulemaking must include the name, address, and telephone number of the person requesting the rulemaking; a copy of the rule proposed in the application and a general statement of the reasons for the requested rule; and a proposed statement on the basis and purpose for the rule. No petitioner presentation is required.	During the last 5 years, four petitions for rulemaking have been filed with the Commission. The Commission denied one of those petitions after a hearing before it to consider whether to undertake the proposed rulemaking. The Commission's decision was challenged in district court. One petition resulted in rulemaking. One petition was considered by the Commission; however, no formal rulemaking commenced due in part to a separate study that staff agreed to work on that satisfied the rulemaking request. The fourth petition was just submitted to the Commission and staff is in the process of reviewing it. Contact: Mimi Larsen
Colorado Department of Natural Resources: State Land Board (SLB)	The State Land Board has rulemaking authority, but uses it rarely. Its last rulemaking was to repeal an obsolete rule and it currently has one actual rule on the books. It does not have a process for citizen petitions to create a rule or regulation and does not offer any guidance for citizen petitions. The AG's office is not aware of any citizen petition for a rulemaking to the Land Board in the past.	Contact: Kristin Kemp
Colorado Department of Natural Resources: Colorado Water Conservation Board (CWCB)	The CWCB does not have a formal citizen petition request process and have never had such requests from the public. Under 24-4-103(7), any interested person has the right to petition for the issuance, amendment, or repeal of any state rule. Commission action on the petition is within the discretion of the agency.	Contact: Viola Bralish
Colorado Department of Public Health and Environment: Solid and Hazardous Waste Commission (SHWC)	The Division or any member of the public may petition the Commission in writing to issue, amend, or repeal a rule. Such petition is open to public inspection and must fulfill the requirements outlined in the linked policy. Action on a petition is within the discretion of the Commission; but, when the Commission undertakes rulemaking on any matter, all related petitions for the issuance, amendment or repeal of rules on such matter will be considered and acted upon in the same proceeding. The Commission, in its sole discretion, may elect to use the prehearing procedure described in Section 7.08 of the linked document for any formal action.	<a href="#">See the Colorado Hazardous Waste Regulations - Procedural Rules for details.</a>