



COLORADO
OIL & GAS
ASSOCIATION

COGA | COGCC Oil and Gas Task Force Rulemaking Summary

Important Dates:

Adopted: January 25, 2016 | Published: February 25, 2016 | Effective: March 16, 2016

Summary of New Commission Rules

On August 4, 2014, Governor John Hickenlooper announced the formation of an oil and gas development task force, which was established through Executive Order in September 2014. The 21-member Task Force convened monthly from September 2014 through February 2015. The Task Force put forth 9 recommendations. Two of the recommendations, numbers 17 and 20, which were unanimously approved, required a formal rulemaking of the Colorado Oil and Gas Conservation Commission (COGCC) to implement.

Recommendation 17 calls for the COGCC to define and adopt a process for improved local government involvement during the COGCC permitting process for Applications to Drill (APD) concerning the location of large scale oil and gas facilities in Urban Mitigation Areas (UMA). Recommendation 20 proposes that all operators would be required to register in the municipalities in which they have operations and provide information on their planned development and operations within those municipalities.

On January 25, 2016, the COGCC adopted new rules to implement Recommendations Numbers 17 and 20. The rules define Large Facilities within Urban Mitigation Areas (UMA), outline an enhanced local government consultation process when siting Large UMA Facilities, and include registration with local governments to promote increased communication and advanced planning.

A summary of the new rules are as follows:

- **Definition of Large Urban Mitigation Area Facility (LUMA):**

The Commission voted 5-4 to define a LUMA as a location having eight new horizontal, vertical, or directional wells or 4,000 barrels of new or existing cumulative hydrocarbon storage capacity, within an urban mitigation area. These locations will trigger an enhanced local government consultation process prior to submitting a Form 2A oil and gas location assessment permit to the COGCC. COGA and the Colorado Petroleum Association (CPA) advocated for a definition of 16 new vertical or directional wells or more than 12 new horizontal wells or 9,600 barrels of cumulative hydrocarbon storage. COGA/CPA also advocated for express language to incentivize the utilization pipeline transportation – which was not expressly included in the rule. The Commission suggested the relatively low storage capacity numbers act as an incentive for pipeline utilization.

- **Process: Notice of Intent to Construct a Large UMA Facility:**

An operator with a location falling under the new LUMA definition must provide this notice to the local government with land use authority over the proposed location 90 days prior to initiating the Form 2A COGCC permitting process. The notice must include the following:

- Description of the proposed oil and gas location.
- Siting rationale proposing to locate the facility within an UMA along with a description of why other sites were rejected.
- Offer to consult with the local government to seek agreement regarding the location of the LUMA.
 - The local government has 30 days to accept the offer to consult.
 - Surface owners will receive same notice and may elect to participate in the consultation process.
 - If agreement is not reached the local government may participate in a mediation (up to 45 days unless both parties agree to establish a longer time).
 - If agreement is reached, or after 90 days from receipt of the notice of intent to construct the operator may submit its Form 2A to the COGCC.

- **COGCC Processing Time:**

Rule 303.c. mandates that the operator wait 90 days, with local government agreement, and 120 days, with no agreement, to seek a hearing from the Commission on any LUMA Form 2A. The COGA/CPA alternative rule requested that the current rule of 75 days for review of the Application for Permit to Drill (APD)/Form 2A hearings to remain from the date of COGCC's "completeness check".

- **Pre-application Notice to Proximate Local Governments:**

The operator proposing a LUMA must provide a 45-day pre-application notice to proximate local governments – those whose jurisdiction are within 1,000 feet of the proposed LUMA location. These local governments are not entitled to the new consultation process; however, they are afforded the opportunity to submit comments to COGCC as a result of receiving the pre-application notice. In adopting the pre-application notice for proximate local governments, the Commission resisted expansion of the consultation process, advanced by the allied local government coalition and citizen groups.

- **Exceptions to the Process:**

COGA/CPA supported the staff proposed exceptions to the LUMA notification/consultation process and advocated for an additional exception to expressly grandfather existing Surface Use Agreements (SUAs). While many parties (including NARO and Colorado Farm Bureau) advocated for grandfathering in SUA's that contemplate a specific location, the Commission opted not to adopt the suggested changes. The LUMA consultation process is not required if any of the following exceptions exist:

- The local government with land use authority has opted out of the entire process. (This was supported by COGA, CPA, Weld County, and Garfield County).
- The operator and the local government have an existing agreement regarding the siting of oil and gas locations.
- The facility is proposed to be located within a site specific development plan that established vested property rights.
- The facility is within an approved Application for Development pursuant to the Mineral Notification Statute.

Best Management Practices:

An operator submitting Form 2A for a LUMA location must include specific best management practices (i.e. flaring and venting, emergency events, fluid-management and leak detection, automated shut-in control measures) and also comply with existing Designated Setback Location mitigation measures under Rule 604.c.(3).

- **Registration: Rule 302.c.:**
New rule 302.c. requires operators to register in each municipal jurisdiction and county in which it has an approved drilling unit or a pending location request by May 1, 2016. Under the adopted provisions, operators must provide prospective well count information to the local government, at the request of the local government designee. The Commission voted to remove municipal Growth Management Areas from the registration requirement. COGA/CPA had requested Growth Management Areas be removed from the final rule as they fall outside the Task Force Recommendation of limiting this requirement to municipalities.

Industry was actively engaged throughout the Governor's Task Force, COGCC traveling stakeholder meetings, COGCC formal stakeholder meetings, and the rulemaking process. The final rules reflect many provisions in which COGA and CPA supported and those of Weld and Garfield Counties.