

**Guidebook  
to the  
Air Quality Control Commission's  
Rule-Making Process**

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## **I. INTRODUCTION**

The Air Quality Control Commission (the “Commission”) is an administrative agency responsible for implementing the policies set forth by the Colorado Legislature in the Colorado Air Quality Control Act. The Commission adopts air quality standards that protect the health and environment of Colorado as well as air quality regulations that ensure Colorado meets National Ambient Air Quality Standards established by the United States Environmental Protection Agency. The Department of Public Health and Environment, Air Pollution Control Division (the “Division”) works as staff to the Commission in researching, drafting, and proposing these standards and regulations. This Guidebook has been prepared to provide members of the public and other interested persons information on the process, known as “rule-making,” by which the Commission adopts these standards and regulations.

The Commission hopes that this Guidebook will help facilitate public involvement and improve the understanding of the rule-making process. For further information regarding any of the topics addressed in the Guidebook, please contact the Commission’s Technical Secretary, Doug Lempke, at (303) 692-3478 or the Commission’s Program Assistant, Jenifer Gurr, at (303) 692-3476 or write to:

Technical Secretary  
Colorado Air Quality Control Commission  
APCD-CC-B1  
4300 Cherry Drive South  
Denver, Colorado 80246-1530

Thank you.

## **II. PROCESS SUMMARY**

As noted in the Introduction, the Commission is the administrative agency responsible for adopting and revising Colorado air quality standards and regulations, or “rules,” through a process known as rule-making. The rule-making process is intended to provide all interested persons with the opportunity to become involved in the adoption of a rule. Thus, the Commission’s rule-making process includes requirements intended to provide all interested persons with notice of an upcoming rule-making hearing, with information regarding the effects of and alternatives to a proposed rule, with the opportunity to propose an alternate rule, and with the opportunity to otherwise participate as a party to the rule-making proceeding. This section provides a brief overview discussing and a chart summarizing these requirements.

### **A. Overview of the Rule-Making Process**

The rule-making requirements can be divided up into four general categories: (1) Requirements relevant to the **request for rule-making hearing**, or the hearing at which a person proposing a rule requests the Commission to schedule a public rule-making hearing. These requirements ensure that the person proposing the rule provides the Commission and other interested persons with information regarding the rule. (2) Requirements relevant to the **prehearing process**. These requirements ensure that all interested persons are given the opportunity to participate as a party to the rule-making. These requirements also attempt to resolve differences between parties prior to the public rule-making hearing. (3) Requirements relevant to the **public rule-making hearing**. These requirements ensure that the public rule-making proceeds in an efficient and orderly manner. (4) Requirements imposed after the public rule-making hearing. After the public rule-making hearing, the Commission may require revisions to the proposed rule.

#### **1. The Request for Rule-Making Hearing**

A rule-making is initiated when a person with a proposed rule, or **petitioner**, contacts the Commission’s Technical Secretary and requests the Technical Secretary schedule a **request for rule-making hearing** before the Commission. The Technical Secretary schedules this hearing for one of the Commission’s monthly meetings, which generally occur on the third Thursday of every month. Typically the Division brings forward new rules and proposed revisions to rules; however, any member of the public--a citizen’s group, an industry representative, or any other concerned or aggrieved person--may propose a revised or new rule for Commission consideration. The Commission encourages members of the public to participate in this process; either as a petitioner submitting a proposed rule or as a party to the rule-making proceeding.

Thirty days prior to the scheduled date of the petitioner’s request for rule-making hearing, the petitioner must file with the Commission a complete **petition for rule-making**. This petition must include a draft of the **proposed rule**, as well as certain other documents: **memorandum of notice; statement regarding federal requirements; range of regulatory alternatives; statement of basis, specific statutory authority, and purpose; and initial impact analysis**. These documents are intended to provide the Commission and other interested persons with detailed information about the purpose and anticipated effects of the proposed rule. The

Technical Secretary prepares and submits to the Commission with the petition for rule-making a **draft notice of rule-making**. (These documents, and the other documents mentioned in this overview, are discussed in more detail in later sections of this Guidebook.)

At the petitioner's request for rule-making hearing, the Commission decides whether to approve the petition for rule-making. If the Commission approves the petition, the petition is then scheduled for a **public rule-making hearing**.

## **2.     The Prehearing Process**

Once the Commission schedules a rule-making hearing, The Commission require that certain procedures be followed in order to allow any interested individual to be involved. No less than sixty days prior to the scheduled date of the public rule-making hearing (or, typically, on the tenth day of the month following the request for rule-making hearing), the Technical Secretary must publish a **notice of rule-making** in the Colorado Register. At that time Technical Secretary also must have copies of the complete petition for rule-making available for public review.

Interested members of the public who wish to become involved in the rule-making process may file with the Commission a **petition for party status**. This petition must be filed as specified in the notice of rule-making, or, if not specified, then no later than forty-five days prior to the rule-making hearing. A person also may obtain party status by filing an **alternative proposal to a proposed rule** by the date specified in the notice of rule-making.

About one week after the deadline to submit applications for party status, the Commission generally will hold a **status conferences** in order to discuss the issues involved in the rule-making and ensure the parties are making efforts to resolve any differences. The Commission may also schedule a **prehearing conference** to help resolve any differences not resolved at the status conference. Three to seven days prior to the prehearing conference, or as otherwise specified in the notice of rule-making, each applicant for party status must file with the Commission a **prehearing statement**. The prehearing statement submitted by the petitioner or by any proponent of an alternative proposal must include a **final economic impact analysis**. The commission may provide the parties the opportunity to submit rebuttal statements to other party's prehearing statements.

Upon request by any person filed with the Commission at least fifteen days prior to a public rule-making hearing, the Commission or the Division is required to prepare a **regulatory analysis** of the proposed rule.

## **3.     The Public Rule-Making Hearing**

After all prehearing procedural requirements have been fulfilled, the Commission holds the public rule-making hearing. For this hearing, the Commission may set forth specific rules governing the testimony of witnesses, presentation of evidence, time limits for questioning, and questions from the general public. The rule-making hearing is held before a quorum of Commissioners at its regular monthly business meeting

## **4.     Requirements Imposed After the Public Rule-Making Hearing**

After the public rule-making hearing, the Commission may require revisions to the proposed rule. The required form for these revisions is discussed below.

## **B. Chronology of Events**

The following Chronology summarizes the events discussed above:

1. Petitioner contacts Technical Secretary to schedule request for rule-making hearing
2. Petition for rule-making due (see table of request for hearing documents)<sup>1</sup>
3. Request for rule-making hearing held before Commission
4. Notice of rule-making published<sup>2</sup>
5. Request for party status due<sup>3</sup>
6. Status Conference
7. Hearing documents due<sup>4</sup> (See table of hearing documents)
8. Alternate proposals due<sup>5</sup>
9. Prehearing statements due<sup>6</sup>
10. Prehearing conference
11. Request for regulatory analysis deadline <sup>7</sup>
12. Regulatory analysis due<sup>8</sup>
13. Public rule-making hearing<sup>9</sup>
14. Revisions based on hearing due to commission office

## **III. REQUESTING THE RULE-MAKING HEARING**

As noted in the Section I, above, in order to request a rule-making hearing a petitioner must submit with a petition for rule-making certain documents intended to provide interested parties

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<sup>1</sup> Due no later than 30 days prior to the request hearing.

<sup>2</sup> Typically on the 10<sup>th</sup> of the month following the request hearing, but in no case less than 60 days prior to final hearing

<sup>3</sup> Due no later than 45 days prior to the final hearing .

<sup>4</sup> Due no later than 30 days prior to the final hearing.

<sup>5</sup> Due no later than 20 days prior to the final hearing.

<sup>6</sup> Due no later than 7 days prior to the prehearing conference.

<sup>7</sup> Due no later than 17 days prior to the final hearing.

<sup>8</sup> Due no later than 5 days prior to the final hearing.

<sup>9</sup> Rules adopted normally become effective 20 days after publication, which occurs on the 10<sup>th</sup> of the month.

with information regarding a proposed rule. Thirty days prior to the public rule-making hearing, the petitioner must submit certain additional documents. This section discusses each of these documents in more detail. This section also provides a chart listing the documents and the date by which each document must be submitted.

A petitioner must submit twenty copies of each required document. Documents due prior to the request for rule-making hearing may be revised and resubmitted prior to the public rule-making hearing for good cause shown. Examples of many of the documents discussed in this section are provided in the appendices.

### **A. Exemptions from Documentation**

Certain of the documents listed below that the petitioner otherwise would be required to submit may not be required if one of the following exemptions apply:

- The proposed new regulatory language simply adopts or incorporates by reference applicable federal requirements.
- The proposed new regulatory language will implement State statutory language that is prescriptive, and allows no significant policy making decisions to be made by the Air Quality Control Commission.
- The proposed new regulatory language will have no regulatory impact on any person, facility, or activity.

The discussion of each document states whether the document is required, optional, or subject to one of the above exemptions.

### **B. Request for Rule-Making and Public Rule-Making Documents**

#### **1. Agenda Item Control Sheet (required)**

This component provides basic information about the request for public rule-making. A copy of the standard format is provided in appendix A. (A copy of this form may also be obtained by contacting the Office of the Commission.) It should be 1 to 2 pages in length and should briefly explain the following:

- Who requests the action
- Nature of the action (e.g., a Request for Public Hearing on a specific rule for a specific Commission meeting)
- The subject of the action (inspection and maintenance program, operating permit program, etc)
- Regulations to which the action applies (Regulation No. 3, Regulation No. 7, etc.)
- Summary of the regulation change including any policy, factual, and legal issues related to the revisions

- Expected applicability of new proposed rule
- Recommended action (i.e., set for public hearing, motion to adopt rule)
- List of included documents, if any (attachments)

## **2. Issue Fact Sheet (required)**

The Issue Fact Sheet should briefly state the problem being remedied and the relevant issues and associated facts surrounding the problem. It should be a maximum of two pages in length, and presented in a bulleted, summary format. The goal of this document is to briefly identify the problem, highlight the main issues, and overview facts relevant to the main issues. This document is required by the Commission.

## **3. Memorandum of Notice (required)**

The proponent of the proposed rule must supply this document. It is required by state statute. The proponent may work in conjunction with the Air Pollution Control Division to prepare this document, but the proponent is responsible for its completion. The Memorandum of Notice must contain all of the information listed below or it may cause a proposed rule-making to be delayed (or vacated) until the required information is assembled. This information should be separated into specific sections so the reader can easily identify each of the specific requirements. Attached in Appendix A is a model Memorandum of Notice. The Memorandum of Notice must include the following items:

- o Explanation of the proposed rule
  - discussion of what the proposed rule contains, i.e.;
    - \* additional regulatory language to clarify,
    - \* typographical corrections
    - \* highlight of the new requirements (or repeal thereof)
- o Disclosure of materials contained within the proposed rule
  - discuss any analysis or technical documentation supporting the rule's premise
  - identification of new regulatory sections (or repeal thereof)
  - materials incorporated by reference
- o Problem Identification/Resolution
  - discussion of the problem/problem statement
  - discussion of how the proposed rule seeks to remedy the problem identified
- o Meeting Plan



- any plans for meetings with the Commission staff/Division on the proposed rule
- should also include any public meetings that may be held
- should extend an opportunity to meet with the proponent and provide contact such that there is some discussion about the proposal

o Process to Develop Proposed Rule

- a discussion of who and how the proposed rule was developed
  - \* any public meetings that were/will be held
  - \* input from other organizations (public, private, government)
  - \* modeled after another states rule, or federal rule

o Differences with Adjacent States/Federal Program

- identify the differences between the proposed rule and the
  - a) applicable federal requirements
  - b) relevant requirements of Utah, New Mexico, & Arizona

o Rule Implementation Plan

- a plan that outlines the implementation milestones and dates to achieve those milestones
- identification of any positive or negative timing effects of the rules implementation
- identification of any time constraints on the regulated community or any State or federal agencies
- results of a delayed implementation

o Initial Economic Impact Analysis

- see Economic Impact Analyses; Initial & Final

o Contact

- a real person and daytime phone number
- someone to contact for additional information on the proposed rule language (if different from above)

o No Action Analysis

- discussion of what will occur if no action is taken

**4. Annotated Proposed Rule (exemptions may apply)**

The proponent must provide a footnoted version of the rule where each footnote describes why the amendment is included and how it differs (if at all) from the federal requirements. If the proposed revisions differ from federal requirements a justification for the differences should be included in the footnote. An example is provide in appendix A. This document is attached to and made part of the Memorandum of Notice where the rule is not an incorporation by reference or otherwise required by federal law.

If the rule or rule revision is an incorporation by reference or is otherwise required by federal law, then this document is not required, however it should be noted that a statement by the proponent must be made to express the application of the exemption.

## **5. Justification for Differences with Federal Requirements (exemptions may apply)**

The proponent must include in the rule-making packet a response to the series of questions set forth below as required by statute in 25-7-110.5(5)(b). This analysis is a required element of the rule-making packet unless the proposed rule or rule revision meets the criteria set forth in Chapter III: Exemptions.

### **o All Applicable Federal Requirements**

- What are the federal requirements?
  - \* description of the requirements
  - \* commentary on those requirements
- Are the federal requirements technology or performance based?
- Is there any flexibility in the federal requirements?

### **o Colorado Environmental/Health Issues Considered in Development**

- Were there any Colorado specific issues that were considered in development of the federal requirements?
  - \* identify any data or information that would indicate Colorado was specifically considered in the development of the requirement

### **o Cost Effective Compliance**

- Will the proposed rule provide a more cost effective solution than the federal requirements?
  - by:
    - \* granting the regulated community the ability to better comply by clarifying confusing/conflicting requirements,
    - \* increasing certainty that this is the correct regulatory control, or

- \* preventing/reducing the need for costly retrofit to meet more stringent requirements later

- o Timing/Implementation

- Is there any justification for changing the time frame for implementation of the federal requirements?

- \* any specific reason that would benefit the State or regulated community

- o Accommodation of Uncertainty & Future Growth

- Does the proposed requirement provide a reasonable margin to address the uncertainty in the control requirements ability to address the proposed problem, and any future growth in the capacity of the source?

- o Equity of Applicability

- Does the proposed requirement establish or maintain equity among the sources to which it applies?

- Does the application of the proposed requirement create an unfair advantage for certain types of sources within the range of applicability?

- o Impacts versus Stringency

- Will other sectors of business or the community face increased costs in some manner if the proposed (more stringent) rule is not enacted and the federal requirement is adopted?

- o Monitoring, Reporting, & Procedural Requirements

- Are the monitoring, reporting, and procedural requirements different in the proposed rule than the federal requirements?

- Why are they different?

- What are the compelling reasons to promote the difference?

- o Technology Available to Meet Requirement

- Is there currently technology available that would comply with the proposed requirements?

- What is that technology?

- How readily available is the technology?

- o Pollution Prevention/Environmental Gain

- Does the proposed requirement promote pollution prevention or otherwise foster a more cost effective environmental benefit?

- \* does proposed requirement contribute to pollution prevention efforts, or
- \* does it address a potential problem and result in a more cost-effective environmental benefit

o Compliance with the Standard

- Does the proposed rule (the alternative to the federal rule) address and ensure compliance with the federally required air quality standard in question?
- Would taking no action at all cause a violation of the specific air quality standard? (including, but not limited to NAAQS)

**6. Range of Regulatory Alternatives (exemptions may apply)**

A discussion regarding the Range of Regulatory Alternatives the proponent has considered is required to be included and should discuss any alternatives that may have been effective, but for the reasons stated within the discussion have not been selected to be included in the proposed rule. The proponent should describe each of the options, how they were considered, and why they were not selected or why no other options were considered. This analysis must include a specific section discussing the consequences that the proponent of the rule or rule revision and/or any affected party might face if there is no action taken to address the problem identified in the Memorandum of Notice. This is termed the "No Action Alternative".

**7. Proposed Rule Language (exemptions may apply)**

The proposed rule language, required to be completed, is necessary for any rule-making action. It should contain, in the standard format of the Commission's regulations, the actual language being proposed for adoption as a regulation or regulatory revision. All revisions must be presented so that the Commission and interested parties can read the revisions in context. For example, capitalized words for new regulation text and strike out to indicate the deletion of existing text. The proponent of a regulatory change must identify any sections being revised precisely. This proposed rule language is the language that is published in the Notice of Public Rule-Making Hearing should the Commission decide to grant such a request. The Commission office requires that the proponent submit a paper copy of the proposed rule language and requests that each proponent submit an electronic copy of the proposed language on a 3.5" diskette in WordPerfect 6.1.

## **8. Background Materials (optional)**

The proponent of the proposed rule-making is required to supply any other concise background information that may assist the interested and affected public in understanding the impacts of the proposed rule. This is information that the proponent is aware of, or is interested in preparing to further the knowledge of interested and affected parties. This would typically consist of summaries of studies, tables of analytical data, maps, conclusions, and/or references.

## **9. Rule Implementation Plan (required)**

The rule implementation plan is required to be completed by the proponent and should discuss how the Air Pollution Control Division will implement the proposed rule if it is adopted by the Commission. Depending on the rules, it may be appropriate for the proponent to host a workshop, distribute a fact sheet discussing how the rules apply and when, or work with other organizations to host a workshop for the interested parties. This plan should outline when various implementation actions will occur in relation to the rule-making hearing and how they will be implemented.

## **10. Detailed Issue Statement (optional)**

The detailed issue statement is similar to the Issue Fact Sheet but more comprehensive. This document may be substituted for the Issue Fact Sheet but, if so, must be submitted prior to the request for public rule-making hearing as outlined in the Hearing Document table. This document should be a detailed explanation of the issues and the relevant associated facts. It should contain, as separate sections, the following information:

Introduction -- explains the action and the general reason for the action

Background -- detailed discussion of how the proponent got to this action and the history of previous related actions (actions in other states, prior legislative actions, etc.)

Summary of Proposed Rule Changes -- summary of rule changes and why those changes are necessary

This document should identify and discuss the following types of issues:

- ☞ Policy issues
- ☞ Technical issues
- ☞ Legal issues
- ☞ Cross-media issues
- ☞ Local agency issues
- ☞ Health issues
- ☞ Other environmental issues

For each issue provide the following:

- ☞ description
- ☞ facts relevant to the issue
- ☞ general statement as to the level of controversy associated with the issue

- ☞ alternatives and options available to the Commission
- ☞ discussion of the discarded ideas considered and why they were discarded
- ☞ recommendation regarding an action for the Commission to take

Prior Public Input -- summary of prior public input opportunities

Conclusions

Recommended Action -- big picture options, summary of issue recommendations

## **12. Proposed Statement of Basis, Specific Statutory Authority and Purpose (required)**

The rule proponent must submit a preliminary version of this document at the request for hearing and must provide a final version of this document before the Commission can adopt a proposed rule. The Statement of Basis, Specific Statutory Authority and Purpose must explain why the Commission would adopt the proposed rule, the statutory citation under which the Commission would adopt the proposed rule, and the purpose the proposed rule will serve if adopted. The proposed statement of basis, specific statutory authority and purpose must include the following information which should be separated into individual sections for clarity:

- ☞ general statement of the basis for the rules
- ☞ a statement of the specific statutory authority, including citations, authorizing the rule-making
- ☞ a description of the purpose of the rules, including any interpretations relevant to resolving issues (e.g., CACI and the Division agree that rather than changing a regulatory provision, the Division interpretation of that provision will satisfy CACI's concerns, such an interpretation should be included in the statement of purpose). This statement should reflect what the Commission would conclude in adopting the rule.
- ☞ a discussion of federal versus state-only conditions included in the rules
- ☞ The Commission is required by statute to make certain findings of fact in each of its rule-making proceedings. Each proposed rule-making that is adopted, must conform to these findings. The findings that the Commission must make are listed below and in the actual language for the readers convenience. Without the findings, the Commission is prohibited from adopting a valid rule or rule revision. Those findings are as follows:
  - o The rule is based on reasonably available, validated, reviewed, and sound scientific methodologies.
  - o The rule shall result in a demonstrable reduction in air pollution (unless the rule is administrative in nature).
  - o The rule is the most cost effective alternative, or provide an analysis detailing why the alternative is unacceptable.
  - o The rule maximizes air quality benefits in the most cost effective manner.

Division staff should consult with the Attorney General's office in preparation of this document.

Interested members of the public may contact the Office of the Commission to further discuss the preparation of this document.

### **13. Economic Impact Analysis: Initial & Final (exemptions may apply)**

The Division staff economist will typically prepare this document for the Division and may assist in the preparation of this document for members of the public proposing regulatory actions.

#### **a. Generally**

An Economic Impact Analysis (EIA) is required to be completed by the proponent of the rule. The requirements provide for an initial and final economic impact analysis to be completed. The initial EIA is intended to be a “first cut” at the economic impacts of the effects of the proposed rule language. The EIA is not a “cost/benefit analysis”, but is rather a focus on direct implementation costs and measured air quality benefits. A final EIA is due prior to the permanent rule-making hearing as identified in the document submission summary table and provides an opportunity to verify and supplement the information initially provided by the proponent of the rule and by others contributing to or reviewing the analysis. The Air Pollution Control Division staff economist can assist in developing the EIA, if requested, with the cooperation of the proponent. The proponent of the new regulatory language should contact the Commission Office if assistance of the Division staff economist is desired.

The necessary elements of the final economic impact analysis (EIA) are required to be completed, but do not differ from the elements of the initial EIA. If there are no changes, the initial EIA may be designated as the final EIA, however, a written affirmative statement from the proponent is required for this action. The final EIA is statutorily due 5 days prior to the pre-hearing conference. If no pre-hearing conference is held, the final analysis is due 10 days prior to the date of the rule-making hearing, however, the Commission office prefers to have these documents submitted according to the document submission summary table. The following discussion will focus on the overall required content of the economic impact analysis instead of a comparison of the initial and final EIA.

As stated, there are no substantive differences between the requirements of the initial and final EIA. The final analysis may serve to clarify questions that come about as a result of the Commission pre-hearing process. The initial analysis may also change, in the final version, to reflect alterations in the proposed rule after the initial proposal. Alternative proposals must be accompanied by an economic impact analysis if they introduce regulatory language that is substantively different from that which is proposed by the proponent. If such alternative proposals are not accompanied by an EIA they can not be considered by the Commission during the rule-making hearing.

This analysis is a required element of the rule-making packet unless the proposed rule or rule revision meets the criteria set forth in Chapter III; Exemptions.

#### **b. The Analysis**

Each of the aspects listed below provide the basis for the initial and final economic impact analyses. The following aspects and associated questions should be considered in the development of the EIA for each proposed rule or alternative proposal, where substantively different from the original proposal.

**(1) Industry/Business**

- who are the affected industry/business parties
- what is the industrial outlook for this sector(s)
- what will be asked of them in terms of rule compliance
- what information must be obtained to compute cumulative industry/business costs
- how will information be requested

**(2) Public**

- will the public be directly/indirectly affected by the proposed rule
- if affected, what cost increases will the public face
- what information must be obtained to compute public costs
- how will this information be obtained
- what information can be made available to promote public understanding

**(3) Technical**

- what information is required to compute emissions reductions resulting from implementation of the proposed rule
- what is the Time line for completion of these impacts

**(4) Administration**

- what is the administrative burden of rule implementation on the regulated community and any State or local agencies
- how will cost information be obtained

**c. Additional Queries.**

Given the nature of the proposed rule, should the standard Economic Impact Analysis (EIA) format be altered to include or exclude any alternative provisions for such analysis as outlined in C.R.S. 25-7-110.5 & 110.8? Once these issues are addressed, a Time line should be established to map progress and completion of the analysis . How will the analysis be executed?

**d. Preparation**

The initial economic impact analysis is required to be prepared by the proponent of the proposed rule or rule revision. The Air Pollution Control Division staff economist can provide assistance to those individuals or organizations outside the Commission staff.

The Division staff economist may review any individual EIAs prepared by proponents outside the Division for content and completeness, however, such review is not required.

**e. Qualifiers**



The initial economic impact analysis is required to be based upon reasonably available information. Reasonable availability is defined by the contacted parties willingness to provide information for the development of the analysis. If after inquiry, the contacted party will not or does not provide the requested information, that information or data cannot be considered to be reasonably available and may be exempted from the analysis. Each proponent must make all efforts to contact parties or organizations that may have information pertinent to the characterization of the economic impacts of the proposal.

In the analysis of the economic impacts, only the direct costs of the proposed rule or rule revision are to be considered. The preparer of this analysis cannot include nonmarket costs or external costs. Nonmarket costs are costs that would be determined through econometric or mathematical modeling to determine prices for items for which no market currently exists. External costs or externalities, as they are often referred to, are costs (or benefits) that one party may experience due to an un-paid-for cost (or benefit) borne by another party. The only benefits that are allowed to be considered are the direct benefits related to reductions in air pollutant emissions that occur from implementation of the proposed rule or rule revision.

**f. Formats**

The economic impact analysis must follow one of the following three formats. It may include components of any one of the three listed below, but must contain at least all the components of one of the formats identified here.

**FORMAT I: COST EFFECTIVENESS ANALYSIS**

Format I may work best for rule analyses where multiple parties are to be affected simultaneously (e.g. agency, industry & public). It may also prove beneficial when applied to situations where effects are localized (not spread throughout an entire economic sector). In the cost effectiveness analysis the preparer must identify the following:

- o Direct costs to industry
  - capital costs, operations & maintenance costs, labor costs, administrative costs
- o Compliance costs to the public
  - additional purchase costs, fees
- o Emission reductions and the costs per unit reduced
  - quantify the emission reductions per pollutant
- o Costs for the Division to implement
  - direct and indirect costs

## FORMAT II: INDUSTRY COSTS ANALYSIS

Format II might be the analysis of choice in circumstances where a single industry is impacted. Format II focuses the analysis on an industrial sector from a variety of important viewpoints (e.g. competition, growth potential, other pending regulation). In the industry cost analysis the preparer must identify the following:

- o Regulatory impacts on the general business climate
- o The characteristics and the current economic conditions of the affected industry
- o Forecast of how the proposal may impact the affected industries growth
- o Direct costs for the affected industry sector to comply with the requirements of the proposed rule or rule revision

## FORMAT III: ECONOMIC IMPACT ANALYSIS

Format III may be applied most successfully in instances of "trickling" effects. In these cases, affected parties are closely linked to supporting economic sectors that are important to the region's/State's overall economy. In this format the preparer must identify the following:

- o All the industry and business sectors that will be affected by the proposal
- o Direct costs to the primary sectors that are affected
- o Economic impacts to the supporting business and industrial sectors - estimate, at least

The final economic impact analysis must be submitted to the Technical Secretary of the Commission and to all parties of record, no later than five working days prior to the pre-hearing conference or ten days prior to the rule-making hearing itself.

## C. Document Chart

The following chart summarizes the documents a petitioner must submit prior to the request for rule-making and public rule-making hearings. Those documents that may not be required due to an exemptions are marked with an asterisk.

DOCUMENT	20 COPIES OF MATERIALS DUE 30 DAYS PRIOR TO THE REQUEST FOR RULE- MAKING HEARING	20 COPIES OF MATERIALS DUE 30 DAYS PRIOR TO THE PUBLIC RULE-MAKING HEARING
Agenda Item Control Sheet	X	X
Issue Fact Sheet	X	
Memorandum of Notice*	X	
Annotated Proposed Rule**	X	
Initial Economic Impact Analysis**	X	
Justification for difference with Federal Requirements**	X	
Range of Regulatory Alternatives Considered and a No Action Alternative Analysis**	X	
Proposed Rule Language*	X	
Background Materials, if any	X	
Rule Implementation Plan*	X	
Detailed Issue Statement		X
Proposed Statement of Basis, Specific Statutory Authority and Purpose*	X	X
Final Economic Impact Analysis**		X
HB 95-1326 Findings*		X

\* Required for any proposed rule-making before the Air Quality Control Commission

\*\* Required but may be exempt from the requirement to complete, please refer to Section III detailed discussion.

## **IV. THE PREHEARING PROCESS**

After the petitioner's petition for rule-making has been approved by the Commission, but prior to the public rule-making hearing, the Commission's rule-making regulations set forth certain procedures intended to involve all interested persons in the rule-making process. These procedures are discussed in more detail below.

### **A. Notice of Rule-Making Hearing**

Official notice of the rule-making hearing is accomplished by publication in the Colorado Register. In addition, notice of the hearing is also mailed to the Commission's mailing list. Any individual that would like to receive a notice of a hearing can join the Commission's mailing list simply by providing the appropriate mailing information.

Hearing notices are prepared by the Technical Secretary, with input from the Attorney General's office, and submitted to the Commission for review and comment prior to publication. The Colorado Administrative Procedures Act requires at least 30 days notice prior to conducting a rule-making hearing. Because of the timing of the Commission meetings and the publication of the Colorado Register the notice period typically results in a three month period between the time of a request for hearing and the actual hearing itself.

Commission rule-making notices typically include the specific rule-making proposal to be considered, to encourage thorough analysis of the issues possible, although the Colorado Administrative Procedures Act provides that a notice is only required to contain "a description of the subjects and issues involved."

### **B. Party Status Application**

The hearing notice for rule-making hearings generally includes a deadline for requesting party status to a rule-making hearing. Persons with party status receive copies of documents submitted from other parties, must meet certain deadlines for the submission of documents, must submit their documents to the other parties, and have the right to cross-examine witnesses. The deadline to apply for party status is included in the Notice of Hearing and is typically two to three weeks following the publication of the notice in the Colorado Register, or, if not specified, then no later than forty-five days prior to the rule-making hearing.

### **C. Status Conference**

A status conference is typically scheduled about one week after the deadline to submit applications for party status. The status conference is intended to provide a meeting at which each of the parties can identify their issues to the other parties and the prehearing officer. The status conference is also intended to begin the parties discussion of the issues toward resolution. This helps to provide the Commissioners with an appropriate amount of time to more thoroughly consider unresolved issues prior to the hearing and to conduct the hearing as efficiently as possible.

Attendance at this conference is required for any individual seeking party status. Members of the public are invited to attend but are not so required. At this conference, the applications for party status will either be granted or denied. The date for the prehearing conference may also be set at this meeting or it may be changed if it was previously established.

## **D. Prehearing Statements**

Prehearing statements are required to be submitted by each party if the Commission determines a prehearing conference (discussed below) is necessary. They are typically due three to seven days prior to the prehearing conference. Each of the parties and the Division must file twenty (20) copies with the Commission office and deliver copies to each other party, the Division, the Division staff person, the Assistant Attorney General representing the Commission and the Assistant Attorney General representing the Division. Prehearing statements must be delivered to the Office of the Commission by the due date or party status may be revoked. The pre-hearing statement must include the following:

- ☞. executive summary in lay persons terms covering the general position and contents of the pre-hearing statement;
- ☞. statement of factual and legal issues and the position being taken on each;
- ☞. list of the issues to be resolved by the Commission;
- ☞. copies of all exhibits that will be introduced at the hearing;
- ☞. list of witnesses with a brief description of their testimony;
- ☞. the amount of time need to present testimony;
- ☞. all written testimony ;
- ☞. text of any alternate proposed rule or revision, including a brief narrative identifying the elements of the alternate that are not specifically required by the federal clean air act; and
- ☞. final economic impact analysis (if necessary).

## **E. Prehearing Conference**

Each party is required to attend the prehearing conference, if scheduled. The prehearing conference is typically scheduled two to three weeks after the status conference. This meeting is typically held because the parties have not come to an agreement on one or more of the issues presented at the status conference. If the parties have reached agreement they should contact the Commission Technical Secretary to determine whether a prehearing conference will be held. At the prehearing conference the parties will identify for the prehearing officer any remaining unresolved issues and the prehearing officer will attempt to facilitate further negotiation among the parties toward settlement of the issues. The prehearing conference is also used to prepare the parties for the hearing; amount of time for and order of presentation. At the prehearing conference , the prehearing officer will also entertain any motions or applications for late party status. Application for late party status should be accompanied with preheating statements (if they have not already been submitted).

At the conclusion of the prehearing conference the Attorney General will draft a prehearing order for the prehearing officers signature that documents the meeting attendance, remaining unresolved issues, and time/order of presentation.

## **F. Rebuttal Statements**

Typically the prehearing officer will provide the parties four to seven days to submit any rebuttal statements to the other party prehearing statements. Rebuttal statements should provide countervailing arguments to the other party prehearing statements and should not necessarily raise new issues unless otherwise provided for by the prehearing officer.

## **G. Regulatory Analysis**

The Commission may require the submission of a regulatory analysis. The regulatory analysis is prepared by the Division staff person assigned to the rule-making. The analysis must include:

- ☞. A description of the classes of persons who will be affected by the proposed rule including both those that will bear the costs and those that will benefit;
- ☞. the probable quantitative and qualitative impact, economic and otherwise;
- ☞. probable costs to the agency and any other agency for implementation and enforcement;
- ☞. comparison of probable costs and benefits of the rule and of inaction;
- ☞. determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the rule;
- ☞. a description of any alternative methods of achieving the purpose of the proposed rule; and
- ☞. a quantification of the data to the extent practicable including both long and short term consequences.

## **V. THE RULE-MAKING HEARING**

### **A. Conduct of the Hearing**

The hearing itself is typically run by the prehearing officer acting as hearing chair. The order of presentation of testimony is typically set forth in the prehearing order and generally provides for the Division, or party proposing the revision, to present their testimony first followed by public comment, then the parties. Parties are allowed to cross examine witnesses during the course of the hearing. The Commission may limit the testimony of the public if a substantial number of public commenters have requested the opportunity to speak. In many cases, time is provided to the parties at the conclusion of all testimony, to provide rebuttal to arguments presented.

### **B. Participation as a Member of the Public**

Members of the public are encouraged to participate in all rule-making hearings before the Commission. Members of the public can provide written comment to the commission or may simply

appear at the hearing and provide public comment. Written comment from members of the public is most effective if it can be reviewed by the commission prior to the hearing, and therefore, the Commission encourages all written comment to be submitted to the Office of the Commission at least 14 day prior to the rule-making hearing. Members of the public wishing to make public comment at a specific hearing are asked to complete a testimony request card at the time of the hearing so the Commission may have a record of the person providing testimony.

## **VI. MATERIALS DUE to the COMMISSION OFFICE FOLLOWING the PUBLIC HEARING**

The Commission may change the proposed regulatory text or statement of basis, specific statutory authority and purpose during the course of the hearing. These changes must be reflected in the final documentation given to the Commission office. The following documents should be revised based on the hearing and submitted to the Commission office within 10 working days following the hearing.

- . Small caps bold/strike out version of the regulation showing all the changes adopted by the commission. In electronic format using WordPerfect version 6.
- . Clean copy of the new regulation. In electronic format using WordPerfect version 6.
- . Final Statement of Basis, Specific Statutory Authority and Purpose. In electronic format using WordPerfect version 6.

### **A. Policy meeting**

The policy meeting is mandatory for the Division staff and the attorney representing the Division. The Division staff and attorney should be prepared to explain and discuss the policy and legal issues surrounding the proposed regulatory change.

### **B. Presentations meeting**

The presentations meeting is mandatory for any Division staff planing to speak before the Air Quality Control Commission. Anyone planning to speak should be ready to walk through the presentation, especially any portions that may be controversial or complicated. The following must be available at the time of the presentations meeting:

1. slides, videos or other visual aids for the hearing; and
2. handouts for the Commission.

## **APPENDIX A: Rule-Making Flowcharts**





## **APPENDIX B : Rule-Making Packet Examples**

### **CONTENTS**

- ☞ Agenda Item Control Sheet
- ☞ Issue Fact Sheet
- ☞ Memorandum of Notice
- ☞ Economic Impact Analyses
- ☞ HB 95-1326 Findings
- ☞ Statements for Rules with Differences from Federal Requirements
- ☞ Statement of Basis, Specific Statutory Authority, & Purpose

## Meeting date

TYPES OF ACTION		
<b><i>NON-HEARING ACTIONS</i></b>	<b><i>REQUEST FOR HEARING</i></b>	<b><i>HEARING</i></b>
<input type="checkbox"/> Administrative	<input type="checkbox"/> Public Rule-Making	<input type="checkbox"/> Public Rule-Making
<input type="checkbox"/> Briefing	<input type="checkbox"/> Informational	<input type="checkbox"/> Informational
<input type="checkbox"/> Policy		
RECOMMENDED ACTION		
<input type="checkbox"/> Adoption	<input type="checkbox"/> Approval	<input type="checkbox"/> Denial
MOTION		
<input type="checkbox"/> Required	<input type="checkbox"/> Attached	<input type="checkbox"/> Not applicable
STATUTORY AUTHORITY		
General _____	Specific _____	
EPA SUBMITTAL		
Is this issue considered a SIP revision?    Yes <input type="checkbox"/> No <input type="checkbox"/>		
Which SIP?	Date of EPA submission deadline:	

ATTACHMENTS:

- 1.
- 2.

1.	Preparer	Date
2.	Supervisor, Regulation, Policy & Small Business Assistance Program	Date
3.	Supervisor, Permit Section	Date
4.	Program Manager, Stationary Sources	Date
5.	Division Director, Air Pollution Control Division	Date

## MEMORANDUM of NOTICE

**Date:**

**To:**

**Subject:**

[intro paragraph]

### **What's in this Package?**

Attachments to this memorandum provide details on the proposal as follows:

- \$ Attachment A The actual language of the proposed rule (amendments).
- \$ Attachment B A statement describing the initial economic impact analysis of the proposed rule.
- \$ Attachment C Statements for Rules with Differences from Federal Requirements.
- \$ Attachment D An explanation of the range of regulatory alternatives, including the no-action alternative, to be considered in adopting the proposed rule.
- \$ Attachment E concise background material like Fact Sheets

### **Explanation of the Proposed Rule**

[explain here]

### **Materials Contained in the Proposed Rule**

[list anything incorporated by reference]

## **Public Meetings Plan**

### *Controversial Rules:*

You are invited to review these materials and present written or oral comment to the Division in accordance with the following:

**Date:** [3rd week after publication of proposed rule in Colorado Register]

**Time:**

**Place:** Room, 4300 Cherry Creek Drive South, Denver, CO 80222

**Contact:**

[contact person] is lead staff person for this public comment meeting. Following the public comment period, lead staff should prepare a Response to Public Comment, which is a summary of public comment received, a discussion of options for addressing the concerns, and a recommendation for each issue. The Air Quality Control Commission (AQCC) will receive a copy of the Response to Public Comment and all written comments submitted.

If you wish to be kept advised of this proceeding and receive a copy of the Response to Public Comment, you should request that your name be placed on the mailing list for this rule-making proposal.

If interested persons require additional meetings with Division staff, such meetings may occur after the public comment meeting and prior to three weeks before the AQCC Public Hearing. To schedule such a meeting, please contact the lead staff who will make arrangements and inform everyone on the mailing list for this rule-making proposal.

### *Non-controversial Rules:*

The Division has scheduled no meetings for this rule-making proposal prior to the Public Hearing before the AQCC. However, the Division will respond to written comments received prior to [3 weeks after publication in the Colorado Register]. If you wish to request a meeting to discuss this rule-making proposal, please contact [lead Division staff] at (303) 692-xxxx.

## **Background on Development of the Rule-Making Proposal**

### What is the problem?

[what are we fixing]

How does this proposed rule help solve the problem?

[?]

How was the rule developed?

[explain]

How does it affect the public, regulated community, other agencies?

[basic economic effects]

How does the rule relate to federal requirements or adjacent state requirements?

[substantive differences with feds and Utah, Arizona, New Mexico, Wyoming, Nebraska, Oklahoma & Kansas, where relevant]

How will the rule be implemented?

[rule implementation plan]

Are there time constraints?

[on regulated community & state agencies as result of implementation or delay in implementation, include specific dates/timeliness]

What if the Air Quality Control Commission does not adopt the proposed rule?

[no action analysis]

Contact for more information:

If you would like more information on this rule-making proposal, or would like to be added to the mailing list, please contact:

[lead Division staff] at (303) 692-xxxx

*\* These items not required for rule-makings where adoption by reference of federal rules.*

## **EXAMPLE STANDARD EIA FORMAT**

The following format represents a culmination of all three recommended EIA format alternatives, as outlined in C.R.S. 25-7-110.5(4). Use of this standard format will ensure continuity between, 1) various Division programs, 2) outside proponents and the Division, and 3) proposals presented to the AQCC.

Due to the specific nature of the proposed rule, there may be occasion to alter this format. The appropriateness of the standard format should be decided in the initial team meeting.

### **HEADER: NAME OF DOCUMENT**

**NAME OF PROPOSED RULE  
LOCATION/JURISDICTION**

**ECONOMIC IMPACT ANALYSIS  
Per C.R.S. 25-7-110.5(4)(a) & (c)(III)**

**DATE:**

### **IDENTIFICATION OF IMPACTED PARTIES**

In this section the parties affected by the proposed rule are to be identified by name, location, type of source, and any relevant adaptations the proposed rule will impose on the entity.

#### **EXAMPLE:**

##### **City of Denver Parks and Recreation Department**

The City of Denver Parks and Rec. Dept. will be required to comply with two provisions of the proposed rule:

- 1) deferral of mowing of park facilities on predicted high ozone days;
- 2) deferring refueling of maintenance vehicles on predicted high ozone days.

##### **Chemical Industrial Sector SIC 2800**

Chemical manufacturers will have to monitor and report their emissions of XYZ chemical on an annual basis.

### **WHAT IS THE INDUSTRIAL OUTLOOK FOR AFFECTED BUSINESSES/INDUSTRIES**



In this section the overall financial/competitive health of the affected business/industrial sector will be disclosed. This information should provide an indication as to any other cost-circumstances facing the business/industry in general. A good starting point for information of this sort is the United States Industrial Outlook and Manufacturing USA published by Wards Business Directories.

EXAMPLE:

**Chemicals and Allied Products**

During 1994 the value of shipments of the U.S. chemical industry should grow more than 2 percent to \$121 billion. Exports will increase 4 percent to \$22.6 billion. The industry is expected to see reductions in the workforce as cutbacks announced in 1993 take effect through attrition, and layoffs. Capital expenditures are expected to increase by \$1 billion, 45% of which are attributed to pollution control expenditures and Clean Air Act program implementation costs.

QUANTIFICATION OF DIRECT COSTS TO THE PRIMARY AFFECTED PARTIES

In this section each cost component will be explained and computed. Remember, only additional direct, market costs may be used in these calculations. It is important that units of measurement, depreciation of capital investment, reliability of cost figures and the time value of money all be considered.

In addition to costs, there may also be applicable savings resulting from implementation of any proposed rule. For example, if a nonhazardous material is to be substituted for a hazardous material, a cost savings due to the elimination of disposal fees may result. Likewise, some mandated replacement materials may cost less than those previously used; also resulting in cost savings. These savings are to be subtracted from the total cost for each affected entity.

Examples of direct cost figures that will typically be used include:

Equipment Costs: capital costs (e.g. equipment, monitor), operation costs, maintenance costs, service fees, fuel costs, labor costs

Administrative Costs: report preparation costs, tracking costs, additional staffing costs

Miscellaneous Applicable Costs: transport costs, additional material acquisition costs, transition costs (change old to new)

QUANTIFICATION OF DIRECT COSTS TO THE PUBLIC

The same guidelines and restrictions apply to public cost determination as those applied to industry/business cost computation. Public costs are often difficult to pinpoint, as often neither the proponent nor the affected party can extrapolate costs from an internal to external scale (business costs that lead to public costs). It is important to identify whether an industry can pass its costs along to the public in the form of increased goods/service prices. Transferable costs should be excluded from the industry side of the cost equation and should be computed at the point of final burden (public). This will eliminate cost inflation due to double counting.

Examples of direct costs to the public may include: fee costs, tax increases, product substitution costs, service costs, additional materials acquisition costs

### ESTIMATE OF IMPACTS ON SUPPORTING BUSINESSES AND INDUSTRIES

Often profits and competitive advantages of supporting sectors are altered by regulations that do not directly affect their operation. For instance, a change in VOC emissions limits may boost profits for an industry that retails catalytic incineration devices which are demonstrated to meet new efficiency requirements. On the other hand, if a company supplies a pollution control device that can no longer meet capture efficiency needs, the company will suffer negative effects of the proposed rule. These effects can be estimated or forecast, however, only direct costs (market values) can be utilized in the analysis. This situation "muddies" the direct/indirect cost water a bit; be sure to justify assumptions and qualify data when quantification is not appropriate.

Examples of costs on supporting sectors may include: increased/decreased demand for products, market shifts resulting from changes in demand or quantity demanded, projected job losses/additions associated with rule implementation

### AIR QUALITY BENEFITS OF PROPOSED MEASURE

Benefits resulting from a new air pollution control strategy are to be presented in terms of quantifiable emissions reductions. These reductions are to be modeled with a margin of error for growth and uncertainty; this may be determined by the technical staff. For ease in comparison, it is best to obtain emissions data in the same denomination as cost data (e.g. cost/day & reductions in X pollutant/day).

## **HB 95-1326 FINDINGS**

Per C.R.S. 25-7-110.8, in issuing a final rule with respect to Stationary Sources<sup>10</sup> the AQCC must make a determination that :

- Any rule promulgated under 25-7-110.5 is based on sound scientific methodologies, that all interested parties are considered and have had ample document review time.
- All non-administrative rules shall result in a demonstratable air pollution reduction.
- Risk reductions/health benefits must justify costs to government, the regulated community, and the public
- The AQCC shall choose the alternative that is most cost effective and provides the regulated community with flexibility, achieves necessary reductions. The AQCC may reject the most cost-effective alternative and provide detail as to why it is unacceptable.
- The regulatory alternative selected will maximize air quality benefits in the most cost-effective manner.

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<sup>10</sup>

The differences between Division/Outside Proponent implementation with regard to Stationary Sources applies here as well.

## **STATEMENTS REQUIRED FOR RULES WITH DIFFERENCES FROM FEDERAL REQUIREMENTS**

The following questions should be clearly answered, so that a decision regarding the stringency of a proposed rule-making action can be supported and defended:

1. *Are there federal requirements that are applicable to this situation? If so, exactly what are they?*

[explain]

2. *Are the applicable federal requirements performance based, technology based, or both, with the most stringent controlling?*

[explain]

3. *Do the applicable federal requirements specifically address the issues that are of concern in Colorado? Was data or information that would reasonably reflect Colorado's concern and situation considered in the federal process that established the federal requirements?*

[explain]

4. *Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying any confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?*

[explain]

5. *Is there a timing issue that might justify changing the time frame for implementation of federal requirements?*

[explain]

6. *Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?*

[explain]

7. *Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources (level the playing field)?*

[explain]

8. *Would others face increased costs if a more stringent rule is not enacted?*

[explain]

9. *Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?*

[explain]

10. *Is demonstrated technology available to comply with the proposed requirement?*

[explain]

11. *Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?*

[explain]

12. *Would an alternative rule, including a no-action alternative, address the required standard?*

[explain]

Statement of Basis, Specific Statutory Authority  
and Purpose  
Revisions to Colorado Air Quality Control Commission  
Regulation No.  
[Date]

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, section 24-4-103, C.R.S. and the Colorado Air Pollution Prevention and Control Act, section 25-7-110.5, C.R.S.

Basis

Specific Statutory Authority

Purpose

Findings

1. The Commission has considered, and has based its decision, on the reasonably available, validated, reviewed and sound scientific methodologies and information made available by interested parties.
2. Evidence in the record supports the conclusion that the operating limitations adopted will result in a demonstrable reduction in air pollution when taken in conjunction with the Federal New Source Performance Standard.
3. The alternative selected maximizes the air quality benefits of the emissions standards applicable.

### APPENDIX C: Typical Work Distribution Between Division and AGO

Document	Division lead	AG lead
AICS	X	
Issue Fact Sheet	X	
Memorandum of Notice	X	
Annotated Proposed Rule / Proposed Rule Language	X	X
Justification of Differences with Federal Requirements	X	
Range of Regulatory Options	X	
Background Materials	X	X
Rule Implementation Plan	X	
Detailed Issue Statement	X	
Statement of Basis, Statutory Authority and Purpose		X
Economic Impact Analysis	Division Economist	
Pre-hearing Statements		X
Regulatory Analysis	X	