



COLORADO

Air Quality Control Commission

Department of Public Health & Environment

Rulemaking Process Guidebook

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I. INTRODUCTION

The Air Quality Control Commission (“Commission” or “AQCC”) is an administrative agency responsible for implementing the policies set forth by the Colorado General Assembly to oversee Colorado’s air quality program pursuant to the Colorado Air Pollution Prevention and Control Act, Section 25-7-101 et seq., C.R.S., as amended (the Act).

The primary role of the Commission is to adopt an air quality management program that promotes clean and healthy air for Colorado’s citizens and visitors, protects Colorado’s scenic and natural resources in a cost-effective and efficient manner, and ensures that Colorado meets National Ambient Air Quality Standards established by the United States Environmental Protection Agency. The Colorado Department of Public Health and Environment Air Pollution Control Division (“Division” or “APCD”), acts as staff for 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 parties information on the process, known as “rulemaking,” by which the Commission adopts these regulations. The Commission offers this Guidebook to help you understand rulemaking before the Commission. We tried to make this Guidebook as informative and accurate as possible. If you wish to participate in the Commission’s rulemaking process, you are responsible for reviewing relevant statutes and rules that apply to the rulemaking process to make sure you understand your rights and responsibilities. More details regarding this process may be found in the Commission’s Rules of Practice and Procedure, 5 CCR 1001-1, the Air Pollution Prevention and Control Act (APPCA), C.R.S. §25-7-101, et seq., and the Colorado Administrative Procedures Act (APA), C.R.S. §24-4-103. The Commission hopes that this Guidebook will help facilitate public involvement and improve the understanding of the rulemaking process.

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

Colorado Air Quality Control Commission
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, EDO-AQCC-A5
Denver, Colorado 80246
Email: cdphe.aqcc-comments@state.co.us
Web: <https://www.colorado.gov/cdphe/aqcc>

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 rulemaking. The rulemaking process provides all interested persons with the opportunity to become involved in the adoption of a rule. Thus, the Commission’s rulemaking process includes requirements to provide notice of an upcoming rulemaking hearing, information regarding the effects of and alternatives to a proposed rule, opportunity to propose an alternate rule, opportunity to participate as a party to the rulemaking proceeding, and opportunity to provide comments on the proposed rulemaking. This section provides a brief overview of these requirements.

A. Overview of the Rulemaking Process

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

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

1. The Request for Rulemaking Hearing

A rulemaking begins when a person with a proposed rule, or **petitioner**, contacts the Commission and requests that the Commission schedule a **request for rulemaking**. The Technical Secretary schedules this hearing for one of the Commission’s monthly meetings, which generally occur on the third Thursday and/or Friday of every month. Typically, the Division proposes rules and rule revisions; however, any member of the public, a citizen’s group, an industry representative, or any other concerned person may propose a revised or new rule for Commission consideration. The Commission may also request the Division prepare a petition for rulemaking.

The Commission encourages members of the public to participate in this process. The Commission maintains a long-term calendar of projected meeting topics on the Commission's website to inform interested individuals of potential rulemakings.

Thirty days prior to the scheduled date of the petitioner's request for rulemaking, the petitioner must file a complete **petition for rulemaking** with the Commission. This petition must include a draft of the **proposed rule**, as well as certain other documents including a **memorandum of notice**; **statement regarding federal requirements**; **range of regulatory alternatives**; **statement of basis, specific statutory authority, and purpose**; and an **initial economic impact analysis**. These documents, discussed in more detail, provide the Commission and other interested persons with detailed information about the proposed rule. At the request for rulemaking, the Commission decides whether to approve the request for rulemaking. If the Commission approves the request, the Commission schedules the petition for a **rulemaking hearing**, typically three months after the request for rulemaking. If the petition for rulemaking is incomplete or provided to the Commission less than thirty days in advance of the request for rulemaking without good cause, the Commission may place the issue on the agenda for the following Commission meeting.

2. The Prehearing Process

Once the Commission schedules a rulemaking hearing, interested individuals are required to follow certain procedures in order to be involved in the rulemaking process. No less than sixty days prior to the scheduled date of the rulemaking hearing, typically the tenth day of the month following the request for rulemaking hearing, the Commission must publish a **notice of rulemaking** in the Colorado Register, the local newspaper, and post the completed petition for rulemaking and notice of rulemaking on the Commission website for public review.

Interested individuals who wish to become involved in the rulemaking process may offer written comment to the Commission and/or the Division after notice is published and before the hearing, offer written and/or oral comment at the hearing, or may participate as a party by filing a **petition for party status** with the Commission by the date specified in the notice of rulemaking, or no later than forty-five days prior to the rulemaking hearing if not specified. A person may also obtain party status by filing an **alternative proposal to a proposed rule** by the date specified in the notice of rulemaking. Party status affords individuals more opportunity to be involved in the process but also involves more responsibilities. Typically one week after the deadline to submit petitions for party status, the Commission will hold a **status conference** to discuss the issues involved in the rulemaking and ensure that the parties are making efforts to resolve any differences. The Commission may also schedule a **prehearing conference** to define the issues, establish the details of the hearing process and help resolve differences not resolved at the status conference. Three to seven days prior to the prehearing conference, or as otherwise specified in the notice of rulemaking, each party must file a **prehearing statement** with the Commission.

The prehearing statement submitted by the petitioner, or by any petitioner 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. Specific to rules proposed by the Division and within five days after publication of the notice of rulemaking, any person may request that the Department of Regulatory Agencies require the Division prepare a **cost-benefit analysis**. If the Department of Regulatory Agencies determines a cost-benefit analysis is required, the Division must complete the cost-benefit analysis at least ten days before the rulemaking hearing. In addition, any person may request at least fifteen days prior to a rulemaking hearing that the Division prepare a **regulatory analysis** of the proposed rule. The Division must complete such regulatory analysis at least five days prior to the rulemaking hearing.

3. The Rulemaking Hearing

After the petitioner and parties fulfill all prehearing procedural requirements, the Commission holds the rulemaking hearing. The Commission often establishes a plan for public comment and party presentations, including order of presentation and time limits. The rulemaking hearing is held before a quorum of Commissioners at its regular monthly business meeting, typically the third Thursday of the month.

4. Requirements Imposed After the Rulemaking Hearing

After the rulemaking hearing, the Commission may require revisions to the proposed rule.

B. Chronology of Events

The following Chronology summarizes the events discussed in the Overview of the rulemaking process:

- 1) Petitioner contacts Commission to schedule a request for rulemaking hearing
- 2) EO5 Survey 1 (60-90 days prior to request for hearing)
- 3) Agenda item review meeting (Monday after Commission meeting)
- 4) Petition for rulemaking due (no later than 30 days prior to the request for hearing)
- 5) Presentation review meeting (Monday the week before the Commission meeting, final slides due to Commission the following Tuesday)
- 6) Request for rulemaking hearing (typically the third Thursday of the month)
- 7) Agenda item review meeting (Monday after Commission meeting)

- 8) Notice of rulemaking published in the Colorado Register (typically the tenth of the month following the request for hearing but no less than 60 days prior to the rulemaking hearing. If the rule is a SIP revision, public notice must also be provided in the area affected at least 30 days prior to the hearing (40 CFR 51.102))
- 9) Request for cost-benefit analysis due (within five days after publication of the notice of rulemaking)
- 10) Request for party status due (no later than 45 days prior to the rulemaking hearing, and typically the 17-20th of the month following the request for hearing)
- 11) Status Conference (typically scheduled three-five days after the request for party status date listed in the notice of rulemaking hearing)
- 12) Hearing documents due (no later than 30 days prior the rulemaking hearing)
- 13) Alternate proposals due (no later than 20 days prior to the rulemaking hearing)
- 14) Prehearing statements, with petitioner's or alternative's final economic impact analysis, due (typically seven days before the prehearing conference date)
- 15) Prehearing conference (typically scheduled 20-30 days prior to the rulemaking hearing)
- 16) Rebuttal statements due, if necessary (typically seven days prior to the rulemaking hearing)
- 17) Request for regulatory analysis due (at least 15 days prior to the hearing)
- 18) Presentation review meeting (Monday the week before the Commission meeting, final slides due to Commission the following Tuesday)
- 19) Cost-benefit analysis due, if necessary (no later than 10 days prior to the rulemaking hearing)
- 20) Regulatory analysis due, if necessary (no later than five days prior to the rulemaking hearing)
- 21) Rulemaking hearing conducted according to the date listed in the notice of rulemaking hearing (typically the third Thursday of the month unless otherwise noticed)
- 22) Revisions based on rulemaking hearing due (same day or one day following the conclusion of the rulemaking hearing)
- 23) Rule adopted reviewed and approved by the Attorney General's Office (within 20 days of adoption)
- 24) Rule published in Colorado Register (typically the 10th of the month following the final hearing)
- 25) Rules become effective (no earlier than 30 days after the Attorney General Opinion and typically 20 calendar days after publication in the Colorado Register)

III. REQUESTING FOR RULEMAKING

If you wish to propose a new rule or a new revision to an existing rule, you must submit a petition for rulemaking. Your petition must provide the Commission and interested persons with information regarding a proposed rule at least 30 days prior to the rulemaking hearing. This section discusses each of the required petition documents in more detail and provides a chart listing the required submission dates. The petitioner must submit the petition for rulemaking electronically to the Commission in word format, as well as the signed Agenda Item Control Sheet in (pdf) format. Petitioners may obtain templates of many of the documents discussed in this section from the Commission Office.

A. Request for Rulemaking and Rulemaking Documents

1. Agenda Item Control Sheet (required)

The Agenda Item Control Sheet ("AICS") provides basic information about the request for rulemaking. The AICS must include:

- a. The nature of the action (e.g., a Request for Public Hearing on a specific rule for a specific Commission meeting);
- b. The recommended action (e.g., set public hearing, motion to adopt);
- c. The specific or general statutory authority to promulgate the rule;
- d. State Implementation Plan(s) ("SIP") that may be affected (e.g., Regional Haze SIP);
- e. Who requests the action;
- f. The subject of the action (e.g., inspection and maintenance program, operating permit program, etc);
- g. The regulation(s) to which the action applies (e.g., Regulation Number 3, Regulation Number 7);
- h. An issue statement;
 - Introduction and background of problem/issue being remedied
 - Summary of the proposed regulatory revisions and why the revisions are necessary
 - Relevant policy, factual, technical, and legal issues related to the revisions
 - Summary of prior public input, if any
 - Conclusions and recommended action
- i. List of included documents, if any (attachments).

2. Memorandum of Notice (required)

State statute requires a Memorandum of Notice ("MON") that contains all of the information listed below. The Commission may delay or vacate the proposed rulemaking until the petitioner assembles the required information. The petitioner may work with the Division to prepare this document, but the petitioner is responsible for its completion. The petitioner should separate the information listed into specific sections so the reader can easily identify each of the specific requirements.

The MON must include:

- a. An explanation of the proposed rule;
 - Discussion of what the proposed rule contains, e.g. additional regulatory language to clarify, typographical corrections, highlight of the new requirements or repeal thereof
- b. Disclosure of materials contained within the proposed rule;
 - Any analysis or technical documentation supporting the rule's premise
 - Identification of new regulatory sections or repeal thereof
 - Materials incorporated by reference
- c. The preliminary meeting plan;
 - Plans for meetings with the Commission staff on the proposed rule
 - Plans for public meetings
- d. Problem identification and potential resolution
 - Discussion of the problem sought to be remedied by the proposed rule
 - Discussion of how the proposed rule solves the problem identified
- e. The process to develop the proposed rule
 - Discussion of why, who, and how the proposed rule was developed, e.g. any public meetings that were or will be held, input from other organizations (public, private, government), whether the proposed rule was modeled after another state or federal rule
- f. An initial economic impact analysis (may be a separate document)
 - See Economic Impact Analyses: Initial & Final
- g. Any substantive differences with federal requirements and adjacent states (Utah, New Mexico, & Arizona, and other states as necessary)
- h. A rule implementation plan, e.g. outline implementation milestones and dates to achieve those milestones, any public meetings/workshops

- i. Any time constraints on the regulated community and state agencies as a result of implementing or delaying implementation of the proposed rule
- j. Contact for additional information
- k. A no action analysis, i.e. discussion of what will occur if no action is taken

3. Range of Regulatory Alternatives (exemptions may apply)

The petitioner must discuss the Range of Regulatory Alternatives that reasonably flow from or relate to the proposal and relevant existing regulation(s). The petitioner should describe the alternative option(s), discuss how the petitioner considered the option(s), and explain why the petitioner did not select or consider option(s). The petitioner may include the range of regulatory alternatives discussion in the MON.

This analysis is not required if the proposal (1) adopts by reference applicable federal rules; (2) implements prescriptive state statutory requirements, where the Commission is allowed no significant policy-making options; or (3) will have no regulatory impact on any person, facility, or activity.

4. Proposed Rule (exemptions may apply)

The petitioner must provide the Commission with the precise language of proposed new rule(s) or rule revision(s) in the standard format of the Commission's regulations. The petitioner may obtain copies of existing regulations in word format from the Commission Office. The petitioner must precisely identify the section(s) of the regulation(s) affected by the proposed rule revision(s). The petitioner must present proposed revisions to existing regulations in a form the Commission can view in context (e.g., track changes/redline). Changes made between the Request for Hearing and Hearing itself should be highlighted. This proposed rule language is the language published in the Notice of Rulemaking Hearing should the Commission grant the request for rulemaking hearing.

For proposed rules that differ from or exceed the federal act or regulations, the petitioner must provide a detailed, footnoted explanation of the differences between the proposed rule and the federal requirements. The petitioner typically includes this analysis in the proposed Statement of Basis and Purpose.

This additional analysis is not required if the proposal (1) adopts by reference applicable federal rules; (2) implements prescriptive state statutory requirements, where the commission is allowed no significant policy-making options; or (3) will have no regulatory impact on any person, facility, or activity.

5. Economic Impact Analysis: Initial & Final (exemptions may apply)

The Economic Impact Analysis (“EIA”) is not a “cost/benefit analysis” but focuses on direct implementation costs and measured air quality benefits. The petitioner must provide an initial EIA with the petition for rulemaking and a final EIA prior to the rulemaking hearing.

The initial EIA is a “first cut” at the economic impacts of the effects of the proposed rule language. The final EIA verifies and supplements the information provided in the initial EIA, reflects alterations in the proposed rule after the initial proposal, or clarifies questions resulting from the prehearing process. A petitioner may request, through the Commission, that the Division assist in developing the EIA.

The necessary elements of the initial and final EIA are the same. If there are no changes in the initial EIA, the petitioner may submit a written affirmative statement designating the initial EIA as the final EIA. The final EIA, or designation of initial EIA as the final EIA, is due five days before the prehearing conference. If the Commission does not hold a prehearing conference, the final EIA is due 10 days before the rulemaking hearing. However, the Commission prefers to have the final EIA submitted with the rulemaking hearing documents 30 days prior to the rulemaking hearing.

The EIA is not required if the proposed rule or rule revision (1) adopts by reference applicable federal rules; (2) implements prescriptive state statutory requirements, where the commission is allowed no significant policy-making options; or (3) will have no regulatory impact on any person, facility, or activity. The Division will, however, submit a No Analysis Justification.

a. Analysis

The petitioner must base the EIA on reasonably available information and consider only the direct costs of the proposed rule or rule revision. The petitioner must contact parties or organizations that may have information pertinent to the characterization of the economic impacts of the proposal. If, after inquiry, the contacted party does not provide the requested information, the petitioner may consider that information or data not reasonably available and may exempt the information from the EIA.

The petitioner is not required to include nonmarket or external costs in the EIA. Nonmarket costs are prices for items for which no market currently exists that are determined through econometric or mathematical modeling. External costs, or externalities, are costs or benefits that one party may experience due to a un-paid-for cost or benefit borne by another party. In addition, the petitioner may consider only the direct benefits related to reductions in air pollutant emissions that occur from implementation of the proposed rule or rule revision.

Each of the aspects listed below provide a basis for the initial and final EIAs. The petitioner should consider the following aspects and associated questions in the development of the EIA for each proposed rule, or alternative proposed rule where substantively different from the original proposal.

Industry/Business

- Who are the industry/business parties affected by the proposed rule
- What is the industrial outlook for this sector(s)
- What will be asked of the industry/business in terms of rule compliance
- What information is necessary to compute cumulative industry/business costs
- How will information be requested

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

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

Administration

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

b. Formats

The petitioner must select one or more of the following three EIA formats. The petitioner may include components of any one of the three listed, but the EIA must contain at least all the components of one of the formats.

FORMAT I: COST EFFECTIVENESS ANALYSIS

Format I may work best for rule analyses where the proposed rule affects multiple parties or results in localized impacts (i.e. not spread throughout an entire economic sector). Under this format, the petitioner must identify:

- Cumulative cost, including total capital, operation, and maintenance costs of the proposal for any affected business entity or industry to comply (e.g. capital costs, operation and maintenance costs, labor costs, administrative costs);

- Direct costs incurred by the general public to comply with the proposal (e.g. additional purchase costs, fees);
- Air pollution reductions that would result from the proposal and the cost per unit reduced; and
- Cost for the Division to implement the proposal (e.g. direct and indirect costs).

FORMAT II: INDUSTRY COSTS ANALYSIS

Format II may work best where the proposed rule affects a single industry because the analysis focuses on an industrial sector from a variety of important viewpoints (e.g. competition, growth potential, other pending regulation). Under this format, the petitioner must identify:

- Characteristics and current economic conditions of the impacted business or industry sector;
- Projected impacts on the growth of the affected industry sectors, with and without implementation of the proposal;
- How the proposal may affect or alter the growth of the affected industry sector; and
- Direct cost of the proposal on the affected industry.

FORMAT III: ECONOMIC IMPACT ANALYSIS

Format III may work best in instances of "trickling" effects, where parties affected by the proposed rule are closely linked to supporting economic sectors that are important to the region's/State's overall economy. Format III may also work where there are no industry studies examining the direct costs of the proposed rule on affected entities and petitioner cannot quantify the air quality benefits of the proposed rule. Under this format, the petitioner must identify:

- The industrial and business sectors that will be impacted by the proposal;
- The direct cost to the primary affected business or industrial sector; and
- Estimate the economic impact of the proposal on the supporting business and industrial sectors associated with the primary affected business or industry.

6. Justification for Differences with Federal Requirements (exemptions may apply)

When a proposed rule exceeds or differs from the requirements of the federal Clean Air Act or associated regulations, the petitioner must provide a detailed, footnoted explanation of the differences between the rule and the federal requirements, as described under Proposed Rule,. This petitioner must discuss the following information listed.

- a. Any federal requirements that is applicable to the proposed rule, with a commentary on those requirements.
- b. Whether the federal requirements are performance based or technology based, whether there is any flexibility in those requirements, and an explanation why there is no flexibility if so.
- c. Whether the federal requirements specifically address the issues of concern to Colorado, and whether data or information show that Colorado's concern and situation was considered in the process establishing the federal requirements.
- d. Whether the proposal will improve the ability of the regulated community to comply in a more cost-effective way by:
 - Clarifying 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.
- e. Whether there is a timing issue which might justify changing the time frame for the implementation of the federal requirements.
- f. Whether the proposal will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth.
- g. Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources.
- h. Whether others would face increased costs if a more stringent rule is not enacted.
- i. Whether the proposal includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the compelling reason is for different requirements.
- j. Whether demonstrated technology is available to comply with the proposal.
 - What is that technology?
 - How readily available is the technology?
- k. Whether the proposal will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain.
- l. Whether an alternative rule, including a no-action alternative, would address and ensure compliance with the required federal standard or cause a violation of the standard.

This analysis is not required if the proposal (1) adopts by reference applicable federal rules; (2) implements prescriptive state statutory requirements, where the commission is allowed no significant policy-making options; or (3) will have no regulatory impact on any person, facility, or activity.

7. Background Materials (optional)

The petitioner may provide any other concise background information that may assist the Commission and interested individuals in understanding the impacts of the proposed rule. This optional information typically consists of summaries of studies, tables of analytical data, maps, conclusions, and/or references.

8. Proposed Statement of Basis, Specific Statutory Authority and Purpose (required)

The Statement of Basis, Specific Statutory Authority and Purpose ("SBAP") explains 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 petitioner must submit a preliminary version of this document with the petition for rulemaking and must provide a final version of this document before the rulemaking hearing. Changes made between the Request for Hearing and Hearing itself should be highlighted. The Division should consult with the Attorney General's Office in preparation of the SBAP. Other petitioners may contact the Commission Office to discuss the preparation of the SBAP. Similar to the proposed rule language, the SBAP must follow the format in the Secretary of State's CCR template.

The proposed SBAP must include the following information, which the petitioner should separate into individual sections for clarity.

- a. A general statement of the basis for the rule or revisions;
- b. A statement of the specific statutory authority, including citations, authorizing the rulemaking;
- c. 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 or revisions;
- d. A discussion of federal versus state-only conditions included in the rules, see Justification for Differences with Federal Requirements; and
- e. The Commission's statutorily required findings of fact listed below for each rulemaking where the Commission has no discretion not to adopt the rule or any alternative rule. This analysis is not required if the rule incorporates by reference applicable federal rules.
 - The Commission considered and based the rule on reasonably available, validated, reviewed, and sound scientific methodologies.

- The rule will result in a demonstrable reduction in air pollution (unless the rule is administrative in nature).
- The rule will reduce risks to human health and environment or provide other benefits that justify the costs to implement and comply with the rule.
- The rule is the most cost effective alternative, provides the regulated community flexibility, and achieves the necessary reduction in air pollution. The Commission may reject the most cost-effective alternative and provide an analysis detailing why the alternative is unacceptable.
- The rule maximizes air quality benefits in the most cost effective manner.

9. Errata

The petitioner may revise and resubmit documents prior to or at the rulemaking hearing for good cause shown.

The petitioner must submit an Errata Sheet to the Commission explaining the revision(s) and the reason and need for such revision. The petitioner must also provide the Commission a copy of the regulation or other revised document(s) with the errata revisions highlighted.

The Commission has the discretion to accept or reject such errata revisions.

B. Additional Petitioner Requirements

1. Local Government Consultation (state agency only)

On January 11, 2011, the Governor signed Executive Order 5 ("EO5"), which directed state agencies to consult with local governments prior to the promulgation of a regulation containing a mandate on local governments. This requirement is now in Colorado Revised Statute Section 24-4-103.

For proposed rules that include a state mandate for local government, agencies must provide to the Director of the Office of State Planning and Budgeting ("OSPB") descriptions of the proposed rule, the nature and extent of consultations with local governments, written communications or comments submitted by the local governments, and the agency's reasoning for the proposed rule. Agencies cannot conduct public rulemakings without a written notice of compliance from OSPB.

The petitioner must prepare an EO5 Survey 1 at the onset of considering potential regulatory revisions determined to contain a mandate on local government. The petitioner sends the Survey 1 to the Commission for mailing to the local governments and other entities. Prior to the final hearing, the petitioner must provide the Commission an EO5 Survey 2 reflecting any changes to the proposed rule for mailing to interested local governments.

2. Rule Review (state agency only)

On January 19, 2012, the Governor signed Executive Order 2 ("EO2"), which directed state agencies to review their rules to assess the continuing need, appropriateness, and cost-effectiveness to determine if the rule should be continued in current form, modified, or repealed. This requirement is now in Colorado Revised Statute Section 24-4-103.3.

The Division must now consider whether the Commission's rules:

- Are necessary;
- Overlap or duplicate other rules;
- Are written in plain language and easy to understand;
- Have achieved the desired intent and whether more or less regulation is necessary;
- Can be amended for more flexibility, to reduce regulatory burdens, or to reduce unnecessary paperwork or steps;
- Are implemented in an efficient and effective manner;
- Were subject to a cost-benefit analysis; and
- Are adequate for the protection of the safety, health, and welfare of Colorado.

The Division must provide public notice of this rule review to allow interested individuals an opportunity to provide input and impacted state agencies an opportunity to collaborate and provide input. Based on this review, the Division will determine whether the existing rule should be continued in current form, amended, or repealed.

3. Additional Process Detail

Agenda item review meeting

Commission staff conducts an agenda item review meeting typically on the Monday following the Commission's last monthly meeting. The purpose of the meeting is for the petitioner to explain and discuss the policy and legal issues surrounding the proposed regulatory change. The Commission Technical Secretary will use this discussion to clarify the items on the Commission's agenda for the next Commission meeting.

Presentation review meeting

The presentation review meeting is mandatory and typically occurs the Monday the week before the Commission meeting. The Assistant Attorney General representing the Division-petitioner may also attend. At the presentation review meeting, the petitioner will provide and discuss draft presentation slides or handouts, especially controversial portions. The Commission Technical Secretary and the petitioner will discuss how to clarify the presentation for the Commission.

C. Document Chart

The following chart summarizes the documents a petitioner must submit.

Document	Materials Due 30 Days Prior to the Request For Rulemaking Hearing	Materials Due 30 Days Prior to The Rulemaking Hearing
Agenda Item Control Sheet	X	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	X
Background Materials (exhibits), if any	X	X
Proposed Statement of Basis, Specific Statutory Authority and Purpose*	X	X
Final Economic Impact Analysis**		X

* Required for any proposed rulemaking before the Air Quality Control Commission

** May be exempt from the requirement to complete

IV. THE PREHEARING PROCESS

After the Commission approves the petitioner's petition for rulemaking, but prior to the rulemaking hearing, interested persons have an opportunity to become involved in the rulemaking process. The Commission's prehearing process is overseen by a hearing officer appointed by the Commission chair. The following procedures for such involvement are discussed in more detail. All members of the public are entitled to notice and the opportunity to submit written comment on any rulemaking, as well as the opportunity to appear and comment at the hearing. Commission procedures also afford interested persons the opportunity to ask to be a party to the rulemaking. Party status affords people greater rights and greater responsibilities concerning their participation in the process.

A. Notice of Rulemaking Hearing

The Commission accomplishes official notice of the rulemaking hearing through publication in the Colorado Register. The Commission also posts the notice of rulemaking hearing on the Commission's website. Any individual that would like to receive a notice of a hearing can join the Commission's mailing list by providing the appropriate mailing information to the Commission. Notice of rulemakings is published at least 60 days prior to commencing a rulemaking 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 rulemaking notices typically include the specific rulemaking proposal to encourage thorough analysis of the issues, although the Colorado Administrative Procedures Act only requires the notice contain "a description of the subjects and issues involved."

B. Party Status Application

The notice for rulemaking hearing includes a deadline for requesting party status to a rulemaking hearing, typically seven to 10 days after the publication of the notice in the Colorado Register or, if not specified, **no later than forty-five days prior to the rulemaking hearing**. The Commission may grant late party status for good cause shown. Persons with party status must meet certain deadlines for the submission of documents as specified in the notice, must submit their documents to the other parties, will receive copies of documents submitted by other parties, may make an oral or written presentation at the hearing, and have the right to make objections and cross-examine witnesses.

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

C. Status Conference

The Commission typically schedules a status conference one week after the deadline to submit applications for party status. Attendees will identify their issues and begin discussions toward issue resolution. Early resolution of issues provides the Commission with more time to thoroughly consider unresolved issues at the hearing and to conduct the hearing as efficiently as possible. Attendance at the status conference is required for any individual seeking party status. Members of the public may also attend. The Hearing Officer will grant or deny applications for party status at the status conference and set the date for the prehearing conference.

D. Prehearing Statements

Each party must submit a prehearing statement, typically three to seven days prior to the prehearing conference. Each party and the Division must file electronic copies with the Commission and email copies to each other party, the Division staff person, the Assistant Attorney General representing the Commission, and the Assistant Attorney General representing the Division. If prehearing statements are not delivered to the Commission by the due date, the Commission may revoke party status. The prehearing statement must include:

- An executive summary, in lay persons terms, discussing the general position and contents of the prehearing statement;
- An explanation of the factual and legal issues arising from the proposal and the position being taken on each;
- A list of the issues to be resolved by the Commission;
- A copy of all exhibits that will be introduced at the hearing;
- A list of witnesses with a brief description of their testimony, including a description of any exhibits the witness will discuss or rely upon;
- The reasonable estimate of the amount of time necessary for presentation;
- All written testimony to be offered into evidence at the hearing;
- The 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, if provided; and
- The final EIA for the proposed rule or any alternative rule.

The prehearing statements must reflect final positions on the factual and legal issues to ensure that parties conduct all necessary discussions before prehearing statements are due. The Commission may reschedule the rulemaking hearing if prehearing statements do not reflect final positions.

E. Prehearing Conference

Each party must attend the prehearing conference, if scheduled. The prehearing conference is typically held because the parties have not come to an agreement on one or more of the issues presented at the status conference and is typically scheduled 20-30 days prior to the rulemaking hearing. If the parties have reached agreement on the legal or factual issues, they should contact the Technical Secretary to determine whether a prehearing conference will be held. At the prehearing conference, the parties will identify for the Hearing Officer any remaining unresolved issues and the Hearing Officer will attempt to facilitate further negotiation among the parties toward resolution of the issues. The Hearing Officer will also prepare the parties for the hearing, determine the amount of time for and order of presentation, and entertain any prehearing motions or applications for late party status. Parties must file any prehearing motions concerning the hearing procedures or other issues with the Commission electronically. Persons submitting an application for late party status should also submit a prehearing statement.

At the conclusion of the prehearing conference, the Assistant Attorney General representing the Commission will draft a prehearing order for the Hearing Officer that reflects any rulings made by the Hearing Officer with respect to the hearing procedures and specifies the time and order of presentations at the hearing.

F. Rebuttal Statements

The Hearing Officer typically provides the parties seven days after the prehearing conference to submit any rebuttal statements to the other party prehearing statements. Rebuttal statements are limited to topics raised in the prehearing statements and cannot raise new issues or arguments.

G. Regulatory Analysis

Upon a written request filed with the Commission at least 15 days prior the hearing, the Commission may require the Division submit a regulatory analysis. The Division must complete such regulatory analysis at least five days prior to the rulemaking hearing. The regulatory analysis must include:

- A description of the classes of persons who will be affected by the proposed rule, including those that will bear the costs and those that will benefit;
- Probable quantitative and qualitative impact of the proposed rule upon affected classes of persons, economic and otherwise;
- Probable costs to the agency and any other agency of the implementation and enforcement of the proposed rule, and any anticipated effect on state revenues;
- Comparison of probable costs and benefits of the proposed rule to inaction;

- Determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed 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.

H. Cost-Benefit Analysis

Upon a request made within five days after publication of the notice of rulemaking, the Department of Regulatory Agencies may require the Division to prepare a cost-benefit analysis. If required, the Division must complete the cost-benefit analysis at least 10 days before the rulemaking hearing. The cost-benefit analysis must include:

- The reason for the proposed rule;
- Anticipated economic benefits of the proposed rule, including economic growth, job creation, and economic competitiveness;
- Anticipated costs of the proposed rule, including the direct costs to the government to administer the proposed rule and the direct or indirect costs to business and other entities required to comply with the proposed rule;
- Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness; and
- At least two alternatives to the proposed rule, including the costs and benefits.

V. THE RULEMAKING HEARING

A. Conduct of the Hearing

The Hearing Officer acts as hearing chair at the rulemaking hearing. The prehearing order generally provides for the Division or party proposing the revision to present their testimony first, followed by public comment, and then the party's presentations. Parties may cross-examine witnesses or make objections during the hearing. In many cases, the Commission provides time at the conclusion of all testimony for parties to provide rebuttal or closing statements.

Once all comment and argument has been heard, the hearing officer will close the hearing and commence deliberations. During this time, Commissioners discuss the information they have received and make decisions on the proposal. The Commission may approve or disapprove the rule or revision, as proposed, or decide to make changes to the proposal as they deem necessary and appropriate, and adopt the proposal as changed. During deliberations and decision-making, no more comment from any party or other members of the public is accepted unless the Commission votes to re-open the hearing to take additional information.

Typically, the Commission's deliberations occur in public. However, the Commission may opt to conduct an Executive Session to ask for advice from the Commission's attorney or to discuss other topics, to the extent permissible under the Colorado Open Meetings Act. Executive Sessions are closed to the public. Once such topics are addressed, the Commission will re-open the public meeting to make any decisions.

B. Participation as a Member of the Public

Members of the public are encouraged to participate in all rulemaking hearings by providing written or oral comments to the Commission. Written comment from members of the public is most effective if the Commission can review the comments prior to the hearing. Therefore, the Commission encourages interested persons submit all written comment to the Commission at least 14 days prior to the rulemaking hearing. Members of the public wishing to provide oral comments should complete a testimony request card at the hearing so the Commission has a record of the person providing testimony.

Members of the public are afforded a limited, predetermined amount of time to comment at the hearing based on the nature of the rulemaking. Parties and members of the public may be afforded more time for good cause shown.

VI. FOLLOWING THE RULEMAKING HEARING

The Commission may change the proposed regulatory text or SBAP during the hearing. The petitioner must revise the following documents based on the hearing, if necessary, and submit the documents to the Commission the same or one day following the hearing.

- Small caps bold/strike out version or in electronic format using "track changes" of the regulation showing all the changes adopted by the Commission.
- Clean copy of the new regulation.
- Final Statement of Basis, Specific Statutory Authority, and Purpose.

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

Rulemaking Checklist

- ☐ Contact Commission Office for baseline version of the regulation being revised
 - ☐ Email request should:
 - ☐ Note the parts of the regulation being revised
 - ☐ State the approximate date for request, if known
- ☐ Complete EO5 survey 1
- ☐ Attend agenda item review meeting on: _____
- ☐ Complete documents for request for hearing
 - ☐ AICS
 - ☐ MON
 - ☐ Range of Regulatory Alternatives, if necessary
 - ☐ Proposed redline rule language
 - ☐ Proposed SBAP
 - ☐ Initial EIA
- ☐ Prepare presentation for request for hearing, if necessary
- ☐ Attend presentation review meeting on: _____
- ☐ Attend Commission meeting on: _____
- ☐ Attend status conference, if scheduled, on: _____
- ☐ Prepare documents for prehearing conference
 - ☐ Prehearing statement
 - ☐ Final EIA
 - ☐ Proposed rule language, if necessary
 - ☐ SBAP, if necessary
 - ☐ Alternative proposal, if necessary
- ☐ Attend prehearing conference, if scheduled, on: _____
- ☐ Attend agenda item review meeting on: _____
- ☐ Complete documents for hearing
 - ☐ AICS
 - ☐ Proposed redline rule language
 - ☐ Proposed SBAP
 - ☐ Final EIA
- ☐ Division proponent - prepare regulatory analysis, if requested
- ☐ Prepare presentation for hearing, if necessary
- ☐ Attend presentation review meeting on: _____
- ☐ Division proponent - prepare cost-benefit analysis, if requested
- ☐ Submit errata documents to Commission, as needed
- ☐ Present at Commission hearing on: _____
- ☐ Make any changes requested by the Commission, if necessary, and submit final documents with changes on: _____
 - ☐ Redline version of the proposed regulation highlighting all changes adopted by the Commission
 - ☐ Clean copy of the adopted regulation
 - ☐ Final SBAP