



COLORADO

Air Quality Control Commission

Department of Public Health & Environment

NOTICE OF RULEMAKING HEARING

Regarding proposed revisions to:

Ozone State Implementation Plan (SIP)

**Regulation Number 3 & Regulation Number 7 & Regulation Number 21 & Common Provisions & Air Quality Standards, Designations, and Emission Budgets
5 CCR 1001-5 & 5 CCR 1001-9 & 5 CCR 1001-25 & 5 CCR 1001-2 & 5 CCR 1001-14**

SUBJECT:

The Air Quality Control Commission will hold a rulemaking hearing to consider revisions addressing HB21-1266 and the Clean Air Act (CAA): Severe and Moderate Ozone Nonattainment requirements. This would include proposed elements to Colorado's State Implementation Plans (SIP) and revisions to associated regulations. There are six segments to this rulemaking hearing which will be addressed by the Commission:

Ozone Nonattainment Area SIP Elements: proposed Severe SIP Element for the Denver Metro and North Front Range (DMNFR) 2008 Ozone Nonattainment Area to include severe SIP elements specific to emission inventories, enhanced monitoring, reasonable further progress, attainment demonstration and weight of evidence, reasonably available control technology (RACT), reasonably available control measures (RACM), motor vehicle inspection and maintenance (I/M), nonattainment new source review (NSR), contingency measures, motor vehicle emissions budgets (MVEB), clean fuel fleet program, vehicle miles travelled offset demonstration, major source fee program, and reformulated gasoline. Proposed Moderate SIP Element for the DMNFR and northern Weld County 2015 Ozone Nonattainment Area to include moderate SIP elements specific to SIP elements specific to emission inventories, enhanced monitoring, rate of progress, attainment demonstration and weight of evidence, reasonably available control technology (RACT), reasonably available control measures (RACM), motor vehicle inspection and maintenance (I/M), nonattainment new source review (NSR), contingency measures, and motor vehicle emissions budgets (MVEB). Proposed update to the marginal emissions inventory for the 2015 Ozone Nonattainment Area to include emissions in northern Weld County.

Regulation Number 3: proposed revisions to include requirements for a major source fee program should Colorado not attain the 2008 NAAQS by the applicable severe attainment date, revisions to supplement the emission statement requirement of Section 182(a)(3)(B) of the CAA, revisions to correspond to EPA's correction amendments in 40 CFR Part 51, revisions to correspond to public notice in 40 CFR Part 70, and other revisions aligning with current practice and for clean-up. The proposed revisions also include revisions requested for hearing in May to update Part A to reflect the current APEN, emission, and permit processing fees as provided in CRS §§ 24-7-114.1 and 24-7-114.7, but not to include fees on greenhouse gas (GHG) emissions; to include 1-bromopropane (1-BP) on the list of reportable hazardous air pollutants (HAP) to reflect EPA's addition of 1-BP to the federal list of HAPs; and include GHGs on specific air pollutant emission notices (APEN) as directed in CRS § 25-7-114.1 by HB 21-1266.

Regulation Number 7: proposed revisions to include provisions that require the implementation of RACT for major sources of VOC or NO_x in the DMNFR and/or northern Weld County; establish VOC content limits for certain automotive materials; establish VOC content limits for certain automotive coatings should Colorado not attain the 2015 NAAQS by the applicable moderate attainment date; include specific oil and gas requirements for certain 1,000 hp engines, new facility pneumatic controllers, and hydrocarbon liquids loadout in the SIP as SIP-strengthening measures; clarify the applicability of Regulation Number 7 to newly classified ozone nonattainment areas; update the ozone nonattainment area maps and descriptions to reflect the designation of northern Weld County to nonattainment under the 2015 NAAQS; and revise the gasoline tank truck testing requirements.

Regulation Number 21: proposed revisions to include new and revised VOC content limits for consumer products should Colorado not attain the 2008 NAAQS by the applicable severe attainment date.

Common Provisions: proposed revisions to update definitions and citations, make the annual adjustment to penalty fees as directed by HB 20-1143, and to further address the affirmative defense provisions identified in EPA's start-up, shutdown, and malfunction (SSM) SIP Call.

Air Quality Standards, Designations and Emission Budgets: proposed revisions to satisfy the transportation conformity requirements of Section 176(c) of the CAA and include motor vehicle emission budgets (MVEB) for use in both the Severe and Moderate SIPs and proposed revisions to update the ozone attainment area maps and descriptions to reflect the designation of northern Weld County to nonattainment under the 2015 NAAQS.

All required documents for this rulemaking can be found on the Commission website at: <https://cdphe.colorado.gov/aqcc>

PUBLIC COMMENT SESSION

DATE: December 13, 2022

TIME: 4:30 p.m. to 7:30 p.m.

PLACE: The session will be held online only; there will be no in-person participation. Details related to participation and registration can be found at:

<https://cdphe.colorado.gov/aqcc>

NOTE: The public comment session may end early if all commenters that are registered and in attendance before 6:30 have had an opportunity to speak prior to 7:30.

PARTY TESTIMONY & DELIBERATIONS

DATE: December 14-16, 2022

TIME: To begin after the public comment session has ended.

PLACE: The hearing will be held online only; there will be no in-person participation. Details related to participation and registration can be found at:

<https://cdphe.colorado.gov/aqcc>

IMPORTANT: As Colorado begins to re-open from COVID-19, the Commission may reestablish conducting meetings at the Colorado Department of Public Health and Environment in its entirety or structured as a hybrid meeting. The hearing may be continued at such places and time as the Commission may announce. Any such changes will be noticed on the Commission's website at: <https://cdphe.colorado.gov/aqcc>

PUBLIC COMMENT:

The Commission encourages input from the public, either orally during the public comment session or in writing prior to the hearing. However, oral public comment will generally not be permitted by persons who offer comment on behalf of an entity that is a party. Those persons may, however, submit written public comment. Instructions for registering to provide oral public comment will be posted in the agenda on the Commission’s website at <https://cdphe.colorado.gov/aqcc> on December 2, 2022.

Written comments should be submitted no later than **November 29, 2022** by emailing cdphe.aqcc-comments@state.co.us or mailing to:

Colorado Air Quality Control Commission
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, EDO-AQCC-A5
Denver, Colorado 80246

IMPORTANT DATES AND DEADLINES:

PROCESS DESCRIPTION	DUE DATE & TIME	NOTES
Request for Party Status	October 13, 2022 by 5:00 p.m.	Additional information below
Status Conference	October 17, 2022 at 8:30 a.m.	Virtual Meeting or as noticed on the Commission website at: https://cdphe.colorado.gov/aqcc
Alternate Proposal	October 31, 2022 by 5:00 p.m.	Additional information below
Prehearing Statement	October 31, 2022 by 5:00 p.m.	Additional information below
Prehearing Conference	November 7, 2022 at 8:30 a.m.	Virtual Meeting or as noticed on the Commission website at: https://cdphe.colorado.gov/aqcc
Rebuttal Statement	November 21, 2022 by 5:00 p.m.	Additional information below
Written Public Comments	November 29, 2022 by 5:00 p.m.	Additional information above

Submittals for this hearing should be emailed to cdphe.aqcc-comments@state.co.us unless an exception is granted pursuant to Subsection III.1.3. of the Commissions Procedural Rules.

REQUEST FOR PARTY STATUS:

A request for party status must:

- 1) identify the applicant (this could be a company and/or contact name);
- 2) provide the name, address, telephone and email address of the applicant’s representative or counsel; and
- 3) briefly summarize what, if any, policy, factual, and legal issues the applicant has with the proposal(s) as of the time of filing the application.

In addition, requests for party status should indicate whether the applicant intends to file an alternate proposal and, if so, briefly describe the scope and nature of the alternate proposal.

The request for party status must be electronically mailed to:

- Air Quality Control Commission staff: theresa.martin@state.co.us
- Air Quality Control Commission attorney: tom.roan@coag.gov
- Air Pollution Control Division staff: leah.martland@state.co.us
- Air Pollution Control Division attorney: laura.mehew@coag.gov
- Air Pollution Control Division attorney: sarah.rowlands@coag.gov

Requests received beyond the stated deadline shall only be considered upon a written motion for good cause shown. The Commission reserves the right to deny party status to anyone that does not comply with the Commission's Procedural Rules.

STATUS CONFERENCE:

Attendance at the status conference is mandatory for anyone who has requested party status, though each party need only have one representative present. The status conference is intended to ascertain and discuss the issues involved, and to ensure that parties are making all necessary efforts to discuss and resolve such issues prior to the submission of prehearing statements. Parties will be confirmed and a party list will be generated and distributed. The status conference will be held virtually via video conference. A registration link will be provided by the Commission's office prior to the status conference. Note that if the Hearing Officer deems the status conference unnecessary, the status conference may be cancelled.

ALTERNATE PROPOSAL:

Alternate proposals will be considered by the Commission "only if the subject matter of the alternative proposal is consistent with and fits within the scope of the notice." 5 CCR 1001-1, Section (V)(E)(4)(b). The submittal of an alternate proposal must be accompanied by a separate electronic copy of the alternate proposed rule and statement of basis and purpose language and all other associated documents as required by the Commission's Procedural Rules, including an economic impact analysis. Alternate proposals and associated exhibits must be emailed to all persons listed on the party status list or otherwise provided through an approved method of electronic transmission.

PREHEARING STATEMENTS:

Each party must submit a prehearing statement. Exhibits to a prehearing statement must be submitted in a separate electronic transmission. Prehearing statements and associated exhibits must be emailed to all persons listed on the party status list or otherwise provided through an approved method of electronic transmission. Prehearing statements must contain all the necessary elements described in subsection V.E.6.c of the Commission's Procedural Rules (5 CCR 1001-1).

PREHEARING CONFERENCE:

Attendance at the prehearing conference is mandatory for all parties to this hearing, though each party need only have one representative present. The prehearing conference will be held virtually, and registration information will be provided by the Commission's office prior to the prehearing conference.

REBUTTAL STATEMENTS:

Rebuttal statements may be submitted by the Division and any party to the hearing to respond to issues and arguments identified in prehearing statements. Rebuttal statements may not raise any issues, or be accompanied by alternate proposals, that could have been raised in the party's prehearing statement. Rebuttal statements and associated exhibits must be emailed to all persons listed on the party status list or otherwise provided through an approved method of electronic transmission. The filing of rebuttal statements is optional.

DELIBERATION AND FINAL ACTION:

The Commission intends to deliberate and take final action on the proposed changes to these Regulations at the conclusion of the testimony.

STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:

Regulation Number 3:

The Colorado Air Pollution Prevention and Control Act, § 25-7-106, C.R.S. provides the Commission the maximum flexibility in establishing an air quality control program and authority to promulgate regulations as necessary or desirable to carry out that program. § 25-7-105(1) directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and are necessary for the proper implementation and administration of Article 7, including a comprehensive state implementation plan which will prevent significant deterioration of air quality. § 25-7-114.1 authorizes the air pollutant emission notice program. § 25-7-114.2 authorizes the construction permitting program. § 25-7-105(12) authorizes the Commission to promulgate regulations necessary to implement the provisions of the emission notice, construction permit, and Title V programs. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information.

Regulation Number 7:

The State Air Act, specifically § 25-7-105(1), directs the Commission to promulgate such rules and regulations as are consistent with the legislative declaration set forth in § 25-7-102 and that are necessary for the proper implementation and administration of Article 7. The Act broadly defines air pollutant to include essentially any gas emitted into the atmosphere (and, as such, includes VOC, NO_x, methane and other hydrocarbons) and provides the Commission broad authority to regulate air pollutants.

§ 105(1)(a)(I) directs the Commission to adopt a state implementation plan (SIP) to attain the NAAQS. § 25-7-106 provides the Commission maximum flexibility in developing an effective air quality program and promulgating such combination of regulations as may be necessary or desirable to carry out that program. § 25-7-106 also authorizes the Commission to promulgate emission control regulations applicable to the entire state, specified areas or zones, or a specified class of pollution. § 25-7-106(6) further authorizes the Commission to require owners and operators of any air pollution source to monitor, record, and report information. §§ 25-7-109(1)(a) and (2) of the Act authorize the Commission to promulgate regulations requiring effective and practical air pollution controls for significant sources and categories of sources and emission control regulations pertaining to nitrogen oxides and hydrocarbons.

Regulation Number 21:

The Colorado Air Pollution Prevention and Control Act, §§ 25-7-105(1)(a), 25-7-201 through 25-7-206, 25-7-210, 25-7-301, and 25-7-302, C.R.S., authorize the Commission to promulgate a comprehensive State Implementation Plan (SIP) to assure attainment and maintenance of national ambient air quality standards in conformance with the Federal and Colorado Acts. Sections 105(1)(b) and 109 authorize the Commission to establish emission control regulations, including pertaining to hydrocarbons. § 106(1) authorizes the Commission to establish emission control regulations applicable to the entire state or only within specified areas of the state. § 106(6) authorizes the Commission to require owners or operators of any air pollution source to establish and maintain reports and record, monitor, and sample emissions. § 109(2) authorizes the Commission to adopt emission control regulations to reduce emissions of various pollutants, including chemical substances.

Common Provisions:

The statutory authority for these revisions is set forth in the Colorado Air Pollution Prevention and Control Act, C.R.S. § 25-7-101, et. seq. Specifically, § 25-7-105(1)(a) authorizes the Commission to adopt rules necessary to implement the Clean Air Act, and to adopt and revise comprehensive State Implementation Plans to assure attainment and maintenance of National Ambient Air Quality Standards. § 25-7-109(5) requires the Commission to promulgate rules setting conditions and time limitations for periods of startup, shutdown and malfunction (SSM) or other conditions which justify temporary relief from controls. § 25-7-109 authorizes the Commission to adopt rules that are consistent with state policy regarding air pollution and with federal recommendations and requirements. § 25-7-106 grants the Commission maximum flexibility in developing an effective air quality control program. § 25-7-115 addresses state enforcement of violations that occur during SSM events. § 25-7-122 requires the Commission to annually adjust the maximum civil penalty amount.

Air Quality Standards, Designations and Emission Budgets:

The authority to establish emissions budgets and to establish criteria for transportation conformity determinations is included in the general authority to adopt a State Implementation Plan (SIP) set out in § 25-7-105(1), C.R.S.

The rulemaking hearing will be conducted in accordance with §§ 24-4-103 and 25-7-110, 25-7-110.5 and 25-7-110.8 C.R.S., as applicable and amended, the Commission's Procedural Rules, all other applicable rules and regulations, and as otherwise stated in this notice. This list of statutory authority is not intended as an exhaustive list of the Commission's statutory authority to act in this matter.

Dated this 15th day of September 2022 at Denver, Colorado

Colorado Air Quality Control Commission



Jeremy Neustifter, Administrator