

**BEFORE THE AIR QUALITY CONTROL COMMISSION
STATE OF COLORADO**

IN THE MATTER OF PROPOSED REVISIONS TO REGULATION NUMBER 30 (5 CCR
1001-34)

PREHEARING STATEMENT OF THE COLORADO CHAMBER OF COMMERCE

The Colorado Chamber of Commerce submits this Prehearing Statement in this proceeding to adopt revisions to the Colorado Air Quality Control Commission’s (“Commission”) Regulation 30 as provided in the Notice of Rulemaking Hearing dated October 16, 2024. The rulemaking will be conducted in accordance with 5 CCR 1001-34, §§ 24-4-103 and 25-7-110, 25-110.5 and 25-7-110.8 C.R.S., and the Hearing Officer’s Order granting an extension of time for prehearing statements dated November 21, 2024.

EXECUTIVE SUMMARY

The Colorado Chamber of Commerce (the “Chamber”) is the only state-wide chamber of commerce in Colorado and as such it represents hundreds of businesses of all sizes and sectors across the state, as well as trade associations, economic development organizations, and over 75 local chambers of commerce. Included among the Chamber’s membership are major operators in Colorado’s electricity generation sector, oil and gas exploration, production, and refining sectors, as well as numerous manufacturers and businesses in other key industry sectors. The Chamber works to improve the business climate in Colorado for all sizes of business from a statewide, multi-disciplinary perspective. The Chamber plays a vital role as a unified voice for business in Colorado. What the Chamber accomplishes is good for all businesses and good for the State’s economy.

Section I of this Prehearing Statement details the Chamber’s legal, policy, and factual issues with the Proposed Rules. The Chamber is not submitting redline language at this time; however, reserves the right to do so in future filings.

Chamber’s Request for Time

The Chamber anticipates it will need **20 minutes** for testimony at the hearing. The Chamber may request more time if additional testimony is required in rebuttal to other prehearing statements or alternate proposals.

CHAMBER PHS
PROPOSED REVISIONS TO REGULATION 30 – PRIORITY AIR TOXICS

I. LEGAL, POLICY, AND FACTUAL ISSUES ARISING FROM THE PROPOSED RULES

The Chamber appreciates the Division’s efforts in the stakeholder outreach, preparation of technical information, and ultimately choosing and listing up to five priority toxic air contaminants (“TACs”) for this rulemaking. House Bill 22-1244 put an extremely difficult challenge in front of the Air Pollution Control Division (“Division”) and this Commission with very short time frames for implementation and a challenging approach to regulating air toxics. The Division has already met the first milestone in the Statute by establishing a statewide monitoring network and much data will be collected in the coming years to inform this regulatory action. The selection of up to five priority TACs by April 30, 2025 (C.R.S. § 25-7-109.5(6)(a)(I)) is a herculean task. This will be followed up by the other mandates of HB 22-1244 which include the following;

- C.R.S. § 25-7-109.5(4)(c)(III) – Considering the adoption of TAC reporting rules,
- C.R.S. § 25-7-109.5(8)(a) - Preparing a needs assessment for a potential Air Permitting program for TAC sources no later than December 31, 2025,
- C.R.S. § 25-7-109.5(6)(c) Proposing health-based standards for TACs no later than April 30, 2026, and
- C.R.S. § 25-7-109.5(7)(a) Establishing requirements for emission control regulations to reduce TACs, by April 30, 2026.

The Chamber understands that the above will require at least two additional rulemakings in the coming year(s) and that the Division is doing its best to accommodate this legislative mandate, while acknowledging that the approach outlined in Statute is a bit “chicken and egg” by regulatory standards. The selection of up to five priority TACs without an understanding of how they will ultimately be permitted, controlled, or even annually reported makes difficult work for the establishment of Regulation 30. As a result, it is difficult for Chamber members to comment on the five priority TACs without understanding how they will be regulated and what the associated impacts and costs to the regulated community will ultimately be.

As such, the Chamber has the following concerns with this rulemaking:

- A. The Division did not prepare or provide an adequate Economic Impact Analysis as required by law;
- B. Provisions to account for control technologies are not clearly delineated by the Divisions in the choices of the priority TACs;
- C. The use of short-duration monitoring data to assess chronic health effects and the use of overestimated emissions reporting should be further refined in future regulatory proceedings as more data becomes available;
- D. The presence of contaminants and population do not translate directly to exposure and risk; and
- E. Any approach to air toxics should be accompanied by a reasoned and thoughtful public information and education campaign.

Based on these concerns, the Chamber suggests that the Commission revisit the choice of these five TACs as appropriate and as more data and information become available. Further, detailed

CHAMBER PHS
PROPOSED REVISIONS TO REGULATION 30 – PRIORITY AIR TOXICS

assessments of economic impacts should be evaluated in future rulemakings to ensure that adequate party representation is available and sufficient estimates of cost impacts to emission sources are adequately outlined for the business community.

A. The Division did not Prepare an Adequate Economic Impact Analysis

The Colorado Air Act requires the proponent of any regulation to prepare an Economic Impact Analysis (EIA), unless it has “no regulatory impact on any person, facility, or activity” C.R.S. § 25-7-110.5(2), and the Division has stated that the proposed revisions are “administrative in nature and have no regulatory impact on any person, facility or activity”; therefore, they did not prepare a sufficient EIA. While the Chamber acknowledges that there may not be a direct impact for this rulemaking, clearly this rulemaking proposal lays the foundation for future regulations regarding permitting, TAC emission controls and health-based standards which will have significant costs for businesses and public entities who emit the TACs ultimately selected. An EIA should identify the direct costs to impacted sources, and while future regulations may have an EIA that does so, we find conflict in the lack of any EIA at all in this initial rulemaking. Additional detail and information on how the proposed TACs will be regulated should be established, or at least foreshadowed, at this time to ensure adequate party representation and assessment of impacts, or potential impacts, of the selection and ultimate regulation of these TACs.

B. Provision to Account for Control Technologies Should be Clearly Delineated by the Division in their Choice of Priority TACs

To add onto the Chamber’s request for an EIA, the Chamber also seeks to better understand how the Division used criteria around the availability and effectiveness of control technologies in their decision-making process for priority TAC selection. Specifically, the Division must consider the ability of emission controls to reduce or eliminate the emissions of a priority toxic air contaminant, including non-emitting alternative processes and control technologies C.R.S. § 25-7-109.5(7)(b)(IV). The Division clearly states that their selection methodology considers the ability for a TAC to be controlled but provides little to no data about how these criteria were used in their decision-making process, to whom it would be applicable, or how these controls will be applied in theory. Or even work on the processes for which they are identified. The application of emission control technologies also speaks to the above issue identified in (A) regarding the need for economic analysis as well. Without this information, neither the Chamber nor its members can adequately comment on the impact, effectiveness, or applicability of the establishment and regulation of these proposed TACs. The Division should provide an explanation and additional information into how the controllability of the five proposed TACs was considered in their selection and how they may be used in future regulatory proceedings.

C. Use of Short Duration Monitoring Data to Assess Chronic Health Effects and the Use of Overestimated Emission Reporting Should be Further Refined in Future Regulatory Proceedings as More Data Becomes Available

CHAMBER PHS
PROPOSED REVISIONS TO REGULATION 30 – PRIORITY AIR TOXICS

The Division identified how each priority TAC was chosen and what reported data, monitoring data, or modeling went into their selection; however, the Chamber outlines just a few concerns of many here;

- Some of the data selected was short-duration monitoring data that was used to apply to longer periods and then used to develop into an exposure scenario (Benzene). Further, the use worst-case emissions scenarios to apply to long-term chronic exposure, when there is clear evidence that exposure to these concentrations is *not long term* and, in fact, arises primarily from mobile, temporary activities.
- For other TACs, the Division has acknowledged over reporting of the TAC (Acrolein) and adjusted for risk from modeled approaches, but presumed linear risk relationship. The presumption that a 50% reduction in reported emissions translating directly to a 50% reduction in risk is an oversimplification.
- For some TACs the Division performed actual risk modeling assessments and applied them to census block tracts and populations. The Chamber recognizes the value of modeling pollutant exposures but has additional questions regarding the modeling analysis. Additional modeling should be performed to refine the risk analysis and inform this regulatory regime and the TAC list identified here should be revisited as appropriate.

It is beyond the scope of the Chamber's technical abilities to comment on the full adequacy of this approach and much input from the Scientific and Toxicological community is needed to adequately assess the work of the Division's Air Toxics Unit. The Chamber appreciates the Division's choice to use both monitoring and modeling to inform its priority TAC recommendations. What is clear to the Chamber, however, is that much more data and information should be collected and many expert opinions assessed before a presumption of community risk can reasonably be applied or implied from the work done to date. We ask that as future information is provided, received, and evaluated by the Division that these priority TACs be reconsidered as this list or the regulatory approaches to these priority TACs may substantively change.

The Chamber also wants to highlight that Colorado has put a tremendous amount of work into its air quality management program and many emission controls may already exist for TAC emission sources across the State. This should be made clear in the establishment of this rule. The Division makes statements to this effect in their proposal, but the Chamber outlines in Section E below the need for public outreach and appropriate education on how short-duration, geographically disparate emissions translate into risk. It is imperative that the current status of emission controls be adequately communicated to the public when risk statements are made.

D. The Presence of Contaminants and Population do not Translate to Risk

As stated above, the presence of, or potential for, TACs in proximity to population, does not translate immediately directly to risk. The Chamber is not prepared at this time to comment on the appropriateness of the Division's use of hazard quotients, or the work done to model some areas for the chosen TACs, but reserves the right to do so in rebuttal. Further, it appears that the Division did a meaningful assessment with the information available to it; however, this foundational work is essential and should continue to be refined as it will be the foundation of this and future regulatory actions for TACs.

CHAMBER PHS
PROPOSED REVISIONS TO REGULATION 30 – PRIORITY AIR TOXICS

While the potential for TAC emissions and population presence puts people in the vicinity of *potential exposure*, duration and other critical determinants of public health must be considered before a presumption of risk or causation should be indulged (*emphasis added*). As stated above, it is outside of the technical acumen of the Chamber to comment at this juncture on the Division’s approach to its risk analysis; however, additional work in the future is clearly warranted and important in future assessments of Colorado’s choice of, and ultimate regulation of, TACs.

E. The Division Should Develop and Implement a Thoughtful Public Information Campaign for its Chosen Priority TACs

Many statements exist in the technical documentation about risk based on hazard quotients, or geographic and TAC specific monitoring. Comparison of modeled data to monitored data is also presented and there is much reliance generally on the EPA 2019 (updated 2020) AirToxScreen modeling results; however, little discussion was provided on the limitations of this model. Safeguards and conservatism are built into all air quality models and these limitations should be identified in the technical support information.

Social responsibility goes hand-in-hand in communicating risk and exposure potential to the public and communities throughout Colorado. Presenting scientific data without context or with incomplete context should be avoided and it will be imperative to have a thoughtful public information campaign to accompany any air toxics assessments and statements made in this rulemaking. Public awareness and education will be the cornerstone to illness prevention and community engagement that has been at the forefront of Colorado Environmental Justice conversations. Much work has been done at the local government level to create thoughtful public awareness and education campaigns around TACs. These campaigns should be used first to start a conversation, lead to a robust understanding of causation, acute and chronic (long-term) exposure and ultimately prevention. This is an opportunity to build bridges between emission sources and communities and it should be thoughtfully considered, adequately and effectively communicated.

When conducting public outreach, the Division and CDPHE should:

- Explain that the Division’s rules implementing HB 21-1244 focus on chronic risks, and explain the difference between chronic and acute risks;
- Explain the Health Guideline Value averaging periods and the fact that short spikes in ambient concentrations do not correlate to chronic risks;
- Explain Hazard Quotients;
- Explain the conservative nature of reference concentrations; and
- Explain that individual exposures may differ and that ambient concentrations alone do not quantify exposures.

II. ISSUES TO BE RESOLVED BY THE COMMISSION

1. Should the Division prepare an EIA and foreshadow future regulatory actions for adequate engagement in this rulemaking.

CHAMBER PHS
PROPOSED REVISIONS TO REGULATION 30 – PRIORITY AIR TOXICS

2. Should the Division provide a discussion of how they used control strategy approaches in their selection of the priority TACS.
3. Should additional technical analysis be presented to discuss the cautions to be aware of in using short duration monitoring data to assess chronic health effects. Further, should overestimated emissions data be evaluated more specifically to its correlation to risk.
4. Should the Division be directed to provide a broader narrative to include the limitations of associating the potential presence of TACS to census block populations in establishing a presumed risk for anyone living in that census block. Duration and other critical determinants of health should also be considered.
5. Should the Division develop and implement a thoughtful public information campaign for any adopted Priority TACS.

III. EXHIBITS TO BE INTRODUCED AT HEARING

The Chamber does not have any Exhibits to file at this time. The Chamber does not currently intend to introduce any exhibits or written testimony at the hearing but reserves the right to introduce exhibits or written testimony necessary to rebut any Alternate Proposals, rule revisions or issues raised by the Division or other parties to this rulemaking.

IV. WITNESSES AND PRELIMINARY DESCRIPTION OF TESTIMONY

Each of the following witnesses may testify on any of the topics and comments articulated in the Chamber's Prehearing Statement based on their history and experience participating in Commission rulemakings.

- Christy Woodward, P.E., Astute Regulatory Solutions, Regulatory Affairs Advisor to the Colorado Chamber of Commerce. Ms. Woodward will testify on all aspects of the rule proposal addressed in the Chamber's prehearing filings and may further testify in rebuttal to other Parties and the Division's prehearing filings and testimony at Hearing.

V. WRITTEN TESTIMONY

The Chamber does not have any written testimony at this time but reserves its right to provide written testimony in response to other parties' prehearing statements.

VI. TIME REQUESTED AT HEARING

The Chamber anticipates it will need **20 minutes** for testimony at the hearing. The Chamber may request more time if additional testimony is required in rebuttal to other prehearing statements or alternate proposals.

VII. CONCLUSION

The Chamber appreciates the opportunity to submit this Prehearing Statement and respectfully requests the Commission thoughtfully consider and adopt the Chamber’s proposed revisions to the Proposed Rules.

Respectfully submitted this 4th day of December, 2024.

/s/ Christy Woodward

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*Representative for the Colorado Chamber of
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CHAMBER PHS
PROPOSED REVISIONS TO REGULATION 30 – PRIORITY AIR TOXICS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Prehearing Statement of the Colorado Chamber of Commerce was served on the Parties listed below via electronic mail on December 4, 2024.

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