## Schedule 13
## Change Request for FY 08-09 Budget Request Cycle

Request Title: Ozone State Implementation Plan (SIP)
Department: Department of Public Health and Environment
Priority Number:

Decision Item FY 08-09 ☐ Base Reduction Item FY 08-09 ☐ Supplemental FY 07-08 ☑ Budget Request Amendment FY 08-09 ☐

Dept. Approval by: [signature] Date: 9/25/07
OSPB Approval: [signature] Date: 9/25/07

| | Fund | 1 Prior-Year Actual FY 06-07 | 2 Appropriation FY 07-08 | 3 Supplemental Request FY 07-08 | 4 Total Revised Request FY 07-08 | 5 Base Request FY 08-09 | 6 Decision/ Base Reduction FY 08-09 | 7 November 1 Request FY 08-09 | 8 Budget Amendment FY 08-09 | 9 Total Revised Request FY 08-09 | 10 Change from Base (Column 5) FY 09-10 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Total of All Line Items | Total | 0 | 0 | 220,184 | 220,184 | 0 | 0 | 0 | 0 | 0 | 0 |
| | FTE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| | GF | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | GFE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | CF | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | CFE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | FF | 0 | 0 | 99,837 | 99,837 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | 120,347 | 120,347 | 0 | 0 | 0 | 0 | 0 | 0 |
| (5) Air Quality Control Division | | | | | | | | | | | |
| Ozone Modeling | Total | 0 | 0 | 220,184 | 220,184 | 0 | 0 | 0 | 0 | 0 | 0 |
| | FTE | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| | GF | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | GFE | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | CF | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | CFE | 0 | 0 | 99,837 | 99,837 | 0 | 0 | 0 | 0 | 0 | 0 |
| | FF | 0 | 0 | 120,347 | 120,347 | 0 | 0 | 0 | 0 | 0 | 0 |

Letternote revised text:
Cash Fund name/number, Federal Fund Grant name: Fund 406 - AIR Account, Federal Funding from Perfromance Partnership Agreement, EPA
IT Request: ☐ Yes ☑ No
Request Affects Other Departments: ☐ Yes ☑ No If Yes, List Other Departments Here:

# CHANGE REQUEST for FY 08-09 BUDGET REQUEST CYCLE

| | |
|---|---|
| Department: | Colorado Department of Public Health and Environment |
| Priority Number: | |
| Change Request Title: | Ozone State Implementation Plan (SIP) |

**SELECT ONE (click on box):**

☐ Decision Item FY 08-09
☐ Base Reduction Item FY 08-09
☒ Supplemental Request FY 07-08
☐ Budget Request Amendment FY 08-09

**SELECT ONE (click on box):**

Supplemental or Budget Request Amendment Criterion:

☐ Not a Supplemental or Budget Request Amendment
☐ An emergency
☐ A technical error which has a substantial effect on the operation of the program
☒ New data resulting in substantial changes in funding needs
☐ Unforeseen contingency such as a significant workload change

Short Summary of Request:

The Department (CDPHE) requests $299,837 spending authority total funds ($220,184 in FY 2007-08 and $79,653 for FY 2008-09) for ozone modeling and development of the State Implementation Plan (SIP). Of this amount, the Department is requesting $99,837 from the AIR Account for FY 2007-08. The total cost of the project is estimated to be $399,837. The Department requests the use of $99,837 cash exempt funds. Of the remaining $300,000 the Department of Transportation is contributing $100,000 federal funds and the EPA is contributing $200,000 federal funds. This is a one-time project, and funding is not expected to be continued into out years.

Background and Appropriation History:

This request, if approved, will enable the CDPHE to do meteorological, emissions inventory and photochemical modeling to provide mandatory technical support for development of a State Implementation Plan to attain the 8-hour ozone standard in the North Front Range of Colorado. CDPHE will contract this money to the Denver Regional Air Quality Council (RAQC) to accomplish this task. The technical support is critical in order to develop a plan for the Colorado Air Quality Control Commission as mandated by the Clean Air Act. The plan will ensure the protection of public health and

welfare, compliance with federal clean air standards for ozone, and completion of Governor Ritter's July 26, 2007 directive.

The State of Colorado and other regional agencies in the Denver metropolitan area, including the Counties of Weld and Larimer, entered an Early Action Compact (EAC) with the U.S. Environmental Protection Agency (EPA) in December 2002. The EAC is a voluntary agreement that laid out a process for achieving attainment with EPA's 8-hour ozone standard in an expeditious manner. This EAC required the development of a plan to meet the standard as well as the adoption and implementation of necessary air emissions controls to meet the standard by December 31, 2007, and maintenance of the standard beyond that date. The following control strategies were adopted and implemented as part of the EAC (in addition to existing emissions control programs):

- Regulation 7, relating to emissions of volatile organic compounds, was revised to control emissions from oil and gas condensate tanks, gas processing plants, stationary source engines and dehydrators.
- The Reid Vapor Pressure of fuel sold in the Denver metropolitan area has been reduced from 9.0 psi to 7.8 psi during the summer ozone season. This reduction in fuel volatility reduces volatile organic compound emissions that contribute to the formation of ozone.
- Regulation 11, Automobile Inspection and Readjustment, was revised to set the maximum penetration of the clean screen program at 50% in order to reduce the dis-benefit of the clean screening program.[1]

The EAC plan was developed over a 14-month period between October 2002 and December 2003. During this 14-month period, the interagency team was required to plan and implement a technical analysis then subsequently use this analysis to evaluate and propose control strategies for adoption by the Colorado Air Quality Control Commission. The technical analysis plan included photochemical dispersion modeling, a complex and

[1] Dis-benefit is a SIP concept. Under a SIP, the State has emissions control/reduction strategies to improve air quality, and the State gets a "benefit" for those (i.e. a credit for those emissions reductions). In this case, there is an element of "dis-benefit" for the Clean Screen mobile source testing program because it allows people to bypass the traditional I/M Testing program...and some amount of those cars that are allowed to bypass the traditional testing program might be falsely identified as "clean" (thus the SIP builds in a "dis-benefit" for that fraction of vehicles that might be incorrectly passed by the Clean Screen test).

resource intensive effort. In order to meet the expedited timeframe for preparation of the EAC plan, the technical analysis was contracted out to an environmental consultant. Approximately, $180,000 was spent on consulting products to support the EAC plan. CDPHE air quality scientists provided significant staff-hours and subject matter expertise to the EAC plan.

Compliance with the 8-hour ozone standard by way of the EAC plan is based on ambient ozone monitoring during the 2005-2007 summers. The preliminary ambient ozone monitoring from the 2007 season in conjunction with the 2005 and 2006 ozone data indicates, with a significant degree of probability, that the North Front Range area will be in violation of the 8-hr ozone standard. With recent validation of the 2007 monitoring data, the EPA is expected to designate the geographical area designated in the EAC as non-attainment for the 8-hr ozone standard. Under the Clean Air Act, the non-attainment designation will mandate that Colorado develop a State Implementation Plan (SIP) to achieve the 8-hour ozone standard. The SIP is required to be approved by the Colorado Air Quality Control Commission (AQCC) in late 2008. As a consequence of the ambient monitoring data and the potential non-attainment designation, on July 26, 2007, Governor Ritter wrote a letter to Andrew Speilman, the Chairman of the Denver Regional Air Quality Council (RAQC), directing the council to submit a plan to attain the 8-hour ozone standard to the Air Quality Control Commission by September 2008, and to set an immediate goal to reduce or eliminate ozone levels above 0.08 parts per million (ppm) over an 8-hour period. Submittal of an 8-hour ozone SIP to the Colorado AQCC by September 2008 requires immediate, expedited technical photochemical dispersion modeling, and emissions inventory work. This is required to meet Governor Ritter's directive to protect public health and to meet Clean Air Act deadlines.

This Plan, which must be developed and supported with photochemical dispersion modeling, will benefit the citizens of the Front Range Region and Colorado citizens throughout the State. As a result of this plan, residents and visitors will breathe healthier air and enjoy economic development that will not be hindered by an adverse air quality finding from the federal government.

There is no previous appropriation history associated with this request.

General Description of Request:

The air emissions inventory preprocessing, and the full meteorological and dispersion modeling component of the work necessary for this State Implementation Plan is estimated to cost $399,837. This is an estimate of the amount necessary for this critical technical exercise, although given the complexity, and time compression, these costs could be higher. The CDPHE has secured funding from the Colorado Department of Transportation ($100,000 paid directly to the RAQC from CDOT), and $200,000 from the EPA that will be processed through the CDPHE for this project. The balance of the request $99,837 is requested from the AIR Account, cash funds exempt for the CDPHE.

Tasks and a proposed schedule to ensure Air Quality Control Commission adoption of SIP plan by a December 31, 2008 deadline are as follows:

- September 2007 – develop scope of work for photochemical dispersion modeling
- October 2007 – AQCD enters into a contract with the RAQC to perform the photochemical dispersion modeling. This will include the meteorological modeling and the emission inventory pre-processing.
- November 2007 through August 2008 – RAQC with its environmental consultant, along with support from AQCD staff, will prepare emissions inventories, meteorology and dispersion modeling to develop the attainment demonstration.
- October 2007 - July 2008 – Stakeholder process for strategy development and evaluation
- August 2008 - preparation of the SIP document and Technical Support Document by the AQCD, in conjunction with the local air quality planning agencies.
- September 2008 - Colorado Air Quality Control Commission Request for Hearing.
- December 2008 - Colorado Air Quality Control Commission hearing to adopt SIP.
- January 2009 - submittal to Colorado Legislature for inclusion in SIP Bill.
- Submittal of SIP to EPA upon legislative approval.

The timeframe for a project of this complexity and importance to the State is very short. The technical work for the EAC was accomplished in 14 months with the help of a contractor. At this point in time, the Regional Air Quality Council and CDPHE will have about twelve months available to accomplish another similar but more complex task. It is imperative the work to develop the SIP plan begin as soon as possible.

The reasons for the increased complexity of this plan compared to the EAC are as follows:

- The EAC modeling was based on one multi-day ozone episode. The new federal guidance for photochemical dispersion modeling requires the evaluation of an ozone season (June – August) rather than a single multi-day episode. This new requirements will add to the complexity and expense of preparing a plan.
- The strategies with the lowest cost-benefit ratio were implemented as part of the EAC. Additional control strategies necessary to comply with the 8-hour standard will be more expensive and more difficult to evaluate, plan for and implement. The added detail for control strategy evaluation will also add to the complexity and expense of preparing a plan.

The 2002/2003 EAC modeling work was fiscally constrained. As noted above, $180,000 was the level of funding available to put towards the modeling analysis for the EAC plan. The consequences of this fiscal constraint were as follows:

- Limited resources were devoted to the meteorological simulation and photochemical model validation.
- Limited resources compromised the robustness of the evaluation of the consequences of various control scenarios.
- The EAC generated questions about potential control strategies that will need to be evaluated as part of the SIP in order to satisfy stakeholder concerns.

A fully-funded request will have the following benefits:

- AQCD air quality scientists will work with a technical contractor to assure that recent staff research into meteorological conditions that lead to elevated ozone

concentrations are adequately characterized by the meteorological modeling, which will drive the photochemical dispersion modeling.

- Adequate funding for model validation and inventory refinements will assure a robust validation of the model demonstration (comparing the model's estimates with actual monitored ozone concentrations and emissions inventory). A robust model validation and careful assessment of potential control measures will increase the certainty that the 8-hour ozone standard will be met in as short a timeframe as possible, per the Governor's directive. In addition, the completion of the technical work for this SIP will leave the State of Colorado well positioned to react in a timely manner to the recently proposed lower federal 8-hour ozone standard.
- Maximize the ability of the State to prepare and submit a defensible SIP, a plan which must be approved by the US Environmental Protection Agency and avoid consequences to the State of not complying with the Clean Air Act.

The following table shows the allocation of dollars to accomplish the modeling tasks as described above. The hourly rates per task were based on contractor staffing ratios and rates in the EAC for hours worked by Company Principles, Senior Staff, and Associates. For some of the staff, the labor rates were based on their Federal GSA contractor certified rates. All rates were adjusted from the rates quoted in 2003 by 10% (2.5% X 4 years = 2007 rates).

| TASK | Rate ($/hr) | Hours | Cost |
|---|---|---|---|
| Modeling Protocol, and determine ozone season that will be modeled | 188 | 80 | $15,040 |
| Meteorological Modeling and Evaluation | 151 | 497 | $75,047 |
| Base Year and Base Future Year Emissions Processing | 123 | 244 | $30,012 |
| Base Year Photochemical Modeling and Analysis | 123 | 407 | $50,061 |
| Future Year Photochemical Modeling | 123 | 366 | $45,018 |
| Control Strategy Emission Inventory Development and Photochemical Modeling | 129 | 814 | $105,006 |
| Technical Support Documentation | 174 | 69 | $12,006 |
| Weight of Evidence Assistance | 123 | 81 | $9,963 |
| Technology Transfer from Contractor to CDPHE/AQCD | 174 | 46 | $8,004 |
| Project Management | 72 | 690 | $49,680 |
| **TOTAL** | | 3,294 | $399,837 |

Consequences if Not Funded:

If this request is not funded, the Clean Air Act deadline for an 8-hour Ozone State Implementation Plan cannot be met, and the State may face consequences of not complying with the Federal Act. Residents of the Colorado North Front Range will not receive the benefits of breathing air that achieves federal health-based standards for ozone, and Governor Ritter's July 26, 2007, directive will not be met.

Full funding of the work necessary to develop a SIP will demonstrate to the EPA that Colorado has a serious commitment to attainment of the 8-hour ozone standard. If Colorado is unable to demonstrate satisfactory progress toward development and adoption of a plan to meet the 8-hour ozone standard, the EPA could impose a Federal Implementation Plan on Colorado. Such a plan removes a great deal of local/State influence and control regarding air quality matters.

Prior to a non-attainment designation the Denver Regional Council of Governments (DRCOG) and the North Front Range Transportation and Air Quality Planning Council (NFRTAQPC) were not subject to the transportation conformity requirement pertaining to the 8-hour ozone standard. This means that there are no restrictions on transportation related volatile organic compounds (VOC) and nitrogen oxide ($NO_x$) emissions that are ozone precursor. One calendar year after a non-attainment designation becomes effective, DRCOG and NFRTAQPC must show that VOC and $NO_x$ emissions are less in the No-Build scenario than they are in the Build scenario. This stringent conformity "test" may make it more difficult for DRCOG and the NFRTAQPC to show conformity on their transportation plans, and a "lapse" in conformity could result, jeopardizing federal funding for transportation projects. This stringent test will terminate once a revised plan is in place, allowing for the traditional conformity process and its familiar "tests" to take effect. The funding of the modeling, which is the focus of this Supplemental, is key to the development of a revised ozone plan and key for acquiring federal funded transportation projects.

While the area is designated non-attainment, major new or modified sources of ozone precursor emissions must obtain emission offsets from other sources in order to build in the region. This could have the effect of hampering the regions' economic growth. This requirement will remain in effect until a revised plan is approved and implemented, bringing the region back into an attainment status. The funding of the modeling is key to plan development and future flexibility for the operators of industrial facilities.

Calculations for Request:

| Summary of Request FY 07-08 | Total Funds | General Fund | Cash Funds | Cash Funds Exempt | Federal Funds | FTE |
|---|---|---|---|---|---|---|
| Total Request | $320,184 | | | $99,837 | $220,347[a] | |
| Contractual Services | $320,184 | | | $99,837 | $220,347 | |

[a] $100,000 of this amount is from the CDOT directly to the RAQC and will not come through the CDPHE.

| Summary of Request FY 08-09 | Total Funds | General Fund | Cash Funds | Cash Funds Exempt | Federal Funds | FTE |
|---|---|---|---|---|---|---|
| Total Request | $79,653 | | | | $79,653 | |
| Contractual Services | $79,653 | | | | $79,653 | |

Assumptions for Calculations:

The dollars specified in the above table are based on the professional judgment of Denver RAQC and CDPHE staff that worked on the EAC plan and managed the technical consultants. Staff used the cost estimates from the EAC contract along with the knowledge of the scope of work necessary to accomplish the modeling for a SIP. The RAQC and CDPHE will make in-kind contributions to the entire process through preparation of emissions inventory estimates and providing reviews and consistency checks on the results over the duration of the contract. It is not practical, at current staffing levels, for CDPHE to attempt to do the technical work necessary in the short time frame available to accomplish the work. It is also impractical to increase staffing levels to do the work in the short time frame. These technical tasks are very complex and require specialized skills and experience. It is difficult to hire scientists with these technical competencies for a short-term project.

Impact on Other Government Agencies:

The Colorado Department of Transportation and local municipalities could be impacted by loss of funding for transportation projects if the area's non-attainment status of the 8-hour ozone standard is not remedied.

Cost Benefit Analysis:

The likely violation of the 8-hour ozone standard means that Colorado citizens living in the North Front Range of Colorado are breathing unhealthy air. Exposure to ozone has been linked to a number of health effects, including significant decreases in lung function, inflammation of the airways and increased respiratory symptoms such as cough and pain

when taking a deep breath. Exposure to ozone can also aggravate lung diseases such as asthma, leading to increased medication use, hospital admissions and emergency room visits. Active children are the group at highest risk from ozone exposure because they spend more time outdoors during the summer when ozone levels tend to be elevated. Children are also more likely to have asthma, which may be aggravated by ozone exposure. Other at-risk groups include adults who are active outdoors and individuals with lung diseases such as asthma and chronic obstructive pulmonary disease. Long-term exposure to moderate levels of ozone may cause permanent changes in lung structure, leading to premature aging of lung tissue and worsening of chronic lung disease.

Ozone also affects vegetation and ecosystems, leading to reductions in agricultural crop and commercial forest yields, reduced growth and other environmental stresses. In long-lived species, these effects may become evident only after several years or even decades and may result in long-term effects on forest ecosystems. Ground level ozone injury to trees and plants can lead to a decrease in the natural beauty of our national parks and recreation areas. The recently completed review of the ozone standard by the EPA and others has highlighted concerns with ozone effects on vegetation for which the 1-hour ozone standard did not provide adequate protection. These effects can include reduction in agricultural and commercial forest yields, reduced growth and decreased survivability of tree seedlings, increased tree and plant susceptibility to disease, pests and other environmental stresses and potential long-term effects on forests and ecosystems. The above information on health effects and ecosystems is from the Colorado 2005 Air Quality Data Report, Air Pollution Control Division, and the US Environmental Protection Agency, Air Trends, Ozone, March 1, 2006.

Health effects aside, the $399,837 requested in this document is also a good investment for the state for the economic related reasons cited in the 'Consequences if Not Funded' section above. The federal transportation funds that could be jeopardized could be orders of magnitude larger than this request level. In addition, there would undoubtedly be an impediment to economic growth due to the restrictions on emissions growth in the area.

Implementation Schedule:

| Task | Month/Year |
|---|---|
| Develop modeling protocol and determine ozone season that will be modeled | September 2007 |
| Meteorological Modeling and evaluation | October-December 2007 |
| Base Year and Base Future year emissions preprocessing | October – December 2007 |
| Base Year Photochemical modeling and analysis | January-February 2008 |
| Future Year Photochemical modeling and analysis | March 2008 |
| Control Strategy Emission Inventory Development and Photochemical Modeling | April – June 2008 |
| Technical Support Document | July – August 2008 |
| Weight Evidence assistance | June-August 2008 |
| Technology Transfer from Contractor to CDPHE/APCD | September 2008 |

Statutory and Federal Authority: C.R.S. Secs. 25-7-105(1)(a), 25-7-109

**25-7-105. Duties of commission.**

(1) Except as provided in sections 25-7-130 and 25-7-131, the commission shall promulgate such rules and regulations as are consistent with the legislative declaration set forth in section 25-7-102 and necessary for the proper implementation and administration of this article, including but not limited to:

(a) (I) A comprehensive state implementation plan which will assure attainment and maintenance of national ambient air quality standards and which will prevent significant

deterioration of air quality, all in conformity with the provisions of this article. The comprehensive plan shall meet all requirements of the federal act and shall be revised whenever necessary or appropriate.

**25-7-109. Commission to promulgate emission control regulations.**

(1) (a) Except as provided in sections 25-7-130 and 25-7-131, as promptly as possible, the commission shall adopt, promulgate, and from time to time modify or repeal emission control regulations which require the use of effective practical air pollution controls:

(I) For each significant source or category of significant sources of air pollutants;

(II) For each type of facility, process, or activity which produces or might produce significant emissions of air pollutants.

(b) The requirements and prohibitions contained in such regulations shall be set forth with as much specificity and clarity as is practical. Upon adoption of an emission control regulation under subparagraph (II) of paragraph (a) of this subsection (1) for the control of a specific facility, process, or activity, such regulation shall apply to the exclusion of other emission control regulations adopted pursuant to subparagraph (I) of paragraph (a) of this subsection (1); prior to such adoption, the general regulations adopted pursuant to subparagraph (I) of paragraph (a) of this subsection (1) shall be applicable to such facility, process, or activity. In the formulation of each emission control regulation, the commission shall take into consideration the following:

(I) The state policy regarding air pollution, as set forth in section 25-7-102;

(II) Federal recommendations and requirements;

(III) The degree to which altitude, topography, climate, or meteorology in certain portions of the state require that emission control regulations be more or less stringent than in other portions of the state;

(IV) The degree to which any particular type of emission is subject to treatment, and the availability, technical feasibility, and economic reasonableness of control techniques;

(V) The extent to which the emission to be controlled is significant;

(VI) The continuous, intermittent, or seasonal nature of the emission to be controlled;

(VII) The economic, environmental, and energy costs of compliance with such emission control regulation;

(VIII) Whether an emission control regulation should be applied throughout the entire state or only within specified areas or zones of the state, and whether it should be applied only when a specified class or type of pollution is concerned.

(2) Such emission control regulations may include, but shall not be limited to, regulations pertaining to:

(a) Visible pollutants;

(b) Particulates;

(c) Sulfur oxides, sulfuric acids, hydrogen sulfide, nitrogen oxides, carbon oxides, hydrocarbons, fluorides, and any other chemical substance;

(d) Odors, except for livestock feeding operations that are not housed commercial swine feeding operations as defined in section 25-8-501.1 (2) (b);

(e) Open burning activity;

(f) Organic solvents;

(g) Photochemical substances;

(h) Hazardous air pollutants.

(3) Emission control regulations adopted pursuant to this section shall include, but shall not be limited to, regulations pertaining to the following facilities, processes, and activities:

(a) Incinerator and incinerator design;

(b) Storage and transfer of petroleum products and any other volatile organic compounds;

(c) Activities which frequently result in particulate matter becoming airborne, such as construction and demolition operations;

(d) Specifications, prohibitions, and requirements pertaining to fuels and fuel additives, such as tetraethyl lead;

(e) Wigwam waste burners, pulp mills, alfalfa dehydrators, asphalt plants, and any other industrial or commercial activity which tends to emit air pollutants as a by-product;

(f) Industrial process equipment;

(g) Industrial spraying operations;

(h) Airplanes;

(i) Diesel-powered machines, vehicles, engines, and equipment;

(j) Storage and transfer of volatile compounds and hazardous or toxic gases or other hazardous substances which may become airborne.

(4) The commission shall promulgate appropriate regulations pertaining to hazardous air pollutants.

(5) The commission shall promulgate appropriate regulations setting conditions and time limitations for periods of start-up, shutdown, or malfunction or other conditions which justify temporary relief from controls. Operations of any air pollution source during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance or compliance test.

(6) The commission shall establish test methods and procedures for determining compliance with emission control regulations promulgated under this section and, in so doing, shall, to the maximum degree consistent with the purposes of this article, consider the test methods and procedures established by the United States environmental protection agency and shall adopt such test methods and procedures as shall minimize the possibility of inconsistency or duplication of effort.

(7) All regulations promulgated pursuant to this section shall conform with the provisions of part 5 of this article concerning asbestos control.

(8) (a) Notwithstanding any other provision of this section, the commission shall not regulate emissions from agricultural, horticultural, or floricultural production such as farming, seasonal crop drying, animal feeding operations that are not housed commercial swine feeding operations as defined in section 25-8-501.1 (2) (b), and pesticide application; except that the commission shall regulate such emissions if they are "major stationary sources", as that term is defined in 42 U.S.C. sec. 7602 (j), or are required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program), or are participating in the early reduction program of section 112 of the federal act, or is not required by section 111 of the federal act, or is not required for sources to be excluded as a major source under this article.

(b) Nothing in paragraph (a) of this subsection (8), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(9) (a) The commission shall adopt a procedure consistent with the federal environmental protection agency requirements for determining when there has been a net significant emissions increase which results in a major modification that subjects a source to the permitting requirements of the prevention of significant deterioration program or the nonattainment area new source review. The commission's procedure shall also prohibit sources from circumventing the new source review requirements in a manner consistent with the federal environmental protection agency guidance. Such procedure shall be the

same for both the prevention of significant deterioration program and the nonattainment area new source review program and shall not apply to hazardous air pollutants. Such net emissions increase procedure shall be as described in paragraph (b) of this subsection (9), unless and until the federal environmental protection agency requires otherwise or unless after January 1, 1998, the commission:

(I) Undertakes a collaborative process with the affected industries to determine the cost and emission impacts associated with any proposed changes in this procedure;

(II) Reviews at least three years of emissions increases and decreases under the procedures described in paragraph (b) of this subsection (9);

(III) Delivers reports on the matters required in subparagraphs (I) and (II) of this paragraph (a) to the general assembly for its review;

(IV) Determines through rule-making that an applicability procedure for major modifications more stringent than that described in paragraph (b) of this subsection (9) is equitable when considering minor, area, and mobile source controls; and

(V) Determines through rule-making that such more stringent applicability procedure is necessary to attain and to maintain the national ambient air quality standards.

(b) The procedure for determining when there has been a net significant emissions increase shall be consistent with requirements of the federal environmental protection agency and:

(I) Such requirements shall apply only if there is, in the first instance, a significant emissions increase from an individual proposed project or modification. If the individual proposed project or modification will not result in a significant emissions increase, it shall be exempt from the prevention of significant deterioration program and the nonattainment area new source review requirements.

(II) If a project or modification is not exempt under subparagraph (I) of this paragraph (b), each pollutant for which the project results in a significant emissions increase shall be

subject to the prevention of significant deterioration program or the nonattainment area new source review requirements only if the sum of all source-wide, non-de minimis, contemporaneous, and creditable emissions increases and decreases of that pollutant or that regulated precursor exceed applicable significance levels. Each specific regulated precursor shall be considered independently in determining applicable significance levels.

(III) In determining the non-de minimis net emissions increase during the contemporaneous period, the commission's procedures shall be consistent with the federal environmental protection agency's review procedure for determining net emissions increases and decreases. Non-de minimis increases shall exclude all increases which would be exempt under commission rules from a requirement to obtain a construction permit under section 25-7-114.2.

Performance Measures:

The request does not specifically address any of the performance measures listed in the strategic plan. The request will support the development of a SIP, which will give the State a plan to reduce ozone concentrations in the long term, and thus improve public and environmental health.