

witnesses will testify, the request must include their qualifications to testify as experts.

3. Section 1.130(c) requires the hearings examiner to ensure that the proceeding is fair and provides due process. In determining if it is feasible to conduct all or part of a proceeding telephonically, the hearings examiner must take into account the following factors: (1) Timeliness of a party's request; (2) receipt of written agreements from all parties to conduct all or part of the proceeding by telephone; (3) demonstrations from the parties on how witnesses will be separated, how coaching of witnesses will be prevented, why observing only a witness's oral demeanor is sufficient, and how the witnesses' and parties' identities will be established; (4) the number of parties and the number of witnesses; (5) the number and type of exhibits; (6) the distance of the parties or witnesses from Austin; (7) the nature of the hearing; and (8) any other pertinent factors which the hearings examiner believes may affect the proceeding.

4. Section 1.130(d) requires the hearings examiner to notify the parties, not less than ten days before the proceeding, of his or her decision to conduct all or part of a proceeding telephonically.

5. Section 1.130(e) requires the parties to file and serve all documentary evidence, other than prefiled written testimony, in advance of the proceeding.

6. Section 1.130(f) specifies that, subject only to the limitation of the physical arrangement, all substantive and procedural rights apply to telephonic proceedings.

7. Section 1.130(g) requires that the time and location of telephonic proceedings be posted. Any person may, by advance request, be present in the room with the hearings examiner.

8. Section 1.130(h) requires the hearings examiner to conduct telephonic proceedings using a speaker telephone. The hearings examiner must make a tape recording of the telephonic proceeding, or arrange to have the proceeding recorded by a court reporter.

9. Section 1.130(i) requires the hearings examiner to initiate the telephonic proceeding, including arranging any necessary conference call. When all parties appearing telephonically are connected, the hearings examiner will affirm the parties' consent to the telephonic proceeding. The hearings examiner will then call the proceeding to order; ask all parties to identify themselves, their locations, and their witnesses; affirm on the record the prior written agreement

from all parties consenting to the telephonic appearance or proceeding; and state whether the proceeding is being tape recorded or whether a court reporter is recording the proceeding. The hearings examiner will administer the oath to each witness individually before his or her testimony.

10. Section 1.130(j) provides that if the hearings examiner is prevented from connecting all parties through circumstances that are beyond the control of any party or the examiner, the examiner may postpone, continue, or recess the proceeding, as appropriate, until the earliest possible date and time for the proceeding to be reconvened.

11. Section 1.130(k) provides that if the hearings examiner decides or any party requests not to proceed with the telephonic proceeding at any time, or asserts that the presence of the parties or witnesses in the hearing room is necessary for full disclosure of the facts, the hearings examiner may postpone, continue, or recess the proceedings, as appropriate. The hearings examiner must reschedule the proceedings to the earliest possible date and time. The examiner must state on the record or in writing to all parties the reasons for terminating the telephonic proceeding and state the date, time, and location of the reconvened proceeding.

12. Section 1.130(l) provides that the Commission may consider the following events to constitute a failure to appear and grounds for default or dismissal: (1) Failure to answer the telephone for more than 10 minutes after the scheduled time for the proceeding; (2) failure to free the telephone for the proceeding for more than 10 minutes after the scheduled time for the proceeding; (3) failure to be ready to proceed with the proceeding within 10 minutes of the scheduled time; and (4) a party's intentional disconnection from the conference call.

13. Finally, Section 1.130(m) specifies that in the event of accidental disconnection of one or more parties to the proceeding, the hearings examiner will immediately recess the hearing and attempt to re-establish the connection or connections. If reconnection is achieved within 30 minutes, the hearings examiner may resume the telephonic hearing, or may postpone, continue, or recess the proceedings, as appropriate, until the earliest possible date and time for the proceeding to be reconvened. The examiner must state on the record the date, time, and location of the reconvened proceeding. If reconnection cannot be achieved, then the hearings examiner must recess the telephonic proceeding and reschedule the hearing.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Microsoft Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: TX-043-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581-6430.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on April 25, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the