

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH, Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

COLORADO AIR QUALITY CONTROL COMMISSION

<http://www.cdphe.state.co.us>

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Denver, Colorado 80246-1530
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**Colorado Department
of Public Health
and Environment**

NOTICE OF WRITTEN COMMENT ONLY PUBLIC RULEMAKING HEARING BEFORE THE COLORADO AIR QUALITY CONTROL COMMISSION

Regarding proposed revisions to:

Procedural Rules Regulation

SUBJECT:

The Air Quality Control Commission will hold a written comment only rulemaking hearing to consider revisions to the Commission's Procedural Rules. The proposed revisions would eliminate or update obsolete provisions, delete duplicate language, and improve their "readability" so that the rules can be more easily understood by the general public.

HEARING SCHEDULE:

DATE: March 21, 2013
TIME: 9:00 AM
PLACE: Colorado Department of Public Health & Environment
4300 Cherry Creek Drive South, Sabin Conference Room
Denver, Colorado 80246

The hearing may be continued at such places and time as the Commission may announce. Interested parties may contact the Commission Office at 303-692-3476 to confirm meeting dates and times.

PUBLIC COMMENT:

This is a written comment only rulemaking hearing. The Commission encourages all interested persons to provide their views in writing prior to the hearing. Written comments should be submitted no later than **March 1, 2013**. The Commission especially solicits comments and analyses from persons who will incur directly some cost or benefit from the proposed revisions. No testimony will be taken at the hearing except for good cause shown. Written submissions should be mailed to the Commission Office at the address listed in the hearing schedule.

STATUTORY AUTHORITY FOR THE COMMISSION'S ACTIONS:

The AQCC is authorized to promulgate rules and regulations necessary for the proper implementation and administration of the Colorado Air Pollution Prevention and Control Act (the State Air Act, 25-7-101 *et seq.*, C.R.S.); the AQCC is authorized to adopt procedural rules pursuant to 25-7-106(3) and (5), C.R.S. Rulemaking and adjudication procedures must also be consistent with the State Administrative Procedures Act (24-4-101 *et seq.*, C.R.S.)

The rulemaking hearing will be conducted in accordance with Sections 24-4-103 and 25-7-110, 110.5 and 110.8 C.R.S., as applicable and amended, the Procedural Rules of the Commission 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 21st day of December 2012 at Denver, Colorado

Colorado Air Quality Control Commission

A handwritten signature in cursive script that reads "Michael Silverstein".

Michael Silverstein, Administrator

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

PROCEDURAL RULES

5 CCR 1001-1

1.0.0—PROCEDURAL RULES

I. 1.1.0—INTRODUCTION

The Colorado activities of the Air Quality Control Commission ~~(the~~ are open to the public, with the exception of instances when the Commission) is appointed allowed by law to meet in executive session. The Commission encourages public participation to its fullest extent. ~~the Governor~~ The procedures set forth herein are designed to promote open, fair, and authorized by te 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 ~~(effective proceedings such that the~~ Act) general public can participate readily.

The primary role of the Commission is to adopt a cost-effective and efficient an air quality management program that promotes clean and healthy air for Colorado's citizens and visitors, and protects Colorado's fosters the health, welfare, convenience, and comfort of the inhabitants of the state of Colorado and which facilitates the enjoyment and use of the scenic and natural resources. The Colorado Department of Public Health of the state, and accomplishes this in a cost-effective manner and with an efficient regulatory program. The Commission intends that the air quality management program which it adopts will achieve the maximum practical degree of air purity in every portion of the state, will attain and Environment's maintain the national ambient air quality standards, and will prevent the significant deterioration of air quality in those portions of the state where the air quality is better than the national ambient air quality standards. The Colorado General Assembly and the Governor have authorized the Air Quality Control Commission to accomplish this purpose in the Colorado Air Pollution Prevention and Control Act.

The Commission also listens to appeals from the regulated community and the general public regarding the actions of the Air Pollution Control Division (the Division) acts as staff for the Commission. The general public and the regulated community may appeal certain decisions of the Division to the Commission for review and determination of fair and appropriate action.

The activities of the Commission are open to the public, with the exception of certain circumstances in which the Commission is permitted by law to meet in executive session. The Commission encourages public participation to its fullest extent. The Commission's Procedural Rules are designed to promote open, fair, and effective proceedings with the input and participation of the general public.

The Commission is composed of nine citizen members appointed by the Governor and confirmed by the Colorado State Senate. The members They reflect a wide variety of professional backgrounds and individual interests. Colorado has chosen the citizen board approach to develop developing and oversee overseeing the implementation of its air quality management program as a means to ensure that help keep regulatory agencies are responsive to the public.

These procedural rules are intended to promote participation by all interested persons in a fair and responsible manner. The goal of Commission proceedings is to produce thoughtful and well-informed decisions. In rulemaking proceedings the Commission promotes intends to minimize trial type activities and promote policy discussion that is well supported by technical and scientific data with a minimum of adversarial or formal trial-like proceedings.- In adjudicatory proceedings the Commission intends to enforce

its rules and regulations ~~as~~-uniformly and equitably-~~as possible~~ while ensuring that the goals of the air quality program it has adopted are not compromised.

Accordingly, these procedural rules are intended to promote, rather than obstruct, public participation in decision-making. Air quality rules and regulations are often complicated and difficult to understand. The Commission makes every effort to simplify the process. Persons appearing before the Commission are encouraged to make well-planned presentations that use clear, concise, common sense language to explain their points of view. Abusive tactics, misrepresentations, and personal attacks on the motivation of others will not be tolerated. Persons appearing before the Commission ~~can~~are attempting to assist their fellow citizens in reaching decisions that may have significant social and economic impacts in the state. The Commission welcomes and appreciates all participation in its decision-making process.

II.1.2.0 SCOPE, PURPOSE, AND AUTHORITY

II.A.1.2.1 These procedural regulations are adopted pursuant to the authority conferred upon the Commission in Sections 25-7-106(3) and -106(5), C.R.S., and are intended to implement and be consistent with the requirements of the State Administrative Procedures Act, Section 24-4-101 et seq., C.R.S., as amended (the APA), and the Colorado Air Pollution Prevention and Control Act, Section 25-7-101 et seq., C.R.S., as amended (the Act).

II.B.1.2.2 These regulations ~~shall~~ govern all procedures and hearings before the ~~Colorado Air Quality Control Commission~~. ~~Where (the Commission); where~~ specifically stated, they ~~shall~~ also govern certain procedures and hearings before the Air Pollution Control Division within the Colorado Department of Public Health and Environment.

II.C.1.2.3 These regulations do not apply to interpretive rules or general statements of policy issued by the Commission that are not intended to be binding.

II.D.1.2.4 Except when necessary to comply with applicable statutes or to provide due process, the requirements of these procedural regulations may be waived by the Commission whenever it is determined that strict adherence to the rules is not in the best interest of fairness, impartiality, or an efficient proceeding before the Commission. ~~A Failure of a party to any proceeding~~proceedings before the Commission ~~who, to raise~~ during the proceeding, ~~fails to raise~~ an objection regarding lack of compliance with any procedural ~~requirement of~~requirements within these regulations ~~waives constitutes a waiver of~~ that issue ~~by the party~~ for the purpose of judicial review.

II.E.1.2.5 In the event of a conflict between these regulations and the APA or the Act, the statutes prevail. Where a conflict between the APA and the Act arises, and the Act is more specific, the Act takes precedence.

II.F.1.2.6 The records of the Commission are open to the public for inspection during normal business hours unless confidential treatment of specified records is required under provision of law. Many Commission records are available online; please contact the Office of the Air Quality Control Commission for further information.

III.1.3.0 DEFINITIONS

The definitions of terms used in these regulations shall be in accordance with the Act, the APA, and other applicable regulations of the Commission unless the context requires otherwise. ~~The following terms have the meanings assigned in this section.~~

III.A.1.3.1 Act: The Colorado Air Pollution Prevention and Control Act, Section 25-7-101 et seq., C.R.S.

III.B.1.3.2 Adjudicatory Proceeding: Adjudicatory proceedings include notice and hearing activities which are required by law ~~in order~~ to determine past and future rights and obligations of individual persons or sources, e.g., ~~an~~ appeal of permit terms and conditions, ~~enforcement actions, or~~ declaratory order proceedings, ~~or appeal of enforcement actions~~. Adjudicatory proceedings typically occur during the Commission's general meetings and are governed by the procedures in Section VI.1.6.0 of these regulations.

III.C.1.3.3 Alternate Proposal: Any new substantive proposed rule text offered for the Commission's consideration and approval, including wholly new regulation text, or amendments or revisions to ~~previously already~~ proposed regulation text. For purposes of Sections ~~V.E.1.5.5(5)(c.)~~(ix), ~~V.E.1.5.5(6.)~~, and ~~V.E.1.5.5(7.)~~(b.), proposed text that simply ~~deletes~~ ~~DELETES~~, clarifies or elaborates on elements of an already-submitted proposal, without substantive new obligations or requirements, is not an alternate proposal.

III.D. 1.3.4 ~~APA, or~~ Administrative Procedures Act (APA): Section 24-4-101 et seq., C.R.S.

III.E.1.3.5 Commission: The Colorado Air Quality Control Commission created in Section 25-7-104, C.R.S. ~~The Commission's address is:~~

Colorado Air Quality Control Commission
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South, EDO-AQCC-A5
Denver, Colorado 80246-~~4530~~
Email: cdphe.aqcc-comments@state.co.us
Web: <http://www.colorado.gov/cdphe/aqcc>

III.F. Consent Agenda: A consent agenda consists of routine, non-controversial, and self-explanatory items that the Commission may approve without individual discussion.

III.G.1.3.6 Division: The Colorado Air Pollution Control Division that exists within the Division of Administration of the Colorado Department of Public Health and Environment.

III.H.1.3.7 Ex parte Communication: Means an oral or written communication regarding a proceeding where the communication is between a member or members of the Commission and a person who has an interest in the proceeding that: takes place after the adoption of a petition to notice a rulemaking or after an appeal for an adjudicatory hearing has been filed; is not on the public record; is not authorized by other specific provision of law or Commission order; and, with respect to which reasonable prior notice to all parties is not given.

III.I.1.3.8 File or Filed:

III.I.1.3.8(1) Means received in the Office of the Air Quality Control Commission and date-stamped by staff as received on that day or, when filed by electronic mail for rulemakings or adjudications under III.I.1.3.8(2.), as provided herein.

III.I.1.3.8(2.) Electronic Filing ~~Mail~~

III.I.1.3.8(2.)(a. Filing) ~~Service~~ by electronic mail shall be complete when the Office of the Air Quality Control Commission receives, by midnight on the date it is due, an electronic mail containing an attached, signed version of the document to be filed, and a message is transmitted back to the sender from the Office of the Air Quality Control Commission, confirming the filing was received by midnight on the day that the document is due. An electronic document may be "signed" by affixing a signature to the document and scanning and attaching the signature page to the filing. Alternatively, by affixing his or her name to the document, a filer agrees that

the document constitutes an electronic transaction pursuant to C.R.S. 24-71.3-105 and an electronic signature pursuant to 24-71-101.

The Commission's email address is: cdphe.agcc-comments@state.co.us unless otherwise specified in various Commission documents. When a party files by electronic mail, it shall be considered an agreement to be served by electronic mail. The filer is responsible for furnishing one or more electronic notification addresses at which the electronic filer agrees to accept service and shall immediately provide the Commission, and all parties with any change to the electronic filer's notification address. Documents larger than twenty (20) megabytes shall not be filed by electronic mail, unless otherwise ~~approved~~provided by the Commission. If the document is too large to transmit by electronic mail, the filer shall serve the document(s) on a CD or disc or other electronic means by mailing or hand delivering 15 copies of the electronic version to the Office of the Air Quality Control Commission.

~~III.I.1.3.8(2)(b.)~~ Subject to the size limitation established in ~~III.I.1.3.8(2)(a.)~~, or unless granted an exception to electronic filing of III.I.3., otherwise for good cause shown, all filings for rulemakings and adjudications under Procedural Rules V.1-5 and VI.1-6 shall be made by electronic mail.

III.I.1.3.8(3) Exception to Electronic Filing

Any person who is unable to comply with the requirements of III.I.2. may ~~request~~petition the Commission to file documents in paper ~~copy~~ format. ~~if they are unable for any reason to not comply with the requirements of 1.3.8(2).~~ An original and ~~the a specified~~ number of paper copies required for each proceeding as specified in these procedural rules must be filed in the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, EDO-AQCC-A5, Denver, Colorado 80246.

III.J.1.3.9 Good Cause: Means a valid and sufficient reason, in the opinion of the hearing officer or the Commission, to make an exception to~~rational explanation justifying why~~ a requirement of the Procedural Rules~~in these procedural rules was not met or need not be complied with in the particular circumstance.~~

III.K.1.3.10 Party: Any person, entity, or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Commission proceedings subject to these regulations. Parties generally are allowed to make individual presentations to the Commission at hearing and to cross-examine witnesses (see, Section V.E.1-5.5(2.) of these regulations [regarding parties to rulemaking proceedings]). The Division and any person subject to an order or decision of the Division are parties to an adjudicatory proceeding (see, Section VI.B.1-6.2(4.) of these regulations [regarding parties to adjudicatory proceedings]).

III.L.1.3.11 Publication: Publication in the Colorado Register or Colorado Code of Regulations, as appropriate.

III.M.1.3.12 Rule or Regulation: As used in these procedural rules include proposed revisions or amendments to existing regulations, alternate proposals, or wholly new regulation text.

III.N.1.3.13 Rulemaking Proceeding: Rulemaking proceedings are the notice and hearing activities required by law for the Commission to adopt regulations, as authorized by the Act or other specific authority, that are of general applicability and future effect that implement, interpret, or declare~~implementing, interpreting, or declaring~~ law or policy, which are intended to be binding, e.g., emissions control regulations, operating permit regulations, or inspection and maintenance requirements. They include adoption of proposed~~whole generic~~ regulations, or deletion of, or

revisions or modifications to, existing regulations of the Commission. Rulemaking proceedings typically occur during the Commission's general meetings and are governed by the procedures in Section V.1-5-0 of these regulations.

III.O. State Implementation Plan (SIP):1-3-14-SIP: State Implementation Plan for ambient air quality standards required under 42 U.S.C. Section 7410. This instrument generally consists of enforceable regulations, plans, and support documentation, and is submitted to the U.S. Environmental Protection Agency for review and approval (see i.e.g., 40 C.F.R. Part 52, Subpart G [Colorado]).

III.P.1-3-15 Staff: Means the Technical Secretary under all circumstances, and the Division at the request of the Commission or the Technical Secretary.

III.Q.1-3-16 Technical Secretary: The person employed by the Commission pursuant to Section 25-7-105(3), C.R.S. The Technical Secretary can be reached at the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, EDO-AQCC-A5, Denver, Colorado 80246-~~1530~~.

IV.1.4.0 PROCEDURES FOR GENERAL MEETINGS

IV.A.1.4.1 General Meetings:

General meetings of the Commission are typically held once a month. General meetings are held for the Commission to conduct business, which might include, for example, informal hearings, briefings, reports, budget matters, noticed rulemaking or adjudicatory hearings, or noticed SIP hearings.

IV.B.1.4.2 Frequency:

Meeting dates and hearing schedules are set by ~~decision of~~ the Commission. The chairperson or vice chairperson for the Commission may as necessary call special meetings of the Commission.

IV.C.1.4.3 Notice and Agenda:

Any person seeking to place an item on the Commission's agenda must file the relevant materials in the Office of the Air Quality Control Commission ~~thirty days~~ prior to the general meeting during which that person desires the matter to be addressed. Materials filed less than thirty days in advance ~~may~~will generally result in the matter being placed on the agenda for the following ~~month's~~ general meeting, unless the Commission or the chairperson determines, for good cause shown, that the matter should be addressed at that month's general meeting. ~~(which would include adjudicatory hearings, appeals, and certain regulatory matters where the Commission is to hold a hearing within a certain period of time of receiving a request for hearing).~~ Amendments to the agenda may be made at any time.

IV.D.1.4.4 Conduct of General Meetings:

Six Commissioners ~~shall~~ constitute a quorum, and at least five Commissioners must vote in favor of a motion on a matter within the powers and duties of the Commission for that motion to pass. The chairperson, will preside over general meetings. If the chairperson is absent or has been recused, the Vice Chair, or a presiding Commissioner will conduct general meetings ~~if the chairperson is absent~~. General meetings may proceed under Robert's Rules of Order, although the Commission typically acts on a more informal basis. Specific procedures for rulemaking proceedings and adjudicatory proceedings will be governed by the procedures set forth in Sections V.1-5-0 and VI. 1-6-0, below.

IV.D.1. The Commission may vote on Agenda items as part of a Consent Agenda. Adoption of a Consent Agenda allows the Commission to consolidate voting on agenda items that do not need to be discussed individually and for which presentation of additional information is not required. If any Commissioner or any member of the public believes that any item proposed

for the Consent Agenda requires discussion that item may be removed from the consent agenda and handled as a regular agenda item at the same general meeting or at a subsequent general meeting. Items not removed may be adopted by unanimous consent without debate.

IV.E.1.4.5 Planning:

Among other agenda topics, the Commission may periodically set aside time on its agenda for general discussions regarding planning of ~~Commission's~~ business or discussions of policy related to air quality.

IV.F.1.4.6 Recording Proceedings:

~~The Office of the Air Quality Control Commission~~~~The Technical Secretary~~ will record the proceedings of all general meetings. Copies of such recordings will be available to the public upon request at cost.

IV.G.1.4.7 Minutes:

~~The Office of the Air Quality Control Commission~~~~The Technical Secretary~~ shall prepare the minutes of the general meeting, as promptly as possible, and mail them to the Commissioners for their comment, modification and approval.

IV.H.1.4.8 Public Participation Encouraged:

All general meetings are open to the public. The Commission strongly encourages public participation. The chairperson or presiding Commissioner will provide an opportunity at each general meeting for the Commission to accept public comments, and the public may be ~~invited~~~~allowed~~ to participate at other appropriate times during the general meeting in the discretion of the chairperson or presiding Commissioner. Public participation and comment may be reasonably limited as the chairperson or presiding Commissioner deems necessary. The chairperson or presiding Commissioner will be responsible for the orderly conduct of the meeting. Members of the public appearing before the Commission are expected to present their views in a respectful manner and must refrain from abusive tactics and personal attacks.

IV.I.1.4.9 Executive Session:

The Commission may with respect to particular matters approved under the Colorado Open Meetings Law call for an executive session, upon affirmative vote of at least six Commissioners and announcement to the public of the topic for discussion during the executive session, where only the Commission, its counsel, appropriate staff (which includes the Technical Secretary and ~~Program Coordinator and~~, when appropriate, relevant Division personnel), and other pertinent or necessary persons may be present, pursuant to Section 24-6-402(3), C.R.S.

IV.J. Public Hearings:

The Commission is authorized to hold public hearings that are conducted in compliance with the APA. Public hearings may include rulemaking hearings to adopt air quality standards and emission control regulations. Public hearings also include adjudicatory hearings, hearings on delayed compliance orders, and hearings on construction permits. Public hearings afford any interested person the opportunity to submit data, views, or arguments orally or in writing. The Commission may designate certain matters for which oral presentations are unnecessary as "Written Comment Only" hearings. Detailed information regarding each type of public hearing is addressed in these Procedural Rules.

IV.K.1.4.10 Informal Hearings:

Informal hearings are held in the discretion of the Commission to gather information or receive comment on a matter under preliminary consideration by the Commission or staff. They are typically held during the

Commission's general meetings. Informal hearings generally do not require compliance with the APA and are therefore conducted as deemed appropriate by the Commission. Matters considered at informal hearings do not have binding regulatory or adjudicatory effect. See, Section ~~V.B.1-5.2.(2)(a.)~~ of these regulations (regarding informal hearings for development of a proposed rule).

IV.L.1.4.11 Statements of Policy and Interpretive Rules:

The Commission may from time to time adopt statements of policy and interpretive rules to guide the work of the Commission and the implementation of its programs. Their adoption does not require compliance with the APA and therefore will be conducted as deemed appropriate by the Commission.

IV.M.1.4.12 Approval of Plans, Reports and SIPs:

The Commission periodically takes formal action on plans, reports, or SIPs, which in many cases does not involve rulemaking. The actions may vary from review and approval of reports to the state legislature, to formal promulgation of SIPs or approval of SIP reports. When the approval of regulations or revisions to regulations is involved, the Commission will follow the procedures provided in Section ~~V.1-5-0~~ with respect to the rulemaking elements. With respect to any non-regulatory action or elements, the Commission ~~will, intends to the extent appropriate, follow the general structure of the~~ procedures in Section ~~V. This 1-5-0; to the extent such procedures are appropriate; this~~, however, shall not be construed to require the Commission to follow such procedures in any action that does not include rulemaking. The ~~Commission's written~~ Commission intends where necessary to explain in its notice for any such actions ~~will describe~~ the specific requirements for participation applicable to parties and the Division, and ~~to the public~~ where appropriate, ~~to the public. Prior to the hearing, the, Hearing and the Prehearing Conference~~ Officer may also provide ~~a prehearing additional direction by order that specifies specifying~~ other procedural requirements ~~prior to the hearing.~~

Notwithstanding the foregoing, any plan, report, or other provision, which is to become part of the Federally-enforceable SIP, must be adopted by the Commission following a formal rulemaking hearing. This requirement may be satisfied by adopting such plan, report, or provision during the course of a rulemaking hearing on an associated rule, or by publishing notice of the hearing on the plan, report, or provision in compliance with the notice requirements of Sections 24-4-103 and 25-7-110, C.R.S. This requirement ~~does shall~~ not ~~be construed to~~ require the promulgation and publication of a plan, report or other provision as a rule or regulation unless such plan, report or provision is a rule as that term is defined in Section 24-4-102, C.R.S.

IV.N.1.4.13 Review of conformity determinations

IV.N.1.4.13(1) The Commission shall hold at least one public meeting to review ~~non-routine~~ conformity determinations on a transportation plan or transportation improvement program. In general, the Division will determine whether a Conformity Determination is routine per the definition in AQCC Regulation Number 10, *Criteria for Analysis of Transportation Conformity*. Such requirement for a public meeting ~~shall also applies to a apply tea~~ non-routine conformity determination for a Federal Highway Administration or Federal Transit Administration project or any regionally significant project funded with non-federal moneys located outside of a metropolitan planning area if any member of the review team established to consult on such conformity determination requests a review by the Commission.

IV.N.1.4.13(2) The Commission shall provide written notice of the public meeting to the persons on the Commission mailing list maintained by the Office of the Air Quality Control Commission, Technical Secretary. Such notice ~~must shall~~ be ~~emailed mailed~~ at least thirty days prior to the public meeting.

IV.N.1.4.13(3) The entity making the conformity determination shall file via email the following documents with the Commission at least thirty days prior to the public meeting:-

~~IV.N.1.4.13(3)(a.)~~ ~~A)~~ ~~Twenty copies of a~~ statement summarizing the conformity finding and the key assumptions supporting the finding, and any technical support documentation.

~~IV.N.1.4.13(3)(b.)~~ One copy each of the relevant Transportation Plan and Transportation Improvement Program.

~~IV.N.1.4.13(4)~~ At least fourteen days prior to the public meeting, the Division shall provide each Commissioner with a copy of its written comments, if any, on the conformity determination. This provision ~~does shall not be construed to~~ preclude the Division from making additional comments on the conformity determination at the public meeting.

~~IV.N.1.4.13(5.)~~ The Commission may continue the public meeting to the next regularly scheduled Commission meeting, or to such other date requested by the entity making the conformity determination.

~~IV.N.1.4.13(6. The Board)~~ ~~Final adoption of the conformity determination by the board~~ or ~~Commission~~ ~~commission~~ with final authority to adopt ~~a~~ the conformity determination is not required ~~doing so~~ prior to the public meeting. If the conformity determination reviewed by the Commission is not final, or is otherwise subject to change prior to submittal to the Federal Highway Administration, the Commission may provide provisional concurrence, or continue the public meeting to review any changes to the conformity determination, and any changes to the plan or program that materially affect the conformity determination, that occur after the public meeting.

~~IV.N.1.4.13(7.)~~ The following procedures ~~shall~~ apply to any public meeting continued pursuant to Section ~~IV.N.1.4.13(5.)~~ or ~~IV.N.(6.)~~:

~~IV.N.1.4.13(7)(a.)~~ Testimony at the continued meeting may be limited to ~~the resolution~~ ~~of~~ Commission comments and to changes to the conformity determination that have occurred since the public meeting on the proposed conformity determination.

~~IV.N.1.4.13(7)(b.)~~ Any change to the conformity determination following the public meeting must be filed with the Commission at least fourteen days prior to the continued meeting. The Metropolitan Planning Organization, or ~~the Colorado Department of Transportation (CDOT)~~, or ~~any~~ other organization responsible for making the conformity determination, shall file ~~15~~ ~~twenty~~ copies of a description of the changes to the conformity determination, and to the key assumptions supporting the conformity determination, together with one copy of any revisions to the supporting documentation. Any changes filed less than fourteen days prior to the continued meeting may result in an additional continuation of the public meeting to the following month.

~~IV.N.1.4.13(8.)~~ Nothing in this rule ~~prevents shall be construed to prevent~~ the Division, the Metropolitan Planning Organization, ~~(CDOT), Colorado Department of Transportation,~~ or members of the Commission from briefing the Commission on upcoming conformity determinations. Any such briefings ~~will shall~~ be in addition to the public meetings required by this rule.

V.1.5.0 PROCEDURES FOR RULEMAKING

V.A.1.5.1 How a rulemaking proceeding begins

V.A.1.5.1(1) Commencement of rulemaking:

A rulemaking proceeding formally commences when the Commission approves a petition for rulemaking. A petition for rulemaking ~~may~~ originate from any member of the public or from the Division; the Commission ~~may~~ also request that staff prepare a petition for a specific matter.

~~V.A.1.5.1(2)~~ Members of the public and petitions for rulemaking:

Any member of the public ~~may~~ ~~shall have the right to~~ petition the Commission in writing ~~to issue, amend~~ ~~for the issuance, amendment,~~ or repeal ~~of~~ a rule. Such petition ~~is~~ ~~shall be~~ open to public inspection and must fulfill the requirements of Section ~~V.C.1.5.3~~ of this regulation, including those related to timing. Except as provided in Section ~~V.F.1.5.6(14.)~~, action on such petition ~~is~~ ~~shall be~~ within the discretion of the Commission; but, when the Commission undertakes rulemaking on any matter, all related petitions for the issuance, amendment or repeal of rules on such matter ~~will~~ ~~shall~~ be considered and acted upon in the same proceeding.

~~V.A.1.5.1(3.)~~—Commission schedule for rulemakings:

~~The Commission's Office of For efficiency,~~ the ~~Air Quality Control~~ Commission ~~maintains a~~ ~~intends to~~ ~~hear petitions for amendments to any one of its regulations according to the~~ long-term schedule for ~~rulemakings~~ ~~regulatory actions~~ and State Implementation Plan actions; ~~the schedule is available on,~~ ~~maintained by~~ the ~~Commission's website.~~ ~~In limited circumstances, the Commission may grant a~~ ~~petitioner's request~~ ~~Technical Secretary.~~ ~~If a petitioner intends~~ to deviate from the ~~Commission's~~ long-term schedule ~~upon showing~~ of ~~the Commission,~~ ~~the petitioner should~~ ~~demonstrate~~ good cause ~~for such deviation.~~

~~V.B.1.5.2~~ Development of proposals for rules or revisions:

The Commission strongly encourages thoughtful development of regulation text prior to it being proposed to the Commission in a formal petition for rulemaking. Engaging other ~~interested~~ ~~relevant~~ persons, the Division, and any other relevant regulatory entities in the regulation development process makes the rulemaking process more efficient for the Commission and all persons involved. Failure to solicit and consider the positions of others may result in rulemakings having to be postponed, re-noticed, or vacated.

~~V.B.1.5.2(1)~~ By members of the public:

Persons interested in proposing regulation text to the Commission are encouraged to contact other ~~interested~~ ~~relevant~~ persons, the Division, and other relevant regulatory entities in developing the draft regulation text. Appropriate Division staff can be reached by contacting the ~~Office of the Air Quality Control Commission~~ ~~Technical Secretary.~~ Any person can request the Commission to ~~announce~~ ~~make announcement of~~ and convene a work group ~~of relevant persons~~ pursuant to Section ~~V.B.1.5.2.(2)(b.)~~, or a subcommittee pursuant to Section ~~V.B.1.5.2.(2)(c.)~~, ~~below,~~ action upon which is in the discretion of the Commission.

~~V.B.1.5.2.(2)~~ By the Commission or staff

~~V.B.1.5.2.(2)(a.)~~ Informal hearings:

Whenever the Commission contemplates rulemaking, public announcement of any informal pre-rulemaking proceedings, e.g., an informal hearing, ~~is~~ may be made at such time and in such manner as the Commission or staff determines, and ~~opportunity will be afforded~~ the public ~~will be invited~~ to submit views or otherwise participate informally in conferences with the Commission or staff on the proposals under consideration. It is in the discretion of the Commission to determine if and when such proceedings should occur. An announcement should be designed to encourage early and informal public participation regarding, for example: the consideration and design of the proposed rule; the process of deciding whether rulemaking should be pursued; and, ~~resolution of issues related to proposing a rule.~~

Informal hearings conducted by the Commission are discussed in Section [IV.J.1.4.10, above](#). Whenever time and resources permit, ~~it is the intention of~~ the Commission ~~will~~ provide for and encourage informal comment and discussion regarding potential rulemaking issues prior to commencement of the formal rulemaking process.

[V.B1-5.2.\(2\)\(b.\)](#) Workgroups:

A workgroup may be convened by staff at the direction of the Commission for the purpose of: producing either a consensus proposal or to develop a core proposal and potential alternatives. Commissioners generally do not participate in workgroups. Public announcement of any workgroup will be provided as deemed appropriate by the Commission or ~~those persons participating in the~~ workgroup participants. At the end of any workgroup, any person, including the Division as staff, may proceed with formal action before the Commission. ~~In the discretion of the Commission, staff may provide periodic reports to the Commission on the status of the workgroup during the Commission's general meetings. It is the desire of the Commission that a workgroup will result in a consensus proposal, or at least bring focus to a core proposal and what alternate proposals might be submitted as a result of the workgroup.~~

[V.B1-5.2.\(2\)\(c.\)](#) Subcommittees:

~~The~~In its discretion the Commission may convene a subcommittee of Commissioners, and appoint a Commissioner to chair ~~at the~~ subcommittee to evaluate ~~any~~an issue that may come before the Commission, including new ~~regulatory~~regulation requirements or revisions to existing regulations, ~~if that is decided as the recommended course of action~~. A subcommittee consists of one or more Commissioners. Members of the public may participate to assist the Commission, but are not part of the subcommittee. Subcommittees ~~may~~will generally endeavor to propose regulation text that addresses the issues of concern, to identify issues that need to be resolved, consider the views of interested persons and entities, and propose regulatory language that addresses the issues of concern. ~~Where~~where possible, ~~the subcommittee will~~ to reach consensus on regulatory text. ~~A subcommittee's recommendation is~~text that addresses the issues of concern of those participating in the subcommittee or other relevant persons or entities. A subcommittee is convened to consider what is the best proposal for purposes of a petition and notice, so that the rulemaking is efficient and encompasses the proper issues for the Commission's consideration at hearing; members of the subcommittee are not committed to the subcommittee's recommendation, which is simply a proposal to generate discussion in an efficient and focused hearing before the full Commission; members of the subcommittee are not committed to the subcommittee's recommendation. Regulation text developed by the subcommittee generally will ~~generally~~ be proposed and presented in a petition by the Division as staff ~~in a petition~~, although in some circumstances, if the subcommittee so directs, a subcommittee participant may propose and present the subcommittee text to the Commission. ~~Member~~Any members of the public and the Division may offer alternate proposals to those of the subcommittee.

[V.B1-5.2.\(2\)\(d.\)](#) Staff:

In order to solicit participation in the development of regulatory text prior to submitting a petition for rulemaking to the Commission~~When appropriate, and in its discretion,~~ the Division may use whatever means are practical and efficient, including public workshops or staff-initiated workgroups, ~~in soliciting participation in the development of regulation text prior to submitting a petition for rulemaking to the Commission~~. Such workshops or workgroups should be noticed where appropriate and should strive to include the general public.

[V.C.1-5.3](#)

Petitions for rulemaking

V.C.1.5.3(1) General:

Petitions for rulemaking shall be open to public inspection and must fulfill the requirements Section V.C. of this regulation. The Commission strongly encourages thoughtful and thorough preparation of petitions before they are submitted to the Office of the Air Quality Control Commission of this Section 1.5.3 of the regulation.

~~V.C. The Commission strongly encourages thoughtful and advanced preparation of petitions before they are submitted to the Technical Secretary, and strongly discourages late or "last-minute" petitions. The Commission thus intends to adhere to the timing requirements reflected in this section of the regulation.~~

1.5.3(2) Timing:

Except for emergency rules addressed in Section V.C.1.5.3(6) of this regulation, the complete petition ~~must~~ shall be filed by electronic mail pursuant to the provisions of Subsection III.1.3.8(2). If granted an exception to electronic filing pursuant to the provisions of Subsection III.1.3.8(3), the petitioner must submit an original and fifteen copies of a complete petition for rulemaking in the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado, 80246-1530. Petitions must be filed by the close of business thirty days prior to the scheduled general meeting of the Commission at which the petitioner desires to have the Commission hear the petition. Electronically mailed copies or copies covered under the exception of the provisions of Subsection III.1.3.8(3) must also be delivered by that time to the Assistant ~~Attorneys~~ Attorney General representing the Commission and the Division, and to the Director of the Division.

Failure to comply with this requirement will generally result in the petition not being considered during the desired general meeting of the Commission, but being held over to the next general meeting of the Commission. In limited circumstances, the Commission may grant a petitioner's request to have a late petition heard upon showing of good cause.

V.C.1.5.3. Contents(3) — Content of a standard petition:

~~Petitioners are advised to~~ It is recommended that petitioners contact the Office of the Air Quality Control Commission ~~Technical Secretary as soon as possible~~ when ~~they are~~ preparing their petition to discuss whether the petition is complete and addresses all requirements. The Office of the Air Quality Control Commission ~~Technical Secretary~~ may return any petition that does not address every requirement specified in this Section V.C.1.5.3.(3), with a brief explanation of ~~how~~ where the petition is deficient. Petitions that are returned by the Office of the Air Quality Control Commission ~~Technical Secretary~~ likely will not be considered by the Commission at the general meeting during which the petitioner desired to have the petition heard. Unless the rule proposal is subject to Section V.C.1.5.3(4) of this regulation, a complete petition for rulemaking ~~must~~ shall include the information required in this Section V.C.1.5.3.(3), subsections (a) through k.:(i):

V.C.1.5.3.(3)(a) Petition Cover Sheet ~~document~~:

Petitioners shall provide a cover sheet ~~A document~~ that: identifies the person(s) requesting the rulemaking (including the representative's name, address, electronic mail address, and ~~facsimile and~~ telephone numbers); includes a statement describing the nature of the request; includes a statement broadly summarizing the issue to be addressed by the petition; includes a statement summarizing what, if any, policy, factual, and legal issues arise due to the proposal; and, includes a statement of the Commission's authority to promulgate the rule, citing specific relevant sections of the Act or other relevant statute.

V.C.1.5.3.(3)(b) Memorandum of Notice:

The Technical Secretary, in cooperation with the petitioner, must prepare a Memorandum of Notice (MON) which includes the information required under 25-7-110.5(3), C.R.S.

The Memorandum of Notice must also include an Initial Economic Impact Analysis as required by 25-7-110.5(4) C.R.S. The petitioner may ask the Division for assistance to prepare the economic impact analysis, but, pursuant to 25-7-110.5(4)(a) and (c), the petitioner must confer with the Division to determine what type or types of economic impact analysis are required.

V.C.3.c.) Proposed regulation text:

Petitioners must also provide the Commission with the precise language of any proposed new regulations, regulation or amendments amendment to existing regulations. Proposed regulations or amendments to existing regulations Commission regulation must be presented included in a form that the Commission can view in context. (i.e., track changes/redline or capitalized words for new regulation text and strikeout with small caps if track changes is not available), and the petitioner to delete existing regulation text). It must precisely identify the sections of section(s) from the Commission's Commission's regulations that are affected by the being addressed. Proposed rules that intend to incorporate by reference allowable requirements must comply with Sections 24-4-103(12.5)(a)-103(12.5)(c)(i), and 103(12.5)(d), C.R.S.; the petitioner must also provide in its petition 15 complete copies of the document(s) proposed change.

V.C.3.d. Range of regulatory alternatives:

The Petitioner shall also to be incorporated by reference so that the Technical Secretary can provide a statement describing the range of regulatory options available to the Commission, including a no-action alternative. The statement should discuss those regulatory options that reasonably flow from or relate to the petitioner's proposal and relevant existing regulation(s). the required documents to the state publications depository and distribution center pursuant to Section 24-4-103(12.5)(c)(II)(b), C.R.S.

V.C.3.e.1.5.3(3)(c) Memorandum of Notice:

A Memorandum of Notice addressing each required topic in § 25-7-110.5(3), C.R.S. The Technical Secretary may assist the petitioner in developing the Memorandum of Notice, if requested and time permitting. The Memorandum of Notice must include a fiscal and economic statement, known as an Initial Economic Impact Analysis, required by Section 25-7-110.5(4), C.R.S. (this can be an attachment to the Memorandum of Notice). The petitioner may ask for assistance from the Division in preparing the economic impact analysis, but must confer with the Division in selecting the appropriate type of economic impact analysis or analyses (see, Sections 25-7-110.5(4)(a) and (4)(c), C.R.S.). (Note: the petitioner will also be responsible for developing, in cooperation with the Division, a Final Economic Impact Analysis due after the notice of rulemaking has been published. See, Section 1.5.5(5)(c)(ix) of this regulation.)

1.5.3(3)(d) Statement regarding Federal requirements:

For any provision A statement describing the potential justification of terms that is are not required by federal statute, exceed, or regulations, the Petitioner shall provide a brief statement that identifies differ from federal requirements as required by Section 25-7-110.5(5), C.R.S., which, if applicable, must include a detailed, footnoted explanation of the portion of differences between the proposed rule that is and the federal requirements. The detailed, footnoted explanation must address the topics specified in Section 25-7-110.5(5)(b), C.R.S. (Note: this requirement only applies to proposed rules that are not

required by the federal act, and includes exceed the explanation requirements of the federal act, or differ from the federal act or rules there under.)

In addition, the petitioner must provide a brief narrative statement identifying what elements of the proposed rule or amendment are not specifically required by 25-7-110.5(5)(b), C.R.S. The Petitioner must also, the provisions of the federal Clean Air Act or are otherwise more stringent than the requirements of the Clean Air Act pursuant to Section 25-7-105.1 and 133(3), state that any non-federally required provision is not an addition to or a revision of any SIP(1) C.R.S. This statement regarding federal requirements may also be used in the notice of rulemaking for the rule, and in the final Statement statement of Basis, Specific Statutory Authority basis, specific statutory authority, and Purpose purpose.

V.1.5.3(3)(e) — Risk cost-benefit analysis:

[Reserved. See, Section 25-7-110.5(6), C.R.S.]

1.5.3.(3)(f) (Draft Statement) — Range of Basis, Specific Statutory Authority, regulatory alternatives:

A statement describing the range of regulatory options available to the Commission when addressing the petitioner's proposal, including a statement regarding the no-action alternative. The regulatory options should be those that are reasonably contemplated as flowing from or related to the petitioner's proposal and Purpose; where applicable, the relevant existing regulation.

The Petitioner shall also provide a 1.5.3(3)(g) — Other information:

Where appropriate, a statement providing any other concise background material that would assist the interested and affected public and the Commission in understanding the impact of the proposed rule.

1.5.3(3)(h) — Draft statement of basis, specific statutory authority, and purpose:

A freestanding draft statement of the rule's basis, statutory authority, and purpose, which explains the Commission's rationale for adopting a proposed rule or amendment. The statement must contain:

- i. A general statement of the basis for the rules;
- ~~ii.~~ — ~~The specific statutory section(s) authorizing the rulemaking; and,~~
- iii. The specific purposes of the rule (e.g., "to implement the provisions regarding ..., by requiring that" is a way to frame this required discussion).
- ~~iii.~~ The specific statutory section(s) authorizing the rulemaking;
- iv. For any provision that is not federally required, the statement described at V.C.3.e.
- v. Pursuant to 25-7-110.8, C.R.S., the statement required when the Commission has no discretion under state law not to adopt the proposed rule or to adopt any alternative rule.

- vi. For any rule or amendment which involves technological or scientific issues, the Petitioner must include an evaluation of the scientific or technological rationale justifying the proposal.

~~V.C.3.g. This statement is intended to reflect what the Commission would conclude in adopting the rule, and should be phrased accordingly. It should address all findings and considerations that the Commission is required to address under the Act or other relevant statute in adopting the proposal. It should address the major factual and policy issues that the Commission will be asked to decide, and the reasoning used to resolve them. If the proposed rule involves technological or scientific issues, the document must include an evaluation of the scientific or technological rationale justifying the proposed rule. The document must also identify what portion of the rule or revision being adopted is not specifically required by the provisions of the federal act or is otherwise more stringent than the requirements of the federal act, as required by Sections 25-7-133(3) and 105.1, C.R.S. (the brief narrative statement required by Section 1.5.3(3)(d), above, should be used here), or, in the alternative, include a statement that the rule or revision being adopted is not an addition to or revision of the SIP. The document should identify which SIPs in the state, if any, are affected by the Commission's adoption of the regulation. (Note: this document will in many cases be used by staff to prepare a final document for approval by the Commission, reflecting issues and considerations that might arise during the course of the rulemaking proceeding.)~~

~~1.5.3(3)(i)~~ Technical Support Documents:

Any technical documents required by 40 CFR, Part 51 (July 1997, EPA) for any SIP submittal or otherwise prepared for submittal to EPA in support of such a SIP submittal. Such technical documents shall be available electronically and for public inspection at the Office of the Air Quality Control Commission-office, and at least one location in each portion of the State in which the relevant SIP will apply.

V.C.1.5.3.h. Final Economic Analysis:

The petitioner shall also prepare, in cooperation with the Division, a Final Economic Impact Analysis (EIA) pursuant to C.R.S. 25-7-110.5(4). The EIA is due five working days prior to the prehearing conference. If no prehearing conference is held, the final economic analysis is due at least ten days prior to the date of the rule-making hearing.

V.C.3.i. Identification of Affected SIPs:

The Petitioner should identify which SIPs in the state, if any, are affected by the Commission's adoption of the regulation.

V.C.3.j. Other information:

Where appropriate, a statement providing any other concise background material that would help the public and the Commission to understand the impact of the proposed rule.

V.C.3.k. Incorporation by Reference:

A petitioner who seeks to incorporate any material by reference must comply with 24-4-103(12.5)(a)-(c), C.R.S. The petitioner must also provide one complete copy of any material to be incorporated by reference to the Office of the Air Quality Control Commission, which will forward the incorporated material to the state publications depository and distribution center.

V.C.4.) Content of particular petitions:

Some requirements for a petition in Section V.C.1.5.3.(3) do not apply to rule proposals that: (1) adopt by reference applicable federal rules; (2) adopt 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. ~~Petitions for such rule proposals must include all elements of a petition specified in Section 1.5.3(3), except they need not include the following:~~

Petitions for these types of rule proposals must include all elements of a petition specified in Section V.C.1.5.3. However these types of petitions need not include:

V.C.(4.a. Either the initial or final)(a) — Fiscal & economic statement/initial economic impact analysis required by Section 25-7-110.5(3)(g) and (4), C.R.S. or, (in the Memorandum of Notice):

V.C. The fiscal & economic statement, known as an Initial Economic Impact Analysis, required by Section 25-7-110.5(4), C.R.S., is not required in the Memorandum of Notice. (Note: for these rulemaking proposals the petitioner is also exempted from having to submit a Final Economic Impact Analysis.)

1.5.3(4)(b.) Statement regarding Federal requirements:

The statement describing the potential justification of terms exceeding or differing from federal requirements as required by Section 25-7-110.5(5), C.R.S., or, is not required. (Note: the Memorandum of Notice must still address the topic in Section 25-7-110.5(3)(h), C.R.S., to the extent practicable; also, the petition must still provide a brief narrative statement describing whether the proposal is not specifically required by the provisions of the federal Clean Air Act or is otherwise more stringent than the requirements of the Clean Air Act pursuant to Sections 25-7-105.1 and 133(3), C.R.S.)

V.C.4.c.1.5.3(4)(c) — Risk cost-benefit analysis:

[Reserved. See, Section 25-7-110.5(6), C.R.S.]

1.5.3(4)(d) Range of regulatory alternatives:

The statement describing the range of regulatory alternatives, including the no-action alternative, is not required.

V.C.1.5.3(5) Alternate proposals submitted at the same time that the petition is to be considered:

Persons who submit an alternate proposal for consideration while at the time the Commission is considering a proponent's petition for rulemaking, and who also intend that the alternate proposal to be considered published with the original petition notice, must comply with the timing requirements of Section V.C.2. and the requirements of Section V.C.1.5.3.(3)(a.) through V.C.1.5.3.k., (3)(h) (unless the alternate proposal is subject to the abbreviated requirements of Section V.C.1.5.3(4. A proponent of an alternative proposal must also prepare, in cooperation with the Division a Final Economic Analysis. For an alternative proposal, a final economic analysis is due five working days prior to the prehearing conference. The Commission may consider alternative proposals and economic analyses that were not submitted prior to the prehearing conference, for good cause shown.)), and also with the timing requirements of Section 1.5.3(2).

V.C.1.5.3(6.) Petition for an Emergency Rule emergency rule

V.C.1.5.3(6.)(a.) Request and petition:

Any person including the Division may request the Commission to adopt a temporary or emergency rule without ~~complying compliance~~ with the requirements of Section ~~V.C.1-5-3~~ of this regulation and with less than sixty days notice (or, where circumstances imperatively require, with no notice). The Commission may adopt such a rule if it finds on the record that immediate adoption of the rule is:

- (i) imperatively necessary to comply with a state or federal law or federal regulation, or
- (ii) imperatively necessary for the preservation of public health, safety or welfare; and,
- (iii) compliance with the rulemaking procedural requirements of Section ~~V.C.1-5-3~~ of this regulation (excluding this Subsection ~~V.C.1-5-3(6.)~~) would be contrary to the public interest.

Unless the immediacy of the situation precludes any preparation, the person requesting a temporary or emergency rule shall prepare at least a brief petition that describes the issue at hand, provides the proposed rule text (~~i.e., track changes/redline or strikeout with small caps if track changes is not available~~), ~~to include in a small capital/strike-through format~~, includes a statement of the reasons for the action (i.e., the need for the emergency action), and includes proposed findings of the basis for the Commission's action under ~~V.C.6.a.(i) and (iii), or (ii) and (iii).~~, ~~immediately above~~. This petition should be filed in the Office of the Air Quality Control Commission at the earliest possible date. The ~~Commission~~ ~~Technical Secretary~~ will endeavor to provide notice of the proposed emergency rule, as practicable.

Any person may request that a regulatory analysis under Section 24-4-103(4.5), C.R.S., be prepared and made available to the public five working days prior to the hearing, unless there is an imminent and serious hazard to health, welfare, or the environment. The request must be in writing and filed in the Office of the Air Quality Control Commission at least fifteen days prior to the hearing at which a temporary or emergency rule is to be considered. Section 24-4-103(4.5)(d), C.R.S. applies to any such regulatory analysis.

~~V.C.1-5-3(6.)~~(b.) Commission requirements:

The required findings in Section ~~V.C.1-5-3(6.)~~(a.), and a statement of the reasons for the action, ~~will shall~~ be published with any temporary or emergency rule adopted by the Commission. A temporary or emergency rule ~~is shall become~~ effective upon adoption or on such later date as is stated in the rule, ~~will shall~~ be published promptly, and ~~will remain in shall have~~ effect for not more than ~~120 days or less three months~~ from the date of adoption, (unless it is a special emergency rule adopted under Section ~~V.C.1-5-3(6.)~~(c.), or it is made permanent by compliance with this Section ~~V.C.1-5-3~~).

~~V.C.1-5-3(6.)~~(c.) Special emergency rules for interim emissions control regulations:

In addition to the general temporary or emergency rulemaking authority described in Section ~~V.C.1-5-3(6.)~~(a.), ~~above~~, the Commission may conduct emergency rulemaking for the purpose of adopting an interim emission control regulation to apply for a specified period of time in place of an existing emission control regulation or to create an emission control regulation whenever federal regulations have been adopted and become effective pursuant to Section 111 of the federal act and which add to the list of categories of stationary sources, or add new or more restrictive standards of performance for new sources, or whenever federal regulations are adopted and effective pursuant to Section 112 of the federal act and which modify or adopt Maximum Achievable Control Technology or Generally Available

Control Technology for new or existing sources, and such regulations are required to be implemented by the states.

These emergency emission control regulations are effective upon adoption, unless a later date is specified in the rule, and ~~will~~ shall be effective for a period not exceeding twelve months from the date of adoption. ~~Persons seeking adoption of such an emergency rule shall comply with Section 1.5.3(6)(a), above, and the Commission will comply with Section 1.5.3(6)(b) (with the exception of the length of time the rule may remain valid). The provision in Section 1.5.3(6)(a) regarding a regulatory analysis is applicable to any special emergency rule under this section.~~

V.C.7. Petition for Written Comment Only Rule

Written Comment Only hearings are not subject to standard prehearing procedures. Petitions for written comment only rulemaking shall be open for public inspection and must fulfill the requirements of this regulation. If the Commission grants such a petition, all interested persons are encouraged to provide their views in writing 14 business days prior to the hearing or as otherwise provided in the Notice of Hearing. No testimony or oral presentations will be taken at the hearing except for good cause shown. If the Commission determines that a prehearing process is necessary at the time of the hearing, the Commission must adopt a motion to re-notice the hearing.

V.D. Notice

V.D.1.1.5.4 Notice

1.5.4(1) Preparation:

Upon receipt of a complete rulemaking petition, the Office of the Air Quality Control Commission~~The Technical Secretary~~ will prepare a draft notice of proposed ~~upon receipt of a complete petition for~~ rulemaking. Petitioners may consult with the Air Quality Control Commission~~are free to contact the Technical Secretary~~ regarding the description of the proposed rule in the notice. The Office of the Air Quality Control Commission~~Technical Secretary~~ will provide the draft notice and the petition to the Commission ~~along with the petition~~.

V.D.1.5.4(2) Publication requirement:

Except for temporary or emergency rules under Section V.C.1.5.3(6) of this regulation, or rulemaking hearings exempt under Section 24-4-103(1), C.R.S., or rulemaking hearings covered under Section V.F.1.5.6(14), each rulemaking hearing of the Commission shall be preceded by formal notice published in the Colorado Register and on the Commission's website no less than sixty days prior to the hearing.

V.D.1.5.4(3) Proposed Rulemaking Packet:

At the time the official notice for a particular rulemaking is published, the Office of the Air Quality Control Commission~~Technical Secretary~~ will provide to any member of the public upon request, either electronically, or in hard copy at cost, a copy of the Proposed Rulemaking Packet. (Note: a complete petition for rulemaking meeting the requirements of Section V.C.1.5.3(3) (or V.C.1.5.3(4), if appropriate) constitutes the Proposed Rulemaking Packet.)

V.D.1.5.4(4) Amended notices:

V.D.4.a. Minor Changes

An amended notice with minor changes may be issued by the Commission at any time prior to the hearing without necessitating a continuance of the hearing date, provided the original notice is not substantially altered so that it would prejudice any person who might be interested in the proceedings. Amended notices with minor changes will be available on the Commissions website.

V.D.4.b. Substantial Changes

–If an amendment is substantial and would be prejudicial, the hearing date shall be continued to an appropriate date as determined by the Commission. Notice, and notice thereof shall be made in the same manner as the original notice and must be published in the Colorado Register, the newspaper, and on the Commission’s website consistent with the Colorado statutes.

V.E.1.5.5 Prehearing procedures

V.E.1.5.5(1) General:

These prehearing procedures provide a process by which ~~the~~ issues related to a proposed rule are raised and discussed, and, if they cannot be resolved prior to the prehearing conference, presented to the Commission for decision in an efficient manner. ~~if they cannot be resolved prior to the prehearing conference.~~ It is the strong desire of the Commission that the parties and the Division ~~try to~~ resolve as many issues as possible by negotiation prior to the prehearing conference.

V.E.1.5.5(2) Selection of the Hearing Officer

The Technical Secretary requests that a Commissioner volunteer to serve as the Hearing Officer for the prehearing process and the rulemaking hearing. The Hearing Officer has the authority as discussed in Section V.E.4.

V.E.3. Rights and obligations of parties, non-parties, and the Division.

V.E.3.1.5.5(2)(a.) Parties:

Persons ~~granted~~ gaining party status ~~will~~ have the right to make an individual presentation either be heard orally or in writing, or both, during the rulemaking hearing, to (i.e., to make an individual presentation), make appropriate objections, and ~~will have the right~~ to cross-examine witnesses. Parties to the rulemaking must comply with the prehearing procedures, including any order of the Commission or the Hearing Prehearing Conference Officer. Failure to comply with the prehearing procedures or any order will generally result in loss of party status.

V.E.3.1.5.5(2)(b.) Non-parties:

Persons who do not desire party status, but would like to participate in the rulemaking process, ~~may will be able to~~ make their views known to the Commission on any rulemaking ~~either~~ by submitting comments in writing in advance of or at the hearing, and by speaking during the public comment period ~~at~~ allotted during any hearing.

V.E.3.1.5.5(2)(c.) Air Pollution Control — The Division:

The Division ~~acts shall act~~ as staff to the Commission in any rulemaking hearing, and typically is not a formal party. In fulfilling its role as staff, the Division may, ~~among other things,~~ present evidence and testimony, provide background, summarize evidence and any matters settled before the hearing, ~~and~~ make recommendations to the Commission and perform other duties as requested by the Commission. The Division or the Assistant Attorney

~~General representing~~; the Division may, as necessary to assist the Commission, make objections or cross-examine witnesses, in the discretion of the Commission. The Division may affirmatively request party status pursuant to the procedure in Section ~~V.E.(1-5-5(3)(c))~~, below. If the Division formally gains party status, it may continue to provide staff services to assist the Commission, as directed by the Commission or the Prehearing Conference Officer. Whether the Division participates as staff, as a party, or both, it shall comply with prehearing procedures.

~~V.E.4.1-5-5(3)~~ Gaining party status:

The requirements for gaining party status to any particular rulemaking typically are specified in the notice for that rulemaking. In order to be granted party status, the petitioner must comply with the requirements of this subsection. Where ~~the notice of rulemaking specifies that~~ a petition for party status is required ~~in the notice~~, the petition shall be filed by electronic mail in compliance with Subsection ~~III.1.2. unless an exception is granted under III.1.3.8(2)~~. Electronically mailed copies must also be ~~timely~~ received ~~by that time~~ by the Assistant Attorneys General representing the Commission and the Division, and by the Division staff person identified in the notice. If granted an exception to electronic filing pursuant to the provisions of ~~Subsection III.1.3.8(3)~~, the petitioner must complete filing for party status by submitting an original and three copies of the petition ~~for party status~~ in the Office of the Air Quality Control Commission by the date specified in the notice. As may be modified by any notice for a rulemaking, the following entities will have party status in rulemaking proceedings before the Commission:

~~V.E.4.1-5-5(3)(a.)~~ The petitioner:

Any person petitioning for rulemaking under Section ~~V.C.1-5-3~~ shall automatically be granted party status.

~~V.E.4.1-5-5(3)(b.)~~ The proponent of an ~~initial~~-alternate proposal:

Any person ~~who proposes~~ ~~desiring party status by the act of proposing~~ an ~~initial~~-alternate rule to a proposed rule or revision shall ~~comply~~ ~~file in compliance~~ with ~~the filing requirements of V.E.4. and provide an~~ ~~this Subsection 1-5-5(3) such initial~~ alternate rule or revision and any other ~~required~~ documents ~~required by V.C.3.a. through V.C.3.k. The required documents should be filed in the Office of the Air Quality Control Commission~~ by the date specified in the notice for party status requests, but ~~not less in no event later~~ than ~~20 days prior to the rulemaking hearing. However, the final economic analysis must be filed at least five working~~ ~~twenty~~ days prior to the rulemaking hearing.

~~Any person may propose an alternative to a proposed rule or revision. However, 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 for the particular rulemaking hearing.~~ By filing an ~~initial~~ alternate rule proposal within the specified time frame and fulfilling the necessary requirements for alternate proposals and other relevant prehearing requirements, a person ~~shall~~ automatically ~~obtains~~ ~~obtain~~ party status.

~~Failure to timely file required documents~~ ~~To file such an initial alternate proposal, the proponent is required to simultaneously provide a document that addresses for the alternate proposal the requirements in Section 1-5-3(3)(a), and the alternate rule or revision must be submitted in a form consistent with the requirements in Section 1-5-3(3)(b). Alternate proposals may only be considered by the Commission if the subject matter of the alternative proposal is consistent with and fits within the scope of the notice for the particular rulemaking hearing. The proponent of an alternate proposal must also file in the Office of the Air Quality Control Commission fifteen copies of a final economic impact analysis developed by the proponent, or developed by the proponent in cooperation with the Division, meeting the~~

~~requirements of Section 25-7-110.5(4)(c), C.R.S., at least five working days prior to the prehearing conference or as otherwise specified in the notice. Copies of the documents described above must also be received at the time indicated by each party of record, the Division staff person identified in the notice, and the Assistant Attorneys General representing the Commission and the Division.~~

~~If the proponent of an initial alternate proposal submitted to gain party status does not file the required documents by the date specified in the notice for party status requests, and in turn relies upon filing such initial alternate proposal anytime up to twenty days before the hearing, that proponent bears the burden of complying with the timing requirements for economic impact analyses set forth in Section 25-7-110.5(4)(a), C.R.S., including being granted leave to file the economic impact analysis if the prehearing conference has already occurred; moreover, the proponent of such an initial alternate proposal submitted to gain party status at such a late date is required to file all necessary prehearing documents and comply with prehearing procedures to the extent practicable, but~~ may cause delay or a continuance of the hearing, and the alternate proposal likely will be given accord by the Commission commensurate with the amount of time prior to the hearing that the proponent chose to file the ~~initial~~ alternate proposal.

~~V.E.4.1-5.5(3)(c.)~~ Any other person; petitions for party status:

Any person may seek party status by petitioning the Commission. Granting of party status under this Section ~~V.E.4.1-5.5(3)(c.)~~ is in the sole discretion of the Commission. The petition must be filed in the Office of the Air Quality Control Commission as specified in the notice of rulemaking by electronic mail as required by ~~III.1.4.3.8(2.)~~, and if not specified in the notice then in no event later than forty-five days before the rulemaking hearing. If granted an exception to electronic filing pursuant to the provisions of Subsection ~~III.1.4.3.8(3)~~, the petitioner must complete filing for party status by submitting an original and three copies of the petition in the Office of the Air Quality Control Commission by the date specified in the notice.

The petition for party status must:- (1) identify the applicant; (2) provide the name, address, electronic mail address, and telephone ~~and facsimile numbers~~ of the applicant or applicant's representative; 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. Copies of the petition for party status must also be filed by electronic mail as required by ~~III.1.4.3.8(2.)~~ or copies covered under the exception of the provisions of Subsection ~~III.1.4.3.8(3)~~ and received by the Division staff person identified in the notice, and the Assistant Attorneys General representing the Commission and the Division, by the same day that it is due to be filed in the Office of the Air Quality Control Commission.

~~V.E.4.1-5.5(3)(d.)~~ Late party status:

The Commission may grant party status requests submitted ~~with~~ fewer than forty-five days before the hearing on a particular rulemaking only upon ~~a~~ written request and motion for good cause shown. Action on such ~~motion~~ is ~~at~~ the ~~sole~~ discretion of the Commission or the Prehearing Conference Officer. Any such request motion must be filed in the Office of the Air Quality Control Commission at the earliest possible opportunity, and must also be received by each party of record, and the Division staff person identified in the notice, and the Assistant Attorneys General representing the Division and the Commission, ~~by the same day that it is due to be filed.~~ Persons seeking party status by the act of proposing an ~~initial~~ alternative rule are subject to the time requirements provided in the notice or that are provided in Section ~~V.E.4.1-5.5(3)(b.)~~.

~~V.E.4.5.5(4)~~ Status Conference:

~~The Hearing~~~~The Commission or the Prehearing Conference~~ Officer may require one or more status conferences with the Division and the parties to a rulemaking hearing. The Commission may, in the notice of rulemaking, make attending the status conference mandatory. Status conferences will typically be held prior to the prehearing conference, shortly after the close of the deadline for party status. The ~~Hearing~~~~Prehearing Conference~~ Officer will preside at the status conference. The goal of the status conference is to ascertain and discuss the issues involved in the rulemaking, and to ensure that the Division and the parties are making all necessary efforts to discuss and resolve all possible issues prior to the date that prehearing statements are due. It is the intent of the Commission that final positions on the issues in a rulemaking (including final alternate proposals) will be reflected in the prehearing statements for the prehearing conference, so that all necessary discussions and revisions to positions will take place before the prehearing statements are due. If it is apparent that the final positions of the parties and the Division are not reflected in the prehearing statement, i.e., if further discussions, revisions to positions, or alternate proposals are warranted at the time of the prehearing conference, the ~~Hearing~~~~Prehearing Conference~~ Officer may decide to continue the rulemaking hearing. The ~~Hearing~~~~Prehearing Conference~~ Officer may impose appropriate sanctions on any party that fails to attend a mandatory status conference. ~~These Such~~ sanctions may include limits on the issues that may be raised at the hearing, or the denial of party status.

V.E.6.1-5.5(5) Prehearing Conference

V.E.6.1-5.5(5)(a.) Participation mandatory:

~~If the Commission determines that a prehearing conference is necessary, the~~~~The~~ Commission will specify in the notice of proposed rulemaking when a prehearing conference will be held ~~if deemed necessary~~. A duly appointed Commissioner will preside as ~~Hearing~~~~Prehearing Conference~~ Officer at the prehearing conference, and is authorized to ~~issue~~~~make necessary or appropriate~~ procedural orders. All parties and the Division shall participate in the prehearing conference in person. ~~A party may submit, in writing, a request~~~~The Prehearing Conference Officer may grant leave~~ to not participate in ~~the hearing~~ in person. ~~For, for~~ good cause shown, ~~the Hearing Officer may grant the request~~. Failure to comply with the requirements of this ~~section~~~~Section 1-5.5(5)~~ may result in denial of a party status application, ~~or in~~ dismissal of a party ~~or limits on the issues that may be raised at the hearing~~. ~~Request in writing prior to~~ by the Prehearing Conference ~~has to show good cause why and the Hearing~~ Officer ~~may grant acceptance~~~~or the Commission~~.

V.E.6.1-5.5(5)(b.) Goals of the prehearing conference and authority of the ~~Hearing~~~~Prehearing Conference~~ Officer:

The goals of the prehearing conference include: the identification of stipulations; the identification of contested matters and issues to be raised at the hearing; the disposal of motions; the identification of witnesses and exhibits to be presented by the parties, the Division, and other persons (where applicable); and, the formulation of a prehearing order for the rulemaking proceeding. The ~~Hearing~~~~Prehearing Conference~~ Officer will take action on petitions for party status at the prehearing conference. Such action is appealable to the Commission at the rulemaking hearing. The parties, the Division, or other persons should make known at the prehearing conference any objections to the procedures or evidence that may be used at the hearing.

Prehearing motions are to be filed with the ~~Office of the Air Quality Control Commission by electronic mail or as otherwise~~~~Technical Secretary, with copies~~ provided in III.I.3. Copies are to be provided simultaneously to the parties, the Division, ~~and to~~ the Assistant Attorneys General representing the Commission and the Division, and to any other person as required by ~~by electronic mail, as noted in~~ the notice of proposed rulemaking.

~~, or as soon as practicable prior to the prehearing conference.~~ A prehearing order shall be prepared at the direction of the ~~Hearing~~ ~~Prehearing Conference~~ Officer based upon the prehearing conference. The order shall reflect any rulings made by the ~~Hearing~~ ~~Prehearing Conference~~ Officer with respect to procedures to be followed at the hearing, or any other matter. The order will specify the order of presentations and the time allotted for such presentations. The ~~Hearing~~ ~~Prehearing Conference~~ Officer may make any necessary or appropriate procedural rulings; any party may appeal such rulings to the Commission at its next meeting by filing a written appeal with the ~~Office of the Air Quality Control Commission~~ ~~Technical Secretary~~ (with copies provided simultaneously to all parties, the Division, and the Assistant Attorneys General representing the Division and the Commission) no later than five working days prior to the hearing. The ~~Hearing~~ ~~Prehearing Conference~~ Officer may also make procedural decisions, outside the Prehearing Conference, reflected in an order, e.g., requiring attendance at status conferences, requiring written briefs on particular legal or factual issues, requiring intermediate informational presentations, or segmenting the rulemaking hearings for the benefit of the Commission.

~~V.E.6.1.5.5(5)(c.)~~ Prehearing statements:

Seven days prior to any prehearing conference, or at such other time as may be specified in the notice of proposed rulemaking, each party, the Division, and each applicant for party status shall file by electronic mail as required by Subsection ~~III.1.4.3.8(2.)~~ a prehearing statement in the Office of the Air Quality Control Commission, and shall provide the prehearing statement to every other party, applicant for party status, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings, by electronic mail, by midnight that same day. If granted an exception to electronic filing pursuant to the provisions of ~~III.1.4.3.8(3)~~, the applicant for party status shall by close of business that same day, file an original and fifteen copies of the prehearing statement in the Office of the Air Quality Control Commission, and shall also deliver copies to each other party, applicant for party status, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings, ~~as by electronic mail or as otherwise~~ provided by the exception granted under Subsection ~~III.1.4.3.8(3)~~, by that same day. The prehearing statement ~~must~~ shall contain:

- (i) A cover document that ~~summarizes~~ ~~contains an executive summary~~, in layperson's terms, ~~of~~ the Division's or the party's general position and the contents of the prehearing statement. The ~~executive summary~~ must ~~shall~~ also summarize any voluminous exhibits and provide a reasonable estimate of the time necessary for presentation, ~~and~~.
- (ii) A ~~prehearing specific~~ statement that explains ~~of~~ the factual and legal issues that arise from the rulemaking proposal, and what position is being taken on each such issue. Briefs discussing legal issues are encouraged, and ~~at times~~ may be required by the Hearing Officer, and.
- (iii) A list of the issues to be resolved by the Commission during the hearing.
- (iv) ~~A copy~~ Copies of ~~each exhibit~~ all exhibits to be introduced at the hearing.
 - (A) Any exhibit to be introduced at the hearing shall be included ~~with~~ in the prehearing statement and will be sent to the individual Commissioners for review prior to the hearing.
 - (B) Where the nature of an exhibit is such that providing an electronic mailed copy or fifteen paper copies would be unduly burdensome, the prehearing statement shall describe the exhibit, indicate what

evidence is reflected in the exhibit, and indicate that the exhibit shall be available for inspection with the Technical Secretary in the Offices of the Commission, at the discretion of the Prehearing Conference Officer. Any such exhibit shall also be available for inspection at the prehearing conference and at the hearing. Such exhibit will not be mailed to the Commissioners prior to the hearing, but shall become part of the record of the hearing absent an objection that is sustained by the Prehearing Conference Officer or the Commission.

- (v) A list of witnesses to be called and a brief description of their testimony, including, where applicable, what exhibits they will discuss or rely upon; any witnesses not listed in the prehearing statement will be prohibited from testifying unless the Hearing Officer approves the witness upon a request and for good cause shown.
- (vi) All written testimony to be offered into evidence at the hearing. (Note: the Commission encourages, and in some instances may require, witness testimony to be provided in writing).
- (vii) Where applicable, the text of any alternate proposed rule or revision in the format specified in Section V.C.3.b.1-5.3(3)(b) of this regulation.
- (viii) If an alternate proposed rule or revision is offered, a brief narrative statement identifying what elements of the alternate proposed rule are not specifically required by provisions of the federal Clean Air Act or are otherwise more stringent than the requirements of the Clean Air Act pursuant to Sections 25-7-105.1, 110.5(1)(d) and -133(3), C.R.S. This statement may also be used in the final statement of basis and purpose pursuant to V.C.3.h. those sections.
- (ix) The Final Economic Impact Analysis required for the proposed rule, or the Final Economic Impact Analysis for any alternate proposal developed in cooperation with the Division that meets, pursuant to and meeting the requirements of Section 25-7-110.5(4)(a) and (c), C.R.S. If the Final Economic Impact Analysis is the same as the Initial Economic Impact Analysis (submitted pursuant to sections V.C.1-5.3.(3)(c.) or V.C.1-5.1.-3(5)), an affirmative written statement to that effect must be submitted to satisfy this Subsection V.E.6.c.(ix). Economic impact analyses for alternate proposals may, if feasible and appropriate, evaluate the incremental impact over that already estimated for the original petition proposal, if feasible and appropriate. (Note: if no prehearing conference is scheduled, the Final Economic Impact Analysis must be filed in the Office of the Air Quality Control Commission at least ten working days before the rulemaking hearing.)

V.E.6.1-5.5(5)(d.) — Rebuttal statements & late filings:

The Hearing ~~The Commission or the Prehearing Conference~~ Officer may provide a reasonable period of time following the prehearing conference for the filing of electronic mailed or written rebuttal statements which may include, including identification of rebuttal witnesses, and providing electronic mailed or written rebuttal testimony, and exhibits. Rebuttal statements are limited ~~constrained~~ to address topics raised in the prehearing statements of the parties or the Division, and are not to raise new issues or arguments. Rebuttal statements will include an executive summary document consistent with Subsection

~~V.E.4.1-5.5(3)(c.)~~(i) of this regulation. The statement ~~must~~will be filed by electronic mail in compliance with the requirements of Subsection ~~III.1.4.3.8(2.)~~ in the Office of the Air Quality Control Commission within five working days after the prehearing conference unless otherwise provided in the notice of proposed rulemaking or directed by the Prehearing ~~Conference~~ Officer; and, copies shall also be delivered by electronic mail to each party, to the Assistant Attorneys General for the Commission and Division, and to the Division staff person for the proceeding by midnight of that same day.

If granted an exception to electronic filing pursuant to the provisions of ~~III.1.4.3.8(3)~~ Subsection 4.3.8(3), the original and fifteen copies of the rebuttal statement ~~must~~will be filed in the Office of the Air Quality Control Commission within five working days after the prehearing conference unless otherwise provided in the notice of proposed rulemaking or directed by the ~~Hearing~~Prehearing Conference Officer. ~~Copies must, and shall also be provided~~deliver copies to each ~~other~~ party, ~~(applicant for party status,~~ the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings, by electronic mail as provided in Subsection III.1.2., or as ~~or as otherwise~~ provided in the exception granted under Subsection ~~III.1.4.3.8(3)~~, by close of business that same day.

Except for such rebuttal, the Commission ~~will~~does not ~~intend to~~ accept any witnesses, documentation or exhibits submitted by any party or the Division after the prehearing conference (i.e., "late filings"), except for good cause shown, at in the discretion of the ~~Hearing~~Commission or the Prehearing Conference Officer, ~~, or as agreed upon by the parties and the Division and then approved by the Prehearing Conference Officer.~~

~~V.E.6.1-5.5(5)(e.)~~ Additional conferences:

Where scheduling allows and it appears that an additional conference would be useful, a decision may be made at the ~~Hearing Officer may~~prehearing conference to schedule an additional status conference prior to the hearing.

~~V.E.7.1-5.5(6)~~ Final Economic Impact Analyses:

If no prehearing conference is held, the Final Economic Impact Analysis required for the proposed rule, pursuant to and meeting the requirements of Section 25-7-110.5(4)(c), C.R.S., must be filed in the Office of the Air Quality Control Commission, by electronic mail in compliance with the requirements of Subsection ~~III.1.4.3.8(2.)~~ or as otherwise provided in the exception granted under Subsection ~~III.1.4.3.8(3)~~ at least ten working days before the rulemaking hearing. If the Final Economic Impact Analysis is the same as the Initial Economic Impact Analysis (submitted pursuant to Subsections ~~V.C.1.5.3.(3)(c.)~~ or ~~V.C.1.5.3(5)~~), an affirmative written statement to that effect must be submitted to satisfy this Subsection ~~V.E.7.1-5.5(6)~~. Economic impact analyses for alternate proposals may, if feasible and appropriate, evaluate the incremental impact over that already estimated for the original petition proposal, ~~if feasible and appropriate~~.

~~V.E.8.1-5.5(7)~~ Alternate proposals offered after the prehearing conference:

Except as provided in Sections V.E.8.a. through V.E.8.c., ~~general policy,~~ the Hearing Officer will not accept ~~submission of~~ an alternative proposal by a party after the prehearing conference is strongly discouraged. However, the parties are encouraged to develop consensus positions based upon which may emanate from discussions during or after the prehearing conference and prior to a final Commission action in the proceeding, provided ~~the~~The Commission and the parties have a reasonable opportunity, in light of the circumstances, to evaluate such alternative proposals. The following requirements are to guide the Commission in its considerations of such alternative proposed rule text prior to taking final action in the proceeding:

~~V.E.8.1-5.5(7)(a.)~~ The Commission, or the ~~Hearing~~~~Prehearing Conference~~ Officer ~~may, must~~ grant leave to submit such alternate proposed rule text for good cause shown. ~~In granting or denying such leave, the Commission or the Hearing Officer will, and may~~ consider the timing of the proposal and the hearing, the complexity of the issues, and whether the parties and the Division are or expect to be in agreement on such alternate proposed rule text. ~~in granting or denying such leave;~~

~~V.E.8.1-5.5(7)(b.)~~ Such alternate proposed rule text must be accompanied by a Final Economic Impact Analysis, developed in cooperation with the Division, pursuant to and meeting the requirements of Section 25-7-110.5(4)(c), C.R.S. Economic impact analyses for alternate proposals may evaluate the incremental impact over that already estimated for the original petition proposal, if feasible and appropriate; and

~~V.E.8.1-5.5(7)(c.)~~ Such alternate proposed rule text and Final Economic Impact Analysis must be delivered by electronic mail, ~~as provided in subsection III.1.2.,~~ or as otherwise provided in the exception granted under Subsection ~~III.1.3., 8(3), where possible,~~ to all parties, the Division staff person for the proceeding, and the Assistant Attorneys General for the Commission and the Division, ~~within the with an adequate amount of time set to review them prior to the rulemaking hearing.~~ Additionally, ~~an electronically mailed copy in compliance with 1.3.8 of such documents must be filed in the Office of the Air Quality Control Commission by the Hearing~~time specified by ~~the Prehearing Conference~~ Officer or the Commission. If granted an exception to electronic filing pursuant to the provisions of ~~III.1.3., 8(3),~~ an original and fifteen copies of such alternate proposed rule text and Final Economic Impact Analysis must be delivered in the Office of the Air Quality Control Commission, to all parties, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings, ~~by the time specified by the Prehearing Conference Officer or the Commission.~~

~~V.E.9.1-5.5(8)~~ Motions:

~~The~~ Apart from Section 1.5.5(5)(b) of this regulation (goals of the prehearing conference), the Commission or the ~~Hearing~~~~Prehearing Conference~~ Officer may require that parties, the Division, or other persons (where applicable) file by electronic mail in compliance with ~~III.1.2., or otherwise, in compliance with III.1.3., 8(2)~~ in advance of the hearing, all motions or requests for rulings that they intend to make with respect to the proposed rulemaking. ~~Filings that must be made prior to the hearing, except where, due to the lack of material information, such motions or requests cannot reasonably be filed in advance of the hearing. These shall~~ include motions regarding procedures, the scope and nature of the proceedings, or any other matter that requires a determination prior to final agency action based on the record, or any matter that may reasonably be disposed of prior to receiving testimony or other evidence.

~~V.E.10.1-5.5(9)~~ Discovery:

The Commission or the ~~Hearing~~~~Prehearing Conference~~ Officer may on ~~their~~~~its~~ own motion, or upon the motion of staff, or any interested person or a party for good cause shown, take depositions or have depositions taken, ~~and fix the time and place therefore.~~ Other forms of discovery may be allowed by the Commission or the ~~Hearing~~~~Prehearing Conference~~ Officer on ~~their~~~~its~~ own motion, or where staff, any person or a party is granted leave to conduct such discovery for good cause shown.

~~V.E.11.1-5.5(10)~~ Subpoenas:

The Commission or the ~~Hearing~~~~Prehearing Conference~~ Officer shall issue subpoenas without discrimination between public and private persons or parties. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with

such subpoena, the proponent of the subpoena may petition the Commission to use its authorities provided in Section 24-4-103(14), C.R.S. A witness shall be entitled to the fees and mileage provided for a witness in Sections 13-33-102 and -103, C.R.S.

V.E.12.1-5.5(11) Ex parte communications:

Ex parte communications are permissible if agreeable to the Commissioner(s) involved, but such information, if to be considered or relied upon in final decision-making, ~~will shall~~ be made part of the record by the Commission(s). Commissioner(s).

Once the rulemaking record is closed, new information ~~will shall~~ only be presented to the entire Commission ~~as a whole~~ upon approval of a request to reopen the Commission record. Ex parte communication with individual Commissioners should not occur subsequent to the close of the rulemaking record and before the Commission takes final action. If ex parte communications do occur in that time frame, that fact ~~will shall~~ be disclosed to the full Commission, and the Commission may, ~~if appropriate~~, reopen the record to allow the parties, the Division, and the public an opportunity to respond to the substance of the ex parte communication.

V.E.13.1-5.5(12) Regulatory analysis:

Upon a written request ~~by any person~~ filed in the Office of the Air Quality Control Commission at least fifteen days prior to the hearing on a proposed rule, the Commission, or its staff, shall prepare a regulatory analysis of the proposed rule pursuant to Section 24-4-103(4.5), C.R.S. The analysis ~~will shall~~ address the topics reflected in Section 24-4-103(4.5)(a)(~~I~~) - (~~VI~~) - (~~vi~~), C.R.S., ~~will shall~~ include quantification of the data to the extent practicable, and ~~will shall~~ take account of both short-term and long-term consequences. The regulatory analysis ~~will shall~~ be available for inspection in the Office of the Air Quality Control Commission at least five days prior to the hearing on the proposed rulemaking and can be made available electronically upon request.

~~—(Note: the petitioner for a proposed rule is encouraged to supply information with the petition or prehearing statement which could provide the basis for a regulatory analysis; if appropriate information is not provided, the Commission or its staff shall prepare the analysis [if one is requested] based upon information supplied by the parties, the Division, and the public, and upon such other information as may reasonably be available.)~~

V.E.14.1-5.5(13) Continuing hearings:

Except for hearings governed by Section V.F.1-5.6(14), upon motion by a party for good cause shown, or by its own motion, the Commission or the Hearing Officer may cancel, or continue any rulemaking hearing to a later date, as deemed necessary and appropriate. For continuances, the new hearing date, time and place may be announced by an amended notice pursuant to Section V.D.1-5.4(6) or by a statement at the time and place of the initial noticed hearing. Cancellations may be announced by issuing a notice to that effect on the Commission's website or by announcement at the time and place of the noticed hearing. The Hearing~~Prehearing Conference~~ Officer may also continue a rulemaking hearing by order based upon a written request and for good cause shown, or when the officer deems it appropriate. ~~The Commission will generally will only~~ continue a hearing~~rulemaking hearings~~ one time only; the hearing will if requested, to be rescheduled for the next Commission meeting or at the convenience of the Commission. If requested convenient opportunity on the Commission's docket; in response to a request to continue a rulemaking hearing a second time, the Commission may ~~choose to vacate the rulemaking hearing and re-notice it for a later date pursuant to Section V.D. and in compliance with the Colorado Administrative Procedures Act, Section 24-4.5.4-103(4)(d).~~ of this regulation.

V.F.1-5.6 Conduct of rulemaking hearings

V.F.1.5-6(1) Public participation encouraged:

The Commission shall hold a public hearing before promulgating any rule or regulation. The Commission encourages the public to participate in rulemaking hearings by commenting on proposed rules or alternate proposals. The Commission will generally afford any person an opportunity to submit data, views or arguments orally at the hearing, but, where appropriate, the Commission may require that such data, views or arguments be submitted in writing in advance of or at the rulemaking hearing as reflected in the notice of proposed rulemaking or by order of the Commission.

The Commission will generally set aside a portion of the rulemaking hearing to hear public comment and testimony from those persons who are not a party to the rulemaking. The presiding Commissioner may limit oral testimony at a hearing. Organized groups ~~of individuals~~ are urged to identify one spokesperson. Speakers are asked to be as concise as possible, and to avoid repeating comments made by others. ~~The Commission may provide parties or the Division an opportunity to rebut documents submitted or oral testimony provided by public comment, and may provide additional time as reasonably necessary for such rebuttal in the Commission's discretion.~~

Members ~~Introduction~~ of the public may submit written materials to the Commission ~~material~~ at the rulemaking hearing. ~~by members of the public is permitted (parties, see Section 1.5.5(5)(d)).~~ If members of the public would like ~~desire to have~~ the Commission to review written material prior to the rulemaking hearing, such documents must be filed in the Office of the Air Quality Control Commission in sufficient time to be included in the monthly meeting packets for the Commission (generally three weeks prior to the noticed rulemaking hearing), or as otherwise specified in the notice of proposed rulemaking hearing. The Commission may provide parties or the Division an opportunity to rebut oral testimony or documents submitted by the public during a rulemaking hearing and may provide time as reasonably necessary for such rebuttal.

V.F.1.5-6(2) Hearings to be conducted by the Commission:

The Commission shall conduct all rulemaking hearings.

V.F.1.5-6(3) Order of presentation:

The prehearing order issued by the Hearing ~~Prehearing Conference~~ Officer following the prehearing conference generally will specify the order of presentations before the Commission and the time allotted for each presentation. Subject to the terms of the prehearing order, rulemaking hearings generally will involve:

V.F.1.5-6(3) ~~(a.)~~ Opening the hearing and disposing of any procedural issues not resolved by the Hearing ~~Prehearing Conference~~ Officer, e.g., prehearing motions, remaining party status issues, late filings. The Commission at this time should determine ~~entertain~~ whether any apparent, potential, or actual conflicts of interest exist as described X. of these rules, ~~if any.~~

V.F.1.5-6(3) ~~(b.)~~ Presentation by the Division describing the background and basis for the proposed rule or other matters specified in the prehearing order and at the discretion of the Commission, ~~or~~ presentation of comments that are ~~offered by~~ as staff for the benefit of the Commission, ~~in the discretion of the Commission.~~ This introductory presentation, may at the discretion of the Commission ~~times,~~ be provided by a party proposing the rule, ~~in the discretion of the Commission.~~

V.F.1.5-6(3) ~~(c. Public)~~ Entertaining any public comment on the proposed rule; ~~(the prehearing order or the presiding Commissioner may specify when and how public comment may be taken during the proceeding.)~~

~~V.F. 1.5.6(3)(d)~~ Presentations by parties and other interested persons as specified in the prehearing order.

~~V.F. 1.5.6(3)(e)~~ Rebuttal or closing statements as may be provided for in the prehearing order, or in the discretion of the presiding Commissioner or the Commission.

~~V.F. 1.5.6(4)~~ Role of the Division:

The Division shall act as staff to the Commission in any rulemaking hearing, ~~and typically is not a formal party.~~ In fulfilling its role as staff, the Division may, ~~among other things,~~ present evidence, provide background information, make proposals or alternate proposals, summarize evidence and any matters settled before the hearing, ~~and~~ make recommendations to the Commission; ~~the Division may as necessary to assist the Commission~~ make objections or cross-examine witnesses, and provide other support as necessary to assist in the discretion of the Commission.

The Division may affirmatively request party status pursuant to the procedure in Section ~~V.E. 1.5.5(3)(c), above.~~ If the Division has formally gained party status, it may continue to provide staff services to assist the Commission, as directed by the Commission or the ~~Hearing~~ Prehearing Conference Officer.

~~V.F. 1.5.6(5)~~ Role of the Attorney General:

The Attorney General represents and advises the Commission, and also represents the Division before the Commission.

~~V.F. 1.5.6(6)~~ Witness presentations: Oaths

~~Except for hearings governed by Section 1.5.6(14), oaths~~ or affirmations ~~may~~ shall not be required of persons who make statements at rulemaking hearings. The Commission encourages the general public and party witnesses to make plain, brief and simple statements of their positions. Where submittal of written testimony is required prior to the hearing pursuant to the notice of proposed rulemaking or the prehearing order, only an oral summary of that testimony should be provided at the hearing. When not explicitly required, the Commission encourages filing of written testimony prior to the hearing in accordance with the prehearing procedures in Section ~~V.E. 1.5.5(5)(c)(vi)~~ (for parties, the Division, or other persons) ~~, [where applicable],~~ or V.F. 1.5.6(1) (for the general public).

~~V.F. 1.5.6(7)~~ Cross-examination and objections:

Where the Commission allows participation as a party, a party may make objections, and all witnesses ~~are~~ shall be subject to cross-examination by or on behalf of persons who have party status. In all hearings, witnesses ~~are~~ shall be subject to cross-examination by or on behalf of the Commission, and the Commission may allow its staff ~~and/~~ or legal counsel for the Commission, ~~or Division~~ its staff and/or legal counsel for the Division, to conduct cross-examination.

Any witness whose oral and/or written testimony a party wishes to have as part of the record shall be available for cross-examination at the rulemaking hearing. Where lengthy cross-examination would use undue time, the presiding Commissioner may ~~require~~ have each party to estimate the amount of time necessary for cross-examination; to promote an efficient and focused hearing, the presiding Commissioner may ~~and~~ limit each party's time for cross-examination, ~~taking such estimates into account.~~ The presiding Commissioner may also limit cross-examination to promote an efficient and focused hearing.

~~V.F. 1.5.6(8)~~ Other authority:

~~In The Commission in~~ conducting any rulemaking hearing, ~~shall, in addition to~~ the Commission is authorized ~~authority specified elsewhere, have the authority on its own motion, or upon the motion of any person, the Division, or party for good cause shown,~~ to: administer oaths and affirmations; sign and issue subpoenas; regulate the course of the hearing, set the time and place for continued hearings, ~~and~~ fix the time for filing of ~~appropriate~~ documents; take depositions or have depositions taken; issue appropriate orders which shall control the subsequent course of the proceedings and take any other action authorized by agency rule consistent with the Act and the APA. These actions can be directed by the Commission, the presiding Commissioner, or, where appropriate, ~~by the Hearing~~ Prehearing Conference Officer.

V.F.4-5-6(9.) Summation of facts and law:

The Commission, after the receipt of evidence, may allow or require staff, parties, or other persons to present oral or written summations of the facts and the law, either at the hearing or subsequent thereto, ~~as deemed appropriate.~~

V.F.4-5-6(10.) Final action:

In adopting any rule or regulation the Commission shall consider all submissions. The rules and regulations promulgated will shall be based upon the record, which will shall consist of proposed rules and alternate proposals, evidence, exhibits, testimony, prehearing submittals, and other matters presented or considered, matters officially noticed, rulings on exceptions, any proposed findings of fact and conclusions of law, and any written comments or briefs filed. Deliberations of the Commission are open to the public, and ~~do shall~~ not constitute part of the rulemaking record. The rules or regulations will shall be consistent with the subject matter as set forth in the notice of proposed rulemaking. The Commission may designate a subcommittee of Commissioners to assist with deliberations, ~~where appropriate.~~ If the Commission will deliberate at some time other than immediately after the close of the record for that particular hearing, appropriate notice will shall be given to the parties and to any other person requesting such notice. If a proposed final rule tentatively approved by the Commission differs substantially from the original noticed proposal or any alternate proposals, the Commission may, at the request of any person, or party, or on its own motion, make the proposed final rule available for additional comment prior to taking final action.

After consideration of the relevant matter presented, the Commission shall adopt simultaneously with the rules or revision a statement of basis, specific statutory authority, and purpose pursuant to Section 24-4-103(4)(c), C.R.S.

V.F.4-5-6(11.) Filing with Secretary of State:

Each rule adopted by the Commission, together with the statement of basis and purpose and the Attorney General's opinion rendered in connection with the rule, will shall be filed ~~within twenty days after adoption~~ with the Secretary of State for publication in the Colorado register within twenty days after adoption.

V.F.4-5-6(12.) Publication and effective date:

Except for temporary or emergency rules, a rule shall become effective twenty days after publication as described in this subsection, or on such later date as is stated in the rule. Once a rule becomes effective, the rulemaking process shall be deemed to have become final agency action for purposes of judicial review. Publication of an adopted rule shall be by electronic publication ~~the delivery or mailing~~ of the Colorado Register ~~to persons on the mailing list maintained~~ pursuant to Section 24-4-103(11)(h), C.R.S. ~~(see Section 24-4-103(11)(g), C.R.S.)~~

V.F.4-5-6(13.) Maintaining rules:

The Commission maintains copies of its currently effective rules, which are available for inspection by any person during regular office hours and can be made available electronically upon request. ~~(Theresa, do you want to describe how to access archived rules here?)~~.

~~V.F. 1-5-6(14.)~~ Special ~~additional~~ procedures for particular hearings

~~V.F. 1-5-6(14.)~~(a.) Hearings to Review Area Classifications, Designations, or General SIP Revisions:

(i) Hearings on matters pursuant to~~under~~ Section 25-7-105(2), ~~C.R.S.~~:

~~Any person~~ may ~~involve~~file an application to apply the following additional procedures ~~otherwise used only for adjudicatory hearings in any hearing requested under~~ Section 25-7-105(2), ~~C.R.S.~~ states that the Commission shall provide forms for the review of: the classification of any attainment, non-attainment, or unclassifiable areas within the state made~~area~~ pursuant to Sections 25-7-106(1) or 25-7-107(2);

(ii) any area ~~), C.R.S.~~, for designation or redesignation made~~of any Class I, II or III area~~ pursuant to section~~Section~~ 25-7-208;

(iii) _____, ~~C.R.S.~~, or for any specific revision of the terms of general application of the state implementation plan.

~~(i.e., pursuant to Sections 25-7-115(4)(a)(i)(B) or 117, C.R.S.)~~ Any request to apply such additional procedures must be included in the initial application and must state a clear basis for invoking ~~such~~ additional protections, ~~which protections are~~ ordinarily available only in an adjudicatory hearing. The following procedures shall apply to Section 25-7-105(2) hearings: ~~if the Commission grants the request:~~

(i) ~~—~~No fewer than fifteen days after the petition has been received, the Commission shall grant the request and set the matter for hearing to be held within ninety days of receipt of the petition. The requirement to hold the hearing within ninety days of receipt of the petition shall not apply if the Commission determines that: (1) the petition is primarily a request for a rulemaking hearing, which requires ~~and~~ (2) the Commission to~~must~~ comply with the publication requirements of Section 25-7-110(1).

(ii) ~~—~~Notice of the hearing will~~shall~~ be published, at least thirty days prior to the hearing, in a newspaper of general circulation in the area in which the proposed project or activity is located and will be published on the Commission website. ~~at least thirty days prior to the hearing.~~

(iii) ~~—~~All testimony at the hearing shall be under oath or affirmation.

(iv) ~~—~~A full and complete record of all proceedings and testimony presented shall be taken and filed at the Office of the Air Quality Control Commission.

(v) ~~—~~The petitioner for a revision to the state implementation plan under this section shall bear the burden of proof with respect to the justification for the revision and must provide~~the~~ information, data, and analysis supporting the petition.

(vi) _____ ~~—~~The Division shall appear as a party and shall have the same rights to judicial review as any other party.

~~V.F. 1-5-6(14)(b.)~~ Hearings to list Hazardous Air Pollutants (HAPs): Note that the statutory reference to the Air Quality Science Advisory Board (at 25-7-109.4, C.R.S.) was repealed in 2008; references to the Board have been deleted.

The following additional procedures apply to petitions that propose to amend the list of Colorado hazardous air pollutants (HAPs) pursuant to Section 25-7-109.3(5)(b), C.R.S.:

~~(i) Prior to granting a petition to amend the list of HAPs, the Commission shall refer the matter to the Air Quality Science Advisory Board (SAB) for an advisory opinion. The Commission should establish a schedule at that time identifying: who will submit information to the SAB and by what time; when the advisory opinion will be provided to the Commission; and, when the Commission expects notice of the rulemaking will be published and when it expects the hearing on the petition to occur. The Commission may but is not required to publish a notice that the matter has been submitted to the SAB for an advisory opinion, and that any person may submit information to the SAB to be considered in rendering that opinion. The SAB shall refer, as a guideline, to the same standards and criteria that the EPA uses as required under Section 112 of the Clean Air Act, 42 U.S.C. Section 7412, for amending the federal list of HAPs in rendering its advisory opinion.~~

~~(ii) Upon receipt of the advisory opinion from the SAB, the Commission shall set the matter for hearing to be held within ninety days, and shall publish notice of the rulemaking hearing in the Colorado Register.~~

~~(iii) Notice of the hearing shall also be published in a newspaper of general circulation in the relevant area(s) at least thirty days prior to the hearing.~~

~~(iv) All testimony at the hearing shall be under oath or affirmation.~~

~~(iv) v) A full and complete record of all proceedings and testimony presented shall be taken and filed at the Office of the Air Quality Control Commission.~~

~~V.F. 1-5-6(14)(c.)~~ Appeals of Colorado Maximum Achievable Control Technology (MACT) or Generally Available Control Technology (GACT) ~~MACT~~ determinations or compliance schedules:

The following additional procedures apply to petitions appealing a determination or compliance schedule by the Division pursuant to Section 25-7-109.3(3)(a)(IV), C.R.S.:

No fewer than (i) At least fifteen days after the petition has been received, the Commission shall grant the request, and set the matter for hearing to be held within ninety days of receipt of the petition.

At least thirty days prior to the hearing, notice ~~(ii) Notice~~ of the hearing shall be published in a newspaper of general circulation in the area in which the proposed project or activity is located ~~at least thirty days prior to the hearing.~~

~~(iii) All testimony at the hearing shall be under oath or affirmation.~~

(iii) All testimony at the hearing shall be under oath or affirmation.

~~(iv) A full and complete record of all proceedings and testimony presented shall be taken and filed. The hearing shall be recorded, and the transcript shall be filed at the office of the Commission.~~

~~V.F. 1-5-6(14)(d)~~ Criteria and procedures for local government petitions regarding the installation of emission control units filed pursuant to Section 25-7-133(7)(d)(V), C.R.S.

~~(1-5-6(14)(d)(i))~~ A petition for a hearing pursuant to Section 25-7-133(7)(d)(V), C.R.S. must be filed and served as required by Section ~~VI.B.1-6.2.(2)~~. A copy of the petition for a hearing must also be served, by hand delivery or first-class mail, upon the regulated entity proposing to install the contested emissions control unit. Service upon the regulated entity by first-class mail shall be timely if the petition is deposited in the mail on or before the deadline established pursuant to Section 25-7-133(7)(d)(V), C.R.S. for filing the petition with the Commission, provided that the contact person is also notified by such date by telephone at the number listed in the notice. The petition shall include the following:

- (A) Local government requesting the hearing;
- (B) The name of the regulated entity proposing to construct the contested emissions control unit, including contact person, if available; and
- (C) A statement of the basis for the objection.

~~(1-5-6(14)(d)(ii))~~ The hearing may be held and the matter decided by the Commission or a Hearing Officer designated by the Executive Committee of the Commission.

- (A) The procedures specified in Sections ~~VI.A.1-6-1~~ through ~~VI.F.1-6-6~~ apply only to the extent deemed appropriate by the Commission or the appointed Hearing Officer, and may be modified as appropriate.
- (B) The Hearing Officer, if so authorized by the Executive Committee of the Commission, may enter an initial decision pursuant to Section 24-4-105, C.R.S.
- (C) Alternatively, the Executive Committee of the Commission may set the matter for a hearing before the Commission, in which case the Hearing Officer shall administer the prehearing process in preparation for such hearing before the Commission.

~~1-5-6(14)(d)(iii)~~ The Commission shall uphold an objection by a local government if:

- (A) The regulated entity can comply with the requirements of Regulation Number 7 in a manner that complies with the local ordinance or resolution or otherwise addresses the objection filed by the local government; and
- (B) It is reasonable to uphold the objection based on consideration of the following factors:
 - (1) Any local ordinances, resolutions, permit or land use requirements that would, but for Section 25-7-133(7)(d)(~~VI~~), C.R.S., establish a valid basis to either deny a local permit or land use application, or ~~to that would~~ impose additional conditions on the unit. ~~In supplying this~~

~~factor, the Commission may give greater weight to a local ordinance or resolution adopted prior to July 1, 2004.~~

- (2) Any additional cost, burden or loss in production that may be incurred by the regulated entity due to the local government's objection.
- (3) Whether the regulated entity provided the notice required in Section 25-7-133(7)(d)(II) and has otherwise cooperated with the local government by addressing its concerns, including consideration of any reasonable alternatives.
- (4) The reasonableness of the objection and the weight of the public interest at issue.
- (5) Any other factor deemed relevant by the Commission.

V.F.15. Special Procedures for informal hearings under 25-7-112, C.R.S.

Pursuant to 25-7-112, C.R.S., a member of the public may request the Division to investigate a suspected discharge involving a significant risk of air pollution that present a clear, present and immediate danger to the environment or to public health. If the Division denies a request for an investigation, or if a member of the public is dissatisfied with the result of the investigation, such person may complain to the Commission by petition. The Commission may convene an informal hearing, not to determine the merits of the petition, but to decide whether to order the Division to conduct an investigation.

VI.4.6.0 PROCEDURES FOR ADJUDICATIONS

VI.A.4.6.1 Scope:

This section applies to all adjudicatory hearings conducted before the Commission including, for example, appeals of Division compliance orders and noncompliance penalty determinations, challenges of Division denials of proposed permits or of permit terms and conditions, for construction permits and operating permits, and applications for declaratory orders. ~~This Depending on the circumstances, this~~ section may also apply to requests for site-specific revisions of the state implementation plan. ~~Requests are~~ Some such requests will be subject to the procedures in Section ~~V.F.4.5.6(14.)~~ in addition to, or in lieu of, the requirements of this section.

VI.B.4.6.2 Initiating an ~~Adjudicatory~~ Adjudicator Hearing

VI.B.1.6.2(1) Jurisdiction of the Commission and Timing of the Appeal:

All requests for adjudicatory hearings must be timely filed within the deadlines established by the applicable statutory requirements and in the manner required by these regulations. Requests not made within statutory deadlines are outside the jurisdiction of the Commission and will be denied. The Commission may conduct a limited evidentiary hearing to resolve any disputed issues of fact in order to ~~that would~~ determine whether a request was timely filed.

VI.B.4.6.2.(2) Filing and Serving the Hearing Request:

Hearing requests shall be timely filed in the Office of the Air Quality Control Commission ~~within applicable deadlines~~. The ~~person requesting the hearing also shall serve the request~~ shall also be served ~~by electronic mail or under the exception of the provisions of Subsection 1.3.8(3)~~ upon the Compliance Manager ~~Legal Administrator~~ for the Division, and the First Assistant Attorney General,

Air Environmental Quality Unit, Natural Resources and Environment Section, Office of the Colorado Attorney General, 1525 Sherman Street, 7th Floor, Denver, Colorado, 80203. Hearing requests must be filed electronically, pursuant to III.I.2., or otherwise, if an exception to electronic filing is granted pursuant to III.I.3.

VI.B.1.6.2(3.) Contents of the Hearing Request:

All requests for adjudicatory hearings shall contain the following information:

- (a) Name~~Identification~~ of the person(s) requesting the hearing, including address and telephone number;
- (b) A ~~statement of the relief requested and a~~ general statement of the relevant facts, factual basis and legal justification ~~[including a description of~~ the legal issues to be addressed, and the relief requested by ~~which the~~ proponent, prospective party intends to raise ~~] for the requested action;~~
- (c) A copy of any Division compliance order, noncompliance penalty determination or permit which is the subject of the request;
- (d) A statement identifying the date of receipt of the compliance order, date of issuance of the noncompliance penalty determination, or date of publication of public notice for a permit;
- (e) An estimate of the time that will be required for the hearing.

VI.B.1.6.2(4.) Notice of the Hearing:

VI.B.1.6.2(4.)(a.) All formal adjudicatory hearings of the Commission shall be preceded by written notice thereof in accordance with the requirements of this section.

VI.B.1.6.2(4.)(b.) The hearing notice ~~will~~shall contain (i) the time, date, place, and general subject matter of the hearing to be held, (ii) the time, date, place, and general purpose of the prehearing conference, (iii) instructions~~a description~~ as to how an interested person may apply for party status in the proceedings, and (iv) pertinent filing deadlines. The notice may also contain special procedures or requirements, including requirements for written testimony, which the Commission or Hearing Officer deems appropriate for a particular matter. The Commission may amend the notice, without ~~continuing~~continuance of the hearing date, at any time prior to the hearing as long as the change does not alter the original notice to the substantial prejudice of any party or the public.

VI.B.1.6.2(4.)(c.) The Office of the Air Quality Control Commission ~~Technical Secretary~~ shall timely-mail, at least thirty days prior to the hearing, ~~the~~ notice to all persons who have requested to be included~~listing~~ on the Commission's~~Commission~~ agenda mailing list, ~~to~~ all parties, and to each person who has filed a written request to receive notices for a particular adjudicatory proceeding. [Note: the APA says "any person entitled to notice of a hearing shall be given timely notice" which shall be served "personally, or by first class mail...at least thirty days prior to the hearing." See 24-4-105(2)(a).]

VI.B.1.6.2(4.)(d.) Notice of each hearing shall be published, at least thirty days before the hearing in a newspaper of general circulation in the area in which the affected

source or activity is located, ~~and on at least forty days before~~ the Commission's website hearing.

VI.B.4.6.2(5.) Parties:

VI.B.4.6.2(5.)(a.) The person requesting a hearing shall appear as a party. The Division shall appear as a party in adjudications of actions of the Division. The Division may appear as a party upon application in proceedings for declaratory orders. Other persons may apply for party status. An application for party status shall identify the person making the request, including an address and telephone number. The application must also ~~shall~~ contain a statement of the reasons for seeking party status, the manner in which the matter affects the ~~person's~~ person's interests, ~~and an explanation as to~~ why the existing parties do not adequately represent the ~~person's~~ person's interests, ~~and including~~ a description of the legal issues which the prospective party intends to raise. In addition, the application ~~must~~ shall describe the general nature of the evidence the applicant intends to present.

VI.B.4.6.2(5.)(b.) ~~Each~~ The notice of each hearing notice must ~~shall~~ prescribe a deadline for filing applications for party status, which must ~~shall~~ not be less than thirty days prior to the hearing. Thereafter, applications to be a party will ~~shall~~ not be considered except upon motion and for good cause shown.

VI.B.4.6.2(5.)(c.) The Hearing Officer will grant or deny ~~resolve~~ applications for party status prior to or at the prehearing conference. Party status will ~~shall~~ be granted to any person affected by the proceeding whose interests are not already adequately represented. Applicants for party status shall comply with all requirements of these rules pending resolution of the request.

VI.B.4.6.2(6) Setting the Hearing:

VI.B.4.6.2(6)(a.) The Office of the Air Quality Control Commission ~~Technical Secretary~~ shall include ~~place~~ all hearing ~~requests~~ for hearing on the Commission's ~~Commission~~ agenda for the next meeting following receipt of the request. At this meeting or by order of the Hearing Officer, not less than fifteen days after receipt of the request ~~requests~~, the Commission shall grant or deny the request. If the Commission grants the request, it shall set a time and date for the hearing, which shall be within ninety days of receipt of the request if the hearing relates to a Division compliance order, ~~to~~ a declaratory order, or to a permit appeal by the permit applicant.

VI.B.4.6.2(6)(b.) The Hearing Officer may continue the hearing ~~as appropriate~~ upon written motion by any party or for the convenience of the Commission.

VI.B.6.1.2(7.) Appointment and Powers of the Hearing Officer:

VI.B.6.1.2(7.)(a.) At its first meeting following receipt of a hearing request, the Commission shall appoint a Commissioner as Hearing Officer for the matter. The ~~If~~ necessary, the chairperson of the Commission may appoint a Hearing Officer to act until such meeting or ~~may appoint~~ at any time may appoint a replacement Hearing Officer, to be confirmed by the Commission at its next general meeting.

VI.B.6.1.2(7.)(b.) The Hearing Officer may exercise any powers conferred by Section 24-4-105(4), C.R.S., ~~[see appendix E]~~, including actions in accordance, to the extent practicable, with the procedure in district courts. ~~The Hearing Officer shall~~

~~not decide dispositive motions, but may schedule, in consultation with the chairperson and Technical Secretary of the Commission, such motions or any other matters for decision by the Commission prior to or at the hearing.~~ The Hearing Officer may require ~~that,~~ as part of the prehearing conference or otherwise, each party to parties shall submit in advance of the hearing any all motions or requests for rulings that party intends to make. These include motions regarding procedures, the scope and nature of the proceedings, or any other matter that requires a determination by the Hearing Officer or the Commission prior to final agency action, or any matter that may reasonably be disposed of by the Hearing Officer or the Commission prior to the receipt of testimony or other evidence.

~~—~~The Hearing Officer shall decide all procedural and preliminary motions, subject to appeal to the Commission. Decisions by the Hearing Officer shall be final unless appealed to the Commission. Failure to appeal an adverse decision of the Hearing Officer to the Commission constitutes a waiver of that issue for the purposes of judicial review.

~~VI.B.6.1.2(7)(c.)~~ The Hearing Officer shall conduct the prehearing conference and the hearing.

VI.C.4.6.3 Prehearing Procedures

VI.C.1.6.3(1) Settlement Period and Report:

The Commission encourages efforts to settle adjudicatory proceedings and will consider favorably requests for continuances or other measures to allow discussions to take place. However, fairness to all parties demands adequate time for hearing preparation. The party requesting the hearing ~~must~~ shall submit to the Hearing Officer not less than forty-five days before the scheduled hearing date a report regarding whether settlement is likely and whether a continuance of the scheduled hearing is appropriate.

VI.C.4.6.3(2.) Discovery:

~~VI.C.4.6.3(2)(a.)~~ Parties may conduct depositions and discovery pursuant to Rules 26 through 37 of the Colorado Rules of Civil Procedure (CRCP) without authorization by the Hearing Officer, to the extent that time is available before the hearing for such discovery. To the extent practicable, Rules 26 through 37, CRCP, apply to all adjudicatory matters before the Commission.

~~VI.C.4.6.3(2)(b.)~~ Unless otherwise ordered by the Hearing Officer, reasonable notice for the taking of depositions under Rule 30(b)(1), CRCP, shall not be less than five days. Pending resolution of any motion for a protective order under Rule 26(c), CRCP, and filing of the motion shall stay the discovery at which the motion is directed. Motions for protective orders shall be filed with the Office of the Air Quality Control Commission Technical Secretary, who shall immediately forward them to the Hearing Officer for prompt resolution. When such a motion is filed, the period for responding to the discovery is extended for the amount of time from the filing of the motion until action is taken on it.

~~VI.C.4.6.3(2)(c.)~~ Parties shall complete discovery no later than five days before the hearing, unless otherwise ordered by the Hearing Officer. The hearing may proceed regardless of whether the period between notice and hearing is sufficient to enable completion of all discovery.

VI.C.4.6.3.(3) Prehearing Conference:

~~VI.C.1.6.3.(3)(a.)~~ A prehearing conference shall be held in each adjudicatory matter before the Commission, not less than twenty nor more than thirty days before the hearing, unless otherwise ordered by the Hearing Officer. ~~The Office of the Air Quality Control Commission~~ ~~The Technical Secretary~~ will provide notice of the prehearing conference to all parties and persons who have applied to become parties. The Hearing Officer shall conduct the prehearing conference.

~~VI.C.1.6.3.(3)(b.)~~ The prehearing conference is held to dispose of procedural motions, form stipulations, identify and minimize contested matters respecting the issues to be raised, resolve discovery schedules and disputes, identify witnesses and exhibits to be presented by the parties, determine the order of presentation during the hearing, exchange prehearing statements and exhibits, and resolve any other matter that can be resolved before the hearing. The Hearing Officer may restrict ~~the parties'~~ party's presentations, exhibits and testimony ~~in order~~ to avoid duplication and ~~to minimize unnecessary commitment of the Commission's~~ time ~~spent on~~ to uncontested or peripheral issues.

~~VI.C.1.6.3.(3)(c.)~~ Each party and each person who has applied to become a party shall attend the prehearing conference, in person or through counsel.

~~VI.C.1.6.3.(3)(d.)~~ Each party and each person who has applied to become a party shall file with the ~~Office of the Air Quality Control Commission~~ ~~Technical Secretary~~ a Preliminary Prehearing Statement not less than five days prior to the prehearing conference. ~~The Office of the Air Quality Control Commission~~ ~~The Technical Secretary~~ shall promptly provide the statements to the Hearing Officer to allow the Hearing Officer to prepare for the prehearing conference. Preliminary Prehearing Statements will be contemporaneously served upon all parties and all persons who have applied to become parties and ~~must include all~~ shall state the information required in a Prehearing Statement, but ~~not~~ exhibits, written testimony and other attachments. ~~will not be included~~. Parties may modify their Preliminary Prehearing Statements ~~as appropriate~~ prior to the prehearing conference.

~~VI.C.1.6.3(4.)~~ Prehearing Statements:

~~VI.C.1.6.3(4.)(a. All parties must submit by electronic mail)~~ ~~Each party and each person who has applied to become a prehearing party shall present at the prehearing conference its Prehearing Statement. Each participant will provide at the conference copies of the statement to each other party and applicant for party status and fifteen copies for distribution to the Commission Office by close of business of the date specified in the Notice of Rulemaking Hearing. The prehearing statement must be filed by electronic mail pursuant to the provisions of Subsection III.1.2. If granted an exception to electronic filing pursuant to, the provisions of Subsection III.1.3., Technical Secretary, the petitioner must submit an original and fifteen copies of a complete petition for rulemaking in the Office Director of the Air Quality Pollution Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado, 80246-1530.~~

~~In addition, electronically mailed copies of these documents must be delivered by that date to all persons who have requested party status and the Division point of contact and each of the Assistant Attorneys General identified in the Notice of Rulemaking Hearing. Any revisions to the prehearing statement must be submitted to the Administrator of the Commission at the prehearing conference representing the Commission and by electronic mail to the Commission Office on the day of the prehearing conference. Division.~~

VI.C.1.6.3(4)(b.) Prehearing Statements ~~must~~shall contain information and exhibits ~~that substantially comply in substantial compliance~~ with the ~~format~~form outlined in ~~Section V.E.5.c. Appendix F~~ to these rules.- The authenticity of exhibits, statutes, ordinances, regulations or standards ~~submitted with~~set forth in the Prehearing statement shall be ~~considered~~ admitted ~~into the record~~ unless a party files a written objection with the Hearing Officer within ten days after the prehearing conference. The information provided in a Prehearing Statement ~~is~~shall be binding on each party throughout the course of the hearing unless ~~the Statement must be~~ modified to prevent manifest injustice. New witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing the Prehearing Statement and then only if ~~these additions~~it would not prejudice other parties or necessitate a delay of the hearing.

VI.C.1.6.3(4)(c.) Parties may amend or supplement the Prehearing Statements only to address issues, matters or evidence ~~that was~~ raised at the prehearing conference. The Hearing Officer shall specify the ~~deadline to file~~filling date for any amended or supplemented Prehearing Statements.

VI.C.1.6.3(5.) Proposed Findings of Fact, Conclusions of Law, Decision and Order:

~~At the prehearing conference, each~~Each party and each person who has applied to become a party shall present ~~at the prehearing conference a~~ Proposed Findings of Fact, Conclusions of Law, ~~and~~ Final Decision and Order. This document ~~must specify~~will express each finding and conclusion ~~that~~ the party seeks from the Commission. -In addition, the proposal ~~must state~~will include the final decision sought and ~~the~~ specific terms desired in any order implementing the decision.

VI.C.1.6.3(6) Prehearing Order:

The Hearing Officer shall direct ~~the~~ preparation of a prehearing order by ~~either at~~the party or ~~a~~ staff member ~~of his or her choice~~. The prehearing order ~~will~~shall reflect all decisions reached at the prehearing conference, ~~including~~ the order and timing of each presentation at the hearing, procedures to be followed for the duration of the matter and any other ~~issues addressed at the prehearing conference.~~information directed by the Hearing Officer.- The Hearing Officer may allow filing of prehearing briefs by a deadline established in the prehearing order.- The order shall control the subsequent course of the hearing unless ~~the order must be~~ modified to prevent manifest injustice.

VI.C.1.6.3(7.) Dispositive Motions:

VI.C.1.6.3(7)(a.) Any party may present a dispositive motion for consideration by the Commission. A dispositive motion is one that would finally resolve the subject of the adjudicatory hearing or any substantive part thereof.

VI.C.1.6.3(7)(b.) The Hearing Officer shall not decide dispositive motions. The Commission shall schedule these motions for decision. In the discretion of the Hearing Officer, the Commission may hear dispositive motions at the hearing of the matter or at a prior meeting.

VI.C.(1.6.3(7)(c) Dispositive motions shall be supported by memoranda stating the legal and factual basis for the motion. All other parties shall be provided a fair opportunity to respond to the motion.

VI.C.1.6.3(8.) Procedural Motions:

VI.C.4.6.3(8)(a.) Any party may present a procedural motion for consideration by the Hearing Officer. Procedural motions relate to discovery, timing and processes used in adjudication of the matter at issue.

VI.C.4.6.3(8)(b.) The Hearing Officer shall promptly decide procedural motions. As appropriate, the Hearing Officer may allow verbal procedural motions or require that they be made in writing or that memoranda support them.

VI.C.4.6.3(9.) Consolidation of Cases:

Any party may seek consolidation of two or more cases by filing a motion to consolidate in each case. ~~sought to be consolidated.~~ If more than one Hearing Officer has been assigned to the cases, the motion shall be ~~decided~~ determined by the Hearing Officer assigned to the case first filed. If the Hearing Officer orders consolidation, all subsequent filings shall be in the case first filed and the Office of the Air Quality Control Commission ~~Technical Secretary~~ shall place all previous filings related to the consolidated cases ~~together~~ in that case file. The Commission may order consolidation on its own initiative.

VI.C.4.6.3(10.) Dismissal of Cases:

VI.C.4.6.3(10)(a.) Any ~~—The~~ person who requested ~~requesting~~ a hearing before the Commission may request dismissal of the matter at any time. All requests for dismissal shall be in writing and filed with the Office of the Air Quality Control Commission ~~Technical Secretary~~.

VI.C.4.6.3(10)(b.) If there are no parties other than the Division and the person requesting the hearing, the Hearing Officer, or the chairperson of the Commission if no Hearing Officer has yet been appointed, may dismiss the matter by written order. If there are other parties, the Hearing Officer, or the Commission, shall provide an appropriate opportunity for each party to respond regarding the proposed dismissal. The Hearing Officer or the Commission may dismiss the matter over the objection of any party by written order.

VI.C.4.6.3(11.) Stay of Action Pending Hearing:

Any party may request a stay pending hearing of the matter on the merits. The Hearing Officer will rule on the request after providing all parties an opportunity to be heard. Any party may appeal the Hearing ~~Officers~~ Officer's decision to the Commission.

VI.C.4.6.3(12.) Location of Hearing:

The Commission's monthly meetings are generally held at ~~In addition to the~~ Colorado Department location of Public Health Environment, 4300 Cherry Creek Drive South, Sabin-Cleere Conference Rooms, Denver, Colorado 80246. ~~Upon its regular monthly meeting, upon~~ request by any party or the public or upon its own motion, the Commission may elect to conduct ~~at the~~ hearing elsewhere, including in any matter in the geographic ~~geographical~~ area of ~~at the~~ source(s) affected by a particular hearing.— Any request for a change in location ~~must~~ shall be submitted to the Office of the Air Quality Control Commission ~~Technical Secretary~~ not later than five days ~~before~~ prior to the regular monthly meeting that precedes ~~next preceding~~ the scheduled date for the hearing. Any such request ~~must~~ shall be served by the same deadline upon all parties and all applicants for party status, who ~~will~~ shall all receive an appropriate opportunity to respond to the motion before or at the meeting at which the Commission considers the request. Notice of any change in location of the hearing will be published in a newspaper of general circulation in the area in which the affected source or activity is located at least twenty days before the hearing.

VI.C.4.6.3(13.) Continuances:

Any party may request by motion that the Hearing Officer continue a scheduled hearing to a specific date for the convenience of the Commission or the parties. Any motion for a continuance to a date more than ninety days after the request for hearing shall reflect the waiver by the party requesting the hearing of the provisions of Section 25-7-119(1), C.R.S. In the absence of such a waiver, the Hearing Officer or the Commission shall deny the request and shall begin the hearing within the period(s) prescribed by Section 25-7-119. However, the Commission may elect to continue the remainder of the hearing at any time after the hearing begins.

Parties shall file motions for continuances with the Office of the Air Quality Control Commission~~Technical Secretary~~ for presentation to the Hearing Officer at least 10 days before the scheduled hearing; motions for continuance filed later than ten days before the hearing will be granted only~~except~~ for good cause shown. The Hearing Officer shall rule on continuance requests after providing all parties an appropriate opportunity to respond ~~under the circumstances~~. Any party may appeal the Hearing ~~Officer's~~~~Officer's~~ decision to the Commission.

VI.C.4.6.3(14.) Scheduling Orders:

Upon motion by any party, or upon his or her own motion, the Hearing Officer may require the parties to present proposals for scheduling matters preliminary to the hearing in order to assure that all parties have a fair opportunity to prepare for the hearing. The Hearing Officer may enter a scheduling order relating to motions, discovery and any other procedural matters at, before or after the prehearing conference.

VI.C.4.6.3(15.) Subpoenas:

Any counsel who has entered an appearance in the matter, ~~or by~~ the Hearing Officer upon application by any party not represented by counsel, may issue subpoenas for attendance at a deposition or the hearing. The Hearing Officer shall issue subpoenas without discrimination between parties. A subpoena shall be served in the same manner as a subpoena issued by a district court. The provisions of C.R.C.P. 45 apply to the extent not inconsistent with these rules.

Upon failure of any witness to comply with a subpoena, any party may by motion request that the Commission petition any district court for an order compelling the witness to attend and testify or produce books, records or other evidence. The party shall file the motion with the Office of the Air Quality Control Commission~~Technical Secretary~~, who shall immediately forward them to the Hearing Officer. The Hearing Officer or the Technical Secretary shall present any such motion to the Commission at or before its next meeting, as appropriate. Any party prejudiced by the absence of the witness or documentary evidence may also by motion request that the Commission continue the hearing pending resolution of the Commission's petition to the district court.

If the witness who fails to comply with a subpoena is an employee of a party, the Hearing Officer may entertain motions for sanctions against the party, including dismissal of the hearing, limitation of the issues or evidence, or orders concluding the evidence to be provided by the witness to be established against the party employing the witness.

VI.C.4.6.3(16.) Filing and Service of Documents:

All documents ~~must~~~~shall~~ be filed with the Office of the Air Quality Control Commission unless the Hearing Officer or the Commission directs otherwise, and documents must be served upon all parties, and the Assistant Attorneys General's representing the Commission and the Division by electronic mail in compliance with the requirements of Subsection III.I.4.3.8(2.) or as otherwise provided in the exception granted under Subsection III.I.3. 4.3.8(3) ~~with the Technical Secretary unless otherwise ordered by the Hearing Officer or the Commission.~~ All documents filed shall also

~~be served upon all parties by electronic mail in compliance with 1.3.8(2) unless an exception is granted under Subsection 1.3.8(3) in the manner prescribed by the Colorado Rules of Civil Procedure.~~

VI.D.1.6.4 Hearing Procedures

VI.D.1.6.4(1) Burden of Proof:

The Division has the burden of proof in proceedings regarding alleged violations of the Act, Commission regulations, and permits or orders, including appeals of compliance orders, noncompliance penalty determinations, cease and desist orders and notices of penalty determinations. The permit applicant has the burden of proof in all appeals of permit denials and of permit terms and conditions under Section 25-7-114.5(8), C.R.S. A petitioner for a site-specific amendment to the state implementation plan has the burden of proof. In all other adjudicatory matters, the proponent of an order has the burden of proof.

VI.D.1.6.4(2) Order of Presentation:

Every party may present its case through oral and documentary evidence. The party carrying the burden of proof may submit rebuttal evidence. Opening and closing statements will be allowed.

Unless otherwise established by the Hearing Officer or the Commission, the order of presentation will be:

VI.D.2.a. Consideration~~First, consideration~~ and resolution of any conflict of interest issues;

VI.D.2.b. Description~~Second, description~~ of the prehearing order and of the findings and rulings of the Hearing Officer. The prehearing order and rulings of the Hearing Officer govern the conduct of the hearing unless appealed to the Commission by a party or a member of the Commission.

VI.D.2.c. Consideration~~Third, consideration~~ of any remaining dispositive motions or other motions allowed by the prehearing order, including appeals by a party to the Commission of the prehearing order or other rulings of the Hearing Officer.

VI.D.2.d. Opening~~Fourth, opening~~ statements, beginning with the party upon whom the burden of proof rests.

VI.D.2.e. Presentation~~Fifth, presentation~~ of evidence, beginning with the party upon whom the burden of proof rests. The party upon whom the burden of proof rests may present rebuttal evidence. Sixth, closing statements, beginning with the party upon whom the burden of proof rests.

~~Sixth, closing statements, beginning with the party upon whom the burden of proof rests.~~ VI.D.

1.6.4(3) Witnesses:

Each witness shall take an oath or affirmation before testifying. Parties and Commissioners may cross-examine witnesses in the order established by the Hearing Officer.

VI.D.1.6.4(4) Motions and Objections:

The Hearing Officer shall decide procedural motions and objections relating to procedure and to evidence made during the course of the hearing. Parties may make evidentiary offers and objections thereto, which shall be noted in the record. The Commission may reconsider the decision of the

Hearing Officer, upon motion of a party or request of a Commissioner. Any matters not reconsidered by the Commission are deemed waived by all parties for the purposes of judicial review.

~~VI.D.1.6.4(5.)~~ Public Participation:

The Commission may allow public participation in an adjudicatory hearing at appropriate times. Persons who testify at the hearing are subject to cross-examination. If a witness unrelated to a party raises new issues or introduces documents containing factual matters ~~not~~ previously ~~addressed~~~~unaddressed~~ and a party requests the opportunity to rebut, the Hearing Officer will allow an adequate opportunity to rebut at the hearing or afterward to the extent necessary to avoid prejudice to any party.

~~VI.D.1.6.4(6)~~ Motion for Directed Verdict:

After the party upon whom the burden of proof rests completes its case in chief, any party may present a motion for directed verdict contending that the burden of proof was not satisfied as to all or part of the case. This motion is a dispositive motion that the entire Commission shall consider.

~~VI.D.1.6.4(7.)~~ Evidence:

The rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil non-jury cases in the district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties, the Commission may receive and consider evidence not admissible under such Rules if the evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their own affairs. The Commission shall give effect to the rules of privilege recognized by law and may exclude incompetent and unduly repetitious evidence. The Commission may utilize its experience, technical competence and specialized knowledge in the evaluation of evidence before it. The Commission may take notice of general, technical or scientific facts within its knowledge, but only if the fact so noticed is specified in the record or is brought to the attention of the parties before final decisions and every party is afforded an opportunity to controvert the fact so noticed. Upon request by a party, the Hearing Officer may allow the parties to submit evidence not previously submitted during the prehearing process, but only where the party presenting the evidence demonstrates good cause for not previously disclosing it.

~~VI.D.1.6.4(8.)~~ Rules of Civil Procedure:

To the extent practicable and not inconsistent with these rules, the Colorado Rules of Civil Procedure apply to hearings before the Commission.

~~VI.D.1.6.4(9.)~~ Post-hearing Briefs and Summaries:

The Commission may allow parties to file hearing briefs or summaries after the close of evidence by a deadline determined at the hearing. If the Commission allows such briefs, it shall schedule a time at which it will deliberate on the case. At such deliberation, no evidence or argument by the parties may be received unless the Commission reopens the record.

~~VI.E.1.6.5~~ Decisions of the Commission

~~VI.E.1.6.5(4)~~ Decisions by Motion:

Decisions of the Commission on motions presented by parties, including dispositive motions and appeals of rulings by the Hearing Officer, shall be on the motion as presented by the party and no motion by a Commissioner is necessary. The Commission may not grant a dispositive motion unless a majority of the Commission votes in favor of the motion.

Decisions of the Commission on the merits of the case at the close of the hearing or determination shall be on motion by a Commissioner, which may be to adopt the Proposed Findings of Fact, Conclusions of Law, Decision and Order filed by any party or to enter any other appropriate order. Any such motion shall include findings of fact, conclusions of law, a decision and order. Any decision of the Commission on the merits requires a majority of the Commission.

VI.E.1.6.5(2.) Decision in the Event that No Motion Carries:

If no decision on the merits achieves a majority vote of the Commission, the party upon whom the burden of proof rests shall be deemed to have failed to sustain its burden. The relief requested or the order supported by the party ~~will~~ shall be deemed denied.

VI.E.1.6.5(3.) Effective Date of the Decision:

Unless the Commission designates another date, the effective date of the final decision is the date of adoption of a dispositive resolution of the entire matter heard, including an order to that effect. Commission decisions disposing of parts of a case before the final decision are effective as of the date of the final decision. The Commission may direct a delayed entry of a final order in order to allow preparation of an order with specific changes adopted by the Commission.

VI.F.1.6.6 Post-Decision Matters

VI.F.1.6.6(1) Requests for Reconsideration:

Parties may request reconsideration of all or part of any final decision by the Commission within ten days of the effective date of the decision by written motion filed with the Office of the Air Quality Control Commission by electronic mail in compliance with the requirements of Subsection III.I.1.3.8(2.) or as otherwise provided in the exception granted under Subsection III.I.3.1.3.8(3) ~~with the Technical Secretary~~. The Office of the Air Quality Control Commission ~~Technical Secretary~~ shall immediately transmit any such motion to all Commissioners who participated in the final decision. ~~Any Commissioner who voted in favor of the final decision may request that the Commission reconsider all or part of the final decision.~~ If a party requests reconsideration, the Technical Secretary, in conjunction with the Hearing Officer, shall arrange a prompt meeting of the Commission, which may include participation by telephone. ~~At the meeting, any Commissioner who voted in favor of the final decision may move that the Commission reconsider all or part of the final decision.~~ Only Commissioners who participated in the original final decision may participate in a decision to reconsider. A motion to reconsider requires an affirmative vote by a majority of the Commission in order to pass. If the Commission decides to reconsider, the matter shall be a priority item at the next regular meeting. When the Commission decides to reconsider any portion of a final decision, the effective date of the entire decision is suspended until reconsideration is complete.

VI.F.1.6.6(2.) Stays Pending Judicial Review:

Any party may move for a stay of the final determination of the Commission, in whole or in part, for the duration of any judicial review sought. The party may present its motion at the conclusion of the hearing, in which case the Commission will resolve the motion at that meeting if possible. A party also may move for a stay by filing the motion in writing with the Office of the Air Quality Control Commission ~~Technical Secretary~~ and serving each participant in the hearing not less than five days before the next regular meeting of the Commission following the final decision. The Commission will hear any stay motion made after the hearing at its next regular meeting. The Commission will afford all participants in the hearing an opportunity to respond to the motion for a stay. Decisions on a stay motion shall be made on the motion as presented by the party and no motion by a Commissioner is necessary. The Commission will not consider a motion for a stay after any party files a complaint for judicial review.

~~VI.F.1.6.6(3.)~~ Transcripts:

~~The Office of the Air Quality Control Commission~~~~The Technical Secretary~~ shall arrange for a full and complete record of all proceedings and testimony presented at the hearing. The reporter shall furnish, upon payment of any fees allowed therefore, a certified transcript of the whole or any part of the transcript to any party requesting it. The record of the hearing shall include all pleadings, applications, evidence, exhibits, and other papers presented or considered, matters officially noticed, rulings upon exceptions, any findings of fact and conclusions of law proposed by any party, and any written briefs filed.

~~VI.G.4.6.7~~ Ex Parte Communications:

No ex parte communications, as defined in Section ~~III~~~~4.3.7~~, shall occur with or by any Commission member during the pendency of an adjudicatory proceeding. Commissioners shall disclose any ex parte communications on the record.

~~VI.G.4.6.8~~ Declaratory Orders

Pursuant to Section 24-4-105(11), C.R.S., the Commission, in its discretion, may review petitions for declaratory orders in order to terminate controversies or to remove uncertainty in the application to a petitioner of provisions of the Act or of any relevant statute, rule, regulation, decision, permit, or order. Any order disposing of a petition constitutes final agency action subject to judicial review.

If the Commission votes to review a petition, it shall issue an order disposing of the petition after notice and an adjudicatory public hearing that meets the requirements of the ~~APA~~, the Act, and these rules. The order shall be limited in its scope to those matters necessary to dispose of the petition properly.

~~VII.1.7.0~~ PROCEDURES FOR ~~HEARINGS TO TAKE~~ PUBLIC COMMENT ~~HEARINGS~~ ON PERMIT APPLICATIONS

~~VII.A.1.7.1~~ Scope

This Section applies to all public comment hearings conducted before the Commission under Section 25-7-114.5(6), C.R.S. It does not apply either to adjudicatory hearings under Sections 25-7-119 and 24-4-105, C.R.S., or to rulemaking proceedings under the Act and Section 24-4-103, C.R.S.

~~VII.B.1.7.2~~ Setting the Hearing

~~VII.B.1.7.2(1)~~ The ~~time and date for the~~ public comment hearing ~~will~~~~shall~~ be ~~held~~ within sixty days of the ~~Commission's~~~~Commissions'~~ receipt of all required materials relating to review of a permit or a permit term or condition pursuant to Section 25-7-114.5(6)(b), C.R.S. unless the applicant and the Division agree to a later date.

~~VII.B.1.7.2(2)~~ The Commission may continue the public comment hearing for the convenience of the Commission ~~if the requirements of paragraph 1.7.2(a) are met.~~

~~VII.B.1.7.2(3.)~~ Where there is more than one request for a public comment hearing; such hearings may be combined at the discretion of the Commission.

~~VII.B.1.7.2(4.)~~ At least thirty (30) days prior to the date set for the public comment hearing, the notice of public comment hearing, the preliminary analysis and the draft permit ~~will~~~~shall~~ be posted on the Commission's web site. No substantive revisions ~~will~~~~shall~~ be made to the draft permit during the thirty (30) days prior to the public comment hearing.

VII.C.1.7.3 Appointment ~~and Powers~~ of the Public Comment Hearing Commissioner:

VII.C.1.7.3(1) At its first meeting following receipt of a request for a public comment hearing, the Commission may appoint a Commissioner to convene the hearing and preside over the receipt of public comment. If necessary, the chairperson of the Commission may appoint a Commissioner to act until such meeting or may appoint at any time a replacement Commissioner, to be confirmed by the Commission at its next meeting.

VII.D. Public Comment Hearing Procedures

VII.D.1. A 7.3(2) ~~The Commissioner appointed to preside over the~~ public comment hearing is intended to encourage citizen participation ~~may set reasonable time limits for all oral statements~~ and provide a forum for information gathering by the agency. It is not an adversarial proceeding.

VII.D.2. During the hearing the Commission will elicit and record the comments of any interested ~~may permit individuals to aggregate their allotted time to one~~ person regarding the sufficiency of the Air Pollution Control Division's "preliminary analysis" of a permit application, renewal or modification and whether the permit should be approved or denied ~~to speak on their behalf.~~

VII.D.3.1.7.4 ~~Public Comment Hearing Procedures~~

1.7.4(1) Any person, including the permit applicant, may submit written statements or present oral comments at the public comment hearing.

VII.D.4. The Hearing Officer or Chairperson will preside over the public comment hearing, be responsible for its orderly conduct, and the Hearing Officer will set reasonable time limits for all oral statements.

VII.D.5. All comments received at the hearing are recorded for the hearing record. Written comments are encouraged and will be accepted until the close of the public hearing, unless an extension is granted by the Commission or the Hearing Officer.

VII.D.6.1.7.4(2) The Division shall appear at the public comment hearing in order to present the permit application.

VII.D.7. At the beginning of the hearing, the Division and the permit applicant will describe the project, the permit application, the preliminary analysis, and the draft permit, including any revisions to the draft permit based on public comments.

VII.D.8. Any person may submit written statements or present oral comments to the Commission or Hearing Officer regarding the Division's preliminary analysis and draft permit. All oral comments will be subject to the time limits imposed by the Commission or Hearing Officer.

VII.D.9. Individual commenters at the public hearing may appoint a spokesperson and pool their allotted comment time up to a maximum amount of comment time as determined by the Commission or the Hearing Officer. Commenters choosing to pool their comment time must be present at the time the spokesperson is called upon to present the comments.

VII.D.10. Public comment hearing participants should refrain from engaging in debate with the Commission, Division, permit applicant, or other commenters regarding their perspective on the Division's preliminary analysis or the draft permit.

VII.D.11. Where any person presents clear and convincing evidence that the Division's preliminary analysis is insufficient, the Commission may, at its discretion, direct the Division to address the insufficiency.

VII.D.12. Commenter's at the public hearing should raise all issues of concern and provide information supporting their perspectives by the close of the public comment period. ~~4(3)~~
The public comment period closes at the conclusion of the public comment hearing, unless the Commission or Hearing Officer~~presiding commissioner~~ grants an extension of the public comment period to receive additional written~~time to submit public~~ comments.

VII.D.13.~~1.7.4(4)~~ The Office of Administrator~~for the Air Quality Control Commission~~commission shall immediately transmit all oral and written public comment received at the public comment hearing to the Division for its consideration prior to the Division's final action on the permit.

VII.D.14. The Division must grant, deny or modify the permit within 30 days of the conclusion of the public comment period. The Division will make its responses to the public comments available to any interested person at the time of permit issuance or denial. The administrative record will include the permit application and supporting data, the preliminary analysis, the draft permit and any permit revisions, the final permit, comments and documentation received during the public comment period and public comment hearing, and the Division responses to comments.

VII.E.1.7.5 Appeals of the Permit

VII.E.1.7.5(1) After the permit has been issued, any participant in the public comment process, including members of the public and any other person who could obtain judicial review under applicable law may seek judicial review of the Division's final decision on the permit application under Section 25-7-114.5(11), C.R.S.

VII.E.1.7.5(2) After the permit has been issued, the permit applicant may seek review by the Commission of the Division's decision on the permit under Section 25-7-114.5(8).

VIII.1.8.0 PUBLIC INFORMATION AND CONFIDENTIAL INFORMATION

VIII.A.1.8.0(1) Distribution of notices, agendas, and other information by the Commission:

The Office of the Air Quality Control Commission shall maintain a mailing list. Any person may request to be added to the mailing list. The mailing list maintained electronically. However, if an email address is not available, the Office of the Air Quality Control Commission will accept a physical address to which mailings will be sent.~~A reasonable annual charge to cover the cost of printing and mailing shall be collected before a person is added to the mailing list, and charged annually to be maintained on the mailing list.~~

VIII.B.1.8.0(2) Availability of records; emissions data always public:

Records of the Commission ~~are and Division shall be~~ available to any person pursuant to and consistent with the provisions of the Colorado Open Public Records Act, Sections 24-72-201~~101~~ et seq., C.R.S. Requests for records must be made either by email or U.S. mail, and addressed to the Office of the Air Quality Control Commission. Records will be presumed to be open to public inspection at all times during normal business hours and can be made available electronically, unless confidentiality for specified material has been secured under provision of law. Securing confidentiality of any materials submitted to the Commission will require clearly marked segregation of the materials from all other non-confidential materials, and a written document justifying the assertion of confidentiality consistent with any applicable provision of law. Notwithstanding any other

provisions of law or regulation, all emission data records shall be available to the public to the extent required by the federal Clean Air Act.

~~VIII.C.1-8.0(3)~~ Confidential information:

Any information relating to secret processes or methods of manufacture or production which may be required, ascertained, or discovered, or any other information confidential under the [Colorado Air Pollution Prevention and Control Act Section 25-7-119\(4\)](#)~~Public Records Act, Sections 24-72-101 et seq.~~, C.R.S., shall not be publicly disclosed in public hearings or otherwise and shall be kept confidential by any Commissioner and staff. Any person seeking to invoke the protection of this subsection in any hearing shall bear the burden of proving its applicability. This provision is subject to the requirements for securing the confidentiality of any material, and the availability of emission data records, in Subsection [VIII.B1-8.0\(2\)](#), ~~above~~.

~~IX.1.9.0~~ C.R.S. Section 24-4-105(4)

Any agency conducting a hearing, any administrative law judge, and any ~~Hearing Officer~~~~hearing officer~~ shall have authority to: Administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof and receive evidence; dispose of motions relating to the discovery and production of relevant documents and things for inspection copying, or photographing; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of briefs and other documents; directs the parties to appear and confer to consider the simplification of the issues, admissions of fact or of documents to avoid unnecessary proof, and limitation of the number of expert witnesses; issue appropriate orders which shall control the subsequent course of the proceedings; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to dismiss without prejudice application and other pleadings; dispose of motions to intervene, procedural requests, or similar matters; reprimand or exclude from the hearing any person for any improper or indecorous conduct in his presence; award attorney fees for abuses of discovery procedures or as otherwise provided under the Colorado rules of civil procedure; and take any other action authorized by agency rule consistent with this article or in accordance, to the extent practicable, with the procedure in the district courts. All parties to the proceeding shall also have the right to cross-examine witnesses who testify at the proceeding. In the event more than one person engages in the conduct of a hearing, such persons shall designate one of their number to perform such ~~of the above~~ functions as can best be performed by one person only, and thereafter such person only shall perform those functions which are assigned to him by the several persons conducting such hearing.

~~X.1.10.0~~ CONFLICTS OF INTEREST

The following rule encourages the timely disclosure of conflicts of interest, including actual, apparent and potential conflicts of interest, and provides guidance on the standards that should be applied for the disqualification of a Commissioner based on a conflict of interest.

~~X.A.1.10.1~~ Definitions

~~X.A.1.10.1(1)~~ Actual conflict of interest means:

~~X.A.1.10.1(1)(a.)~~ In a rulemaking proceeding or other action of general applicability, an inability of a Commissioner to objectively participate in the matter before the Commission because the Commissioner has an unalterably closed mind on a matter critical to the disposition of the proceeding. An official act that affects a group of industries or businesses does not, in and of itself, constitute an actual conflict of interest even though the Commissioner may work for or otherwise have an interest in one of the industries or businesses impacted by the official act.

~~X.A.1.10.1(1)(b. In)~~ ~~in~~ an adjudicatory proceeding:

- (i) _____ —The Commissioner has, in some measure, adjudged the facts as well as the law in the case in advance of the hearing, or
- (ii) _____ —The Commissioner, or the Commissioner's employer, has a substantial financial interest in the outcome of the proceeding.

~~X.A.1.10.1(2.)~~ An apparent conflict of interest means a personal or financial interest which could reasonably be perceived as an interest that may influence the Commissioner's decision.

~~X.A.1.10.1(3.)~~ A potential conflict of interest means an apparent or actual conflict of interest that may come about due to reasonably foreseeable events.

~~X.B.1.10.2~~ Disclosure of a Conflict of Interest:

If a Commissioner perceives that he or she may have an actual, apparent or potential conflict of interest, the Commissioner shall disclose the basis of the possible actual, apparent or potential conflict of interest to the Commission and others in attendance before the discussion or hearing begins, or as soon thereafter as the Commissioner perceives the possible actual, apparent or potential conflict of interest.

~~X.C.1.10.3~~ Disqualification of a Commissioner for a Conflict of Interest

~~X.C.1.10.3(1)~~ If a Commissioner perceives that he or she has an actual conflict of interest regarding any matter before the Commission, the Commissioner shall recuse himself/herself from any further participation or voting on the matter at hand.

~~X.C.1.10.3(2.)~~ Members of the public, parties, the Division, or other Commissioners may bring to the Commission's attention circumstances that they believe constitute a conflict of interest for a Commissioner with respect to the proceeding.

~~X.D.1.10.4~~ Advisory Opinions:

~~The Office of the Air Quality Control Commission~~~~The Technical Secretary~~ shall maintain a log of Advisory Opinions approved by the Commission to assist the Commission in interpreting these Conflict of Interest provisions. This Section is to be interpreted to implement fully the goal of the General Assembly to have a citizen-based Commission with a minority business vote.

~~X.E.1.10.5~~ Rule of Necessity:

The foregoing notwithstanding, if recusal of the Commissioner or Commissioners in question would prevent Commission action because fewer than five Commissioners would be available to participate and vote on the matter at hand, the Commissioner or Commissioners may participate, in spite of an actual conflict of interest, if they have complied with the disclosure requirements applicable to an actual, apparent or potential conflict of interest prior to acting.

~~XI.1.11.0~~ **STATE IMPLEMENTATION PLAN**

~~XI.A.1.11.1(1)~~ The following are the only requirements in these procedural rules which are part of the State Implementation Plan:

The Commission shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under this article or under the federal act. The members of the Commission shall disclose any

potential conflicts of interest that arise during their terms of membership to the other Commissioners in a public meeting of the Commission.

XI.B.1-11.1(2) All other requirements of these procedural rules, found in all sections except this Section XI.1-11.0 are reserved to the authority of the State and are not part of the State Implementation Plan.

XII.1-12.0 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE

XII.A.1-12.1 Revisions to the Air Quality Control Commission Procedural Rules adopted on January 16, 1998

The purpose of these rules is to provide for the fair and efficient administration of hearings and meetings before the Commission, and to make the rules consistent with the Colorado Air Pollution Prevention and Control Act, and the Colorado Administrative Procedures Act.

Federal Requirements

The Federal Clean Air Act requires that the State Implementation Plan contain provisions requiring the Commission to: -(1) have at least a majority of its members represent the public interest, and (2) adequately disclose any potential conflicts of interest that might arise regarding any of its members.- The provisions of Section XI.1-11.0 of the procedural rules are intended to implement such federal requirements, and are to be submitted to EPA for inclusion in the SIP. The remaining provisions of the procedural rules are not required by federal law and, therefore, shall not be submitted to EPA for approval, or for inclusion in the SIP.

Statutory Authority

Specific statutory authority for the adoption of such procedural rules is provided in Section 25-7-106(3).

Findings pursuant to Section 25-7-110.8

The procedural rules adopted by the Commission on January 15, 1998 do not include the adoption of any control measures intended to reduce air pollution. Such rule changes are administrative in nature. The rule changes are designed to improve the efficiency of Commission hearings, to encourage the resolution of issues, and to promote the cost-effective administration of hearings before the Commission.

Division's role in assisting the proponent of an alternative proposal to prepare an economic impact analysis Section 25-7-110.5(4)(a) requires the proponent of an alternative proposal to provide a final economic impact analysis in advance of the hearing. The proponent may request assistance from the Division in the development of such a final economic impact analysis. The Commission anticipates that the Division will continue its current practice of consulting with the proponent of any such alternative proposal and providing such assistance as may be necessary for the proponent to comply with the requirements of -Section 25-7-110.5 (4).

Special procedures for hearings on applications submitted pursuant to Section 25-7-105(2). Section V.F.1-5.6(14.)(a.) establishes special procedures for certain applications submitted pursuant to Section 25-7-105(2). The purpose of this section is to resolve the conflict between Sections 25-7-110(1) and 25-7-119 for hearing on the petitions described in Section 25-7-105(2), and to do so in a manner that provides for efficient and cost-effective hearings.

Section 25-7-105(2) requires the commission to hold hearings pursuant to Section 25-7-119 for "applications for review of the classification of any attainment, nonattainment, or unclassifiable area within the state ..., all applications for designation or redesignation ... and all applications for any revision of general application of the state implementation plan ..." -The types of actions listed in Section 25-7-105(2) tend to be rulemaking activities of general applicability, but the procedure described in Section 25-7-119 is an adjudicatory, rather

than rulemaking, process. The adjudicatory aspects of Section 25-7-119 include: (1) the status of the Division as a party, rather than staff to the Commission; (2) the requirement for a hearing within ninety days; and (3) the requirement for testimony under oath. Section 25-7-110(1) establishes a procedure for rulemaking hearings before the Commission when adopting, promulgating, amending or modifying regulatory plans or programs. The process described in Section 25-7-110 also applies to the types of actions listed in Section 25-7-105(2) and, among other things, requires the publication of notice of the rulemaking hearing in the Colorado register at least sixty days prior to the hearing. In most cases, depending upon the timing of the receipt of the petition for a hearing, the Commission is not able to comply with both the requirement for a hearing within ninety days as required by Section 25-7-119, and the requirement for sixty days advance notice published in the Colorado register. Thus the Commission is required to choose between these two procedures, or otherwise harmonize the statutes. The rule is intended to harmonize the inconsistencies between Sections 25-7-110 and 25-7-119.

The activities listed in Section 25-7-105(2) are primarily rulemaking actions. Therefore, the Commission will generally follow the rulemaking procedures outlined in Section 25-7-110, and will not apply the adjudicatory procedures described in Section 25-7-119 unless the petitioner specifically requests a hearing that observes the adjudicatory procedures. This requirement is consistent with the plain language of Section 25-7-105(2) to establish a specific procedure for hearings on certain applications submitted to the Commission. In any case in which the Commission cannot reasonably comply with both the rulemaking requirements and the adjudicatory requirements, the Commission will apply the procedures most applicable to the type of action being requested. That is, the rulemaking procedures set out in Section 25-7-110 should apply to actions that are primarily rulemaking in nature; the adjudicatory procedures in Section 25-7-119 should apply to matters that are primarily adjudicatory in nature. In most instances, the Commission will assume, unless otherwise indicated, that matters such as area classifications, designations, and SIP revisions of general applicability, are rulemaking matters.

Conflicts of Interest

Section ~~X.1.10.0~~ on Conflicts of Interest is not intended to expand or contract the standard for disqualification of a Commissioner. This Rule reflects an attempt to interpret and apply the law, as it exists at this time, on the subject of disqualification. This Section is to be interpreted to implement fully the goal of the General Assembly to have a citizen-based Commission with a minority business vote.

One of the parties to the hearing was concerned that the standard set out in Section ~~X.A.1.10.1(1)(b.)(i)~~ may require disqualification if a Commissioner had prejudged the law or the facts of a case. The party pointed out that commissioners are likely to have taken previous positions on the meaning of a rule or statute and should not, therefore, be required to recuse themselves from future hearings concerning the same rule or statute. However, the standard in ~~X.A.1.10.1(1)(b.)(i)~~ is conjunctive, and would not require disqualification in an adjudicatory hearing merely because a commissioner had decided the meaning of the law in advance of the hearing.

Section ~~X.A.1.10.1(1)(b.)(ii)~~ requires disqualification in an adjudicatory hearing if the Commissioner, or the Commissioner's employer, has a substantial financial interest in the outcome of the proceeding. This standard does not require that such substantial financial interest be direct. An action involving an indirect substantial interest, such as an enforcement action involving a competitor may require disqualification in an adjudicatory hearing.

XII.B.1.12.2 Revisions to "Air Quality Control Commission Procedural Rules" adopted by the Air Quality Control Commission October 15, 1998

The revisions to the Air Quality Control Commission Procedural Rules are adopted to provide for notice and meaningful public meetings to review conformity determinations, to repeal the procedure for disqualification of a Commissioner for an impermissible conflict of interest, and to simplify some of the requirements that apply to parties to rulemaking hearings before the Commission.

The revisions add a new Section [IV.M.1.4.13](#) to the procedural rules. This section establishes a procedure for public meetings on conformity determinations following notice to the public. The rule ensures that documents supporting the conformity determination are available for review prior to the hearing. The rule also provides a means for the Commission to review a proposed conformity determination and submit timely comments to the metropolitan planning organization.

The revisions to Section [V.E.1.5.5](#) make the Commission's rulemaking procedures more efficient.

At the request of Legislative Legal Services, the Commission repealed the provisions in Section [X.C.1.10.3](#) that established a procedure for the Commission to disqualify a member of the Commission upon a finding of an actual conflict of interest. Legislative Legal Services concluded that the Commission does not have such authority.

Federal Requirements

The procedures for the review of conformity determinations are related to the federal transportation conformity requirements set out at 40 CFR, part 93, subpart A. Those provisions require the State to establish criteria and procedures for making transportation conformity determinations, but do not require the State to establish a procedure for public hearings before the Air Quality Control Commission on such conformity determinations. The procedural requirements for conformity determinations established in the procedural rules exceed federal requirements and, therefore, are adopted solely under state law and shall not be submitted to EPA for inclusion in the SIP.

Although not required by federal law, such procedural requirements are consistent with state law. Section 25-7-124, C.R.S. provides that the Commission is the state agency for all purposes of the federal Clean Air Act. As the state air quality agency, the Commission must be included in the consultation procedures, 40 CFR Section 93.105. The meetings of the Commission must be open to the public, Section 24-6-402, C.R.S. (1997). Review of a conformity determination is similar in nature to rulemaking and it is appropriate for the Commission to follow procedures that are similar to its rulemaking procedures in reviewing conformity determinations, and to provide an opportunity for interested parties outside of the agency to make comments on the conformity determination. Therefore, it is reasonable and appropriate for the commission to promulgate state-only procedural rules that provide for public participation in the review of conformity determinations.

The revisions to Sections [V.E.1.5.5](#) and [X.C.1.10.3](#) of the procedural rule are not related to transportation conformity, and are not required by any federal rule or law. Such provisions are adopted solely under state law to provide for more efficient rulemaking hearings.

Statutory Authority

Section 25-7-106 (3), C.R.S. provides the Commission with the statutory authority to adopt regulations governing procedures before the Commission.

Findings pursuant to Section 25-7-110.8

The procedural rules are administrative in nature and are exempt from the requirements of Section 25-7-110.8(1)(b), C.R.S. (1997). The rule revisions adopted by the Commission ensure that interested parties have an opportunity to make their views on conformity determinations and rulemaking matters. In this way, the rule revision improves the Commission's decision-making process. The rule revisions provide for cost-effective hearings and public meetings before the Commission.

[XII.C.1.12.3](#) Revisions to “Air Quality Control Commission Procedural Rules” adopted by the Air Quality Control Commission February 21, 2002.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, Section 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, Sections 25-7-110 and 25-7-110.5, C.R.S ("the Act").

Basis

The Commission Procedural Rules establish the procedures through which the Commission conducts hearings. Regulation Number 3 contains the procedural and substantive requirements for both construction and operating permits. The Commission's Procedural Rules and Regulation Number 3 set forth the mechanisms available for interested persons to be heard regarding both Commission and Division matters.

Specific Statutory Authority

Section 25-7-109, C.R.S. of the Act, provides the Commission with the authority to adopt and revise rules and regulations that are consistent with state policy regarding air pollution and with federal recommendations and requirements.

Purpose

Section 25-7-114.5(5) and (6), C.R.S., requires the Division to give public notice of a permit application in a newspaper of general distribution in the area in which the proposed project is located or by such other method reasonably designed to ensure effective general public notice. In this rulemaking, the Commission set out a two-tiered notification system. The newspaper notice contains basic information about the proposed project and provides the location of the Division's web site and a Division person to contact should any interested person desire more detailed information. The statute also requires that certain permit information be filed with the county clerk of the county wherein the particular source that is subject to the permit application is proposed. If the proposed source straddles more than one county, the information must be filed with the clerk of each county in which the source is located. Section 25-7-114.5(6), C.R.S., requires the Commission, following a written request, to hold a public comment hearing to allow interested persons the opportunity to appear and submit written and/or oral comments regarding air pollution considerations about a proposed permit, the sufficiency of the Division's preliminary analysis and whether the permit application should be approved or denied. This requirement extends to the nonattainment area new source review, prevention of significant deterioration, and renewable operating permit programs. In this rulemaking, the Commission clarified the existing procedures by adding a section to the Commission's Procedural Rules to specifically address public comment hearing procedures. That section, denominated Section VII-4-7.0, specifies how the Commission will conduct public comment hearings relating to applications for permits controlled by these programs. The Commission also made conforming changes to Regulation Number 3.

Public comment hearings are intended to encourage citizen participation in the air quality permitting process and to provide a forum for gathering information for use by the Division in final evaluation of applications for construction and operating permits. The Commission intends to conduct public comment hearings in a way that will ensure an effective opportunity for the public to present information for use by the Division.

In addition, the revisions to these regulations specify the role of public comments in the Division's decision-making process following development of the preliminary analysis. The Commission concluded that Division responses to such comments are an important feature of the permitting process in order to assure the public that their comments and concerns are considered.

Finally, the revisions underscore the distinction between a public comment hearing that is intended to provide information to the Division prior to making a final determination on a permit application, and an adjudicatory hearing before the Commission that may be requested only by an applicant to challenge the Division's final action on a permit application. A public comment hearing does not constitute an adjudication or a rulemaking and the provisions of the Administrative Procedures Act relating to those proceedings do not apply. In the Commission's view, the hearing allowed under Section 25-7-114.5(6), C.R.S., does not require the procedural mechanisms applicable to adjudications or rulemakings. These revisions establish

reasonable mechanisms that appropriately balance the goal of providing public input to the Division with the need to manage the time and resources of both the Commission and Division effectively.

Federal Requirements

Title 40, Section 124.12 of the Code of Federal Regulations requires the State to provide an opportunity for public comment on permit applications under the nonattainment new source review, prevention of significant deterioration, and operating permit programs. These revisions meet the federal requirement.

Findings pursuant to Section 25-7-110.8, C.R.S.

The procedural provisions addressed in this rulemaking are administrative in nature and are not intended to reduce air pollution. Accordingly, Section 25-7-110.8(1) exempts this rulemaking from the requirements of that section.

XII.D.1.12.4 Revisions to the “Air Quality Control Commission Procedural Rules” adopted by the Air Quality Control Commission November 18, 2004.

This revision establishes the procedural and substantive criteria for hearings on objections filed by local governments to emissions control units proposed for installation at oil and gas exploration and production operations, natural gas compressor stations or natural gas drip stations located upstream of a natural gas-processing plant in the 8-hour Ozone Control Area in order to comply with the emission reduction requirements of Section XII. of Regulation Number 7.

The specific statutory authority for this regulation is set out at Section 25-7-133(7)(d)(VI), C.R.S.

The requirements of Section 25-7-110.8 do not apply because this rule change is administrative in nature and its purpose is to decide disputes between local governments and regulated entities, rather than reduce air pollution.

XII.E.1.12.5 Revisions to the “Air Quality Control Commission Procedural Rules” adopted by the Air Quality Control Commission October 18 & 19, 2007

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103(4) and (12.5), C.R.S. for new and revised regulations.

Basis

The Air Quality Control Commission’s (AQCC) Procedural Rules (Rules) establish the framework and procedures for the AQCC to discharge its statutory responsibilities under the Colorado Air Pollution Prevention and Control Act (Act). Among the established procedures is the filing by parties to rulemakings and adjudicatory hearings of various documents, including petitions for rulemakings and the attendant attachments to such petitions (including an Economic Impact Analysis, Agenda Item Control Sheet, briefs, exhibits, proposed rule revisions and additions and Statements of Basis, Specific Statutory Authority, and Purpose), requests for party status, prehearing statements, rebuttal statements, and exhibits. In the last several years the quantity of documents fillings for rulemakings and other documents under the procedural rules has expanded dramatically. To reduce the quantity of paper associated with such filings, the AQCC has determined that it should require the use of electronic filings in lieu of paper filings for all rulemaking and adjudication proceedings. In several rulemakings last year, the AQCC allowed parties to file rulemaking prehearing, rebuttal and motion documents by electronic mail. This allowed parties to file these documents more quickly and efficiently and reduced the amount of paper filed with the AQCC. ~~Subsection III.I.1.3.8(2.)~~ requires that an electronic mail submittal be “signed” by the filing party. It is expected that this signature will be accomplished by the filing party through “scanning in” the signature page and transmitting the scanned signature page along with the rest of the filing.

While the amendments to the Procedural Rules include a size limitation of twenty (20) megabytes for electronic mail filings, parties to rulemakings and adjudications are encouraged to limit the size of electronic mail filings to ten (10) megabytes to minimize transmission delays because of server limitations. In addition, because of the potential for future server size capacity increases, the rule amendments allow the Commission the flexibility to increase the size of the documents being electronic mailed on a case-by-case basis. Parties to rulemakings and adjudications who do not have access to computers may apply to the Commission for a waiver from this requirement under Subsection [III.1.3.8\(3\)](#) or under the “Good cause” provision of Section [III.1.3.9](#).

Specific Statutory Authority

The specific statutory authority for these revisions to the procedural rules derives from the authority granted the AQCC in Sections 25-7-106(3) and -106(5), which authorizes the AQCC to adopt rules and regulations to conduct hearings so that they will be fair and impartial and to carry out the AQCC’s statutory responsibilities in conformity with the State Administrative Procedure Act, Sections 24-4-103, -105 C.R.S.

Purpose

The purposes of these revisions of the procedural rules are (1) to reduce the amount of paper filed with the AQCC’s administrative office, and (2) to require parties to rulemakings and adjudications to more quickly and efficiently file necessary documents with the AQCC, each other, and the Division.

XII.F. 1.12.6 Revisions to the “Air Quality Control Commission Procedural Rules” adopted by the Air Quality Control Commission December 15, 2011

Basis and Purpose

The purpose of these amendments is to streamline the transportation conformity process by allowing the Colorado Air Pollution Control Division to provide concurrence with routine transportation conformity determinations without the need for a public hearing before the Colorado Air Quality Control Commission. This change to the conformity process is allowed for under federal law and will reduce the burden on the Commission, the Division and transportation planning organizations, while ensuring that air quality requirements are met. These amendments were adopted in conjunction with corresponding changes to the AQCC Regulation Number 10, governing conformity determinations in Colorado.

Specific Statutory Authority

The Commission promulgates these regulatory changes pursuant to its authority under Section 25-7-106(3), C.R.S. to adopt regulations governing procedures before the Commission.

Findings Pursuant to Section 25-7-110.8

These revisions are administrative in nature and are not intended to reduce air pollution. Rather, the revisions are intended to streamline the transportation conformity process, while maintaining the air quality benefits of the existing rule. Accordingly, the requirements of Section 25-7-110.8, C.R.S. do not apply to this rulemaking.

XII.G. Rule Review of the Air Quality Control Commission (AQCC or Commission) Procedural Rules adopted by the Air Quality Control Commission March 21, 2013

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedure Act Sections 24-4-103, C.R.S. for new and revised regulations.

Basis

Subchapter 1 of the Federal Clean Air Act requires the State of Colorado to adopt a plan to implement, maintain and enforce air quality standards; the adoption and revision of that plan is the responsibility of the AQCC through a comprehensive program of air quality regulation codified in the State Air Act, 25-7-101 et seq., C.R.S. In addition, 25-7-105(1), C.R.S. requires the AQCC to promulgate rules and regulations necessary for the proper implementation and administration of the State Air Act. Rulemaking and adjudication procedures must also be consistent with the State Administrative Procedures Act (24-4-101 et seq., C.R.S.). The AQCC, through its Procedural Rules, fulfills the requirements of State and Federal law; periodically the rules need to be updated.

Specific Statutory Authority

The AQCC is authorized to promulgate rules and regulations necessary for the proper implementation and administration of the Colorado Air Pollution Prevention and Control Act (the State Air Act, 25-7-101 et seq., C.R.S.; the AQCC is authorized to adopt procedural rules pursuant to 25-7-106(3) and (5), C.R.S. Rulemaking and adjudication procedures must also be consistent with the State Administrative Procedures Act (24-4-101 et seq., C.R.S.).

Purpose

The AQCC proposes to update its Procedural Rules in its entirety to eliminate or update obsolete provisions, delete duplicate language, and to improve their “readability” so that the rules can be more easily understood by the general public. The Air Quality Control Commission’s (AQCC) Procedural Rules (Rules) establish the framework and procedures for the AQCC to discharge its statutory responsibilities under the Colorado Air Pollution Prevention and Control Act (Act). Among the established procedures is the filing by parties to rulemakings and adjudicatory hearings of various documents, including petitions for rulemakings and the attendant attachments to such petitions (including an Economic Impact Analysis, Agenda Item Control Sheet, briefs, exhibits, proposed rule revisions and additions and Statements of Basis, Specific Statutory Authority, and Purpose), requests for party status, prehearing statements, rebuttal statements, and exhibits. The changes will make the filing of required documents more efficient for persons participating in AQCC activities and hearings and ease the paper compilation and distribution burden on the AQCC’s administrative office.

The Procedural Rules require periodic revision. References to statutory provisions that been repealed (such as the requirement that the AQCC consult with the Air Quality Science Advisory Board (AQSAB), which was repealed in 2008) have been deleted. Other statutory references have been updated; for example, a reference to the Colorado Public Records Act (24-72-101 et seq., C.R.S.) has been updated to refer to the Colorado Open Records Act (24-72-201 et seq., C.R.S.). Provisions have been revised to account for advances in technology: references to faxing have been deleted, the provision regarding electronic signatures has been updated, and the procedure for submitting documents electronically was clarified. The rules reflect minor changes in Commission procedures; a definition for “Consent Agenda” has been added, as have the Commissioners’ “Ground rules for Public Comment Hearings.” To improve the readability of the document, most uses of the passive voice were eliminated, uses of the word “shall” “must” and “will” were corrected to be consistent with plain language rules of drafting, and some sections were reorganized to eliminate duplicate provisions. Further, these revisions will include any typographical, grammatical and formatting errors throughout the regulation.

APPENDIX A

OUTLINE OF AN ADJUDICATORY PREHEARING STATEMENT BEFORE THE COLORADO AIR QUALITY CONTROL COMMISSION

STATE OF COLORADO

PREHEARING STATEMENT OF [PARTY NAME]

REGARDING [PARTY NAME AND NATURE OF REQUEST]

PENDING MOTIONS AND APPEALS TO THE COMMISSION

A list of all outstanding motions that have not been ruled upon by the Hearing Officer or which the party intends to appeal to the Commission as a result of an adverse decision by the Hearing Officer. The list will identify all trial briefs or other pleadings that the party intends to file and a proposed filing schedule for the pleadings and responses.

STATEMENT OF CLAIMS AND DEFENSES

A concise statement of all claims or defenses asserted by all parties, together with all matters in mitigation or aggravation.

Undisputed Facts

A concise statement of all facts, which the party contends are or should be undisputed. The Hearing Officer may order the parties to reduce undisputed facts to a stipulation for the convenience of the Commission.

Disputed Issues of Fact

A concise statement of the material facts, which the party claims or concedes to be in dispute.

POINTS OF LAW

A concise statement of all points or contentions of law upon which the party intends to rely or which may be in controversy, citing pertinent statutes, regulations, cases and other authority. Extended legal argument is not required.

WITNESSES

The name, address and telephone number of each witness whom the party may call at the hearing, together with a detailed statement of the anticipated content of the individual's testimony. All written testimony will also be identified, along with proposed filing deadlines.

EXPERT WITNESSES

The name, address and telephone number of each witness whom the party may seek to qualify as an expert witness at the hearing, together with a summary of the individual's qualifications and a detailed statement of the opinions to which the expert is expected to testify. The listing shall identify all reports or summaries prepared by the expert in anticipation of the hearing.

EXHIBITS

A listing of all physical or documentary evidence which the party intends to offer into evidence at the hearing. The party shall append copies of all documentary evidence, including photographs, to the prehearing statement. The exhibits shall be pre-marked for identification (requesting party by letters and opposing parties by numbers).

STIPULATIONS

A listing of all stipulations of fact or law reached, as well as a listing of any additional stipulations requested or offered to facilitate disposition of the case.

TRIAL EFFICIENCIES

An estimate of the amount of time required to try the case, including separate statements of the time that the party requests for presentation of its case.

APPENDIX B

Example Regulatory Time Line

-	20	-	6	20	-	10	-	5	7	27	-	3	6	9	20
OCTOBER	Full Petition Due	NOVEMBER	AQCC Mailing	Adopt Petition	DECEMBER	Notice Published	JANUARY	Party Status Due	Status Conference	Final PHS due with alternate proposals	FEBRUARY	Prehearing Conference	AQCC Mailing	Rebuttal Statements	Hearing