

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Air Quality Control Commission**

**PROCEDURAL RULES**

**5 CCR 1001-1**

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

**Commented [A1]:** This version reflects the Commission's preliminary final adoption of Errata #2, plus changes directed by the Commission during deliberations are highlighted in yellow.

**Outline of Regulation**

**PART A Procedural Rules for All Proceedings Before the Commission before August 1, 2025 and All Rulemaking Proceedings Commenced by a Petition for Rulemaking and Adjudicatory Proceedings Commenced by a Request for Hearing Filed before August 1, 2025**

- I. Introduction
- II. Scope, Purpose and Authority
- III. Definitions
- IV. Procedures for General Meetings**
  - IV.A General Meetings**
  - IV.B Frequency**
  - IV.C Placing an Item on the General Meeting Agenda**
  - IV.D Conduct of General Meetings**
  - IV.E Planning**
  - IV.F Recording Proceedings**
  - IV.G Minutes**
  - IV.H Public Participation Encouraged**
  - IV.I Executive Session**
  - IV.J Public Hearings**
  - IV.K Informal Hearings**
  - IV.L Statements of Policy and Interpretive Rules**
  - IV.M Approval of Plans, Reports and State Implementation Plans**
  - IV.N Review of Conformity Determinations**
- V. Procedures for Rulemakings**
  - V.A. How a rulemaking proceeding begins**
  - V.B. Development of proposals for rules or revisions**
  - V.C. Petitions for rulemaking**
  - V.D. Notice**
  - V.E. Prehearing procedures**
  - V.F. Conduct of rulemaking hearings**
- IV-VI. Procedures for Adjudications**
  - VI.A Scope**
  - VI.B Initiating an Adjudicatory Hearing**
  - VI.C Prehearing Procedures**
  - VI.D Hearing Procedures**
  - VI.E Decisions of the Commission**
  - VI.F Post-Decision Matters**
  - VI.G Ex Parte Communications**
  - VI.H Declaratory Orders**
  - VI.I Special Procedures for Particular Hearings**
- V-VII. Procedures for Public Comment Hearings on Permit Applications**

~~VI~~.VIII. Public Information and Confidential Information

~~VII~~.A. Scope

~~VII~~.B. Setting the Hearing

~~VII~~.C. Appointment of the Public Comment Hearing Commissioner

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

~~VII~~.E. Appeals of the Permit

~~VIII~~.IX. ~~C.R.S. Colorado Revised Statutes~~ § 24-4-105(4)

~~VIII~~.X. Conflicts of Interest

~~X~~.A. Definitions

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

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

~~X~~.D. Advisory Opinions

~~X~~.E. Rule of Necessity

~~IX~~.XI. State Implementation Plan

~~X~~.XII. Statements of Basis, Specific Statutory Authority, and Purpose

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**PART B** Procedural Rules for All Proceedings Before the Commission on or After August 1, 2025, Except Rulemaking Proceedings Commenced by a Petition for Rulemaking and Adjudicatory Proceedings Commenced by a Request for Hearing Filed Before August 1, 2025

- I. Introduction
- II. Scope, Purpose and Authority
- III. Definitions
- IV. Procedures for General Meetings
  - IV.A General Meetings
  - IV.B Frequency
  - IV.C Placing an Item on the General Meeting Agenda
  - IV.D Conduct of General Meetings
  - IV.E Planning
  - IV.F Recording Proceedings
  - IV.G Minutes
  - IV.H Public Participation Encouraged
  - IV.I Executive Session
  - IV.J Public Hearings
  - IV.K Informal Hearings
  - IV.L Statements of Policy and Interpretive Rules
  - IV.M Approval of Plans, Reports and State Implementation Plans
  - IV.N Review of Conformity Determinations
- V. Procedures for Rulemakings
  - V.A How a Rulemaking Proposal is Developed
  - V.B How a Rulemaking Proceeding Begins
  - V.C Participation in Rulemaking
  - V.D How a Proposed Rule is Developed through the Prehearing Process
  - V.E How a Proposed Rule is Prepared for Hearing
  - V.F How a Hearing is Conducted
  - V.G How a Final Rule Becomes a Regulation
  - V.H Special Rulemaking Proceedings
- VI. Procedures for Adjudications
  - VI.A Scope
  - VI.B Initiating an Adjudicatory Hearing
  - VI.C Prehearing Procedures
  - VI.D Hearing Procedures
  - VI.E Decisions of the Commission
  - VI.F Post-Decision Matters
  - VI.G Ex Parte Communications
  - VI.H Declaratory Orders
  - VI.I Special Procedures for Particular Hearings
- VII. Procedures for Public Comment Hearings on Permit Applications
  - VII.A Scope
  - VII.B Setting the Hearing
  - VII.C Appointment of the Public Comment Hearing Commissioner
  - VII.D Public Comment Hearing Procedures
  - VII.E Appeals of the Permit
- VIII. Public Information and Confidential Information
  - VIII.A Distribution of Notices, Agendas, and other information by the Commission
  - VIII.B Availability of Records; Emissions Data Always Public
  - VIII.C Confidential Information
- IX. Colorado Revised Statutes § 24-4-105(4)

- X. Conflicts of Interest
    - X.A Definitions
    - X.B Disclosure of a Conflict of Interest
    - X.C Disqualification of a Commissioner for a Conflict of Interest
    - X.D Advisory Opinions
    - X.E Rule of Necessity
  - XI. State Implementation Plan
  - XII. Statements of Basis, Specific Statutory Authority, and Purpose
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**PART A Procedural Rules for All Proceedings Before the Commission before August 1, 2025 and All Rulemaking Proceedings Commenced by a Petition for Rulemaking before August 1, 2025**

The rules as set forth in this Part A will cease to apply on August 1, 2025; provided, however, that the rules in this Part A will continue to apply on and after August 1, 2025, to rulemaking proceedings initiated by a Petition Request occurring before August 1, 2025.

**I. INTRODUCTION**

The Colorado Air Quality Control Commission (Commission) is appointed by the Governor and authorized by the Colorado General Assembly to oversee Colorado's air quality program pursuant to the Colorado Air Pollution Prevention and Control Act, § 25-7-101 et seq., C.R.S., as amended (the Act).

The primary role of the Commission is to adopt an air quality management program that promotes clean and healthy air for Colorado's citizens and visitors, and protects Colorado's scenic and natural resources in a cost-effective and efficient manner. The Colorado Department of Public Health and Environment's Air Pollution Control Division (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 reflect a wide variety of professional backgrounds and individual interests. Colorado has chosen the citizen board approach to develop and oversee implementation of its air quality management program to ensure that the air quality program is 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 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 uniformly and equitably 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 assist their fellow citizens in reaching decisions that may have significant social and economic impacts in the state. The Commission welcomes and appreciates participation in its decision-making process.

**II. SCOPE, PURPOSE, AND AUTHORITY**

II.A. These procedural regulations are adopted pursuant to the authority conferred upon the Commission in §§ 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, § 24-4-101 et seq., C.R.S., as amended (the APA), and the Colorado Air Pollution Prevention and Control Act, § 25-7-101 et seq., C.R.S., as amended (the Act).

- II.B. These regulations govern all procedures and hearings before the Commission. Where specifically stated, they also govern certain procedures and hearings before the Air Pollution Control Division within the Colorado Department of Public Health and Environment.
- II.C. 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. 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 party to any proceeding before the Commission who, during the proceeding, fails to raise an objection regarding lack of compliance with any procedural requirement of these regulations waives that issue for the purpose of judicial review.
- II.E. 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. 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 Commission Office for further information.

### III. 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.

- III.A. Act: The Colorado Air Pollution Prevention and Control Act, § 25-7-101 et seq., C.R.S.
- III.B. Adjudicatory Proceeding: Adjudicatory proceedings include notice and hearing activities which are required by law 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. Adjudicatory proceedings typically occur during the Commission's general meetings and are governed by the procedures in Section VI. of these regulations.
- III.C. Administrative Procedures Act (APA): § 24-4-101 et seq., C.R.S.
- III.D. 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 proposed regulation text. For purposes of Sections V.E.5.c.(ix), V.E.6., and V.E.7.b., proposed text that simply deletes, clarifies or elaborates on elements of an already-submitted proposal, without substantive new obligations or requirements, is not an alternate proposal.
- III.E. Attorney General: The Attorney General represents and advises the Commission, and also represents the Division before the Commission.

Office of the Attorney General  
Colorado Department of Law  
Natural Resources & Environment  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 9th Floor  
Denver, Colorado 80203

- F. Commission: The Colorado Air Quality Control Commission created in § 25-7-104, C.R.S.

Colorado Air Quality Control Commission  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South, EDO-AQCC-A5  
Denver, Colorado 80246  
Email: [cdphe.aqcc-comments@state.co.us](mailto:cdphe.aqcc-comments@state.co.us)  
Web: <https://cdphe.colorado.gov/aqcc>

- III.G. Consent Agenda: A consent agenda consists of routine, non-controversial, and self-explanatory items that the Commission may approve without individual discussion.
- III.H. Division: The Colorado Air Pollution Control Division that exists within the Division of Administration of the Colorado Department of Public Health and Environment.

Colorado Air Pollution Control Division  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South, APCD-B1  
Denver, Colorado 80246  
Email: [cdphe.commentsapcd@state.co.us](mailto:cdphe.commentsapcd@state.co.us)  
Web: <https://cdphe.colorado.gov/air-pollution/air-pollution-control-division-topics>

- III.I. 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.J. File or Filed:
- III.J.1. Means received in the Commission Office and date-stamped by staff as received on that day or, when filed by electronic mail for rulemakings or adjudications under Section III.J.2., as provided herein.

III.J.2. Electronic Filing

- III.J.2.a. Filing by electronic mail shall be complete when the Commission Office 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 Commission Office, 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.aqcc-comments@state.co.us](mailto:cdphe.aqcc-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 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 Commission Office.

- III.J.2.b. Subject to the size limitation established in Section III.J.2.a., or unless granted an exception to electronic filing of Section III.J.3., all filings for rulemakings and adjudications under Procedural Rules V. and VI. shall be made by electronic mail.

### III.J.3. Exception to Electronic Filing

Any person who is unable to comply with the requirements of Section III.J.2. may request the Commission to file documents in paper format. An original and the number of paper copies required for each proceeding as specified in these procedural rules must be filed in the Commission Office.

- III.K. Good Cause: Means a valid and sufficient reason, in the opinion of the hearing officer or the Commission, to make an exception to a requirement of the Procedural Rules.
- III.L. 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.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.4. of these regulations [regarding parties to adjudicatory proceedings]).
- III.M. Publication: Publication in the Colorado Register or Colorado Code of Regulations, as appropriate.
- III.N. 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.O. 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 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 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. of these regulations.
- III.P. State Implementation Plan (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. 40 C.F.R. Part 52, Subpart G [Colorado]).
- III.Q. Staff: Means the Technical Secretary/Administrator under all circumstances and the Division at the request of the Commission or the Technical Secretary/Administrator.
- III.R. Technical Secretary/Administrator: The person employed by the Commission pursuant to § 25-7-105(3), C.R.S. The Technical Secretary/Administrator can be reached at the Commission Office.



#### **IV. PROCEDURES FOR GENERAL MEETINGS**

##### **IV.A. 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. Frequency:**

Meeting dates and hearing schedules are set by the Commission. The Commission chairperson or if the chairperson is absent or has been recused, the vice chairperson may as necessary call special meetings of the Commission.

##### **IV.C. Placing an Item on the General Meeting Agenda:**

Any person seeking to place an item on the Commission's agenda must file the relevant materials in the Commission Office prior to the general meeting during which that person desires the matter to be addressed. Materials filed less than thirty days in advance may result in the matter being placed on the agenda for the following 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. Amendments to the agenda may be made at any time.

##### **IV.D. Conduct of General Meetings:**

Six Commissioners 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. 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. and VI.

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. Planning:**

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

##### **IV.F. Recording Proceedings:**

The Commission Office will record the proceedings of all general meetings. Copies of such recordings will be available to the public upon request at cost.

##### **IV.G. Minutes:**

The Commission Office 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. 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 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. 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/Administrator and Program Coordinator and, when appropriate, relevant Division personnel), and other pertinent or necessary persons may be present, pursuant to § 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. 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.2.a. of these regulations (regarding informal hearings for development of a proposed rule).

#### IV.L. 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. 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. with respect

to the rulemaking elements. With respect to any non-regulatory action or elements, the Commission will, to the extent appropriate, follow the procedures in Section V.

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 notice for any such actions will describe the specific requirements for participation applicable to parties and the Division, and, where appropriate, to the public. Prior to the hearing, the Hearing Officer may also provide a prehearing order that specifies other procedural requirements.

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 §§ 24-4-103 and 25-7-110, C.R.S. This requirement does not 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 § 24-4-102, C.R.S.

#### IV.N. Review of conformity determinations

- IV.N.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 also applies to a 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.2. The Commission shall provide written notice of the public meeting to the persons on the Commission mailing list maintained by the Commission Office. Such notice must be emailed at least thirty days prior to the public meeting.
- IV.N.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.3.a. A statement summarizing the conformity finding and the key assumptions supporting the finding and any technical support documentation.
  - IV.N.3.b. One copy each of the relevant Transportation Plan and Transportation Improvement Program.
- IV.N.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 not preclude the Division from making additional comments on the conformity determination at the public meeting.
- IV.N.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.6. The entity with final authority to adopt a conformity determination is not required to do 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.7. The following procedures apply to any public meeting continued pursuant to Section IV.N.5. or IV.N.6.:

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

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

## **V. PROCEDURES FOR RULEMAKING**

V.A. How a rulemaking proceeding begins

V.A.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.2. Members of the public and petitions for rulemaking:

Any member of the public may petition the Commission in writing to issue, amend, or repeal a rule. Such petition is open to public inspection and must fulfill the requirements of Section V.C. of this regulation, including those related to timing. Except as provided in Section V.F.13., action on such petition is 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 be considered and acted upon in the same proceeding.

V.A.3. Commission schedule for rulemakings:

The Commission's Commission Office maintains a long-term schedule for rulemakings and State Implementation Plan actions; the schedule is available on the Commission's website. In limited circumstances, the Commission may grant a petitioner's request to deviate from the Commission's schedule upon showing of good cause.

V.B. 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 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. By members of the public:

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

V.B.2. By the Commission or staff

V.B.2.a. Informal hearings:

Whenever the Commission contemplates rulemaking, public announcement of any informal pre-rulemaking proceedings, e.g., an informal hearing, may be made at such time and in such manner as the Commission or staff determines, and 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. Whenever time and resources permit, the Commission will provide for and encourage informal comment and discussion regarding potential rulemaking issues prior to commencement of the formal rulemaking process.

V.B.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 workgroup participants. At the end of any workgroup, any person, including the Division as staff, may proceed with formal action before the Commission.

V.B.2.c. Subcommittees:

The Commission may convene a subcommittee of Commissioners, and appoint a Commissioner to chair a subcommittee to evaluate any issue that may come before the Commission, including new regulatory requirements or revisions to existing regulations. 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 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 possible, the subcommittee will reach consensus on regulatory text. A subcommittee's recommendation is 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 be proposed and presented in a petition by the Division as staff, although in some circumstances, if the subcommittee so directs, a subcommittee participant may propose and present the subcommittee text to the Commission. Member of the public and the Division may offer alternate proposals to those of the subcommittee.

V.B.2.d. Staff:

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

V.C. Petitions for rulemaking

V.C.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 Commission Office.

V.C.2. Timing:

Except for emergency rules addressed in Section V.C.6. of this regulation, the complete petition must be filed by electronic mail pursuant to the provisions of Section III.J.2. If granted an exception to electronic filing pursuant to the provisions of Section III.J.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, EDO-AQCC-A5, Denver, Colorado 80246. 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 Section III.J.3. must also be delivered by that time to the Assistant Attorneys 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.3. Contents of a standard petition:

Petitioners are advised to contact the Commission Office when preparing their petition to discuss whether the petition is complete and addresses all requirements. The Commission Office may return any petition that does not address every requirement specified in this Section V.C.3., with a brief explanation of how the petition is deficient. Petitions that are returned by the Commission Office 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.4. of this regulation, a complete petition for rulemaking must include the information required in this Section V.C.3.a., through V.C.3.k.

V.C.3.a. Petition Cover Sheet

Petitioners shall provide a cover sheet that: identifies the person(s) requesting the rulemaking (including the representative's name, address, electronic mail address, 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.3.b. Memorandum of Notice:

The Technical Secretary/Administrator, 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, or amendments to existing regulations. Proposed regulations or amendments to existing regulations must be presented in a form that the Commission can view in context, (i.e., track changes/redline or strikeout with small caps if track changes is not available), and the petitioner must precisely identify the sections of the Commission's regulations that are affected by the proposed change.

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

The Petitioner shall also 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).

V.C.3.e. Statement regarding Federal requirements:

For any provision that is not required by federal statute or regulations, the Petitioner shall provide a brief statement that identifies the portion of the proposed rule that is not required by the federal act, and includes the explanation required by § 25-7-110.5(5)(b),

C.R.S. The Petitioner must also, pursuant to §§ 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. This statement regarding federal requirements may also be used in the notice of rulemaking, and in the final Statement of Basis, Specific Statutory Authority, and Purpose.

V.C.3.f. Draft Statement of Basis, Specific Statutory Authority, and Purpose:

The Petitioner shall also provide a 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:

- V.C.3.f.(i) A general statement of the basis for the rules;
- V.C.3.f.(ii) The specific purposes of the rule (e.g., "to implement the provisions regarding ..., by requiring that ...." is a way to frame this required discussion).
- V.C.3.f.(iii) The specific statutory section(s) authorizing the rulemaking;
- V.C.3.f.(iv) For any provision that is not federally required, the statement described at V.C.3.e.
- V.C.3.f.(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.
- V.C.3.f.(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. 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 SIP submittal. Such technical documents shall be available electronically and for public inspection at the Commission Office, and at least one location in each portion of the State in which the relevant SIP will apply.

V.C.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 Commission Office, 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.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 these types of rule proposals must include all elements of a petition specified in Section V.C.3. However, these types of petitions need not include:

V.C.4.a. Either the initial or final economic impact analysis required by § 25-7-110(5)(3)(g) and (4), C.R.S. or,

V.C.4.b. Statement regarding Federal requirements:

The statement describing the potential justification of terms exceeding or differing from federal requirements as required by § 25-7-110.5(5), C.R.S. or,

V.C.4.c. Range of regulatory alternatives:

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

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

Persons who submit an alternate proposal for consideration while the Commission is considering a petition for rulemaking, and who intend that the alternate proposal be considered with the original petition must comply with the timing requirements of Section V.C.2. and the requirements of Section V.C.3.a. through V.C.3.k., unless the alternate proposal is subject to the abbreviated requirements of Section V.C.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.

V.C.6. Petition for an Emergency Rule

V.C.6.a. Request and petition:

Any person including the Division may request the Commission to adopt a temporary or emergency rule without complying with the requirements of Section V.C. 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:

V.C.6.a.(i) imperatively necessary to comply with a state or federal law or federal regulation, or

- V.C.6.a.(ii) imperatively necessary for the preservation of public health, safety or welfare; and,
- V.C.6.a.(iii) compliance with the rulemaking procedural requirements of Section V.C. of this regulation (excluding this Section V.C.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 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 V.C.6.a.(iii), or V.C.6.a.(ii) and V.C.6.a.(iii). This petition should be filed in the Commission Office at the earliest possible date. The Commission will endeavor to provide notice of the proposed emergency rule, as practicable.

Any person may request that a regulatory analysis under § 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 Commission Office at least fifteen days prior to the hearing at which a temporary or emergency rule is to be considered. § 24-4-103(4.5)(d), C.R.S. applies to any such regulatory analysis.

V.C.6.b. Commission requirements:

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

V.C.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.6.a., 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 be effective for a period not exceeding twelve months from the date of adoption.

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. Preparation:

Upon receipt of a complete rulemaking petition, the Commission Office will prepare a draft notice of proposed rulemaking. Petitioners may consult with the Air Quality Control Commission regarding the description of the proposed rule in the notice. The Commission Office will provide the draft notice and the petition to the Commission.

V.D.2. Publication requirement:

Except for temporary or emergency rules under Section V.C.6. of this regulation, or rulemaking hearings exempt under § 24-4-103(1), C.R.S., or rulemaking hearings covered under Section V.F.13., 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.3. Proposed Rulemaking Packet:

At the time the official notice for a particular rulemaking is published, the Commission Office 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.3. or V.C.4. if appropriate, constitutes the Proposed Rulemaking Packet.)

V.D.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 Commission's 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 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. Prehearing procedures

V.E.1. General

These prehearing procedures provide a process by which 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. It is the strong desire of the

Commission that the parties and the Division resolve as many issues as possible by negotiation prior to the prehearing conference.

#### V.E.2. Selection of the Hearing Officer

The Technical Secretary/Administrator 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.a. Parties:

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

##### V.E.3.b. Non-parties:

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

##### V.E.3.c. Air Pollution Control Division:

The Division acts 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 present evidence and testimony, provide background, summarize evidence and any matters settled before the hearing, 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.(3)(c). 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 Officer. Whether the Division participates as staff, as a party, or both, it shall comply with prehearing procedures.

#### V.E.4. 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 section. Where the notice of rulemaking specifies that a petition for party status is required, the petition shall be filed by electronic mail in compliance with Section III.J.2. unless an exception is granted under Section III.J.3. Electronically mailed copies must also be timely received 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 Section III.J.3., the petitioner must complete filing for party status by submitting an original and three copies of the petition for party status in the Commission Office 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.a. The petitioner:

Any person petitioning for rulemaking under Section V.C. shall automatically be granted party status.

V.E.4.b. The proponent of an alternate proposal:

Any person who proposes an alternative to a proposed rule or revision shall comply with the filing requirements of V.E.4. and provide an alternative rule or revision and any other documents required by V.C.3.a. through V.C.3.k. The required documents should be filed by the date specified in the notice for party status requests but not less than 20 days prior to the rulemaking hearing. However, the final economic analysis must be filed at least five working 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 alternative rule proposal within the specified time frame and fulfilling the necessary requirements for alternate proposals and other relevant prehearing requirements, a person automatically obtains party status. Failure to timely file required documents may cause delay or a continuance of the hearing.

V.E.4.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.c. is in the sole discretion of the Commission. The petition must be filed in the Commission Office as specified in the notice of rulemaking by electronic mail as required by Section III.J.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 Section III.J.3., the petitioner must complete filing for party status by submitting an original and three copies of the petition in the Commission Office 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 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 Section III.J.2. or copies covered under the exception of the provisions of Section III.J.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 Commission Office.

V.E.4.d. Late party status:

The Commission may grant party status requests submitted fewer than forty-five days before the hearing on a particular rulemaking only upon written request and for good cause shown. Action on such is at the discretion of the Commission or the Prehearing Conference Officer. Any such request must be filed in the Commission Office 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. Persons seeking party status by the act of

proposing an alternative rule are subject to the time requirements provided in the notice or that are provided in Section V.E.4.b.

#### V.E.5. Status Conference

The Hearing 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 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 Officer may decide to continue the rulemaking hearing. The Hearing Officer may impose appropriate sanctions on any party that fails to attend a mandatory status conference. These sanctions may include limits on the issues that may be raised at the hearing, or the denial of party status.

#### V.E.6. Prehearing Conference

##### V.E.6.a. Participation mandatory:

If the Commission determines that a prehearing conference is necessary, the Commission will specify in the notice of proposed rulemaking when a prehearing conference will be held. A duly appointed Commissioner will preside as Hearing Officer at the prehearing conference, and is authorized to issue procedural orders. All parties and the Division shall participate in the prehearing conference in person. A party may submit, in writing, a request to not participate in the hearing in person. For good cause shown, the Hearing Officer may grant the request. Failure to comply with the requirements of this section may result in denial of a party status application, dismissal of a party or limits on the issues that may be raised at the hearing.

##### V.E.6.b. Goals of the prehearing conference and authority of the Hearing 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 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 Commission Office by electronic mail or as otherwise provided in Section III.J.3. Copies are to be provided to the parties, the Division, the Assistant Attorneys General representing the Commission and the Division, and to any other person as required by the notice of proposed rulemaking.

A prehearing order shall be prepared at the direction of the Hearing Officer based upon the prehearing conference. The order shall reflect any rulings made by the Hearing 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 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 Commission Office (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 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.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 Section III.J.2. a prehearing statement in the Commission Office, 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 Section III.J.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 Commission Office, 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 provided by the exception granted under Section III.J.3. The prehearing statement must contain:

- V.E.6.c.(i) A cover document that summarizes in layperson's terms, the Division's or the party's general position and the contents of the prehearing statement. The summary must also summarize any voluminous exhibits and provide a reasonable estimate of the time necessary for presentation, and
- V.E.6.c.(ii) A prehearing statement that explains 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 may be required by the Hearing Officer, and
- V.E.6.c.(iii) A list of the issues to be resolved by the Commission during the hearing.
- V.E.6.c.(iv) A copy of each exhibit to be introduced at the hearing.
  - V.E.6.c.(iv)(A) Any exhibit to be introduced at the hearing shall be included with the prehearing statement and will be sent to the individual Commissioners for review prior to the hearing

- V.E.6.c.(iv)(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/Administrator 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.E.6.c.(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.
- V.E.6.c.(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).
- V.E.6.c.(vii) Where applicable, the text of any alternate proposed rule or revision in the format specified in Section V.C.3.b.
- V.E.6.c.(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 §§ 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.
- V.E.6.c.(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 the requirements of § 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.3.c. or V.C.5.), an affirmative written statement to that effect must be submitted to satisfy this Section 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.

V.E.6.d. Rebuttal statements & late filings:

The Hearing 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 identification of rebuttal witnesses, rebuttal testimony, and exhibits. Rebuttal



statements are limited to 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 Section V.E.4.c.(i) of this regulation. The statement must be filed by electronic mail in compliance with the requirements of Section III.J.2. in the Commission Office within five working days after the prehearing conference unless otherwise provided in the notice of proposed rulemaking or directed by the Prehearing 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 Section III.J.3., the original and fifteen copies of the rebuttal statement must be filed in the Commission Office within five working days after the prehearing conference unless otherwise provided in the notice of proposed rulemaking or directed by the Hearing Officer. Copies must also be provided to each party, (the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings, by electronic mail as provided in Section III.J.2., or as provided in the exception granted under Section III.J.3. by close of business that same day. Except for such rebuttal, the Commission will not 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 the discretion of the Hearing Officer.

V.E.6.e. Additional conferences:

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

V.E.7. 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 § 25-7-110.5(4)(c), C.R.S., must be filed in the Commission Office, by electronic mail in compliance with the requirements of Section III.J.2. or as otherwise provided in the exception granted under Section III.J.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 Sections V.C.3.c. or V.C.5.), an affirmative written statement to that effect must be submitted to satisfy this Section V.E.7. Economic impact analyses for alternate proposals may, if feasible and appropriate, evaluate the incremental impact over that already estimated for the original petition proposal.

V.E.8. Alternate proposals offered after the prehearing conference:

Except as provided in Sections V.E.8.a. through V.E.8.c., the Hearing Officer will not accept an alternative proposal by a party after the prehearing conference. However, the parties are encouraged to develop consensus positions, and to narrow the issues in contention based upon discussions during or after the prehearing conference and prior to a final Commission action in the proceeding, provided the Commission and the parties have a reasonable opportunity 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.a. The Commission or the Hearing Officer may 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 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.,

V.E.8.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 § 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.c. Such alternate proposed rule text and Final Economic Impact Analysis must be delivered by electronic mail, as provided in Section III.J.2., or as otherwise provided in the exception granted under Section III.J.3., to all parties, the Division staff person for the proceeding, and the Assistant Attorneys General for the Commission and the Division, within the time set by the Hearing Officer or the Commission. If granted an exception to electronic filing pursuant to the provisions of Section III.J.3., an original and fifteen copies of such alternate proposed rule text and Final Economic Impact Analysis must be delivered in the Commission Office, to all parties, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings.

V.E.9. Motions:

The Commission or the Hearing Officer may require that parties, the Division, or other person's file by electronic mail in compliance with Section III.J.2., or otherwise, in compliance with Section III.J.3., 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 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. Discovery:

The Commission or the Hearing Officer may on their 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. Other forms of discovery may be allowed by the Commission or the Hearing Officer on their own motion, or where staff, any person or a party is granted leave to conduct such discovery for good cause shown.

V.E.11. Subpoenas:

The Commission or the Hearing 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 § 24-4-103(14), C.R.S. A witness shall be entitled to the fees and mileage provided for a witness in §§ 13-33-102 and -103, C.R.S.

V.E.12. 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 be made part of the record by the Commission). Once the rulemaking record is closed, new information will only be presented to the entire Commission 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 be disclosed to the full Commission,

and the Commission may 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. Regulatory analysis:

Upon a written request filed in the Commission Office 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 § 24-4-103(4.5), C.R.S. The analysis will address the topics reflected in § 24-4-103(4.5)(a)(I) - (VI), C.R.S., will include quantification of the data to the extent practicable, and will take account of both short-term and long-term consequences. The regulatory analysis will be available for inspection in the Commission Office 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

#### V.E.14. Continuing hearings:

Except for hearings governed by Section V.F.13., 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.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 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 continue a hearing one time only; the hearing will be rescheduled for the next Commission meeting or at the convenience of the Commission. If requested to continue a rulemaking hearing a second time, the Commission may vacate the hearing and re-notice it for a later date pursuant to Section V.D. and in compliance with the Colorado Administrative Procedures Act, § 24-4-103(4)(d).

### V.F. Conduct of rulemaking hearings

#### V.F.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 are urged to identify one spokesperson. Speakers are asked to be as concise as possible, and to avoid repeating comments made by others.

Members of the public may submit written materials to the Commission at the rulemaking hearing. If members of the public would like the Commission to review written material prior to the rulemaking hearing, such documents must be filed in the Commission Office 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.2. Hearings to be conducted by the Commission:

The Commission shall conduct all rulemaking hearings.

V.F.3. Order of presentation:

The prehearing order issued by the Hearing 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.3.a. Opening the hearing and disposing of any procedural issues not resolved by the Hearing Officer, e.g., prehearing motions, remaining party status issues, late filings. The Commission at this time should determine whether any apparent, potential, or actual conflicts of interest exist as described [in Section X.](#) of these rules.

V.F.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, presentation of comments offered by staff for the benefit of the Commission. This introductory presentation may at the discretion of the Commission, be provided by a party proposing the rule.

V.F.3.c. 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.3.d. Presentations by parties and other interested persons as specified in the prehearing order.

V.F.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.4. Role of the Division:

The Division shall act as staff to the Commission in any rulemaking hearing. In fulfilling its role as staff, the Division may present evidence, provide background information, make proposals or alternate proposals, summarize evidence and any matters settled before the hearing, make recommendations to the Commission; make objections or cross-examine witnesses, and provide other support as necessary to assist the Commission.

The Division may affirmatively request party status pursuant to the procedure in Section V.E.3. 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 Officer.

V.F.5. Witness presentations: Oaths or affirmations may 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.5.c.(vi) (for parties, the Division, or other persons), or V.F.1. (for the general public).

V.F.6. Cross-examination and objections:

Where the Commission allows participation as a party, a party may make objections, and all witnesses are subject to cross-examination by or on behalf of persons who have party status. In all hearings, witnesses are 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 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 each party to estimate the amount of time necessary for cross-examination; to promote an efficient and focused hearing, the presiding Commissioner may limit each party's time for cross-examination.

V.F.7. Other authority:

In conducting any rulemaking hearing, the Commission is authorized to: administer oaths and affirmations; sign and issue subpoenas; regulate the course of the hearing, set the time and place for continued hearings, fix the time for filing of 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, the Hearing Officer.

V.F.8. 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.

V.F.9. Final action:

In adopting any rule or regulation the Commission shall consider all submissions. The rules and regulations promulgated will be based upon the record, which will 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 not constitute part of the rulemaking record. The rules or regulations will 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. If the Commission will deliberate at some time other than immediately after the close of the record for that particular hearing, appropriate notice will 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 § 24-4-103(4)(c), C.R.S.

V.F.10. 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 be filed with the Secretary of State for publication in the Colorado register within twenty days after adoption.

V.F.11. Publication and effective date:

Except for temporary or emergency rules, a rule shall become effective twenty days after publication as described in this section, 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 of the Colorado Register pursuant to § 24-4-103(11)(g), C.R.S.

V.F.12. 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.

~~V.F.13. Special procedures for particular hearings~~

~~V.F.13.a. Hearings to Review Area Classifications, Designations, or General SIP Revisions:~~

~~V.F.13.a.(i) Hearings on matters pursuant to § 25-7-105(2), C.R.S. may involve additional procedures otherwise used only for adjudicatory hearings. § 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 pursuant to §§ 25-7-106(1), C.R.S. or 25-7-107(2), C.R.S.;~~

~~V.F.13.a.(ii) any area designation or redesignation made pursuant to § 25-7-208, C.R.S.;~~

~~V.F.13.a.(iii) any revision of general application of the state implementation plan.~~

~~V.F.13.b. Any request to apply such additional procedures must be included in the initial application and must state a clear basis for invoking additional protections ordinarily available only in an adjudicatory hearing. The following procedures apply to § 25-7-105(2), C.R.S. hearings:~~

~~V.F.13.b.(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 the Commission to comply with the publication requirements of § 25-7-110(1), C.R.S.~~

~~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 the~~

Commission to comply with the publication requirements of § 25-7-110(1), C.R.S.

V.F.13.b.(ii) Notice of the hearing will 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.

Commission website.

V.F.13.b.(iii) All testimony at the hearing shall be under oath or affirmation.

V.F.13.b.(iv) A full and complete record of all proceedings and testimony presented shall be taken and filed at the Commission Office.

V.F.13.b.(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 information, data, and analysis supporting the petition.

V.F.13.b.(vi) The Division shall appear as a party and shall have the same rights to judicial review as any other party.

V.F.13.c. 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.

V.F.13.d. The following additional procedures apply to petitions that propose to amend the list of Colorado hazardous air pollutants (HAPs) pursuant to § 25-7-109.3(5)(b), C.R.S.:

V.F.13.d.(i) 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.

V.F.13.d.(ii) 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.

V.F.13.d.(iii) All testimony at the hearing shall be under oath or affirmation.

V.F.13.d.(iv) A full and complete record of all proceedings and testimony presented shall be taken and filed at the Commission Office.

V.F.13.e. Appeals of Colorado Maximum Achievable Control Technology (MACT) or Generally Available Control Technology (GACT) determinations or compliance schedules:

V.F.13.f. The following additional procedures apply to petitions appealing a determination or compliance schedule by the Division pursuant to § 25-7-109.3(3)(a)(IV), C.R.S.:

- V.F.13.f.(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.
- V.F.13.f.(ii) At least thirty days prior to the hearing, 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.
- V.F.13.f.(iii) All testimony at the hearing shall be under oath or affirmation.
- V.F.13.f.(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 Commission Office.
- V.F. 13.g. Criteria and procedures for local government petitions regarding the installation of emission control units filed pursuant to § 25-7-133(7)(d)(V), C.R.S.
- V.F.13.g.(i) A petition for a hearing pursuant to § 25-7-133(7)(d)(V), C.R.S. must be filed and served as required by Section VI.B.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 § 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:
- ng 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:
- V.F.13.g.(i)(A) Local government requesting the hearing;
- V.F.13.g.(i)(B) The name of the regulated entity proposing to construct the contested emissions control unit, including contact person, if available; and
- V.F.13.g.(i)(C) A statement of the basis for the objection.
- V.F.13.g.(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.
- V.F.13.g.(ii)(A) The procedures specified in Sections VI.A. through VI.F. apply only to the extent deemed appropriate by the Commission or the appointed Hearing Officer, and may be modified as appropriate.
- V.F.13.g.(ii)(B) The Hearing Officer, if so authorized by the Executive Committee of the Commission, may enter an initial decision pursuant to § 24-4-105, C.R.S.



V.F.13.g.(ii)(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.

V.F.13.g.(iii) The Commission shall uphold an objection by a local government if:

V.F.13.g.(iii)(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

V.F.13.g.(iii)(B) It is reasonable to uphold the objection based on consideration of the following factors:

V.F.13.g.(iii)(B)(1) Any local ordinances, resolutions, permit or land use requirements that would, but for § 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 impose additional conditions on the unit.

V.F.13.g.(iii)(B)(2) Any additional cost, burden or loss in production that may be incurred by the regulated entity due to the local government's objection.

V.F.13.g.(iii)(B)(3) Whether the regulated entity provided the notice required in § 25-7-133(7)(d)(II), C.R.S. and has otherwise cooperated with the local government by addressing its concerns, including consideration of any reasonable alternatives.

V.F.13.g.(iii)(B)(4) The reasonableness of the objection and the weight of the public interest at issue.

V.F.13.g.(iii)(B)(5) Any other factor deemed relevant by the Commission.

#### V.F.134. 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. PROCEDURES FOR ADJUDICATIONS

VI.A. 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 section may also apply to requests for site-specific revisions of the state implementation plan.

VI.B. Initiating an Adjudicatory Hearing

VI.B.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 determine whether a request was timely filed.

VI.B.2. Filing and Serving the Hearing Request:

Hearing requests shall be timely filed in the Commission Office. The request shall also be served upon the Division, and the First Assistant Attorney General. Hearing requests must be filed electronically, pursuant to Section III.J.2., or otherwise, if an exception to electronic filing is granted pursuant to Section III.J.3.

VI.B.3. Contents of the Hearing Request:

All requests for adjudicatory hearings must contain the following information:

- VI.B.3.a. Name of the person(s) requesting the hearing, including address and telephone number;
- VI.B.3. b. Brief statement of background and relevant facts;
- VI.B.3.c. The legal and factual errors alleged by the person requesting the hearing;
- VI.B.3.d. The statutory, regulatory, and/or permit-based citations supporting the request for hearing;
- VI.B.3.e. The relief requested by the person requesting the hearing;
- VI.B.3.f. A copy of any Division compliance order, noncompliance penalty determination or permit which is the subject of the request;
- VI.B.3.g. 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;
- VI.B.3.h. An estimate of the time that will be required for the hearing;
- VI.B.3.i. A statement as to whether the 90-day hearing timeframe set forth in Section VI.B.4.a. is waived; and

VI.B.3.j. A certificate of service, confirming that proper filing and service has been made in accordance with Section VI.B.2.

VI.B.4. Setting the Hearing:

VI.B.4.a. The Commission office will include a request for adjudicatory hearing on the Commission's agenda for the next meeting following receipt of a complete request. The Commission will grant a properly filed request and will 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, a declaratory order, or to a permit appeal by the permit applicant (unless the ninety-day timeframe is waived by the person requesting the hearing).

VI.B.4.b. Once appointed, the Hearing Officer may continue the hearing upon written motion by any party or for the convenience of the Commission.

VI.B.4.c. At the meeting of the Commission following receipt of the request, the Commission will determine whether the request for adjudicatory hearing presents only questions of law or whether there are disputed issues of fact. If the request presents only a question of law, the Commission or Hearing Officer may issue a briefing schedule in accordance with CRCP 56, with the party requesting the hearing as movant, but permitting the Division sur-reply (the scope of sur-reply shall be limited to issues raised in the reply). In this case, the provisions of Sections VI.C and VI.D. may not apply (except that Sections VI.C.1, VI.C.4, VI.C.6, VI.C.12-13, and VI.D.8 will apply), and oral argument may be permitted at the hearing (no witnesses or cross-examination).

VI.B.5. Notice of the Hearing:

VI.B.5.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.5.b. The hearing notice will 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, and (iii) 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 or the Hearing Officer may amend the notice, without continuing 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.5.c. The Commission Office shall mail, at least thirty days prior to the hearing, notice to all persons who have requested to be included on the Commission's mailing list, 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.5.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 the Commission's website.
- VI.B.6. Parties:
- VI.B.6.a. The person requesting a hearing will appear as a party. The Division will 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 under Section VI.H.
- VI.B.6.b. Any person who is affected by the proceeding and whose interests are not already adequately represented has the opportunity to be a party upon approval by the Hearing Officer. Any person seeking party status may apply consistent with any deadline set by the Commission or Hearing Officer. An application for party status must identify the person making the request, including an address and telephone number. The application must also contain a statement of the reasons for seeking party status, the manner in which the matter affects the person's interests, an explanation as to why the existing parties do not adequately represent the person's interests, a description of the legal and/or factual issues which the prospective party intends to raise, and potential witnesses the prospective party intends to call at the hearing. In addition, the application must describe the general nature of the evidence the applicant intends to present.
- VI.B.6.c. Applications for party status should be made no later than the deadline set in the Scheduling Order. If the application for party status is filed after the Scheduling Conference, the application should include a description of the amount and nature of discovery requested (e.g. number of depositions) and the justification therefor. Late filings will be accepted for good cause and upon a showing that admittance of the party will not create delay in the prehearing process or of the date of the hearing.
- VI.B.6.d. The Hearing Officer will grant or deny applications for party status. An order granting an application for party status will also identify any amendments to the Scheduling Order related to discovery limits for the new party. Applicants for party status shall comply with all requirements of these rules pending resolution of the request.
- VI.B.7. Appointment and Powers of the Hearing Officer:
- VI.B.7.a. At its first meeting following receipt of a hearing request, a Commissioner will be appointed as Hearing Officer for the matter. If the Commission meeting following receipt of the request is more than fifteen days after receipt of the request, a Hearing Officer will be appointed within fifteen days of receipt of the request. The chairperson of the Commission may appoint a Hearing Officer to act until such meeting or at any time may appoint a replacement Hearing Officer, to be confirmed by the Commission at its next general meeting.
- VI.B.7.b. The Hearing Officer may exercise any powers conferred by § 24-4-105(4), C.R.S., including actions in accordance, to the extent practicable, with the procedure in district courts. The Hearing Officer may require as part of the prehearing conference or otherwise, each party to submit in advance of the hearing any 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.7.c. The Hearing Officer shall conduct the scheduling conference, the prehearing conference and the hearing.

#### VI.C. Prehearing Procedures

##### VI.C.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 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.2. Scheduling Conference:

VI.C.2.a. The Hearing Officer, upon appointment, will issue a notice of scheduling conference, setting a date for the scheduling conference to take place between fifteen (15) and thirty (30) days of receipt of a complete request for adjudicatory hearing. The purpose of the scheduling conference is to set discovery limitations, address timing of discovery and other related issues, resolve any pending motions, and discuss a Scheduling Order.

VI.C.2.b. At least five (5) days prior to the scheduling conference, the parties will submit a joint proposed scheduling order addressing the following: (i) cut-off dates for service of written requests and setting of depositions, and a final discovery cut-off date for completion of discovery, which must be at least five (5) prior to the hearing; (ii) the proposed number of depositions, including both fact and expert witnesses; (iii) the proposed number of interrogatories, requests for production, and requests for admission, and proposed timeframes for responding; (iv) timing of service and response to motions, and a motion cut-off date; and (v) timing and limits for prehearing and rebuttal statements (e.g. page limits). Parties should also identify potential witnesses (fact and expert) and brief description of the scope of the anticipated testimony. If parties are unable to agree on any of the terms as described, each party may submit its own proposed scheduling order, along with an explanation of the basis for any unilateral request. Parties must describe their good faith efforts made to reach agreement.

VI.C.2.c. The Hearing Officer will issue a Scheduling Order no later than 5 days after the scheduling conference. The Scheduling Order will include the Hearing Officer's rulings on the matters identified in Section VI.C.2.b, and instructions as to how and the deadline for when an interested

person may apply for party status in the proceedings. If the party requesting the hearing has waived the 90-day hearing timeframe, the Scheduling Order will also set forth the discovery commencement date. Parties may request modifications to the Scheduling Order only upon a showing of changed circumstances and good cause.

VI.C.3. Discovery:

- VI.C.3.a. Except as provided within and as authorized by the Scheduling Order, 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. If the party requesting the hearing has not waived the 90-day hearing timeframe, written discovery may commence after the Commission meeting granting the request for adjudicatory hearing or the Scheduling Conference, whichever is earlier. If the party requesting the hearing has waived the 90-day hearing timeframe, discovery commencement will be set forth in the Scheduling Order.
- VI.C.3.b. To the extent practicable, and unless otherwise ordered by the Hearing Officer, the discovery limitations of Rules 26 through 37, CRCP, apply to all adjudicatory matters before the Commission. However, Rules 26 (a) and (d), 27, 28, 29, and 35, CRCP, are not applicable in adjudicatory proceedings.
- VI.C.3.c. Responses to written discovery are due within twenty-one (21) days (as opposed to the time authorized in CRCP 33, 34, and 36), unless otherwise ordered by the Hearing Officer. Documents provided in response to discovery must be Bates-stamped or contain other identifying information.
- VI.C.3.d. Depositions must be noticed at least seven (7) days before the date proposed for the deposition. Parties must confer regarding dates of depositions; failure to confer may result in cancellation of the deposition by the Hearing Officer (even if there is not enough time remaining for the deposition to be rescheduled).
- VI.C.3.e. Written motions practice for discovery issues is not permitted. If there is a discovery dispute, the parties must work in good faith to resolve it. If it cannot be resolved, the parties must jointly contact the Commission office and seek a telephonic hearing with the Hearing Officer. The Hearing Officer will schedule a conference call (or other electronic meeting), may order a written briefing, and will either rule after hearing from the parties on the issue or will issue a written order shortly after the call.
- VI.C.3.f. 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.3.g. The Hearing Officer is empowered to impose sanctions for failure to participate in good faith in the discovery process and for noncompliance with the Scheduling Order or other order of the Hearing Officer or Commission, including, but not limited to, the dismissal of a request for

adjudicatory hearing or exclusion of evidence not timely provided to other parties in discovery (or exclusion of witnesses not reasonably made available). Any such sanctions will be proportionate to the noncompliance or failures to participate in good faith. A decision of the Hearing Officer to dismiss all or part of a claim under this section is immediately appealable to the full Commission.

VI.C.4. Prehearing Conference:

- VI.C.4.a. A prehearing conference shall be held in each adjudicatory matter before the Commission, not less than fourteen (14) nor more than twenty-one (21) days before the hearing, unless otherwise ordered by the Hearing Officer. The Commission Office 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.4.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, and resolve any other matter that can be resolved before the hearing. The Hearing Officer may restrict the parties' presentations, exhibits and testimony to avoid duplication and to minimize time spent on uncontested or peripheral issues.
- VI.C.4.c. Each party and each person who has applied to become a party must attend the prehearing conference, in person and through counsel (if represented).
- VI.C.4.d. At least five (5) days prior to the prehearing conference, the parties must submit a Joint Statement of Undisputed Facts, identifying each undisputed fact and each exhibit that is uncontested as to authenticity and relevance. The parties must work in good faith to put together the Statement of Undisputed Facts. Exhibits on the Joint Statement must be identified as "Joint Exhibit 1", "Joint Exhibit 2", etc.

VI.C.5. Prehearing Statements and Rebuttal Statements:

- VI.C.5.a. All parties must submit by electronic mail a Prehearing Statement to the Commission Office by close of business of the date specified in the Notice of Adjudicatory Hearing. The Prehearing Statement must be filed by electronic mail pursuant to the provisions of Section III.J.2. If granted an exception to electronic filing pursuant to the provisions of Section III.J.3., the petitioner must submit an original and fifteen copies of a complete petition for adjudication in the Commission Office.  
  
In addition, electronically mailed copies 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 Adjudicatory Hearing.
- VI.C.5.b. Prehearing Statements must contain the following:
  - VI.C.5.b.(i) A summary of argument;

- VI.C.5.b.(ii) Legal and factual arguments in support of party's position to be taken at the hearing, with citation to exhibits;
- VI.C.5.b.(iii) A description of the specific relief sought from the Commission, including the specific terms desired in any Commission order implementing the decision;
- VI.C.5.b.(iv) A list of all exhibits, except demonstrative exhibits, to be relied upon at the hearing (exhibits must be identified by Bates-stamp and if not yet provided to other parties, copies must be made available at the time of filing the Prehearing Statement). Failure to provide the other parties with copies of all exhibits may result in the exhibit(s) being excluded from introduction at the hearing;
- VI.C.5.b.(v) A list of all witnesses to be called at the hearing, a statement as to whether the witness has been (or will be) deposed, and a detailed description of the witnesses' testimony.

The authenticity of exhibits, statutes, ordinances, regulations or standards submitted with 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 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 would not prejudice other parties or necessitate a delay of the hearing.

VI.C.5.c. Rebuttal Statements:

Parties may submit a Rebuttal Statement only to address issues, matters or evidence that were raised at the prehearing conference or in another party's Prehearing Statement. The Notice of Adjudicatory Hearing shall specify the deadline to file any Rebuttal Statements, and any limitations on the filing of the statement (e.g. page limitations). Rebuttal Statements must attach any additional exhibits (except demonstrative exhibits) not capable of being provided at the time of the Prehearing Statement.

VI.C.6. Prehearing Order:

The Hearing Officer shall direct the preparation of a prehearing order by either a party or Staff. The prehearing order will 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. 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.7. Dispositive Motions:

- VI.C.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.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.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.8. Procedural Motions:

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

VI.C.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. Decisions of the Hearing Officer on procedural motions are not appealable to the full Commission.

VI.C.9. Consolidation of Cases:

Any party may seek consolidation of two or more cases by filing a motion to consolidate in each case. If more than one Hearing Officer has been assigned to the cases, the motion shall be decided 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 Commission Office shall place all previous filings related to the consolidated cases in that case file. The Commission may order consolidation on its own initiative.

VI.C.10. Dismissal of Cases:

VI.C.10.a. Any person who requested 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 Commission Office.

VI.C.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 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.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 Officer's decision to the Commission.

VI.C.12. Location of Hearing:

The Commission's monthly meetings are generally held at the Colorado Department of Public Health Environment, 4300 Cherry Creek Drive South, Sabin-Cleere Conference Rooms, Denver,

Colorado 80246. Upon request by any party or the public or upon its own motion, the Commission may elect to conduct a hearing virtually or in another location, including in the geographic area of a source affected by a particular hearing. Any request for a change in location must be submitted to the Commission Office not later than five days before the regular monthly meeting that precedes the scheduled date for the hearing. Any such request must be served by the same deadline upon all parties and all applicants for party status, who will all receive an 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.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 upon a showing of good cause. 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 § 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 § 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 Commission Office for presentation to the Hearing Officer at least 10 days before the scheduled hearing; motions for continuance filed fewer than ten days before the hearing will be granted only for good cause shown and an unforeseen and unavoidable change in circumstances justifying the continuance. The Hearing Officer shall rule on continuance requests after providing all parties an appropriate opportunity to respond. Any party may appeal the Hearing Officer's decision to the Commission.

VI.C.15. Subpoenas:

Any counsel who has entered an appearance in the matter, or 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 Commission Office, who shall immediately forward them to the Hearing Officer. The Hearing Officer or the Technical Secretary/Administrator 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.16. Filing and Service of Documents:

All documents must be filed with the Commission Office 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 Section III.J.2. or as otherwise provided in the exception granted under Section III.J.3.

VI.D. Hearing Procedures

VI.D.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 § 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.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 and resolution of any conflict of interest issues;
- VI.D.2.b. 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 where permitted by these rules.
- VI.D.2.c. 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 statements, beginning with the party upon whom the burden of proof rests.
- VI.D.2.e. 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.
- VI.D.2.f. Sixth, closing statements, beginning with the party upon whom the burden of proof rests.

VI.D.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.4. Motions and Objections:

The Hearing Officer shall rule on procedural motions and objections relating to procedure and 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.5. Public Participation:

The Commission may allow public participation in an adjudicatory hearing at appropriate times as determined in the sole discretion of the Commission. Comments and any documents offered may be made part of the record, unless objected to by a party and the objection is upheld by the Hearing Officer or Commission. Persons who offer comment 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 (which may be permitted unless it will prejudice any party) and a party requests the opportunity to rebut, the Hearing Officer will allow an adequate opportunity to rebut at the hearing.

#### VI.D.6. 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 that it was not possible to have disclosed the evidence during the prehearing process in accordance with these rules.

#### VI.D.7. Good Faith Conferal:

All parties shall confer in good faith before the filing of any motion or the making of any request to the Hearing Officer or Commission, consistent with the conferal requirements of the Colorado Rules of Civil Procedure.

#### VI.D.8. Post-hearing Briefs and Summaries:

The Commission may allow parties to file hearing briefs or summaries, or proposed findings of fact and conclusions of law, after the close of evidence by a deadline determined at the hearing. If the Commission allows such materials, it shall schedule a time at which it will deliberate on the case, however, no additional deliberations would be required upon submittal of proposed findings of fact and conclusions of law. At such deliberation, no evidence or argument by the parties may be received unless the Commission reopens the record.

### VI.E. Decisions of the Commission

#### VI.E.1. 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.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 be deemed denied.

VI.E.3. Effective Date of the Decision:

Unless the Commission designates a later date, the effective date of the final decision is the date the Commission order is mailed, pursuant to § 24-4-105(16)(a). Commission decisions disposing of parts of a case before the final decision are effective as of the date of mailing the Commission order. 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. Post-Decision Matters

VI.F.1. Requests for Reconsideration:

A request to reconsider all or part of any final decision by the Commission may be made by either a party or by any Commissioner who participated in the final decision. Any request to reconsider must be made within ten days of the date of the decision by written motion filed with the Commission Office by electronic mail in compliance with the requirements of Section III.J.2 or as otherwise provided in the exception granted under Section III.J.3. The Commission Office shall immediately transmit any such motion to all Commissioners who participated in the final decision. If a party or any Commissioner who participated in the final decision requests reconsideration, the Technical Secretary/Administrator, in conjunction with the Hearing Officer, shall arrange a prompt meeting of the Commission, which may include participation by telephone. 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 its final decision or any portion thereof, the effective date of the entire decision is suspended until reconsideration is complete. If the Commission declines to reconsider its final decision, the effective date of the final decision is not suspended.

VI.F.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 Commission Office 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.3. Transcripts:

The Commission Office 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. Ex Parte Communications:

No ex parte communications, as defined in Section III.I, 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.H. Declaratory Orders

Pursuant to § 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 State Administrative Procedure Act, the Act, and these rules. The order shall be limited in its scope to those matters necessary to dispose of the petition properly.

**VI.I. Special Procedures for Particular Hearings**

**VI.I.1. Hearings to Review Area Classifications, Designations, or General SIP Revisions:**

**VI.I.1.a. Hearings on matters pursuant to § 25-7-105(2) C.R.S. may involve additional procedures otherwise used only for adjudicatory hearings. § 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 pursuant to § 25-7-106(1) C.R.S. or § 25-7-107(2) C.R.S.**

**VI.I.1.b. Any area designation or redesignation made pursuant to § 25-7-208 C.R.S.**

**VI.I.1.c. Any revision of general application of the state implementation plan.**

**VI.I.2. Any request to apply such additional procedures must be included in the initial application and must state a clear basis for invoking additional protections ordinarily available only in an adjudicatory hearing. The following procedures apply to § 25-7-105(2) C.R.S. hearings:**

**VI.I.2.a. 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:**

**VI.I.2.a.(i) the petition is primarily a request for a rulemaking hearing, which requires the Commission to comply with the publication requirements of § 25-7-110(1) C.R.S.**

**VI.I.2.b. Notice of the hearing will 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.**

**VI.I.2.c. All testimony at the hearing shall be under oath or affirmation.**

VI.1.2.d. A full and complete record of all proceedings and testimony presented shall be taken and filed at the Commission Office.

VI.1.2.e. 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 information, data, and analysis supporting the petition.

VI.1.2.f. The Division shall appear as a party and shall have the same rights to judicial review as any other party.

VI.1.3. 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.

VI.1.4. The following additional procedures apply to petitions that propose to amend the list of Colorado hazardous air pollutants (HAPs) pursuant to § 25-7-109.3(5)(b) C.R.S.:

VI.1.4.a. 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.

VI.1.4.b. 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.

VI.1.4.c. All testimony at the hearing shall be under oath or affirmation.

VI.1.4.d. A full and complete record of all proceedings and testimony presented shall be taken and filed at the Commission Office.

VI.1.5. Appeal of Colorado Maximum Achievable Control Technology (MACT) or Generally Available Control Technology (GACT) determinations or compliance schedules.

VI.1.6. The following additional procedures apply to petitions appealing a determination or compliance schedule by the Division pursuant to § 25-7-109.3(3)(a)(IV) C.R.S.:

VI.1.6.a. 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.

VI.1.6.b. At least thirty days prior to the hearing, 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.

VI.1.6.c. All testimony at the hearing shall be under oath or affirmation.

VI.1.6.d. 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 Commission Office.

VI.1.7. Criteria and procedures for local government petitions regarding the installation of emission control units filed pursuant to § 25-7-133(7)(d)(V) C.R.S.

VI.1.7.a. A petition for a hearing pursuant to § 25-7-133(7)(d)(V) C.R.S. must be filed and served as required by Section VI.B.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 § 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:

VI.1.7.a.(i) Local government requesting the hearing;

VI.1.7.a.(ii) The name of the regulated entity proposing to construct the contested emissions control unit, including contact person, if available; and

VI.1.7.a.(iii) A statement of the basis for the objection.

VI.1.7.b. The hearing may be held and the matter decided by the Commission or a Hearing Officer designated by the Executive Committee of the Commission.

VI.1.7.b.(i) The procedures specified in Sections VI.A. through VI.F. apply only to the extent deemed appropriate by the Commission or the appointed Hearing Officer, and may be modified as appropriate.

VI.1.7.b.(ii) The Hearing Officer, if so authorized by the Executive Committee of the Commission, may enter an initial decision pursuant to § 24-4-105 C.R.S.

VI.1.7.b.(iii) 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.

VI.1.7.c. The Commission shall uphold any objection by local government if:

VI.1.7.c.(i) 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

VI.1.7.c.(ii) It is reasonable to uphold the objection based on consideration of the following factors:

VI.1.7.c.(ii)(A) Any local ordinances, resolutions, permit or land use requirements that would, but for § 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 impose additional conditions on the unit.

VI.1.7.c.(ii)(B) Any additional cost, burden or loss in production that may be incurred by the regulated entity due to the local government's objection.



VI.1.7.c.(ii)(C) Whether the regulated entity provided the notice required in § 25-7-133(7)(d)(II) C.R.S. and has otherwise cooperated with the local government by addressing its concerns, including consideration of any reasonable alternatives.

VI.1.7.c.(ii)(D) The reasonableness of the objection and the weight of the public interest at issue.

VI.1.7.c.(ii)(E) Any other factor deemed relevant by the Commission.

#### VI.1.8. 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.

## VII. PROCEDURES FOR PUBLIC COMMENT HEARINGS ON PERMIT APPLICATIONS

### VII.A. Scope

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

### VII.B. Setting the Hearing

- VII.B.1. The public comment hearing will be held within sixty days of the Commission's receipt of all required materials relating to review of a permit or a permit term or condition pursuant to § 25-7-114.5(6)(b), C.R.S. unless the applicant and the Division agree to a later date.
- VII.B.2. The Commission may continue the public comment hearing for the convenience of the Commission.
- VII.B.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.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 be posted on the Commission's web site. No substantive revisions will be made to the draft permit during the thirty (30) days prior to the public comment hearing.

### VII.C. Appointment of the Public Comment Hearing Commissioner:

- VII.C.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 public comment hearing is intended to encourage citizen participation 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 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.
- VII.D.3. 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. 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. The public comment period closes at the conclusion of the public comment hearing, unless the Commission or Hearing Officer grants an extension of the public comment period to receive additional written comments.

VII.D.13. The Commission Office 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. Appeals of the Permit

VII.E.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 § 25-7-114.5(11), C.R.S.

VII.E.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 § 25-7-114.5(8).

### VIII. PUBLIC INFORMATION AND CONFIDENTIAL INFORMATION

#### VIII.A. Distribution of notices, agendas, and other information by the Commission:

The Commission Office shall maintain a mailing list. Any person may request to be added to the mailing list. The mailing list is maintained electronically. However, if an email address is not available, the Commission Office will accept a physical address to which mailings will be sent.

#### VIII.B. Availability of records; emissions data always public:

Records of the Commission are available to any person pursuant to and consistent with the provisions of the Colorado Open Records Act, § 24-72-201 et seq., C.R.S. Requests for records must be made either by email or U.S. mail, and addressed to the Commission Office. 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. 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 § 25-7-119(4) 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 section 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 Section VIII.B.

**IX. C.R.S. Colorado Revised Statutes § 24-4-105(4)**

Any agency conducting a hearing, any administrative law judge, and any 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 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. 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. Definitions**

**X.A.1. Actual conflict of interest means:**

X.A.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.b. In an adjudicatory proceeding:**

X.A.1.b.(i) The Commissioner has, in some measure, adjudged the facts as well as the law in the case in advance of the hearing, or

X.A.1.b.(ii) The Commissioner, or the Commissioner's employer, has a substantial financial interest in the outcome of the proceeding.

X.A.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.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. 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. Disqualification of a Commissioner for a Conflict of Interest

X.C.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.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. Advisory Opinions:

The Commission Office shall maintain a log of Advisory Opinions approved by the Commission to assist the Commission in interpreting these Conflict of Interest provisions.

X.E. 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. STATE IMPLEMENTATION PLAN**

XI.A. 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. All other requirements of these procedural rules, found in all sections except this Section XI. are reserved to the authority of the State and are not part of the State Implementation Plan.

**PART B Procedural Rules for All Proceedings bBefore the Commission on or After August 1, 2025, Except Rulemaking Proceedings Commenced by a Petition for Rulemaking and Adjudicatory Proceedings Commenced by a Request for Hearing Filed Before August 1, 2025**

The rules as set forth in this Part B will apply on and after August 1, 2025, and the rules in Part A will no longer apply; provided, however, that the rules in Part A will continue to apply to rulemaking proceedings initiated by a Petition Request and adjudicatory proceedings initiated by a Request for Hearing filed occurring before August 1, 2025.

**I. INTRODUCTION**

The Colorado Air Quality Control Commission (Commission) is appointed by the Governor and authorized by the Colorado General Assembly to oversee Colorado's air quality program pursuant to the Colorado Air Pollution Prevention and Control Act, § 25-7-101 et seq., C.R.S., as amended ~~(the Act)~~.

The primary role of the Commission is to adopt an air quality management program that promotes clean and healthy air for Colorado's ~~citizens~~ residents and visitors, and protects Colorado's scenic and natural resources in a cost-effective and efficient manner. The Colorado Department of Public Health and Environment's Air Pollution Control Division (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 reflect a wide variety of professional backgrounds and individual interests. Colorado has chosen the citizen board approach to develop and oversee implementation of its air quality management program to ensure that the air quality program is 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 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 uniformly and equitably 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~~ plain 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 assist their fellow ~~citizens~~ residents in reaching decisions that may have significant social, ~~health, environmental~~ and economic impacts in the state. The Commission welcomes and appreciates participation in its decision-making process.

The Commission is committed to prioritizing and fostering meaningful public engagement, particularly with those disproportionately impacted by air and other pollution, and will continue to explore opportunities to eliminate barriers to such engagement.

## II. SCOPE, PURPOSE, AND AUTHORITY

- II.A. These procedural regulations are adopted pursuant to the authority conferred upon the Commission in §§ 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, § 24-4-101 et seq., C.R.S., as amended (the APA), and the Colorado Air Pollution Prevention and Control Act, § 25-7-101 et seq., C.R.S., as amended (the Act).
- II.B. These regulations ~~specify govern all~~ procedures for all proceedings and hearings conducted by and/or at the direction of ~~before~~ the Commission. Where specifically stated, they also govern certain procedures and hearings before the Air Pollution Control Division within the Colorado Department of Public Health and Environment.
- II.C. These regulations do not apply to interpretive rules, guidance, or general statements of policy issued by the Commission that are not intended to be binding.
- II.D. 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 ~~P~~party to any proceeding before the Commission who, during the proceeding, fails to raise an objection regarding lack of compliance with any procedural requirement of these regulations waives that issue for the purpose of judicial review.
- II.E. 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. 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 Office records are available online; please contact the Commission Office for further information.

## III. DEFINITIONS

The definitions of terms used in these regulations ~~are shall be~~ in accordance with the Act, the APA, and other applicable regulations of the Commission unless the context requires otherwise.

- III.A. Act: The Colorado Air Pollution Prevention and Control Act, § 25-7-101 et seq., C.R.S.
- III.B. Adjudicatory Proceeding: Adjudicatory proceedings include notice and hearing activities which are required by law 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. Adjudicatory proceedings typically occur during the Commission's general meetings and are governed by the procedures in Section VI. of these regulations.
- III.C. Administrative Procedures Act (APA): § 24-4-101 et seq., C.R.S.
- ~~III.D. Administrator/Technical Secretary: The person employed by the Commission pursuant to § 25-7-105(3), C.R.S. The Administrator/Technical Secretary can be reached at the Office of the Air Quality Control Commission in Section III.F.~~
- III.~~E~~D. Alternate Proposal: ~~Any new substantive proposed rule text, whether wholly new or amendments or revisions to previously proposed regulation text, that materially alters proposed compliance dates, materially impacts the emissions reductions that would result from the proposed rule, or~~

otherwise materially impacts the cost or benefits of the proposed rule (e.g., the emissions reductions that would be achieved, cost per ton of compliance by affected sources), or contains substantive new obligations or requirements Means Redlines proposed by a Party during a rulemaking proceeding that are not incorporated into the Proponent's final rule text and which are offered for the Commission's consideration and adoption approval, including wholly new regulation text, or amendments or revisions to previously proposed regulation text. For purposes of Sections V.E.5.c.(ix), V.E.6., and V.E.7.b., proposed text that simply deletes, clarifies or elaborates on elements of an already-submitted proposal, without substantive new obligations or requirements, is not an alternate proposal.

~~III.E. Attorney General: The Attorney General represents and advises the Commission, and also represents the Division before the Commission.~~

~~Office of the Attorney General  
Colorado Department of Law  
Natural Resources & Environment  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 9th Floor  
Denver, Colorado 80203~~

III.F. Commission: The Colorado Air Quality Control Commission created in § 25-7-104, C.R.S.

Colorado Air Quality Control Commission  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South, EDO-AQCC-A5  
Denver, Colorado 80246  
Email: [cdphe.aqcc-comments@state.co.us](mailto:cdphe.aqcc-comments@state.co.us)  
Web: <https://cdphe.colorado.gov/aqcc>

III.G. Consent Agenda: A consent agenda consists of routine, non-controversial, and self-explanatory items that the Commission may approve without individual discussion. Written comment only rulemaking items may be placed on the Consent Agenda.

III.H. Day: Unless specified otherwise, day, whether capitalized or not, refers to a calendar day.

~~III.IH Department of Law: Assistant Attorneys General from the Department of Law represents and advises the Commission, and the Division before the Commission.~~

~~Colorado Department of Law  
Natural Resources & Environment Section  
Air Quality Unit  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 10th Floor  
Denver, Colorado 80203~~

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

~~Colorado Air Pollution Control Division  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South, APCD-B1  
Denver, Colorado 80246  
Email: [cdphe.commentsapcd@state.co.us](mailto:cdphe.commentsapcd@state.co.us)  
Web: <https://cdphe.colorado.gov/apcd> <https://cdphe.colorado.gov/air-pollution/air-pollution-control-division-topics>~~



III.KI. 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 approval of a the Rulemaking Request notice of a rulemaking hearing is published~~ 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 ~~P~~parties is not given.

III.LJ. File or Filed:

III.LJ.1. Means received in the Commission Office and date-stamped by staff as received on that day or, when filed by electronic mail for rulemakings or adjudications under Section III.LJ.2. as provided herein.

III.LJ.2. Electronic Filing

III.LJ.2.a. Filing by electronic mail ~~shall be~~ complete when the Commission Office ~~timely~~ 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 Commission Office, together with a certificate of service confirming the filing was received by midnight on the day~~ that the document ~~has also been provided to the Division and all Parties included on the Party List for any proceeding to the extent such a list has been compiled by the Commission 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~~their name to the document, a filer agrees that the document constitutes an electronic transaction pursuant to ~~C.R.S. § 24-71.3-105~~ C.R.S. and an electronic signature pursuant to ~~§ 24-71-101, C.R.S.~~

The Commission's email address is: [cdphe.agcc-comments@state.co.us](mailto:cdphe.agcc-comments@state.co.us) unless otherwise specified in various Commission documents. When a ~~P~~party files by electronic mail, it ~~shall will~~ 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 must~~ immediately provide the Commission, and all ~~p~~Parties with any change to the electronic filer's notification address. Documents larger than twenty (20) megabytes ~~shall must~~ not be filed by electronic mail, unless otherwise approved by the Commission. If the document is too large to transmit by electronic mail, the filer ~~shall must file serve~~ the document(s) ~~on a CD or disc~~through the Commission's File Transfer Protocol (FTP) site or through other electronic means ~~approved by mailing or hand delivering 15 copies of the electronic version to~~ the Commission Office.

III.LJ.2.b. Subject to the size limitation established in Section III.LJ.2.a., or unless granted an exception to electronic filing of Section III.LJ.3., all filings for rulemakings and adjudications under Procedural Rules V. and VI. ~~shall must~~ be made by electronic mail.

III.LJ.3. Exception to Electronic Filing

Any ~~p~~Person who is unable to comply with the requirements of Section III.LJ.2. may ~~request the Commission to~~ file documents in paper format ~~and must notify the Commission Office of the~~

paper format filing via email or phone. An original and the number of paper copies required for each proceeding as specified in these procedural rules must be filed in the Commission Office.

III.MK. Good Cause: Means a valid and sufficient reason, in the opinion of the ~~h~~Hearing ~~e~~Officer or the Commission, to make an exception to a requirement of the Procedural Rules.

III.N. Interested person: Means any person who may be aggrieved by an agency action.

III.OL. Party: Any person(s), entity(ies), or agency(ies) named or admitted as a ~~P~~party, or properly seeking and entitled as of right to be admitted as a ~~P~~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.2. of these regulations [regarding parties to rulemaking proceedings]).~~ The Division and any person subject to an order or decision of the Division are ~~P~~parties to an adjudicatory proceeding (see, Section VI.B.4. of these regulations [regarding ~~P~~parties to adjudicatory proceedings]).

III.P. Person: Means any individual or entity, except the Commission and its Staff.

III.Q. Proponent: The Division or any Person who is proposing a Rule or Alternate Proposal in connection with a Rulemaking Proceeding.

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

III.S. Redline(s): Redline(s) are any revisions to the Proponent's proposed rule text or Statement of Basis and Purpose, whether wholly new or amendments or revisions to the Proponent's previously proposed rule text. Revisions to the Proponent's previously proposed rule text or Statement of Basis and Purpose that are solely typographical in nature and do not make any substantive edits are not considered Redlines.

III.TN. Rule or Regulation: As used in these procedural rules include proposed revisions or amendments to existing regulations, ~~a~~Alternate ~~p~~Proposals, or wholly new regulation text.

III.UQ. 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 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 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. of these regulations.

III.V. Rulemaking Request: Is the meeting at which the Commission will consider whether to set a rulemaking hearing for an ~~issue~~Rule as proposed by a Proponent who has submitted a petition package.

III.WQ. Staff: Means the ~~Technical Secretary/Administrator~~Technical Secretary and Office of Environmental Boards and Commissions staff under all circumstances and the Division ~~at the request of the Commission during Rulemakings pursuant to Section V; at the request of the Commission~~ or the Technical Secretary/Administrator.

III.XP. State Implementation Plan (SIP): State Implementation Plan for (1) ambient air quality standards required under 42 U.S.C. Section 7410, and (2) regional haze required under 42 U.S.C. Section 7404. ~~These~~is instruments ~~s~~ generally consists of enforceable regulations, plans, and support

documentation, and is are submitted to the U.S. Environmental Protection Agency for review and approval (see, e.g., i.e. 40 C.F.R. Part 52, Subpart G [Colorado]).

III.Y. Working Day: Unless specified otherwise, working day, whether capitalized or not, refers to any day other than a Saturday, Sunday, or legal holiday as the term is defined in § 24-11-101, C.R.S.

III.ZR. Written Testimony: Means a signed and dated statement of fact or opinion from someone who supports or opposes the position(s) or comments of a Party or the Division. A written comment from the public is not Written Testimony. Technical Secretary/Administrator: The person employed by the Commission pursuant to § 25-7-105(3), C.R.S. The Technical Secretary/Administrator can be reached at the Commission Office.

#### **IV. PROCEDURES FOR GENERAL MEETINGS**

##### **IV.A. 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, or and receiving public comments.

##### **IV.B. Frequency:**

Meeting dates and hearing schedules are set by the Commission. The Commission chairperson or if the chairperson is absent or has been recused, the vice chairperson may as necessary call special meetings of the Commission.

##### **IV.C. Placing an Item on the General Meeting Agenda:**

Any person seeking to place an item on the Commission's agenda must submit a request to file the relevant materials in the Commission Office for consideration by the Executive Committee or full Commission. The Commission requires the submittal of this request and associated materials thirty (30) days in advance of, and any associated materials fourteen (14) days in advance of the Executive Committee prior to the general meeting during which that person desires the matter of the full Commission meeting where this item is to be considered for placement on the agenda-addressed. Following approval, if approved, the Commission Office will provide instructions on when the item will appear on a meeting agenda and timing for providing written and/or presentation materials. These fourteen (14) and thirty (30) day requirements may be waived at the discretion of the Commission Chairperson. Materials filed less than thirty days in advance may result in the matter being placed on the agenda for the following 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. Amendments to the agenda may be made at any time.

##### **IV.D. Conduct of General Meetings:**

Six Commissioners 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 Chairperson, or a presiding Commissioner will conduct general meetings. 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. and VI.

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 eConsent 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. Items not adopted by unanimous consent will be handled as a regular agenda item and discussed.

#### IV.E. Planning:

Among other agenda topics, the Commission may periodically set aside time on its agenda for general discussions regarding planning of Commission business or discussions of policy or information related to air quality. These discussions may include briefings by the Commission Office, Division staff, or other Person(s) as the Commission determines. Commissioners may ask questions and seek additional information as necessary to inform policy development.

#### IV.F. Recording Proceedings:

The Commission Office will record the proceedings of all general meetings. Copies of such recordings will be available to the public upon request at no cost, and transcripts of rulemaking and adjudicatory hearings will be available at cost.

#### IV.G. Minutes:

The Commission Office shall will prepare the minutes of the general meeting as promptly as possible, and electronically mail them to the Commissioners-Commission's Secretary for their comment; modification and approval. The minutes will typically be considered for adoption by the full Commission at its next regular meeting.

#### IV.H. 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 to participate at other appropriate times during the general meeting in at the discretion of the Chairperson or presiding Commissioner. Adjudicatory Proceedings may be addressed differently as described in Section VI. Public participation and comment and the presentation of written and/or electronic information may be reasonably limited as the Chairperson or presiding Commissioner deems necessary. The Commission recommends that any written or electronic materials offered to the Commission in support of comments be provided to the Commission Office fourteen (14) days prior to meetings so that Commissioners may have the advance opportunity to review materials. However, the Commission may accept written materials up to and during the Commission meeting. The Chairperson or presiding Commissioner may deny the presentation of electronic information (slides, audio files, videos, etc.) for reasons including if that information was not provided to the Commission Office fourteen (14) seven (7) days prior to a meeting, will be responsible for the orderly conduct of the meeting. All conduct during Commission meetings must be civilized, and dignified, and respectful of Commissioners, Commission Staff, and all members of the public. 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. The Chairperson may remove any person who engages in disruptive behavior. Public comment should be brief, approximately three (3) minutes per individual, unless otherwise set by the Commission. Depending on the number of speakers and time available, the Commission, Hearing Officer, and Chairperson retains discretion to limit the time to less than three minutes or to grant additional time for each person to speak. If more extensive comment is desired, commenters should contact the Commission Office to request placing an item on the meeting agenda in accordance with Section IV.C.

#### IV.I. Executive Session:

The Commission may with respect to particular matters approved under the Colorado Open Meetings Law, § 24-6-101 et seq., C.R.S., 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/Administrator/Technical Secretary~~ and Program Coordinator and, when appropriate, Staff, and relevant Division personnel), and other pertinent or necessary persons may be present, pursuant to § 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 any applicable requirements under the Act and 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 public comment hearings on ~~construction~~ permits where required by law. Public hearings ~~afford any~~ provide interested persons with 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. Informal Hearings:

Informal hearings are held ~~in-at~~ the discretion of the Commission to gather information or receive comment on a matter under preliminary consideration by the Commission or staff, or to receive information of general interest. 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.2.a. of these regulations (regarding informal hearings for development of a proposed rule).~~

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

The Commission may from time to time adopt statements of policy, guidance, 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. Approval of Plans, Reports and State Implementation Plans:

The Commission periodically takes formal action on plans, reports, or State Implementation Plans, 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 State Implementation Plans or approval of State Implementation Plan reports. When the approval-adoption of regulations or revisions to regulations is involved, the Commission will follow the procedures provided in Section V, and all applicable statutes, including but not limited to §§ 24-4-103 and 25-7-110 through 110.8, C.R.S., with respect to the rulemaking elements. With respect to any non-regulatory action or elements, the Commission ~~will, to the extent appropriate, may, at the discretion of the Hearing Officer,~~ follow any or all of the procedures set forth in Section V deemed necessary to manage the proceeding.

~~This, however, shall not be construed to require~~ The Commission is not, however, required to follow such procedures in any action that does not include rulemaking. The Commission's written notice for any such actions will describe the specific requirements for participation applicable to Pparties and the Division, and, where appropriate, to the public. Prior to the hearing, the, Hearing Officer may also provide a prehearing order that specifies other procedural requirements.

~~Notwithstanding the foregoing, a~~Any plan, report, or other provision which is to become part of the Federally-enforceable State Implementation Plan must be adopted by the Commission following at least thirty (30) days public notice and the opportunity to comment, 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 §§ 24-4-103 and 25-7-110, C.R.S. This requirement does not 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 § 24-4-102, C.R.S.~~

#### IV.N. Review of ~~e~~Conformity ~~d~~Determinations

- IV.N.1. The Commission ~~shall~~will 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 also applies to a 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.2. The Commission ~~shall~~will provide written notice of the public meeting referenced in Section IV.N.1., to all the persons on the Commission's mailing list maintained by the Commission Office. Such notice must be emailed at least thirty (30) days prior to the public meeting.
- IV.N.3. The ~~entity~~Person making the conformity determination ~~shall~~must file via email the following documents with the Commission at least thirty (30) days prior to the public meeting:
- IV.N.3.a. A statement summarizing the conformity finding and the key assumptions supporting the finding and any technical support documentation.
- IV.N.3.b. One copy each of the relevant Transportation Plan and Transportation Improvement Program.
- IV.N.4. At least fourteen (14) days prior to the public meeting referenced in Section IV.N.1., the Division ~~shall~~will electronically provide each Commissioner with a copy of its written comments, if any, on the conformity determination. This provision does not preclude the Division from making additional comments on the conformity determination at the public meeting.
- IV.N.5. The Commission may continue the public meeting referenced in Section IV.N.1. to the next regularly scheduled Commission meeting, or to such other date requested by the Person entity making the conformity determination.
- IV.N.6. The Person entity with final authority to adopt a conformity determination is not required to do so prior to the public meeting referenced in Section IV.N.1. However, ~~if~~ 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.7. The following procedures apply to any public meeting continued pursuant to Section IV.N.5. or IV.N.6.:

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

IV.N.7.b. Any change to the conformity determination following the public meeting must be filed with the Commission Office at least fourteen (14) 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 will electronically file 15 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 and any revisions to the supporting documentation. Any changes filed less than fourteen (14) days prior to the continued meeting may result in an additional continuation of the public meeting to the following month.

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

## V. PROCEDURES FOR RULEMAKING

### V.A. How a Rulemaking Proposal is Developed

#### V.A.1. Community Outreach and Development of Proposals for Rules or Revisions:

Before a rule is proposed to the Commission at a Rulemaking Request, the Commission expects the Proponent of the rule to make efforts appropriate to the scope and nature of the potential rulemaking to engage with interested persons, the Division, persons, and entities that could be affected by the proposed rule; affected disproportionately impacted communities; and any other relevant regulatory entities to ensure timely consideration of alternative viewpoints and thoughtful development of the text of the proposed rule. The Commission expects this engagement to make the process more efficient for the Commission and all persons involved. Failure to conduct pre-petition engagement may be a basis for the Commission denial of aat the Rulemaking Request, unless Sections V.H.1. or V.H.2. apply.

#### V.A.1.a. Announcement of Pre-Petition Rulemaking Process

Whenever the Division or any person contemplates proposing a Rulemaking, the Division or that person must use different methods of outreach to publicize the proposed Rulemaking and make a public announcement of the pre-petition process to encourage public and stakeholder participation and engagement in the pre-petition process. The announcementDivision or person must identify ways for interested persons to engage in the pre-petition process.

Proponents other than the Division may use the requirements in § 24-4-109, C.R.S. as a guide for compliance with Section V.A.1.a. The Division and Commission will comply with

any applicable requirements in § 24-4-109, C.R.S. in satisfying the requirements of Section V.A.1.a. The rule proponent, if not the Division, will also comply with the practices in § 24-4-109(3), C.R.S., in conducting pre-petition outreach in compliance with this Section V.A.1.a.

Compliance with the requirements of this Section V.A.1.a. are intended to fulfill the requirements of § 24-4-109, C.R.S.

#### V.A.1.b. Rulemaking Concepts

Whenever the Division or any person contemplates proposing a rulemaking, the Division or that person must create a detailed summary of rulemaking concepts and make it that is publicly available at least forty-five (45)-sixty (60) days before the date of the Rulemaking Request any request for hearing scheduled in accordance with Section V.B.1. The summary must clearly describe which regulations and sections will be affected by the anticipated proposal. The summary must may take the form of include preliminary rule language that is subject to change.

### V.B. How a Rulemaking Proceeding Begins

#### V.B.1. Scheduling a Petition for Consideration

A rulemaking proceeding commences when the Commission approves a petition package (or "petition package") for rulemaking. A petition package for rulemaking must meet the requirements of Section V.B.2. and may be filed, as set forth in Section III.L., by any person or by the Division. A person developing a petition package must contact the Commission Office before submitting a petition package to schedule a Rulemaking Request during which the Commission will decide whether to approve the petition for rulemaking. Non-emergency. The petition packages must be submitted to the Commission Office at least thirty (30) days prior to the scheduled Rulemaking Request hearing.

The Commission may also request that Staff prepare a petition package for a specific matter.

#### V.B.2. Contents of a Petition Package

A petition package for rulemaking will be made publicly available by posting on the Commission's website and must include the items specified in § 25-7-110.5(1)(a)-(g), C.R.S., and meet the requirements of this Section V.B.2., subject to the exceptions identified in Sections V.B.5. and V.H. The Commission Office may return any petition package that fails to comply with these requirements. If the Commission Office returns a petition package as incomplete it will identify the information missing from the petition package. Petition packages that are returned by the Commission Office will likely not be considered by the Commission at the initially scheduled Rulemaking Request hearing, unless a complete petition package is submitted at least thirty (30) days prior to the Rulemaking Request as required by Section V.B.1.

Unless the rule proposal is subject to Sections V.B.5. or V.H., a complete petition package includes the following:

##### V.B.2.a. Agenda Item Control Sheet

Proponents must submit an Agenda Item Control Sheet using the template available on the Commission's website. This cover sheet identifies the Person(s) requesting the rulemaking (including the Person's name, electronic mail address, and telephone number); includes a statement describing the nature of the request; includes a statement broadly summarizing the issue to be addressed by the proposal; whether this rule is



being submitted in response to issues raised by the Committee on Legal Services or by the Office of Legislative Legal Services Staff; 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.B.2.b. Actual Language of the Proposed Rule

The Proponent must submit the language of any proposed new regulation(s) or amendment to existing regulation(s) in a clean format and separately in a version showing tracked changes from existing regulatory language. The Proponent must submit a version that can be edited using widely available word processing software. The Proponent must specifically identify the sections of the Commission's regulations that are affected by the proposed change(s). A Proponent who seeks to incorporate any material by reference must comply with § 24-4-103(12.5)(a)-(c), C.R.S., as applicable. The Proponent must also provide one (1) complete copy of any material to be incorporated by reference to the Commission Office, which will forward the incorporated material to the state publications depository and distribution center.

V.B.2.c. Proposed Statement of Basis and Purpose

The Proponent must provide a draft statement of the proposed rule's basis, statutory authority, and purpose consistent with the requirements of § 24-4-103(4)(c), C.R.S. The statement must contain:

V.B.2.c.(i) A general statement of why the rule is being proposed;

V.B.2.c.(ii) The specific purpose(s) of the rule, including the rationale for adopting a proposed rule or amendment;

V.B.2.c.(iii) The specific statutory section(s) authorizing the rulemaking;

V.B.2.c.(iv) For any provision that is not federally required, the statement described in Subsection V.B.2.f.;

V.B.2.c.(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; and

V.B.2.c.(vi) For any rule or amendment which involves technological or scientific issues, the Proponent must include an evaluation of the scientific or technological rationale justifying the proposal.

V.B.2.d. Memorandum of Notice

The Proponent must prepare a proposed Memorandum of Notice that, which includes the information required under § 25-7-110.5(3), C.R.S. Once submitted, the Administrator/Technical Secretary will provide the Memorandum of Notice to the Commission and the public in accordance with the requirements of § 25-7-110.5(1), C.R.S. The Memorandum of Notice must also include a description of any outreach conducted pursuant to Section V.A.1. in the development of the proposed regulations.

V.B.2.e. Initial Economic Impact Analysis

The Proponent must provide an Initial Economic Impact Analysis meeting the requirements of § 25-7-110.5(4), C.R.S. A Proponent seeking the Division's assistance in

preparing an initial economic impact analysis must, no fewer than fourteen (14) days prior to the deadline for the petition package, confer with the Division to determine the scope and the most appropriate type of economic impact analysis required.

V.B.2.f. Statement Regarding Federal Requirements

For any provision that is not required by the federal Clean Air Act statute or regulations promulgated thereunder (the federal act), the Proponent must include a brief statement that identifies the portion of the proposed rule that is not required by the federal act, and include the explanation required by § 25-7-110.5(5), C.R.S. The Proponent must also, pursuant to §§ 25-7-105.1 and 133(3), C.R.S., state that any non-federally required provision is not an addition to or a revision of any SIP. This statement regarding federal requirements may also be used in the notice of rulemaking, and in the final Statement of Basis, Specific Statutory Authority, and Purpose.

V.B.2.g. Range of Regulatory Alternatives

The Proponent must include 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 Proponent's proposal and relevant existing regulation(s). The statement must also summarize alternatives and suggestions raised during the pre-petition engagement process described in Section V.A.1. and provide an overview of what changes were or were not made to the Proponent's proposal as a result of that engagement.

When the Proponent is not the Division, the petition package should also include any information which the Proponent wishes to be available to the Commission for the preparation of a regulatory analysis of the proposed rule. In the event such an analysis is requested before the hearing on the proposed rule pursuant to § 24-4-103(4.5), C.R.S. and Section V.E.5. of these rules.

V.B.2.h. Draft Statement of Rulemaking Scope

To facilitate a robust discussion of the scope of the rulemaking during the Rulemaking Request, a Proponent must include a short plain language statement of the proposed scope of the rulemaking. The proposed scope of the rulemaking will provide sufficient guidelines to provide notice such that interested persons may reasonably anticipate the impacts that may arise from the particular rulemaking. The scope may include, but is not necessarily limited to, information regarding the pollutant(s) of concern, the impacted persons and source category(ies), any geographic limitations, and, if applicable, any specific statutory directives or requirements.

V.B.2.i. Community Outreach and Engagement

The Proponent must submit a summary statement regarding the input received by the Proponent from impacted communities and other interested members of the public during the pre-petition process described in Section V.A.1.

V.B.2.j. Other Information

The Proponent may include 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.B.2.k. Information required for Alternate Proposals

~~When submitting an Alternate Proposal, a Party must include an explanation of the Alternate Proposal and how it solves problems not addressed by the Proponent's proposal.~~

#### V.B.3. Commission schedule for rulemakings

~~The Commission's Office maintains a long-term schedule for anticipated rulemakings and State Implementation Plan actions; the schedule is available on the Commission's website. The Commission may grant a Proponent's request to deviate from the Commission's schedule upon showing of good cause.~~

#### V.B.4. Petitions for a Written Comment Only Rule

~~In addition to the requirements of Section V.B.2., a petition package for a written comment only rulemaking must include a statement that the Proponent is requesting a written comment only hearing, which is not subject to standard prehearing procedures. Petitions for written comment only rulemaking will be open for public inspection and comment. The Commission may accept the petition package as written comment only or may determine that the rulemaking should instead follow standard prehearing procedures. The determination of the Commission will be reflected in the notice of proposed rulemaking.~~

~~If the Commission grants such a petition, all interested persons are encouraged to provide their views in writing at least twenty (20) days prior to the hearing or as otherwise provided in the notice of proposed rulemaking. No testimony or oral presentations, other than testimony or oral presentations presented by the Proponent, will be taken at the hearing, except for good cause shown. If a proposal is substantively revised prior to hearing, the Commission Office will notify all persons on the Commission distribution list. ~~and a~~ After receipt of this notification, all interested persons are ~~continued to be~~ encouraged to provide their views on the substantive revision in writing at least twenty (20) days prior to the hearing or as otherwise provided in the notification from the Commission Office.~~

~~If substantial and substantive comment in opposition to the proposal is received, or if the Commission otherwise determines that a standard prehearing process is necessary, the Commission will re-notice the hearing.~~

#### V.B.5. Exceptions to Petition **Package** Requirements

~~Some requirements for a petition **package** in Section V.B.2., including the pre-petition process in Section V.A., and the Community Outreach and Engagement summary in Section V.B.2.i., do not apply to rule proposals that: (1) solely 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.~~

~~Petition **packages** for these types of rule proposals need not include:~~

- ~~V.B.5.a. Either the initial or final economic impact analysis required by § 25-7-110.5(3)(g) and (4), C.R.S., and Sections V.B.2.e. and V.E.2.;~~
- ~~V.B.5.b. The statement describing the potential justification of terms exceeding or differing from federal requirements as required by § 25-7-110.5(5), C.R.S., and Section V.B.2.f.;~~
- ~~V.B.5.c. The statement describing the range of regulatory alternatives, including the no-action alternative, required by Section V.B.2.g.; or~~

V.B.5.d. The community outreach and engagement summary, required by Section V.B.2.i.

V.B.5.e. The pre-petition process, required by Section V.A.

#### V.B.6. Submission of a Rulemaking Proposal to the Commission

The complete petition package, and any other documents required to be filed under this Section V., must be filed in accordance with Section III.L. Failure to comply with this requirement will generally result in the petition package not being considered during the desired-scheduled 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 Proponent's request to have a late petition heard package considered by the Commission, if complete, upon showing good cause.

#### V.B.7. Petition Rulemaking Request

At the Rulemaking Request hearing the Commission will consider the petition package and determine whether to set the matter for hearing. The Commission will then set the scope of the rulemaking hearing. In setting the scope, the Commission will consider the draft scope provided by the Proponent as described in Section V.B.2.h and any comments received. The scope may include, but is not necessarily limited to, information regarding the pollutant(s) of concern, the impacted persons and source category(ies), any geographic limitations, and, if applicable, any specific statutory directives or requirements.

The Commission will provide opportunity for public comment on the petition package. Written comments on the petition package and/or the scope of the proposed rulemaking must should be submitted to the Commission Office at least fourteen five (514) days before the scheduled Rulemaking Request hearings so that the comments can be considered by Commissioners. Written comments on the petition package received fewer than five (5) days before the scheduled Rulemaking Request will still be considered part of the rulemaking record pursuant to Section V.F.6. Oral comments on the petition package and/or the scope of the proposed rulemaking may be made during the public comment session during the Commission's general meeting at the Rulemaking Request and will be considered part of the hearing record pursuant to Section V.F.6.

If the Commission denies the Rulemaking Request petition package, the Proponent may consider revising and resubmitting the petition package for the Commission's consideration at a later date. If the Commission grants the Rulemaking Request petition package, the Commission will determine the scope of the rulemaking hearing and a Hearing Officer will be selected. The scope of the rulemaking, as determined by the Commission, will be included in the notice of proposed rulemaking published under Section V.B.9.

#### V.B.8. Selecting the Hearing Officer

When the Commission grants approves a petition package Rulemaking Request and sets the matter for hearing, a member of the Commission will be identified as the Hearing Officer. a Hearing Officer will be appointed. The Hearing Officer will preside over the prehearing process and the rulemaking hearing. The Hearing Officer will decide whether to grant or deny any motions, and otherwise act on matters as authorized in these procedural rules. The Hearing Officer's decisions will be made by written order.

#### V.B.9. Publishing the Notice of Proposed Rulemaking

After the Commission grants approves the petition package Rulemaking Request and sets it for hearing, a notice that includes a statement of the scope of the rulemaking hearing will be

published in the Colorado Register no less than sixty (60) days prior to the hearing. Temporary or emergency rules under Section V.H., and rules and policies exempt under § 24-4-103(1), C.R.S. are not subject to this 60-day notice publication requirement.

#### V.B.10. Amended Rulemaking Notices

Requirements regarding amended notices vary depending on whether there is a minor or substantial change to the notice.

##### V.B.10.a. Amended Rulemaking Notices with Minor Changes

An amended notice with minor changes may be issued by the Commission 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 Commission's website.

##### V.B.10.b. Amended Rulemaking Notices with Substantial Changes

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

#### V.B.11. Rescheduling and Continuing Hearings

Upon the motion of the Division or a Party for good cause shown, or by verbal or written motion of the Hearing Officer in accordance with § 24-4-103(13), C.R.S., The Commission or the Hearing Officer may, on their own, or upon consideration of a written motion of the Division or Party, and in accordance with § 24-4-103(13), C.R.S., issue an order canceling, continuing, or rescheduling any rulemaking hearing to a later date if, in the discretion of the Commission or Hearing Officer, there is good cause, as deemed necessary and appropriate. When a hearing is rescheduled, the new hearing date, time, and place may be announced by an amended notice pursuant to Section V.B.10, 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.

#### V.C. Participation in Rulemaking

##### V.C.1. Air Pollution Control Division

The Division acts as Staff to the Commission in any rulemaking hearing. In fulfilling its role as staff, the Division may, among other duties, propose a rule, present evidence and testimony, provide background, summarize evidence and any matters settled before the hearing, make recommendations to the Commission and perform other duties as requested by the Commission.

##### V.C.2. Colorado Department of Law

Attorneys from the Department of Law represent and advise the Commission, and also represent the Division before the Commission.

##### V.C.3. Parties to Rulemaking

Any person may request permission to participate as a Party in any rulemaking before the Commission. Party status is required for any person who: (1) submits Redlines; (2) intends to submit initial comments on the rule proposal as described in Section V.D.1.; or (3) intends to provide testimony during the rulemaking hearing, unless the person is called as a witness by the Division or a Party to the proceeding. Any person petitioning for rulemaking under Section V.B. will be granted Party status, unless otherwise revoked or denied by the Hearing Officer for reasons such as noncompliance with Sections V.D.

#### V.C.3.a. Rights of Parties to a Rulemaking

Parties have the right to notice of all prehearing proceedings and filings, and the right to participate in all prehearing proceedings. Parties have the right to file Redlines. Parties have the right to make an individual presentation either orally or in writing, or both, during that part of the rulemaking hearing scheduled for Party presentations. Parties have the right to make motions, respond to motions where allowed by the Hearing Officer, make objections, and to cross-examine witnesses. Any Party may appeal a decision of the Hearing Officer, except decisions made pursuant to Section V.D.2.c., to the Commission at its next meeting by filing a written appeal with the Commission Office. The appeal must be filed by electronic mail pursuant to the provisions of Section III.L. and served to all Parties no later than five (5) working days prior to the meeting at which the appeal is to be heard by the Commission.

#### V.C.3.b. Requests for Party Status

All Persons who desire to participate as a Party to a rulemaking must file with the Commission Office a Request for Party Status on or before the deadline the Commission provides in the notice of the rulemaking as set forth in Section V.B.9. Requests for Party status must be made using the form available on the Commission website, and must contain, at minimum the name, address, electronic mail address, and telephone number for the person desiring Party status and any representatives, including attorneys, a brief summary of what, if any, policy, factual, and legal issues the applicant has with the proposal(s), and, if applicable, a statement of how that the applicant participated in the pre-petition engagement process described in Section V.A.1., and if they did not, why not.

#### V.C.3.c. Late Party Status

Any Person who wishes to seek Party status after the deadline for filing Requests for Party Status must file a written request, describing any good cause reasons for the late requests, with the Commission Office and served via electronic mail on each Party of record. The request will be considered by the Hearing Officer, who will either grant or deny the request. Absent exceptional circumstances, late party status requests will not be granted to those seeking to submit Redlines/Alternate Proposals. Late Party Status will not typically be granted after the Revised Proposal and Response to Initial Comments deadline, except for good cause.

#### V.C.3.d. Compliance with Prehearing Procedures

Parties to the rulemaking must comply with the prehearing procedures outlined in Section V.D., including any order of the Commission or the Hearing Officer. Failure to comply with the prehearing procedures or any order may result in the loss of Party status or other consequences, at the discretion of the Hearing Officer.

#### V.C.4. Non-Parties to a Rulemaking

Persons or entities who do not desire Party status, but would like to participate in the rulemaking process, may make their views known to the Commission on any rulemaking by submitting comments in writing in advance of or at the hearing, and by speaking during the public comment period at any hearing. Oral presentation of comments by non-Parties are generally limited to three (3) minutes per individual, or as determined by the Hearing Officer. Depending on the number of speakers and time available, the Commission, Hearing Officer, or Chairperson retain discretion to limit the time to less than three (3) minutes or to grant additional time for each person to speak.

#### V.C.5. Alternate Proposals

Either the Petitioner or any Party may propose an Alternate Proposal. Parties wishing to submit an Alternate Proposal must strictly comply with the requirements of this Section V.C.5.

##### V.C.5.a. ——— Deadline for Submitting Alternate Proposal

All Alternate Proposals must be submitted no later than the deadline established in the notice of rulemaking as set forth in Section V.B.9., unless otherwise ordered by the Hearing Officer.

If the proponent of an Alternate Proposal requests that the Commission consider a late Alternate Proposal, the Hearing Officer will decide if the late proposal will be heard by the entire Commission. The Hearing Officer can allow the late proposal to be heard by the entire Commission only if, in the discretion of the Hearing Officer, the proponent's explanation adequately justifies why it is late and there is enough time remaining before the hearing to allow the Division and other Parties adequate opportunity to consider and respond to the Alternate Proposal such that its late submission will not prejudice any Party's rights.

##### V.C.5.b. ——— Alternate Proposal Requirements

An Alternate Proposal will be considered by the Commission only if, in the judgment of the Hearing Officer:

V.C.5.b.(i) ——— The Alternate Proposal is timely filed;

V.C.5.b.(ii) ——— The Alternate Proposal is a logical extension or outgrowth of the subject matter of the rulemaking described in the scope of rulemaking adopted by the Commission described in Section V.B.7. The Alternate Proposal must be sufficiently related in subject matter and context to scope of rulemaking in the notice of proposed rulemaking such that interested persons should have been able to anticipate that the Alternate Proposal was possible based on the scope of the notice for the particular rulemaking hearing;

V.C.5.b.(iii) ——— The Alternate Proposal is within the Commission's authority and is legal;

V.C.5.b.(iv) ——— The Alternate Proposal includes all information specified in Sections V.B.2.b., V.B.2.c, V.B.2.e., V.B.2.i., and V.B.2.k., and a description of how the proponent of the Alternate Proposal participated in the prehearing process described in Section V.A.

##### V.C.5.c. ——— Preparation and Submission of Economic Impact Analysis

The person submitting an Alternate Proposal is required to submit an Initial Economic Impact Analysis of the Alternate Proposal as set forth in Section V.B.2.d. and a Final Economic Impact Analysis as set forth Section V.E.2. In doing so, they may rely on the Economic Impact Analysis supporting the Proponent's rule proposal if the proponent explains the differences in impact between the Proponent's proposal and the Alternate Proposal. If a person submitting an Alternate Proposal intends to request the help of the Division in preparing the required Final Economic Impact Analysis, they must contact the Division no later than thirty (30) days before the deadline to submit the Final Economic Impact Analysis.

#### V.C.6. Response to Alternate Proposals

Any comments in support of or opposition to a submitted Alternate Proposal must be filed using the template available on the Commission's website within five (5) days after the deadline for submitting an Alternate Proposal.

#### V.C.7. Determinations on Alternate Proposals

The Hearing Officer will determine whether an Alternate Proposal will be considered by the Commission as part of the noticed rulemaking process, by order, within fourteen (14) days after the deadline for submission of Alternate Proposals. In determining whether an Alternate Proposal will be considered, the Hearing Officer will consider whether the Alternate Proposal satisfies the requirements in V.C.5. and adherence to these procedural rules including engagement in the pre-rulemaking engagement process.

The Hearing Officer may refer the determination on any Alternate Proposal to the full Commission based on received responses to Alternate Proposals. If a determination on an Alternate Proposal is referred to the full Commission, the Commission will make that determination at its next scheduled meeting or at its earliest opportunity.

### V.D. How a Proposed Rule is Developed through the Prehearing Process

#### V.D.1. Initial Comments on Rule Proposal and Submission of Redlines and/or Alternate Proposals

##### V.D.1.a. Purpose and Function of Initial Comments

All Parties, except the rule Proponent, must file Initial Comments. The Initial Comments on a Rule Proposal and/or Alternate Proposal are Parties' first opportunity after a Rulemaking Request has been granted to identify issues with and/or provide feedback and suggestions on the proposed rules, or any Alternate Proposal approved by the Hearing Officer to proceed to hearing. A Party proposing a rule or an Alternate Proposal is not expected to file Initial Comments addressing their own proposal. All Parties, except the rule Proponent, must file Initial Comments. If a Party wants to propose something different than the Proponent's proposal, Redlines are required to must be filed with Initial Comments, unless otherwise ordered by the Hearing Officer sets a different deadline, for suggested revisions that substantively change the Proponent's original proposal.

A Party that submits Redlines must also describe in its Initial Comments how the Redlines address that Party's concerns the problems with the Proponent's original proposal and how its their proposed revisions fit within the scope of the rulemaking notice published by the Commission. Redlines must be provided in a version that can be edited using widely available word processing software.



~~Initial Comments may also be accompanied by redlines to the rule proposal or any Alternate Proposal, provided such redlines do not constitute an Alternate Proposal. Initial comments constituting an Alternate Proposal or that are outside the scope of the rulemaking may be stricken either on the motion of the Division or a Party or in the discretion of the Hearing Officer acting on their own motion and Redlines must be filed by electronic mail pursuant to the provisions of Section III.L. and served to all Parties. Initial Comments must be submitted using the template provided on the Commission's website and must include:~~

~~V.D.1.a.(i) A brief description of the Party's issues remaining in the Proponent's proposal, which may include citation to and discussion of any legal authorities supporting the Party's position with respect to such proposal.~~

~~V.D.1.a.(ii) A list of anticipated witnesses a Party intends to call at the hearing, which indicates the issue (s) on which the witness will testify.~~

~~V.D.1.a.(iii) A list of exhibits and written testimony to be provided at the hearing. Links to websites cannot be used as exhibits. Spreadsheets must have locked cells so that numbers and formulas cannot be altered after being published, but can still be viewable.~~

~~V.D.1.b. Preparation and Submission of Economic Impact Analysis~~

~~Parties must, in accordance with § 25-7-110.5(4), C.R.S., evaluate the economic impact of their Redlines. Parties must include a statement that economic impacts are or are not already reflected in the Proponent's initial EIA. If a Party determines that the Proponent's Initial EIA adequately covers the economic impacts of their Redlines, then the Redlines must be accompanied by a statement of identifying the portions of the Proponent's Initial EIA that account for the economic impact of the Redlines revisions.~~

~~If a Party determines that the Proponent's Initial EIA does not adequately cover the economic impacts of their Redlines, the Party is required to submit an Initial Economic Impact Analysis with its Initial Comments as set forth in Section V.B.2.d. In doing so, they the Party may identify those portions of the Proponent's Initial EIA relevant to their Redlines, but the Party must also separately identify and discuss the economic impacts of their Redlines that are not adequately addressed in the Proponent's Initial EIA.~~

~~A Party that submits Redlines must also describe in its filing how the Redlines address the problems with the Proponent's original proposal and how their proposed revisions fit within the scope of rulemaking notice published by the Commission. proposing a rule or an Alternate Proposal is not expected to file Initial Comments addressing their own proposal. Initial Comments may also be accompanied by Redlines to the rule proposal or any Alternate Proposal, provided such Redlines do not constitute an Alternate Proposal incorporate identify those portions of the Proponent's Initial EIA relevant to their Redline, but they must separately identify and discuss the economic impacts of their Redline that are not adequately addressed in the Proponent's Initial EIA.~~

~~The Commission only adopts rules that are well supported by the rulemaking record. It is the duty of each Parties to ensure that the Commission has enough data and information to adopt any suggested revision in their Redlines. The Commission may refuse to adopt any and all proposed revisions contained in a Redline due to inadequate economic impact analyses. If a Person Party submitting a Redlines, that requires~~

additional economic impact information, intends to request the help of the Division in preparing an Initial Economic Impact Analysis, it must contact the Division and request any specific information desired no fewer than thirty (30) days before the deadline to submit the Initial Comments.

V.D.1.c. Deadline for Filing Initial Comments

The deadline for filing Initial Comments will be established in the notice of proposed rulemaking. The deadline for filing Redlines will also be established in the notice of proposed rulemaking, and may be set before the deadline for the filing of Initial Comments at the discretion of the Hearing Officer. The Hearing Officer may revise these deadlines.

V.D.1.d. Effect of Filing Initial Comments

A Party is not required to file Initial Comments, but any A Party who has concerns about the proposed rule must raise those concerns in its or any Alternate Proposal and intends to present those issues to the Commission must file Initial Comments in accordance with this Section V.D.1. A Party may not raise issues after the Initial Comments deadline if those issues could have been raised in the Initial Comments.

V.D.1.e. Format of Initial Comments

Initial Comments must be submitted using the template available on the Commission's website.

V.D.2. Scope of Issues

V.D.2.a. Review of Redlines

All Redlines submitted pursuant to Section V.D.1. will be reviewed to determine which issues identified in Redlines may be considered accepted to continue on through the prehearing process. The Commission will consider issues as discussed in Parties' Redlines at the hearing only if, in the judgment of the Hearing Officer:

V.D.2.a.(i) The Redlines are timely filed;

V.D.2.a.(ii) The Redlines are a logical extension or outgrowth of the subject matter of the rulemaking described in the scope of rulemaking adopted by the Commission described in Section V.B.9. The Redlines must be sufficiently related in subject matter and context to the scope of rulemaking in the notice of proposed rulemaking such that interested persons should have been able to anticipate that the proposed revisions in the Redlines were possible based on the scope of the notice for the particular rulemaking hearing;

V.D.2.a.(iii) The Redlines are within the Commission's authority and is legal;

V.D.2.a.(iv) The Initial Comments include a description of how the party participated in the prehearing process described in Section V.A.

V.D.2.b. Opposition to Redlines Based on Scope

Any comments filed by a Party in opposition to Redlines based on how whether the Redlines fit are in within the scope of the rulemaking notice must be filed using the template available on the Commission's website within seven five (75) days after the deadline for submitting Initial Comments.

#### V.D.2.c. Determinations on Scope of issues

The Hearing Officer will determine whether issues raised in Parties' Redlines that were opposed by any Party will not be considered by the Commission as part of the noticed rulemaking process, by order, issued within fourteen seven (74) days after the receipt of comments in opposition to Redlines deadline for submission of Initial Comments. In determining whether an issue raised in Parties' Redlines is are within the scope of the rulemaking, the Hearing Officer will consider whether the issues raised in Parties' Redlines satisfiesatisfy the requirements in V.D.2.a. and compliesy with these procedural rules including engagement in the pre-rulemaking engagement process.

The Hearing Officer may refer the determination on any issues raised in Parties' Redlines to the full Commission based on received opposition based on how the Redlines fit under the scope of rulemaking notice. If a determination is referred to the full Commission, the Commission will make that determination at its next scheduled meeting or at its earliest opportunity. The Hearing Officer may refer the determination whether to consider a Party's Redlines within the scope rulemaking process to the full Commission based on received opposition to the scope of the Redlines. If a referral is made to the full Commission, the Commission will make the determination whether to consider the Party's Redlines as part of the noticed rulemaking process at its earliest opportunity.

If Redlines are determined to be outside the scope of the rulemaking, the Hearing Officer will strike order those Redlines excluded from further consideration. The Hearing Officer may act either on the motion of the Division or a Party or in the discretion of the Hearing Officer acting on their own motion. Any Redlines that are not opposed based on scope by any Party are considered within the scope of rulemaking notice, unless otherwise ordered by the Hearing Officer. A Hearing Officer determination to include or exclude Redlines from further consideration is not appealable to the Commission.

#### V.D.3. Revised Proposal and Response to Initial Comments

##### V.D.3.a. Purpose and Function of the Revised Proposal and Response to Initial Comments

The Revised Proposal and Response to Initial Comments allows the Proponents of the proposed rule and any Alternate Proposals to refine theirits proposal and address issues raised in the Initial Comments and Redlines. The Revised proposal is intended to provide an opportunity for the Proponent to engage with the Parties and narrow the issues in advance of the Position Statement required under Section V.D.4.

##### V.D.3.b. Deadline for Filing Revised Proposal and Response to Initial Comments

The deadline for filing a Revised Proposal and Response to Initial Comments will be established in the notice of proposed rulemaking.

##### V.D.3.c. Effect of Filing Revised Proposal and Response to Initial Comments

The pProponents of a proposed rule and any Alternate Proposals mustmay file a Revised Proposal and Response to Initial Comments addressing the issues raised in the Initial Comments, and may file a Revised Proposal. The proponents of a proposed rule and any

~~Alternate Proposals may also make revisions to their proposal to address issues raised in the Initial Comments. If doing so the Proponent files a Revised Proposal, theyit should specifically indicate which issue(s) a revision addresses, and describe how the revision is intended to address those issues. The Response to Initial Comments must include all of the requirements for Initial Comments as identified in Section V.D.1.a.(i) through (iii). The Proponent must submit a version of the rule text that can be edited using widely available word processing software.~~

V.D.3.d. Format of Revised Proposal and Response to Initial Comments

~~The Revised Proposal or Revised Alternate Proposal should must consist of rule text showing tracked changes a redline offrom the existing regulationinitial proposal, a redline of the initial proposal or initial Alternate Proposal, and a summary of the changes made to the initial proposal and initial Alternate Proposal.~~

V.D.4. Informal Discussions Regarding Proposed Rule and Alternate Proposals

~~Following the submission of the Revised Proposal and Response to Initial Comments and before the deadline for submission of the final text of a proposed rule or Alternate Proposal as set forth in the notice of proposed rulemaking and discussed in Section V.D.6., the Proponents of a proposed rule and any Alternate Proposals are is encouraged to participate in informal direct discussions with Parties (and the Division, where the Division is not the Proponent) to narrow the issues in dispute in advance of the hearing. These discussions are intended to provide the Proponent and Parties an opportunity to develop consensus positions and to narrow the issues in contention on a timeline allowing the Commission, the Parties, and the public to have a reasonable opportunity to evaluate any revisions made to the rule proposal or Redlines submitted by Parties or an Alternate Proposal before the hearing. Notwithstanding the foregoing, informal discussions may happen at any time during the prehearing process up to the hearing deadline for submitting final Proposed Rule and Alternate Proposals in Section V.D.5.~~

V.D.5. Position Statements and Final Redlines

V.D.5.a. Requirements for Position Statements

~~All Parties intending to participate at the Rulemaking hearing, including the rule Proponent and any proponents of Alternate Proposals, must submit a Position Statement using the template on the Commission's website. The Hearing Officer may set page limits for Position Statements in thea prehearing order as described in Section V.E.6. The Position Statement must be filed and served no later than the date specified in the Notice of Rulemaking Hearing. Parties may file final Redlines with Position Statements. Position Statements and associated Redlines may only address issues raised in previous Redlines submitted with Initial Comments and must be responsive to the Proponent's Response to Initial Comments and, if applicable, Revised Proposal or other Parties' Initial Comments and Redlines. Final Redlines not meeting these requirements may be considered by the Proponent in developing its Final Proposed Rule but will not be considered as Alternate Proposals to the Commission unless the Hearing Officer finds good cause justifying the failure to raise issues in Redlines submitted with Initial Comments. The Position Statement must be filed by electronic mail pursuant to the provisions of Section III.L., served toon all Parties, and submitted using the template provided on the Commission's website, and must include:~~

V.D.5.a.(i) A brief description of the issues remaining to be considered by the Commission at the hearing.

V.D.5.a.(ii) A brief description of the action the Party wants the Commission to take on the Proposal or Redlines, the specific relief sought from the Commission, including the specific terms desired in any Commission order implementing the decision;

V.D.5.a.(iii) A list of any pending motions.

V.D.5.a.(iv) A list of witnesses a Party intends to call at the hearing, which indicates the issue(s) on which the witness will testify.

V.D.5.a.(v) A list of exhibits and written testimony to be provided at the hearing. Links to websites cannot be used as exhibits. Spreadsheets must have locked cells so that numbers and formulas cannot be altered after being published, but can still be viewable.

V.D.5.a.(vi) A request for the amount of time a Party would like for its initial presentation (including any cross examination of other Parties' witnesses) and rebuttal presentation. The Commission encourages Parties with similar issues to consolidate and jointly present information to the Commission. Parties must note in the time request where they intend to pool time with other Parties. Pooling of time will not be allowed after submittal of Position Statements.

#### V.D.5.b. Requirements for Final Redlines Submitted with Position Statements

Parties may file final updated Redlines with Position Statements. Redlines submitted with Position Statements may only address only those issues raised in previous Redlines submitted pursuant to Section V.D.1. unless:

V.D.5.b.(i) they are responsive to other Parties' Initial Comments and Redlines or the Proponent's Response to Initial Comments and Revised Proposal, and

V.D.5.b.(ii) they address issues that could not have been raised in Redlines submitted pursuant to Section V.D.1.

Final Redlines not meeting these requirements may be considered by the Proponent in developing its Final Proposed Rule but will not be considered as Alternate Proposals to the Commission unless the Hearing Officer finds good cause justifying the failure to raise issues in Redlines submitted with Initial Comments.

#### V.D.5.c. Preparation and Submission of Economic Impact Analysis

Parties must, in accordance with § 25-7-110.5(4), C.R.S., evaluate the economic impact of their final Redlines that have not already been addressed in their Initial Comments filing. If a Party determines that the Proponent's Initial EIA adequately covers the economic impacts of their Redlines revisions, then the Redlines must be accompanied by a statement identifying the portions of the Proponent's Initial EIA that account for the economic impacts in the Redlines revisions.

If a Party determines that the Proponent's Initial EIA does not adequately cover the economic impacts of their final the Party's Redlines revisions, the Party is required to submit a Final Economic Impact Analysis with its Position Statement as set forth Section V.E.2. The Final Economic Impact Analysis must either contain all the information required to assess the economic impact of the Redlines or the information required to

assess the incremental changes in costs and benefits from the Proponent's EIA. In doing so, they may identify and incorporate those portions of the Proponent's Initial EIA relevant to their Redline revisions, but they must separately identify and discuss the additional economic impacts of their Redline revisions that are not adequately addressed in the Proponent's Initial EIA.

If a Person/Party submitting an Redlines that requires additional economic impact information intends to request the help of the Division in preparing the required Final Economic Impact Analysis, they must contact the Division no later/fewer than thirty (30) days before the deadline to submit the Position Statements.

The Commission only adopts rules that are well supported by the rulemaking record. It is the duty of the each Parties to ensure that the Commission has enough data and information to adopt any suggested revision in their Redlines. The Commission may refuse to adopt any and all proposed revisions contained in a Redline due to inadequate economic impact analyses.

#### V.D.6. Submission of Final Proposed Rule and Alternate Proposals

The Proponent of a proposed rule or any Alternate Proposal must submit the final version of their Proposed Rule or Alternate Proposal at least five (5) working days prior to the prehearing conference or, if no prehearing conference is scheduled, at least ten (10) working days before the date of the hearing. The Proponent must submit a version of the rule text that can be edited using widely available word processing software.

#### V.D.7. Technical Support Documents

The Proponent must provide any technical documents required by 40 CFR, Part 51 (July 1997, EPA) for any State Implementation Plan submittal or otherwise prepared for submittal to the Environmental Protection Agency (EPA) in support of such SIP submittal, as soon as possible but no later than thirty (30) days prior to the public hearing. Such technical documents will be available electronically and for public inspection at the Commission office.

#### V.D.8. Alternate Proposals

Any Redlines proposed by a Party that are not incorporated into the Proponent's final Proposed Rule text may be presented as an Alternate Proposal at the hearing for the Commission's consideration and adoption. Parties may advocate for requested language changes during the hearing provided the changes are reflected in one or more Alternate Proposal(s) and do not address wholly new or out of scope issues. The Commission will take all supporting information for an Alternate Proposal into consideration, including the Final EIA, before adoption/determining whether to adopt any such proposal.

Parties must submit their Alternate Proposals to the Commission in writing. Alternate Proposals must (1) use the Final Proposed Rule as the base; (2) contain all Redlines for which the Party continues to advocate adoption (as compared to the Redlines submitted with that Party's Position Statement); (3) contain any new Redlines directly responsive to new language in the Final Proposed Rule; and (4) provide an indication, where applicable, of any revisions to the Redlines made following the Party's Position Statement Redlines, including any Redlines the Party no longer intends to pursue at hearing. The deadline for Alternate Proposals will be set in the notice of rulemaking. The Alternate Proposals must be filed by electronic mail pursuant to the provisions of Section III.L. and served on all Parties.

#### V.D.9. Consensus Alternate Proposals

After submission of the Final Proposed Rule, any substantive change that is agreed to or unopposed by all Parties and the Division may be submitted by the Division as a Consensus Alternate Proposal. Consensus Alternate Proposals must be filed with the Commission Office and served on all Parties in compliance with Section III.L. before the change will be considered by the Commission. Consensus Alternate Proposals may be offered any time after a proposal is filed with the Commission Office and before the Commission takes final action on the proposal. Consensus Alternate Proposals must be accompanied by a Revised EIA or a statement that the Final EIA adequately covers the proposed changes.

#### V.D.10. Errata

After submission of the Final Proposed Rule, subsequent changes to any rule proposal made using Errata may include correcting typographical, punctuation or grammatical errors only, unless any substantive change is agreed to by all Parties and the Division. Changes to the Final Proposed Rule that only correct typographical, punctuation or grammatical errors, may be submitted by Parties or the Division as Errata. Any change must be filed with the Commission Office and served on all Parties in compliance with Section III.L. before the change will be considered by the Commission. Errata may be offered any time after a proposal is filed with the Commission Office and before the Commission takes final action on the proposal. Any substantive change agreed to by all Parties and the Division must be accompanied by a Revised EIA.

### V.E. How a Proposed Rule is Prepared for Hearing

#### V.E.1. Motions

Parties may also file any motions necessary to resolve procedural questions or any other issues relating to the conduct of the hearing arising during the prehearing process. The Hearing Officer may rule on grant prehearing motions that are filed and served later than fourteen (14) days before the hearing date, only if good cause is shown. The Commission or Hearing Officer may allow the Proponent or Parties to respond to such prehearing motions, as they deem necessary. The Proponent or a Party may make a motion to the Commission or Hearing Officer to resolve issues that come up during the rulemaking hearing conducted in accordance with V.F. The basis for the hearing motion should be clearly stated, and must not be based on matters that could have been raised before the prehearing motions deadline.

#### V.E.2. Final Economic Impact Analyses

The Final Economic Impact Analysis required for the proposed rule, and any Alternate Proposal, pursuant to and meeting the requirements of § 25-7-110.5(4)(e), C.R.S., must be filed in the Commission Office and delivered to all Parties of record at least five (5) working days prior to the prehearing conference or, if no prehearing conference is scheduled, at least ten (10) working days before the date of the hearing. If the Final Economic Impact Analysis is the same as the Initial Economic Impact Analysis (submitted pursuant to Sections V.B.2.d. and V.C.5.c.), an affirmative written statement to that effect must be submitted to satisfy this Section V.E.2. A Proponent/Party submitting Economic impact analyses for Alternate Proposals Redlines may must file in the Commission Office and deliver to all Parties of record at least five (5) working days prior to the prehearing conference or, if no prehearing conference is scheduled, at least 10 working days before the date of the hearing, a Final Economic Impact Analysis, or an evaluation of the, if feasible and appropriate, evaluate the incremental impacts over those already estimated for the Proponent's original proposal, or - Alternatively, a Party submitting a Redline may elect to submit a statement, consistent with Section V.D.5.c.1.d.(ii), that the costs and benefits of the Final Redlines are is within the scope of costs identified in the Proponent's EIA/Initial Economic Impact Analysis submitted with the petition package.

### V.E.3. Prehearing Conference

The Hearing Officer may hold one or more prehearing conferences, which can be held no later than up to ten (10) days prior to the hearing to address any matters raised by the Hearing Officer, the Division, or the Parties. The Division and any Party wishing to participate at Parties to the hearing must attend any prehearing conference(s). Such conferences will be conducted by video or telephone conference only, unless otherwise ordered by the Hearing Officer. The Hearing Officer will issue an order setting the time and location of the conference.

### V.E.4. Cost-Benefit Analysis

Any person may, within five (5) days after publication of the notice of proposed rulemaking in the Colorado register, request that the department of regulatory agencies require the Division to prepare a cost-benefit analysis in accordance with § 24-4-103(2.5)(a), C.R.S. A copy of the request to the department of regulatory agencies must be submitted to the Commission Office and the Division. If the Commission has issued a list of Parties in conjunction with the rulemaking, a copy of the request must also be provided to all Parties to the rulemaking. If the executive director in the department of regulatory agencies, or his or her designee, determines that a cost-benefit analysis is required, the Division or Proponent must complete a final cost benefit analysis at least ten (10) days prior to the hearing. The Division will make this analysis available to the public by posting the analysis on the Commission's official website, and will submit a copy to the executive director of the department of regulatory agencies or his or her designee.

Note: The Proponent for a proposed rule is encouraged to supply information with the petition package analysis which that could provide the basis for a cost-benefit analysis.

### V.E.5. Regulatory Analysis

Upon a written request of any person filed with inreceived by the Commission Office at least fifteen (15) days prior to the hearing on a proposed rule, the Commission, or its staff, will prepare a regulatory analysis of the proposed rule pursuant to § 24-4-103(4.5), C.R.S. The analysis will address the topics reflected in §§ 24-4-103(4.5)(a)(I) - (VI) and 24-4-103(4.5)(b), C.R.S. The regulatory analysis will be available to the public by posting on the Commission website and maintaining a copy in the Commission Office at least five (5) days prior to the hearing on the proposed rulemaking.

Note: The Proponent for a proposed rule is encouraged to supply information with the petition package which could provide the basis for a regulatory analysis.

### V.E.6. Prehearing Orders

The Hearing Officer may issue prehearing orders to address any matter that comes up before the hearing, to guide the hearing process, and to otherwise help the Parties prepare for the hearing. Hearing deadlines in prehearing orders are set by the Hearing Officer taking into consideration factors including, but not limited to the needs of Parties and the Division, the needs of the Commission and its Staff, other hearing deadlines, and statutory deadline requirements. Prehearing orders may address any procedural or substantive aspects of the hearing, including but not limited to,

V.E.6.a. A summary of the rule proposal and any Alternate Proposals;

V.E.6.b. A list of the Parties who intend to participate at the hearing;

V.E.6.c. A summary of the issues in dispute and the Proponents' and Parties' positions and arguments on those issues.



- V.E.6.d. A list of Commissioner disclosures made to the Hearing Officer on or before the date when the prehearing order containing the disclosures is issued, including information regarding the occurrence of any Ex Parte Communications, with whom any such communications occurred, and a description of the substance of any such communications;
- V.E.6.e. A list of any motions, resolved and pending;
- V.E.6.f. The order of testimony the Commission will hear from the Proponent, Division (if not the Proponent), and the Parties;
- V.E.6.g. The amount of time the Proponent, the Division (if not the Proponent), and the Parties will be allowed to use during the hearing. The Hearing Officer has the discretion to allow, limit, or prohibit the practice of trading or donating allocated time between Parties;
- V.E.6.h. Whether the hearing will be conducted in person or by video or telephone conference or both; and
- V.E.6.i. Any other procedural matters.

V.F. How a Rulemaking Hearing is Conducted

V.F.1. Decorum.

All conduct during hearings before the Commission must be civilized, dignified and respectful of Commissioners, Commission Staff, Parties and all members of the public. Behavior the Commission determines to be disruptive will not be tolerated. Displaying signs, placards, banners, or other materials, obstructing the passage of any other person, interrupting proceedings, yelling or other audible outbursts; using sound amplification; harassing, intimidating, or threatening others; and interfering with the ability of Staff to carry out its business, are examples of behavior that may be considered disruptive.

The Commission may ask anyone who is impeding, disrupting, or hindering a hearing or who endangers any member or staff to leave the premises or a video or phone conference. Anyone who refuses to leave an in-person meeting or hearing may be escorted from the premises by a peace officer. Anyone who refuses to leave a video or phone conference will be blocked from participation.

The Chairperson or Hearing Officer may require that persons making video or audio recordings do so from a specified area or areas in the hearing room in order to avoid a disruption or blocking public access.

V.F.2. Commencing the Hearing

- V.F.2.a. The Hearing Officer will preside over the hearing. If the Hearing Officer is unavailable, the Chairperson or their designee will preside over the hearing.
- V.F.2.b. The Hearing Officer will announce the commencement of the hearing. So long as the date and time of the commencement of the hearing was provided for in the notice of proposed rulemaking or, if available, the Commission agenda, the hearing may commence without the presence of all Parties in the Hearing Officer's discretion.

V.F.2.c. The Hearing Officer will ask Commissioners to disclose any Ex Parte Communications as described in Section III.K. and any apparent, potential, or actual conflicts of interest as described in Section X.

V.F.2.d. The Hearing Officer will describe, consistent with the notice, when and how public comment may be taken during the proceeding.

V.F.2.e. The Commission or Hearing Officer may rule on motions and clarify procedural matters relating to the conduct of the hearing before presentations begin.

#### V.F.3. Order of Presentation

Unless otherwise set forth in the prehearing order, the order of presentation at the hearing will be as follows:

V.F.3.a. Presentation by the Division and the Proponent of the rule if not 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, presentation of rebuttal comments offered by Staff for the benefit of the Commission.

V.F.3.b. Presentations by Parties and other interested persons as specified in the prehearing order. Parties with Alternate Proposals will typically go after the Proponent.

V.F.3.c. Rebuttal testimony as may be provided for in the prehearing order, or in the discretion of the Hearing Officer or Commission. The Proponent of the rule will go first in rebuttal testimony, followed by the Division (if not the Proponent). The Division will typically go last in Rebuttal testimony.

V.F.3.d. Surrebuttal testimony will be provided by only the Division and the Proponent (even if the Division is not the Proponent of the rule). The Division will go last in sur-rebuttal. The Division and Proponent may allocate their remaining time between rebuttal and surrebuttal as they choose.

V.F.3.d. The Division, or proponent of the rule, may be allowed surrebuttal testimony at the conclusion of Rebuttal testimony.

V.F.3.ed. Questioning by the Commission. After each presentation (direct, rebuttal, or surrebuttal) by the Proponent or Party, the Commission may ask questions of the Proponent, or that a Party, a Parties' witness, or the Division at any time, or with reasonable notice, a Party's witness during cross-examination. The Commission may, in between presentations, call up a Party or witness for follow-up questions.

#### V.F.4. Objections and Cross-Examination

V.F.4.a. Objections to information or testimony offered by the Proponent or a Party may be made during their presentation. The grounds for the objection must be clearly stated. Any objection not timely raised during the hearing is waived.

V.F.4.b. After each presentation, the Hearing Officer will make available the opportunity for cross-examination of the presenter. Each witness presenting oral and/or written testimony at the hearing will be available for cross-examination immediately following presentation of the witness's testimony. Immediately after their presentation, the Division, Proponent, Party, and/or their witness(es) making a presentation shall be subject available for to cross-examination by the Division, Proponent and/or other Parties, unless the Division, Proponent, or Party has made all other Parties aware of a witness's unavailability at least five (5) days prior to the hearing and no Party objecteds (objections must be based on a good faith reason why that witness's testimony is necessary, (f.e.e.g.), that none of the party's other listed witnesses are capable of providing the same or similar information).

V.F.4.c. Cross-examination is a Party's opportunity to ask questions to clarify a of another Party's witness, testimony or to ask a witness to admit a fact. Any Party or the Proponent may cross-examine any witness who testifies on behalf of another Party or the Proponent during a rulemaking hearing. Questions asked during cross-examination are limited to topics the witness discussed during their presentation, or topics provided in testimony or exhibits. Time taken to cross-examine a witness counts against the total time afforded to the examining Party for the hearing, as specified in the prehearing order.

#### V.F.5. Deliberations

After the close of testimony and after any outstanding motions have been resolved, the Commissioners will conduct deliberations which may discuss any aspect of the proposed rulemaking, including the proposed rule, all submissions, public comment, and any other matter relevant to the proposed rulemaking. The deliberations will be open to the public. If the Commission decides to deliberate at some time other than immediately after the conclusion of testimony for that particular hearing, the Commission will state the time and date of its deliberations on the record.

#### V.F.6. Contents of Rulemaking Record

The rules adopted will be based upon the rulemaking record, which will consist of the petition package, proposed rules, evidence, exhibits, and other matters presented to or considered by the Commission, matters officially noticed, rulings on exceptions, any findings of fact and conclusions of law proposed by any Party, and any written comments or briefs filed with the Commission after the Proponent files the petition package with the Commission. The rulemaking record, Commissioner deliberations, any official transcript of oral presentations made in the proceeding upon which the rule is based (including presentations made regarding the appropriate scope of the rulemaking at the Rulemaking Request), or, if not transcribed, any recording of those presentations and any memorandum prepared by a presiding official summarizing the contents of those presentations and additional items identified in § 24-4-103(8.1)(b), C.R.S., will constitute the official rulemaking record for purposes of judicial review as provided for in § 24-4-106(6), C.R.S. proposed rules and Alternate Proposals, presentations, evidence, exhibits, oral comments, testimony, prehearing submittals, and other matters presented or considered, matters officially noticed, rulings on exceptions, any proposed findings of fact and conclusions of law, any written comments, any summary of written or oral comments, any responses to written or oral comments or briefs filed. The rulemaking record and Commissioner deliberations will constitute the record for purposes of judicial review as provided for in § 24-4-106(6), C.R.S.

#### V.F.7. Closing the Record

Once the rulemaking record is closed, new information will only be presented to the Commission only upon approval by the Commission of a request by any Commissioner to reopen the rulemaking record.

#### V.F.8. Other Authority:

In accordance with § 24-4-103(13), C.R.S., and wWithout limiting the authorities granted under these regulations, when conducting a rulemaking, the Commission is authorized to: ~~do the following when conducting a rulemaking:~~ administer oaths and affirmations; sign and issue subpoenas; regulate the course of the hearing, set the time and place for rescheduled hearings, fix the time for filing of documents; take depositions or have depositions taken; issue appropriate orders which will 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, the Hearing Officer.

#### V.F.9. Final Action

After deliberations have completed and the rulemaking record has been closed, the Commission may take final action on the proposed rules or may vote to preliminarily approve any proposed rules.

##### V.F.9.a. Final Adoption

The Commission may adopt proposed rules, subject to Commission directed revisions. The rules adopted must be consistent with the subject matter as set forth in the notice of proposed rulemaking. After consideration of the relevant matter presented, the Commission will adopt simultaneously with the rules a statement of basis, specific statutory authority, and purpose pursuant to § 24-4-103(4)(c), C.R.S.

##### V.F.9.b. Preliminary Final Adoption

The Commission may preliminarily adopt any proposed rules, subject to Commission-directed revisions to any proposed rules or statement of basis, authority and purpose, or both.

V.F.9.b.(i) If the Commission votes to pursue preliminary final action, the Commission will take a vote on conceptual adoption subject to direction to the Commission Office. The motion must specifically describe the goals of the Commission in revising the rule proposal and the direction to the Commission Office. The motion may also specify the process for review by the Proponent and Parties, including limiting Party comments to confirming the draft changes are consistent with the Commission's direction. Information not included in the rulemaking record will not be considered by the Commission unless the Commission reopens the record.

V.F.9.b.(ii) If the Commission elects to preliminarily adopt any or all proposed rules, the Commission will take final action on such proposed rules, including any Commission-directed revisions, as soon as possible.

#### V.G. How a Final Rule Becomes a Regulation

##### V.G.1. Attorney General Review

Upon final adoption, the Commission Office will file the final rule for Attorney General review pursuant to § 24-4-103(8)(b), C.R.S. The Attorney General/Department of Law will issue an opinion regarding the rule's constitutionality and legality.

#### V.G.2. Filing with the Office of Legislative Legal Services

After the Attorney General/Department of Law issues the legal opinion, the final rule is submitted to the Office of Legislative Legal Services (OLLS) for review. The OLLS reviews the final rule pursuant to § 24-4-103(8)(d), C.R.S., to determine the rule's legality and whether it is within the Commission's rulemaking authority.

#### V.G.3. Filing with Secretary of State

Each rule adopted by the Commission, together with the Statement of Basis, Specific Statutory Authority and Purpose and the Department of Law/Attorney General's opinion rendered in connection with any final rule, including a temporary or emergency rule as described in Section V.H., will be filed with the Secretary of State for publication in the Colorado register within twenty (20) days after adoption. § 24-4-103(11), C.R.S.

#### V.G.4. Publication and Effective Date

As required by § 24-4-103(5), C.R.S., except for temporary or emergency rules, a rule becomes effective twenty (20) days after publication as described in this section, or on such later date as is stated in the rule. Once a rule becomes effective, the rulemaking process is deemed to have become final agency action for purposes of judicial review. Publication of an adopted rule will be by electronic publication of the Colorado Register in accordance with § 24-4-103(11)(g), C.R.S.

#### V.G.5. Maintaining Rules

The Secretary of State maintains copies of the Commission's currently effective rules, which are available for inspection by any person at the Commission Office during regular office hours and can be made available electronically upon request.

### V.H. Special Rulemaking Proceedings

#### V.H.1. Petitions for a Temporary or Emergency Rule

Any Person, including the Division, may request the Commission to adopt a temporary or emergency rule without complying with the requirements of Section V.B.2. of this regulation and with less than sixty (60) days' notice (or, where circumstances imperatively require, with no notice).

Unless the immediacy of the situation precludes any preparation, the Person requesting a temporary or emergency rule must prepare at least a brief petition that describes the issue(s) at hand, provides the proposed rule text that 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 that meet the requirements for Commission adoption under Section V.H.4. This emergency rule petition should be filed in the Commission Office at the earliest possible date. The Commission will provide as much notice as possible of the proposed temporary or emergency rule.

#### V.H.2. Special Emergency Rules for Interim Emissions Control Regulations

In addition to the general petition process for a temporary or emergency rulemaking described in Section V.H.1., the Commission may conduct an emergency rulemaking to establish interim

emission control regulations 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 be effective for a period not exceeding twelve (12) months from the date of adoption.

#### V.H.3. Regulatory Analysis for Proposed Temporary or Emergency Rules

Any person may request a regulatory analysis under § 24-4-103(4.5), C.R.S. for a proposed emergency rule be prepared and made available to the public five (5) working days prior to the hearing, unless **sooner adoption of the emergency rule is required because of there is an imminent and serious hazard to health, welfare, or the environment.** The request must be in writing and filed in the Commission Office at least fifteen (15) days prior to the hearing at which the temporary or emergency rule is to be considered. The requirements of § 24-4-103(4.5)(d), C.R.S. apply to any such requested regulatory analysis.

#### V.H.4. Commission Adoption of Temporary or Emergency Rules

The Commission may adopt a temporary or emergency rule if it finds on the record that immediate adoption of the rule is:

- V.H.4.a. Imperatively necessary to comply with a state or federal law or federal regulation, or
- V.H.4.b. Imperatively necessary for the preservation of public health, safety or welfare; and,
- V.H.4.c. Imperatively necessary because compliance with the rulemaking procedural requirements of Section V.B. of this regulation (excluding Sections V.H.1 through V.H.4) would be contrary to the public interest.

The required findings in this Section V.H.4., and a statement of the reasons for the action, will be published with any temporary or emergency rule adopted by the Commission. A temporary or emergency rule is effective upon adoption or on such later date as is stated in the rule, will be published promptly, and will remain in effect for not more than one hundred twenty (120) days or less from the date of adoption, (unless it is a special emergency rule adopted under Section V.H.2., or it is made permanent by compliance with this Section V.H.).

## **VI. PROCEDURES FOR ADJUDICATIONS AND SPECIAL PROCEDURES FOR PARTICULAR HEARINGS**

### VI.A. 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 section may also apply to requests for site-specific revisions of the state implementation plan.

### VI.B. Initiating an Adjudicatory Hearing

VI.B.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 determine whether a request was timely filed.

VI.B.2. Filing and Serving the Hearing Request:

Hearing requests shall be timely filed in the Commission Office. The request shall also be served upon the Division, and the First Assistant Attorney General. Hearing requests must be filed electronically, pursuant to Section III.J.2., or otherwise, if an exception to electronic filing is granted pursuant to Section III.J.3.

VI.B.3. Contents of the Hearing Request:

All requests for adjudicatory hearings must contain the following information:

- VI.B.3.a. Name of the person(s) requesting the hearing, including address and telephone number;
- VI.B.3.b. Brief statement of background and relevant facts;
- VI.B.3.c. The legal and factual errors alleged by the person requesting the hearing;
- VI.B.3.d. The statutory, regulatory, and/or permit-based citations supporting the request for hearing;
- VI.B.3.e. The relief requested by the person requesting the hearing;
- VI.B.3.f. A copy of any Division compliance order, noncompliance penalty determination or permit which is the subject of the request;
- VI.B.3.g. 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;
- VI.B.3.h. An estimate of the time that will be required for the hearing;
- VI.B.3.i. A statement as to whether the 90-day hearing timeframe set forth in Section VI.B.4.a. is waived; and
- VI.B.3.j. A certificate of service, confirming that proper filing and service has been made in accordance with Section VI.B.2.

VI.B.4. Setting the Hearing:

- VI.B.4.a. The Commission Office will include a request for adjudicatory hearing on the Commission's agenda for the next meeting following receipt of a complete request. The Commission will grant a properly filed request and will 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, a declaratory order, or to a permit appeal by the permit applicant

(unless the ninety-day timeframe is waived by the person requesting the hearing).

VI.B.4.b. Once appointed, the Hearing Officer may continue the hearing upon written motion by any party or for the convenience of the Commission.

VI.B.4.c. At the meeting of the Commission following receipt of the request, the Commission will determine whether the request for adjudicatory hearing presents only questions of law or whether there are disputed issues of fact. If the request presents only a question of law, the Commission or Hearing Officer may issue a briefing schedule in accordance with CRCP 56, with the party requesting the hearing as movant, but permitting the Division sur-reply (the scope of sur-reply shall be limited to issues raised in the reply). In this case, the provisions of Sections VI.C and VI.D. may not apply (except that Sections VI.C.1, VI.C.4, VI.C.6, VI.C.12-13, and VI.D.8 will apply), and oral argument may be permitted at the hearing (no witnesses or cross-examination).

VI.B.5. Notice of the Hearing:

VI.B.5.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.5.b. The hearing notice will 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, and (iii) 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 or the Hearing Officer may amend the notice, without continuing 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.5.c. The Commission Office shall mail, at least thirty days prior to the hearing, notice to all persons who have requested to be included on the Commission's mailing list, 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.5.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 the Commission's website.

VI.B.6. Parties:

VI.B.6.a. The person requesting a hearing will appear as a party. The Division will 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 under Section VI.H.

VI.B.6.b. Any person who is affected by the proceeding and whose interests are not already adequately represented has the opportunity to be a party



upon approval by the Hearing Officer. Any person seeking party status may apply consistent with any deadline set by the Commission or Hearing Officer. An application for party status must identify the person making the request, including an address and telephone number. The application must also contain a statement of the reasons for seeking party status, the manner in which the matter affects the person's interests, an explanation as to why the existing parties do not adequately represent the person's interests, a description of the legal and/or factual issues which the prospective party intends to raise, and potential witnesses the prospective party intends to call at the hearing. In addition, the application must describe the general nature of the evidence the applicant intends to present.

- VI.B.6.c. Applications for party status should be made no later than the deadline set in the Scheduling Order. If the application for party status is filed after the Scheduling Conference, the application should include a description of the amount and nature of discovery requested (e.g. number of depositions) and the justification therefor. Late filings will be accepted for good cause and upon a showing that admittance of the party will not create delay in the prehearing process or of the date of the hearing.
- VI.B.6.d. The Hearing Officer will grant or deny applications for party status. An order granting an application for party status will also identify any amendments to the Scheduling Order related to discovery limits for the new party. Applicants for party status shall comply with all requirements of these rules pending resolution of the request.

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

- VI.B.7.a. At its first meeting following receipt of a hearing request, a Commissioner will be appointed as Hearing Officer for the matter. If the Commission meeting following receipt of the request is more than fifteen days after receipt of the request, a Hearing Officer will be appointed within fifteen days of receipt of the request. The chairperson of the Commission may appoint a Hearing Officer to act until such meeting or at any time may appoint a replacement Hearing Officer, to be confirmed by the Commission at its next general meeting.
- VI.B.7.b. The Hearing Officer may exercise any powers conferred by § 24-4-105(4), C.R.S., including actions in accordance, to the extent practicable, with the procedure in district courts. The Hearing Officer may require as part of the prehearing conference or otherwise, each party to submit in advance of the hearing any 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.7.c. The Hearing Officer shall conduct the scheduling conference, the prehearing conference and the hearing.

#### VI.C. Prehearing Procedures

##### VI.C.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 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.2. Scheduling Conference:

VI.C.2.a. The Hearing Officer, upon appointment, will issue a notice of scheduling conference, setting a date for the scheduling conference to take place between fifteen (15) and thirty (30) days of receipt of a complete request for adjudicatory hearing. The purpose of the scheduling conference is to set discovery limitations, address timing of discovery and other related issues, resolve any pending motions, and discuss a Scheduling Order.

VI.C.2.b. At least five (5) days prior to the scheduling conference, the parties will submit a joint proposed scheduling order addressing the following: (i) cut-off dates for service of written requests and setting of depositions, and a final discovery cut-off date for completion of discovery, which must be at least five (5) days prior to the hearing; (ii) the proposed number of depositions, including both fact and expert witnesses; (iii) the proposed number of interrogatories, requests for production, and requests for admission, and proposed timeframes for responding; (iv) timing of service and response to motions, and a motion cut-off date; and (v) timing and limits for prehearing and rebuttal statements (e.g. page limits). Parties should also identify potential witnesses (fact and expert) and brief description of the scope of the anticipated testimony. If parties are unable to agree on any of the terms as described, each party may submit its own proposed scheduling order, along with an explanation of the basis for any unilateral request. Parties must describe their good faith efforts made to reach agreement.

VI.C.2.c. The Hearing Officer will issue a Scheduling Order no later than 5 days after the scheduling conference. The Scheduling Order will include the Hearing Officer's rulings on the matters identified in Section VI.C.2.b, and instructions as to how and the deadline for when an interested person may apply for party status in the proceedings. If the party requesting the hearing has waived the 90-day hearing timeframe, the Scheduling Order will also set forth the discovery commencement date. Parties may request modifications to the Scheduling Order only upon a showing of changed circumstances and good cause.

##### VI.C.3. Discovery:

VI.C.3.a. Except as provided within and as authorized by the Scheduling Order, 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. If the party requesting the hearing has not waived the 90-day hearing timeframe, written discovery may commence after the Commission meeting granting the request for adjudicatory hearing or the Scheduling Conference, whichever is earlier. If the party requesting the hearing has waived the 90-day hearing timeframe, discovery commencement will be set forth in the Scheduling Order.

- VI.C.3.b. To the extent practicable, and unless otherwise ordered by the Hearing Officer, the discovery limitations of Rules 26 through 37, CRCP, apply to all adjudicatory matters before the Commission. However, Rules 26 (a) and (d), 27, 28, 29, and 35, CRCP, are not applicable in adjudicatory proceedings.
- VI.C.3.c. Responses to written discovery are due within twenty-one (21) days (as opposed to the time authorized in CRCP 33, 34, and 36), unless otherwise ordered by the Hearing Officer. Documents provided in response to discovery must be Bates-stamped or contain other identifying information.
- VI.C.3.d. Depositions must be noticed at least seven (7) days before the date proposed for the deposition. Parties must confer regarding dates of depositions; failure to confer may result in cancellation of the deposition by the Hearing Officer (even if there is not enough time remaining for the deposition to be rescheduled).
- VI.C.3.e. Written motions practice for discovery issues is not permitted. If there is a discovery dispute, the parties must work in good faith to resolve it. If it cannot be resolved, the parties must jointly contact the Commission eOffice and seek a telephonic hearing with the Hearing Officer. The Hearing Officer will schedule a conference call (or other electronic meeting), may order a written briefing, and will either rule after hearing from the parties on the issue or will issue a written order shortly after the call.
- VI.C.3.f. 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.3.g. The Hearing Officer is empowered to impose sanctions for failure to participate in good faith in the discovery process and for noncompliance with the Scheduling Order or other order of the Hearing Officer or Commission, including, but not limited to, the dismissal of a request for adjudicatory hearing or exclusion of evidence not timely provided to other parties in discovery (or exclusion of witnesses not reasonably made available). Any such sanctions will be proportionate to the noncompliance or failures to participate in good faith. A decision of the Hearing Officer to dismiss all or part of a claim under this section is immediately appealable to the full Commission.

VI.C.4. Prehearing Conference:

- VI.C.4.a. A prehearing conference shall be held in each adjudicatory matter before the Commission, not less than fourteen (14) nor more than twenty-one

(21) days before the hearing, unless otherwise ordered by the Hearing Officer. The Commission Office 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.4.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, and resolve any other matter that can be resolved before the hearing. The Hearing Officer may restrict the parties' presentations, exhibits and testimony to avoid duplication and to minimize time spent on uncontested or peripheral issues.
- VI.C.4.c. Each party and each person who has applied to become a party must attend the prehearing conference, in person and through counsel (if represented).
- VI.C.4.d. At least five (5) days prior to the prehearing conference, the parties must submit a Joint Statement of Undisputed Facts, identifying each undisputed fact and each exhibit that is uncontested as to authenticity and relevance. The parties must work in good faith to put together the Statement of Undisputed Facts. Exhibits on the Joint Statement must be identified as "Joint Exhibit 1", "Joint Exhibit 2", etc.

VI.C.5. Prehearing Statements and Rebuttal Statements:

- VI.C.5.a. All parties must submit by electronic mail a Prehearing Statement to the Commission Office by close of business of the date specified in the Notice of Adjudicatory Hearing. The Prehearing Statement must be filed by electronic mail pursuant to the provisions of Section III.J.2. If granted an exception to electronic filing pursuant to the provisions of Section III.J.3., the petitioner must submit an original and fifteen copies of a complete petition for adjudication in the Commission Office.

In addition, electronically mailed copies 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 Adjudicatory Hearing.

- VI.C.5.b. Prehearing Statements must contain the following:
  - VI.C.5.b.(i) A summary of argument;
  - VI.C.5.b.(ii) Legal and factual arguments in support of party's position to be taken at the hearing, with citation to exhibits;
  - VI.C.5.b.(iii) A description of the specific relief sought from the Commission, including the specific terms desired in any Commission order implementing the decision;
  - VI.C.5.b.(iv) A list of all exhibits, except demonstrative exhibits, to be relied upon at the hearing (exhibits must be identified by Bates-stamp and if not yet provided to other parties, copies must be made available at the time of filing the Prehearing Statement). Failure

to provide the other parties with copies of all exhibits may result in the exhibit(s) being excluded from introduction at the hearing;

- VI.C.5.b.(v) A list of all witnesses to be called at the hearing, a statement as to whether the witness has been (or will be) deposed, and a detailed description of the witnesses' testimony.

The authenticity of exhibits, statutes, ordinances, regulations or standards submitted with 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 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 would not prejudice other parties or necessitate a delay of the hearing.

VI.C.5.c. Rebuttal Statements:

Parties may submit a Rebuttal Statement only to address issues, matters or evidence that were raised at the prehearing conference or in another party's Prehearing Statement. The Notice of Adjudicatory Hearing shall specify the deadline to file any Rebuttal Statements, and any limitations on the filing of the statement (e.g. page limitations). Rebuttal Statements must attach any additional exhibits (except demonstrative exhibits) not capable of being provided at the time of the Prehearing Statement.

VI.C.6. Prehearing Order:

The Hearing Officer shall direct the preparation of a prehearing order by either a party or Staff. The prehearing order will 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. 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.7. Dispositive Motions:

- VI.C.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.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.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.8. Procedural Motions:

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

VI.C.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. Decisions of the Hearing Officer on procedural motions are not appealable to the full Commission.

VI.C.9. Consolidation of Cases:

Any party may seek consolidation of two or more cases by filing a motion to consolidate in each case. If more than one Hearing Officer has been assigned to the cases, the motion shall be decided 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 Commission Office shall place all previous filings related to the consolidated cases in that case file. The Commission may order consolidation on its own initiative.

VI.C.10. Dismissal of Cases:

VI.C.10.a. Any person who requested 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 Commission Office.

VI.C.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 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.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 Officer's decision to the Commission.

VI.C.12. Location of Hearing:

The Commission's monthly meetings are generally held at the Colorado Department of Public Health Environment, 4300 Cherry Creek Drive South, Sabin-Cleere Conference Rooms, Denver, Colorado 80246. Upon request by any party or the public or upon its own motion, the Commission may elect to conduct a hearing virtually or in another location, including in the geographic area of a source affected by a particular hearing. Any request for a change in location must be submitted to the Commission Office not later than five days before the regular monthly meeting that precedes the scheduled date for the hearing. Any such request must be served by the same deadline upon all parties and all applicants for party status, who will all receive an 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.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 upon a showing of good cause. 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 § 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 § 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 Commission Office for presentation to the Hearing Officer at least 10 days before the scheduled hearing; motions for continuance filed fewer than ten days before the hearing will be granted only for good cause shown and an unforeseen and unavoidable change in circumstances justifying the continuance. The Hearing Officer shall rule on continuance requests after providing all parties an appropriate opportunity to respond. Any party may appeal the Hearing Officer's decision to the Commission.

VI.C.15. Subpoenas:

Any counsel who has entered an appearance in the matter, or 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 Commission Office, who shall immediately forward them to the Hearing Officer. The Hearing Officer or the Technical Secretary/Administrator 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.16. Filing and Service of Documents:

All documents must be filed with the Commission Office 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 Section III.J.2. or as otherwise provided in the exception granted under Section III.J.3.

VI.D. Hearing Procedures

VI.D.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 § 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.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 and resolution of any conflict of interest issues;
- VI.D.2.b. 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 where permitted by these rules.
- VI.D.2.c. 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 statements, beginning with the party upon whom the burden of proof rests.
- VI.D.2.e. 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.
- VI.D.2.f. Sixth, closing statements, beginning with the party upon whom the burden of proof rests.

#### VI.D.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.4. Motions and Objections:

The Hearing Officer shall rule on procedural motions and objections relating to procedure and 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.5. Public Participation:

The Commission may allow public participation in an adjudicatory hearing at appropriate times as determined in the sole discretion of the Commission. Comments and any documents offered may be made part of the record, unless objected to by a party and the objection is upheld by the Hearing Officer or Commission. Persons who offer comment 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 (which may be permitted unless it will prejudice any party) and a party requests the opportunity to rebut, the Hearing Officer will allow an adequate opportunity to rebut at the hearing.

#### VI.D.6. 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 that it was not possible to have disclosed the evidence during the prehearing process in accordance with these rules.

VI.D.7. Good Faith Conferal:

All parties shall confer in good faith before the filing of any motion or the making of any request to the Hearing Officer or Commission, consistent with the conferal requirements of the Colorado Rules of Civil Procedure.

VI.D.8. Post-hearing Briefs and Summaries:

The Commission may allow parties to file hearing briefs or summaries, or proposed findings of fact and conclusions of law, after the close of evidence by a deadline determined at the hearing. If the Commission allows such materials, it shall schedule a time at which it will deliberate on the case, however, no additional deliberations would be required upon submittal of proposed findings of fact and conclusions of law. At such deliberation, no evidence or argument by the parties may be received unless the Commission reopens the record.

VI.E. Decisions of the Commission

VI.E.1. 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.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 be deemed denied.

VI.E.3. Effective Date of the Decision:

Unless the Commission designates a later date, the effective date of the final decision is the date the Commission order is mailed, pursuant to § 24-4-105(16)(a). Commission decisions disposing

of parts of a case before the final decision are effective as of the date of mailing the Commission order. 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. Post-Decision Matters

##### VI.F.1. Requests for Reconsideration:

A request to reconsider all or part of any final decision by the Commission may be made by either a party or by any Commissioner who participated in the final decision. Any request to reconsider must be made within ten days of the date of the decision by written motion filed with the Commission Office by electronic mail in compliance with the requirements of Section III.J.2 or as otherwise provided in the exception granted under Section III.J.3. The Commission Office shall immediately transmit any such motion to all Commissioners who participated in the final decision. If a party or any Commissioner who participated in the final decision requests reconsideration, the Technical Secretary/Administrator, in conjunction with the Hearing Officer, shall arrange a prompt meeting of the Commission, which may include participation by telephone. 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 its final decision or any portion thereof, the effective date of the entire decision is suspended until reconsideration is complete. If the Commission declines to reconsider its final decision, the effective date of the final decision is not suspended.

##### VI.F.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 Commission Office 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.3. Transcripts:

The Commission Office 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. Ex Parte Communications:

No ex parte communications, as defined in Section III.I.J, 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.H. Declaratory Orders

Pursuant to § 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 State Administrative Procedure Act, the Act, and these rules. The order shall be limited in its scope to those matters necessary to dispose of the petition properly.

#### VI.I. Special Procedures for Particular Hearings

##### VI.I.1. Hearings to Review Area Classifications, Designations, or General SIP Revisions:

VI.I.1.a. Hearings on matters pursuant to § 25-7-105(2) C.R.S. may involve additional procedures otherwise used only for adjudicatory hearings. § 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 pursuant to § 25-7-106(1) C.R.S. or § 25-7-107(2) C.R.S.

VI.I.1.b. Any area designation or redesignation made pursuant to § 25-7-208 C.R.S.

VI.I.1.c. Any revision of general application of the state implementation plan.

VI.I.2. Any request to apply such additional procedures must be included in the initial application and must state a clear basis for invoking additional protections ordinarily available only in an adjudicatory hearing. The following procedures apply to § 25-7-105(2).C.R.S hearings:

VI.I.2.a. 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:

VI.I.2.a.(i) the petition is primarily a request for a rulemaking hearing, which requires the Commission to comply with the publication requirements of § 25-7-110(1) C.R.S.

VI.I.2.b. Notice of the hearing will 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.

VI.I.2.c. All testimony at the hearing shall be under oath or affirmation.

VI.I.2.d. A full and complete record of all proceedings and testimony presented shall be taken and filed at the Commission Office.

VI.I.2.e. 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 information, data, and analysis supporting the petition.

VI.I.2.f. The Division shall appear as a party and shall have the same rights to judicial review as any other party.

VI.1.3. 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.

VI.1.4. The following additional procedures apply to petitions that propose to amend the list of Colorado hazardous air pollutants (HAPs) pursuant to § 25-7-109.3(5)(b) C.R.S.:

VI.1.4.a. 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.

VI.1.4.b. 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.

VI.1.4.c. All testimony at the hearing shall be under oath or affirmation.

VI.1.4.d. A full and complete record of all proceedings and testimony presented shall be taken and filed at the Commission Office.

VI.1.5. Appeal of Colorado Maximum Achievable Control Technology (MACT) or Generally Available Control Technology (GACT) determinations or compliance schedules.

VI.1.6. The following additional procedures apply to petitions appealing a determination or compliance schedule by the Division pursuant to § 25-7-109.3(3)(a)(IV) C.R.S.:

VI.1.6.a. 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.

VI.1.6.b. At least thirty days prior to the hearing, 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.

VI.1.6.c. All testimony at the hearing shall be under oath or affirmation.

VI.1.6.d. 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 Commission Office.

VI.1.7. Criteria and procedures for local government petitions regarding the installation of emission control units filed pursuant to § 25-7-133(7)(d)(V) C.R.S.

VI.1.7.a. A petition for a hearing pursuant to § 25-7-133(7)(d)(V) C.R.S. must be filed and served as required by Section VI.B.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 § 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:

VI.1.7.a.(i) Local government requesting the hearing;

VI.1.7.a.(ii) The name of the regulated entity proposing to construct the contested emissions control unit, including contact person, if available; and

VI.1.7.a.(iii) A statement of the basis for the objection.

VI.1.7.b. The hearing may be held and the matter decided by the Commission or a Hearing Officer designated by the Executive Committee of the Commission.

VI.1.7.b.(i) The procedures specified in Sections VI.A. through VI.F. apply only to the extent deemed appropriate by the Commission or the appointed Hearing Officer, and may be modified as appropriate.

VI.1.7.b.(ii) The Hearing Officer, if so authorized by the Executive Committee of the Commission, may enter an initial decision pursuant to § 24-4-105 C.R.S.

VI.1.7.b.(iii) 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.

VI.1.7.c. The Commission shall uphold any objection by local government if:

VI.1.7.c.(i) 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

VI.1.7.c.(ii) It is reasonable to uphold the objection based on consideration of the following factors:

VI.1.7.c.(ii)(A) Any local ordinances, resolutions, permit or land use requirements that would, but for § 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 impose additional conditions on the unit.

VI.1.7.c.(ii)(B) Any additional cost, burden or loss in production that may be incurred by the regulated entity due to the local government's objection.

VI.1.7.c.(ii)(C) Whether the regulated entity provided the notice required in § 25-7-133(7)(d)(II) C.R.S. and has otherwise cooperated with the local government by addressing its concerns, including consideration of any reasonable alternatives.

VI.1.7.c.(ii)(D) The reasonableness of the objection and the weight of the public interest at issue.

VI.1.7.c.(ii)(E) Any other factor deemed relevant by the Commission.

VI.1.8. 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.1.1. Hearings to Review Area Classifications, Designations, or General SIP Revisions (that do not include rules or regulations):~~

**Commented [A2]:** This Section number reference was updated

~~VI.1.1.a. Hearings on matters pursuant to § 25-7-105(2), C.R.S. may involve additional procedures otherwise used only for adjudicatory rulemaking hearings pursuant to this Section V. § 25-7-105(2), C.R.S. states that the Commission will provide forms for the review of: the classification of any attainment, non-attainment, or unclassifiable areas within the state made pursuant to §§ 25-7-106(1) or 25-7-107(2).~~

~~VI.1.1.b. Any area designation or redesignation made pursuant to § 25-7-208:~~

~~VI.1.1.c. Any revision of general application of the State Implementation Plan.~~

~~VI.1.2. Any request to apply such additional procedures must be included in the initial application and must state a clear basis for invoking additional protections ordinarily available only in an adjudicatory hearing. The following procedures apply to § 25-7-105(2) hearings:~~

~~VI.1.2.a. No fewer than fifteen (15) days after the petition has been received, the Commission will grant the request and set the matter for hearing to be held within ninety (90) days of receipt of the petition. The requirement to hold the hearing within ninety (90) days of receipt of the petition will not apply if the Commission determines that: (1) the petition is primarily a request for a rulemaking hearing, which requires the Commission to comply with the publication requirements of § 25-7-110(1).~~

~~VI.1.2.b. Notice of the hearing will be published, at least thirty (30) days prior to the hearing, in a newspaper of general circulation prominent advertisement in the area in which the proposed project or activity is located and will be published on the Commission website.~~

~~VI.1.2.c. All testimony at the hearing must be under oath or affirmation.~~

~~VI.1.2.d. A full and complete record of all proceedings and testimony presented will be taken and filed at the Office of the Air Quality Control Commission Office.~~

~~VI.1.2.e. The petitioner for a revision to the state implementation plan under this section will bear the burden of proof with respect to the justification for the revision and must provide information, data, and analysis supporting the petition.~~

~~VI.1.2.f. The Division will appear as a Party and will have the same rights to judicial review as any other Party.~~

## VII. PROCEDURES FOR PUBLIC COMMENT HEARINGS ON PERMIT APPLICATIONS

#### VII.A. Scope

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

#### VII.B. Setting the Hearing

- VII.B.1. The public comment hearing will be held within sixty days of the Commission's receipt of all required materials relating to review of a permit or a permit term or condition pursuant to § 25-7-114.5(6)(b), C.R.S. unless the applicant and the Division agree to a later date.
- VII.B.2. The Commission may continue the public comment hearing for the convenience of the Commission.
- VII.B.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.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 be posted on the Commission's web site. No substantive revisions will be made to the draft permit during the thirty (30) days prior to the public comment hearing.

#### VII.C. Appointment of the Public Comment Hearing Commissioner:

- VII.C.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 public comment hearing is intended to encourage ~~citizen~~ public participation 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 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.
- VII.D.3. 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. 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. The public comment period closes at the conclusion of the public comment hearing, unless the Commission or Hearing Officer grants an extension of the public comment period to receive additional written comments.
- VII.D.13. The Commission Office 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. ~~For operating permits the Division must grant, deny or modify the permit within thirty (30) days following EPA's review of the draft permit or any permits subsequently submitted to EPA for 45-day review, which typically occurs following the Division's response to significant public comments received during the public comment period.~~ The Division will make any its responses to the public comments available to ~~any~~ interested persons at the time of permit issuance or denial. For operating permits issued under Part C of Regulation Number 3, the Division will make any responses to public comment available upon request after the transmittal of a draftproposed Title V permit to EPA. The administrative record will include the permit application and supporting data, the preliminary analysis/technical review document, the draft permit and any permit revisions, the final permit, comments and documentation received during the public comment period and public comment hearing, any applicant responses to comments, and the Division responses to comments. The Division must grant, deny, or modify the permit within thirty (30) days of the conclusion of the public comment period. For Title V Permits, the Division must grant, deny, or modify the



permit within thirty (30) days of . This thirty (30) day period does not begin for Title V operating permits until after the conclusion of EPA's 45-day review period. This thirty (30) day period does not apply if EPA raises objections to the permit, the thirty (30) day requirement to grant, deny, or modify the permit does not apply.

#### VII.E. Appeals of the Permit

- VII.E.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 § 25-7-114.5(11), C.R.S.
- VII.E.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 § 25-7-114.5(8).

### VIII. PUBLIC INFORMATION AND CONFIDENTIAL INFORMATION

#### VIII.A. Distribution of Notices, Agendas, and other information by the Commission:

The Commission Office shall maintain a mailing list. Any person may request to be added to the mailing list. The mailing list is maintained electronically. However, if an email address is not available, the Commission Office will accept a physical address to which mailings will be sent.

#### VIII.B. Availability of records; emissions data always public:

Records of the Commission are available to any person pursuant to and consistent with the provisions of the Colorado Open Records Act, § 24-72-201 et seq., C.R.S. Requests for records must be made either by email or U.S. mail, and addressed to the Commission Office. 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. 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 § 25-7-119(4) 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 section 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 Section VIII.B.

### IX. C.R.S. Colorado Revised Statutes § 24-4-105(4)

Any agency conducting a hearing, any administrative law judge, and any 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 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. CONFLICTS OF INTEREST**

The following [section 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. Definitions**

#### **X.A.1. Actual conflict of interest means:**

X.A.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.b. In an adjudicatory proceeding:**

X.A.1.b.(i) The Commissioner has, in some measure, adjudged the facts as well as the law in the case in advance of the hearing, or

X.A.1.b.(ii) The Commissioner, or the Commissioner's employer, has a substantial financial interest in the outcome of the proceeding.

X.A.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.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. 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. Disqualification of a Commissioner for a Conflict of Interest**

X.C.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.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. Advisory Opinions:

The Commission Office shall maintain a log of Advisory Opinions approved by the Commission to assist the Commission in interpreting these Conflict of Interest provisions.

X.E. 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. STATE IMPLEMENTATION PLAN**

XI.A. 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 person's/people 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. All other requirements of these procedural rules, found in all sections except this Section XI. are reserved to the authority of the State and are not part of the State Implementation Plan.

## **XII. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE**

XII.A. 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. 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 § 25-7-106(3).

#### Findings pursuant to § 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 § 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 § 25-7-110.5 (4). Special procedures for hearings on applications submitted pursuant to § 25-7-105(2). Section V.F.13.a. establishes special procedures for certain applications submitted pursuant to § 25-7-105(2). The purpose of this section is to resolve the conflict between §§ 25-7-110(1) and 25-7-119 for hearing on the petitions described in § 25-7-105(2), and to do so in a manner that provides for efficient and cost-effective hearings.

§ 25-7-105(2) requires the commission to hold hearings pursuant to § 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 § 25-7-105(2) tend to be rulemaking activities of general applicability, but the procedure described in § 25-7-119 is an adjudicatory, rather than rulemaking, process. The adjudicatory aspects of § 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. § 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 § 25-7-110 also applies to the types of actions listed in § 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 § 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 §§ 25-7-110 and 25-7-119.

The activities listed in § 25-7-105(2) are primarily rulemaking actions. Therefore, the Commission will generally follow the rulemaking procedures outlined in § 25-7-110, and will not apply the adjudicatory procedures described in § 25-7-119 unless the petitioner specifically requests a hearing that observes the adjudicatory procedures. This requirement is consistent with the plain language of § 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 § 25-7-110 should apply to actions that are primarily rulemaking in nature; the adjudicatory procedures in § 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. 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.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 Section X.A.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.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. 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. 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. make the Commission's rulemaking procedures more efficient.

At the request of Legislative Legal Services, the Commission repealed the provisions in Section X.C. 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. § 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, § 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. and X.C. 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

§ 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 § 25-7-110.8

The procedural rules are administrative in nature and are exempt from the requirements of § 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. 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, § 24-4-103, C.R.S., and the Colorado Air Pollution Prevention and Control Act, §§ 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

§ 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

§ 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. § 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., 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 § 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 § 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, § 25-7-110.8(1) exempts this rulemaking from the requirements of that section.

#### XII.D. 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 § 25-7-133(7)(d)(VI), C.R.S.

The requirements of § 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. 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 §§ 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 filings 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. Section III.J.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 Section III.J.3. or under the "Good cause" provision of Section III.J.

Specific Statutory Authority

The specific statutory authority for these revisions to the procedural rules derives from the authority granted the AQCC in §§ 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, §§ 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. 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 § 25-7-106(3), C.R.S. to adopt regulations governing procedures before the Commission.

### Findings Pursuant to § 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 § 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 § 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 (AQ SAB), 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.

#### XII.H. Revisions to the Air Quality Control Commission Procedural Rules, Adopted July 15, 2021 (Effective Date January 1, 2022)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the State Administrative Procedure Act, § 24-4-101 *et seq.*, C.R.S. ("APA"), and the Colorado Air Pollution Prevention and Control Act, § 25-7-101 *et seq.*, C.R.S. ("the Act").

##### Basis

The Commission Procedural Rules establish the procedures through which the Commission conducts meetings, rulemakings, and adjudicatory hearings.

##### Statutory Authority

The Commission has the authority to adopt procedural rules, consistent with the APA to govern the procedures before the Commission. § 25-7-106(3), C.R.S. The procedural rules are administrative in nature and are exempt from the requirements of § 25-7-110.8(1), C.R.S.

##### Purpose

The adjudicatory hearings section of the Commission's Procedural Rules had long needed a broad update, as there were outdated and incorrect references, stylistic issues, and other administrative problems that need correction or clarification. Only minor amendments to address narrow issues had been made since the early 2000s. In this hearing, the Commission made changes to the adjudicatory procedures to bring the rules into conformance with current practice as well as to update references and address these administrative corrections and clarifications. The Commission also made improvements to its processes. Further, these revisions will include any typographical, grammatical and formatting errors throughout the regulation.

##### Adjudicatory Procedures

The Commission has, over the past couple decades, held few adjudicatory hearings. The Commission determined it was time to update the adjudicatory hearing procedures based on past experience and to address improvements in similar proceedings before courts that enhance the adjudicatory process, such

as discovery and motions practice. The main areas addressed by these revisions include the scheduling conference, discovery process, and submittal of briefs to the Commission. The majority of the Commission's revisions were to address the difficulty in conducting a comprehensive fact finding process where the hearing must be held within 90 days of the Commission's receipt of the petition for adjudicatory hearing.

#### *Scheduling Conference, Section VI.C.2*

The Commission believes that a scheduling conference soon after the request for adjudicatory hearing is received will facilitate an orderly and transparent process. The revisions require the parties to quickly coordinate on a joint proposed scheduling order to address several issues that will inform the Hearing Officer's order setting timing and limits on the discovery process. The Commission is required to consider the request for adjudicatory hearing at its next meeting following receipt. However, it is not possible to predict when a request for adjudicatory hearing will be submitted in relation to the next Commission meeting; therefore, the rules contemplate that a Hearing Officer will be appointed immediately upon receipt of a request for adjudicatory hearing in order to address these procedural matters.

#### *Discovery Process, Section VI.C.3*

In earlier versions of the adjudicatory procedures rules, parties could not commence discovery until after the Commission had considered the adjudicatory hearing request at its next meeting. This left less than 60 days for the parties to conduct discovery in accordance with the Colorado Rules of Civil Procedure, which are based on a longer timeframe for the discovery process. Therefore, the Commission determined both to allow discovery to commence earlier in the process and to shorten the presumptive timeframes for responding to discovery requests. However, the revisions recognize that if the 90-day hearing timeframe is waived by the party requesting the hearing, the need to commence discovery earlier is abated, and the full discovery timeline will be governed by the Scheduling Order. Further, the Commission maintained the provision that provides that the adjudicatory hearing may proceed even if full discovery is not completed.

The Commission also revised the motions practice for discovery. Instead of parties submitting written motions regarding discovery disputes, the parties are now directed to jointly contact the Hearing Officer and seek a conference (by telephone or other video conference method, at the discretion of the Hearing Officer). These revisions allow prompt resolution of discovery disputes without unnecessary paperwork.

#### *Written Submittals to the Commission*

The revisions streamline the submittals to the Commission. Under these revisions, parties must submit a joint statement of undisputed facts, and submit a list of undisputed exhibits, prior to the prehearing conference. This will enable the Hearing Officer to better understand the disputed issues to be heard at the hearing, and to streamline the package of materials that the Commission will consider.

Under the revisions, the parties also have the opportunity to submit prehearing statements and rebuttal statements. The timing of these statements should be addressed by the Hearing Officer in the Scheduling Order. Under previous rule iterations, the parties also were required to submit proposed findings of fact and conclusions of law. These revisions do not mandate the submittal of that document, but would allow for the Hearing Officer to require it, along with additional briefing on legal issues, in the discretion of the Hearing Officer.

#### *Other Changes*

In Section VI.B.4.c, the Commission established a streamlined process for hearings that involve only questions of law, as opposed to questions of fact. For example, when a request for adjudicatory hearing challenging a unilateral compliance order of the Division raises only the question of the Division's interpretation of a regulation or permit condition. In such cases, the Commission determined that an extensive fact finding process with discovery is unnecessary, and the case should proceed on briefing

alone, as in a court case where there are no disputed issues of material fact. In these situations, the Commission or Hearing Officer, as appropriate, should issue a briefing schedule to allow parties to present their legal arguments to the Commission, and oral argument would be allowed at the adjudicatory hearing itself.

The Commission also clarified the requirements for interested third parties to seek party status. The Commission encourages interested third parties to seek party status prior to the Scheduling Conference and to participate in the consideration of issues pertinent to the Scheduling Order (e.g. discovery timing and limits). However, the Commission recognizes that there may be interested third parties who were not able to have learned about the request for adjudicatory hearing prior to the item being included on a Commission meeting agenda, and so has provided that the Scheduling Order will set the deadline for seeking party status. The Commission does not intend that intervening parties should be able to seek modifications of the Scheduling Order, once issued, absent meeting the requirements of the rules for modifications thereof.

Based on a recent case regarding the effective date of Commission final action in an adjudicatory proceeding, the Commission has revised Sections VI.E.3 and VI.F.1 for consistency with the Court of Appeals decision. These revisions do not change the current practice, but offer more clarity in the regulation consistent with that opinion.

#### XIII.I. Revisions to the Air Quality Control Commission Procedural Rules, Adopted ~~November~~December 22~~18~~, 2024

(Effective Date August 1, 2025)

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the State Administrative Procedure Act, §24-4-101 et seq., C.R.S. ("APA"), the Colorado Air Pollution Prevention and Control Act, §25-7-101 et seq., C.R.S. ("the Act"), and the Air Quality Control Commission's (Commission) Procedural Rules, 5 Code Colo. Reg. §1001-1.

##### Basis

The Commission Procedural Rules establish the procedures through which the Commission conducts meetings, rulemakings, and adjudicatory hearings.

##### Statutory Authority

The Commission has the authority to adopt procedural rules consistent with the APA to govern the procedures before the Commission. § 25-7-106(3), C.R.S. The procedural rules are administrative in nature and are exempt from the requirements of § 25-7-110.8(1), C.R.S.

##### Purpose

The Commission's Procedural Rules have long needed a broad update, as there were outdated and incorrect references, stylistic issues, and other issues that need correction or clarification. Only minor amendments to address narrow issues had been made since the early 2000s. The Commission reorganized the regulation into Parts A and B. Part A contains the Procedural Rules as they existed as of November 22, 2024, except for corrections to typographical errors and moving the Section on "Special Procedures for Particular Hearings" from Section V to Section VI for better organization and readability. Part A and applies to rulemaking and adjudicatory proceedings with a where the petition for rulemaking that happens was filed with the Commission Office before August 1, 2025. Part B contains the revised Procedural Rules that apply to rulemaking proceedings with a for Rulemaking Requests filed where the petition is filed with the Commission Office after August 1, 2025. The Commission directs the Division to propose to repeal Part A in 2026.

The Commission adopted revisions to its Procedural Rules regulation to update obsolete provisions, restructure for better “readability”, and account for modern practices. Additionally, the Commission adopted revisions to its prehearing processes and rulemaking procedures, including changes related to alternate proposals. Importantly, the Commission made changes to improve access to the process for interested members of the public, remove barriers to participation, and improve transparency. A significant goal of the Commission in making these changes is to increase public understanding of, and participation in, rulemaking proceedings. To accomplish this, the rule provides, among other things, that the time for public comment at Commission hearings is 3 minutes per person, unless the number of persons registering to comment is so great as to demand less time; written and oral comments will be accepted at the new Rulemaking Request before the Commission and will become part of the rulemaking record; and all Proponents for a rule – not just the Division - must comply with the Environmental Justice Act outreach requirements. The Commission also altered the prehearing process, including changes related to alternate proposals, as well as the hearing process, revising the order of rebuttal testimony.

~~Additionally, the Commission adopted revisions to its prehearing processes, and rulemaking procedures, including changes related to alternate proposals. Importantly, the Commission made changes to improve access to the process for interested members of the public, remove barriers to participation, and improve transparency. A significant goal of the Commission in making these changes is to increase public understanding of, and participation in, rulemaking proceedings to improve access to the process for interested members of the public and alter the prehearing process, including changes related to alternate proposals.~~

#### Section I - Introduction

The Commission adopted minor revisions to the introductory language for clarity.

#### Section III - Definitions

The Commission adopted minor revisions to existing definitions of “Attorney General”, “Division”, “File or Filed”, “Party” and “Staff” to reflect current Commission practice. The Commission added new definitions for “Administrator/Technical Secretary”, “Person”, “Proponent”, “Redlines” and “Written Testimony”. There is also a potentially impactful revision to ~~The Commission also revised the definition of “Alternate Proposal”.~~

The Commission added a new definition and process for “Redlines” to ~~encourage Parties with diverse ideas to to allow parties more flexibility and opportunity to~~ meaningfully engage with the Proponent. ~~is proposal.~~ The previous practice around Alternate Proposals has been replaced with a more equitable approach. The revised definition of “Alternate Proposal” reflects how this new practice will work. Parties submit Redlines for the Proponent to consider incorporating into the Revised Proposal and Final Rule Text. Redlines that are not incorporated by the Proponent may be taken forward to hearing by an interested Party as an Alternate Proposal ~~upon filing with the Commission just before the hearing.~~ ~~Redlines and Alternate Proposals are still subject to a scope determination by the Commission.~~ Redlines and Alternate Proposals that are outside the scope of rulemaking notice will not move forward to the hearing.

The revised definition of “Alternate Proposal” is intended to clarify that any suggestion by a party that contains new obligations/requirements or materially alters the costs, benefits, emission reductions, or compliance dates will be considered an alternate proposal. A party submitting an alternate proposal is subject to all of the requirements of Section V.C.5.

#### Section IV - Procedures for General Meetings

The Commission adopted revisions to clarify requirements for placing an item on a general meeting agenda. The Commission also clarifies that recordings of meetings will be made available at no cost and transcripts of rulemaking and adjudicatory hearings will be available for a cost. Public participation provisions were updated to reflect current practices. Additional clarifications were made regarding the approval of plans, reports, and SIPs to align with current practices and statutory requirements.

#### *Section V - Procedures for Rulemaking*

The Commission heavily revised Section V, in an attempt to respond to stakeholder and public feedback. Three principles underlie the adopted revisions: (1) increasing accessibility to the rulemaking process and removing barriers to public participation; (2) improving transparency in the rulemaking process; and (3) making sure that every step of the prehearing process adds value for stakeholders, the Division, and the Commission.

In general, rulemakings will occur over a period of four months (from the Rulemaking Request until the start of the rulemaking hearing); however, in some instances, the Commission and Parties may benefit from a longer period to allow for the development of Redlines, sequential filings of Redlines and other briefs, and more time for parties to engage in discussions to narrow issues and find common ground on draft regulatory text. Nothing in these procedural rules is intended to preclude the Commission from exercising its lawful authority to issue a longer schedule, in response to requests from a Petitioner/Proponent or any other interested Party.

There are many issue topics covered in Section V, that will require additional explanation and clarification in guidance. Some parties to the rulemaking advocated for putting needed clarification and expectations in the rule rather than in guidance. The Commission determined that in many cases creating guidance would be more appropriate because any adjustments that may be needed as experience with these new rules is gained can be made more quickly and efficiently through the use of guidance rather than through rulemaking. The Commission expects that any changes to guidance be made only after an opportunity for input from interested stakeholders and the public.

Some parties to the rulemaking advocated for putting needed clarification and expectations in the rule rather than in guidance. The Commission determined that guidance would be more appropriate because of the significant modifications to the rulemaking process that may need to be adjusted as experience is gained, and the ease of making the needed adjustments in the guidance.

Some parties asked the Commission to adopt a requirement that the Commission more thoroughly update the Statement of Basis and Purpose after deliberations, adopted by the Commission with each Rule revision, so that it also reflects an explanation of the Commission's reasoning behind its action, including where the Commission determined not to adopt any revision requested by any Party. The Commission currently reviews all Statement of Basis and Purpose language for deliberations and votes whether to adopt the language and where to update the language. The Statement of Basis and Purpose language summarizes the rule revisions as adopted by the Commission after their consideration of testimony, submissions during the process, public comments, and their discussions and decisions during deliberations. The Commission supports efforts by this Commission and future Commissions to strive to provide a more accessible explanation of reasoning for rule adoption in Statements of Basis and Purpose, in accessible plain language.

The Commission directs Division and Commission staff to update the AQCC Rulemaking Guidebook ("AQCC Guidance") and any necessary Commission Office templates or forms. The Commission directs that the Division and Commission staff take public comment on revised AQCC Guidance beginning no later than by the end of January/February 2025.

The Commission recommends that the revised AQCC Guidance be updated to reflect the revisions as adopted in this action, with the following issues clarified in detail.

- Expectations for ~~petitioners~~Proponents in the pre-petition process. The updated guidance should outline best practices, timelines, when and how draft rulemaking concepts and preliminary rule language should be shared, and expectations for outreach to affected disproportionately impacted communities.
- Discussion of Colorado's Environmental Justice Act to highlight comprehensive outreach efforts.
- Details and best practices for ~~P~~parties submitting ~~r~~Redlines and ~~a~~Alternate ~~p~~Proposals.
- How to access and complete new Commission forms and templates developed for these revisions.
- Expectations for decorum at public hearings.
- Clarifying how Errata may be utilized and ~~that Errata may be~~the process for making substantive changes to the ~~Proponent's~~ final rule proposal. ~~only if all parties and the Division are in agreement of such a change.~~
- Expectations for Written Public Comment including responsibilities of both the Division and Commission in ensuring comments are summarized and receive a response.
- Includes additional details on digital accessibility and accommodation requests.
- The Commission expects the Division and Commission Staff to provide updates to the Commission at its General Meetings on the progress and completion of the AQCC Guidance.

#### Section V.A. How a Rulemaking Proposal is Developed

This section includes new requirements for the pre-petition process with a focus on outreach to all interested persons, persons, and entities that would be affected by the proposed rule, affected disproportionately impacted communities, and any other relevant regulatory entities to ensure timely consideration of alternative viewpoints and thoughtful development of the text of any proposed rule.

There is also a new requirement for a ~~P~~roponent to ~~make a public announcement, using different methods of outreach to publicize~~ that a new rule revision is being contemplated. ~~The announcement~~Proponent must ~~identify multiple ways include avenues~~ for interested persons to engage in the ~~stakeholder~~pre-petition process. Proponents must also publish a summary of rulemaking concepts to further inform the public on the details of the proposal being developed. The summary of concepts must clearly identify the regulations and sections impacted by the proposal. The Commission intends that this document be as detailed as practicable and ~~must may take include the form of~~ preliminary draft rule language. ~~The preliminary draft rule language does not have to be perfect or complete (e.g., placeholders for concepts to be discussed with the public are acceptable).~~ ~~and~~ The Commission understands that any rule language shared is subject to change in the petition package~~t~~.

The Commission also required that the rule proponent, if not the Division, comply with the practices in § 24-4-109(3), C.R.S. in satisfying the requirements of this Section V.A.1.a.

#### Section V.B. How a Rulemaking Proceeding Begins

##### V.B.1. Scheduling a Petition for Consideration

The process for scheduling a rulemaking with the Commission Office remains the same as under the current process. However, the petition pack~~agee~~t deadline of thirty (30) days is intended to be a hard deadline for the majority of rulemaking requests. This deadline has been somewhat fluid under current practice, but having a ~~petition~~ package-V-D-2 available for public inspection weeks before the ~~request for~~

hearing Rulemaking Request is essential to give interested parties persons the opportunity and time to develop alternate proposals Redlines.

#### V.B.2. Contents of a Petition Package

This section has been revised to include a few new items required for the pPetition Ppackage. The proposal retains the requirements for a petition package to include: a cover sheet (Agenda Item Control Sheet), proposed rule language, proposed statement of basis, specific statutory authority, and purpose language, a Memorandum of Notice, an Initial Economic Impact Analysis, statements regarding Federal requirements, and a range of regulatory alternatives.

Petitioners Proponents must now also include a draft statement of rulemaking scope. This statement should be short, written in plain language, and describe the scope of rulemaking (i.e., what are the affected source categories, the regulated pollutant(s) of concern, etc.). Care should be taken in drafting this statement to ensure that the scope is well-defined and the purpose of the proposed rulemaking is clear. The Commission may or may not choose to use this draft statement of rulemaking scope when writing the scope of notice included in the Notice of Proposed Rulemaking. The intent is that the draft scope will help the Commission in finalizing the rulemaking scope, thus making determinations on Redlines alternate proposals the scope of issues a more straightforward process. In determining not to ultimately allow appeals as of right for Hearing Officer determinations on whether a particular set of Redlines is within the scope as set by the Commission, the Commission is relying on this upfront, transparent and explicit process to encourage earlier resolution of questions of scope of the hearing.

Also included in the proposal pPetition pPackage is a new summary for any input received from stakeholders during the pre-petition outreach and engagement. This summary will serve to educate the public, Commission, and potential Pparties on issues and ideas raised before the request packet Ppetition Ppackage was submitted. Concern was raised during the rulemaking that the summary may misstate input or fail to include input. The Commission views the summary as a helpful tool in providing information and understands that the summary may not always accurately reflect all comments. The Commission will provide opportunities for stakeholders and the public during the Rulemaking Request and during the rulemaking hearing process to make comments directly to the Commission.

Parties submitting alternate proposals will not be required to submit a Memorandum of Notice, a range of regulatory alternatives, or a draft statement of rulemaking scope. However, Section V.B.2.j., now includes the requirement for parties submitting alternate proposals to explain their proposal and how it solves problems not addressed by the petitioner's proposal. Additional details and best practices for parties submitting alternate proposals will be addressed in the revised AQCC Guidance.

#### V.B.3. Commission schedule for rulemakings

The adopted revisions do not add any new requirements to current practice. The Commission Office will maintain a long-term schedule for rulemakings and post the schedule on its website. Deviation from the schedule will require a showing of good cause from petitioners Proponents. Under the adopted revisions, the Commission intends that the majority of rulemakings will take place on a four month timeline by default, however, the Commission may set shorter or longer timelines as allowed by the APA.

#### V.B.4. Petitions for a Written Comment Only Rule

The adopted revisions do not add any new requirements to current practice, other than clarifying when the Commission Office notifies all persons on the Commission distribution list if a proposal is substantively revised prior to hearing. The revisions also clarify that written comments are encouraged on the substantive revision-.

#### V.B.5. Exceptions to Petition Requirements:



The adopted revisions do not add any new requirements to current practice, except that the pre-petition process in Section V.A. and the Community Outreach and Engagement summary in Section V.B.2.i. ~~is~~ ~~are~~ also not required for a rulemakings that (1) solely 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.

#### V.B.6. Submission of a Rulemaking Proposal to the Commission

~~The adopted revisions do not add any new requirements to current practice.~~

#### V.B.7. Petition Rulemaking Request

This section describes the petition-Rulemaking Rrequest-hearing process led by the Commission. Notably, the adopted revisions require that the Commission provide opportunity for public comment on the petition package. Commenters are allowed to make comments orally or in writing on any element of the petition package, including the draft statement of scope. The Commission has broad discretion in its decision to set a matter for hearing or not. The Commission may, in its discretion, weigh a number of considerations before setting a hearing date.

Over the years, Division practice had evolved so that it routinely submitted petition packages late with a good cause exception. Under these new rules, the Commission expects that all petition package submissions be filed in a timely manner (i.e. 30 days before the scheduled Rulemaking Request). Late petition packages will only be accepted under rare circumstances with good cause shown.

#### V.B.8. Selecting the Hearing Officer

This section ~~requires~~clarifies that the Commission appoint a Hearing eOfficer from amongst the Commissioners be appointed when the Commission sets the rulemaking for hearing for a successful petitionRulemaking Request. ~~The adopted revisions do not add any new requirements to current practice.~~

#### V.B.9. Publishing the Notice of Proposed Rulemaking

The Commission adopted revisions to require that the Commission publish a formal notice of proposed rulemaking in the Colorado Register no less than sixty (60) days before the hearing, as required by statute. The notice of proposed rulemaking will detail all prehearing filing deadlines.

#### V.B.10. Amended Rulemaking Notices

~~The adopted revisions do not add any new requirements to current practice.~~

#### V.B.11. Rescheduling and Continuing Hearings:

~~The adopted revisions do not add any new requirements to current practice.~~

### Section V.C. Participation in Rulemaking

#### V.C.1. and V.C.2.

~~The adopted language includes minor changes but does not add any new requirements to current practice.~~

#### V.C.3. Parties to Rulemaking

The Commission clarified that party status is required to submit ~~an alternate proposal~~Redlines, file initial eComments, Position Statements, or testify at the rulemaking hearing. ~~Petitioners~~Proponents (typically

the Division) will be granted automatic party status, except the Division, which serves as staff to the Commission. Requests for party status will be made via a form that will be accessible on the Commission website. Details of the party status request form will be covered in the revised AQCC Guidance. The Commission included a requirement that potential Parties make a statement of how that person participated in the pre-petition stakeholder outreach process. This statement will be used for informational purposes only so that the Commission and Division can assess the effectiveness of their stockholding stakeholder practices. While engagement in the pre-petition engagement process is critical for interested stakeholders to meaningfully influence a Proponent's petition package, the Commission understands that stakeholders may not always have the resources or expertise to attend these meetings.

Parties will have the right to make an individual presentation either orally or in writing, or both, during that part of the rulemaking hearing scheduled for Party presentations. Parties also have the right to make motions, respond to motions and make objections, and to cross-examine witnesses.

In line with past practice, late party status will only be granted with good cause shown. Those seeking party status after the deadline for Revised Proposals and Response to Initial Comments (see Section V.D.2.) will generally be denied. Parties may lose party status if they fail to comply with the prehearing procedures and orders, at the discretion of the Hearing Officer.

#### V.C.4. Non-Parties to a Rulemaking

In line with past practice, party status is not the only way to engage in the rulemaking process. The revised language allows for persons or entities to make their views known to the Commission either orally or with written comment. The Commission will host public comment before any hearing and written comments will be accepted up to the day of the hearing. However, the Commission recommends that non-parties submit written comments fourteen (14) days before a hearing to give Commissioners adequate time to review those comments.

#### V.C.5. Alternate Proposals

The Commission adopted revisions concerning the submission, revision, and review of Alternate Proposals. Alternate proposals may be submitted by the Division or any Parties to the rulemaking. Alternate proposals must be submitted within twenty-one (21) days after petition request hearing. Late submissions will only be accepted with good cause, at the discretion of the Hearing Officer. The timeline for submission of alternate proposals appears to be very short on a surface level reading of the proposed language; however, taking into account that the Petition Package will be available thirty (30) days before the request hearing date, parties will have fifty-one (51) days to develop and submit an alternate proposal.

Alternate proposals will only be considered by the Commission if they are filed on time, are a "logical extension or outgrowth" of the initial proposal, are within the scope of notice, adequately supported by submitted information, and part of a complete submission as described in the proposed Procedural Rules language.

One of the elements of a complete submission is an Initial Economic Impact Analysis ("EIA"). Under current practice, alternate proposals must be submitted with a final EIA, with no process spelled out on how to update or improve that EIA. The Commission adopted a process that allows parties submitting alternate proposals to improve their EIA and proposals through the prehearing process. The Initial EIA may also rely on the original proponents' EIA submitted in the petition package so long as they take into account any differences between the two EIAs.

#### V.C.6. Responses to Alternate Proposals

The Commission adopted revisions that allow interested Persons to respond to Alternate Proposals, either in support of or opposition to a proposal. The Commission will set up a form for interested persons

to fill out, available on its website. Responses are due five (5) days after the deadline for submission of Alternate Proposals.

#### V.C.7. Determinations on Alternate Proposals

The Hearing Officer will have up to fourteen (14) days after the alternate proposal submission deadline to make a determination on each alternate proposal submitted. The Hearing Officer will apply the criteria listed in Section V.C.6. to ensure that only alternate proposals satisfying all requirements will move on to be considered by the Commission at the rulemaking hearing. The Hearing Officer may refer determinations to the entire Commission based on received responses to Alternate Proposals. If a determination on an Alternate Proposal is referred to the full Commission, the Commission will make that determination at its next scheduled meeting or at its earliest opportunity. The criteria in Section V.C.6. along with the scope of notice previously approved by the entire Commission is intended to make determination a rote decision.

If an Alternate Proposal is determined to be outside the scope of rulemaking, the Person(s) who submitted the rejected proposal can submit a petition for rulemaking so long as the Procedural Rules are followed.

#### V.D. How a Proposed Rule is Developed through the Prehearing Process

This section has been reworked so that subsections occur sequentially in order of events through the prehearing process.

##### V.D.1. Initial Comments on Rule Proposal and Submission of Redlines and/or Alternate Proposals

The Commission adopted a new filing intended to allow for a conversation between the pProponent of the rule and any Alternate Proposal and the pParties. Instead of cross-filing prehearing statements, the sequential nature of these filings allows the pParties to engage in a back-and-forth to identify and, potentially, resolve issues before the hearing. By separating substantive comments on the rule from the more formal requirements of the position statement, the pParties should be able to focus more squarely on resolving issues relating to the rule itself. A template for initial comments will be made available on the Commission website.; However, Initial comments may take the form of redlines so long as they do not qualify as alternate proposals as defined in Section III.E. Substantive changes to the proposal that are raised by Parties in Initial Comments must be accompanied by a Redlines.

In order to avoid creating another barrier to participation, the Initial Comments are not mandatory, except to the extent they could preclude a Party from raising an issue at the hearing that could have first been raised in an Initial Comment. Initial Comments are mandatory for all Parties. This is intended to encourage pParties to meaningfully engage during the prehearing process to resolve issues and narrow the scope of the hearing. However, the Procedural Rules do not limit the ability of Parties to address issues that arise from subsequent revisions to a proposal or Alternate Proposal. Parties can also respond to issues raised by another Party. For example, a Party who wishes to revise a monitoring frequency or applicability threshold must file a Redlines imposingproposing their desired frequency or threshold, rather than filing a separate document describing the requested revision. This process will allow the Commission and all Parties to review and respond to specific proposals.

Any Redlines submitted by Parties must be accompanied by economic impact information in accordance with C.R.S. § 25-7-110.5(4) if there are costs and/or benefits not accounted for in, or meaningfully different from, by the Proponent's Initial EIA. The Commission only adopts rules that are well supported by the rulemaking record. It is the duty of the Parties to ensure that the Commission has enough data and information to adopt any suggested revision in their Redlines. The Commission may refuse to adopt any and all proposed revisions contained in Redlines due to inadequate economic impact analyses.

The Commission also adopted deadline provisions for Redlines and Initial Comments that make it possible for Redlines to be required before Initial Comments. The Commission intends that these two deadlines will be identical for rulemakings on a four-month timeline. In instances where the Commission sets a longer timeline, the Commission may allow for submission of Redlines before Initial Comments. If the Commission decides to decouple the deadlines for a rulemaking, the Commission Office will ensure that the timeframe from the Rulemaking Request and the due date for Redlines is not compressed compared to the presumptive timeline.

#### *V.D.2. Scope of Issues*

The rule provides that the Hearing Officer is to make the determination whether submitted Redlines opposed by any Party will be considered by the Commission or will be rejected as not consistent with the scope of the hearing. All parties to the Hearing, except for the Division, urged the Commission to allow for an appeal as of right, of the Hearing Officer's determination to the full Commission. While it is not unusual for all the parties and the Division to agree on proposed rule language presented to the Commission, it is not common for all parties to agree to language that the Division does not support. The Commission recognizes and appreciates the significant work of the Parties to come to an agreement regarding their proposal. The Commission as a whole decided, as a policy matter, to adopt the Division's proposal that the Hearing Officer's determination regarding challenges to a Party's Redline would not be appealable to the full Commission. This decision is based upon the experience with the role and decisions of Hearing Officers in prior rulemakings, the new process that establishes a more detailed and complete description of the scope of a rulemaking, the need to conduct rulemaking hearings efficiently and in keeping with the Commission's full rulemaking calendar, and the ability of the Hearing Officer to refer the determination to the full Commission.

Hearing Officers are responsible for overseeing and directing the rulemaking process before and during the rulemaking hearing. Because of this responsibility, Hearing Officers will often have a greater understanding of the issues and positions of the Parties earlier in the process than the other Commissioners. Before making any procedural decision, Hearing Officers routinely will confer with the Commission's attorney and staff. Recognizing the responsibility of the Hearing Officer, and early depth of knowledge, the full Commission regularly defers to the Hearing Officer's procedural determinations. Parties asserted that an appeal of a Hearing Officer's determination would be rare. The Commission believes that overturning a Hearing Officer's scoping determination would be even more uncommon. This is especially true given the scoping details this new rule requires. Such required detail is intended to give potential Parties and the public a clearer understanding of both the breadth and limits of the subject matter of the proposed rule. A better-defined scope will make it easier for Parties, as well as the Hearing Officer, to determine what Redlines would be considered to be in scope. This also makes the hearing process more efficient. Seeking an appeal before the full Commission would delay the already lengthy rulemaking process, and potentially delay other rulemakings and other matters previously scheduled before the Commission. And, the rule allows the Hearing Officer to refer decisions whether a Redline is or is not consistent with the rulemaking scope based upon opposition to the Redline to the full Commission. For these reasons, without limitation, the Commission declined to adopt the Parties' proposal.

The Hearing Officer will have up to fourteen (14) days after the Initial Comments submission deadline to make a determination on whether Redlines that were opposed by any Party will be considered by the Commission as part of the noticed rulemaking process. Issues raised by Parties based on the scope of rulemaking notice. Redlines that are not opposed by any Party are considered to be accepted by the Hearing Officer based on scope and issues deemed to be within the scope of rulemaking notice will move through the rulemaking process and on to be considered by the Commission at the rulemaking hearing. Parties will have an opportunity to oppose issues raised in another Party's Initial Comments and Redlines based on scope. ~~five~~ seven (75) days after the submission deadline. The Hearing Officer may refer determinations to the entire Commission based on opposition from other Parties. If a determination on the scope of issues is referred to the full Commission, the Commission will make that determination at its next scheduled meeting or at its earliest opportunity. The scope of notice previously approved by the entire

Commission is intended to provide strong guidance to the hearing officer, limiting the amount of discretion involved in this decision.

If specific issues are determined to be outside the scope of rulemaking, the PersonParty(s) who submitted the rejected proposalRedlines can submit a Rulemaking Requestpetition package at a different time so long as the Procedural Rules are followed.

#### V.D.23. Revised Proposal and Response to Initial Comments

The Commission adopted a new filing intended to continue the conversation started by the Parties' filing of Initial Comments. This new filing gives the Proponent of a proposed rule or an Alternate Proposal a chance to meaningfully engage with the comments provided by Parties and, potentially, to revise their proposal to address those concerns. A Revised Proposal or Revised Alternate Proposal will consist of a redlinerule text in tracked changes of the existing regulationinitial proposal, if necessary, a redline of the initial proposal or initial alternate proposal, and a summary of the changes made to the initial proposal and initial alternate proposal.

#### V.D.34. Informal Discussions Regarding Proposed Rule and Alternate Proposals

This updated process is intended to replace current practice of informal discussions leading up to the hearing. By specifically identifying the ability to engage in direct, informal discussions in the rules, this provision improves transparency and accessibility for purposes of the rulemaking process. Also, by avoiding late, substantive changes on the eve of the hearing, this section is intended to minimize the possibility of substantive changes that could undermine the validity or applicability of the various required analyses (e.g., Final EIA, Regulatory Analysis, and Cost Benefit Analysis).

#### V.D.5. Position Statements

The Commission adopted requirements for Position Statements to replace rebuttal statements as they exist in current practice. Instead of requiring the parties to engage with each other, Position Statements only require the parties to provide information for the benefit of the Hearing Officer as the Hearing Officer prepares the Prehearing Order. This revised process should help make the filings more useful for the Hearing Office and Commission as they attempt to prepare the rule proposal for a hearing and identify the issues in dispute.

entify the issues in dispute.

These Position Statements will include the following: a brief description of the issues remaining to be considered by the Commission at the hearing, a description of the specific relief sought from the Commission, a list of any pending motions, a list of witnesses a Party intends to call at the hearing, a list of exhibits and written testimony to be provided at the hearing, and a request for the amount of time a Party would like for its testimony at the hearing. Parties must note where they intend to pool time with other Parties.

Parties may submit Redlines with Position Statements to make suggested revisions to the revised proposal so long as the Redlines fit within the published scope of rulemaking notice. Redlines submitted at this point mustshould only address issues raised in Initial Comments or in response to the revised proposal. Position Statements and associated Redlines must not raise wholly new issues. Again, any Redlines submitted by Parties must be accompanied by economic impact information in accordance with C.R.S. § 25-7-110.5(4) if there are costs and benefits not accounted for by the Proponent's Initial EIA. Parties that need Division assistance to prepare Final EIA information, must contact the Division at least 30 days before the Position Statement deadline.

#### V.D.56 and 8. Submission of Final Proposed Rule and Alternate Proposals

The Commission adopted a requirement for final rule text for the Proponent's proposal and any Alternate Proposals to be submitted at least ten (10) working days before the hearing (if there is no prehearing conference) to provide clarity on what proposed rule revisions are before the Commission at the hearing. By finalizing the proposed rule text earlier/later in the process, it allows the Division and/or the Proponent to prepare the required economic analyses and limits the possibility that the analyses could be undermined by substantive changes to the proposed rule between the time when those analyses are prepared and when the rule is presented to the Commission.

Any Redlines that have not been incorporated into the Proponent's final rule text become an Alternate Proposal. The Commission adopted a provision to allow Parties to submit written documentation of the remaining Alternate Proposals after the Final Proposed Rule is filed by the Proponent. The Final Party Redlines/Alternate Proposal - which provides the Commission notice of which Redlines sought by a Party were not accepted by the Proponent - should be based off of the Proponent's Final Rule Proposal. For purposes of the Alternate Proposal, Parties may submit partial Redlines. For example, if a Final Proposed Rule is 90 pages, and the Party has only remaining Redlines addressing two subsections of the rule, the Party may submit partial Redlines that reflect only those changes to those two subsections. The EIA requirements contained in Section V.D.1.b. and V.D.5.b. continue to apply to any Alternate Proposals submitted by Parties. *V.D.67- Technical Support Documents*

The adopted revisions do not add any new requirements to current practice for submission of technical documents that support a SIP submittal.

#### *V.D.8—Alternate Proposals*

Any Redlines that have not been incorporated into the Proponent's final rule text may become an Alternate Proposal. Parties with Alternate Proposals will have the opportunity to address the issues raised by their proposal at the hearing during their testimony. Parties may also address issues with another Party's Alternate Proposal at the hearing. Alternate Proposals may also include new issues where the issue that did not exist until the Proponent's final rule text was submitted (e.g., a revision newly included in the final rule text has a legal, technical, or policy issue that the Party wants to address).

#### *V.D.9. Consensus Alternate Proposals*

The proposed language clarifies that if all Parties and the Division reach consensus agreement on a substantive change after the final rule language has been submitted, then the Division may submit a consensus alternate proposal to be considered by the Commission at the hearing. This caveat allows for the necessary flexibility that will allow Parties to narrow the issues before the Commission at hearing. Any rule change that will result in changes to the costs and benefits of the proposed rule will also need to be accompanied by a revised EIA, if not already covered by the Final EIA.

#### *V.D.10. Errata*

The proposed language clarifies that errata should not be used to make substantive changes to the proposed rule text. However, if all parties and the Division reach consensus agreement on a substantive change after the final rule language has been submitted, then the Proponent may submit an errata to be considered by the Commission at the hearing. This caveat allows for the necessary flexibility that will allow parties to narrow the issues before the Commission at hearing.

#### *V.E. How a Proposed Rule is Prepared for Hearing*

##### *V.E.1 Motions*

The motions practice remains largely unchanged in the proposed revisions, except that motions that are filed and served within fourteen (14) days of the hearing date will be accepted only with good cause shown.

#### V.E.2. Final Economic Impact Analyses

The Commission adopted revisions specifying that final EIAs are now due on the dates specified in the Colorado Statutes to allow the pProponent and pParties submitting Redlines ~~alternate proposals~~ time to update the analysis based on revisions made throughout the prehearing process. The revisions also clarify that EIAs for Redlines ~~and~~ Alternate Proposals may evaluate the incremental impact over that already estimated for the Proponent's original ~~petition~~ proposal. This clarification is intended to lower the burden involved in preparing an EIA for Parties submitting Redlines ~~proponents of Alternate Proposals~~ and should improve accessibility.

#### V.E.3. Prehearing Conference

The Commission adopted revisions making Prehearing Conferences optional. Prehearing Conferences will only be conducted by the Hearing Officer when doing so will help prepare the proposed rule for hearing. The Commission intends that participation is not absolutely mandatory for these conferences but it is a prerequisite for any Party who intends to participate at the hearing. Prehearing conferences will require seven (7) days' notice and can be held up to ten (10) days before the hearing.

#### V.E.4. Cost-Benefit Analysis

The adopted revisions do not add any new requirements to current practice. If properly requested, a Cost-Benefit Analysis is required in accordance with § 24-4-103(2.5)(a), C.R.S.

#### V.E.5. Regulatory Analysis

The adopted revisions do not add any new requirements to current practice. If properly requested, a Regulatory Analysis is required in accordance with § 24-4-103(4.5), C.R.S.

#### V.E.6. Prehearing Orders

The adopted revisions do not add any new requirements to current practice.

#### V.F. How a Hearing is Conducted

##### V.F.1. Decorum

The adopted revisions do not add any new requirements to current practice but are included to aid in transparency. The adopted revisions are intended to clarify expectations for proceedings before the Commission.

##### V.F.2. Commencing the Hearing

The adopted revisions do not add any new requirements to current practice but are included to aid in transparency.

##### V.F.3. Order of Presentation

The Commission adopted revisions to clarify that Parties that have submitted ~~successful~~ alternate proposals will present testimony after the Proponent of the original proposal (and after the Division, if the Division is not the Proponent). The order of rebuttal testimony is set by the Hearing Officer, ~~but typically the Division will go last.~~ The Proponent of the rule (and the Division, if not the Proponent) will go first in rebuttal testimony.

~~Surrebuttal testimony.~~ Surrebuttal testimony will be provided by only the Division and the Proponent, even if the Division is not the Proponent of the rule. The Division will always go last in surrebuttal even if not

the Proponent. The Division has a unique role at the hearing because it serves as Commission Staff and is the implementing agency for any rule adopted by the Commission. The Commission also often has the most questions for the Division based upon testimony from other Parties. For these reasons, the Hearing Officer will usually order the Division will be the Party allowed to provide surrebuttal testimony to go last will typically be granted an opportunity to address any rebuttal testimony from Parties, and may allow for surrebuttal testimony from a Proponent that is not the Division. In such cases allowing surrebuttal testimony, it is expected that Proponent will present first during rebuttal testimony.

#### V.F.4. — Objections and Cross-examination

The adopted revisions do not add any new requirements to current practice but are included to aid in transparency.

#### V.F.5. — Deliberations

The adopted revisions do not add any new requirements to current practice but are included to aid in transparency.

#### V.F.6. Contents of Rulemaking Record

The Commission adopted a new section for transparency and to clarify all of the elements that constitute the rulemaking record. Importantly, Commissioner deliberations are now part of the record for purposes of judicial review as provided for in § 24-4-106(6), C.R.S.

#### V.F.7. — Closing the Record

The adopted revisions do not add any new requirements to current practice but are included to aid in transparency.

#### V.F.8. — Other Authority

The adopted revisions do not add any new requirements but have been slightly amended for clarity.

#### V.F.9. Final Action

The adopted revisions are intended to bring clarity to the Preliminary Final Adoption process. In recent years, the Commission has utilized this process to make the final hearing day more efficient and effective. However, many stakeholders have voiced concerns that it is often unclear exactly what the Commission actually adopted because the final rule text is not presented at the hearing. These revisions are intended to avoid re-drafting of language by the Commission on the fly. If significant changes are agreed upon by Commissioners, the Commission can more deliberately approach those changes and provide parties with an opportunity for limited review and comment to avoid any unintended consequences.

#### V.G. — How a Final Rule Becomes a Regulation

The adopted revisions do not add any new requirements to current practice but are included to aid in transparency.

#### V.H. — Special Rulemaking Proceedings

All provisions relating to temporary or emergency rules are gathered in one place to avoid any potential for confusion regarding the requirements particular to these proceedings. These are largely the same as what is in previous versions of the Procedural Rules.

#### Section VI.I – Special Procedures for Particular Hearings



Certain procedures for non-routine types of hearings have been moved from Section V to Section VI for better organization and readability. The Commission instructs Commission Staff to review these provisions and evaluate them against the referenced statutes to identify any potential inconsistencies, and to report back to the Commission at a later date. The remaining sections relating to special hearing procedures were removed from the rules because the procedures applicable to those hearings are adequately described in statute.

*Section VII.D. Public Comment Hearing Procedures*

The Commission adopted revisions to clarify the process for operating permit applications. Operating permits are administered under a federal program authorized by the federal Clean Air Act. Colorado's program is authorized by state law and permission from the United States Environmental Protection Agency. While the Division is responsible for administering all operating permit applications, EPA is responsible for reviewing any permit decisions before they are final. Currently, the Commission's rules can be interpreted to be inconsistent with that process. The Commission is clarifying that no operating permit decision will be issued until the public comment period closes, the Division has responded to those any comments, and EPA has reviewed the permit decision. The Commission also clarified that the Division will make responses to comments publicly available after transmittal of a Title V permit to EPA, including responses to comments provided by the permit applicant.

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**Editor's Notes**