

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Air Quality Control Commission

PROCEDURAL RULES

5 CCR 1001-1

1.0.0 PROCEDURAL RULES

1.1.0 INTRODUCTION

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

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

The Commission also listens to appeals from the regulated community and the general public regarding the actions of the Air Pollution Control Division. The 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 Commission is composed of nine citizen members appointed by the Governor and confirmed by the Colorado State Senate. They reflect a wide variety of professional backgrounds and individual interests. Colorado has chosen the citizen board approach to developing and overseeing the implementation of its air quality management program as a means to help keep regulatory agencies 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 intends to minimize trial type activities and promote policy discussion that is well supported by technical and scientific data. In adjudicatory proceedings the Commission intends to enforce its rules and regulations as uniformly and equitably as possible while ensuring that the goals of the air quality program it has adopted are not compromised.

Accordingly, these procedural rules are intended to promote, rather than obstruct, 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 are attempting to assist their fellow citizens in reaching decisions that may have significant social and economic impacts in the state. The Commission welcomes and appreciates all participation in its decision-making process.

1.2.0 SCOPE, PURPOSE, AND AUTHORITY

- 1.2.1 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).
- 1.2.2 These regulations shall govern all procedures and hearings before the Colorado Air Quality Control Commission (the Commission); where specifically stated, they shall also govern certain procedures and hearings before the Air Pollution Control Division within the Colorado Department of Public Health and Environment.
- 1.2.3 These regulations do not apply to interpretive rules or general statements of policy issued by the Commission that are not intended to be binding.
- 1.2.4 Except when necessary to comply with applicable statutes or to provide due process, the requirements of these procedural regulations may be waived by the Commission whenever it is determined that strict adherence to the rules is not in the best interest of fairness, impartiality, or an efficient proceeding before the Commission. Failure of a party to any proceedings before the Commission, to raise during the proceeding, an objection regarding lack of compliance with any procedural requirements within these regulations constitutes a waiver of that issue by the party for the purpose of judicial review.
- 1.2.5 In the event of a conflict between these regulations and the APA or the Act, the statutes prevail. Where a conflict between the APA and the Act arises, and the Act is more specific, the Act takes precedence.
- 1.2.6 The records of the Commission are open to the public for inspection during normal business hours unless confidential treatment of specified records is required under provision of law.

1.3.0 DEFINITIONS

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

- 1.3.1 Act: The Colorado Air Pollution Prevention and Control Act, § 25-7-101 et seq., C.R.S.
- 1.3.2 Adjudicatory Proceeding: Adjudicatory proceedings include notice and hearing activities which are required by law in order to determine past and future rights and obligations of individual persons or sources, e.g., appeal of permit terms and conditions, declaratory order proceedings, or appeal of enforcement actions. Adjudicatory proceedings typically occur during the Commission's general meetings and are governed by the procedures in Section 1.6.0 of these regulations.
- 1.3.3 Alternate Proposal: Any new substantive proposed rule text offered for the Commission's consideration and approval, including wholly new regulation text, or amendments or revisions to already proposed regulation text. For purposes of Sections 1.5.5(5)(c)(ix), 1.5.5(6), and 1.5.5(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.
- 1.3.4 APA, or Administrative Procedures Act: § 24-4-101 et seq., C.R.S.
- 1.3.5 Commission: The Colorado Air Quality Control Commission created in § 25-7-104, C.R.S. The Commission's address is:

Colorado Air Quality Control Commission

Colorado Department of Public Health and Environment

4300 Cherry Creek Drive South

Denver, Colorado 80246-1530

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

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

1.3.8 File or Filed:

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

1.3.8(2) Electronic Mail

1.3.8(2)(a) Service by electronic mail shall be complete when the Office of the Air Quality Control Commission receives an electronic mail containing an attached, signed version of the document to be filed, and a message is transmitted back to the sender from the Office of the Air Quality Control Commission, confirming the filing was received. 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 provided by the Commission. If the document is too large to transmit by electronic mail, the filer shall serve the document(s) on a CD or disc or other electronic means by mailing or hand delivering 15 copies of the electronic version to the Office of the Air Quality Control Commission.

1.3.8(2)(b) Subject to the size limitation established in 1.3.8(2)(a), or otherwise for good cause shown, all filings for rulemakings and adjudications under Procedural Rules 1.5 and 1.6. shall be made by electronic mail.

1.3.8(3) Exception to Electronic Filing

Any person may petition the Commission to file documents in paper copy format if they are unable for any reason to not comply with the requirements of 1.3.8(2). An original and a specified number of paper copies must be filed in the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246.

1.3.9 Good Cause: Means a rational explanation justifying why a requirement in these procedural rules was not met or need not be complied with in the particular circumstance.

- 1.3.10 Party: Any person, entity, or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in any Commission proceedings subject to these regulations. Parties generally are allowed to make individual presentations to the Commission at hearing and to cross-examine witnesses (see, Section 1.5.5(2) of these regulations [regarding parties to rulemaking proceedings]). The Division and any person subject to an order or decision of the Division are parties to an adjudicatory proceeding (see, Section 1.6.2(4) of these regulations [regarding parties to adjudicatory proceedings]).
- 1.3.11 Publication: Publication in the Colorado Register or Colorado Code of Regulations, as appropriate.
- 1.3.12 Rule or Regulation: As used in these procedural rules include proposed revisions or amendments to existing regulations, alternate proposals, or wholly new regulation text.
- 1.3.13 Rulemaking Proceeding: Rulemaking proceedings are the notice and hearing activities required by law for the Commission to adopt regulations, as authorized by the Act or other specific authority, that are of general applicability and future effect implementing, interpreting, or declaring law or policy, which are intended to be binding, e.g., emissions control regulations, operating permit regulations, or inspection and maintenance requirements. They include adoption of whole generic regulations, or deletion of, or revisions or modifications to, existing regulations of the Commission. Rulemaking proceedings typically occur during the Commission's general meetings and are governed by the procedures in Section 1.5.0 of these regulations.
- 1.3.14 SIP: State Implementation Plan for ambient air quality standards required under 42 U.S.C. Section 7410. This instrument generally consists of enforceable regulations, plans, and support documentation, and is submitted to the U.S. Environmental Protection Agency for review and approval (see e.g., 40 C.F.R. Part 52, Subpart G [Colorado]).
- 1.3.15 Staff: Means the Technical Secretary under all circumstances, and the Division at the request of the Commission or the Technical Secretary.
- 1.3.16 Technical Secretary: The person employed by the Commission pursuant to § 25-7-105(3), C.R.S. The Technical Secretary can be reached at the Office of the Air Quality Control Commission, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

1.4.0 PROCEDURES FOR GENERAL MEETINGS

1.4.1 General Meetings:

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

1.4.2 Frequency:

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

1.4.3 Notice and Agenda:

Any person seeking to place an item on the Commission's agenda must file the relevant materials in the Office of the Air Quality Control Commission thirty days prior to the general meeting during which that person desires the matter to be addressed. Materials filed less than thirty days in advance will generally result in the matter being placed on the agenda for the following month's general meeting, unless the Commission or the chairperson determines for good cause shown that the matter should be addressed at that month's general

meeting (which would include adjudicatory hearings, appeals, and certain regulatory matters where the Commission is to hold a hearing within a certain period of time of receiving a request for hearing). Amendments to the agenda may be made at any time.

1.4.4 Conduct of General Meetings:

Six Commissioners shall constitute a quorum, and at least five Commissioners must vote in favor of a motion on a matter within the powers and duties of the Commission for that motion to pass. The chairperson, or presiding Commissioner will conduct general meetings if the chairperson is absent. General meetings may proceed under Robert's Rules of Order, although the Commission typically acts on a more informal basis. Specific procedures for rulemaking proceedings and adjudicatory proceedings will be governed by the procedures set forth in Sections 1.5.0 and 1.6.0, below.

1.4.5 Planning:

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

1.4.6 Recording Proceedings:

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

1.4.7 Minutes:

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

1.4.8 Public Participation Encouraged:

All general meetings are open to the public. The Commission strongly encourages public participation. The chairperson or presiding Commissioner will provide an opportunity at each general meeting for the Commission to accept public comments, and the public may be allowed to participate at other appropriate times during the general meeting in the discretion of the chairperson or presiding Commissioner. Public participation and comment may be reasonably limited as the chairperson or presiding Commissioner deems necessary.

1.4.9 Executive Session:

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

1.4.10 Informal Hearings:

Informal hearings are held in the discretion of the Commission to gather information or receive comment on a matter under preliminary consideration by the Commission or staff. They are typically held during the Commission's general meetings. Informal hearings generally do not require compliance with the APA and are therefore conducted as deemed appropriate by the Commission. Matters considered at informal hearings do not have binding regulatory or adjudicatory effect. See, Section 1.5.2(2)(a) of these regulations (regarding informal hearings for development of a proposed rule).

1.4.11 Statements of Policy and Interpretive Rules:

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

1.4.12 Approval of Plans, Reports and SIPs:

The Commission periodically takes formal action on plans, reports, or SIPs, which in many cases does not involve rulemaking. The actions may vary from review and approval of reports to the state legislature, to formal promulgation of SIPs or approval of SIP reports. When the approval of regulations or revisions to regulations is involved, the Commission will follow the procedures provided in Section 1.5.0 with respect to the rulemaking elements. With respect to any non-regulatory action or elements, the Commission intends to follow the general structure of the procedures in Section 1.5.0; to the extent such procedures are appropriate; this, however, shall not be construed to require the Commission to follow such procedures in any action that does not include rulemaking. The Commission intends where necessary to explain in its notice for any such actions the specific requirements for participation applicable to parties and the Division, and to the public where appropriate, and the Prehearing Conference Officer may also provide additional direction by order specifying other procedural requirements prior to the hearing.

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

1.4.13 Review of conformity determinations

- 1.4.13(1) The Commission shall hold at least one public meeting to review each non-routine conformity determination-determinations on a transportation plan or transportation improvement program. In general, the Division will determine whether a Conformity Determination is routine per the definition in AQCC Regulation Number 10, Criteria for Analysis of Transportation Conformity. Such requirement for a public meeting shall also apply 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.
- 1.4.13(2) The Commission shall provide written notice of the public meeting to the persons on the Commission mailing list maintained by the Technical Secretary. Such notice shall be mailed at least thirty days prior to the public meeting.
- 1.4.13(3) The entity making the conformity determination shall file the following documents with the Commission at least thirty days prior to the public meeting.
 - 1.4.13(3)(a) Twenty copies of a statement summarizing the conformity finding and the key assumptions supporting the finding, and any technical support documentation.
 - 1.4.13(3)(b) One copy each of the relevant Transportation Plan and Transportation Improvement Program. ~~of the technical support documentation.~~
- 1.4.13(4) At least fourteen days prior to the public meeting, the Division shall provide each Commissioner with a copy of its written comments, if any, on the conformity determination.

This provision shall not be construed to preclude the Division from making additional comments on the conformity determination at the public meeting.

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

1.4.13(6) Final adoption of the conformity determination by the board or commission with final authority to adopt the conformity determination is not required 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 shall 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.

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

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

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

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

1.5.0 PROCEDURES FOR RULEMAKING

1.5.1 How a rulemaking proceeding begins

1.5.1(1) Commencement of rulemaking:

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

1.5.1(2) Members of the public and petitions for rulemaking:

Any member of the public shall have the right to petition the Commission in writing for the issuance, amendment, or repeal of a rule. Such petition shall be open to public inspection and must fulfill the requirements of Section 1.5.3 of this regulation, including those related to timing. Except as provided in Section 1.5.6(14), action on such petition shall be within the discretion of the Commission; but, when the Commission undertakes rulemaking on any matter, all related petitions for the issuance,

amendment or repeal of rules on such matter shall be considered and acted upon in the same proceeding.

1.5.1(3) Commission schedule for rulemakings:

For efficiency, the Commission intends to hear petitions for amendments to any one of its regulations according to the long-term schedule for regulatory actions and State Implementation Plan actions, maintained by the Technical Secretary. If a petitioner intends to deviate from the long-term schedule of the Commission, the petitioner should demonstrate good cause for such deviation.

1.5.2 Development of proposals for rules or revisions:

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

1.5.2(1) By members of the public:

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

1.5.2(2) By the Commission or staff

1.5.2(2)(a) Informal hearings:

Whenever the Commission contemplates rulemaking, public announcement of any informal pre-rulemaking proceedings, e.g., an informal hearing may be made at such time and in such manner as the Commission or staff determines, and opportunity will be afforded the public 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 1.4.10, above. Whenever time and resources permit, it is the intention of the Commission to provide for and encourage informal comment and discussion regarding potential rulemaking issues prior to commencement of the formal rulemaking process.

1.5.2(2)(b) Workgroups:

A workgroup may be convened by staff at the direction of the Commission. Commissioners generally do not participate in workgroups. Public announcement of any workgroup will be provided as deemed appropriate by the Commission or those persons participating in the workgroup. At the end of any workgroup, any person, including the Division as staff, may proceed with formal action before the Commission. In the discretion of the Commission, staff may provide periodic reports to the Commission on the status of the workgroup during the Commission's general meetings. It is the desire of the Commission that a workgroup will

result in a consensus proposal, or at least bring focus to a core proposal and what alternate proposals might be submitted as a result of the workgroup.

1.5.2(2)(c) Subcommittees:

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

1.5.2(2)(d) Staff:

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

1.5.3 Petitions for rulemaking

1.5.3(1) General:

Petitions for rulemaking shall be open to public inspection and must fulfill the requirements of this Section 1.5.3 of the regulation.

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

1.5.3(2) Timing:

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

exception of the provisions of Subsection 1.3.8(3) must also be delivered by that time to the Assistant Attorney General representing the Commission, 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.

1.5.3(3) Content of a standard petition:

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

1.5.3(3)(a) Petition document:

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

1.5.3(3)(b) Proposed regulation text:

The language of the proposed regulation or amendment to existing Commission regulation must be included in a form that the Commission can view in context (i.e., capitalized words for new regulation text and strikeout to delete existing regulation text). It must precisely identify the section(s) from the Commission's regulations that are being addressed. Proposed rules that intend to incorporate by reference allowable requirements must comply with §§ 24-4-103(12.5)(a) -103(12.5)(c)(i), and -103(12.5)(d), C.R.S.; the petitioner must also provide in its petition 15 complete copies of the document(s) proposed to be incorporated by reference so that the Technical Secretary can provide the required documents to the state publications depository and distribution center pursuant to § 24-4-103(12.5)(c)(II)(b), C.R.S.

1.5.3(3)(c) Memorandum of Notice:

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

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

A statement describing the potential justification of terms that are not required by, exceed, or differ from federal requirements as required by § 25-7-110.5(5), C.R.S., which, if applicable, must include a detailed, footnoted explanation of the differences between the proposed rule and the federal requirements. The detailed, footnoted explanation must address the topics specified in § 25-7-110.5(5)(b), C.R.S. (Note: this requirement only applies to proposed rules that are not required by the federal act, exceed the requirements of the federal act, or differ from the federal act or rules there under.)

In addition, the petitioner must provide a brief narrative statement identifying what elements of the proposed rule or amendment are not specifically required by the 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(1) C.R.S. This statement may be used in the notice for the rule, and in the final statement of basis, specific statutory authority, and purpose.

1.5.3(3)(e) Risk cost-benefit analysis:

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

1.5.3(3)(f) Range of regulatory alternatives:

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

1.5.3(3)(g) Other information:

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

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

A freestanding draft statement of the rule's basis, statutory authority, and purpose. The statement must contain:

- i. A general statement of the basis for the rules;
- ii. The specific statutory section(s) authorizing the rulemaking; and,
- iii. The specific purposes of the rule (e.g., "to implement the provisions regarding ..., by requiring that ..." is a way to frame this required discussion).

This statement is intended to reflect what the Commission would conclude in adopting the rule, and should be phrased accordingly. It should address all findings and considerations that the Commission is required to address under the Act or other relevant statute in adopting the proposal. It should address the major factual and policy issues that the Commission will be asked to decide, and the reasoning used to resolve them. If the proposed rule involves technological or scientific issues, the document must include an evaluation of the scientific or technological rationale justifying the proposed rule. The document must also identify what portion of the rule or revision being adopted is not specifically required by the provisions of the federal act or is otherwise more stringent than

the requirements of the federal act, as required by §§ 25-7-133(3) and -105.1, C.R.S. (the brief narrative statement required by Section 1.5.3(3)(d), above, should be used here), or, in the alternative, include a statement that the rule or revision being adopted is not an addition to or revision of the SIP. The document should identify which SIPs in the state, if any, are affected by the Commission's adoption of the regulation. (Note: this document will in many cases be used by staff to prepare a final document for approval by the Commission, reflecting issues and considerations that might arise during the course of the rulemaking proceeding.)

1.5.3(3)(i) Technical Support Documents:

Any technical documents required by 40 CFR, Part 51 (July 1997, EPA) for any SIP submittal or otherwise prepared for submittal to EPA in support of such a SIP submittal. Such technical documents shall be available 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.

1.5.3(4) Content of particular petitions:

Some requirements for a petition in Section 1.5.3(3) do not apply to rule proposals that: (1) adopt by reference applicable federal rules; (2) adopt prescriptive state statutory requirements where the Commission is allowed no significant policy-making options; or, (3) will have no regulatory impact on any person, facility, or activity. Petitions for such rule proposals must include all elements of a petition specified in Section 1.5.3(3), except they need not include the following:

1.5.3(4)(a) Fiscal & economic statement/initial economic impact analysis (in the Memorandum of Notice):

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

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

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

1.5.3(4)(c) Risk cost-benefit analysis:

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

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

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

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

Persons who submit an alternate proposal for consideration at the time the Commission is considering a proponent's petition for rulemaking, and who also intend that alternate proposal to be

published with the notice, must comply with the requirements of Section 1.5.3(3)(a) through 1.5.3(3)(h) (unless the alternate proposal is subject to the abbreviated requirements of Section 1.5.3(4)), and also with the timing requirements of Section 1.5.3(2).

1.5.3(6) Petition for emergency rule

1.5.3(6)(a) Request and petition:

Any person including the Division may request the Commission to adopt a temporary or emergency rule without compliance with the requirements of Section 1.5.3 of this regulation and with less than sixty days notice (or, where circumstances imperatively require, with no notice). The Commission may adopt such a rule if it finds on the record that immediate adoption of the rule is:

- (i) imperatively necessary to comply with a state or federal law or federal regulation, or
- (ii) imperatively necessary for the preservation of public health, safety or welfare; and,
- (iii) compliance with the rulemaking procedural requirements of Section 1.5.3 of this regulation (excluding this Subsection 1.5.3(6)) would be contrary to the public interest.

Unless the immediacy of the situation precludes any preparation, the person requesting a temporary or emergency rule shall prepare at least a brief petition that describes the issue at hand, provides the proposed rule text (in a small capital/strike-through format), includes a statement of the reasons for the action (i.e., the need for the emergency action), and includes proposed findings of the basis for the Commission's action under (i) and (iii), or (ii) and (iii), immediately above. This petition should be filed in the Office of the Air Quality Control Commission at the earliest possible date. The Technical Secretary 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 Office of the Air Quality Control Commission at least fifteen days prior to the hearing at which a temporary or emergency rule is to be considered. § 24-4-103(4.5)(d), C.R.S. applies to any such regulatory analysis.

1.5.3(6)(b) Commission requirements:

The required findings in Section 1.5.3(6)(a), and a statement of the reasons for the action, shall be published with any temporary or emergency rule adopted by the Commission. A temporary or emergency rule shall become effective upon adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for not more than three months from the date of adoption (unless it is a special emergency rule adopted under Section 1.5.3(6)(c), or it is made permanent by compliance with this Section 1.5.3).

1.5.3(6)(c) Special emergency rules for interim emissions control regulations:

In addition to the general temporary or emergency rulemaking authority described in Section 1.5.3(6)(a), above, the Commission may conduct emergency rulemaking for the purpose of adopting an interim emission control regulation to apply for a specified period of time in place of an existing emission control regulation or to create an emission control regulation

whenever federal regulations have been adopted and become effective pursuant to Section 111 of the federal act and which add to the list of categories of stationary sources, or add new or more restrictive standards of performance for new sources, or whenever federal regulations are adopted and effective pursuant to Section 112 of the federal act and which modify or adopt Maximum Achievable Control Technology or Generally Available Control Technology for new or existing sources, and such regulations are required to be implemented by the states.

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

1.5.4 Notice

1.5.4(1) Preparation:

The Technical Secretary will prepare a draft notice upon receipt of a complete petition for rulemaking. Petitioners are free to contact the Technical Secretary regarding the description of the proposed rule in the notice. The Technical Secretary will provide the draft notice to the Commission along with the petition.

1.5.4(2) Publication requirement:

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

1.5.4(3) Proposed Rulemaking Packet:

At the time the official notice for a particular rulemaking is published, the Technical Secretary will provide to any member of the public upon request, at cost, a copy of the Proposed Rulemaking Packet. (Note: a complete petition for rulemaking meeting the requirements of Section 1.5.3(3) (or 1.5.3(4), if appropriate) constitutes the Proposed Rulemaking Packet.)

1.5.4(4) Amended notices:

An amended notice 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. If an amendment is substantial and would be prejudicial, the hearing date shall be continued to an appropriate date as determined by the Commission, and notice thereof shall be made in the same manner as the original notice.

1.5.5 Prehearing procedures

1.5.5(1) General:

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

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

1.5.5(2) Rights and obligations of parties, non-parties, and the Division

1.5.5(2)(a) Parties:

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

1.5.5(2)(b) Non-parties:

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

1.5.5(2)(c) The Division:

The Division shall act as staff to the Commission in any rulemaking hearing, and typically is not a formal party. In fulfilling its role as staff, the Division may, among other things, present evidence and testimony, provide background, summarize evidence and any matters settled before the hearing, and make recommendations to the Commission; the Division may, as necessary to assist the Commission, make objections or cross-examine witnesses, in the discretion of the Commission. The Division may affirmatively request party status pursuant to the procedure in Section 1.5.5(3)(c), below. If the Division formally gains party status, it may continue to provide staff services to assist the Commission, as directed by the Commission or the Prehearing Conference Officer. Whether the Division participates as staff, as a party, or both, it shall comply with prehearing procedures.

1.5.5(3) Gaining party status:

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

1.5.5(3)(a) The petitioner:

Any person petitioning for rulemaking under Section 1.5.3 shall automatically be granted party status.

1.5.5(3)(b) The proponent of an initial alternate proposal:

Any person desiring party status by the act of proposing an initial alternative rule to a proposed rule or revision shall file in compliance with this Subsection 1.5.5.(3) such initial alternative rule or revision and any other required documents in the Office of the Air Quality Control Commission by the date specified in the notice for party status requests, but in no event later than twenty days prior to the rulemaking hearing. By filing an initial alternative rule proposal within the specified time frame and fulfilling the necessary requirements for alternate proposals and other relevant prehearing requirements, a person shall automatically obtain party status.

To file such an initial alternate proposal, the proponent is required to simultaneously provide a document that addresses for the alternate proposal the requirements in Section 1.5.3(3)(a), and the alternate rule or revision must be submitted in a form consistent with the requirements in Section 1.5.3(3)(b). Alternate proposals may only be considered by the Commission if the subject matter of the alternative proposal is consistent with and fits within the scope of the notice for the particular rulemaking hearing. The proponent of an alternate proposal must also file in the Office of the Air Quality Control Commission fifteen copies of a final economic impact analysis developed by the proponent, or developed by the proponent in cooperation with the Division, meeting the requirements of § 25-7-110.5(4)(c), C.R.S., at least five working days prior to the prehearing conference or as otherwise specified in the notice. Copies of the documents described above must also be received at the time indicated by each party of record, the Division staff person identified in the notice, and the Assistant Attorneys General representing the Commission and the Division.

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

1.5.5(3)(c) Any other person; petitions for party status:

Any person may seek party status by petitioning the Commission. Granting of party status under this Section 1.5.5(3)(c) is in the sole discretion of the Commission. The petition must be filed in the Office of the Air Quality Control Commission as specified in the notice of rulemaking by electronic mail as required by 1.3.8(2), and if not specified in the notice then in no event later than forty-five days before the rulemaking hearing. If granted an exception to electronic filing pursuant to the provisions of Subsection 1.3.8(3), the petitioner must complete filing for party status by submitting an original and three copies of the petition in the Office of the Air Quality Control Commission by the date specified in the notice. The petition must: (1) identify the applicant; (2) provide the name, address, electronic mail address, and telephone and facsimile numbers of the 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 1.3.8(2) or copies covered under the exception of the provisions of Subsection 1.3.8(3) and received by the Division staff person identified in the notice, and the Assistant Attorneys General representing the Commission and the Division, by the same day that it is due to be filed in the Office of the Air Quality Control Commission.

1.5.5(3)(d) Late party status:

The Commission may grant party status requests submitted with fewer than forty-five days before the hearing on a particular rulemaking only upon a written motion for good cause shown. Action on such motion is in the sole discretion of the Commission. Any such motion must be filed in the Office of the Air Quality Control Commission at the earliest possible opportunity, and must also be received by each party of record, and the Division staff person identified in the notice, and the Assistant Attorneys General representing the Division and the Commission, by the same day that it is due to be filed. Persons seeking party status by the act of proposing an initial alternative rule are subject to the time requirements provided in the notice or that are provided in Section 1.5.5(3)(b).

1.5.5(4) Status Conference:

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

1.5.5(5) Prehearing Conference

1.5.5(5)(a) Participation mandatory:

The Commission will specify in the notice of proposed rulemaking when a prehearing conference will be held if deemed necessary. A duly appointed Commissioner will preside as Prehearing Conference Officer at the prehearing conference, and is authorized to make necessary or appropriate procedural orders. All parties and the Division shall participate in the prehearing conference in person. The Prehearing Conference Officer may grant leave to not participate in person, for good cause shown. Failure to comply with the requirements of this Section 1.5.5(5) may result in denial of a party status application or in dismissal of a party by the Prehearing Conference Officer or the Commission.

1.5.5(5)(b) Goals of the prehearing conference and authority of the Prehearing Conference Officer:

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

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

1.5.5(5)(c) Prehearing statements:

Seven days prior to any prehearing conference, or at such other time as may be specified in the notice of proposed rulemaking, each party, the Division, and each applicant for party status shall file by electronic mail as required by Subsection 1.3.8(2) a prehearing statement in the Office of the Air Quality Control Commission, and shall 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 that same day. If granted an exception to electronic filing pursuant to the provisions of 1.3.8(3), the applicant for party status shall file an original and fifteen copies of the prehearing statement in the Office of the Air Quality Control Commission, and shall also deliver copies to each other party, applicant for party status, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings, by electronic mail or as otherwise provided by the exception granted under Subsection 1.3.8(3), by that same day. The prehearing statement shall contain:

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

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

- (v) A list of witnesses to be called and a brief description of their testimony, including, where applicable, what exhibits they will discuss or rely upon.
- (vi) All written testimony to be offered into evidence at the hearing. (Note: the Commission encourages, and in some instances may require, witness testimony to be provided in writing).
- (vii) Where applicable, the text of any alternate proposed rule or revision in the format specified in Section 1.5.3(3)(b) of this regulation.
- (viii) If an alternate proposed rule or revision is offered, a brief narrative statement identifying what elements of the alternate proposed rule are not specifically required by provisions of the federal Clean Air Act or are otherwise more stringent than the requirements of the Clean Air Act pursuant to §§ 25-7-105.1 and -133(3), C.R.S. This statement may be used in the final statement of basis and purpose pursuant to those sections.
- (ix) The Final Economic Impact Analysis required for the proposed rule, or the Final Economic Impact Analysis for any alternate proposal developed in cooperation with the Division, pursuant to and meeting the requirements of § 25-7-110.5(4)(c), C.R.S. If the Final Economic Impact Analysis is the same as the Initial Economic Impact Analysis (submitted pursuant to sections 1.5.3(3)(c) or 1.5.3(5)), an affirmative written statement to that effect must be submitted to satisfy this Subsection (ix). Economic impact analyses for alternate proposals may evaluate the incremental impact over that already estimated for the original petition proposal, if feasible and appropriate. (Note: if no prehearing conference is scheduled, the Final Economic Impact Analysis must be filed in the Office of the Air Quality Control Commission at least ten working days before the rulemaking hearing.)

1.5.5(5)(d) Rebuttal statements & late filings:

The Commission or the Prehearing Conference Officer may provide a reasonable period of time following the prehearing conference for the filing of electronic mailed or written rebuttal statements, including identification of rebuttal witnesses, and providing electronic mailed or written rebuttal testimony and exhibits. Rebuttal statements are constrained to address topics raised in the prehearing statements of the parties or the Division, and are not to raise new issues or arguments. Rebuttal statements will include an executive summary document consistent with Subsection 1.5.5(3)(c)(i) of this regulation. The statement will be filed by electronic mail in compliance with the requirements of Subsection 1.3.8(2) in the Office of the Air Quality Control Commission within five working days after the prehearing conference unless otherwise provided in the notice of proposed rulemaking or directed by the Prehearing Conference Officer; and, copies shall also be delivered by electronic mail to each party, to the Assistant Attorneys General for the Commission and Division, and to the

Division staff person for the proceeding by that same day. If granted an exception to electronic filing pursuant to the provisions of Subsection 1.3.8(3), the original and fifteen copies of the rebuttal statement will be filed in the Office of the Air Quality Control Commission within five working days after the prehearing conference unless otherwise provided in the notice of proposed rulemaking or directed by the Prehearing Conference Officer, 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, by electronic mail or as otherwise provided in the exception granted under Subsection 1.3.8(3), by that same day.

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

1.5.5(5)(e) Additional conferences:

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

1.5.5(6) Final Economic Impact Analyses:

If no prehearing conference is held, the Final Economic Impact Analysis required for the proposed rule, pursuant to and meeting the requirements of § 25-7-110.5(4)(c), C.R.S., must be filed in the Office of the Air Quality Control Commission by electronic mail in compliance with the requirements of Subsection 1.3.8(2) or as otherwise provided in the exception granted under Subsection 1.3.8(3) at least ten working days before the rulemaking hearing. If the Final Economic Impact Analysis is the same as the Initial Economic Impact Analysis (submitted pursuant to Subsections 1.5.3(3)(c) or 1.5.3(5)), an affirmative written statement to that effect must be submitted to satisfy this Subsection 1.5.5(6). Economic impact analyses for alternate proposals may evaluate the incremental impact over that already estimated for the original petition proposal, if feasible and appropriate.

1.5.5(7) Alternate proposals offered after the prehearing conference:

As a general policy, the submission of an alternative proposal by a party after the prehearing conference is strongly discouraged. However, the parties are encouraged to develop consensus positions which may emanate from 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, in light of the circumstances, to evaluate such alternative proposals. The following requirements are to guide the Commission in its considerations of such alternative proposed rule text prior to taking final action in the proceeding:

1.5.5(7)(a) The Commission, or the Prehearing Conference Officer, must grant leave to submit such alternate proposed rule text for good cause shown, and may consider the timing of the proposal and the hearing, the complexity of the issues, and whether the parties and the Division are or expect to be in agreement on such alternate proposed rule text, in granting or denying such leave;

1.5.5(7)(b) Such alternate proposed rule text must be accompanied by a Final Economic Impact Analysis, developed in cooperation with the Division, pursuant to and meeting the requirements of § 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

1.5.5(7)(c) Such alternate proposed rule text and Final Economic Impact Analysis must be delivered by electronic mail or as otherwise provided in the exception granted under Subsection 1.3.8(3), where possible, to all parties, the Division staff person for the proceeding, and the Assistant Attorneys General for the Commission and the Division, with an adequate amount of time to review them prior to the rulemaking hearing. Additionally, an electronically mailed copy in compliance with 1.3.8 of such documents must be filed in the Office of the Air Quality Control Commission by the time specified by the Prehearing Conference Officer or the Commission. If granted an exception to electronic filing pursuant to the provisions of 1.3.8(3), an original and fifteen copies of such alternate proposed rule text and Final Economic Impact Analysis must be delivered in the Office of the Air Quality Control Commission, to all parties, the Assistant Attorneys General representing the Commission and Division, and the Division staff person for the proceedings, by the time specified by the Prehearing Conference Officer or the Commission.

1.5.5(8) Motions:

Apart from Section 1.5.5(5)(b) of this regulation (goals of the prehearing conference), the Commission or the Prehearing Conference Officer may require that parties, the Division, or other persons (where applicable) file by electronic mail in compliance with 1.3.8(2) in advance of the hearing all motions or requests for rulings that they intend to make with respect to the proposed rulemaking, except where, due to the lack of material information, such motions or requests cannot reasonably be filed in advance of the hearing. These shall include motions regarding procedures, the scope and nature of the proceedings, or any other matter that requires a determination prior to final agency action based on the record, or any matter that may reasonably be disposed of prior to receiving testimony or other evidence.

1.5.5(9) Discovery:

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

1.5.5(10) Subpoenas:

The Commission or the Prehearing Conference Officer shall issue subpoenas without discrimination between public and private persons or parties. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the proponent of the subpoena may petition the Commission to use its authorities provided in § 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.

1.5.5(11) Ex parte communications:

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

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

the record to allow the parties, the Division, and the public an opportunity to respond to the substance of the ex parte communication.

1.5.5(12) Regulatory analysis:

Upon written request by any person filed in the Office of the Air Quality Control Commission at least fifteen days prior to the hearing on a proposed rule, the Commission, or its staff, shall prepare a regulatory analysis of the proposed rule pursuant to § 24-4-103(4.5), C.R.S. The analysis shall address the topics reflected in § 24-4-103(4.5)(a)(i) - (vi), C.R.S., shall include quantification of the data to the extent practicable, and shall take account of both short-term and long-term consequences. The regulatory analysis shall be available for inspection in the Office of the Air Quality Control Commission at least five days prior to the hearing on the proposed rulemaking. (Note: the petitioner for a proposed rule is encouraged to supply information with the petition or prehearing statement which could provide the basis for a regulatory analysis; if appropriate information is not provided, the Commission or its staff shall prepare the analysis [if one is requested] based upon information supplied by the parties, the Division, and the public, and upon such other information as may reasonably be available.)

1.5.5(13) Continuing hearings:

Except for hearings governed by Section 1.5.6(14), upon motion by a party for good cause shown, or by its own motion, the Commission 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 1.5.4(6) or by a statement at the time and place of the initial noticed hearing. Cancellations may be announced by issuing a notice to that effect or by announcement at the time and place of the noticed hearing. The Prehearing Conference Officer may also continue a rulemaking hearing by order for good cause shown, or when the officer deems it appropriate. The Commission generally will only continue rulemaking hearings one time if requested, to be rescheduled for the next convenient opportunity on the Commission's docket; in response to a request to continue a rulemaking hearing a second time, the Commission may choose to vacate the rulemaking hearing and re-notice it for a later date pursuant to Section 1.5.4 of this regulation.

1.5.6 Conduct of rulemaking hearings

1.5.6(1) Public participation encouraged:

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

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

Introduction of written material at the hearing by members of the public is permitted (parties, see Section 1.5.5(5)(d)). If members of the public desire to have the Commission review written material prior to the rulemaking hearing, such documents must be filed in the Office of the Air Quality Control

Commission in sufficient time to be included in the monthly meeting packets for the Commission (generally three weeks prior to the noticed rulemaking hearing), or as otherwise specified in the notice of proposed rulemaking hearing.

1.5.6(2) Hearings to be conducted by the Commission:

The Commission shall conduct all rulemaking hearings.

1.5.6(3) Order of presentation:

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

- 1.5.6(3)(a) Opening the hearing and disposing of any procedural issues not resolved by the Prehearing Conference Officer, e.g., prehearing motions, remaining party status issues, late filings. The Commission at this time should entertain whether apparent potential, or actual conflicts of interest exist, if any.
- 1.5.6(3)(b) Presentation by the Division describing the background and basis for the proposed rule or other matters specified in the prehearing order, or presentation of comments that are offered as staff for the benefit of the Commission, in the discretion of the Commission. This introductory presentation, may at times, be provided by a party proposing the rule, in the discretion of the Commission.
- 1.5.6(3) (c) Entertaining any public comment on the proposed rule (the prehearing order or the presiding Commissioner may specify when and how public comment may be taken during the proceeding).
- 1.5.6(3) (d) Presentations by parties and other interested persons as specified in the prehearing order.
- 1.5.6(3) (e) Rebuttal or closing statements as may be provided for in the prehearing order, or in the discretion of the presiding Commissioner or the Commission.

1.5.6(4) Role of the Division:

The Division shall act as staff to the Commission in any rulemaking hearing, and typically is not a formal party. In fulfilling its role as staff, the Division may, among other things, present evidence, provide background, make proposals or alternate proposals, summarize evidence and any matters settled before the hearing, and make recommendations to the Commission; the Division may as necessary to assist the Commission make objections or cross-examine witnesses, in the discretion of the Commission. The Division may affirmatively request party status pursuant to the procedure in Section 1.5.5(3)(c), above. If the Division has formally gained party status, it may continue to provide staff services to assist the Commission, as directed by the Commission or the Prehearing Conference Officer.

1.5.6(5) Role of the Attorney General:

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

1.5.6(6) Witness presentations:

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

1.5.6(7) Cross-examination and objections:

Where the Commission allows participation as a party, a party may make objections, and all witnesses shall be subject to cross-examination by or on behalf of persons who have party status. In all hearings, witnesses shall be subject to cross-examination by or on behalf of the Commission, and the Commission may allow its staff, or legal counsel for the Commission or its staff, 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 have each party estimate the amount of time necessary for cross-examination and limit each party's time for cross-examination, taking such estimates into account. The presiding Commissioner may also limit cross-examination to promote an efficient and focused hearing.

1.5.6(8) Other authority:

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

1.5.6(9) Summation of facts and law:

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

1.5.6(10) Final action:

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

proposals, the Commission may, at the request of any person, or party, or on its own motion, make the proposed final rule available for additional comment prior to taking final action.

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

1.5.6(11) Filing with Secretary of State:

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

1.5.6(12) Publication and effective date:

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

1.5.6(13) Maintaining rules:

The Commission maintains copies of its currently effective rules, which are available for inspection by any person during regular office hours.

1.5.6(14) Special additional procedures for particular hearings

1.5.6(14)(a) Hearings under § 25-7-105(2):

Any person may file an application to apply the following additional procedures in any hearing requested under § 25-7-105(2), C.R.S. for review of the classification of any attainment, non-attainment, or unclassifiable area pursuant to §§ 25-7-106(1) or -107(2), C.R.S., for designation or redesignation of any Class I, II or III area pursuant to § 25-7-208, C.R.S., or for any specific revision of the terms of general application of the state implementation plan (i.e., pursuant to §§ 25-7-115(4)(a)(i)(B) or -117, C.R.S.). Any request to apply such additional procedures must be included in the initial application and must state a clear basis for invoking such additional protections, which protections are ordinarily available only in an adjudicatory hearing. The following procedures shall apply if the Commission grants the request:

- (i) No fewer than fifteen days after the petition has been received, the Commission shall grant the request and set the matter for hearing to be held within ninety days of receipt of the petition. The requirement to hold the hearing within ninety days of receipt of the petition shall not apply if the Commission determines that: (1) the petition is primarily a request for a rulemaking hearing, and (2) the Commission must comply with the publication requirements of § 25-7-110(1).
- (ii) Notice of the hearing shall be published in a newspaper of general circulation in the area in which the proposed project or activity is located at least thirty days prior to the hearing.
- (iii) All testimony at the hearing shall be under oath or affirmation.

(iv) A full and complete record of all proceedings and testimony presented shall be taken and filed.

(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 the information, data, and analysis supporting the petition.

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

1.5.6(14)(b) Hearings to list Hazardous Air Pollutants (HAPs):

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.:

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

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

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

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

(v) A full and complete record of all proceedings and testimony presented shall be taken and filed.

1.5.6(14)(c) Appeals of Colorado Maximum Achievable Control Technology (MACT) or MACT determinations or compliance schedules:

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.:

(i) At least fifteen days after the petition has been received, the Commission shall grant the request and set the matter for hearing to be held within ninety days of receipt of the petition.

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

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

(iv) A full and complete record of all proceedings and testimony presented shall be taken and filed.

1.5.6 (14)(d) Criteria and procedures for local government petitions filed pursuant to § 25-7-133(7)(d)(V), C.R.S.

1.5.6(14)(d)(i) A petition for a hearing pursuant to § 25-7-133(7)(d)(V), C.R.S. shall be filed and served as required by Section 1.6.2(2). A copy of the petition for a hearing shall 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:

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

1.5.6(14)(d)(ii) The hearing may be held and the matter decided by the Commission or a Hearing Officer designated by the Executive Committee of the Commission.

- (A) The procedures specified in Sections 1.6.1 through 1.6.6 apply only to the extent deemed appropriate by the Commission or the appointed Hearing Officer, and may be modified as appropriate.
- (B) The Hearing Officer, if so authorized by the Executive Committee of the Commission, may enter an initial decision pursuant to § 24-4-105, C.R.S.
- (C) Alternatively, the Executive Committee of the Commission may set the matter for a hearing before the Commission, in which case the Hearing Officer shall administer the prehearing process in preparation for such hearing before the Commission.

1.5.6(14)(d)(iii) The Commission shall uphold an objection by a local government if:

- (A) The regulated entity can comply with the requirements of Regulation No. 7 in a manner that complies with the local ordinance or resolution or otherwise addresses the objection filed by the local government; and
- (B) It is reasonable to uphold the objection based on consideration of the following factors:
 - (1) Any local ordinances, resolutions, permit or land use requirements that would, but for § 25-7-133(7)(d)(vi), C.R.S., establish a valid basis to deny a local permit or land

use application, or that would impose additional conditions on the unit. In supplying this factor, the Commission may give greater weight to a local ordinance or resolution adopted prior to July 1, 2004.

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

1.6.0 PROCEDURES FOR ADJUDICATIONS

1.6.1 Scope:

This section applies to all adjudicatory hearings conducted before the Commission including, for example, appeals of Division compliance orders and noncompliance penalty determinations, challenges of Division denials of proposed permits or of permit terms and conditions, for construction permits and operating permits, and applications for declaratory orders. Depending on the circumstances, this section may apply to requests for site-specific revisions of the state implementation plan. Some such requests will be subject to the procedures in Section 1.5.6(14) in addition to, or in lieu of, the requirements of this section.

1.6.2 Initiating an Adjudicator Hearing

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

All requests for adjudicatory hearings must be timely filed within the deadlines established by the applicable statutory requirements 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 that would determine whether a request was timely filed.

1.6.2(2) Filing and Serving the Hearing Request:

Hearing requests shall be filed in the Office of the Air Quality Control Commission within applicable deadlines. The person requesting the hearing also shall serve the request by electronic mail or under the exception of the provisions of Subsection 1.3.8(3) upon the Legal Administrator for the Division and the First Assistant Attorney General, Environmental Quality Unit, Natural Resources and Environment Section, Colorado Attorney General, 1525 Sherman Street, 7th Floor, Denver, Colorado, 80203.

1.6.2(3) Contents of the Hearing Request:

All requests for adjudicatory hearings shall contain the following information:

- (a) Identification of the person(s) requesting the hearing, including address and telephone number;

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

1.6.2(4) Notice of the Hearing:

- 1.6.2(4)(a) All formal adjudicatory hearings of the Commission shall be preceded by written notice thereof in accordance with the requirements of this section.
- 1.6.2(4)(b) The hearing notice shall contain (i) the time, date, place, and general subject matter of the hearing to be held, (ii) the time, date, place, and general purpose of the prehearing conference, (iii) a description as to how an interested person may apply for party status in the proceedings, and (iv) pertinent filing deadlines. The notice may contain special procedures or requirements, including requirements for written testimony, which the Commission or Hearing Officer deems appropriate for a particular matter. The Commission may amend the notice, without continuance of the hearing date, at any time prior to the hearing as long as the change does not alter the original notice to the substantial prejudice of any party or the public.
- 1.6.2(4)(c) The Technical Secretary shall timely mail the notice to all persons who have requested listing on the Commission agenda mailing list, to all parties, and to each person who has filed a written request to receive notices for a particular adjudicatory proceeding.
- 1.6.2(4)(d) Notice of each hearing shall be published in a newspaper of general circulation in the area in which the affected source or activity is located at least forty days before the hearing.

1.6.2(5) Parties:

- 1.6.2(5)(a) The person requesting a hearing shall appear as a party. The Division shall appear as a party in adjudications of actions of the Division. The Division may appear as a party upon application in proceedings for declaratory orders. Other persons may apply for party status. An application for party status shall identify the person making the request, including an address and telephone number. The application also shall contain a statement of the reasons for seeking party status, the manner in which the matter affects the person's interests, and an explanation why the existing parties do not adequately represent the person's interests [including a description of the legal issues which the prospective party intends to raise]. In addition, the application shall describe the general nature of the evidence the applicant intends to present.
- 1.6.2(5)(b) The notice of each hearing shall prescribe a deadline for filing applications for party status, which shall not be less than thirty days prior to the hearing.

Thereafter, applications to be a party shall not be considered except upon motion and for good cause shown.

1.6.2(5)(c) The Hearing Officer will resolve applications for party status prior to or at the prehearing conference. Party status shall be granted to any person affected by the proceeding whose interests are not already adequately represented. Applicants shall comply with all requirements of these rules pending resolution of the request.

1.6.2(6) Setting the Hearing:

1.6.2(6)(a) The Technical Secretary shall place all hearing requests on the Commission agenda for the next meeting following receipt of the request. At this meeting or by order of the Hearing Officer, not less than fifteen days after receipt of the requests, the Commission shall grant or deny the request. If the Commission grants the request, it shall set a time and date for the hearing, which shall be within ninety days of receipt of the request if the hearing relates to a Division compliance order, to a declaratory order, or to a permit appeal by the applicant.

1.6.2(6)(b) The Hearing Officer may continue the hearing as appropriate upon written motion by any party or for the convenience of the Commission.

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

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

6.1.2(7)(b) The Hearing Officer may exercise any powers conferred by § 24-4-105(4), C.R.S. [see appendix E], including actions in accordance, to the extent practicable, with the procedure in district courts. The Hearing Officer shall not decide dispositive motions, but may schedule, in consultation with the chairperson and Technical Secretary of the Commission, such motions or any other matters for decision by the Commission prior to or at the hearing. The Hearing Officer may require that, as part of the prehearing conference or otherwise, parties shall submit in advance of the hearing all motions or requests for rulings that party intends to make. These include motions regarding procedures, the scope and nature of the proceedings, or any other matter that requires a determination by the Hearing Officer or the Commission prior to final agency action, or any matter that may reasonably be disposed of by the Hearing Officer or the Commission prior to the receipt of testimony or other evidence. The Hearing Officer shall decide all procedural and preliminary motions, subject to appeal to the Commission. Decisions by the Hearing Officer shall be final unless appealed to the Commission. Failure to appeal an adverse decision of the Hearing Officer to the Commission constitutes a waiver of that issue for the purposes of judicial review.

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

1.6.3 Prehearing Procedures

1.6.3(1) Settlement Period and Report:

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

1.6.3(2) Discovery:

1.6.3(2)(a) Parties may conduct depositions and discovery pursuant to Rules 26 through 37 of the Colorado Rules of Civil Procedure (CRCP) without authorization by the Hearing Officer, to the extent that time is available before the hearing for such discovery. To the extent practicable, Rules 26 through 37, CRCP, apply to all adjudicatory matters before the Commission.

1.6.3(2)(b) Unless otherwise ordered by the Hearing Officer, reasonable notice for the taking of depositions under Rule 30(b)(1), CRCP, shall not be less than five days. Pending resolution of any motion for a protective order under Rule 26(c), CRCP, filing of the motion shall stay the discovery at which the motion is directed. Motions for protective orders shall be filed with the Technical Secretary, who shall immediately forward them to the Hearing Officer for prompt resolution. When such a motion is filed, the period for responding to the discovery is extended for the amount of time from the filing of the motion until action is taken on it.

1.6.3(2)(c) Parties shall complete discovery no later than five days before the hearing, unless otherwise ordered by the Hearing Officer. The hearing may proceed regardless of whether the period between notice and hearing is sufficient to enable completion of all discovery.

1.6.3(3) Prehearing Conference:

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

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

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

1.6.3(3)(d) Each party and each person who has applied to become a party shall file with the Technical Secretary a Preliminary Prehearing Statement not less than five days prior to the prehearing conference. The Technical Secretary shall promptly provide the statements to the Hearing Officer to allow the Hearing Officer to prepare for the prehearing conference. Preliminary Prehearing Statements will be

contemporaneously served upon all parties and all persons who have applied to become parties and shall state the information required in a Prehearing Statement, but exhibits, written testimony and other attachments will not be included. Parties may modify their Preliminary Prehearing Statements as appropriate prior to the prehearing conference.

1.6.3(4) Prehearing Statements:

- 1.6.3(4)(a) Each party and each person who has applied to become a party shall present at the prehearing conference its Prehearing Statement. Each participant will provide at the conference copies of the statement to each other party and applicant for party status and fifteen copies for distribution to the Commission, the Technical Secretary, the Director of the Air Pollution Control Division and the Assistant Attorneys General representing the Commission and Division.
- 1.6.3(4)(b) Prehearing Statements shall contain information and exhibits in substantial compliance with the form outlined in Appendix F to these rules. The authenticity of exhibits, statutes, ordinances, regulations or standards set forth in the Prehearing statement shall be admitted 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 shall be binding on each party throughout the course of the hearing unless 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 it would not prejudice other parties or necessitate a delay of the hearing.
- 1.6.3(4)(c) Parties may amend or supplement the Prehearing Statements only to address issues, matters or evidence raised at the prehearing conference. The Hearing Officer shall specify the filing date for any amended or supplemented Prehearing Statements.

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

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

1.6.3(6) Prehearing Order:

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

1.6.3(7) Dispositive Motions:

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

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

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

1.6.3(8) Procedural Motions:

1.6.3(8)(a) Any party may present a procedural motion for consideration by the Hearing Officer. Procedural motions relate to discovery, timing and processes used in adjudication of the matter at issue.

1.6.3(8)(b) The Hearing Officer shall promptly decide procedural motions. As appropriate, the Hearing Officer may allow verbal procedural motions or require that they be made in writing or that memoranda support them.

1.6.3(9) Consolidation of Cases:

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

1.6.3(10) Dismissal of Cases:

1.6.3(10)(a) The person requesting a hearing before the Commission may request dismissal of the matter at any time. All requests for dismissal shall be in writing and filed with the Technical Secretary.

1.6.3(10)(b) If there are no parties other than the Division and the person requesting the hearing, the Hearing Officer, or the chairperson of the Commission if no Hearing Officer has yet been appointed, may dismiss the matter by written order. If there are other parties, the Hearing Officer, or the Commission, shall provide an appropriate opportunity for each party to respond regarding the proposed dismissal. The Hearing Officer or the Commission may dismiss the matter over the objection of any party by written order.

1.6.3(11) Stay of Action Pending Hearing:

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

1.6.3(12) Location of Hearing:

In addition to the location of its regular monthly meeting, upon request by any party or the public or upon its own motion, the Commission may elect to conduct the hearing in any matter in the geographical area of the source(s) affected. Any request for a change in location shall be submitted to the Technical Secretary not later than five days prior to the regular monthly meeting next preceding the scheduled date for the hearing. Any such request shall be served by the same

deadline upon all parties and all applicants for party status, who shall all receive an appropriate opportunity to respond 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.

1.6.3(13) Continuances:

Any party may request by motion that the Hearing Officer continue a scheduled hearing to a specific date for the convenience of the Commission or the parties. Any motion for a continuance to a date more than ninety days after the request for hearing shall reflect the waiver by the party requesting the hearing of the provisions of § 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 Technical Secretary for presentation to the Hearing Officer at least 10 days before the scheduled hearing except for good cause shown. The Hearing Officer shall rule on continuance requests after providing all parties an appropriate opportunity to respond under the circumstances. Any party may appeal the Hearing Officer's decision to the Commission.

1.6.3(14) Scheduling Orders:

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

1.6.3(15) Subpoenas:

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

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

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

1.6.3(16) Filing and Service of Documents:

All documents shall be filed by electronic mail in compliance with the requirements of Subsection 1.3.8(2) or as otherwise provided in the exception granted under Subsection 1.3.8(3) with the Technical Secretary unless otherwise ordered by the Hearing Officer or the Commission. All documents filed shall also be served upon all parties by electronic mail in compliance with 1.3.8(2) unless an exception is granted under Subsection 1.3.8(3) in the manner prescribed by the Colorado Rules of Civil Procedure.

1.6.4 Hearing Procedures

1.6.4(1) Burden of Proof:

The Division has the burden of proof in proceedings regarding alleged violations of the Act, Commission regulations, and permits or orders, including appeals of compliance orders, noncompliance penalty determinations, cease and desist orders and notices of penalty determinations. The permit applicant has the burden of proof in all appeals of permit denials and of permit terms and conditions under § 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.

1.6.4(2) Order of Presentation:

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

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

First, consideration and resolution of any conflict of interest issues;

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

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

Fourth, opening statements, beginning with the party upon whom the burden of proof rests.

Fifth, presentation of evidence, beginning with the party upon whom the burden of proof rests. The party upon whom the burden of proof rests may present rebuttal evidence.

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

1.6.4(3) Witnesses:

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

1.6.4(4) Motions and Objections:

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

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

1.6.4(5) Public Participation:

The Commission may allow public participation in an adjudicatory hearing at appropriate times. Persons who testify at the hearing are subject to cross-examination. If a witness unrelated to a party raises new issues or introduces documents containing factual matters previously unaddressed and a party requests the opportunity to rebut, the Hearing Officer will allow an adequate opportunity to rebut at the hearing or afterward to the extent necessary to avoid prejudice to any party.

1.6.4(6) Motion for Directed Verdict:

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

1.6.4(7) Evidence:

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

1.6.4(8) Rules of Civil Procedure:

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

1.6.4(9) Post-hearing Briefs and Summaries:

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

1.6.5 Decisions of the Commission

1.6.5(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.

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

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

1.6.5(3) Effective Date of the Decision:

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

1.6.6 Post-Decision Matters

1.6.6(1) Requests for Reconsideration:

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

1.6.6(2) Stays Pending Judicial Review:

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

1.6.6(3) Transcripts:

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

1.6.7 Ex Parte Communications:

No ex parte communications, as defined in Section 1.3.7, shall occur with or by any Commission member during the pendency of an adjudicatory proceeding. Commissioners shall disclose any ex parte communications on the record.

1.6.8 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 [APA](#), the Act, and these rules. The order shall be limited in its scope to those matters necessary to dispose of the petition properly.

1.7.0 PROCEDURES FOR HEARINGS TO TAKE PUBLIC COMMENT ON PERMIT APPLICATIONS

1.7.1 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.

1.7.2 Setting the Hearing

1.7.2(1) The time and date for the public comment hearing shall be within sixty days of the Commissions' 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.

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

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

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

1.7.3 Appointment and Powers of the Public Comment Hearing Commissioner:

1.7.3(1) At its first meeting following receipt of a request for a public comment hearing, the Commission may appoint a Commissioner to convene the hearing and preside over the

receipt of public comment. If necessary, the chairperson of the Commission may appoint a Commissioner to act until such meeting or may appoint at any time a replacement Commissioner, to be confirmed by the Commission at its next meeting.

1.7.3(2) The Commissioner appointed to preside over the public comment hearing may set reasonable time limits for all oral statements and may permit individuals to aggregate their allotted time to one person to speak on their behalf.

1.7.4 Public Comment Hearing Procedures

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

1.7.4(2) The Division shall appear at the public comment hearing in order to present the permit application.

1.7.4(3) The public comment period closes at the conclusion of the public comment hearing, unless the presiding commissioner grants an extension of time to submit public comments.

1.7.4(4) The Administrator for the commission shall immediately transmit all oral and written public comment received at the public comment hearing to the Division for its consideration prior to the Division's final action on the permit.

1.7.5 Appeals of the Permit

1.7.5(1) After the permit has been issued, any participant in the public comment process may seek judicial review of the Division's final decision on the permit application under § 25-7-114.5(11), C.R.S.

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

1.8.0 PUBLIC INFORMATION AND CONFIDENTIAL INFORMATION

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

The Commission shall maintain a mailing list. Any person may request to be added to the mailing list. A reasonable annual charge to cover the cost of printing and mailing shall be collected before a person is added to the mailing list, and charged annually to be maintained on the mailing list.

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

Records of the Commission and Division shall be available to any person pursuant to and consistent with the provisions of the Public Records Act, §§ 24-72-101 et seq., C.R.S. Records will be presumed to be open to public inspection at all times during normal business hours, 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.

1.8.0(3) Confidential information:

Any information relating to secret processes or methods of manufacture or production which may be required, ascertained, or discovered, or any other information confidential under the Public Records Act, §§ 24-72-101 et seq., C.R.S., shall not be publicly disclosed in public hearings or otherwise and shall be kept confidential by any Commissioner and staff. Any person seeking to invoke the protection of this subsection in any hearing shall bear the burden of proving its applicability. This provision is subject to the requirements for securing the confidentiality of any material, and the availability of emission data records, in Subsection 1.8.0(2), above.

1.9.0 C.R.S. § 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 of the above functions as can best be performed by one person only, and thereafter such person only shall perform those functions which are assigned to him by the several persons conducting such hearing.

1.10.0 CONFLICTS OF INTEREST

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

1.10.1 Definitions

1.10.1(1) Actual conflict of interest means:

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

1.10.1(1)(b) in an adjudicatory proceeding:

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

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

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

1.10.2 Disclosure of a Conflict of Interest:

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

1.10.3 Disqualification of a Commissioner for a Conflict of Interest

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

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

1.10.4 Advisory Opinions:

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

1.10.5 Rule of Necessity:

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

1.11.0 STATE IMPLEMENTATION PLAN

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

The Commission shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under this article or under the federal act. The members of the Commission shall disclose any potential conflicts of interest that arise during their terms of membership to the other Commissioners in a public meeting of the Commission.

1.11.1(2) All other requirements of these procedural rules, found in all sections except this Section 1.11.0 are reserved to the authority of the State and are not part of the State Implementation Plan.

1.12.0 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE

1.12.1 Revisions to the Air Quality Control Commission Procedural Rules adopted on January 16, 1998

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

Federal Requirements

The Federal Clean Air Act requires that the State Implementation Plan contain provisions requiring the Commission to: (1) have at least a majority of its members represent the public interest, and (2) adequately disclose any potential conflicts of interest that might arise regarding any of its members. The provisions of Section 1.11.0 of the procedural rules are intended to implement such federal requirements, and are to be submitted to EPA for inclusion in the SIP. The remaining provisions of the procedural rules are not required by federal law and, therefore, shall not be submitted to EPA for approval, or for inclusion in the SIP.

Statutory Authority

Specific statutory authority for the adoption of such procedural rules is provided in § 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 1.5.6(14)(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 1.10.0 on Conflicts of Interest is not intended to expand or contract the standard for disqualification of a Commissioner. This Rule reflects an attempt to interpret and apply the law, as it exists at this time, on the subject of disqualification. This Section is to be interpreted to implement fully the goal of the General Assembly to have a citizen-based Commission with a minority business vote.

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

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

1.12.2 Revisions to “Air Quality Control Commission Procedural Rules” adopted by the Air Quality Control Commission October 15, 1998

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

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

The revisions to Section 1.5.5 make the Commission's rulemaking procedures more efficient.

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

Federal Requirements

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

Although not required by federal law, such procedural requirements are consistent with state law. § 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 1.5.5 and 1.10.3 of the procedural rule are not related to transportation conformity, and are not required by any federal rule or law. Such provisions are adopted solely under state law to provide for more efficient rulemaking hearings.

Statutory Authority

§ 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.

1.12.3 Revisions to "Air Quality Control Commission Procedural Rules" adopted by the Air Quality Control Commission February 21, 2002.

This Statement of Basis, Specific Statutory Authority and Purpose complies with the requirements of the Colorado Administrative Procedures Act, § 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 No. 3 contains the procedural and substantive requirements for both construction and

operating permits. The Commission's Procedural Rules and Regulation No. 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 1.7.0, specifies how the Commission will conduct public comment hearings relating to applications for permits controlled by these programs. The Commission also made conforming changes to Regulation No. 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.

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

This revision establishes the procedural and substantive criteria for hearings on objections filed by local governments to emissions control units proposed for installation at oil and gas exploration and production operations, natural gas compressor stations or natural gas drip stations located upstream of a natural gas-processing plant in the 8-hour Ozone Control Area in order to comply with the emission reduction requirements of Section XII of Regulation No. 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.

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

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

Basis

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

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

Specific Statutory Authority

The specific statutory authority for these revisions to the procedural rules derives from the authority granted the AQCC in §§ 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.

1.12.6 Revisions to the "Air Quality Control Commission Procedural Rules" adopted by the Air Quality Control Commission December 15, 2011

Basis and Purpose

The purpose of these amendments is to streamline the transportation conformity process by allowing the Colorado Air Pollution Control Division to provide concurrence with routine transportation conformity determinations without the need for a public hearing before the Colorado Air Quality Control Commission. This change to the conformity process is allowed for under federal law and will reduce the burden on the AQCC, 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 No. 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.

APPENDIX A

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

STATE OF COLORADO

PREHEARING STATEMENT OF [PARTY NAME]

REGARDING [PARTY NAME AND NATURE OF REQUEST]

PENDING MOTIONS AND APPEALS TO THE COMMISSION

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

STATEMENT OF CLAIMS AND DEFENSES

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

Undisputed Facts

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

Disputed Issues of Fact

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

POINTS OF LAW

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

WITNESSES

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

EXPERT WITNESSES

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

EXHIBITS

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

STIPULATIONS

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

TRIAL EFFICIENCIES

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

APPENDIX B

Example Regulatory Time Line

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