

# STATE OF COLORADO

John W. Hickenlooper, Governor  
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Executive Director and Chief Medical Officer



Colorado Department  
of Public Health  
and Environment

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

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## NOTICE OF PUBLIC RULE-MAKING HEARING BEFORE THE COLORADO BOARD OF HEALTH

NOTICE is hereby given pursuant to the provisions of Section 24-4-103, C.R.S., that the Colorado Board of Health will conduct a public rule-making hearing on October 17, 2012 in the Sabin-Cleere Conference Room of the Colorado Department of Public Health and Environment, Bldg. A, First Floor, 4300 Cherry Creek Drive, South, Denver, CO 80246, to consider the promulgation of procedural rules for the Board of Health. The Board meeting commences in the morning. For the specific time this hearing is scheduled, please consult the meeting agenda on the Board's Web site at <http://www.cdphe.state.co.us/op/bh/index.html> on or after Friday, October 5, 2012, or call (303) 692-3464.

The purpose of this hearing is to receive public comments on proposed procedural rules for the State Board of Health. The proposed rules establish who may serve as a rulemaking chair, set forth how the Board will conduct rulemaking hearings, establish deadlines for submission of written materials, and authorize limitations on written materials and oral comments.

The proposed rules have been developed by the State Board of Health pursuant to Section 25-1-108(1)(c)(I), C.R.S.

Copies of the proposed rules may be obtained by contacting the Colorado Department of Public Health and Environment, State Board of Health Office, EDO A-5, 4300 Cherry Creek Drive S., Denver, CO 80246, (303) 692-3466. The proposed amendments will also be available on the Board's Web site at <http://www.cdphe.state.co.us/op/bh/index.html> under "Notices of Upcoming Public Rulemaking Hearings and Draft Proposed Rules."


The Board encourages all interested persons to participate in the hearing by providing written data, views, or comments, or by making oral comments at the hearing. At the discretion of the Chair, oral testimony at the hearing may be limited to five minutes or less depending on the number of persons wishing to comment.

**The Board requests submission of written materials no later than October 3, 2012 to allow the Board sufficient time to review the comments prior to the meeting.** Persons wishing to submit written comments or views should submit them to:

Colorado Board of Health  
ATTN: Jamie L. Thornton, Program Assistant  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South EDO-A5  
Denver, Colorado 80246-1530  
FAX: 303-691-7702, e-mail: [Jamie.thornton@state.co.us](mailto:Jamie.thornton@state.co.us)

The proposed revisions to be considered at the hearing, together with the proposed statement of basis and purpose, specific statutory authority and regulatory analysis will be available for inspection at the above address by any person at least five working days prior to the hearing.

Dated this 14 day of August 2012.

  
Christopher E. Urbina, MD, MPH  
Executive Director/Chief Medical Officer

**DRAFT**  
**STATEMENT OF BASIS AND PURPOSE**  
**AND SPECIFIC STATUTORY AUTHORITY FOR**  
**State Board of Health Procedural Rules**  
**6 CCR 1014-8**

August 16, 2012

**Basis and Purpose.**

The Board of Health has had a set of bylaws for many years that govern the Board's internal operations, such as meeting dates and locations, and quorum requirements. The Board has always conducted its rulemaking hearings in accordance with the Colorado Administrative Procedures Act (C.R.S. §24-4-103) but has not had any additional procedural rules which further flesh out the rulemaking process. The three other Type 1 rulemaking bodies within the department (Air Quality Control Commission, Solid and Hazardous Waste Commission, and Water Quality Control Commission) have their own procedural rules. In 2010, Board staff suggested that establishing a set of procedural rules by which the Board could lay out how it will conduct meetings and rulemaking hearings could be useful to the public and to the Board. The Board discussed the idea in various work sessions and retreats and reviewed several draft proposals before beginning a stakeholder process in June 2012. Input from that process is discussed in the **Major Factual and Policy Issues Encountered** section below.

The purpose of these rules is to provide further definition and clarification regarding how the Board of Health conducts its rulemaking hearings and general business. The rules clearly set forth the expectations and protocols to all persons appearing before the Board to ensure that a level playing field exists for all. The procedural rules establish the expectations of the Board regarding the participants in the rulemaking process, lay out what the participants should expect in the process, and establish a structure to support and illuminate the process for all involved.

Second, the procedural rules of the Board are designed to facilitate the rulemaking process for all interested persons, including the Board members. The procedural rules are intended to promote participation by all interested persons in a fair and responsible manner and to facilitate the Board rendering thoughtful and well-informed decisions. By establishing procedural rules that are clear, concise, and have been the subject of public input and debate, the Board aims to create a level playing field for all the participants. Structured and transparent operating rules can help assure fair and impartial hearings, allow the decision-makers to focus on the substantive issues, simplify the process, and minimize unnecessary distractions.

Finally, the procedural rules establish a process whereby all Board members have the opportunity to preside over a rulemaking hearing. Currently the Board's bylaws provide that the President or Vice-President of the Board will conduct meetings and hearings. Allowing other members to take a leadership role in rulemaking hearings will expand the experience base and be helpful in succession planning for the Board.

**Specific Statutory Authority.** These rules are promulgated pursuant to the following statutes: C.R.S. §25-1-108(1) (c) (I).

**Major Factual and Policy Issues Encountered.**

During the initial discussions among the Board, some members expressed concerns that having formal procedural rules would intimidate some people and result in more limited public participation in the process. Other concerns raised were whether having procedural rules would limit the Board's flexibility to adapt to a given situation or prohibit it from acting on a more informal basis when appropriate.

On June 15, 2012, the Board held a stakeholder meeting to receive comments on the original draft document. Over 4,000 notices regarding the meeting were distributed via U.S. Mail or electronic mail. Two sets of written comments were received and 13 people attended the meeting. Three Board members attended the stakeholder meeting and responded to questions and comments. One stakeholder requested that the Board allow additional public comment when amendments are made during the public hearing. The stakeholder recognized that it may not be an issue that required an amendment to the proposed regulations but requested the Board to make it part of its normal practice. The second set of written comments proposed changes to the definitions section to include a definition of "opponent" and to clarify that an "interested person" includes individuals, organizations, associations and governmental agencies. Another suggestion included conforming amendments to sections 3.01.2(2), 3.03.1, and 3.03.2 regarding the Board's ability to set limitations on the length, format and period for written and oral testimony.

A representative at the stakeholder meeting suggested four changes to the proposal. First, that the Board use "party status" procedures similar to those used by other Commissions to address the "interested person" concerns. The second suggestion was for the Board to include any limitations it intends to impose in the notice of proposed rulemaking. It was also recommended that the Board amend or eliminate the provision in sections 3.02.5(d) and 3.03.3(d) related to whether there is consensus between the rule proponent and the amending party about a proposed change. Finally, the representative suggested that whether or not a person or entity participates in the development of the proposal should not be a factor considered by the Hearing Chair when deciding whether to allow "new" information.

One commenter at the stakeholder meeting opposed having any limitation on the amount or length of written comments submitted to the Board. Two Board members suggested that the definition of "interested person" delete "aggrieved" to be consistent with the definitions in the Colorado Administrative Procedures Act ("APA"). The Board agreed to change the definition of "interested person" so that it is consistent with the APA.

**Alternative Rules Considered and Why Rejected.**

Throughout the two years that the Board discussed developing procedural rules, it considered several different models. First, it looked at the types of procedural rules used by the other Type 1 rulemaking bodies within the department (Air Quality Control Commission, Solid and Hazardous Waste Commission, and Water Quality Control Commission). Each one of these Commissions has slightly different procedures with varying levels of process. After significant discussion, the Board rejected adopting those models because it deemed them too formal and restrictive for the needs of the Board and the people that appear before it. During the course of

all the discussions, it was of paramount concern that the Board remains approachable and accessible to anyone wishing to be heard. The Board members believe that this proposal creates a level and fair playing field for all participants by clearly setting forth the Board's expectations and responsibilities for everyone.

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**DRAFT REGULATORY ANALYSIS**  
for  
Proposed Amendments to 6 CCR 1014-8  
**State Board of Health Procedural Rules**

**August 16, 2012**

- 1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

This rule will affect all people who appear before the board to participate in rulemaking hearings. This group includes individuals, organizations, associations, and governmental agencies.

- 2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.**

The board expects that the clear direction provided to rulemaking participants and the board members will result in more efficient rulemaking hearings. Established deadlines for submission of comments by participants should minimize the last minute substantive changes and alternatives proposals that can disrupt and otherwise draw out the rulemaking process.

Additionally, the procedural rules set forth the board's expectations regarding the participants in the rulemaking process, lay out what the participants should expect in the process, and establish a structure to support and illuminate the process for all involved. Board staff currently can spend significant time explaining the rulemaking process to the public and department staff. By establishing procedural rules that are clear, concise, and have been the subject of public input and debate, everyone will know how the rulemaking process works and how they can participate. Structured and transparent operating rules can help assure fair and impartial hearings, allow the decision-makers to focus on the substantive issues, simplify the process, and minimize unnecessary distractions.

- 3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

None.

- 4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

There are no probable costs to this rule. However, the board believes that there are significant potential benefits as stated above. By maintaining the status quo (operating without procedural rules), some of the public are unclear as to how they may engage in a rulemaking hearing and may forgo participating at all. Some participants may intentionally circumvent the stakeholder process conducted by the department and only raise their concerns at the rulemaking hearing. This often results in confusion and delay because neither the department nor the board members are adequately prepared to consider the new issues.

**5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

There are no less costly or less intrusive methods.

**6. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

During the initial discussions, the board reviewed the procedural rules used by the Air Quality Control Commission, the Solid and Hazardous Waste Commission, and the Water Quality Control Commission. The board determined that while those procedural rules worked well for those entities, it was important that any procedural rules the board would contemplate reflect its values. The Commissions' rules were considered lengthy, complex, and potentially intimidating to the public that regularly appears before the board. After discussions at the board's 2011 retreat and subsequent work sessions, the board developed the present proposal. This proposal will effectively serve the needs of the citizens for a forum to express their views and the board's desire to conduct its business in a fair, open, and consistent manner.

**7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.**

No empirical data was used in formulating the proposal. However, the board examined and considered the rulemaking experience of other entities with procedural rules in developing this proposal.

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State Board of Health  
PROCEDURAL RULES  
6 CCR 1014-8

August 16, 2012

Regulation I. General Provisions

Section 1.01 Definitions

- 1.01.1 “Board” means the Colorado State Board of Health
- 1.01.2 “Department” means the Colorado Department of Public Health and Environment and its staff.
- 1.01.3 “General public” means any members of the public not in the attentive public or associated with a group or organization on any given issue; laypersons.
- 1.01.4 “Hearing Chair” means the Board member that presides over a rulemaking hearing.
- 1.01.5 “Interested person” means any person who may be ~~affected or~~ aggrieved by agency action.
- 1.01.6 “Proponent” means a person or entity that is advocating for the adoption of a rule proposal.
- 1.01.7 “Rule-making” means the Board process for the formulation, amendment, or repeal of a rule.
- 1.01.8 “Staff” means the administrator for the Board, the program assistant for the Board and any person employed by the department or on contract with the department. “On contract” includes working within the department via a temporary contract.

Regulation II. Hearing Chair

Section 2.01 Who serves and how selected

- 2.01.1 Any member of the Board may serve as a Hearing Chair for a rulemaking hearing.
- 2.01.2 The president of the Board shall serve as the Hearing Chair for rulemaking hearings, or in his or her absence, the vice-president. The president may also select any member to serve as a Hearing Chair as provided in 2.01.3
- 2.01.3 At the time the Board sets a rulemaking hearing, or at anytime thereafter, the President may select a member of the Board to serve as the Hearing Chair. The President shall use his or her discretion in selecting a Hearing Chair but in no event may the Hearing Chair have an actual or perceived/apparent conflict of interest. Any actual or perceived/apparent conflict of interest must be voluntarily disclosed as provided in C.R.S. §24-18-110 by the prospective hearing chair during the selection process in the subject matter of the rulemaking hearing over which he or she shall preside.



Regulation III. Rulemaking Hearings

Section 3.01 General Provisions

- 3.01.1 The rulemaking hearing ordinarily is conducted under Robert's Rules of Order –Revised, but the Board may from time to time act on a more informal basis, but in no event shall the hearing fail to comply with title 24, article 4 of the Colorado Revised Statutes C.R.S. §24-4-103 Nothing in these rules shall be construed to limit the ability of Board members to ask appropriate questions of any participant in a rulemaking hearing.
- 3.01.2(1) The Board shall conduct a public rulemaking hearing before promulgating any rule. The Board shall afford any interested persons, members of the general public and department staff an opportunity to submit written data, views, or arguments. The Hearing Chair may set appropriate limitations on the length, format, time frame for submission and general scope of any written data, views, or arguments in the notice of proposed rulemaking or by a subsequent order of the Board.
- (2) The Board may allow interested persons, members of the general public and department staff to present data, views or arguments orally at the rulemaking hearing if the Board determines, in its discretion, that such oral testimony will be helpful. Oral testimony at the rulemaking hearing may be limited. The Hearing Chair may impose reasonable restrictions on the oral testimony at the rulemaking hearing, including but not limited to, restricting the amount of time, and prohibiting duplicative or repetitive testimony.
- 3.01.3 Board members, department staff, interested parties, and the general public may not address the Board until recognized by the Hearing Chair.
- Section 3.02 Submission of Written Comments
- 3.02.1 The Board may require that written data, views and arguments be submitted in advance of the rulemaking hearing as stated in the notice of proposed rulemaking or by a subsequent order of the Board. Written data, views, comments and arguments shall be submitted no later than five (5) calendar days prior to the rulemaking hearing unless extenuating circumstances exist.
- 3.02.2 The Board may limit or prohibit the introduction of new substantive written information concerning a proposed rule at the rulemaking hearing.
- 3.02.3 The Board may set appropriate limitations on the length, format, time frame for submission and general scope of any written data, views, or arguments. The Board may specify the limitations in the notice of proposed rulemaking or by a subsequent order of the Board.
- 3.02.4 Interested persons and the department are encouraged to develop consensus positions which emanate from discussions prior to the rulemaking hearing. The Board, interested persons and the department must have a reasonable opportunity, in light of the circumstances, to evaluate any alternative proposals.
- 3.02.5 The Hearing Chair may limit or prohibit the introduction of new substantive written or oral information concerning a proposed rule or alternative proposal at the rulemaking hearing. When determining



whether to consider new written substantive information the Board may consider:

- a. whether the submitter has been given an opportunity to be involved in the stakeholder process and with the development of the original rule proposal rule being proposed and/or discussions concerning the rule proposal;
- b. the timing of the new information or alternative proposal and the hearing;
- c. the complexity of the issues being presented;
- d. the degree to which the proponent of the rule and the interested persons involved in the rulemaking hearing are or expect to be in agreement on the substantive issues; and
- e. whether any statutory or programmatic requirements exist regarding the need for Board action.

### Section 3.03 Oral Comments at Rulemaking Hearing

3.03.1 The Board encourages the general public to participate in rulemaking hearings by commenting on proposed rules or alternate proposals. The Board will generally afford any interested 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 the rulemaking hearing as reflected in the notice of proposed rulemaking or by order of the Board.

3.03.2 The Board will generally set aside a portion of the rulemaking hearing to hear comments and testimony from the general public. The Hearing Chair always has the right to limit or prohibit the oral testimony of the general public or interested persons at the rulemaking hearing. Organized groups of individuals are urged to identify one spokesperson. Speakers should be as concise as possible, and avoid repeating comments previously made by others.

3.03.3 The Board and/or Hearing Chair may limit or prohibit the introduction of new substantive oral information concerning a proposed rule or alternative proposal at the rulemaking hearing. When determining whether to consider new substantive oral information the Board may consider:

- a. whether the commenter has been given an opportunity to be involved with the development of the original rule proposal and/or discussions concerning the rule proposal;
- b. the timing of the new information or alternative proposal and the hearing;
- c. the complexity of the issues being presented;
- d. the degree to which the proponent of the rule and the interested persons involved in the rulemaking hearing are or expect to be in agreement on the substantive issues; and
- e. whether any statutory or programmatic requirements exist regarding the need for Board action.

Highlighted text indicates language changed since the July 18, 2012 Request for Rulemaking

135 Regulation IV. Miscellaneous

136 **RESERVED.**

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