

## WWFOCB Rulemaking Process Summary

The Water and Wastewater Facility Operators Certification Board adopts rules and revisions under its authority found in Title 25, Article 9 of the Colorado Revised Statutes.

This summary of the steps involved in considering and adopting a new or changed rule is for the convenience of interested persons. Complete procedural requirements for rulemaking proceedings are set out in the State Administrative Procedure Act, found in Title 24, Article 4 of the Colorado Revised Statutes.

### Board rulemaking proceedings

The Board considers and adopts rules or changes in three main phases:

- Proposal and notice of planned rulemaking
- Prehearing procedures and public hearing
- Deliberation and decision on the proposed rule

### Proposal and notice of planned rulemaking

A member of the Board, its staff or anyone in the general public may request that the Board consider a rule proposal. The decision whether to consider a rule is entirely within the Board's discretion. The Board may discuss whether to consider the proposal, but will restrict its discussions to that question rather than deliberating the merits of any rule. The final decision will rest on evidence introduced during a public hearing.

The first step in the process is providing public notice of the rulemaking proceeding. Although the official notice is through the Colorado Register, the Board will generally try to notify the public by email or otherwise through interested organizations and operator databases. The notice will identify the time, place and nature of the proceedings, as well as the authority for any action proposed. A draft of the rule and an explanation of the basis, statutory authority and purpose are included with the notice. Any person may request that the Board also issue a regulatory analysis of the proposal. That request must be made at least fifteen days before the hearing.

A hearing on the proposed rule cannot occur for at least twenty days after publication of the notice, but often would be held between thirty and sixty days after the notice in order to allow public participation.

### Prehearing Procedures and Public Hearing

In order to assure a fair opportunity for participation in the rulemaking, the Board holds a public hearing. Interested persons may submit written comments or proposed alternatives in writing before the day of the hearing. Any deadlines for written comments or other procedural limits will generally be included in the published notice.

Any written comments should be provided early enough to allow the Board members to read the material before the day of the hearing. It is difficult for Board members to review written material provided on the day of the hearing and the Board can decide not to accept such information if it would unfairly prevent someone from responding to the submittal.

At the hearing, one member of the Board, generally the chair, will preside to direct the process. The hearing officer may decide the order of presentation and the amount of time allowed for each witness or participant and may impose reasonable time limits on testimony. The officer would also make other procedural decisions necessary during the hearing.

One responsibility of the Board is to base its decision on the public record rather than on other information. Beginning with the decision to issue a notice and consider a rule, Board members do not discuss the merits of the rule outside a public hearing. This is intended to assure that anyone interested in the rule knows exactly what information the members are considering in making their decision.

During the hearing, members of the public may testify and present other evidence. Board members may ask questions of any witness or regarding any exhibits or other documents provided by any participant. Public testimony and written materials submitted to the Board form the record, or basis, for a decision.

#### Deliberation and decision on the proposed rule

Following introduction of all evidence, the Board considers the record and may choose between proposals, combine elements of several proposals, or decide not to adopt any rule or revision at all. During these deliberations, Board members may consider their own experience and expertise and may discuss the proposal in light of each. However, the decision made must rest solely on the evidence contained in the record.

Deliberations and decisions on a proposal do not have to happen at the same meeting as the hearing. As necessary, final decision on the rulemaking may be postponed to a later meeting to accommodate the Board's schedule.

Once the Board adopts a rule, it is sent to the Attorney General, the General Assembly's Office of Legislative Legal Services and the Colorado Secretary of State for further action. In general, the rule would become effective at the end of the second month following the Board meeting at which the rule was adopted, *e.g.*, a rule adopted on November 30 would be effective at the end of January. Board rules can be challenged in court after they become effective.