



Colorado Department
of Public Health
and Environment

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

6 CCR 1014-1

**STATE BOARD OF HEALTH
Declaratory Orders Procedures**

(Adopted May 19, 1982, effective June 30, 1982)

DECLARATORY ORDERS PROCEDURES

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DEFINITIONS

- 1.1 “Board” refers to the Colorado Board of Health.
- 1.2 “Person” includes an individual, partnership, corporation, association and public or private organization of any character other than an agency.

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PROCEDURES

- 2.1 Any person may petition the board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the board.
- 2.2 The board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the board determines that it will not rule upon such a petition, the board shall promptly notify the petitioner of its action and state the reasons for such action.
- 2.3 In determining whether to rule upon a petition filed pursuant to this rule, the board will consider the following matters, among others:
 - a. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the board.
 - b. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the board or a court involving one or more of the petitioners.
 - c. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the board or a court but not involving any petitioner.
 - d. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

- e. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to rule 57, Colorado Rules of Civil Procedure, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

2.4 Any petition filed pursuant to this rule shall set forth the following:

- a. The name and address of the petitioner.
- b. The statute, rule or order to which the petition relates.
- c. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

2.5 If the board determines that it will rule on the petition, the following procedures shall apply:

- a. The board may rule upon the petition based solely upon the facts presented in the petition.
 - 1. Any ruling of the board will apply only to the extent of the facts presented in the petition and any amendment to the petition.
 - 2. The board may order the petitioner to file a written brief, memorandum or statement of position.
 - 3. The board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
 - 4. The board may dispose of the petition on the sole basis of the matters set forth in the petition.
 - 5. The board may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - 6. The board may take administrative notice of facts pursuant to the Administrative Procedures Act (C.R.S. 1973, 24-4-105(8)) and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.
 - 7. If the board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

- b. The board may, in its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the board intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the board to consider.
- 2.6 The parties to any proceeding pursuant to this rule shall be the board and the petitioner. Any other person may seek leave of the board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the board. A petition to intervene shall set forth the same matters as required by section 2.4 of this rule. Any reference to a “petitioner” in this rule also refers to any person who has been granted leave to intervene by the board.
- 2.7 Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to C.R.S. 1973, 24-4-106.

DECLARATORY ORDERS PROCEDURES

Statement of Basis and Purpose

Statutory authority for the adoption of these regulations is found in C.R.S. 1973, 24-4-105(11). These regulations provide for the entertaining and prompt disposition of petitions for declaratory orders to terminate controversies or to remove uncertainties as to the applicability to the petitioners of any statutory provision or of any rule or order of the Colorado Board of Health. Adoption of these regulations is not discretionary, as they are mandated by statute. Therefore, they are being enacted in order to come into compliance with the law.

Statement of Fiscal Impact

No fiscal impact will occur as a result of the promulgation of these regulations.