

NOTICE OF PUBLIC RULEMAKING HEARING BEFORE
THE COLORADO WATER CONSERVATION BOARD BY THE DEPARTMENT OF
NATURAL RESOURCES

Colorado Weather Modification Rules and Regulations
Colo. Code Regs. § 401-1 (2011)

SUBJECT

This is a notice of a public rulemaking hearing before the Colorado Water Conservation Board (“CWCB”) for promulgation by the Executive Director of the Department of Natural Resources (“Executive Director”) of adoption of rules and regulations, titled “Colorado Weather Modification Rules and Regulations” (“the Rules”). Senate Bill 11-090 requires that the Director of Natural Resources update the Rules by July 1, 2012. This requirement is codified by statute at section 36-20-107(3)(a), C.R.S. (2011). The attached Rules are intended to supersede and replace the 1986 Colorado Weather Modification Rules and Regulations codified in the Code of Colorado Regulations at 2 Colo. Code Regs. § 401-1 (2011). The updated Rules are summarized below, and for the convenience of interested persons, are attached to this notice as Exhibit 1. A hard copy is available upon request to the CWCB staff, located at 1313 Sherman Street, Room 721, Denver, CO 80203; (303) 866-3441, as well as from the CWCB website at www.cwcb.state.co.us. The Executive Director, in consultation with the CWCB, may change the updated Rules as set forth in Exhibit 1 at the rulemaking hearing. The Executive Director, in consultation with the CWCB, will consider any alternative proposals related to the proposed Rules that fall within the scope of the Notice.

HEARING SCHEDULE

Prehearing Conference

Interested persons can attend the Prehearing Conference in person or by phone.

Date: April 27, 2012

Time 10:00 am

Place: 1580 Logan Street, Office Level 2, conference room
Denver, Colorado 80203

Prehearing Conference Call Information:

Call-in number: 1-877-820-7831, participant passcode: 961987#

Rulemaking Hearing

Date: May 16, 2012

Time 3:00 pm

Place: Hotel Glenwood Springs
52000 Two Rivers Plaza Road
Glenwood Springs, Colorado 81601.

PUBLIC PARTICIPATION

All public comments on the proposed Rules should be made in writing. Verbal presentation of the information contained in the written comments will not be necessary; however, the Executive Director will allow brief verbal summaries of written comments to be made, to the extent time allows, as described below. Although the Executive Director strongly encourages all interested persons to submit their comments in writing, a short period of time at the end of the rulemaking hearing (a total of 30 minutes or less) will be reserved for General Public Comments by those persons who do not provide written comments.

Written Comment Deadline

Twenty double-sided copies of all public written comments must be delivered to the CWCB office at 1313 Sherman Street, Room #721, Denver, CO 80203 by the close of business (5:00 pm) on April 20, 2012 and send by email to steve.wolff@state.co.us. The CWCB will accept and consider late written comments and day-of hearing written comments, but any person who fails to deliver written comments by the April 20, 2012 deadline will not be entitled to make a Scheduled Oral Presentation, as described below.

Oral Presentations

The opportunity for two types of oral presentations will be available to the public. The first, referred to as Scheduled Oral Presentation, will be an assignment of up to 15 minutes of time on the agenda. (NOTE: Time will be allocated depending upon the number of people seeking a Scheduled Oral Presentation.) The second, referred to as a General Public Comment, will be allotted three minutes or less (determined by the available time and number of speakers) and scheduled on a “first come, first serve” basis.

Scheduled Oral Presentations are available for persons who deliver their written comments to the CWCB on or before April 20, 2012. Anyone who submits written comments by April 20, 2012 but cannot attend the Prehearing Conference may make a written request for a Scheduled Oral Presentation at the rulemaking hearing on or before April 20, 2012, but will have to accept whatever time slot is available after those attending the prehearing conference have been assigned a time slot.

Rebuttal Statements Deadline

Any rebuttal statement must be submitted to the CWCB in the same manner as written comments (described above), and to all persons who provided written comments, by May 3, 2012, at 5:00 pm. Rebuttal statements are constrained to address topics raised in the written comments.

PROPOSED AGENDA OF RULEMAKING HEARING

3:00 pm	Rulemaking procedures explained
3:15	Staff presentation
3:35	Scheduled oral presentations
4:05	Break
4:15	General public comment
4:30	Staff Response to questions during oral presentations and public comment
4:45	Deliberation by Executive Director and Board Discussion
5:00	Hearing adjourns

NOTE: THIS AGENDA MAY BE MODIFIED AT THE PREHEARING CONFERENCE DEPENDING UPON THE NUMBER OF SPEAKERS.

Availability of Administrative Record

The Administrative Record, including public written comments and all other written materials to be considered by the Executive Director, in consultation with the CWCB, in this rulemaking will be available for inspection at the CWCB office during normal business hours (8:00 am – 5:00 pm) and available on the CWCB website at www.cwcb.state.co.us. Copies are available upon request from the CWCB for a fee of 25 cents per page, plus postage (if the copies are to be mailed).

HEARING PROCEDURE

The rules of evidence or civil procedure will not apply to the rulemaking hearing. No member of the public or CWCB staff shall have the right to cross examine any person speaking at the hearing. Executive Director or CWCB members may ask questions of any person appearing before them. At the end of all public comment, the Executive Director, in consultation with the CWCB, may allow members of the public to submit questions to the Executive Director or CWCB to ask, in his or her discretion.

The Executive Director or the chair of the CWCB may stop any Scheduled Oral Presentation or General Public Comment if the person speaking has exceeded his/her allotted time. No exhibits, maps, demonstrative exhibits or physical evidence may be presented in the oral summary unless such material was attached to the participant's written comments. Once materials are submitted to the CWCB, the material becomes part of the Administrative Record and the property of the CWCB, and will not be returned to the person offering the material.

Subject to section 24-4-103, C.R.S. (2011), the Executive Director, in consultation with the CWCB, may modify the proposed revised Rules prior to promulgating final revised Rules.

DESCRIPTION OF THE SUBJECT AND ISSUES INVOLVED

The Rules provide the technical standards and a process for obtaining, operating and maintaining a weather modification permit in Colorado. The purpose of the Rules is as follows:

To provide regulation of and standards for weather modification in Colorado in accordance with the legislative declaration provided by the Weather Modification Act of 1972 (“Act”), section 36-20-101, C.R.S. (2011), and pursuant to the legislative direction provided by section 36-20-107(3)(a), C.R.S. (2011). Rules for regulation of weather modification operations are of statewide concern to the State of Colorado and the Department of Natural Resources. The State of Colorado, through the Colorado General Assembly, recognizes the economic benefits that can be derived for the people of Colorado from weather modification, while minimizing possible adverse effects through implementation of proper safeguards and collection of accurate information.

Prior to the rulemaking hearing, CWCB staff and counsel reviewed several other states’ weather modification rules and interviewed regulators in those states to understand their regulatory practices. The CWCB staff and counsel convened a sixteen-member advisory committee of weather and climate experts, permit holders, project sponsors, and fiscal managers of programs to provide their experience with weather modification regulatory programs.

The primary changes between the 1986 Rules and the proposed are as follows:

Senate Bill 1996-90 repealed annual licensing of qualified operators and gives permits to qualified operators. As part of the current rulemaking, the proposed Rules broaden the qualifications to include other degrees and training and experience that could be counted in addition to the traditional meteorology degree.

At the request of project sponsors of ongoing weather modification operations, and due to the five-year and ten-year duration of winter ground based permits, the proposed Rules include a process for issuing a new permit in the same target area if sponsors elect to not contract with their original permit holder.

The proposed Rules now require periodic evaluation proposals be submitted to the project sponsors by the permit holders of weather modification operations, a variety of established data collection and evaluation techniques are provided.

The Colorado General Assembly authorized the Director to issue permits applicable to weather modification operations pursuant to the Act, section 36-20-108(1), C.R.S.

(2011). This direction is intended to ensure that weather modification operations implement proper safeguards and provide accurate information on operations.

A COPY OF THE PROPOSED RULES IS ATTACHED AS EXHIBIT 1.

EFFECTIVE DATE

The Rules shall become effective 20 days after publication of the final rules in the Colorado Register.

SPECIFIC STATUTORY AUTHORITY

The statutory authority for the adoption of the Rules is found in 36-20-107, C.R.S. (2011). The CWCB has administered the weather modification permitting program since 1987 pursuant to an Executive Director's Office administrative order. At a regularly scheduled CWCB Board meeting on January 20, 2012, the CWCB staff requested approval for a process to assist the Executive Director by providing a rulemaking hearing at the May 15-16, 2012 CWCB board meeting and also requested Deputy Attorney General Casey Shpall as the hearing officer. The motion was approved unanimously. The Executive Director has agreed to utilize the CWCB Board meeting process for the rulemaking hearing, although the responsibility and authority to promulgate new rules resides with the Executive Director.

Dated this 30th day of March, 2012.



Robert W. Randall, Deputy Director

for

Mike King, Executive Director
Department of Natural Resources

Colorado Weather Modification Rules and Regulations

Statement of Basis and Purpose – March 30, 2012

Proposed Basis and Purpose for Colorado Weather Modification Rules and Regulations:

1. The General Assembly required the Executive Director of the Department of Natural Resources (“Executive Director”) to promulgate new rules to ensure that the Colorado Weather Modification Rules and Regulations (“Rules”) are up to date and consistent with Senate Bill 11-090, , the Weather Modification Act of 1972 (the “Act”), section 36-20-107(1), C.R.S. (2011)) by June 30, 2012.
2. The General Assembly gave the Executive Director the responsibility to ensure weather modification operations are carried out with proper safeguards to minimize danger to land, health, safety, people, property, or the environment, recognizing that economic benefits are derived for Colorado from weather modification. § 36-20-102 & 108(2), C.R.S., (2011). The General Assembly also authorized the Executive Director to issue weather modifications permits pursuant to section 36-20-108(1).
3. These Rules are promulgated to carry out the authority and responsibilities of the Executive Director to govern the research and development or commercial operations in weather modification Director considers necessary or desirable to minimize danger to land, health, safety, people, property, or the environment. § 36-20-108(2), C.R.S., (2011).
4. In 1987, the Executive Director delegated authority to administer the Act to the Director of the Colorado Water Conservation Board (“CWCB”). §§ 24-1-107, 36-20-108(3)(b), C.R.S. (2011).
5. The purpose of the Rules is to provide regulation of and standards for weather modification in Colorado in accordance with the legislative declaration provided by the Act and ensure that the Rules are up to date and consistent with the Act. The proposed Rules replace the current Rules in their entirety.
6. The Rules better define and update the qualifications, education, and experience necessary to obtain a permit to conduct commercial weather modification operations. § 36-20-112(g), C.R.S. (2011).
7. The Rules allow the Executive Director to modify, suspend or revoke a permit, give the operator an opportunity for a hearing, and to issue a second permit in a target area if it does not conflict with a existing permit because it has become inactive. § 36-20-109(1), C.R.S. (2011).
8. The Rules define the commercial fee as 2% of the yearly contract between the permit holder and the operation sponsors, or if the permit holder and operation sponsor are the same, then 2% of the weather modification operation’s annual

- budget. This commercial fee is separate from the permit application fee, and assists the state in operating a permit compliance, environmental monitoring and evaluation program. §36-20-112(b), C.R.S. (2011).
9. The Rules update the requirements for publication of legal notices and public hearings. These updates are in accordance with the Act, but reflect the trend over time away from official newspaper of records in each county. § 36-20-104(7), C.R.S. (2011).
 10. The Rules require weather modification operators to notify the National Weather Service, Colorado Avalanche Information Center, County Emergency Managers, and the Colorado Climate Center prior to each season's operations. Any emergency manager may temporarily suspend weather modification operations. The Rules also provide criteria for temporarily suspending operations due to avalanche hazards and for other weather-related emergencies. These provisions are necessary in order to allow weather modifications to be restricted during weather emergencies, and are consistent with the Act, which requires the Executive Director to immediately modify a weather modification permit due to emergencies. § 36-20-115(2), C.R.S. (2011).
 11. The Rules include additional reporting requirements for aircraft operations. § 36-20-126(1)(b), C.R.S. (2011).
 12. The Rules require permit holders to comply with American Society of Civil Engineer's Standard Practices documents to design, operate, and evaluation weather modification operations. § 36-20-108 (5)(c), C.R.S. (2011).
 13. The Rules provide that weather modification permit holders submit periodic evaluation proposals, outside of the normal annual reporting requirements to the project sponsors and State of Colorado. The data and evaluation types listed in Rules are established standards and practices, and are intended to refine and develop weather modification programs. §§ 36-20-104(8) & (9), C.R.S. (2011).
 14. The Rules were developed in consultation with a sixteen-member advisory committee of weather modification and climate experts, permit holders, project sponsors, and fiscal managers of programs to provide their experience with weather modification regulatory programs.