



Draft Statement of Basis, Purpose, and Specific Statutory Authority

Colorado Department of State General Policies and Administrative Rules, et seq¹ 8 CCR 1505-3, et seq²

I. Basis and Purpose

This statement explains proposed amendments to the Colorado Department of State General Policies and Administration Rules.³ The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado laws.⁴ Additionally, these proposed amendments to the General Policies and Administration Rules require proposed amendments to other regulations under the purview of the Department. Specifically, rules concerning elections, campaign and political finance, the Colorado Charitable Solicitations Act, lobbyist regulation, and notary program have proposed amendments in this rulemaking.⁵

Specific changes include:

- Amendments to rules concerning general procedures and administration.
 - Amendments to Rule 1 renumber rules, update statutory references, and change grammar to be consistent with Department rulemaking standards. The repeal of Rule 1.7 is due to the effective date of the rules no longer being necessary. Amendments to Rule 2 update the title of Rule 2 to be consistent with Department rulemaking standards.

¹ Additional regulations are amended as a result of this rulemaking. The amended rules are: the rules concerning elections, campaign and political finance, the Colorado Charitable Solicitations Act, lobbyist regulation, and notary program.

² The additional regulations' CCR numbers are: 8 CCR 1505-1, 1505-6, 1505-8, 1505-9, and 1505-11.

³ 8 CCR 1505-3.

⁴ Title 1, Article 16 of Title 6, and Articles 4, 6, and 21 of Title 24, C.R.S.

⁵ 8 CCR 1505-1, 1505-6, 1505-8, 1505-9, and 1505-11.

- New Rule 3 introduces general procedural rules for administrative hearings. The new rule is generally based upon Campaign and Political Finance Rule 24, which this rulemaking proposes repealing as a result of New Rule 3 in 8 CCR 1505-3.
 - New Rule 3.1 pertains to the scope of these rules, including the general statutory authority for Rule 3 and the specific matters that come before the hearing officer under the Department's authority and the corresponding statutory authority.
 - New Rule 3.2 provides the different definitions that are used within Rule 3.
 - New Rule 3.3 provides guidance for the timing for filing an administrative complaint, request for hearing, or transfer of an initial complaint or protest to a hearing officer.
 - New Rule 3.4 explains the content of administrative complaints and the legal representation of the divisions within the Department.
 - New Rule 3.5 lists the requirements for general filings and service of pleadings and other papers during a hearing proceeding.
 - New Rule 3.6 lists the requirements for filings for answers or other pleadings.
 - New Rule 3.7 pertains to the settings of hearings or other proceedings before a hearing officer.
 - New Rule 3.8 standardizes the process for mediations for licensees upon either petition of the licensee or the Department.
 - New Rule 3.9 lists the requirements for settlement agreements during a hearing proceeding.
 - New Rule 3.10 pertains to the requirements of discovery and subpoenas during a proceeding before a hearing officer.
 - New Rule 3.11 provides guidance for prehearing procedures, statements, and conferences.
 - New Rule 3.12 pertains to the general conduct of hearings before a hearing officer.
 - New Rule 3.13 pertains to the burden of proof.
 - New Rule 3.14 pertains to post-hearing procedures.

- New Rule 3.15 pertains to the entry of appearances and withdrawal of counsel during a hearing proceeding before a hearing officer.
 - New Rule 3.16 pertains to ex parte communications during a hearing proceeding.
 - New Rule 3.17 pertains to the general conduct of the hearing officer.
 - New Rule 3.18 pertains to the transferring of any pending administrative complaints from the Office of Administrative Courts to a hearing officer.
 - Appendices A and B are example outlines of a prehearing statement and a case management order.
- Amendments to rules concerning elections.⁶
 - Amendments to Rule 13.2.10 include a reference to 8 CCR 1505-3, Rule 3, for the standardized administrative hearing process and updates the deadline that the Department shall consider the initial determination by the hearing officer for Help America Vote Act (HAVA) complaints.
 - Amendments to Rule 14.5 include the initialism of voter registration drive that is used in rule.
 - Amendments to Rule 14.5.5 include a reference to 8 CCR 1505-3, Rule 3, for the standardized administrative hearing process.
 - Repeal of Rule 14.5.6 to be consistent with statute and 8 CCR 1505-3, Rule 3.
- Amendments to rules concerning campaign and political finance.⁷
 - Repeal of Rules 1.2, 1.7, 1.15, and 1.19 as they are no longer needed after the repeal of Rule 24.
 - Amendment to Rule 4.3.4 includes a reference to 8 CCR 1505-3, Rule 3, for the standardized administrative hearing process.
 - Amendments to Rule 23.2.1 clarify that the complaint in this rule refers to an administrative complaint, which is a common terminology used within both the campaign and political finance rules and general policies and administration rules.

⁶ 8 CCR 1505-1

⁷ 8 CCR 1505-6

- Amendments to Rule 23.3.1 clarify that the complaint in this rule is an administrative complaint and that this complaint is filed with a hearing officer, under 8 CCR 1505-3, Rule 3.
- Repeal of Rule 24. This rule is no longer necessary within solely the campaign and political finance rules as there will now be a standardized hearing officer process for complaints, request for hearings, and the transferring of complaints to a hearing officer. This also removes Appendices A and B from the campaign and political finance rules as they are no longer necessary with the repeal of Rule 24.
- Amendments to rules concerning lobbyist regulation.⁸
 - Amendment to Rule 5.6.1 includes a reference to 8 CCR 1505-3, Rule 3, for the standardized administrative hearing process.
 - Amendments to Rule 5.6.2 clarify that the division may recommend that a hearing officer, not the Department, may take one or more of the actions listed in rule. Section (f) of this rule is amended to reference a specific rule in 8 CCR 1505-3 that lists additional remedies, aside from those listed in statute.
 - Repeal of Rule 5.6.3 as it is not consistent with the Administrative Procedure Act and is no longer needed.
- Amendments to rules concerning the Colorado Charitable Solicitations Act.⁹
 - Amendments to Rule 3.1 update the expedited hearing process to be consistent with statute and 8 CCR 1505-3, Rule 3, which includes holding the hearing within 49 days instead of between 20 and 45 days.
 - Amendments to Rule 3.3 repeals the original language and amends the language so that it is consistent with the Administrative Procedure Act, specifically section 24-6-105(14), C.R.S. This includes requiring the hearing officer to issue an initial decision within 10 days of a hearing or within 10 days of the close of evidence, whichever is later.
- Amendments to rules concerning the notary program.¹⁰
 - Amendment to Rules 3.1.3, 3.6.5, 5.3.5, and 5.3.9, to reference 8 CCR 1505-3, Rule 3, for the standardized administrative hearing process.

⁸ 8 CCR 1505-8

⁹ 8 CCR 1505-9

¹⁰ 8 CCR 1505-11

Other changes to rules not specifically listed are non-substantive and necessary for consistency with Department rulemaking format and style. Cross-references in rules are also corrected or updated.

II. Rulemaking Authority

The statutory authority is as follows:

- Section 1-1.5-105(1), C.R.S., authorizes the Secretary of State to “establish by rule a uniform administrative complaint procedure to remedy grievances brought under Title III of [Help American Vote Act, HAVA].”
- Section 1-1.5-105(2)(g), C.R.S., requires that the rule promulgated by the Secretary of State regarding Help America Vote Act (HAVA) complaints “must provide for, but need not be limited to...[,] at the request of the complainant, a hearing on record[.]”
- Section 1-2-703, C.R.S., authorizes the Secretary of State to fine a voter registration drive organizer that fails to file a statement of intent under section 1-2-701, C.R.S., maintain a designated agent in the state, use a voter registration form approved by the Secretary of State, fulfill the training requirements by the Secretary of State in accordance with section 1-2-701, C.R.S., appropriately deliver a voter registration application to the proper county clerk and recorder, or compensate a circulator based on the number of voter registration applications that have been collected by that circulator.
- Section 1-4-905.5(3), C.R.S., requires the Secretary of State to provide an applicant or licensee with timely notice and hearing in accordance with Article 4 of Title 24, C.R.S., if the Secretary of State denies, revokes, suspends, or imposes a condition on a license.
- Section 1-4-905.7(3), C.R.S., requires that a complaint filed alleging a violation of the requirements for the petition circulator report required by subsection (2) must be governed by Article 4 of Title 24, C.R.S., unless otherwise provided in this section.
- Section 1-4-909(1.7)(c), C.R.S., permits the Secretary of State to “convene a hearing [in response to a candidate filing a protest], which must be held before the secretary of state or a designee of the secretary of state is appointed as the hearing officer.”
- Section 1-12-108(9)(a)(III), C.R.S., requires that “[e]very hearing shall be heard before the designated election official with whom the protest is filed or a designee of the designated election official appointed as the hearing officer” as well as other requirements of the protest hearing.

- Section 1-40-132, C.R.S., authorizes the Secretary of State to “conduct a hearing, upon a written complaint by a registered elector, on any alleged violation of the provisions relating to the circulation of a petition...”
- Section 1-40-135(3)(a), C.R.S., states that “[a]ny procedures by which alleged violations involving petition entities are heard and adjudicated shall be governed by the ‘State Administrative Procedure Act’, article 4 of title 24.”
- Section 1-45-111.5, C.R.S., authorizes the Secretary of State to promulgate rules “necessary to enforce and administer any provision of this article”, which includes complaints filed before a hearing officer.
- Section 1-45-111.7, C.R.S., authorizes the Secretary of State to file a complaint with a hearing officer within thirty days after initiating an investigation and provides additional requirements for hearings conducted by a hearing officer.
- Section 6-16-111(6)(b), C.R.S., states that for a proceeding for “any such denial, suspension, or revocation hearing are governed by the ‘State Administrative Procedure Act’, article 4 of title 24; except that the secretary of state shall promulgate rules to provide for expedited deadlines to govern such proceedings...”
- Section 24-4-104, C.R.S., states that an agency “shall set and conduct the proceedings in accordance with this article unless otherwise required by law,” the agency shall not revoke, suspend, annul, limit, or modify a previously issued license until after holding a hearing, and if an application for a new license is denied without a hearing, the applicant may request a hearing before the agency as provided in section 24-4-106, C.R.S.
- Section 24-4-105(3), C.R.S., permits hearing officers to preside over any agency adjudicatory proceeding if otherwise authorized by law.
- Section 24-6-305, C.R.S., authorizes the Secretary of State to “revoke the certificate of registration of any individual who has been convicted of violating any of the provisions of [Part 3, Article 6 of Title 24]” and to do so in accordance with the State Administrative Procedure Act
- Section 24-6-308(2), C.R.S., states that, upon receipt of a lobbyist complaint, “the secretary of state may act upon alleged violation of this section to enforce governing laws or rules...”
- Section 24-21-108, C.R.S., authorizes the Secretary of State to conduct hearings, when authorized by law, “in conformance with the provisions of section 24-4-105; except that hearings related to petitions or certificates of designation or nomination filed under section 1-4-901, C.R.S., shall not be required to be conducted under provisions of section 24-4-105[, C.R.S.]”

- Section 24-21-115(6), C.R.S., permits the secretary of state to “promulgate rules to implement this section” in regard to durable medical equipment suppliers.
- Section 24-21-523(3), C.R.S., states that if the Secretary of State “denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with the ‘State Administrative Procedure Act’...”