COLORADO REVISED STATUTES

TITLE 24 GOVERNMENT – STATE : ADMINISTRATION

ARTICLE 4

Rule-making and Licensing Procedures by State Agencies

24-4-101. Short title.

This article shall be known and may be cited as the "State Administrative Procedure Act".

24-4-101.5. Legislative declaration.

The general assembly finds that an agency should not regulate or restrict the freedom of any person to conduct his or her affairs, use his or her property, or deal with others on mutually agreeable terms unless it finds, after a full consideration of the effects of the agency action, that the action would benefit the public interest and encourage the benefits of a free enterprise system for the citizens of this state. The general assembly also finds that many government programs may be adopted without stating the direct and indirect costs to consumers and businesses and without consideration of such costs in relation to the benefits to be derived from the programs. The general assembly further recognizes that agency action taken without evaluation of its economic impact may have unintended effects, which may include barriers to competition, reduced economic efficiency, reduced consumer choice, increased producer and consumer costs, and restrictions on employment. The general assembly further finds that agency rules can negatively impact the state's business climate by impeding the ability of local businesses to compete with out-of-state businesses, by discouraging new or existing businesses from moving to this state, and by hindering economic competitiveness and job creation. Accordingly, it is the continuing responsibility of agencies to analyze the economic impact of agency actions and reevaluate the economic impact of continuing agency actions to determine whether the actions promote the public interest.

24-4-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Action" includes the whole or any part of any agency rule, order, interlocutory order, license, sanction, relief, or the equivalent or denial thereof, or failure to act. Any agency rule, order, license, sanction, relief, or the equivalent or denial thereof which constitutes final agency action shall include a list of all parties to the agency proceeding and shall specify the date on which the action becomes effective.

(2) "Adjudication" means the procedure used by an agency for the formulation, amendment, or repeal of an order and includes licensing.

(3) "Agency" means any board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative branch or judicial branch and except:

(a) State educational institutions administered pursuant to title 23 (except articles 8 and 9, parts 2 and 3 of article 21, and parts 2 to 4 of article 30), C.R.S.;

(b) The Colorado law enforcement training academy created in part 3 of article 33.5 of this title; and

(c) The adjutant general of the national guard, whose powers and duties are set forth in section 28-3-106, C.R.S.

(3.5) "Aggrieved", for the purpose of judicial review of rule-making, means having suffered actual loss or injury or being exposed to potential loss or injury to legitimate interests including, but not limited to, business, economic, aesthetic, governmental, recreational, or conservational interests.

(4) "Counsel" means an attorney admitted to practice before the supreme court of this state.

(5) "Decision" means the determinative action in adjudication and includes order, opinion, sanction, and relief.

(5.5) "Economic competitiveness" means the ability of the state of Colorado to attract new business and the ability of the businesses currently operating in Colorado to create new jobs and raise productivity.

(6) "Initial decision" means a decision made by a hearing officer or administrative law judge which will become the action of the agency unless reviewed by the agency.

(6.2) "Interested person" includes any person who may be aggrieved by agency action.

(6.5) "Legislative committees of reference" means the committees established by the rules of the house of representatives and rules of the senate of the general assembly having jurisdiction over subject matter regulated by state agencies.

(7) "License" includes the whole or any part of any agency permit, certificate, registration, charter, membership, or statutory exemption.

(8) "Licensing" includes the procedure used by an agency respecting the grant, renewal, denial, revocation, suspension, annulment, limitation, or modification of a license.

(9) "Opinion" means the statement of reasons, findings of fact, and conclusions of law in explanation or support of an order.

(10) "Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) by any agency in any matter other than rule-making.

(11) "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding subject to the provisions of this article.

(12) "Person" includes an individual, limited liability company, partnership, corporation, association, county, and public or private organization of any character other than an agency.

(13) "Proceeding" means any agency process for any rule or rule-making, order or adjudication, or license or licensing.

(14) "Relief" includes the whole or any part of any agency grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; recognition of any claim, right, immunity, privilege, exemption, exception, or remedy; or any other action upon the application or petition of, and beneficial to, any person.

(15) "Rule" means the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of any agency. "Rule" includes "regulation".

(16) "Rule-making" means agency process for the formulation, amendment, or repeal of a rule.

(17) "Sanction" includes the whole or any part of any agency prohibition, requirement, limitation, or other condition affecting the freedom of any person; withholding of relief; imposition of any form of penalty or fine; destruction, taking, seizure, barring access to, or withholding of property; assessment of damages; reimbursement; restitution; compensation; costs; charges or fees; requirement; revocation or suspension of a license or the prescription or requirement of terms, conditions, or standards of conduct thereunder; or other compulsory or restrictive action.

(18) "Small business" means a business with fewer than five hundred employees.

24-4-103. Rule-making - procedure - repeal.

(1) When any agency is required or permitted by law to make rules, in order to establish procedures and to accord interested persons an opportunity to participate therein, the provisions of this section shall be applicable. Except when notice or hearing is otherwise required by law, this section does not apply to interpretative rules or general statements of policy, which are not meant to be binding as rules, or rules of agency organization.

(1.5) If an agency reinterprets an existing rule in a manner that is substantially different than previous agency interpretations of the rule or if there has been a change in a statute that affects the interpretation or the legality of a rule, the office of legislative legal services shall review the rule in the same manner as rules that have been newly adopted or amended under paragraph (d) of subsection (8) of this section upon receiving a request for such a review of the rule by any member of the general assembly.

(2) When rule-making is contemplated, public announcement thereof may be made at such time and in such manner as the agency determines, and opportunity may be afforded interested persons to submit views or otherwise participate informally in conferences on the proposals under consideration.

(2.5) (a) At the time of filing a notice of proposed rule-making with the secretary of state as the secretary may require, an agency shall submit a draft of the proposed rule or the proposed amendment to an existing rule and a statement, in plain language, concerning the subject matter or purpose of the proposed rule or amendment to the office of the executive director in the department of regulatory agencies. The executive director, or his or her designee, may determine if the proposed rule or amendment may have a negative impact on economic competitiveness or on small business in Colorado. If the executive director, or his or her designee, determines that the proposed rule or amendment may have such negative impact, he or she may direct the submitting agency to perform a cost-benefit analysis of the rule or amendment. If the executive director, or his or her designee, makes such a request, it shall be made at least twenty days before the date of the hearing on the rule or amendment. The agency receiving such request shall complete a cost-benefit analysis at least five days before the hearing on the rule or amendment, shall make the analysis available to the public, and shall submit a copy to the executive director or his or her designee. Failure to complete a requested cost-benefit analysis pursuant to this subsection (2.5) shall preclude the adoption of such rule or amendment. Such cost-benefit analysis shall include the following:

(I) The reason for the rule or amendment;

(II) The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness;

(III) The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment;

(IV) Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness; and

(V) At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

(b) The executive director, or his or her designee, shall study the cost-benefit analysis and may urge the agency to revise the rule or amendment to eliminate or reduce the negative economic impact. The executive director, or his or her designee, may inform the public about the negative impact of the proposed rule or the proposed amendment to an existing rule.

(c) Any proprietary information provided to the department of revenue by a business or trade association for the purpose of preparing a cost-benefit analysis shall be confidential.

(d) If the agency has made a good faith effort to comply with the requirements of paragraph (a) of this subsection (2.5), the rule or amendment shall not be invalidated on the ground that the contents of the cost-benefit analysis are insufficient or inaccurate.

(e) This subsection (2.5) shall not apply to orders, licenses, permits, adjudication, or rules affecting the direct reimbursement of vendors or providers with state funds.

(f) (I) This subsection (2.5) is repealed, effective July 1, 2013.

(II) Prior to such repeal, the provisions regarding the preparation of a cost-benefit analysis pursuant to this subsection (2.5) shall be reviewed as provided for in section 24-34-104, C.R.S.

(3) (a) Notice of proposed rule-making shall be published as provided in subsection (11) of this section and shall state the time, place, and nature of public rule-making proceedings that shall not be held less than twenty days after such publication, the authority under which the rule is proposed, and either the terms or the substance of the proposed rule or a description of the subjects and issues involved. If any material is to be incorporated by reference in a proposed rule pursuant to subsection (12.5) of this section, the agency shall identify the material in the notice by the name of the appropriate agency, organization, or association and by the date, title, or citation of the material.

(b) Each rule-making agency shall maintain a list of all persons who request notification of proposed rule-making, including temporary or emergency rule-making. Any person on such list who requests a copy of the proposed rules shall submit to the agency a fee that shall be set by such agency based upon the agency's actual cost of copying and mailing the proposed rules to such person. All fees collected by the agency are hereby appropriated to the agency solely for the purpose of defraying such cost. On or before the date of the publication of notice of proposed rule-making in the Colorado register, the agency shall mail the notice of proposed rule-making to all persons on such list. If a person requests to be notified by electronic mail, notice is sufficient by such means if a copy of the proposed rules is attached or included in the electronic mail or if the electronic mail provides the location where the proposed rules may be viewed on the internet. No fees shall be charged for notification by electronic mail. A person may only request notification on his or her own behalf, and a request for notification by one person on behalf of another person need not be honored.

(4) (a) At the place and time stated in the notice, the agency shall hold a public hearing at which it shall afford interested persons an opportunity to submit written data, views, or arguments and to present the same orally unless the agency deems it unnecessary. The agency shall consider all such submissions. Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing, together with a proposed statement of basis, specific statutory authority, purpose, and the

regulatory analysis required in subsection (4.5) of this section, shall be made available to any person at least five days prior to said hearing. The rules promulgated by the agency shall be based on the record, which shall consist of proposed rules, evidence, exhibits, and other matters presented or considered, matters officially noticed, rulings on exceptions, any findings of fact and conclusions of law proposed by any party, and any written comments or briefs filed.

(a.5) Subject to the provisions of section 24-72-204 (3) (a) (IV), any study or other documentation utilized by an agency as the basis of a proposed rule shall be a public document in accordance with the provisions of part 2 of article 72 of this title and shall be open for public inspection. Subject to the provisions of section 24-72-204 (3) (a) (IV), all information, including, but not limited to, the conclusions and underlying research data from any studies, reports, published papers, and documents, used by the agency in the development of a proposed rule shall be a public document in accordance with the provisions of part 2 of article 72 of this title and shall be open for public inspection.

(b) All proposed rules shall be reviewed by the agency. No rule shall be adopted unless:

(I) The record of the rule-making proceeding demonstrates the need for the regulation;

(II) The proper statutory authority exists for the regulation;

(III) To the extent practicable, the regulation is clearly and simply stated so that its meaning will be understood by any party required to comply with the regulation;

(IV) The regulation does not conflict with other provisions of law; and

(V) The duplication or overlapping of regulations is explained by the agency proposing the rule.

(c) Rules, as finally adopted, shall be consistent with the subject matter as set forth in the notice of proposed rule-making provided in subsection (11) of this section. After consideration of the relevant matter presented, the agency shall incorporate by reference on the rules adopted a written concise general statement of their basis, specific statutory authority, and purpose. The written statement of the basis, specific authority, regulatory analysis required by subsection (4.5) of this section, and purpose of a rule which involves scientific or technological issues shall include an evaluation of the scientific or technological rationale justifying the rule. Each agency shall maintain a copy of its currently effective rules and the current status of each published proposal for rules and minutes of all its action upon rules, as well as any attorney general's opinion rendered on any adopted or proposed rule. Such materials shall be available for inspection by any person during regular office hours.

(d) Within one hundred eighty days after the last public hearing on the proposed rule, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Colorado register.

(4.5) (a) Upon request of any person, at least fifteen days prior to the hearing, the agency shall issue a regulatory analysis of a proposed rule. The regulatory analysis shall contain:

(I) 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;

(II) 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;

(III) 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;

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule; and

(VI) 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.

(b) Each regulatory analysis shall include quantification of the data to the extent practicable and shall take account of both short-term and long-term consequences.

(c) The regulatory analysis shall be available to the public at least five days prior to the rule-making hearing.

(d) If the agency has made a good faith effort to comply with the requirements of paragraphs (a) to (c) of this subsection (4.5), the rule shall not be invalidated on the ground that the contents of the regulatory analysis are insufficient or inaccurate.

(e) Nothing in paragraphs (a) to (c) of this subsection (4.5) shall limit an agency's discretionary authority to adopt or amend rules.

(f) The provisions of this subsection (4.5) shall not apply to rules and regulations promulgated by the department of revenue regarding the administration of any tax which is within the authority of said department.

(5) A rule shall become effective twenty days after publication of the rule as finally adopted, as provided in subsection (11) of this section, or on such later date as is stated in the rule. Once a rule becomes effective, the rule-making process shall be deemed to have become final agency action for judicial review purposes.

(6) A temporary or emergency rule may be adopted without compliance with the procedures prescribed in subsection (4) of this section and with less than the twenty days' notice prescribed in subsection (3) of this section (or where circumstances imperatively require, without notice) only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such a finding on the record. Such findings and a statement of the reasons for the action shall be published with the rule. A temporary or emergency rule may be adopted without compliance with subsection (2.5) of this section, but shall not become permanent without compliance with such subsection (2.5). A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for not more than three months from the adoption thereof or for such shorter period as may be specifically provided by the statute governing such agency, unless made permanent by compliance with subsections (3) and (4) of this section. The period of effectiveness provided by this subsection (6) does not apply to temporary or emergency rules adopted by the public utilities commission under section 40-2-108 (2), C.R.S.

(7) Any interested person shall have the right to petition for the issuance, amendment, or repeal of a rule. Such petition shall be open to public inspection. Action on such petition shall be within the discretion of the agency; but when an agency undertakes rule-making on any matter, all related petitions for the issuance, amendment, or repeal of rules on such matter shall be considered and acted upon in the same proceeding.

(8) (a) No rule shall be issued except within the power delegated to the agency and as authorized by law. A rule shall not be deemed to be within the statutory authority and jurisdiction of any agency merely because such rule is not contrary to the specific provisions of a statute. Any rule or amendment to an existing rule issued by any agency, including state institutions of higher education administered pursuant to title 23, C.R.S., which conflicts with a statute shall be void.

(b) On and after July 1, 1967, no rule shall be issued nor existing rule amended by any agency unless it is first submitted by the issuing agency to the attorney general for his opinion as to its constitutionality and legality. Any rule or amendment to an existing rule issued by any agency without being so submitted to the attorney general shall be void.

(c) (I) Notwithstanding any other provision of law to the contrary and the provisions of section 24-4-107, all rules adopted or amended on or after January 1, 1993, and before November 1, 1993, shall expire at 11:59 p.m. on May 15 of the year following their adoption unless the general assembly by bill acts to postpone the expiration of a specific rule, and commencing with rules adopted or amended on or after November 1, 1993, all rules adopted or amended during any one-year period that begins each November 1 and

continues through the following October 31 shall expire at 11:59 p.m. on the May 15 that follows such one-year period unless the general assembly by bill acts to postpone the expiration of a specific rule. The general assembly, in its discretion, may postpone such expiration, in which case, the provisions of section 24-4-108 or 24-34-104 shall apply, and the rules shall expire or be subject to review as provided in said sections. The postponement of the expiration of a rule shall not constitute legislative approval of the rule nor be admissible in any court as evidence of legislative intent. The postponement of the expiration date of a specific rule shall not prohibit any action by the general assembly pursuant to the provisions of paragraph (d) of this subsection (8) with respect to such rule.

(II) It is the intent of the general assembly that, in the event of a conflict between this paragraph (c) and any other provision of law relating to suspension or extension of rules by joint resolution (whether said provision was adopted prior to or subsequent to this paragraph (c)), this paragraph (c) shall control, notwithstanding the rule of law that a specific provision of law controls over a general provision of law.

(d) All rules adopted or amended on or after July 1, 1976, including temporary or emergency rules, shall be submitted by the adopting agency to the office of legislative legal services in the form and manner prescribed by the committee on legal services. Said rules and amendments to existing rules shall be filed by and in such office and shall be first reviewed by the staff of said committee to determine whether said rules and amendments are within the agency's rule-making authority and for later review by the committee on legal services for its opinion as to whether the rules conform with paragraph (a) of this subsection (8). The committee on legal services shall direct the staff of the committee to review the rules submitted by adopting agencies using graduated levels of review based on criteria established by the committee. The criteria developed by the committee shall provide that every rule shall be reviewed as to form and compliance with filing procedures and that, upon request of any member of the committee or any other member of the general assembly, the staff shall provide full legal review of any rule during the time period that such rule is subject to review by the committee. The official certificate of the director of the office of legislative legal services as to the fact of submission or the date of submission of a rule as shown by the records of his office, as well as to the fact of nonsubmission as shown by the nonexistence of such records, shall be received and held in all civil cases as competent evidence of the facts contained therein. Records regarding the review of rules pursuant to this section shall be retained by the office of legislative legal services in accordance with policies established pursuant to section 2-3-303 (2), C.R.S. Any such rule or amendment to an existing rule issued by any agency without being so submitted within twenty days after the date of the attorney general's opinion rendered thereon to the office of legislative legal services for review by the committee on legal services shall be void. The staff's findings shall be presented to said committee at a public meeting held after timely notice to the public and affected agencies. The committee on legal services shall, on affirmative vote, submit such rules, comments, and proposed legislation at the next regular session of the general assembly. The committee on legal services shall be the committee of reference for any bill introduced pursuant to this paragraph (d). Any member of the general assembly may introduce a bill which rescinds or deletes portions of the rule. Rejection of such a bill

does not constitute legislative approval of the rule. Only that portion of any rule specifically disapproved by bill shall no longer be effective, and that portion of the rule which remains after deletion of a portion thereof shall retain its character as an administrative rule. Each agency shall revise its rules to conform with the action taken by the general assembly. A rule which has been allowed to expire by action of the general assembly pursuant to the provisions of paragraph (c) of this subsection (8) because such rule, in the opinion of the general assembly, is not authorized by the state constitution or statute shall not be repromulgated by an agency unless the authority to promulgate such rule has been granted to such agency by a statutory amendment or by the state constitution or by a judicial determination that statutory or constitutional authority exists. Any rule so repromulgated shall be void. Such revision shall be transmitted to the secretary of state for publication pursuant to subsection (11) of this section. Passage of a bill repealing a rule does not result in revival of a predecessor rule. This paragraph (d) and subsection (4.5) of this section do not apply to rules of agency organization or general statements of policy which are not meant to be binding as rules. For the purpose of performing the functions assigned it by this paragraph (d), the committee on legal services, with the approval of the speaker of the house of representatives and the president of the senate, may appoint subcommittees from the membership of the general assembly.

(8.1) (a) An agency shall maintain an official rule-making record for each proposed rule for which a notice of proposed rule-making has been published in the Colorado register. Such rule-making record shall be maintained by the agency until all administrative and judicial review procedures have been completed pursuant to the provisions of this article. The rule-making record and any materials incorporated by reference in the record shall be available for public inspection.

(b) The agency rule-making record shall contain:

(I) Copies of all publications in the Colorado register with respect to the rule or the proceeding upon which the rule is based;

(II) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

(III) All written petitions, requests, submissions, and comments received by the agency as of the date of the hearing on the rule and all other written materials, or a listing of such materials, considered by the agency in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, which materials shall be available for public inspection during working hours;

(IV) Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(V) A copy of any regulatory analysis or cost-benefit analysis prepared for the proceeding upon which the rule was based, if applicable, and any formal statement made to the agency promulgating the rule by the executive director of the department of regulatory agencies regarding such cost-benefit analysis;

(VI) A copy of the rule and explanatory statement filed in the office of the secretary of state;

(VII) All petitions for exceptions to, amendments of, or repeal or suspension of the rule;

(VIII) A copy of any objection to the rule presented to the committee on legal services of the general assembly by its staff pursuant to paragraph (d) of subsection (8) of this section and the agency's response; and

(IX) A copy of any filed executive order with respect to the rule.

(c) Upon judicial review, the record required by this section constitutes the official rule-making record with respect to a rule. The agency rule-making record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof; except that, this paragraph (c) shall not be interpreted to allow the introduction of evidence or information into such rule-making record from outside of the public rule-making hearing, or to allow such introduction of evidence or information without notice to all parties to such hearing and opportunity to respond.

(8.2) (a) A rule adopted on or after September 1, 1988, shall be invalid unless adopted in substantial compliance with the provisions of this section. However, inadvertent failure to mail a notice of proposed rule-making to any person as required by subsection (3) of this section shall not invalidate a rule.

(b) An action to contest the validity of a rule on the grounds of its noncompliance with any provision of this section shall be commenced within thirty days after the effective date of the rule.

(9) Each agency shall make available to the public and shall deliver to anyone requesting it a copy of any notice of proposed rule-making proceeding in which action has not been completed. Upon request, such copy shall be certified. The agency may make a reasonable charge for supplying any such copy.

(10) No rule shall be relied upon or cited against any person unless, if adopted after May 1, 1959, it has been published and, whether adopted before or after said date, it has been made available to the public in accordance with this section.

(11) (a) There is hereby established the code of Colorado regulations for the publication of rules and regulations of agencies of the executive branch and the Colorado register for the publication of notices of rule-making, proposed rules, attorney general's opinions relating to such rules and regulations, and adopted rules. The code of Colorado

regulations and the Colorado register shall be the sole official publications for such rules and regulations, notices of rule-making, proposed rules, and attorney general's opinions. The code of Colorado regulations and the Colorado register shall contain, where applicable, references to court opinions and recommendations of the legal services committee of the general assembly which relate to or affect such rules and regulations and references to any action of the general assembly relating to the extension, expiration, deletion, or rescission of such rules and regulations and may contain other items which, in the opinion of the editor, are relevant to such rules and regulations.

(b) The secretary of state shall cause to be published in electronic form and may cause to be published in printed form, at the least cost possible to the state, the code of Colorado regulations and the Colorado register no less often than once each calendar month and shall make all diligent effort to enter into a publication agreement to such effect for a period not to exceed five years, but such agreement may include a renewal provision for additional periods not to exceed five years each. The executive director of the department or his or her designee may work with the secretary of state to make the code of Colorado regulations and the Colorado register available to the public in an electronic format that is accessible and user-friendly. In the event of any discrepancy between the electronic and printed form of the code or the register, the printed form shall prevail unless it is conclusively shown, by reference to the rule-making filings made with the secretary of state pursuant to this section, that the printed form contains an error in publication.

(c) The secretary of state shall enter into any publication agreement provided for in this section with the person offering to publish and make available to the public the code and register at the lowest price, taking into consideration the qualities of the publications to be supplied, their conformity with the specifications, the purposes for which they are required, and the date of delivery. Each person offering to publish the code and register shall be entered on a record, and, after the person is chosen to publish the code and register, the record of each person offering to publish shall be open to public inspection. A bond furnished by a surety company authorized to do business in this state for the proper performance of each publication agreement may be required in the discretion of the secretary of state.

(d) (I) Each agency subject to the provisions of this section shall, on or before a date during the fiscal year beginning on July 1, 2003, specified by the secretary of state, file or verify that there is on file with the secretary of state a copy of each currently effective rule specified in subsection (1) of this section in print and in electronic form as specified by the secretary of state. Any rule in effect prior to such date that is not on file with the secretary of state on such date, shall not continue in effect on or after such date.

(II) Each rule adopted, together with the attorney general's opinion rendered in connection therewith, shall be filed pursuant to subsection (12) of this section within twenty days thereafter with the secretary of state for publication in the Colorado register. Upon written request of an agency, the secretary of state shall correct typographical and other nonsubstantive errors appearing in the rules as filed by such agency that occur after final adoption of the rules by the agency during the preparation of such rules for

publication in order to conform the published rules with the adopted rules. Notices of rule-making proceedings pursuant to subsection (3) of this section shall also be filed with the secretary of state in sufficient time for publication pursuant to subsection (5) of this section in the Colorado register. Rules revised to conform with action taken by the general assembly shall be filed with the secretary of state for publication in the register and in the code. The legal services committee of the general assembly shall notify the secretary of state whenever a rule published in the code is rescinded or a portion thereof is deleted by the general assembly and whenever a rule or a portion thereof is allowed to expire in accordance with section 24-4-108 or with subparagraph (I) of paragraph (c) of subsection (8) of this section, and the secretary of state shall direct the removal from the code of material so deleted, rescinded, or allowed to expire.

(e) The secretary of state shall establish and maintain an accurate docket system for recording the time and date of the filing of each document, the agency filing the same, and the title or description of such document required to be filed for publication under the provisions of this section, which docket system shall be cross-indexed as to such time, date, agency, and title or description.

(f) Publication of the code of Colorado regulations shall be effected by making the same available for purchase by any person, public or private, at a reasonable price approved by the secretary of state.

(g) Publication of notices and other required information related to proposed and adopted rules shall be by electronic publication or by mailing the Colorado register to persons on the subscriber list maintained pursuant to paragraph (h) of this subsection (11). The date of publication of the Colorado register shall be the date that the last regular mailing and the electronic publication are completed. The Colorado register shall likewise be available for purchase by any person, public or private, at a reasonable price approved by the secretary of state.

(h) In order to facilitate the publication of the code of Colorado regulations and the Colorado register, the publishing agent shall maintain a current subscriber list for the code and register of all persons requesting to be placed thereon and having paid the approved purchase price, including those persons on any agency's mailing list who pay such purchase price. The subscriber list shall show for each subscriber whether the subscriber has purchased a print subscription, an electronic subscription, or both.

(i) (I) The code of Colorado regulations shall contain only those rules effective on the date of publication, subject to the provisions of paragraph (d) of this subsection (11) concerning rules filed with the secretary of state.

(II) The Colorado register shall contain only such notices, proposed rules, adopted rules, opinions, and other relevant information and materials as are filed pursuant to law with the secretary of state.

(III) If, for any reason, the code of Colorado regulations or the Colorado register is not published for three consecutive months or during a total of four calendar months

during any twelve-month period, said agreement shall be void and all right, title, and interest to the information, copyright, mailing lists, other materials, and work product of the publishing agent shall vest, without compensation, in the state of Colorado. In such event, the secretary of state shall notify each agency of the termination of such agreement and shall publish or cause to be published the code of Colorado regulations and the Colorado register. Until the secretary of state has the facilities and funds and is fully prepared to publish each notice of rule-making and each rule as finally adopted and so notifies the agencies, each agency shall publish its own notices of rule-making and rules as finally adopted. Publication shall be by mailing a copy to each person on the agency's mailing list, which shall include the attorney general and every person who has requested to be placed thereon and who has paid any fee set by the agency for such purpose, such fee to approximate the cost of the mailing to such person, and by placing and keeping a copy on permanent file in the agency's office for inspection by any person during regular office hours.

(j) Repealed.

(k) Each agency promulgating or administering rules shall obtain the appropriate portion or portions of the code of Colorado regulations and the portion or portions of the Colorado register pertaining thereto and shall maintain the same in its office for its use and that of the public as a public record.

(12) All rules of any agency that have been submitted to the attorney general under the provisions of subsection (8) of this section and the opinion of the attorney general, when issued, shall be filed in the office of the secretary of state. The secretary of state shall require that such rules be filed in an electronic format that complies with any requirements established pursuant to sections 24-37.5-106 and 24-71.3-118.

(12.5) (a) Subject to the provisions of this subsection (12.5), an agency may incorporate the following by reference in its rules without publishing the incorporated material in full:

(I) Federal rules, codes, or standards published in full in the federal register or the code of federal regulations;

(I.5) Federal rules, codes, or standards that have been properly incorporated by reference in the federal register as part of a duly promulgated final rule or in the code of federal regulations pursuant to federal legal requirements;

(II) (A) Published codes, standards, or guidelines of any nationally recognized scientific or technical association or organization.

(B) For the purposes of this subparagraph (II), "nationally recognized scientific or technical association or organization" means an association or organization that is regularly in the business of developing scientific or technical standards or guidelines, is recognized by those in the relevant professional community as having a high degree of

expertise and competence in its field, and whose publications are widely distributed and easily available throughout the nation and the state of Colorado.

(b) (I) An agency may incorporate by reference the material set forth in paragraph (a) of this subsection (12.5) only if the issuing agency, organization, or association makes copies of the material available to the public. An agency may not incorporate any material by reference unless the material has been properly identified in the notice of proposed rule-making pursuant to paragraph (a) of subsection (3) of this section.

(II) A federal rule, code, or standard does not have the force of Colorado law unless the federal rule, code, or standard is adopted in a state rule in accordance with the provisions of this article and the federal rule, code, or standard is set forth in full in the state rule or is incorporated by reference as required by the provisions of this subsection (12.5).

(c) (I) The reference to any incorporated material shall identify the incorporated material by appropriate agency, organization, or association and by date, title, or citation. The reference shall also state that the rule does not include later amendments to or editions of the incorporated material.

(II) (A) If an agency proposes to incorporate any material by reference in a state rule, the agency shall allow public inspection of any noncopyrighted material and provide copies of the material to the public at cost upon request beginning no later than the date of publication of the notice of proposed rule-making. If any material to be incorporated by reference has been copyrighted, the agency shall upon request provide information about the publisher and the citation to the material.

(B) If any agency within the department of public health and environment proposes to incorporate material by reference in any regulation promulgated pursuant to article 7, 8, or 15 of title 25, C.R.S., and the version or edition of the material to be incorporated by reference has not previously been distributed to the state publications depository libraries, the agency shall provide a sufficient number of copies of the material to the state publications depository and distribution center no later than the date of the notice. The state librarian shall retain one copy of the material and shall provide one copy of the material to each state publications depository library pursuant to section 24-90-206 (2).

(C) Except as provided in sub-subparagraph (B) of this subparagraph (II), if any agency proposes to incorporate any material by reference in a regulation and the version or edition of the material to be incorporated has not previously been provided to the state publications depository and distribution center, the agency shall provide one copy of the material to the state publications depository and distribution center no later than the date of the notice. The state librarian shall retain the copy of the material and shall make the copy available for interlibrary loans.

(III) After any material is incorporated by reference in a state rule, the agency incorporating the material by reference shall maintain certified copies of the complete text of the material incorporated, which copies shall be available for public inspection

during regular business hours. Certified copies of the material incorporated shall be provided at cost upon request.

(d) The agency shall include in any rule which incorporates material by reference the title and address of an employee of the agency who will provide information regarding how the incorporated material may be obtained or examined and a statement indicating that any material that has been incorporated by reference in the rule may be examined at any state publications depository library.

(13) Any agency conducting a hearing shall have authority on its own motion or upon the motion of any interested person for good cause shown to: Administer oaths and affirmations; sign and issue subpoenas; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of appropriate documents; take depositions or have depositions taken; issue appropriate orders which shall control the subsequent course of the proceedings; and take any other action authorized by agency rule consistent with this article. In the event more than one person engages in the conduct of a hearing, such persons shall designate one of their number to perform the functions of this subsection (13) and subsection (14) of this section as can best be performed by one person only, and thereafter such person only shall perform those functions which are assigned to him by the several persons conducting such hearing.

(14) Subpoenas shall be issued without discrimination between public and private parties by any agency or any member, the secretary or chief administrative officer thereof, or, with respect to any hearing for which a hearing officer or an administrative law judge has been appointed, the hearing officer or administrative law judge. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the agency may petition any district court, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence, under penalty of punishment for contempt in case of contumacious failure to comply with the order of the court. A witness shall be entitled to the fees and mileage provided for a witness in sections 13-33-102 and 13-33-103, C.R.S.

24-4-103.5. Rule-making affecting small business - procedure. (Repealed)

24-4-104. Licenses - issuance, suspension or revocation, renewal.

(1) In any case in which application is made for a license required by law, the agency, with due regard for the rights and privileges of all interested persons, shall set and conduct the proceedings in accordance with this article unless otherwise required by law.

(2) Every agency decision respecting the grant, renewal, denial, revocation, suspension, annulment, limitation, or modification of a license shall be based solely upon the stated criteria, terms, and purposes of the statute, or regulations promulgated thereunder, and case law interpreting such statutes and regulations pursuant to which the license is issued or required. Terms, conditions, or requirements limiting any license shall

be valid only if reasonably necessary to effectuate the purposes, scope, or stated terms of the statute pursuant to which the license is issued or required.

(3) (a) No revocation, suspension, annulment, limitation, or modification of a license by any agency shall be lawful unless, before institution of agency proceedings therefor, the agency has given the licensee notice in writing of objective facts or conduct established upon a full investigation that may warrant such action and afforded the licensee opportunity to submit written data, views, and arguments with respect to the facts or conduct and, except in cases of deliberate and willful violation or of substantial danger to public health and safety, given the licensee a reasonable opportunity to comply with all lawful requirements. For purposes of this subsection (3), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in paragraph (a) of this subsection (3) shall not apply to licenses issued under articles 1.1, 9, 10, 11, 11.5, 12, 13, 14, and 16 of title 40 or article 2 of title 42, C.R.S.

(4) (a) Where the agency has objective and reasonable grounds to believe and finds, upon a full investigation, that the licensee has been guilty of deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and determined. For purposes of this subsection (4), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in paragraph (a) of this subsection (4) shall not apply to licenses issued under articles 1.1, 9, 10, 11, 11.5, 12, 13, 14, and 16 of title 40 or article 2 of title 42, C.R.S.

(5) A proceeding for the revocation, suspension, annulment, limitation, or modification of a previously issued license shall be commenced by the agency upon its own motion or by the filing with the agency of a written complaint, signed and sworn to by the complainant, stating the name of the licensee complained against and the grounds for the requested action.

(6) No previously issued license shall be revoked, suspended, annulled, limited, or modified, except as provided in subsection (3) of this section, until after hearing as provided in section 24-4-105.

(7) In any case in which the licensee has made timely and sufficient application for the renewal of a license or for a new license for the conduct of a previously licensed activity of a continuing nature, the existing license shall not expire until such application has been finally acted upon by the agency, and, if the application is denied, it shall be treated in all respects as a denial. The licensee, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section 24-4-105,

and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

(8) An application for a license shall be acted upon promptly, and, immediately after the taking of action on such application by an agency, a written notice of the action taken by the agency and, if the application is denied, the grounds therefor shall be given to the applicant. The giving of such notice shall be by personal service upon the applicant or by mailing the same to the address of the applicant as shown on the application or as subsequently furnished in writing by the applicant to the agency.

(9) If an application for a new license is denied without a hearing, the applicant, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section 24-4-105, and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

(10) Written notice of the revocation, suspension, annulment, limitation, or modification of a license and the grounds therefor shall be served forthwith on the licensee personally or by mailing by first-class mail to the last address furnished the agency by the licensee.

(11) A limitation, unless consented to by the applicant, on a license applied for shall be treated as a denial. A modification, unless consented to by the licensee, of a license already issued shall be treated as a revocation.

(12) In an appropriate case a revoked or suspended license may be reissued.

(13) (a) Any applicant who, under oath, supplies false information to an agency in an application for a license commits perjury in the second degree, as defined in section 18-8-503, C.R.S. Any such application shall bear notice, in accordance with section 18-8-501 (2) (a) (I), C.R.S., that false statements made therein are punishable.

(b) On and after January 1, 1985, an agency shall not require that information contained in an application for a license be affirmed to before a notary

24-4-105. Hearings and determinations.

(1) In order to assure that all parties to any agency adjudicatory proceeding are accorded due process of law, the provisions of this section shall be applicable.

(2) (a) In any such proceeding in which an opportunity for agency adjudicatory hearing is required under the state constitution or by this or any other statute, the parties are entitled to a hearing and decision in conformity with this section. Any person entitled to notice of a hearing shall be given timely notice of the time, place, and nature thereof, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Unless otherwise provided by law, such notice shall be served personally or by mailing by first-class mail to the last address furnished the agency by the person to be notified at least thirty days prior to the hearing. In fixing the time and place

for a hearing, due regard shall be had for the convenience and necessity of the parties and their representatives.

(b) Any person given such notice shall file a written answer thirty days after the service or mailing of such notice. If such person fails to answer, any agency, administrative law judge, or hearing officer, upon motion, may enter a default. For good cause shown, the entry of default may be set aside within ten days after the date of such entry.

(c) A person who may be affected or aggrieved by agency action shall be admitted as a party to the proceeding upon his filing with the agency a written request therefor, setting forth a brief and plain statement of the facts which entitle him to be admitted and the matters which he claims should be decided. Nothing in this subsection (2) shall prevent an agency from admitting any person or agency as a party to any agency proceeding for limited purposes.

(3) At a hearing only one of the following may preside: The agency, an administrative law judge from the office of administrative courts, or, if otherwise authorized by law, a hearing officer who if authorized by law may be a member of the body which comprises the agency. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias of an administrative law judge or a hearing officer or a member of the agency or the agency, the administrative law judge, hearing officer, or agency shall forthwith rule upon the allegations in such affidavit as part of the record in the case. An administrative law judge or a hearing officer may at any time withdraw if he or she deems himself or herself disqualified or for any other good reason in which case another administrative law judge or hearing officer may be assigned to continue the case, and he or she shall do so in such manner that no substantial prejudice to any party results therefrom. An agency or a member of an agency may withdraw for any like reason and in like manner, unless his or her withdrawal makes it impossible for the agency to render a decision.

(4) Any agency conducting a hearing, any administrative law judge, and any hearing officer shall have authority to: Administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof and receive evidence; dispose of motions relating to the discovery and production of relevant documents and things for inspection, copying, or photographing; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of briefs and other documents; direct the parties to appear and confer to consider the simplification of the issues, admissions of fact or of documents to avoid unnecessary proof, and limitation of the number of expert witnesses; issue appropriate orders which shall control the subsequent course of the proceedings; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to dismiss without prejudice applications and other pleadings; dispose of motions to intervene, procedural requests, or similar matters; reprimand or exclude from the hearing any person for any improper or indecorous conduct in his presence; award attorney fees for abuses of discovery procedures or as otherwise provided under the Colorado rules of civil procedure; and take any other action authorized by agency rule consistent with this article

or in accordance, to the extent practicable, with the procedure in the district courts. All parties to the proceeding shall also have the right to cross-examine witnesses who testify at the proceeding. In the event more than one person engages in the conduct of a hearing, such persons shall designate one of their number to perform such of the above functions as can best be performed by one person only, and thereafter such person only shall perform those functions which are assigned to him by the several persons conducting such hearing.

(5) Subpoenas shall be issued without discrimination between public and private parties by any agency or any member, the secretary, or chief administrative officer thereof or, with respect to any hearing for which an administrative law judge or a hearing officer has been appointed, the administrative law judge or the hearing officer. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the agency may petition any district court, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena; in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence, under penalty of punishment for contempt in case of contumacious failure to comply with the order of the court and may award attorney fees under the Colorado rules of civil procedure. A witness shall be entitled to the fees and mileage provided for a witness in a court of record.

(6) No person engaged in conducting a hearing or participating in a decision or an initial decision shall be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigatory or prosecuting functions for the agency.

(7) Except as otherwise provided by statute, the proponent of an order shall have the burden of proof, and every party to the proceeding shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, a person conducting a hearing may receive all or part of the evidence in written form. The rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person so conducting the hearing may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The person conducting a hearing shall give effect to the rules of privilege recognized by law. He may exclude incompetent and unduly repetitious evidence. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available; but, upon request, the party shall be given an opportunity to compare the copy with the original. An agency may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

(8) An agency may take notice of general, technical, or scientific facts within its knowledge, but only if the fact so noticed is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.

(9) (a) Any party, or the agent, servant, or employee of any party, permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of his or her own choosing and at his or her own expense, but a person may appear on their own behalf. An attorney who is a witness may not act as counsel for the party calling the attorney as a witness. Any party, upon payment of a reasonable charge therefor, shall be entitled to procure a copy of the transcript of the record or any part thereof. Any person permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of such person's own choosing and, upon payment of a reasonable charge therefor, to procure a copy of the transcript of such person's testimony if it is recorded.

(b) (I) Except as provided in subparagraph (III) of this paragraph (b), no attorney shall submit a document concerning an adjudicatory proceeding after January 1, 1994, unless such document is submitted on recycled paper. The provisions of this section shall apply to all papers appended to each such document.

(II) (A) Any state agency that adopts policies, procedures, rules, or regulations for the purpose of implementing the provisions of this section shall ensure that the conduct of state business is not impeded and that no person is denied access to the services or programs of a state agency as a result of such implementation.

(B) No document shall be refused by a state agency solely because it was not submitted on recycled paper.

(III) Nothing in this section shall be construed to apply to:

(A) Photographs;

(B) An original document that was prepared or printed prior to January 1, 1994;

(C) A document that was not created at the direction or under the control of the submitting attorney;

(D) Facsimile copies concerning an adjudicatory proceeding otherwise permitted to be filed in lieu of the original document; however, if the original is also required to be filed, such original shall be submitted in compliance with this section;

(E) Existing stocks of nonrecycled paper and preprinted forms acquired or printed prior to January 1, 1994.

(IV) The provisions of this section shall not be applicable if recycled paper is not readily available.

(V) For purposes of this paragraph (b), unless the context otherwise requires:

(A) "Attorney" means an attorney-at-law admitted to practice law before any court of record in this state.

(B) "Document" means any pleading or any other paper submitted as an appendix to such pleading by an attorney, which document is required or permitted to be filed with a state agency concerning any action to be commenced or which is pending before such agency.

(C) "Recycled paper" means paper with not less than fifty percent of its total weight consisting of secondary and postconsumer waste and with not less than ten percent of such total weight consisting of postconsumer waste.

(10) Every agency shall proceed with reasonable dispatch to conclude any matter presented to it with due regard for the convenience of the parties or their representatives, giving precedence to rehearing proceedings after remand by court order. Prompt notice shall be given of the refusal to accept for filing or the denial in whole or in part of any written application or other request made in connection with any agency proceeding or action, with a statement of the grounds therefor. Upon application made to any court of competent jurisdiction by a party to any agency proceeding or by a person adversely affected by agency action and a showing to the court that there has been undue delay in connection with such proceeding or action, the court may direct the agency to decide the matter promptly.

(11) Every agency shall provide by rule for the entertaining, in its sound discretion, 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 agency. The order disposing of the petition shall constitute agency action subject to judicial review.

(12) Nothing in this article shall affect statutory powers of an agency to issue an emergency order where the agency finds and states of record the reasons for so finding that immediate issuance of the order is imperatively necessary for the preservation of public health, safety, or welfare and observance of the requirements of this section would be contrary to the public interest. Any person against whom an emergency order is issued, who would otherwise be entitled to a hearing pursuant to this section, shall be entitled upon request to an immediate hearing in accordance with this article, in which proceeding the agency shall be deemed the proponent of the order.

(13) The administrative law judge or the hearing officer shall cause the proceedings to be recorded by a reporter or by an electronic recording device. When required, the administrative law judge or the hearing officer shall cause the proceedings, or any portion thereof, to be transcribed, the cost thereof to be paid by the agency when it orders the transcription or by any party seeking to reverse or modify an initial decision of the administrative law judge or the hearing officer. If the agency acquires a copy of the

transcription of the proceedings, its copy of the transcription shall be made available to any party at reasonable times for inspection and study.

(14) (a) For the purpose of a decision by an agency which conducts a hearing or an initial decision by an administrative law judge or a hearing officer, the record shall include: All pleadings, applications, evidence, exhibits, and other papers presented or considered, matters officially noticed, rulings upon exceptions, any findings of fact and conclusions of law proposed by any party, and any written brief filed. The agency, administrative law judge, or hearing officer may permit oral argument. No ex parte material or representation of any kind offered without notice shall be received or considered by the agency, the administrative law judge, or by the hearing officer. The agency, an administrative law judge, or hearing officer, with the consent of all parties, may eliminate or summarize any part of the record where this may be done without affecting the decision. In any case in which the agency has conducted the hearing, the agency shall prepare, file, and serve upon each party its decision. In any case in which an administrative law judge or a hearing officer has conducted the hearing, the administrative law judge or the hearing officer shall prepare and file an initial decision which the agency shall serve upon each party, except where all parties with the consent of the agency have expressly waived their right to have an initial decision rendered by such administrative law judge or hearing officer. Each decision and initial decision shall include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record and the appropriate order, sanction, relief, or denial thereof. An appeal to the agency shall be made as follows:

(I) With regard to initial decisions regarding agency action by the department of health care policy and financing, the state department of human services, or county department of social services, or any contractor acting for any such department, under section 26-1-106 (1) (a) or 25.5-1-107 (1) (a), C.R.S., by filing exceptions within fifteen days after service of the initial decision upon the parties, unless extended by the department of health care policy and financing, or the state department of human services, as applicable, or unless a review has been initiated in accordance with this subparagraph (I) upon motion of the applicable department within fifteen days after service of the initial decision. In the event a party fails to file an exception within fifteen days, the applicable department may allow, upon a showing of good cause by the party, for an extension of up to an additional fifteen days to reconsider the final agency action.

(II) With regard to initial decisions regarding agency action of any other agency, by filing exceptions within thirty days after service of the initial decision upon the parties, unless extended by the agency or unless review has been initiated upon motion of the agency within thirty days after service of the initial decision.

(b) (I) In the absence of an exception filed pursuant to subparagraph (I) of paragraph (a) of this subsection (14), the executive director of the department of health care policy and financing shall review the initial decision regarding agency action by such department in accordance with a procedure adopted by the medical services board pursuant to section 25.5-1-107 (1), C.R.S.

(II) In the absence of an exception filed pursuant to subparagraph (I) of paragraph (a) of this subsection (14), the executive director of the state department of human services shall review the initial decision regarding agency action by such department in accordance with a procedure adopted by the state board of human services pursuant to section 26-1-106 (1), C.R.S.

(III) In the absence of an exception filed pursuant to subparagraph (II) of paragraph (a) of this subsection (14), the initial decision of any other agency shall become the decision of the agency, and, in such case, the evidence taken by the administrative law judge or the hearing officer need not be transcribed.

(c) Failure to file the exceptions prescribed in this subsection (14) shall result in a waiver of the right to judicial review of the final order of such agency, unless that portion of such order subject to exception is different from the content of the initial decision.

(15) (a) Any party who seeks to reverse or modify the initial decision of the administrative law judge or the hearing officer shall file with the agency, within twenty days following such decision, a designation of the relevant parts of the record described in subsection (14) of this section and of the parts of the transcript of the proceedings which shall be prepared and advance the cost therefor. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party or the agency may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost therefor. The transcript or the parts thereof which may be designated by the parties or the agency shall be prepared by the reporter or, in the case of an electronic recording device, the agency and shall thereafter be filed with the agency. No transcription is required if the agency's review is limited to a pure question of law. The agency may permit oral argument. The grounds of the decision shall be within the scope of the issues presented on the record. The record shall include all matters constituting the record upon which the decision of the administrative law judge or the hearing officer was based, the rulings upon the proposed findings and conclusions, the initial decision of the administrative law judge or the hearing officer, and any other exceptions and briefs filed.

(b) The findings of evidentiary fact, as distinguished from ultimate conclusions of fact, made by the administrative law judge or the hearing officer shall not be set aside by the agency on review of the initial decision unless such findings of evidentiary fact are contrary to the weight of the evidence. The agency may remand the case to the administrative law judge or the hearing officer for such further proceedings as it may direct, or it may affirm, set aside, or modify the order or any sanction or relief entered therein, in conformity with the facts and the law.

(16) (a) Each decision and initial decision shall be served on each party by personal service or by mailing by first-class mail to the last address furnished the agency by such party and, except as provided in paragraph (b) of this subsection (16), shall be effective as to such party on the date mailed or such later date as is stated in the decision.

(b) Upon application by a party, and prior to the expiration of the time allowed for commencing an action for judicial review, the agency may change the effective date of a decision or initial decision.

24-4-106. Judicial review.

(1) In order to assure a plain, simple, and prompt judicial remedy to persons or parties adversely affected or aggrieved by agency actions, the provisions of this section shall be applicable.

(2) Final agency action under this or any other law shall be subject to judicial review as provided in this section, whether or not an application for reconsideration has been filed, unless the filing of an application for reconsideration is required by the statutory provisions governing the specific agency. In the event specific provisions for rehearing as a basis for judicial review as applied to any particular agency are in effect on or after July 1, 1969, then such provisions shall govern the rehearing and appeal procedure, the provisions of this article to the contrary notwithstanding.

(3) An action may be commenced in any court of competent jurisdiction by or on behalf of an agency for judicial enforcement of any final order of such agency. In any such action, any person adversely affected or aggrieved by such agency action may obtain judicial review of such agency action.

(4) Except as provided in subsection (11) of this section, any person adversely affected or aggrieved by any agency action may commence an action for judicial review in the district court within thirty days after such agency action becomes effective; but, if such agency action occurs in relation to any hearing pursuant to section 24-4-105, then the person must also have been a party to such agency hearing. A proceeding for such review may be brought against the agency by its official title, individuals who comprise the agency, or any person representing the agency or acting on its behalf in the matter sought to be reviewed. The complaint shall state the facts upon which the plaintiff bases the claim that he has been adversely affected or aggrieved, the reasons entitling him to relief, and the relief which he seeks. Every party to an agency action in a proceeding under section 24-4-105 not appearing as plaintiff in such action for judicial review shall be made a defendant; except that, in review of agency actions taken pursuant to section 24-4-103, persons participating in the rule-making proceeding need not be made defendants. Each agency conducting a rule-making proceeding shall maintain a docket listing the name, address, and telephone number of every person who has participated in a rule-making proceeding by written statement, or by oral comment at a hearing. Any person who commences suit for judicial review of the rule shall notify each person on the agency's docket of the fact that a suit has been commenced. The notice shall be sent by first-class certified mail within ten days after filing of the action and shall be accompanied by a copy of the complaint for judicial review bearing the action number of the case. Thereafter, service of process, responsive pleadings, and other matters of procedure shall be controlled by the Colorado rules of civil procedure. An action shall not be dismissed for failure to join an indispensable party until an opportunity has been afforded to an affected party to bring the indispensable party into the action. The residence of a state agency for the purposes of this subsection (4) shall be deemed to be

the city and county of Denver. In any action in which the plaintiff seeks judicial review of an agency decision made after a hearing as provided in section 24-4-105, the parties after issue is joined shall file briefs within the time periods specified in the Colorado appellate rules.

(4.5) Subject to the limitation set forth in section 39-8-108 (2), C.R.S., the board of county commissioners of any county of this state may commence an action in the Denver district court within the time limit set forth in subsection (4) of this section for judicial review of any agency action which is directed to any official, board, or employee of such county or which involves any duty or function of any official, board, or employee of such county with the consent of said official, board, or employee, and to the extent that said official, board, or employee could maintain an action under subsection (4) of this section. In addition, in any action brought against any official, board, or employee of a county of this state for judicial enforcement of any final order of any agency, the defendant official, board, or employee may obtain judicial review of such agency action. In any such action for judicial review, the county official, board, or employee shall not be permitted to seek temporary or preliminary injunctive relief pending a final decision on the merits of its claim.

(5) Upon a finding that irreparable injury would otherwise result, the agency, upon application therefor, shall postpone the effective date of the agency action pending judicial review, or the reviewing court, upon application therefor and regardless of whether such an application previously has been made to or denied by any agency, and upon such terms and upon such security, if any, as the court shall find necessary and order, shall issue all necessary and appropriate process to postpone the effective date of the agency action or to preserve the rights of the parties pending conclusion of the review proceedings.

(6) In every case of agency action, the record, unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, applications, evidence, exhibits, and other papers presented to or considered by the agency, rulings upon exceptions, and the decision, findings, and action of the agency. Any person initiating judicial review shall designate the relevant parts of such record and advance the cost therefor. As to alleged errors, omissions, and irregularities in the agency record, evidence may be taken independently by the court.

(7) If the court finds no error, it shall affirm the agency action. If it finds that the agency action is arbitrary or capricious, a denial of statutory right, contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, purposes, or limitations, not in accord with the procedures or procedural limitations of this article or as otherwise required by law, an abuse or clearly unwarranted exercise of discretion, based upon findings of fact that are clearly erroneous on the whole record, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law, then the court shall hold unlawful and set aside the agency action and shall restrain the enforcement of the order or rule under review, compel any agency action to be taken which has been unlawfully withheld or unduly delayed, remand the case for further proceedings, and afford such other relief as may be appropriate. In

making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party. In all cases under review, the court shall determine all questions of law and interpret the statutory and constitutional provisions involved and shall apply such interpretation to the facts duly found or established.

(8) Upon a showing of irreparable injury, any court of competent jurisdiction may enjoin at any time the conduct of any agency proceeding in which the proceeding itself or the action proposed to be taken therein is clearly beyond the constitutional or statutory jurisdiction or authority of the agency. If the court finds that any proceeding contesting the jurisdiction or authority of the agency is frivolous or brought for the purpose of delay, it shall assess against the plaintiff in such proceeding costs and a reasonable sum for attorney fees (or an equivalent sum in lieu thereof) incurred by other parties, including the state.

(9) The decision of the district court shall be subject to appellate review as may be permitted by law or the Colorado appellate rules, but a notice of intent to seek appellate review must be filed with the district court within forty-five days after its decision becomes final. If no notice of intent to seek appellate review is filed with the trial court within forty-five days after its decision becomes final, the trial court shall immediately return to the agency its record. Upon disposition of a case in an appellate court which requires further proceedings in the trial court, the agency's record shall be returned to the trial court. On final disposition of the case in the appellate court when no further proceedings are necessary or permitted in the trial court, the agency's record shall be returned by the appellate court to the agency with notice of such disposition to the trial court or to the trial court, in which event the agency's record shall be returned by the trial court to the agency.

(10) In any judicial review of agency action, the district court or the appellate court shall advance on the docket any case which in the discretion of the court requires acceleration.

(11) (a) Whenever judicial review of any agency action is directed to the court of appeals, the provisions of this subsection (11) shall be applicable except for review of orders of the industrial claim appeals office.

(b) Such proceeding shall be commenced by the filing of a notice of appeal with the court of appeals within forty-five days after the date of the service of the final order entered in the action by the agency, together with a certificate of service showing service of a copy of said notice of appeal on the agency and on all other persons who have appeared as parties to the action before the agency. The date of service of an order is the date on which a copy of the order is delivered in person or, if service is by mail, the date of mailing.

(c) The record on appeal shall conform to the provisions of subsection (6) of this section. The designation and preparation of the record and its transmission to the court of appeals shall be in accordance with the Colorado appellate rules. A request for an

extension of time to transmit the record shall be made to the court of appeals and may be granted only by that court.

(d) The docketing of the appeal and all procedures thereafter shall be as set forth in the Colorado appellate rules. The agency shall not be required to pay a docket fee. All persons who have appeared as parties to the action before the agency who are not designated as appellants shall, together with the agency, be designated as appellees.

(e) The standard for review as set forth in subsection (7) of this section shall apply to appeals brought under this subsection (11).

24-4-107. Application of article.

This article applies to every agency of the state having statewide territorial jurisdiction except those in the legislative or judicial branches, courts-martial, military commissions, and arbitration and mediation functions. It applies to every other agency to which it is made to apply by specific statutory reference; but, where there is a conflict between this article and a specific statutory provision relating to a specific agency, such specific statutory provision shall control as to such agency.

24-4-108. Legislative consideration of rules.

(1) Unless extended by the general assembly acting by bill, all of the rules and regulations of the principal departments shall expire on the dates specified in this section.

(2) The rules and regulations of the following principal departments shall expire on July 1, 1980:

(a) to (c) Repealed.

(3) The rules and regulations of the following principal departments shall expire on July 1, 1981:

(a) to (d) Repealed.

(4) The rules and regulations of the following principal departments shall expire on July 1, 1982:

(a) to (c) Repealed.

(5) The rules and regulations of the following principal departments shall expire on July 1, 1983:

(a) to (d) Repealed.

(6) The rules and regulations of the following principal departments shall expire on July 1, 1984:

(a) Department of the treasury;

(b) Repealed.

(c) Office of state planning and budgeting;

(d) to (h) Repealed.

(6.1) Repealed.

(7) The general assembly, in its discretion, may postpone by bill the expiration of rules and regulations, or any portion thereof. Nothing in this section shall prohibit any action by the general assembly pursuant to section 24-4-103 (8) (d). The postponement of the expiration of a rule shall not constitute legislative approval of the rule nor be admissible in any court as evidence of legislative intent. The committee on legal services is authorized to establish procedures for the implementation of review of rules and regulations contemplated by this section including, but not limited to, a procedure for annual review of rules and regulations which may conflict with statutes or statutory changes adopted subsequent to review of a department's rules and regulations pursuant to this section.

(8) This section shall not apply to rules and regulations of any agency in the department of regulatory agencies, which rules shall be subject to the provisions of section 24-34-104 (9) (b) (II).