

Colorado Revised Statutes 2024

TITLE 24

GOVERNMENT - STATE

Cross references: For elections, see title 1; for peace officers and firefighters, see article 5 of title 29; for state engineer, see article 80 of title 37; for state chemist, see part 4 of article 1 of title 25; for offenses against government, see article 8 of title 18; for the "Uniform Records Retention Act", see article 17 of title 6.

ARTICLE 4

Rule-making and Licensing Procedures by State Agencies

Cross references: For limitation on licensing and revocation of licenses, see *Graeb v. State Board of Medical Examiners*, 55 Colo. 523, 139 P. 1099; *Chenowith v. State Board of Medical Examiners*, 57 Colo. 74, 141 P. 132 (1914); *Sapero v. State Board of Medical Examiners*, 90 Colo. 568, 11 P.2d 555 (1932); *Paine v. People*, 106 Colo. 258, 103 P.2d 686 (1940); *Prouty v. Heron*, 127 Colo. 168, 255 P.2d 755 (1953); *Colorado State Board of Nurse Examiners v. Hohu*, 129 Colo. 195, 268 P.2d 401 (1954); *In re Hearings Concerning Canon 35*, 132 Colo. 591, 296 P.2d 465 (1956); and *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957). For the distinction between "standards" which must be enacted by the general assembly and rules and regulations which can be enacted by the department, see cases annotated under article III of the Colorado Constitution; *Schechter Poultry Corp. v. U.S.*, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 (1935); *Prouty v. Heron*, 127 Colo. 168, 255 P.2d 755 (1953); and *Casey v. People*, 139 Colo. 89, 336 P.2d 308 (1959); for article,

"Administrative Rule Review: Procedures and Oversight by the Colorado General Assembly", see 33 Colo. Law. 83 (June 2004).

Law reviews: For article, "The Colorado Administrative Procedure Act: Exclusive Demanding Reform", see 44 Den. L.J. 42 (1967); for comment on the Colorado Administrative Procedure Act and its construction, see 51 Den. L.J. 275 (1974); for comment, "Pre-Enforcement Judicial Review: CF&I Steel Corp. v. Colorado Air Pollution Control Commission", see 58 Den. L.J. 693 (1981); for article, "Administrative Law", which discusses Tenth Circuit decisions dealing with questions of administrative law, see 61 Den. L.J. 109 (1984); for article, "Administrative Law", which discusses Tenth Circuit decisions dealing with questions of administrative law, see 62 Den. U. L. Rev. 9 (1985); for "Administrative Law", which discusses Tenth Circuit decisions dealing with questions of administrative law, see 63 Den. U. L. Rev. 165 (1986); for article, "A Practitioner's Guide to the Colorado Air Quality Control Commission", see 16 Colo. Law. 1405 (1987); for article, "General Principles of the Colorado Administrative Procedure Act", see 16 Colo. Law. 1983 (1987); for article, "Prosecuting an Appeal from a Decision of the Colorado Public Utilities Commission", see 16 Colo. Law. 2163 (1987); for article, "Practicing Before the Colorado Civil Rights Commission", see 17 Colo. Law. 259 (1988); for article, "Administrative Law", which discusses Tenth Circuit decisions dealing with questions of administrative law, see 65 Den. U. L. Rev. 357 (1988); for a discussion of Tenth Circuit decisions dealing with questions of administrative law, see 66 Den. U. L. Rev. 667 (1989); for a discussion of Tenth Circuit decisions dealing with questions of administrative law, see 67 Den. U. L. Rev. 603 (1990); for article, "Parallel Criminal and Administrative Licensure Proceedings", see 20 Colo. Law. 213 (1991); for article, "Legislative Sunset of Administrative Rules", see 21 Colo. Law. 2191 (1992); for article, "Representing a Professional Licensee in A Regulatory Board Investigation", see 21 Colo. Law. 1397 (1992).

PART 1

GENERAL

24-4-101. Short title. This article shall be known and may be cited as the "State Administrative Procedure Act".

Source: L. 69: p. 91, § 8. C.R.S. 1963: § 3-16-7.

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.

Source: **L. 77:** Entire section added, p. 1134, § 1, effective May 31. **L. 2003:** Entire section amended, p. 2369, § 1, effective August 6.

24-4-102. Definitions. As used in this article 4, 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 part 1 of article 8, parts 2 and 3 of article 21, and parts 2 to 4 of article 31 of title 23;

(b) Repealed.

(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.

(14.5) "Representative group" means a diverse group convened by an agency prior to rule-making or invited to participate in the rule-making hearing to give input and to comment on the effect of the proposed rules. The group should represent different points of view and may include representatives of persons, businesses, advocacy groups, trade associations, labor organizations, environmental advocacy groups, consumer advocates, or the regulated industry or profession affected negatively or positively by proposed rules.

(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. "Rule-making" does not include a statutory citation correction authorized by section 24-4-103 (11)(l).

(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.

Source: **L. 59:** p. 158, § 1. **CRS 53:** § 3-16-1. **C.R.S. 1963:** §3-16-1. **L. 67:** p. 300, § 1. **L. 69:** p. 81, § 1. **L. 76:** (4) amended and (6.5) added, p. 582, § 14, effective May 24. **L. 79:** (3.5) added and (12) amended, pp. 842, 843, §§ 1, 1, effective May 26. **L. 81:** (1) amended, p. 1133, § 1, effective June 6. **L. 83:** (3) amended, p. 962, § 7, effective July 1, 1984. **L. 87:** (6) amended, p. 961, § 64, effective March 13. **L. 90:** (12) amended, p. 447, § 8, effective April 18. **L. 93:** (6.2) added, p. 1325, § 1, effective June 6. **L. 2002:** (3) amended, p. 586, § 6, effective May 24. **L. 2003:** (5.5) and (18) added, p. 2370, § 2, effective August 6. **L. 2012:** (14.5) added, (HB 12-1008), ch. 182, p. 691, § 1, effective May 17; (3)(b) repealed, (HB 12-1283), ch. 240, p. 1133, § 44, effective July 1. **L. 2013:** (3)(a) amended, (HB 13-1300), ch. 316, p. 1681, § 49, effective August 7. **L. 2017:** (16) amended, (HB 17-1006), ch. 31, p. 88, § 1, effective March 16. **L. 2021:** IP and (3)(a) amended, (HB 21-1264), ch. 308, p. 1876, § 16, effective June 23.

Cross references: (1) For the legislative declaration in the 2012 act repealing subsection (3)(b), see section 1 of chapter 240, Session Laws of Colorado 2012.

(2) For the legislative declaration in HB 21-1264, see section 2 of chapter 308, Session Laws of Colorado 2021.

24-4-103. Rule-making - procedure - definitions - statutory citation correction.

(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. The agency shall establish a representative group of participants with an interest in the subject of the rule-making to submit views or otherwise participate informally in conferences on the proposals under consideration or to participate in the public rule-making proceedings on the proposed rules.

In establishing the representative group, the agency shall make diligent attempts to solicit input from representatives of each of the various stakeholder interests that may be affected positively or negatively by the proposed rules. If the agency convenes a representative group prior to issuing a notice of proposed rule-making as provided in paragraph (a) of subsection (3) of this section, the agency shall add those persons who participated in the representative group to the list of persons who receive notification of proposed rule-making as provided in paragraph (b) of subsection (3) of this section.

(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, shall distribute the proposed rule or amendment, the agency's statement concerning the subject matter or purpose of the proposed rule or amendment, and any cost-benefit analysis prepared pursuant to this section to all persons who have submitted a request to receive notices from the department of regulatory agencies about proposed rule-making. Any person may, within five days after publication of the notice of proposed rule-making in the Colorado register, request that the department of regulatory agencies require the agency submitting the proposed rule or amendment to prepare a cost-benefit analysis. The executive director, or his or her designee, shall determine, after consultation with the agency proposing the rule or amendment, whether to require the agency to prepare a cost-benefit analysis. If the executive director, or his or her designee, determines that a cost-benefit analysis is required, the agency shall complete a cost-benefit analysis at least ten days before the hearing on the rule or amendment, shall make the analysis available to the public by posting the analysis on the agency's official website, and shall submit a copy to the executive director or his or her designee. The executive director, or his or her designee, shall post the analysis on the department of regulatory agencies' official website. By filing an additional notice published in the Colorado register, the agency may postpone the hearing on the rule or amendment to comply with the requirement to complete the cost-benefit analysis at least ten days before the hearing. 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) Repealed.

(g) Each state rule-making agency with a website containing rule-making information shall include the following information on its website:

(I) Information about the cost-benefit analysis process set forth in this subsection (2.5); and

(II) A link to the online regulatory notice enrollment form created by the executive director of the department of regulatory agencies or the executive director's designee and listed on the department's website.

(2.7) (a) As used in this subsection (2.7):

(I) "Director" means the director of the office of state planning and budgeting.

(II) "State mandate" has the same meaning as set forth in section 29-1-304.5 (3)(d), C.R.S.

(b) No agency shall promulgate a rule creating a state mandate on a local government unless the agency complies with the requirements of section 29-1-304.5, C.R.S.

(c) (I) Except as provided in paragraph (g) of this subsection (2.7), beginning January 1, 2014, for each proposed rule that includes a state mandate, an agency shall provide to the director a description of:

(A) The proposed rule;

(B) The nature and extent of any consultations that the agency had with elected officials or other representatives of the local governments that would be affected by the proposed state mandate;

(C) The nature of any concerns of the elected officials or other representatives of the local governments;

(D) Any written communications or comments submitted to the agency by an elected official or other representative of a local government; and

(E) The agency's reasoning supporting the need to promulgate the rule containing the state mandate.

(II) The director shall review the information provided pursuant to subparagraph (I) of this paragraph (c) and, if it complies with the requirements of this paragraph (c), the director shall send a written notice of compliance to the agency. An agency shall not conduct a public rule-making proceeding unless the agency has received the written notice of compliance from the director.

(d) Each agency shall develop a process to actively solicit the meaningful and timely input of elected officials and other representatives of local governments into the development of proposed rules with state mandates affecting local governments. Each agency shall implement its process no later than January 1, 2014, and post the process on the agency's website.

(e) The executive director of each department shall be responsible for ensuring implementation of and compliance with this subsection (2.7).

(f) The general assembly shall appropriate any moneys necessary for the implementation of this subsection (2.7) to the office of state planning and budgeting in the annual general appropriation act for the fiscal year 2013-14.

(g) Beginning January 1, 2014, for each proposed rule of the state board of education that imposes a new state mandate or an increase in the level of service for an existing state mandate beyond that required by statute, the department of education shall comply with the provisions of paragraph (c) of this subsection (2.7).

(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.

(a.5) If the agency proposes a rule to increase fees or fines, at the time of giving notice of proposed rule-making or within ten days following the adoption of an emergency or temporary rule that increases fees or fines, the agency shall send a written or electronic notification to each member of the general assembly notifying the members of the general assembly of the proposed rule or the adoption of an emergency rule and specifying the amount of the increase in the fees or fines.

(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) 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 subsections (2.5) and (2.7) of this section, but shall not become permanent without compliance with such subsections (2.5) and (2.7). 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 one hundred twenty days after its adoption 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.

(b) 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) An agency shall not issue a rule or amend an existing rule unless the issuing agency first submits the rule to the attorney general for the attorney general's opinion as to its constitutionality and legality. If an agency issues a rule or an amendment to an existing rule without first submitting the rule or amendment to the attorney general, the rule or amendment is void.

(c) (I) (A) Notwithstanding any other provision of law to the contrary, including section 24-4-107, and except as provided in subsection (8)(c)(I)(B) of this section, on and 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 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.

(B) A rule adopted pursuant to section 25.5-4-402.4 (6)(b)(III) expires at 11:59 p.m. on the May 15 following the adoption of the rule unless the general assembly acts by bill to postpone the expiration of a specific rule.

(C) Postponing the expiration of a rule does not constitute legislative approval of the rule and is not admissible in any court as evidence of legislative intent. Postponing the expiration date of a specific rule does not prohibit any action by the general assembly pursuant to subsection (8)(d) of this section with respect to the 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) (I) An agency that has adopted or amended a rule shall submit the adopted or amended rule, including a temporary or emergency rule, to the office of legislative legal services in the form and manner prescribed by the committee on legal services. The office of legislative legal services shall first review the rule or amendment to the existing rule to determine whether the rule or amendment is within the agency's rule-making authority and for later review by the committee on legal services for its opinion as to whether the rule conforms with subsection (8)(a) of this section.

(II) The committee on legal services shall direct the office of legislative legal services 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 on legal services must provide that the office of legislative legal services review every rule 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 office of legislative legal

services provide full legal review of any rule during the time period that the rule is subject to review by the committee.

(III) The official certificate of the director of the office of legislative legal services, or the director's designee, as to the fact that an agency submitted a rule to the office of legislative legal services or as to the date an agency submitted a rule, as shown by the records of the director's office, as well as to the fact that an agency failed to submit a rule to the office of legislative legal services, as shown by the nonexistence of such records, shall be received and held in all civil cases as competent evidence of the facts contained in the official certificate. The office of legislative legal services shall retain records regarding the review of rules pursuant to this section in accordance with policies established pursuant to section 2-3-303 (2). If an agency issues a rule or an amendment to an existing rule for review by the committee on legal services pursuant to this subsection (8) without submitting the rule or amendment to the office of legislative legal services within twenty days after the date of the attorney general's opinion on the rule or amendment pursuant to subsection (8)(b) of this section, the rule or amendment is void.

(IV) The office of legislative legal services shall present its findings to the committee on legal services 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 is the committee of reference for any bill introduced pursuant to this subsection (8)(d)(IV). Any member of the general assembly may introduce a bill that 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 is no longer effective, and that portion of the rule that remains after deletion of a portion of the rule retains its character as an administrative rule.

(V) Each agency shall revise its rules to conform with the action taken by the general assembly. An agency shall not repromulgate a rule that has been allowed to expire by action of the general assembly pursuant to subsection (8)(c) of this section because the rule, in the opinion of the general assembly, is not authorized by the state constitution or statute, unless the authority to promulgate the rule has been granted to the agency by a statutory amendment, by the state constitution, or by a judicial determination that statutory or constitutional authority exists. Any rule so repromulgated is void. Any rule that an agency revises pursuant to this subsection (8)(d)(V) 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.

(VI) This subsection (8)(d) and subsection (4.5) of this section do not apply to rules of agency organization or general statements of policy that are not meant to be binding as rules.

(VII) For the purpose of performing the functions assigned it by this subsection (8)(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.

(e) The office of legislative legal services shall identify rules that were adopted during each applicable one-year period as a result of legislation enacted during any legislative session, regular or special, commencing on or after the previous eight calendar years. After the rules have been identified, the office of legislative legal services shall notify in writing any prime sponsors of the enacted legislation who are still serving in the general assembly and the current members of the applicable committees of reference in the senate and house of representatives for that enacted legislation that a rule has been adopted as a result of the legislation; except that the office of legislative legal services need not provide the notice regarding an adopted rule if the rule resulted from legislation that was enacted more than eight calendar years prior to the rule's adoption.

(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 shall be available for public inspection.

(b) The agency rule-making record must 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 by the office of legislative legal services pursuant to subsection (8)(d) of this section and the agency's response;

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

(X) A copy of any information provided to the director pursuant to paragraph (c) of subsection (2.7) of this section and the written notice of compliance from the director.

(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.

(d) If an agency includes information required by subparagraph (X) of paragraph (b) of this subsection (8.1) in the rule-making record, the agency shall provide a copy of the portion of the record that includes such information with the executive committee of the legislative council in accordance with the provisions of section 24-1-136 (9).

(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.

(8.3) (a) On or after August 11, 2010, all new or amended rules or regulations promulgated pursuant to this section that refer to persons with disabilities shall comply with the provisions of section 2-2-802, C.R.S., as applicable to the new or amended rule.

(b) Violation of this subsection (8.3) shall not be grounds to invalidate any new or amended rule; however, such rules shall be amended to reflect the provisions of section 2-2-802, C.R.S., in any subsequent revision.

(c) Nothing in this subsection (8.3) shall constitute a requirement to change the name of any department, agency, or program of the state.

(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 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 adopted rules. The code and the register shall be the sole official publications for such rules, notices of rule-making, proposed rules, and attorney general's opinions. The code and the register shall contain, where applicable, references to court opinions and recommendations of the legal services committee of the general assembly that relate to or affect such rules and references to any action of the general assembly relating to the extension, expiration, deletion, or rescission of such rules and may contain other items that, in the opinion of the editor, are relevant to such rules. The register may also include other public notices, including annual departmental regulatory agendas submitted by principal departments to the secretary of state pursuant to section 2-7-203, C.R.S.; however, except as specifically permitted by law, the inclusion of such notices in the register shall be in addition to and not in substitution for existing public notice requirements.

(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. In the event of any discrepancy between the electronic and printed form of the code or the register, the electronic 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 electronic form contains an error in publication.

(c) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(d) The agency adopting a rule shall file the adopted rule, together with the attorney general's opinion rendered in connection with the rule, with the secretary of state for publication in the Colorado register pursuant to subsection (12) of this section within twenty days after adoption of the rule. Upon written request of an agency, the secretary of state shall correct typographical and other nonsubstantive errors appearing in the rules as filed by the agency that occur after final adoption of the rules by the agency during the preparation of the rules for publication in order to conform the published rules with the adopted rules. The agency shall also file notices of rule-making proceedings pursuant to subsection (3) of this section with the secretary of state in sufficient time for publication in the register pursuant to subsection (5) of this section. An agency shall file rules revised to conform with action taken by the general assembly with the secretary of state for publication in the register and in the code of Colorado regulations. The office of legislative legal services shall notify the secretary of state whenever a rule published in the code is rescinded or a portion of the rule is deleted by the general assembly and whenever a rule or a portion of a rule is allowed to expire in accordance with subsection (8)(c)(I) of this section. The secretary of state shall direct the removal from the code of material that was 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) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(g) Publication of notices and other required information related to proposed and adopted rules shall be by electronic publication.

(h) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(i) (I) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(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) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(j) Repealed.

(k) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(l) (I) An agency may request the secretary of state to correct a statutory citation contained in a rule, including a form incorporated into a rule, as published in the code of Colorado regulations if:

(A) The general assembly has relocated the statute in a manner that renders the rule's citation to the statute inaccurate; and

(B) The agency submits to the secretary a written determination by the attorney general that finds that the condition specified in subsection (11)(l)(I)(A) of this section applies, specifies what the correct citation is, and identifies each citation that should be corrected.

(II) Upon receipt of a request that complies with subsection (11)(l)(I) of this section, the secretary of state shall correct in the code of Colorado regulations each statutory citation listed in the determination specified in subsection (11)(l)(I)(B) of this section.

(III) A statutory citation correction authorized by this subsection (11)(l) is not rule-making and need not comply with any requirements of this section other than those specified in this subsection (11)(l).

(m) Repealed.

(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 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, 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) A rule may incorporate by reference all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, if:

(I) Repeating verbatim the text of the code, standard, guideline, or rule in the rule would be unduly cumbersome, expensive, or otherwise inexpedient;

(II) The reference fully identifies the incorporated code, standard, guideline, or rule by citation and date, identifies the address of the agency where the code, standard, guideline, or rule is available for public inspection, and states that the rule does not include any later amendments or editions of the code, standard, guideline, or rule;

(III) The code, standard, guideline, or rule is readily available to the public in written or electronic form;

(IV) The rule states where copies of the code, standard, guideline, or rule are available for a reasonable charge from the agency adopting the rule and where copies are available from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline, or rule; and

(V) The agency maintains a copy of the code, standard, guideline, or rule readily available for public inspection at the agency office during regular business hours.

(b) The agency shall provide certified copies of the material incorporated at cost upon request or shall provide the requester with information on how to obtain a certified copy of the material incorporated by reference from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline, or rule.

(c) If any agency incorporates or proposes to incorporate any material by reference in a rule and the version or edition of the material to be incorporated has not previously been provided to the state publications depository and distribution center, and if the rule or proposed rule does not identify where the incorporated material is available to the public on the internet at no cost, then the agency shall provide one copy of the material in either paper or electronic format to the state publications depository and distribution center. The state librarian shall retain the copy of the material and shall make the copy available to the public.

(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.

Source: **L. 59:** p. 159, § 2. **CRS 53:** § 3-16-2. **C.R.S. 1963:** §3-16-2. **L. 67:** p. 300, § 2. **L. 69:** p. 82, §§ 2, 3. **L. 76:** (1) and (8)(a) amended and (8)(d) added, p. 582, § 15, effective May 24. **L. 77:** (8)(d) amended, p. 1134, § 2, effective May 31; (13) and (14) added, p. 1144, § 1, effective June 3; (4) amended, p. 1136, § 1, effective June 19; (4) amended and (11) R&RE, p. 1138, §§ 1, 2, effective June 19; (8)(d) amended, p. 1141, § 1, effective (see editor's note). **L. 78:** (12) amended, p. 390, § 1, March 30. **L. 79:** (5) amended, p. 842, § 2, effective May 22; (8)(d) and (11)(d) amended, p. 849, § 1, effective May 25; (8)(c) R&RE and (8)(d) amended, p. 845, §§ 1, 2, effective June 29. **L. 81:** (9) and (11) amended, (11)(k) added, and (11)(j) repealed, pp. 1129, 1130, §§ 1, 2; (12.5) added, p. 1131, § 1, effective July 1; (12) and (13) amended, p. 1133, § 2, effective July 1. **L. 82:** (11)(a) and (11)(d) amended, p. 360, § 1, effective March 11. **L. 84:** (4) amended, p. 649, § 1, effective July 1. **L. 87:** (11)(k) amended, p. 915, § 1, effective July 1; (8)(c)(I) and (8)(d) amended, p. 919, § 2, effective July 3; (14) amended, p. 961, § 65, effective March 13. **L. 88:** (8)(d) amended, p. 311, § 19, effective May 23; (3), (6), and (8)(d) amended, (4) R&RE, and (4.5), (8.1), and (8.2) added, pp. 884, 886, 887, §§ 1, 2, 3, effective May 17. **L. 89:** (4.5)(f) added and (8.1)(b)(V) amended, pp. 1502, 1503, §§ 10, 11, effective July 1, 1990. **L. 91:** (1) amended, p. 807, § 3, effective June 5. **L. 93:** (3)(b), (6), (8.1)(c), (8.2)(b), and (11)(d) amended, p. 1325, § 2, effective June 6; (8)(d) amended, p. 2109, § 12, effective June 9; (8)(c)(I) amended, p. 496, § 1, effective July 1. **L. 94:** (1.5) added and (3)(a) and (12.5) amended, p. 2587, § 1, effective July 1. **L. 95:** (6) amended, p. 232, § 2, effective April 17. **L. 98:** (4)(a.5) added, p. 721, § 1, effective May 18.

L. 2000: (1) amended, p. 1861, § 73, effective August 2. **L. 2001:** (8)(d) amended, p. 318, § 2, effective April 12; (4)(a.5) amended, p. 1076, § 5, effective August 8; (12) amended, p. 38, § 2, effective August 8. **L. 2002:** (3)(b), (9), (11)(b), (11)(d), (11)(f), (11)(g), (11)(h), (11)(i), (11)(k), and (12) amended, p. 436, § 2, effective May 14. **L. 2003:** (11)(b) and (11)(d)(I) amended, p. 2048, § 1, effective May 22; (2.5) added and (6), (8.1)(b)(V), and (11)(b) amended, p. 2370, § 3, effective August 6. **L. 2005:** (12) amended, p. 768, § 36, effective June 1. **L. 2006:** IP(2.5)(a) and (2.5)(f)(I) amended, p. 202, § 1, effective March 31; (12) amended, p. 1735, § 20, effective June 6. **L. 2007:** (12) amended, p. 910, § 2, effective May 17. **L. 2009:** (8)(c)(I) amended, (HB 09-1293), ch. 152, p. 651, § 9, effective July 1. **L. 2010:** (3)(a), (8.1)(a), and (12.5) amended, (HB 10-1235), ch. 76, p. 258, § 1, effective April 5; (6) amended, (HB 10-1346), ch. 137, p. 460, § 1, effective April 15; (11) and (12) amended, (SB 10-123), ch. 104, p. 350, § 1, effective April 15; (8.3) added, (HB 10-1137), ch. 93, p. 320, § 2, effective August 11. **L. 2012:** (2), (3), and (11)(a) amended, (HB 12-1008), ch. 182, pp. 691, 694, §§ 2, 5, effective May 17; (2.7), (8.1)(b)(X), and (8.1)(d) added and (6)(a), (8.1)(b)(VIII), and (8.1)(b)(IX) amended, ch. 199, p. 797, § 1, effective August 8. **L. 2013:** IP(2.5)(a) amended and (8)(e) added, (SB 13-030), ch. 110, p. 379, § 1, effective April 8; IP(2.5)(a) and (2.5)(f) amended, (SB 13-158), ch. 283, p. 1490, § 1, effective July 1; IP(2.7)(c)(I) amended and (2.7)(g) added, (HB 13-1219), ch. 104, p. 366, § 20, effective August 7. **L. 2015:** (8)(e) amended, (SB 15-047), ch. 71, p. 190, § 1, effective August 5. **L. 2016:** (8)(b) amended, (HB 16-1094), ch. 94, p. 267, § 12, effective August 10. **L. 2017:** (11)(l) added, (HB 17-1006), ch. 31, p. 88, § 2, effective March 16; (11)(m) added, (SB 17-242), ch. 263, p. 1321, § 177, effective May 25; (8)(c)(I) amended, (SB 17-267), ch. 267, p. 1440, § 7, effective July 1. **L. 2018:** (2.5)(f) repealed and (2.5)(g) added, (HB 18-1237), ch. 165, p. 1137, § 2, effective August 8. **L. 2021:** (8)(e) amended, (HB 21-1137), ch. 37, p. 142, § 1, effective September 7. **L. 2022:** (8)(b), (8)(c)(I), (8)(d), IP(8.1)(b), (8.1)(b)(VIII), and (11)(d) amended, (SB 22-091), ch. 28, p. 165, § 1, effective August 10.

Editor's note: (1) House Bill 77-1646, which amended subsection (8)(d), was delivered to the governor on June 20, 1977. The general assembly adjourned sine die on June 22, 1977. The governor disapproved House Bill 77-1646 on July 15, 1977, but the bill was not filed with the secretary of state until July 27, 1977, and the governor's letter stating objections to the bill was not filed with the secretary of state until August 2, 1977. Because House Bill 77-1646 and the governor's objections to it were not filed with the secretary of state within thirty days after adjournment of the general assembly, House Bill 77-1646 became a law pursuant to the provisions of § 11 of article IV of the Colorado Constitution.

(2) Amendments to subsection (4) by House Bill 77-1419 and House Bill 77-1623 were harmonized.

(3) Amendments to subsection (8)(d) by House Bill 79-1393 and House Bill 79-1063 were harmonized.

(4) Amendments to subsection (11)(b) by Senate Bill 03-121 and House Bill 03-1350 were harmonized.

(5) Amendments to the introductory portion to subsection (2.5)(a) by Senate Bill 13-030 and Senate Bill 13-158 were harmonized.

(6) Section 34 of chapter 267 (SB 17-267), Session Laws of Colorado 2017, provides that the section of the act amending this section does not take effect if the centers for medicare and medicaid services determine that the amendments do not comply with federal law. For more information, see SB 17-267. (L. 2017, p. 1447.) The executive director of the department of health care policy and financing did not notify the revisor of statutes by June 1, 2017, of such determination; therefore, amendments to this section took effect July 1, 2017.

(7) Subsection (11)(m)(II) provided for the repeal of subsection (11)(m), effective July 1, 2018. (See L. 2017, p. 1321.)

Cross references: (1) For the general authority of department heads to adopt rules and regulations, see § 24-2-105.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 17-267, see section 1 of chapter 267, Session Laws of Colorado 2017.

24-4-103.3. Mandatory review of rules by agencies - report on results of review in departmental regulatory agendas. (1) The department of regulatory agencies shall establish a schedule, in consultation with each principal department, for the review of all of the rules for each principal department. Each principal department shall conduct a review of all of its rules to assess the continuing need for and the appropriateness and cost-effectiveness of its rules to determine if they should be continued in their current form, modified, or repealed. The applicable rule-making agency or official in the principal department shall consider the following:

(a) Whether the rule is necessary;

(b) Whether the rule overlaps or duplicates other rules of the agency or with other federal, state, or local government rules;

- (c) Whether the rule is written in plain language and is easy to understand;
- (d) Whether the rule has achieved the desired intent and whether more or less regulation is necessary;
- (e) Whether the rule can be amended to give more flexibility, reduce regulatory burdens, or reduce unnecessary paperwork or steps while maintaining its benefits;
- (f) Whether the rule is implemented in an efficient and effective manner, including the requirements for the issuance of permits and licenses;
- (g) Whether a cost-benefit analysis was performed by the applicable rule-making agency or official in the principal department pursuant to section 24-4-103 (2.5); and
- (h) Whether the rule is adequate for the protection of the safety, health, and welfare of the state or its residents.

(2) Each rule-making agency or official shall provide public notice on the agency's official website of its review of the rules, give the public an appropriate opportunity to provide input, and notify other state agencies that may have jurisdiction over the subject matter of the rules to allow for collaboration and input. Based on this review, the rule-making agency or official shall determine whether the existing rules should be continued in their current form, amended, or repealed. If the rule-making agency or official decides that a rule should be amended or repealed, the rule-making agency or official shall comply with the notice and hearing requirements of section 24-4-103.

(3) The department of regulatory agencies shall not schedule mandatory review under this section during the year of and during the year following any scheduled sunset review conducted by the department of regulatory agencies pursuant to section 24-34-104.

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

Source: L. 2014: Entire section added, (SB 14-063), ch. 69, p. 296, § 1, effective March 27.

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

Source: L. 82: p. 362, § 1. L. 87: (1) amended, p. 1010, § 1, effective April 16. L. 97: Entire section repealed, p. 525, § 6, effective July 1.

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 subsection (3)(a) of this section shall not apply to licenses issued under articles 1.1, 9, 10.1, and 11.5 of title 40 or article 2 of title 42.

(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 subsection (4)(a) of this section shall not apply to licenses issued under articles 1.1, 9, 10.1, and 11.5 of title 40 or article 2 of title 42.

(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) Except as provided in subsection (4) of this section, an agency shall not revoke, suspend, annul, limit, or modify a previously issued license until after holding a 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.

Source: L. 59: p. 161, § 3. CRS 53: § 3-16-3. C.R.S. 1963: § 3-16-3. L. 69: p. 84, § 4. L. 81: (2) amended, p. 1141, §1, effective April 16. L. 83: (13) added, p. 521, § 4, effective March 15. L. 93: (3) and (7) amended, p. 1327, § 3, effective June 6. L. 2006: (3) and (4) amended, p. 838, § 1, effective August 7. L. 2007: (3)(b) and (4)(b) amended, p. 2033, § 48, effective June 1. L. 2018: (3)(b) and (4)(b) amended, (HB 18-1375), ch. 274, p. 1705, § 34, effective May 29; (6) amended, (HB 18-1224), ch. 288, p. 1780, § 1, effective May 29.

24-4-104.5. Permits - rules in effect at time of submission of application for a permit control. (1) For purposes of this section, unless the context otherwise requires, "permit" means a grant of authority by an agency that authorizes the holder of the permit to do some act not forbidden by law but not allowed to be performed without such authority. "Permit" does not include a professional license issued by a licensing board or an agency to conduct a profession or occupation. "Permit" does not include a registration or certification issued by a board or state agency to an individual to pursue a profession, practice, or occupation. "Permit" does not include a water well permit issued by the state engineer pursuant to title 37, C.R.S.

(2) (a) The rules and any written statements of agency interpretation of the statutes of an agency that are in effect on the date that a person applies for issuance or renewal of a permit govern the application process and any permit eligibility requirement. If the rules or any written statements of agency interpretation of the statutes governing the agency's permit process or the requirements to qualify for a permit have been amended, the agency shall process the application under the rules and any written statements of agency interpretation of the statutes in effect on the date of the application, unless the agency determines in writing that:

(I) (A) The new rules materially affect the health and safety of the public; and

(B) Use of the rules in effect on the date of application is likely to result in an unsafe situation if the applicant does not comply with the new rules; or

(II) New rules or new requirements are necessary to ensure that the agency and the permit will be in compliance with the requirements of federal law and federal regulations; or

(III) New rules or new requirements are necessary to ensure that the agency and the permit will not be in conflict with state statutes; or

(IV) New rules or new requirements are necessary to ensure that the agency and the permit will be in compliance with the requirements of a court order.

(b) If the agency determines that one of the exceptions to the requirements of paragraph (a) of this subsection (2) will occur if the applicant does not comply with the new rules or new requirements, the agency shall:

(I) Treat the application as pending;

(II) Provide a written notice to the applicant stating the reasons the application is incomplete; and

(III) Give the applicant a reasonable opportunity to comply with the new rules or new requirements.

(3) If an agency adopts or amends rules that govern or impact the application process or any permit eligibility requirements after a person has applied for a permit or renewal of a permit and while the application is pending with the agency, the person shall have the option to have the application processed under the rules in existence at the time of the filing of the application or under the new rules.

Source: L. 2012: Entire section added, (HB 12-1002), ch. 249, p. 1241, § 2, effective August 8.

Cross references: In 2012, this section was added by the "Creating Level Expectations for Application Review Act" or the "CLEAR Act". For the short title, see section 1 of chapter 249, Session Laws of Colorado 2012.

24-4-104.6. Analysis of noncompliance with department rules - definition - legislative declaration. (1) (a) The general assembly hereby finds and declares that this section codifies existing practice, that each agency already knows about and tracks the rule issues described in subsection (2)(a) of this section, and that much of this work is currently completed in the normal course of an agency's business.

(b) The general assembly further finds and declares that it is not the general assembly's intent for an agency to increase its existing rule compliance monitoring.

(2) (a) Each agency shall conduct, within existing resources, an analysis of noncompliance with its rules to identify rules with the greatest frequency of noncompliance, rules that generate the greatest amount of fines, how many first-time offenders were given the opportunity to cure a minor violation, and those factors that contribute to noncompliance with rules by regulated businesses. The analysis will guide each department on how to improve its education and outreach to regulated businesses on compliance with the department's rules. The agency shall consider and review:

(I) Whether the rule is unclear and should be rewritten;

(II) Whether more education or training of the regulated businesses would be likely to achieve better compliance with the rule; and

(III) The enforcement level and any appropriate fines for noncompliance with the department's rules.

(b) Any principal department that conducts an analysis of noncompliance with rules adopted by agencies within its department pursuant to subsection (2)(a) of this section shall forward that analysis to the department of regulatory agencies, which shall compile and summarize those analyses into one combined analysis of noncompliance with rules. The department of regulatory agencies shall include the compiled analysis in its departmental presentation to its oversight legislative committee of reference made pursuant to section 2-7-203 of the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act".

Source: L. 2018: Entire section added, (HB 18-1250), ch. 195, p. 1286, § 1, effective August 8.

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) (a) 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 that 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 or her 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 4 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 that are assigned to him or her by the several persons conducting such hearing.

(b) (I) (A) The general assembly hereby finds that the mediation process generally saves the state and the licensee time and money. Mediation takes much less time than moving a case through agency proceedings and judicial review. These cases typically take months or years to resolve, but mediation typically achieves a resolution in a matter of hours. Taking less time means expending less money on hourly fees and costs. This benefits both the agency and the licensee, and because the result is attained by the parties working together, compliance with the mediated agreement is usually high. This further reduces costs because agencies do not have to pay an attorney or investigators to force compliance.

(B) The general assembly hereby declares that, in order to save time and money, the policy of Colorado is to use mediation whenever appropriate to settle disputes between agencies and licensees.

(II) Upon petition of the agency or licensee after the licensee has received the notice of hearing under subsection (2)(a) of this section, the hearing officer or administrative law judge shall order mediation between the agency and the licensee unless the license was summarily suspended in accordance with section 24-4-104 (4). When mediation is ordered, the agency shall:

(A) Assign a person with authority to make prehearing decisions concerning disposition of the matter to be present during meetings related to settlement communications or mediation communications and to be included in any material

settlement communications with the licensee or the licensee's representative over the matter; and

(B) Upon the licensee's request, allow a private or public mediator chosen by the licensee to be present during meetings related to mediation and to be included in any material settlement communications with the licensee or the licensee's representative over the matter. If the mediator is privately retained, the licensee must pay the mediator's reasonable fees, and the agency need not pay the privately retained mediator's fees.

(III) To the extent feasible, for the purpose of carrying out this subsection (4):

(A) Administrative law judges shall make themselves available as public mediators without cost to the licensee;

(B) The members of any governing body that regulates the licensee shall make a member or other person available for mediation as a person with authority to make prehearing decisions concerning disposition of the matter.

(IV) If an agency fails to comply with an order of mediation, a licensee adversely affected by the failure may petition the administrative law judge or hearing officer to suspend the proceedings and require compliance with the order, to be completed in good faith as soon as practicable, under the administrative law judge's or the hearing officer's supervision.

(V) If mediation fails, the agency shall notify the administrative law judge or the hearing officer, and the administrative law judge or the hearing officer shall lift the suspension and proceed with the hearing.

(VI) When determining the place to hold the mediation, the agency shall give due consideration to the location of the licensee's occupation or residence, the availability of an administrative law judge to mediate, and the availability of a member of the governing body that regulates the licensee to be a person with authority to make prehearing decisions concerning disposition of the matter.

(VII) This subsection (4)(b) applies only to agency proceedings that concern an individual who is licensed to practice an occupation or profession; except that this subsection (4)(b) does not apply to a commercial driver's license issued under part 4 of article 2 of title 42.

(VIII) This subsection (4)(b) does not apply if a license has been summarily suspended because the agency finds, in accordance with section 24-4-104 (4), that the licensee is guilty of a deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in the agency's

order. Nothing in this subsection (4)(b) prohibits an agency and licensee from voluntarily agreeing to a mediation following a summary suspension.

(IX) Repealed.

(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 that conducts a hearing or an initial decision by an administrative law judge or a hearing officer, the record must 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. The agency, the administrative law judge, or the hearing officer shall not receive or consider ex parte material or representation of any kind offered without notice. 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 that 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 must 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. An appeal to the agency must be made as follows:

(I) With regard to initial decisions regarding agency action by the department of health care policy and financing, the department of early childhood, the state department of human services, or county department of human or social services, or any contractor acting for any such department, under section 26-1-106 (1)(a), 26.5-1-107, or 25.5-1-107 (1)(a), 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, the department of early childhood, or the state department of human services, as applicable, or unless a review has been initiated in accordance with this subsection (14)(a)(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.

Source: **L. 59:** p. 162, § 4. **CRS 53:** § 3-16-4. **L. 61:** p. 138, § 1. **C.R.S. 1963:** § 3-16-4. **L. 69:** p. 85, § 5. **L. 76:** (13) and (14) amended and (15) R&RE, pp. 583, 584, §§ 16, 17, effective May 24. **L. 77:** (14) amended, pp. 1137, 1145, §§ 2, 2, effective June 19. **L. 81:** (4) amended, p. 1134, § 3, effective June 6. **L. 87:** (3), (4), (5), (13), (14), and (15) amended, p. 961, § 66, effective March 13. **L. 93:** (14) amended, p. 426, § 3, effective April 19; (2), (4), (5), (14), (15)(a), and (16) amended, p. 1327, § 4, effective June 6; (9) amended, p. 624, § 3, effective July 1; (9)(b)(V)(B) amended, p. 1798, § 107, effective July 1. **L. 94:** (14)(a)(I) and (14)(b) amended, p. 2692, § 228, effective July 1. **L. 95:** (14)(a)(I) and (14)(b) amended, p. 902, § 1, effective May 25. **L. 2005:** (3) amended, p. 857, § 21, effective June 1. **L. 2018:** (4) amended, (HB 18-1224), ch. 288, p. 1780, § 2, effective May 29; IP(14)(a) and (14)(a)(I) amended, (SB 18-092), ch. 38, p. 440, § 96, effective August 8. **L. 2019:** (4)(b)(IX) amended, (SB 19-241), ch. 390, p. 3469, § 26, effective August 2. **L. 2022:** (14)(a)(I) amended, (HB 22-1295), ch. 123, p. 843, § 64, effective July 1.

Editor's note: (1) Amendments to subsection (14) by Senate Bill 93-133 and House Bill 93-1001 were harmonized.

(2) Subsection IP(4)(b)(IX) provided for the repeal of subsection (4)(b)(IX), effective July 1, 2022. (See L. 2019, p. 3469.)

Cross references: (1) For mileage allowances and fees of witnesses, see §§ 13-33-102 and 13-33-103.

(2) For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

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-five 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 or she has been adversely affected or aggrieved, the reasons entitling him or her to relief, and

the relief which he or she 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 fourteen 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.

(4.7) The county clerk and recorder of any county may commence an action under this section in the Denver district court for judicial review of any final action issued by the secretary of state arising under the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S. In any such action, the county clerk and recorder may seek temporary or preliminary injunctive relief pending a final decision on the merits of the claim as permitted under this section.

(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) (a) If the court finds no error, it shall affirm the agency action.

(b) 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 that has been unlawfully withheld or unduly delayed, remand the case for further proceedings, and afford other relief as may be appropriate if the court finds that the agency action is:

(I) Arbitrary or capricious;

(II) A denial of statutory right;

(III) Contrary to constitutional right, power, privilege, or immunity;

(IV) In excess of statutory jurisdiction, authority, purposes, or limitations;

(V) Not in accord with the procedures or procedural limitations of this article 4 or as otherwise required by law;

(VI) An abuse or clearly unwarranted exercise of discretion;

(VII) Based upon findings of fact that are clearly erroneous on the whole record;

(VIII) Unsupported by substantial evidence when the record is considered as a whole; or

(IX) Otherwise contrary to law, including failing to comply with section 24-4-104 (3)(a) or 24-4-105 (4)(b).

(c) In making the findings specified in this subsection (7), the court shall review the whole record or portions of the record cited by any party.

(d) In all cases under review, the court shall determine all questions of law and interpret the statutory and constitutional provisions involved and shall apply the 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-nine days after its decision becomes final. If no notice of intent to seek appellate review is filed with the trial court within forty-nine 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-nine 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).

Source: L. 59: p. 164, § 5. CRS 53: § 3-16-5. C.R.S. 1963: §3-16-5. L. 69: pp. 89, 268, §§ 6, 2. L. 76: (4) amended, p. 584, § 18, effective May 24. L. 79: (4.5) added, p. 843, § 2, effective May 26. L. 81: (4) amended and (11) added, pp. 890, 1134, 1142, §§ 4, 4, 1, effective July 1. L. 86: (11)(a) amended, p. 498, § 117, effective July 1. L. 87: (9) amended, p. 921, § 1, effective June 20. L. 93: (6) amended, p. 1330, § 5, effective June 6. L. 2012: (4) amended, (SB 12-175), ch. 208, p. 880, § 144, effective July 1. L. 2013: (9) and (11)(b) amended, (HB 13-1126), ch. 58, p. 192, § 5, effective July 1. L. 2014: (4.7) added, (HB 14-1354), ch. 159, p. 553, § 2, effective May 9. L. 2018: (7) amended, (HB 18-1224), ch. 288, p. 1783, § 3, effective May 29.

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.

Source: L. 59: p. 166, §6. CRS 53: § 3-16-6. C.R.S. 1963: § 3-16-6. L. 69: p. 91, § 7.

24-4-108. Legislative consideration of rules. (Repealed)

Source: **L. 79:** Entire section added, p. 846, § 3, effective July 1. **L. 80:** (2)(c) repealed, p. 289, § 3, effective April 13; (2)(b) repealed, p. 292, § 3, effective April 16; (6)(g) added and (2)(a) repealed, p. 287, §§ 2, 3, effective April 16. **L. 81:** (3)(a) repealed and (6.1) added, p. 1148, §§ 3, 2, effective April 24; (3)(d) repealed and (6.1) added, p. 1149, §§ 3, 2, effective May 28; (3)(b) repealed, p. 272, § 2, effective June 5; (7) amended and (3)(c), (6)(f), (6)(g), (6)(h), and (6.1) repealed, pp. 1145, 1146, §§ 1, 7, effective July 1; (8) amended, p. 1178, § 7, effective July 1. **L. 82:** (4)(a) repealed, p. 199, § 2, effective March 11; (4)(b) repealed, p. 201, § 2, effective April 27; (4)(c) repealed, p. 203, § 2, effective March 13. **L. 83:** (5)(b) repealed, p. 304, § 2, effective May 20; (5)(a) repealed, p. 306, § 2, effective May 25; (5)(c) repealed, p. 309, § 2, effective May 26; (5)(d) repealed, p. 308, § 2, effective June 1. **L. 84:** (6)(b) repealed, p. 260, § 2, effective March 29; (6)(e) repealed, p. 259, § 2, effective April 5; (6)(d) repealed, p. 258, § 2, effective April 9. **L. 2016:** (8) amended, (HB 16-1192), ch. 83, p. 234, § 16, effective April 14. **L. 2022:** Entire section repealed, (SB 22-091), ch. 28, p. 168, § 2, effective August 10.

24-4-109. State engagement of disproportionately impacted communities - definitions. (1) **Goal.** The goal of outreach to and engagement of disproportionately impacted communities is to build trust and transparency, provide meaningful opportunities to influence public policy, and modify proposed state action in response to received public input to decrease environmental burdens or increase environmental benefits for each disproportionately impacted community.

(2) **Definitions.** (a) (I) (A) All statewide agencies shall use the definition of disproportionately impacted community set forth in subsection (2)(b)(II) of this section.

(B) In applying the definition of disproportionately impacted community, a statewide agency may prioritize or target certain criteria of the definition of disproportionately impacted community or certain subsets of communities that meet the definition of disproportionately impacted community if the statewide agency makes a determination by rule or other public decision-making process that the prioritization or targeting is warranted and reasonably tailored to the category of statewide agency action involved. A statewide agency with rulemaking authority shall make the determination by rule.

(C) A determination of the public utilities commission that it will prioritize or target certain criteria of the definition of disproportionately impacted community or subsets of communities that meet the definition of disproportionately impacted community does not constitute any prejudice or disadvantage or any unreasonable difference as set forth in section 40-3-106 (1)(a).

(II) (Deleted by amendment, L. 2023.)

(b) As used in this section and sections 25-1-134 and 25-7-105 (1)(e), unless the context otherwise requires:

(I) "Agency" means the air quality control commission created in section 25-7-104 and, as used in this section and section 25-1-134, the water quality control commission created in section 25-8-201 (1)(a). The portions of this subsection (2)(b)(I) that apply to the water quality control commission are effective on July 1, 2023, except for the portions requiring the water quality control commission to effectuate the requirements of subsections (3)(b)(I), (3)(b)(II), (3)(b)(IV), and (3)(b)(V) of this section, which apply to any rule-making proceedings of the commission concerning the classifications and numeric standards for the South Platte river basin, Laramie river basin, Republican river basin, and Smoky Hill river basin that occur after June 8, 2022.

(II) "Disproportionately impacted community" means a community that is described in subsection (2)(b)(II)(G) or (2)(b)(II)(H) of this section or that is in a census block group, as determined in accordance with the most recent five-year United States bureau of the census American community survey and meets one or more of the following criteria:

(A) The proportion of the population living in households that are below two hundred percent of the federal poverty level is greater than forty percent;

(B) The proportion of households that spend more than thirty percent of household income on housing is greater than fifty percent;

(C) The proportion of the population that identifies as people of color is greater than forty percent;

(D) The proportion of the population that is linguistically isolated is greater than twenty percent;

(E) A statewide agency determines, after a community presents evidence of being and requests to be classified as a disproportionately impacted community, that the population is disproportionately impacted based on evidence, presented in a relevant statewide agency decision-making process, that a census block group is disproportionately impacted because it has a history of environmental racism perpetuated through redlining or through anti-indigenous, anti-immigrant, anti-Latino, or anti-Black laws, policies, or practices and that present-day demographic factors and data demonstrate that the community currently faces environmental health disparities;

(F) The community is identified by a statewide agency as being one where multiple factors, including socioeconomic stressors, vulnerable populations, disproportionate

environmental burdens, vulnerability to environmental degradation or climate change, and lack of public participation may act cumulatively to affect health and the environment and may contribute to persistent disparities;

(G) The community is a mobile home park, as defined in section 38-12-201.5 (6), regardless of whether the mobile home park is a census block group; or

(H) The community is located on the Southern Ute or Ute Mountain Ute Indian reservation, regardless of whether the community is a census block group;

(III) "Proposed state action" means:

(A) Rule-making proceedings held pursuant to section 24-4-103;

(B) Licensing proceedings, including the issuance and renewal of permits, held pursuant to section 24-4-104; and

(C) Adjudicatory hearings held pursuant to section 24-4-105.

(IV) "Statewide agency" means any board, bureau, commission, department, institution, division, section, or officer of the state. "Statewide agency" does not include:

(A) The legislative branch;

(B) The judicial branch;

(C) State educational institutions administered pursuant to title 23, except part 1 of article 8, parts 2 and 3 of article 21, and parts 2 to 4 of article 31 of title 23; or

(D) The adjutant general of the National Guard, whose powers and duties are set forth in section 28-3-106.

(3) **Engagement.** (a) To promote the goal of state engagement of disproportionately impacted communities, an agency shall strive to create new ways to gather input from communities across the state, using multiple languages and multiple formats and transparently sharing information about adverse environmental effects from its proposed state action.

(b) When conducting outreach to and engagement of disproportionately impacted communities regarding a proposed state action, the agency shall:

(I) Schedule variable times of day and days of the week for opportunities for public input on the proposed state action, including at least one weekend time, one evening time, and one morning time for public input;

(II) Provide notice at least thirty days before any public input opportunity or before the start of any public comment period;

(III) Utilize several different methods of outreach and ways to publicize the proposed state action, including disseminating information through schools, clinics, social media, social and activity clubs, local governments, tribal governments, libraries, religious organizations, civic associations, community-based environmental justice organizations, or other local services;

(IV) Provide several methods for the public to give input, such as in-person meetings, virtual and online meetings, online comment portals or e-mail, and call-in meetings;

(V) Consider using a variety of locations for public input on the proposed state action, including meeting locations in urban centers, in neighborhoods whose populations are predominantly Black, Indigenous, or people of color and have an average income below the state's average, and in rural locations in various regions of the state; and

(VI) Create outreach materials concerning the proposed state action in layperson's terms, translated into the top two languages spoken in a community, that inform people of opportunities to provide input on the proposed state action, their rights, the possible outcomes, and the upcoming public input process.

(4) The division of parks and wildlife created in section 33-9-104 shall, in conducting public outreach regarding the keep Colorado wild pass pursuant to section 33-12-108 (7):

(a) Include outreach to and engagement of disproportionately impacted communities with a goal to build trust and transparency, provide meaningful opportunities to influence public policy, and modify proposed state action in response to public input received to decrease environmental burdens or increase environmental benefits for each disproportionately impacted community; and

(b) Engage disproportionately impacted communities in accordance with the procedures set forth in subsection (3) of this section.

(5) (a) (I) The division of administration in the Colorado department of public health and environment shall administer the Colorado EnviroScreen tool so that a census block group that scores above the eightieth percentile in the Colorado EnviroScreen tool is presumed to be a disproportionately impacted community under subsection (2)(b)(II)(F) of this section. A statewide agency determining whether a community is a disproportionately impacted community under subsection (2)(b)(II)(F) of this section shall apply the most recent version of the Colorado EnviroScreen tool available at the time the statewide agency makes the determination.

(II) As used in this subsection (5)(a), "Colorado EnviroScreen tool" means the environmental justice mapping tool developed and administered by the department of public health and environment and Colorado state university, or any successor tool.

(b) A census block group that is within a census tract that qualifies as disadvantaged as determined under the climate and economic justice screening tool developed by the council on environmental quality in the office of the president of the United States is presumed to be a disproportionately impacted community under subsection (2)(b)(II)(F) of this section. A statewide agency determining whether a community is a disproportionately impacted community under subsection (2)(b)(II)(F) of this section shall apply the most recent version of the climate and economic justice screening tool available when it is determining whether a community is a disproportionately impacted community.

(6) The provisions of subsection (2)(b)(II) of this section are severable, and if any provision of subsection (2)(b)(II) of this section is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions are valid, unless:

(a) It appears to the court that the valid provisions are so essentially and inseparably connected with, and so dependent on, the unconstitutional provision that it cannot be presumed that the legislature would have enacted the valid provisions without the unconstitutional one; or

(b) The court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Source: **L. 2021:** Entire section added, (HB 21-1266), ch. 411, p. 2725, § 3, effective July 2; (4) added, (SB 21-249), ch. 273, p. 1587, § 2, effective September 7. **L. 2022:** (2)(b)(I) amended, (HB 22-1322), ch. 460, p. 3270, § 1, effective June 8. **L. 2023:** (2)(a) and (2)(b)(II) amended and (2)(b)(IV), (5), and (6) added, (HB 23-1233), ch. 245, p. 1328, § 14, effective May 23. **L. 2024:** IP(2)(b) and (2)(b)(I) amended, (HB 24-1338), ch. 259, p. 1720, § 5, effective May 28.

Cross references: (1) For the short title ("Environmental Justice Act") and the legislative declaration in HB 21-1266, see sections 1 and 2 of chapter 411, Session Laws of Colorado 2021.

(2) For the legislative declaration in HB 23-1233, see section 1 of chapter 245, Session Laws of Colorado 2023.

