



## DEPARTMENT OF REVENUE

### Firearms Dealer Division

## COLORADO FIREARM DEALER RULES

### 1 CCR 214-1

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#### **Part 1 - General Applicability**

#### **RULE 1-100. COMPUTATION OF TIME.**

IN COMPUTING A DEADLINE UNDER THESE REGULATIONS BASED UPON A PERIOD OF DAYS, THE FIRST DAY IS EXCLUDED AND THE LAST DAY IS INCLUDED. IF THE LAST DAY OF ANY PERIOD IS A SATURDAY, SUNDAY, OR STATE OF COLORADO HOLIDAY, THE PERIOD IS EXTENDED TO INCLUDE THE NEXT DAY WHICH IS NOT A SATURDAY, SUNDAY, OR STATE OF COLORADO HOLIDAY.

#### **Rule 1-200. Petitions for Statements of Position and Declaratory Orders.**

Basis and Purpose. The statutory authority for this rule includes, but is not limited to, subsection 24-4-105(11), C.R.S. The purpose of this rule is to establish clear and comprehensive procedures and considerations required for a statement of position and/or a declaratory order.

- A. Statements of Position. Any person may petition the Division for a statement of position concerning the applicability of any provision of the Firearm Dealer Code or Firearm Dealer Rules to the petitioner. The petition must include the information set forth in paragraph (E)(1)-(E)(6) of this rule.
- B. Service of Petition for Statement of Position. A ~~letter for petition~~ for a statement of position shall be served on the Division by mailing or emailing such petition to the Division. Each petition for a statement of position shall contain a certification that the service requirements of this paragraph have been met. **THE DIVISION SHALL ACKNOWLEDGE RECEIPT OF A PETITION FOR A STATEMENT OF POSITION WITHIN FIVE (5) DAYS OF RECEIPT.**
- C. Time to Respond. The Division shall promptly respond to a petition for statement of position in writing **WITHIN SIXTY (60) DAYS** after receiving such petition and set forth its position and the reasons therefore, or the grounds on which the Division declines to provide a statement of position, pursuant to section 24-4-105(11), C.R.S., and/or paragraph (G) of this rule. **THE DIVISION'S RESPONSE SHALL BE SENT BY U.S. MAIL AND E-MAIL TO THE LAST-KNOWN ADDRESSES SHOWN BY THE RECORDS OF THE DIVISION. IF NECESSARY, THE DIVISION MAY REQUEST THAT THE PETITIONER EXTEND THE TIME FOR THE DIVISION TO RESPOND TO**

**A PETITION FOR A STATEMENT OF POSITION FOR AN AGREED-UPON PERIOD BY CONTACTING THE PERSON WHO FILED THE PETITION.**

- D. Declaratory Orders. Any person who has petitioned the Division for a statement of position and who is dissatisfied with the statement of position may petition the executive director within **SIXTY (60) ~~forty-five (45)~~** days of the issuance of the statement of position for a declaratory order pursuant to section 24-4-105(11), C.R.S. The parties to any petition for a declaratory order pursuant to this rule shall be the petitioner and the Division.
- E. Requirements for a Petition for a Statement of Position or a Petition for Declaratory Order. Each petition for a statement of position or petition for a declaratory order shall set forth the following:
1. The name and address of the petitioner; whether the petitioner holds a state permit pursuant to the Firearm Dealer Code and, if so, the type of state permit and the address of the dealer's place of business.
  2. The statute, rule, or order to which the petition relates.
  3. A concise statement of all the facts necessary to show the nature of the controversy or the uncertainty as to the applicability to the petitioner of the statute, rule, or order to which the petition relates.
  4. A concise statement of the legal authorities, if any, and such other reasons upon which the petitioner relies.
  5. A concise statement of the statement of position or declaratory order sought by the petitioner.
  6. The Statement of Position previously issued if the petitioner is filing a Petition for a Declaratory Order.
- F. Service of Petition for Declaratory Order. A petition for a declaratory order shall be served on the executive director by mailing such petition to the executive director **AT 1707 COLE BOULEVARD, SUITE 350, LAKEWOOD, CO 80401. ON THE SAME DATE THE PETITION IS SERVED ON THE EXECUTIVE DIRECTOR, with** a copy of the petition **SHALL ALSO BE SERVED ON THE DIVISION AT 1707 COLE BOULEVARD, SUITE 300, LAKEWOOD, CO 80401, AND BY EMAIL TO [DOR\\_FDD@STATE.CO.US](mailto:DOR_FDD@STATE.CO.US), AND SENT TO LEGAL COUNSEL FOR THE DIVISION, ADDRESSED TO THE REVENUE & REGULATORY LAW SECTION OF THE COLORADO DEPARTMENT OF LAW, AT 1300 BROADWAY, 8TH FLOOR, DENVER, CO 80203**~~sent on the same date to the Division and to the Revenue & Regulatory Section of the Colorado Department of Law~~. Each petition for a declaratory order shall contain a certification that the service requirements of this paragraph have been met.
- G. Acceptance. The Division will determine whether to entertain any petition for statement of position. The executive director will determine whether to entertain any petition for declaratory order. If either the Division or the executive director decides it will not entertain a petition, it shall promptly notify the petitioner in writing of its decision and

the reasons for that decision. Any of the following grounds may be sufficient reason to refuse to entertain a petition:

1. For a petition for declaratory order, the petitioner has failed to petition the Division for a statement of position, or if a statement of position has been issued, the petition for declaratory order was filed with the executive director more than forty-five (45) days after issuance of the statement of position.
2. A ruling on the petition will not terminate the controversy nor remove uncertainties concerning the applicability to the petitioner of the statute, rule, or order in question.
3. The petition involves a subject, question, or issue that is currently involved in a court action, an administrative action before the **EXECUTIVE DIRECTOR state licensing authority**, an ongoing investigation conducted by the Division, or a written complaint filed with the executive director or Division.
4. The petition seeks a ruling on a moot or hypothetical question, having no applicability to the petitioner.
5. Petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colo.R.Civ.P. 57, which will terminate the controversy or remove any uncertainty concerning the applicability of the statute, rule, or order.
6. The petitioner failed to properly serve the petition pursuant to this rule.
7. The petitioner failed to include information required in paragraph (E) of this rule.
8. **THE EXECUTIVE DIRECTOR SHALL DETERMINE WHETHER TO ACCEPT A PETITION FOR DECLARATORY ORDER, AND IF SO, ISSUE A SCHEDULING ORDER WITHIN SIXTY (60) DAYS OF THE SERVICE OF THE PETITION FOR DECLARATORY ORDER.**

H. Determination. If the executive director determines that it will entertain the petition for declaratory order, it shall promptly so notify all parties involved, and the following procedures shall apply:

1. The executive director may expedite the hearing, where the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Division to submit additional evidence and legal argument in writing. Any such request for additional information shall be served on all parties.
2. If the executive director determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, the executive director shall issue a Notice to Set to all parties, and on the date so set, a hearing shall be conducted in conformance with section 24-4-105, C.R.S.

3. In ruling on a petition for declaratory order, the executive director may take administrative notice of general, technical, or scientific facts within its knowledge, so long as the fact is specified in the record or is brought to the attention of the parties before the final decision and every party is afforded an opportunity to controvert the fact so noticed.
  4. Every declaratory order shall be promptly decided and issued in writing, specifying the basis in fact and law for the order.
  5. Any other interested person, as defined in subsection 24-4-102(6.2), C.R.S., may seek leave of the executive director to intervene in the proceeding, and such leave may be granted if the licensing authority determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.
  6. A declaratory order shall constitute final agency action subject to judicial review pursuant to section 24-4-106, C.R.S.
- I. Record Retention and Reliability. Files of all requests, statements of position, and declaratory orders will be maintained and relied upon by the Division for a period of five (5) years unless the statement of position or declaratory order is superseded by a statutory or regulatory change, amended by the Division, or amended or reversed by the executive director. Except with respect to any material required by law to be kept confidential, such files shall be available for public inspection.

## **Part 3 - Enforcement**

### **Rule 3-210. Disciplinary Actions and Hearings.**

**Basis and Purpose.** The statutory authority for this regulation includes but is not limited to, sections 18-12-401.5(2)(b), 18-12-401.5(10), 24-4-104, and 24-4-105, C.R.S. The purpose of this regulation is to establish what entity conducts the administrative hearings for the executive director, the procedures governing administrative hearings, and other general hearings issues.

#### **A. Initiation of Disciplinary Actions.**

1. If the executive director, on its own initiative or based on a complaint, has reasonable cause to believe that a permittee has violated the Firearm Dealer Code, or the Firearm Dealer Rules, or any of the executive director's orders, the executive director shall issue and serve upon the permittee an order to show cause as to why its permit should not be suspended, revoked, restricted, fined, or subject to other disciplinary sanction.
2. The order to show cause shall identify the statute, rule, or order allegedly violated, and the facts alleged to constitute the violation. The order shall also provide an advisement that the permit could be suspended, revoked, restricted, fined, or subject to other disciplinary sanctions should the charges contained in the notice be sustained upon final hearing.
3. A respondent that has been served with an order to show cause shall be entitled to a hearing regarding the matters addressed therein.

#### **B. Permit Denials.**

1. If the executive director denies an application, the executive director shall inform the applicant in writing of the reasons for the denial in a notice of denial, either personally served or mailed to the denied applicant at the last-known address as shown by the records of the Division. A notice of denial shall be deemed to have been received three (3) days after the date of mailing, if sent by mail.
2. A denied applicant that has been served with a notice of denial may request a hearing within sixty (60) days of the service of the notice of denial, as shown in the certificate of service attached thereto, by making a written request for a hearing to the Division. The request must be submitted by United States mail, by hand delivery, or by email at dor\_fdd@state.co.us. The request must be sent to the mailing address of the Division's headquarters, as listed on the Division's website. Include "Attn: Hearing Request" in the mailing address. The written request for a hearing must be received by the Division within the time stated in the notice of denial. An untimely request for a hearing will not be considered.
3. A denied applicant that timely requests a hearing following the issuance of a notice of denial shall be served with a Notice of Grounds for Denial and shall be entitled to a hearing regarding the matters addressed therein.

C. General Procedures – Administrative Hearings.

1. Hearing Location. Hearings will generally be conducted by the Department of Revenue's Hearings Division. Hearings will be held virtually unless otherwise ordered by the hearing officer for good cause. If the hearing officer orders an in-person hearing, the hearing will be conducted at a location in the greater Denver metropolitan area to be determined by the hearing officer. Good cause for in-person hearings includes unusual circumstances where justice, judicial economy, and convenience of the parties would be served by holding a hearing in person.
2. Scope of Hearing Rules. This rule shall be construed to promote the just and efficient determination of all matters presented.
3. Right to Legal Counsel. Any denied applicant or respondent has a right to legal counsel throughout all processes described in rules associated with the denial of an application and disciplinary action. Such counsel shall be provided solely at the denied applicant's or respondent's expense. Unless a denied applicant or respondent is an entity that satisfies the exception in section 13-1-127(2), C.R.S., the denied applicant or respondent must be represented by an attorney admitted to practice law in the state of Colorado.

D. When a Responsive Pleading is Required.

1. A respondent shall file a written answer with the hearings division and the Division within thirty (30) days after the date of mailing of any order to show cause. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a respondent fails to file a required answer, the Hearing Officer, upon motion, may enter a default against that person pursuant to section 24-4-105(2)(b), C.R.S. For good cause, as described in this rule, shown, the hearing officer may set aside the entry of default within ten (10) days after the date of such entry.
2. A denied applicant shall file a written answer with the Hearings Division and the Division within thirty (30) days after the date of mailing of any Notice of Grounds for Denial. The written answer shall comply with the requirements of Rule 8 of the Colorado Rules of Civil Procedure. If a denied applicant fails to file a required answer, the hearing officer, upon motion, may enter a default against that person pursuant to section 24-4-105(2)(b), C.R.S. For good cause shown, as described in this rule, the hearing officer may set aside the entry of default within ten (10) days after the date of such entry.

E. Hearing Notices.

1. Notice to Set. The Division shall send a notice to set a hearing to the denied applicant or Respondent in writing by electronic mail or, if an electronic mail address is unknown, by first-class mail to the last mailing address of record.
2. Notice of Hearing. The Hearings Division shall notify the Division and denied applicant or Respondent of the date, place, time, and nature of the hearing regarding denial of the permit application or whether discipline should be

imposed against the Respondent's permit at least thirty (30) days prior to the date of such hearing, unless otherwise agreed to by both parties. This notice shall be sent to the Denied applicant or Respondent in writing by first-class mail to the last mailing address of record. Hearings shall be scheduled and held as soon as is practicable.

- a. If an order of summary suspension has been issued pursuant to section 24-4-104(4), C.R.S., the hearing on the order to show cause will be scheduled and held promptly.
- b. Continuances may be granted for good cause, as described in this rule, shown. A motion for a continuance must be timely.
- c. **Good Cause for Continuance.** Good cause for a continuance may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to a settlement of the case which has been or will likely be approved by the final decision maker. Good cause for a continuance normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness' testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

F. Prehearing Matters Generally.

1. Prehearing Conferences Once a Hearing is Set. Prehearing conferences may be held at the discretion of the hearing officer upon request of any party, or upon the hearing officer's own motion. If a prehearing conference is held and a prehearing order is issued by the hearing officer, the prehearing order will control the course of the proceedings. Such prehearing conferences will be held virtually or by telephone, unless otherwise ordered by the hearing officer.
2. Depositions. Depositions are generally not allowed; however, a hearing officer has the discretion to allow a deposition if a party files a written motion and can show why such a deposition is necessary to prove its case. When a hearing officer grants a motion for a deposition, Colorado Rules of Civil Procedure 30 controls. Hearings will not be continued because a deposition is allowed unless (a) both parties stipulate to a continuance and the hearing officer grants the continuance, or (b) the hearing officer grants a continuance over the objection of any party in accordance with paragraphs (E)(2)(b) and (c) of this Rule.
3. Prehearing Statements Once a Hearing is Set. Prehearing Statements are required and unless otherwise ordered by the hearing officer, each party shall file

with the hearing officer and serve on each party a prehearing statement no later than seven calendar days prior to the hearing. Parties shall also exchange exhibits at that time. Parties shall exchange exhibits by the date on which prehearing statements are to be filed. Prehearing statements shall include the following information:

- a. Witnesses. The name, mailing address, and telephone number of any witness whom the party may call at hearing, together with a detailed statement of the expected testimony.
  - b. Experts. The name, mailing address, and a brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.
  - c. Exhibits. A description of any physical or documentary evidence to be offered into evidence at the hearing. Exhibits should be identified as follows: Division using numbers and denied applicant or respondent using letters.
  - d. Stipulations. A list of all stipulations of fact or law reached.
4. Prehearing Statements Binding. The information provided in a party's prehearing statement shall be binding on that party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if:
- a. the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement;
  - b. it would not prejudice other parties; and
  - c. it would not necessitate a delay of the hearing.
5. Consequence of Not Filing a Prehearing Statement Once a Hearing is Set. If a party does not timely file a prehearing statement, the hearing officer may impose appropriate sanctions including but not limited to, striking proposed witnesses and exhibits.

G. Conduct of Hearings.

1. The hearing officer shall cause all hearings to be electronically recorded.
2. The hearing officer may allow a hearing, or any portion of the hearing, to be conducted in real-time by telephone or other electronic means. If a party is appearing by telephone, the party must provide actual copies of the exhibits to be offered into evidence at the hearing to the hearing officer as required by the hearing officer. Electronic filings will be accepted at: [dor\\_regulatoryhearings@state.co.us](mailto:dor_regulatoryhearings@state.co.us).



3. The hearing officer shall administer oaths to all witnesses at hearing. The hearing officer may question any witness.
  4. The hearing, including testimony and exhibits, shall be open to the public unless otherwise ordered by the hearing officer in accordance with a specific provision of law.
    - a. Reports and other information that would otherwise be confidential pursuant to a specific provision of law may be introduced as exhibits at hearing.
    - b. Any party may move the hearing officer to seal an exhibit or order other appropriate relief if necessary to safeguard the confidentiality of evidence.
  5. Court Rules.
    - a. To the extent practicable, the Colorado Rules of Evidence apply. Unless the context requires otherwise, whenever the word “court,” “judge,” or “jury” appears in the Colorado Rules of Evidence, such word shall be construed to mean a hearing officer. A hearing officer has discretion to consider evidence not admissible under such rules, including but not limited to hearsay evidence, pursuant to section 24-4-105(7), C.R.S.
    - b. To the extent practicable, the Colorado Rules of Civil Procedure apply. However, Colorado Rules of Civil Procedure 16 and 26-37 do not apply, although parties are encouraged to voluntarily work together to resolve the case, simplify issues, and exchange information relevant to the case prior to a hearing. Unless the context otherwise requires, whenever the word “court” appears in a rule of civil procedure, that word shall be construed to mean a hearing officer.
  6. Exhibits.
    - a. All documentary exhibits must be paginated by the party offering the exhibit into evidence.
    - b. The Division shall use numbers to mark its exhibits.
    - c. The denied applicant or respondent shall use letters to mark its exhibits.
  7. The hearing officer may proceed with the hearing or enter a default judgment if any party fails to appear at hearing after proper notice.
- H. Post Hearing. After considering all the evidence, the hearing officer shall determine whether the proponent of the order has proven its case by a preponderance of the evidence, and shall make written findings of evidentiary fact, ultimate conclusions of fact, conclusions of law, and a recommendation. These written findings shall constitute an initial decision subject to review by the executive director pursuant to the Colorado Administrative Procedure Act and this paragraph H.

1. Exception(s) Process. Any party may appeal an initial decision to the executive director pursuant to the Colorado Administrative Procedure Act by filing written exception(s) within thirty (30) days after the date of mailing of the initial decision to the denied applicant or respondent and the Division. The written exception(s) shall include a statement giving the basis and grounds for the exception(s). Any party who fails to properly file written exception(s) within the time provided in these rules shall be deemed to have waived the right to an appeal. A copy of the exception(s) shall be served on all parties. The address of the executive director is: Executive Director, **1707 COLE BOULEVARD, SUITE 350, LAKEWOOD, CO 80401PO-Box 17087-Denver, Colorado-80217-0087.**
  2. Designation of Record. Any party that seeks to reverse or modify the Initial Decision of the hearing officer shall file with the executive director, within 20 days from the mailing of the Initial Decision, a designation of the relevant parts of the record and of the parts of the hearing transcript which shall be prepared, and advance the costs therefore. A copy of this designation shall be served on all parties. Within ten (10) days thereafter, any other party may also file a designation of additional parts of the transcript of the proceedings, which is to be included and advance the cost therefore. No transcript is required if the review is limited to a pure question of law. A copy of this designation of record shall be served on all parties.
  3. Deadline Modifications. The executive director may modify deadlines and procedures related to the filing of exceptions to the initial decision upon motion by either party for good cause shown.
  4. No Oral Argument Allowed. Requests for oral argument will not be considered.
- I. No Ex Parte Communication. Ex-parte communication shall not be allowed at any point following the formal initiation of the hearing process. A party or counsel for a party shall not initiate any communication with a hearing officer or the executive director, or with conflicts counsel representing the hearing officer or executive director, pertaining to any pending matter unless all other parties participate in the communication or unless prior consent of all other parties (and any pro se parties) has been obtained. Parties shall provide all other parties with copies of any pleading or other paper submitted to the hearing officer or the executive director in connection with a hearing or with the exceptions process.
  - J. Firearm Dealer Division Representation. The Division shall be represented by the Colorado Department of Law.

### **Rule 3-230. Administrative Subpoenas.**

Basis and Purpose. The statutory authority for this rule includes but is not limited to, sections 18-12-401.5(2)(b), 18-12-401.5(10), and 24-4-105, C.R.S. The purpose of this rule is to establish how all parties, including pro se parties, can obtain subpoenas during the administrative hearing process.

- A. Informal Exchange of Documents Encouraged. Parties are encouraged to exchange documents relevant to the notice of denial or order to show cause prior to requesting subpoenas. In addition, to the extent practicable, parties are encouraged to secure the

voluntary presence of witnesses necessary for the hearing prior to requesting subpoenas.

B. Hearing Officer May Issue Subpoenas.

1. A party or its counsel may request the hearing officer to issue subpoenas to secure the presence of witnesses or documents necessary for the hearing or a deposition, if one is allowed.
2. Requests for subpoenas to be issued by the hearing officer must be emailed to the Hearings Division of the Department of Revenue at [dor\\_regulatoryhearings@state.co.us](mailto:dor_regulatoryhearings@state.co.us). Subpoena requests must include the return mailing address, and phone and facsimile numbers of the requesting party or its attorney.
3. Requests for subpoenas to be issued by the hearing officer must be made on a "Request for Subpoena" form authorized and provided by the Hearings Division. A hearing officer shall not issue a subpoena unless the request contains the following information:
  - a. Name of denied applicant or respondent;
  - b. Permit or application number;
  - c. Case number;
  - d. Date of hearing;
  - e. Location of hearing, including information necessary to access virtual proceedings, or telephone number for telephone check-in;
  - f. Time of hearing;
  - g. Name of witness to be subpoenaed; and
  - h. Mailing address of witness (home or business).
4. A request for a subpoena *duces tecum* must identify each document or category of documents to be produced.
5. Requests for subpoenas shall be signed by the requesting party or its counsel.
6. The hearing officer shall issue subpoenas without discrimination, as set forth in section 24-4-105(5), C.R.S. If the reviewing hearing officer denies the issuance of a subpoena, or alters a subpoena in any material way, specific findings and reasons for such denial or alteration must be made on the record, or by written order incorporated into the record.

C. Service of Subpoenas.

1. Service of any subpoena is the duty of the party requesting the subpoena.

2. All subpoenas must be served at least two business days prior to the hearing.

D. Subpoena Enforcement.

1. Any subpoenaed witness, entity, or custodian of documents may move to quash the subpoena with the hearing officer.
2. A hearing officer may quash a subpoena if he or she finds on the record that compliance would be unduly burdensome or impracticable, unreasonably expensive, or is unnecessary.