

RULES GOVERNING GENERAL POLICIES AND ADMINISTRATION

OFFICE OF THE SECRETARY OF STATE

RULE 1

DECLARATORY ORDERS

- 1.1 Applicability: Any person may petition the Secretary of State for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provisions or or any rule or order of the Secretary of State as required by CRS 24-4-105(11).
- 1.2 Initial determination:
  - (A) The Secretary of State will determine, at her discretion and without notice to petitioner, whether to rule upon the filed petition. If the Secretary decides not to rule upon the petition, the petitioner shall promptly be notified of the action. The notice shall state the reasons for the action.
  - (B) In determining whether to rule upon a petition filed pursuant to this rule, the Secretary will consider the following matters, among others:
    - (1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the petitioner of any statutory provision, rule or order of the Secretary.
    - (2) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Secretary or a court involving one or more of the petitioners.
    - (3) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Secretary or a court but not involving any petitioner.
    - (4) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
- 1.3 Content of petition: any petition filed pursuant to this rule shall set forth the following:
  - (A) The name and address of the petitioner and the relationship of the petitioner to the Secretary of State whether a licensee, a person required to file with the Secretary of State, a citizen or other relationship.

- (B) The statute, rule or order to which the petition relates.
- (C) A concise statement of all of the facts necessary to show the nature or the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

1.4 Procedure for ruling: if the Secretary of State decides to rule on the petition, the following procedures shall apply:

- (A) The Secretary may rule upon the petition based solely upon the facts presented In the petition. In such a case:
  - (1) Any ruling of the Secretary will apply only to the extent of the facts presented in the petition and any amendment to the petition.
  - (2) The Secretary may order the petitioner to file a written brief, memorandum or statement of position.
  - (3) The Secretary may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
  - (4) The Secretary may dispose of the petition on the sole basis of the matters set forth in the petition.
  - (5) The Secretary may request the petitioner to submit additional facts, in writing. In that event, the additional facts will be considered as an amendment to the petition.
  - (6) The Secretary may take administrative notice of facts pursuant to the Administrative Procedure Act, CR3 24-4-105(8), and may utilize the experience, technical competence and specialized knowledge of the Secretary in the disposition of the petition.
  - (7) If the Secretary rules upon the petition without a hearing, the petitioner shall be promptly notified of the decision.
- (B) The Secretary, at her discretion, may set the petition for hearing under CRS 1973, 24-4-105, as amended, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting the hearing shall set forth, to the extent known, the factual or other matters into which the Secretary intends to inquire. The petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty, the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts

the petitioner desires the Secretary to consider.

- 1.5 Parties and Intervention: the parties to any proceeding pursuant to this rule shall be the Secretary and the petitioner. Any other person may seek leave of the Secretary to intervene in the proceedings. Leave to intervene will be granted at the sole discretion of the Secretary. A petition to intervene shall set forth the same information as required by rule 1.3. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Secretary.
- 1.6 Final agency action: any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to Judicial review pursuant to CRS 24-4-106(2).
- 1.7 Effective date: these rules were adopted as emergency rules on July 9, 1991 and as permanent rules on November 6, 1991, effective January 1, 1992.