

CHAPTER 200

ADMINISTRATIVE RULE REVIEW

HOUSE BILL 93-1131

BY REPRESENTATIVES Adkins, Owen, Williams, and Agler;
also SENATORS Wham, Mares, Wattenberg, Wells, Bishop, Mutzebaugh, and Tebedo.

AN ACT**CONCERNING IMPLEMENTATION OF RECOMMENDATIONS OF THE COMMITTEE ON LEGAL SERVICES
IN CONNECTION WITH LEGISLATIVE REVIEW OF RULES AND REGULATIONS OF STATE AGENCIES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Rules and regulations scheduled for expiration June 1, 1993 - extension - exceptions. (1) Except as indicated, the expiration of all rules and regulations of agencies in the following principal departments, which rules and regulations were adopted or amended on or after January 1, 1992, and before January 1, 1993, and which are therefore scheduled for expiration June 1, 1993, is postponed, and the provisions of section 24-4-108 or 24-34-104, Colorado Revised Statutes, shall apply:

(a) Department of administration;

(b) Department of agriculture;

(c) Department of corrections; except that the following rule is not extended: Rule 9.1, concerning a procedure for appeals of revocation of parole which provides for a third board member to cast the deciding vote if the two members of the board who conduct the appellate review disagree about upholding the decision to revoke or modify parole, of the state board of parole (8 CCR 1503-1);

(d) Department of education; except that the following rules of the state board of education are not extended:

(I) Rule 2202-R-3.05 (4), concerning the advisory accountability committee for

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

each school making recommendations to the principal relative to the prioritization of expenditures (1 CCR 301-1);

(II) Rule 2220-R-3.04 (1) (d), concerning special education nurses (1 CCR 301-8);

(III) Rule 2220-R-3.04 (4), concerning aides (1 CCR 301-8);

(IV) Rule 2220-R-4.01 (5) (c), concerning development of an individualized educational program if the determination is made that the child has a disability (1 CCR 301-8);

(V) Rule 2220-R-6.03 (2), concerning a request for a due process hearing by a parent, administrative unit, or district (1 CCR 301-8);

(VI) Rule 2220-R-6.03 (6) (d) (i), concerning the hearing officer rendering findings of fact and the decision (1 CCR 301-8);

(VII) Rule 2220-R-6.03 (9), concerning right to appeal decision of impartial hearing officer (1 CCR 301-8);

(VIII) Rule 2220-R-8.06, concerning audits (1 CCR 301-8);

(IX) Rule 2245-R-3.01, concerning the general fund (1 CCR 301-11);

(X) Rule 2245-R-3.01 (1), concerning the general fund accounting for lawful expenditure of the school district (1 CCR 301-11);

(XI) Rule 2245-R-3.01 (2), concerning transfer of moneys to the general fund (1 CCR 301-11);

(XII) Rule 2245-R-3.03, concerning capital reserve fund (1 CCR 301-11);

(XIII) Rule 2245-R-3.04, concerning insurance reserve fund (1 CCR 301-11);

(XIV) Rule 2245-R-3.06, concerning bond redemption fund (1 CCR 301-11);

(XV) Rule 2245-R-3.08, concerning special building fund (1 CCR 301-11);

(XVI) Rule 2245-R-3.09, concerning transportation fund (1 CCR 301-11);

(e) Department of health; except that the following rules are not extended:

(I) Rule 2.5.2.2.4.1, concerning the affixing of a notice of noncompliance label to radiation machines which fail to meet regulatory standards, of the state board of health (6 CCR 1007-1);

(II) Rule 2.5.2.2.7.2, concerning the affixing of labels on radiation machines by a representative of the department, of the state board of health (6 CCR 1007-1);

(III) Rule 2.5.2.2.7.3, concerning the affixing of labels on radiation machines by

the facility registrant upon written authorization from the department, of the state board of health (6 CCR 1007-1);

(IV) Rule 2.2.3 (b), concerning test methods used for groundwater analysis, of rules concerning solid wastes disposal sites and facilities (6 CCR 1007-2);

(V) Rule III., concerning smoking gasoline powered motor vehicle control region, of rules of the air quality control commission concerning common provisions applicable to air pollution emission control regulations (5 CCR 1001-2);

(VI) The following portions of Regulation No. 7, concerning the control of emissions of volatile organic compounds, of rules of the air quality control commission (5 CCR 1001-9):

(A) VI. D. 3. c., concerning monitoring to confirm the continuing existence of leak tight conditions;

(B) IX. A. 8. c., concerning recordkeeping procedures;

(C) IX. A. 10. b., concerning compliance calculation procedures;

(D) IX. N. 3. a. (i) (B), concerning recommended industrial ventilation guidelines;

(E) XII. D. 1. c., concerning compliance with this entire section being consistent with Appendix B;

(F) XIII. C., concerning testing and monitoring;

(G) XIII. D., concerning the owner or operator of a source subject to the requirements of this section;

(H) XV. B. 1. b., concerning a reading equal to or greater than 100 percent of the lower explosive limit;

(VII) Rule 2.6, concerning the definition of "CPR Directive" of rules of the state board of health pertaining to implementation and application of advance medical directives for cardiopulmonary resuscitation (CPR) by emergency medical service personnel (6 CCR 1015-2);

(f) Department of higher education; except that the following rules concerning the regulation of private occupational schools (8 CCR 1504-1) are not extended:

(I) Regulation II. G., concerning payment of advisory committee members for meetings and for car mileage;

(II) Regulation II. H., concerning a vacancy on the advisory committee;

(III) Regulation II. I., concerning terms of appointment to the advisory committee;

(IV) Regulation III. A. 2. d), concerning private occupational schools sustaining operations in accordance with AICPA statement of auditing standards # 59;

(V) Regulation III. E. 2., concerning instructional staff;

(g) Department of institutions; except that the following rules are not extended:

(I) Rule 103.2.A.2., concerning exclusion of Saturdays, Sundays, and holidays when a designated treatment and evaluation facility detains a person for a seventy-two-hour evaluation and treatment, excluding Saturdays, Sundays, and holidays, if evaluation and treatment services are not available at the facility on those days, of rules concerning the care and treatment of the mentally ill (2 CCR 502-1);

(II) Rule 103.2.A.3., concerning extension for diagnostic services, of rules concerning the care and treatment of the mentally ill (2 CCR 502-1);

(III) The following rules of the executive director, concerning the amendment and reenactment of rules for the division of developmental disabilities (2 CCR 503-1):

(A) 1.3.13.8, concerning the consent agreement entered into by the person receiving services not including any exculpatory language waiving legal rights;

(B) 3.2.2.2 (a), concerning a copy of articles of incorporation;

(C) 5.2.2.2, concerning community centered boards cooperating with local interagency childfind efforts as the single point of identification for children;

(D) 5.5.16, concerning eligibility for medicaid funded programs specific to persons with developmental disabilities;

(E) 5.6.1, concerning service and support coordination;

(F) 6.2.3, concerning protection from abuse, neglect, exploitation, and mistreatment;

(G) 6.2.4.2, concerning protection from being required to perform any act contrary to religious belief;

(H) 6.2.5.8, concerning training in human sexuality, growth and development;

(I) 6.3.1.5, concerning emergency action taken by the director or his/her designee of the community centered board, service agency or regional center;

(J) 8.3.1.6, concerning appointed members of agency committees;

(K) 8.3.1.7, concerning employees of authorized external agencies;

(L) 10.3.8, concerning when restrictive procedures are recommended or used, the following steps that must be completed;

(M) 10.4.2.12, concerning the human rights committee establishing and implementing operating and review procedures;

(N) 16.0 through 16.22.10, concerning home and community based services for the

developmentally disabled;

(O) 16.23 through 16.26.3, concerning home and community based services for the developmentally disabled;

(h) Department of labor and employment; except that the following rules are not extended:

(I) Rule XIII E. 2., concerning a premium surcharge of 0.03% for the purpose of establishing the premium cost containment fund, of rules of the director of the division of workers' compensation relating to workers' compensation premium taxes (7 CCR 1101-3);

(II) Rule XIV D. 12. a., concerning filing of an appeal of a director's order in a utilization review proceeding, of rules of the director of the division of workers' compensation relating to medical cost containment (7 CCR 1101-3);

(III) Rule XIV L. 3. h., concerning payment for an independent medical examination when there is a dispute concerning maximum medical improvement (MMI) or impairment, of rules of the director of the division of workers' compensation relating to medical cost containment (7 CCR 1101-3);

(i) Department of law;

(j) Department of local affairs;

(k) Department of natural resources; except that the following rule is not extended: Chapter 9, Article I, #900 - A. 11., concerning a prohibition of possessing, using, or applying any form of fireworks, explosives, poisons, herbicides, insecticides or other pesticides, or unlawful controlled substances, or possessing or dispensing alcoholic beverages of rules of the wildlife commission concerning restrictions of use of state wildlife areas (2 CCR 406-7);

(l) Department of personnel;

(m) Department of public safety;

(n) Department of regulatory agencies; except that the following rules are not extended:

(I) The following rule of the director of the division of registrations: Rule III: B., concerning a requirement that a person not licensed in this state must possess a current active license or registration in good standing in another state (4 CCR 732-1);

(II) The following rule of the division of insurance: Regulation 1-2-4 VI. B. 1., concerning courses presented to the commissioner or the continuing education administrator, of rules concerning continuing education requirements for agents and brokers (3 CCR 702-1);

(III) The following rules of the public utilities commission:

(A) Rule 5.5, concerning Blocking, of rules on caller identification services relating to the collection and disclosure of personal information obtained by public utilities (4 CCR 723-7);

(B) Rule 5.6, concerning Last Call Return, of rules relating to the collection and disclosure of personal information obtained by public utilities (4 CCR 723-7);

(IV) The following rule of the Colorado racing commission: Rule II B 2.03:16, concerning capital improvements fund (4 CCR 724-3);

(o) Department of revenue; except that the following rules are not extended:

(I) Regulation 46-112.5., concerning possessing or attempting to use fraudulent or fictitious identification, of rules of the executive director relating to the Colorado beer code (1 CCR 203-1);

(II) Regulation 47-107.2, concerning application after denial - change class of license, of rules of the executive director relating to the Colorado liquor code (1 CCR 203-2);

(III) Regulation 47-122.1., concerning a public transportation motor vehicle sticker, of rules of the executive director relating to the Colorado liquor code (1 CCR 203-2);

(IV) Regulation 47-128.11., concerning possessing or attempting to use fraudulent or fictitious identification, of rules of the executive director relating to the Colorado liquor code (1 CCR 203-2);

(V) Regulation 26-114.7, concerning vending machine vendors, of rules of the executive director relating to sales and use tax (1 CCR 201-4);

(VI) The following rules of the executive director relating to enterprise zone regulations (1 CCR 201-13) are not extended:

(A) Regulation 39-30-103.5 (e) (2) (i), concerning the donation of money or property to the enterprise zone administrator for the establishment of a child care facility;

(B) Regulation 39-30-105 (m), concerning related taxpayer defined;

(C) Regulation 39-30-105.5 (a) (2), concerning research and experimental expenditures defined for an enterprise zone in federal treasury regulation 1.174-2;

(D) Regulation 39-30-105.6 (a) (1), concerning credit for rehabilitation of vacant enterprise zone buildings;

(p) Department of social services; except that the following rules are not extended:

(I) Rule 7.700.33 M., concerning the limitation of placement alternative plans to certain families with children or youth, of the rules of the state board of social services (12 CCR 2509-8);

(II) Rule 3.600.17, concerning a specified caretaker relative, of rules of the state board of social services concerning income maintenance (9 CCR 2503-1);

(III) Rule 8.110.29, concerning medical assistance provided retroactive to July 1, 1986, to qualified disabled widow(er)s, of rules of the state board of social services concerning medical assistance (10 CCR 2505-10);

(IV) Rule 8.110.291, concerning medical assistance provided to disabled widow(er)s age 50 through 64, of rules of the state board of social services concerning medical assistance (10 CCR 2505-10);

(V) Rule 7.701.14 C., concerning facilities for which a license is not required, of rules of the state board of social services concerning program area VII licensing rules (12 CCR 2509-8);

(VI) Rule 7.701.17 A., concerning an employment search of the central registry of child protection, of rules of the state board of social services concerning program area VII licensing rules (12 CCR 2509-8);

(VII) Rule 7.701.17 C., concerning an operator or director requesting information concerning an individual who is not an applicant or current employee, of rules of the state board of social services concerning program area VII licensing rules (12 CCR 2509-8);

(VIII) Rule 2.532 B. 2., concerning indefinite suspension, of rules of the state board of social services concerning disciplinary actions under the merit system for county department of social services employees (9 CCR 2502-1);

(IX) Rule 2.715, concerning disqualification, of rules of the state board of social services concerning disqualification under the merit system for county department of social services employees (9 CCR 2502-1);

(X) Rule 3.668.1, concerning individuals who are discontinued under the AFDC program being notified, of rules of the state board of social services concerning transitional child care benefits (9 CCR 2503-1);

(XI) Rule 3.668.3, concerning eligible families being required to pay a portion of their child care cost based on the sliding scale, of rules of the state board of social services concerning transitional child care benefits (9 CCR 2503-1);

(XII) Rule 8.442 B. 1, concerning costs expended for meeting certification standards, of rules of the state board of social services concerning the implementation of the federal "Clinical Laboratory Improvement Amendments of 1988" (10 CCR 2505-10);

(XIII) Rule 8.442 B. 2., concerning skilled or intermediate nursing services, of rules of the state board of social services concerning the implementation of the federal "Clinical Laboratory Improvement Amendments of 1988" (10 CCR 2505-10);

(XIV) Rule 8.561 A., concerning participating health agencies, of rules of the state board of social services concerning the implementation of the federal "Clinical

Laboratory Improvement Amendments of 1988" (10 CCR 2505-10);

(XV) Rule 8.700.2 A., concerning participating providers, of rules of the state board of social services concerning the implementation of the federal "Clinical Laboratory Improvement Amendments of 1988" (10 CCR 2505-10);

(q) Department of state;

(r) Department of transportation; except that the following rule is not extended: Section IV. B., concerning formation of regional planning commissions, of rules of the transportation commission concerning statewide transportation planning process (2 CCR 604-2).

(2) The expiration of all rules and regulations of the public employees' retirement association, which rules and regulations were adopted or amended on or after January 1, 1992, and before January 1, 1993, and which are therefore scheduled for expiration June 1, 1993, is postponed.

(3) The expiration of the following rules and regulations of the department of revenue, which rules and regulations were adopted or amended on or after January 1, 1992, and before January 1, 1993, and which are therefore scheduled to expire June 1, 1993, is postponed until June 1, 1994:

(a) Regulation 46-115.1, concerning delivery of fermented malt beverages, of rules of the executive director relating to the Colorado beer code (1 CCR 203-1);

(b) Regulation 47-128.12, concerning delivery of liquor, of rules of the executive director relating to the Colorado liquor code (1 CCR 203-1).

(4) The expiration of the following rules and regulations of the department of personnel, which rules and regulations were adopted or amended on or after January 1, 1987, and before January 1, 1988, and which were extended until June 1, 1993, in House Bill 92-132, chapter 27, Session Laws of Colorado 1992, and which are therefore scheduled for expiration June 1, 1993, is postponed until June 1, 1994:

(a) R12-1-54, concerning job group (4 CCR 801-1);

(b) P11-2-4, concerning selective referral (4 CCR 801-2);

(c) P12-1-3 (f), (f)(1), and (f)(2), concerning promotional examination announcements (4 CCR 801-2).

(5) The expiration of the following rules and regulations of the department of personnel, which rules and regulations were adopted or amended on or after January 1, 1992, and which are therefore scheduled for expiration June 1, 1993, is postponed until June 1, 1994:

(a) Policy 11-1, concerning discrimination prohibited (4 CCR 801-1);

(b) R11-1-1, concerning appeals and grievances (4 CCR 801-1);

- (c) R11-1-2, concerning guidelines and standards (4 CCR 801-1);
- (d) R11-1-3, concerning sexual harassment (4 CCR 801-1);
- (e) R11-1-4, concerning reasonable accommodation for persons with a disability (4 CCR 801-1);
- (f) R11-1-5, concerning remedies (4 CCR 801-1);
- (g) Policy 11-2 (A), concerning affirmative action being the commitment of state government (4 CCR 801-1);
- (h) Policy 11-2 (B), concerning implementing the affirmative action policy of the state (4 CCR 801-1);
- (i) Policy 11-2 (C), concerning persons with disabilities (4 CCR 801-1);
- (j) R11-2-1, concerning affirmative action plan (4 CCR 801-1);
- (k) R11-2-2, concerning recruitment program (4 CCR 801-1);
- (l) R11-2-3, concerning trainees and interns (4 CCR 801-1);
- (m) R11-2-4, concerning promotional examinations (4 CCR 801-1);
- (n) R11-2-5, concerning director's review of examination (4 CCR 801-1);
- (o) R11-2-6, concerning selective referral (4 CCR 801-1);
- (p) R11-2-7, concerning considerations in making appointments (4 CCR 801-1);
- (q) R11-2-8, concerning determination of underutilization (4 CCR 801-1);
- (r) R11-2-9, concerning complaints regarding administration (4 CCR 801-1);
- (s) R11-2-10, concerning affirmative action referral (4 CCR 801-1);
- (t) P 5-6-2 (E), concerning referrals for affirmative action remedies (4 CCR 801-2).

(6) The expiration of the following rule and regulation of the state board of education, department of education, which rule and regulation was adopted or amended on or after January 1, 1992, and before January 1, 1993, and which is therefore scheduled to expire June 1, 1993, is postponed until March 15, 1994: Rule 2220-R-2.01 (1) (a) and (1) (b), concerning exceptions to the administrative unit of residence (1 CCR 301-8).

(7) The expiration of the following rule and regulation of the peace officer standards and training board, department of law, which rule and regulation was adopted or amended on or after January 1, 1992, and before January 1, 1993, and which is therefore scheduled to expire June 1, 1993, is postponed until August 1,

1993: Rule 3.3.4. (2), concerning applicants to the basic program submitting a fingerprint card to the Colorado Bureau of Investigation on or before the first day of formal classroom instruction, of rules relating to the background investigation of applicants by fingerprint review (4 CCR 901-1).

(8) The expiration of the following rules and regulations of the executive director of the department of institutions, which rules and regulations were adopted or amended on or after January 1, 1992, and before January 1, 1993, is postponed until August 1, 1993:

(a) Rule 16.22.11, concerning the case management agency being financially liable for any loss of medicaid reimbursement, of chapter 16 of rules concerning home and community based services for the developmentally disabled (2 CCR 503-1);

(b) Rule 16.40 through 16.90.4.5, of chapter 16 of rules concerning home and community based services for the developmentally disabled (2 CCR 503-1).

(9) It is the opinion of the general assembly that the rules allowed to expire pursuant to the provisions of this act were adopted without authority of the state constitution or statute. Therefore, pursuant to section 24-4-103 (8) (d), Colorado Revised Statutes, any rule allowed to expire pursuant to the provisions of this act which is repromulgated shall be void unless the authority to promulgate such rule has been granted to an agency by a statutory amendment or by the state constitution or by a judicial determination that statutory or constitutional authority exists for such rule.

(10) The recommendations of the Committee on Legal Services as reflected in this act shall apply to the specified rules in the form in which said rules were considered and acted upon by the committee. Any amendments or other changes in the specified rules which became effective before January 1, 1993, which comply with the recommendations of the Committee on Legal Services are not affected by this act. Any subsequent amendments or other changes in the specified rules which became effective on or after January 1, 1993, are not affected by this act.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 28, 1993