

CHAPTER 148

**ADMINISTRATIVE RULE REVIEW**

SENATE BILL 96-236

BY SENATORS Wattenberg, Hernandez, Matsunaka, Pascoe, Perlmutter, and L. Powers;  
also REPRESENTATIVES Kaufman, Keller, and Saliman.

**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 May 15, 1996 - 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 November 1, 1994, and before November 1, 1995, and which are therefore scheduled for expiration May 15, 1996, is postponed, and the provisions of section 24-4-108 or 24-34-104, Colorado Revised Statutes, shall apply:

(a) Department of administration; except that the following rules are not extended:

(I) Rule 27, concerning expanded media coverage, of the procedural rules of the division of administrative hearings (1 CCR 104-1);

(II) The following rules of the division of accounts and control are not extended:

(A) Paragraph .01, entitled Clean Air Transit Benefit for State Employees under the sub-heading to Rule 2-8 entitled "Other Benefits (Perquisites)" of the state fiscal rules of the state controller (1 CCR 101-1);

(B) Paragraph .02, concerning legislative intent to have appropriation carryover, under the sub-heading to Rule 8-3 entitled "Exceptions to Rule" of the state fiscal rules of the state controller (1 CCR 101-1);

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

(b) Department of agriculture; except that the following rules are not extended:

(I) Regulation 9.00 B. 1., concerning submitting falsified information or making a material and deliberate misstatement on the application for a license, of the rules concerning the administration and enforcement of the "Pet Animal Care and Facilities Act" (8 CCR 1201-11);

(II) Regulation 12.00 G. 1. e, concerning requirements for the sale or transfer of dogs, of the rules concerning the administration and enforcement of the "Pet Animal Care and Facilities Act" (8 CCR 1201-11);

(III) Regulation 14.00 I. 5., concerning release for sale, trade, or adoption of cats, of the rules concerning the administration and enforcement of the "Pet Animal Care and Facilities Act" (8 CCR 1201-11);

(c) Department of corrections;

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

(I) The following rules of the state board of education, concerning the administration of the Educator Licensing Act of 1991 (1 CCR 301-37):

(A) Rules 2260.5-R-3.08 (1), 2260.5-R-3.08 (1)(e)(iii), 2260.5-R-3.08 (1)(e)(iv), and 2260.5-R-3.08 (2), concerning master teacher certificates;

(B) Rule 2260.5-R-3.09, concerning master special services certificate;

(C) Rule 2260.5-R-3.10, concerning master principal certificate;

(D) Rule 2260.5-R-3.11, concerning master administrator certificate;

(E) Rule 2260.5-R-7.04 (1) (b), concerning the appointment of committees to review the licensing/endorsement standards;

(F) The first paragraph of Rule 2260.5-R-12.02 (1), concerning professional development activities; Rule 2260.5-R-12.02 (3), concerning submission of renewal portfolios; Rule 2260.5-R-12.02 (4) (including (a) through (d)), concerning the educator licensing board reviewing the portfolios based upon criteria; the first paragraph of Rule 2260.5-R-12.02 (5), concerning the educator licensing review boards; Rule 2260.5-R-12.02 (5) (b), concerning renewal requests not recommended for approval; Rule 2260.5-R-12.02 (6) (a), concerning professional development activities; Rule 2260.5-R-12.02 (6) (b), concerning master certificate holders serving as mentors;

(G) Rule 2260.5-R-16.03 (1) (k), concerning the institution submitting its response and plan;

(H) Rule 2260.5-R-16.04 (3), concerning the department review of documentation;

(I) Rule 2260.5-R-16.05, concerning creative programs for licensing and endorsement;

(J) Rule 2260.5-R-19.03, concerning evaluation forms;

(K) The introductory paragraph to Rule 2260.5-R-20.00, concerning professional standards boards; Rule 2260.5-R-20.00 (7) (including (a) through (h)), concerning powers and duties of the boards; and Rule 2260.5-R-20.00 (8) (a), concerning the appointment and terms of members of the boards;

(L) Rule 2260.5-R-22.00, concerning educator licensing review boards;

(M) Rule 2260.5-R-22.01, concerning the composition of the educator licensing review boards;

(N) Rule 2260.5-R-22.02, concerning establishment of educator licensing review boards;

(O) Rule 2260.5-R-22.03, concerning the department of education providing technical assistance;

(II) The following rules of the state board of education, concerning the administration of the Educator Licensing Act of 1991 (1 CCR 301-37):

(A) Rule 2260.5-R-4.01 (1), concerning applicants who possess outstanding talent; and Rule 4.03 (5), concerning the employing school district providing induction programs;

(B) Rule 2260.5-R-4.10 (2), concerning the employing school district providing induction programs;

(C) The introductory paragraph to Rule 2260.5-R-12.02, concerning professional licenses;

(D) Rule 2260.5-R-13.00, concerning approved induction programs;

(E) The introductory paragraph to Rule 2260.5-13.01, concerning criteria for approval and review of induction programs;

(III) The following rule of the state board of education concerning the administration of the Public School Finance Act of 1994: Rule 2254-R-4.00 (including 4.01 through 4.07), concerning alternative count date (1 CCR 301-39);

(IV) The following rule of the state board of education concerning the operation of school transportation vehicles: Rule 4204-R-206.01, concerning character requirements for a CDL "S" endorsement or CDE SVP card (1 CCR 301-26);

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

(I) Rule OPPI-95-1, section IX. A. 2. a) (1), concerning a fidelity bond or a deposit of funds, of the rules concerning health care coverage cooperatives (10 CCR 2505-2);

(II) Rule 8.203, concerning Physician Referral Prohibitions, of the rules of the state board of medical services concerning referral by medicaid providers (10 CCR 2505-10);

(III) Rule 8.203.1, concerning Definitions, of the rules of the state board of medical services concerning referral by medicaid providers (10 CCR 2505-10);

(IV) Rule 8.203.2, concerning General Exceptions to "Financial Relationship", of the rules of the state board of medical services concerning referral by medicaid providers (10 CCR 2505-10);

(V) Rule 8.203.3, concerning Reporting Requirements, of the rules of the state board of medical services concerning referral by medicaid providers (10 CCR 2505-10);

(VI) Rule 8.203.4, concerning Sanctions, of the rules of the state board of medical services concerning referral by medicaid providers (10 CCR 2505-10);

(f) Department of higher education;

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

(I) Rule 7.000.6 R., concerning the definition of neglected or dependent child, of the rules of the state board of human services concerning general information and policies (12 CCR 2509-1);

(II) Rule 7.504.54 E., concerning the removal of a child from the home on a 72-hour hold for abuse, of the rules of the state board of human services concerning child welfare services (12 CCR 2509-6);

(III) Rule 7.504.54 F., concerning the removal of a child from the home for detention, of the rules of the state board of human services concerning child welfare services (12 CCR 2509-6);

(h) Department of labor and employment; except that the following rules of the director of the division of workers' compensation are not extended:

(I) Rule XIX C., concerning apportionment of permanent impairment rating (7 CCR 1101-3);

(II) Rule XIX E. 3., concerning the permanent impairment report including a written summary of the mental evaluation and the work sheet (Division form WC-M3-PSYCH) (7 CCR 1101-3);

(i) Department of law;

(j) Department of local affairs; except that the following rules concerning the search and rescue fund are not extended:

(I) Rule #1651 A., concerning the definition of licensed person (8 CCR 1307-1);

(II) Rule #1651 C., concerning the definition of SAR Fund (8 CCR 1307-1);

(III) Rule #1651 D., concerning the definition of actual operational expenses (8 CCR 1307-1);

(IV) Rule #1653 A., concerning procedures pursuant to section 24-32-2107 (10), C.R.S. (8 CCR 1307-1);

(V) Rule #1653 B. 4., concerning procedures if an agreement is not reached (8 CCR 1307-1);

(VI) Rule #1653 C. 1. a., concerning procedures for year-end dispersement process for searches and rescues of parents, siblings, spouses, children, or grandchildren of licensed persons (8 CCR 1307-1);

(k) Department of natural resources; except that the following rules of the Colorado Mined Land Reclamation Board are not extended:

(I) Rule 1.04 (21), concerning the definition of coal, of the regulations for coal mining (2 CCR 407-2);

(II) Rule 2.06.6 (2) (a) (i), concerning incorporation by reference of the soil survey, of the regulations for coal mining (2 CCR 407-2);

(III) Rule 1.4.11 (2), concerning Special 111 Operation Permit Applications, of the regulations for hard rock/metal mining (2 CCR 407-1);

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

(I) Rule R10-3-1, concerning appeal, of the rules on retaliation for disclosure of information under the state employee protection law (4 CCR 801-1);

(II) Rule R10-3-2, concerning grievance, of the rules on retaliation for disclosure of information under the state employee protection law (4 CCR 801-1);

(III) Rule R10-3-3, concerning investigation, of the rules on retaliation for disclosure of information under the state employee protection law (4 CCR 801-1);

(IV) Rule R10-3-4, concerning rights of the parties after completion of the director's investigation, of the rules on retaliation for disclosure of information under the state employee protection law (4 CCR 801-1);

(V) Rule R10-3-5, concerning investigation by person other than the director, of the rules on retaliation for disclosure of information under the state employee protection law (4 CCR 801-1);

(m) Department of public health and environment; except that the following rules are not extended:

(I) The preliminary statement of incorporation by reference to Chapter VIII - Part

5 of the rules of the state board of health concerning standards for community residential homes for persons with developmental disabilities (6 CCR 1011-1);

(II) Rule 4.2 of article IV, concerning equipment and personnel, of rules of the state board of health concerning safety requirements for swimming pools and mineral baths (5 CCR 1003-5);

(n) Department of public safety; except that the following rules are not extended:

(I) Rule CBI 1, concerning applicability, of the rules of the executive director concerning the instant criminal background check system in the state of Colorado (8 CCR 1507-14);

(II) The following rules of the division of fire safety concerning the firefighter voluntary certification program (8 CCR 1507-3):

(A) Section 400 1. D., concerning the board conducting site visits;

(B) Section 400 3. F., concerning utilizing IFSTA training manuals, lesson plans, and curriculum packages;

(C) The second paragraph of Section 1100, concerning training subjects for various levels of certification;

(D) Section 1300 1., concerning the Fire Instructor certification program;

(E) The second paragraph of Section 1400, concerning the Driver/Operator certification program;

(F) Section 1500, "First Responder Curriculum," General Guidelines for Practical Skills Behavioral Objectives, Station #1-CPR, concerning Evaluation Sub Tasks;

(G) Section 1600 1., concerning the Fire Officer certification program;

(H) Section 1700 1., concerning the Colorado Fire Inspector I certification program;

(I) Section 1800 1., concerning the Colorado Public Fire Educator certification program;

(J) Section 1900 1., concerning the Colorado Fire Investigator certification program;

(K) Section 2000 1., concerning the Wildland Fire Fighter certification program;

(L) Section 2000 2., concerning the requirements for all applicants for the written examination for the Wildland Fire Fighter levels;

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

(I) Rule XVI of the state board of dental examiners, concerning licensure of graduates of a foreign dental school (3 CCR 709-1);

(II) Rule XVII of the state board of dental examiners, concerning evaluation of credentials for graduates of foreign dental schools (3 CCR 709-1);

(III) Rule 14 (c) (3) of the board of marriage and family therapist examiners, concerning the qualifications needed at the time of application for a Colorado license by endorsement (4 CCR 736-1);

(IV) Rule 17 (a) of the board of marriage and family therapist examiners, concerning a master's or doctoral degree with major in marriage and family therapy (4 CCR 736-1);

(V) The first paragraph of rule 17 (b) of the board of marriage and family therapist examiners, concerning a master's or doctoral degree with required education and training in marriage and family therapy (4 CCR 736-1);

(VI) Rule 2. of Chapter II, concerning the registration of individuals practicing as an audiologist on or before July 1, 1995, of rules of the director of the division of registrations concerning audiologist registration and hearing aid dealer registration (3 CCR 711-1);

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

(I) Regulation 39-22-104 (4)(a)(2), concerning individual retirement account funds invested in United States government obligations (1 CCR 201-2);

(II) Regulation 39-22-104.5, concerning reporting requirements with respect to catastrophic health insurance premium withholdings (1 CCR 201-2);

(III) Regulation 39-22-305.3, concerning election to file consolidated return (1 CCR 201-2);

(IV) Regulation 27-202 (7), concerning a nonprofit transit agency meeting the definition as described in 40-1.1-102, of the rules relating to the Colorado gasoline and special fuel regulations (1 CCR 201-8);

(V) Regulation 39-22-504.6 (2), concerning medical savings account holder (1 CCR 201-2);

(VI) Regulation 39-22-504.6 (3), concerning dependent child (1 CCR 201-2);

(VII) Rule A., of the rules of the motor vehicle division, concerning application for a hearing to consider an interlock probationary license (1 CCR 204-17);

(VIII) Regulation 47.1-4.515, of the Colorado limited gaming control commission, concerning definition of interest (1 CCR 207-1);

(q) Department of state;

(r) Department of transportation.

(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 November 1, 1994, and before November 1, 1995, and which are therefore scheduled for expiration May 15, 1996, is postponed.

(3) (a) 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 May 15, 1996, in Senate Bill 94-069, chapter 193, Session Laws of Colorado 1994, is postponed until May 15, 1998:

(I) R12-1-24, concerning job group (4 CCR 801-1);

(II) P12-1-8 (f), (f)(1), and (f)(2), concerning promotional examination announcements (4 CCR 801-2);

(III) P11-2-1, concerning protected classes, P11-2-2, concerning workforce availability and utilization analysis, and P11-2-3, concerning affirmative action plan (4 CCR 801-2).

(b) The following rule and regulation of the department of personnel, which rule and regulation was adopted or amended on or after January 1, 1987, and before January 1, 1988, and which was extended until May 15, 1996, in Senate Bill 94-069, chapter 193, Session Laws of Colorado 1994, and is therefore scheduled to expire on May 15, 1996, is not extended: P11-2-4, concerning selective referral (4 CCR 801-2).

(c) 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 before January 1, 1993, and which were extended until May 15, 1996, in Senate Bill 94-069, chapter 193, Session Laws of Colorado 1994, is postponed until May 15, 1998:

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

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

(III) R11-1-2, concerning guidelines and standards (4 CCR 801-1);

(IV) R11-1-3, concerning sexual harassment (4 CCR 801-1);

(V) R11-1-4, concerning reasonable accommodation for persons with a disability (4 CCR 801-1);

(VI) R11-1-5, concerning remedies (4 CCR 801-1);

(VII) Policy 11-2 (A), concerning affirmative action being the commitment of state government (4 CCR 801-1);



- (VIII) Policy 11-2 (C), concerning persons with disabilities (4 CCR 801-1);
- (IX) R11-2-1, concerning affirmative action plan (4 CCR 801-1);
- (X) R11-2-2, concerning recruitment program (4 CCR 801-1);
- (XI) R11-2-5, concerning director's review of examination (4 CCR 801-1);
- (XII) R11-2-7, concerning considerations in making appointments (4 CCR 801-1);
- (XIII) R11-2-8, concerning determination of underutilization (4 CCR 801-1);
- (XIV) R11-2-9, concerning complaints regarding administration (4 CCR 801-1).

(d) 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 before January 1, 1993, and which were extended until May 15, 1996, in Senate Bill 94-069, chapter 193, Session Laws of Colorado 1994, and are therefore scheduled to expire on May 15, 1996, are not extended:

- (I) Policy 11-2 (B), concerning implementing the affirmative action policy of the state (4 CCR 801-1);
- (II) R11-2-3, concerning trainees and interns (4 CCR 801-1);
- (III) R11-2-6, concerning selective referral (4 CCR 801-1);
- (IV) P 5-6-2 (E), concerning referrals for affirmative action remedies (4 CCR 801-2);
- (V) R11-2-4, concerning promotional examinations (4 CCR 801-1);
- (VI) R11-2-10, concerning affirmative action referral (4 CCR 801-1).

(4) 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 repromulgate 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.

(5) 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 November 1, 1995, 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 November 1, 1995, are not affected by this act.

**SECTION 2.** Part 1 of article 50 of title 24, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**24-50-144. Rules on affirmative action - repeal.** (1) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO ALLOW THE DEPARTMENT OF PERSONNEL TO ADOPT AFFIRMATIVE ACTION REMEDIES FOR THE STATE PERSONNEL SYSTEM THAT ARE CONSISTENT WITH THE UNITED STATES CONSTITUTION AND THAT PRESERVE THE MERIT PRINCIPLES CONTAINED IN SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION AND DO NOT VIOLATE THE RULE OF THREE PRESCRIBED BY SECTION 13 (1) AND (5) OF ARTICLE XII OF THE STATE CONSTITUTION.

(2) THE STATE PERSONNEL BOARD IS AUTHORIZED TO ADOPT PURSUANT TO THE COLORADO "ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF THIS TITLE, RULES PROVIDING FOR THE USE OF AFFIRMATIVE ACTION REMEDIES WITHIN THE STATE PERSONNEL SYSTEM. SUCH RULES SHALL APPLY ONLY WHERE THE FOLLOWING CONDITIONS EXIST WITH REFERENCE TO APPOINTMENTS OR PROMOTIONS WITHIN A DIVISION OF A PRINCIPAL DEPARTMENT IN THE STATE PERSONNEL SYSTEM:

(a) THAT DISCRIMINATION HAS OCCURRED AND THERE CONTINUE TO BE PRESENT-DAY EFFECTS OF THAT DISCRIMINATION;

(b) THAT THE AFFIRMATIVE ACTION REMEDIES ARE NECESSARY TO ELIMINATE THE PRESENT-DAY EFFECTS OF THE PRIOR DISCRIMINATION;

(c) THAT THE AFFIRMATIVE ACTION REMEDIES ARE NARROWLY TAILORED TO FURTHER THE GOVERNMENTAL INTEREST IN REMEDYING SUCH DISCRIMINATION;

(d) THAT THE AFFIRMATIVE ACTION REMEDIES ARE USED ONLY TO THE EXTENT, AND ONLY FOR THE DURATION, NECESSARY TO ELIMINATE THE PRESENT-DAY EFFECTS OF THE PRIOR DISCRIMINATION; AND

(e) THAT THE REMEDIES EMPLOY RACE-NEUTRAL METHODS WHERE POSSIBLE.

(3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 1997.

**SECTION 3. 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 15, 1996