

CHAPTER 188

ADMINISTRATIVE RULE REVIEW

SENATE BILL 98-109

BY SENATORS Wells, Matsunaka, Perlmutter, Wattenberg, Wham, and Mutzebaugh;
also REPRESENTATIVES Grossman, Adkins, Kaufman, Kreutz, and Nichol.

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, 1998 - 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, 1996, and before November 1, 1997, and which are therefore scheduled for expiration May 15, 1998, is postponed, and the provisions of section 24-4-108 or 24-34-104, Colorado Revised Statutes, shall apply:

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

(I) Rule 2.7, concerning the board reimbursing the Colorado department of agriculture for any non-personnel costs associated with conducting any election, of rules of the commissioner of agriculture concerning district boards of grazing advisers (8 CCR 1207-1);

(II) Rules 6.1 and 6.2, concerning notices of meetings, of rules of the commissioner of agriculture concerning district boards of grazing advisers (8 CCR 1207-1);

(III) Rule 9.1, concerning reporting periods, of rules of the commissioner of agriculture concerning district boards of grazing advisers (8 CCR 1207-1);

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

(IV) Rule 9.2, concerning the board submitting to the commissioner an unaudited financial statement, of rules of the commissioner of agriculture concerning district boards of grazing advisers (8 CCR 1207-1);

(V) Rule 9.3, concerning the board submitting to the commissioner a three-year special audit, of rules of the commissioner of agriculture concerning district boards of grazing advisers (8 CCR 1207-1);

(b) Department of corrections;

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

(I) The following rules of the state board of education concerning administration of the "Exceptional Children's Educational Act" (1 CCR 301-8):

(A) Rule 2220-R-2.02 (9), concerning the definition of a preschool child with a disability;

(B) Rule 2220-R-3.01 (5) (a) (i), (ii), (v), (vi), (viii), and (ix), concerning the contents of the comprehensive plan;

(C) Rule 2220-R-4.01 (3) (c) (ii), concerning the administrative unit appointing an educational surrogate parent;

(D) Rule 2220-R-4.02 (4) (k), concerning the written IEP for each child with a hearing disability including a Communication Plan;

(E) Rule 2220-R-5.02 (4), concerning when choosing between two or more appropriate placements, the administrative unit may consider cost;

(F) Rule 2220-R-6.02 (2) (b), concerning the administrative unit appointing an educational surrogate parent;

(G) Rule 2220-R-8.02 (1) (f) (i), concerning salaries for certified, endorsed, or licensed personnel working with gifted and talented students;

(II) Rule 2251-R-2.01, concerning the rules for the administration of the public school transportation fund pertaining to all districts, of the rules of the state board of education concerning administration of the public school transportation fund (1 CCR 301-14);

(III) Rule 2260.5-R-3.05 (4), concerning applicants for professional licenses not completing an approved induction program as a provisional teacher licensee, of the rules of the state board of education concerning administration of the "Educator Licensing Act of 1991" (1 CCR 301-37);

(IV) Rule 2260.5-R-13.02, concerning program evaluation of each induction program, of the rules of the state board of education concerning administration of the "Educator Licensing Act of 1991" (1 CCR 301-37);

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

(I) The following rules of the medical services board, concerning use of an enrollment facilitator (10 CCR 2505-10):

(A) 8.207.21, concerning voluntary enrollment of clients to medicaid managed care options;

(B) 8.207.22, concerning mandatory client inform and choice period;

(C) 8.207.29 A., concerning Default Assignment through the Medicaid Management Information System (MMIS);

(D) 8.207.41 C., concerning ensuring that all clients have no less than sixty-five calendar days to select among the available managed care options;

(II) Rules 8.112 through 8.112.33, concerning treatment of income and resources for institutionalized spouses or spouses of individuals enrolled in the program for all inclusive care for the elderly (PACE), of the rules of the state board of medical services (10 CCR 2505-10);

(e) Department of higher education;

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

(I) Rule 3.850.66, concerning interim relief - Colorado works and child care assistance, of the rules of the state board of human services concerning income maintenance (9 CCR 2503-1);

(II) Rule 3.616.1 H., concerning recipients of state diversion who receive a one-time or short-term payment not being required to assign child support rights, of rules of the state board of human services concerning the Colorado Works program (9 CCR 2503-1);

(III) Rule 6.903.11 L., concerning denial of passports, of the rules of the state board of human services concerning child support enforcement (9 CCR 2504-1);

(IV) The first paragraph of Rule 5.190.2, concerning submittal and certifications, of the rules of the department concerning finance and accounting (11 CCR 2508-1);

(V) Rule 7.402.71 E. 2., concerning the director of the central registry, or designee, reviewing records, of the rules of the state board of human services concerning the central registry of child protection (12 CCR 2509-5);

(VI) Rule 7.803 C. 2., concerning completed home study and supporting documents complying with INS requirements, of the rules of the state board of human services concerning non-public interstate and foreign adoptions (12 CCR 2509-9);

(VII) Rule 7.508.21, concerning use and observance of the compact, of the rules of the state board of human services concerning the interstate compact on the placement of children (12 CCR 2509-6);

(VIII) Rule 7.508.7 F. 4. b, concerning the placement has disrupted and the child

has been returned to the sending state or has been relocated, of rules of the state board of human services concerning the interstate compact on the placement of children (12 CCR 2509-6);

(IX) Rule 7.508.83 B. 3., concerning obtaining a copy of form ICPC-103, of the rules of the state board of human services concerning the interstate compact on placement of children (12 CCR 2509-6);

(g) Department of labor and employment;

(h) Department of law;

(i) Department of local affairs;

(j) Department of natural resources; except that the following rules are not extended:

(I) The following rules of the director of the division of minerals and geology, concerning the coal mine health and safety rules and regulations of the coal mine board of examiners (2 CCR 407-5):

(A) Rule 1.2 (1), concerning the quarterly meetings of the board;

(B) Rule 1.7 (2), concerning the amount of the fee;

(C) Rule 2.3 (1) (a), concerning the procedure if certification lapses from a person's lack of being actively employed in the coal mining industry;

(D) Rule 3.2 (6), concerning Temporary Certification;

(E) Rule 5.1 (3) (c), concerning where the health and safety of other individuals may be compromised, of a rule relating to the director or office taking immediate action to temporarily suspend a certification;

(II) Rule #300 5. a. (1) of Chapter 3, concerning the type of insurance being "comprehensive general liability" or "commercial general liability", of rules of the board of parks and outdoor recreation relating to river outfitters (2 CCR 405-1);

(III) Rule #206 B. 4. c. of Article II of Chapter 2, concerning any eligible hunter ages 12 through 15 being entitled to youth hunt preference for the regular rifle seasons, of the rules of the wildlife commission concerning big game hunting (2 CCR 406-2);

(IV) Rule # 206. B. 4. d. of Article II of Chapter 2, concerning up to 15 percent of the number of either-sex deer licenses and antlerless deer, elk, and antelope licenses being available for purchase by qualified youth applicants, of rules of the wildlife commission concerning big game hunting (2 CCR 406-2);

(k) Department of personnel; except that the following rule is not extended: Rule 1., concerning a specific technical standard matrix, of the IMC Rule on Technical Standards Matrix of rules of the information management commission (1 CCR

106-2);

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

(I) Rule 3.2.8, of Part 3 of Chapter II, concerning the department not collecting in any report any patient or resident names, of the rules pertaining to General Licensure Standards for health and hospital facilities (6 CCR 1011-1);

(m) Department of public safety;

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

(I) Rule XV. L., concerning coverage of inspectors under good faith immunity in acting as agents for the board, of rules of the state board of dental examiners pertaining to anesthesia office inspection (3 CCR 709-1);

(II) Rule XIX. F., concerning practice monitor guidelines, of rules of the state board of dental examiners (3 CCR 709-1);

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

(I) The entire rule concerning issuance of special interest license plates, designated as Rule 10 in the table of contents, of the rules of the executive director pertaining to license plates, inspection, registration, ownership taxes, dealers, enforcement and hearing procedures (1 CCR 204-14);

(II) Rule 3.308 of Chapter 3 on Occupational Licenses, concerning issuance of a temporary license badge, of the rules of the Colorado racing commission (1 CCR 208-1);

(III) The portion of Sales Tax Regulation 26-114.11 of the rules of the department of revenue (1 CCR 201-4), commencing with the word "INTRODUCTION:" through the last paragraph that precedes paragraph (A) of the regulation; except that the following paragraph is extended: "For machinery to be used predominantly in manufacturing, the greatest use of the machinery must be its use in manufacturing. If a machine has other uses in addition to its manufacturing use, the manufacturing use must be greater than 50% of all use to qualify for the exemption. For purposes of determining whether the manufacturing use of an item of machinery is greater than 50% of all use, machinery which is shut off is not in use, even while being repaired or maintained.

(IV) Paragraph (C) of Sales Tax Regulation 26-114.11 of the rules of the department of revenue (1 CCR 201-4), concerning the definition of "MACHINERY".

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

(I) Rule 22.4, concerning the purpose or nature of interest of the committee or

party, of rules of the secretary of state concerning Fair Campaign Practices (8 CCR 1505-6);

(II) Rule 24.1, concerning the definition of contribution, of rules of the secretary of state concerning Fair Campaign Practices (8 CCR 1505-6);

(III) Rule 25., concerning unexpended contributions, of rules of the secretary of state concerning Fair Campaign Practices (8 CCR 1505-6);

(q) Department of transportation;

(2) The expiration of all rules and regulations of the public employee's retirement association, which rules and regulations were adopted or amended on or after November 1, 1996, and before November 1, 1997, and which are therefore scheduled for expiration May 15, 1998, is postponed.

(3) Rule 12-64-103 (14). R II. 9. (b), concerning emergency services, and Rule 12-64-103 (14). R II. 10., concerning recordkeeping, of the rules of professional conduct of the code of professional ethics, of the rules of the state board of veterinary medicine, of the department of regulatory agencies (4 CCR 727-2), which rules were adopted on or after November 1, 1997, are repealed.

(4) (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, 1998, in Senate Bill 96-236, chapter 148, Session Laws of Colorado 1996, is postponed until May 15, 2000:

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

(II) P11-2-1, concerning protected classes (4 CCR 801-2);

(III) P11-2-2, concerning workforce availability and utilization analysis (4 CCR 801-2).

(b) 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, 1998, in Senate Bill 96-236, chapter 148, Session Laws of Colorado 1996, is postponed until May 15, 2000:

(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 (C), concerning persons with disabilities (4 CCR 801-1);
- (VIII) R11-2-1, concerning affirmative action plan (4 CCR 801-1);
- (IX) R11-2-5, concerning director's review of examination (4 CCR 801-1);
- (X) R11-2-8, concerning determination of underutilization (4 CCR 801-1);
- (XI) R11-2-9, concerning complaints regarding administration (4 CCR 801-1).

(c) 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, 1998, in Senate Bill 96-236, chapter 148, Session Laws of Colorado 1996, and are therefore scheduled to expire on May 15, 1998, are not extended:

- (I) P12-1-8 (f), (f)(1) and (f)(2), concerning promotional examination announcements (4 CCR 801-2);
- (II) P11-2-3, concerning affirmative action plan (4 CCR 801-2).

(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, 1998, in Senate Bill 96-236, chapter 148, Session Laws of Colorado 1996, and are therefore scheduled to expire on May 15, 1998, are not extended:

- (I) Policy 11-2 (A), concerning affirmative action being the commitment of state government (4 CCR 801-1);
- (II) R11-2-2, concerning recruitment program (4 CCR 801-1);
- (III) R11-2-7, concerning considerations in making appointments (4 CCR 801-1).

(e) No later than September 1, 2000, the department of personnel shall submit to the committee on legal services the following information:

- (I) Employment utilization figures for the state personnel system for the period from January 1, 1998, through January 1, 2000;
- (II) The department of personnel's annual affirmative action reports to the governor for 1998 and 1999;
- (III) Such other information as the staff of the committee on legal services may reasonably request related to implementation of the affirmative action rules to aid in the evaluation of their operation and legal sufficiency.

(5) Rule 3.850.66, concerning interim relief - Colorado works and child care assistance, of the rules of the state board of human services, of the department of

human services, concerning income maintenance (9 CCR 2503-1), which rule was adopted on or after November 1, 1997, is repealed.

(6) Rule 8.079.4. G., concerning MCO quality assurance programs, of the rules of the medical services board, of the department of health care policy and financing (10 CCR 2505-10), which rule was adopted on or after November 1, 1997, is repealed.

(7) The following instructions in the Assessors' Reference Library Volume 3, Chapter 5, of the division of property taxation, department of local affairs, approved by the state board of equalization on January 17, 1998, are repealed:

(a) The second paragraph on page 5.23, concerning definitions and use of livestock;

(b) The portion of the instructions designated as STEP: 2, concerning determining the primary use of the parcel, which is comprised of the last paragraph on page 5.24, pages 5.25 and 5.26, and the first three paragraphs on page 5.27.

(8) 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 that became effective before November 1, 1997, that 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 that became effective on or after November 1, 1997, are not affected by this act.

SECTION 2. Pilot project for review of rules - extended. In H.B. 97-1193, the general assembly authorized the committee on legal services to conduct a one-year pilot project for the prioritization of the review of executive branch rules. In the interests of using staff resources efficiently in carrying out the rule review functions pursuant to section 24-4-103, Colorado Revised Statutes, and to gather more information on the effectiveness of such an approach, the committee on legal services is authorized to direct the staff of the office of legislative legal services to continue to operate the pilot project for the prioritization of the review of executive branch rules adopted or amended on or after November 1, 1997, and before November 1, 1998. The pilot project shall require that every rule submitted be reviewed but shall provide for appropriate graduated levels of review based on criteria established by the committee on legal services.

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, 1998