

CHAPTER 112

ADMINISTRATIVE RULE REVIEW

HOUSE BILL 99-1163

BY REPRESENTATIVES Kaufman and Grossman;
also SENATORS Perlmutter, Nichol, Wattenberg, Wham, and Matsunaka.

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, 1999 - 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, 1997, and before November 1, 1998, and which are therefore scheduled for expiration May 15, 1999, is postponed, and the provisions of section 24-4-108 or 24-34-104, Colorado Revised Statutes, shall apply:

(a) Department of agriculture;

(b) Department of corrections;

(c) Department of education; except that the following rule is not extended: Rule 2260.5-R-3.02 (5), concerning evidence of passing scores on the Colorado licensing assessments with exceptions for persons applying for endorsement as an occupational therapist, physical therapist, school nurse, school psychologist, or school social worker, of rules of the state board of education concerning the 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) Rule 8.591.02 H. 1., concerning telephone communication devices for the hearing impaired and other facilitative listening devices, of rules of the state board

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

of medical services concerning durable medical equipment and disposable medical supplies (10 CCR 2505-10);

(II) Rule 8.591.02 H. 5., concerning any other device, other than a wheelchair, that enables a person with a disability to communicate or maneuver, of rules of the state board of medical services concerning durable medical equipment and disposable medical supplies (10 CCR 2505-10);

(e) Department of higher education;

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

(I) The following rules of the state board of human services concerning the Colorado works program (9 CCR 2503-1):

(A) Rules 3.605.5 and 3.605.6, concerning the definitions of cash assistance;

(B) Rule 3.600.12 B. 1., concerning a dependent child under the age of eighteen or who if age 6 through 18 is in school or an approved training program for purposes of participating in Colorado works;

(C) Rule 3.600.15 A., concerning assistance units which include an unmarried minor parent under the age of eighteen;

(D) Rule 3.602.1 D., concerning procedures for appealing the denial of any adverse action resulting from the denial of a Colorado works waiver;

(E) Rule 3.602.10, concerning the decision on the waiver being made by a panel;

(F) Rule 3.602.2, concerning counties granting waivers of any program requirements except work requirements that would make it more difficult for an applicant to escape domestic violence;

(G) Rule 3.620.2 B., concerning that the IRC is a contract between the participant and the county;

(H) The introductory portion to Rule 3.850.11, concerning the opportunity for state level fair hearing;

(II) The definition of "Conduct of an Employee of the County Department of Social Services" in Rule 7.200.3 A., of the rules of the state board of human services concerning the child welfare grievance resolution process (12 CCR 2509-3);

(III) Rule 7.304.62 J., concerning the county department not moving a child from one short-term emergency placement to another unless all reasonable efforts to place the child in a more permanent setting have been exhausted, of the rules of the state board of human services concerning child welfare services (12 CCR 2509-4);

(IV) Rule 7.307.1, concerning use and observance of the compact, of the rules of the state board of human services concerning child welfare services (12 CCR 2509-4);

(g) Department of labor and employment;

(h) Department of law;

(i) Department of local affairs;

(j) Department of natural resources;

(k) Department of personnel; except that the following rules are not extended:

(I) The following rules of the state personnel board concerning the implementation of Colorado peak performance (4 CCR 801):

(A) R-6-4, concerning an unsatisfactory performance rating;

(B) R-8-5, concerning grievance and what is grievable and not grievable;

(II) The following rules of the executive director of the department of personnel, concerning the implementation of Colorado peak performance for classified state employees (4 CCR 801):

(A) P-6-1, concerning the director establishing guidelines governing the performance management and evaluation system for employees;

(B) P-8-13, concerning the performance management review process being an open, impartial process that is not a grievance or appeal;

(C) P-8-17, concerning performance management review process;

(D) P-12-23, concerning the definition of performance management review process under CPP;

(I) Department of public health and environment; except that the following rule is not extended: Rule 303. N., concerning interfacility consultation and transfer - pediatric, of chapter 3 of the rules of the board of health concerning the statewide trauma system (6 CCR 1015-4);

(m) Department of public safety;

(n) Department of regulatory agencies;

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

(I) The thirteenth paragraph of Regulation 12-6-104 (3)(g), concerning upon request of the board that all applicants and licensees be required to submit to fingerprinting, of rules of the motor vehicle dealer board concerning dealing in motor vehicles (1 CCR 205-1);

(II) Rule 47.1-2002 (3) (a), concerning license condition or denial actions, of rules of the Colorado limited gaming control commission, concerning prehearing procedures for gaming licensing hearings (1 CCR 207-1);

(III) Rule 47.1-2002 (3) (a) (iv), concerning the presence of intervenors in a denial action, of rules of the Colorado limited gaming control commission, concerning prehearing procedures for gaming licensing hearings (1 CCR 207-1);

(p) Department of state;

(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, 1997, and before November 1, 1998, and which are therefore scheduled for expiration May 15, 1999, is postponed.

(3) Rule 2220-R-3.01(5)(a)(i), (ii), (v), and (vi), concerning the contents of the comprehensive plan, of rules of the state board of education concerning administration of the "Exceptional Children's Educational Act", (1 CCR 301-8) were not extended in SB 98-109, enacted at the second regular session of the sixty-first general assembly. The committee on legal services has determined that those rules were subsequently repromulgated by the state board of education without authority to promulgate those rules having been granted to the state board of education by a statutory amendment or by the state constitution or by a judicial determination that statutory or constitutional authority exists in accordance with section 24-4-103 (8) (d), Colorado Revised Statutes. The committee on legal services has determined that such repromulgation violates the requirements of section 24-4-103 (8) (d), Colorado Revised Statutes, regarding the repromulgation of rules allowed to expire and that as a result these rules are void by operation of law.

(4) Rule 304., concerning pediatric trauma designation criteria, of chapter 3 of the rules on the statewide trauma system of the state board of health, of the department of public health and environment, (6 CCR 1015-4), which rules were adopted on or after November 1, 1996, and before November 1, 1997, is repealed.

(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 that became effective before November 1, 1998, 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, 1998, are not affected by this act.

SECTION 2. Pilot project for review of rules - extended. In H.B. 97-1193 and S.B. 98-109, the general assembly authorized the committee on legal services to conduct a 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, 1998, and before November 1, 2000. 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: April 15, 1999