

CHAPTER 146

ADMINISTRATIVE RULE REVIEW

HOUSE BILL 02-1203

BY REPRESENTATIVE(S) Lee, Hefley, Mitchell, Fairbank, Groff, Harvey, Johnson, King, Plant, and Schultheis;
also SENATOR(S) Linkhart, Epps, Evans, Gordon, and Perlmutter.

AN ACT

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

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

SECTION 1. Rules and regulations scheduled for expiration May 15, 2002 - 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, 2000, and before November 1, 2001, and that are therefore scheduled for expiration May 15, 2002, 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 rules are not extended:

(I) The following rule of the state board of education concerning the teacher development grant program: Rule 2207-R-2.02 (3), concerning evaluation of individual school programs (1 CCR 301-48);

(II) The following rule of the state board of education concerning administration of education reform: Rule 22-7-R-4.04, concerning exemption from academic performance ratings (1 CCR 301-46);

- (d) Department of health care policy and financing; except that the following rule

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

is not extended: The following rule of the medical services board on medical assistance: Rule 8.110.52 B. 5. b. 1) 1), concerning distributions from the trust may be made only to or for the benefit of the individual beneficiary (10 CCR 2505-10);

- (e) Department of higher education;
- (f) Department of human services;
- (g) Department of labor and employment;
- (h) Department of law;
- (i) Department of local affairs; except that the following rules are not extended:

(I) The following rule of the division of local government concerning local government mandate turnback relating to partial reimbursements of waste tire processing and usage: Rule B. 3. of Part II, concerning the end user and/or processor not being located in Colorado (8 CCR 1306-2);

(II) The following rules of the state housing board concerning manufactured housing installations (8 CCR 1302-7):

- (A) Section 10, concerning revocations, suspension and appeal process;
- (B) Section 12, concerning installation warranty period;
- (C) Subsection 2., of Schedule "A", concerning plan checking fees;

(D) Subsection 5., of Schedule "A", concerning change of installer, ownership or change of address;

- (j) Department of natural resources;
- (k) Department of personnel;

(l) Department of public health and environment; except that the following rule is not extended: The following rule of the air quality control commission: Subpart X. of the permit fee credits regulation of Regulation No. 5, Part B, concerning effective date and repeal (5 CCR 1001-7);

(m) Department of public safety; except that the following rule of the executive director concerning claims for reimbursement for the costs of handling hazardous substance incidents, is not extended: Rule HSCR 1 D., concerning direct costs (8 CCR 1507-22);

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

(I) The following rule of the commissioner of insurance, division of insurance, concerning insurer assessments for CoverColorado (3 CCR 702-4): Section 7 of Regulation 4-2-22, concerning emergency assessments;

(II) The following rule of the state board of nursing, division of registrations, concerning the impaired professional diversion program (3 CCR 716-1): Rule A. 7. of Chapter XII, concerning any licensee may apply to the program without reprisal, unless the committee in its discretion believes there are safety to practice concerns;

(III) The following rules of the Colorado state boxing commission, concerning boxing and kickboxing (4 CCR 740-1):

(A) Rule 1.003, concerning license application;

(B) Rule 5.002, concerning licenses required;

(C) Rule 5.003, concerning license fee schedule;

(D) Rule 15.001, concerning matchmaker license;

(E) Rule 16.001, concerning requirements and restrictions;

(F) Rule 17.001, concerning physician examinations and assistance in emergencies;

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

(I) The following rule of the Colorado lottery commission, lottery division, concerning multi-state lottery association on-line lottery games, is not extended: Rule 14.10 b) 2), concerning an exception from ineligibility to purchase tickets for any employee of the division when authorized by the director for investigation purposes (1 CCR 206-1);

(II) The following rules of the motor carrier services division of rules concerning gasoline and special fuel tax (1 CCR 201-8):

(A) Regulation (39-) 27-103.5 (1), concerning definitions;

(B) Regulation (39-) 27-103.5 (2), concerning identification and establishment of industry segments;

(C) Regulation (39-) 27-103.5 (3), concerning establishing an industry segment percentage;

(D) Regulation (39-) 27-103.5 (4), concerning procedures and documentation for an industry standard proposal;

(E) Regulation (39-) 27-103.5 (5), concerning establishment of the account percentage and utilization of the industry segment percentage;

(F) Regulation (39-) 27-103.5 (6), concerning protests of the industry, industry-segment, or account percentage;

(G) Regulation (39-) 27-103.5 (7), concerning qualifying fuel;

(III) The following rule of the motor carrier services division of rules concerning Colorado gasoline and special fuel regulations (1 CCR 201-8): Regulation 27-103 (3) (d), concerning claims for refund shall be postmarked no later than six months after purchase of the fuel;

(IV) The following rules of the motor vehicle business group, concerning periodic motor vehicle registration (1 CCR 204-9):

- (A) Rule II. A., concerning vehicles not previously registered;
- (B) Rule II. B. 1. a., concerning registration of a vehicle not previously registered;
- (C) Rule II. B. 1. b., concerning registration renewal;
- (D) Rule II. C., concerning reissues and transfers;
- (E) Rule III. A., concerning all vehicles subject to Class A taxes;
- (F) Rule III. B., concerning all vehicles issued disabled veteran plates;
- (G) Rule III. C., concerning all special mobile equipment (SME);
- (H) Rule III. H., concerning vehicles issued special call letter license plates;
- (p) Department of state;
- (q) 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, 2000, and before November 1, 2001, and which are therefore scheduled for expiration May 15, 2002, is postponed.

(3) The expiration of all rules and regulations of the office of economic development, in the office of the governor, which rules and regulations were adopted or amended on or after November 1, 2000, and before November 1, 2001, and which are therefore scheduled for expiration May 15, 2002, is postponed; except that the following rules concerning certified capital companies' program (8 CCR 1501-2), are not extended:

- (a) The definition of "distributions review";
- (b) Subsection 14., concerning an audited balance sheet, in the legal name of the applicant, of the portion of the rule entitled "Requirements of an Application";
- (c) The paragraph concerning "Continued Accuracy of Information Submitted in the Application", of the portion of the rule entitled "Continuing Certification Requirements".

(4) The following rules of the Colorado lottery commission, lottery division, of the department of revenue, (1 CCR 206-1), are repealed:

(a) Rule 5.9 b) 2), which rule was adopted on or after December 20, 1982, and before January 30, 1983, concerning an exception from ineligibility to purchase tickets for any employee of the division when authorized by the director for investigating purposes (1 CCR 206-1);

(b) Rule 10.9 b) 2), which rule was adopted on or after November 8, 1988, and before December 30, 1988, concerning an exception from ineligibility to purchase tickets for any employee of the division when authorized by the director for investigating purposes (1 CCR 206-1);

(5) Rule 8.2, concerning a person certified as an EMT-Basic, EMT-Intermediate or an EMT-Paramedic by another state may, with the authorization of a physician advisor, function as an EMT-Basic, EMT-Intermediate or EMT-Paramedic, of the rule of the board of medical examiners, division of registrations, of the department of regulatory agencies, concerning emergency medical services physician advisors and emergency medical technicians (3 CCR 713-6), which rule was adopted on or after November 1, 2001, is repealed.

(6) 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, 2001, 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, 2001, are not affected by this act.

SECTION 2. 24-4-103 (3) (b), (9), (11) (b), (11) (d), (11) (f), (11) (g), (11) (h), (11) (i), (11) (k), and (12), Colorado Revised Statutes, are amended to read:

24-4-103. Rule-making - procedure. (3) (b) Each rule-making agency shall maintain a list of all persons who request notification of proposed rule-making, including temporary or emergency rule-making. Any person on such list who requests a copy of the proposed rules shall submit to the agency a fee ~~which~~ THAT shall be set by such agency based upon the agency's actual cost of copying and mailing the proposed rules to such person. All fees collected by the agency are hereby appropriated to the agency solely for the purpose of defraying such cost. On or before the date of the publication of notice of proposed rule-making in the Colorado register, the agency shall mail the notice of proposed rule-making to all persons on such list. IF A PERSON REQUESTS TO BE NOTIFIED BY ELECTRONIC MAIL, NOTICE IS SUFFICIENT BY SUCH MEANS IF A COPY OF THE PROPOSED RULES IS ATTACHED OR INCLUDED IN THE ELECTRONIC MAIL OR IF THE ELECTRONIC MAIL PROVIDES THE LOCATION WHERE THE PROPOSED RULES MAY BE VIEWED ON THE INTERNET. NO FEES SHALL BE CHARGED FOR NOTIFICATION BY ELECTRONIC MAIL. A person may only request notification on his OR HER own behalf, and a request for notification by one person on behalf of another person need not be honored.

(9) Each agency shall make available to the public and shall deliver to anyone requesting it a copy of ~~any rule of the agency then in effect or of~~ any notice of proposed rule-making proceeding in which action has not been completed. Upon request, such copy shall be certified. The agency may make a reasonable charge for supplying any such copy. ~~Except for temporary or emergency rules adopted pursuant~~

to this section, such copy shall be in the same format as the rule appears in the code of Colorado regulations or the Colorado register established pursuant to subsection (11) of this section.

(11) (b) The secretary of state shall cause to be published IN ELECTRONIC FORM AND MAY CAUSE TO BE PUBLISHED IN PRINTED FORM, at ~~no~~ THE LEAST cost POSSIBLE to the state, the code of Colorado regulations ~~no later than January 1, 1978~~; and the Colorado register no less often than once each calendar month ~~on and after such date~~ and shall make all diligent effort to enter into a publication agreement to such effect ~~on or before eight weeks from June 19, 1977~~, for a period not to exceed five years, but SUCH AGREEMENT may include a renewal provision ~~The publication and format of rules and proposed rules shall be in a form approved by the committee on legal services of the Colorado general assembly~~ FOR ADDITIONAL PERIODS NOT TO EXCEED FIVE YEARS EACH.

(d) (I) Each agency subject to the provisions of this section shall, on or before ~~September 1, 1977~~ A DATE DURING THE FISCAL YEAR BEGINNING ON JULY 1, 2002, SPECIFIED BY THE SECRETARY OF STATE, file or verify that there is on file with the secretary of state a copy of each currently effective rule specified in subsection (1) of this section IN PRINT AND IN ELECTRONIC FORM AS SPECIFIED BY THE SECRETARY OF STATE. Any rule in effect prior to such date ~~which~~ THAT is not on file with the secretary of state on ~~September 1, 1977~~ SUCH DATE, shall not continue in effect on or after ~~January 1, 1978~~ SUCH DATE.

(II) Each rule adopted, ~~on or after September 1, 1977~~, together with the attorney general's opinion rendered in connection therewith, shall be filed pursuant to subsection (12) of this section within twenty days thereafter with the secretary of state for publication in the Colorado register. Upon written request of an agency, the secretary of state shall correct typographical and other nonsubstantive errors appearing in the rules as filed by such agency that occur after final adoption of the rules by the agency during the preparation of such rules for publication in order to conform the published rules with the adopted rules. Notices of rule-making proceedings pursuant to subsection (3) of this section ~~which proceedings are to be held after January 1, 1978~~, shall also be filed with the secretary of state in sufficient time for publication pursuant to subsection (5) of this section in the Colorado register. ~~on or after January 1, 1978~~. Rules revised to conform with action taken by the general assembly shall be filed with the secretary of state for publication in the register and in the code. The legal services committee of the general assembly shall notify the secretary of state whenever a rule published in the code is rescinded or a portion thereof is deleted by the general assembly and whenever a rule or a portion thereof is allowed to expire in accordance with section 24-4-108 or with subparagraph (I) of paragraph (c) of subsection (8) of this section, and the secretary of state shall direct the removal from the code of material so deleted, rescinded, or allowed to expire.

(f) Publication of the code of Colorado regulations shall be effected by making the same available ~~by January 1, 1978~~, for purchase by any person, public or private, at a reasonable price approved by the secretary of state.

(g) Publication of notices and other required information related to proposed and adopted rules shall be by ~~the delivery~~ ELECTRONIC PUBLICATION or BY mailing ~~on or~~

~~after January 1, 1978, of the Colorado register to persons on the mailing~~ SUBSCRIBER list maintained pursuant to paragraph (h) of this subsection (11). The date of publication of the Colorado register shall be the date ~~of the last regular delivery or mailing~~ THAT THE LAST REGULAR MAILING AND THE ELECTRONIC PUBLICATION ARE COMPLETED. The Colorado register shall likewise be available for purchase by any person, public or private, at a reasonable price approved by the secretary of state.

(h) In order to facilitate the ~~delivery or mailing~~ PUBLICATION of the ~~said~~ code OF COLORADO REGULATIONS and THE COLORADO register, the publishing agent shall maintain a current ~~mailing~~ SUBSCRIBER list for the ~~said~~ code and register of all persons requesting to be placed thereon and having paid the approved purchase price, including those persons on any agency's mailing list ~~on January 1, 1978~~, who pay such purchase price. THE SUBSCRIBER LIST SHALL SHOW FOR EACH SUBSCRIBER WHETHER THE SUBSCRIBER HAS PURCHASED A PRINT SUBSCRIPTION, AN ELECTRONIC SUBSCRIPTION, OR BOTH.

(i) (I) The ~~publication agreement entered into by the secretary of state shall provide for the publication no later than January 1, 1978, of the code of Colorado regulations and of the Colorado register on and after such date by mailing at intervals of not less than once each calendar month.~~ Said code shall contain only those rules effective on the date of publication, subject to the provisions of paragraph (d) of this subsection (11) concerning rules filed with the secretary of state.

(II) The Colorado register shall contain only such notices, proposed rules, adopted rules, opinions, and other relevant information and materials as are filed pursuant to law with the secretary of state.

(III) If, for any reason, the code of Colorado regulations ~~is not published on or before January 1, 1978, or if, on or after such date,~~ the Colorado register is not published for three consecutive months or during a total of four calendar months during any twelve-month period, said agreement shall be void and all right, title, and interest to the information, copyright, mailing lists, other materials, and work product of the publishing agent shall vest, without compensation, in the state of Colorado. In such event, the secretary of state shall notify each agency of the termination of such agreement and shall publish or cause to be published the code of Colorado regulations and the Colorado register. Until the secretary of state has the facilities and funds and is fully prepared to publish each notice of rule-making and each rule as finally adopted and so notifies the agencies, each agency shall publish its own notices of rule-making and rules as finally adopted. Publication shall be by mailing a copy to each person on the agency's mailing list, which shall include the attorney general and every person who has requested to be placed thereon and who has paid any fee set by the agency for such purpose, such fee to approximate the cost of the mailing to such person, and by placing and keeping a copy on permanent file in the agency's office for inspection by any person during regular office hours.

(k) Each agency promulgating or administering rules shall obtain the appropriate portion or portions of the code of Colorado regulations and the ~~annual~~ portion or portions of the Colorado register pertaining thereto and shall maintain the same in its office for its use and that of the public as a public record.

(12) All rules of any agency that have been submitted to the attorney general under

the provisions of subsection (8) of this section and the opinion of the attorney general, when issued, shall be filed in the office of the secretary of state. The secretary of state ~~may~~ SHALL require that such rules be filed in an electronic format that complies with any requirements established pursuant to sections 24-71.1-110, 24-37.5-106, and 24-37.5-205.

SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the department of state cash fund created in section 24-21-104, Colorado Revised Statutes, not otherwise appropriated, to the department of state, the sum of four hundred sixty-four thousand nine hundred nineteen dollars (\$464,919) and 3.7 FTE, or so much thereof as may be necessary, for the implementation of this act. The moneys appropriated by this section shall become available upon passage of this act and shall remain available through June 30, 2003.

SECTION 4. 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 14, 2002