

Colorado Revised Statutes 2022

TITLE 24

GOVERNMENT - STATE

Cross references: For elections, see title 1; for peace officers and firefighters, see article 5 of title 29; for state engineer, see article 80 of title 37; for state chemist, see part 4 of article 1 of title 25; for offenses against government, see article 8 of title 18; for the "Uniform Records Retention Act", see article 17 of title 6.

ARTICLE 4

Rule-making and Licensing Procedures

by State Agencies

Cross references: For limitation on licensing and revocation of licenses, see *Graeb v. State Board of Medical Examiners*, 55 Colo. 523, 139 P. 1099; *Chenoweth v. State Board of Medical Examiners*, 57 Colo. 74, 141 P. 132 (1914); *Sapero v. State Board of Medical Examiners*, 90 Colo. 568, 11 P.2d 555 (1932); *Paine v. People*, 106 Colo. 258, 103 P.2d 686 (1940); *Prouty v. Heron*, 127 Colo. 168, 255 P.2d 755 (1953); *Colorado State Board of Nurse Examiners v. Hohu*, 129 Colo. 195, 268 P.2d 401 (1954); *In re Hearings Concerning Canon 35*, 132 Colo. 591, 296 P.2d 465 (1956); and *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957). For the distinction between "standards" which must be enacted by the general assembly and rules and regulations which can be enacted by the department, see cases annotated under article III of the Colorado Constitution; *Schechter Poultry Corp. v. U.S.*, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 (1935); *Prouty v. Heron*, 127 Colo. 168, 255 P.2d 755 (1953); and *Casey v. People*, 139 Colo. 89, 336 P.2d 308 (1959); for article, "Administrative Rule Review: Procedures and Oversight by the Colorado General Assembly", see 33 Colo. Law. 83 (June 2004).

Law reviews: For article, "The Colorado Administrative Procedure Act: Exclusive Demanding Reform", see 44 Den. L.J. 42 (1967); for comment on the Colorado Administrative Procedure Act and its construction, see 51 Den. L.J. 275 (1974); for comment, "Pre-Enforcement Judicial Review: CF Steel Corp. v. Colorado Air Pollution Control Commission", see 58 Den. L.J. 693 (1981); for article, "Administrative Law", which discusses Tenth Circuit decisions dealing with questions of administrative law, see 61 Den. L.J. 109 (1984); for article, "Administrative Law", which discusses Tenth Circuit decisions dealing with questions of administrative law, see 62 Den. U. L. Rev. 9 (1985); for "Administrative Law", which discusses Tenth Circuit decisions dealing with questions of administrative law, see 63 Den. U. L. Rev. 165 (1986); for article, "A Practitioner's Guide to the Colorado Air Quality Control Commission", see 16 Colo. Law. 1405 (1987); for article, "General Principles of the Colorado Administrative Procedure Act", see 16 Colo. Law. 1983 (1987); for article, "Prosecuting an Appeal from a Decision of the Colorado Public Utilities Commission", see 16 Colo. Law. 2163 (1987); for article, "Practicing Before the Colorado Civil Rights Commission", see 17 Colo. Law. 259 (1988); for article, "Administrative Law", which discusses Tenth Circuit decisions dealing with questions of administrative law, see 65 Den. U. L. Rev. 357 (1988); for a discussion of Tenth Circuit decisions dealing with questions of administrative law, see 66 Den. U. L. Rev. 667 (1989); for a discussion of Tenth Circuit decisions dealing with questions of administrative law, see 67 Den. U. L. Rev. 603 (1990); for article, "Parallel Criminal and Administrative Licensure Proceedings", see 20 Colo. Law. 213 (1991); for article, "Legislative Sunset of Administrative Rules", see 21 Colo. Law. 2191 (1992); for article, "Representing a Professional Licensee in A Regulatory Board Investigation", see 21 Colo. Law. 1397 (1992).

PART 1

GENERAL

24-4-101. Short title. This article shall be known and may be cited as the "State Administrative Procedure Act".

Source: L. 69: p. 91, § 8. C.R.S. 1963: § 3-16-7.

24-4-101.5. Legislative declaration. The general assembly finds that an agency should not regulate or restrict the freedom of any person to conduct his or her affairs, use his or her property, or deal with others on mutually agreeable terms unless it finds, after a

full consideration of the effects of the agency action, that the action would benefit the public interest and encourage the benefits of a free enterprise system for the citizens of this state. The general assembly also finds that many government programs may be adopted without stating the direct and indirect costs to consumers and businesses and without consideration of such costs in relation to the benefits to be derived from the programs. The general assembly further recognizes that agency action taken without evaluation of its economic impact may have unintended effects, which may include barriers to competition, reduced economic efficiency, reduced consumer choice, increased producer and consumer costs, and restrictions on employment. The general assembly further finds that agency rules can negatively impact the state's business climate by impeding the ability of local businesses to compete with out-of-state businesses, by discouraging new or existing businesses from moving to this state, and by hindering economic competitiveness and job creation. Accordingly, it is the continuing responsibility of agencies to analyze the economic impact of agency actions and reevaluate the economic impact of continuing agency actions to determine whether the actions promote the public interest.

Source: L. 77: Entire section added, p. 1134, § 1, effective May 31. **L. 2003:** Entire section amended, p. 2369, § 1, effective August 6.

24-4-102. Definitions. As used in this article 4, unless the context otherwise requires:

(1) "Action" includes the whole or any part of any agency rule, order, interlocutory order, license, sanction, relief, or the equivalent or denial thereof, or failure to act. Any agency rule, order, license, sanction, relief, or the equivalent or denial thereof which constitutes final agency action shall include a list of all parties to the agency proceeding and shall specify the date on which the action becomes effective.

(2) "Adjudication" means the procedure used by an agency for the formulation, amendment, or repeal of an order and includes licensing.

(3) "Agency" means any board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative branch or judicial branch and except:

(a) State educational institutions administered pursuant to title 23, except part 1 of article 8, parts 2 and 3 of article 21, and parts 2 to 4 of article 31 of title 23;

(b) Repealed.

(c) The adjutant general of the National Guard, whose powers and duties are set forth in section 28-3-106, C.R.S.

(3.5) "Aggrieved", for the purpose of judicial review of rule-making, means having suffered actual loss or injury or being exposed to potential loss or injury to legitimate interests including, but not limited to, business, economic, aesthetic, governmental, recreational, or conservational interests.

(4) "Counsel" means an attorney admitted to practice before the supreme court of this state.

(5) "Decision" means the determinative action in adjudication and includes order, opinion, sanction, and relief.

(5.5) "Economic competitiveness" means the ability of the state of Colorado to attract new business and the ability of the businesses currently operating in Colorado to create new jobs and raise productivity.

(6) "Initial decision" means a decision made by a hearing officer or administrative law judge which will become the action of the agency unless reviewed by the agency.

(6.2) "Interested person" includes any person who may be aggrieved by agency action.

(6.5) "Legislative committees of reference" means the committees established by the rules of the house of representatives and rules of the senate of the general assembly having jurisdiction over subject matter regulated by state agencies.

(7) "License" includes the whole or any part of any agency permit, certificate, registration, charter, membership, or statutory exemption.

(8) "Licensing" includes the procedure used by an agency respecting the grant, renewal, denial, revocation, suspension, annulment, limitation, or modification of a license.

(9) "Opinion" means the statement of reasons, findings of fact, and conclusions of law in explanation or support of an order.

(10) "Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) by any agency in any matter other than rule-making.

(11) "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding subject to the provisions of this article.

(12) "Person" includes an individual, limited liability company, partnership, corporation, association, county, and public or private organization of any character other than an agency.

(13) "Proceeding" means any agency process for any rule or rule-making, order or adjudication, or license or licensing.

(14) "Relief" includes the whole or any part of any agency grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; recognition of any claim, right, immunity, privilege, exemption, exception, or remedy; or any other action upon the application or petition of, and beneficial to, any person.

(14.5) "Representative group" means a diverse group convened by an agency prior to rule-making or invited to participate in the rule-making hearing to give input and to comment on the effect of the proposed rules. The group should represent different points of view and may include representatives of persons, businesses, advocacy groups, trade associations, labor organizations, environmental advocacy groups, consumer advocates, or the regulated industry or profession affected negatively or positively by proposed rules.

(15) "Rule" means the whole or any part of every agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of any agency. "Rule" includes "regulation".

(16) "Rule-making" means agency process for the formulation, amendment, or repeal of a rule. "Rule-making" does not include a statutory citation correction authorized by section 24-4-103 (11)(l).

(17) "Sanction" includes the whole or any part of any agency prohibition, requirement, limitation, or other condition affecting the freedom of any person; withholding of relief; imposition of any form of penalty or fine; destruction, taking, seizure, barring access to, or withholding of property; assessment of damages; reimbursement; restitution; compensation; costs; charges or fees; requirement; revocation or suspension of a license or the prescription or requirement of terms, conditions, or standards of conduct thereunder; or other compulsory or restrictive action.

(18) "Small business" means a business with fewer than five hundred employees.

Source: L. 59: p. 158, § 1. CRS 53: § 3-16-1. C.R.S. 1963: §3-16-1. L. 67: p. 300, § 1. L. 69: p. 81, § 1. L. 76: (4) amended and (6.5) added, p. 582, § 14, effective May 24. L. 79: (3.5) added and (12) amended, pp. 842, 843, §§ 1, 1, effective May 26. L. 81: (1) amended, p. 1133, § 1, effective June 6. L. 83: (3) amended, p. 962, § 7, effective July 1, 1984. L. 87:

(6) amended, p. 961, § 64, effective March 13. **L. 90:** (12) amended, p. 447, § 8, effective April 18. **L. 93:** (6.2) added, p. 1325, § 1, effective June 6. **L. 2002:** (3) amended, p. 586, § 6, effective May 24. **L. 2003:** (5.5) and (18) added, p. 2370, § 2, effective August 6. **L. 2012:** (14.5) added, (HB 12-1008), ch. 182, p. 691, § 1, effective May 17; (3)(b) repealed, (HB 12-1283), ch. 240, p. 1133, § 44, effective July 1. **L. 2013:** (3)(a) amended, (HB 13-1300), ch. 316, p. 1681, § 49, effective August 7. **L. 2017:** (16) amended, (HB 17-1006), ch. 31, p. 88, § 1, effective March 16. **L. 2021:** IP and (3)(a) amended, (HB 21-1264), ch. 308, p. 1876, § 16, effective June 23.

Cross references: (1) For the legislative declaration in the 2012 act repealing subsection (3)(b), see section 1 of chapter 240, Session Laws of Colorado 2012.

(2) For the legislative declaration in HB 21-1264, see section 2 of chapter 308, Session Laws of Colorado 2021.

24-4-103. Rule-making - procedure - definitions - statutory citation correction.

(1) When any agency is required or permitted by law to make rules, in order to establish procedures and to accord interested persons an opportunity to participate therein, the provisions of this section shall be applicable. Except when notice or hearing is otherwise required by law, this section does not apply to interpretative rules or general statements of policy, which are not meant to be binding as rules, or rules of agency organization.

(1.5) If an agency reinterprets an existing rule in a manner that is substantially different than previous agency interpretations of the rule or if there has been a change in a statute that affects the interpretation or the legality of a rule, the office of legislative legal services shall review the rule in the same manner as rules that have been newly adopted or amended under paragraph (d) of subsection (8) of this section upon receiving a request for such a review of the rule by any member of the general assembly.

(2) When rule-making is contemplated, public announcement thereof may be made at such time and in such manner as the agency determines. The agency shall establish a representative group of participants with an interest in the subject of the rule-making to submit views or otherwise participate informally in conferences on the proposals under consideration or to participate in the public rule-making proceedings on the proposed rules. In establishing the representative group, the agency shall make diligent attempts to solicit input from representatives of each of the various stakeholder interests that may be affected positively or negatively by the proposed rules. If the agency convenes a representative group prior to issuing a notice of proposed rule-making as provided in paragraph (a) of subsection (3) of this section, the agency shall add those persons who participated in the representative

group to the list of persons who receive notification of proposed rule-making as provided in paragraph (b) of subsection (3) of this section.

(2.5) (a) At the time of filing a notice of proposed rule-making with the secretary of state as the secretary may require, an agency shall submit a draft of the proposed rule or the proposed amendment to an existing rule and a statement, in plain language, concerning the subject matter or purpose of the proposed rule or amendment to the office of the executive director in the department of regulatory agencies. The executive director, or his or her designee, shall distribute the proposed rule or amendment, the agency's statement concerning the subject matter or purpose of the proposed rule or amendment, and any cost-benefit analysis prepared pursuant to this section to all persons who have submitted a request to receive notices from the department of regulatory agencies about proposed rule-making. Any person may, within five days after publication of the notice of proposed rule-making in the Colorado register, request that the department of regulatory agencies require the agency submitting the proposed rule or amendment to prepare a cost-benefit analysis. The executive director, or his or her designee, shall determine, after consultation with the agency proposing the rule or amendment, whether to require the agency to prepare a cost-benefit analysis. If the executive director, or his or her designee, determines that a cost-benefit analysis is required, the agency shall complete a cost-benefit analysis at least ten days before the hearing on the rule or amendment, shall make the analysis available to the public by posting the analysis on the agency's official website, and shall submit a copy to the executive director or his or her designee. The executive director, or his or her designee, shall post the analysis on the department of regulatory agencies' official website. By filing an additional notice published in the Colorado register, the agency may postpone the hearing on the rule or amendment to comply with the requirement to complete the cost-benefit analysis at least ten days before the hearing. Failure to complete a requested cost-benefit analysis pursuant to this subsection (2.5) shall preclude the adoption of such rule or amendment. Such cost-benefit analysis shall include the following:

(I) The reason for the rule or amendment;

(II) The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness;

(III) The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment;

(IV) Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness; and

(V) At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

(b) The executive director, or his or her designee, shall study the cost-benefit analysis and may urge the agency to revise the rule or amendment to eliminate or reduce the negative economic impact. The executive director, or his or her designee, may inform the public about the negative impact of the proposed rule or the proposed amendment to an existing rule.

(c) Any proprietary information provided to the department of revenue by a business or trade association for the purpose of preparing a cost-benefit analysis shall be confidential.

(d) If the agency has made a good faith effort to comply with the requirements of paragraph (a) of this subsection (2.5), the rule or amendment shall not be invalidated on the ground that the contents of the cost-benefit analysis are insufficient or inaccurate.

(e) This subsection (2.5) shall not apply to orders, licenses, permits, adjudication, or rules affecting the direct reimbursement of vendors or providers with state funds.

(f) Repealed.

(g) Each state rule-making agency with a website containing rule-making information shall include the following information on its website:

(I) Information about the cost-benefit analysis process set forth in this subsection (2.5); and

(II) A link to the online regulatory notice enrollment form created by the executive director of the department of regulatory agencies or the executive director's designee and listed on the department's website.

(2.7) (a) As used in this subsection (2.7):

(I) "Director" means the director of the office of state planning and budgeting.

(II) "State mandate" has the same meaning as set forth in section 29-1-304.5 (3)(d), C.R.S.

(b) No agency shall promulgate a rule creating a state mandate on a local government unless the agency complies with the requirements of section 29-1-304.5, C.R.S.

(c) (I) Except as provided in paragraph (g) of this subsection (2.7), beginning January 1, 2014, for each proposed rule that includes a state mandate, an agency shall provide to the director a description of:

(A) The proposed rule;

(B) The nature and extent of any consultations that the agency had with elected officials or other representatives of the local governments that would be affected by the proposed state mandate;

(C) The nature of any concerns of the elected officials or other representatives of the local governments;

(D) Any written communications or comments submitted to the agency by an elected official or other representative of a local government; and

(E) The agency's reasoning supporting the need to promulgate the rule containing the state mandate.

(II) The director shall review the information provided pursuant to subparagraph (I) of this paragraph (c) and, if it complies with the requirements of this paragraph (c), the director shall send a written notice of compliance to the agency. An agency shall not conduct a public rule-making proceeding unless the agency has received the written notice of compliance from the director.

(d) Each agency shall develop a process to actively solicit the meaningful and timely input of elected officials and other representatives of local governments into the development of proposed rules with state mandates affecting local governments. Each agency shall implement its process no later than January 1, 2014, and post the process on the agency's website.

(e) The executive director of each department shall be responsible for ensuring implementation of and compliance with this subsection (2.7).

(f) The general assembly shall appropriate any moneys necessary for the implementation of this subsection (2.7) to the office of state planning and budgeting in the annual general appropriation act for the fiscal year 2013-14.

(g) Beginning January 1, 2014, for each proposed rule of the state board of education that imposes a new state mandate or an increase in the level of service for an existing state mandate beyond that required by statute, the department of education shall comply with the provisions of paragraph (c) of this subsection (2.7).

(3) (a) Notice of proposed rule-making shall be published as provided in subsection (11) of this section and shall state the time, place, and nature of public rule-making proceedings that shall not be held less than twenty days after such publication, the authority under which the rule is proposed, and either the terms or the substance of the proposed rule or a description of the subjects and issues involved.

(a.5) If the agency proposes a rule to increase fees or fines, at the time of giving notice of proposed rule-making or within ten days following the adoption of an emergency or temporary rule that increases fees or fines, the agency shall send a written or electronic notification to each member of the general assembly notifying the members of the general assembly of the proposed rule or the adoption of an emergency rule and specifying the amount of the increase in the fees or fines.

(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 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.

(4) (a) At the place and time stated in the notice, the agency shall hold a public hearing at which it shall afford interested persons an opportunity to submit written data, views, or arguments and to present the same orally unless the agency deems it unnecessary. The agency shall consider all such submissions. Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing, together with a proposed statement of basis, specific statutory authority, purpose, and the regulatory analysis required in subsection (4.5) of this section, shall be made available to any person at least five days prior to said hearing. The rules promulgated by the agency shall be based on the record, which shall consist of proposed rules, evidence, exhibits, and other matters presented or considered, matters officially noticed, rulings on exceptions, any findings of fact and conclusions of law proposed by any party, and any written comments or briefs filed.

(a.5) Subject to the provisions of section 24-72-204 (3)(a)(IV), any study or other documentation utilized by an agency as the basis of a proposed rule shall be a public document in accordance with the provisions of part 2 of article 72 of this title and shall be open for public inspection. Subject to the provisions of section 24-72-204 (3)(a)(IV), all information, including, but not limited to, the conclusions and underlying research data from any studies, reports, published papers, and documents, used by the agency in the

development of a proposed rule shall be a public document in accordance with the provisions of part 2 of article 72 of this title and shall be open for public inspection.

(b) All proposed rules shall be reviewed by the agency. No rule shall be adopted unless:

(I) The record of the rule-making proceeding demonstrates the need for the regulation;

(II) The proper statutory authority exists for the regulation;

(III) To the extent practicable, the regulation is clearly and simply stated so that its meaning will be understood by any party required to comply with the regulation;

(IV) The regulation does not conflict with other provisions of law; and

(V) The duplication or overlapping of regulations is explained by the agency proposing the rule.

(c) Rules, as finally adopted, shall be consistent with the subject matter as set forth in the notice of proposed rule-making provided in subsection (11) of this section. After consideration of the relevant matter presented, the agency shall incorporate by reference on the rules adopted a written concise general statement of their basis, specific statutory authority, and purpose. The written statement of the basis, specific authority, regulatory analysis required by subsection (4.5) of this section, and purpose of a rule which involves scientific or technological issues shall include an evaluation of the scientific or technological rationale justifying the rule. Each agency shall maintain a copy of its currently effective rules and the current status of each published proposal for rules and minutes of all its action upon rules, as well as any attorney general's opinion rendered on any adopted or proposed rule. Such materials shall be available for inspection by any person during regular office hours.

(d) Within one hundred eighty days after the last public hearing on the proposed rule, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Colorado register.

(4.5) (a) Upon request of any person, at least fifteen days prior to the hearing, the agency shall issue a regulatory analysis of a proposed rule. The regulatory analysis shall contain:

(I) A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(II) To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons;

(III) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(IV) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;

(V) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule; and

(VI) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

(b) Each regulatory analysis shall include quantification of the data to the extent practicable and shall take account of both short-term and long-term consequences.

(c) The regulatory analysis shall be available to the public at least five days prior to the rule-making hearing.

(d) If the agency has made a good faith effort to comply with the requirements of paragraphs (a) to (c) of this subsection (4.5), the rule shall not be invalidated on the ground that the contents of the regulatory analysis are insufficient or inaccurate.

(e) Nothing in paragraphs (a) to (c) of this subsection (4.5) shall limit an agency's discretionary authority to adopt or amend rules.

(f) The provisions of this subsection (4.5) shall not apply to rules and regulations promulgated by the department of revenue regarding the administration of any tax which is within the authority of said department.

(5) A rule shall become effective twenty days after publication of the rule as finally adopted, as provided in subsection (11) of this section, or on such later date as is stated in the rule. Once a rule becomes effective, the rule-making process shall be deemed to have become final agency action for judicial review purposes.

(6) (a) A temporary or emergency rule may be adopted without compliance with the procedures prescribed in subsection (4) of this section and with less than the twenty days' notice prescribed in subsection (3) of this section, or where circumstances imperatively require, without notice, only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the

preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such a finding on the record. Such findings and a statement of the reasons for the action shall be published with the rule. A temporary or emergency rule may be adopted without compliance with subsections (2.5) and (2.7) of this section, but shall not become permanent without compliance with such subsections (2.5) and (2.7). A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for not more than one hundred twenty days after its adoption or for such shorter period as may be specifically provided by the statute governing such agency, unless made permanent by compliance with subsections (3) and (4) of this section.

(b) The period of effectiveness provided by this subsection (6) does not apply to temporary or emergency rules adopted by the public utilities commission under section 40-2-108 (2), C.R.S.

(7) Any interested person shall have the right to petition for the issuance, amendment, or repeal of a rule. Such petition shall be open to public inspection. Action on such petition shall be within the discretion of the agency; but when an agency undertakes rule-making on any matter, all related petitions for the issuance, amendment, or repeal of rules on such matter shall be considered and acted upon in the same proceeding.

(8) (a) No rule shall be issued except within the power delegated to the agency and as authorized by law. A rule shall not be deemed to be within the statutory authority and jurisdiction of any agency merely because such rule is not contrary to the specific provisions of a statute. Any rule or amendment to an existing rule issued by any agency, including state institutions of higher education administered pursuant to title 23, C.R.S., which conflicts with a statute shall be void.

(b) An agency shall not issue a rule or amend an existing rule unless the issuing agency first submits the rule to the attorney general for the attorney general's opinion as to its constitutionality and legality. If an agency issues a rule or an amendment to an existing rule without first submitting the rule or amendment to the attorney general, the rule or amendment is void.

(c) (I) (A) Notwithstanding any other provision of law to the contrary, including section 24-4-107, and except as provided in subsection (8)(c)(I)(B) of this section, on and after November 1, 1993, all rules adopted or amended during any one-year period that begins each November 1 and continues through the following October 31 expire at 11:59 p.m. on the May 15 that follows such one-year period unless the general assembly by bill acts to postpone the expiration of a specific rule.

(B) A rule adopted pursuant to section 25.5-4-402.4 (6)(b)(III) expires at 11:59 p.m. on the May 15 following the adoption of the rule unless the general assembly acts by bill to postpone the expiration of a specific rule.

(C) Postponing the expiration of a rule does not constitute legislative approval of the rule and is not admissible in any court as evidence of legislative intent. Postponing the expiration date of a specific rule does not prohibit any action by the general assembly pursuant to subsection (8)(d) of this section with respect to the rule.

(II) It is the intent of the general assembly that, in the event of a conflict between this paragraph (c) and any other provision of law relating to suspension or extension of rules by joint resolution (whether said provision was adopted prior to or subsequent to this paragraph (c)), this paragraph (c) shall control, notwithstanding the rule of law that a specific provision of law controls over a general provision of law.

(d) (I) An agency that has adopted or amended a rule shall submit the adopted or amended rule, including a temporary or emergency rule, to the office of legislative legal services in the form and manner prescribed by the committee on legal services. The office of legislative legal services shall first review the rule or amendment to the existing rule to determine whether the rule or amendment is within the agency's rule-making authority and for later review by the committee on legal services for its opinion as to whether the rule conforms with subsection (8)(a) of this section.

(II) The committee on legal services shall direct the office of legislative legal services to review the rules submitted by adopting agencies using graduated levels of review based on criteria established by the committee. The criteria developed by the committee on legal services must provide that the office of legislative legal services review every rule as to form and compliance with filing procedures and that, upon request of any member of the committee or any other member of the general assembly, the office of legislative legal services provide full legal review of any rule during the time period that the rule is subject to review by the committee.

(III) The official certificate of the director of the office of legislative legal services, or the director's designee, as to the fact that an agency submitted a rule to the office of legislative legal services or as to the date an agency submitted a rule, as shown by the records of the director's office, as well as to the fact that an agency failed to submit a rule to the office of legislative legal services, as shown by the nonexistence of such records, shall be received and held in all civil cases as competent evidence of the facts contained in the official certificate. The office of legislative legal services shall retain records regarding the review of rules pursuant to this section in accordance with policies established pursuant to section 2-3-303 (2). If an agency issues a rule or an amendment to an existing rule for review by the committee on legal services pursuant to this subsection (8) without submitting the

rule or amendment to the office of legislative legal services within twenty days after the date of the attorney general's opinion on the rule or amendment pursuant to subsection (8)(b) of this section, the rule or amendment is void.

(IV) The office of legislative legal services shall present its findings to the committee on legal services at a public meeting held after timely notice to the public and affected agencies. The committee on legal services shall, on affirmative vote, submit such rules, comments, and proposed legislation at the next regular session of the general assembly. The committee on legal services is the committee of reference for any bill introduced pursuant to this subsection (8)(d)(IV). Any member of the general assembly may introduce a bill that rescinds or deletes portions of the rule. Rejection of such a bill does not constitute legislative approval of the rule. Only that portion of any rule specifically disapproved by bill is no longer effective, and that portion of the rule that remains after deletion of a portion of the rule retains its character as an administrative rule.

(V) Each agency shall revise its rules to conform with the action taken by the general assembly. An agency shall not repromulgate a rule that has been allowed to expire by action of the general assembly pursuant to subsection (8)(c) of this section because the rule, in the opinion of the general assembly, is not authorized by the state constitution or statute, unless the authority to promulgate the rule has been granted to the agency by a statutory amendment, by the state constitution, or by a judicial determination that statutory or constitutional authority exists. Any rule so repromulgated is void. Any rule that an agency revises pursuant to this subsection (8)(d)(V) shall be transmitted to the secretary of state for publication pursuant to subsection (11) of this section. Passage of a bill repealing a rule does not result in revival of a predecessor rule.

(VI) This subsection (8)(d) and subsection (4.5) of this section do not apply to rules of agency organization or general statements of policy that are not meant to be binding as rules.

(VII) For the purpose of performing the functions assigned it by this subsection (8)(d), the committee on legal services, with the approval of the speaker of the house of representatives and the president of the senate, may appoint subcommittees from the membership of the general assembly.

(e) The office of legislative legal services shall identify rules that were adopted during each applicable one-year period as a result of legislation enacted during any legislative session, regular or special, commencing on or after the previous eight calendar years. After the rules have been identified, the office of legislative legal services shall notify in writing any prime sponsors of the enacted legislation who are still serving in the general assembly and the current members of the applicable committees of reference in the senate and house of representatives for that enacted legislation that a rule has been adopted as a

result of the legislation; except that the office of legislative legal services need not provide the notice regarding an adopted rule if the rule resulted from legislation that was enacted more than eight calendar years prior to the rule's adoption.

(8.1) (a) An agency shall maintain an official rule-making record for each proposed rule for which a notice of proposed rule-making has been published in the Colorado register. Such rule-making record shall be maintained by the agency until all administrative and judicial review procedures have been completed pursuant to the provisions of this article. The rule-making record shall be available for public inspection.

(b) The agency rule-making record must contain:

(I) Copies of all publications in the Colorado register with respect to the rule or the proceeding upon which the rule is based;

(II) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

(III) All written petitions, requests, submissions, and comments received by the agency as of the date of the hearing on the rule and all other written materials, or a listing of such materials, considered by the agency in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, which materials shall be available for public inspection during working hours;

(IV) Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(V) A copy of any regulatory analysis or cost-benefit analysis prepared for the proceeding upon which the rule was based, if applicable, and any formal statement made to the agency promulgating the rule by the executive director of the department of regulatory agencies regarding such cost-benefit analysis;

(VI) A copy of the rule and explanatory statement filed in the office of the secretary of state;

(VII) All petitions for exceptions to, amendments of, or repeal or suspension of the rule;

(VIII) A copy of any objection to the rule presented to the committee on legal services by the office of legislative legal services pursuant to subsection (8)(d) of this section and the agency's response;

(IX) A copy of any filed executive order with respect to the rule; and

(X) A copy of any information provided to the director pursuant to paragraph (c) of subsection (2.7) of this section and the written notice of compliance from the director.

(c) Upon judicial review, the record required by this section constitutes the official rule-making record with respect to a rule. The agency rule-making record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof; except that, this paragraph (c) shall not be interpreted to allow the introduction of evidence or information into such rule-making record from outside of the public rule-making hearing, or to allow such introduction of evidence or information without notice to all parties to such hearing and opportunity to respond.

(d) If an agency includes information required by subparagraph (X) of paragraph (b) of this subsection (8.1) in the rule-making record, the agency shall provide a copy of the portion of the record that includes such information with the executive committee of the legislative council in accordance with the provisions of section 24-1-136 (9).

(8.2) (a) A rule adopted on or after September 1, 1988, shall be invalid unless adopted in substantial compliance with the provisions of this section. However, inadvertent failure to mail a notice of proposed rule-making to any person as required by subsection (3) of this section shall not invalidate a rule.

(b) An action to contest the validity of a rule on the grounds of its noncompliance with any provision of this section shall be commenced within thirty days after the effective date of the rule.

(8.3) (a) On or after August 11, 2010, all new or amended rules or regulations promulgated pursuant to this section that refer to persons with disabilities shall comply with the provisions of section 2-2-802, C.R.S., as applicable to the new or amended rule.

(b) Violation of this subsection (8.3) shall not be grounds to invalidate any new or amended rule; however, such rules shall be amended to reflect the provisions of section 2-2-802, C.R.S., in any subsequent revision.

(c) Nothing in this subsection (8.3) shall constitute a requirement to change the name of any department, agency, or program of the state.

(9) Each agency shall make available to the public and shall deliver to anyone requesting it a copy 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.

(10) No rule shall be relied upon or cited against any person unless, if adopted after May 1, 1959, it has been published and, whether adopted before or after said date, it has been made available to the public in accordance with this section.

(11) (a) There is hereby established the code of Colorado regulations for the publication of rules of agencies of the executive branch and the Colorado register for the publication of notices of rule-making, proposed rules, attorney general's opinions relating to such rules, and adopted rules. The code and the register shall be the sole official publications for such rules, notices of rule-making, proposed rules, and attorney general's opinions. The code and the register shall contain, where applicable, references to court opinions and recommendations of the legal services committee of the general assembly that relate to or affect such rules and references to any action of the general assembly relating to the extension, expiration, deletion, or rescission of such rules and may contain other items that, in the opinion of the editor, are relevant to such rules. The register may also include other public notices, including annual departmental regulatory agendas submitted by principal departments to the secretary of state pursuant to section 2-7-203, C.R.S.; however, except as specifically permitted by law, the inclusion of such notices in the register shall be in addition to and not in substitution for existing public notice requirements.

(b) The secretary of state shall cause to be published in electronic form, and may cause to be published in printed form, at the least cost possible to the state, the code of Colorado regulations and the Colorado register no less often than once each calendar month. In the event of any discrepancy between the electronic and printed form of the code or the register, the electronic form shall prevail unless it is conclusively shown, by reference to the rule-making filings made with the secretary of state pursuant to this section, that the electronic form contains an error in publication.

(c) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(d) The agency adopting a rule shall file the adopted rule, together with the attorney general's opinion rendered in connection with the rule, with the secretary of state for publication in the Colorado register pursuant to subsection (12) of this section within twenty days after adoption of the rule. Upon written request of an agency, the secretary of state shall correct typographical and other nonsubstantive errors appearing in the rules as filed by the agency that occur after final adoption of the rules by the agency during the preparation of the rules for publication in order to conform the published rules with the adopted rules. The agency shall also file notices of rule-making proceedings pursuant to subsection (3) of this section with the secretary of state in sufficient time for publication in the register pursuant to subsection (5) of this section. An agency shall file rules revised to conform with action taken by the general assembly with the secretary of state for publication in the register and in the code of Colorado regulations. The office of legislative legal services shall notify the secretary of state whenever a rule published in the code is rescinded or a portion of the rule is deleted by the general assembly and whenever a rule or a portion of a rule is allowed to expire in accordance with subsection (8)(c)(I) of this section. The secretary of

state shall direct the removal from the code of material that was deleted, rescinded, or allowed to expire.

(e) The secretary of state shall establish and maintain an accurate docket system for recording the time and date of the filing of each document, the agency filing the same, and the title or description of such document required to be filed for publication under the provisions of this section, which docket system shall be cross-indexed as to such time, date, agency, and title or description.

(f) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(g) Publication of notices and other required information related to proposed and adopted rules shall be by electronic publication.

(h) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(i) (I) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(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) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(j) Repealed.

(k) (Deleted by amendment, L. 2010, (SB 10-123), ch. 104, p. 350, § 1, effective April 15, 2010.)

(l) (I) An agency may request the secretary of state to correct a statutory citation contained in a rule, including a form incorporated into a rule, as published in the code of Colorado regulations if:

(A) The general assembly has relocated the statute in a manner that renders the rule's citation to the statute inaccurate; and

(B) The agency submits to the secretary a written determination by the attorney general that finds that the condition specified in subsection (11)(l)(I)(A) of this section applies, specifies what the correct citation is, and identifies each citation that should be corrected.

(II) Upon receipt of a request that complies with subsection (11)(l)(I) of this section, the secretary of state shall correct in the code of Colorado regulations each statutory citation listed in the determination specified in subsection (11)(l)(I)(B) of this section.

(III) A statutory citation correction authorized by this subsection (11)(l) is not rule-making and need not comply with any requirements of this section other than those specified in this subsection (11)(l).

(m) Repealed.

(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 shall require that 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, be filed in an electronic format that complies with any requirements established pursuant to sections 24-37.5-106 and 24-71.3-118.

(12.5) (a) A rule may incorporate by reference all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, if:

(I) Repeating verbatim the text of the code, standard, guideline, or rule in the rule would be unduly cumbersome, expensive, or otherwise inexpedient;

(II) The reference fully identifies the incorporated code, standard, guideline, or rule by citation and date, identifies the address of the agency where the code, standard, guideline, or rule is available for public inspection, and states that the rule does not include any later amendments or editions of the code, standard, guideline, or rule;

(III) The code, standard, guideline, or rule is readily available to the public in written or electronic form;

(IV) The rule states where copies of the code, standard, guideline, or rule are available for a reasonable charge from the agency adopting the rule and where copies are available from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline, or rule; and

(V) The agency maintains a copy of the code, standard, guideline, or rule readily available for public inspection at the agency office during regular business hours.

(b) The agency shall provide certified copies of the material incorporated at cost upon request or shall provide the requester with information on how to obtain a certified copy of the material incorporated by reference from the agency of the United States, this

state, another state, or the organization or association originally issuing the code, standard, guideline, or rule.

(c) If any agency incorporates or proposes to incorporate any material by reference in a rule and the version or edition of the material to be incorporated has not previously been provided to the state publications depository and distribution center, and if the rule or proposed rule does not identify where the incorporated material is available to the public on the internet at no cost, then the agency shall provide one copy of the material in either paper or electronic format to the state publications depository and distribution center. The state librarian shall retain the copy of the material and shall make the copy available to the public.

(13) Any agency conducting a hearing shall have authority on its own motion or upon the motion of any interested person for good cause shown to: Administer oaths and affirmations; sign and issue subpoenas; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of appropriate documents; take depositions or have depositions taken; issue appropriate orders which shall control the subsequent course of the proceedings; and take any other action authorized by agency rule consistent with this article. In the event more than one person engages in the conduct of a hearing, such persons shall designate one of their number to perform the functions of this subsection (13) and subsection (14) of this section as can best be performed by one person only, and thereafter such person only shall perform those functions which are assigned to him by the several persons conducting such hearing.

(14) Subpoenas shall be issued without discrimination between public and private parties by any agency or any member, the secretary or chief administrative officer thereof, or, with respect to any hearing for which a hearing officer or an administrative law judge has been appointed, the hearing officer or administrative law judge. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the agency may petition any district court, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence, under penalty of punishment for contempt in case of contumacious failure to comply with the order of the court. A witness shall be entitled to the fees and mileage provided for a witness in sections 13-33-102 and 13-33-103, C.R.S.

Source: L. 59: p. 159, § 2. CRS 53: § 3-16-2. C.R.S. 1963: §3-16-2. L. 67: p. 300, § 2. L. 69: p. 82, §§ 2, 3. L. 76: (1) and (8)(a) amended and (8)(d) added, p. 582, § 15, effective

May 24. **L. 77:** (8)(d) amended, p. 1134, § 2, effective May 31; (13) and (14) added, p. 1144, § 1, effective June 3; (4) amended, p. 1136, § 1, effective June 19; (4) amended and (11) R&RE, p. 1138, §§ 1, 2, effective June 19; (8)(d) amended, p. 1141, § 1, effective (see editor's note). **L. 78:** (12) amended, p. 390, § 1, March 30. **L. 79:** (5) amended, p. 842, § 2, effective May 22; (8)(d) and (11)(d) amended, p. 849, § 1, effective May 25; (8)(c) R&RE and (8)(d) amended, p. 845, §§ 1, 2, effective June 29. **L. 81:** (9) and (11) amended, (11)(k) added, and (11)(j) repealed, pp. 1129, 1130, §§ 1, 2; (12.5) added, p. 1131, § 1, effective July 1; (12) and (13) amended, p. 1133, § 2, effective July 1. **L. 82:** (11)(a) and (11)(d) amended, p. 360, § 1, effective March 11. **L. 84:** (4) amended, p. 649, § 1, effective July 1. **L. 87:** (11)(k) amended, p. 915, § 1, effective July 1; (8)(c)(I) and (8)(d) amended, p. 919, § 2, effective July 3; (14) amended, p. 961, § 65, effective March 13. **L. 88:** (8)(d) amended, p. 311, § 19, effective May 23; (3), (6), and (8)(d) amended, (4) R&RE, and (4.5), (8.1), and (8.2) added, pp. 884, 886, 887, §§ 1, 2, 3, effective May 17. **L. 89:** (4.5)(f) added and (8.1)(b)(V) amended, pp. 1502, 1503, §§ 10, 11, effective July 1, 1990. **L. 91:** (1) amended, p. 807, § 3, effective June 5. **L. 93:** (3)(b), (6), (8.1)(c), (8.2)(b), and (11)(d) amended, p. 1325, § 2, effective June 6; (8)(d) amended, p. 2109, § 12, effective June 9; (8)(c)(I) amended, p. 496, § 1, effective July 1. **L. 94:** (1.5) added and (3)(a) and (12.5) amended, p. 2587, § 1, effective July 1. **L. 95:** (6) amended, p. 232, § 2, effective April 17. **L. 98:** (4)(a.5) added, p. 721, § 1, effective May 18. **L. 2000:** (1) amended, p. 1861, § 73, effective August 2. **L. 2001:** (8)(d) amended, p. 318, § 2, effective April 12; (4)(a.5) amended, p. 1076, § 5, effective August 8; (12) amended, p. 38, § 2, effective August 8. **L. 2002:** (3)(b), (9), (11)(b), (11)(d), (11)(f), (11)(g), (11)(h), (11)(i), (11)(k), and (12) amended, p. 436, § 2, effective May 14. **L. 2003:** (11)(b) and (11)(d)(I) amended, p. 2048, § 1, effective May 22; (2.5) added and (6), (8.1)(b)(V), and (11)(b) amended, p. 2370, § 3, effective August 6. **L. 2005:** (12) amended, p. 768, § 36, effective June 1. **L. 2006:** IP(2.5)(a) and (2.5)(f)(I) amended, p. 202, § 1, effective March 31; (12) amended, p. 1735, § 20, effective June 6. **L. 2007:** (12) amended, p. 910, § 2, effective May 17. **L. 2009:** (8)(c)(I) amended, (HB 09-1293), ch. 152, p. 651, § 9, effective July 1. **L. 2010:** (3)(a), (8.1)(a), and (12.5) amended, (HB 10-1235), ch. 76, p. 258, § 1, effective April 5; (6) amended, (HB 10-1346), ch. 137, p. 460, § 1, effective April 15; (11) and (12) amended, (SB 10-123), ch. 104, p. 350, § 1, effective April 15; (8.3) added, (HB 10-1137), ch. 93, p. 320, § 2, effective August 11. **L. 2012:** (2), (3), and (11)(a) amended, (HB 12-1008), ch. 182, pp. 691, 694, §§ 2, 5, effective May 17; (2.7), (8.1)(b)(X), and (8.1)(d) added and (6)(a), (8.1)(b)(VIII), and (8.1)(b)(IX) amended, ch. 199, p. 797, § 1, effective August 8. **L. 2013:** IP(2.5)(a) amended and (8)(e) added, (SB 13-030), ch. 110, p. 379, § 1, effective April 8; IP(2.5)(a) and (2.5)(f) amended, (SB 13-158), ch. 283, p. 1490, § 1, effective July 1; IP(2.7)(c)(I) amended and (2.7)(g) added, (HB 13-1219), ch. 104, p. 366, § 20, effective August 7. **L. 2015:** (8)(e) amended, (SB 15-047), ch. 71, p. 190, § 1, effective August 5. **L. 2016:** (8)(b) amended, (HB 16-1094), ch. 94, p. 267, § 12, effective August 10. **L. 2017:** (11)(l) added, (HB 17-1006), ch. 31, p. 88, § 2, effective March 16; (11)(m) added, (SB 17-

242), ch. 263, p. 1321, § 177, effective May 25; (8)(c)(I) amended, (SB 17-267), ch. 267, p. 1440, § 7, effective July 1. **L. 2018:** (2.5)(f) repealed and (2.5)(g) added, (HB 18-1237), ch. 165, p. 1137, § 2, effective August 8. **L. 2021:** (8)(e) amended, (HB 21-1137), ch. 37, p. 142, § 1, effective September 7. **L. 2022:** (8)(b), (8)(c)(I), (8)(d), IP(8.1)(b), (8.1)(b)(VIII), and (11)(d) amended, (SB 22-091), ch. 28, p. 165, § 1, effective August 10.

Editor's note: (1) House Bill 77-1646, which amended subsection (8)(d), was delivered to the governor on June 20, 1977. The general assembly adjourned sine die on June 22, 1977. The governor disapproved House Bill 77-1646 on July 15, 1977, but the bill was not filed with the secretary of state until July 27, 1977, and the governor's letter stating objections to the bill was not filed with the secretary of state until August 2, 1977. Because House Bill 77-1646 and the governor's objections to it were not filed with the secretary of state within thirty days after adjournment of the general assembly, House Bill 77-1646 became a law pursuant to the provisions of § 11 of article IV of the Colorado Constitution.

(2) Amendments to subsection (4) by House Bill 77-1419 and House Bill 77-1623 were harmonized.

(3) Amendments to subsection (8)(d) by House Bill 79-1393 and House Bill 79-1063 were harmonized.

(4) Amendments to subsection (11)(b) by Senate Bill 03-121 and House Bill 03-1350 were harmonized.

(5) Amendments to the introductory portion to subsection (2.5)(a) by Senate Bill 13-030 and Senate Bill 13-158 were harmonized.

(6) Section 34 of chapter 267 (SB 17-267), Session Laws of Colorado 2017, provides that the section of the act amending this section does not take effect if the centers for medicare and medicaid services determine that the amendments do not comply with federal law. For more information, see SB 17-267. (L. 2017, p. 1447.) The executive director of the department of health care policy and financing did not notify the revisor of statutes by June 1, 2017, of such determination; therefore, amendments to this section took effect July 1, 2017.

(7) Subsection (11)(m)(II) provided for the repeal of subsection (11)(m), effective July 1, 2018. (See L. 2017, p. 1321.)

Cross references: (1) For the general authority of department heads to adopt rules and regulations, see § 24-2-105.

(2) For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 17-267, see section 1 of chapter 267, Session Laws of Colorado 2017.

24-4-103.3. Mandatory review of rules by agencies - report on results of review in departmental regulatory agendas. (1) The department of regulatory agencies shall establish a schedule, in consultation with each principal department, for the review of all of the rules for each principal department. Each principal department shall conduct a review of all of its rules to assess the continuing need for and the appropriateness and cost-effectiveness of its rules to determine if they should be continued in their current form, modified, or repealed. The applicable rule-making agency or official in the principal department shall consider the following:

- (a) Whether the rule is necessary;
- (b) Whether the rule overlaps or duplicates other rules of the agency or with other federal, state, or local government rules;
- (c) Whether the rule is written in plain language and is easy to understand;
- (d) Whether the rule has achieved the desired intent and whether more or less regulation is necessary;
- (e) Whether the rule can be amended to give more flexibility, reduce regulatory burdens, or reduce unnecessary paperwork or steps while maintaining its benefits;
- (f) Whether the rule is implemented in an efficient and effective manner, including the requirements for the issuance of permits and licenses;
- (g) Whether a cost-benefit analysis was performed by the applicable rule-making agency or official in the principal department pursuant to section 24-4-103 (2.5); and
- (h) Whether the rule is adequate for the protection of the safety, health, and welfare of the state or its residents.

(2) Each rule-making agency or official shall provide public notice on the agency's official website of its review of the rules, give the public an appropriate opportunity to provide input, and notify other state agencies that may have jurisdiction over the subject matter of the rules to allow for collaboration and input. Based on this review, the rule-making agency or official shall determine whether the existing rules should be continued in their current form, amended, or repealed. If the rule-making agency or official decides that a rule should be amended or repealed, the rule-making agency or official shall comply with the notice and hearing requirements of section 24-4-103.

(3) The department of regulatory agencies shall not schedule mandatory review under this section during the year of and during the year following any scheduled sunset review conducted by the department of regulatory agencies pursuant to section 24-34-104.

(4) Each principal department shall include a report on the results of its mandatory review of rules as part of its departmental regulatory agenda that it submits to the staff of the legislative council for distribution to the applicable committee of reference of the general assembly as outlined in section 2-7-203, C.R.S.

Source: L. 2014: Entire section added, (SB 14-063), ch. 69, p. 296, § 1, effective March 27.

24-4-103.5. Rule-making affecting small business - procedure. (Repealed)

Source: L. 82: p. 362, § 1. **L. 87:** (1) amended, p. 1010, § 1, effective April 16. **L. 97:** Entire section repealed, p. 525, § 6, effective July 1.

24-4-104. Licenses - issuance, suspension or revocation, renewal. (1) In any case in which application is made for a license required by law, the agency, with due regard for the rights and privileges of all interested persons, shall set and conduct the proceedings in accordance with this article unless otherwise required by law.

(2) Every agency decision respecting the grant, renewal, denial, revocation, suspension, annulment, limitation, or modification of a license shall be based solely upon the stated criteria, terms, and purposes of the statute, or regulations promulgated thereunder, and case law interpreting such statutes and regulations pursuant to which the license is issued or required. Terms, conditions, or requirements limiting any license shall be valid only if reasonably necessary to effectuate the purposes, scope, or stated terms of the statute pursuant to which the license is issued or required.

(3) (a) No revocation, suspension, annulment, limitation, or modification of a license by any agency shall be lawful unless, before institution of agency proceedings therefor, the agency has given the licensee notice in writing of objective facts or conduct established upon a full investigation that may warrant such action and afforded the licensee opportunity to submit written data, views, and arguments with respect to the facts or conduct and, except in cases of deliberate and willful violation or of substantial danger to public health and safety, given the licensee a reasonable opportunity to comply with all

lawful requirements. For purposes of this subsection (3), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in subsection (3)(a) of this section shall not apply to licenses issued under articles 1.1, 9, 10.1, and 11.5 of title 40 or article 2 of title 42.

(4) (a) Where the agency has objective and reasonable grounds to believe and finds, upon a full investigation, that the licensee has been guilty of deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and determined. For purposes of this subsection (4), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in subsection (4)(a) of this section shall not apply to licenses issued under articles 1.1, 9, 10.1, and 11.5 of title 40 or article 2 of title 42.

(5) A proceeding for the revocation, suspension, annulment, limitation, or modification of a previously issued license shall be commenced by the agency upon its own motion or by the filing with the agency of a written complaint, signed and sworn to by the complainant, stating the name of the licensee complained against and the grounds for the requested action.

(6) Except as provided in subsection (4) of this section, an agency shall not revoke, suspend, annul, limit, or modify a previously issued license until after holding a hearing as provided in section 24-4-105.

(7) In any case in which the licensee has made timely and sufficient application for the renewal of a license or for a new license for the conduct of a previously licensed activity of a continuing nature, the existing license shall not expire until such application has been finally acted upon by the agency, and, if the application is denied, it shall be treated in all respects as a denial. The licensee, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section 24-4-105, and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

(8) An application for a license shall be acted upon promptly, and, immediately after the taking of action on such application by an agency, a written notice of the action taken by the agency and, if the application is denied, the grounds therefor shall be given to the applicant. The giving of such notice shall be by personal service upon the applicant or by

mailing the same to the address of the applicant as shown on the application or as subsequently furnished in writing by the applicant to the agency.

(9) If an application for a new license is denied without a hearing, the applicant, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section 24-4-105, and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

(10) Written notice of the revocation, suspension, annulment, limitation, or modification of a license and the grounds therefor shall be served forthwith on the licensee personally or by mailing by first-class mail to the last address furnished the agency by the licensee.

(11) A limitation, unless consented to by the applicant, on a license applied for shall be treated as a denial. A modification, unless consented to by the licensee, of a license already issued shall be treated as a revocation.

(12) In an appropriate case a revoked or suspended license may be reissued.

(13) (a) Any applicant who, under oath, supplies false information to an agency in an application for a license commits perjury in the second degree, as defined in section 18-8-503, C.R.S. Any such application shall bear notice, in accordance with section 18-8-501 (2)(a)(I), C.R.S., that false statements made therein are punishable.

(b) On and after January 1, 1985, an agency shall not require that information contained in an application for a license be affirmed to before a notary.

Source: L. 59: p. 161, § 3. CRS 53: § 3-16-3. C.R.S. 1963: § 3-16-3. L. 69: p. 84, § 4. L. 81: (2) amended, p. 1141, §1, effective April 16. L. 83: (13) added, p. 521, § 4, effective March 15. L. 93: (3) and (7) amended, p. 1327, § 3, effective June 6. L. 2006: (3) and (4) amended, p. 838, § 1, effective August 7. L. 2007: (3)(b) and (4)(b) amended, p. 2033, § 48, effective June 1. L. 2018: (3)(b) and (4)(b) amended, (HB 18-1375), ch. 274, p. 1705, § 34, effective May 29; (6) amended, (HB 18-1224), ch. 288, p. 1780, § 1, effective May 29.