24-4-103. Rule-making - procedure - repeal.

(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, and opportunity may be afforded interested persons to submit views or otherwise participate informally in conferences on the proposals under consideration.

(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, may determine if the proposed rule or amendment may have a negative impact on economic competitiveness or on small business in Colorado. If the executive director, or his or her designee, determines that the proposed rule or amendment may have such negative impact, he or she may direct the submitting agency to perform a cost-benefit analysis of the rule or amendment. If the executive director, or his or her designee, makes such a request, it shall be made at least twenty days before the date of the hearing on the rule or amendment. The agency receiving such request shall complete a cost-benefit analysis at least five days before the hearing on the rule or amendment, shall make the analysis available to the public, and shall submit a copy to the executive director or his or her designee. 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) (I) This subsection (2.5) is repealed, effective July 1, 2013.

(II) Prior to such repeal, the provisions regarding the preparation of a cost-benefit analysis pursuant to this subsection (2.5) shall be reviewed as provided for in section 24-34-104, C.R.S.

(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. If any material is to be incorporated by reference in a proposed rule pursuant to subsection (12.5) of this section, the agency shall identify the material in the notice by the name of the appropriate agency, organization, or association and by the date, title, or citation of the material.

(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 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 subsection (2.5) of this section, but shall not become permanent without compliance with such subsection (2.5). 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 three months from the adoption thereof 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. 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) On and after July 1, 1967, no rule shall be issued nor existing rule amended by any agency unless it is first submitted by the issuing agency to the attorney general for his opinion as to its constitutionality and legality. Any rule or amendment to an existing rule issued by any agency without being so submitted to the attorney general shall be void.

(c) (I) Notwithstanding any other provision of law to the contrary and the provisions of section 24-4-107, all rules adopted or amended on or after January 1, 1993, and before November 1, 1993, shall expire at 11:59 p.m. on May 15 of the year following their adoption unless the general assembly by bill acts to postpone the expiration of a specific rule, and commencing with rules adopted or amended on or 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 shall 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; except that a rule adopted pursuant to section 25.5-4-402.3 (5) (b) (III), C.R.S., shall expire 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. The general assembly, in its discretion, may postpone such expiration, in which case, the provisions of section 24-4-108 or 24-34-104 shall apply, and the rules shall expire or be subject to review as provided in said sections. The postponement of the expiration of a rule shall not constitute legislative approval of the rule nor be admissible in any court as evidence of legislative intent. The postponement of the expiration date of a specific rule shall not prohibit any action by the general assembly pursuant to the provisions of paragraph (d) of this subsection (8) with respect to such 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) All rules adopted or amended on or after July 1, 1976, including temporary or emergency rules, shall be submitted by the adopting agency to the office of legislative legal services in the form and manner prescribed by the committee on legal services. Said rules and amendments to existing rules shall be filed by and in such office and shall be first reviewed by the staff of said committee to determine whether said rules and amendments are within the agency's rule-making authority and for later review by the committee on legal services for its opinion as to whether the rules conform with paragraph (a) of this subsection (8). The committee on legal services shall direct the staff of the committee 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 shall provide that every rule shall be reviewed 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 staff shall provide full legal review of any rule during the time period that such rule is subject to review by the committee. The official certificate of the director of the office of legislative legal services as to the fact of submission or the date of submission of a rule as shown by the records of his office, as well as to the fact of nonsubmission as shown by the nonexistence of such records, shall be received and held in all civil cases as competent evidence of the facts contained therein. Records regarding the review of rules pursuant to this section shall be retained by the office of legislative legal services in accordance with policies established pursuant to section 2-3-303 (2), C.R.S. Any such rule or amendment to an existing rule issued by any agency without being so submitted within twenty days after the date of the attorney general's opinion rendered thereon to the office of legislative legal services for review by the committee on legal services shall be void. The staff's findings shall be presented to said committee 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 shall be the committee of reference for any bill introduced pursuant to this paragraph (d). Any member of the general assembly may introduce a bill which 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 shall no longer be effective, and that portion of the rule which remains after deletion of a portion thereof shall retain its character as an administrative rule. Each agency shall revise its rules to conform with the action taken by the general assembly. A rule which has been allowed to expire by action of the general assembly pursuant to the provisions of paragraph (c) of this subsection (8) because such rule, in the opinion of the general assembly, is not authorized by the state constitution or statute shall not be repromulgated by an agency unless the authority to promulgate such rule has been granted to such agency by a statutory amendment or by the state constitution or by a judicial determination that statutory or constitutional authority exists. Any rule so repromulgated shall be void. Such revision 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. This paragraph (d) and subsection (4.5) of this section do not apply to rules of agency organization or general statements of policy which are not meant to be binding as rules. For the purpose of performing the functions assigned it by this paragraph (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.

(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 and any materials incorporated by reference in the record shall be available for public inspection.

(b) The agency rule-making record shall 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 of the general assembly by its staff pursuant to paragraph (d) of subsection (8) of this section and the agency's response; and

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

(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.

(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.

(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 and regulations 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 regulations, and adopted rules. The code of Colorado regulations and the Colorado register shall be the sole official publications for such rules and regulations, notices of rule-making, proposed rules, and attorney general's opinions. The code of Colorado regulations and the Colorado register shall contain, where applicable, references to court opinions and recommendations of the legal services committee of the general assembly which relate to or affect such rules and regulations and references to any action of the general assembly relating to the extension, expiration, deletion, or rescission of such rules and regulations and may contain other items which, in the opinion of the editor, are relevant to such rules and regulations.

(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 and shall make all diligent effort to enter into a publication agreement to such effect for a period not to exceed five years, but such agreement may include a renewal provision for additional periods not to exceed five years each. The executive director of the department or his or her designee may work with the secretary of state to make the code of Colorado regulations and the Colorado register available to the public in an electronic format that is accessible and user-friendly. In the event of any discrepancy between the electronic and printed form of the code or the register, the printed 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 printed form contains an error in publication.

(c) The secretary of state shall enter into any publication agreement provided for in this section with the person offering to publish and make available to the public the code and register at the lowest price, taking into consideration the qualities of the publications to be supplied, their conformity with the specifications, the purposes for which they are required, and the date of delivery. Each person offering to publish the code and register shall be entered on a record, and,

after the person is chosen to publish the code and register, the record of each person offering to publish shall be open to public inspection. A bond furnished by a surety company authorized to do business in this state for the proper performance of each publication agreement may be required in the discretion of the secretary of state.

(d) (I) Each agency subject to the provisions of this section shall, on or before a date during the fiscal year beginning on July 1, 2003, 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 that is not on file with the secretary of state on such date, shall not continue in effect on or after such date.

(II) Each rule adopted, 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 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. 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.

(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) Publication of the code of Colorado regulations shall be effected by making the same available 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 electronic publication or by mailing the Colorado register to persons on the subscriber list maintained pursuant to paragraph (h) of this subsection (11). The date of publication of the Colorado register shall be the date 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 publication of the code of Colorado regulations and the Colorado

register, the publishing agent shall maintain a current subscriber list for the 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 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 code of Colorado regulations 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 or 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.

(j) Repealed.

(k) Each agency promulgating or administering rules shall obtain the appropriate portion or portions of the code of Colorado regulations and the 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 shall require that such rules be filed in an electronic format that complies with any requirements established pursuant to section 24-37.5-106.

(12.5) (a) Subject to the provisions of this subsection (12.5), an agency may incorporate the following by reference in its rules without publishing the incorporated material in full:

(I) Federal rules, codes, or standards published in full in the federal register or the code of federal regulations;

(I.5) Federal rules, codes, or standards that have been properly incorporated by reference in the federal register as part of a duly promulgated final rule or in the code of federal regulations pursuant to federal legal requirements;

(II) (A) Published codes, standards, or guidelines of any nationally recognized scientific or technical association or organization.

(B) For the purposes of this subparagraph (II), "nationally recognized scientific or technical association or organization" means an association or organization that is regularly in the business of developing scientific or technical standards or guidelines, is recognized by those in the relevant professional community as having a high degree of expertise and competence in its field, and whose publications are widely distributed and easily available throughout the nation and the state of Colorado.

(b) (I) An agency may incorporate by reference the material set forth in paragraph (a) of this subsection (12.5) only if the issuing agency, organization, or association makes copies of the material available to the public. An agency may not incorporate any material by reference unless the material has been properly identified in the notice of proposed rule-making pursuant to paragraph (a) of subsection (3) of this section.

(II) A federal rule, code, or standard does not have the force of Colorado law unless the federal rule, code, or standard is adopted in a state rule in accordance with the provisions of this article and the federal rule, code, or standard is set forth in full in the state rule or is incorporated by reference as required by the provisions of this subsection (12.5).

(c) (I) The reference to any incorporated material shall identify the incorporated material by appropriate agency, organization, or association and by date, title, or citation. The reference shall also state that the rule does not include later amendments to or editions of the incorporated material.

(II) (A) If an agency proposes to incorporate any material by reference in a state rule, the agency shall allow public inspection of any noncopyrighted material and provide copies of the material to the public at cost upon request beginning no later than the date of publication of the notice of proposed rule-making. If any material to be incorporated by reference has been copyrighted, the agency shall upon request provide information about the publisher and the citation to the material.

(B) If any agency within the department of public health and environment proposes to incorporate material by reference in any regulation promulgated pursuant to article 7, 8, or 15 of title 25, C.R.S., and the version or edition of the material to be incorporated by reference has not previously been distributed to the state publications depository libraries, the agency shall provide a sufficient number of copies of the material to the state publications depository and distribution center no later than the date of the notice. The state librarian shall retain one copy of the material and shall provide one copy of the material to each state publications depository library pursuant to section 24-90-206 (2).

(C) Except as provided in sub-subparagraph (B) of this subparagraph (II), if any agency proposes to incorporate any material by reference in a regulation and the version or edition of the material to be incorporated has not previously been provided to the state publications depository

and distribution center, the agency shall provide one copy of the material to the state publications depository and distribution center no later than the date of the notice. The state librarian shall retain the copy of the material and shall make the copy available for interlibrary loans.

(III) After any material is incorporated by reference in a state rule, the agency incorporating the material by reference shall maintain certified copies of the complete text of the material incorporated, which copies shall be available for public inspection during regular business hours. Certified copies of the material incorporated shall be provided at cost upon request.

(d) The agency shall include in any rule which incorporates material by reference the title and address of an employee of the agency who will provide information regarding how the incorporated material may be obtained or examined and a statement indicating that any material that has been incorporated by reference in the rule may be examined at any state publications depository library.

(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) amended 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.

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 (8)(d) by House Bill 79-1393 and House Bill 79-1063 were harmonized.

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

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

ANNOTATION

Am. Jur.2d. See 2 Am. Jur.2d, Administrative Law, §§ 136, 169-172, 190-192, 221-229.

C.J.S. See 73 C.J.S., Public Administrative Law and Procedure, §§ 161-181.

Law reviews. For article, "Discovery and Judicial Review in State Administrative Practice", see 10 Colo. Law. 2490 (1981). For article, "Administrative Law", which discusses a recent Tenth Circuit decision dealing with rule-making, see 61 Den. L.J. 110 (1984). For article, "Administrative Law", which discusses recent Tenth Circuit decisions dealing with rulemaking, see 62 Den. U. L. Rev. 15 (1985). For article, "General Principles of the Colorado Administrative Procedure Act", see 16 Colo. Law. 1983 (1987). For article, "Hearsay Evidence and the Residuum Rule in Colorado", see 17 Colo. Law. 651 (1988). For article, "Administrative Law", which discusses a recent Tenth Circuit decision dealing with an agency's interpretation of its rules, see 65 Den. U. L. Rev. 366 (1988). For article, "Legislative and Judicial Oversight of Rulemaking", see 18 Colo. Law. 246 (1989). For article, "Understanding Administrative Fact-

Finding", see 20 Colo. Law. 1607 (1991). For article, "Legislative Sunset of Administrative Rules", see 21 Colo. Law. 2191 (1992). For article, "Guidelines for Negotiated Rulemaking", see 25 Colo. Law. 21 (January 1996).

Section constitutional. Subsection (10) does not violate § 21 of art. VI, Colo. Const. People v. Bobian, 626 P.2d 1132 (Colo. 1981).

The basic purpose of subsection (10) is public policy rather than simply a legislative attempt to regulate the day-to-day procedural operation of the courts. People v. Bobian, 626 P.2d 1132 (Colo. 1981).

Section is not applicable to board of regents of university of Colorado. Sigma Chi Fraternity v. Regents of Univ. of Colo., 258 F. Supp. 515 (D. Colo. 1966).

Section is not applicable to suspension of medical license. Section 24-4-104 (4), dealing with the procedure for the issuance, suspension, revocation, or renewal of licenses, is the authority for the state board of medical examiners to summarily suspend a license to practice medicine pending a full hearing; this section and § 12-36-101 et seq., dealing with medical practice, do not apply. Bd. of Medical Exam'rs v. District Court, 191 Colo. 158, 551 P.2d 194 (1976).

Apparent purpose of the 1977 amendment was to formalize, to a limited degree, the agency rule-making process by requiring a brief explanation of the reasoning process underlying an administrative regulation, and by requiring that the regulation be based upon and tied to the administrative record. Citizens for Free Enter. v. Dept. of Rev., 649 P.2d 1054 (Colo. 1982).

Rationale for requirement of statement of basis and purpose. The statement of basis and purpose assures that the administratively perceived necessity for the rule will be explicated, and serves to provide a reference point against which the validity of the rule can be measured. It removes the review process from the realm of speculation and provides a context within which meaningful judicial review can occur. Citizens for Free Enter. v. Dept. of Rev., 649 P.2d 1054 (Colo. 1982).

Where agency, in rule-making, fails to maintain an appropriate record of the public hearing because of a malfunctioning tape recorder, improperly compiles the rule-making record by introducing documents from outside of the rule-making procedures, and fails to maintain the rule-making record by failing to include and maintain all written submissions and comments received by the agency prior to the hearing, the agency has failed to substantially comply with the requirements of the Administrative Procedure Act. Studor v. Examining Bd. of Plumbers, 929 P.2d 46 (Colo. App. 1996).

The reason for the prehearing statement of basis and purpose under subsection (2.5)(a) is to provide public notice of what the agency is considering. The reason for requiring that rules incorporate by reference a written concise general statement of their basis, specific statutory authority, and purpose under subsection (4)(c) is to assist in appellate review. Brighton Pharmacy, Inc. v. Colo. State Pharmacy Bd., 160 P.3d 412 (Colo. App. 2007).

Agency substantially complied with the requirement of state Administrative Procedure Act (APA) of providing a statement of basis and purpose. Here, regulation at issue was not based on findings of fact obtained from evidence presented at the hearing or otherwise. Instead, it was based almost entirely on policy considerations. In addition, the purpose of the regulation is self-explanatory. Brighton Pharmacy, Inc. v. Colo. State Pharmacy Bd., 160 P.3d 412 (Colo. App. 2007).

State pharmacy board (Board) substantially complied with APA requirements of maintaining an adequate and appropriate record of the rulemaking hearing proceeding. Maintaining an adequate record provides a rationale and support for agency decisions, allows for public inspection of the agency's actions, and establishes a record that an appellate court may use to evaluate the basis of the agency's conclusions. Here, the Board substantially complied with APA hearing procedure requirements where (1) although the tape recording of the hearing contains inaudible and unreconstructed portions, the substance of and core testimony at the hearing appears to be intact and sufficient for public inspection

and appellate review, (2) written comments were included in the record that address many of the items discussed at the hearing, (3) comments and questions made by Board members during the testimony are sufficient to convey the Board 's thought processes and reasoning, and (4) the record sufficiently indicates that a majority of Board members voted in favor of the rule. Brighton Pharmacy, Inc. v. Colo. State Pharmacy Bd., 160 P.3d 412 (Colo. App. 2007).

State pharmacy board (Board) did not exceed its statutory authority in promulgating rule prohibiting pharmacists from dispensing prescription drugs resulting from internet-based questionnaires, internet-based consultation, or telephonic consultation without a valid preexisting patient-practitioner relationship. Court rejects appellants' claims that a determination of whether a valid preexisting patient-practitioner relationship (1) necessarily involves knowledge of the Medical Practice Act and the rules promulgated by the Colorado state board of medical examiners (BME), (2) is beyond the expertise of individual pharmacists and the Board, and (3) improperly injects the Board into areas that are properly regulated by the BME. Brighton Pharmacy, Inc. v. Colo. State Pharmacy Bd., 160 P.3d 412 (Colo. App. 2007).

Fiscal impact determination not based on record before agency. Subsection (8)(d) does not require that the fiscal impact determination be based upon or supported by the record before the administrative agency. Rather, the administrative agency should conduct such investigations and research as are reasonably necessary to arrive at an estimate of fiscal impact or to determine that such impact cannot reasonably or reliably be quantified. Citizens for Free Enter. v. Dept. of Rev., 649 P.2d 1054 (Colo. 1982) (decided prior to 1988 amendment deleting fiscal impact statement requirement).

Fiscal impact statement requirement relates to the substance of new or amended regulations and not to their form. If the amendment is one of substance which has fiscal implications, then the fiscal impact statement is required. Conversely, if the change is not substantive and does not affect the fiscal impact of the regulation as it is written, then no fiscal impact statement is required. Dept. of Natural Resources v. Clark Gen. Store, Inc., 658 P.2d 1385 (Colo. App. 1983) (decided prior to 1988 amendment deleting fiscal impact statement requirement).

Simple renumbering of preexisting regulation does not constitute an amendment such as would require a fiscal impact statement under subsection (8)(d). Dept. of Natural Resources v. Clark Gen. Store, Inc., 658 P.2d 1385 (Colo. App. 1983) (decided prior to 1988 amendment deleting fiscal impact statement requirement).

Review of fiscal impact statements is limited. The role of the court in reviewing the sufficiency of fiscal impact statements is limited. Citizens for Free Enter. v. Dept. of Rev., 649 P.2d 1054 (Colo. 1982) (decided prior to 1988 amendment deleting fiscal impact statement requirement).

Only where the statement of fiscal impact is clearly inadequate may the court intervene. Citizens for Free Enter. v. Dept. of Rev., 649 P.2d 1054 (Colo. 1982) (decided prior to 1988 amendment deleting fiscal impact statement requirement).

Lack of bona fide emergency. Rule not invalid for lack of emergency where challenge was merely procedural and where notice and an opportunity to be heard were given. Colo. Health Care Ass'n v. Dept. of Soc. Servs., 598 F. Supp. 1400 (D. Colo. 1984).

Issue of validity of emergency regulations not considered when the new regulations, if invalidly promulgated, would have left identical prior regulations in effect. Nat. Advertising v. Dept. of Highways, 718 P.2d 1038 (Colo. 1986).

Rule-making quasi-legislative in character. Rule-making conducted in accordance with this section is quasi-legislative, not quasi-judicial, in character. Collopy v. Wildlife Comm'n, 625 P.2d 994 (Colo. 1981).

An administrative regulation promulgated pursuant to this section is a quasi-legislative action subject to review by a declaratory judgment. Clasby v. Klapper, 636 P.2d 682 (Colo. 1981).

Legislative delegation of rule-making and regulatory authority to an administrative agency must

provide both sufficient standards for rational and consistent rule-making and adequate procedural safeguards for effective judicial review of administrative action. Orsinger Outdoor Advertising, Inc. v. Dept. of Hwys., 752 P.2d 55 (Colo. 1988); Partridge v. State, 895 P.2d 1183 (Colo. App. 1995).

The general assembly need not adopt a specific formula to guide agency rule-making if the agency can find general guidance, through the legislative intent, in the purposes and overall scheme of an act. Ettelman v. State Bd. of Accountancy, 849 P.2d 795 (Colo. App. 1992).

While the construction of a statute by an administrative agency charged with its enforcement should be given deference by the courts, the courts have a duty to invalidate administrative regulations which conflict with the design of a statute because they are in excess of the administrative authority granted. Ettelman v. State Bd. of Accountancy, 849 P.2d 795 (Colo. App. 1992).

Board's rules were not abolished by legislation abolishing existing board and immediately creating a newly constituted one, nor was board required to re-enact, ratify, or promulgate new rules, since annual legislation by the general assembly specifically postponing the expiration of the board's rules effectively postponed the rules of the "old" board and continued their application under the "new" board. 1st Am. Sav. Bank v. Boulder County, 888 P.2d 360 (Colo. App. 1994).

Secretary of state was not required to promulgate rules under the APA in order to implement the reporting requirement for games of chance suppliers and manufacturers under § 12-9-107.5. Bingo Games Supply Co., Inc. v. Meyer, 895 P.2d 1125 (Colo. App. 1995).

Counties not "persons" or "parties". There is nothing in the context of this section that includes counties as "persons" or "parties" entitled as of right to be admitted to agency hearings. Bd. of County Comm'rs v. State Bd. of Soc. Servs., 186 Colo. 435, 528 P.2d 244 (1974).

Department proposing a regulation has no affirmative duty to offer supporting evidence. Colo. Auto & Truck Wreckers Ass'n v. Dept. of Rev., 618 P.2d 646 (Colo. 1980).

Study or findings are not required to support rules based primarily on policy considerations if reasoning process leading to rules is defensible. Colo. Health Care Ass'n v. Dept. of Soc. Servs., 598 F. Supp. 1400 (D. Colo. 1984).

Racing commission was not precluded from making financial irresponsibility grounds for discipline, even though such grounds were not enumerated in § 12-60-507, since the rule was in the interests of the public and reasonable and was fully consistent with the commission's authority to promulgate rules. Partridge v. State, 895 P.2d 1183 (Colo. App. 1995).

Submissions by interested persons not controlling. Although subsection (4) provides that the agency "shall consider all submissions", it does not provide that such submissions shall be controlling, even when unrebutted. Colo. Auto & Truck Wreckers Ass'n v. Dept. of Rev., 618 P.2d 646 (Colo. 1980).

Definition of "rule". The numerical point system formulated by a peer review organization was not a rule but a general statement of policy which did not establish a binding norm nor finally determine issues or rights. Therefore no publication of the point system was required. Meyer v. State Dept. of Soc. Servs., 758 P.2d 192 (Colo. App. 1988).

Division of labor's requirement that self-insured employers use payroll statement to calculate the tax owed amounted to a "rule" as defined in subsection (15) of § 24-4-102. Jefferson Sch. Dist. R-1 v. Division of Labor, 791 P.2d 1217 (Colo. App. 1990).

Promulgated and effective rule deemed "final" and subject to review. Once a commission's rule or regulation has been promulgated and is in effect, the agency action is "final" as to that particular regulation and subject to review under this article. CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n, 199 Colo. 270, 610 P.2d 85 (1980).

Properly filed and indexed rules introduced in evidence. In effect, the general assembly stated in this

section that, in order to have a rule introduced in evidence, the filing authority shall index and number the set of rules involved, shall keep amendments and repealed rules in a separate permanent file, and shall cross-index with up-to-date rules any amended or repealed rules. People v. Williams, 197 Colo. 559, 596 P.2d 745 (1979).

When rule may be introduced into evidence. An administrative rule which does not satisfy the public notice requirements of this section may not be introduced as evidence in criminal proceedings. People v. More, 668 P.2d 968 (Colo. App. 1983).

A party to judicial proceedings has the right to require an adverse party seeking to introduce an administrative rule into evidence to establish compliance with the applicable provisions of this section. People v. More, 668 P.2d 968 (Colo. App. 1983).

Statute governing admission of administrative rules and regulations into evidence against an accused in a criminal trial requires only a showing of proper publication and public availability of the rules. No showing need be made that there has been compliance with the provisions of the statute governing other aspects of issuance or promulgation of the rules. People v. Gallegos, 692 P.2d 1074 (Colo. 1984) (limiting People v. More cited in the previous paragraphs).

Standard of review specified in subsection (6) correctly applied where termination was reversed without an explicit finding that agency action was arbitrary, capricious, or contrary to rule or law. Kinchen v. Dept. of Institutions, 867 P.2d 8 (Colo. App. 1993).

Conviction based on regulation not available to public is reversed. Where, in order to show that defendant received aid to the blind benefits to which he was not entitled, the department of social services had to both cite and rely on a regulation which had not been made available to the public in violation of this section, the defendant's conviction for welfare fraud had to be reversed. People v. Bobian, 626 P.2d 1132 (Colo. 1981).

Administrative law judge (ALJ) violated subsection (10) where the numerical point system formulated by the department of social services was utilized by the ALJ as the sole criterion upon which to determine petitioners' continuing eligibility for benefits but had never been made the subject of a formally adopted rule or regulation nor had claimant been given proper notice of its preeminent significance in determining benefit eligibility. Weaver v. Dept. of Soc. Servs., 791 P.2d 1230 (Colo. App. 1990).

The use of unpublished criteria in a scoring system used to evaluate the plaintiff's eligibility for home- and community-based services was not in violation of the Administrative Procedure Act because the scoring system serves only to facilitate the evaluation process for certain applicants and is not the final factual determination of eligibility. Morgan v. Colo. Dept. of Health Care Policy & Fin., 56 P.3d 1136 (Colo. App. 2002).

Agency rule-making conducted in accordance with this section is quasi-legislative, not quasi-judicial, in character. Colo. Ground Water Comm'n v. Eagle Peak Farms, 919 P.2d 212 (Colo. 1996).

Rules that are interpretive in nature fall within the express exception to the notice and hearing requirements of this section. Regular Rt. Com. Carrier Conf. v. Pub. Utils. Comm'n, 761 P.2d 737 (Colo. 1988).

Agency's rule, which provides minimum guidelines as to how the discovery process will be conducted with respect to that agency, is an interpretive rule and falls within the express exception to the notice and hearing requirements of this section. Colo. Motor Vehicle v. Northglenn, 972 P.2d 707 (Colo. App. 1998).

Emergency rule-making was within authority of department of social services and in accordance with the Administrative Procedure Act and the Medicaid Act. Health Care of Colo. v. Dept. of Soc. Servs., 842 F.2d 1158 (10th Cir. 1988).

Fiscal impact statement is not required to contain a description of the types of persons the rule

will injure. The paragraph of the rule only requires a description of those types of persons or groups who will bear the costs of the rule and, for purposes of this paragraph, costs means fiscal costs. Urbish v. Lamm, 761 P.2d 756 (Colo. 1988) (decided under law in effect prior to 1988 amendment deleting fiscal impact statement requirement).

Rules published in the code of Colorado regulations are a fit subject for judicial notice. Westfall v. Town of Hugo, 851 P.2d 299 (Colo. App. 1993).

Where an agency's interpretation of law established agency policy and procedure, compliance with the Administrative Procedure Act (APA) was required and, where the APA requirements were not met, the rule was not enforceable. Jefferson Sch. Dist. R-1 v. Division of Labor, 791 P.2d 1217 (Colo. App. 1990).

It was permissible for the trial court to consider the commission's deliberations in the rule-making proceeding, in conjunction with the rest of the record, in conducting the court's review. The transcripts of the commission's deliberations are analogous to legislative history concerning a statute. Bd. of County Comm'rs v. Water Quality Control Comm'n, 809 P.2d 1107 (Colo. App. 1991).

A regulation may not modify or contravene an existing statute, and any regulation that is inconsistent with or contrary to statute is void. Ettelman v. State Bd. of Accountancy, 849 P.2d 795 (Colo. App. 1992).

A regulation that states that permits issued pursuant to it shall be binding with respect to "any conflicting local governmental permit or land use approval process" is overly broad and void where it conflicts with law providing that oil and gas rules preempt county regulations only when the operational effect of the county regulations conflicts with the application of the state oil and gas statute or state regulations. Bd. of County Comm'rs v. Colo. Oil & Gas Conservation Comm'n, 81 P.3d 1119 (Colo. App. 2003).

District court did not abuse its discretion by entering preliminary injunction against secretary of state enjoining implementation of administrative rule. Proposed rule would force labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns. Plaintiffs demonstrated reasonable probability of success on the merits in challenging secretary's authority to enact proposed rule. Secretary's "definition" of term "member" in proposed rule is much more than an effort to define term. It can be read effectively to add, modify, and conflict with constitutional provision by imposing new condition not found in text of article XXVIII. Secretary's stated purpose in enacting proposed rule not furthered by "definition" contained in proposed rule. Proposed rule does not further secretary's stated goal of achieving transparency of contributions. Finally, timing and scope of secretary's definition raise constitutional issues with respect to plaintiff's associational rights. Sanger v. Dennis, 148 P.3d 404 (Colo. App. 2006).

Applied in Union P. R. R. v. Heckers, 181 Colo. 374, 509 P.2d 1255 (1973); Chroma Corp. v. County of Adams, 36 Colo. App. 345, 543 P.2d 83 (1975); United Buying Serv., Inc. v. State Dept. of Rev., 37 Colo. App. 465, 548 P.2d 1286 (1976); Van Pelt v. State Bd. for Community Colleges & Occupational Educ., 195 Colo. 316, 577 P.2d 765 (1978); Colorado-Ute Elec. Ass'n v. Air Pollution Control Comm'n, 41 Colo. App. 393, 591 P.2d 1323 (1978); A & A Auto Wrecking, Inc. v. Dept. of Rev., 43 Colo. App. 85, 602 P.2d 10 (1979); Schneider v. Indus. Comm'n, 624 P.2d 371 (Colo. App. 1981); Colo. Water Quality Control Comm'n v. Town of Frederick, 641 P.2d 958 (Colo. 1982); Geriatrics, Inc. v. Colo. State Dept. of Health, 650 P.2d 1288 (Colo. App. 1982), aff'd in part and rev'd in part on other grounds, 699 P.2d 952 (Colo. 1985).

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.