

OFFICE OF LEGISLATIVE LEGAL SERVICES
COLORADO GENERAL ASSEMBLY

STATE CAPITOL BUILDING, ROOM 091
200 EAST COLFAX AVENUE
DENVER, COLORADO 80203-1782

TELEPHONE: 303-866-2045 FACSIMILE: 303-866-4157
E-MAIL: OLLS.GA@STATE.CO.US

Rule Review FAQ (Frequently Asked Questions)

What is rule review?

Rule review is a process authorized by the State Administrative Procedure Act (APA) that provides for legislative oversight of executive branch rulemaking. Section 24-4-103 (8) (d), C.R.S., requires executive branch agencies to submit new or amended rules to the Office of Legislative Legal Services. The statute directs OLLS staff to review the rules to determine whether they are within the agency's rulemaking authority. OLLS staff performs rule review under the direction of a legislative committee, the Committee on Legal Services.

Whose rules are reviewed?

The APA uses the word "agency" to mean any executive branch board, bureau, commission, department, institution, division, section, or officer. This means every agency from the Board of Accountancy to the Zoning Board of Adjustments.

How many rules does the OLLS review each year?

Executive branch agencies issue approximately 15,000 pages of rules each year. Each of these is reviewed by an OLLS staff member.

What about legislative and court rules?

Only rules issued by executive branch agencies are subject to review under the APA. Rules originating in the legislative branch, such as those governing procedure in the Senate and House of Representatives, or the judicial branch, including rules of the Colorado Supreme Court, are not reviewed by the Office of Legislative Legal Services.

Does the legislature have the authority to veto rules?

No. The APA says that *all* rules issued by executive branch agencies are subject to expiration on May 15 of the year following the rule's issuance *unless* the General Assembly acts by bill to postpone the rule's expiration. Every year, the "rule review bill" moves through the legislative process to ensure that all properly adopted rules are kept alive while those rules whose adoption has been deemed improper are allowed to expire. In this way, the legislature does not act negatively through the exercise of veto power over the rules but, rather, acts positively to preserve the vast majority of the rules promulgated each year by the state's various boards, agencies, and commissions.

Does the review of executive branch rules by the General Assembly violate the principle of separation of powers?

No. The issuance of rules by an agency is a law-making function. Because the authority to make law generally rests with the legislative branch, the only way an executive branch agency can make law via rules is if that authority has been delegated to the agency by the legislature. This is done through the statutes that create an agency and define its specific role and authority. Because an agency's authority to issue rules originated with the General Assembly, the legislature retains the authority, indeed the responsibility, to make sure rules adopted by the agency are within that agency's powers as delegated to it by the General Assembly in the first place. This is the essence of the rule review process set forth in the State Administrative Procedure Act. The rule review process in Colorado is an example of the "checks and balances" between the legislative and executive branches of state government.

What are rule reviewers looking for?

Review of a rule by the OLLS takes into account a number of factors, from the procedural - were certain time deadlines met? - to the more substantive issues, such as whether a rule conflicts with a statutory provision enacted by the legislature or whether an agency's rule goes beyond the authority granted it by the General Assembly. Some issues also require that the rules be checked against the Colorado Constitution, as well as federal regulations and statutes and even the United States Constitution.

What happens when a problem with a rule is found?

OLLS staff conduct an internal analysis to determine if a potential rule problem is an actual rule problem. If staff believes there is a problem with the rule, an agency representative is contacted. The representative will have an opportunity to explain the rationale for the rule. In many instances, this clarification is sufficient, and the rule is allowed to continue in force.

In other cases, however, the reason given by the agency does not explain away the problem with the rule. In this situation, there are two possible options. First, the agency may agree there is a problem with the rule and that the rule should be deleted or amended. A separate rulemaking effort is then initiated by the agency.

The second scenario occurs if the agency continues to believe its rule is proper while OLLS staff believes it is not. This rule issue is then set for hearing before the Committee on Legal Services.

What is the role of the Committee on Legal Services?

The Committee on Legal Services is composed of ten members, five from the House of Representatives and five from the Senate. It usually meets to discuss rule issues at a series of meetings in the fall of each year. It may also hear rule issues at its meetings during the regular legislative session.

A hearing on a rule issue begins with a presentation by an OLLS staff member outlining the problems with the rule. This is followed by a representative of the agency, or perhaps an assistant attorney general, speaking in defense of the rule. Any other interested parties are given the opportunity to address the Committee at this time.

The Committee on Legal Services does not try to determine whether the rule is good or bad policy. Rather, it limits its analysis to the narrow question of whether the agency has the legal authority to promulgate the rule in question. If the Committee believes the rule is proper, it will vote to allow the rule to continue. If the Committee determines that the rule is in conflict with a statute or exceeds the agency's statutory authority, the vote will specify that this rule will be allowed to expire the following May 15.

Is the action by the Committee on Legal Services the final step?

No. The rule review bill introduced in the following legislative session will specifically list those rules that have been deemed improper by action of the Committee and will designate them for expiration. The expiration of all other rules is postponed, allowing them to continue in effect past the May 15 expiration date set in the APA.

The rule review bill must be passed by both houses of the General Assembly and signed by the Governor. It must go through the same process as any other piece of legislation, where it is subject to amendment in committee and on the floor. When enacted, this legislation has the effect of preserving the vast majority of agency rules while causing only those acted on by the Committee on Legal Services to expire.