

## **IC 4-22-2.5**

### **Chapter 2.5. Expiration and Readoption of Administrative Rules**

#### **IC 4-22-2.5-1**

##### **Exceptions**

Sec. 1. This chapter does not apply to the following:

- (1) Rules adopted by the department of state revenue.
- (2) Rules adopted by the department of local government finance.
- (3) Rules adopted by the Indiana board of tax review.
- (4) Rules adopted under IC 13-14-9 by the department of environmental management or a board that has rulemaking authority under IC 13.
- (5) A rule that incorporates a federal regulation by reference or adopts under a federal mandate a federal regulation in its entirety without substantive additions.

*As added by P.L.17-1996, SEC.7. Amended by P.L.90-2002, SEC.10.*

#### **IC 4-22-2.5-1.1**

##### **Rules that do not expire**

Sec. 1.1. (a) This section applies to the following:

- (1) A rule that is required to receive or maintain:
  - (A) delegation;
  - (B) primacy; or
  - (C) approval;

for state implementation or operation of a program established under federal law.

- (2) A rule that is required to begin or continue receiving federal funding for the implementation or operation of a program.

(b) A rule described in subsection (a) does not expire under this chapter. However, an agency shall readopt a rule described in this section before January 1 of the seventh year after the year in which the rule takes effect as set forth in this chapter.

*As added by P.L.146-2001, SEC.1.*

#### **IC 4-22-2.5-2**

##### **Dates for expiration**

Sec. 2. (a) Except as provided in subsection (b) or section 1.1 of this chapter, an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect, unless the rule contains an earlier expiration date. The expiration date of a rule under this section is extended each time that a rule amending an unexpired rule takes effect. The rule, as amended, expires on January 1 of the seventh year after the year in which the amendment takes effect.

(b) An administrative rule that:

- (1) was adopted under IC 4-22-2;

(2) is in force on December 31, 1995; and  
(3) is not amended by a rule that takes effect after December 31, 1995, and before January 1, 2002; expires not later than January 1, 2002.

(c) The determination of whether an administrative rule expires under this chapter shall be applied at the level of an Indiana Administrative Code section.

*As added by P.L.17-1996, SEC.7. Amended by P.L.146-2001, SEC.2; P.L.215-2005, SEC.9.*

#### **IC 4-22-2.5-3**

##### **Procedures for readoption**

Sec. 3. (a) An agency that wishes to readopt a rule that is subject to expiration under this chapter must:

(1) follow the procedure for adoption of administrative rules under IC 4-22-2; and

(2) for a rule that expires under this chapter after June 30, 2005, conduct any review required under section 3.1 of this chapter.

(b) An agency may adopt a rule under IC 4-22-2 in anticipation of a rule's expiration under this chapter.

(c) An agency may not use IC 4-22-2-37.1 to readopt a rule that is subject to expiration under this chapter.

*As added by P.L.17-1996, SEC.7. Amended by P.L.188-2005, SEC.5.*

#### **IC 4-22-2.5-3.1**

##### **Readoption of rule affecting small businesses; review required; consideration of regulatory alternatives; reexamination of economic impact statement**

Sec. 3.1. (a) This section applies to a rule that:

(1) expires under this chapter after June 30, 2005; and

(2) imposes requirements or costs on small businesses.

(b) As used in this section, "small business" has the meaning set forth in IC 4-22-2.1-4.

(c) Before an agency may act under section 3 of this chapter to readopt a rule described in subsection (a), the agency shall conduct a review to consider whether there are any alternative methods of achieving the purpose of the rule that are less costly or less intrusive, or that would otherwise minimize the economic impact of the proposed rule on small businesses. In reviewing a rule under this section, the agency shall consider the following:

(1) The continued need for the rule.

(2) The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

(3) The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

(B) small businesses in complying with the rule.

- (4) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.
- (5) The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

(d) This subsection applies to a rule that was adopted through a rulemaking action initiated by the agency under IC 4-22-2-23 after June 30, 2005. In reviewing the rule under this section, the agency shall reexamine the most recent economic impact statement prepared by the agency under IC 4-22-2.1-5. The agency shall consider:

- (1) the degree to which the factors analyzed in the statement have changed since the statement was prepared; and
- (2) whether:
  - (A) any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5); or
  - (B) any regulatory alternatives not considered by the agency at the time the statement was prepared; could be implemented to replace one (1) or more of the rule's existing requirements.

(e) After conducting the review required by this section, the agency shall:

- (1) readopt the rule without change, if no alternative regulatory methods exist that could minimize the economic impact of the rule on small businesses while still achieving the purpose of the rule;
- (2) amend the rule to implement alternative regulatory methods that will minimize the economic impact of the rule on small businesses; or
- (3) repeal the rule, if the need for the rule no longer exists.

*As added by P.L.188-2005, SEC.6.*

#### **IC 4-22-2.5-4**

##### **Request for separate readoption of rules**

Sec. 4. (a) Except as provided in subsection (b) and subject to section 3.1 of this chapter, an agency may readopt all rules subject to expiration under this chapter under one (1) rule that lists all rules that are readopted by their titles and subtitles only. A rule that has expired but is readopted under this subsection may not be removed from the Indiana Administrative Code.

(b) If, not later than thirty (30) days after an agency's publication of notice of its intention to adopt a rule under IC 4-22-2-23 using the listing allowed under subsection (a), a person submits to the agency a written request and the person's basis for the request that a particular rule be readopted separately from the readoption rule described in subsection (a), the agency must:

- (1) readopt that rule separately from the readoption rule described in subsection (a); and
- (2) follow the procedure for adoption of administrative rules under IC 4-22-2 with respect to the rule.

(c) If the agency does not receive a written request under subsection (b) regarding a rule within thirty (30) days after the agency's publication of notice, the agency may:

- (1) submit the rule for filing with the publisher under IC 4-22-2-35; or
- (2) elect the procedure for readoption under IC 4-22-2.

*As added by P.L.17-1996, SEC.7. Amended by P.L.188-2005, SEC.7; P.L.215-2005, SEC.10; P.L.1-2006, SEC.76; P.L.123-2006, SEC.18.*

#### **IC 4-22-2.5-5**

##### **Power of governor to postpone expiration date**

Sec. 5. If a rule is not readopted before the expiration date for the rule and the governor finds that the failure to readopt the rule causes an emergency to exist, the governor may, by executive order issued before the rule's expiration date, postpone the expiration date of the rule until a date that is one (1) year after the date specified in section 2 of this chapter.

*As added by P.L.17-1996, SEC.7.*

#### **IC 4-22-2.5-6**

##### **Removal of expired rules**

Sec. 6. The publisher shall remove all rules that have expired under this chapter from the Indiana Administrative Code.

*As added by P.L.17-1996, SEC.7.*