

COLORADO DEPARTMENT OF TRANSPORTATION		<input type="checkbox"/> POLICY DIRECTIVE <input checked="" type="checkbox"/> PROCEDURAL DIRECTIVE
Subject RULE MAKING PROCEDURE		Number 20.1
Effective 4/7/11	Supersedes 09/05/02	Originating Office Office of Policy & Government Relations

PURPOSE

The purpose of this procedural directive is to establish the procedure for promulgation of rules by the Transportation Commission (TC), Executive Director, Chief Engineer or other statutorily designated authority.

AUTHORITY

Executive Director, § 43-1-105, C.R.S.
Colorado Governor's Executive Order, D2011-005
Administrative Procedures Act, 24-4-103

APPLICABILITY

This procedural directive applies to all rules promulgated by the Transportation Commission, Executive Director, Chief Engineer or other statutorily designated authority pursuant to specific statutory authority and in accordance with section 24-4-103 of the Administrative Procedures Act (APA).

PROCEDURE

I. PROGRAM MANAGER

- A. Each rule shall have a division, branch and program manager designated to be responsible for the rule at all times. The Program Manager will be designated by the Executive Management Team Member responsible for the rule. The Program Manager shall be listed on the Department's website as the contact for the rule. A branch head may be designated as the Program Manager.
- B. The Program Manager's responsibilities shall include:
 1. The Executive Management Team Member whose division or office is responsible for the rule shall be the signer of the request to the Transportation Commission or Executive Director, Chief Engineer or other statutorily designated authority to initiate a formal rulemaking process.
 2. Writing the draft rule, making all required changes in a timely manner;
 3. Coordinating with other branches or divisions that are affected by the rule. This coordination may include forming a committee that includes other

branches, region personnel, members of the public, the Department's Administrative Procedures Officer and the Assistant Attorney General assigned to the rule;

4. Writing all associated documents (including but not limited to all documents required by the APA);
5. Organizing public hearing matters which may include coordinating with the Rule Making Coordinator to: set the hearing date and time; reserve the conference room; prepare an oral presentation; arrange for distribution of all appropriate notices; and schedule and pay a court reporter. Determine whether proposed rule may have impact on local government. If so, follow procedure in Section V of this directive, entitled Local Agency Consultation Process;
6. Gathering necessary factual data, coordinating input by interested committees, associations, branches or divisions or the department;
7. Advising management of any potential public, consumer group or departmental concerns or opposition;
7. Maintaining the official public file;
8. Monitoring all legislative changes to the authorizing statute;
9. Serving as the contact person and senior subject matter authority for the public, regions, Legal Services Office, Secretary of State, Department's legislative liaison and the Office of the Attorney General on all matters concerning the particular rule. The program manager shall provide a focus for the regions and branches in solving administrative and enforcement problems for the rule;
10. The Program Manager shall ensure that either the Transportation Commission, Executive Director, Chief Engineer or other statutorily designated authority is clearly stated as rule promulgator in the beginning sections of the rule, preferably in the Statement of Basis, Specific Statutory Authority and Purpose.

II. RULE MAKING COORDINATOR

- A. A Rule Making Coordinator shall be designated for the rule making process. The Rule Making Coordinator shall be from the Office of Policy and Government Relations (OPGR).
- B. The responsibilities of the Rule Making Coordinator shall include:
 1. Create and maintain current detailed procedural guidelines for rule making events;
 2. Provide technical assistance to each substantive or program manager on APA requirements;

3. Review all rules proposed or adopted by the Department for their consistency with other rules;
4. Monitor and advise Program Managers of all legislative changes to the APA;
5. Maintaining a current listing of all rules promulgated by the Department and assigned Division, Branches and Program Managers;
6. Assisting in the writing of a rule and all accompanying documents;
7. Assist in organizing public hearing matters which may include coordinating with the Program Manager to: set the hearing date and time; reserve the conference room; prepare an oral presentation; arrange for distribution of all appropriate notices; schedule and pay a court reporter;
9. Conducting the formal public hearings only if so delegated by the Executive Director, the Transportation Commission, the Chief Engineer or other statutorily designated authority (whichever has the statutory authority to make such delegation) as the Administrative Hearing Officer;
10. Monitoring legal oversight provided by the Attorney General's Office when a rule is being developed or amended;
11. Maintaining the official public file.

III. ATTORNEY GENERAL'S OFFICE

- A. The Program Manager shall coordinate with the First Assistant Attorney General of the transportation unit to obtain assigned counsel to assist in each rule making by the Transportation Commission, Executive Director, Chief Engineer or other statutorily designated authority.
- B. The program manager will work with the assigned counsel to:
 1. Advise the Transportation Commission, the Executive Director, [Chief Engineer or other statutorily designated authority](#) as to the statutory authority, legality and constitutionality of the proposed rule, the statement of basis, purpose and statutory authority, and the rule analysis if one is prepared;
 2. Advise on legal claims and information submitted during rule development and review;
 3. Review the proposed rule for clarity, conciseness and form, and possible conflicts with other laws;
 4. Review the specific rule making procedure for compliance with the APA;
 5. Provide copies of all legal counsel materials to the Program Manager, the Rules Coordinator, and additional CDOT supervisors and managers, as necessary;

6. Represent the Department at all rule making public hearings and adoption processes, unless otherwise decided by the Chief Transportation Council.

IV. ADMINISTRATIVE HEARING OFFICER

An Administrative Hearing Officer may be appointed for rule making hearings at the request and on behalf of the Transportation Commission, Executive Director, Chief Engineer or other statutorily designated authority. The delegation must be made in writing and will become part of the official rule making record. The Administrative Hearing Officer may be the same person as the Rules Coordinator.

V. LOCAL AGENCY CONSULTATION PROCESS

Local governments continue to face difficulties such as funding, complexity, and delay in securing flexibility and approvals regarding state requirements. Local governments should have more flexibility to design solutions to problems without excessive interference or oversight, or unnecessary regulation, from state government. In addition, local governments should not be expected to implement laws and regulations without the funding necessary to do so.

In order to assist local governments in working with CDOT and to comply with Executive Order D2011-005, CDOT shall actively solicit input from local agencies when promulgating rules. If a potential impact to local agencies is identified, CDOT will take special care to do everything possible to satisfy local agency concerns and cause no undue burden as a result of the promulgation of a rule.

A. Program Manager Responsibilities

1. Prior to the formal filing of a rule making hearing with the Secretary of State, assess the rule for regulatory impacts to local government. For every new rule or update to an existing rule, the Program Manager shall include Colorado Counties, Inc. (CCI) and Colorado Municipal League (CML) on the "interested parties" distribution list.
2. If the rule is assessed by the Program Manager as having a negative impact on local government, coordinate with the Office of Policy and Government Relations (OPGR) to proceed with an outreach program to appropriate local entities and representatives of local government.
3. Assist OPGR in the outreach program to local entities.

B. Rule Making Coordinator Responsibilities

1. Assist in the assessment of every new rule or update to rule for regulatory impacts to local government.
2. Assist OPGR in the outreach program to local entities.

3. If the Transportation Commission, Executive Director, Chief Engineer or other statutorily designated authority proposes the promulgation of a rule containing a mandate on local government, the Rule Making Coordinator shall provide to the Director of the Governor's Office of State Planning and Budgeting a description of the nature and extent of the agency's consultation with representatives of the local governments that would be affected by the proposed mandate, the nature of their concerns, any written communications or comments submitted to the agency by such units of local government, and the agency's reasoning supporting the need to issue the regulation containing the mandate.

C. Office of Policy and Government Relations (OPGR) Responsibilities

1. If Program Manager or Rules Coordinator determines a potential impact to local governments, the OPGR shall proactively contact the Colorado Municipal League, Colorado Counties, Inc., and any specific local agencies directly to obtain meaningful and timely input on the proposed rule.
2. Work with the Program Manager and Rule Making Coordinator to determine if changes can be made to the proposed rule to mitigate any negative impact to local government.
3. Upon adoption of the rule, if local agencies perceive the rule is unduly burdensome, and the Transportation Commission, Executive Director, Chief Engineer or other statutorily designated authority has the statutory authority to permanently or temporarily waive the rule or statute, the OPGR shall work with the local agency to apply for a waiver to the rule, per the "Waivers" section of this Procedure.

C. Waivers

1. Waivers, when statutorily permitted, may be allowed for local agencies that can demonstrate that requirements conflict with other regulations or statutes, are unduly burdensome to the local agency.
2. The Transportation Commission Executive Director, Chief Engineer or other statutorily designated authority, whichever has rule promulgation, shall determine if a temporary or permanent waiver shall be granted to the local agency.
3. The Transportation Commission, Executive Director, Chief Engineer or other statutorily designated authority shall render the decision within 90 days of receipt of application from the local agency.
4. Following the Governor's Executive Order, for every mandate CDOT implements, an application for waiver for exception to the rule shall be included. If a waiver is not granted, CDOT will provide the local agency with timely written notice of its decision and reason for decision.

IMPLEMENTATION PLAN

This directive shall be effective immediately upon adoption by the Executive Director. OPRG will disseminate a copy of this Procedure to CCI, CML, and all CDOT Program Managers responsible for the promulgation of an official rule. OPRG will make the directive available for all future rule making needs by posting it on the CDOT website. Additionally, the directive will be posted on Public Announcements.

REVIEW DATE:

This procedural directive shall be reviewed by August 2016.



04/07/11

Executive Director

Date of Approval