

Resolution #TC-2022-09-17

Adopt Proposed Changes to the Rules Governing Statewide Transportation Planning Process and Transportation Planning Regions (“the Planning Rules”), 2 CCR 601-22.

Approved by the Transportation Commission on September 15, 2022.

WHEREAS, §§ 43-1-106(8)(k), and 43-1-1103(5), C.R.S. authorize the Transportation Commission of Colorado (“Commission”) to adopt rules that govern the statewide planning process; and

WHEREAS, on December 16, 2021, the Commission adopted revisions to 2 CCR 601-22, including language setting GHG pollution reduction standards across the state, including a restriction on funds for CDOT and MPOs that fail to meet the reduction standards; and

WHEREAS, the Commission established the Ad Hoc Agency Coordination Committee (“ACC”) in 2021 to act as liaison for the Commission throughout the rulemaking process to work with staff to amend the Planning Rules; and

WHEREAS, on July 21, 2022, the Commission adopted emergency rules to clarify the intent that plans adopted prior to October 1, 2022 that do not meet the required GHG reduction levels as outlined in the rule would have both the statutory restriction on funds and the restrictions on funds as outlined in the rule apply; and

WHEREAS, the ACC and staff recommended to the Commission that the emergency rules should be made permanent and certain rule sections of the Planning Rules should be opened to add clarifying language and address recommendations made by the Office of Legislative Legal Services and stakeholders; and

WHEREAS, the Transportation Commission passed Resolution No. TC-2022-07-10 on July 21, 2022, authorizing a Hearing Officer to conduct a hearing on the proposed changes to the Planning Rules; and

WHEREAS, pursuant to § 24-4-103, C.R.S., the State Administrative Procedure Act, and Commission Resolution No. TC-2022-07-10, the Department opened the official rulemaking process; and

WHEREAS, the Hearing Officer held a virtual public hearing on September 2, 2022 to receive public comment on the proposed changes to the Planning Rules; and

WHEREAS, the Hearing Officer reviewed the entire record consisting of thirteen exhibits and found that staff complied with the State Administrative Procedure Act; and

WHEREAS, the Hearing Officer recommends to the Commission that the proposed changes to the Planning Rules be adopted.

NOW THEREFORE BE IT RESOLVED, after review and consideration of the proposed changes to the rules, the Commission adopts the proposed changes to the Rules Governing Statewide Transportation Planning Process and Transportation Planning Regions, 2 CCR 601-22 attached as Exhibit A.

Herman
Stockinger

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Herman Stockinger
Date: 2022.09.16
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Herman Stockinger, III
Transportation Secretary

Date

Exhibit A

DEPARTMENT OF TRANSPORTATION

Transportation Commission

RULES GOVERNING STATEWIDE TRANSPORTATION PLANNING PROCESS AND TRANSPORTATION PLANNING REGIONS

2 CCR 601-22

What Relevant Regulations Currently Apply to Transportation Planning

Transportation planning is subject to both state and federal requirements. Under federal law governing transportation planning and federal-aid highways, it is declared to be in the national interest to promote transportation systems that accomplish a number of mobility objectives “while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes...” *see* 23 U.S.C. § 134; *see also* 23 U.S.C. § 135(a)(1). In the metropolitan planning process, consideration must be given to projects and strategies that will “protect and enhance the environment, promote energy conservation, improve the quality of life...” *see* 23 U.S.C. § 134(h)(1)(E); *see also* 23 C.F.R. Part 450, Subpart B (federal regulations governing statewide transportation planning and programming). The same planning objective applies to statewide transportation planning. *see* 23 U.S.C. § 135(d)(1)(E); *see also* 23 C.F.R. Part 450, Subpart C (governing metropolitan transportation planning and programming). Further, the Statewide Transportation Plan shall be developed, as appropriate, in consultation with State...local agencies responsible for...environmental protection...” *see* 23 U.S.C. § 135(f)(2)(D)(i).

Under conforming Colorado law, the Statewide Transportation Plan is developed by integrating and consolidating Regional Transportation Plans developed by MPOs and regional transportation planning organizations into a “comprehensive statewide transportation plan” pursuant to rules and regulations promulgated by the Commission. *see* § 43-1-1103(5), C.R.S. The Statewide Transportation Plan must address a number of factors including, but not limited to, “environmental stewardship” and “reduction of greenhouse gas emissions.” *see* § 43-1-1103(5)(h) and (j), C.R.S.

Regional Transportation Plans must account for the “expected environmental, social, and economic impacts of the recommendations in the transportation plan, including... [a] full range of reasonable transportation alternatives...in order to provide for the transportation and environmental needs of the area in a safe and efficient manner.” *see* § 43-1-1103(1)(d), C.R.S. Further, in developing Regional Transportation Plans, MPOs “[s]hall assist other agencies in developing transportation control measures for utilization in accordance with state...regulations...and shall identify and evaluate measures that show promise of supporting clean air objectives.” *see* § 43-1-1103(1)(e), C.R.S.

1.04 Baseline – For each MPO area and for the Non-MPO areas of the state, for each of the model years 2025, 2030, 2040, and 2050: the GHG emissions, in million metric tons (MMT), produced by the most recently adopted model for that area, together with the current EPA-approved version of

MOVES or its successors in the format currently run by APCD, resulting from modeling the MPO RTP or CDOT 10-year plan adopted as of January 30, 2022.

1.34 Multimodal Transportation and Mitigation Options Fund (MMOF) - a program created in the State Treasury pursuant to § 43-4-1103, C.R.S. which funds bicycle, pedestrian, transit and other Multimodal projects as defined in § 43-4-1102(5), C.R.S. and GHG Mitigation projects as defined in § 43-4-1102(4.5), C.R.S.

1.44 State Interagency Consultation Team - consists of the Division Director or the Division Director’s designee, the Colorado Department of Public Health and Environment (CDPHE) Director of Air Pollution Control Division or the Director’s designee, the Director of each MPO or their designee, and the Colorado Energy Office Director or Director’s designee. The Division Director shall appoint a rural TPR Chair with experience with and representing rural planning interests and may appoint this member and additional member(s) from outside of these organizations to renewable terms of three (3) years. The State Interagency Consultation Team works collaboratively and consults appropriately to approve modifications to Regionally Significant definitions, and address classification of projects as Regionally Significant, modeling assumptions, and projects that reduce GHG emissions.

8.02.5 Timing for Determining Compliance

8.02.5.1 By October 1, 2022, CDOT shall update their 10-Year Plan and DRCOG and NFRMPO shall update their RTPs and meet the reduction levels in Table 1 or MMOF will be restricted pursuant to § 43-4-1103, C.R.S. and the restrictions set forth in Rule 8.02.6.4, as applicable, shall also apply.

8.02.5.2 CDOT must for each Applicable Planning Document, adopted or amended after October 1, 2022, meet either the reduction levels within Table 1 for Non-MPO areas or the requirements as set forth in Rule 8.02.6.4.1.

8.02.5.3 MPOs must for each Applicable Planning Document adopted or amended after October 1, 2022, meet either the corresponding reduction levels within Table 1, or the relevant MPO and CDOT each must meet the requirements as set forth in Rule 8.02.6.4.2 or Rule 8.02.6.4.3, as applicable. This provision shall not apply to MPO TIP Amendments.

8.02.6.4 If an Applicable Planning Document does not meet the GHG Reduction Levels as described in Rule 8.02.6.1, the GHG Transportation Report may be deemed in compliance if certain funds are restricted as applicable in this section.

8.02.6.4.1 In Non-MPO areas the Department shall award 10-Year Plan funds anticipated to be expended on Regionally Significant Projects on projects or approved GHG Mitigation Measures that reduce GHG emissions as necessary to achieve the GHG Reduction Levels in MMT of CO₂e for each compliance year in Table 1.

8.02.6.4.2 In MPO areas that are not in receipt of federal suballocations pursuant to the CMAQ and/or STBG programs, the Department shall award 10-Year Plan funds on projects or approved GHG Mitigation Measures as necessary to achieve the GHG Reduction Levels in MMT of CO₂e for each compliance year in Table 1.

8.02.6.4.3 In MPO areas that are in receipt of federal suballocations pursuant to the CMAQ and/or STBG programs, the MPO shall award those funds anticipated to be expended on projects or approved GHG Mitigation Measures that reduce GHG emissions, and the Department shall award 10-Year Plan funds on projects or approved GHG Mitigation Measures as necessary to achieve the GHG Reduction Levels in MMT of CO₂e for each compliance year in Table 1.

8.02.6.4.4 The restrictions in Rule 8.02.6.4 do not apply to projects which have been advertised for construction with funding identified prior to the adoption of the Applicable Planning Document or are not contained in an Applicable Planning Document.

8.02.6.4.5 The restrictions in 8.02.6.4 do not apply to funding sources where adherence to those restrictions would violate federal or state statutory requirements for those funding sources.

8.05.2 If the Commission determines, by resolution, the requirements of Rule 8.02.6 have not been met, the Commission shall restrict the use of funds pursuant to Rule 8.02.6.4, as applicable, to projects and approved GHG Mitigation Measures that reduce GHG emissions. Prior to the implementation of such restriction, an MPO, CDOT (upon concurrence with the applicable MPO) or a TPR in a Non-MPO area, may, pursue one or both of the following actions.

8.05.2.1 Request a waiver from the Commission imposing restrictions on specific projects not expected to reduce GHG emissions.

8.05.2.1.1 By April 1, 2022, CDOT staff in consultation with the MPOs shall develop a waiver form for use by CDOT, MPOs, or TPRs when requesting a waiver.

8.05.2.1.2 A waiver may be requested at any time, including concurrently with the submission of a GHG Transportation Report.

8.05.2.1.3 The Commission may waive the restrictions on specific projects when applicants use CDOT's waiver form that specifies the GHG Transportation

Report reflected significant effort and priority placed, in total, on projects and GHG Mitigation Measures that reduce GHG emissions.

8.05.2.1.4 In no case shall a waiver be granted if such waiver results in a substantial increase in GHG emissions when compared to the required GHG Reduction Levels in this Rule.

8.05.2.2 Request reconsideration of a non-compliance determination by the Commission and provide written explanation of how the requirements of Rule 8.02.6 have been met.

8.05.3 The Commission shall act, by resolution, on a waiver or reconsideration request within thirty (30) days of receipt of the waiver or reconsideration request or at the next regularly scheduled Commission meeting, whichever is later.

8.05.4 Notwithstanding any other provision of this Rule, CDOT, DRCOG and NFRMPO must meet the requirements of § 43-4-1103, C.R.S.

9.02 Also incorporated by reference are the following federal laws and regulations and do not include any later amendments:

9.02.1 Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, et. seq., in effect as of January 1, 2009.

9.02.2 Clean Air Act (CAA), 42 U.S.C. §§ 7407-7410, and 7505a, in effect as of November 15, 1990.

9.02.3 Transportation Conformity Regulations, 40 C.F.R. § 93.101, in effect as of November 24, 1993.

