



COLORADO

Department of Transportation

Office of Policy and Government Relations

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MEMORANDUM

DATE: November 06, 2020
TO: Transportation Commission
FROM: Herman Stockinger, Transportation Commission Secretary
Natalie Lutz, Rules, Policies, and Procedures Administrator
SUBJECT: Adopt Proposed Changes to State Highway Accommodation Code, 2 CCR 601-18

Purpose

To accept the Hearing Officer's recommendation and adopt the proposed changes to the State Highway Accommodation Code, 2 CCR 601-18.

Action

To pass a resolution to adopt the changes to the State Highway Accommodation Code ("the Utility Code"), 2 CCR 601-18, based on the Hearing Officer's recommendation from the rulemaking hearing conducted on September 30, 2020.

Background

As required by Senate Bill 14-063 and codified in section 24-4-103.3, C.R.S., the Colorado Department of Transportation ("the Department" or "CDOT") on behalf of the Transportation Commission ("the Commission") initiated a rule review to assess the continuing need for, appropriateness and cost effectiveness of the Utility Code. The assessment also determined whether the Utility Code should be continued in its current form, modified, or repealed.

On October 17, 2019, the Commission, by Resolution No. 2019-10-07, authorized a Hearing Officer to conduct a hearing on the proposed changes to the Utility Code. It was determined that the Utility Code should be modified. In 2019, the Department held five workshops throughout the State to receive feedback from affected and interested parties. The proposed changes make the Utility Code easier to understand and follow. Additionally, the proposed changes support the development of a comprehensive database of utilities being accommodated in CDOT's Right-of-Way ("ROW"). Finally, the proposed changes align the Utility Code with the Administrative Procedure Act ("APA"). Key substantive changes to the Code are explained below:

- Rule 1.4.1 sets forth 18 abbreviations used in the Utility Code, which were modified by adding 4 new abbreviations and deleting 2 abbreviations.



- Rule 1.4.2 establishes 111 defined terms to aid in the interpretation of the Utility Code, which were renumbered. Fourteen outdated, unused, or unnecessary terms were deleted; twenty-five terms were modified, and eight new terms were added. “As-Constructed Plan” and “Record Set” were added as new defined terms in order to achieve the development of a comprehensive database of utilities being accommodated in CDOT’s ROW.
- Rule 2.2.6.4 was added to specify the procedures to summarily suspend a permit in accordance with the APA in cases of deliberate and willful violation or a substantial danger to public health, safety, and welfare.
- Rule 2.3.2.4 was updated to require the permittee to provide As-Constructed Plans when alterations are made. This requirement complies with Senate Bill 18-167 and helps the Department achieve its goal to establish a more comprehensive database of existing utilities in CDOT’s ROW.
- Rule 3.1.9 was added to establish the closure requirements for utility permits. To close out a permit, the following steps must occur: As-Constructed information must be provided and the permittee must request in writing that a permit receive final inspection to be closed out. This new rule ensures consistency in the close out process by defining the time limits and requirements needed to start the two year permit warranty period.
- Rule 3.3.4.3 was added to require that a boring permit application include plan and profile information. A plan and profile will be required for any underground boring to include offsets to the ROW and face of curb or edge of asphalt as well as separation for any existing facilities. It is impossible for the Department to determine if an installation is at the proper location or offset from other facilities without a plan and profile. There are significant safety concerns and risks in potential damage to other utilities with blind boring.
- Rule 3.3.4.6 was added to establish the required documentation for utility plans.
- Rule 3.3.4.6.1 was added to specify when the engineering design requires the oversight of a licensed professional engineer, a sealed Record Set will be required to be submitted to the Department prior to the start of construction. The stamped Record Set is governed by the regulations for professional engineers and is consistent with state law requiring work under the responsible charge of a professional engineer to be stamped by the engineer. This is also supported by the new requirements pursuant to Senate Bill 18-167.
- Rule 3.3.4.6.2 was updated to require the utility to submit As-Constructed Plans within 45 days of completion of the work, which shows actual final surface and subsurface utilities, including location, alignment, profile, and depth. The time period was changed from 90 to 45 days. The rule also requires As-Constructed Plans to be submitted electronically unless the Department and the utility agree in writing that paper plans are acceptable. The rationale for the requirement of the submission of an As-Constructed Plan is to assist in developing an accurate inventory of utilities being accommodated in CDOT’s ROW. Potential benefits include the reduction in errors and costs associated with performing routine maintenance or emergency work.



- Rule 3.4.2.3 was updated to clarify the utility shall have a traffic control supervisor at the work site at all times in direct responsible charge of implementing the traffic control plan. If the scope of the utility project necessitates a flagger, the utility shall have the appropriate number of certified flaggers at the work site in accordance with the traffic control plan. The traffic control supervisor is the responsible person for all traffic control devices and they must be present onsite while the devices are deployed.
- Rule 3.4.9.1 was updated to specify that all new underground facilities must be electronically locatable when installed. This language reflects the requirements in section 9-1.5-103, C.R.S.

The Hearing Officer held a rulemaking hearing on September 30, 2020, to receive public comment on the proposed changes to the Utility Code. Thirty-one members of the public also attended the hearing and Verizon Wireless offered testimony. Written comments were also received prior to the hearing. After full consideration of the oral testimony heard at the hearing and the written comments received, the Hearing Officer recommended that some of the proposed revisions to the Utility Code should be further amended as explained below:

- Rule 2.1.2.2 should be further modified to clarify the reasonable time that a utility has to remedy deficiencies on departmental projects by setting forth the specific time in the Department's written notification and granting extensions upon a showing of good cause.
- Rule 2.2.3.2 should be further modified to clarify that the Department shall promptly evaluate and act on applications in accordance with the Utility Code and any applicable federal and state laws. The Department must process applications for small cell facilities in accordance with federal law.
- Rule 3.3.7.7. should be further modified to also include mechanical joint restraints on all vertical and horizontal bends in pressure pipes.

The Hearing Officer found that the requirements of the APA have been satisfied, that there is sufficient evidence in the record to support the proposed changes to the Utility Code, and that the Commission has the authority to adopt the proposed changes as recommended by the Hearing Officer. The Department has responded to all affected and interested parties who submitted written comments or provided oral testimony.

Next Steps

Following the Commission's adoption of the proposed rules as recommended by Hearing Officer, the Department will file the rules with the Secretary of State. They will become effective on January 14, 2020.

Attachments

Resolution

Red-line of Proposed Revisions to the Utility Code ([online](#))

Hearing Officer Summary and Recommendation ([online](#))

Redacted Rulemaking Exhibits for data privacy ([online](#))

