



# COLORADO

## Department of Transportation

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08/31/2021

### Transportation Commission of Colorado Rules Governing Statewide Transportation Planning Process and Transportation Planning Regions 2 CCR 601-22

#### Updated Proposed Statement of Basis and Purpose, Statutory Authority, and Preamble

#### Statement of Basis and Purpose and Preamble

##### Overview

The purpose of the Rules Governing the Statewide Transportation Planning Process and Transportation Planning Regions (Rules) is to prescribe the statewide transportation planning process through which a long-range multimodal, comprehensive Statewide Transportation Plan will be developed, integrated, updated, and amended by the Colorado Department of Transportation (Department or CDOT), in cooperation with local governments, Metropolitan Planning Organizations (MPOs), Regional Planning Commissions, Indian tribal governments, relevant state and federal agencies, the private sector, transit and freight operators, and the general public. This cooperative process is designed to coordinate regional transportation planning, guided by the statewide transportation policy set by the Department and the Transportation Commission of Colorado ("Commission"), as a basis for developing the Statewide Transportation Plan. The result of the statewide transportation planning process shall be a long-range, financially feasible, environmentally sound, multimodal transportation system plan for Colorado that will reduce traffic and smog.

Further, the purpose of the Rules is to define the state's Transportation Planning Regions for which long-range Regional Transportation Plans are developed, prescribe the process for conducting and initiating transportation planning in the non-MPO Transportation Planning Regions and coordinating with the MPOs for planning in the metropolitan areas. Memoranda of Agreement (MOA) that serve as the Metropolitan Planning Agreements (MPAs) pursuant to 23 C.F.R. § 450 between the Department, each MPO, and applicable transit provider(s) further prescribe the transportation planning process in the MPO Transportation Planning Regions. In addition, the purpose of the Rules is to describe the organization and function of the Statewide Transportation Advisory Committee (STAC) as established by § 43-1-1104, Colorado Revised Statutes (C.R.S.).

The Rules are promulgated to meet the intent of both the U.S. Congress and the Colorado General Assembly for conducting a continuing, cooperative, and comprehensive statewide performance-based multimodal transportation planning process for producing a Statewide Transportation Plan and Regional Transportation Plans that address the transportation needs of the State. This planning process, through comprehensive input, results in systematic project prioritization and resource allocation.

The Rules, governing the statewide planning process, emphasize Colorado's continually greater integration of multimodal, cost-effective, and environmentally sound means of transportation which leads to cleaner air and reduced traffic. The Rules reflect the Commission's and the Department's focus on multimodal transportation projects including highways, transit, rail, bicycles and pedestrians. Section 8 of these Rules establishes an ongoing administrative process for identifying, measuring, confirming, and verifying those



best practices and their impacts, so that CDOT and MPOs can easily apply them to their plans in order to achieve the pollution reduction levels required by these Rules.

The specific purpose of this rulemaking is to establish Greenhouse Gas (GHG) pollution reduction planning levels for transportation within Section 8 of these Rules that will improve air quality, reduce smog, and provide more sustainable options for travelers across Colorado. The purpose of these requirements is to limit the GHG pollution which would result from the transportation system if the plan was implemented, consistent with the state greenhouse gas pollution reduction roadmap. This is accomplished by requiring CDOT and MPOs to establish plans that meet targets through a mix of projects that limit and mitigate air pollution and improve quality of life and Multimodal options. CDOT and MPOs will be required to demonstrate through travel demand modeling and approved air quality modeling that statewide and regional aggregate emissions resulting from its state or regional plans do not exceed a specified emissions level in total. In the event that a plan fails to comply, CDOT and MPOs have the option to commit to implementing GHG Mitigation Measures that provide travelers with cleaner and more equitable transportation options such as safer pedestrian crossings and sidewalks, better transit and transit-access, or infrastructure that supports access to housing, jobs, and retail.

Examples of these types of mitigations, which also benefit quality of place and the economic resilience of communities, will include but not be limited to: adding bus rapid transit facilities and services, enhancing first-and-last mile connections to transit, adding bike-sharing services including electric bikes, improving pedestrian facilities like sidewalks and safe accessible crosswalks, investments that support vibrant downtown density and local zoning decisions that favor sustainable building codes and inclusive multi-use facilities downtown, and more. The process of identifying and approving mitigations will be established by a policy process that allows for ongoing innovations from local governments and other partners to be considered on an iterative basis.

If compliance still cannot be demonstrated, even after committing to GHG Mitigation Measures, the Commission shall restrict the use of certain funds, requiring that dollars be focused on projects that help reduce transportation emissions and are recognized as approved mitigations. These requirements address the Colorado General Assembly's directive to reduce statewide GHG pollution in § 25-7-102(2)(g), C.R.S., as well as the directive for transportation planning to consider environmental stewardship and reducing GHG emissions, § 43-1-1103(5), C.R.S.

Additionally, the Commission proposes to clarify that the Statewide Transportation Plan will include an analysis of how it aligns with Colorado's climate goals and helps reduce, prevent, and mitigate GHG pollution throughout the State. The Commission proposes to include the 10-Year Plan as a required appendix of the Statewide Transportation Plan. The Commission also proposes to establish a State Interagency Consultation Team, consisting of CDOT's Director of the Division of Transportation Development, the Colorado Department of Public Health and Environment's Director of Air Pollution Control Division, and the Director of each MPO. The Commission proposes to add nineteen (19) new defined terms relating to the establishment of the GHG pollution reduction planning levels for transportation and to reformat the defined terms into alphabetical order. Finally, the Commission proposes to make other minor changes or updates, such as capitalizing defined terms.

#### Context of Section 8 of these Rules Within Statewide Objectives

The passage of House Bill (HB)19-1261 set Colorado on a course to dramatically reduce GHG emissions across all sectors of the economy. In HB 19-1261, now codified in part at §§ 25-7-102(2) and 105(1)(e), C.R.S., the General Assembly declared that "climate change adversely affects Colorado's economy, air quality and public health, ecosystems, natural resources, and quality of life[.]" acknowledged that "Colorado is already experiencing harmful climate impacts[.]" and that "many of these impacts disproportionately affect" certain Disproportionately Impacted Communities. *see* § 25-7-102(2), C.R.S. The General Assembly also



recognized that “[b]y reducing [GHG] pollution, Colorado will also reduce other harmful air pollutants, which will, in turn, improve public health, reduce health care costs, improve air quality, and help sustain the environment.” *see* § 25-7-102(2)(d), C.R.S.

Since 2019, the State has been rigorously developing a plan to achieve the ambitious GHG pollution reduction goals in § 25-7-102(2)(g), C.R.S. In January 2021, the State published its Greenhouse Gas Pollution Reduction Roadmap (Roadmap). Available at: <https://energyoffice.colorado.gov/climate-energy/ghg-pollution-reduction-roadmap>. The Roadmap identified the transportation sector as the single largest source of statewide GHG pollution as of 2020, with passenger vehicles the largest contributor within the transportation sector. Additionally, the Roadmap determined that emissions from transportation are a “significant contributor to local air pollution that disproportionately impacts lower-income communities and communities of color.” *see* Roadmap, p. XII.

A key finding in the Roadmap recognized that “[m]aking changes to transportation planning and infrastructure to reduce growth in driving is an important tool” to meet the statewide GHG pollution reduction goals. *see* Roadmap, p. 32. Section 8 of these Rules also advances the State’s goals to reduce emissions of other harmful air pollutants, including ozone.

#### Why the Commission is Taking This Action

Senate Bill 21-260, signed into law by the Governor on June 17, 2021, and effective upon signature, includes a new § 43-1-128, C.R.S., which directs CDOT and MPOs to engage in an enhanced level of planning, modeling and other analysis to minimize the adverse environmental and health impacts of planned transportation capacity projects. Section 43-1-128, C.R.S. also directs CDOT and the Commission to take steps to account for the impacts of transportation capacity projects on GHG pollution and Vehicle Miles Traveled and to help achieve statewide GHG pollution targets established in § 25-7-102(2)(g), C.R.S.

Under Colorado law governing transportation planning, CDOT is charged with and identified as the proper body for “developing and maintaining the state transportation planning process and the state transportation plan” in cooperation with Regional Planning Commissions and local government officials. *see* § 43-1-1101, C.R.S.

The Commission is responsible for formulating policy with respect to transportation systems in the State and promulgating and adopting all CDOT financial budgets for construction based on the Statewide Transportation Improvement Programs. *see* § 43-1-106(8), C.R.S. The Commission is statutorily charged “to assure that the preservation and enhancement of Colorado’s environment, safety, mobility and economics be considered in the planning, selection, construction and operation of all transportation projects in Colorado.” *see* § 43-1-106(8)(b), C.R.S. In addition, the Commission is generally authorized “to make all necessary and reasonable orders, rules and regulations in order to carry out the provisions of this part . . .” *see* § 43-1-106(8)(k), C.R.S.

As such, CDOT and the Commission are primarily responsible for ensuring compliance with GHG reductions in transportation planning.

#### 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 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.

#### Putting Section 8 of these Rules into Perspective

Section 8 establishes GHG regulatory requirements that are among the first of their kind in the U.S. However, from an air pollutant standpoint, connecting transportation planning to emissions is not a new policy area. In fact, transportation conformity provisions within the Clean Air Act approach ozone much the same way. Transportation conformity ensures that federally funded or approved highway and transit activities within a Nonattainment Area are consistent with or “conform to” a state’s plan to reduce emissions. Colorado’s front range has been in ozone nonattainment for many years, which has required the North Front Range and the Denver Regional Council of Governments’ MPOs to demonstrate conformity with each plan adoption and amendment.

However, because the transportation sector encompasses the millions of individual choices people make every day that have an impact on climate, a variety of strategies are necessary to achieve the State’s climate goals. Section 8 of these Rules is one of many steps needed to achieve the totality of reduction goals for the transportation sector.

#### Purpose of GHG Mitigation Measures

The transportation modeling conducted for this rulemaking may demonstrate that certain projects increase GHG pollution for a variety of reasons. These reasons may include factors such as induced demand as a result of additional lane mileage attracting additional vehicular traffic, or additional traffic facilitated by access to new commercial or residential development in the absence of public transit options or bicycle/pedestrian access that provides consumers with other non-driving options. Transportation infrastructure itself can also increase or decrease GHG and other air pollutants by virtue of factors like certain construction materials, removal or addition of tree cover that captures carbon pollution, or integration with vertical construction templates of various efficiencies that result in higher or lower levels of per capita energy use. The pollution impacts of various infrastructure projects will vary significantly depending on their specifics and must be modeled in a manner that is context-sensitive to a range of issues such as location, footprint of existing infrastructure, design, and how it fits together with transportation alternatives.



Of note, many types of infrastructure have been demonstrated not to generate significant induced demand or increased emissions. For example, the state of California conducted a study of project types that should be considered “neutral” from the perspective of GHG pollution -- due to their use being related primarily to issues like safety and utility for emergency services. See here: <https://dot.ca.gov/-/media/dot-media/programs/transportation-planning/documents/sb-743/2020-09-10-1st-edition-tac-fnl-a11y.pdf>

Furthermore, other aspects of transportation infrastructure can facilitate reductions in emissions and thus serve as mitigations rather than contributors to pollution. For example, the addition of transit resources in a manner that can displace Vehicle Miles Traveled can reduce emissions. Moreover, improving downtown pedestrian and bike access, particularly in areas that allow individuals to shift multiple daily trips for everything from work to dining to retail, can improve both emissions and quality of life.

There is an increasing array of proven best practices for reducing pollution and smog and improving economies and neighborhoods that can help streamline decision-making for state and local agencies developing plans and programs of projects.

### **Statutory Authority**

The statutory authority is as follows:

- House Bill 19-1261 enacted into law on May 30, 2019.
- Senate Bill 21-260 enacted into law on June 17, 2021.
- § 25-7-102(2), C.R.S., which sets forth the legislative declaration to reduce statewide GHG pollution and establishes statewide GHG pollution targets.
- § 43-1-128, C.R.S., which directs CDOT and MPOs to engage in an enhanced level of planning, modeling, and other analysis to minimize the adverse environmental and health impacts of planned transportation capacity projects. Also directs CDOT and the Commission to take steps to account for the impacts of transportation capacity projects on GHG pollution and vehicle miles traveled and to help achieve statewide GHG pollution targets established in § 25-7-102(2)(g), C.R.S.
- § 43-1-1101, C.R.S., which authorizes CDOT to develop and maintain the state transportation planning process and the State Transportation Plan in cooperation with Regional Planning Commissions and local government.
- § 43-1-1103(5), C.R.S., which authorizes the Commission to promulgate rules to establish the formation of the Statewide Transportation Plan and the statewide planning process. Also requires the consideration of environmental stewardship and reducing GHG emissions as part of transportation planning.
- § 43-1-106(8), C.R.S, which authorizes the Commission to formulate policy with respect to transportation systems in the State and promulgate and adopt all CDOT financial budgets for construction based on the Statewide Transportation Improvement Programs.
- § 43-1-106(8)(b), C.R.S., which requires the Commission to assure that the preservation and enhancement of Colorado’s environment, safety, mobility and economics be considered in the planning, selection, construction and operation of all transportation projects in Colorado.
- § 43-1-106(8)(k), C.R.S., which authorizes the Commission to make all necessary and reasonable order, rules and regulations.

