

Citizen's Guide

2016



Colorado Rulemaking

Encouraging public participation in the agency
rulemaking process

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Introduction

Dear Citizens:

Over the last few years, executive orders have been signed by Governor John Hickenlooper and bills have been passed by the Colorado General Assembly that affect state agencies' rulemaking process. The rights of citizens and local governments are improved and the process is more transparent as a result.

By informing citizens of their rights, government is not only held accountable, but benefits from the input of those affected by the regulations they promulgate.

This guide outlines your rights per the [State Administrative Procedure Act \(APA\)](#).

The Colorado Office of Policy, Research and Regulatory Reform hopes that this guide will encourage you to participate in the rulemaking process by: receiving notices of rulemaking in your area(s) of interest; reviewing agency rulemaking schedules and filing petitions for rulemaking when you have ideas on how to streamline government rules; requesting analyses of proposed rules; and by participating in rulemaking hearings.

Sincerely,



Joe Neguse

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Rulemaking

Rulemaking is the formal process followed by [state agencies](#) to clarify, refine and operationalize the broad policy statutes passed by the [Colorado General Assembly](#) or [Congress](#), or to implement [federal agency regulations](#).

Though it's one of the most important roles of government, rulemaking may be one of the least understood by citizens. This guide aims to provide clear insight into how citizens can partake in the state agency rulemaking process.

Colorado Rules Overview

State agencies with rulemaking authority must follow the rulemaking procedures outlined in section 24-4-103, et seq, Colorado Revised Statutes (C.R.S.), the [State Administrative Procedure Act \(APA\)](#). Per the APA, “agencies” are statutorily defined as any board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative branch or judicial branch and except:

- State educational institutions administered pursuant to title 23 (except articles 8 and 9, parts 2 and 3 of article 21, and parts 2 to 4 of article 30), C.R.S.;
- The Colorado Law Enforcement Training Academy; and
- The Adjutant General of the National Guard.

Pursuant to section 24-4-103(8)(a), C.R.S.:

No rule shall be issued except within the power delegated to the agency and as authorized by law. A rule shall not be deemed to be within the statutory authority and jurisdiction of any agency merely because such rule is not contrary to the specific provisions of a statute. Any rule or amendment to an existing rule issued by any agency, including state institutions of higher education administered pursuant to title 23, C.R.S., which conflicts with a statute shall be void.

In general, the APA does not apply to rules of agency organization, interpretative rules or general statements of policy, which are not meant to be binding as rules.

Official Rules of State Agencies

The [Colorado Secretary of State](#) compiles and publishes the “official” administrative rules of the executive agencies of the State of Colorado in the [Code of Colorado Regulations](#). Agencies may also make copies of their rules available, but these versions are not considered “official”.

Notification of emergency and permanent rulemaking activities is done through the Colorado Register which is published twice monthly.

Legislative Declaration

The general assembly finds that an agency should not regulate or restrict the freedom of any person to conduct his or her affairs, use his or her property, or deal with others on mutually agreed upon terms unless it finds, after a full consideration of the effects of the agency action, that the action would benefit the public interest and encourage the benefits of a free enterprise system for the citizens of this state.

The general assemble also finds that many government programs may be adopted without stating the direct and indirect costs to consumers and businesses and without consideration of such costs in relation to the benefits to be derived from the programs.

The general assembly further recognizes that agency action taken without evaluation of its economic impact may have unintended effects, which may include barriers to competition, reduce economic efficiency, reduce consumer choice, increased producer and consumer costs, and restrictions on employment.

The general assemble future finds that agency rules can negatively impact the state’s business climate by impeding the ability of local businesses to compete with out-of-state businesses, by discouraging new or existing business from moving to this state, and by hindering economic competitiveness and job creation.

Accordingly, it is the continuing responsibility of the agencies to analyze actions and reevaluate the economic impact of the continuing agency actions to determine whether the actions promote the public interest.

[State Administrative Procedure Act](#)

24-2-101, et seq. Colorado Revised Statutes

Citizen's Rights

The State Administrative Procedure Act ensures that citizens have ample rights and opportunities to participate in agency rulemaking.

Citizens Have the Right To:

01. Participate in informal stakeholder input meetings;
02. Petition for a Declaratory Order;
03. Receive notice of state agency rulemaking hearings;
04. Provide comments on new or amended rules;
05. Petition a state agency to amend or repeal existing rules;
06. Request a cost-benefit or regulatory analysis of proposed rules;
07. Review an agency's record of rulemaking proceedings; and
08. Request a judicial review of rules and proceedings

01 Participate in Stakeholder Meetings

Help draft agency rules by attending an agency's informal stakeholder meetings, which are held prior to the agency's filing of the Notice of Proposed Rulemaking with the Secretary of State.

You can find each agency's rules review schedule, as well as their detailed process for citizen involvement in rulemaking, and annual departmental regulatory agenda, on their [website](#).

You can also visit the [Colorado Register](#) November 10 issue for a complete summary of agency rules review schedules.



02 Petition for a Declaratory Order



A petition for a Declaratory Order is a formal request that an agency or board issue a declaratory order to terminate controversies or remove uncertainties in a rule. For more information about how to petition, refer to the process outlined in the official rule.

03 Receive Notice of Rulemaking Hearings

Citizens are encouraged to review proposed rules and provide comments. To stay informed about state rulemaking, you can sign up anytime to receive:

Notifications directly from a rulemaking agency

By contacting the [rulemaking agency](#) directly and asking to be added to their rulemaking notification list, you'll be emailed with any agency temporary or emergency rulemaking.

Please note that you can only request a notification on your own behalf. Hard copies of proposed rules can also be requested, but may require payment to cover printing and mailing costs.

• Notifications of emergency and permanent rulemaking activities from the Secretary of State

• By signing up through [the Secretary of State's Online form](#), you'll receive email notifications of rulemaking, permanent rules, or emergency rules that have been published by the Secretary of State in the [Colorado Register](#).

• The emails also link to associated Attorney General opinions about the rules.

• Notifications of permanent rulemaking activities from the Department of Regulatory Agencies (DORA)

• By signing up through [DORA's Online form](#), you'll receive email notifications of permanent rules that are being proposed according to specific subject areas

• These notifications also include rulemaking hearing information and details about what changes are being proposed and why.

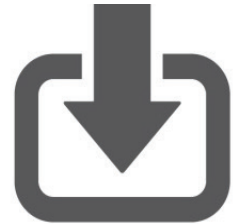
• These notifications also provide you with easy access to request a cost-benefit analysis of any new or amended rule.

Agencies are obligated to send the Notice of Proposed Rulemaking to individuals on a rulemaking notification list before it's published.

04 Provide Comments on Proposed Rules

During the agency rulemaking hearings, give your input on a specific rule.

For a rulemaking hearing schedule, contact the rulemaking [agency](#).



05 Petition for Rule Changes

If you are adversely affected by a rule, you can petition for the issuance, amendment, or repeal of the rule by submitting a “Petition for Rulemaking” to the rulemaking agency directly. The petition is open to public inspection.

When an agency undertakes rulemaking on a matter, all related petitions for the issuance, amendment, or repeal of rules must be considered and acted upon in the same proceeding. For a full list of items an agency must consider when reviewing rules, see Appendix A.

To find out when an agency is reviewing specific rules, visit the [Colorado Register](#) November 10 issue, or visit the [Colorado Regulatory Reform Portal](#).



06 Request a Cost-Benefit or Regulatory Analysis

Cost-benefit/regulatory analysis is a tool that is used to quantify the estimated impacts and benefits of proposed regulations.

For a general report on a rule and what its impact is, request a Regulatory Analysis from the rulemaking agency. If you are seeking a more rigorous evaluation on the rule, request a cost-benefit analysis from COPRRR.

The following page details the differences between the analyses.



Cost Benefit Analysis

For a step-by-step guide to requesting a cost-benefit analysis, see the Appendix.

Must include the following:

- Reason for the rule or amendment;
- Anticipated economic benefits of the rule or amendment;
- Anticipated costs of the rule or amendment, including direct costs to the government regarding the administration of the rule or amendment, and the direct/indirect costs to business and other entities required to comply with the rule or amendment;
- Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness; and
- Two or more alternatives to the proposed rule or amendment, including the costs and benefits of pursuing each of the alternatives identified.

Exceptions:

Rules within the following categories are not subject to citizen-requested cost-benefit analysis:

- Orders - all or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) by any agency in any matter other than rulemaking.
- Licenses - all or any part of any agency permit, certificate, registration, charter, membership, or statutory exemption.
- Permits.
- Adjudication - the procedure used by an agency for the formulation, amendment, or repeal of an order and includes licensing.
- Rules affecting the direct reimbursement of vendors or providers with state funds.

Regulatory Analysis

A regulatory analysis can be requested directly to the rulemaking agency no later than fifteen days prior to the rule hearing. The analysis must then be completed no later than five days prior to the rulemaking hearing.

Must include the following:

- A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons;
- The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;
- A determination of potentially less costly or less intrusive methods for achieving the purpose of the proposed rule; and
- A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency, with the reasons why they were rejected in favor of the proposed rule.

07 Review an Agency's Record of Rulemaking Proceedings

Citizens have the right to access an agency's official rulemaking record for each proposed rule for which a Notice of Proposed Rulemaking has been published in the Colorado Register.

The materials must be available for public inspection during regular office hours, and must be maintained until all administrative and judicial review procedures have been completed



Agency Rulemaking Records Must Contain:

- Publications in the Colorado Register with respect to the rule;
- Components of the agency's public rulemaking agenda related to the rule;
- Written petitions, requests, submissions, and comments received by the agency, as well as other written materials connected with the formulation, proposal, or adoption of the rule;
- Official transcripts, tape recordings, or stenographic records of oral presentations made in the proceeding upon which the rule is based and any memorandum prepared by a presiding official summarizing the contents of those presentations;
- Any regulatory analysis or cost-benefit analysis prepared for the proceeding upon which the rule was based, and any formal statements made by the Executive Director of DORA responding to the analysis;
- A copy of the rule and explanatory statement filed with the Secretary of State;
- Petitions for exceptions to, amendments of, or repeal or suspension of the rule;
- Any objection to the rule presented to the General Assembly Committee on Legal Services, as well as the agency's response; and
- Any filed executive order related to the rule.

Upon judicial review, this record of rulemaking forms the official rulemaking record with respect to a rule. The agency rulemaking record need not constitute the exclusive basis for agency action on a rule or for judicial review; except that the introduction of evidence or information into the rulemaking record from outside of the public rulemaking hearing, or introduction of evidence or information without notice to all parties to such hearing and opportunity to respond is not allowed.

Rules adopted on or after September 1, 1988, are invalid unless adopted in substantial compliance with the provisions of the APA. However, unintentional failure to mail a Notice of Proposed Rulemaking to any person as required does not invalidate a rule.

08 Request a Judicial Review of Rules and Proceedings

Citizens have the right to judicial review of agency rulemaking in district court. Anyone affected or aggrieved by any agency action may instigate an action for judicial review. The action must be started within 35 days from when the agency action becomes effective.

When conducting rulemaking proceedings, an agency must maintain a docket listing the name, address, and phone number of every person who has participated in a rulemaking proceeding by written statement, or by oral comment at a hearing.

The proceeding for review may be brought against the agency, individuals who make up the agency, or any representative of the agency acting on its behalf.



When Judicial Review is Appropriate

Rulemaking agencies must promulgate rules in a manner that is not:

- Arbitrary and capricious;
- In denial of statutory right;
- Contrary to the constitutional right, power, privilege, or immunity;
- In excess of statutory jurisdiction, authority, purposes, or limitations;
- In accord with the procedures or procedural limitations of this article or as otherwise required by law;
- An abuse or clearly unwarranted exercise of discretion; or
- Based on facts that are clearly wrong, unsupported by evidence, or otherwise contrary to the law.

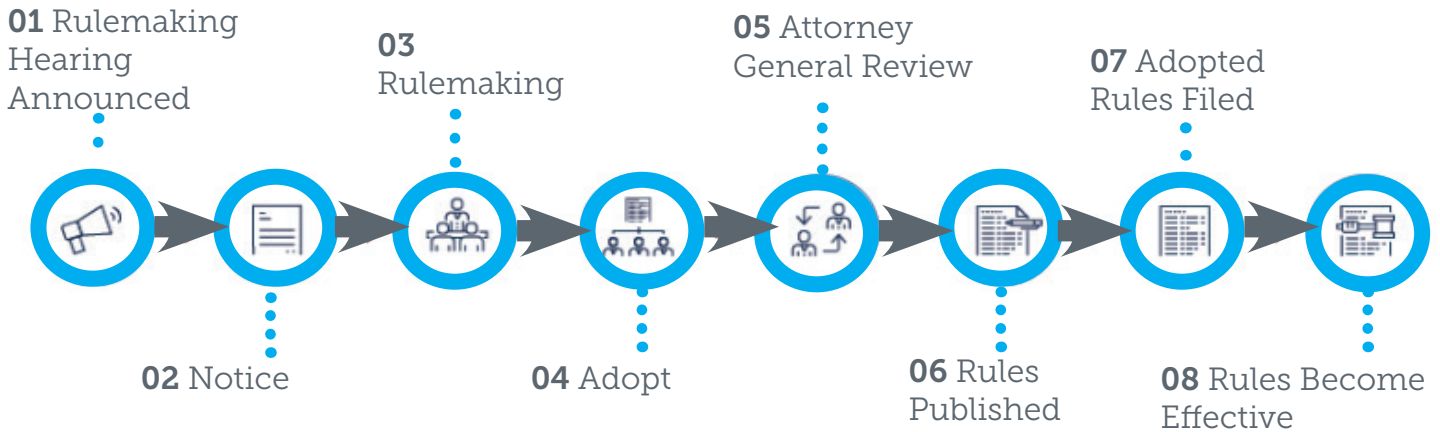
If the agency finds that irreparable injury would result from an agency action, the agency must postpone the effective date of the action pending judicial review.

Decisions by the district court may be appealed to the Colorado Appellate Court. Notice of an appeal must be filed with the district court within forty-nine days after its decision becomes final.

Appendix

Stages of the Rulemaking Process

Every state agency in the Executive Branch must adhere to the rulemaking process outlined in the Administrative Procedure Act or APA (Section 24-4-101, Colorado Revised Statutes) unless explicitly exempted.



Required Agency Considerations When Reviewing Rules

- Whether the rule is necessary;
- Whether the rule overlaps or duplicates other rules of the agency or with other federal, state, or local government rules;
- Whether the rule is written in plain language and is easy to understand;
- Whether the rule has achieved the desired intent and whether more or less regulation is necessary;
- Whether the rule can be amended to give more flexibility, reduce regulatory burdens, or reduce unnecessary paperwork or steps while maintaining its benefits;
- Whether the rule is implemented in an efficient and effective manner, including the requirements for the issuance of permits and licenses;
- Whether a cost-benefit analysis was performed by the applicable rulemaking agency or official in the principal department pursuant to section 24-4-103 (2.5); and
- Whether the rule is adequate for the protection of the safety, health, and welfare of the state or its residents.

Appendix

How to Request a Cost-Benefit Analysis of a Rule



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Find more information about rulemaking at dora.colorado.gov/
[opr and at sos.state.co.us](http://opr.and.at.sos.state.co.us).

