

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 1 of 15
Current Issue: 1/7/2013			

1) Purpose

The purpose of this policy is to:

- a) Develop a Department-wide “best practices” process for rulemaking that is consistent, transparent and collaborative.
- b) Ensure compliance with [HB12-1008](#)
- c) Ensure compliance with [2011 Executive Order 005](#) and [2012 Executive Order 002](#)
- d) Provide Department of Revenue division Rule Managers with tools and resources to ensure compliance.
- e) Establish a Department-level database for all rules.
- f) Ensure efficient tracking of the rulemaking process for all rules.
- g) Set forth the procedures for rules management.

2) Background

- a) Each agency within the Department of Revenue previously managed its rulemaking process independently. As a result, the process was applied inconsistently and no database existed to efficiently track rulemaking across the Department. The Department lacked a set of “best practices” to ensure an efficient and effective process for managing rulemaking.
- b) Executive Order 005 (EO5), “Establishing a Policy to Enhance the Relationship between State and Local Government,” was issued by the Governor in 2011 and requires state rulemaking agencies to consult with and engage local governments prior to the promulgation of any rules containing mandates and to provide the Office of State Planning and Budgeting (OSPB) with certain information regarding proposed rules that contain mandates. The goal of EO5 is to prevent excessive or unnecessary regulation of local government through increased intergovernmental communication.
- c) In 2012, Governor Hickenlooper issued Executive Order 002 (EO2), “Regulatory Efficiency Reviews,” that impacts the rulemaking process. EO2 orders departments to conduct a review of all their rules to determine if they should be continued in their current form, modified, or repealed. EO2 also requires each department to provide public notification of its rule reviews, provide appropriate opportunity for the public to provide input, and to notify other state agencies that may have jurisdiction over the subject matter of the rules to allow for collaboration.
- d) Additionally, legislative changes in 2012 had an impact on the rulemaking process. HB12-1008 directs state agencies to establish representative groups to evaluate and comment on proposed rules, requires agencies to notify the General Assembly of any rulemaking that result in increases in fees or fines, and requires agencies to submit departmental regulatory agendas to the General Assembly.

3) Scope

- a) This process applies to all divisions, offices and sections of the Department of Revenue. Rules management includes:
 - i) New rulemaking
 - ii) Rulemaking to effect revisions to existing rules
 - iii) Continuous routine review of all rules

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 2 of 15
Current Issue: 1/7/2013			

4) Definitions

<u>Communications Coordinator (EO5).</u>	An individual designated by the Department's Executive Director to be the single point of contact for all initial inquiries from local government regarding proposed or ongoing rulemaking proceedings. Although this person may refer the local government to the Department's EO5 Rule Administrator for a response, he/she should have general information regarding the status of all proposed rulemakings within the Department to assist local governments. This person also has access to the DOR EO5 SalesForce system for purposes of sending out notices.
<u>Invitation to Participate form (EO5)</u>	A form sent to local government stakeholders via the SalesForce system as soon as possible after the Department first decides to consider proceeding with any rulemaking that creates a mandate. This is to ensure that the local government(s) has an opportunity to provide relevant information to the Department and to participate in any stakeholder process in the development of the draft rule. These forms are sent on-line thru the SalesForce system to the stakeholder list maintained within the SalesForce system. They are sent by the Rule Administrator, can be filled out and returned on-line, and are maintained on the Department's website until OSPB completes its review. The Department and OSPB will have access to these forms.
<u>Local Government Input Questionnaire (EO5)</u>	A form sent by the Rule Administrator to all local government stakeholders who have indicated an interest in the rulemaking proceeding. This questionnaire provides a venue for interested local government stakeholders to provide their input on the proposed rule before it is finalized and promulgated. The form is sent no later than the time the rule is published by the Secretary of State and must be accompanied by a copy of the proposed rule.
<u>Mandate</u>	Any legal requirement established by statutory provision or administrative rule or regulation which requires any local government to undertake a specific activity or to provide a specific service which satisfies minimum state standards, including but not limited to (a) program mandates which result from orders or conditions specified by the state as to what activity shall be performed, the quality of the program, or the quantity of services to be provided, and (b) procedural mandates which regulate and direct the behavior of any local government in providing programs or services, including but not limited to reporting, fiscal, personnel, planning and evaluation, record-keeping, and performance requirements.

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 3 of 15
Current Issue: 1/7/2013			

<u>Representative Group</u>	A group made up of parties who have an interest in a specific rule-making subject and representatives who may be impacted by the rule proposal, including any elected officials and local governments, if appropriate. This group participates informally in conferences on rule proposals under consideration and/or in public rule-making proceedings on the rule proposals. The division must make diligent attempts to solicit input from representatives of each of the various stakeholder interests that may be affected positively or negatively by the proposed rules.
<u>Regulatory Agenda</u>	An agenda required to be submitted by the Department to the staff of Legislative Council on November 1, 2012, and each November 1 thereafter. The agenda contains a list of new rules and/or rule revisions that the Department expects to propose in the next calendar year. See Appendix D for the information the agenda is required to contain. The Department posts the Regulatory Agenda on its website and submits it to the Secretary of State for publication in the Colorado Register. The Department presents its Regulatory Agenda during the subsequent legislative session.
<u>Regulatory Report</u>	A list and brief summary of all permanent and temporary rules actually adopted by the Department since the previous departmental Regulatory Agenda was filed. This report is required to be submitted by the Department to the staff of Legislative Council each year on November 1, beginning with November 1, 2013.
<u>Rule Administrator (EO5)</u>	Individuals designated by the Department's Executive Director to be the points of contact for Departmental rulemaking. These persons are responsible for using the EO5 Salesforce system to notify local governments of proposed rulemaking, including sending and receiving the Invitation to Participate forms, Local Government Outreach Forms, and Local Government Input Questionnaires, as appropriate.
<u>Rules Manager</u>	A designated employee in each DOR division that manages the rulemaking process for the division.
<u>Rule Tracking Database</u>	A standard template used by each DOR division to log, track and maintain all rule requests for the division.
<u>Rule Request Form</u>	A DOR form that is required to be completed for any and all requests for new rules and/or rule changes and is made available on the Department's website.
<u>SalesForce System</u>	An online system that facilitates communication between the Department and local governments to ensure proper notifications are sent and received pursuant to EO5, including the Invitation to Participate form and the Local Government Input Questionnaire. This may also be referred to as the "EO5 Tool."

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 4 of 15
Current Issue: 1/7/2013			

5) Policy

Each Department of Revenue division shall adhere to the procedures set forth in this policy to ensure compliance with relevant State statutes and executive orders and to facilitate a consistent rulemaking process throughout the agency.

6) Procedures

Rulemaking may occur for a number of reasons to include, but not limited to, changes resulting from ongoing, routine review of rules pursuant to Executive Order 2012-002 (see Appendix B), change proposals from interested internal and/or external stakeholders, new technology, and new legislation and litigation impacts. The rulemaking process involves three distinct phases: conceptual, formal rule-making and implementation.

- a) Concept Phase: The Concept Phase is where a majority of the preparatory work is performed, including collaborating with impacted and interested stakeholders.
 - i) Rules Review Request. Regardless of the origin of the new rule proposal or rule change proposal, the rulemaking process is initiated by the submission of a Rules Review Request form (DR2477) at the Department level. DR2477 can be found at G:\Global\Rules and on the DOR website.
 - ii) Receipt of Rules Review Request. Upon receipt of the Rules Review Request form by the Department's Executive Director's Office (EDO), the EDO's assistant reviews the form for completeness. If incomplete, the assistant returns the form to the requestor with an explanation as to why it was returned. If the form is complete, the assistant adds the request to the Rule Tracking Database and forwards the Rules Request Form to the Rules Manager of the appropriate division within the Department.
 - iii) Division Rules Manager. Each division has an official Rules Manager designated by the division director to manage the rulemaking process for his/her division.
 - (1) Upon receipt of the Rules Review Request form from the Department, the Rules Manager determines which Subject Matter Expert (SME) within the division should receive the request, and forwards the request to the SME.
 - (2) The Rules Manager tracks the progress of each Rules Review Request from the time it is received by the division until the time it is promulgated and submitted to Legislative Council via the Regulatory Report or rejected.
 - (3) The Rules Manager updates the Rule Tracking Database throughout the process. The Rule Tracking Database is a standardized database that is used by all divisions within the Department.
 - iv) Rule Review by the SME. Upon receipt of the Rules Review Request from the division's Rules Manager, the SME reviews the rule proposal to determine, among other things, if the request is conceptually viable and if there are any conflicts with existing law.
 - (1) If warranted, the division considers requesting a review by the Attorney General's (AG) office. A decision to seek review by the AG is discretionary at this point. See Appendix A for AG Review Parameters.
 - (2) If the rule request is a result of the division's periodic review of its existing rules, the review is to encompass the requirements outlined in Executive Order 2012-002 (EO2). See Appendix B for EO2 Rule Review Requirements.
 - (3) If the rule request could contain a mandate on local government, please refer to the requirements of Executive Order 2011-005 (EO5). See Appendix C for the EO5 Process

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 5 of 15
Current Issue: 1/7/2013			

Guidelines.

- (4) If the rule request results in any increases in fees and/or fines, refer to the General Assembly notification requirements outlined in HB12-1008. Refer to Appendix D.
 - (5) Upon conclusion of the initial review, including any AG review, the SME notifies the Rules Manager of the outcome, who in turn updates the Rule Tracking Database.
 - (6) If the request is determined to be unviable, the SME returns the Rules Review Request to the Rules Manager along with an explanation as to why it is determined to be unviable (e.g., statutorily invalid). The Rules Manager notifies the requestor in person (i.e., by phone) of this and ensures the requestor understands the reason prior to the denial letter being sent. The Senior or Deputy Director must be notified of a denial prior to contacting the requestor or sending out notification. The denial letter must be attached to the Rule Tracking Database. NOTE: Divisions are encouraged to adequately vet the proposal in workshops as addressed in paragraphs (iv) and (v) below unless there exists a clear obstacle, such as lack of statutory authority.
 - (7) If the request is determined to be viable, the Rules Manager flags the rule to include it in the Regulatory Agenda pursuant to HB12-1008. Refer to Appendix D for these requirements. NOTE: Some requests may require a more expedited process.
 - (8) The SME proceeds with the development of a draft concept and/or language for the rule request.
- v) Develop Concept and/or Draft Rule Language. During this step, the SME conducts any necessary research including contacting peer agencies in other jurisdictions, if appropriate, to discuss. Taking into consideration the results of this research as well as any AG feedback from section (iv) above, the SME drafts the proposed rule text or concept in the proper format and updates the Rules Manager of the status.
- vi) Select and Confirm Representative Group(s). Each division is required to have procedures in place for establishing a representative group of persons to participate in workshops to collaborate on proposed rules and to participate in public rulemaking hearings. At a minimum, each division should maintain the following information on interested parties: name, who they represent, contact phone number, email address and area(s) of interest. This information is maintained by the Rules Manager.
- (1) Divisions solicit impacted persons, identify interested stakeholders and compile a list of those who have expressed interest in participating in a particular rulemaking subject. For each particular rulemaking subject, the division selects the appropriate representative group. According to CRS 24-4-103(2), the division must make "diligent attempts to solicit input from representatives of each of the various stakeholder interests that may be affected positively or negatively by the proposed rules."
 - (2) For each rule proposal, the division provides the representative group with a draft of the proposed rule or concept with the intent of soliciting feedback and any concerns with impacts.
 - (3) If the proposed rule could contain a mandate on local government, the division Director requests the DOR Rule Administrator for EO5 to contact designated local government points of contact, as well as local government associations and others, to notify them of the potential regulation. The Rule Administrator uses the Department's EO5 Salesforce system to send emails asking local governments if they would like to participate in the rulemaking process and provides local governments with a draft of the proposed rule or concept. Please refer to Appendix C for criteria

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 6 of 15
Current Issue: 1/7/2013			

to use in determining if the proposed rule contains a mandate on local government.

- (4) Any necessary updates are provided to the Rules Manager; the Rules Manager updates the Rule Tracking Database.
- vii) Workshops. The SME works with the Rules Manager to coordinate and schedule a workshop to solicit input and feedback from the representative group(s).
 - (5) Once a date, location and agenda are set for the workshop, the Rules Manager posts a public notice and the rule proposal on the division's website.
 - (6) The Rules Manager sends an email to members of the appropriate representative group to invite them to the workshop and includes the rule proposal as an attachment or includes a link to the proposal on the website.
 - (7) The division Director requests the DOR EO5 Rule Administrator to use the Department's EO5 Salesforce system to solicit feedback on the rule draft. This includes providing the recipients with the workshop date, location, agenda and rule draft. Any feedback received is forwarded to the appropriate division.
 - (8) The division conducts the workshop and ensures a collaborative exchange of information. Input is received and impacts are identified. All information is taken into consideration as the workshop participants work toward consensus on the proposed rule language. An additional workshop(s) or subgroup(s) may be warranted depending upon the progress made. Once consensus has been reached, or reasonable attempts to do so have been exhausted, the division SME can move forward with a developing final rule draft.
 - (9) The SME provides a status update to the Rules Manager; the Rules Manager updates the Rule Tracking Database.
- b) Formal Rulemaking Phase: Upon completion of the Concept Phase of the rulemaking process, the Formal Rulemaking Phase commences.
 - i) Draft Rule. The SME develops a draft rule for review by the AG's office, forwards the draft to the AG for review, and incorporates any AG input as appropriate. If the proposed rule refers to and incorporates all or any part of a code, standard, guideline or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, consult with the AG regarding the procedure for "incorporation by reference." See also Appendix A for more information about AG Review Parameters.
 - ii) Finalize Rule Draft. The SME finalizes the rule draft, working with the Rules Manager to ensure proper format for filing with the Secretary of State's (SOS) office.
 - iii) Any person may request a regulatory analysis up to fifteen days prior to the hearing. If you are not familiar with the process, consult the AG. The regulatory analysis must be complete five days prior to the hearing.
 - iv) Schedule Rulemaking Hearing. The SME, in coordination with the Rules Manager, determines when the rule proposal is to be set for rulemaking hearing.
 - (1) If it is determined the rule proposal should proceed to rulemaking as soon as possible, the Rules Manager schedules the hearing.
 - (2) If it is determined the rule proposal can wait to a later time, the Rules Manager adds it to the appropriate Regulatory Agenda. See Appendix D for these requirements.
 - v) Notifications. The Rules Manager notifies the appropriate parties of the pending rulemaking hearing. The Rules Manager:
 - (1) Files the rule proposal and notice of hearing with the Secretary of State's (SOS) office. The

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 7 of 15
Current Issue: 1/7/2013			

notice must include the time, place and nature of the public rulemaking proceeding, the authority under which the rule is proposed and either the terms or substance of the proposed rule or a description of the subjects and issues involved. NOTE: Check the SOS's website to ensure that the proposed rule is filed timely prior to the rulemaking hearing. The notice must be filed with the SOS in time to be published by the SOS at least twenty (20) days prior to the hearing.

- (2) Completes the DORA filing process at the same time as the SOS filing. DORA reviews the rule proposal to determine if a cost-benefit analysis is required to assess possible impacts on small businesses. DORA provides the results of its review via email prior to the rulemaking hearing.
 - (3) Notifies the General Assembly if the proposed rule increases any fees or fines, pursuant to HB12-1008. This notification must occur at the same time as the SOS filing or within 10 days following the adoption of an emergency or temporary rule that increases fees or fines. Appendix D covers this in more detail.
 - (4) Posts the rule proposal on the division's website at the same time as the SOS filing.
 - (5) Circulates the rule proposal at the same time as the SOS filing, via email, to the representative group(s), to all persons who have requested notification of the division's proposed rule-making, to the industry, to local government, if appropriate, to the AG, and internally.
 - (6) Provides the rule proposal to the Commission, Board, or Hearing Officer, including a cover memo explaining why the rule is being proposed.
 - (7) Assures that the draft rule together with any proposed statement of basis and purpose, any required cost-benefit analysis and any required regulatory analysis are available to the public at least five (5) days prior to the rulemaking hearing.
- vi) OSPB Review. For rule proposals that fall under EO5 requirements (i.e., rules that create a mandate on local government), the Department submits to OSPB a report generated by the EO5 Salesforce system detailing the local government consultation and feedback that occurred during development of the proposed rule. The Department may not promulgate such rules prior to completion of OSPB's review. See Appendix C for additional detail.
- vii) Conduct Rulemaking Hearing. A public hearing is held on the proposed rule. All hearings must be held by a DOR hearing officer, unless the rule hearing is conducted by a board or commission. NOTE: A record must be maintained of written and oral communications received or considered by the agency in connection with the Rulemaking Hearing. The Department must maintain the official rulemaking record until all administrative and judicial review procedures have been completed.
- (1) The division presents the rule proposal to the hearing officer, board or commission.
 - (2) The hearing officer, board or commission provides the public an opportunity to provide feedback or comment.
 - (3) The hearing officer, board or commission considers the written submissions, oral testimony and any other relevant matter presented.
 - (4) The hearing officer, board, or commission either
 - (a) amends the proposal and closes the hearing,
 - (b) amends the proposal and holds the hearing open for further written testimony,
 - (c) tables the proposal for future consideration,
 - (d) rejects the proposal, or
 - (e) adopts the proposal as presented. Note: The rule must be adopted or rulemaking

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 8 of 15
Current Issue: 1/7/2013			

terminated within 180 days of the last public hearing on the rule.

- viii) **Modify Rule Draft and/or Finalize Rule.** If the proposal is amended by the hearing officer, board or commission, the rule draft is modified accordingly. If the hearing is held open for additional testimony, the hearing officer, board or commission considers all additional testimony provided. Once all additional testimony is considered and any necessary modifications are made to the proposal, the hearing officer, board or commission either
 - (1) amends the proposal, adopts it and closes the hearing,
 - (2) tables the proposal for future consideration,
 - (3) rejects the proposal, or
 - (4) adopts the proposal as presented.
 - (5) The rule as finally adopted must be consistent with the subject matter as set forth in the notice of proposed rule-making filed with the SOS. The statement of basis and purpose and authority to promulgate the rule must be adopted as part of the rule.
- ix) **Execute SOS Process.** Upon close of the rulemaking hearing, the Rules Manager will execute the SOS process.
 - (1) The Rules Manager requests the AG's opinion on the adopted rule through the SOS website. This must be done within 5 days after adoption. Both a clean version and a redline version of the rules adopted by the Commission or Hearing Officer must be submitted with the request for the AG's opinion. The SOS notifies the Rules Manager upon receipt of the AG's opinion.
 - (2) The Rules Manager submits the final rule filing on the SOS website with 20 days of rule adoption.
 - (3) The final rule filing with SOS also accomplishes filing of the rule with the Office of Legislative Legal Services (OLLS).
- c) Implementation Phase:** The final phase of the Department's rulemaking process is to ensure the final rule is implemented.
 - i) The rules on the division's website are updated, if needed, by the Rules Manager.
 - ii) The Rules Manager circulates the final rule to the representative group, to the industry, to local government, if appropriate, and internally.
 - iii) The final rule is flagged by the Rules Manager to include in the annual Regulatory Report, which is required to be submitted on November 1 of each year, beginning with November 1, 2013, pursuant to HB12-1008. Refer to Appendix D for this requirement.
 - iv) The Rules Manager updates the Rule Tracking Database with all relevant information.
- d) Tools and Resources**
 - i) Appendix A – Guidelines for Assessing Attorney General's Involvement in the Rulemaking Process
 - ii) Appendix B – EO2 Rule Review Requirements
 - iii) Appendix C – EO5 Process Guidelines
 - iv) Appendix D - HB12-1008 Process

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 9 of 15
Current Issue: 1/7/2013			

APPENDIX A

Guidelines for Assessing Attorney General's Involvement in the Rulemaking Process

There are three phases in the new rule making process. The first is the conceptual stage. At this stage the Attorney General's involvement is optional. However, in some cases it is prudent to involve the Attorney General's office in this phase. The following are recommended guidelines provided to agencies within the Department of Revenue for the purpose of assessing a need for involvement by the Attorney General's Office in earlier stages of an agency's rulemaking process. While agencies need to qualify legal review needs versus budgetary constraints, the following examples are situations when early AG involvement is advisable:

1. The rule addresses a controversial issue or issues.
2. There are questions regarding authority under statute to promulgate certain rules.
3. Rules are promulgated as the result of litigation.
4. Changes to fees and/or fines are proposed.
5. The rule creates a local mandate.
6. Promulgating any emergency rule.
7. Rules are promulgated to address and/or define problem areas or vague areas within the statute.

During the final rulemaking phase, the Attorney General's Office must be consulted prior to scheduling the hearing, and continued communication may be advisable throughout the rulemaking proceeding depending on the circumstances. For example, if a rule is substantially revised during the course of or following the hearing, it is recommended that the division contact the AG prior to adoption of the revised rule. Following the adoption of the rule, the AG's Office is legally required to issue an opinion stating whether the rule is constitutional and legal.

The Attorney General's office is always available to answer legal questions. When in doubt, it is better to ask questions and resolve legal issues earlier in the process rather than risk legal problems later on in the rulemaking process.

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 10 of 15
Current Issue: 1/7/2013			

APPENDIX B

EO2 Rule Review Requirements

- A. Each division is required to conduct a periodic review of all its existing rules to assess the continuing need for, appropriateness and cost-effectiveness of its rules to determine if they should be continued in their current form, modified or repealed.
- B. Each division should develop a rule review plan that ensures all existing rules are reviewed on an approximate 5-year cycle or 20% each year. The division is required to consider whether each rule:
 1. Is necessary and does not duplicate existing rules;
 2. Is written in plain language and is easy to understand;
 3. Has achieved the desired intent and whether more or less regulation is necessary;
 4. Can be amended to reduce any regulatory burdens while maintaining its benefits; and
 5. Is implemented in an efficient and effective manner, including the requirements for the issuance of any permits or licenses.
- C. Any changes to existing rules must follow the rulemaking process outlined in this DOR Policy DOR.
- D. The entire text of Executive Order 2012-002 may be found here: [2012 Executive Order 002](#)
- E. The Department of Regulatory Agencies (DORA) has developed implementation guidance for EO2.

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 11 of 15
Current Issue: 1/7/2013			

APPENDIX C

EO5 Process Guidelines

EO5 requires that, at the onset of considering potential regulation revisions, the Department shall determine if the regulation could contain a mandate on local government. If such a determination is made, the requirements stated below must be met. Each division should have written procedures in place to ensure compliance with the requirements of EO5. Please see entire text of EO5 here: [2011 Executive Order 005](#).

A. Rule Conception

If a division determines that potential regulation revisions contain a mandate on local government(s), the Division Director requests the Department's EO5 Rule Administrator to send out the Invitation to Participate form via the Salesforce system to designated local government points of contact, local government associations and others, to notify them of the potential regulation. If compliance with the regulation that is creating the mandate is optional for local government, and/or if the local government does not have to incur any direct costs to comply with the mandate, the regulation is still considered a mandate for which compliance with EO5 is required.

B. Rule Development with Stakeholders

During the development phase of the proposed rule, agencies should actively engage designated local government stakeholders to discuss and develop the proposed rule. This engagement should occur prior to filing a rulemaking notice with the SOS.

C. Rule Draft

Once the agency finalizes a draft of the proposed rule, it is shared with all local government and other interested stakeholders. The EO5 Rule Administrator sends out the Local Government Input Questionnaire, along with a copy of the proposed rule, via the Salesforce system to the identified stakeholders in paragraph A above. This questionnaire provides a venue for interested stakeholders to provide their input on the proposed rule before it is finalized and promulgated. The questionnaire must be sent no later than the time the rulemaking notice is filed with the SOS.

D. Office of State Planning and Budgeting (OSPB) Review

After receiving the completed Questionnaires in paragraph C above, and prior to formal promulgation of the regulation, the Department must submit to OSPB a report generated by the Salesforce system detailing the local government consultation and feedback that occurred during the development of the proposed rule. The report should be sent to OSPB at least two weeks prior to the rulemaking hearing. Upon receipt of the report, OSPB will review and evaluate (1) whether the Department adequately consulted with local governments on the proposed rule, (2) the local government feedback, and (3) whether the rule will create a mandate on local government.

E. Rule Finalization and Adoption

The agency may not promulgate the rule prior to the completion of OSPB's review. After OSPB has reviewed the proposed rule and provided feedback, the agency shall finalize and promulgate rules in

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 12 of 15
Current Issue: 1/7/2013			

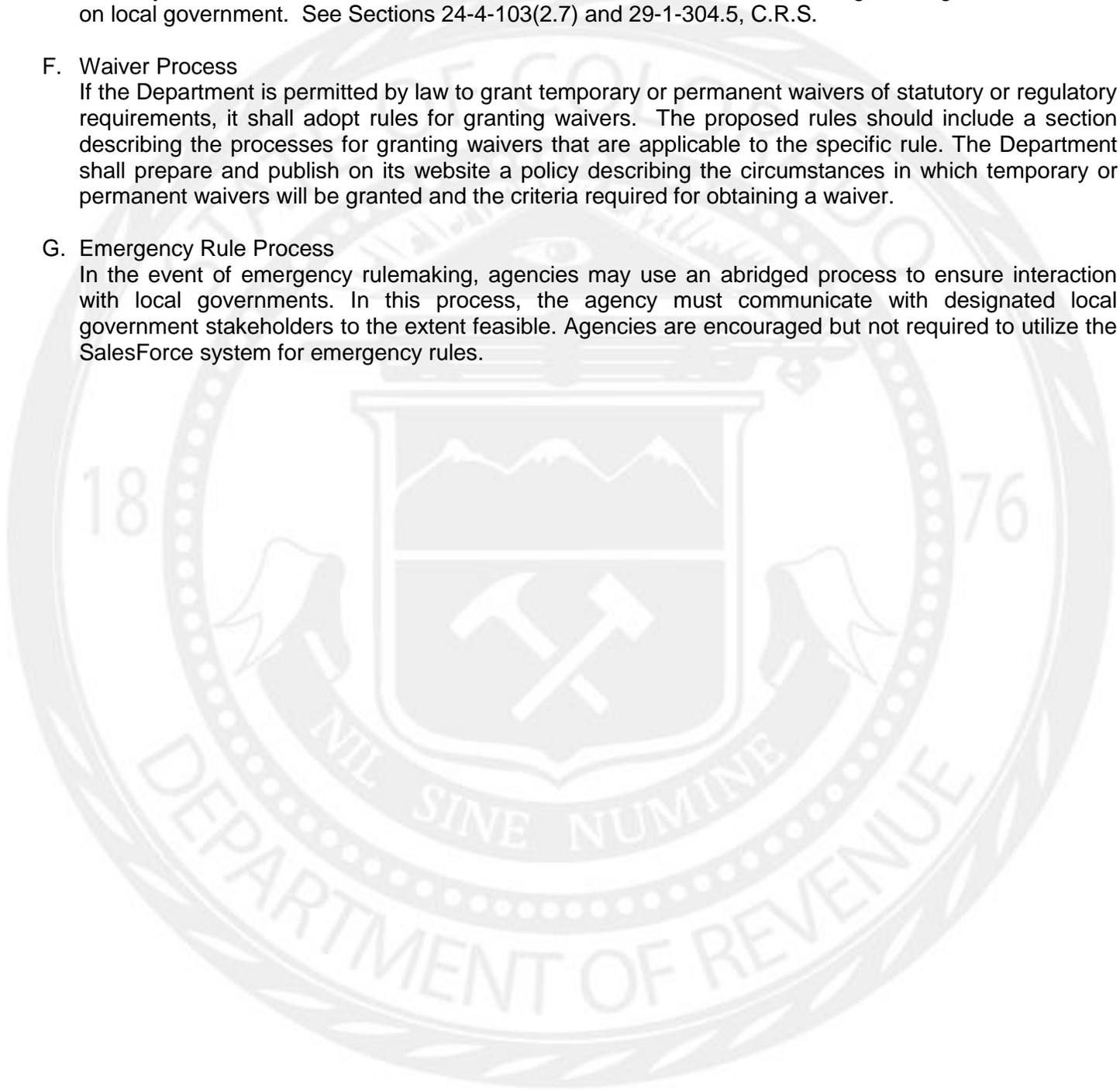
accordance with the State Administrative Procedures Act. The agency should also consult with the Attorney General's Office to assure that the rule is consistent with statutes governing state mandates on local government. See Sections 24-4-103(2.7) and 29-1-304.5, C.R.S.

F. Waiver Process

If the Department is permitted by law to grant temporary or permanent waivers of statutory or regulatory requirements, it shall adopt rules for granting waivers. The proposed rules should include a section describing the processes for granting waivers that are applicable to the specific rule. The Department shall prepare and publish on its website a policy describing the circumstances in which temporary or permanent waivers will be granted and the criteria required for obtaining a waiver.

G. Emergency Rule Process

In the event of emergency rulemaking, agencies may use an abridged process to ensure interaction with local governments. In this process, the agency must communicate with designated local government stakeholders to the extent feasible. Agencies are encouraged but not required to utilize the Salesforce system for emergency rules.



RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 13 of 15
Current Issue: 1/7/2013			

APPENDIX D

HB12-1008 Process Guidelines

HB12-1008 requires the Department of Revenue to provide input to executive branch agencies about proposed rules, directs the Department to establish representative groups to evaluate and comment on proposed rules, requires the Department to notify the General Assembly of any rulemaking that increases fees or fines, and requires the Department to submit its regulatory agendas to the General Assembly. Please see entire text of HB12-1008 [here](#). A summary of the requirements follow.

- A. The Department is required to establish a representative group of persons interested in the subject of rulemaking.
 1. The representative group is invited to participate in informal workshops on the rule proposals under consideration and/or in the public rulemaking proceedings on the proposals.
 2. The Department is required to make diligent attempts to solicit input from representatives of each of the various stakeholder interests that may be affected by the proposed rules.
- B. If the Department proposes a rule to increase fees or fines, the Department must notify each member of the General Assembly via email of such. The Department maintains the email distribution list of these members. The notification must occur at the time of filing the rulemaking notice with the SOS, or within 10 days following the adoption of an emergency or temporary rule that increases fees or fines, and must include the amount of the increase.
- C. Each division must maintain a list of all persons who request notification of proposed rulemaking, including temporary or emergency rulemaking. On or before the date of filing the rulemaking notice with the SOS, the Department is required to mail/email the notice of proposed rulemaking to all persons on such list. In addition, the notice must be mailed/emailed to the representative group.
- D. The Department is required to prepare an annual Regulatory Agenda.
 1. Beginning on November 1, 2012, and each November 1 thereafter, the Department must prepare a Regulatory Agenda and
 - a. submit it to the staff of Legislative Council,
 - b. make the agenda available to the public by posting on the Department's website, and
 - c. submit it to the SOS for publication in the Colorado Register.
 2. The Regulatory Agenda must contain the following information:
 - a. a list of new rules or revisions to existing rules that the Department expects to propose in the next calendar year,
 - b. the statutory or other basis for adoption of the proposed rules,

RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 14 of 15
Current Issue: 1/7/2013			

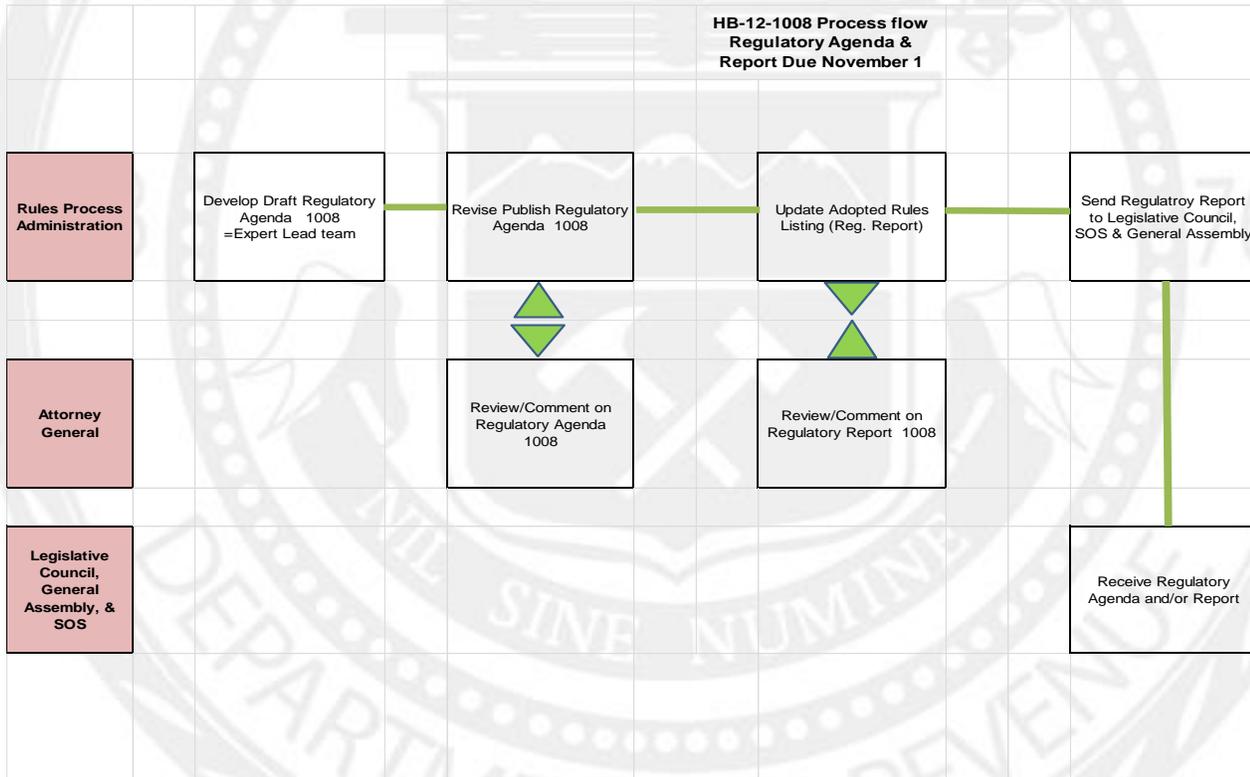
- c. the purpose of the proposed rules,
- d. the contemplated schedule for adoption of the rules, and
- e. an identification and listing of persons or parties that may be affected positively or negatively by the rules.

3. The Department develops the Regulatory Agenda from the information contained in the standardized Rules Tracking Database forms maintained by each division.

4. The Department will present its Regulatory Agenda in the subsequent legislative session.

E. Beginning on November 1, 2013, and each November 1 thereafter, the Department must submit a Regulatory Report to the Legislative Council. This report is a list and brief summary of all permanent and temporary rules actually adopted since the previous Departmental Regulatory Agenda was filed.

F. Process Flow



RULES MANAGEMENT POLICY AND PROCEDURES

Colorado Department of Revenue	Policy # DOR-505	Date: 1/7/2013	Version 1.0
Owner: Colorado Department of Revenue	Approved by: Barbara Brohl The Executive Director of the Department of Revenue		Page 15 of 15
Current Issue: 1/7/2013			

