

Rulemaking Process

Every state agency in the Executive Branch must adhere to the rulemaking process outlined in the Administrative Procedure Act (APA), unless explicitly exempted. When an agency wants to promulgate a new rule or an amendment to an existing rule, it must first file a Notice of Proposed Rulemaking with the Secretary of State. Agencies must also send a copy of the proposed rule to the Office of Policy, Research and Regulatory Reform. Rules are sent to the Attorney General's Office to make sure they align with the statutory authority granted to the agency.

The public is allowed to comment on the proposed rule. The agency must accept and consider comments from the public before that agency can adopt, amend or otherwise change any regulation not explicitly exempted from the APA.

At the hearing on the proposed rule, the agency accepts written and oral testimony about the rule. Once the hearing ends, the public is no longer able to offer comments on the proposed rule unless the agency alters the proposed rule in a manner that requires the process to begin again.

Following the hearing on the proposed rule, the agency has 180 days to file adopted rules with the Secretary of State. The Secretary of State publishes the rules in the Colorado Register. Adopted rules go into effect twenty days after publication or on such a later date as is stated in the rule.

Colorado Administrative Procedure Act

Phase 1: Pre-Notification & Stakeholder Engagement

Rulemaking Contemplation: The agency determines a need for a new rule or amendment. A public announcement may be made at this time.

Stakeholder Group Formation: The agency **must** establish a representative group of interested participants (stakeholders) to submit views or participate in informal conferences.

Local Government Consultation: If the rule creates a state mandate on local governments, the agency must consult with elected officials and provide a description of these consultations to the Director of the Office of State Planning and Budgeting to receive a **Notice of Compliance**.

Legislative Notification: If the rule increases fees or fines, the agency must notify every member of the General Assembly.

Phase 2: Filing and Formal Notice

Filing with Secretary of State: The agency files a Notice of Proposed Rulemaking for publication in the Colorado Register.

Submission to Department of Regulatory Agencies (DORA): At the same time, the agency submits the draft rule and a "plain language" statement to the Executive Director of the DORA.

Cost-Benefit Analysis (CBA) Request: * Within 5 days of publication, any person may request a CBA.

If DORA determines a CBA is required, the agency must complete it at least 10 days before the hearing and post it on their website.

Phase 3: Public Review and Analysis

Notice Period: The formal public hearing cannot be held less than 20 days after the notice is published in the Colorado Register.

Regulatory Analysis Request: Upon request by any person at least 15 days before the hearing, the agency must issue a detailed regulatory analysis.

Public Inspection: All studies, research data, and documentation used as the basis for the rule must be made available for public inspection.

Document Availability: The proposed rule, statement of basis, statutory authority, and regulatory analysis must be available to the public at least 5 days prior to the hearing.

Phase 4: The Rulemaking Hearing

Conducting the Hearing: The agency holds the hearing to receive written data and oral presentations.

Building the Record: The agency must base the rule on the official record (testimony, exhibits, written comments, etc.).

Compliance Review: The agency ensures the rule:

Demonstrates a specific need.

Has proper statutory authority.

Is stated clearly and simply.

Does not conflict with other laws.

Phase 5: Final Adoption and Legal Oversight

Attorney General Review: Before adoption, the rule must be submitted to the Attorney General (AG) for an opinion on constitutionality and legality.

Formal Adoption: The agency must adopt the rule (or terminate proceedings) within 180 **days** of the last public hearing.

Legislative Legal Services (OLLS) Filing: Within 20 days of the AG's opinion, the rule must be submitted to the OLLS for review of rulemaking authority.

Publication & Effective Date: * The final rule is published in the Colorado Register.

The rule becomes effective 20 days after publication (or a later date if specified).

Emergency Rulemaking

If an agency finds that immediate adoption is **imperatively necessary** for public health, safety, or welfare, or to comply with law:

They may skip standard notice and hearing requirements.

The rule is effective for a maximum of **120 days**.

The rule must eventually go through the permanent process (Steps 1–18) to remain in effect beyond that window.

Colorado Register

Colorado Administrative Procedure Act