

## **GUIDANCE FOR EXECUTIVE ORDER D 2011-005**

### **Enhancing the Intergovernmental Relationship**

In an effort to enhance the partnership between state and local government, Governor Hickenlooper signed Executive Order D 2011-005, "Establishing a Policy to Enhance the Relationship between State and Local Government." The Executive Order requires state agencies to consult with and engage local governments prior to the promulgation of any rules containing mandates. To ensure compliance with this Executive Order, state agencies are required to provide the Governor's Office of State Planning and Budgeting (OSPB) the following:

"A description of the nature and extent of the agency's consultation with representatives of the local governments that would be affected by the proposed mandate, the nature of their concerns, any written communications or comments submitted to the agency by such units of local government, and the agency's reasoning supporting the need to issue the regulation containing the mandate."

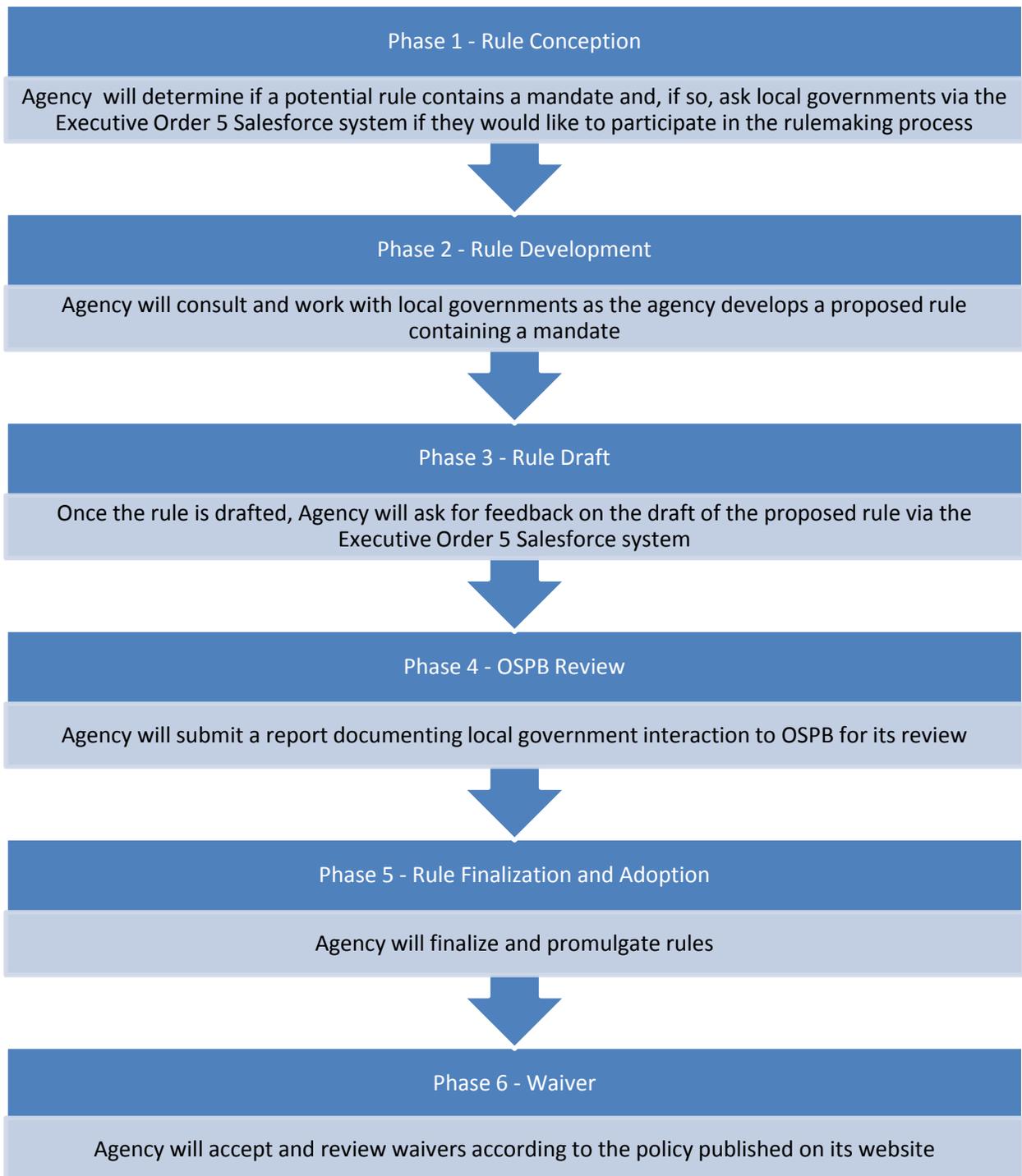
This guidance serves to:

- 1) Establish a general process for documenting agency consultation with local governments and related stakeholders, and
- 2) Identify specific documentation for submission to OSPB.

The process established by this guidance is designed to be user friendly and flexible, allowing agencies to easily incorporate it into their existing processes. The goal of the process is to ensure achievement of Executive Order D 2011-005's purpose, which is to prevent excessive or unnecessary regulation of local government through increased intergovernmental communication.

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**INTERGOVERNMENTAL ENGAGEMENT PROCESS**



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Phase 1 – Rule Conception

At the onset of considering potential regulation revisions, the agency shall determine if the regulation could contain a mandate on local government. Upon such a determination, the Division Director should request an agency Rule Administrator for EO D 2011-005 to contact designated local government points of contact, as well as local government associations and others, to notify them of the potential regulation. Agencies should use the Executive Order 5 Salesforce system to send emails asking Local Governments if they would like to participate in the rulemaking process.

Phase 2 – Rule Development with Stakeholders

During the development phase of the proposed rule, agencies should actively engage designated local government representatives to discuss and develop the proposed rule. Such engagement should occur prior to filing a notice pursuant to § 24-4-103(2.5)(a) C.R.S.

Phase 3 – Rule Draft

Once the agency finalizes a draft of the proposed rule, it should be shared with all stakeholders as outlined in § 24-4-103(2.5)(a) C.R.S. In addition, agencies should again use the Executive Order 5 Salesforce system to send Local Government Input Questionnaires to those local governments that expressed interest in a proposed rule. This Questionnaire provides a venue for interested local government stakeholders to provide their input on the proposed rule before it is finalized and promulgated.

Phase 4 – OSPB Review

After receiving completed Questionnaire(s) but prior to formal promulgation of the regulation, agencies should submit to OSPB a report generated by the Executive Order 5 Salesforce system detailing the local government consultation and feedback that occurred during development of the proposed rule. Once generated, the OSPB report should be automatically emailed to OSPB.

Upon receipt of the report, OSPB will review and evaluate two aspects of the report. First, OSPB will evaluate whether the agency adequately consulted with local governments on the proposed rule. Second, OSPB will evaluate local government feedback on the proposed rule and whether the rule will create a mandate on local government.

OSPB will take up to two weeks to review the report. The agency may request that OSPB take less time in reviewing the report.

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After completing its review, OSPB will respond to the agency with any questions or concerns. Upon completion of its review, OSPB will email the agency informing the agency to proceed with the rule making process.

Also during this phase, OSPB will incorporate additional Governor's Office staff as appropriate.

Phase 5 – Rule Finalization and Adoption

After OSPB has reviewed the proposed rule and provided feedback, the agency shall finalize and promulgate rules in accordance with the State Administrative Procedures Act. Note the agency should not promulgate the rule prior to completion of OSPB's review.

Phase 6 – Waiver Process

Agencies that are permitted by law to grant temporary or permanent waivers of statutory or regulatory requirements shall adopt rules for granting waivers. The proposed rule should include a section describing the processes for granting waivers that are applicable to the specific rule.

Where the legal authority to grant a waiver does not specifically identify the required criteria to obtain a waiver, the proposed rule could include this suggested language: *“Local governments may request temporary or permanent waivers of regulatory requirements pursuant to Executive Order D 2011-005. To obtain a waiver the affected local government must demonstrate that the requirements in these regulations (1) conflict with other statutes or regulations, (2) are unduly burdensome, or (3) describe alternative means of accomplishing the purpose and goal of the regulations. Supporting documentation should be included with the waiver request, such as a cost benefit analysis.”*

Agencies shall prepare and publish on their website a policy describing the circumstances in which temporary or permanent waivers will be granted, and the criteria required for obtaining a waiver. Agencies could utilize this one process for waiver requests on existing and new rules.

Agencies should incorporate the following criteria in their waiver application processes:

1. Identify person to whom waiver requests should be submitted. This may be the agencies's Executive Director or a Division Director.
2. Require the requestor to identify specific requirements in the regulations that conflict with other statutes or regulations or demonstrate why they are unduly burdensome.
3. Require the requestor to include supporting documentation or a cost-benefit analysis to justify the waiver request. This includes but is not limited to demonstrating or proposing alternate methods for compliance with the regulations.
4. Acknowledge receipt of waiver requests within 7 days of receipt, along with written notification to applicant that a decision will be rendered within 90 days of receipt.

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5. Provide the applicant with written notice of decision and the reasons for its decision within 90 days of receipt.

**EMERGENCY RULE PROCESS**

In the event of an emergency rulemaking, agencies may use an abridged process to ensure interaction with local government. In this process, agencies must communicate with designated local government representatives to the extent feasible. Agencies are encouraged but not required to utilize the Executive Order 5 Salesforce system for Emergency Rules.