

# THE RULE PROMULGATION PROCESS

## (Old Process v. New Process)

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### **Overview:**

The Bureau of Construction Codes (BCC) completed a Lean Process Improvement (LPI) with the intention to reduce the promulgation time between when a ruleset is opened, to the final draft ruleset sent to the Office of Regulatory Reinvention (ORR).

This LPI had certain expected outcomes and project goals, this included:

- Reviewing the current process; creating a streamlined process that is consistent throughout all of the disciplines; and to ensure the process is in alignment with the statutory authority.
- Building a process that is timelier, with a goal of a 50% reduction in processing time, beginning with “opening the rules” to the completion of draft rules to be provided to ORR.
- Both exploring, and then creating, a process for customer industry to have an opportunity to request a code/rule change, while providing justification for the change.
- Improving the efficiencies of the promulgation process by streamlining and creating a consistent process.
- Reducing (or even eliminating) inconsistencies in interpretations/definitions between the statutes versus code books.
- Improving the justifications for code/rules changes, which will better support the ORR process and ensure proper compliance with the Administrative Procedures Act (APA).

### **Current “As Is” Process:**

The process for rule and code promulgation is completed by a committee made up of 15-20 board members and non-board members. These members meet to compile ideas multiple times throughout the year and vote on any changes to be made. This process can be very extensive taking anywhere from 36-41 weeks to complete. Additionally, each discipline (i.e. electrical, plumbing, mechanical) go through their respective process differently.

The LPI team spent a large portion mapping out what the current rule promulgation process looks like from beginning to end. The following is an explanation regarding each step of the current process:

### Opening Up the Rules

This initial process generally takes **2-3 weeks (10-15 business days)** to complete. Generally the applicable statute or statutory amendment will necessitate the current ruleset to be updated or revised. Under this scenario, the Rules Specialist (Specialist) will work with the Division Manager to craft a Request For Rulemaking (RFR), explaining to the Department of Licensing and Regulatory Affairs' (LARA) Office of Policy and Legislative Affairs (OPLA) and ORR a justification why the rules need to be amended.

The RFR will start in BCC, be provided to OPLA and upon OPLA's satisfaction with the content of the RFR, will submit to ORR for approval. In the unlikely event ORR were not to approve the RFR (theoretically due to lack of information with the RFR document), it would be returned to BCC to provide supplemental information and background, as needed. Assuming the RFR is approved by ORR, it will be assigned a rule number and be returned to the Specialist who will begin the promulgation process.

### Committee Members Identified & Committees Scheduled

The next **two months (8 business weeks)**, the Specialist has two concurrent tracks upon which she must now proceed. First, the Specialist will ensure a code change template is available on the BCC website which will allow for comments regarding which (if any) code provisions should be changed, while also starting to work with the Division Managers to obtain from them a list of individuals the DM believes could serve on a committee to review the proposed changes to their respective code. Upon receipt of this list of names, the Specialist will work through the list to ensure a sufficient number of participants are amenable to serving on the committee. No further action can or will occur until enough participants agree to serve in this capacity. Once the Specialist is able to secure enough participation to form a working committee, the Specialist will notify those members of their selection to the committee and will subsequently order codebooks for each committee member. BCC covers the costs of the codebooks.

### Committee Meetings Held

Thus a **four month (16 week)** long endeavor to hold committee meetings occurs: committee assignments of chapter-to-code comparisons based upon each member's preference or code familiarity; maintain and track outside change form submittals from the public; ensure invitations to those members of the public who provided a change suggestion to relevant meetings; review/report/discuss the findings related to current code/standard to the proposed changes in said code/standard; debate the justification for proposed changes; and finally the committee vote for the proposed changes is facilitated by BCC on behalf of the members of the committee.

### Code/Rules Get Drafted & Posted

This typical **six week** time frame consists of two inter-connected phases: First, is the time it takes for the Specialist to draft the newly formed rules and proof them to ensure their accuracy, specifically as it relates to the changes voted upon by the committee (traditionally, **2-3 weeks**). Upon completion of the drafting and proofing process, the Specialist will provide the draft rules

to the appropriate committee for their review and response (with a **1 week timeline** to provide said response, allotted). Thirdly, the DM will then receive the drafted rules, with any changes made pursuant to committee member review, and the DM will be allocated approximately **1-2 weeks** to review and make any changes necessary to effectuate the changes pursuant to the committee meetings held some four weeks prior. Lastly, the BCC Administration is given final review authority to determine the statutory authority, as proposed, as well as the realistic ability for the Bureau to fully administer the Code as authority by the draft rules (this is allowed a **1-2 week timeline** for completion).

#### OPLA Receives Draft Rules

After approval by the committee members, Division Manager, and the BCC Administration, the Specialist will then submit the draft rules to OPLA for their informal review. It is not uncommon for this process to take upwards of **four weeks** as OPLA's responsibility requires a back-and-forth question process regarding the proposed changes, clarifications needed and technical aspects reviewed. After the completion of the OPLA review, the draft rules are submitted to ORR.

#### Summation:

This is a 36-41 week endeavor, and one which occurs even before ORR and JCAR have their opportunity to formally review the draft rules. This 8-month process merely delays the implementation of public policy, predicated upon a group of BCC selected technical experts who each may have their own interests regarding why a Code (and its Rules) should or should not contain specific requirements.

While the committee votes on the entire rule set, they are not tasked with reviewing the complete proposed rule set. There is not a consistent mode for voting (i.e. individual changes versus voting on the entire code). Division Managers must be more involved in the rule change initiation and proofing process to ensure accountability. The Bureau subsequently dedicates too many business hours and expenses to rule promulgation, to the detriment of enforcement actions against industry-wide bad actors.

Even though an argument can be made that each committee is made up of various technical experts providing a broad and balanced review, it inevitably leads to an inconsistent rule development process resulting in conflicts. From a historical and current perspective, the end product of this process for updating codes/rules often generates conflicts with statutory requirements and previously promulgated rules which begs for more transparency and public scrutiny.

## Proposed “To Be” Process:

To accomplish the expected outcomes, areas were identified where the process is unduly burdensome, complicated, or time-consuming. The committee process was identified as the longest part of the Bureau’s portion of the promulgation process.

Generally:

- Clarified responsibilities for the following roles: Specialist, Division Managers, Bureau Support Staff, Chairperson of Relevant Trade which is either a Gubernatorial appointed or board/commission elected position, and Advisory Rules-Meeting Participants.
- The Division Manager will now begin the process of notifying the Specialist that an RFR is needed. Likewise, the DM will be responsible for scheduling advisory rules-meetings, keeping the Chair on a strict timeline to continue moving the process forward in a timely manner and will utilize support staff to help effectuate these goals. Division Manager will now contact the respective Trade’s Chairperson regarding their ruleset.
- Will now include an “Advisory Rules Meeting” to be treated as a “pre-public hearing” as is done once the draft rules are informally submitted to ORR.

## Opening Up the Rules

Much like the “As Is” process, the “To Be” process will maintain some similar steps, albeit, with the onus placed upon the DM, instead of the Specialist. The logic is that the DMs should know when their respective statutes or codes have been amended or updated and whether or not a ruleset would need to be opened. Therefore, the DM will submit a request to the Specialist to submit a RFR to OPLA/ORR. The DM will also utilize the current Administrative Rules (provided on our website), thus allowing them to begin making comparisons between the current and new Code provisions. This process will likely take **15 business days** to complete.

## Rule Drafting

The Specialist will notify the DM regarding the ORR Rule Number and will submit a request to IT to update the Rules website with information regarding the open ruleset and post the Code (Rule)Change Proposal Form. While the DM and Chair begin their process, the Specialist submits a request to IT to pull (stakeholders) list serve email from web and to send out email blast, with a copy to “BCC Allstaff”. This email blast will include notice of the open Ruleset and direct recipients to visit the Rules website for more information and updates throughout process. Concurrently the DM will address the applicable Board/Commission at a regularly scheduled meeting informing them that the Bureau is seeking their input regarding the new code. Direction by the Bureau will be provided so that the Board/Commission can develop proposals as subcommittees and/or with other industry experts. This will subsequently allow the Board/Commission, interested stakeholders and the public four **weeks** to craft their comments/suggestions to the Bureau.

Within one-week after receiving all proposals, the DM will contact Chairperson (or designee) for participation in the drafting of the rules, particularly taking into consideration the Rules (Code) Proposed Change Forms that were received by the industry/stakeholders/public. Concurrently, the Specialist will begin to draft the Regulatory Impact Statement (RIS), which includes working in conjunction with Managers.

This process will move forward with the following three steps occurring concurrent to one another: the DM continues/completes rule draft with chairperson/designee; the DM completes a Rules Outline Table; and there will be an Advisory Rules Meeting scheduled, open to the public. During this process the rules with all proposed changes will be published on the BCC website and another email blast will sent to stakeholders to advise them of the proposed ruleset update based upon comments received.

The Specialist, on the other hand, will have her own responsibilities to move the process forward, they include: putting the draft rules, provided by the DM, into traditional strike and bold format; she will provide a draft to the Administrative Law Specialist (ALS) for legal review and ensuring statutory compliance; the Specialist will also provide a draft to IT to be posted to the Rules website and to be emailed to the stakeholders list.

The culmination of which becomes an Advisory Rules Meeting held to discuss the rules draft. This entire rule drafting process is expected to take between **8 – 10 weeks** to complete.

#### Code Rules Edited

Once the feedback has been received from the stakeholders via Board/Commission input, public comments received and advisory meeting, the Bureau's Administration, the ALS, the appropriate DM for the Trade/Code, and the Specialist will meet to discuss the comments from the Advisory Rules Meeting. This allows for an evaluation step to determine if the proposed changes have merit and whether proper justification has been provided by the interested party. From there, the Specialist will do any edits, if deemed necessary, based on the internal meeting. Alternatively, if there are edits, the

Specialist will provide the edited version to the DM to discuss with the Chairperson (or designee). Finally, the DM works with chairperson and Specialist to confirm all proofed-edits are correct/complete and the ALS will review the edits to ensure statutory compliance. This step will take approximately **2 weeks** to complete, less time if there are no edits required.

#### Finalization of the RIS

If it hasn't been completed, the Specialist and Division Manager will work together to finalize RIS, at which point the RIS draft and draft rules are sent to OPLA, which are subsequently sent to ORR by OPLA. The time it takes OPLA to review the RIS and rules sent to ORR is traditionally **4 weeks**, therefore, we have maintained this timeline as it ultimately is out of the hands of the Bureau.

### Summation

This process will give the applicable Board/Commission, stakeholders, and the general public the opportunity to be involved in the process at three different stages: The general public continue to maintain their initial opportunity to propose their suggested changes to the Bureau when the RFR is approved by ORR, they will have an opportunity to present their suggestions during the Advisory Rules Meeting, and finally, they will be able to present their suggestions for a third-time at the regularly scheduled public hearing.

The value to this new process is it places more responsibility on the Division Managers to help shepherd the potential rule changes, respective to their trade, through the process. More so, by working with the Chair of the respective board relative to their trade, that person is the representation of the trade working with the Bureau. There is less self-dealing built into this process which establishes an even playing field for the industry, thus it eliminates additional costs to the general public by picking winners and losers. Additional benefits are the BCC incurs less expenses by not having to cover purchasing code book costs of the committee members. Finally, a legal review of the rules are conducted by BCC to help resolve conflicts with the act, rules, and national codes before the code/rules are promulgated.