

# Requests to Review a Rule Out of Cycle

As adopted by the COLS March 6, 2015

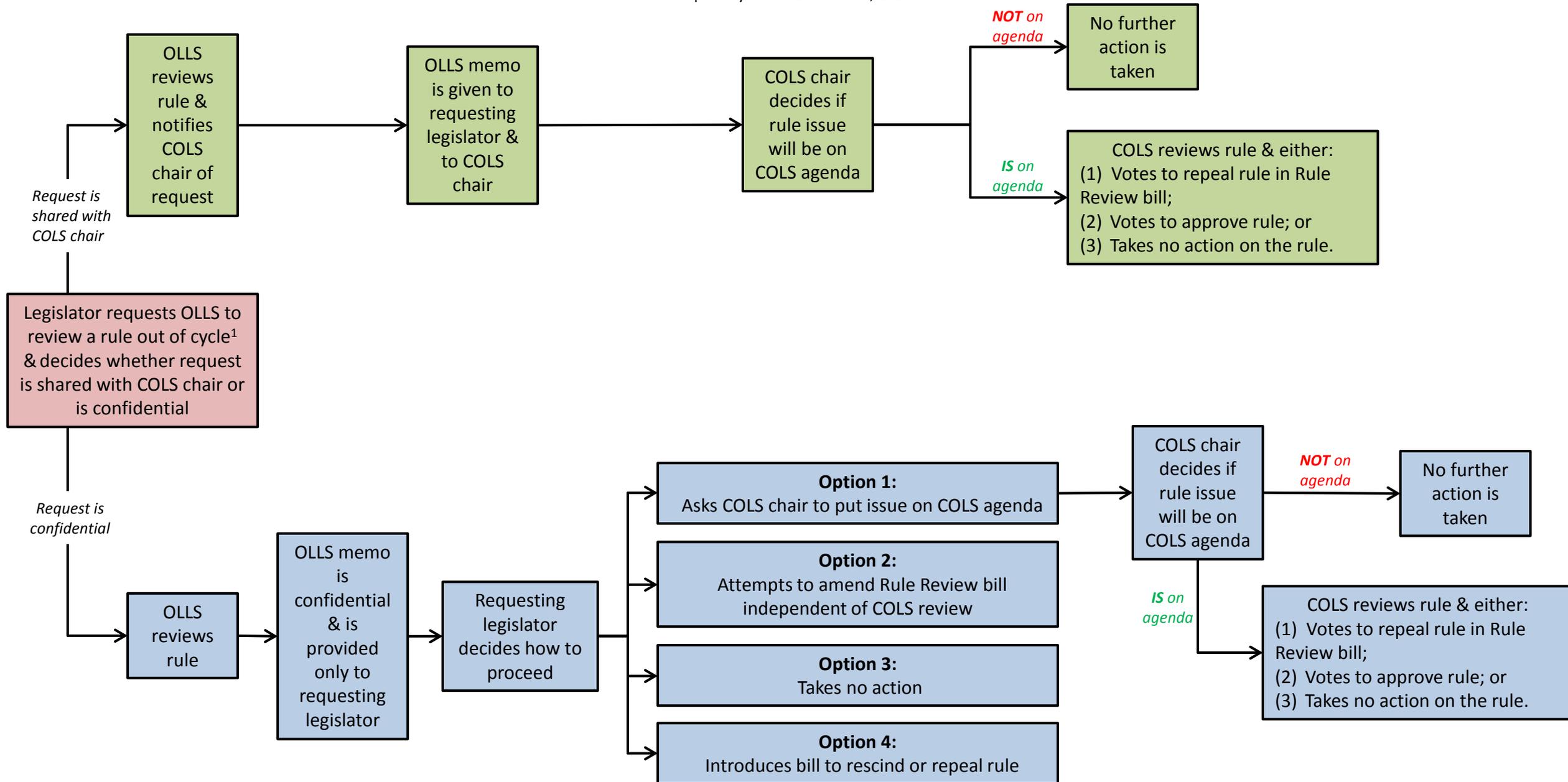
- 1) As explained in the section in the handbook on the Rule Review Process, under the "Administrative Procedures Act", article 4 of title 24, C.R.S., all rules adopted or amended during the one-year period that begins each November 1 and continues through the following October 31 expire on the May 15 that follows the one-year period, unless the General Assembly passes a bill to postpone the expiration. This one-year period followed by an expiration date is referred to as the "rule review cycle," and rules that are adopted or amended and reviewed during this period are referred to as being "within cycle."

On occasion, the OLLS is asked to review a rule that was not adopted or amended during the current rule review cycle or asked to re-review a rule that the OLLS found to be within the agency's authority during the current rule-review cycle. Rules that are not within the current rule review cycle are referred to as "out-of-cycle rules." This section addresses the process by which the OLLS will review out-of-cycle rules.

- 2) Any legislator, regardless of whether he or she is a member of the COLS, may ask the OLLS to review a rule out of cycle. When the OLLS receives the request, the staff will explain to the requesting legislator the procedures described in this section and that the staff will notify the Chair of the COLS of the request **unless** the requesting legislator requests confidentiality.
- 3) The OLLS will review the out-of-cycle rule using the same grounds specified in the APA for an in-cycle rule: does the rule lack statutory authority; does the rule exceed the agency's statutory authority; or does the rule conflict with the statutes or the constitution. When reviewing the out-of-cycle rule, the OLLS may need to discuss the rule and any identified issues with the state agency that adopted the rule, in which case the staff will keep confidential the name of the requesting legislator.
- 4) After the review, the OLLS staff will prepare a rule review issue memo outlining its findings on the rule review issue. If the OLLS staff finds that the rule is in conflict with statute or lacks statutory authority, the OLLS will recommend that the COLS repeal the rule. If the OLLS staff finds that the rule is authorized, the OLLS will recommend that the COLS take no action on the rule.
- 5) *If the requesting legislator did not request confidentiality*, the OLLS staff will give a copy of the rule review memo to the requesting legislator and to the COLS chair. The COLS chair has the discretion to decide whether the rule review issue will be scheduled on a future COLS agenda.
- 6) *If the requesting legislator requested confidentiality*, the OLLS staff will give a copy of the rule review memo only to the requesting legislator. The requesting legislator has the option to ask the COLS chair to schedule the issue on the COLS agenda. The COLS chair has the discretion to decide whether the rule review issue will be scheduled on a future COLS agenda. The requesting legislator also has the option to take no action, to attempt to amend the Rule Review Bill, or to introduce a separate bill to rescind or repeal the rule.
- 7) If an out-of-cycle rule issue is scheduled before the COLS and the OLLS staff has taken the position that the rule is authorized, the OLLS staff will explain its conclusion regarding the authority for the rule at the meeting. The burden of persuasion that the rule is not authorized will be on the legislator who requested the review and continues to assert that the rule is not authorized.
- 8) At a meeting on an out-of-cycle rule, the COLS will have at least three options that it may exercise by majority vote: 1) Find that there is no issue with the rule and take no action on the rule, which has the effect of continuing the rule; 2) Find that there is an issue with the rule and vote to repeal the rule in the Rule Review Bill, effective the following May 15; or 3) Agree to consider the rule during the regular review cycle that applies to the rule.
- 9) Regardless of the action the COLS takes, the Rule Review Bill is subject to the legislative process and any legislator may try to amend the bill on second or third reading in either chamber to address the out-of-cycle rule.

# COLS Policy for Requests to Review a Rule Out of Cycle

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<sup>1</sup> Based on §24-4-103 (8), C.R.S., a rule review cycle runs from November 1 to November 1 and the rules adopted or amended during that one-year period automatically expire on the following May 15, unless extended by the General Assembly through the annual Rule Review Bill. An out-of-cycle rule means a rule that is not within the current rule review cycle. Because an out-of-cycle rule is not subject to the statutory automatic expiration, if the COLS decides that an out-of-cycle rule is in conflict with statute or lacks or exceeds statutory authority, the action that the COLS takes is to repeal the rule.