

Overview of the Rule Making Process

With the passage of [Executive Order 10-06](#) and [guidelines from OFM](#), only rules that meet specified exceptions can proceed in rule making through December 31, 2011. All rules that were in process before the executive order was passed were suspended until an exemption was approved. An exemption may only be submitted if it meets one of the following criteria:

- Required by federal or state law or required to maintain federally delegated or authorized programs;
- Required by court order;
- Necessary to manage budget shortfalls, maintain fund solvency or for revenue generating activities;
- Necessary to protect public health, safety, and welfare, or necessary to avoid an immediate threat to the state's natural resources

If an exemption is approved, the process described below applies.

The Regular Rule Making Process

All proposed WAC changes must meet the requirements of [DSHS Administrative Policy 11.09, DSHS Rule Making](#).

Most DSHS rules adopted each year follow the regular steps required in state rule making laws and rules.

In addition, you must follow the requirements outlined in [DSHS Administrative Policy 11.09](#), including the required draft review, when following the regular rule-making process.

Below are the required steps in the four phases that make up the regular rule making process. Click on the links provided to learn more about each phase.

Phase 1: [Initial Planning and Public Notice](#)

Benchmark: [CR-101 notice](#)

Phase 2: [Rule Development](#) and [Required Draft Review](#)

Benchmark: [DSHS 02-003, Review and Approval form](#)

Phase 3: [Formal Proposed Rules](#)

Benchmark: [CR-102 notice](#)

Phase 4: [Permanent Rule Adoption](#)

Benchmark: [CR-103P notice](#)

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If an **emergency rule** is requested, the following procedure must now be followed due to the passage of Executive Order 10-06:

1. Rule writer obtains written confirmation of review by the Assistant Attorney General (AAG) for the emergency justification;
2. Obtain Division Director approval;
3. Rule writer submits a request for exemption from the Executive Order to the Assistant Secretary for signature;
4. If approved, rule writer submits emergency rule packet to Rules and Policies Assistance Unit (RPAU);
5. RPAU sends the packet to the Secretary, Chief of Staff, Chief Financial Officer, OSSD Division Director, and the Chief of the Office of Administrative Resources, and works with the Secretary's office to approve filing; and
6. If approved, the CR-103E is filed in the state register within two to three days.

After the emergency WAC is approved, the regular rule making process begins in order to make the WAC permanent. All emergency WACs expire after 120 days.

Frequently Asked Questions

Q: *How long will it take to amend a WAC?*

A: This process varies from 5 months to several years depending on many factors. After the Initial Planning and Public Notice (CR-101) is filed, internal stakeholder work should begin and the amendments to the WAC should be submitted. This part of the rule process can vary greatly in time.

A Small Business Economic Impact Statement (SBEIS) and Cost Benefit analysis may need to be developed. A SBEIS is a type of economic analysis that may be required depending on whether the proposed rule has a [more than minor](#) impact on small businesses.

The SBEIS must include:

- Which costs will have a disproportionate economic impact on small businesses when compared to large businesses;
- What a program plans to do to help mitigate (lessen) disproportionate costs to small businesses; and
- How many jobs (estimate) will be created or lost due to small businesses complying with rules.

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A SBEIS is filed with the [formal proposed rule notice](#) (CR-102) for publication in the Washington State Register.

A Cost Benefit Analysis (CBA) must also be considered. Specifically, under RCW 34.05.328(1)(c), you must show that the probable benefits of a [significant legislative rule](#)—unless [exempt](#)— are greater than its probable costs. You must take into account both [qualitative and quantitative](#) benefits and costs. A CBA is filed with the [formal proposed rule notice](#) (CR-102) for publication in the official rule making file.

The CBA and SBEIS development will impact the timeline in the rule making process.

After the WAC changes have been submitted, a formal draft of the WAC, CBA, and SBEIS is sent to all internal and external stakeholders. Depending on how many comments the Division receives and has to address, this phase can greatly delay the process. The comments that are submitted may entail many discussions, meetings, and formal responses which may or may not create additional changes to our proposed WAC. If significant changes are made to the WAC, it will then need to be sent to all stakeholders for additional review.

After all comments are addressed, a CR-102 notice, SBEIS, and CBA (if needed) will be filed to schedule a public hearing. The public hearing process must follow these guidelines:

- RPAU must schedule your public hearing date at least 20 days after the [publication date](#) in the Washington State Register of your:
 - Formal proposed rule-making notice (CR-102);
 - Proposed rule text and attachments; and
 - [Small Business Economic Impact Statement](#) and CBA, if required.
- RPAU sets 24 regular hearing dates throughout the year. Hearings are scheduled to coincide with the 20-day waiting period following the 24 published issues of the State Register. See the [RPAU CR-102 calendar](#) to view the scheduled hearing dates.

Q: *When will the WAC changes be displayed after a CR-103P after a CR-103P (permanent rule notice) has been filed?*

A: It can take from 4 to 11 weeks for the [Office of the Code Reviser](#) to file the official WAC changes after the CR-103P is filed.

Q: *How can I find out what stage WACs are in during the rule development process?*

A: For rules that affect your program, the DDD Rules Program Manager will keep you notified as to what stage of development the WAC is in.

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Additionally, all WAC updates are posted to the rule making website on the DDD Rule Making SharePoint site where you can submit comments and questions. You can also e-mail Meredith Kelly kellymj@dshs.wa.gov with any suggestions.



WAC sharepoint updates.mht