

Administrative Policy No. 11.09

Subject: DSHS Rule Making

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Authorizing Source: [Chapter 34.05 RCW](#), Administrative Procedure Act
[Chapter 19.85 RCW](#), Regulatory Fairness Act
[Chapter 1-21 WAC](#), Rule Making
[Governor's Executive Order 05-03](#), Plain Talk

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Approved By: **Original signed by Pearlette J. Ramos**
Senior Director, Office of Justice & Civil Rights

Purpose

The Department of Social and Health Services (DSHS) must develop, amend, review, propose, repeal, and adopt rules consistent with related laws, executive orders, and this policy. This policy establishes DSHS requirements for adopting rules into the Washington Administrative Code (WAC).

The policy covers management approvals as well as responsibilities of administrations, rule writers, the rules and policies assistance unit (RPAU), and the regulatory improvement advisory committee (RIAC).

Scope

This policy applies to all DSHS staff who write, review, or approve rules.

Additional Guidance

- [DSHS online rules manual](#) (includes procedures, best practices, tools, and examples)
- [RPAU intranet](#) and [RPAU internet](#) websites
- RPAU rule making training

- [DSHS Style Guide for Clear Rule Writing](#)
- [Office of the code reviser's instructions on Style](#)
- [RPAU's rule writing quick reference guide](#)
- [RPAU rule making criteria cheat sheet](#)
- [Writing Courses](#) offered through the Washington Learning Center

Definitions

Chief officer: For purposes of this policy, chief officers are the chief of staff, chief financial officer, chief risk officer, chief audit executive, and chief technology innovation officer.

Code reviser: An agency of the state legislature that periodically codifies, indexes, and publishes the Revised Code of Washington (RCW) and the Washington Administrative Code.

DSHS rules coordinator: The designated DSHS staff person responsible to manage, oversee, and direct the DSHS rule making program, and is designated as the agency expert on applicable laws, rules, executive orders, directives, and policies related to rule making. The rules coordinator is also the staff person who has knowledge of rule subjects currently proposed and responds to public inquiries about rules. (See [RCW 34.05.312](#).)

Economic analyses: For this policy, refers to small businesses economic impact statements and cost-benefit analyses for rules. (See [chapter 19.85 RCW](#) and [RCW 34.05.328](#), respectively.)

Emergency rules: Temporary agency rules, effective for not more than 120 days, that follow special criteria outlined in [RCW 34.05.350](#).

Expedited rule: A permanent rule adopted under an abbreviated rule making process described in [RCW 34.05.353](#).

Formal proposed rules: Part of the regular rule making process notifying the public that proposed rules and economic analyses are available for public comment, published on the [CR-102 form](#).

Initial public notice: The first formal part of the regular rule making process where a rule writer officially informs the public about an upcoming rule change, invites public participation, starts planning for rule making, and lays the groundwork for the rest of the rule making process, published on the [CR-101 form](#).

Official rule making file: A hard-copy file compiled and maintained by RPAU under [RCW 34.05.370](#) containing certified copies of the required rule making notices, which the code reviser publishes. May include other rule-related information (see #D8). The rule making file is a public record and open to public inspection.

Official rule making notices: Official forms from the code reviser ([CR-101](#), [CR-102](#), [CR-103P](#), [CR-103E](#), and [CR-105](#)) that state agencies are required to use to inform the public about rule making actions.

Official rule text: Format of rule text, established in RCW [34.05.395](#) and chapter [1-21](#) WAC.

Negotiated rules: The type of rule making where agency representatives and stakeholders use group decision making and negotiation to develop a proposed rule. (See [RCW 34.05.310](#).)

Permanent adoption of rules: The part of the rule making process where new, amended, and repealed rules are finalized and published on the [CR-103P form](#).

Petition: Any one of three actions:

1. A formal request to DSHS to amend or repeal existing rules or adopt new rules;
2. An appeal to the Governor to reverse an emergency rule or DSHS' denial of a rule petition; or
3. An appeal to the joint administrative rules review committee (JARRC) to reverse DSHS' denial of a rule petition or review a DSHS rule or small business economic impact statement.

Required draft review: The mandatory DSHS review process where rule writers send drafts of rules and economic analyses to internal and external stakeholders.

Rule: A legal directive that carries out the intent of a federal or state law (statute). Sets requirements that a government agency or those affected by the rule must follow. Also called a regulation, when published and codified as Washington Administrative Code (WAC) they are collectively called administrative law. (See [RCW 34.05.010\[16\]](#)).

Rule development: The part of the regular rule making process where rule writers draft rules and economic analyses while involving stakeholders.

Rule writer: A DSHS staff person responsible for writing rule content, preparing economic analyses, and drafting official rule making notices to be filed with the code reviser.

Significant legislative rule: Under [RCW 34.05.328](#), a rule that: adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or adopts a new, or makes significant amendments to, a policy or regulatory program.

Stakeholders: In general, those people or entities impacted by proposed rule changes whether internal (within the department) or external (outside the department).

Policy Requirements

All DSHS staff engaged in rule making must follow the Administrative Procedure Act ([chapter 34.05 RCW](#)), the Regulatory Fairness Act ([chapter 19.85 RCW](#)), and this policy.

(See the [DSHS online rules manual](#) for more details about the rule making process.)

A. DSHS levels of approval for rule making

1. The **DSHS secretary** approves the permanent adoption of significant legislative rules.
2. For their areas of responsibility, the **assistant secretaries, senior directors, and chief officers**—or their designees—must approve:
 - a. The completed required draft review (as part of the paperwork for formal proposed rules).
 - b. Permanent adoption of rules where there is a change since the CR-102.
 - c. Emergency rule making.
3. **Division directors** or equivalent, or their designees must approve:
 - a. The initial public notice, starting the official rule making process.
 - b. The completed required draft review form 02-003 as part of the paperwork for formal proposed rules, prior to sending to RPAU.
 - c. Emergency rule making.
4. The **DSHS rules coordinator** or designee must approve:
 - a. The required draft review process for all new and amended rules.
 - b. All official rule making notices before they are filed with the code reviser.

Note: This approval indicates that rule making has followed the legal procedures under the Administrative Procedure Act ([Chapter 34.05 RCW](#)), the Regulatory Fairness Act ([Chapter 19.85 RCW](#)), and this policy.

B. Administration responsibilities for rule making

1. Programs within administrations must have a process to involve stakeholders in rule making, including rule development and economic analyses.
2. Programs within administrations must coordinate rule making internally and, when needed, work with other DSHS programs and other agencies that may be affected by proposed rules.

C. Rule writer responsibilities for rule making

1. Rule writers are responsible for the entire rule making process for their rules. They must involve their supervisors, managers, assistant attorneys general (AAGs), and internal and external stakeholders throughout the rule making process, as appropriate.
2. Rule writers must have the proper statutory rule making authority to support rule making in their subject areas.
3. Rule writers must follow the rule making procedures in the [online rules manual](#).
4. Rule writers must write rules and economic analyses using clear language and organization that are easy for readers to understand. (See [RCW 34.05.220\(5\)](#); [Executive Order 23-02 - Plain Language, superseding EO 05-03 on Plain Talk](#); office of the code reviser's bill drafting guide, instructions on style; RPAU's rule writing quick reference guide; and the DSHS style guide.)
5. Rule writers must send draft rules, draft written economic analyses, and a list of any repealed rules through DSHS' required draft review to both:
 - a. Mandatory internal stakeholders
 - b. Key external stakeholders(See the [online rules manual](#) for details.)
6. When preparing economic analyses, rule writers must refer to the online rules manual for guidance on developing these documents, including the use of economic or industry experts if necessary.
7. Rule writers (or other subject matter expert) must attend their [scheduled](#) hearing to answer questions from the public about their formal proposed rules. Rule writers may request RPAU to schedule multiple hearings for their rules.
8. For the official rule making file, rule writers must include any documents that explain and justify their rationales, options, choices, and statutory authority in developing the rule.
 - a. Rule writers should consult with either their AAG, RPAU, or both about supporting documentation to include in any official rule making file.
 - b. When rules are controversial or are likely to be challenged, rule writers must consult with their AAG about supporting documentation for the rule making file—early in the rule making process, if possible.

Note: Written AAG analyses are subject to attorney-client privilege and are not included in the official rule making file.

9. Rule writers must consult with RPAU about petitions, negotiated rules, and expedited rules. See [online rules manual](#).

D. RPAU responsibilities for rule making

The rules and policies assistance unit provides information about DSHS rules for agency staff and the public. RPAU is the DSHS liaison to the code reviser, the legislature's [Joint Administrative Rules Review Committee](#), and the [Office of Regulatory Innovation and Assistance](#).

1. RPAU offers technical assistance for all aspects of rule making and related to:
 - a. Legal requirements
 - b. Best practices
 - c. Problem solving and risk assessment
 - d. Coordination with other areas of DSHS and, if known, other state agencies
2. RPAU offers consultation with program staff and may offer training about rule making. RPAU may modify training as needed to respond to law and department changes, and customer need.
3. The DSHS Rules Coordinator or RPAU staff must review and approve all official rule making notices and agency forms, rules, and economic analyses, and rule-related materials to make sure they are complete and meet legal and agency requirements.
4. RPAU staff must work with divisions or administrations to resolve any concerns or deficiencies in rule making.
5. RPAU must conduct rule making hearings for all DSHS rules.
6. To further support agency rule making, RPAU staff must perform the centralized rule making procedures covered by the Administrative Procedure Act, the Regulatory Fairness Act, chapter 1-21 WAC, and the online rules manual.
7. RPAU must maintain the official rule making files.
8. The official rule making file may contain any decision-making summaries, studies, reports, correspondence, or other information that supports the rule making adoption. Files may also contain any documents that explain and justify their rationales, options, choices, and statutory authority in developing the rule.
 - a. Consult with either your AAG, RPAU, or both early in the process about supporting documentation to include with any rule making.

- b. You must submit any materials for your official rule making file by the time you submit packet materials to RPAU with your CR-103P for permanent adoption.

E. Responsibilities of the DSHS regulatory improvement advisory committee

Chaired by the DSHS rules coordinator, the DSHS regulatory improvement advisory committee (RIAC) consists of rule coordinators from administrations or divisions and rule-writing leads. RIAC members:

1. Serve as liaisons between RPAU and their respective DSHS divisions or administrations.
2. Advise management and RPAU about implications of any proposed changes to the DSHS rule making process.
3. Promote agency-wide consistency of rule making practices.

Note: Programs may contact [current RIAC representatives](#) to find out about any requirements, in addition to the general DSHS requirements, that apply to their program.

ⁱ Updated links to new SharePoint