Brief Overview of Rulemaking Process

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The standard rulemaking process is divided into three stages:

- Stage 1: Pre-proposal Statement of Inquiry (CR-101)
- Stage 2: Proposed Rule Making (CR-102)
- Stage 3: Rule-making Order (CR-103P)

Each stage consists of specific tasks and processes.
CR-101 Statement of Inquiry
Filed June 25, 2018
WSR #18-14-020

CR-102 Proposal

CR-103 Final Adoption

Stakeholder work

Rule Drafting, Analyses

Public Hearing/Comments

Department Responds to Comments

Start

Basic Rule Making Flow Chart

We are here

Finish
Statement of Inquiry (CR-101) – RCW 34.05.310

Purpose: Describes the issue(s) being addressed by rule

- The pre-proposal is filed with the Office of the Code Reviser and published in the Washington State Register. The CR 101 is the formal document that identifies the purpose and scope of rulemaking.
- The scope of rules created through this process is controlled by statutory authority and must be compatible with existing requirements.
- Most rulemaking work is done after the filing the pre-proposal statement of inquiry.
- The department works with stakeholders to develop rules.
- The department encourages a collaborative rule process and encourages public engagement.
- The department begins internal development of required analyses required by chapter 34.05 RCW, the Administrative Procedures Act and chapter 19.85 RCW, the Regulatory Fairness Act.
Standard Rule Making – Stage 2

Proposal (CR-102) – RCW 34.05.320

Proposed rule language and impact analysis.

• The department creates the proposed rulemaking order, CR-102.
• This filing establishes the **formal** review and comment process, including the date, time and location of the public hearing.
• The public hearing is typically held at the end of the review period.
• At the hearing, public testimony is taken and written comments are submitted on the proposed rule(s).
Final Adoption (CR 103P ) Order – RCW 34.05.360

Final rules are adopted

- After the public hearing and review period ends, the department compiles all comments received and makes a decision whether the proposed rules should be changed or adopted as proposed.
- If the department makes substantive changes, a supplemental CR-102 must be filed and 2nd hearing held. This substantially extends the timeline of the process, and is uncommon in most rulemaking projects.
- If the department adopts the rules as proposed, the department files the rulemaking order, or CR-103, and the rules typically become effective 31 days later.
- All comments and the department’s responses are complied into a Concise Explanatory Statement and are provided to all commenters shortly after the adopted rules are filed.
- The Secretary of Health is the final decision maker for all rules.
Simple flow chart of the rule making process

1. Initiate rulemaking; file notice with the Office of the Code Reviser
2. Hold public workshop(s) to solicit input from interested persons/public
3. Draft rule language
4. Send draft rules out to the public for comments/input
5. Schedule formal rule hearing (can continue to accept comments)
6. Hold rule hearing; comments and/or testimony provided in person or in writing
7. Final rule adopted and filed with the Office of the Code Reviser, then sent to all interested persons
8. Department must address what comments were received, how the rule language was changed or not changed based on those comments
Why does rule making take so long?

Most HSQA rules take 12 to 18 months (and sometimes more) to develop and finalize.

- Waiting periods are set by law.
- Public involvement and deliberative dialogue take time.
- No two rule sets are exactly alike; some rules are very complex and/or controversial and require substantial time, collaboration, and work to develop.
- Data collection, research and economic analysis can, and often is, time consuming.
- DOH Internal review process is lengthy.
Resources

Washington State Office of the Code Reviser:
http://leg.wa.gov/CodeReviser/Pages/default.aspx

Department of Health Rule Making – General:
http://www.doh.wa.gov/AboutUs/RuleMaking

Department of Health Rule-Making Activity – Specific:
http://www.doh.wa.gov/AboutUs/RuleMaking/RuleMakingActivity

Washington State Administrative Procedure Act – Chapter 34.05 RCW – Part III Rule-Making Procedures:
http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05