

# **Influencing the Rule-Making Process**

## **In Washington State**

### **A role for Citizens in Public Policy**



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## Influencing the Rule-Making Process in Washington State

Most people know that we can have a voice in the laws that are passed. But passing a law is only one step - laws must be implemented before they can affect our lives. And the details for how laws will be implemented are spelled out in “regulations,” or “rules.” Happily, we can also have a voice in the Rules that govern how our laws are carried out. This short pamphlet is designed to help ordinary citizens (especially those involved in the delivery of social services) understand the rule-making process, and their role in it.

### Citizen Roles.

Citizens can influence the rule-making process in a variety of ways.

- ⇒ Citizens can influence the implementation of *new legislation* by being an active participant as the rules are being written.
- ⇒ Citizens can help determine changes in - or even repeal of - already *existing rules*.
- ⇒ Citizen participation can take many forms: in person or in writing, by testifying, by contacting the agency staff writing the rules, or by serving on an advisory group.



The number one tip for those participating in the rules-process is this: **Keep it Simple!** The process can be complex but the citizen’s role is straightforward: you can tell state agencies what you think about specific rules being drafted by them, before the rules are finalized. You can do this by phone, email, mail and/or in person. If they apply to a new law: will they work? If they apply to an existing law: are they working as intended? What rules/rule changes do you believe should be implemented by state agencies?

By participating in the rule-making process, you can help develop rules that will assist our state agencies in continuing to operate successfully and to help define the way by which they deliver their services. The intent of this short “how to” guide is to get you started in becoming involved in a form of advocacy known as “administrative advocacy.”

### What are Rules?

The compilation of all existing Rules is known as the Washington Administrative Code, or WAC. Rules are developed and adopted by state agencies to help implement state and federal laws. A rule can be thought of as a regulation that is set up by an appropriate authority. That authority could be the State Legislature, the courts, or a state agency itself – and the regulations serve to guide an agency and the operation of programs under its responsibility.



Useful Terms. A *statute* is a law passed by a legislative body; it can only change or be adopted when the legislature is in session. *Administrative rules* spell out how the law will be administered; they have the force of law, and they can change at any time during the year. A state agency can adopt, repeal, or modify a rule for any number of reasons. A citizen, or group of citizens, can also request that a rule be adopted, modified or repealed. Just as citizens can influence how laws are written, citizens can influence how rules are written.

For example, a government agency will give notice that it is about to develop new rules (or regulations) to specify how it is going to enforce a new law just passed by the Legislature. Or, a government agency may give notice that it wants to repeal an existing rule because it is making the delivery of a specific service too difficult and is not effective. Similarly, an individual or a group may give notice to a state agency that it wishes to challenge a rule that is having a negative effect on a population that they serve. Or, that same group or individual may petition for the adoption of a new rule.

Rules (Regulations) help define and guide a government agency's specific organization and its procedures, including the delivery of social services.

**Rule-Making:**

**Once a rule becomes final, it has the force of law** and can impact our everyday lives. E.g., rules help the Department of Ecology enforce the law prohibiting the unsafe disposal of household chemicals. Rules help define the manner in which the Department of Social and Health Services delivers a wide array of services. Rules can even define how a bet is placed at the horse races!

*Because Rules are so significant, it is important to remember:*  
**citizen comments and input can affect the design of agency rules, or rule changes, throughout the rule-making process.**

**Points of Citizen Involvement**

- You can attend forums and public meetings held by the agency.

Many agencies hold forums and/or public meetings where there is a good possibility of discussions on the agency's future plans for rule changes. This is a good time to get to know the agency's key personnel who are often in attendance at these meetings. As one longtime rules advocate stated, "a lot of my success is based on the working relationships that I have developed with agency personnel." Attending the public meetings is also a good opportunity to sign up to get on the agency's different mailing lists. Contact the agency you are interested in, and inquire as to how you can find out about upcoming forums or public meetings. You can also find public meeting announcements listed in the "Miscellaneous" section of the Washington State Register.

- You can get State agency plans to develop or change agency rules.

Every six months our state agencies must publish their **Rule-Making Agenda** in the Washington State Register (WSR); this spells out their **anticipated rule-making activities** for the next six months. Although state agencies are supposed to have these agendas published no later than January 31<sup>st</sup> and July 31<sup>st</sup> of each year, some agencies fail to submit their agendas to the WSR for publication by these dates. So, it pays to check the WSR by those dates, and check again on a regular basis (typically, the WSR will publish agency agendas when they are received).

Or, just ask the agency you are most interested in - or a specific program within that agency – to place you on the mailing list to receive their semi-annual rule-making agendas. This request must be in writing. The agency has the right to charge a nominal fee for this service. Check with the agency you are interested in to see if they charge a fee or not. State agencies are required to send their rule-making agendas to "interested parties:" i.e., people who ask for them. Contact that agency's **rules-coordinator** for information on how to get on the desired mailing list. (Rules Coordinators for key agencies are listed in the APPENDIX)

Contact information for key personnel who are, or will be, working on the rule changes is included in these agendas. It helps to contact the agency personnel as soon as the rule-making agenda is published. That way you can become involved and informed, right from the ground floor - even before the agency initiates the actual rule-making process. Since it is important to be well-prepared and knowledgeable about the issue you intend to comment on, this extra time will give you a head-start in researching the possible rule-change, adoption, or repeal. It will also give you extra time to involve others. One person can make a difference, especially if that person is a reliable source of information, but an agency will usually pay more attention if it hears from many people, or a group, rather than just a single individual.

- You can learn an agency's thinking, and comment during an early stage.

The next step comes when an agency publishes its **Preproposal** in the Washington State Register (WSR). This is simply an announcement stating that the agency is planning a rule change. A Preproposal is filed by completion of a CR-101 form (you will see this number in publications relating to administrative rule-making; it just refers to the Preproposal). The Preproposal includes:

- a brief description of the proposed rule-change,
- contact information, and
- details as to how, when, and where citizens may present their views on these proposed changes.

The state agency is asking for public input at this time; that means it wants to hear from **you!**



**Negotiated Rule-Making** is a voluntary process where an agency may, but is not required to, contact and involve representatives of stakeholders in discussions regarding a possible rule-change before it publishes a **Proposal**. These discussions may include the process of formulating the proposed rule-change and/or negotiations on the language used in the rule. These discussions may also involve an outside mediator. If an agency doesn't provide an opportunity for interested parties to participate in the rules process before the publication of the proposed rule, it must provide a written justification as to why this opportunity was not offered.

Any person may request a **formal** negotiated process but this should be done if that is the only way to resolve differences between stakeholders and the agency. This type of process can be very expensive and time-consuming. A request does not guarantee this process. There are times when an agency will hold **informal** discussions with the stakeholders and they are just that – informal discussions on possible rule changes. Each agency handles negotiated rule-making differently; you need to contact the rules-coordinator of the agency to find out their specific procedures.

- You can comment again as agency thinking is evolving.

A minimum of 30-days must elapse between publication of the Preproposal, and publication of the **Proposal** (also known as a CR-102) in the WSR. That 30-day period is an ideal time to talk with agency personnel, as the rule is taking shape. This can be done by calling, emailing, or even setting up a time to meet with a person who is working on the proposed rule-change. The Proposal contains all of the text of what has been proposed, and it includes the **location, time, and date** of the **Public Hearing**.

- You can participate in the Public Hearings.

The **Public Hearing** is just that: an opportunity for members of the public to state their concerns, or support, for a particular rule-change. If you don't feel comfortable speaking at this meeting you can submit your comments in writing; in person, by fax, email or phone. The public hearing is usually presided over by the agency's rules-coordinator and/or staff. If you can keep your written comments short (1 page or less), concise, and to the point – that will be appreciated, and your comments will be effective. But, if more information is needed, provide it.



Key agency personnel are also usually present. If time allows, it is not unusual for them to stay behind to talk with citizens after the hearing, to answer additional questions or speak to the public's concerns. In addition, citizens usually have until 5:00 p.m. on the day of the public hearing to fax in any concerns or provide any supporting material. All input from citizens is included in the rule-making file as part of the final proposal.

After an agency holds a public hearing, and before it files the rule in final form with the WSR, the agency must prepare a **Concise Explanatory Statement**. This statement includes the agency's reasons for the rule-change, along with a comparison of any changes in the text as published in the WSR and the final rule being adopted. A summary of comments received and how these comments were/were not used by the agency in writing the final rule is also included. The agency must provide a Concise Explanatory Statement to all citizens who provided input. (Others can contact the agency's rules-coordinator to get on the mailing list to receive this statement.)

- You can challenge a rule.

Citizens can also act to appeal and amend existing rules, or initiate the adoption of a new rule.

**Appeal to the Agency.** "Any person may petition an agency requesting the adoption, amendment, or repeal of any rule." Appeal to the agency by filling out a form called an OFM 101. This may be obtained from the Office of Financial Management (OFM), by calling their office at **(360) 902-0666**. They will send this form to you by e-mail, by fax, or by mail. Sixty days after you file this petition the agency will do one of the following. They may deny the petition stating why, and they will also address the concerns that led you to file an appeal. The agency may also state alternative ways for addressing your concerns. Or, the agency may initiate the rule-making process by adopting, amending or repealing a rule based on what you have proposed.



**Appeal to the Governor.** If the agency denies your petition to repeal or amend a rule, you have 30 days in which to file an appeal with the governor, and the governor has up to 45 days to respond. If the governor denies your appeal s/he will comment on the specific areas of your concern and perhaps state possible ways to address those concerns. The other possibility is that the governor may have the agency initiate the rule-making process.

**Appealing Expedited Rule-Making.** Anyone may appeal the expedited-rules process. This rule-making process allows the agency to pass a rule without holding a public hearing. This is typically used only when the agency is not expecting any opposition to the proposed change.

**Appealing Emergency Rules.** Emergency rules are usually adopted, amended, or repealed when there is a danger to the public's health, safety, or welfare and are only in effect for a limited time-period. Anyone can petition the governor to repeal an emergency rule.

### **Practical Tips**

It may sound obvious, but you will be more successful if you are well prepared when attending a public hearing. Know what you want to say; know the specifics of the section of the WAC that you are referring to; and have the facts ready to back up your claims. It also helps to offer an option or two – steps the agency could pursue other than the rule-change being proposed.

If you are the party initiating action – e.g., filing a request for a rule change - it helps to talk to the agency's key personnel about your issues before you actually file a formal request to adopt, amend, or repeal a rule. The time of state employees and the resources of the state spent on this process are significant, and you won't want to abuse the right to challenge a rule. Respecting the time of agency personnel will be appreciated, and besides, there is always a chance that your concerns may be addressed by speaking with staff - without the time and effort involved in the formal process of appealing or challenging a proposed rule-change.

**Success Stories.** There is a wide range of involvement among those involved in administrative advocacy. Many agencies, such as Columbia Legal Services, are strong advocates for their clients and spend a good deal of time involved in the rule-making process. By influencing the rule-making process in DSHS units such as the Economic Services and the Medical Assistance Administration, Columbia Legal Services has brought about significant changes in the way services are delivered to their clients.

There are many examples of individuals who have influenced the rule-making process as well. One such individual who runs an adult family home has spent a considerable amount of time being involved in the rule-making process of the Aging and Adult Services of DSHS. He started without any knowledge regarding the rules process, and would just show up at meetings and hearings to express his opinion on proposed rule changes that affected his business. Over the past eight years he has had an influence on a wide variety of issues from successfully challenging an unnecessary yearly fee on adult homes to influencing how new residents are evaluated and how medications are dispensed.

The amount of success you can have on influencing the rules process will vary, and will depend on many factors, including the amount of time you have available, your level of preparation, and the quality of relationships you have built with agency personnel. But first you have to try.

## Getting Started

**1. Use the agency website.** Large state agencies may use their own websites to explain their rule-making processes in detail. This information usually includes: proposed rule changes, the designated public contact for questions; the cut-off time for public input; and, details about any public hearings.

**2. Go directly to the WSR.** If the state agency you are interested in does not have information readily available, you can access a current copy of the Washington State Register (WSR). The Washington State Register is a bi-weekly publication put out by the Washington State Code Reviser's Office. It also contains current permanently adopted rules, changes to an agency's rules-coordinator, and assorted announcements relating to the rules process of state agencies.

There are several ways to access the WSR. The easiest way is to use a computer and go to <http://slc.leg.wa.gov>. This is the web page for the Code Reviser's Office. On this page, click on: *Washington State Register*. This will take you to the WSR's home-page. Everything available in the hard-copy version of the WSR is listed on the web-site.

To access the current information on an agency's rule changes, go to the **far left** side of this page, under the Washington State Seal, scroll down to Index, and under Index, click on current. This will display the current year's rule-making activity, as listed in the Washington State Register, listing state agencies in alphabetical order.

The abbreviations on the **right** indicate the type of announcement, i.e., whether it is a Permanent (perm), Preproposal (prep), or Proposed (prop) rule. The other abbreviation (misc) stands for "miscellaneous items." Included in the miscellaneous section of the WSR are notices of public meetings of state agencies and rules-coordinator notifications. At the end of each Preproposal is the contact information for citizens wishing to be involved.

To the right of these abbreviations are three numbers. The first set of numbers is the year; the second set is the issue number of the WSR (Since the WSR is published twice per month, the January issues would be 01 and 02; August issues would number 15 and 16). The third set of

numbers is the file number assigned to each announcement in that issue, in the order in which they were received by the WSR.



**3. Use the Library.** If you do not have access to a computer, you can still read the current issues of the WSR. “For each county there are a complete and current set of registers and compilations.” Call your county courthouse or county law library to learn where these are located in your community. E.g., the State Library carries a paper subscription to the WSR and the Seattle Public Library carries a current copy (206) 386-4636. The University of Washington also carries a current copy, at (206) 543-1937. Contact your local library to see if they carry a subscription, or if they can access the WSR on the web. For a subscription to the WSR, call (360) 786-6369, or order the WSR online at their homepage. The WSR comes in paper form, disk format, and electronically. The twice-monthly publication is distributed on the first and third Wednesday of each month for \$8.25 per copy, or \$195 for a year’s subscription (2003 prices).

**4. Identify the Rules-Coordinator for the agency you care about.** A *rules-coordinator* is the person assigned by the state agency that is designated to know what rule-changes are being considered and who the key personnel are who are working on the proposed rule-change. One responsibility of the *rules-coordinator* is to respond to citizen questions regarding any rule change and the person(s) to contact in the agency for more information. The rules-coordinators and key personnel are pleasant and very helpful; don’t hesitate to ask questions. Contact information regarding the rules-coordinators is also published in the WSR’s first issue of the year.

For a list of current rules-coordinators, go to the WSR home-page and click on [rules-coordinators](#). If there is no rules-coordinator listed for the agency you are inquiring about, call the agency itself and ask who their rules-coordinator is. Some agency employees may not know the answer, but they can refer you to someone who does.

**NOTE:** Most state agencies use the Microsoft Outlook Express email system. If you do not have Outlook Express, just copy down the email addresses of those you wish to contact and email them using your own email system.



## Appendix

(Information in this pamphlet was compiled from the Administrative Procedure Act for the state of Washington – available in all government libraries – and from personal communications with agency staff from DSHS, DOH, DCTED, and Washington State Register’s Office).

This section contains contact information regarding the rule-making process of three Washington State Agencies critical to health and human services.

1. DSHS, the **Department of Social and Health Services**
2. DOH, the **Department of Health**.
3. OCD, the **Office of Community Development**.

**1. The Department of Social and Health Services.** DSHS has a very detailed and easy-to-access Rules and Policies Assistance Unit which can be seen by going to their web-page [www.wa.gov/dshs/](http://www.wa.gov/dshs/). Scroll down the left hand side and click on the box that says, Rule Making. On the following page click on **Preproposal Statement of Inquiry** for contact information, or, **Proposed Rule Making** for Public Hearing information. Driving instructions to Public Hearings are also listed. Also on the Rules and Policies Assistance Unit page you can click on **Semi-Annual Rule-Making Agenda** for DSHS programs planning a rule-change in the next six months.

Rules Coordinator for DSHS: **Andy Fernando**. Phone (360) 664-6094  
E-mail [Fernaax@dshs.wa.gov](mailto:Fernaax@dshs.wa.gov)

Rules Consultant for DSHS: **Fred Swenson**. Phone (360) 664-6097  
E-mail [swensfh@dshs.wa.gov](mailto:swensfh@dshs.wa.gov)

Mailing address: P.O. Box 45850  
Olympia, WA. 98504-5850  
FAX: (360) 664-6185

To get on the “interested parties” mailing list, contact either Fred Swenson listed above or contact Kevin Sullivan in the Medical Assistance Administration at (360) 725-1344.



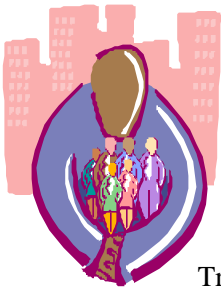
**2. The Department of Health:** In 2003 the DOH unveiled a new site for the Department of Health Rules. It is a comprehensive site that contains the answers to almost any question you may have regarding their rules-process, and how and when the public can become involved.

To access this site, go to [www.doh.wa.gov](http://www.doh.wa.gov). On the DOH main web-page, on the left side of the page, scroll down to **Rule-Making Activities** and click. This will take you to the Department of Health Rules page. On this page, click on **rules comment site**. This will take you to a page with detailed instructions on how to access current proposals and an email system where you can send your comments on proposed rules to the DOH. There is also a contact person listed for each specific rule; this same person can put you on that program’s “interested parties” mailing list. Or, contact Michelle Davis - the rules-coordinator for all of DOH; she will make sure you get on the mailing list for that department. It is important to note that the DOH regulates over 40 different health professions, so be specific as to which agency/agencies you are interested in.

You can also access the DOH schedule of Public Hearings by clicking on [hearing schedule](#). This page will display upcoming Public Hearings along with the date, time, address, and the phone number and mailing address of the contact person for the hearing. Click on the address of the hearing for a detailed map of how to get there.

On the Department of Health Rules Page you can click on [agenda](#) for the DOH's semi-annual rule-making agenda: a list of rule-making activity being planned by DOH for the next six months.

Rules Coordinator for DOH: **Michelle Davis**. Phone (360) 236-4044  
E-mail [Michelle.Davis@doh.wa.gov](mailto:Michelle.Davis@doh.wa.gov)  
P.O. Box 47890  
Olympia, WA. 98504-7890



**3. The Department of Community, Trade and Economic Development:** The Department of Community, Trade & Economic Development (CTED) is divided into two separate offices, the Office of Community Development (OCD) and the Office of Trade and Economic Development (OTED). The rules-coordinator is the same for both offices. For the sake of this pamphlet we are looking at the rules process for OCD only. The Office of Community Development is responsible for many community-based programs, such as Emergency Food Programs, Drug Courts, Early Childhood Education and Assistance Program (ECEAP), Crime Victims Advocacy, Domestic Violence Advocacy and the Farm Worker Housing Program.

To find out more regarding programs that are under CTED, go to their website at [www.cted.wa.gov](http://www.cted.wa.gov) and click on [Office of Community Development](#). Here you will find a more detailed listing of programs under OCD and contact information for each program. At the time of printing this pamphlet the OCD did not have a web-page to explain their department's rule-making process. To find out information regarding their Rules-Agenda, Pre-Proposed, and Proposed rules, go to the Washington State Register. For specific information regarding a rule-change contact the Rules-Coordinator of OCD.

Rules Coordinator for DCTED: **Tom McBride** Phone: (360) 725-4010  
Email: [tommc@cted.wa.gov](mailto:tommc@cted.wa.gov)  
P.O. Box 42525  
Olympia, WA. 98504-2525

All information in this pamphlet current as of July, 2003

# Rule-Making Process for Washington State Agencies

(Does not include Emergency or Expedited Rule-Making)

The four boxes directly below are instances when Rule-Making comes into effect

