

# The DOSH Rulemaking Process

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Lead Rules Stakeholder Meeting February, 17 2016





## Why Do We Do Rulemaking?

- Federal Law (OSHA)
- State Statute
- State Court Decision
- Governor's Order
- Request/Petition
  - Entity - Labor/Industry
  - Individual petition

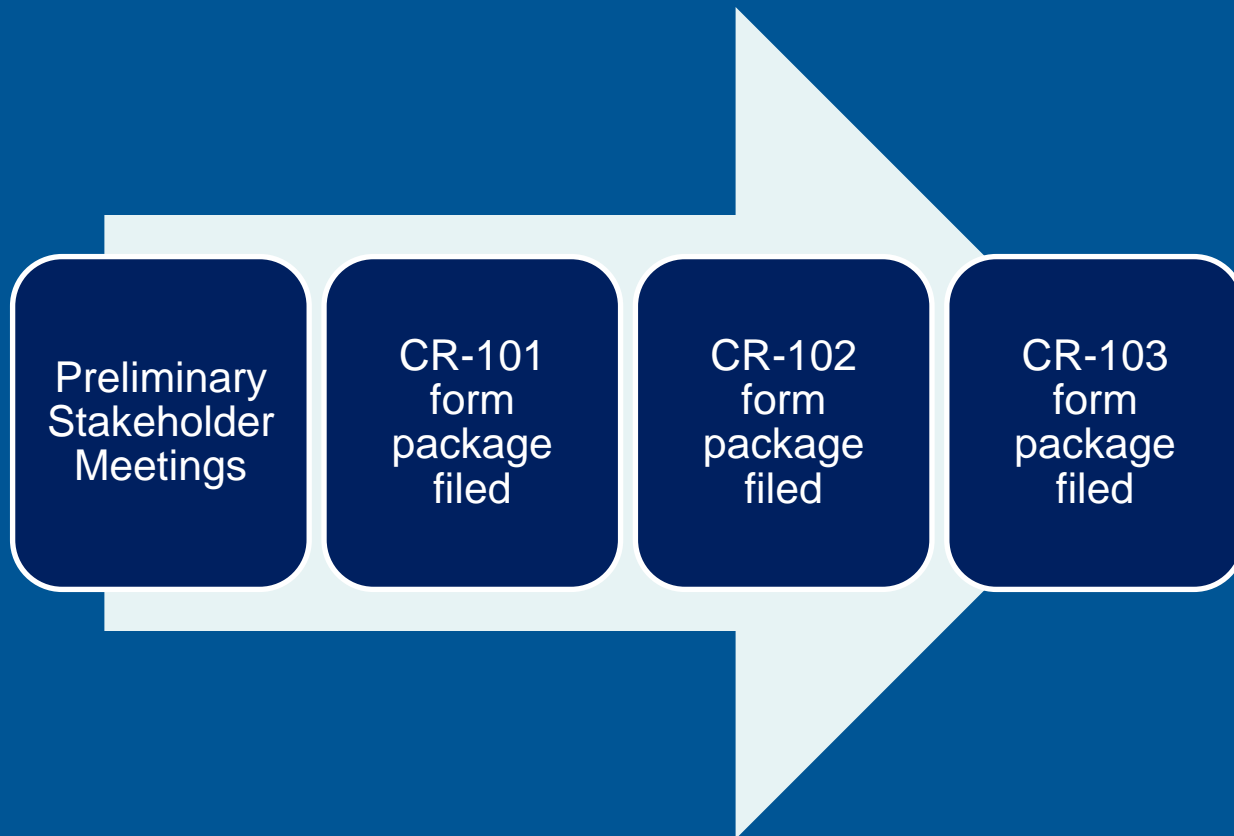


## Impetus for Rulemaking – Petition RCW 34.05.330

- Petitions for Rulemaking
  - “Any person may petition an agency requesting the adoption, amendment, or repeal of any rule.”
  - Within 60 days, the agency shall either: a) deny the petition (stating its reasons) or; b) initiate rulemaking as requested.
  - If agency denies petition, petitioner has 30 days to appeal the denial to the Governor. Gov has 45 days to issue a decision: a) deny again, or; b) direct the agency to initiate rulemaking



## How We Do Rulemaking – The Rulemaking Process





CR-101 form  
package filed

## *The start of rulemaking*

- Public notified of intent of possible rulemaking via *WA Register*
- Public comments solicited from stakeholders
- Proposed rule drafted, reviewed internally
- Economic impact survey conducted, if needed



## The DOSH Rulemaking Process – CR-101 RCW 34.05.310

- Filed at least 30 days before CR-102 Notice of Rulemaking
- Content – “Pre-notice Inquiry”
  - Authorizing statutes
  - Why rulemaking needed
  - How interested parties can participate
- Effect
  - gives public notice
  - solicits comments from the public
  - promotes consensus amongst interested parties
- ❖ **Lead Rule tentative CR-101 date – 4/20/2016**



## CR-102 form package filed

### *Public notice of proposed rule & public hearing*

- Public hearings held
- Public comments collected and reviewed
- Response to public comments prepared
- Proposed rule language finalized



## The DOSH Rulemaking Process – CR-102 RCW 34.05.320

- CR-102 / Notice of Proposed Rule
- Purpose – provides public notice of proposed rulemaking + notice of public comment hearing
- Timing – filed at least 20 days before the public hearing.
  - Note - CR-103 must be filed within 180 days of the CR-102 otherwise must start process over
- ❖ **Lead Rule CR-102 date - not before 6/22/16**





## The DOSH Rulemaking Process – CR-102 cont'd

- Content of CR-102
  - Short explanation, anticipated effect, reasons for
  - Agency comments/recommendations – if any - re: language, implementation, enforcement, and fiscal matters
  - When, where, and how public can provide comment
  - Adoption date
  - Copy of the Small Business (50 or less E'ees) Economic Impact Statement (SBEIS)
  - If a “significant legislative rule” (most L&I rules) then copy of a *preliminary* Cost Benefit Analysis (CBA) if rule will impose > minor costs



## The DOSH Rulemaking Process – CR-102 cont'd

- Small Business Economic Impact Assessment (SBEIS)
  - Required if rule will impose > minor costs on small businesses (50 or less E'ees)
  - May also be required by Joint Administrative Rules Review Committee (JARRC), WA State Legislature
  
- Preliminary Cost Benefit Analysis (CBA)
  - Gather and analyze cost/benefit financial information via survey (by L&I fiscal analyst) re: rule's financial impact
  - Required for “significant legislative rules” (most L&I rules)



## After Public Hearing - Concise Explanatory Statement (CES) RCW 34.05.325

- CES –agency shall prepare a Concise Explanatory Statement (CES) of the rule before filing a CR-103 to adopt the rule.
- CES Contents:
  - Reasons for adopting
  - Describe differences between text of proposed rule and rule as adopted + reasons for changes
  - Summary of all comments and “responding to all comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.”
  - Agency shall provide a copy of CES to any person upon request or from whom the agency received comment.



## CR-103 form package filed

*Filing the CR-103 means the rule is now adopted*

- Finalized rule that incorporates agency consideration of public comments received signed by Agency Director
- Rule adopted upon filing CR-103 with Code Reviser
- Public notified of rule adoption via *WA Register*
- Rule becomes effective on its effective date



## CR 103 – Order Adopting Rule RCW 34.05.360

- Purpose – provides formal notice of the rule adopted by the agency (the agency’s final action on the rulemaking process)
- Timing – after completion of CR-102 process
- Content
  - Adoption date (date CR-103 filed)
  - CES
  - Reference to all rules repealed, amended, or suspended
  - Statutory or other rulemaking authority
  - Effective date if other than that specified by RCW 34.05.380. Rule effective 30 days after filing (adoption) unless later date is required by statute or specified in order of adoption
- Final Cost Benefit Analysis – must be available if a “significant legislative rule” RCW 34.05.328
- ❖ **Lead Rule CR-103 date – not before 8/24/16**



### CR-101:

- Public notified of intent of possible rulemaking via *WA Register*
- Public comments solicited from stakeholders
- Proposed rule drafted, reviewed internally
- Economic impact survey conducted, if needed
- CBA & SBEIS results analyzed, Preliminary CBA & SBEIS prepared

### CR-102:

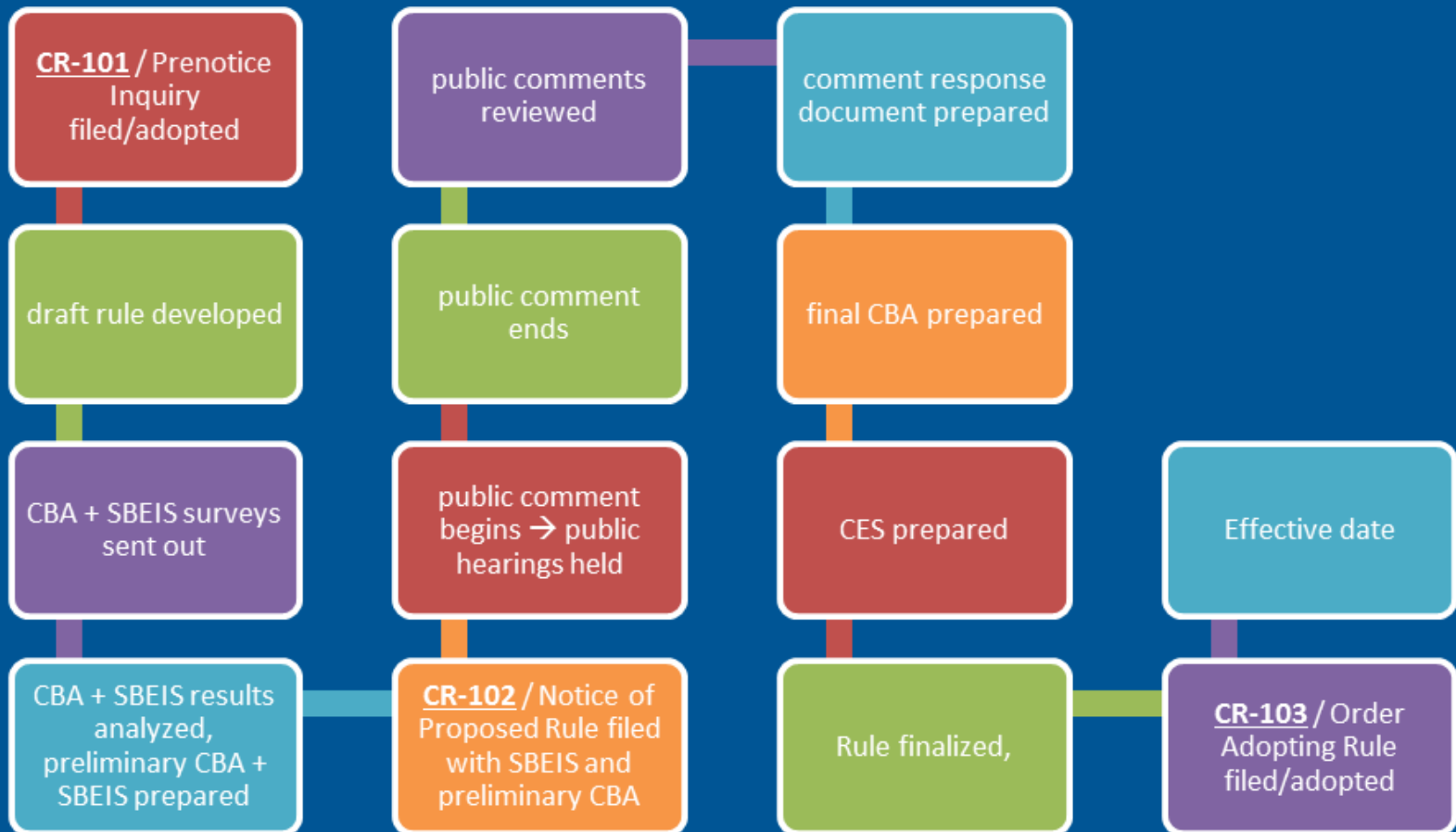
- Public given notice of proposed rulemaking & public comment hearings
- Public hearings held
- Public comments collected and reviewed
- Response to public comments prepared
- Proposed rule language finalized

### CR-103:

- Order adopting the rule filed
- Rule adopted
- Rule goes into force on its effective date



# DOSH Rulemaking Process – Timeline





## Partners / Players in the rulemaking process

- OSHA
- DOSH Standards team
- DOSH technical services team
- L&I Fiscal team
- LGAO – Legislative Governmental Affairs Office
- AGO – Attorney General’s Office
- Entity initiating the rule
- Stakeholders / committees
  - CAC
  - EUSAC
- Other state agencies





## The Rulemaking File RCW 34.05.370

- Each agency shall maintain an official rule-making file available for public inspection
- The Rulemaking file shall contain:
  - Public notices, entries to public rulemaking docket,
  - public input including transcript/recordings of public hearings
  - Petitions for exemptions, amendments, requests to repeal or suspend
  - Citations to data, factual information, reports
  - Concise Explanatory Statement (CES)
  - Any other relevant material
- Internal agency documents exempt from rulemaking file if drafts, notes, recommendations, and intra-agency memoranda containing opinions unless specifically cited by agency's rule decision
- “Upon judicial review, the file required by this section constitutes the official agency rule-making file with respect to that rule. Unless otherwise required by another provision of law, the official agency rule-making file need not be the exclusive basis for agency action on that rule.”



# DOSH Rulemaking Information

- DOSH Rules Page
- <http://www.lni.wa.gov/Safety/Rules/WhatsNew/>

## New Rule Activity



### Rules Under Development

Lists changes to all safety & health rules.

### Public Hearing Calendar

Provides dates of public hearings and comments due on rules under revision.

### DOSH Rules Update Monthly Summary

Summarizes rulemaking projects. Updated monthly

### L&I Safety & Health eRules Project

Our Safety & Health rules are changing. These changes will make our rules easier to understand, search, and use on all mobile devices.

Sign up to receive rule updates via email



# DOSH Rulemaking Information

- DOSH Rule Adoption Schedule

The screenshot shows the Washington State Department of Labor & Industries website. The header includes the department logo, navigation links for Home, Español, and Contact, a search bar for L&I, and links for A-Z Index, Help, and My L&I. Below the header is a menu with categories: Safety & Health (selected), Claims & Insurance, Workplace Rights, and Trades & Licensing. The main content area is titled 'New Rule Activity' and includes a breadcrumb trail: Home > Safety & Health > Rules & Requirements > New Rule Activity. A sidebar on the left lists 'Rules & Requirements' with sub-links for 'Find a Rule', 'New Rule Activity' (with sub-links for 'Rules Under Development' and 'Public Hearing Calendar'), 'Rule Interpretations & Enforcement Policies', 'Top 10 Rule Violations', and 'Related Laws (RCWs)'. The main content area features three sections: 'Rules Under Development' (listing changes to all safety & health rules), 'Public Hearing Calendar' (providing dates of public hearings and comments due on rules under revision), and a sign-up link to receive rule updates via email. A 'Contact Us' button is visible in the top right corner of the main content area.



# The DOSH Rulemaking Process

## Questions?





# The DOSH Rulemaking Process

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<http://www.lni.wa.gov/Safety/Rules/WhatsNew/LeadSafety/default.asp>

<http://www.lni.wa.gov/Main/Listservs/LNI-LEAD-SAFETY.asp>