Hawai'i Department of Health Administrative Rulemaking Process

1) Deciding on Rulemaking

a) DIV/BR/OFC identifies a need for a rule or a change to an existing rule. US Congress or State Legislation may require or give authority to adopt rules for public health & safety (USC, SLH, HRS) e.g. 321-11, HRS; 91-5, HRS

OR

b) The Director, Deputy or Program decides on adopting new rules, change or repeal existing rules. Individuals, agencies & parties may petition for rules [11-1-51, HAR]

2) Draft the Rules

a) DIV/BR/OFC obtains chapter assignment from OPPPD if drafting new rules (586-4188).j

b) DIV/BR/OFC obtains reference material from OPPPD (GOV ADMIN DIR No.09-01, SBRRB impact statement checklist, cover memo sample, and complete package sample).

c) Review Chapter 201M, HRS; Ch 91, HRS; and 11-01, HAR.

d) Review and familiarize with the Hawaii Administrative Rules Drafting Manual, Second Addition (LRB rule drafting manual).

e) DIV/BR/OFC drafts proposal in Ramseyer format [HRS-91-4.1; 00-6 HAR (LRB rule drafting manual)].

f) DIV/BR/OFC collaborates with AG to determine whether Small Business Review is necessary [201M-2(a), HRS]. **SBRRB should not need to be involved for the rest of the process if it is determined by program & AG that there is no small business impact. DBEDT will review and send it to SBRRB if they feel it is necessary.*

g) DIV/BR/OFC collaborates with Advisors Committee(s), Board(s), or other affected State Agencies, Constituents, Fed Agencies, Technical Assistance Groups to draft rules.

h) DIV/BR/OFC consolidates recommended changes and drafts pre-hearing memo to Governor [GOV ADMIN DIR NO. 09-01].

i) DIV/BR/OFC writes Small Business Impact Statement, if needed/required.

- Sample of SB impact statement.
- Sample of SB cost impact matrix.

j) DIV/BR/OFC consults Attorney General (AG) for review and comments of rules, memo, and SB impact statement (if required) until approved.

k) DIV/BR/OFC has Legislative Reference Bureau (LRB) review draft rules prior to finalizing in order to identify avoidable errors and ensure conformance with drafting manual.

l) DIV/BR/OFC provides AG with updated rules accompanied by LRB markup.

m) DOH HAR Review Team reviews draft rules package – team includes Deputy, ASO, Personnel (if appropriate) OPPPD, DIV Chief, Branch Chief & Program staff. ***Send rules package via internal email to review team with two week deadline. Send reminder email one week, and one day, prior and to deadline. If no response, consider approved.***

3) Obtain Governor Approval for Public Hearing

a) DIV/BR/OFC finalize package to Governor (memo, rules in Ramseyer format, and SB impact statement).

b) Attorney General reviews & signs memo [GOV ADMIN DIR No. 09-01].

c) DIV/BR/OFC makes copies for GOV, AG, B&F, DBEDT/ SBRRB, and OPPPD.

d) OPPPD checks package for signatures, number of copies and routes through DIR OFC for approval.

e) Director signs approval.

f) OPPPD hand delivers package to Gov.

g) DIV/BR/OFC distributes copies to AG, B&F, DBEDT-SBRRB, and OPPPD [GOV ADMIN DIR No. 09-01]. Include cover memos to each department requesting review, for Director's signature.

h) SBRRB hearing (if required).

i) B&F reviews and recommends to Governor [GOV ADMIN DIR No. 09-01].

j) SBRRB/DBEDT reviews, makes recommends to Governor, and sends SBRRB comments to DIR OFC. Sample of SBRRB approval.

k) DIV/BR/OFC may contact OPPPD to obtain status from reviewing departments (programs do not contact reviewing departments directly).

4) Governor Approves Public Hearing

a) Governor reviews and approves for Public Hearing.

b) OPPPD retrieves and date stamps receipt.

c) OPPPD notifies DIV/BR/OFC of receipt.

5) Publish Hearing Notice

a) DIV/BR/OFC contacts OPPPD for assignment of docket number for Hearing Notice [11-1-52(a), HAR].

b) DIV/BR/OFC drafts hearing notice [91.3(a), HRS]. See sample of hearing notice.

c) AG receives copy & approves Hearing Notice.

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d) DIV/BR/OFC publishes hearing notice in newspapers in compliance with statewide publication protocol for submittal to each newspaper at least 30 calendar days prior to hearing. [91-3 (a)(1), HRS; 11-1-52(b), HAR]
**For newspaper publication procurement procedures and price list visit http://hawaii.gov/spo/price-vendor-lists*
e) DIV/BR/OFC emails Admin Rule Review Team & AG that notice will be published and that inquiries are possible. Include PDF attachment of rules.
f) DIV/BR/OFC contacts OPPPD to put proposed rules and notice of public hearing notice on the DOH website (linked to LG's website) [91-2.6, HRS].
g) Send notice, rules and rationale to the DOH Communications Office so they can field public inquiries.
h) DIV/BR/OFC keeps full sized copy of rules, rationale and public hearing notice readily accessible during 30-day notice period.

6) Hold Public Hearing 91-(a)(2), HRS
a) DIV/BR/OFC secure DOH Hearing Officer to preside over the meeting. DOH Hearing Officer: Steve Jacobsen, 586-4409
b) Public Hearing day checklist:

- Verify room reservation one week in advance.
- Verify chair, Hearings Officer and commenter table configuration.
- Obtain tape recorder to tape Hearings Officer and commenter.
- Need sign-in table and sign-in sheet.
- Need signs on ground floor, elevator and on the floor of hearing to direct interested parties.

7) Subsequent to Hearing
a) DIV/BR/OFC should prepare public hearing report ASAP and send to him for review and sign-off.
b) DIV/BR/OFC writes a post hearing Small Business Impact Statement if proposed rules have an impact on small business [201M-3].
c) DIV/BR/OFC notifies AG of any changes to the rules as a result of comments from public hearing and requests an opinion on whether to proceed. Obtains opinion from AG on whether to proceed to obtain governors final approval
d) Comments must be addressed by the department in public hearing report.
e) Commentors should be sent an individual letter with the department's response.
f) After AG's concurrence of clean Ramseyer format, DIV/BR/OFC must type rules into standard format.
g) AG signs memo and rules "Approve as to form" [GOV ADMIN DIR No. 09-01].
h) DIV/BR/OFC sends package OPPPD. Administrative Rules Package includes:

- Memo to Gov for Dir to sign.
- AG-approved rules in Ramseyer format for Dir to sign.
- 3 copies of AG-approved rules in standard format for Gov to sign.
- Each set of rules contains a summary sheet with the adoption date. Please note that the adoption date is stamped by the OPPPD. DIV/BR/OFC should leave a blank space for this date stamp.
- Each set of rules contains an approval sheet that has allowances for the signatures of the Director, Deputy Attorney General, and the Governor.

i) OPPPD checks package and routes through DIR OFC.
j) Director signs memo and rules.
k) OPPPD hand delivers package to Gov.
l) DIV/BR/OFC distributes copies to AG, B&F, and DBEDT/SBRRB.
m) SBRRB reviews (only if determined necessary), DBEDT recommends to Governor through, and sends copy to DIR OFC.

8) Governor Approves Rules
a) Governor reviews & approves [91-3(c), HRS].
b) LG office posts & files rules [91-4(a), HRS].

9) Rule Effective 10 Days After Filing
a) DIR OFC/OPPPD receives and date stamps receipt from LG office.
b) OPPPD notifies DIV/BR/OFC of receipt and keeps copy for Master File.
c) OPPPD posts final electronic copy of approved Standard version to DOH website [91-2.6, HRS].
d) DIV/BR/OFC sends signed Standard & Ramseyer version to LRB [00-8-7, HAR].
e) DIV/BR/OFC distributes copies of Standard version to:

- Supreme Court Law Library (1)
- Dept of Prosecuting Attorney (1)
- State Archives (1)
- Hawaii State Library (7)
- Attorney General (1)
- Publish rule [91-5, HRS].

f) DIV/BR/OFC updates HAR and HRS references [00-8-10, HAR] including repealing "null and void or unnecessary chapters" [91-3(f) HRS].

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