



STANDARDS AND PROCEDURES MANUAL FOR RULE-MAKING

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COLORADO DEPARTMENT OF HUMAN SERVICES
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1. CHAPTER 1: INTRODUCTION

This Standards and Procedures Manual establishes the internal processes for the promulgation of Colorado Department of Human Services (CDHS) rules. These standards and procedures are applicable to all programs or service areas within the Department of Human Services required by statute to adopt rules for administration or operation of their respective programs and necessary to assure compliance of and accountability by subordinate administrative or provider agencies.

The purpose of this manual is to provide Department personnel responsible for drafting rules for promulgation by the State Board of Human Services or the Executive Director with consistent standards for rule development, review, submission and adoption; to assure their compliance with statutory requirements for rule promulgation; to ensure stakeholder involvement in the rule development process; and, to ensure that all rules promulgated are consistent with the mission and vision of the Department of Human Services.

1.1 Definitions

- A. "APA" or "Administrative Procedure Act" – Article 4, Title 24, of the Colorado Revised Statutes that sets out the legal requirements for agency rule-making.
- B. "CCR" or "Code of Colorado Regulations" - the official publication of the rules of all Colorado State agencies. The Colorado Secretary of State oversees the Code of Colorado Regulations
- C. "CDHS"- the Colorado Department of Human Services.
- D. "Colorado Register" - A portion of the Code of Colorado Regulations which serves as the official publication of notice for public hearings for rule-making by all agencies in the State.
- E. "CRS" or "Colorado Revised Statutes" – the official state publication of all laws enacted by the Colorado General Assembly.
- F. "Internet" means the official Colorado State Government website, including the Colorado Department of Human Services, found at <http://www.state.co.us> and <http://www.cdhs.state.co.us> respectively.
- G. "Intranet" means the official Colorado Department of Human Services internal website and identified as <http://intranet.cdhs.state.co.us>. Intranet access is limited to departmental staff and is not accessible to outside entities or stakeholders.

- H. "Program" - Any program, office, division or unit under the Colorado Department of Human Services or any other body which is authorized or required to promulgate agency rules through the State Board of Human Services or the Executive Director.
- I. "Regulation" – has the same meaning as "rule". The APA authorizes state agencies to promulgate "rules" and for purposes of this manual, the appropriate term is "rule". Use of the term "regulation" shall be limited in state rules when describing or referencing federal regulations or "regulations" issued by another agency.
- J. "Rule"- Under the Administrative Procedure Act, a "rule" is "the whole or any part of every agency statement of general applicability and future effect implementing, interpreting or declaring law or policy, or setting forth the procedures or practice requirements of any agency." See 24-4-102(15), CRS. This means that any statement implementing, interpreting or declaring law or policy, or any statement setting forth procedures is a rule. However, under the Administrative Procedure Act, the rule also must be required or permitted by the legislature, i.e. the General Assembly. It is this second requirement that distinguishes rules from other documents, such as manuals, procedures, policy statements, agency letters. It is this second requirement that gives rules the force of law. Rules are a "mini-statute" which the General Assembly asks CDHS and other state departments to create.
- K. "Rule-making" - The Administrative Procedure Act establishes the rule-making procedures for all state agencies, and defines a rule-making as the agency process for the formulation, amendment or repeal of a rule. See 24-4-102(16), CRS.
- L. "Rule-making Document" - relevant portions of the rule-making package and other documentation that are submitted to the State Board of Human Services and made available to the public pursuant to the APA rule-making requirements.
- M. "Rule-making Package" – all documents submitted for purposes of rule-making and consisting of the proposed or draft rule and the completed rule-making forms. The rule-making package refers to the proposed rules and all other documents that are submitted to the State Board Administrator for adoption by the State Board of Human Services or the Executive Director.

- N. "SBA" or "State Board Administrator" – means the Director of the Boards and Commission Division, in the Office of Performance of Improvement, and such other staff designated by the Director, responsible for providing direct support to the State Board of Human Services.
- O. "Stakeholder" – means any individual, group, or organization having an interest in agency rules or indirectly or directly affected by an agency's rules, and includes but is not limited to: any program within CDHS, any entity involved in the delivery of services, any other State Department, any organization or individual receiving services or who represents those who receive services, any federal program which regulates or oversees a portion of the subject matter implemented by a program. Examples of Stakeholder include: CDHS Boards and Commissions Division staff, county departments of human services, the Colorado Department of Health Care Policy and Financing, a TANF/Colorado Works participant, a Community Centered Board, a contracted service provider, Colorado Legal Services, Catholic Charities, or the U.S. Department of Health and Human Services.
- P. "State Board of Human Services" or "State Board" or "Board" – means the statutorily created rule-making body for the Colorado Department of Human Services. The State Board consists of nine members, three of whom must be County Commissioners, appointed by the Governor and confirmed by the Colorado Senate.

1.2 Role of the State Board of Human Services in Rule-making

State law, commonly referred to as the Human Services Code, and found at 26-1-103, CRS, et seq., gives the State Board of Human Services sole authority to adopt Department rules "governing program scope and content and requirements, obligations, and rights of clients, recipients, vendors, providers, and other persons affected by acts of the State Department." State law also gives the Board sole authority to promulgate rules for specific programs and services administered by the Department of Human Services, such as the Old Age Pension program, child welfare programs, state nursing homes, mental health and developmental disability services, and all public assistance programs, as that term is defined in statutes.

The Executive Director has statutory authority to promulgate rules regarding CDHS internal administration. An example of an Executive Director's rule is an accounting procedure.

1.3 Responsibilities of the State Board Administrator or SBA

The SBA performs those administrative acts, duties and functions that support the Board in undertaking and accomplishing its statutory duties and responsibilities. The SBA oversees all rule-makings, ensures that all rule-makings are within the scope and authority of the implementing statutes or federal law or regulations, are in compliance with the APA requirements and CDHS standards, and serves as the custodian of all rule-making records.

1.4 Flowchart of the Rule-making Process

Appendix A illustrates the steps to promulgating a rule by either the State Board of Human Services or the Executive Director of the CDHS. This procedures manual follows the steps in Appendix A.

2. CHAPTER 2: DETERMINING THE NEED FOR A RULE

The following is intended to provide guidance and direction to rule drafters and program policy staff when determining when a rule is needed or appropriate.

2.1 Origin of Rules

When the Colorado General Assembly creates a law, it may leave certain things to the Executive Branch's discretion to establish or further define. For example: a statute may require child care providers to apply for a license but the statute will establish only general criteria for licensure and may not state everything that needs to be included on an application form, giving authority to the agency or rule-making body to further define requirements or establish more specific criteria. Through rules, agencies in the Executive Branch can elaborate on laws created by the legislature. See 2.7 for more discussion of what rules are.

2.2 Reasons for Initiating a Rule-making

There are a number of reasons to initiate a rule-making; they include, but are not limited to:

- A. A change in law (federal statute, state statute, federal regulations);
- B. A change in another State Department's rules;
- C. Executive Orders;
- D. State or federal court orders or decisions;
- E. A change in state department procedure, organization, or policy that is required or permitted by statute; or,
- F. Identification of a new need or previously unknown issue and the rule is required or permitted by statute.

2.3 Persons or Entities having Authority to Initiate State Rules

A. CDHS Programs or Stakeholders Can Initiate Rules

- 1. The creation, amendment or repeal of a rule can be initiated by the program that oversees the subject matter addressed in the rule. For example: the Food Assistance Programs Division initiates changes, amendments, or repeal of Food Stamp Program rules.

- B. Any stakeholder that has an interest in and/or is impacted by the subject matter may seek to have a rule created, amended or repealed. For example: A recipient of Old Age Pension may seek to have an OAP rule amended by either petitioning the State Board or through consultation and collaboration with program staff.

2.4 Procedure for Initiating a Rule-making

The following steps or actions will apply to all programs that identify a need to initiate a new rule, amend an existing rule, or repeal an obsolete rule through the rule-making process.

- A. When a program initiates a rule-making, the program will prepare a Pre-Rule Analysis. See 2.5 and 2.6.
- B. For a stakeholder to initiate a rule-making, the stakeholder may contact the program that handles the relevant subject matter. A stakeholder may also contact the SBA to initiate a rule-making. If the stakeholder contacts the SBA, the SBA will forward the request for rule-making to the appropriate program for further action. The program shall contact the stakeholder and inform the SBA of the outcome of the contact. If the program determines that the stakeholder has requested a rule-making (as opposed to a request which is not a request for rule-making such as a request for explanation or information), then the program will prepare a Pre-Rule Analysis. See 2.5 and 2.6.
- C. If the program determines that rule-making is inappropriate or cannot be initiated, the program shall explain why the stakeholder's request is being denied. For example: If the request for rule-making is denied because legislation is necessary, the program may seek to have this item placed on CDHS legislative agenda. The program also can explain what options the stakeholder has. Some options may include: reviewing an agency letter or other policy statement, contacting the county department, speaking to the stakeholder's legislative or congressional representative, participating in state sponsored training activities, giving testimony to the State Board, petitioning the State Board for a rule change, speaking to the SBA, or collaborating with advocacy groups or other stakeholders.

2.5 Purpose of a Pre-Rule Analysis

- A. The purpose of the Pre-Rule Analysis is to articulate, at the outset, the individual, program or stakeholder who initiated the rule-making, the nature of the rule-making, why it is needed, that there is statutory authority to initiate such a change and delineates which parties would be interested in the rule-making.
- B. The program shall prepare a Pre-Rule Analysis for all requests for rule-making, even if the program determines that a rule-making will not be initiated. By documenting the request for rule-making and the reason for rejecting a request, the State Board will have the background information necessary to answer questions later.

Example: Sue Citizen asks the CDHS Division of Child Care to repeal rules regarding background checks of child care providers. In this case, the Division of Child Care will prepare a Pre-Rule Analysis that states that a stakeholder requested a rule change and that a rule-making will not be initiated at this time. On the Pre-Rule Analysis, the Division of Child Care will explain that a rule-making will not occur because the rule is a legislative mandate and a statutory change would be needed before the rule could be repealed. If the SBA determines that it is appropriate, this information is distributed to the State Board so if Sue Citizen appears to give testimony on this matter at a State Board meeting or contacts a Board member, the State Board or Board member will be prepared to respond to the inquiry.

2.6 Preparation of a Pre-Rule Analysis

- A. A Pre-Rule Analysis is prepared by completing a fill-in-the-blank form. A copy of the Pre-Rule Analysis form is located in Appendix B and on the CDHS Intranet. When completing the Pre-Rule Analysis, program is reminded that the APA requires rules to be limited to one subject area, so the Pre-Rule Analysis (and thus the rule) should address topics in a single program area or within a single subject matter.

For example: a single rule-making should not address rules for child support enforcement registration, foster care parent training requirements, and mental health provider administrative fees.

- B. Although not part of the rule-making package (see Chapter 2), the Pre-Rule Analysis is a government or agency record and is subject to open record laws. A Pre-Rule Analysis needs to be made available to the public if requested.
- C. Instructions for Completing the Pre-Rule Analysis form (SBA-1 form)
1. "Program" - enter the name of the program area initiating the Pre-Rule Analysis. For example: Food Assistance Programs Division, Aging and Adult Services, Alcohol and Drug Abuse Division, Mental Health Services.
 2. "Contact Person", "Phone #", and "E-mail" - the name, phone number and e-mail address of the program person responsible document.
 3. "Description of request for rule change" - a brief summary of the change.
 4. "Who requested the proposed change?" - mark the appropriate box. If a stakeholder (someone other than program staff or management) requested the change, identify the stakeholder. For example: the State Board Administrator requests a revision to a rule to make the rule consistent with statutory language.
 5. "Rule-making shall be initiated" - if this box is marked, the program area has determined that the requested rule change is needed. Remaining questions must be completed.
 - a. "Suggested title..." - a clear statement of the scope of the proposed rule change. For example: "Revisions to the Colorado Works Rules Modifying the Definition of the Assistance Unit"
 - b. "Why is the rule necessary..." - a brief summary stating why the rule is needed and why other action is not appropriate.
 - c. "Is this rule required..." - if yes, identify the specific federal or state law (e.g., P.L., C.R.S.) or federal regulation (e.g., 45 CFR 300) and the specific statutory or regulatory language (paraphrasing or summarizing the law or regulation is acceptable)

- d. "What is the anticipated effective date?" - this is the date the program area wants the rule to be effective. This could be the date the state or federal law or statute establishes as the date the provision must be in place, or some other date.
 - e. "Stakeholders contacted or to be contacted..." - identify all stakeholders that have an interest in or will be impacted by the rule.
- 6. "No rule-making to be initiated..." - if this box is marked, the program area has determined that a rule change is not needed. If marked, one or more of the following boxes must be marked.
 - 7. "Manager/Director Approval" - the approval of either the Office Manger or Division director is required. The contact person may not approve.
 - 8. Shaded area at bottom of page is for State Board Administration completion. If the SBA agrees that rule-making is needed, the SBA will assign a department rule-making number and set the title for the proposed rule. The title, as set by the SBA must be included on all subsequent rule-making forms.

2.7 Review of the Pre-Rule Analysis by the SBA

The program shall submit all Pre-Rule Analysis forms, whether initiated by program, a stakeholder, or the SBA, to the SBA for review.

- A. For Pre-Rule Analyses that will not result in a rule-making, the SBA will review the Pre-Rule Analysis to ensure that the program has provided a satisfactory explanation of why a request for rule-making isn't driving a rule-making. The SBA will use this information, when appropriate, to inform the State Board of the request and how it was resolved so that the State Board is prepared if a stakeholder contacts a State Board member or if a stakeholder testifies at a State Board meeting. It is recognized that stakeholders will still come to the State Board with requests that haven't gone through this process; the hope is that this process will minimize those occurrences.
- B. For those requests for rule-making for which the program would like to initiate a rule-making, review by the SBA occurs to ensure that, based on the information provided on the Pre-Rule Analysis, the rule-making is in compliance with the APA and CDHS standards. The SBA will be looking at statutory authority for the rule-making, enforceability, scope of the rule-making, etc. In summary, this review is to ensure the regulatory integrity of the rule-making and it ensures that the rule author and SBA are on the same page early on in the process.

- C. After the Pre-Rule Analysis is reviewed, the program and the SBA must agree that rule-making is appropriate and that the proposed rule meets APA and CDHS standards. If the program and SBA cannot agree that a rule-making is appropriate, then:
1. the program may rescind its rule-making, or
 2. this matter may go to the Executive Director or appropriate Executive Manager for a decision, or
 3. this matter may move forward because the State Board requires it.
- D. When it is determined that rule-making will proceed, the SBA will assign a rule-making number and a title for the rule-making. On the Pre-Rule Analysis form, the program must suggest a rule title, but the actual title is determined by the SBA to ensure that the title is sufficient to meet APA requirements. To comply with the APA, rule-making titles need to be specific while accurately representing all of the proposed rule changes.

As the draft rule goes through the rule-making process, including departmental and legal review, the proposed rule may be revised sufficiently to require that the rule title be changed in order to accurately reflect the scope of the rule and comply with APA noticing and rule-making requirements.

3. CHAPTER 3: PREPARING THE RULE-MAKING PACKAGE

The following chapter sets forth the specific procedural requirements and department standards that apply to preparation of the program's rule-making package. This step is the formal rule review and submittal process for the Department of Human Services.

3.1 Rule-making Package Defined

The rule-making package consists of the completed rule-making forms and the text of the proposed rule(s). The prescribed rule-making forms are included in Appendix C and instructions for their completion are found in section 3.61 of this Chapter.

3.2 Concept of and Timeframes for the Rule-making

- A. The rule-making process begins with Pre-Rule Analysis, and it should be reviewed to determine the scope of the rule-making, identifying the individuals or entities that need to be involved, and the extent or level of stakeholder involvement. If the rule-making involves an amendment (revision) or repeal of a current rule, the current rule should be reviewed to determine what changes need to occur and where. Once the general scope has been determined, two things need to occur in order to prepare a rule-making package for the SBA. One is the completion of the rule-making forms. The second is drafting of the proposed rule. See sections 3.6 and 3.7 of this Chapter.
- B. When the responsible program determines the desired effective date of the proposed rule-making, it should work backwards to establish deadlines or timeframes for rule submission and review. The SBA is responsible for establishing deadlines for each step of the rule-making process and these deadlines conform to requirements for noticing, Attorney General review, internal review and clearance, and other timelines established in the APA. This information is posted on the State Board Intranet site (<http://intranet.cdhs.state.co.us>) or can be obtained by contacting the SBA.

Note: The timeframe for emergency rules differs from the deadlines and timeframes for other rules. For more information about emergency rules see Chapter 7.

3.3 Program Responsibility for Preparing the Rule-making Package

The program is responsible for completing the rule-making forms. The program shall also designate a rule author and identify the rule author on rule-making forms where appropriate. The rule-author is responsible for seeing the rule through the rule-making process and often takes the lead in drafting the rule and completing the rule-making forms. If there is a rule that involved multiple programs, the programs are responsible for designating a rule “author” for the program areas, and who will have lead responsibility for the rule package on behalf of the programs. If the programs do not assign a rule author, the SBA will designate the appropriate Office Manager as lead “author”.

- A. All rule-making packages submitted to the SBA shall be approved by the Office Manager that oversees the program. Office Managers are generally members of the Executive Director’s Executive Management Team (EMT).
- B. Program authors should consult with the SBA if uncertain about the level of approval required for submission of the rule-making package to the SBA. Manager level approval ensures that communication is occurring within the program and among those programs impacted by the rule change. By signing the form, the Office Manager certifies that any coordination required in these procedures has occurred.

3.4 Program Responsibility for Ensuring Stakeholders’ Input

It is CDHS policy that programs identify stakeholders and involve them in the rule-making process. The program shall notify all appropriate stakeholders when the program determines that it is initiating a rule-making package, and prior to formal submission for rule-making. Programs are to distribute and make available for comment the rule-making forms and proposed rule. Any comments received must be summarized on or attached to the Stakeholder Comments Form (See 3.6, E).

- A. Each program is to maintain a list of all stakeholders that are known to the program or who request inclusion on the program’s stakeholder list. This list shall be made available to any stakeholder that requests it, as well as to other programs and the SBA. The SBA, program or stakeholders may submit additions to program stakeholder lists to assure that stakeholder input and collaboration is adequate and in keeping with intent of these procedures.

- B. Although stakeholders have some responsibility to get involved in the rule-making process, programs are ultimately responsible for assuring stakeholder participation in the rule-making process and should do their utmost to involve stakeholders and make every reasonable effort to give stakeholders an opportunity to give feedback on proposed rules.
- C. To the extent practicable, the program shall ensure that all stakeholders receive the same information. For example: as required by state law, the Division of Child Care has a series of town meetings throughout the state to meet with stakeholders and to solicit comments on the effectiveness of agency rules and potential changes to child care rules. The Division of Child Care must ensure that the agenda is the same at all meetings and strive to have consistency at all meetings so all of the stakeholders are aware of the same issues.
- D. To the extent practicable, programs should use electronic methods of communication to stakeholders (e-mail, list-serv, automated systems, etc.); however, other forms of communications such as mail and telephone contact are to be used to reach those stakeholders that do not have access to electronic forms of communication.
- E. Program shall record all comments from stakeholders regarding proposed rules and report such comments as part of the rule-making process.

For example: The Colorado Works Program distributes and makes available for comment the rule-making forms and proposed rule changing a resource requirement. The program contacts Jefferson, Boulder, Weld, and Montezuma County Departments of Human Services, Colorado Works participants, organizations interested in the Colorado Works Program, and the CDHS Office of Appeals. One county department comments that the proposed rule change will considerably open up the pool of eligible individuals, and thus drive additional workload for the county department. The Program will attach this comment to the Stakeholder Comments Form. Also, the Program will evaluate whether the proposed rule should be revised and/or if the rule-making forms such as the Regulatory Analysis Form should be revised based on the comments received, and identify the reason for the change.

3.5 Involvement of the SBA or Boards and Commissions Division Staff

The SBA is not a “stakeholder” in the rule-making process because the SBA’s role is to manage the rule-making process, including the review of all proposed rule-makings for compliance with APA standards and CDHS standards. Other staff in the Boards and Commissions Division, however, may be “stakeholders” for purpose of soliciting comments. For example: Appeals Section staff may request a rule change based on a case reviewed as part of the state level administrative fair hearing process. In this instance, the Appeals Section is or may be impacted by the rule language in question, and is thus a stakeholder whose input may be necessary.

- A. Rules or revisions to General Department Rules that consist of rules stating broad policies or requirements that are generally applicable to all programs in CDHS will be initiated by the SBA. The procedure for initiation and review is the same as for any other proposed rule-making.
- B. In the case of General Rules, stakeholders shall include all CDHS programs affected by the proposed rule-making. CDHS programs have the authority to request that the SBA initiate a pre-rule analysis for rule-making. The SBA, as the author, shall be responsible for notifying and soliciting stakeholder comments or input.
- C. General Rules include rules regarding fair hearings, local dispute resolution processes, confidentiality, application and noticing requirements, record-keeping requirements, civil rights and non-discrimination provisions, and rules concerning the recovery of program overpayments to the extent that they have general applicability. Rules that do not apply to multiple CDHS programs, but are unique to specific programs, are program specific rules, and are to be incorporated into the program area’s rule manual and not the General rules manual.

3.6 Rule-making Forms

Programs shall use the forms prescribed in this manual for submission of proposed rule-making packages. The rule-making forms include the following:

- A. Rule-making Coversheet (SBA-2)
- B. Statement of Basis and Purpose Form (SBA-3a)
- C. Regulatory Analysis Form (SBA-3b)
- D. Overview of the Proposed Rule Form (SBA-3c)
- E. Stakeholder Comment Summary Form (SBA-3d)
- F. The above forms are located in Appendix C and are accessible on-line on the CDHS Intranet, State Board site.

- G. Legislative Legal Services Form (SBA-4): The SBA is responsible for completing this form once the proposed rule is adopted to comply with APA noticing requirements. See Appendix D (informational purposes only).

3.61 Instructions for Completing the Rule-making Forms

A. Rule-making Cover Sheet (SBA-2)

Program area rule author, or contact person, shall complete the Rule-making Cover Sheet (SBA-2) and attach it as the first page of the rule-making package. The form shall be completed in the following manner:

1. "Title of Proposed Rule" - same as assigned by the SBA on Pre-Rule Analysis form.
2. "Rule-making #" - same as assigned by the SBA on Pre-Rule Analysis form.
3. "Program", "Rule Author" (or contact person), and "Phone" - same as listed by program on the on Pre-Rule Analysis form submitted to the SBA.
4. "Type of Rule" - mark one box each in "a" and "b"; most rules will be "Board" and "Regular".
5. "This package is submitted to State Board Administration as" - Initial Circulation if the first time submitted to SBA (mark any subsequent box that applies); Update # ____ if revised since Initial Circulation (updates are submitted in numerical sequence); or Cancel if the program area no longer wishes to proceed with a proposed rule-making and no State Board action is necessary. Specify the reason for an update or cancellation.
6. "What month..." and "What date do you want this rule to be effective"- indicate proposed time frames; contact SBA if there are any questions in determining these dates.
7. "I hereby certify.." - Office Manager must sign that the indicated parties have been consulted and that this is the Department's policy to present for rule-making.
8. The SBA will complete the remainder of the page and return original with comments to the Rule Author; a disapproval may stop the proposed rule-making or drive an update. SBA forwards a copy to the Attorney General's (AG) office for review.

B. Statement of Basis and Purpose Form (SBA-3a)

1. "Summary..." - This page will become the first page of the published rule-making document; therefore, it needs to be accurate and devoid of acronyms. It shall clearly state what the rule is intended to do and written in terms that the general public can understand.
2. "An emergency..." - mark appropriate box and explain how the emergency arose, how the situation will adversely impact the public interest if not addressed, and why it is essential to adopt it immediately. If an implantation date is required, such as in an Act of legislation, specify here.
3. "Authority for Rule" - authority for the State Board of Human Services to promulgate rules is always on this form; each program area must also list its authority with a brief explanation.
4. "Does the rule incorporate material by reference/repeat language?" - indicate if applicable and explain.
5. "...The program has sent this rule-making package to which stakeholders?" - list of stakeholders who have been notified for public comment on the proposed rules.
6. The SBA will add a "footer" to the printed State Board document indicating the time frames for review, adoption, and effective date.

C. Regulatory Analysis Form (SBA-3b)

A regulatory analysis is required for any proposed rule-making and is intended as a comprehensive analysis of the impact of the proposed rule-making on identified entities. All statements on this form are taken from statutory requirements regarding fiscal impact.

1. The information at the top of the form is the same as on the "Statement of Basis and Purpose".
2. "Groups impacted by this rule" - identify all groups affected either positively or negatively by the proposed rules. For example: participants will be impacted positively by a change increasing the maximum OAP grant standard. Lowering of the maximum resource limit would adversely affect persons who are at or near the current maximum limit by making them ineligible for assistance or services. As a rule, all proposed rule-makings will have an impact on one or more groups. If no impact is anticipated, the program area must justify why there will be no impact.

3. “Qualitative and quantitative impact” - requires a detailed description/analysis of the qualitative and quantitative impacts the proposed rule will have on the individuals/groups identified in section 1. The quantitative analysis must include the number of individuals affected either positively or negatively (e.g., increasing income limit will result in 1000 new cases in the current or next fiscal year).
4. “Fiscal Impact” - provide the dollar costs or reductions resulting from this rule change for the State (General Funds), County, Federal, and Other (e.g., vendors or service providers, local governmental entities other than the county, etc.). If there is no fiscal impact associated with this rule, an explanation of why there is no fiscal impact is required.
5. “Data description” - describe any sources of data used to estimate the quantitative, qualitative or fiscal impacts of the rule. This could include federal reports, data system reports, census data, etc.
6. “Alternatives to the Rule-making” - identify any alternatives considered and explain why they were not viable or acceptable. If there were no other alternatives considered, explain why. For example: no alternatives were considered because the rule is required by state or federal law or federal regulations and to discretion was permitted by the law or regulation.

D. Overview of Proposed Rule Form (SBA-3c)

Information on this form will be used by the SBA for historical rule-making records. The Overview is columnar with the left column listing current sections being revised. The middle column briefly describes the current rule. The right column briefly describes the proposed changes. The far right is a section to indicate whether stakeholder comments were received on the proposed rule.

1. Information at the top of the form is the same as on the Statement of Basis and Purpose.
2. “Section Numbers” - the specific rule citation for the section being changed.
3. “Current Rule” - briefly summarize what the current rule language says. If the proposed rule is new, enter “None”.
4. “Proposed Change” - briefly describe the change.
5. “Stakeholder Comment” - mark “yes” or “no”; if “yes”, the “Stakeholder Comment Summary” form must be attached.

E. Stakeholder Comment Summary (SBA-3d)

1. Refer to the Pre-Rule Analysis (SBA-1) and Statement of Basis and Purpose (SBA-3a) forms as a resource for completing this section regarding those individuals or entities that were involved in the drafting and comment period for the proposed rules.
2. Mark the box “No” only if there were no comments received. If there were any comments, mark the “Yes” box, summarize the comments and/or attach a copy.

3.7 Standards for Drafting of Proposed Rules

It is the policy of CDHS that all proposed program rules meet consistent standards for content, format, clarity, readability, use of common terminology, and conversion to other mediums, including Internet and on-line access. To achieve these objectives, all rules initiated by programs in the CDHS must adhere to the following minimum standards.

As a general statement of policy, all rules proposed by any Office or Division within CDHS required by statutes to promulgate rules to implement state or federal law or regulations for adoption by either the State Board of Human Services or Executive Director must conform to the following principles:

- A. The proposed rule must be necessary – Program must show why the rule is needed and the legal, statutory or regulatory authority for the rule.
- B. The agencies or individuals required to comply with the rule must be able to implement the rule – Program must demonstrate that what the rule requires can actually be done on a practical level. For example: does the agency have the resources to comply? Are there trade-offs required to comply? Is training or automated data system changes required to implement? Are workloads and fiscal impacts realistically identified and addressed by program?
- C. The proposed rule language must be enforceable – Rule drafters should ask the question, does the proposed rule state a performance standard or does it merely suggest best practices? Additionally, rule drafters should ask, does the rule address an area of compliance or have a desired outcome? And, is it possible to objectively measure compliance?
- D. The proposed rule must be clear and concise – does the rule state the requirements or expectations for those who must comply with the rule in a straightforward way? Is the rule vague or overly burdened with processes? Will all audiences or entities required to comply with the rules easily understand the rule? Does the rule contradict other rules? Does the rule cross-reference the right rules elsewhere in the manual or in other staff manuals? Does the rule logically flow to and from rules around it? Would a person know where to find it if he or she didn't write it?

- E. The rule must be non-discriminatory – if the rule imposes requirements on only certain populations or groups, is there a reasonable and legally justifiable reason for the rule? Does the rule apply reasonable standards to the affected group? Does the rule meet a basic test of fairness or equity? Does the rule meet a standard of “state-wideness” when applicable? Does the rule afford equal access to services or benefits for all protected classes?
- F. Every reasonable effort has been made to obtain stakeholder input.
- G. The rule is the best possible statement of official CDHS policy.

3.711 Rule Defined

Under the APA, a rule is defined as, “the whole or part of every agency statement of general applicability and future effect implementing, interpreting or declaring law or policy or setting forth the procedures or practice requirements of any agency.” As discussed earlier, rules are an elaboration of the implementing statute, controlling federal law or regulation, or the Department’s broad statement of policy. Rules have the force of law. This means that they are enforceable on the individuals, agencies or providers responsible for complying with the rule.

- A. In terms of enforceability, under the APA, no rule shall be relied upon or cited against any person unless it has been published and made available to the public. See 24-4-103, CRS.
- B. As a general rule, if the program deems it necessary to assure that it can enforce a policy or procedure and impose consequences or sanctions if for non-compliance, the policy or procedure must be stated as a rule, and the rule must be adopted pursuant to the APA.
- C. The APA requires that rules be “clear and concise.”
 - 1. “Clear” means the rule needs to be understandable to anyone who has to apply it.
 - 2. “Concise” does not mean short, it means using language that is to the point. When drafting a proposed rule, the program needs to make sure the content of the rule is fully explained.
- D. Programs must balance the need for specificity that gives sufficient guidance and allows for enforceability, with the need to allow for flexibility. When drafting a proposed rule, programs should consider what they hope to gain through the rule, i.e. how will this rule serve Colorado citizens?
- E. As for enforceability, rules should identify measurable standards and consider what the consequences are if one does not comply with the provisions of the rule.

- F. Sometimes rules reiterate language found in the statute. This is allowed so long as the program identifies some benefit to reiterating the statute. One benefit may be making the statutory language or requirement more accessible to employees of the county departments who as a practice must rely on rule manuals rather than statutes in performing their required program duties or functions. Another example is that a statute may require a rule-making but the statute does not need any elaboration or interpretation.

3.712 Rule Readability, Grammar and Mechanics

- A. A rule must be readable and understandable. In order to do this, one must consider formatting, grammar, mechanics, etc. A rule needs to be stated in plain and simple words. Some rules are very technical and complex, but a start with writing basic principles will help a great deal. When drafting a rule, start with the basics, “Do I need a comma here?” “Is this a compound sentence?” “Have I spelled everything correctly?” “Did I use the same terms throughout the rule?”
- B. The program area rule author is responsible for checking rule readability in *Word*. All proposed and final rules initiated must be readable at the twelfth (12th) grade reading level. This readability standard will ensure that CDHS rules conform with APA requirements that agency rules must be understandable to those affected by or required to comply with the agency’s rules. However, because participants or clients in many programs administered by CDHS frequently have reading competency levels lower than the 12th grade, program shall assure that any rules that require client or participant compliance are written at an eighth (8th) reading level, if appropriate.

3.713 Scope of the Rule

When creating, amending or repealing a rule, the rule author shall, to the extent practicable, limit the scope of the proposed rule-making to a single program or topic. The program has some discretion in this area but must remember that the APA requires that rules noticed for rule-making must be limited to one subject area; the rule should address topics in a single program area or within a single subject.

- A. To some extent, the scope of the rule-making is pre-determined. This is because, at a minimum, everything under a specific rule number is opened for review by stakeholders and the State Board or Executive Director as part of the rule-making process.
- B. Example: (reference the following table) The program has proposed a change to 3.200.11, B, 1, but by doing so everything under 3.200.11 is subject to review. This means that anything under 3.200.11 can be changed and anyone can testify on any part of 3.200.11; not just the changes proposed by the drafter. In this scenario, Bob Citizen may give

testimony and ask the State Board to remove the definition 3.200.11, B, or delete the authority in subsection C for recovering overpayments resulting from IPV, even though the program did not intend to propose this change. However, in this example, the program is not changing anything under 3.200.12 and thus, it is not open for revision or repeal under the rule-making process.

11 CCR 2702-2	<p>Intentional Program Violations (IPV)</p> <p>A. IPV Defined...</p> <ol style="list-style-type: none"> 1. 2. <p>B. Penalties for committing an IPV</p> <ol style="list-style-type: none"> 1. 2. <p>C. Recovering overissued benefits resulting from an Intentional Program Violation</p>
<p>3.200.11 Eff. Date 10/10/02</p>	
<p>3.200.12 Eff. Date 11/11/00</p>	

3.714 Provide the Full Text

The standard for how much text should be included in the rule-making package is at a minimum, to include all of the text under the applicable rule number; in our example that would be everything under 3.200.11. However, in some cases, more text may be required if it is necessary to put the rule-change in context.

3.715 Referencing the Corresponding CCR Cite on Rules

Because the CCR is the only official publication of the rules, it is important to connect CDHS rules to their official citation. In order to do this each page of the rule will begin with the CCR cite. The SBA is responsible for entering the correct CCR cite on each rule page included in the rule-making package.

3.716 Standards for Numbering of CDHS Rules

The Department standard for numbering of rule sections and subsections is intended to assure consistency and improve readability of between program rule manuals. All rule CDHS program rule manuals will be based on a numeric manual number, with sections and subsections numbered in consecutive order.

- A. The SBA is responsible for the assignment of rule manual numbers as new programs are implemented or the needs arise.

- B. The following are the numeric rule manual designations for CDHS programs and corresponding CCR cites:

RULE MANUAL 1 – (new manual – no CCR designation) Proposed General Rules of the Department of Human Services (reserved for future use)

RULE MANUAL 2 – (9 CCR 2502-1) County Personnel

RULE MANUAL 3 – (9 CCR 2503-1) Income Maintenance, containing financial assistance programs, including OAP, AND, AB, Colorado Works/TANF, Colorado Child Care Assistance Program (CCCAP), LEAP

RULE MANUAL 4 – (10 CCR 2506-1) Food Stamp Program (will replace current designation of IV-B)

RULE MANUAL 5 – (11 CCR 2508-1) Finance

RULE MANUAL 6 – (9 CCR 2504-1) Child Support Enforcement

RULE MANUAL 7 – (12 CCR 2509) Social Services: includes child welfare and child care licensing

RULE MANUAL 8 – (10 CCR 2505-10) Designation for Colorado Department of Health Care Policy and Financing's Medical Assistance rules

RULE MANUAL 9 – (12 CCR 2513-1) Rehabilitation Services

RULE MANUAL 10 – (12 CCR 2510-1) Services for the Aging

RULE MANUAL 11 – (12 CCR 2511-1) State Nursing Homes and Veterans Affairs

RULE MANUAL 12 – (12 CCR 2512-2) Special Projects

RULE MANUAL 13 – (12 CCR 2514-1) Donated Foods

RULE MANUAL 14 – (6 CCR 1008-3) Addiction Counselor Certification Standards

RULE MANUAL 15 – (6 CCR 1008-1) Alcohol and Drug Abuse Treatment (ADAD)

RULE MANUAL 16 – (2 CCR 503-1) Developmental Disabilities Services

RULE MANUAL 17 – (2 CCR 504-1) Division of Youth Corrections (formerly Department of Institutions, Office of Youth Services)

RULE MANUAL 18 – (2 CCR 501-1) Mental Health Services: Ability to Pay

RULE MANUAL 19 – (2 CCR 502-2) Mental Health Services

RULE MANUAL 20 – (2 CCR 502-3) Child Mental Health Treatment

Rule Manual 21 - (2 CCR 502-1) Mental Health Services: Care and Treatment of the Mentally Ill

Rule Manual 22 - (6 CCR 1008-2) ADAD: Licensing and Registration of Researchers, Analytical Laboratories and Addiction Programs Using Controlled Substances

Rule Manual 23 - (12 CCR 2515-1) Adoption Intermediary Commission: Rules of Procedure

Rule Manual 24 - (12 CCR 2515-2) Adoption Intermediary Commission: Standards for Training Confidential Intermediaries

Rule Manual 25 - (12 CCR 2515-3) Adoption Intermediary Commission: Removal of Confidential Intermediaries and Training Programs

Rule Manual 26 - (12 CCR 2515-4) Adoption Intermediary Commission: Standards for Child Placement Agencies Conducting Searches

Rule Manual 27 – (12 CCR 2516-1) Colorado Commission for the Deaf and Hard of Hearing

C. Sections and related subsections of the general and program specific rule manuals shall be numbered in a manner consistent with the following:

1. In the number “4.415.1”

a. 4.xxx Represents the general program rule manual.

b. x.415. Represents the section. Sections are used to delineate programs within a certain subject area or for large program area sections to delineate a certain topic within the subject. This number adds another layer of specificity as to what subject matter is covered.

Example: Rule 4.415 identifies a Food Stamp Program rule (4.) concerning Resource Requirements (415).

This number is also used to delineate a chapter within the rule manual; when this occurs there is no decimal place after this number.

Example: Rule 3.300 Old Age Program Definitions and Requirements, or

Example: Rule 3.400 Aid to the Needy Disabled or Blind Program Definitions and Requirements.

- c. x.xxx.1 Represents the subsection. Note that the number “0” cannot be used in a subsection due to the requirements of the rules database maintained by the SBA.

Example: Rule 4.415.1 may apply to Food Stamps (4), Resource Requirements (415), Definition of resource (1), or,

Example: Rule 7.312.2 may apply to Child Welfare (7), Central Registry (312), Review of Central Registry Listings (2).

- d. Under this rule numbering standard, the first number of the subsection controls so rules are numbered in the following order:

Rule 3.111.1
 Rule 3.111.11
 Rule 3.111.12
 Rule 3.111.2
 Rule 3.111.3
 Rule 3.111.31
 Rule 3.111.312
 Rule 3.111.4

3.717 The Effective Date of Adopted Rules

- A. The “effective date” of a rule is the date the rule is effective after adoption by the State Board or Executive Director and is determined based on timeframes established by the APA. By statute, the effective date for all rules, except emergency rules, is the first day of the month following the month the rule is published by the Secretary of State.
- B. The effective date of the rule is located directly underneath the rule number to the left of the rule text. The effective date applies to all of the rule text covered by the rule number. The effective date shown on the rule page is the date of the most recent revision to the rule.

1. Example:

9 CCR 2503-1	
Rule 4.415 Effective 10/02/03	Text of the rule...
Rule 4.415.1 Rev. Eff. 10/02/03	Text of the rule....
Rule 4.415.12 Rev. eff. 04/05/00	Text of the rule...

3.718 Expiration of Rules Governing Pilot Projects

To ensure that rules creating short-term or pilot programs are reviewed for ongoing applicability and need, any program rules promulgated to create or govern a short-term pilot program shall include a specific expiration date consistent with the intended life of the pilot program, and longer than five years following the date the rules creating the pilot program were promulgated. Prior to expiration of the pilot program rules, the program area will be responsible for reviewing the rules and initiating a rule-making package to re-promulgate the pilot program rules.

Following each rule chapter heading shall be a statement of when the rule chapter expires.

*Example: Rule 10.400 Pilot Experiential Work Program
Program Definitions and Requirements.
This section 10.400 shall expire on April 5, 2008.*

3.719 Subject Heading for Sections and Subsections

Each section that has no subsection requires a subject heading. Each subsection also requires a subject heading.

Example: 3.111.6 Child Care Assistance Program Eligibility

3.111.61	Maximum Monthly Income Limits
3.111.62	Countable Gross Income

3.721 Consistent Use of Terms

When drafting a rule, the program will use the terms delineated in the common definitions section of the CDHS Rule Manual 1 -General Rule Manual. Appendix E of this manual contains a list of common terminology which shall be used by all programs. Programs are to use common definitions, but if a common definition is not applicable or cannot be used in the context of the rule, the program shall be responsible for defining alternative terminology in the "definition" section of its rule manual.

3.722 Definition Section of Program Rule Manual

The first section of the program's rule manual should be for definitions; define the terms first and then use the term. The program should have definitions for any term that has a meaning beyond the definition commonly used or understood by most people (i.e., Webster's dictionary usage.)

Example:

Rule 3.310.2	RECOVERY FOR FRAUD CLAIMS
	A. Definitions
	B. ...

3.723 Use of Acronyms and Standard Abbreviations

Acronyms and Standard Abbreviations should be kept to a minimum. Abbreviations shall not be used unless there is no other way to communicate within the rule. If the program must use an acronym, then the acronym will be spelled out the first time it is used or it may be located in the definitions section. See Appendix F for a list of acronyms. As a guide, an acronym should be only be used within a rule number or within a few pages; this is because the acronym needs to be kept in context and a reader needs to be able to easily locate the definition of an acronym.

A. Example: Use "and" rather than "&."

B. Example: Rule 4.600.1 RECOVERY

A. ...

B. ...

C. Inadvertent Household Errors (hereinafter IHE) ...IHE...IHE...

3.724 Standard Font and Font Size for Proposed Rules

The standard font for all CDHS rules is "Arial" and standard font size is 10 pitch.

A. If necessary to comply with the Americans With Disabilities Act (ADA) requirements, copies of state rules may be made available in a larger font size upon request. However, the agency's rules will always be published in Arial 10 pitch. Program areas shall copy the rules to larger size upon request.

B. **Bold** type is prohibited in the subject title or text of any rules. Bold type may only be used to distinguish a new number in a proposed rule package.

C. *Italics* should be limited in use as not all databases recognize this function.

- D. Underlining may be acceptable within rule text to identify titles or official publications or for other purposes, so long as usage is consistent in the rule manual and acceptable to the SBA.

3.725 Organization of Information within the Rule

The following format for delineating topics or information within the rule shall be the standard for CDHS rules. This format will follow the appropriate major or minor numerical number corresponding to the rule manual (e.g., 3.100).

- A.
- B.
 - 1.
 - 2.
 - a.
 - b.
 - 1)
 - 2)
 - a)
 - b)

Each paragraph will have one of the above headings unless a narrative of a couple of paragraphs is necessary.

3.726 Use of Complete Sentences

The default is that each paragraph will use complete sentences. Complete sentences are used unless the rule contains a list or an outline format is deemed to be more appropriate and is comprehensible.

3.727 Use of Dates in Rules

If it is necessary to state a date, the date shall be spelled out.

Example: May 1, 2002 is correct; 5/1/02 or 05/01/2002 is not correct.

3.728 Use of Dollar Amounts in Rules

The amount shall be stated using a dollar sign, commas and cents.

Example: \$5,721.50

3.729 Referencing or Cross Referencing Other Agency Rules

- A. If a rule references a rule in another CCR section, the program shall ensure that the reference is accurate and use the full rule citation.

Example: Section 3.490.1 (9 CCR 2503-1)

- B. If a rule references a rule within the same CCR section, then reference the rule number only. It is not necessary to reference the CCR cite. Program shall ensure that the reference is accurate.

Example: Section 3.490.1

- C. If the rule references a statute, the following format will be used.

Example: 19-3-313, C.R.S.

- D. Rules should avoid referencing specific forms or other documents, which may be revised outside of the rule-making process. To the extent possible, references to forms or documents should exclude form numbers or names to minimize the potential for contradictory references throughout the rule. Form references should be as generic as possible to avoid the need to promulgate rules to change form numbers or names.

Example: The County shall use the State prescribed forms.

3.731 Incorporating Material by Reference

24-4-103(12.5)(a), C.R.S., states that the following materials may be incorporated by reference:

- A. Federal rules, codes or standards published in full in the Federal Register or Code of Federal Regulations (CFR);
- B. Federal rules, codes or standards that have been properly incorporated by reference in the Federal Register; or,
- C. Published codes, standards or guidelines of any nationally recognized scientific or technical association or organization.
- D. In order to incorporate material by reference, 24-4-103(12.5), C.R.S., requires that the following occur:
 1. The state agency identify the incorporated material by appropriate agency, organization, association and by date, title or citation;
 2. The rule states that the rule does not include later amendments to or editions of the incorporated material;
 3. The rule includes the title and address of an employee of the agency who will provide information regarding how the incorporated material may be obtained or examined; and,
 4. The rule include a statement that the incorporated material may be examined at any state publications depository library.

3.732 Establishing the Rule History

The statement of basis and purpose summarized in the CCR shall annotate the changes that have occurred within the rule manual. This information will be entered by the SBA based on the information provided in the rule-making package.

3.8 Revising a Proposed Rule

Do not submit electronic copies of rule-making packages by using the “Track Changes” feature available in Microsoft Word.

However, for in internal use of this feature, follow these steps:

- A. Open the document you want to revise.
- B. On the bottom of your Word screen, there is a toolbar that contains information on the number of pages in the document and the location of the cursor. In the very center of the bar, there are four little boxes that look like this:

REC	TRK	EXT	OVR
-----	-----	-----	-----

By double clicking on the TRK box, you will turn on the track changes feature. From then on, all of your changes will be formatted and annotated for review.

- C. Make the changes you want by inserting, deleting, or moving text or graphics. You can also change any formatting. Microsoft Word uses revision marks to show the tracked changes.
- D. Although it is possible to change the color and other formatting that Word uses to mark changed text and graphics, do not do so. The defaults for this feature are the established departmental standard.
- E. If you need further assistance using this feature, consider using the help feature in Microsoft Word.

3.9 Technical Review

Once the rule is drafted, it will go through a technical review. The purpose of this review is to ensure the rule is properly formatted, eliminate any typographical errors, etc. This is not a substantive review. The technical review is to be performed by the program area prior to submission of the rule-making package to the SBA, and by the SBA as part of its review of the rule-making package. Technical changes will be made by the SBA to the rule documents and forwarded to the rule drafter for concurrence.

4. CHAPTER 4: INTERNAL REVIEW OF THE RULE-MAKING PACKAGE

4.1 Submission of the Rule-making Package

Once the rule-making package is ready, the program shall submit the rule-making package to the SBA. Programs shall submit one hard-copy and one electronic copy.

4.2 Review of the Rule-making Package

The SBA will review the rule-making package to ensure compliance with the Administrative Procedure Act and CDHS standards for rule-making. Also, the SBA will forward the rule-making package to the Attorney General and ask the Attorney General for an agency memorandum regarding the rule-making package's legality and constitutionality.

The SBA will return the rule-making package with the SBA's and Attorney General's comments to the rule author. It is the SBA's goal to return the reviewed rule-making package within ten days of submission. Based on the feedback received from the SBA, the rule author may need to revise the rule-making package.

4.3 Revision of the Rule-making Package

If necessary, the rule author will revise the rule-making package in light of the feedback received. The rule-making package is then resubmitted to the SBA in the form of a rule "update"; the program shall resubmit the entire rule-making package, as revised, electronically and shall submit one hardcopy of the changes to the rule-making package highlighting the specific changes.

As a result of changes to the language of the rule, updates to the rule-making forms may also be required, including the Rule-making Cover Sheet.

4.4 SBA Pre-Board Meeting

The Pre-Board Meeting applies to all rules that are proposed to be heard before the State Board at its next meeting; this includes all rules up for an initial review and all rules up for public hearing and adoption. All rule authors requesting a rule-making at the State Board meeting are required to attend a Pre-Board Meeting. The Pre-Board Meeting normally occurs at 1:30 p.m. on the third Wednesday of the month.

The purpose of this meeting is the following: negotiate the advancement of any rule, verify that the rule-making package as revised is ready to be sent to the State Board, verify that the program is prepared to present the rule and determine what testimony if any is anticipated and the length of such testimony, make any agenda requests. To the extent feasible the agenda will accommodate the schedules of program staff and those testifying.

4.5 SBA Decision to Schedule the Rule-making for the State Board

Upon review of the revised rule-making package and based upon the discussions at the Pre-Board Meeting, the SBA shall determine if the rule will go before the State Board.

- A. If the answer is no, then the rule-making may be postponed, cancelled or withdrawn. The rule-making package is returned to the program with an explanation of why it is not moving forward at this time.
- B. If the answer is yes, then the SBA will prepare the rule-making documents for the State Board. The rule-making documents draw from the materials in the rule-making package and other supplemental documentation.

4.6 Withdrawing a Rule-making

The program can withdraw a rule-making any time up to its presentation before the State Board; however, an explanation is required from the program. Also, note that once the rule-making is officially before the State Board, any action on the rule-making is its decision.

4.7 Revising the Rule-making Package After Pre-Board

Revisions can occur up to and including presentation before the State Board; however, the program must show good cause for revising the rule. "Word-smithing" or "tweaks" should be avoided after submission of the revised rule-making package to the SBA.

- A. The concern is that programs get caught in a never-ending revision loop and the showing of "good cause" is a measure to prevent that loop. This does not mean that a typo, found at the last minute, cannot be corrected. Programs are to use their judgment to balance the need to get it right with the need to get it through.
- B. The SBA has discretion to deny a revision to ensure that a rule moves forward.
- C. The process for revisions is the same as the process as above. Any revisions shall be submitted to the SBA and the rule author will need to attend Pre-Board, etc. The program shall resubmit the rule-making package, as revised, electronically and shall submit one hard-copy of the changes to the rule-making package, highlighting the specific changes. Again, remember that you may need to update your forms, including the Rule-making Cover Sheet.

5. CHAPTER 5: PREPARING FOR THE STATE BOARD MEETING

5.1 Board Meeting Agenda

- A. Based upon the discussions at the Pre-Board Meeting, the SBA will prepare the agenda. The agenda will delineate the schedule for the State Board of Human Services Meeting with a specific reference to each rule that will be discussed.
- B. It is the responsibility of the SBA to distribute and post the agenda. The agenda will be included in the rule-making documents sent to the State Board members. The agenda will be distributed to those who have requested to be on the agenda distribution list, as well as all CDHS office managers, county directors, rule authors and their supervisors. The agenda also will be posted on the Internet at:
http://www.cdhs.state.co.us/opi/state_board/bdagenda.html.

5.2 Rule-making Documents

- A. The SBA is responsible for preparing and distributing the rule-making documents. The documents shall contain the following: the proposed rules up for Initial Review and the proposed rules up for adoption, including any revisions/updates to the proposed rule, and all the rule-making forms except for the Rule-making Cover Sheet.
- B. The rule-making documents will be sent to the State Board members along with any additional information, briefing papers and discussion topics. The rule-making documents are distributed in two mailings. The first occurs after Pre-Board, approximately two weeks prior to the State Board meeting and the second occurs approximately one week prior to the State Board meeting.
- C. For those rules that have been noticed and are to be heard at public hearing, i.e. the rules that are scheduled for adoption, the APA requires the following information be available to the public:
 - 1. The proposed rule, the proposed statement of basis, statutory authority, and regulatory analysis; 24-4-103, CRS.
 - 2. This information must be available at least five days before the scheduled public hearing. Stakeholders have access to all information contained in the rule-making package as well as the rule-making documents. This information will be available to public once mailed to State Board, at least 5 days prior to hearing.
- D. Electronic copies of the proposed rule documents shall be posted on the Internet by the SBA.

5.3 Content of Notice of Proposed Rules

In order to be adopted, all proposed rules must be noticed. Such notice, must occur twenty days before the public hearing. The APA requires the notice to contain the following information: the time, place and nature of the rule-making; the statutory authority for the rule; the terms/substance of the rule or a description of the subjects and issues involved in the rule. See 24-4-103, CRS.

5.4. Distribution of Notice for Proposed Rules

Under the APA, notice shall be published in the Colorado Register, which the Secretary of State oversees. Prior to the due dates established by the Secretary of State (presently the 10th of every month), the SBA shall send the notice to the Secretary of State. Publication in the Colorado Register must occur twenty days prior to the public hearing for the rule-making to be valid.

- A. In addition, the APA requires CDHS to maintain a list of all persons who request notification of proposed rule-making. A stakeholder must request to be included on CDHS's list on his or her own behalf. CDHS need not honor requests made on behalf of another person; to request to be put on the agency's list, please contact the SBA. See 24-4-103, CRS.
- B. Under the APA, CDHS shall mail notice of the proposed rule-making to all persons on the list on or before the date of publication of the notice in the Colorado Register. See 24-4-103, CRS. It is the responsibility of the SBA to maintain this list and mail notice to those individuals on the list on or before the date of publication in the Colorado Register.
- C. The SBA also posts notices on the Internet. These notices are located on the CDHS homepage on the State Board of Human Services webpage.

6. CHAPTER 6: ACTION BY THE STATE BOARD

6.1 State Board Meetings

The State Board generally meets on the first Friday of every month in Denver at the State Human Services Building, 1575 Sherman Street, in the fourth floor conference room. However, times and locations may vary due to state holidays or to comply with statutory provisions encouraging appointed rule-making bodies to conduct a portion of their meetings in other areas of the state. Contact the SBA or the Internet site for additional information and schedules of State Board meetings.

6.2 Initial Review by the State Board

Proposed rules are presented to the State Board for initial and final review; generally at two consecutive meetings of the Board. The initial or first review is informal in nature and the only Board action required is to approve the rule for formal public hearing pursuant to the APA. A quorum is not necessary for initial review. Initial review affords the Board, the Executive Director, program and SBA staff to discuss the proposed rule-making package and to obtain input and suggestions from interested stakeholders. During initial review, the program rule author summarizes the proposed rule-making and the State Board makes comments and allows for comment from stakeholders. Program authors take whatever action is recommended or requested, including revisions to the draft rule-making for subsequent public hearing and adoption.

6.3 Public Hearing and Adoption

After the initial review, the rule is brought back before the State Board. This generally occurs the following month. The purpose of this meeting of the State Board is to hold a public hearing and vote to adopt the proposed rule.

Under the APA, the State Board must allow for written testimony and may allow oral testimony. After the record has been established, see 6.4 below, the State Board votes to adopt the rule. If the proposed rule is not adopted, then the rule-making fails. Generally the State Board votes on the rule at the same meeting as the public hearing; however, the State Board may table the rule until a later time as specified in the record. If the rule is adopted, then the SBA will take those steps necessary to submit the rule for publication and distribution.

6.4 Establishing and Maintaining the Rule Record

The APA requires rules promulgated by CDHS be based only upon the record. The record is maintained by the SBA and consists of: proposed rules, evidence, exhibits and other matters presented or considered, matters officially noticed, rulings on exceptions, any findings of fact and conclusions of law proposed by any party and any written comments or briefs filed. See 24-4-103, CRS.

7. CHAPTER 7: EMERGENCY RULE-MAKING

7.1 Emergency Rule-making Defined

Under the APA for an emergency rule-making to occur, the State Board must find that the immediate adoption of the rule is necessary:

- A. To comply with state or federal law; or,
- B. For the preservation of the public health, safety and welfare; and,
- C. Compliance with the requirements of the APA would be contrary to the public's interest.
- D. An emergency rule is effective for no longer than three months from the date of adoption.

7.2 Emergency Rule-making Procedure

Under the APA, a temporary or emergency rule may be adopted without compliance with some of the standard APA rule-making procedures including the requirement that notice be posted 20 days prior to hearing.

- A. To the extent feasible, the program shall follow the same procedure as they would if it were a regular rule-making. Programs should involve stakeholders, submit the rule to the SBA, attend the Pre-Board Meeting, and present at the State Board hearing or hearings if applicable.
- B. To the extent feasible, the SBA shall include the rule on the agenda, in the rule-making documents, provide the notifications necessary, make available the necessary documents, etc.
- C. Once adopted, it is the responsibility of the SBA to provide the rule to the Secretary of State's office to ensure prompt publication in the Code of Colorado Regulations.

7.3 Effective Dates of an Emergency Rule

An emergency rule is effective on adoption or such later date as stated in the rule. An emergency rule is effective for no longer than three months from the date of adoption. This is long enough for the program to comply with proper noticing requirements. Note that use of an emergency rule-making is limited by the APA and when it is used, it should not circumvent stakeholder input.

8. CHAPTER 8: POST STATE BOARD ACTION PROCESSES

8.1 Vote Summary and State Board Minutes

- A. After a State Board meeting, the SBA will annotate the agenda with a vote summary on the Internet. The vote summary will state if the rule is to be heard next month, amended, adopted, or terminated. This will occur for rules that were initially reviewed and those that were voted upon.
- B. The SBA will post the State Board Meeting minutes at http://www.cdhs.state.co.us/opi/state_board/minutes.html, once the State Board has voted to approve the minutes, which generally occurs at the next meeting.

8.2 Formal Opinion of the Attorney General

The APA requires that the Attorney General issue a formal opinion on rules that are adopted by the State Board or Executive Director for inclusion in the final submission of adopted rules to the Secretary of State. It is the responsibility of the SBA to send the rules to the Attorney General for a review on the legality and constitutionality of each rule.

The request for formal Attorney General Opinion is transmitted to the Attorney General's office the first working day following the rule-making session, with a requested time for return, which must be within 20 days of adoption to comply with statutory requirements.

8.3 Formatting of Adopted Rules

- A. The SBA shall ensure that the final rule text is the version of the rule adopted by the State Board. The finalized rule format must be consistent with the officially published rules (i.e., CCR). In addition to the text of the rule, the SBA verifies that the CCR citation and effective date of the rule is correct.
- B. The SBA will update the CCR Statement of Basis and Purpose Summary and complete the Legislative Legal Services' "Filing Information Form".

8.4 Distribution of the Rule

8.41 Code of Colorado Regulations (CCR)

The APA requires CDHS to submit adopted rules to the Secretary of State so the rule can be published in the CCR. Again, the CCR is published on the 10th of each month. It is the responsibility of the SBA to submit the rule and Attorney General Opinion to the Secretary of State to meet the statutory timeframes.

8.42 Legislative Legal Services

The Administrative Procedure Act requires the agency to submit all adopted rules to Legislative Legal Services for review. It is the responsibility of the SBA to submit the rule-making package and Legislative Legal Services form to Legislative Legal Services based on the statutory timeframes.

Legislative Legal Services has authority to review and comment on all rules subsequent to adoption by the Board. The SBA is the Legislative Legal Services staff contact for the CDHS. If Legislative Legal Services contacts the SBA, the SBA will ensure that the program is made aware of the contact. Further, it is the responsibility of the SBA to ensure that CDHS has responded to any inquiries from Legislative Legal Services. The SBA shall maintain a record of inquiries from Legislative Legal Services.

8.5 Informing Stakeholders of Rule Changes

Programs are to inform their stakeholders of rule changes through their agency letter process or through their other electronic communication processes. Information about rule changes can also be found on the Internet at http://www.cdhs.state.co.us/OPI/state_board/hs_board.html.

8.6 Internet Posting of Rules and Rule Histories

The SBA shall publish an unofficial copy of the rules on the Internet for the use by department staff and stakeholders. The “menu” of Rule Manuals may be found on the “CDHS Board” site at [http://www.cdhs.state.co.us/pls/cdhs/rule_volumes\\$.volumes](http://www.cdhs.state.co.us/pls/cdhs/rule_volumes$.volumes).
See Section 3.716 for a table of contents of CDHS rules manuals.

8.7 Effective Date of Rules

- A. For non-emergency rules, the APA provides that the rules shall be effective 20 days after publication (usually on the 10th of the following month) in the CCR or such date stated in the rule. For example: a rule adopted by the State Board on 7/1/02 is effective 9/1/02.
- B. For emergency rules, see Chapter 7.

9. CHAPTER 9: RULE RECORD-KEEPING AND ARCHIVING

9.1 Record-keeping

The APA requires each agency to maintain copy of currently effective rules, current status of each published proposal for rules, Attorney General opinions, the Colorado Register for the agency's rule-makings, the CCR for the agency's rules. It is the responsibility of the SBA to maintain these records as well as the rule-making record and all other material documentation associated with a rule-making. These records are to be archived in a manner consistent with state statute.

Any individual or entity needing assistance with retrieving a rule record may contact the SBA.

9.2 Official Publication of Rules

The CCR is the official publication of all state agency rules. If you want a hard copy or an official copy of the CCR, please contact the Secretary of State's Office or Weil Publishing at <http://www.weilpublishing.com>.

10. CHAPTER 10: MAINTAINING THE QUALITY AND INTEGRITY OF RULES

10.1 Maintaining Rule Integrity

- A. It is the responsibility of programs to keep current with the state and federal standards. Programs track legislation and know if it permits or requires rules. Programs know whether or not it needs a rule. Programs are to be diligent in the initiation of rules to ensure that CDHS is keeping up with the demands of the legislature and that our commitments don't fall through the cracks. Programs should turn to other department resources such as the legislative liaison or federal liaisons to help them identify what needs to be done.
- B. Rules are only one portion of the picture, when considering a rule-making, it is important for the program (and others involved) to consider the impact of the rule-making. Questions that should be asked include: Does this impact our State Plan? Does this impact our contracts? How does this impact state and county staff? Does this connect to any legislative efforts? Is this feasible (financially and otherwise)? What other communications do we have out there (agency letters, policy statements, newsletters, phone responses) and how does this impact them? This really comes down to closing the loop, ensuring everything is connected and everything is current.

10.2 Periodic Review of Department Rules

- A. At least every five years program staff shall be responsible for conducting an in depth review of all rules, including soliciting stakeholder comments and feedback, to ensure that the rules are necessary. A second benefit is that this process requires the program to review the rules to ensure they are doing what the program intended when it promulgated the rule, and it allows the rule to evolve as the public need and CDHS objectives evolve.
- B. In addition to this internal review process, formal “sunsetting” or rule expiration or repeal occurs in the annual “Sunset Bill” that is initiated by Legislative Legal Services staff and considered by the Legal Services Committee of the General Assembly, and the General Assembly itself.

10.3 Stakeholder Input

Stakeholder input is essential to ensuring that agency rules are clear, understandable, consistent, and achieve their intended purpose. The goal to the revised rule-making process is to promote more stakeholder participation and involvement.

**COLORADO DEPARTMENT OF HUMAN SERVICES
STANDARDS AND PROCEDURES MANUAL FOR RULE-MAKING**

APPENDICES

Appendix A - Rule-making Process Flow Chart

Appendix B - Pre-Rule Analysis Form

Appendix C - Rule-making Forms

~~Appendix D - Legislative Legal Services' "Filing Information Form" (no longer used)~~

Appendix E - Common Definitions

Appendix F - List of Acronyms Used by CDHS

[Flow Chart]

PRE-RULE ANALYSIS FORM

Program: _____ Contact Person: _____
Phone #: _____ E-mail: _____

Description of request for rule change:

(Example: Revise Section X.XXX to require background checks of all foster care parents.)

Who requested the proposed rule change? (Place an X in the appropriate box)

- Initiated by the program responsible for the subject matter
- Executive Director/Executive Management Team
- Stakeholder *(identify stakeholder here)* _____
- Other; specify person/entity: _____

Rule-making shall be initiated.

Suggested Title of the Proposed Rule: _____

Why is the rule necessary as opposed to some other action? *(Example: 19-3-313 (7)(b)(III), CRS, requires the CRCP to define minor offense.)*

If this rule is required or authorized by state/federal statute or federal rules, then provide the cite and language requiring a rule-making. *(Example: see above.)*

What is the anticipated effective date?

Stakeholders, including other CDHS Programs, contacted or to be contacted include:

- No rule-making to be initiated because the change:
- Has no statutory authority (requires a statutory change before a rule change can occur)
 - Is duplicative of current Department rules; specify rule: _____
 - Is not a rule, but a CDHS policy, administrative procedure or training issue

<input type="checkbox"/>
<input type="checkbox"/>

Is unfair to a specific group or discriminatory

Other; specify reason: _____

Deputy Executive Director

Approval: _____

Date: _____

State Board Administrator:	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Disagree	Date:	
Department rule-making #:					Comments:	
Rulemaking Title:						

Rule-making Form SBA-1 (10/08)

cc: Deputy Executive Director
Rule Presenter

RULE-MAKING COVER SHEET

Title of Proposed Rule: _____

Rule-making#: _____

Office or Division/Program: _____ Rule Author: _____ Phone: _____
 E-Mail: _____

Type of Rule: *(complete a and b, below)*

a. Board Executive Director

b. Regular Emergency

This package is submitted to State Board Administration as:

Initial Circulation (check all that apply)

- that creates a rule(s)
- that revises a rule(s)
- that is technical clean-up of a rule(s)

Update # _____

- that revises a proposed rule
- that is technical clean-up of a proposed rule

Cancel

Specify reason(s) for update or cancellation:

What month is being requested for this rule to first go before the State Board? _____

What date is being requested for this rule to be effective? _____

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Office of Policy & Legislative Initiatives, Office of Budget Services, Office of Operations & Financial Services, and Division of Information Technology has occurred.

Deputy Executive Director Approval: _____ **Date:** _____

TO BE COMPLETED BY STATE BOARD ADMINISTRATION

Approved		Date:
Conditional		Comments:
Disapproved		

Pre-Board	1st Board	2nd Board	Effective Date
-----------	-----------	-----------	----------------

Approved to go to AG: _____ Code: _____

Title of Proposed Rule:

Rule-making#:

Office or Division/Program:

Rule Author:

Phone:

E-Mail:

STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for the rule or rule change. *(State what the rule says or does, explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule.)*

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

<input type="checkbox"/>
<input type="checkbox"/>

to comply with state/federal law and/or

to preserve public health, safety and welfare

Explain:

Authority for Rule:

State Board Authority: 26-1-107, C.R.S. (2010) - State Board to promulgate rules; 26-1-109, C.R.S. (2010) - State Board rules to coordinate with federal programs; 26-1-111, C.R.S. (2010) - State Board to promulgate rules for public assistance and welfare activities.

Program Authority: *(give federal and/or state citations and a summary of the language authorizing the rule-making)*

Does the rule incorporate material by reference?

<input type="checkbox"/>
<input type="checkbox"/>

Yes

<input type="checkbox"/>
<input type="checkbox"/>

No

Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

State Board Administration will send this rule-making package to Colorado Counties, Inc., Office of State Planning and Budgeting, and the Joint Budget Committee. The program has sent this proposed rule-making package to which stakeholders?

[Note: Changes to rule text are identified as follows: deletions are shown as "strikethrough", additions are in "all caps", and changes made between initial review and final adoption are in brackets.]

Attachments:

Regulatory Analysis

Overview of Proposed Rule

Stakeholder Comment Summary

Title of Proposed Rule:

Rule-making#:

Office or Division/Program:

Rule Author:

Phone:

REGULATORY ANALYSIS

(complete each question; answers may take more than the space provided)

1. List of groups impacted by this rule:

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?

2. Describe the qualitative and quantitative impact:

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

3. Fiscal Impact:

For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources.

State Fiscal Impact *(Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)*

County Fiscal Impact

Title of Proposed Rule:

Rule-making#:

Office or Division/Program:

Rule Author:

Phone:

Federal Fiscal Impact

Other Fiscal Impact (such as providers, local governments, etc.)

4. Data Description:

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

5. Alternatives to this Rule-making:

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative.

Title of Proposed Rule:

Rule-making#:

Office or Division/Program:

Rule Author:

Phone:

OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

<u>Section Numbers</u>	<u>Current Regulation</u>	<u>Proposed Change</u>	<u>Stakeholder Comment</u>
<u>Example:</u> 4.242.11, C	<i>Report and verify changes of more than \$100 in gross earned monthly income</i>	<i>Change \$100 to \$75</i>	<u>X</u> Yes _ No

Title of Proposed Rule:

Rule-making#:

Office or Division/Program:

Rule Author:

Phone:

STAKEHOLDER COMMENT SUMMARY

DEVELOPMENT

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, Sub-PAC, and the Child Welfare Action Committee):

THIS RULE-MAKING PACKAGE

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

Are other State Agencies (such as the Department of Health Care Policy and Financing) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes No

Date presented _____. Were there any issues raised? ____ Yes ____ No

If not, why.

Comments were received from stakeholders on the proposed rules:

Yes No

If "yes" to any of the above questions, summarize and/or attach the feedback received by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.