

# Rulemaking Info

2014 - 2015

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue Number	Closing Dates <sup>1</sup>			Distribution Date	First Agency Hearing Date <sup>3</sup>	Expedited Adoption <sup>4</sup>
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS or <sup>2</sup> 10 p. max. Non-OTS			
<i>For Inclusion In -</i>	<i>File no later than 12:00 noon -</i>			<i>Count 20 days from -</i>	<i>For hearing on or after</i>	<i>First Agency Adoption Date</i>
14-15	6/25/2014	7/9/2014	7/23/2014	8/6/2014	8/26/2014	9/23/2014
14-16	7/9/2014	7/23/2014	8/6/2014	8/20/2014	9/9/2014	10/7/2014
14-17	7/23/2014	8/6/2014	8/20/2014	9/3/2014	9/23/2014	10/21/2014
14-18	8/6/2014	8/20/2014	9/3/2014	9/17/2014	10/7/2014	11/4/2014
14-19	8/20/2014	9/3/2014	9/17/2014	10/1/2014	10/21/2014	11/18/2014
14-20	9/3/2014	9/17/2014	10/1/2014	10/15/2014	11/4/2014	12/2/2014
14-21	9/24/2014	10/8/2014	10/22/2014	11/5/2014	11/25/2014	12/23/2014
14-22	10/8/2014	10/22/2014	11/5/2014	11/19/2014	12/9/2014	1/6/2015
14-23	10/22/2014	11/5/2014	11/19/2014	12/3/2014	12/23/2014	1/20/2015
14-24	11/5/2014	11/19/2014	12/3/2014	12/17/2014	1/6/2015	2/3/2015
15-01	11/26/2014	12/10/2014	12/24/2014	1/7/2015	1/27/2015	2/24/2015
15-02	12/10/2014	12/24/2014	1/7/2015	1/21/2015	2/10/2015	3/10/2015
15-03	12/24/2014	1/7/2015	1/21/2015	2/4/2015	2/24/2015	3/24/2015
15-04	1/7/2015	1/21/2015	2/4/2015	2/18/2015	3/10/2015	4/7/2015
15-05	1/21/2015	2/4/2015	2/18/2015	3/4/2015	3/24/2015	4/21/2015
15-06	2/4/2015	2/18/2015	3/4/2015	3/18/2015	4/7/2015	5/5/2015
15-07	2/18/2015	3/4/2015	3/18/2015	4/1/2015	4/21/2015	5/19/2015
15-08	3/4/2015	3/18/2015	4/1/2015	4/15/2015	5/5/2015	6/2/2015
15-09	3/25/2015	4/8/2015	4/22/2015	5/6/2015	5/26/2015	6/23/2015
15-10	4/8/2015	4/22/2015	5/6/2015	5/20/2015	6/9/2015	7/7/2015
15-11	4/22/2015	5/6/2015	5/20/2015	6/3/2015	6/23/2015	7/21/2015
15-12	5/6/2015	5/20/2015	6/3/2015	6/17/2015	7/7/2015	8/4/2015
15-13	5/20/2015	6/3/2015	6/17/2015	7/1/2015	7/21/2015	8/18/2015
15-14	6/3/2015	6/17/2015	7/1/2015	7/15/2015	8/4/2015	9/1/2015
15-15	6/24/2015	7/8/2015	7/22/2015	8/5/2015	8/25/2015	9/22/2015
15-16	7/8/2015	7/22/2015	8/5/2015	8/19/2015	9/8/2015	10/6/2015
15-17	7/22/2015	8/5/2015	8/19/2015	9/2/2015	9/22/2015	10/20/2015
15-18	8/5/2015	8/19/2015	9/2/2015	9/16/2015	10/6/2015	11/3/2015
15-19	8/26/2015	9/9/2015	9/23/2015	10/7/2015	10/27/2015	11/24/2015
15-20	9/9/2015	9/23/2015	10/7/2015	10/21/2015	11/10/2015	12/8/2015
15-21	9/23/2015	10/7/2015	10/21/2015	11/4/2015	11/24/2015	12/22/2015
15-22	10/7/2015	10/21/2015	11/4/2015	11/18/2015	12/8/2015	1/5/2016
15-23	10/21/2015	11/4/2015	11/18/2015	12/2/2015	12/22/2015	1/19/2016
15-24	11/4/2015	11/18/2015	12/2/2015	12/16/2015	1/5/2016	2/2/2016

<sup>1</sup> All documents are due at the code reviser's office by 12:00 noon on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-21-040.

<sup>2</sup> A filing of any length will be accepted on the closing dates of this column if it has been prepared and completed by the order typing service (OTS) of the code reviser's office; see WAC 1-21-040. Agency-typed material is subject to a ten page limit for these dates; longer agency-typed material is subject to the earlier non-OTS dates.

<sup>3</sup> At least twenty days before the rule-making hearing, the agency shall cause notice of the hearing to be published in the Register; see RCW 34.05.320(1). These dates represent the twentieth day after the distribution date of the applicable Register.

<sup>4</sup> A minimum of forty-five days is required between the distribution date of the Register giving notice of the expedited adoption and the agency adoption date. No hearing is required, but the public may file written objections. See RCW 34.05.230 and 1.12.040.

## Washington's Rulemaking Process

What is it?

A rule (or regulation) is a written policy or procedure by a state agency that is generally applicable to a group of people, industries, activities, or circumstances. Rules are used by agencies to “fill in the gaps” of legislation. They implement, interpret, apply or enforce a state or federal law or court decision. A rule is adopted by an agency; a statute is a law that is passed by the state Legislature. In both cases, state law provides for citizen participation before a rule or law is approved.

### Rulemaking Process

After laws, or statutes, are passed by the state Legislature and signed by the Governor, they are compiled in the Revised Code of Washington, or RCWs. Rules to carry out those laws — which are sometimes called regulations and sometimes called WACs, for the Washington Administrative Code — are adopted by agencies through a process mandated in law by Washington's Administrative Procedure Act (APA) (<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>). The APA sets out exactly what steps an agency has to follow to adopt rules. Different processes are provided for different kinds of rules. The same basic process is used to adopt a new rule, amend an existing rule, or repeal an existing rule.

The basic rule process has three formal steps.

#### Step 1

Notice of intent to change, adopt, or repeal a rule. The first step is called a pre-notice inquiry. The agency files a notice with the Office of the Code Reviser explaining that it is considering a rule adoption or amendment, why it is considering such an action, and what authority it has for doing so. The form for this notice is called a CR-101. The Code Reviser then publishes the notice in the Washington State Register, which is a document published twice a month that contains all agency rule notices, public meeting notices, Governor Executive Orders, and Supreme Court rules. The Register is available in hard copy or electronic format at the Code Reviser's Web Site.

The agency also sends copies of the prenotice inquiry, either electronically or in hard copy, to any person who has asked for such notice. Agencies may have a public meeting where interested parties can comment on the proposal, or they may request written comments only at this stage. Some agencies will also send preliminary draft rule language at this stage. The agency will take any comments it receives into consideration as it decides whether to go forward with rulemaking.

#### Step 2

Proposed new or revised rule language. If the agency decides to go forward with rulemaking, it

will develop a draft. Typically, the draft will go through several revisions as the agency considers the comments it may have received. In some cases, agencies will have meetings with interested parties to discuss issues with the proposal. Or the agency may use other means to involve the public, including sending surveys, circulating working drafts to interested parties, forming drafting committees. The drafting process can take anywhere from several months to several years to complete before the agency proposes the rule for formal comment. During this time an agency must also decide if the rule proposal will require a small business economic impact statement.

A small business economic impact statement is required if a rule will impose more than minor costs on business or industry, or if a legislative committee, the Joint Administrative Rules Review Committee, requests a statement. If possible, the agency must reduce the costs that the rule imposes on small businesses. This requirement does not apply to costs imposed by legislation or by court directive. Some rules, called significant legislative rules, require a more detailed analysis to be done. These rules require that the agency make a more complete explanation of why it is proposing this rule, including performing a cost-benefit analysis of the proposal, which includes the qualitative as well as the quantitative costs and benefits of the proposed rule. When the agency believes it has developed a final rule proposal, it files a "Notice of Proposed Rulemaking" (CR-102) and a copy of the proposed rule with the Code Reviser, which is published in the Washington State Register. The agency sends the notice to interested parties, and schedules a public hearing at which interested parties can make comments about the proposal. Written comments can also be submitted to the agency.

At the public hearing, the agency representative will explain the proposal and the rule process. Anyone who wishes can give verbal or written comments. After the hearing, the agency considers the comments and the rule proposal, and makes any changes it thinks are necessary. If the changes are substantial, the agency may revise the draft rule, file another Notice of Proposed Rulemaking, send out a new notice and hold another hearing.

Prior to the adoption of the rule, the agency also prepares a document called a concise explanatory statement. The statement summarizes the agency's reasons for adopting the rule, any comments received on the rule proposal, as well as the agency's responses to those comments.

### **Step 3**

**Final Adoption of the Rule.** When the agency is ready, it will adopt the rule. The rule adoption is not a public process, but consists of filing the final rule, along with the "Rulemaking Order" (CR-103) with the Code Reviser. Rules normally become effective 31 days after they are filed with the Code Reviser. The Code Reviser publishes the order and the final rule in the Register. The agency normally sends a notice to its stakeholders that it has adopted the rule.

## **Other Rulemaking Processes**

## Expedited Rulemaking

Agencies can use an expedited process to adopt, repeal, or amend rules in certain limited circumstances. Generally this process is available if:

- The rule applies only to internal government operations;
- The rule incorporates only federal or state law or other agency rules;
- The rule is correcting only typographical errors, making name or address changes, or clarifying the language of a rule without changing its effect;
- The rule is explicitly and specifically dictated by statute; or
- The rule was developed through negotiated or pilot rulemaking.

In the expedited process, the agency files the proposed rule with the Code Reviser for publication in the Register, and sends the notice to interested parties, but no hearing is scheduled. If any person objects to the expedited process within forty-five days of publication, the agency considers the notice to be the same as the proposal notice used in the basic rulemaking process, and it must complete the rulemaking using the basic rulemaking process, including publishing the notice of intent to adopt and holding a hearing on the proposal.

## Emergency Rulemaking

In certain circumstances, agencies may use an “emergency rulemaking” process. This process may be used when a rule is needed before the standard rulemaking process can be completed. To use this process, the agency must find, with good cause, that the immediate adoption, amendment, or repeal of a rule is necessary for the preservation of public health, safety, or general welfare, or that state or federal law or rule, or a federal deadline for receipt of funds, requires immediate adoption of a rule.

Emergency rules do not require public notice or hearing. They usually take effect when filed with the Code Reviser. Emergency rules can remain in effect for up to 120 days after filing. An agency can refile the emergency rule if the agency has started the permanent rulemaking process.

The rules are the policies and procedures by which an agency implements, interprets and enforces the law. Agency rules are published in the Wash. Admin. Code, or WAC.

WACs are designated by three numbers. The first number represents the Title, and is the primary division of rules, which is divided by agency. The second number represents the Chapter, and deals with major subject matters. The third number represents the Section, which is relatively short, and encompasses individual rules.

For example, WAC 162-12-130, is from Title 162 which deals with the HRC. The Chapter, 12, relates to the subject of employment, and the section 130, states that discriminatory pre-employment inquiries are prohibited.

In doing rulemaking, we can amend the rule – which means deleting some language and changing it to different language. We can repeal, which means we can eliminate complete sections. We can also adopt a new rule.

Rulemaking procedures are set forth in the Administrative Procedure Act, which is in RCW 34.05. The agency involved is the Code Reviser's Office, and its procedural rules for agency rulemaking are found in WAC 1-21.

If we decide to engage in rulemaking, we must first solicit comments from the public on the subject of rulemaking. We would file a form with the Code Reviser's Office called the CR-101, explaining that we are considering rulemaking and why. This gets published in the Washington State Register. We would also need to send notice to all people who have requested notice of rule making. I am keeping that list, and have only had one inquiry so far.

We would then develop a draft of the proposed rule. The drafting should consider the comments received, and can involve meetings and work groups with interested parties. If the new or changed rule would have a cost impact on small businesses, we have to do a small business economic impact statement. After the draft is finished, and at least thirty days after the publication of the notice of intent to conduct rulemaking, we would file a notice of the proposed rule with the Code Reviser. We would fill out a CR-102 form with a copy of the proposed rule, which are published in the State Register. We then would send notice to all interested parties, and schedule a public hearing.

We then would need to take public comments on the proposed rule. We need to do this via mail, fax, phone message, and email. We also need to hold a public hearing at least 20 days after notice of the proposed rule has been published in the State Register. The hearing must be recorded.

After we review public comments, and make any changes to the proposed rule, we finalize the rule, and file the adopted rule with the Code Reviser, along with a Rulemaking Order or CR103. We need to have an explanatory statement – the reasons for adopting the rule, any differences between the proposed rule and adopted rule, the

reasons for the changes, and a summary of public comments. This information is published in the State Register.

We have to keep a rulemaking file on each rule that we amend, adopt or repeal. This is subject to public inspection, and must have the proposed and final rule, all communications with the code reviser as well as public comment including the recording from the hearing.

There are parts of our WAC that need updating, either to keep pace with changes in legislation and court decisions or to provide more thorough interpretations to businesses. Topics that come to mind include disability (definition), service animals, and pregnancy-related disability issues. The last is probably the most warranted, as the current WACs are confusing and conflicting, and we get the most questions in this area.

In addition, if the Comm. has long-standing policies, RCW 34-05-230 encourages agencies to convert these policies into procedural rules. If it is not a rule, then a person cannot be required to comply.

This will take time and FTEs. One person to work on this as a major part of their job, to head a team and coordinate the changes and to receive and analyze public comment, and a few other people to work as part of a team to analyze what changes are most important, and to come up with ideas and language. It will also take the time of support staff to do all that is required to provide notice to the proper parties and to prepare for the public comment period. Will also take IT time to update the website and provide for public comment via the website.

Contact - Shawn at his office  
Notes give to Tanya.

## Rulemaking 101

### Basics

Laws – passed by legislature, signed by the governor. Found in RCW – Revised Code of Washington

Administrative Rules – the policies and procedures by which an agency implements, interprets and enforces the laws. Collectively, they are the Washington Administrative Code, or WAC.

Each WAC is comprised of a Title, which is the first number and represents the agency enforcing a particular law; a Chapter, which deals with major subject headings; and a Section, which are the individual rules. The WSHRC WACs are found under Title 162.

Rulemaking can: *3 things:*

- Amend the rule (changing the language to read differently);
- Repeal the rule (eliminate the rule altogether); or
- Adopt a new rule.

The Rules on Rulemaking:

- Laws - Administrative Procedures Act – RCW 34.05.
- Agency – Office of Code Reviser
- WAC – 1-21

### Long Process

*1st* File CR-101 with Code Reviser – explains that the agency is considering doing rulemaking and why.

The CR-101 gets published in the Washington State Register.

The agency also sends notice to all people who have requested notice of rulemaking.

*Involves research - Also to stakeholders in the subject area - advocacy lawyers other agencies*

*2nd* Develop draft of proposed rule. This involves reviewing comments received, and holding meetings and work groups with interested parties.

Do a small business economic impact statement if necessary.

File CR-102 with the Code Reviser – notice of the proposed rule. (This must be done at least thirty days after the CR-101 is published.)

The CR-102 gets published in the Washington State Register.

The agency sends notice out to all interested parties, which now includes all persons who made comments and were involved in meetings and work groups. *work groups made up of HRC & stakeholders. Hold in different parts of the state.*

*3rd* The agency then takes public comments on the proposed rule – via mail, fax, phone, and email.



The agency also needs to hold a public hearing. (This must be done at least twenty days after the CR-102 is published.) The hearing must be recorded.

*Good idea to hold a few in different areas of the state.*

*4th* The agency then reviews all public comments.

The agency then makes changes to the proposed rule, *if appropriate in light of public comment.*

The rule is finalized.

The final (adopted) rule is filed with the Code Reviser, along with a Rulemaking Order, or CR-103, and an explanatory statement which must include:

- the reasons for adopting the rule,
- any differences between the proposed rule and the adopted rule,
- the reasons for the changes,
- and a summary of public comment.

This information is published in the State Register.

Throughout the process, the agency must keep a rulemaking file on each separate rule that is amended, adopted, or repealed.

Subject to public inspection

Must include the proposed and final rule, all communications with the Code Reviser, the public comment, and the recording from the public hearing.

### Good Place to Start

If there are any long-standing policies, these should be adopted as rules.

RCW 34-05-230 encourages agencies to convert these policies into rules.

### Resources

Even if most of the analysis and changes are completed by the Commissioners, most likely WSHRC support staff will spend a significant amount of time sending out notices, receiving public comment, and preparing for public comment. In addition, staff time will be utilized in setting up the phone system and the internet site to receive public comment and disseminate information.

*Rulemaking will involve:*

*Time*

*Research*

*Analysis*

*Input*

*Reading / reviewing comments*

*work w/ the public + other groups.*

*writing.*