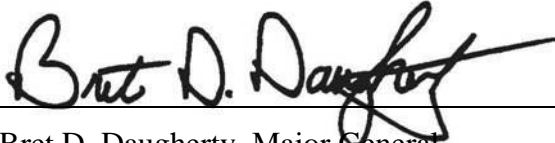




Department Policy No. DIR-012-14

Title:	Washington Administrative Code Rule-making
Former Number:	New
Authorizing Source:	Chapter 34.05 RCW , Administrative Procedure Act Chapter 19.85 RCW , Regulatory Fairness Act Chapter 1-21 WAC , Rule Making
Information Contact:	Intergovernmental Affairs & Policy Director Building #1 (253) 512-7712
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Approved By:	 Bret D. Daugherty, Major General The Adjutant General Washington Military Department Director

Purpose

This policy establishes the roles and responsibilities of Washington Military Department (WMD) employees who participate in the rule-making process for adopting rules into the Washington Administrative Code (WAC).

Scope

This policy applies to all WMD state employees who are involved in developing, amending, reviewing, proposing, repealing, or adopting a WMD rule.

Definitions

Administrative Procedure Act: The legislature intends, by enacting this 1988 Administrative Procedure Act, to clarify the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision making.

Code Reviser: An agency of the state legislature that periodically codifies (organizes), indexes, and publishes the Revised Code of Washington (RCW) and the WAC.

Economic analyses: For this policy, refers to Small Businesses Economic Impact Statements and Cost-Benefit Analyses for rules. (See [Chapters 19.85 RCW](#) and [RCW 34.05.328](#)).

Emergency rules: Temporary agency rules, effective for not more than 120 days, that follow special criteria outlined in [RCW 34.05.350](#).

Expedited rule: A permanent rule adopted under an abbreviated rule-making process described in [RCW 34.05.353](#).

Formal proposed rules: Part of the regular rule-making process notifying the public that proposed rules and economic analyses are available for formal comment by the public, published on the CR-102 form.

Initial public notice: The first formal part of the regular rule-making process where a rule writer officially informs the public about an upcoming rule change, invites public participation, starts planning for rule making, and lays the groundwork for the rest of the rule-making process, published on the CR-101 form.

Official rule-making file: A file compiled and maintained by the Rules Coordinator under [RCW 34.05.370](#) containing certified copies of the required rule-making notices, which the code reviser publishes, as well as other rule-related information. The rule-making file is a public record and open to public inspection.

Official rule-making notices: Official forms from the code reviser (CR-101, CR-102, CR-103P, CR-103E, and CR-105) that state agencies are required to use to inform the public about rule-making actions.

Official rule text: Format of rule text, established in [RCW 34.05.395](#) and Chapter 1-21 WAC.

Negotiated rules: Where agency representatives and stakeholders use group consensus and negotiation to develop a proposed rule.

Permanent adoption of rules: The part of the rule-making process where new, amended, and repealed rules are finalized and published on the CR-103 form.

Petition: Any of three actions: a formal request to WMD to amend or repeal existing rules or adopt new rules; an appeal to the Governor to reverse an emergency rule of WMDs denial of a rule petition; or an appeal to the Joint Administrative Rules Review Committee (JARRC) to reverse WMDs' denial of a rule petition or review a WMD rule or Small Business Economic Impact Statement.

Required draft review: The mandatory WMD rule development process where rule writers send drafts of rules and economic analyses to the Rules Coordinator, Intergovernmental Affairs & Policy (IGAP) Director and Assistant Attorney General for review and consultation prior to sharing with external stakeholders. This required draft review must occur each time a new draft is developed.

Revised Code of Washington: The Revised Code of Washington (RCW) is the compilation of all permanent laws now in force. It is a collection of Session Laws (enacted by the Legislature, and signed by the Governor, or enacted via the initiative process), arranged by topic, with amendments added and repealed laws removed. It does not include temporary laws such as appropriations acts.

Rule: A legal directive that carries out the intent of a law (statute) which is adopted in compliance with ch. 34.05 RCW, applicable executive orders of the governor, and this policy. A government agency or those affected by the rule must follow the rule's requirements. A rule is also called Washington Administrative Code (WAC) and administrative law. (See [RCW 34.05.010\(16\)](#)).

Rule development: The part of the regular rule-making process where rule writers draft rules and economic analyses while involving stakeholders prior to the Rules Coordinator filing formal proposed rules (CR-102). Rule development includes the required draft review process.

Rule writer: The WMD employee(s) responsible for writing rule content, preparing economic analyses, initiating required draft review, and assisting the Rules Coordinator with preparing official rule-making notices.

Stakeholders: In general, those people or entities impacted by proposed rule changes whether internal (within the agency) or external (outside the agency).

Washington Administrative Code (WAC): Regulations of executive branch agencies are issued by authority of statutes. Like legislation and the Constitution, regulations are a source of primary law in Washington State. The WAC codifies the regulations and arranges them by subject or agency.

WMD Rules Coordinator: The designated WMD staff person in the IGAP Office responsible for administering the WMD rule-making program and process consistent with applicable state laws and rules. The Rules Coordinator will be kept informed by agency management and staff of the subjects of rules being proposed or prepared within the agency for proposal and the identity of agency personnel involved in such action, maintain the records of any such action, and respond to public inquiries about possible, proposed, or adopted rules of the WMD. Only the Rules Coordinator will file WMD official rule-making notices with the Code Reviser.

Policy

All WMD employees engaged in rule-making must follow the Administrative Procedure Act ([Chapter 34.05 RCW](#)), the Regulatory Fairness Act ([Chapter 19.85 RCW](#)) and this policy.

Roles and responsibilities for WMD rule-making shall be as follows:

A. The WMD Director shall approve each of the following agency actions:

1. Permanent adoption of all rules.

2. Emergency rule-making.
 3. Expedited rule-making.
 4. Agency action on petitions.
- B. The IGAP Director shall conduct each of the following actions:
1. Review and approve the initial public notice (CR-101) prior to filing with the Code Reviser.
 2. Review drafts of rules and economic analyses for consistency with WMD agency wide operations and fiscal policy as part of the required draft review process.
 3. Approve completion of the required draft review process prior to the rule writer sending drafts to external stakeholders.
 4. Review and approve the CR-102 prior to formal proposed rules being filed with the Code Reviser by the Rules Coordinator.
 5. Review and approve all other WMD official rule-making notices prior to filing with the Code Reviser by the Rules Coordinator.
 6. Ensure the AAG is consulted as appropriate for advice and review throughout the rule-making process.
 7. Regularly update and inform the WMD Director on all proposed rule-making throughout the agency, consult with the WMD Director on related policy issues, and coordinate agency policy direction in rule-making.
- C. Rule Writers shall:
1. Involve and coordinate with their supervisors and managers, the WMD Assistant Attorney General (AAG), the IGAP Director, the Rules Coordinator, and internal and external stakeholders throughout the rule-making process, as appropriate.
 2. Establish a statutory for conducting rule-making authority in consultation with the AAG prior to preparing the initial public notice (CR-101).
 3. Initiate preparation of the initial public notice (CR-101) through coordination with the Rules Coordinator and IGAP Director.
 4. Consult and coordinate with the Rules Coordinator in the preparation and filing of all official rule-making notices.

5. Write rules and economic analyses, when applicable, using clear language and organization that is easy for users to understand (see [RCW 34.05.220\(5\)](#)).
6. Initiate the required draft review process for all draft rules and economic analyses each time a new draft is developed and obtain approval from the IGAP Director that the draft review process has been completed prior to sharing drafts with external stakeholders.
7. Include economic or industry experts as necessary when preparing economic analyses.
8. For the official rule-making file, coordinate with the Rules Coordinator throughout the rule-making process to include any documents that explain and justify their rationales, options, choices, and statutory authority in developing the rule. Rule writers should also consult with the AAG about supporting documentation to include in any official rule-making file.

Note: Written AAG analyses are subject to attorney-client privilege and the appropriate exemptions applied under RCW 42.56.510 and RCW 5.60.060(2)(a) in the event of a public disclosure request. AAG analyses should be part of the official rule making file to show evidence of decisions made.

9. Consult with the Rules Coordinator about petitions, forms, notices, process, procedures, timing, public hearings, negotiated rules, emergency rules, and expedited rules.

D. The Rules Coordinator shall:

1. Provide information about WMD rules and rule-making to WMD staff and the public.
2. Provide technical assistance to WMD staff on rule-making procedures, practices and requirements.
3. Act as the WMD liaison to the Office of the Code Reviser, the legislature's Joint Administrative Rules Review Committee, and the Office of Regulatory Assistance.
4. Offer consultation and training about rule-making to WMD staff.
5. Review drafts of all WMD official rule-making notices and agency forms, rules, economic analyses, and rule-related materials for completeness and consistency with legal requirements. The Rules Coordinator will consult with the AAG in conducting this review as appropriate.

6. Obtain approval of the IGAP Director prior to filing WMD official rule-making notices with the Code Reviser.
7. Work with divisions to resolve any concerns or deficiencies in rule-making.
8. Coordinate the scheduling, preparation and conduct of all WMD rule-making hearings.
9. Perform the rule-making procedures covered by the Administrative Procedure Act, the Regulatory Fairness Act, and Chapter 1-21 WAC
10. Maintain the official WMD rule-making files.
11. Files all WMD official rule-making notices with the Code Reviser.