



Typical Phases of Agency Rulemaking Process

There are typically three phases in agency rulemaking: inquiry, proposal and adoption. The rule development process may take several months to a couple of years to complete, depending on the Board's resources, complexity of the issue, availability of data or information to complete any required analyses, and public interest in the rule.

The Inquiry Phase (CR-101)

The first phase of rulemaking is the inquiry. During this phase, the Board has identified a need to update or adopt a rule, and announces it is considering developing rules to address a certain issue. The inquiry phase is intended to allow interested parties the opportunity to participate in the rule development process from the beginning.

The inquiry phase begins once the Pre-Proposal Statement of Inquiry (CR-101) form has been filed with the Washington State Code Reviser's Office for publication in the Washington State Register. The CR-101 briefly describes the rule subject, an agency's authority to adopt rules on the topic and explains why rules may be needed. The CR-101 also identifies the person interested parties can contact to participate in rule development.

The intent of the CR-101 is to notify the public that the Board is planning to write rules on a particular subject, and invite the public to take part in the rule development. Once the Board files a CR-101 with the Code Reviser, we notify individuals who have requested to be informed about rulemaking activities, as well as public health partners, state government, and organizations that represent people and industries that may be impacted by the rule.

The Proposal Phase (CR-102)

The second phase of rulemaking is the proposal phase. During this phase, the Board develops the proposed changes to rule. Our policy advisors review federal and state laws and rules, gather data, conduct analyses, collect feedback from interested parties and the public, and circulate working drafts of the rule to interested people and technical experts. This feedback helps us develop alternative options, draft text, as well as cost-benefit or small business economic impact statements. From time to time, and as resources allow, the Board may convene ad-hoc technical advisory committees to help inform rule development. This phase culminates with the Board filing the official Proposed Rulemaking (CR-102) form with the Washington State Code Reviser's Office, which is published in the Washington State Register. The purpose of the CR-102 is announce the official public hearing and invite public comment on the proposed rule the Board is considering adopting.

The CR-102 form describes the proposed rule, and provides the proposed rule text, agency contact information, the intended adoption date, as well as public hearing details, the public comment deadline and the process for submitting comments. Depending on the rule proposal, our policy advisors may also

need to complete specific analyses. Staff must complete a [small business impact statement](#) if the proposed rules add more than minor costs for small businesses, and a [cost-benefit analysis](#) if the Board is adopting or changing a rule that is considered significant under the Administrative Procedures Act (APA). The CR-102 describes how interested parties may obtain a copy of any analyses.

Once the CR-102 is filed, we notify interested parties and invite them to participate in the formal comment period. The formal comment period includes a public rules hearing before the Board, that gives people the chance to comment on the proposed rule changes. People can provide their comments in writing prior to the hearing, or may provide them in person at the public hearing. At the conclusion of the official public comment period, the Board may adopt the rule. Staff summarize all comments received during the official public comment period. This summary is called a Concise Explanatory Statement and it is shared with those who submit comment during the formal comment period. The document becomes part of the official record.

The Adoption Phase (CR-103)

The adoption phase is the last step in the rulemaking process. The adoption phase begins after the formal public period closes and the Board votes to adopt the rule. Once the Board adopts the rule, staff completes a CR-103 Rulemaking Order form. The CR-103 documents the Board's action to officially adopt the rule, and notifies the public of the newly adopted rule. The CR-103 notice includes the full text of the adopted rule, and lets the public know when the rules will become effective. Staff files CR-103 form with the Washington State Code Reviser's Office for publication in the Washington State Register. The new rule becomes effective 31 days after the CR-103 is filed, unless the Board determines a different effective date.

The Board cannot adopt a rule prior to the date of intended adoption date published on the CR-102 form. If the Board does not file the CR-103 within 180 days of filing the CR-102, the Code Reviser's Office will withdraw it from the rulemaking process. We then must file a new CR-102 form to continue rulemaking on the same topic.

Sometimes the Board may use abbreviated rulemaking processes. State law allows agencies to use a couple of shortened rulemaking processes to adopt rules, which are used less often and only under certain circumstances. These rules are exempt from the cost benefit and small business economic impact statements, and may be exempt from the public hearing requirements.

Expedited rules (CR-105): this rulemaking is used to file rules in an expedited manner. There are limited circumstances for this type of rulemaking. The Board can use this process to adopt rules that:

- relate only to internal governmental operations that are subject to violation;
- incorporate by reference without material change federal statutes or regulations, or national consensus codes that generally establish industry standards
- correct typographical errors, make address or name changes or clarify rule language without changing its effect

Once a CR-105 is filed, there is a 45 day waiting period before the rule can be adopted. On the 46th day, or any day after that, the rule can be adopted and usually becomes effective 31 days later. This process doesn't require a public hearing, however if the Board receives an objection to using this process, it must file a CR-102 and hold a public hearing before adopting the rule. If the Board doesn't receive any objection, staff file a CR-103 Rulemaking Order with the Code Reviser.

“Exception rules”: This process exempts state agencies from filing a CR-101. This process is different than expedited because it includes a public hearing, and it is initiated with the filing of a CR-102 form. This process may be used for rules that:

- relate only to internal governmental operations that are subject to violation
- incorporate by reference without material change federal statutes or regulations, or national consensus codes that generally establish industry standards
- correct typographical errors, make address or name changes or clarify rule language without changing its effect
- have content that is explicitly dictated by statute
- adjust fees pursuant to legislative standards
- adopt, amend or repeal practices related to agency hearings or process requirements for licenses and permits

After the rules hearing and Board action to adopt the proposed rule, staff complete a concise explanatory statement and file a CR-103 order of adoption with the Code Reviser.

Emergency rules: An emergency rule is a rule that the Board may adopt that is necessary to protect the public’s health, safety or welfare, or is required to comply with federal law or rule, or for federal deadline for state receipt of federal funds. These rule changes become effective immediately upon filing a CR-103E Rulemaking Order- Emergency form with the Washington State Code Reviser’s Office and are effective for just 120 days. This rule is exempt from the filing of a CR-101, analytical and public hearing requirements.