

Rule Making

A “Readers Digest” Explanation of How We Get the PRA Model Rules

Presented by Morgan Damerow, AAG. This presentation solely represents the views of the author. It is not an official opinion of the Office of the Attorney General.

Outline

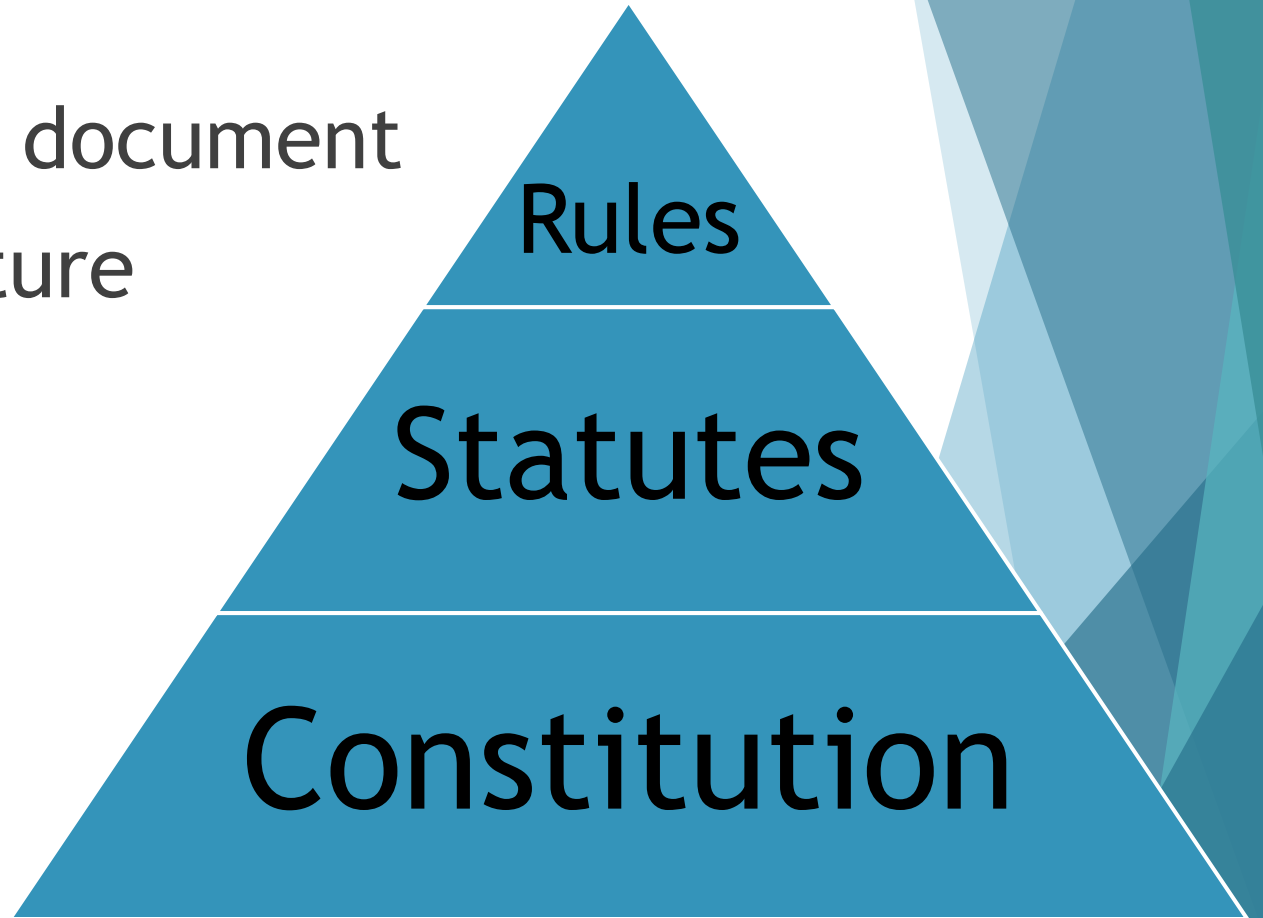
- I. Background - What is a rule?
- II. Rule making procedures - How to make a rule.
- III. AGO PRA Model Rules - Where are we now?
- IV. Final Rule and Review - Now What?

Part I: Background

► What is a rule?

Where Do Agency Rules Fit Among Other Laws?

1. Constitution - Founding document
2. Statutes/laws - Legislature
3. Rules - Agency



Agency Rule Making Authority

- ▶ Agencies carry out the authority expressly granted in statute, and any additional authority necessarily implied in RCWs.
- ▶ Agencies can engage in rulemaking when authorized by statute, WACs (rules) can further clarify or fill in the gaps of RCWs.
- ▶ WACs (rules) cannot contradict RCWs (statutes).
- ▶ Rules carry the force of law.*

* Within statutory authority.

What is a Rule?

- ▶ Any agency order, directive, or regulation of general applicability that has a legally binding effect by exposing a person to penalty or affecting a person's legally created right.
- ▶ May implement, interpret or enforce laws passed by the legislature.

Rule—A Very Simple Summary

- ▶ A directive that if violated may result in a penalty or sanction to similarly situated people.
- ▶ A generally applicable directive altering a qualification or requirement affecting a law-based benefit.
- ▶ A generally applicable directive altering a qualification or standard affecting a commercial license.

There Are **RULES**

And Then There Are Rules

- ▶ The attorney general ... shall adopt by rule *advisory* model rules.
- ▶ Local agencies should consult the *advisory* model rules when establishing local ordinances for compliance with the PRA.

RCW 42.56.570(2)

PRA Model Rules - The Courts Perspective

“Although the model rules are advisory only and nonbinding, this court has repeatedly cited to the rules when interpreting provisions of the PRA.”

Kilduff v. San Juan County, 194 Wn.2d 859, 453 P.3d 719 (2019)

- ▶ The PRA Model Rules have been cited 76 times in appellate decisions.
 - ▶ 1st case: *Soter v. Cowles Publishing*, 2007.
 - ▶ Most recent: *unDivided Media LLC v. City of Seattle*, 2026.
- ▶ The overwhelming number of decisions identify the PRA Model Rules affirmatively.

PRA Model Rules - The Structure

The PRA Model Rules have two parts:

- ▶ The actual model rule - identified by a three-digit WAC number such as WAC 44-14-040.
- ▶ The comments - identified by a five-digit WAC number such as WAC 44-14-04001.

The comments are designed to explain the basis and rationale for the rules themselves as well as provide broader context and legal guidance.

Part II: Rule Making Process

► How to make a rule

Rule Making Process Fundamentals

- ▶ Notice to the public.
- ▶ Opportunity for public comment.
- ▶ Agency considers and responds to comments.

Administrative Procedure Act

Chapter 34.05 RCW

- ▶ Purpose: Provide clarity and consistency to procedures used by administrative agencies
- ▶ Three general types of agency actions:
 - ▶ Rule makings
 - ▶ Adjudications
 - ▶ Other agency actions
- ▶ Rulemaking procedures: RCW 34.05.310 - 395

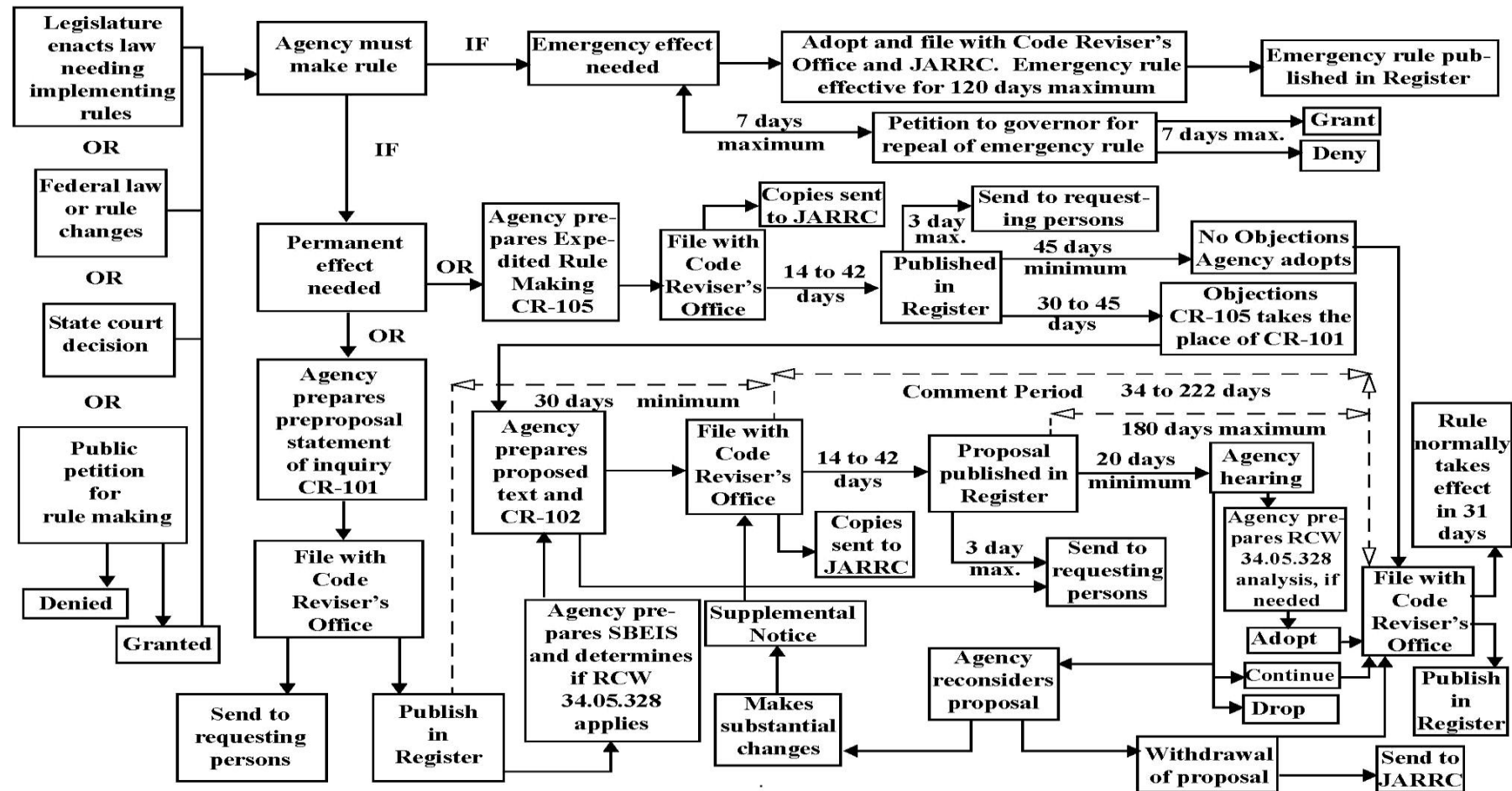
APA Procedural Requirements

The Administrative Procedure Act (APA) requires many steps to further public participation, e.g.:

- ▶ CR filings provide notice to the public;
- ▶ The public has an opportunity to comment;
- ▶ Public may inspect the rulemaking file;
- ▶ Agency needs to respond to comments in Concise Explanatory Statement (CES) if it adopts a rule (CR-103).
This shows the agency considered the public comment.

Rule Development Detailed Procedures

RULE-MAKING PROCESS



Rule Making Procedures - An Overview

1. Notice to public:

- ▶ Preproposal inquiry (Code Reviser Form CR-101)
- ▶ Proposed rule (Code Reviser Form CR-102)

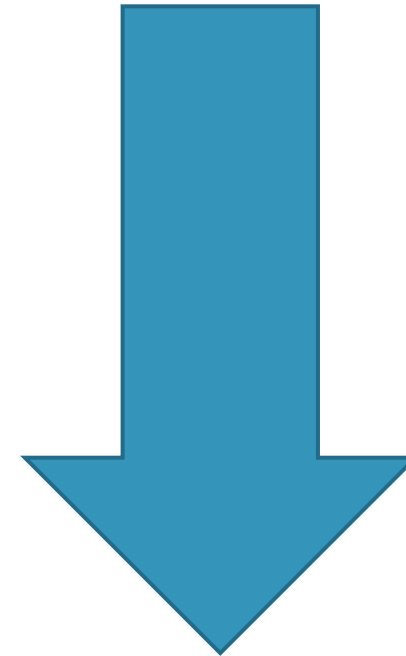
2. Public comment on proposed rule:

- ▶ Written comment
- ▶ Oral public hearing

3. Agency considers comments and whether to adopt rule

- ▶ Consider limited variation from proposed rule
- ▶ Final rule adoption
- ▶ CR-103P filing and response to comments (Concise Explanatory Statement)

Note: Procedures vary for emergency and expedited rules



Some Agency Rules Are “Significant Legislative Rules”

- ▶ RCW 34.05.328 generally applies to rule by
 - ▶ departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, the state building code council, and legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW
- ▶ Exceptions set forth in RCW 34.05.328(5).

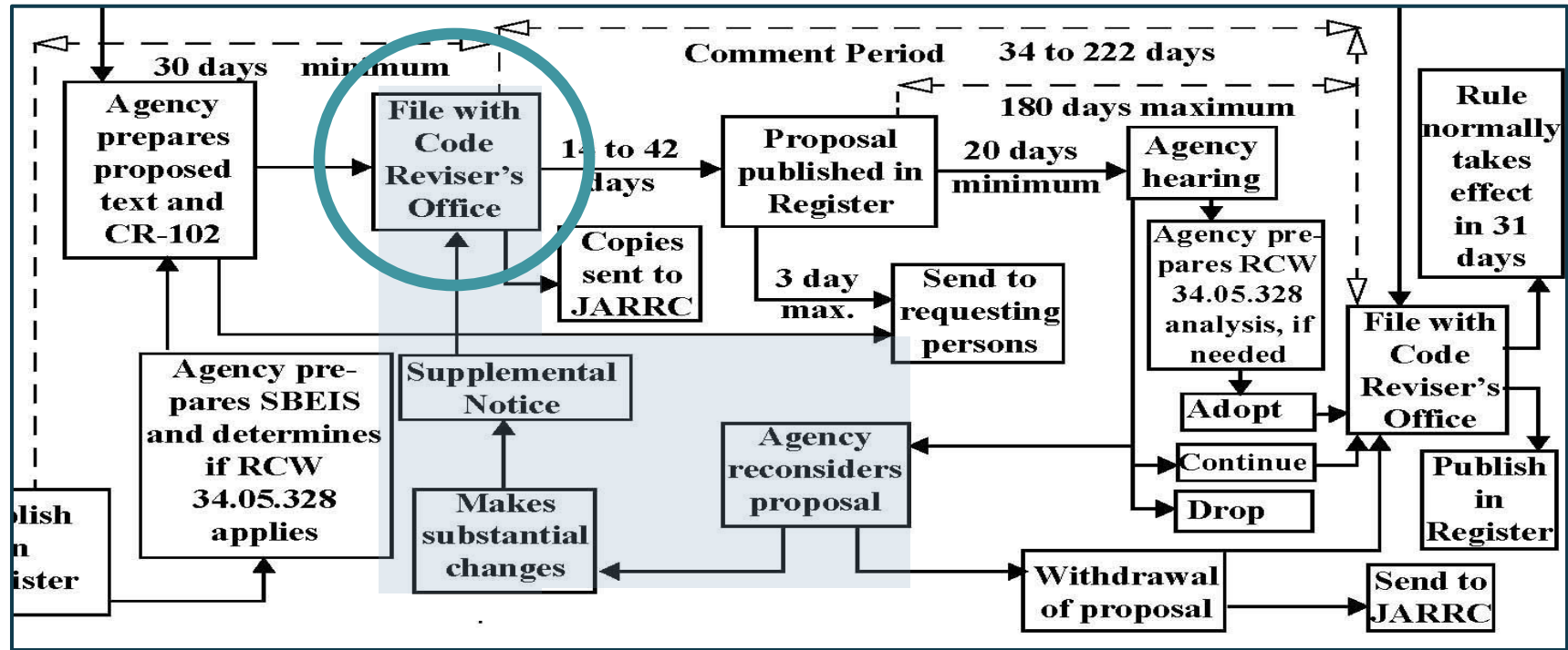
Recap: Agency Rule Making Authority

- ▶ Agencies carry out the authority expressly granted in statute, and any additional authority necessarily implied.
- ▶ Agencies can engage in rulemaking when authorized by statute, WACs (rules) can further clarify or fill in the gaps of RCWs.
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Part III: AGO PRA Model Rules

► Where are we now?

RULE-MAKING PROCESS



Agency rule published in Register

Agency rule published in Register

Agency rule published in Register

Agency rule published in Register

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Significant Rule Making Dates

- ▶ May 18, 2026 - CR 102 Filed
- ▶ June 3, 2026 - Publication in Register
- ▶ June 30, 2026 - Public Hearing

3:00 - 5:00 pm

John A Cherberg Building, Rooms ABC

304 15th Ave SW

Olympia, WA 988501

In person and remote public comment.

Additional information and register to provide remote public comment at <https://www.atg.wa.gov/rulemaking-activity>

Part IV: Final Rule And Review

- ▶ Finalization
- ▶ Petitions for review

What happens after the public hearing?

- ▶ Preparation of Concise Explanatory Statement.
- ▶ File Final Rule with Code Revisor.
- ▶ Wait - Rule generally effective after 31 days.
- ▶ Preparation of compliance materials and technical assistance manuals (optional).

What if someone wants to invalidate or change a rule?

- ▶ Petitions to the agency, RCW 34.05.330(1)
- ▶ Petitions to the Governor, RCW 34.05.330(3)
- ▶ Petitions for review by Legislature's rules review committee, RCW 34.05.655
- ▶ Petitions for judicial review by the courts, RCW 34.05.570

Petitions for Judicial Review

When would a court invalidate a rule, RCW 34.05.570(2)?

1. If the rule is unconstitutional.
2. If the agency does not “substantially comply” with the procedural requirements of the APA.
3. If agency lacks statutory authority.
4. If the rule is “arbitrary and capricious.”

A full moon is positioned in the center of the frame, partially obscured by the text. The moon is bright white and circular. The background consists of a calm ocean with gentle ripples, a horizon line, and a sky filled with soft, white clouds. The overall color palette is dominated by various shades of blue and white.

THANK YOU