

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

CODE REVISER

(agency name)

Administrative Order No. 20

(1) I, Dennis W. Cooper,

Code Reviser of the state of Washington

do promulgate and adopt at Olympia

(place)

the annexed rules relating to: Regulations for the drafting and filing of notices and rules by state agencies and institutions of higher education, chapters 1-12 and 1-13 WAC.

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. filed with the code reviser on. Such rules shall take effect:

- checkbox pursuant to RCW 34.04.040(2).
checkbox at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, Dennis W. Cooper, Code Reviser

find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is:

The implementation of chapter 186, Laws of 1980, which takes effect June 12, 1980, requires certain amendments to chapters 1-12 and 1-13 WAC; however, the legislation was not approved by the governor until April 4, 1980, which did not permit sufficient time for adoption of permanent rules to take effect at the same time as the underlying statute.

Such rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04 (1977 c 19 § 2) that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" (fill in statement (a), (b), or (c) as appropriate):

- checkbox (a) This rule is promulgated pursuant to RCW 34.08.030 and is intended to administratively implement that statute.
checkbox (b) This rule is promulgated pursuant to RCW 1.08.110, 28B.19.080, and 34.04.055 which directs that the

Code Reviser

(agency)

has authority to implement the provisions of

chapters 28B.19 and 34.04 RCW.

(name of act or RCW citation)

- checkbox (c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW

(4) The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

(5) This order after being first recorded in the order register of this agency is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

STATE OF WASHINGTON

APPROVED AND ADOPTED June 12 1980

FILED JUN 12 1980

By Dennis W. Cooper

Code Reviser

Title

80-07-024

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-12-005 DECLARATION OF PURPOSE. The creation and maintenance of the Washington Administrative Code is a task of considerable magnitude. In recognition of the amount of total effort involved, and in order to effect overall economies in this important function of state government, the legislature has placed responsibilities upon the individual agencies by requiring (RCW 34.04.057 and ((-34:04:-----{1977--e--19--§-4})) 34.04.058) that they formulate both newly created and amendatory rules in the bill drafting style of the legislature and further in accordance with the style, format, and numbering system of the code.

This chapter is promulgated by the code reviser pursuant to the authority granted by RCW ((-1:08:-----{1977-1st-ex.s.-e--240--§--2})) 1.08.110, 34.04.055, and ((-34:08:-----{1977-1st-ex.s.-e-240-§-4})) 34.08.030 in the interest of assisting the agencies in preparing, promulgating, and disseminating their administrative rules in an expeditious, orderly, and uniform manner so as to produce a state register and an administrative code which shall be as concise and accurate as possible, and at minimum overall expense to the state. The format standards imposed by this chapter are necessary to enable the inclusion of the rules as part of the register and the code in an orderly and efficient manner.

The code reviser's office will be pleased to afford such advice and assistance to requesting agencies regarding this chapter as its time and resources will permit.

The code reviser expressly reserves the power to create new code titles, chapters, and sections of the Washington Administrative Code, or otherwise revise the title, chapter, and sectional organization of the code, all as may be required from time to time, to effectuate the orderly and logical arrangement of the rules published therein.

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-12-030 NOTICES OF INTENTION TO ADOPT RULES. (1) Statutory notice requirements; see RCW 34.04.025<sup>1</sup>, 34.04.045, and ((-34:08:-----{1977-1st-ex.s.-e-240-§-3})) 34.08.020.<sup>3</sup>

(2) Failure to comply with twenty days notice requirement--Code reviser not to publish rule and rule not effective for any purpose; see RCW 34.04.027.<sup>2</sup>

(3) Form of notice. Notice shall be filed on forms provided by the code reviser's office (Form CR-1). No other form will be accepted for filing. ((On--and--after--January--17--1978?)) The notice shall also include the full text of any proposed new or amendatory rule and the citation and caption of any existing rule to be repealed. Such proposal shall be done according to the bill drafting style requirements of WAC 1-12-125 through 1-12-160. The rule purpose statement required by RCW 34.04.045 shall also be included with the notice. (See WAC 1-12-065.)

(4) Number of copies; Notice numbers. Agencies shall file in the code reviser's office an original and ((two)) three copies of the notice and rule purpose statement whereupon the date of filing and the notice number will be affixed and a copy returned to the filing agency. Such notice number or numbers shall in the event of one or more continuances, be entered in paragraph (7) of all subsequent notices relating to the original notice (Form CR-1). The notice number and date (or the latest such number and date if due to continuances there be more than one) shall be entered by the agency on the administrative order and transmittal form by which the rules are adopted and transmitted for filing.

(5) Computation of time with respect to the twenty day rule. The effect of RCW 34.04.025 and 34.04.027 is to require the code reviser to ascertain agency compliance with the twenty day rule. Such compliance will be determined as follows:

(a) The code reviser's office construes the twenty day notice requirement of RCW 34.04.025 and 34.04.027 as relating to the date upon which the first action will be taken by the agency upon the proposed rule changes; thus if the agency provides for a public hearing upon the matter, the twenty day requirement applies to the date of such hearing, otherwise it will apply to the date upon which the agency convenes to adopt, amend, or repeal the rules in question. The dates of the hearing, if any, and of the decision shall be inserted in parts (2) and (3), respectively, of the notice form (CR-1), and such dates may, of course, be coincidental.

(Attention is also directed to the additional requirement embodied in RCW 34.04.025(1)(b) which provides that "Prior to the adoption, amendment, or repeal of any rule, each agency shall: . . . Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing . . .")

(b) ~~((Prior to January 17, 1978, the code reviser construes RCW 34.04.025(1)(a) as requiring the actual physical filing of the notice in the code reviser's office at least twenty days prior to the date of such first action; thus notices filed by mail must have been received at least twenty days prior to the date of such first action; the time from such date of receipt to the time of such first action will be computed according to RCW 4.12.040 which provides that:~~

~~-----"The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last, unless the last day is a holiday or Sunday, and then it is also excluded."~~

~~As a rule of thumb consider the date of filing in the code reviser's office as day twenty. Count down to day zero to find the first day on which action may be taken (hearing or meeting, whichever occurs first); cf. State ex rel. Earley v. Batchelor, 45 Wn.2d 449.~~

~~((On and after January 17, 1978))~~ The twenty day notice requirement ~~((will apply))~~ applies to the publication of the notice and text of the proposal in the state register ~~((and not to its filing with the code reviser; the twenty day count will))~~ and begins with the distribution date of the register in which the notice has been published (or a notice regarding the omission of a rule has been published pursuant to RCW 34.04.050(3)). Consider the distribution date of the pertinent register as day twenty; count down to day zero to

find the first day on which action may be taken (hearing or meeting, whichever occurs first); cf. RCW 1.12.040 and State ex rel. Earley v. Batchelor, 15 Wn.2d 149.

~~((d))~~ (c) The distribution dates of ~~((each-monthly))~~ registers shall be the first and third Wednesdays of ~~((that))~~ each month~~((;))~~. If a distribution date falls on a state holiday as determined by RCW 1.16.050, the distribution date of that register shall be delayed until Thursday. The last day to file material in the code reviser's office for inclusion in ~~((that-month's))~~ any particular register will be established according to WAC 1-12-035.

~~((e))~~ (d) If upon convening on any of the dates announced in parts (2) and (3) of the notice form (Form CR-1) the agency desires to continue either the hearing or the decision meeting, or both, to a future time certain but does not desire to file a new notice which would be subject to the twenty day rule such agency may, if it has complied with the twenty day rule as to its original notice and has convened at the time and place specified in such notice, announce a continuance to a date certain and forthwith file with the code reviser a continuation notice (Form CR-1) containing in part (1) thereof the same terms, substance, or description as was contained in the original notice (or if some of the matters have been disposed of, then such portions thereof as remain applicable) and supplying the additional information required by part (7) of such form. In the event of one or more such continuances, the compliance of the original notice with the twenty day rule will be deemed to relate to the continuation notices, and the text of the proposal need not be submitted with a notice of continuance. If an agency determines in advance of a hearing or adoption that it desires to continue either or both actions, it may file notice of a continuance in advance of the action if the notice will appear in a register with a distribution date at least ten days before the first action date of the previous notice.

NOTES:

<sup>1</sup>RCW 34.04.025 as amended by § 7, chapter 240, Laws of 1977 ~~((1st))~~ ex. sess. (effective January 1, 1978) provides:

"(1) Prior to the adoption, amendment, or repeal of any rule, each agency shall:

(a) File notice thereof with the code reviser in accordance with RCW 34.08.020(1) for publication in the state register, and mail such notice to all persons who have made timely request of the agency for advance notice of its rule-making proceedings. Such notice shall also include (i) reference to the authority under which the rule is proposed, (ii) a statement of either the terms or substance of the proposed rule or a description of the subjects and issues involved, and (iii) the time when, the place where, and the manner in which interested persons may present their views thereon;

(b) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or

within thirty days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(2) No proceeding shall be held on any rule until twenty days have passed from the distribution date of the register in which notice thereof was contained. The code reviser shall make provisions for informing an agency giving notice under subsection (1) of this section of the distribution date of the register in which such notice will be published.

(3) No rule hereafter adopted is valid unless adopted in substantial compliance with this section, or, if an emergency rule designated as such, adopted in substantial compliance with RCW 34.04.030, as now or hereafter amended. In any proceeding a rule cannot be contested on the ground of noncompliance with the procedural requirements of RCW 34.08.020(1), of this section, or of RCW 34.04.030, as now or hereafter amended, after two years have elapsed from the effective date of the rule."

RCW 34.04.027 provides:

"When twenty days notice of intended action to adopt, amend or repeal a rule has not been filed with the code reviser, as required in RCW 34.04.025, the code reviser shall not publish such rule and such rule shall not be effective for any purpose."

RCW ((-34:08:-----{1977-1st-ex-s-c-240--§--3})) 34.08.020 as amended by § 15, chapter 186, Laws of 1980 provides: "There is hereby created a state publication to be called the Washington State Register, which shall be published on no less than a monthly basis. The register shall contain, but is not limited to, the following materials received by the code reviser's office during the pertinent publication period:

(1) The full text of any proposed new or amendatory rules, as defined in RCW 34.04.010, and the citation of any existing rules the repeal of which is proposed, prior to the public hearing on such proposal. Such material shall be considered, when published, to be the official notification of the intended action, and no state agency or official thereof may take action on any such rule except on emergency rules adopted in accordance with RCW 34.04.030, until twenty days have passed since the distribution date of the register in which the rule and hearing notice have been published or a notice regarding the omission of the rule has been published pursuant to RCW 34.04.050(3) as now or hereafter amended;

(2) The full text of any new or amendatory rule adopted, and the citation of any existing rule repealed, on a permanent or emergency basis;

(3) Executive orders and emergency declarations of the governor;

(4) Public meeting notices of any and all agencies of state government, including state elected officials whose offices are created by Article III of the state Constitution or RCW 48.02.010;

(5) Rules of the state supreme court which have been adopted but not yet published in an official permanent codification; and

(6) Summaries of attorney general opinions and letter opinions, noting the number, date, subject, and other information, and prepared by the attorney general for inclusion in the register."

NEW SECTION

WAC 1-12-033 WITHDRAWAL OF PROPOSED RULE. Pursuant to RCW 34.04. .... (1980 c 186 § 11) a proposed rule may be withdrawn by the proposing agency at any time before adoption. Notice of withdrawal shall be provided to the code reviser's office in the form of a letter or memorandum from the proposing agency signed by the person signing the notice of proposal or by a designee of that person.

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-12-035 TIME FOR FILING MATERIAL FOR INCLUSION IN REGISTER. To permit sufficient lead time for the editorial, data capture, and printing process, material to be published under RCW ~~((34.08.020))~~ ~~((4977-4st-ex-rs-e-240-§-3))~~ 34.08.020 in a particular ~~((monthly))~~ register shall be in the actual physical possession of and filed in the code reviser's office according to the following schedule:

(1) If the material has been prepared and completed by the order typing service (OTS) of the code reviser's office; by 5:00 p.m. on the fourteenth day prior to the distribution date of that ~~((month's))~~ period's register; or

(2) If the material has been prepared other than by the code reviser's order typing service (OTS) and:

(a) Contains no more than ten pages in conformance with WAC 1-12-170; by 5:00 p.m. on the fourteenth day prior to the distribution date of that ~~((month's))~~ period's register; or

(b) Contains more than ten but less than thirty pages in conformance with WAC 1-12-170; by 5:00 p.m. on the twenty-eighth day prior to the distribution date of that ~~((month's))~~ period's register; or

(c) Contains thirty or more pages in conformance with WAC 1-12-170; by 5:00 p.m. on the forty-second day prior to the distribution date of that ~~((month's))~~ period's register.

AMENDATORY SECTION (Amending Order 12, filed 5/9/77, effective 6/9/77)

WAC 1-12-040 ADMINISTRATIVE ORDER--HOW PROMULGATED. The promulgation of new rules and of rules amending or repealing existing rules shall be accomplished by an administrative order. Such order shall include, as a minimum, the substance of the items set forth in WAC 1-12-930 and 1-12-940 (Forms CR-7 and CR-8). If other items or findings are required by law to be included in an agency order, such material may be included within or appended to the order, and if certain terms or nomenclature in such forms are inappropriate for a particular agency or adoption, correct terminology may be substituted. Orders shall be numbered seriatim by the agency and a record thereof shall be maintained by the agency. (See WAC 1-12-045 for maintaining order

register.)

Four copies of the administrative order are required for filing in the code reviser's office. The order shall be properly signed by an authorized agent of the agency.

Each order shall set forth an appropriate statement of state statutory authority as required by RCW ((-34:04:-----{1977-c-49-§ 2})) 34.04.026.

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-12-050 FILING OF ADMINISTRATIVE ORDER--RULES ADOPTED. Each filing of rules, whether permanent or emergency, shall be assembled and presented to the code reviser's office in the following order:

(1) The administrative order adopting said rules, Form CR-7 or CR-8, as appropriate; four signed copies (See WAC 1-12-040);

(2) ~~((The rule purpose statement; one copy (see WAC 1-12-065);~~  
(3)) The text of rules adopted; one original and three identical copies.

The adoption of permanent and emergency rules shall be effected by separate administrative orders and transmittals thereof.

AMENDATORY/RECODIFICATION SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77; recodified as WAC 1-12-032)

WAC 1-12-065 RULE PURPOSE AND IMPLEMENTATION STATEMENT. RCW ((34:04:-----{1977-1st-ex.s.-c-84-§--4})) 34.04.045<sup>1</sup> requires that when ((any-adopted)) notice of any proposed rule ((7-whether-permanent or-emergency7)) is filed with the code reviser it shall be accompanied by a statement generally describing the rule's purpose and how it is to be implemented. Such statement shall also contain, as a minimum, the other items required by that statute. One copy of the purpose statement shall be attached to each copy of the notice filed with the code reviser's office. Also note that it is the responsibility of the adopting agency to transmit three copies each of the statement to the secretary of the senate and the chief clerk of the house of representatives.

NOTE:

<sup>1</sup>RCW ((-34:04:-----{1977-1st-ex.s.-c-84--§--4})) 34.04.045, as amended by 1980 c 186 § 10, provides:

(1) For the purpose of legislative review of agency rules filed pursuant to this chapter, any new or amendatory rule proposed after June 12, 1980, shall be accompanied by a statement prepared by the adopting agency which generally describes the rule's purpose and how the rule is to be implemented. Such statement shall be on the agen-

cy's stationery or a form bearing the agency's name and shall contain, but is not limited to, the following:

(a) A title, containing a description of the rule's purpose, the statutory authority for the rule, and any other information which may be of assistance in identifying the rule or its purpose;

(b) A summary of the rule and a statement of the reasons supporting the proposed action;

(c) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(d) The name of the person or organization, whether private, public, or governmental, proposing the rule;

(e) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(f) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a copy of such law or court decision shall be attached to the purpose statement.

(2) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the statement on file and available for public inspection and shall forward three copies each of the statement to the secretary of the senate and the chief clerk of the house of representatives, who will in turn forward the statement to the majority and minority caucuses and to the appropriate legislative committees.

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-12-130 DRAFTING INSTRUCTIONS--AMENDATORY SECTION. (1) Both proposed and adopted rules which amend a section or sections of existing rules shall set forth the full text of the most current version of the section or sections including the WAC citation number, caption, text of the section, and associated agency explanatory notes and shall indicate by use of deletion and/or addition marks the amendment being made (RCW ((-34:04:------(1977-c-49-§-4))) 34.04.058).

(2) Amendments shall be to the most current permanent version of a WAC section and shall be drafted in the following manner only:

(a) Language added to an existing WAC section shall be underlined;

(b) Language to be deleted from an existing WAC section shall be

(i) preceded by two left parentheses,

(ii) struck over with hyphens, and

(iii) followed by two right parentheses;

(c) New language which replaces deleted language shall follow the deleted language.

(3) Each amendatory section shall be headed "AMENDATORY SECTION" followed by reference to the agency order number and filing date of the latest permanent order affecting that section. (See WAC 1-12-155 for style of this reference.)

(4) Special care must be taken to make sure that punctuation is

not neglected. Addition and deletion of punctuation must be indicated in the above manner also. Existing punctuation should, however, be utilized to the extent possible. For example, if new language is to follow the last word of a sentence, insert the new language (underlined) between the existing last word and the existing period.

(5) The code reviser's office will be pleased to afford such advice and assistance as its time and resources will permit to requesting agencies regarding the style in which rules amending existing WAC sections must be drafted. (See WAC 1-12-220.)

(6) Note that rules which amend existing WAC sections and which are not drafted in the required style cannot be accepted for filing by the code reviser, and any addition to or deletion from an existing WAC section not promulgated in the required style will have no legal effect and will not be enforceable by the agency (RCW ((34:04:-----1977-e-49-§-4)) 34.04.058<sup>1</sup>).

(7) In the event that any section to be amended is exempted from publication under the provisions of RCW 34.04.050(3) and therefore not codified in the Washington Administrative Code, it shall be referred to by agency order and section number, or other appropriate description.

NOTE:

<sup>1</sup>RCW ((34:04:-----1977-e-49-§-4)) 34.04.058 as amended by section 14, chapter 186, Laws of 1980 provides:

"(1) Rules promulgated by an agency pursuant to RCW 34.04.025 or 34.04.030, as now or hereafter amended, which amend existing sections of the administrative code shall have the words which are amendatory to such existing sections underlined. Any matter to be deleted from an existing section shall be indicated by setting such matter forth in full, enclosed by double parentheses, and such deleted matter shall be lined out with hyphens. In the case of a new section, such shall be designated "NEW SECTION" in upper case type and such designation shall be underlined, but the complete text of the section shall not be underlined. No rule may be forwarded by any agency to the code reviser, nor may the code reviser accept for filing any rule unless the format of such rule is in compliance with the provisions of this section.

(2) Once the rule has been formally adopted by the agency the code reviser need not, except with regard to the register published pursuant to RCW 34.04.050(2), include the items enumerated in subsection (1) of this section in the official code.

(3) Any addition to or deletion from an existing code section not filed by the agency in the style prescribed by subsection (1) of this section shall in all respects be ineffectual, and shall not be shown in subsequent publications or codifications of that section unless the ineffectual portion of the rule is clearly distinguished and an explanatory note is appended thereto by the code reviser in accordance with RCW 34.04.050, as now or hereafter amended, and section 13 of this 1980 act [1980 c 186 § 13]."

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-12-160 DRAFTING INSTRUCTIONS--REDESIGNATION OF WAC NUMBERS--AMENDMENT OR REPEAL OF INCONSISTENT RULES. (1) WAC numbers assigned to chapters or sections are permanent and shall not be changed by the use of addition and deletion marks((‡)). Unless special permission is obtained from the code reviser's office, the only way to change the WAC number originally assigned to a section is to repeal the entire section and readopt it under the new WAC number desired.

(2) ~~((Unless--special--permission--is--obtained--from--the--code--reviser's--office,))~~ The WAC numbers previously assigned to repealed sections or chapters shall not again be used to designate other sections or chapters as the sections or chapters repealed will continue to be referenced in the code as memorial sections or chapters.

(3) In drafting new rules, the draftsman must be cognizant of rules already in existence, and must expressly amend or repeal existing chapters or sections which would not be consistent with the new rules.

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-13-005 DECLARATION OF PURPOSE. The creation and maintenance of the Washington Administrative Code is a task of considerable magnitude. In recognition of the amount of total effort involved, and in order to effect overall economies in this important function of state government, the legislature has placed responsibilities upon the individual institutions of higher education by requiring (RCW 28B.19.090 and 28B.19..... (1980 c 186 § 27)) that they formulate both newly created and amendatory rules in the bill drafting style of the legislature and further in accordance with the style, format, and numbering system of the code.

This chapter is promulgated by the code reviser pursuant to the authority granted by RCW ((4:08:----- (1977-1st-ex:s:-c-240-§-2))) 1.08.110, 28B.19.080, and ((34:08:----- (1977-1st-ex:s:-c-240--§--4))) 34.08.030 in the interest of assisting the agencies in preparing, promulgating, and disseminating their administrative rules in an expeditious, orderly, and uniform manner so as to produce a state register and an administrative code which shall be as concise and accurate as possible, and at minimum overall expense to the state. The format standards imposed by this chapter are necessary to enable the inclusion of the rules as part of the register and the code in an orderly and efficient manner.

The code reviser's office will be pleased to afford such advice and assistance to requesting agencies regarding this chapter as its time and resources will permit.

The code reviser expressly reserves the power to create new code titles, chapters, and sections of the Washington Administrative Code, or otherwise revise the title, chapter, and sectional organization of the code, all as may be required from time to time, to effectuate the orderly and logical arrangement of the rules published therein.

Chapter 28B.19 RCW, the State Higher Education Administrative Procedure Act, established separate procedures for institutions of higher education, and the provisions of this chapter ((shall)) apply only to those institutions.

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-13-030 NOTICES OF INTENTION TO ADOPT RULES. (1) Statutory notice requirements; see RCW 28B.19.030<sup>1</sup>, 28B.19..... (1980 c 186 § 23) and ((34:08:----- (1977-1st-ex:s:-c-240-§-3))) 34.08.020.<sup>3</sup>

(2) Failure to comply with twenty days notice requirement--Code reviser not to publish rules and rule not effective for any purpose; see RCW 28B.19.030 (3).<sup>2</sup>

(3) Form of notice. Notices shall be filed on forms provided by the code reviser's office (Form CR-4). No other form will be accepted for filing. ((On-and-after-January-17-1978;)) The notice shall also include the full text of any proposed new or amendatory rule and the

citation and caption of any existing rule to be repealed. Such proposal ((state)) shall be done according to the bill drafting style requirements of WAC 1-13-125 through 1-13-160. The rule purpose statement required by RCW 28B.19..... (1980 c 186 § 23) shall also be included with the notice. (See WAC 1-13-032.)

(4) Number of copies; Notice numbers. Agencies shall file in the code reviser's office an original and ((two)) three copies of the notice and rule purpose statement whereupon the date of filing and the notice number will be affixed and a copy returned to the filing agency. Such notice number or numbers shall in the event of one or more continuances, be entered in paragraph (7) of all subsequent notices relating to the original notice (Form CR-4). The notice number and date (or the latest such number and date if due to continuances there be more than one) shall be entered by the agency on the administrative order and transmittal form by which the rules are adopted and transmittal form transmitted for filing.

(5) Computation of time with respect to the twenty day rule. The effect of RCW 28B.19.030 is to require the code reviser to ascertain agency compliance with the twenty day rule. Such compliance will be determined as follows:

(a) The code reviser's office construes the twenty day notice requirement of RCW 28B.19.030 as relating to the date upon which the first action will be taken by the agency upon the proposed rule changes; thus if the agency provides for a public hearing upon the matter, the twenty day requirement applies to the date of such hearing, otherwise it will apply to the date upon which the agency convenes to adopt, amend, or repeal the rules in question. The dates of the hearing, if any, and of the decision shall be inserted in parts (2) and (3), respectively, of the notice form (CR-4), and such dates may, of course, be coincidental.

(Attention is also directed to the additional requirement embodied in RCW 28B.19.030(1)(b) which provides that "Prior to the adoption, amendment or repeal of any rule, each agency shall: . . . Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing . . .")

~~(b) ((Prior to January 1, 1978, the code reviser construes RCW 28B.19.030(1)(a) as requiring the actual physical filing of the notice in the reviser's office at least twenty days prior to the date of such first action; thus notices filed by mail must have been received at least twenty days prior to the date of such first action. The time from such date of receipt to the time of such first action, will be computed according to RCW 4.42.040 which provides that:~~

~~-----"The time within which an act is to be done, as herein provided, shall be computed by excluding the first day, and including the last, unless the last day is a holiday or Sunday, and then it is also excluded."~~

~~As a rule of thumb consider the date of filing in the code reviser's office as day twenty. Count down to day zero to find the first day on which action may be taken (hearing or meeting, whichever occurs first); cf. State ex rel. Earley v. Batchelor, 45 Wn.2d 449.~~

~~(c) On and after January 1, 1978,))~~ The twenty day notice requirement ((will apply)) applies to the publication of the notice and the text of the proposal in the state register ((and not to its

~~filing--with-the-code-reviser---The-twenty-day-count-will~~) and begins with the distribution date of the register in which the notice has been published (or a notice regarding the omission of a rule has been published pursuant to RCW 28B.19.070). Consider the distribution date of the pertinent register as day twenty; count down to day zero to find the first day on which action may be taken (hearing or meeting, whichever occurs first); cf. RCW 1.12.040 and State ex rel. Earley v. Batchelor, 15 Wn.2d 149.

~~((d))~~ (c) The distribution dates of ~~((each-monthly))~~ registers shall be the first and third Wednesdays of ~~((that))~~ each month~~((;))~~. If a distribution date falls on a state holiday as determined by RCW 1.16.050, the distribution date of that register shall be delayed until Thursday. The last day to file material in the code reviser's office for inclusion in ~~((that-month's))~~ any particular register will be established according to WAC 1-13-035.

~~((e))~~ (d) If upon convening on any of the dates announced in parts (2) and (3) of the notice form (Form CR-4) the agency desires to continue either the hearing or the decision meeting, or both, to a future time certain but does not desire to file a new notice which would be subject to the twenty day rule such agency may, if it has complied with the twenty day rule as to its original notice and has convened at the time and place specified in such notice, announce a continuance to a date certain and forthwith file with the code reviser a continuation notice (Form CR-4) containing in part (1) thereof the same terms, substance, or description as was contained in the original notice (or if some of the matters have been disposed of, then such portions thereof as remain applicable) and supplying the additional information required by part (7) of such form. In the event of one or more such continuances, the compliance of the original notice with the twenty day rule will be deemed to relate to the continuation notices, and the text of the proposal need not be submitted with a notice of continuance. If an agency determines in advance of a hearing or adoption that it desires to continue either or both actions, it may file a notice of continuance in advance of the action if the notice will appear in a register with a distribution date at least ten days before the first action date of the previous notice.

NOTES:

<sup>1</sup> & <sup>2</sup> RCW 28B.19.030 as amended by § 10, chapter 240, Laws of 1977 ~~((1st))~~ ex. sess. (effective January 1, 1978) provides:

"(1) Prior to the adoption, amendment, or repeal of any rule adopted under this chapter, each institution, college, division, department, or official thereof exercising rule-making authority delegated by the governing board or the president, shall:

(a) File notice thereof with the code reviser in accordance with RCW 34.08.020(1) for publication in the state register, and mail the notice to all persons who have made timely request of the institution or related board for advance notice of its rule-making proceedings. Such notice shall also include (i) reference to the authority under which the rule is proposed, (ii) a statement of either the terms or substance of the proposed rule or a description of the subjects and issues involved, and (iii) the time when, the place where, and the manner in which interested persons may present their views thereon;

(b) Provide notice to the campus or standard newspaper of the institution involved and to a newspaper of general circulation in the area at least seven days prior to the date of the rule-making proceeding. The notice shall state the time when, place where, and manner in which interested persons may present their views thereon and the general subject matter to be covered;

(c) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. An opportunity for oral hearing must be granted if requested by twenty-five persons. The institution shall consider fully all written and oral statements respecting the proposed rule.

(2) No proceeding shall be held on any rule until twenty days have passed from the distribution date of the register in which notice thereof was contained. The code reviser shall make provisions for informing an institution of higher education giving notice under subsection (1) of this section of the distribution date of the register in which such notice will be published.

(3) No rule adopted under this chapter is valid unless adopted in substantial compliance with this section, or, if an emergency rule designated as such, adopted in substantial compliance with RCW 28B.19.040, as now or hereafter amended. In any proceeding a rule cannot be contested on the ground of noncompliance with the procedural requirements of RCW 34.08.020(1), of this section, or of RCW 28B.19.040, as now or hereafter amended, after two years have elapsed from the effective date of the rule.

(4) When twenty days notice of intended action to adopt, amend, or repeal a rule has not been filed with the code reviser, as required by subsection (2) of this section, the code reviser shall not publish such rule and such rule shall not be effective for any purpose."

<sup>3</sup>RCW ((34-08-----{1977-1st-ex.s.-e--240--§--3})) 34.08.020 as amended by § 15, chapter 186, Laws of 1980 provides: "There is hereby created a state publication to be called the Washington State Register, which shall be published on no less than a monthly basis. The register shall contain, but is not limited to, the following materials received by the code reviser's office during the pertinent publication period:

(1) The full text of any proposed new or amendatory rules, as defined in RCW 34.04.010, and the citation of any existing rules the repeal of which is proposed, prior to the public hearing on such proposal. Such material shall be considered, when published, to be the official notification of the intended action, and no state agency or official thereof may take action on any such rule except on emergency rules adopted in accordance with RCW 34.04.030, until twenty days have passed since the distribution date of the register in which the rule and hearing notice have been published or a notice regarding the omission of the rule has been published pursuant to RCW 34.04.050(3) as now or hereafter amended;

(2) The full text of any new or amendatory rule adopted, and the citation of any existing rule repealed, on a permanent or emergency basis;

(3) Executive orders and emergency declarations of the governor;

(4) Public meeting notices of any and all agencies of state government, including state elected officials whose offices are created by Article III of the state Constitution or RCW 48.02.010;

(5) Rules of the state supreme court which have been adopted but not yet published in an official permanent codification; and

(6) Summaries of attorney general opinions and letter opinions, noting the number, date, subject, and other information, and prepared by the attorney general for inclusion in the register."

#### NEW SECTION

WAC 1-13-032 RULE PURPOSE AND IMPLEMENTATION STATEMENT. RCW 28B-19..... (1980 c 186 § 23)<sup>1</sup> requires that when notice of any proposed rule is filed with the code reviser it shall be accompanied by a statement generally describing the rule's purpose and how it is to be implemented. Such statement shall also contain, as a minimum, the other items required by that statute. One copy of the purpose statement shall be attached to each copy of the notice filed with the code reviser's office. Also note that it is the responsibility of the adopting institution to transmit three copies of the statement to the secretary of the senate and the chief clerk of the house of representatives.

#### NOTES:

<sup>1</sup>RCW 28B.19..... (1980 c 186 § 23) provides:

"(1) For the purpose of legislative review of institution rules filed pursuant to this chapter, any new or amendatory rule proposed after June 12, 1980, shall be accompanied by a statement prepared by the adopting institution which generally describes the rule's purpose and how the rule is to be implemented. Such statement shall be on the institution's stationery or a form bearing the institution's name and shall contain, but is not limited to, the following:

(a) A title, containing a description of the rule's purpose, the statutory authority for the rule, and any other information which may be of assistance in identifying the rule or its purpose;

(b) A summary of the rule and a statement of the reasons supporting the proposed action;

(c) The institution personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(d) The name of the person or organization, whether private, public, or governmental, proposing the rule, if any;

(e) Institution comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(f) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a copy of such law or court decision shall be attached to the purpose statement.

(2) Upon filing notice of the proposed rule with the code reviser, the adopting institution shall have copies of the statement on file and available for public inspection and shall forward three copies each of the statement to the secretary of the senate and the

chief clerk of the house of representatives, who will in turn forward the statement to the majority and minority caucuses and to the appropriate legislative committees."

#### NEW SECTION

WAC 1-13-033 WITHDRAWAL OF PROPOSED RULE. Pursuant to RCW 28B-19..... (1980 c 186 § 24) a proposed rule may be withdrawn by the proposing institution at any time before adoption. Notice of withdrawal shall be provided to the code reviser's office in the form of a letter or memorandum from the proposing institution signed by the person signing the notice of proposal or by a designee of that person.

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-13-035 TIME FOR FILING MATERIAL FOR INCLUSION IN REGISTER. To permit sufficient lead time for the editorial, data capture, and printing process, material to be published under RCW ((-34-08-020 (1977-1st-ex-s-c-240-§-3)) 34.08.020 in a particular ((monthly)) register shall be in the actual physical possession of and filed in the code reviser's office according to the following schedule:

(1) If the material has been prepared and completed by the order typing service (OTS) of the code reviser's office; by 5:00 p.m. on the fourteenth day prior to the distribution date of that ((month's)) period's register; or

(2) If the material has been prepared other than by the code reviser's order typing service (OTS) and:

(a) Contains no more than ten pages in conformance with WAC 1-13-170; by 5:00 p.m. on the fourteenth day prior to the distribution date of that ((month's)) period's register; or

(b) Contains more than ten but less than thirty pages in conformance with WAC 1-13-170; by 5:00 p.m. on the twenty-eighth day prior to the distribution date of that ((month's)) period's register; or

(c) Contains thirty or more pages in conformance with WAC 1-13-170; by 5:00 p.m. on the forty-second day prior to the distribution date of that ((month's)) period's register.

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-13-125 DRAFTING INSTRUCTIONS--USE OF UNDERLINING. (1) Words in the text of rules shall not be underlined, except to indicate

language added to an existing section as explained in WAC 1-13-130. The designations "AMENDATORY SECTION," "NEW SECTION," and "REPEALER" shall also be underlined. No other use of underlining will be permitted, as the legal effect of underlining has been established by statute, and other uses present the codifier with an ambiguous situation.

(2) If it is desirable to emphasize certain text within the section for the institution's publication purposes, then consult with the code reviser's office for the appropriate style.

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-13-130 DRAFTING INSTRUCTIONS--AMENDATORY SECTIONS. (1) Both proposed and adopted rules which amend a section or sections of existing rules shall set forth the full text of the most current version of the section or sections including the WAC citation number, caption, text of the section, and associated agency explanatory notes and shall indicate by use of deletion and/or addition marks the amendment being made (RCW 28B.19..... (1980 c 186 § 27)).

(2) Amendments shall be to the most current permanent version of a WAC section and shall be drafted in the following manner only:

(a) Language added to an existing WAC section shall be underlined;

(b) Language to be deleted from an existing WAC section shall be

(i) preceded by two left parentheses,

(ii) struck over with hyphens, and

(iii) followed by two right parentheses;

(c) New language which replaces deleted language shall follow the deleted language.

(3) Each amendatory section shall be headed "AMENDATORY SECTION" followed by reference to the agency order number and filing date of the latest permanent order affecting that section. (See WAC 1-13-155 for style of this reference.)

(4) Special care must be taken to make sure that punctuation is not neglected. Addition and deletion of punctuation must be indicated in the above manner also. Existing punctuation should, however, be utilized to the extent possible. For example, if new language is to follow the last word of a sentence, insert the new language (underlined) between the existing last word and the existing period.

(5) The code reviser's office will be pleased to afford such advice and assistance as its time and resources will permit to requesting institutions regarding the style in which rules amending existing WAC sections must be drafted. (See WAC 1-13-240.)

(6) Note that rules which amend existing WAC sections and which are not drafted in the required style cannot be accepted for filing by the code reviser, and any addition to or deletion from an existing WAC section not promulgated in the required style has no legal effect and is not enforceable by the institution (RCW 28B.19..... 1 (1980 c 186 § 27)).

(7) In the event that any section to be amended is exempted from publication under the provisions of RCW 28B.19.070 and therefore not

codified in the Washington Administrative Code, it shall be referred to by agency order and section number, or other appropriate description.

NOTES:

1RCW 28B.19..... (1980 c 186 § 27) provides:

"(1) Rules promulgated by an institution pursuant to RCW 28B.19.030 or 28B.19.040, as now or hereafter amended, which amend existing sections of the administrative code shall have the words which are amendatory to such existing sections underlined. Any matter to be deleted from an existing section shall be indicated by setting such matter forth in full, enclosed by double parentheses, and such deleted matter shall be lined out with hyphens. In the case of a new section, such shall be designated "NEW SECTION" in upper case type and such designation shall be underlined, but the complete text of the section shall not be underlined. No rule may be forwarded by any institution to the code reviser, nor may the code reviser accept for filing any rule unless the format of such rule is in compliance with the provisions of this section.

(2) Once the rule has been formally adopted by the institution the code reviser need not, except with regard to the register published pursuant to RCW 28B.19.070(2), as now or hereafter amended, include the items enumerated in subsection (1) of this section in the official code.

(3) Any addition to or deletion from an existing code section not filed by the institution in the style prescribed by subsection (1) of this section shall in all respects be ineffectual, and shall not be shown in subsequent publications or codifications of that section unless the ineffectual portion of the rule is clearly distinguished and an explanatory note is appended thereto by the code reviser in accordance with RCW 28B.19.070, as now or hereafter amended, and section 26 of this 1980 act [1980 c 186 § 26]."

AMENDATORY SECTION (Amending Order 15, filed 10/31/77, effective 12/1/77)

WAC 1-13-160 DRAFTING INSTRUCTIONS--REDESIGNATION OF WAC NUMBERS--AMENDMENT OR REPEAL OF INCONSISTENT RULES. (1) WAC numbers assigned to chapters or sections are permanent and shall not be changed by the use of addition and deletion marks(¶). Unless special permission is obtained from the code reviser's office, the only way to change the WAC number originally assigned to a section is to repeal the entire section and readopt it under the new WAC number desired.

(2) ((Unless--special-permission-is-obtained-from-the-code-reviser's-office;)) The WAC numbers previously assigned to repealed sections or chapters shall not again be used to designate other sections or chapters as the sections or chapters repealed will continue to be referenced in the code as memorial sections or chapters.

(3) In drafting new rules, the draftsman must be cognizant of rules already in existence, and must expressly amend or repeal existing chapters or sections which would not be consistent with the new rules.