

Chapter 1-21 WAC

RULE MAKING

WAC

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WAC 1-21-005 Purpose. This chapter implements RCW 34.05.210 and 34.05.310 through 34.05.395, the provisions of the Administrative Procedure Act on agency rule making. It also implements chapter 34.08 RCW, the State Register Act. It replaces the former chapters 1-12 and 1-13 WAC on drafting and filing of notices and rules. It covers both institutions of higher education and all other administrative agencies, since chapter 34.05 RCW merged chapters 28B.19 and 34.04 RCW.

[Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-005, filed 5/31/89.]

WAC 1-21-010 Preproposal statement of inquiry. To solicit comments from the public as required by RCW 34.05.310 on a subject of possible rule making, but before a formal notice is filed under RCW 34.05.320, an agency shall complete and file with the office of the code reviser a CR-101 form (preproposal statement of inquiry). This requirement does not apply to all rule making. The exceptions are set forth in RCW 34.05.310(4).

The text of the new rule is neither required nor recommended at this stage, but if text is submitted for filing, it must meet the form and style requirements of WAC 1-21-110 through 1-21-130. The filing will appear in the *Washington State Register* in accordance with the schedule provided in WAC 1-21-040. Note that the CR-101 must be published at least thirty days before the CR-102 form (proposed rule making) may be filed.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-010, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030 and 2001 c 25. 01-20-090, § 1-21-010, filed 10/3/01, effective 11/3/01. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030 and 34.05.354 as amended by 1998 c 280 §§ 6 and 2. 98-14-048, § 1-21-010, filed 6/24/98, effective 7/25/98. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.230, 34.05.354 and 1997 c 409 §§ 202 and 208. 97-15-035, § 1-21-010, filed 7/10/97, effective 7/27/97. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.310, 34.05.320 and

(6/23/09)

1995 c 403 §§ 701 and 704. 95-17-070, § 1-21-010, filed 8/17/95, effective 9/17/95. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.030 and 34.05.310 as amended by 1994 c 249 § 1. 94-12-075, § 1-21-010, filed 5/31/94, effective 6/9/94. Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-010, filed 5/31/89.]

WAC 1-21-015 Expedited rule making. (1) Expedited rule making filed under RCW 34.05.353 includes both the expedited adoption of rules and the expedited repeal of rules.

(2) An agency shall file notice for the expedited rule making with the office of the code reviser on a CR-105 form (expedited rule making). The agency must file the full text of a proposed new or amendatory rule, along with the CR-105 form. The text must meet the form and style requirements of WAC 1-21-110 through 1-21-130. The filing will appear in the *Washington State Register* in accordance with the schedule provided in WAC 1-21-040. The expedited rule making must be published in the *Washington State Register* at least forty-five days before the agency may file a CR-103 form (rule-making order).

(3) WAC sections proposed for expedited repeal should be listed by citation and caption only, either individually or by entire chapter.

(4) The agency shall file the original and six copies of the expedited rule-making package (form and text). The office of the code reviser will keep the original and two copies and return four stamped copies to the agency. The joint administrative rules review committee has requested that the agency submit three of these copies to the committee for purposes of legislative review. The agency should keep the remaining copy for its files.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-015, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030 and 2001 c 25. 01-20-090, § 1-21-015, filed 10/3/01, effective 11/3/01.]

WAC 1-21-020 Notice—Form, contents, numbers.

(1) An agency shall file a regular notice of proposed rule making under RCW 34.05.320 with the office of the code reviser on a CR-102 form (proposed rule making). The agency must file the full text of the proposed rule along with the notice form (RCW 34.08.020). This filing must be at least thirty days after the CR-101 form, if required, was published (RCW 34.05.310).

(2) The agency shall file the original and six copies of the notice package (form and text). The office of the code reviser will keep the original and two copies and return four stamped copies to the agency. The joint administrative rules review committee has requested that the agency submit three of these copies to the committee for purposes of legislative review. The agency should keep the remaining copy for its files.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-020, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 1.08.110, 34.05.356, 34.05.385, and 34.08.030. 00-

18-001, § 1-21-020, filed 8/23/00, effective 12/31/00. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.354 as amended by 1998 c 280 §§ 6 and 2, 98-14-048, § 1-21-020, filed 6/24/98, effective 7/25/98. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.230, 34.05.354 and 1997 c 409 §§ 202 and 208, 97-15-035, § 1-21-020, filed 7/10/97, effective 7/27/97. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.310, 34.05.320 and 1995 c 403 §§ 701 and 704, 95-17-070, § 1-21-020, filed 8/17/95, effective 9/17/95. Statutory Authority: RCW 34.05.385 and 34.08.030, 89-12-028 (Order 89-1), § 1-21-020, filed 5/31/89.]

WAC 1-21-030 Notice period—*Washington State Register* distribution date. (1) Under RCW 34.05.320, notice of proposed rule making must be published in the *Washington State Register* at least twenty days before the agency may hold a hearing on the proposal. The *Washington State Register* is distributed on the first and third Wednesdays of each month. If a distribution date falls on a state holiday as determined by RCW 1.16.050, the distribution date of that *Washington State Register* will be delayed until Thursday.

(2) In counting the twenty-day notice period, consider the distribution date of the pertinent *Washington State Register* as day twenty; count down to day zero to find the first day on which a hearing may be held; cf. RCW 1.12.040 and *State ex rel. Earley v. Batchelor*, 15 Wn.2d 149 (1942).

(3) The schedule of closing dates on page 2 of each *Washington State Register* applies this section and WAC 1-21-040 to the current year. In case of a discrepancy between the WAC rules and the schedule, the rules have priority.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2, 06-16-019, § 1-21-030, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 34.05.385 and 34.08.030, 89-12-028 (Order 89-1), § 1-21-030, filed 5/31/89.]

WAC 1-21-040 *Washington State Register* material—Time for filing. To permit sufficient lead time for the editorial, data capture, and printing process, material to be published in a particular issue of the *Washington State Register* must be in the physical possession of and filed in the office of the code reviser according to the following schedule:

(1) If the material has been prepared and completed by the office of the code reviser's order typing service (OTS), by 12:00 noon on the fourteenth day before the distribution date of that issue of the *Washington State Register*; or

(2) If the material has been prepared by any means other than OTS and it contains:

(a) No more than ten pages, by 12:00 noon on the fourteenth day before the distribution date of that *Washington State Register*; or

(b) More than ten but less than thirty pages, by 12:00 noon on the twenty-eighth day before the distribution date of that *Washington State Register*; or

(c) Thirty or more pages, by 12:00 noon on the forty-second day before the distribution date of that *Washington State Register*.

The office of the code reviser's filing forms are not included in this page count, but all other material submitted for filing is counted for purposes of this section, excluding federal rules that are not published in the *Washington State Register*.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2, 06-16-019, § 1-21-040, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.310,

34.05.320 and 1995 c 403 §§ 701 and 704, 95-17-070, § 1-21-040, filed 8/17/95, effective 9/17/95. Statutory Authority: RCW 1.08.110, 34.05.385, and 34.08.030, 91-22-006, § 1-21-040, filed 10/24/91, effective 1/1/92. Statutory Authority: RCW 34.05.385 and 34.08.030, 89-12-028 (Order 89-1), § 1-21-040, filed 5/31/89.]

WAC 1-21-050 Continuance. (1) Under RCW 34.05.325(5), an agency may continue a proceeding that has already started by establishing the later time and place on the record. No publication is required in the *Washington State Register*, but before filing the administrative order adopting the rule, the agency shall give notice of the continuance to the office of the code reviser on a CR-102 form. If no substantial change is made in the proposal, the continuance is not subject to the twenty-day publication requirement of RCW 34.05.320. Note that RCW 34.05.335(4) prohibits an agency from adopting a rule before the time established in the published notice.

(2) An agency may change the date or the location, or both, of a rule-making proceeding before the proceeding has begun if the agency gives adequate notice to the public through the same methods that were used for the original notice. Adequate notice for purposes of the *Washington State Register* consists of filing the continuance notice on a CR-102 form with the office of the code reviser in time for it to appear in a *Washington State Register* that will be distributed at least five days before the originally scheduled proceeding.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2, 06-16-019, § 1-21-050, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.310, 34.05.320 and 1995 c 403 §§ 701 and 704, 95-17-070, § 1-21-050, filed 8/17/95, effective 9/17/95. Statutory Authority: RCW 34.05.385 and 34.08.030, 89-12-028 (Order 89-1), § 1-21-050, filed 5/31/89.]

WAC 1-21-060 Withdrawal of proposal. Under RCW 34.05.335 a proposed rule may be withdrawn any time before adoption. The agency shall provide notice of withdrawal to the office of the code reviser by a letter or memorandum signed by the person who signed the original notice, or by that person's designee. The agency shall send a copy of the withdrawal notice to the joint administrative rules review committee.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2, 06-16-019, § 1-21-060, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 34.05.385 and 34.08.030, 89-12-028 (Order 89-1), § 1-21-060, filed 5/31/89.]

WAC 1-21-070 Administrative order. (1) The administrative order by which an agency adopts a rule shall be done on a CR-103 form (rule-making order) provided by the office of the code reviser or, if required by agency practice, on an agency form that provides the information required by RCW 34.05.360.

(2) The agency shall file with the office of the code reviser the original and six copies of the permanent or emergency package (form and text). The joint administrative rules review committee has requested that the agency submit three of these copies to the committee for purposes of legislative review. The agency should keep the remaining copy for its files.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2, 06-16-019, § 1-21-070, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.030, and Executive Order

03-01. 04-02-071, § 1-21-070, filed 1/7/04, effective 2/7/04. Statutory Authority: RCW 1.08.110, 34.05.356, 34.05.385, and 34.08.030. 00-18-001, § 1-21-070, filed 8/23/00, effective 12/31/00. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.230, 34.05.354 and 1997 c 409 §§ 202 and 208. 97-15-035, § 1-21-070, filed 7/10/97, effective 7/27/97. Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-070, filed 5/31/89.]

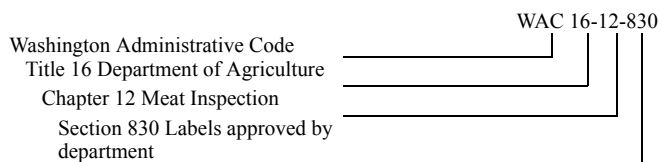
WAC 1-21-080 Numbering system—Captions. (1)

The primary division of the Washington Administrative Code (WAC) is the **Title**. The office of the code reviser assigns each agency a title number, which usually is in alphabetical order. A newly created agency shall apply to the office of the code reviser for assignment of a title number. If an agency's name is changed, the title number stays the same. The list of titles is published in volume 1 of the WAC.

(2) Each title is divided into **chapters**, which are the major subject matter divisions of the agency's title.

(3) Each chapter is divided into **sections**, which are the individual rules and are the smallest unit that can be amended. The agency shall place a short caption on each section to describe its contents. Sections should be as short as reasonably possible to facilitate finding an individual rule and amending it in the future.

(4) The WAC citation number is a composite of these three divisions:



[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-080, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-080, filed 5/31/89.]

WAC 1-21-090 Redesignation of WAC numbers. (1)

WAC numbers are permanent and may not be changed by the use of addition and deletion marks used for text amendments. If an agency wishes to recodify its permanent rules, it should consult with the office of the code reviser for the method to be used.

(2) WAC numbers previously assigned to repealed sections or chapters may not be reused to designate other sections or chapters. The numbers of the repealed rules are shown in a disposition table prepared by the office of the code reviser and published with the appropriate chapter or title.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-090, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-090, filed 5/31/89.]

WAC 1-21-100 Nontext rules. All tables, charts, maps, and other material that are rules under RCW 34.05.010 must be either part of another rule or be assigned WAC numbers and adopted as individual sections. The latter method is preferred, and it simplifies future amendment.

[Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-100, filed 5/31/89.]

WAC 1-21-110 Amendatory rules. (1) Designate each amendatory section with the heading "AMENDATORY SECTION" followed by a reference to the WSR number or agency order number and the filing date of the latest permanent order affecting that section. Show amendments to the text in terms of the latest permanent version of the section that has been filed with the code reviser.

(2) If a section to be amended has been exempted from publication under RCW 34.05.210 and is not published in the WAC, in later orders amending or repealing the section refer to it by the original agency order and section number or other appropriate description.

[Statutory Authority: RCW 1.08.110, 34.05.356, 34.05.385, and 34.08.030. 00-18-001, § 1-21-110, filed 8/23/00, effective 12/31/00. Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-110, filed 5/31/89.]

WAC 1-21-120 Underlining restricted. Since RCW 34.05.395 requires the use of the legislature's bill-drafting style to show amendments in previously adopted rules, underlined text may be used only to show new material added to an existing section. Underlining may not be used for emphasis, as it would not permit codification of the section in the usual manner. *Italics* or **boldface** may be used for emphasis. Consult with the office of the code reviser if in doubt as to the proper method for indicating these styles.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-120, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-120, filed 5/31/89.]

WAC 1-21-130 Repealers. To repeal one or more current sections, list them individually by citation and caption under a heading of "REPEALER." An entire chapter may be repealed section by section or as one complete unit. The first method preserves the unrepealed section numbers for future use, while the second method eliminates the entire chapter number from future use.

[Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-130, filed 5/31/89.]

WAC 1-21-140 Review of previously adopted rules. When an agency is required under RCW 34.05.630 to review permanent or emergency rules previously adopted, the agency shall file notice of the review with the code reviser on a CR-104 form (review of previously adopted rules). The agency shall file the original and six copies of the notice. Four copies will be returned to the agency, three of which shall be delivered to the joint administrative rules review committee. The notice is subject to the twenty-day requirement of RCW 34.05.320. The text of the rule under review is not needed with this notice.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-140, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 1.08.110, 34.05.356, 34.05.385, and 34.08.030. 00-18-001, § 1-21-140, filed 8/23/00, effective 12/31/00. Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-140, filed 5/31/89.]

WAC 1-21-150 Exemptions from publication. Agency rules that are likely to be omitted from WAC publication by the office of the code reviser under the authority of

RCW 34.05.210, may, upon application by the agency to the office of the code reviser for an exemption, be exempted by the office of the code reviser from the form and style requirements of this chapter, other than requirements that are imposed by statute. An application for exemption must be made and approved before filing the rules.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-150, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-150, filed 5/31/89.]

WAC 1-21-160 Filing after office hours. The office of the code reviser is open for the filing of agency rule-making notices and orders from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

An electronic filing system is available to all state agencies seven days a week, twenty-four hours per day. Each state agency must submit a registration letter before using this system.

The office of the code reviser delegates to the Washington state patrol the authority to accept at other times the filing of orders adopting, amending, or repealing rules when the nature of the order requires their immediate filing and/or effectiveness. To use this service, the agency may telephone the Washington state patrol communications center at 360-586-1999. When your call is answered, request a zone 4 trooper and arrange for receipt of the filing(s). The agency shall give the original and three copies of each filing to the trooper. The trooper shall mark each copy with the trooper's name, badge number, date, and time and arrange for all of the copies to be delivered to the office of the code reviser as early as possible on the next business day. The agency filing the rules with the state patrol shall notify the office of the code reviser of the filing by 9:00 a.m. on the next business day after filing and arrange to receive the stamped copies.

[Statutory Authority: RCW 1.08.110 and 34.05.385. 09-14-023, § 1-21-160, filed 6/23/09, effective 8/1/09; 06-22-040, § 1-21-160, filed 10/26/06, effective 11/26/06. Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-160, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030 and 2001 c 25. 01-20-090, § 1-21-160, filed 10/3/01, effective 11/3/01. Statutory Authority: RCW 1.08.110, 34.05.356, 34.05.385, and 34.08.030. 00-18-001, § 1-21-160, filed 8/23/00, effective 12/31/00. Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-160, filed 5/31/89.]

WAC 1-21-170 Official forms. Agencies may obtain the following official forms from the office of the code reviser upon request:

- (1) Form CR-101 Preproposal statement of inquiry
- (2) Form CR-102 Proposed rule making
- (3) Form CR-103 Rule-making order
- (4) Form CR-104 Review of previously adopted rules
- (5) Form CR-105 Expedited rule making.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-170, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030 and 2001 c 25. 01-20-090, § 1-21-170, filed 10/3/01, effective 11/3/01. Statutory Authority: RCW 1.08.110, 34.05.356, 34.05.385, and 34.08.030. 00-18-001, § 1-21-170, filed 8/23/00, effective 12/31/00. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.230, 34.05.354 and 1997 c 409 §§ 202 and 208. 97-15-035, § 1-21-170, filed 7/10/97, effective 7/27/97. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.310, 34.05.320 and 1995 c 403 §§ 701 and 704. 95-17-070, § 1-21-

170, filed 8/17/95, effective 9/17/95. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.030 and 34.05.310 as amended by 1994 c 249 § 1. 94-12-075, § 1-21-170, filed 5/31/94, effective 6/9/94. Statutory Authority: RCW 34.05.385 and 34.08.030. 89-12-028 (Order 89-1), § 1-21-170, filed 5/31/89.]

WAC 1-21-180 Rule-making activity report. To implement RCW 1.08.112, agencies shall supply the information required by RCW 1.08.112 (1)(a) through (f) and (i) by completing the appropriate parts of the CR-103 form. Agencies shall report information required by RCW 1.08.112 (1)(g) and (h) by a memorandum on agency letterhead to the office of the code reviser.

[Statutory Authority: RCW 1.08.110, 34.05.385, 1.08.001, and Executive Order 97-2. 06-16-019, § 1-21-180, filed 7/24/06, effective 8/24/06. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.230, 34.05.354 and 1997 c 409 §§ 202 and 208. 97-15-035, § 1-21-180, filed 7/10/97, effective 7/27/97. Statutory Authority: RCW 1.08.110, 34.05.385, 34.08.020, 34.08.030, 34.05.310, 34.05.320 and 1995 c 403 §§ 701 and 704. 95-17-070, § 1-21-180, filed 8/17/95, effective 9/17/95.]