



# RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/10/97)

Agency: Office of Administrative Hearings	<input checked="" type="checkbox"/> Permanent Rule
(1) Date of adoption: 10-6-99	<input type="checkbox"/> Expedited Adoption

(2) Purpose: Update model procedural rules for conducting administrative hearings for other agencies. Update rules to access OAH public records. Clerical revisions to OAH rules on SEPA. Publish procedures for making complaints about the conduct of Administrative Law Judges.

(3) Citation of existing rules affected by this order: See Attachment  
 Repealed:  
 Amended:

(4) Statutory authority for adoption: RCW 34.05.020, 34.05.250 (for ch. 10-08 WAC), 34.12.030, 34.12.080 (for ch. 10-08 WAC), 42.17.250 (for ch. 10-04 WAC), 43.21C.120 (for ch. 10-12 WAC)  
 Other Authority:

**PERMANENT RULE ONLY (Including EXPEDITED ADOPTION)**  
 Adopted under notice filed as WSR 99-17-107 on 8-18-99 (date).  
 Describe any changes other than editing from proposed to adopted version: Amends WAC 10-08-120(2) to allow a subpoena duces tecum for producing items to specify a reasonably convenient time and place in advance of the hearing instead of just at the hearing itself.

**EMERGENCY RULE ONLY**  
 Under RCW 34.05.350 the agency for good cause finds:  
 (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.  
 (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.  
 Reasons for this finding:

**EXPEDITED REPEAL ONLY**  
 Under Preproposal Statement of Inquiry filed as WSR \_\_\_ on \_\_\_ (date)

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:  
 Yes     No    If Yes, explain:

(6) Effective date of rule:  
**Permanent Rules or Expedited Repeal**  
 31 days after filing  
 Other (specify) \_\_\_\*  
**Emergency Rules**  
 Immediately  
 Later (specify)

\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)  
 Name (Type or Print) Art Wang  
 Signature *Art Wang*  
 Title Chief Administrative Law Judge    Date 10-6-99

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE  
STATE OF WASHINGTON  
FILED

OCT 6 1999

TIME 9:33 AM  
PM  
 WSR 99-20-115

## CR 103 Attachment

(3) Repealed: WAC 10-08-260, 10-08-261

Amended: WAC 10-04-010, 10-04-020, 10-04-030, 10-04-040, 10-04-050, 10-04-060, 10-04-070, 10-04-080, 10-04-090; WAC 10-08-001, 10-08-035, 10-08-040, 10-08-045, 10-08-050, 10-08-090, 10-08-110, 10-08-120, 10-08-130, 10-08-140, 10-08-150, 10-08-160, 10-08-180, 10-08-200, 10-08-210, 10-08-251; WAC 10-12-010, 10-12-020

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

**WAC 10-04-010 Purpose.** The purpose of this chapter is to provide rules implementing RCW (~~(34.04.020 and)~~) 42.17.250 (~~(through 42.17.320)~~) et seq. for the office of administrative hearings.

AMENDATORY SECTION (Amending WSR 93-10-098, filed 5/5/93, effective 6/5/93)

**WAC 10-04-020 Function--Organization--Offices.** The office of administrative hearings (~~(was created by chapter 34.12 RCW for the impartial administration of)~~) conducts impartial administrative hearings for state agencies and local governments pursuant to chapter 34.12 RCW. The office is under the direction of the chief administrative law judge (~~(and is organized in two divisions)~~).

Administrative law judges (~~(assigned to the two divisions)~~) preside over hearings in adjudicative proceedings and issue initial or final orders, including findings of fact and conclusions of law. (~~(Division one is responsible for hearings held before [and] [the] department of social and health services, the utilities and transportation commission, the liquor control board, the department of licensing, the superintendent of public instruction, and any other state agency requiring administrative law judge services except the employment security department. Division two is responsible for hearings held before the employment security department.)~~)

The administrative office is located at (~~(2424 Heritage Court SW, Suite 302)~~) 919 Lakeridge Way SW, 2nd Floor, P.O. Box 42488, Olympia, Washington, 98504-2488. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays. Administrative law judges are (~~(housed in)~~) assigned to field offices located in Everett, Olympia, Seattle, Spokane, Vancouver, and Yakima. Each (~~(of these)~~) office(~~(s)~~) is headed by a senior administrative law judge.

All written (~~(communication[s])~~) communications by parties pertaining to a particular case shall be filed with the field office, if any, assigned to the case, and otherwise with the (~~(deputy)~~) chief administrative law judge or designee at the administrative office.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

**WAC 10-04-030 Public records--Availability.** Public records are available for public inspection and copying except as otherwise provided (~~(by RCW 42.17.310)~~) under chapter 42.17 RCW and these rules.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

**WAC 10-04-040 Public records--Officer.** The public records officer for the administrative office shall be the (~~(confidential secretary to the chief administrative law judge)~~) executive assistant. For those records maintained at field office locations, the public records officer shall be the senior administrative law judge (~~(in benefits division field offices and the deputy chief administrative law judge for regulatory and special assignments field offices)~~).

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

**WAC 10-04-050 Requests for public records.** (~~(In accordance with requirements of chapter 42.17 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:)~~)

(1) (~~(A request shall be made in writing upon a form prescribed by the office which shall be available at the offices where records are maintained. The form shall be presented to the public records officer, or to a member of the staff designated by him or her if the public records officer is not available, during office hours.)~~) Members of the public may inspect or obtain copies of public records in accordance with chapter 42.17 RCW by submitting a written request to the public records officer (or designee) during office hours. The office shall provide a form for submitting a request for public records. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The (~~(time of day and calendar)~~) date on which the request was made;
- (c) The nature of the request;
- (d) An appropriate description of the record requested; and
- (e) Where and how to deliver the record requested.

(2) ~~((In all cases in which a member of the public is making a request, it shall be the obligation of the))~~ The public records officer ~~((or designated staff member to whom the request is made to))~~ shall assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-04-060 Copying fees.** No fee shall be charged for the inspection of public records. The office shall charge a fee of ~~((ten))~~ fifteen cents per page of copy for providing copies of public records and for the use of the office's copy equipment, ~~((subject to a minimum charge per order of \$1.00))~~ including electronic telefacsimile transmission, plus the actual postage ((at actual cost)) or delivery charge. ~~((This charge is the amount necessary to reimburse the office for its actual costs incident to such copying and mailing or transmission by telefacsimile.))~~ Fees may be waived for minimal copies.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

**WAC 10-04-070 Exemptions.** (1) The office reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 10-04-050 is exempt under the provisions of chapter 42.17 RCW ((47.17.310)) or other law.

(2) In addition, pursuant to RCW 42.17.260(1), the office reserves the right to delete identifying details when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

**WAC 10-04-080 Review of denials of public records request.**

(1) (~~Any person who objects to the denial of a~~) A person whose request for a public record has been denied may petition for prompt review of (~~such decision by tendering~~) the denial by submitting a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chief administrative law judge or (~~his~~) designee. The chief administrative law judge or (~~his~~) designee shall immediately consider the matter and (~~either~~) affirm, modify, or reverse (~~such~~) the denial within (~~five~~) two business days following the original denial.

(3) (~~Administrative remedies shall not be considered exhausted until the chief administrative law judge or his designee has returned the petition with a decision or until the close of the fifth business day following denial of inspection, whichever occurs first.~~) A person whose request for a public record has been denied may request the attorney general to review the matter pursuant to RCW 42.17.325.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

**WAC 10-04-090 Protection of public records.** (1) No person shall knowingly alter, deface, or destroy public records of the office.

(2) Original copies of public records of the office shall not be removed from the premises where maintained by the office.

(3) Care and safekeeping of public records of the office, furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.

(4) Records furnished for public inspection or copying shall be returned in good condition and in the same file sequence or organization as when furnished.

(5) (~~Boisterous or otherwise disruptive conduct by those requesting public records of the office shall not be permitted.~~) Persons requesting, inspecting, or copying public records shall not disrupt the office.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-001 Declaration of purpose.** (1) Chapter 10-08 WAC contains the model rules of procedure which RCW 34.05.250 requires the chief administrative law judge to adopt for use by as many agencies as possible. The model rules deal with general functions and duties performed in common by the various agencies. The model rules supplement Administrative Procedure Act provisions which contain grants of rulemaking authority to agencies. It is not the purpose of the model rules to duplicate all procedural provisions of the Administrative Procedure Act. This chapter sets forth general rules applicable to proceedings before many state agencies. It should be read in conjunction with the provisions of the Administrative Procedure Act (chapter 34.05 RCW) and with any administrative rules governing adjudicative proceedings which have been adopted by the particular agency.

(2) Except to the extent an agency is excluded from chapter 34.05 RCW or parts of chapter 34.05 RCW, each agency must adopt as much of the model rules as is reasonable under its circumstances. Any agency adopting a rule of procedure that differs from these model rules must include in the order of adoption a finding stating the reasons for variance.

(3) Adoption of these 1999 amendments to the model rules does not invalidate any variances in rules adopted by agencies between the effective date of the 1988 amendments to the Administrative Procedure Act and the effective date of these 1999 amendments to the model rules.

(4) In the absence of other rules to the contrary, these model rules shall govern any adjudicative proceedings under the Administrative Procedure Act.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-035 Adjudicative proceedings--Application.** An application for an adjudicative proceeding may be on a form provided by the agency for that purpose or in other writing signed by the applicant or the applicant's representative. The application for an adjudicative proceeding should specify the issue to be (~~adjudicated~~) decided in the proceeding.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-040 Adjudicative proceedings--Notice of hearing.**

(1) In any adjudicative proceeding all parties shall be served with a notice of hearing within the time required by (~~([statute] [law])~~) law governing the respective agency or proceeding (~~(, and, in the absence of a)~~). If there is no requirement under other law, all parties shall be served with a notice of hearing not less than seven days before the date set for the hearing. The notice shall include the information specified in RCW 34.05.434 (~~(and)~~). If the hearing is to be conducted by teleconference call, the notice shall so state.

(2) The notice shall state that if a limited-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed and (~~(that)~~) there will be no cost to the party or witness. The notice shall include a form for a party to indicate whether the party needs an interpreter and to identify the primary language or hearing impaired status of the party.

(3) Defects in (~~([the])~~) the notice may not be waived unless:  
(a) The presiding officer determines that the waiver has been made knowingly, voluntarily and intelligently;  
(b) The party's representative, if any, consents; and  
(c) If a party is an impaired person, the waiver is requested through the use of a qualified interpreter.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-045 Adjudicative proceedings--Notice to limited-English-speaking parties.**

(1) When an agency is notified or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, (~~(shall)~~) either:

(a) Shall be written in the primary language of the party; or  
(b) Shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to (~~(if necessary,)~~) the notice.

(2) For purposes of this chapter, the term "limited-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language. The term has the same meaning as "non-English-speaking person" as defined in RCW 2.43.020.



AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-050 Adjudicative proceedings--Assignment of administrative law judge--Motion of prejudice.** (1) Whenever a state agency as defined in RCW 34.12.020(4) conducts a hearing which is not presided over by officials of the agency who are to render the final decision, the agency shall use one of the following methods for requesting assignment of an administrative law judge:

(a) Not less than twenty days prior to the date of the hearing, notify the chief administrative law judge or his or her designee of the date, time, and place of the hearing and request assignment of an administrative law judge to preside over the hearing, or

(b) File with the office of administrative hearings a copy of the hearing file, which filing shall be deemed to be a request for assignment of an administrative law judge to issue the notice of hearing and preside over the hearing, or

(c) Schedule its hearings to be held at times and places reserved and provided to the agency for that purpose by the office of administrative hearings.

(2) Motions of prejudice with supporting affidavits under RCW 34.12.050 must be filed at least three days prior to the hearing or to any earlier stage of the adjudicative proceeding at which the administrative law judge may be required to issue a discretionary ruling. If the notice of hearing does not state the name of the presiding administrative law judge, the chief administrative law judge or his or her designee shall make such assignment at least five days prior to the hearing and shall disclose the assignment to any party or representative making inquiry. Subsequent motions of prejudice filed by the same party in the same proceeding shall be ruled upon by the chief administrative law judge or his or her designee.

NEW SECTION

**WAC 10-08-083 Notice of appearance.** If a party is represented, the representative should provide the presiding officer and other parties with the representative's name, address, and telephone number. The presiding officer may require the representative to file a written notice of appearance or to provide documentation that an absent party has authorized the representative to appear on the party's behalf. If the representative is an attorney admitted to practice in this state, the attorney shall file a written notice of appearance and shall file a notice of withdrawal upon withdrawal of representation.

NEW SECTION

**WAC 10-08-085 Consolidation of proceedings.** If there are multiple adjudicative proceedings involving common issues or parties, upon motion of any party or upon his or her own motion, the presiding officer may, in his or her discretion, consolidate the proceedings.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-090 Adjudicative proceedings--Continuances.** (1) Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, ~~((showing))~~ if the party shows good ((and sufficient)) cause ((therefor)).

(2) A request for a continuance ~~((made prior to the hearing date))~~ may be oral or written ~~((and shall state that))~~. The party seeking the continuance ((has notified)) shall notify all other parties of the request ((and that either)). The request for a continuance shall state whether or not all other parties agree to the continuance ((or that all parties do not agree to the continuance)). If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-110 Adjudicative proceedings--Filing and service of papers.** (1) Filing.

(a) Papers required to be filed with the agency shall be deemed filed upon actual receipt during office hours at any office of the agency. Papers required to be filed with the presiding officer shall be deemed filed upon actual receipt during office hours at the office of the presiding officer.

(b) The following conditions apply for filing papers with the presiding officer by fax:

(i) As used in this chapter, "fax" means electronic telefacsimile transmission.

(ii) Papers may be filed by fax with the presiding officer. Filing by fax is perfected when a complete legible copy of the papers is reproduced on the presiding officer's fax machine during normal working hours, excluding weekends and holidays. If a transmission of papers commences after these office hours, the

papers shall be deemed filed on the next succeeding business day.

(iii) Any papers filed by fax with the presiding officer should be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the papers relate, and indicating the date of and the total number of pages included in the transmission.

(iv) Papers filed by fax should not exceed fifteen pages in length, exclusive of any cover page.

(v) The party attempting to file the papers by fax bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the fax is not received in legible form, it will be considered as if it had never been sent.

(vi) The original of any papers filed by fax should be mailed to the presiding officer within twenty-four hours of the time that the fax was sent. The presiding officer has discretion to require this.

(c) The filing of papers with the presiding officer by electronic mail ("e-mail") is not authorized without the express approval of the presiding officer and under such circumstances as the presiding officer allows.

(2) Service.

(a) All notices, pleadings, and other papers filed with the presiding officer shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

((+2)) (b) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail ~~(by telegraph; by electronic telefacsimile transmission)~~; by fax and same-day mailing of copies; or by commercial parcel delivery company.

((+3)) (c) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by ~~(telegraph shall be regarded as completed when deposited with a telegraph company properly addressed and with charges prepaid. Service by electronic telefacsimile transmission)~~ fax shall be regarded as completed upon production by the ~~(telefacsimile device)~~ fax machine of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

((+4) Papers required to be filed with the agency shall be deemed filed upon actual receipt during office hours at any office of the agency. Papers required to be filed with the presiding officer shall be deemed filed upon actual receipt during office hours at the office of the presiding officer.

+5)) (3) Proof of service. Where proof of service is required by statute or rule, filing the papers with the presiding officer, together with one of the following, shall constitute proof of service:

(a) An acknowledgement of service.

(b) A certificate that the person signing the certificate ~~(did on the date of the certificate serve)~~ served the papers upon

all parties of record in the proceeding by delivering a copy thereof in person to (names(~~(-)~~)).

(c) A certificate that the person signing the certificate (~~((did on the date of the certificate serve))~~) served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) (~~((Telegraphing a copy thereof, properly addressed with charges prepaid, to each party to the proceeding or his or her attorney or authorized agent; or~~

~~((iii)))~~ Transmitting a copy thereof by (~~((electronic telefacsimile device))~~) fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(~~((iv)))~~ (iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-120 Adjudicative proceedings--Subpoenas.** (1)

Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(2) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control (~~((at the time and place set for the hearing))~~).

(a) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for hearing, or another reasonably convenient time and place in advance of the hearing.

(3) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (a) quash or modify the subpoena if it is unreasonable and oppressive or (b) condition denial of the motion

upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-130 Adjudicative proceedings--Prehearing conference.** (1) The presiding officer upon his or her own motion or upon request of a party may direct the parties or their representatives to engage in a prehearing conference or conferences to consider:

- (a) Simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;
- (d) Limitations on the number and consolidation of the examination of witnesses;
- (e) Procedural matters;
- (f) Distribution of written testimony and exhibits to the parties prior to the hearing;
- (g) Such other matters as may aid in the disposition or settlement of the proceeding.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) In any proceeding the presiding officer may, in his or her discretion, conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this rule. The presiding officer shall state on the record the results of such conference.

(5) Nothing in this rule shall be construed to limit the right of ~~(([an] [any]))~~ an agency to attempt informal settlement of an adjudicative proceeding at any time.

NEW SECTION

**WAC 10-08-135 Summary judgment.** A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-140 Adjudicative proceedings--Evidence.** (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(2) Where practicable, the presiding officer may order:

(a) That all documentary evidence which is to be offered during the hearing or portions of the hearing be submitted to the presiding officer and to the other parties sufficiently in advance to permit study and preparation of cross-examination and rebuttal evidence;

(b) That documentary evidence not submitted in advance as required in (a) of this subsection be not received in evidence in the absence of a clear showing that the offering party had good cause for his or her failure to produce the evidence sooner, unless it is submitted for impeachment purposes;

(c) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

(3) When portions only of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(4) No former employee of the agency shall appear, except with the permission of the agency, as an expert witness on behalf of other parties in a proceeding in which he or she previously took an active part in the investigation as a representative of the agency.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be ground for striking all testimony previously given by such witness on related matter.

(6) Any party bound by ~~((a+))~~ a stipulation or admission of record may, at any time prior to closure of the hearing, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the presiding officer that such stipulation or

admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

AMENDATORY SECTION (Amending WSR 93-10-097, filed 5/5/93, effective 6/5/93)

**WAC 10-08-150 Adjudicative proceedings--Interpreters.** (1)

When an impaired person as defined in ((RCW)) chapter 2.42 RCW or a non-English-speaking person as defined in ((RCW)) chapter 2.43 RCW is a party or witness in an adjudicative proceeding, the presiding officer shall appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of ((RCW)) chapters 2.42 and 2.43 RCW.

(2) Relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not be appointed as interpreters in the proceeding. This subsection shall not prohibit the office of administrative hearings from hiring an employee whose sole function is to interpret at administrative hearings.

(3) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired or non-English-speaking person. This determination shall be based upon the testimony or stated needs of the impaired or non-English-speaking person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to his or her qualifications and impartiality.

(4) If at any time during the proceeding, in the opinion of the impaired or non-English-speaking person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired or non-English-speaking person, the presiding officer shall appoint another interpreter.

(5) Mode of interpretation.

(a) Interpreters for non-English-speaking persons shall use the simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(b) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary

interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(c) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding (~~([as] [an])~~) as a nonimpaired or English-speaking party listening to uninterpreted statements would have.

(6) An interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. An interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(7) The presiding officer shall explain to the non-English-speaking party that a written decision or order will be issued in English, and that the party may contact the interpreter for an oral translation of the decision and that the translation itself is at no cost to the party. The interpreter shall provide to the presiding officer and the party the interpreter's telephone number. The telephone number shall be attached to the decision or order mailed to the party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.

(8) If the party has a right to review of the order or decision, the presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(9) The agency involved in the hearing shall pay interpreter fees and expenses.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-160 Adjudicative proceedings--Testimony under oath or affirmation.** (1) Every person called as a witness in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060. If the witness is testifying from outside the jurisdiction, the presiding officer may require the witness to agree to be bound by the laws of the state of Washington for purposes of the oath or affirmation.

(2) Every interpreter shall, before beginning to interpret,



take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-180 Adjudicative proceedings--Teleconference hearings.** (1) The presiding officer (~~(, with the concurrence of the agency,)~~) may conduct all or part of the hearing by telephone, television, or other electronic means, if the rights of the parties will not be prejudiced and if each participant in the hearing has an opportunity to participate in, to hear, and, if technically and economically feasible, in the judgment of the presiding officer, to see the entire proceeding while it is taking place (~~(, provided)~~). However, the presiding officer shall grant the motion of any party showing good cause for having the hearing conducted in person at a rescheduled time.

(2) Documentary evidence shall be submitted in advance as provided in WAC 10-08-140(2).

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-200 Adjudicative proceedings--Presiding officer.** The presiding officer shall have authority to:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas pursuant to RCW 34.05.446;
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on motions for summary judgment;
- (6) Rule on offers of proof and receive relevant evidence;
- ~~((+6+))~~ (7) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(8) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

~~((+7+))~~ (9) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

~~((+8+))~~ (10) Take official notice of facts pursuant to RCW

34.05.452(5);

(11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

~~((+9))~~ (12) Permit or require oral argument or briefs and determine the time limits for submission thereof;

~~((+10))~~ (13) Issue an order of default pursuant to RCW 34.05.440;

(14) Hold prehearing conferences;

(15) Appoint a mediator or serve as mediator, provided that after serving as mediator, the presiding officer shall not conduct the hearing or issue a decision on the matter unless the parties specifically waive any objections to doing so;

(16) Take any other action necessary and authorized by any applicable statute or rule; and

~~((+11))~~ (17) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-210 Adjudicative proceedings--Initial or final order.** Every decision and order, whether initial or final, shall:

(1) Be correctly captioned as to the name of the agency and name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

~~(3) ((Include a concise statement of the nature and background of the proceeding;~~

~~(4))~~ Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

~~((+5))~~ (4) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

~~((+6))~~ (5) Contain an initial or final order disposing of all contested issues;

~~((+7))~~ (6) Contain a statement describing the available post-hearing remedies.

NEW SECTION

**WAC 10-08-217 Shortened record on petition for review or appeal.** If a petition for review or appeal is made of an initial order, by stipulation the parties may agree to shorten the record to be filed with the entity considering the petition for review or appeal. Either party unreasonably refusing to stipulate to such a limitation, including shortening or selecting only portions of a

transcript, may be ordered to pay the additional costs involved. For petitions for judicial review of a final order, see RCW 34.05.566.

NEW SECTION

**WAC 10-08-219 Correction of transcript.** Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. If the parties agree and the presiding officer approves, transcript corrections may be incorporated into the record at any time during the hearing or after the close of evidence. All corrections must be made within ten calendar days after receipt of the transcript unless the presiding officer allows a different period.

AMENDATORY SECTION (Amending Order 6, filed 6/15/89)

**WAC 10-08-251 Declaratory orders--Procedural rights of persons in relation to petition.** If a petition for a declaratory order is set for specified proceedings under RCW 34.05.240 (5)(b), the agency shall give not less than seven days advance written notice of the proceedings to the petitioner and all persons described in RCW 34.05.240(3). The notice shall contain the time, date, place, and nature of the proceedings and shall describe how interested persons may participate in the proceeding. Pursuant to RCW 34.05.240(7), the agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party if the person does not consent in writing to the determination of the matter by a declaratory ruling proceeding.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |               |   |
|---------------|---|
| WAC 10-08-260 | Petition for rulemaking--Form, content and filing.      |
| WAC 10-08-261 | Petition for rulemaking--Consideration and disposition. |

Chapter 10-12 WAC

COMPLIANCE WITH STATE ENVIRONMENTAL ((PROTECTION)) POLICY ACT

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

**WAC 10-12-010 Purpose.** The purpose of this chapter is to comply with and implement RCW 43.21C.120 directing every state agency to adopt rules pertaining to the integration of the policies and procedures of the State Environmental ((Protection)) Policy Act into the various programs under ((their)) its jurisdiction for implementation.

AMENDATORY SECTION (Amending Order 3, filed 11/1/82)

**WAC 10-12-020 Application.** Pursuant to WAC ((197-10-800)) 197-11-800, the office of administrative hearings has reviewed its authorized activities and found them to be exempt under the provisions of chapter ((197-10)) 197-11 WAC.

## Chapter 10-16 WAC

### COMPLAINT PROCEDURES

#### NEW SECTION

**WAC 10-16-010 Procedure for complaints regarding improper conduct of an administrative law judge.** (1) Administrative law judges must at all times adhere to the fundamental principles of law, fairly and equitably. Administrative law judges should be fair in their rulings and should conduct the proceedings in a judicious manner.

(2) Any interested party to an administrative proceeding may file a complaint alleging improper conduct of an administrative law judge. For purposes of this section, an interested party is a person who has a right to receive notice of the administrative hearing.

(3) A complaint concerning a decision or order shall be handled through the appeal or petition for review process. This includes initial or final orders and interim orders or discretionary rulings from which further appeal may be taken.

(4) A complaint concerning the conduct of an administrative law judge, apart from a decision from which further appeal may be filed, shall be in writing and sent to the supervising administrative law judge.

(5) The written complaint must set forth in detail all pertinent facts and information. It shall include, among other things, the name of the administrative law judge, the date of the incident, the individuals present, and any other information which would assist in investigation of the complaint. The complaint should be no more than five pages.

(6) Within ten days of receipt of a written complaint, the supervising administrative law judge shall send a letter acknowledging receipt of the complaint. The supervising administrative law judge shall conduct an investigation of the complaint. For matters no longer pending before the office of administrative hearings at the time the complaint is filed, the supervising administrative law judge shall issue a written response to the complaining party within thirty days of receipt of the complaint. However, for matters pending before the office of administrative hearings at the time the complaint is filed, the supervising administrative law judge shall issue a written response within thirty days after issuance of the administrative law judge's

decision. If additional time is needed, the supervising administrative law judge shall notify the complaining party in writing and indicate an expected response date.

(7) If, after investigation, the complaint is found to have merit, the supervising administrative law judge shall take appropriate corrective action. If disciplinary action is warranted, it shall be handled internally subject to the individual's privacy rights as in other personnel matters.

(8) Should the complaining party not be satisfied with the result of the investigation, he or she may request review of the complaint by the chief administrative law judge. The chief administrative law judge shall review all facts and information pertinent to the complaint and issue a written response. The response of the chief administrative law judge shall be final.

(9) Any inquiries concerning the grievance procedure may be made through the administrative office or any field office of the office of administrative hearings. A directory listing the names and mailing addresses of supervising administrative law judges, deputy chief administrative law judges and the chief administrative law judge will be available through these offices.