



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (10/1/89)

Agency: **AGRICULTURE**

- Permanent Rule
 Emergency Rule

(1) Date of adoption: **November 12, 1991**

(2) Purpose:

Establish procedural rules for the adjudicative process under Chapter 34.05 RCW.

(3) Citation of existing rules affected by this order:

- Repealed:
Amended:
Suspended:

(4) Authority for adoption:

Statute: **34.05**
Other Authority:

(5.1) **PERMANENT RULE ONLY**

Pursuant to notice filed as WSR 91-20-177 on October 2, 1991 (date).

Describe any changes other than editing from proposed to adopted version:

See back page.

(5.2) **EMERGENCY RULE ONLY**

Pursuant to 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:

(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

Emergency Rules

- 31 days after filing Immediately
 Other (specify) _____ * Later (specify) _____

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

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CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

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TIME 1:39

WSR 91-23-051

NAME (TYPE OR PRINT)

Michael V. Schwisow

SIGNATURE

Michael V. Schwisow

TITLE

Deputy Director

DATE

11/15/91

NEW SECTION

WAC 16-08-002 DEFINITIONS. The definitions set forth in this section shall apply throughout this chapter unless the context otherwise requires:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture.

(3) "Reviewing officer" means the deputy director of the department of agriculture, who the director hereby designates to exercise all decision making powers to review initial orders, and prepare and enter final orders for the director of agriculture pursuant to RCW 34.05.464(2), or the director of agriculture. The reviewing officer shall mean the director in those cases where the deputy director has acted as the presiding officer.

NEW SECTION

WAC 16-08-011 ADOPTION OF MODEL RULES OF PROCEDURE. The model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the department. In the case of a conflict between the model rules of procedure and procedural rules adopted in this chapter, the procedural rules adopted by the department shall take precedence.

NEW SECTION

WAC 16-08-021 PRESIDING OFFICER. (1) The director will designate the presiding officer for an adjudicative proceeding:

(a) In matters involving an adjudicative proceeding, the director may designate as presiding officer an administrative law judge assigned by the office of administrative hearings under the authority of chapter 34.12 RCW, or the deputy director;

(b) In matters involving a brief adjudicative proceeding the director may designate an assistant director as presiding officer. In matters involving emergency adjudicative proceedings the director may designate an assistant director, the deputy director, or the deputy director's assistant as presiding officer.

(2) A person who has served as an investigator, prosecutor, or advocate in any stage of an adjudicative proceeding or someone who is subject to the authority or jurisdiction of such a person, may not serve as a presiding officer in the same proceeding.

(3) The presiding officer shall have the authority to:

(a) Determine the order of presentation of evidence;

(b) Administer oaths and affirmations;

(c) Issue subpoenas;

(d) Rule on procedural matters, objections, and motions;

(e) Rule on offers of proof and receive relevant evidence;

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

(g) 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;

(h) Take any appropriate action necessary to maintain order during the hearing;

- (i) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (j) Take any other action necessary and authorized by any applicable statute or rule;
- (k) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver.

NEW SECTION

WAC 16-08-031 APPLICATION FOR ADJUDICATIVE PROCEEDING. An application for an adjudicative proceeding shall be made on a form provided by the department. Written application for an adjudicative proceeding shall be received at the address designated on the application form within twenty days of notice of the proposed department action giving rise to the application unless provided for otherwise by statute or rule.

NEW SECTION

WAC 16-08-041 SETTLEMENT. Before or after a hearing, parties to a proceeding may enter into discussions leading to a voluntary settlement of the subject matter of the proceeding. These conferences shall be informal and without prejudice to the rights of the parties, and no statement, admission, or offer of settlement made at an informal conference shall be admissible in evidence in any adjudicative proceeding.

NEW SECTION

WAC 16-08-051 DISCOVERY--AUTHORITY OF PRESIDING OFFICER. (1) Discovery in adjudicative proceedings other than as enumerated in WAC 16-08-061 through 16-08-121 may be permitted at the discretion of the presiding officer. In permitting such discovery, the presiding officer shall make reference to the civil rules of procedure.

(2) The presiding officer shall have the power to control the frequency and nature of discovery permitted, including discovery as enumerated in WAC 16-08-061 through 16-08-121, and to order discovery conferences to discuss discovery issues.

NEW SECTION

WAC 16-08-061 DEPOSITIONS IN ADJUDICATIVE PROCEEDINGS--RIGHT TO TAKE. Except as may be otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the proceeding.

NEW SECTION

WAC 16-08-071 DEPOSITIONS IN ADJUDICATIVE PROCEEDINGS--SCOPE. Unless otherwise ordered, the deponent may be examined regarding any matter not privileged, which is relevant to the subject matter involved in the proceeding.

NEW SECTION

WAC 16-08-081 DEPOSITIONS IN ADJUDICATIVE PROCEEDINGS--OFFICER BEFORE WHOM TAKEN. Within the United States or within a territory or insular possession subject to the dominion of the United States depositions shall be taken before an officer authorized to administer oaths by the laws of the state of Washington or of the place where the examination is held; within a foreign country, depositions shall be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or a person designated by the director of agriculture or agreed upon by the parties by stipulation in writing filed with the department of agriculture. Except by stipulation, no deposition shall be taken before a person who is a party or the privy of a party, or a privy of any counsel of a party, or who is financially interested in the proceeding.

NEW SECTION

WAC 16-08-091 DEPOSITIONS IN ADJUDICATIVE PROCEEDINGS--NOTICE. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than five days in writing to the department of agriculture and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of a party upon whom the notice is served, the presiding officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

NEW SECTION

WAC 16-08-101 DEPOSITIONS AND INTERROGATORIES IN ADJUDICATIVE PROCEEDINGS--PROTECTION OF PARTIES AND DEONENTS. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the director or his/her designated presiding officer may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order

of the director, or that business secrets or secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the director, or the director may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the director or his/her designated presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

NEW SECTION

WAC 16-08-111 DEPOSITIONS IN ADJUDICATIVE PROCEEDINGS--USE AND EFFECT. Subject to rulings by the presiding officer upon objections, a deposition taken and filed as provided in this rule will not become a part of the record in the proceeding until received in evidence by the presiding officer upon his own motion or the motion of any party. Except by agreement of the parties or ruling of the presiding officer, a deposition will be received only in its entirety. A party does not make a party, or the privy of a party, or any hostile witness his/her witness by taking his/her deposition. Any party may rebut any relevant evidence contained in a deposition whether introduced by him/her or any other party.

NEW SECTION

WAC 16-08-121 DEPOSITIONS IN ADJUDICATIVE PROCEEDINGS--FEES OF OFFICERS AND DEONENTS. Deponents whose depositions are taken and the officers taking the same shall be entitled to the same fees as are paid for like services in the superior courts of the state of Washington under RCW 5.56.010, which fees shall be tendered and paid by the party at whose instance the depositions are taken.

NEW SECTION

WAC 16-08-131 ADJUDICATIVE PROCEEDINGS--PETITION FOR REVIEW AND REPLIES. (1) Any party to an adjudicative proceeding may file a petition for review of an initial order.

(2) The petition for review shall be filed with the director within twenty days of the date of service of the initial order unless a different place and time limit for filing the petition are specified in the initial order in its statement describing available procedures for administrative relief. Copies of the petition shall be served upon all other parties or their representatives at the time the petition is filed and evidence of such service shall be filed with the petition for review.

(3) The petition for review shall specify the portions of the initial order to which exception is taken and shall refer to the evidence of record relied upon to support the petition.

(4) Any party may file a reply to a petition for review. The reply shall be filed with the office where the petition for review was filed within twenty days of the date of service of the petition and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed, and may cross-petition for review. If the reply contains a cross-petition, it shall specify portions of the initial order to which exception is taken by the replying party, and shall refer to the evidence of record relied upon to support the reply.

(5) Any party may reply to a cross-petition by filing and serving it as set forth in subsection (4) of this section.

NEW SECTION

WAC 16-08-141 BRIEF ADJUDICATIVE PROCEEDINGS. (1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where not violative of law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. Those circumstances may include:

- (a) Actions taken by the agency based on the failure:
 - (i) To maintain, supply, or display records; and/or
 - (ii) To display evidence of a license; and/or
 - (iii) To display or post information required by law; and/or
 - (iv) To possess required insurance, bonding or other security.
- (b) Actions taken with respect to late application renewal fees.
- (c) Actions taken with respect to certificate of compliance agreements under WAC 16-461-010.
- (d) Actions taken with respect to sale permits pursuant to RCW 15.13.270.
- (e) Actions taken to revoke certification of plant material as foundation or breeder planting stock pursuant to RCW 15.14.110.
- (f) Penalty actions taken with respect to cattle breed name use.
- (g) Penalty actions taken against milk producers pursuant to RCW 15.36.115.
- (h) Dairy degrade actions taken pursuant to RCW 15.36.595.
- (i) Actions taken with respect to licenses for sale of milk for animal food pursuant to RCW 15.37.030 et seq.
- (j) Actions taken with respect to registration of commercial feed pursuant to RCW 15.53.9036;
- (k) Actions taken with respect to pesticide registration under RCW 15.58.110.
- (l) Actions taken with respect to organic certification pursuant to RCW 15.86.060 and/or 15.86.070.
- (m) Actions taken with respect to mushroom buyer or dealer licenses pursuant to RCW 15.90.020.
- (n) Actions taken with respect to animal health certificates pursuant to RCW 16.36.050.
- (o) Actions taken with respect to destruction or treatment of quarantined animals pursuant to RCW 16.36.090.
- (p) Actions taken with respect to licenses for garbage feeding to swine pursuant to RCW 16.36.108.
- (q) Actions taken with respect to licenses related to custom farm slaughter pursuant to chapter 16.49 RCW.
- (r) Actions taken with respect to licenses related to custom meat facilities pursuant to chapter 16.49 RCW.
- (s) Actions taken with respect to approval of livestock pens within feedlots pursuant to RCW 16.58.080.
- (t) Actions taken with respect to certified feed lot licenses pursuant to RCW 16.58.130.

(u) Actions taken with respect to seizure and destruction of incorrect weights and measures pursuant to RCW 19.24.250.

(v) Actions taken with respect to licenses of grain dealers or warehousemen pursuant to RCW 22.09.471.

(2) A party to a brief adjudicative hearing has twenty days to file an application or request from the date of service of the department's notice of intent to take action. The application or request for a brief adjudicative hearing shall be filed at the address listed on the form provided by the department. The party filing the application or request for a brief adjudicative proceeding shall submit a written explanation of their view of the matter along with the application or request. Other parties may file a written response within ten days after service of the application for a brief adjudicative proceeding. Copies of the response shall be served on all parties. Oral statements may be submitted and considered as follows:

(a) If a party to a brief adjudicative proceeding desires an opportunity to make an oral statement, it should be requested in the application or request.

(b) A request to make an oral statement may be granted if the presiding officer believes such a statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of the decision to grant or deny the request to hear oral comments, and if the request is granted, shall notify the parties of the time and place for hearing comments.

(3) If the party is present at the time any unfavorable action is taken, the presiding officer shall make a brief statement of the reasons for the decision. The decision on an application shall be expressed in a written order which shall be served upon all parties within ten days after entry.

(4) The presiding officer's written decision is an initial order. If no review is taken of the initial order, it shall be the final order.

(5) The reviewing officer shall conduct a review of an initial order resulting from a brief adjudicative proceeding upon the written or oral request of a party if the director receives the request within twenty-one days from the service of the initial order. If no request is filed in a timely manner, the reviewing officer may review, on his or her own motion, an order resulting from a brief adjudicative proceeding and adopt, modify, or reject the initial order; but the reviewing officer shall not take any action on review less favorable to any party without giving that party notice and opportunity to explain his or her view of the matter.

(6) A request for review of an initial order shall contain an explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect. The request for review shall be filed with the director and copies shall be served on all parties, and evidence of such service filed. Responses to a request for review of an initial order shall be filed with the director and served on all parties within ten days after service of the request for review.

(7) The order on review shall be in writing, shall include a brief statement of the reasons for the decision, and shall be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(8) The record in a brief adjudicative proceeding shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding and/or by the reviewing officer for any review.

NEW SECTION

WAC 16-08-151 EMERGENCY ADJUDICATIVE PROCEEDINGS. (1) Pursuant to RCW 34.05.479, the department shall use emergency adjudicative proceedings for the suspension or cancellation of authority in situations involving an immediate danger to the public health, safety, or welfare requiring immediate action by the department. Such situations shall include:

(a) Failure to possess required insurance, bonding or other security.

(b) Health, safety, or welfare violations when the violation involves an immediate danger to the public health, safety, or welfare, including, but not limited to, decisions by the department to condemn horticultural plants under chapter 15.13 RCW; or to condemn infested or infected articles under chapter 15.08 RCW; or to issue stop sale, use, or removal order under chapter 15.49 RCW; or to quarantine apiaries under chapter 15.60 RCW; or to condemn or impound infested, infected, or regulated articles pursuant to chapter 17.24 RCW; or to close food processing facilities under chapter 69.07 RCW; or under rules or regulations of the director adopted pursuant to such laws.

(2) The summary order shall include a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health, safety, or welfare. The order shall be effective when entered. Service of the order shall be made pursuant to WAC 10-08-110. The order shall also establish a date affording the affected party the opportunity to present any defense concerning why the summary order is incorrect.

(3) A decision made upon the emergency adjudicative proceeding shall be expressed in a written order which shall be served on all parties within five days after its entry. This written order is a final order.

(4) The summary order shall be effective pending disposition on the merits of the denial, suspension or revocation of authority.

NEW SECTION

WAC 16-08-161 CONVERSION OF PROCEEDINGS. (1) Upon application by any person or upon his or her own motion, the presiding officer or other official responsible for the original proceeding shall consider whether the conversion of a proceeding pursuant to RCW 34.05.070 should be made.

(2) Commencement of the new proceeding shall be determined to be the time of commencement of the original proceeding, provided that all statutory and regulatory requirements for the new proceeding shall be met.

NEW SECTION

WAC 16-08-171 DOCUMENTS--FILING. Any documents filed with the director under provisions of the Administrative Procedure Act, chapter 34.05 RCW, Model rules of procedure, chapter 10-08 WAC, and this chapter, shall be filed with the Deputy Director's Office, 406 General Administration Bldg., AX-41, Olympia, WA 98504.

Unless otherwise required by law, filing of a document with the director shall be made personally, by first class mail, by certified or registered mail, by commercial parcel delivery company, or by electronic telefacsimile transmission and same-day mailing of original showing same-day postmark. Filing shall occur within the period of time specified for filing by statute, rule, or order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-08-001 PROMULGATION.
- WAC 16-08-010 APPEARANCE AND PRACTICE BEFORE DEPARTMENT OF AGRICULTURE--WHO MAY APPEAR.
- WAC 16-08-020 APPEARANCE AND PRACTICE BEFORE DEPARTMENT OF AGRICULTURE--APPEARANCE IN CERTAIN PROCEEDINGS MAY BE LIMITED TO ATTORNEYS.
- WAC 16-08-040 APPEARANCE AND PRACTICE BEFORE DEPARTMENT OF AGRICULTURE--STANDARDS OF ETHICAL CONDUCT.
- WAC 16-08-050 APPEARANCE AND PRACTICE BEFORE DEPARTMENT OF AGRICULTURE--APPEARANCE BY FORMER EMPLOYEE OF AGENCY OR FORMER MEMBER OF ATTORNEY GENERAL'S STAFF.
- WAC 16-08-060 APPEARANCE AND PRACTICE BEFORE DEPARTMENT OF AGRICULTURE--FORMER EMPLOYEE AS EXPERT WITNESS.
- WAC 16-08-070 COMPUTATION OF TIME.
- WAC 16-08-080 NOTICE AND OPPORTUNITY FOR HEARING IN CONTESTED CASES.
- WAC 16-08-090 SERVICE OF PROCESS--BY WHOM SERVED.
- WAC 16-08-100 SERVICE OF PROCESS--UPON WHOM SERVED.
- WAC 16-08-110 SERVICE OF PROCESS--SERVICE UPON PARTIES.
- WAC 16-08-120 SERVICE OF PROCESS--METHOD OF SERVICE.
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- WAC 16-08-150 SUBPOENAS--FORM.
- WAC 16-08-160 SUBPOENAS--ISSUANCE TO PARTIES.
- WAC 16-08-170 SUBPOENAS--SERVICE.
- WAC 16-08-180 SUBPOENAS--FEES.
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- WAC 16-08-260 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--AUTHORIZATION.
- WAC 16-08-270 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--PROTECTION OF PARTIES AND DEONENTS.
- WAC 16-08-280 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--ORAL EXAMINATION AND CROSS-EXAMINATION.
- WAC 16-08-290 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--RECORDATION.
- WAC 16-08-300 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--SIGNING ATTESTATION AND RETURN.
- WAC 16-08-310 DEPOSITIONS AND INTERROGATORIES IN CONTESTED CASES--USE AND EFFECT.
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- WAC 16-08-330 DEPOSITIONS UPON INTERROGATORIES--SUBMISSION OF INTERROGATORIES.
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- WAC 16-08-360 DEPOSITIONS UPON INTERROGATORIES--PROVISIONS OF DEPOSITION RULE.
- WAC 16-08-370 OFFICIAL NOTICE--MATTERS OF LAW.
- WAC 16-08-380 OFFICIAL NOTICE--MATERIAL FACTS.
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WAC 16-08-420 DEFINITION OF ISSUES BEFORE HEARING.
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