



RULE-MAKING ORDER
(RCW 34.05.360)

CR-103 (4/25/96)

Agency: Washington State Department of Agriculture

- Permanent Rule
- Emergency Rule
- Expedited Repeal

(1) Date of adoption: May 27, 1997

(2) Purpose: Amend the Department's procedural rules for adjudicative proceedings to allow 25 days for a person to request a hearing for an adjudicative proceeding, update agency address, and modification to brief adjudicative proceedings section.

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

Repealed:
 Amended: WAC 16-08-031, 141, 171
 Suspended:

(4) Statutory authority for adoption: Chapter 34.05 RCW
Other Authority:

PERMANENT RULE ONLY

Adopted under notice filed as WSR 97-08-086 on 4/2/97 (date).
Describe any changes other than editing from proposed to adopted version: None

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:

Emergency Rules

- 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)
James M. Jesernig

Signature
James M. Jesernig

Title: Director
Date: 6/19/97

CODE REVISER USE ONLY

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

27 1997

TIME 4:00 AM
WSR 97-14-050 PM

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>3</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>3</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>3</u>	Repealed	_____

AMENDATORY SECTION (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

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-five days of (~~notice~~) service of the proposed department action giving rise to the application unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending WSR 93-10-059, filed 4/30/93, effective 5/31/93)

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 or 15.36.595.
- (h) Dairy degrade or permit suspension actions taken pursuant to chapter 15.36 RCW.
- (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.
- (w) Revocation of compliance agreements for the completion of state phytosanitary, sanitation, or brown garden snail certificates pursuant to chapters 15.13 and 17.24 RCW.
- (x) Revocation of compliance agreements for preprinting or use of rubber stamps for nursery stock inspection certificates pursuant to chapter 15.13 RCW.
- (y) Revocation of compliance agreements for root sampling of nursery stock pursuant to chapter 15.13 RCW.
- (aa) Agency refusal to certify seed stocks because of misleading or confusing labeling pursuant to chapter 15.60 RCW and WAC 16-316-345.
- (bb) Rescinding of permit for seed conditioning pursuant to chapter 15.60 RCW and WAC 16-316-185(8).
- (cc) Expulsion from or refusal to allow entry into a seed or plant certification program pursuant to chapters 15.60 and 15.13 RCW.
- (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.))~~ At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(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.

AMENDATORY SECTION (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

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~~) Administrative Regulations Program, P.O. Box 42560, 1111 Washington St., S.E., Olympia, WA 98504-2560.

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.