

# Chapter 326-08 WAC

## HEARINGS PROCEDURES

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

326-08-060	Form of pleadings. [Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-060, filed 4/5/84.] Repealed by 92-15-077, filed 7/16/92, effective 8/16/92. Statutory Authority: RCW 39.19.030(7).
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**WAC 326-08-010 Purpose.** The purpose of this chapter is to effectuate the intent of chapter 39.19 RCW by providing procedures for adjudicative proceedings to review decisions by the office to decertify or deny certification of a business and for the assessment of penalties.

[Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-010, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-010, filed 4/5/84.]

**WAC 326-08-011 Brief adjudicative proceedings.** (1) The Administrative Procedure Act provides for brief adjudicative proceedings in RCW 34.05.482 through 34.05.494. The office will conduct brief adjudicative proceedings where it does not violate any provision of law and where protection of the public interest does not require the office to give notice and an opportunity to participate to persons other than the parties. If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

- (a) A denial of certification under WAC 326-20-171; or
- (b) A decertification of a firm under WAC 326-20-172;

or

- (c) An assessment of a penalty under WAC 326-02-050.
- (2) If an adjudicative proceeding is requested in a matter not listed in subsection (1) of this section, a brief adjudicative

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proceeding may be conducted at the discretion of the presiding officer when it appears that:

- (a) Only legal issues exist; or
- (b) Both parties have agreed to a brief adjudicative proceeding; and
- (c) The protection of the public interest does not require that the office provide notice and opportunity to participate to persons other than the parties.

[Statutory Authority: RCW 39.19.030. 11-11-030, § 326-08-011, filed 5/11/11, effective 6/11/11.]

**WAC 326-08-012 Application for and conduct of brief adjudicative proceedings.** (1) An application for a brief adjudicative proceeding must be filed within twenty days from the date of service of the office's notice of action. A request for brief adjudication proceeding must set forth in detail the reasons the applicant believes the office's decision to deny certification is in error and include any additional information and documentation the applicant has to offer. Other parties may file a written response, including supporting affidavits, within ten days after receipt of the application for a brief adjudicative proceeding. Copies of the response shall be served on all parties.

(2) Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the director. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but shall not have personally participated in the decision to issue the initiating document.

(3) Accommodations.

(a) If limited English-speaking or hearing impaired parties will be involved in a brief adjudicative proceeding and need an interpreter, an interpreter will be provided at no cost to the party or witness.

(b) If disabled parties or witnesses will be involved in a proceeding and need accommodation of facilities or services, the office will provide reasonable accommodation.

(c) Any party or witness requiring an interpreter or accommodation shall notify the office at the time of the request for a brief adjudicative proceeding.

(4) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(5) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.

(6) No witnesses may appear to testify.

(7) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(8) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ten days of the final

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date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order.

[Statutory Authority: RCW 39.19.030. 11-11-030, § 326-08-012, filed 5/11/11, effective 6/11/11.]

**WAC 326-08-013 Initial orders on brief adjudicative proceedings; review of initial orders.** (1) Initial orders on brief adjudicative proceedings shall become final twenty-one days after service of the initial order unless:

(a) A petition for review of an initial order is served by certified mail, registered mail, or personal service upon the office, and copies shall be served on all parties. A petition 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; or

(b) On its own initiative, the office determines to review the matter and, within twenty-one days of service of the initial order, provides notice to the parties of the date by which a determination shall be made.

(2) If review is taken under subsection (1) of this section, each party shall be provided an opportunity to state its view of the matter, and a written order containing findings of fact, conclusions of law and order shall be entered and served upon the parties within twenty days of service of the initial order or the request for review, whichever is later.

(3) A request for review is deemed to be denied if the office does not act on the request within twenty days after the request is submitted.

(4) If administrative review is taken under subsection (1) of this section, the presiding officer may convert the matter to a full adjudicative proceeding.

(5) The director or his or her designee shall act as the reviewing officer and shall conduct a review of an initial order upon the timely service of a petition for review or upon his or her own motion. The reviewing officer shall 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 the party's view of the matter.

(6) 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 the petition 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.

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

[Statutory Authority: RCW 39.19.030. 11-11-030, § 326-08-013, filed 5/11/11, effective 6/11/11.]

**WAC 326-08-015 Full adjudicative proceedings.** At the office's discretion or a presiding officer's determination that to protect the public interest or if the interest involved in the controversy warrants the use of more formal hearing procedures, the office or presiding officer can convert a brief adjudicative proceeding to a full adjudicative proceeding.

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[Statutory Authority: RCW 39.19.030. 11-11-030, § 326-08-015, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-015, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 85-14-101 (Order 85-6), § 326-08-015, filed 7/2/85.]

**WAC 326-08-016 Commencement of a full adjudicative proceeding.** (1) The office shall commence a full adjudicative proceeding within ninety days after the determination that the use of more formal hearing procedures is required.

(2) A full adjudicative proceeding commences when the office notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.

(3) Within thirty days after receipt of the request for an adjudicative proceeding, the office shall examine the request, notify the requestor of any obvious errors or omissions, request any additional information the office wishes to obtain and is permitted by law to require, and notify the requestor of the name, mailing address, and telephone number of the office that may be contacted regarding the request.

[Statutory Authority: RCW 39.19.030. 11-11-030, § 326-08-016, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-016, filed 7/16/92, effective 8/16/92.]

**WAC 326-08-018 Presiding officer.** The presiding officer in a full adjudicative proceeding is the administrative law judge designated by the office of administrative hearings after notice of hearing is issued by the office.

[Statutory Authority: RCW 39.19.030. 11-11-030, § 326-08-018, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-018, filed 7/16/92, effective 8/16/92.]

**WAC 326-08-020 General procedures rules for full adjudicative proceedings.** The provisions of chapter 10-08 WAC, "Model rules of procedure" shall apply to full adjudicative hearings regarding certification or penalties by the office.

[Statutory Authority: RCW 39.19.030. 11-11-030, § 326-08-020, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-020, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-020, filed 4/5/84.]

**WAC 326-08-030 Amendments apply to pending cases.** An amendment to this chapter applies to cases pending at the time of the adoption of the amendment, unless the amendment or rule-making order says that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone to comply with the amendment unless the amendment expressly says so.

[Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-030, filed 4/5/84.]

**WAC 326-08-035 Who may appear.** (1) Any party to a full adjudicative proceeding may participate personally.

(2) The owner of the majority interest in a certified business is a necessary party and shall appear on behalf of the business.

(3) A former employee of the office shall not, at any time after severing his or her employment with the office, appear as a representative or expert witness on behalf of a petitioner in a matter in which he or she previously took an active part

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as a representative of the office, except with the written permission of the director.

[Statutory Authority: RCW 39.19.030. 11-11-030, § 326-08-035, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-035, filed 7/16/92, effective 8/16/92.]

**WAC 326-08-040 Who may appear in a representative capacity.** (1) Any party to an adjudicative proceeding may be represented or advised by:

(a) An attorney admitted to practice before the Washington state supreme court;

(b) Other attorney admitted to practice before the highest court of any other state, if attorneys from Washington state are permitted to appear in a representative capacity before administrative agencies of that state, and if not otherwise prohibited by Washington law;

(2) A former employee of the office may appear only as permitted in WAC 326-08-035(3).

[Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-040, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-040, filed 4/5/84.]

**WAC 326-08-050 Notice of hearing.** (1) When a full adjudicative proceeding is commenced, the office will issue a notice to all parties and to the office of administrative hearings as provided by RCW 34.05.434.

(2) Time. All parties shall be served with notice not less than twenty days before the hearing.

(3) The notice shall include:

(a) The names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(b) The name of the proceeding;

(c) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(d) A statement of the time, place, and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes and rules involved;

(g) A short and plain statement of the matters asserted by the agency; and

(h) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with WAC 326-08-105.

[Statutory Authority: RCW 39.19.030. 11-11-030, § 326-08-050, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-050, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-050, filed 4/5/84.]

**WAC 326-08-051 Accommodations.** (1) If limited English-speaking or hearing impaired parties or witnesses will be involved in an adjudicative proceeding and need an interpreter, an interpreter will be provided at no cost to the party or witness.

(2) If disabled parties or witnesses will be involved in a hearing and need accommodation of facilities or services, the office will provide reasonable accommodation.

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(3) Any party or witness requiring an interpreter or accommodation shall notify the office at the time of the request for an adjudicative proceeding.

[Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-051, filed 7/16/92, effective 8/16/92.]

**WAC 326-08-070 Service of papers.** (1) 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) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by telegraph, by electronic telefacsimile transmission and same-day mailing of copies, or by commercial parcel delivery company.

(3) 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 shall be regarded as completed upon production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company with charges prepaid.

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

[Statutory Authority: RCW 39.19.030(7). 92-24-107, § 326-08-070, filed 12/2/92, effective 1/2/93; 92-15-077, § 326-08-070, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-070, filed 4/5/84.]

**WAC 326-08-080 Who may issue subpoenas.** Subpoenas may be issued by the director of the office, the director's designee, the assigned administrative law judge, or an attorney for any party in the adjudicative proceeding as provided in RCW 34.05.446.

[Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-080, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-080, filed 4/5/84.]

**WAC 326-08-090 Service of subpoenas.** Subpoenas may be served in any manner authorized by WAC 326-08-070.

[Statutory Authority: RCW 39.19.030(7). 92-15-077, § 326-08-090, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-090, filed 4/5/84.]

**WAC 326-08-095 Burden of proof at a hearing.** (1) At a hearing held pursuant to WAC 326-08-010, the burden of proof shall be on the applicant to demonstrate that the applicant qualifies for certification under chapter 39.19 RCW and Title 326 WAC.

(2) The administrative law judge shall only admit and consider evidence on the issue of whether the office's decision to decertify or to deny certification based on the infor-

mation which was submitted or obtained by the office, was correct at the time it was made.

(3) The administrative law judge shall only admit and consider evidence related to the grounds specified in the request for an adjudicative proceeding.

[Statutory Authority: RCW 39.19.030(7), 92-15-077, § 326-08-095, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 86-17-018 (Order 86-2), § 326-08-095, filed 8/11/86.]

**WAC 326-08-100 Procedures for settlement or disposition without a hearing.** (1) Disposition may be made of any adjudicative proceeding by stipulation, consent order, default, or summary judgment.

(2) Summary judgment will be considered pursuant to a time schedule set by the administrative law judge and may be decided without oral argument.

[Statutory Authority: RCW 39.19.030(7), 92-15-077, § 326-08-100, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-100, filed 4/5/84.]

**WAC 326-08-105 Default.** (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the administrative law judge may serve upon all parties a default order with a statement of the grounds for the order.

(2) Within seven days after service of a default order under subsection (1) of this section, the party against whom the default order was entered may file a written motion to the administrative law judge requesting that the order be vacated and stating the grounds relied upon. The administrative law judge will set aside an order of default only upon a showing of good and sufficient cause for such failure to appear or to request a postponement prior to the scheduled time for hearing. In the event such order of default is set aside, all interested parties shall be so notified in writing and the matter restored to the hearing calendar.

[Statutory Authority: RCW 39.19.030(7), 92-15-077, § 326-08-105, filed 7/16/92, effective 8/16/92.]

**WAC 326-08-110 Initial order.** (1) Within ninety days after the conclusion of a full adjudicative proceeding or after submission of memos, briefs, or proposed findings that the administrative law judge may allow after the adjudicative proceeding, the administrative law judge shall prepare an initial order for signature by the director.

(2) The initial order shall include a statement of findings and conclusions and the reasons and basis on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The initial order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(3) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters

officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the administrative law judge shall not base a finding exclusively on such inadmissible evidence unless the administrative law judge determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(4) Where it bears on the issues presented, the experience, technical competency, and specialized knowledge of the office may be used in the evaluation of evidence.

(5) If an administrative law judge becomes unavailable for any reason before the entry of the order, a substitute administrative law judge shall be appointed by the office of administrative hearings. The substitute administrative law judge shall use any existing record and may conduct any further proceedings appropriate in the interests of justice. Any action taken by a duly appointed administrative law judge for an unavailable administrative law judge is as effective as if taken by the unavailable administrative law judge.

(6) The administrative law judge shall cause to be served copies of the order on all parties.

[Statutory Authority: RCW 39.19.030, 11-11-030, § 326-08-110, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7), 92-15-077, § 326-08-110, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-110, filed 4/5/84.]

**WAC 326-08-120 Objections to initial order.** (1) Any party to a full adjudicative proceeding may file objections to an initial order pursuant to RCW 34.05.464.

(2) The objections to the initial order shall be filed with the director within twenty days of the date of service of the initial order. Copies of the objections to the initial order shall be served upon all other parties.

(3) The objections to the initial order shall specify the portions of the initial order to which objection is taken and shall refer to the evidence of the record which is relied upon to support each objection.

(4) Any party may file a reply to the objections to the initial order. The reply shall be filed with the director within ten days of the date of service of the objections to the initial order and copies of the reply shall be served upon all other parties.

[Statutory Authority: RCW 39.19.030, 11-11-030, § 326-08-120, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7), 92-15-077, § 326-08-120, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-120, filed 4/5/84.]

**WAC 326-08-130 Review of initial order—Final order.** (1) An initial order will become final without further action by the office unless, within ninety days of the service of the initial order:

(a) The director determines that the initial order should be reviewed; or

(b) A party to the adjudicative proceeding files objections to the initial order as required in WAC 326-08-120(2).

(2) Upon the occurrence of either subsection (1)(a) or (b) of this section, the director will serve in writing a final order.

[Statutory Authority: RCW 39.19.030(7), 92-15-077, § 326-08-130, filed 7/16/92, effective 8/16/92. Statutory Authority: Chapter 39.19 RCW. 84-09-002 (Order 84-5), § 326-08-130, filed 4/5/84.]

**WAC 326-08-140 Petition for reconsideration of a final order.** (1) Within ten days of the service of a final order or when an initial order becomes final, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition shall be filed with the office.

(2) No petition for reconsideration may stay the effectiveness of an order.

(3) If a petition for reconsideration is timely filed, the time for filing a petition for judicial review does not commence until the director disposes of the petition for reconsideration.

(4) The petition shall be disposed of by the same person or persons who entered the final order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and remanding for further hearing by the administrative law judge.

(5) The director is deemed to have denied the petition for reconsideration, if, within twenty days from the date the petition is filed, the director does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(6) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (5)(b) of this section is not subject to judicial review.

[Statutory Authority: RCW 39.19.030(7), 92-15-077, § 326-08-140, filed 7/16/92, effective 8/16/92.]