

Chapter 16-08 WAC PRACTICE AND PROCEDURE

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

16-08-001	Promulgation. [Order 793, Promulgation, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-010	Appearance and practice before department of agriculture—Who may appear. [Order 793, Regulation .08.010, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-020	Appearance and practice before department of agriculture—Appearance in certain proceedings may be limited to attorneys. [Order 793, Regulation .08.020, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-040	Appearance and practice before department of agriculture—Standards of ethical conduct. [Order 793, Regulation .08.040, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-050	Appearance and practice before department of agriculture—Appearance by former employee of agency or former member of attorney general's staff. [Order 793, Regulation .08.050, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-060	Appearance and practice before department of agriculture—Former employee as expert witness. [Order 793, Regulation .08.060, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-070	Computation of time. [Order 793, Regulation .08.070, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-080	Notice and opportunity for hearing in contested cases. [Order 793, Regulation .08.080, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-090	Service of process—By whom served. [Order 793, Regulation .08.090, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-100	Service of process—Upon whom served. [Order 793, Regulation .08.100, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-110	Service of process—Service upon parties. [Order 793, Regulation .08.110, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-120	Service of process—Method of service. [Order 793, Regulation .08.120, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-130	Service of process—When service complete. [Order 793, Regulation .08.130, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
16-08-140	Service of process—Filing with agency. [Order 793, Regulation .08.140, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-150 Subpoenas—Form. [Order 793, Regulation .08.150, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-160 Subpoenas—Issuance to parties. [Order 793, Regulation .08.160, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-170 Subpoenas—Service. [Order 793, Regulation .08.170, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-180 Subpoenas—Fees. [Order 793, Regulation .08.180, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-190 Subpoenas—Proof of service. [Order 793, Regulation .08.190, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-200 Subpoenas—Quashing. [Order 793, Regulation .08.200, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-210 Subpoenas—Enforcement. [Order 793, Regulation .08.210, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-220 Subpoenas—Geographical scope. [Order 793, Regulation .08.220, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-230 Depositions and interrogatories in contested cases—Right to take. [Order 793, Regulation .08.230, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-240 Depositions and interrogatories in contested cases—Scope. [Order 793, Regulation .08.240, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-250 Depositions and interrogatories in contested cases—Officer before whom taken. [Order 793, Regulation .08.250, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-260 Depositions and interrogatories in contested cases—Authorization. [Order 793, Regulation .08.260, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-270 Depositions and interrogatories in contested cases—Protection of parties and deponents. [Order 793, Regulation .08.270, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-280 Depositions and interrogatories in contested cases—Oral examination and cross-examination. [Order 793, Regulation .08.280, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-290 Depositions and interrogatories in contested cases—Recordation. [Order 793, Regulation .08.290, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-300 Depositions and interrogatories in contested cases—Signing attestation and return. [Order 793, Regulation .08.300, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-310 Depositions and interrogatories in contested cases—Use and effect. [Order 793, Regulation .08.310, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-320 Depositions and interrogatories in contested cases—Fees of officers and deponents. [Order 793, Regulation .08.320, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-330 Depositions upon interrogatories—Submission of interrogatories. [Order 793, Regulation .08.330, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-340 Depositions upon interrogatories—Interrogation. [Order 793, Regulation .08.340, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-350 Depositions upon interrogatories—Attestation and return. [Order 793, Regulation .08.350, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-360 Depositions upon interrogatories—Provisions of deposition rule. [Order 793, Regulation .08.360, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-370 Official notice—Matters of law. [Order 793, Regulation .08.370, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-380 Official notice—Material facts. [Order 793, Regulation .08.380, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-390 Presumptions. [Order 793, Regulation .08.390, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-400 Stipulations and admissions of record. [Order 793, Regulation .08.400, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

16-08-410 Form and content of decisions in contested cases. [Order 793, Regulation .08.410, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

- 16-08-420 Definition of issues before hearing. [Order 793, Regulation .08.420, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-430 Prehearing conference rule—Authorized. [Order 793, Regulation .08.430, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-440 Prehearing conference rule—Record of conference action. [Order 793, Regulation .08.440, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-450 Submission of documentary evidence in advance. [Order 793, Regulation .08.450, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-460 Excerpts from documentary evidence. [Order 793, Regulation .08.460, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-470 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. [Order 793, Regulation .08.470, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-480 Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements. [Order 793, Regulation .08.480, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-490 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. [Order 793, Regulation .08.490, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-500 Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 16-08-470 or 16-08-480. [Order 793, Regulation .08.500, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-510 Continuances. [Order 793, Regulation .08.510, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-520 Rules of evidence—Admissibility criteria. [Order 793, Regulation .08.520, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-530 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [Order 793, Regulation .08.530, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-540 Petitions for rule making, amendments or repeal—Who may petition. [Order 793, Regulation .08.540, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-550 Petitions for rule making, amendments or repeal—Requisites. [Order 793, Regulation .08.550, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-560 Petitions for rule making, amendments or repeal—Agency must consider. [Order 793, Regulation .08.560, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-570 Petitions for rule making, amendments or repeal—Notice of disposition. [Order 793, Regulation .08.570, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-580 Declaratory rulings. [Order 793, Regulation .08.580, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.
- 16-08-590 Forms. [Order 793, Regulation .08.590, effective 9/29/59.] Repealed by WSR 91-23-051, filed 11/15/91, effective 12/16/91. Statutory Authority: Chapter 34.05 RCW.

WAC 16-08-002 Definitions. The definitions in this section apply to this chapter unless the context otherwise requires:

"Date of service" means the date the department places a properly dated and stamped document into the United States Postal Service or other mail service for delivery.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture.

"Person" means natural persons, sole proprietorship, corporations, trusts, unincorporated associations and partnerships.

"Presiding officer" means the person designated by the director to preside over adjudicative proceedings.

"Reviewing officer" means the director of agriculture or the person designated by the director to review initial orders and prepare and enter final orders for the director.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-002, filed 6/21/17, effective 7/22/17. Statutory Authority: Chapter 34.05 RCW. WSR 11-20-047, § 16-08-002, filed 9/29/11, effective 10/30/11; WSR 95-18-008 (Order 5081), § 16-08-002, filed 8/23/95, effective 9/23/95; WSR 91-23-051, § 16-08-002, filed 11/15/91, effective 12/16/91.]

WAC 16-08-003 Purpose of this chapter. This chapter sets forth the rules of procedure that apply to adjudicative proceedings before the department. This chapter does not apply to civil penalties and orders issued by the department under chapters 90.64 and 90.48 RCW in the dairy nutrient management program.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-003, filed 6/21/17, effective 7/22/17. Statutory Authority: Chapters 90.64 and 34.05 RCW. WSR 04-02-063, § 16-08-003, filed 1/7/04, effective 2/7/04.]

WAC 16-08-004 Dairy nutrient management program appeals. (1) All appeals of civil penalties and orders issued by the department's dairy nutrient management program are filed with the pollution control hearings board at the environmental hearings office and are served on the department of agriculture under RCW 43.21B.230 and 43.21B.300, and WAC 371-08-335 and 371-08-345.

(2) Under WAC 371-08-306, when referring to appeals related to civil penalties and orders issued by the department of agriculture's dairy nutrient management program, all references to "department" in both chapters 43.21B RCW and 371-08 WAC mean the department of agriculture; all references to "director" mean the director of the department of agriculture.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-004, filed 6/21/17, effective 7/22/17. Statutory Authority: Chapters 90.64 and 34.05 RCW. WSR 04-02-063, § 16-08-004, filed 1/7/04, effective 2/7/04.]

WAC 16-08-011 The department of agriculture adopts the model rules of procedure. The model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge under RCW 34.05.250 are 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 in this chapter by the department take precedence.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-011, filed 6/21/17, effective 7/22/17. Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-011, filed 11/15/91, effective 12/16/91.]

WAC 16-08-021 Presiding officer. (1) In matters involving an adjudicative proceeding, the director will designate the presiding officer. The presiding officer may be:

- (a) An administrative law judge assigned by the office of administrative hearings under the authority of chapter 34.12 RCW; or
- (b) The deputy director; or
- (c) An assistant director; or
- (d) A staff person trained to act as a presiding officer in adjudicative proceedings.
- (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 direction of such a person, may not serve as a presiding officer in the same proceeding.
- (3) The presiding officer has 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 their submission;
 - (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 he or she would be prejudiced by such a waiver.

[Statutory Authority: Chapter 34.05 RCW. WSR 11-20-047, § 16-08-021, filed 9/29/11, effective 10/30/11; WSR 95-18-008 (Order 5081), § 16-08-021, filed 8/23/95, effective 9/23/95. Statutory Authority: RCW 34.05.425. WSR 93-10-059, § 16-08-021, filed 4/30/93, effective 5/31/93. Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-021, filed 11/15/91, effective 12/16/91.]

WAC 16-08-022 Consolidation of proceedings. Without affecting the department's discretion to otherwise consolidate adjudicative proceedings, the department may consolidate an emergency adjudicative proceeding with an adjudicative proceeding on the merits.

[Statutory Authority: RCW 34.05.425. WSR 93-10-059, § 16-08-022, filed 4/30/93, effective 5/31/93.]

WAC 16-08-031 Request for hearing—Filing. (1) A request for hearing (application for adjudicative proceeding) must be in writing and filed with the department during regular office hours at the address designated in the notice or instructions provided by the department.

(2) A request for hearing is filed in a timely manner when the mailing is postmarked or received by the department within twenty-five

days of service of the proposed department action giving rise to the request for hearing.

(3) A request for hearing may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered, or certified mail. A request for hearing may be filed by electronic mail (email) only when instructions for email filings have been provided by the department.

(4) If the request for hearing is not timely filed with the department, the applicant waives his or her right to a hearing.

[Statutory Authority: Chapter 34.05 RCW. WSR 11-20-047, § 16-08-031, filed 9/29/11, effective 10/30/11; WSR 97-14-050, § 16-08-031, filed 6/27/97, effective 7/28/97; WSR 91-23-051, § 16-08-031, filed 11/15/91, effective 12/16/91.]

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.

[Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-041, filed 11/15/91, effective 12/16/91.]

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.

[Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-051, filed 11/15/91, effective 12/16/91.]

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.

[Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-061, filed 11/15/91, effective 12/16/91.]

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.

[Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-071, filed 11/15/91, effective 12/16/91.]

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.

[Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-081, filed 11/15/91, effective 12/16/91.]

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 her or the particular class or group to which he or she 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.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-091, filed 6/21/17, effective 7/22/17. Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-091, filed 11/15/91, effective 12/16/91.]

WAC 16-08-101 Depositions and interrogatories in adjudicative proceedings—Protection of parties and deponents. 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.

[Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-101, filed 11/15/91, effective 12/16/91.]

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.

[Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-111, filed 11/15/91, effective 12/16/91.]

WAC 16-08-121 Depositions in adjudicative proceedings—Fees of officers and deponents. 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.

[Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-121, filed 11/15/91, effective 12/16/91.]

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.

[Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-131, filed 11/15/91, effective 12/16/91.]

WAC 16-08-141 Brief adjudicative proceedings—Applicability.

(1) If an adjudicative proceeding is requested in a matter not listed in this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when use of a brief adjudicative proceeding will not violate any provision of law and protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties and:

(a) The only issues presented are issues of law; or

(b) Both parties have agreed to a brief adjudicative proceeding.

(2) Brief adjudicative proceedings may be used to determine the following issues including, but not limited to:

(a) Whether an applicant, permittee, or licensee satisfies all requirements to maintain, provide, make available for review, or display records or has committed other recordkeeping violations.

(b) Whether an applicant, permittee, or licensee satisfies all requirements to create, maintain, provide, or make available for review data or reports.

(c) Whether an applicant, permittee, or licensee satisfies all requirements to display or post information required by law.

(d) Whether an applicant satisfies financial security requirements by providing adequate proof of insurance, surety bonds, custodial account, or other proof of financial security as required by law.

(e) Whether an applicant satisfies terms for reinstatement of a license or registration after a period of license or registration suspension or revocation.

(f) Whether an applicant meets minimum eligibility requirements for an initial or renewal application for a license, permit, registration, or certification.

(g) Whether an applicant, licensee, permittee, or registrant should be denied a license, permit, registration, or certification for failure to comply with labeling requirements.

(h) Whether an applicant, permittee, or licensee failed to cooperate in an investigation, examination, sample taking, or inspection by the department.

(i) Whether an applicant, permittee, or licensee violated the terms of a final order issued by the director or director's designee.

(j) Whether an applicant, permittee, licensee, or registrant failed to timely pay an application fee, renewal fee, or an assessment required for a license, registration, permit, or certification.

(k) Whether commercial use of a weighing or measuring instrument or device violates chapter 19.94 RCW or 16-674, 16-662, or 16-663 WAC.

(l) Whether motor fuel marketed for sale is in compliance with chapters 19.112 RCW and 16-662 WAC.

(m) Whether planting stock fails to meet the certification requirements under chapter 15.14 RCW.

(n) Whether a milk processing plant or producer license should be lowered in grade for failure to meet requirements under chapter 15.36 RCW.

(o) Whether a license for sale of milk for animal food should be denied, suspended, or revoked for violations under chapter 15.37 RCW.

(p) Whether a commercial feed registration of pet food and specialty pet food should be denied or canceled for failure to comply with requirements under chapter 15.53 RCW.

(q) Whether registration on the organic brand name materials list should be denied, suspended, or revoked for failure to meet the requirements under chapter 15.86 RCW.

(r) Whether an applicant for a custom farm slaughter license or a custom meat facility license should be denied, suspended, or revoked for failure to comply with the requirements under chapter 16.49 RCW.

(s) Whether an applicant for pesticide registration should be denied for failure to comply with the pesticide product or labeling requirements under chapter 15.58 RCW.

(t) Whether an applicant for fertilizer registration should be denied for failure to comply with commercial fertilizer product or labeling requirements under chapter 15.54 RCW.

(u) Whether an applicant for a license to feed garbage to swine should be denied, suspended, or revoked for failure to comply with the licensing requirements under chapter 16.36 RCW.

(v) Whether an applicant for a certified feed lot license should be denied, suspended, or revoked for failure to pay fees required under RCW 16.58.130.

(w) Whether a person is in violation of chapter 16.36 RCW for failure to secure a certificate of veterinary inspection for an animal being brought into Washington state.

(x) Whether a person is in violation of RCW 16.36.050(2) for failure to transport or deliver an animal to the destination designated by a certificate of veterinary inspection, import health papers, permits, or other transportation documents required by law.

(y) Whether a person licensed to practice veterinary medicine, surgery, or dentistry in Washington state is in violation of RCW 16.36.080 for failure to report to the department the existence or suspected existence of a reportable disease among animals within the state.

(z) Whether a seed conditioning permit should be revoked for failure to comply with chapters 15.49 RCW and 16-302 WAC.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-141, filed 6/21/17, effective 7/22/17. Statutory

Authority: Chapter 34.05 RCW. WSR 11-20-047, § 16-08-141, filed 9/29/11, effective 10/30/11; WSR 97-14-050, § 16-08-141, filed 6/27/97, effective 7/28/97. Statutory Authority: RCW 34.05.425. WSR 93-10-059, § 16-08-141, filed 4/30/93, effective 5/31/93. Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-141, filed 11/15/91, effective 12/16/91.]

WAC 16-08-142 Brief adjudicative proceedings—Filing. (1) A request for hearing (application for brief adjudicative proceeding) must be in writing and filed with the department during regular office hours at the address designated in the notice or instructions provided by the department. A party may request a brief adjudicative proceeding by completing the application form provided by the department, along with a written explanation of the party's view of the matter.

(2) A request for hearing is filed in a timely manner when the mailing is postmarked or received by the department within twenty-five days of service of the proposed department action giving rise to the request for hearing.

(3) A request for hearing may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered, or certified mail. A request for hearing may be filed by electronic mail (email) only when instructions for email filings have been provided by the department.

(4) If the request for hearing is not timely filed with the department, the applicant waives his or her right to a hearing.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-142, filed 6/21/17, effective 7/22/17.]

WAC 16-08-144 Brief adjudicative proceedings—Procedure. (1) Brief adjudicative proceedings shall be conducted by a presiding officer designated by the director in accordance with WAC 16-08-021.

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

(3) The presiding officer may hear oral argument from the parties or their representatives if the presiding officer believes the statement will help in reaching a decision. If a party to a brief adjudicative proceeding desires to make an oral statement, a request shall be included in the application for the brief adjudicative proceeding. If the request is granted, the presiding officer will designate the time and place for taking oral statements and notify the parties.

(4) The parties may not call witnesses to testify.

(5) If a party fails to appear at the designated time and place for taking oral statements, the presiding officer shall take the oral statement of any party present and shall consider it and all written submissions.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-144, filed 6/21/17, effective 7/22/17.]

WAC 16-08-145 Brief adjudicative proceedings—Decisions. (1)

The presiding officer for brief adjudicative proceedings shall not issue an oral order.

(2) Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer shall enter a written initial order. The initial order will contain a brief written statement of the reasons for the decision and information about any internal review available.

(3) If a party does not request administrative review of an initial order in accordance with WAC 16-08-148, the initial order becomes a final order on the twenty-first calendar day after service of the initial order.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-145, filed 6/21/17, effective 7/22/17.]

WAC 16-08-148 Brief adjudicative proceedings—Administrative review. (1)

Any party may request orally or in writing a review of the initial order issued under WAC 16-08-145. A petition for review of an initial order shall contain a written explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect. Oral requests must be placed in writing.

(a) Petitions for review may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered or certified mail. A petition for review may be filed by electronic mail (email) only when instructions for email filings have been provided by the department. Petitions for review must be received by the department at the address designated in the initial order within twenty-one days of service of the initial order.

(b) Petitions for review shall be served on all parties, and evidence of such service filed at the address designated in the initial order.

(2) A party may file a response to a petition for a review.

(a) The response shall be filed at the address designated in the initial order within ten days of the date of service of the petition for review.

(b) Copies of the response shall be served on all other parties at the time the response is filed.

(3) (a) The department reviewing officer, upon his or her own motion, may petition for administrative review of an initial order.

(b) The reviewing officer shall provide notice to the parties of his or her determination to review the initial order within twenty-one days of service of the initial order. The notice to the parties shall state the date by which a decision shall be made. The reviewing officer shall not take any action on review that is less favorable than the initial order without giving all parties notice and an opportunity to explain his or her view of the matter.

(4) The reviewing officer shall enter a final order disposing of the proceeding. A final order shall be in writing and shall:

(a) Include a brief statement of the reasons for the decision;

(b) Be entered within twenty-one days after the date of the initial order or of the petition for review, whichever is later.

(5) If the reviewing officer deems it necessary, he or she may remand a matter for further proceedings.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-148, filed 6/21/17, effective 7/22/17.]

WAC 16-08-149 Brief adjudicative proceedings—Agency record.

The agency record in a brief adjudicative proceeding shall consist of any documents relating to the matter that were considered or prepared by the presiding officer or by the reviewing officer for any review. The agency record shall include:

- (1) All initiating documents;
- (2) The request for hearing;
- (3) All documents submitted in the proceeding;
- (4) Any transcript or recording of any oral arguments presented;

and

- (5) All orders issued in the case.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-149, filed 6/21/17, effective 7/22/17.]

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:

(i) Condemn horticultural plants under chapter 15.13 RCW;

(ii) Condemn infested or infected articles under chapter 15.08 RCW;

(iii) Issue stop sale, use, or removal order under chapter 15.49 RCW;

(iv) Quarantine apiaries under chapter 15.60 RCW;

(v) Quarantine animals under chapter 16.36 RCW;

(vi) Impound infested, infected, or regulated articles pursuant to chapter 17.24 RCW; and

(vii) Close food processing facilities under chapter 69.07 RCW or under rules or regulations of the director adopted pursuant to such laws.

(2) The department shall enter a written order containing 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 give the affected party instructions on how to request an adjudicative proceeding on the order, or, in the alternative, the department may in the order automatically establish a date affording the affected party the opportunity to present any defense concerning why the order is incorrect.

(3) A request for emergency hearing (application for an adjudicative proceeding) must be in writing and filed with the department dur-

ing regular office hours at the address designated in the notice or instructions provided by the department. A request for hearing is filed in a timely manner when the mailing is postmarked or received by the department within five days of service of the order. A request for hearing may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered, or certified mail. A request for hearing may be filed by electronic mail (email) only when instructions for email filings have been provided by the department.

(4) The presiding officer for the emergency adjudicative proceeding shall issue a written order which shall be served on all parties. This written order is a final order.

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

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-151, filed 6/21/17, effective 7/22/17. Statutory Authority: Chapter 34.05 RCW and RCW 34.05.479. WSR 98-09-085, § 16-08-151, filed 4/21/98, effective 5/22/98. Statutory Authority: RCW 34.05.425. WSR 93-10-059, § 16-08-151, filed 4/30/93, effective 5/31/93. Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-151, filed 11/15/91, effective 12/16/91.]

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.

[Statutory Authority: Chapter 34.05 RCW. WSR 91-23-051, § 16-08-161, 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 Administrative Regulations Program, P.O. Box 42560, 1111 Washington St., S.E., Olympia, WA 98504-2560.

Unless otherwise required by law, documents may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered or certified mail. Documents may be filed by electronic mail (email) only when instructions for email filings have been provided by the department. Filing shall occur within the period of time specified for filing by statute, rule, or order.

[Statutory Authority: RCW 43.17.060 and chapter 34.05 RCW. WSR 17-13-125, § 16-08-171, filed 6/21/17, effective 7/22/17. Statutory Authority: Chapter 34.05 RCW. WSR 97-14-050, § 16-08-171, filed 6/27/97, effective 7/28/97; WSR 91-23-051, § 16-08-171, filed 11/15/91, effective 12/16/91.]