

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

OFFICE OF ADMINISTRATIVE HEARINGS

(agency name)

Administrative Order No. 3

(1) I, David R. LaRose, Chief Administrative Law Judge, director of the Office of Administrative Hearings

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

NEW CHAPTER 10-04 WAC - Agency Organization - Public Records

NEW CHAPTER 10-08 WAC - Uniform Procedural Rules for the Conduct of Contested Cases

NEW CHAPTER 10-12 WAC - Compliance with State Environmental Protection Act

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. WSR 82-16-085 filed with the code reviser on 8/4/82. Such rules shall take effect:

- [x] pursuant to RCW 34.04.040(2).
[] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, find that an emergency exists and that the foregoing order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting such emergency is:

Such rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" (fill in statement (a), (b), or (c) as appropriate):

- [x] (a) This rule is promulgated pursuant to RCW WAC 10-04: RCW 34.04.020, 47.17.250-320; and is intended to administratively implement that statute. WAC 10-08: RCW 34.04.020, 34.04.022
[] (b) This rule is promulgated pursuant to RCW WAC 10-12: RCW 43.21C.120 which directs that the

(agency)

has authority to implement the provisions of

(name of act or RCW citation)

- [] (c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW

(4) The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

(5) This order after being first recorded in the order register of this agency is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED November 1 1982

STATE OF WASHINGTON FILED

NOV 1 1982

By: David R. LaRose

Chief Administrative Law Judge

Title

CODE REVISER'S OFFICE

WSR 82-22-052

CHAPTER 10-04 WAC
AGENCY ORGANIZATION -- PUBLIC RECORDS

NEW SECTION

WAC 10-04-010 PURPOSE. The purpose of this chapter is to provide rules implementing RCW 34.04.020 and RCW 42.17.250 through 42.17.320 for the office of administrative hearings.

NEW SECTION

WAC 10-04-020 FUNCTION--ORGANIZATION--OFFICES. The office of administrative hearings was created by chapter 34.12 RCW for the impartial administration of administrative hearings for state agencies. The office is under the direction of the chief administrative law judge and is organized in two divisions, the benefits division and the regulatory and special assignments division.

Administrative law judges assigned to the two divisions preside over hearings in contested cases and issue proposals for decisions, including findings of fact and conclusions of law. The benefits division is responsible for hearings held before the employment security department and the department of social and health services. The regulatory and special assignments division is responsible for hearings held before the utilities and transportation commission, the liquor control board, the department of licensing, and any other state agency as defined in RCW 34.12.020(4).

The administrative office is located at Building No. 1, 4224 - 6th Avenue S.E., Lacey, Washington, 98504. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays. Administrative law judges are housed in the following field offices:

Social & Health Subdivision
1117 Jefferson
Olympia WA 98504

Social & Health Subdivision
1414 Dexter Avenue North
Seattle WA 98109

Social & Health Subdivision
428 Hutton Building
South 9 Washington
Spokane WA 99204

Social & Health Subdivision
2925 Rockefeller
Everett WA 98201

Yakima Subdivision
1110 West Lincoln Avenue
Yakima WA 98902

Utilities & Transportation Subdivision
6th Floor Highways-Licenses Building
Olympia WA 98504

Liquor Control Subdivision
1025 East Union
Olympia WA 98504

Employment Security Subdivision
Room 606 Securities Building
1904 Third Avenue
Seattle WA 98101

Employment Security Subdivision
Capitol 5000 Building
Olympia WA 98504

Employment Security Subdivision
P.O. Box TAF-C-14
Spokane WA 99220

All written communications by parties pertaining to a particular case shall be filed with the field office, if any, assigned to the case, and otherwise with the deputy chief administrative law judge at the administrative office.

NEW SECTION

WAC 10-04-030 PUBLIC RECORDS--AVAILABILITY. Public records are available for public inspection and copying except as otherwise provided by RCW 42.17.310 and these rules.

NEW SECTION

WAC 10-04-040 PUBLIC RECORDS--OFFICER. The public records officer for the administrative office shall be the confidential secretary to the chief administrative law judge. For those records maintained at field office locations, the public records officer shall be the senior administrative law judge in benefits division field offices and the deputy chief administrative law judge for regulatory and special assignments field offices.

NEW SECTION

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

(1) A request shall be made in writing upon a form prescribed by the office which shall be available at the offices where records are maintained. The form shall be presented to the public records officer, or to a member of the staff designated by him or her if the public records officer is not available, during office hours. The request shall include the following information:

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

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

NEW SECTION

WAC 10-04-060 COPYING FEES. No fee shall be charged for the inspection of public records. The office shall charge a fee of ten cents per page of copy for providing copies of public records and for the use of the office's copy equipment. This charge is the amount necessary to reimburse the office for its actual costs incident to such copying.

NEW SECTION

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

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

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

NEW SECTION

WAC 10-04-080 REVIEW OF DENIALS OF PUBLIC RECORDS REQUEST

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

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

(3) Administrative remedies shall not be considered exhausted until the chief administrative law judge or his designee has returned the petition with a decision or until the close of the fifth business day following denial of inspection, whichever occurs first.

NEW SECTION

WAC 10-04-090 PROTECTION OF PUBLIC RECORDS. (1) No person shall knowingly alter, deface, or destroy public records of the office.

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

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

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

(5) Boisterous or otherwise disruptive conduct by those requesting public records of the office shall not be permitted.

Chapter 10-08 WAC

UNIFORM PROCEDURAL RULES FOR THE CONDUCT OF CONTESTED CASES

NEW SECTION

WAC 10-08-010 APPLICATION OF CHAPTER 10-08 WAC. Chapter 10-08 WAC is promulgated by the chief administrative law judge pursuant to the provisions of RCW 34.04.022, as amended by chapter 67, Laws of 1981. These rules shall govern administrative practice and procedure in all contested case hearings before any state board, commission, department, or officer authorized by law to adjudicate contested cases except those in the legislative or judicial branches, the state militia, the board of prison terms and paroles, institutions of higher education as defined in RCW 28B.19.020, the board of industrial insurance appeals, and the board of tax appeals unless an election is made pursuant to RCW 82.03.140 or 82.03.190: PROVIDED, HOWEVER, That these rules shall not apply to the denial, suspension or revocation of a driver's license by the department of licensing.

NEW SECTION

WAC 10-08-020 SCOPE OF CHAPTER 10-08 WAC. (1) Chapter 10-08 WAC applies to all stages of the conduct of a contested case from issuance of the notice of hearing through issuance of a proposed decision, an initial decision, or the agency's final decision if no proposed or initial decision is required or issued. Form and content of pleadings, procedures for settlement or disposition without hearing, and procedures for obtaining review by the agency of proposed and initial decisions and reconsideration of final decisions shall be as specified in the agency's rules as in effect on June 30, 1982, or as thereafter adopted or amended by the agency.

(2) Except as provided in subsection (3) of this section, these rules supersede the rules of practice and procedure adopted by agencies for the conduct of contested cases from issuance of the notice of hearing through issuance of a proposed or initial decision or final decision if no proposed or initial decision is required or issued.

(3) Demonstrable needs exist for variation among agencies with respect to:

(a) Qualifications of persons appearing in a representative capacity, and

(b) Discovery.

Therefore, these rules do not supersede rules adopted by agencies with respect thereto.

NEW SECTION

WAC 10-08-030 DEFINITIONS. "Presiding officer" means an agency official(s), administrative law judge, hearing examiner, hearing officer, or other person authorized by law or appointed to preside over a contested case hearing.

NEW SECTION

WAC 10-08-040 NOTICE OF HEARING. (1) In any contested case all parties shall be served with a notice within the time required by statute governing the respective agency or proceeding, and in the absence of a statutory requirement, not less than twenty days before the date set for the hearing. The notice shall include the information specified in RCW 34.04.090(1) and if the hearing is to be conducted by teleconference call the notice shall so state. The notice shall also include such other information as may be necessary to apprise the parties of the scope and purpose of the hearing.

(2) Defects in notice may be waived if all parties acquiesce.

NEW SECTION

WAC 10-08-050 ASSIGNMENT OF ADMINISTRATIVE LAW JUDGE. Whenever a state agency as defined in RCW 34.12.020(4) conducts a hearing which is not presided over by officials of the agency who are to render the final decision, the agency shall either:

(1) File with the office of administrative hearings a copy of the hearing file and notice of hearing together with a request for assignment of an administrative law judge to preside over the hearing; or

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

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

NEW SECTION

WAC 10-08-060 INTERVENTION. Where agency statute or substantive rule permits intervention, all parties shall be afforded an opportunity to be heard on petitions for intervention prior to or at the commencement of the hearing or as soon thereafter as the petition is received.

NEW SECTION

WAC 10-08-080 COMPUTATION OF TIME. In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the

next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

NEW SECTION

WAC 10-08-090 CONTINUANCES. Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding officer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, showing good and sufficient cause therefor.

NEW SECTION

WAC 10-08-110 FILING AND 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 parties not represented by counsel 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, or by telegraph.

(3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed, and by telegraph when deposited with a telegraph company properly addressed and with charges prepaid.

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

(5) Where proof of service is required by statute or rule, filing the papers with the presiding officer, together with either an acknowledgment of service or the following certificate shall constitute proof of service:

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy thereof in person to (names) or by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

"Dated at this ... day of, 198....
(signature)"

NEW SECTION

WAC 10-08-120 SUBPOENAS. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.04.105.

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

(3) A subpoena may be served by any suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of

his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit.

(4) The presiding officer, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (a) quash or modify the subpoena if it is unreasonable and oppressive or (b) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, any member of the commission or any member of the agency staff in any proceeding before the public employment relations commission.

NEW SECTION

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

(a) Simplification of issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;

(d) Limitations on the number and consolidation of the examination of witnesses;

(e) Procedural matters;

(f) Distribution of written testimony and exhibits to the parties prior to the hearing;

(g) Such other matters as may aid in the disposition or settlement of the proceeding.

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

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

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

(5) Nothing in this rule shall be construed to limit the right of an agency to order a prehearing conference or other settlement procedure prior to issuance of a notice of hearing.

NEW SECTION

WAC 10-08-140 EVIDENCE. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.04.100.

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

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

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

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

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

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

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

(6) Any party bound by a stipulation or admission of record may, at any time prior to closure of the hearing, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the presiding officer that such stipulation or admission was made inadvertently or under a bona fide mistake of fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding.

NEW SECTION

WAC 10-08-160 TESTIMONY UNDER OATH OR AFFIRMATION. (1) Every person called as a witness in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060.

(2) Interpreters shall swear or affirm that they will well and truly translate all questions asked of and answers given by the witness requiring interpretation.

NEW SECTION

WAC 10-08-170 REPORTING--RECORDING. All hearings shall be recorded by manual, electronic, or other type of recording device.

NEW SECTION

WAC 10-08-180 TELECONFERENCE HEARINGS. (1) The presiding officer, with the concurrence of the agency, may conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place. The presiding officer shall grant the motion of any party showing good cause for having the hearing conducted in person at a rescheduled time.

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

NEW SECTION

WAC 10-08-190 ATTENDANCE AT HEARINGS--CAMERAS--RECORDING DEVICES. (1) All hearings shall be open for observation by the public except as limited by the presiding officer to preserve confidentiality protected by law or for reasons such as space limitation. Photographic and recording equipment shall be permitted; however, the presiding officer may impose such conditions upon their use as he or she deems necessary to prevent disruption of the hearing.

(2) On motion of a party or on the presiding officer's own motion, witnesses may be excluded from any hearing except when testifying.

NEW SECTION

WAC 10-08-200 PRESIDING OFFICER. The presiding officer shall have authority to:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas;
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on offers of proof and receive relevant evidence;
- (6) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (7) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;
- (8) Take any appropriate action necessary to maintain order during the hearing;
- (9) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (10) Take any other action necessary and authorized by any applicable statute or rule;
- (11) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver.

NEW SECTION

WAC 10-08-210 DECISION--ORDER. Every decision and order issued by a presiding officer, whether proposed, initial, or final, shall:

- (1) Be correctly captioned as to the name of the agency and name of the proceeding;
- (2) Designate all parties and representatives participating in the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Contain appropriate numbered findings of fact based exclusively on the record;
- (5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;
- (6) Contain an order, decision, or recommendation, as appropriate, disposing of all contested issues;
- (7) If applicable, contain a statement describing the parties' rights to agency review of the order or decision.

NEW SECTION

WAC 10-08-220 OTHER LAW. Nothing in chapter 10-08 WAC is intended to diminish the constitutional rights of any person or to limit or modify additional requirements imposed by statute, including the administrative procedure act.

CHAPTER 10-12 WAC

COMPLIANCE WITH STATE ENVIRONMENTAL PROTECTION ACT

NEW SECTION

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

NEW SECTION

WAC 10-12-020 APPLICATION. Pursuant to WAC 197-10-800, the Office of Administrative Hearings has reviewed its authorized activities and found them to be exempt under the provisions of chapter 197-10 WAC.