

WSR 24-22-021

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 28, 2024, 7:06 a.m., effective November 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-08 WAC, Practice and procedure, by clarifying current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Citation of Rules Affected by this Order: Amending WAC 16-08-021, 16-08-031, 16-08-091, 16-08-101, 16-08-111, 16-08-142, 16-08-148, and 16-08-161.

Statutory Authority for Adoption: RCW 43.01.160, 43.17.060.

Adopted under notice filed as WSR 24-17-083 on August 19, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 8, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 25, 2024.

Derek I. Sandison
Director

OTS-5728.1

AMENDATORY SECTION (Amending WSR 11-20-047, filed 9/29/11, effective 10/30/11)

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))~~ they would be prejudiced by such a waiver.

AMENDATORY SECTION (Amending WSR 11-20-047, filed 9/29/11, effective 10/30/11)

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))~~ 25 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))~~ their right to a hearing.

AMENDATORY SECTION (Amending WSR 17-13-125, filed 6/21/17, effective 7/22/17)

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))~~ them or the particular class or group to which ~~((he or she))~~ they belong ~~((s))~~. 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.

AMENDATORY SECTION (Amending WSR 91-23-051, 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~~) their 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~~) their 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.

AMENDATORY SECTION (Amending WSR 91-23-051, 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~~) their witness by taking (~~his/her~~) their deposition. Any

party may rebut any relevant evidence contained in a deposition whether introduced by (~~him/her~~) them or any other party.

AMENDATORY SECTION (Amending WSR 17-13-125, filed 6/21/17, effective 7/22/17)

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~~) 25 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~~) their right to a hearing.

AMENDATORY SECTION (Amending WSR 17-13-125, 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~~) 21 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~~) 10 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))~~ their 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))~~ their determination to review the initial order within ~~((twenty-one))~~ 21 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))~~ their 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))~~ 21 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))~~ they may remand a matter for further proceedings.

AMENDATORY SECTION (Amending WSR 91-23-051, 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))~~ their 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.