

Title 10 WAC

ADMINISTRATIVE HEARINGS, OFFICE OF

Chapters

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- 10-08** Model rules of procedure.
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Chapter 10-04 WAC

AGENCY ORGANIZATION—PUBLIC RECORDS

WAC

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

[Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-010, filed 11/1/82.]

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.

Administrative law judges assigned to the two divisions preside over hearings in adjudicative proceedings and issue initial or final orders, including findings of fact and conclusions of law. Division one is responsible for hearings held before [and] [the] department of social and health services, the utilities and transportation commission, the liquor control board, the department of licensing, the superintendent of public instruction, and any other state agency requiring administrative law judge services except the employment security department. Division two is responsible for hearings held before the employment security department.

The administrative office is located at 2424 Heritage Court SW, Suite 302, P.O. Box 42488, Olympia, Washington, 98504-2488. 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 field offices located in Everett, Olympia, Seattle, Spokane, Vancouver, and Yakima. Each of these offices is headed by a senior administrative law judge.

All written communication[s] 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.

[Statutory Authority: RCW 42.17.250 [(1)(a). 93-10-098, § 10-04-020, filed 5/5/93, effective 6/5/93. Statutory Authority: RCW 42.17.250 and 34.05.220 (1)(b). 89-13-036 (Order 6), § 10-04-020, filed 6/15/89. Statutory Authority: RCW 42.17.250 and 34.04.020. 85-22-032 (Order 4), § 10-04-020, filed 10/31/85. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-020, filed 11/1/82.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

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.

[Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-030, filed 11/1/82.]

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.

[Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-040, filed 11/1/82.]

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.

[Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-050, filed 11/1/82.]

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, subject to a minimum charge per order of \$1.00, plus postage at actual cost. This charge is the amount necessary to reimburse the office for its actual costs incident to such copying and mailing or transmission by telefacsimile.

[Statutory Authority: RCW 42.17.250 and 34.05.220 (1)(b). 89-13-036 (Order 6), § 10-04-060, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-060, filed 11/1/82.]

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.

[Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-070, filed 11/1/82.]

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.

[Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-080, filed 11/1/82.]

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.

[Statutory Authority: RCW 34.04.020 and 47.17.250 - 47.17.320 [42.17.250 - 42.17.320]. 82-22-052 (Order 3), § 10-04-090, filed 11/1/82.]

Chapter 10-08 WAC

MODEL RULES OF PROCEDURE

WAC

- 10-08-001 Declaration of purpose.
- 10-08-035 Adjudicative proceedings—Application.
- 10-08-040 Adjudicative proceedings—Notice of hearing.
- 10-08-045 Adjudicative proceedings—Notice to limited-English-speaking parties.
- 10-08-050 Adjudicative proceedings—Assignment of administrative law judge—Motion of prejudice.
- 10-08-080 Computation of time.
- 10-08-090 Adjudicative proceedings—Continuances.
- 10-08-110 Adjudicative proceedings—Filing and service of papers.
- 10-08-120 Adjudicative proceedings—Subpoenas.
- 10-08-130 Adjudicative proceedings—Prehearing conference.
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- 10-08-150 Adjudicative proceedings—Interpreters.
- 10-08-160 Adjudicative proceedings—Testimony under oath or affirmation.
- 10-08-170 Adjudicative proceedings—Reporting—Recording.
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- 10-08-211 Adjudicative proceedings—Petition for review and replies.
- 10-08-215 Adjudicative proceedings—Reconsideration.
- 10-08-220 Other law.
- 10-08-230 Informal settlements.
- 10-08-250 Declaratory orders—Form, content and filing.
- 10-08-251 Declaratory orders—Procedural rights of persons in relation to petition.
- 10-08-252 Declaratory orders—Disposition of petition.
- 10-08-260 Petition for rulemaking—Form, content and filing.
- 10-08-261 Petition for rulemaking—Consideration and disposition.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 10-08-010 Application of chapter 10-08 WAC. [Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-010, filed 11/1/82.] Repealed by 89-13-036 (Order 6), filed 6/15/89. Statutory Authority: RCW 34.05.250.
- 10-08-020 Scope of chapter 10-08 WAC. [Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-020, filed 11/1/82.] Repealed by 89-13-036 (Order 6), filed 6/15/89. Statutory Authority: RCW 34.05.250.
- 10-08-030 Definitions. [Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-030, filed 11/1/82.]

Repealed by 89-13-036 (Order 6), filed 6/15/89. Statutory Authority: RCW 34.05.250.

10-08-060 Intervention. [Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-060, filed 11/1/82.] Repealed by 89-13-036 (Order 6), filed 6/15/89. Statutory Authority: RCW 34.05.250.

WAC 10-08-001 Declaration of purpose. Chapter 10-08 WAC contains the model rules of procedure which RCW 34.05.250 requires the chief administrative law judge to adopt for use by as many agencies as possible. The model rules deal with general functions and duties performed in common by the various agencies. The model rules supplement Administrative Procedure Act provisions which contain grants of rulemaking authority to agencies. It is not the purpose of the model rules to duplicate all procedural provisions of the Administrative Procedure Act. Except to the extent an agency is excluded from chapter 34.05 RCW or parts of chapter 34.05 RCW, each agency must adopt as much of the model rules as is reasonable under its circumstances. Any agency adopting a rule of procedure that differs from these model rules must include in the order of adoption a finding stating the reasons for variance.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-001, filed 6/15/89.]

WAC 10-08-035 Adjudicative proceedings—Application. An application for an adjudicative proceeding may be on a form provided by the agency for that purpose or in other writing signed by the applicant or the applicant's representative. The application for an adjudicative proceeding should specify the issue to be adjudicated in the proceeding.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-035, filed 6/15/89.]

WAC 10-08-040 Adjudicative proceedings—Notice of hearing. (1) In any adjudicative proceeding all parties shall be served with a notice of hearing within the time required by [statute] [law] governing the respective agency or proceeding, and, in the absence of a requirement under other law, not less than seven days before the date set for the hearing. The notice shall include the information specified in RCW 34.05.434 and if the hearing is to be conducted by teleconference call the notice shall so state.

(2) The notice shall state that if a limited English-speaking or hearing impaired party or witness needs an interpreter a qualified interpreter will be appointed and that there will be no cost to the party or witness. The notice shall include a form for a party to indicate whether the party needs an interpreter and to identify the primary language or hearing impaired status of the party.

(3) Defects in [the] notice may not be waived unless:

(a) The presiding officer determines that the waiver has been made knowingly, voluntarily and intelligently;

(b) The party's representative, if any, consents; and

(c) If a party is an impaired person, the waiver is requested through the use of a qualified interpreter.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-040, filed 6/15/89. Statutory Authority: RCW 34.04.022 and chapter 2.42 RCW. 85-22-032 (Order 4), § 10-08-040, filed 10/31/85. Statutory Authority:

RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-040, filed 11/1/82.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 10-08-045 Adjudicative proceedings—Notice to limited-English-speaking parties. When an agency is notified or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, shall either be in the primary language of the party or shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to, if necessary, the notice.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-045, filed 6/15/89.]

WAC 10-08-050 Adjudicative proceedings—Assignment of administrative law judge—Motion of prejudice. (1) 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 use one of the following methods for requesting assignment of an administrative law judge:

(a) Not less than twenty days prior to the date of the hearing, notify the chief administrative law judge or his or her designee of the date, time, and place of the hearing and request assignment of an administrative law judge to preside over the hearing, or

(b) 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, or

(c) Schedule its hearings to be held at times and places reserved and provided to the agency for that purpose by the office of administrative hearings.

(2) 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 adjudicative 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.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-050, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-050, filed 11/1/82.]

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.

[Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-080, filed 11/1/82.]

WAC 10-08-090 Adjudicative proceedings—Continuances. (1) 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.

(2) A request for a continuance made prior to the hearing date may be oral or written and shall state that the party seeking the continuance has notified all other parties of the request and that either all other parties agree to the continuance or that all parties do not agree to the continuance. If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference to receive argument and to rule on the request.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-090, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-090, filed 11/1/82.]

WAC 10-08-110 Adjudicative proceedings—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 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 agency shall be deemed filed upon actual receipt during office hours at any office of the agency. 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.

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

(a) An acknowledgement of service.

(b) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names.)

(c) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the proceeding by

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Telegraphing a copy thereof, properly addressed with charges prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Transmitting a copy thereof by electronic telefacsimile device, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iv) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-110, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-110, filed 11/1/82.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 10-08-120 Adjudicative proceedings—Subpoenas. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446.

(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.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-120, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-120, filed 11/1/82.]

WAC 10-08-130 Adjudicative proceedings—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] [any] agency to attempt informal settlement of an adjudicative proceeding at any time.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-130, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-130, filed 11/1/82.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 10-08-140 Adjudicative proceedings—Evidence. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452.

(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.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-140, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-140, filed 11/1/82.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 10-08-150 Adjudicative proceedings—Interpreters. (1) When an impaired person as defined in RCW 2.42 or a non-English-speaking person as defined in RCW 2.43 is a party or witness in an adjudicative proceeding, the presiding officer shall appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of RCW 2.42 and 2.43.

(2) Relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not be appointed as interpreters in the proceeding. This subsection shall not prohibit the office of administrative hearings from hiring an employee whose sole function is to interpret at administrative hearings.

(3) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired or non-English-speaking person. This determination shall be based upon the testimony or stated needs of the impaired or non-English-speaking person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to his or her qualifications and impartiality.

(4) If at any time during the proceeding, in the opinion of the impaired or non-English-speaking person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired or non-English-speaking person, the presiding officer shall appoint another interpreter.

(5) Mode of interpretation.

(a) Interpreters for non-English-speaking persons shall use simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(b) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(c) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding [as] [an] a nonimpaired or English-speaking party listening to uninterpreted statements would have.

(6) An interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. An interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(7) The presiding officer shall explain to the non-English-speaking party that a written decision or order will be issued in English, and that the party may contact the interpreter for an oral translation of the decision and that the translation itself is at no cost to the party. The interpreter shall provide to the presiding officer and the party the interpreter's telephone number. The telephone number shall be attached to the decision or order mailed to the party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.

(8) If the party has a right to review of the order or decision, the presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(9) The agency involved in the hearing shall pay interpreter fees and expenses.

[Statutory Authority: RCW 34.05.250, 93-10-097, § 10-08-150, filed 5/5/93, effective 6/5/93; 89-13-036 (Order 6), § 10-08-150, filed 6/15/89. Statutory Authority: RCW 34.04.022 and chapter 2.42 RCW. 85-22-032 (Order 4), § 10-08-150, filed 10/31/85.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 10-08-160 Adjudicative proceedings—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) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-160, filed 6/15/89. Statutory Authority: RCW 34.04.022 and chapter 2.42 RCW. 85-22-032 (Order 4), § 10-08-160, filed 10/31/85. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-160, filed 11/1/82.]

WAC 10-08-170 Adjudicative proceedings—Reporting—Recording. All hearings shall be recorded by manual, electronic, or other type of recording device.

[Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-170, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-170, filed 11/1/82.]

WAC 10-08-180 Adjudicative proceedings—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, provided 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).

[Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-180, filed 6/15/89. Statutory Authority: RCW 34.12.080, 34.04.020 and 34.04.022. 87-13-036 (Order 5), § 10-08-180, filed 6/15/87. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-180, filed 11/1/82.]

WAC 10-08-190 Adjudicative proceedings—Cameras—Recording devices. Photographic and recording equipment shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as he or she deems necessary to prevent disruption of the hearing.

[Statutory Authority: RCW 34.05.250, 89-13-036 (Order 6), § 10-08-190, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-190, filed 11/1/82.]

WAC 10-08-200 Adjudicative proceedings—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.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-200, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-200, filed 11/1/82.]

WAC 10-08-210 Adjudicative proceedings—Initial or final order. Every decision and order, whether 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 meeting the requirements in RCW 34.05.461;

(5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;

(6) Contain an initial or final order disposing of all contested issues;

(7) Contain a statement describing the available post-hearing remedies.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-210, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-210, filed 11/1/82.]

WAC 10-08-211 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 agency head 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.

(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 which is 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 ten 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.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-211, filed 6/15/89.]

WAC 10-08-215 Adjudicative proceedings—Reconsideration. A petition for reconsideration of a final order under RCW 34.05.470 shall be filed with the office of the person or persons who entered the order.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-215, filed 6/15/89.]

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.

[Statutory Authority: RCW 34.04.020 and 34.04.022. 82-22-052 (Order 3), § 10-08-220, filed 11/1/82.]

WAC 10-08-230 Informal settlements. RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(1)(a) All agencies and persons are strongly encouraged to explore early, informal resolution to disputes whenever possible. Any person whose interest in a matter before an agency may be resolved by settlement shall communicate his or her request or complaint to the agency, setting forth all pertinent facts and particulars and the desired remedy. If the agency requires additional information to resolve the matter informally, it shall promptly provide to the person who is seeking relief an opportunity to supply such information. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations; Provided, however, that any time limit applicable to filing an application for an adjudicative proceeding shall not be extended because settlement attempts are pending.

(b) In the event an early, informal resolution is reached, the agency is responsible for providing a written description of the resolution to the person(s) involved.

(2)(a) If settlement of an adjudicative proceeding may be accomplished by informal negotiation with the agency or other parties involved, negotiations shall be commenced at the earliest possible stage of the proceeding. Settlement shall be concluded by:

(i) Stipulation of parties or

(ii) Withdrawal by the applicant of his or her application for an adjudicative proceeding or

(iii) Withdrawal by the agency of the agency action which is the subject matter of the adjudicative proceeding.

(b) A stipulation shall be in writing and signed by each party to the stipulation or his or her representative or shall be recited on the record at the hearing. When an adjudicative proceeding has been settled by stipulation, the agency head, the agency head's designee, or the presiding officer shall enter an order in conformity with the terms of the stipulation.

(c) When an adjudicative proceeding has been wholly or partially settled by withdrawal, the presiding officer shall enter an order dismissing the adjudicative proceeding, or an order dismissing the affected party's interest in the proceeding if other parties have not withdrawn.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-230, filed 6/15/89.]

WAC 10-08-250 Declaratory orders—Form, content and filing. A petition for a declaratory order shall generally adhere to the following form:

(1) At the top of the page shall appear the wording "Before the (name of agency)." On the left side of the page below the foregoing the following captions shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory order." Opposite the foregoing caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the relief sought by the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies of the petition shall be filed with the agency.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-250, filed 6/15/89.]

WAC 10-08-251 Declaratory orders—Procedural rights of persons in relation to petition. If a petition for a declaratory order is set for specified proceedings under RCW 34.05.240 (5)(b), the agency shall give not less than seven days advance written notice of the proceedings to the petitioner and all persons described in RCW 34.05.240(3). The notice shall contain the time, date, place, and nature of the proceedings and shall describe how interested persons may participate in the proceeding.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-251, filed 6/15/89.]

WAC 10-08-252 Declaratory orders—Disposition of petition. A declaratory order entered by an agency or a decision by the agency to decline to enter a declaratory order shall be in writing and shall be served upon the petitioner and all other persons described in RCW 34.05.240(3).

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-252, filed 6/15/89.]

WAC 10-08-260 Petition for rulemaking—Form, content and filing. A petition for adoption, amendment, or repeal of a rule shall generally adhere to the following form:

(1) At the top of the page shall appear the wording "Before the (name of agency)." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party)

for rulemaking." Opposite the foregoing caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the adoption of a new rule or rules, or amendment or repeal of an existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(3) Petitions shall be dated and signed by the person or entity named in the first paragraph or by the petitioner's attorney. The original and two legible copies shall be filed with the agency.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-260, filed 6/15/89.]

WAC 10-08-261 Petition for rulemaking—Consideration and disposition. (1) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the agency and the agency may, in its discretion, solicit comments or invite discussion concerning the matter prior to disposition of the petition.

(2) If the agency denies the petition, the denial shall be served upon the petitioner.

[Statutory Authority: RCW 34.05.250. 89-13-036 (Order 6), § 10-08-261, filed 6/15/89.]

Chapter 10-12 WAC

COMPLIANCE WITH STATE ENVIRONMENTAL PROTECTION ACT

WAC

10-12-010 Purpose.
10-12-020 Application.

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.

[Statutory Authority: RCW 43.21C.120. 82-22-052 (Order 3), § 10-12-010, filed 11/1/82.]

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.

[Statutory Authority: RCW 43.21C.120. 82-22-052 (Order 3), § 10-12-020, filed 11/1/82.]