

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.
10-08-083	Notice of appearance.
10-08-085	Consolidation of proceedings.
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.
10-08-135	Summary judgment.
10-08-140	Adjudicative proceedings—Evidence.
10-08-150	Adjudicative proceedings—Interpreters.
10-08-160	Adjudicative proceedings—Testimony under oath or affirmation.
10-08-170	Adjudicative proceedings—Reporting—Recording.
10-08-180	Adjudicative proceedings—Teleconference hearings.
10-08-190	Adjudicative proceedings—Cameras—Recording devices.
10-08-200	Adjudicative proceedings—Presiding officer.
10-08-210	Adjudicative proceedings—Initial or final order.
10-08-211	Adjudicative proceedings—Petition for review and replies.
10-08-215	Adjudicative proceedings—Reconsideration.
10-08-217	Shortened record on petition for review or appeal.
10-08-219	Correction of transcript.
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.

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. WSR 82-22-052 (Order 3), § 10-08-010, filed 11/1/82.] Repealed by WSR 89-13-036 (Order 6), filed 6/15/89.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. WSR 82-22-052 (Order 3), § 10-08-020, filed 11/1/82.] Repealed by WSR 89-13-036 (Order 6), filed 6/15/89.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. WSR 82-22-052 (Order 3), § 10-08-030, filed 11/1/82.] Repealed by WSR 89-13-036 (Order 6), filed 6/15/89.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. WSR 82-22-052 (Order 3), § 10-08-060, filed 11/1/82.] Repealed by WSR 89-13-036 (Order 6), filed 6/15/89. Statutory Authority: RCW 34.05.250.
10-08-260	Petition for rulemaking—Form, content and filing. [Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-260, filed 6/15/89.] Repealed by WSR 99-20-115, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080.
10-08-261	Petition for rulemaking—Consideration and disposition. [Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-261, filed 6/15/89.] Repealed by WSR 99-20-115, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080.

WAC 10-08-001 Declaration of purpose. (1) 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. This chapter sets forth general rules applicable to proceedings before many state agencies. It should be read in conjunction with the provisions of the Administrative Procedure Act (chapter 34.05 RCW) and with any administrative rules governing adjudicative proceedings which have been adopted by the particular agency.

(2) 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.

(3) Adoption of these 1999 amendments to the model rules does not invalidate any variances in rules adopted by agencies between the effective date of the 1988 amendments to the Administrative Procedure Act and the effective date of these 1999 amendments to the model rules.

(4) In the absence of other rules to the contrary, these model rules shall govern any adjudicative proceedings under the Administrative Procedure Act.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-001, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 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 decided in the proceeding.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-035, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 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 law governing the respective agency or proceeding. If there is no requirement under other law, all parties shall be served with a notice of hearing not less than seven days before the date set for the hearing. The notice shall include the information specified in RCW 34.05.434. 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 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 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-040, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-040, filed 6/15/89. Statutory Authority: RCW 34.04.022 and chapter 2.42 RCW. WSR 85-22-032 (Order 4), § 10-08-040, filed 10/31/85. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 82-22-052 (Order 3), § 10-08-040, filed 11/1/82.]

WAC 10-08-045 Adjudicative proceedings—Notice to limited-English-speaking parties. (1) 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, either:

(a) Shall be written in the primary language of the party; or

(b) 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 the notice.

(2) For purposes of this chapter, the term "limited-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language. The term has the same meaning as "non-English-speaking person" as defined in RCW 2.43.020.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-045, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 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

[Ch. 10-08 WAC p. 2]

(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 to 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 or his or her designee 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 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-050, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-050, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 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. WSR 82-22-052 (Order 3), § 10-08-080, filed 11/1/82.]

WAC 10-08-083 Notice of appearance. If a party is represented, the representative should provide the presiding officer and other parties with the representative's name, address, and telephone number. The presiding officer may require the representative to file a written notice of appearance or to provide documentation that an absent party has authorized the representative to appear on the party's behalf. If the representative is an attorney admitted to practice in this state, the attorney shall file a written notice of appearance and shall file a notice of withdrawal upon withdrawal of representation.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-083, filed 10/6/99, effective 11/6/99.]

WAC 10-08-085 Consolidation of proceedings. If there are multiple adjudicative proceedings involving common issues or parties, upon motion of any party or upon his or her own motion, the presiding officer may, in his or her discretion, consolidate the proceedings.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-085, filed 10/6/99, effective 11/6/99.]

WAC 10-08-090 Adjudicative proceedings—Continuances. (1) Postponements, continuances, extensions of time, and adjournments may be ordered by the presiding offi-

cer on his or her own motion or may be granted on timely request of any party, with notice to all other parties, if the party shows good cause.

(2) A request for a continuance may be oral or written. The party seeking the continuance shall notify all other parties of the request. The request for a continuance shall state whether or not all other parties 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 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-090, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-090, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 82-22-052 (Order 3), § 10-08-090, filed 11/1/82.]

WAC 10-08-110 Adjudicative proceedings—Filing and service of papers. (1) Filing.

(a) 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.

(b) The following conditions apply for filing papers with the presiding officer by fax:

(i) As used in this chapter, "fax" means electronic telefacsimile transmission.

(ii) Papers may be filed by fax with the presiding officer. Filing by fax is perfected when a complete legible copy of the papers is reproduced on the presiding officer's fax machine during normal working hours, excluding weekends and holidays. If a transmission of papers commences after these office hours, the papers shall be deemed filed on the next succeeding business day.

(iii) Any papers filed by fax with the presiding officer should be accompanied by a cover page or other form identifying the party making the transmission, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the papers relate, and indicating the date of and the total number of pages included in the transmission.

(iv) Papers filed by fax should not exceed fifteen pages in length, exclusive of any cover page.

(v) The party attempting to file the papers by fax bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the fax is not received in legible form, it will be considered as if it had never been sent.

(vi) The original of any papers filed by fax should be mailed to the presiding officer within twenty-four hours of the time that the fax was sent. The presiding officer has discretion to require this.

(c) The filing of papers with the presiding officer by electronic mail ("email") is not authorized without the express approval of the presiding officer and under such circumstances as the presiding officer allows.

(2) Service.

(a) 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.

(b) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax and same-day mailing of copies; or by commercial parcel delivery company.

(c) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(3) Proof of service. 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 served 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 served 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) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

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

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-110, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-110, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 82-22-052 (Order 3), § 10-08-110, filed 11/1/82.]

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 and 5.56.010.

(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.

(a) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for hearing, or another reasonably convenient time and place in advance of 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 or declaration under penalty of perjury.

(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 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-120, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-120, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 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 agency to attempt informal settlement of an adjudicative proceeding at any time.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-130, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-130, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 82-22-052 (Order 3), § 10-08-130, filed 11/1/82.]

WAC 10-08-135 Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-135, filed 10/6/99, effective 11/6/99.]

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 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-140, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-140, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 82-22-052 (Order 3), § 10-08-140, filed 11/1/82.]

WAC 10-08-150 Adjudicative proceedings—Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in an adjudicative proceeding, the appointing authority shall appoint an interpreter to assist the party or witness throughout the proceed-

ing. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW.

(2) An adjudicative proceeding under chapter 34.05 RCW includes a legal proceeding which occurs on the record, and also includes oral and written communications of a party to an agency proceeding, and the filing, issuance and entry of notices, motions, orders, decisions, petitions, and other documents. When a party or witness appears in a legal proceeding on the record, the appointing authority is the presiding officer, and otherwise the appointing authority is the agency head or designee.

(3)(a) The agency head or designee may make a pre-determination that an interpreter is qualified to provide parties with a:

(i) Visual translation or sight translation of forms, notices, proposed exhibits, briefs and orders, either before or following the hearing; or

(ii) Visual or spoken-language interpretation of oral communication with the agency that is not on the record.

(b) The agency head or designee may maintain a list of interpreters who have been determined to be qualified to interpret before the agency.

(4) 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 function is to interpret at adjudicative proceedings on the record and as otherwise needed by impaired and non-English-speaking persons.

(5) The appointing authority shall appoint a qualified spoken language interpreter who is on the list of certified interpreters maintained by the administrative office of the courts (AOC), except as provided in this subsection. The appointing authority may find there is good cause to appoint a qualified spoken language interpreter who is not on the list of certified interpreters maintained by the AOC. "Good cause" includes, but is not limited to, consideration of the totality of circumstances and a determination by the appointing authority that:

(a) The current list of certified interpreters maintained by the AOC does not include an interpreter certified in the language spoken by the non-English-speaking person;

(b) The parties agree to the issue or motion;

(c) The motion or hearing is expedited or emergent;

(d) The matter involves general or procedural information;

(e) The matter involves sight translation of case-related documents including forms, notices, proposed exhibits, briefs, and orders, either before or following the hearing;

(f) The rescheduling of a hearing to appoint a certified interpreter would cause prejudicial delay;

(g) The certified interpreter qualified by the appointing authority becomes unavailable unexpectedly before completion of the adjudicative proceeding; or

(h) An interpreter who is certified to interpret in the courts of another state or the federal courts is available.

(6) The appointing authority 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.

(7) If in the opinion of the impaired or non-English-speaking person, the appointing authority or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired or non-English-speaking person, the appointing authority shall appoint another interpreter.

(8) Mode of interpretation.

(a) The AOC recognizes three spoken language interpreting modes: Consecutive, simultaneous, and sight translation. Sight translation means the act of reading a written text out loud.

(b) Interpreters for non-English-speaking persons shall use the 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.

(c) 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.

(d) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall interpret all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit interpretation and the presiding officer shall ensure that the interpreter interprets 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 a non-impaired or English-speaking party listening to uninterpreted statements would have.

(9) 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.

(10) The presiding officer shall explain to the impaired or non-English-speaking party that a written decision or order will be issued in English, and that a visual translation or sight translation of the decision is available at no cost to the party.

The presiding officer shall attach to or include in the decision or order a telephone number to request a visual translation or sight translation.

(11) 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.

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

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030, 34.12.080, 2.42.010, and 2.43.010. WSR 16-19-083, § 10-08-150, filed 9/20/16, effective 10/21/16. Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-150, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 93-10-097, § 10-08-150, filed 5/5/93, effective 6/5/93; WSR 89-13-036 (Order 6), § 10-08-150, filed 6/15/89. Statutory Authority: RCW 34.04.022 and chapter 2.42 RCW. WSR 85-22-032 (Order 4), § 10-08-150, filed 10/31/85.]

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. If the witness is testifying from outside the jurisdiction, the presiding officer may require the witness to agree to be bound by the laws of the state of Washington for purposes of the oath or affirmation.

(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 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-160, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-160, filed 6/15/89. Statutory Authority: RCW 34.04.022 and chapter 2.42 RCW. WSR 85-22-032 (Order 4), § 10-08-160, filed 10/31/85. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 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. WSR 89-13-036 (Order 6), § 10-08-170, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 82-22-052 (Order 3), § 10-08-170, filed 11/1/82.]

WAC 10-08-180 Adjudicative proceedings—Teleconference hearings. (1) The presiding officer may conduct all or part of the hearing by telephone, television, or other electronic means, if the rights of the parties will not be prejudiced and if each participant in the hearing has an opportunity to participate in, to hear, and, if technically and economically feasible, in the judgment of the presiding officer, to see the entire proceeding while it is taking place. However, 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 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-180, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 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. WSR 87-13-036 (Order 5), § 10-08-180, filed 6/15/87. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 82-22-052 (Order 3), § 10-08-180, filed 11/1/82.]

[Ch. 10-08 WAC p. 6]

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. WSR 89-13-036 (Order 6), § 10-08-190, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 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 pursuant to RCW 34.05.446;
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on motions for summary judgment;
- (6) Rule on offers of proof and receive relevant evidence;
- (7) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (8) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (9) 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;
- (10) Take official notice of facts pursuant to RCW 34.05.452(5);
- (11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (12) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (13) Issue an order of default pursuant to RCW 34.05.440;
- (14) Hold prehearing conferences;
- (15) Appoint a mediator or serve as mediator, provided that after serving as mediator, the presiding officer shall not conduct the hearing or issue a decision on the matter unless the parties specifically waive any objections to doing so;
- (16) Take any other action necessary and authorized by any applicable statute or rule; and
- (17) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-200, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-200, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 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) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

(9/20/16)

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

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

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

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-210, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 89-13-036 (Order 6), § 10-08-210, filed 6/15/89. Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 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. WSR 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. WSR 89-13-036 (Order 6), § 10-08-215, filed 6/15/89.]

WAC 10-08-217 Shortened record on petition for review or appeal. If a petition for review or appeal is made of an initial order, by stipulation the parties may agree to shorten the record to be filed with the entity considering the petition for review or appeal. Either party unreasonably refusing to stipulate to such a limitation, including shortening or selecting only portions of a transcript, may be ordered to pay the additional costs involved. For petitions for judicial review of a final order, see RCW 34.05.566.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-217, filed 10/6/99, effective 11/6/99.]

WAC 10-08-219 Correction of transcript. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. If the parties agree and the presiding officer approves, transcript corrections may be incorporated into the record at any time during the hearing or after the close of evidence. All corrections must be made within ten calendar days after receipt of the

transcript unless the presiding officer allows a different period.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-219, filed 10/6/99, effective 11/6/99.]

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. WSR 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. WSR 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. WSR 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. Pursuant to RCW 34.05.240(7), the agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party if the person does not consent in writing to the determination of the matter by a declaratory ruling proceeding.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-251, filed 10/6/99, effective 11/6/99. Statutory Authority: RCW 34.05.250. WSR 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. WSR 89-13-036 (Order 6), § 10-08-252, filed 6/15/89.]