

WSR 20-07-005
PERMANENT RULES
OFFICE OF
ADMINISTRATIVE HEARINGS

[Filed March 4, 2020, 3:22 p.m., effective April 4, 2020]

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

Purpose: WAC 10-08-110 was updated to allow for electronic filing of appeal records on existing cases with and the office of administrative hearings (OAH). The amendment implements provisions of the State Administrative Procedures [Procedure] Act, chapter 34.05 RCW, relating to electronic service of notices and orders in administrative adjudications, specifically RCW 34.05.010(19), 34.05.434(5), and 34.05.461(8)(a).

Citation of Rules Affected by this Order: Amending WAC 10-08-110.

Statutory Authority for Adoption: RCW 34.12.080.

Adopted under notice filed as WSR 20-03-163 on January 21, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 10-08-110 (1)(b)(iv) and (vi) were deleted to remove the limitation on number of faxed pages and mailing hard copies after faxing. Subsection (3)(c)(iv) was added to allow for emailing or uploading to an electronic case management system. Section 4 was added to allow for electronic filing with OAH.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 27, 2020.

Lorraine Lee
Chief Administrative Law Judge

OTS-1804.4

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

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

(a) ((Papers required)) Documents to be filed with the agency shall be deemed filed ((upon actual receipt during office)) when received during regular business hours at any office of the agency. ((Papers required)) Documents to be filed with the presiding officer shall be deemed filed ((upon actual receipt during office)) when received during regular business hours at the office of the presiding

officer. Documents received outside of regular business hours shall be deemed filed the following business day.

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

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

(ii) ~~((Papers))~~ Documents may be filed by fax with the ~~((presiding officer))~~ agency. Filing by fax is perfected when a complete and 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))~~ documents is reproduced on the agency's fax machine during regular business hours. A transmission of documents after regular business hours shall be considered filed on the following business day.

(iii) Any ~~((papers))~~ documents 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))~~ documents 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))~~ documents by fax bears the risk that the ~~((papers))~~ documents 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))~~ filing will not be perfected.

(c) The filing of ~~((papers))~~ documents 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))~~ documents filed with the ~~((presiding officer))~~ agency 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) Methods of service permitted. 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. Service by email or electronic filing is permitted if expressly assented to by the receiving party.

(c) Service by mail ~~((shall be regarded as))~~ is completed upon deposit in the United States mail properly stamped and addressed. Service by fax ~~((shall be regarded as))~~ is completed upon production by the fax machine of confirmation of a successful transmission. Service by commercial parcel delivery ~~((shall be regarded as))~~ is completed upon delivery to the parcel delivery company, properly addressed with charges prepaid. Service by email is completed when the email is successfully sent. Service by electronic filing is completed upon successful uploading of the document to that party's designated system.

(3) Proof of service. Where proof of service is required by statute or rule, filing the ~~((papers with the presiding officer))~~ docu-

ments with the agency, together with one of the following, shall constitute proof of service:

(a) An ~~((acknowledgement))~~ acknowledgment of service.

(b) A certificate that the person signing the certificate served the ~~((papers))~~ documents upon all parties of record in the proceeding by delivering a copy thereof in person to ~~((names))~~ all parties of record.

(c) A certificate that the person signing the certificate served the ~~((papers))~~ documents 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; or

(iv) If agreed to by the parties, emailing or uploading to an electronic case management system a copy of the document. The certificate of service must include verification of successful sending or uploading of the document by the recipient, which may include a read receipt or confirmation of successful upload.

(4) Electronic filing with the office of administrative hearings (OAH).

(a) Documents may be filed electronically with OAH through the use of the agency's portal.

(b) Filing documents through the OAH portal:

(i) As used in this chapter, "electronically" means successfully uploading documents through the OAH portal.

(ii) Filing electronically is perfected when a complete and legible copy of the documents is successfully uploaded to OAH's portal during regular business hours. A document uploaded after regular business hours is considered filed on the following business day. Regular business hours for the purposes of electronic filing with OAH are Monday through Friday, 8:00 a.m. to 5:00 p.m. Pacific Time, excluding weekends and state holidays.

(iii) For any documents filed electronically through the OAH portal, the party attempting to file bears the risk that the documents will not be timely received or will not be legible, regardless of the cause unless the cause is due to an OAH portal malfunction. If the uploaded document is not received in legible form, filing will not be perfected.

(c) All service requirements as outlined in subsections (2) and (3) of this section apply to documents electronically filed through the OAH portal.

[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.]