

# Chapter 316-02 WAC

## RULES OF PRACTICE AND PROCEDURE—MARINE EMPLOYEES' COMMISSION

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[Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-140, filed 3/20/84.] Repealed by 85-21-059 (Order 85-2), filed 10/16/85. Statutory Authority: RCW 47.64.260.</p> <p>316-02-310 Subpoenas—Issuance to parties. [Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-310, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-310, filed 3/20/84.] Repealed by 02-14-013, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 34.05.230.</p> <p>316-02-320 Subpoenas—Service. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-320, filed 3/20/84.] Repealed by 90-01-115, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.280.</p> <p>316-02-330 Subpoenas—Fees. [Statutory Authority: RCW 47.64.-280. 84-07-037 (Resolution No. 84-01), § 316-02-330, filed 3/20/84.] Repealed by 90-01-115, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.-280.</p> <p>316-02-340 Subpoenas—Proof of service. [Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-340, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-340, filed 3/20/84.] Repealed by 02-14-013, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 34.05.230.</p> <p>316-02-350 Subpoenas—Quashing. [Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-350, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.260 and chapter 47.64 RCW. 88-10-019 (Order 88-1), § 316-02-350, filed 4/29/88. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-350, filed 3/20/84.] Repealed by 02-14-013, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 34.05.230.</p> <p>316-02-360 Subpoenas—Enforcement. [Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-360, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-360, filed 3/20/84.] Repealed by 02-14-013, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 34.05.230.</p> <p>316-02-370 Subpoenas—Geographical scope. [Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-370, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-370, filed 3/20/84.] Repealed by 02-14-013, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 34.05.230.</p> <p>316-02-810 Commission records—Confidentiality. [Statutory Authority: RCW 34.05.230. 01-01-124, § 316-02-810, filed 12/19/00, effective 1/19/01. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-810, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-810, filed 3/20/84.] Repealed by 09-21-035, filed 10/13/09, effective 11/13/09. Statutory Authority: RCW 34.05.230.</p>
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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

<p>316-02-130</p>	<p>Service of process—Method of service. [Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-130, filed 3/20/84.] Repealed by 85-21-059 (Order 85-2), filed 10/16/85. Statutory Authority: RCW 47.64.260.</p>
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**WAC 316-02-001 Application and scope of chapter 316-02 WAC.** Chapter 316-02 WAC has been added to the Washington Administrative Code by the marine employees' commission pursuant to the authority of RCW 47.64.280 and chapter 34.05 RCW, to promulgate comprehensive and uniform rules for practice and procedure before the commission. The provisions of chapter 1-08 WAC shall not be applicable to the proceedings before the commission. This chapter sets forth general rules applicable to all types of proceedings

before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC which contains rules promulgated by the chief administrative law judge governing the conduct of adjudicative proceedings under chapters 316-25, 316-35, 316-45, 316-55, 316-65, and 316-75 WAC, except;

(a) WAC 10-08-035, which is supplanted by detailed requirements in WAC 316-25-070, 316-25-090, 316-35-050, 316-45-050, 316-65-050, and 316-75-110;

(b) WAC 10-08-110, which is supplanted by WAC 316-02-120 through 316-02-180;

(c) WAC 10-08-120, to the extent that it is further limited by WAC 316-02-040 and 316-02-310;

(d) WAC 10-08-140, to the extent that it is further limited by WAC 316-02-040 and 316-02-310;

(e) WAC 10-08-211, which is supplanted by WAC 316-25-390, 316-25-590, 316-25-630, 316-25-670, 316-35-210, 316-35-230, 316-45-350, 316-45-370, 316-65-550, 316-65-555, and 316-75-270; and

(f) WAC 10-08-230, which is supplanted by WAC 316-02-005, 316-25-150, 316-25-230, 316-25-250, 316-25-270, 316-25-310, 316-35-070, 316-35-150, 316-45-070, 316-45-090, 316-65-515, and 316-75-210.

(2) Chapter 316-25 WAC, which contains rules relating to proceedings on petitions for investigation of questions concerning representation of ferry system employees.

(3) Chapter 316-35 WAC, which contains rules relating to proceedings on petitions for clarification of an existing ferry system employees' bargaining unit.

(4) Chapter 316-45 WAC, which contains rules relating to proceedings on complaints charging unfair labor practices in the Washington state ferry system.

(5) Chapter 316-55 WAC, which contains rules relating to the resolution of impasses occurring in ferry system collective bargaining.

(6) Chapter 316-65 WAC, which contains rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

(7) Chapter 316-75 WAC, which contains rules relating to determination of union security disputes arising between ferry system employees and employee organizations certified or recognized as their bargaining representative.

(8) Chapter 316-85 WAC, which contains rules relating to surveys of compensation, benefits, and conditions of employment required by chapter 47.64 RCW.

In the event of a conflict between general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-001, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-001, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-001, filed 3/20/84.]

#### **WAC 316-02-003 Policy—Construction—Waiver.**

The policy of the state being primarily to promote peace in labor relations in the Washington state ferry system, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the marine employees' commission and nothing in any rule shall be construed to prevent the

commission and its authorized agents from using their best efforts to adjust any labor dispute. The commission and its authorized agents may waive any requirement of the rules not specified by statute unless a party shows that it would be prejudiced by such a waiver.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-003, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-003, filed 3/20/84.]

**WAC 316-02-005 Commission policy—Labor relations.** It is the policy of the commission to promote bilateral collective bargaining negotiations between and among the Washington state ferry system management, ferry employees, and their exclusive representatives in accordance with chapter 47.64 RCW. These parties are encouraged to engage in free and open exchange of proposals and positions on all matters coming into dispute between them. To the extent that the commission and its representatives can assist in fair and harmonious informal settlements of differences, the need for more elaborate and costly adjudicative procedures under all chapters of Title 316 WAC will be diminished.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-005, filed 12/20/89, effective 1/20/90.]

**WAC 316-02-007 Definitions.** As used in Title 316 WAC, unless the context otherwise requires, the definitions in this section shall apply.

(1) "Adjudicative proceeding" means a proceeding before the commission or its designee in which an opportunity for hearing before the commission is required in the resolution of petitions for investigation of questions concerning representation of ferry system employees, resolution of petitions for clarification of an existing ferry system employee bargaining unit, complaints charging unfair labor practices in the Washington state ferry system, impasses occurring in the Washington state ferry system of collective bargaining, grievance disputes arising out of interpretation or application of a collective bargaining agreement in the Washington state ferry system, determination of union security disputes arising between Washington state ferry system employees and employee organization certified or recognized as their bargaining representatives. "Adjudicative proceeding" shall not include the process or decision making in salary surveys or other fact-finding surveys by the commission.

(2) "Collective bargaining representative" means the persons designated by the secretary of transportation and employee organizations to be the exclusive representatives during collective bargaining negotiations.

(3) "Commission" means the marine employees' commission created by RCW 47.64.280 or a majority thereof.

(4) "Department of transportation" or "department" means the department as defined in RCW 47.01.021.

(5) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

(6) "Ferry employee organization" means any labor organization recognized to represent a collective bargaining unit of ferry employees.

(7) "Ferry system management" means those management personnel of the marine transportation division of the department of transportation who have been vested with the day-to-day management responsibilities of the Washington state ferry system by the transportation commission and who are not members of a collective bargaining unit represented by a ferry employee organization.

(8) "Filing" of a petition concerning representation of employees or for clarification of a bargaining unit, a complaint charging an unfair labor practice, an impasse resolution, a request for fact-finding, a grievance and/or request for appointment of an arbitrator, assertion of a right of nonassociation, or other similar papers in matters governed by chapter 47.64 RCW, means delivery of such document to the marine employees' commission at its Olympia office.

(9) "Lockout" means the refusal of ferry system management to furnish work to ferry employees in an effort to get ferry employ organizations to make concessions during collective bargaining, grievance, or other labor relation negotiations. Curtailment of employment of ferry employees due to lack of work resulting from a strike or work stoppage, as defined in subsection (10) of this section, shall not be considered a lockout.

(10) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her willful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike.

(11) "Transportation commission" means the commission as defined in RCW 47.01.021.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-007, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-007, filed 3/20/84.]

**WAC 316-02-010 Appearance and practice before commission—Who may appear.** No person may appear in a representative capacity before the marine employees' commission or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law;

(3) A bona fide officer, employee or other authorized representative of: (a) The department of transportation, or (b) any labor or employee organization recognized, or seeking recognition, in accordance with chapter 316-25 WAC;

(4) Other persons, including but not limited to bona fide representatives of ferry users, may make presentations to the

(10/13/09)

marine employees' commission following written request approved by a majority of the commission: Provided, That only persons qualified under subsections (1), (2), and (3) of this section may take part in representation cases, unit clarifications, unfair labor practice cases, impasse resolutions, grievance handling, union security disputes, or any other technical matters involving labor relations.

Nothing in this chapter may be construed as prohibiting a ferry employee from representing himself or herself before the commission.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-010, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-010, filed 3/20/84.]

**WAC 316-02-020 Appearance and practice before commission—Standards of conduct.** Misconduct at any hearing conducted by the commission or its designee shall be ground for summary exclusion from the hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 316-02-010, shall be ground for suspension or disbarment by the commission after due notice and hearing.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-020, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-020, filed 3/20/84.]

**WAC 316-02-030 Appearance and practice before commission—Appearance by former employee of commission or former member of attorney general's staff.** No former member of the marine employees' commission, former employee of the commission or former member of the attorney general's staff shall, at any time after severing his employment with the commission or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case or proceeding which was pending before the commission during the time of his employment with the commission.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-030, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-030, filed 3/20/84.]

**WAC 316-02-040 Appearance and practice before commission—Former employee as witness.** Except upon the express written consent of the marine employees' commission, no former member of the commission, or former member of the attorney general's staff shall, at any time after severing his employment with the commission or with the attorney general, appear as a witness on behalf of any party in connection with any case or proceeding which was pending before the commission during the time of his employment with the commission.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-040, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-040, filed 3/20/84.]

**WAC 316-02-100 Service of process—Computation of time.** Unless otherwise provided in chapter 47.64 RCW, in computing any period of time prescribed by notice, the prescribed period of time shall commence on the date of receipt of such notice. In computing any other period of time allowed by chapter 47.64 RCW or other applicable statute, the day of

the act, event, or default after which the designated period of time begins to run is not 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 47.64.260. 90-01-115, § 316-02-100, filed 12/20/89, effective 1/20/90; 85-21-059 (Order 85-2), § 316-02-100, filed 10/16/85. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-100, filed 3/20/84.]

**WAC 316-02-103 Service of process—Additional time after service by mail.** Unless a party is required to do some act upon a date specified in a notice or other paper served upon him, whenever a party has the right or is required to do some act within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served on him by mail, 3 days shall be added to the prescribed period.

[Statutory Authority: RCW 47.64.260. 90-01-115, § 316-02-103, filed 12/20/89, effective 1/20/90; 85-21-059 (Order 85-2), § 316-02-103, filed 10/16/85. Statutory Authority: RCW 47.64.280. 84-07-037 (Resolution No. 84-01), § 316-02-103, filed 3/20/84.]

**WAC 316-02-105 Service of process—Extension of time.** The commission or its authorized agent may, by agreement of the parties or for good cause shown, extend any time limit prescribed or allowed by the rules of the commission. Any motion to extend any time limit shall, except for good cause shown, be made before the expiration of such time limit.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-105, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-105, filed 3/20/84.]

**WAC 316-02-110 Service of process—By whom served.** The commission shall cause to be served all orders, notices and other formal papers issued by it, together with any other papers which it is required by law or rule to serve. Every other paper shall be served by the party filing it.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-110, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-110, filed 3/20/84.]

**WAC 316-02-120 Service of process—Upon whom served.** All formal papers served by the commission or by any party shall be served upon all counsel then of record and upon all parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact. Except as specifically provided elsewhere in these rules, copies of all correspondence directed to the commission or by the commission in connection with any matter pending before the commission shall be furnished to all counsel of record and to all parties not represented by counsel.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-120, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-120, filed 3/20/84.]

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**WAC 316-02-135 Service of process—Method and completion of service on parties.** Unless otherwise provided in chapter 47.64 RCW, any notice or other paper served under this chapter shall be in writing. Service thereof is sufficient if mailed by certified mail, return receipt requested, addressed to the last known addresses of the parties or sent by electronic facsimile transmission with transaction report verification and same-day United States postal service mailing of copies. Refusal of certified mail by any party shall be considered service. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-135, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.260. 90-01-115, § 316-02-135, filed 12/20/89, effective 1/20/90; 85-21-059 (Order 85-2), § 316-02-135, filed 10/16/85.]

**WAC 316-02-150 Service of process—Filing with commission.** (1) Papers intended to be filed with the commission shall be deemed filed upon actual receipt by the commission during its regular office hours at its Olympia office.

(2) The following conditions apply for filing papers by fax:

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

(b) Papers may be filed by fax with the commission office. Filing by fax is perfected when a complete legible copy of the papers is reproduced on the commission office'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.

(c) Any papers filed by fax with the commission office 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.

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

(e) 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.

(f) The original of any papers filed by fax must be mailed to the commission office within twenty-four hours of the time that the fax was sent.

(3) Service of such shall be deemed to be incomplete if the party making the filing should subsequently fail, when requested to do so by the commission, to provide proof of service upon other parties required to be served.

(4) Filing a copy of the paper(s), together with one of the following shall constitute proof of service upon other parties:

(a) An acknowledgment of service; or

(b) A certificate that the person signing the certificate did serve the paper(s) upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, by certified mail, return receipt requested, to each party to the proceeding or to 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) Delivery of a copy thereof in person.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-150, filed 6/20/02, effective 7/21/02; 01-01-124, § 316-02-150, filed 12/19/00, effective 1/19/01. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-150, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-150, filed 3/20/84.]

**WAC 316-02-160 Service of process—Opportunity for hearing.** All hearings in contested cases shall be public. Any party to a contested case shall have the right to appear at such hearing in person, by counsel, or by other representative; and to call, examine and cross-examine witnesses; and to introduce into the record documentary or other evidence.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-160, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-160, filed 3/20/84.]

**WAC 316-02-170 Service of process—Notice of hearing.** In any contested case, all parties shall be served with a notice not less than seven days before the date set for hearing. The notice shall include:

(1) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(2) The official file or other reference number and the name of the proceeding;

(3) The name, official title, mailing address, and telephone number of the presiding officer;

(4) A statement of the time, place, and nature of the proceeding;

(5) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(6) A reference to the particular sections of the statutes and rules involved;

(7) A short and plain statement by the commission of the matters asserted;

(8) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding, or be represented therein by agent or counsel, may be held in default.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-170, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-170, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-170, filed 3/20/84.]

**WAC 316-02-180 Service of process—Continuances.** Immediately upon receipt of notice of a hearing, or as soon thereafter as circumstances necessitating a continuance come to its knowledge, any party desiring a continuance shall notify all other parties prior to filing a request for continuance with the commission. All continuance requests shall be filed in writing and shall specify, in detail, the reasons why the continuance is necessary, the position of all other parties concerning the requested continuance and suggested alternative dates for rescheduling. In passing upon a request for continuance, the commission shall consider whether the request was promptly and timely made. For good cause shown, the commission or its designated hearing officer or examiner may

grant a continuance and may at any time order a continuance on its or his own motion. During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the examiner or other officer conducting the hearing may, in his discretion, continue the hearing and fix the date for introduction of additional evidence or presentation of argument. Such oral notice shall constitute final notice of such continued hearing.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-180, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-180, filed 3/20/84.]

**WAC 316-02-200 Definition of issues—Before hearing.** In all proceedings the issues to be adjudicated shall be made initially as precise as possible, in order that the commission may proceed promptly to conduct the hearing on relevant and material matter only.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-200, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-200, filed 3/20/84.]

**WAC 316-02-210 Definition of issues—Prehearing conference authorized.** In any proceeding, the commission or its designated commissioner, upon its or his own motion or upon the motion of one of the parties or their qualified representatives, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:

(1) The simplification of issues;

(2) The necessity of amendments to the pleadings;

(3) The possibility of obtaining stipulations, admissions of facts and of documents;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the proceeding.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-210, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-210, filed 3/20/84.]

**WAC 316-02-220 Definition of issues—Record of action taken during prehearing conference.** The commission or its designated commissioner shall make an order or statement which recites the action taken at any prehearing conference, the amendments allowed to the pleadings, and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or statement shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-220, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-220, filed 3/20/84.]

**WAC 316-02-230 Summary judgment.** A summary judgment may be issued if the pleadings and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that one of the parties is entitled to a judgment as a matter of law. Motions for summary judgment made in advance of a hearing shall be filed

with the commission and served on all other parties to the proceeding.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-230, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-230, filed 3/20/84.]

**WAC 316-02-300 Subpoenas—Discovery.** (1) Pursuant to RCW 47.64.280, the commission on its own motion or at the request of the attorney of record or a party in whose behalf the witness is required to appear may subpoena any ferry employee or designated representative, or any member or representative of the department, and any witness(es).

(2) The commission on its own motion or at the request of an attorney or a party may require attendance of witnesses and the production of all pertinent records in any adjudicative proceeding. Attendance of witnesses and production of evidence may be required from any place in the state of Washington, at any designated place of hearing.

(3) Except as otherwise provided by this chapter, the hearing examiner or arbitrator may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules.

(4) Every subpoena shall identify the party causing issuance of the subpoena and shall state the name of the commission as: State of Washington, marine employees' commission; shall state 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 control at a specified time and place.

(5) Subpoenas requiring the attendance and testimony of witnesses or the production of evidence shall be issued *ex parte* to any party to an adjudicative proceeding: Provided, That no subpoena shall be issued to require the attendance and testimony of, or the production of evidence by, any member of the commission or commission staff in any proceeding before the commission. The commission or its hearing examiner or arbitrator may condition the issuance of subpoenas to parties not represented by counsel upon a showing of general relevance and reasonable scope of the testimony or evidence sought.

(a) Witnesses in an adjudicatory proceeding shall be paid the same fees and allowances in the same manner and under the same conditions, as provided for witnesses in the courts of this state by chapter 2.40 RCW and by RCW 5.56.010, except that the commission shall have the power to fix the allowance for meals and lodging in like manner as provided in RCW 5.56.010 as to courts.

(b) The person initiating an adjudicative proceeding or the party requesting issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

(6) A subpoena may be served by any suitable person over eighteen years of age by exhibiting and reading it to the witness, or by giving him or her a copy, 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 filing the subpoena and the affidavit or declaration under penalty of perjury with the commission. Failure to make proof of service does not affect the validity of the service.

(7) Any motion to quash a subpoena shall be filed and served on all parties within five days after the date of service of the subpoena and, shall be made at or before the time specified in the subpoena for compliance. The person making such motion shall give notice of the motion to the party to whom the subpoena was issued. The commission, hearing examiner or arbitrator may (a) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (b) condition denial of the motion upon just and reasonable conditions.

(8) Upon application and for good cause shown, and upon proof of service of the subpoena involved if such proof was not previously provided pursuant to WAC 316-02-340, the commission may seek judicial enforcement of subpoenas which have not been quashed pursuant to RCW 34.05.588(1).

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-300, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-300, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-300, filed 3/20/84.]

**WAC 316-02-400 Evidence—Examination of witnesses.** Witnesses in any hearing in a contested case shall be examined orally, under oath or affirmation, and shall be subject to cross-examination.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-400, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-400, filed 3/20/84.]

**WAC 316-02-410 Evidence—Application of rules of evidence.** Subject to the other provisions of these rules, the commissioner conducting the hearing shall admit all competent and relevant evidence of probative value. In passing upon the admissibility of evidence, the commissioner conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in the superior courts of the state of Washington.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-410, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-410, filed 3/20/84.]

**WAC 316-02-420 Evidence—Objections and rulings.** When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. No such objection shall be deemed waived by further participation in the hearing.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-420, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-420, filed 3/20/84.]

**WAC 316-02-440 Evidence—Official notice.** The commission or assigned commissioner may take official notice of:

- (1) Any judicially cognizable facts;
- (2) Technical facts within the commissioner's specialized knowledge; and
- (3) Codes or standards that have been so noticed.

Parties shall be notified either before or during hearing or by reference in posthearing reports or findings of the material so noticed and the sources thereof, including any specific data. They shall be afforded opportunity to contest the facts and material so noticed.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-440, filed 12/20/89, effective 1/20/90.]

**WAC 316-02-450 Evidence—Stipulations and admissions of record.** The evidence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) **Upon whom binding.** Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, or oral argument, or, is made in a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) **Withdrawal.** Any party bound by a stipulation or admission of record may, at any time prior to final decision, be permitted to withdraw the same in whole or in part by showing to the satisfaction of the commission or commissioner 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 47.64.280. 90-01-115, § 316-02-450, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-450, filed 3/20/84.]

**WAC 316-02-460 Evidence—Submission of documentary evidence.** Documentary evidence shall be submitted in duplicate. It shall be the responsibility of the party submitting documentary evidence to provide a copy thereof to each of the other parties to the proceeding not already having a copy. Upon failure of a party to comply with this rule within five days after the close of the hearing, the commission shall, upon request, make all necessary copies at a reasonable monetary charge to the party offering the document.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-460, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-460, filed 3/20/84.]

**WAC 316-02-470 Evidence—Excerpts from documentary evidence.** When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing officer or examiner and to the other parties. In the absence of a request for and a showing of cause for the admission of the entire document in evidence, only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

(10/13/09)

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-470, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-470, filed 3/20/84.]

**WAC 316-02-490 Evidence—Refusal of witness to answer.** The refusal of a witness at any hearing in a contested case to answer any question which has been ruled to be proper shall, in the discretion of the hearing officer or examiner, be ground for striking all testimony previously given by such witness on related matter.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-490, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-490, filed 3/20/84.]

**WAC 316-02-500 Declaratory rulings authorized.** As prescribed by RCW 34.05.240 any interested person may petition the commission or assigned commissioner for a declaratory order with respect to the applicability to specified circumstances only of a rule, order, or statute enforceable by the commission or designated examiner. The petition shall set forth facts and reasons on which the petitioner relies to show:

- (1) That uncertainty necessitating resolution exists;
- (2) That there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion;
- (3) That the uncertainty adversely affects the petitioner;
- (4) That the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and
- (5) That the petition complies with WAC 316-02-510.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-500, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-500, filed 3/20/84.]

**WAC 316-02-510 Declaratory orders—Petition.** Any person petitioning the commission or assigned commissioner for a declaratory order pursuant to RCW 34.05.240 and WAC 316-02-500 shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the marine employees' commission." On the left side of page below the foregoing the following caption 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."

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 the name of the other party to any collective bargaining relationship from which the issue or issues to be ruled upon arises. The third 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 prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

The original of the petition plus one copy for service on each party the petitioner seeks to have bound by any declaratory order shall be filed with the commission.

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[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-510, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-510, filed 3/20/84.]

**WAC 316-02-520 Declaratory orders—Rights and disposition.** (1) The petitioner for a declaratory order shall enjoy the same rights, privileges and expectations as in any other proceeding before the commission, except as specifically limited by WAC 316-02-500 and 316-02-510.

(2) Within fifteen days after receipt of a petition for a declaratory order, the commission or designated examiner shall give notice of the petition to all persons to whom notice is required by law or rule, and may give notice to any other person deemed desirable.

(3) Within thirty days after receipt of a petition for a declaratory order the commission or designated examiner, in writing, shall do one of the following:

(a) Enter an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings to be held no more than ninety days after receipt of the petition;

(c) Set a specified time no more than ninety days after receipt of the petition by which a declaratory order will be entered; or

(d) Decline to enter a declaratory order, stating the reasons for that action.

(4) The time limits of subsection (3)(b) and (c) of this section may be extended by the commission or designated examiner for good cause.

(5) The commission or designated examiner may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(6) A declaratory order has the same status as any other order entered in a commission or examiner adjudicative proceeding. Each declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for the conclusions.

[Statutory Authority: RCW 47.64.280. 92-22-044, § 316-02-520, filed 10/27/92, effective 11/27/92; 90-01-115, § 316-02-520, filed 12/20/89, effective 1/20/90.]

**WAC 316-02-560 Intervention and consolidation of proceedings.** (1) Motion for intervention: Any person, not a party, who desires to appear and participate in any proceeding before the commission except resolution of impasse in reaching collective bargaining agreement, may make a written motion for intervention prior to the hearing or make an oral motion for intervention at the outset of the hearing. No such motion shall be filed or made after the hearing of evidence has commenced, except for good cause shown. The motion for intervention must state the name and address of the moving party; the name, address and telephone number of its principal representative, if any; the party's interest in the proceedings; and the party's position in regard to the labor dispute.

(2) Disposition of motion for intervention: Motions for intervention shall be considered first at all hearings, or may be set for prior hearing. An opportunity shall be afforded the original parties to be heard thereon. If it appears that the

motion discloses an interest in the labor dispute or that participation by the moving party is in the public interest, the commission shall grant the motion. Thereafter, the moving party shall be a party to the proceedings with the same right to produce and cross-examine witnesses as the other parties. If it appears during the course of proceedings that an intervenor has no substantial interest therein, the commission may dismiss such intervenor.

(3) Consolidation: On its own motion or at the motion of any party, the commission may consolidate proceedings on two or more notices where the facts or principles of law are related.

(4) This general rule on intervention and consolidation of proceedings may be superseded by specific requirements in certain chapters.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-560, filed 12/20/89, effective 1/20/90.]

**WAC 316-02-600 Adjudicative proceedings (contested cases)—Exceptions.** An application for the commission to investigate, and enter an order thereon, a question concerning (1) representation of ferry system employees, (2) clarification of an existing collective bargaining unit, (3) a complaint charging an unfair labor practice, (4) a grievance based upon alleged violation of rights granted by statute, rule or collective bargaining agreement, (5) union security dispute, or (6) other ferry system labor-management relations disputes, includes an application for the commission to conduct an appropriate adjudicative proceeding whether or not the applicant, complainant, petitioner or grievant expressly requests such proceeding: Provided, That an application for nomination of mediator(s) or arbitrators of impasse(s) in interest arbitration or grievance arbitration from a panel maintained for that purpose in accordance with RCW 47.64.-210 or 47.64.240, and/or questions concerning fact-finding procedures or data shall not be deemed to be adjudicative in nature.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-600, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-600, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-600, filed 3/20/84.]

**WAC 316-02-610 Adjudicative proceedings—Commencement.** An adjudicative proceeding commences when the commission, or assigned commissioner, or the administrative assistant to the commission notifies a party that a pre-hearing conference, hearing or other stage of an adjudicative proceeding will be conducted.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-610, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-610, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-610, filed 3/20/84.]

**WAC 316-02-620 Adjudicative proceedings—Denial of application.** If the commission decides not to conduct an adjudicative proceeding in response to a complaint, petition or grievance, the commission shall serve the complainant, petitioner or grievant with a copy of its decision in writing, with a brief statement of the reason(s) for the commission's denial: Provided, That the commission shall advise said complainant, petitioner or grievant as to the appropriate

review of such denial: And further provided, That unless the complainant, petitioner or grievant files a request for review within thirty days following receipt of the denial, the denial shall be entered as an order which shall be final and binding in accordance with RCW 47.64.280.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-620, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-620, filed 12/20/89, effective 1/20/90.]

**WAC 316-02-630 Adjudicative proceedings—Commission action upon filing.** Upon receipt of an application for adjudicative proceeding under WAC 316-02-600, other than a declaratory order, the commission shall proceed as follows:

(1) Except in situations governed by subsection (2) or (3) of this section, within thirty days after receipt of the application or of the response to a timely request made by the commission under subsection (2) of this section, the commission shall commence an adjudicative proceeding in accordance with the appropriate chapter of these rules, or shall deny the application in accordance with WAC 316-02-620; or

(2) Within thirty days after receipt of the application, the commission shall notify the complainant, petitioner or grievant of any obvious errors or omissions, request any additional information the commission requires to make an initial determination scope or jurisdiction and is permitted by law to require, and shall notify said complainant, petitioner or grievant of the name, mailing address, and telephone number of an office that may be contacted regarding the application; or

(3) If the application seeks relief that is not available when the application is filed but may be available in the future, the commission may maintain the application on the commission's docket awaiting the expected availability of relief and shall notify the complainant, petitioner or grievant of the status of the application.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-630, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-630, filed 12/20/89, effective 1/20/90.]

**WAC 316-02-640 Adjudicative proceedings—Ex parte communications.** (1) Unless required for the disposition of ex parte matters specifically authorized by statute or unless necessary to procedural aspects of maintaining orderly process, neither the commission nor any commissioner nor employee of the commission may communicate, directly or indirectly, regarding any issue in an adjudicative proceeding, with any person not employed by the commission who has a direct or indirect interest in the outcome of the proceeding, without notice and opportunity for all parties to participate.

(2) Unless necessary to procedural aspects of maintaining orderly process, persons to whom the commission or commissioner may not communicate under subsection (1) of this section, may not communicate with commissioners without notice and opportunity for all parties to participate.

(3) If a commissioner receives an ex parte communication of a type that cannot properly be received, that commissioner shall promptly disclose the communication in the manner prescribed in RCW 34.05.455 (5), (6), and (7).

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-640, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-640, filed 12/20/89, effective 1/20/90.]

(10/13/09)

**WAC 316-02-650 Commission decisions in adjudicative proceedings—Form and content.** Every decision and final order shall:

(1) Be correctly captioned as to name of commission and name of proceeding;

(2) Designate all parties and counsel to the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Be accompanied by appropriate numbered findings of fact and conclusions of law;

(5) Whenever practical, the conclusions of law shall include the reason or reasons for the particular order or remedy afforded;

(6) Wherever practical, the conclusions and/or order shall be referenced to specific provisions of the law and/or regulations appropriate thereto, together with reasons and precedents relied upon to support the same.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-650, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-650, filed 12/20/89, effective 1/20/90.]

**WAC 316-02-660 Commission decisions in adjudicative proceedings—Service.** Every final order issued by the commission shall be served on each party or upon the person or organization designated by the party or by law to receive service of such papers; and a copy shall be furnished to any counsel or person appearing for a party in a representative capacity.

[Statutory Authority: RCW 34.05.230. 02-14-013, § 316-02-660, filed 6/20/02, effective 7/21/02. Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-660, filed 12/20/89, effective 1/20/90.]

**WAC 316-02-700 Commission structure.** (1) The marine employees' commission, its staff and/or any designated representative maintains an impartial role in all proceedings involving the Washington state ferry system, its employees and their representatives, ferry users, and the general public.

(2) The commission consists of three members, appointed by the governor with the advice and consent of the senate: One member appointed from labor, one member from industry and one public member who has significant knowledge of maritime affairs and who is chairman of the commission. The commission reserves unto itself all policy making functions. The members serve on a part-time basis. The commission may preside over adjudicative proceedings or may designate one of its members to preside. In the event that a single commissioner or other person acts as presiding officer, the commission is the appellate tribunal. Orders of the commission are final and binding upon the parties in accordance with RCW 47.64.280.

(3) The administrative assistant appointed by the commission is the agency manager with authority to act in administrative and personnel matters. Authority is delegated to the administrative assistant to investigate complaints, conduct such hearings as permitted by statute and rule, conduct salary surveys, conduct employee representation elections, and generally act as the representative of and for the part-time commission.

[Statutory Authority: RCW 47.64.280. 90-01-115, § 316-02-700, filed 12/20/89, effective 1/20/90.]

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**WAC 316-02-800 Commission records—Public access.** The commission will maintain for public inspection:

(1) An index to all proceedings filed with and processed by the commission;

(2) A docket for each proceeding filed with and processed by the commission showing the actions taken on and the final resolution of each such proceeding;

(3) A schedule of hearing dates assigned in particular cases; and

(4) The files for all proceedings, including all documents filed with the commission in the particular case, except materials held in confidence as provided in subsection (10) of this section.

(5) Public records availability. All public records of the commission, unless exempt from disclosure under chapter 42.17, 42.30, or 42.56 RCW, shall be available for public inspection and copying in the commission office from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays and during commission meetings.

(6) Public records officer. The commission's public records shall be in the charge of the public records officer designated by the chair. The public records officer shall be responsible for implementing the commission's rules and regulations regarding release of public records.

(7) Public records requests. Any member of the public may examine public records of the commission by making a request in writing to the public records officer. Requestors are encouraged to use the form provided by the commission which is available by U.S. mail, fax, e-mail, or on the agency web site. The form includes:

(a) Name of the person requesting the record;

(b) Time of day and calendar date of the request;

(c) The public records being requested;

(d) If the matter requested is referenced within the current case index maintained by the public records officer, a reference to the requested record as it is described in such current index; and

(e) If the requested matter is not identifiable by reference to the current index, an appropriate description of the request is requested.

The public records officer shall provide an initial response within five business days. If he or she finds that the requested public records should not be disclosed for a reason permissible under chapter 42.17, 42.30, or 42.56 RCW, the requestor will be notified.

(8) Copying costs. No fees shall be charged for the inspection of public records. Requestors may put a Post-it® Note on to identify the pages the requestor wants copied and staff will make the copies. Public records of the commission may be copied only on the copying machine of the commission by staff. The commission shall charge fifteen cents per page for providing copies of public records; fees will be waived for fewer than twenty pages. This charge is the amount necessary to reimburse the commission for its actual costs related to such copying. There will be no charge for public records copied onto a compact disc.

(9) Exemptions. The public records officer may determine that all or a portion of a public record is exempt under the provisions of chapter 42.17, 42.30, or 42.56 RCW. As outlined in RCW 42.17.260(1) and 42.17.310(2), the public

records officer may redact (delete) portions of the public records that are exempt from disclosure.

(10) Confidentiality. The commission, in order to protect the privacy of individual employees and in order to respect the confidential nature of the mediation process and other labor-management relations processes, shall not permit the disclosure to any person of:

(a) Any evidence filed as a showing of interest in support of a representation petition or motion for intervention; or

(b) Any notes and memoranda made by any member of the commission or its staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute; or

(c) Any other documents or materials related to mediation other than scheduling information.

Other specifically exempt records are listed in WAC 316-85-020.

(11) Review of denials of public records requests. Any person objecting to a denial of a request for public records may submit a written request for review to the commission specifically referring to the denial and containing a brief statement that gives reasons for reconsideration of the denial. Upon receiving the written request for review, the chairperson will review the denial and issue a written decision within two business days of receiving the request for review. This written decision regarding the request for review shall be the final action by the agency.

(12) Protection of public records. Records are available for inspection and copying at the location and during office hours listed above and then only in the presence of an authorized staff person of the commission and with the aid and assistance of such staff person.

The following guidelines must be complied with while inspecting public records:

(a) No public record may be removed from the agency's premises.

(b) A designated department employee must be present during the inspection of a public record.

(c) A public record may not be marked or defaced in any manner during inspection.

(d) Public records may not be dismantled which are maintained in a file or jacket, or in chronological or other filing order, or those records which, if lost or destroyed, would constitute excessive interference with the department's essential functions.

(e) Access to file cabinets, shelves, vaults, or other storage areas is restricted to department personnel, unless other arrangements are made with the public records officer or designee.

(f) Staff members will not allow records to be inspected or copied by anyone who is intoxicated, violent, abusive, threatening, or otherwise disruptive. Anyone who displays these characteristics during a records inspection may have the inspection terminated by department staff.

(13) Records index. The staff of the commission shall make available to all persons documents which provide identifying information as to the following records issued, adopted, or promulgated by the commission. The commission will maintain for public inspection:

(a) An index to all proceedings filed with and processed by the commission;

(b) A docket for each proceeding filed with and processed by the commission showing the actions taken on and the final resolution of each such proceeding;

(c) A schedule of hearing dates assigned in particular cases; and

(d) The files for all proceedings, including all documents filed with the commission in the particular case, except materials held in confidence as provided in WAC 316-02-800(10).

[Statutory Authority: RCW 34.05.230, 09-21-035, § 316-02-800, filed 10/13/09, effective 11/13/09. Statutory Authority: RCW 47.64.280, 90-01-115, § 316-02-800, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-800, filed 3/20/84.]

**WAC 316-02-820 Commission offices.** The commission maintains its office at Evergreen Plaza Building, Suite 104, 711 Capitol Way South, P.O. Box 40902, Olympia, Washington 98504-0902. The telephone number is (360) 586-6354, the fax number is (360) 586-0820, the e-mail address is mec@olywa.net, and the internet address is <http://www.marineempcom.org>.

[Statutory Authority: RCW 34.05.230, 02-14-013, § 316-02-820, filed 6/20/02, effective 7/21/02; 01-01-124, § 316-02-820, filed 12/19/00, effective 1/19/01. Statutory Authority: RCW 47.64.280, 92-22-044, § 316-02-820, filed 10/27/92, effective 11/27/92; 90-01-115, § 316-02-820, filed 12/20/89, effective 1/20/90. Statutory Authority: RCW 47.64.260 and chapter 47.64 RCW, 88-10-019 (Order 88-1), § 316-02-820, filed 4/29/88. Statutory Authority: RCW 47.64.280, 84-07-037 (Resolution No. 84-01), § 316-02-820, filed 3/20/84.]

**WAC 316-02-900 Petitions for rule making—Who may petition.** Any interested person may petition the commission requesting the promulgation, amendment, or repeal of any rule.

[Statutory Authority: RCW 47.64.280, 90-01-115, § 316-02-900, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-900, filed 3/20/84.]

**WAC 316-02-910 Petitions for rule making—Form.** Any interested person petitioning the commission requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

At the top of the page shall appear the wording "Before the marine employees' commission." 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 (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the words "petition for rule making."

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 petitioner seeks the promulgation of new rule or rules, or amendment or repeal of 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 commission 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.

(10/13/09)

Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and three legible copies of the petition shall be filed with the commission.

[Statutory Authority: RCW 47.64.280, 90-01-115, § 316-02-910, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-910, filed 3/20/84.]

**WAC 316-02-920 Petitions for rule making—Commission must consider.** Each petition shall be considered by the commission. The commission may, at its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule.

[Statutory Authority: RCW 47.64.280, 90-01-115, § 316-02-920, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-920, filed 3/20/84.]

**WAC 316-02-930 Petitions for rule making—Notice of disposition.** The commission shall notify the petitioning party within a reasonable time of the disposition, if any, of the petition. If the commission denies the petition, the denial shall be served upon the petitioner.

[Statutory Authority: RCW 47.64.280, 90-01-115, § 316-02-930, filed 12/20/89, effective 1/20/90; 84-07-037 (Resolution No. 84-01), § 316-02-930, filed 3/20/84.]