

Chapter 332-08 WAC

PRACTICE AND PROCEDURE

WAC

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332-08-010	Appearance and practice before agency—Who may appear. [Regulation .08.010, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-020	Appearance and practice before agency—Appearance in certain proceedings may be limited to attorneys. [Regulation .08.020, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-025	Inapplicability to proprietary decisions. [Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-025, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.
332-08-040	Appearance and practice before agency—Standards of ethical conduct. [Regulation .08.040, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-050	Appearance and practice before agency—Appearance by former employee of department or former member of the attorney general's staff. [Regulation 08.050, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-060	Appearance and practice before agency—Former employee as expert witness. [Regulation .08.060, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed

	6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-230	Depositions and interrogatories in contested cases—Right to take. [Regulation .08.230, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-070	Computation of time. [Regulation .08.070, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).		
332-08-080	Notice and opportunity for hearing in contested cases. [Regulation .08.080, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-240	Depositions and interrogatories in contested cases—Scope. [Regulation .08.240, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-090	Service of process—By whom served. [Regulation .08.090, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-250	Depositions and interrogatories in contested cases—Officer before whom taken. [Regulation .08.250, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-100	Service of process—Upon whom served. [Regulation .08.100, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-260	Depositions and interrogatories in contested cases—Authorization. [Regulation .08.260, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-105	Adjudicative proceedings—Application. [Statutory Authority: RCW 34.05.220 (1)(a), 91-13-059 (Order 573), § 332-08-105, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.	332-08-270	Depositions and interrogatories in contested cases—Protection of parties and deponents. [Regulation .08.270, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-110	Service of process—Service upon parties. [Regulation .08.110, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-280	Depositions and interrogatories in contested cases—Oral examination and cross-examination. [Regulation .08.280, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-115	Application for adjudicative proceeding—Time limit. [Statutory Authority: RCW 34.05.220 (1)(a), 91-13-059 (Order 573), § 332-08-115, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.	332-08-290	Depositions and interrogatories in contested cases—Recordation. [Regulation .08.290, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-120	Service of process—Method of service. [Regulation .08.120, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-300	Depositions and interrogatories in contested cases—Signing attestation and return. [Regulation .08.300, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-125	Application for adjudicative proceeding—Place of filing. [Statutory Authority: RCW 34.05.220 (1)(a), 92-20-058 (Order 604), § 332-08-125, filed 10/2/92, effective 11/2/92; 92-01-027 (Order 587), § 332-08-125, filed 12/6/91, effective 1/6/92; 91-13-059 (Order 573), § 332-08-125, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.	332-08-305	Exhibits. [Statutory Authority: RCW 34.05.220 (1)(a), 91-13-059 (Order 573), § 332-08-305, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.
332-08-130	Service of process—When service complete. [Regulation .08.130, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-310	Depositions and interrogatories in contested cases—Use and effect. [Regulation .08.310, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-140	Service of process—Filing with agency. [Regulation .08.140, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-315	Burden of proof. [Statutory Authority: RCW 34.05.220 (1)(a), 92-20-058 (Order 604), § 332-08-315, filed 10/2/92, effective 11/2/92; 92-01-027 (Order 587), § 332-08-315, filed 12/6/91, effective 1/6/92; 91-13-059 (Order 573), § 332-08-315, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.
332-08-150	Subpoenas where provided by law—Form. [Regulation .08.150, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-320	Depositions and interrogatories in contested cases—Fees of officers and deponents. [Regulation .08.320, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-160	Subpoenas where provided by law—Issuance to parties. [Regulation .08.160, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-330	Depositions upon interrogatories—Submission of interrogatories. [Regulation .08.330, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-170	Subpoenas where provided by law—Service. [Regulation .08.170, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-340	Depositions upon interrogatories—Interrogation. [Regulation .08.340, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-180	Subpoenas where provided by law—Fees. [Regulation .08.180, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-350	Depositions upon interrogatories—Attestation and return. [Regulation .08.350, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-190	Subpoenas where provided by law—Proof of service. [Regulation .08.190, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-360	Depositions upon interrogatories—Provisions of deposition rule. [Regulation .08.360, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-200	Subpoenas where provided by law—Quashing. [Regulation .08.200, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-370	Official notice—Matters of law. [Regulation .08.370, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-210	Subpoenas where provided by law—Enforcement. [Regulation .08.210, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).	332-08-380	Official notice—Material facts. [Regulation .08.380, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
332-08-220	Subpoenas where provided by law—Geographical scope. [Regulation .08.220, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).		

- 332-08-390 Presumptions. [Regulation 08.390, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-400 Stipulations and admissions of record. [Regulation .08.400, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-405 Petitions for review of initial orders—Final orders. [Statutory Authority: RCW 34.05.220 (1)(a). 92-20-058 (Order 604), § 332-08-405, filed 10/2/92, effective 11/2/92; 91-13-059 (Order 573), § 332-08-405, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.
- 332-08-410 Form and content of decisions in contested cases. [Regulation .08.410, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-420 Definition of issues before hearing. [Regulation .08.420, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-430 Prehearing conference rule. [Regulation .08.430, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-440 Prehearing conference rule—Record of. [Regulation .08.440, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-450 Submission of documentary evidence in advance. [Regulation .08.450, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-460 Excerpts from documentary evidence. [Regulation .08.460, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-470 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. [Regulation .08.470, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-480 Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements. [Regulation .08.480, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-490 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. [Regulation .08.490, filed 2/7/61.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.
- 332-08-500 Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 332-08-470 or 332-08-480. [Regulation .08.500, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-505 Brief adjudicative proceedings—Matters to which subject. [Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-505, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.
- 332-08-510 Continuances. [Regulation .08.510, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-515 Brief adjudicative proceedings—Application procedure. [Statutory Authority: RCW 34.05.220 (1)(a). 92-20-058 (Order 604), § 332-08-515, filed 10/2/92, effective 11/2/92; 92-01-027 (Order 587), § 332-08-515, filed 12/6/91, effective 1/6/92; 91-13-059 (Order 573), § 332-08-515, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.
- 332-08-520 Rules of evidence—Admissibility criteria. [Regulation .08.520, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-525 Brief adjudicative proceedings—Hearing. [Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-525, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.
- 332-08-530 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [Regulation 08.530, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-535 Brief adjudicative proceedings—Decision. [Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-535, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.
- 332-08-540 Petitions for rule making, amendment, or repeal—Who may petition. [Regulation .08.540, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-545 Brief adjudicative proceedings—Review. [Statutory Authority: RCW 34.05.220 (1)(a). 92-20-058 (Order 604), § 332-08-545, filed 10/2/92, effective 11/2/92; 91-13-059 (Order 573), § 332-08-545, filed 6/17/91, effective 7/18/91.] Repealed by 08-16-095, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220.
- 332-08-550 Petitions for rule making, amendment, or repeal—Requisites. [Regulation .08.550, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-560 Petitions for rule making, amendment, or repeal—Agency must consider. [Regulation .08.560, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-570 Petitions for rule making, amendment, or repeal—Notice of disposition. [Regulation .08.570, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-580 Declaratory rulings. [Regulation .08.580, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).
- 332-08-590 Forms. [Regulation 08.590, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

PART I PURPOSE AND AUTHORITY—GENERAL PROVISIONS

WAC 332-08-001 Purpose and scope. (1) **What do these rules do?** The department's practices and procedures rules, set out in this chapter, govern the method, time and place for challenging department actions and the procedures for conducting an adjudicative proceeding of that challenge.

(2) **Do these rules govern my issue?** Generally, these rules apply if you are challenging a department determination regarding:

- (a) Derelict vessels (chapter 79.100 RCW);
- (b) Forest practices notices to comply (chapter 76.09 RCW);
- (c) Oil and gas drilling (chapter 78.52 RCW);
- (d) Surface mining (chapter 78.44 RCW);
- (e) Other department determinations that are not proprietary and do not fall within the exclusive jurisdiction of separate quasi-judicial boards, such as the forest practices appeals board.

(3) **How are these rules organized?** This chapter contains provisions for all reviews (adjudicative proceedings) heard by the department or the office of administrative hearings on the department's behalf. WAC 332-08-101 through 332-08-610 contain specific procedures for adjudicative pro-

ceedings and are divided by subject matter. Subject-specific sections apply to the following topics:

- (a) Derelict vessels—Part II;
- (b) Forest practices notices to comply—Part III;
- (c) Oil and gas drilling—Part IV;
- (d) Surface mining—Part V; and
- (e) Other department determinations that are not proprietary and fall within the direct review authority of the department—Part VI.

(4) When reviewing these rules, one should review the general provisions under Part I and the specific rules contained in Parts II through VI that relate to the applicable subject matter.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-001, filed 8/5/08, effective 9/5/08.]

WAC 332-08-002 Proprietary decisions. Is review under the Administrative Procedure Act available for proprietary decisions? No. This section, concerning administrative review, is not available for proprietary decisions. Under RCW 34.05.010(3), sales, leases, contracts, or other proprietary decisions in the management of public lands or real property interests are not agency actions and are not subject to adjudicative proceedings under the Administrative Procedure Act (APA). Accordingly, the department will not commence APA-based adjudicative proceedings for proprietary decisions, including, but not limited to, actions taken under the terms of geoduck harvesting agreements, aquatic lands leases, easements, rights of way, revocation to install residential dock and residential mooring buoys, purchases or leases of public lands or any valuable materials thereon, permits to use state-owned land and resources, timber sale contracts, mineral prospecting leases, mining contracts, or other proprietary agreements to which the department is a party. Nonjudicial review of these actions may be available or required under the terms of the specific agreement or related laws.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-002, filed 8/5/08, effective 9/5/08.]

WAC 332-08-003 Exhaustion of administrative remedies. What happens if I don't file a timely challenge of a department action? You may be precluded from filing any challenge if you do not timely file your challenge with the department under these rules.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-003, filed 8/5/08, effective 9/5/08.]

WAC 332-08-015 Definitions. (1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. This definition includes an agency's or quasi-judicial board's consideration of a challenge through a brief adjudicative proceeding, formal adjudicative proceeding, petition for administrative review of an initial order, or a request for reconsideration.

(2) "BAP" means "brief adjudicative proceeding" as described in RCW 34.05.482 through 34.05.494.

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(3) "Department" means the department of natural resources.

(4) "Filing a document that is required to be filed with an agency" means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head. A document is not delivered until it is received by the intended recipient.

(5) "Formal adjudicative proceeding" refers to the adjudicative process described in RCW 34.05.413 through 34.05.476.

(6) "Service" means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail.

(7) For adjudicative hearings before the department, including hearings conducted by the office of administrative hearings, words used in this chapter have the meaning stated in RCW 34.05.010.

(8) For adjudicative hearings before the pollution control hearings board, terms used in this chapter relating to practice and procedure have the meaning stated in the pollution control hearings board's practices and procedures rules, chapter 371-08 WAC, except that "department" means the department of natural resources.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-015, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-015, filed 6/17/91, effective 7/18/91.]

WAC 332-08-022 Incorporation of model rules of procedure. (1) **Formal adjudicative proceedings:** The department incorporates by reference the model rules of procedure, as now or as hereinafter amended, for the department's adjudicative proceedings conducted under RCW 34.05.413 through 34.05.479. The model rules of procedure are those that are adopted by the chief administrative law judge pursuant to RCW 34.05.250. The procedures are contained in chapter 10-08 WAC.

(a) Other rules adopted in this chapter supplement the model rules of procedure.

(b) The rules of this chapter supersede the procedures of chapter 10-08 WAC where there is a conflict.

(2) **Brief adjudicative proceedings.** The department does not incorporate by reference the model rules of procedure for BAPs, which are conducted under less formal requirements provided in RCW 34.05.482 through 34.05.494.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-022, filed 8/5/08, effective 9/5/08.]

WAC 332-08-030 Department settlement authority. May the department settle a dispute without an adjudicative proceeding? The department may informally settle disputes. To explore the possibility of settlement, you should consider discussing settlement options with the department. Generally, settlement negotiations will not be admissible as evidence to show wrongdoing pursuant to Evidence Rule 408. Settlement negotiations do not alter the timelines associated with adjudicative proceeding or judicial appeals.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-030, filed 8/5/08, effective 9/5/08.]

WAC 332-08-035 Standard of proof. What is the standard of proof? Unless the rules or law requires otherwise, the standard of proof in an adjudicative proceeding is a preponderance of the evidence. Preponderance of the evidence means the evidence as a whole makes a fact more probable than not.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-035, filed 8/5/08, effective 9/5/08.]

WAC 332-08-045 De novo review. What does a presiding officer consider? The presiding officer will conduct a de novo review of the department's action(s) in reaching its initial order. New facts and law may be presented to the presiding officer to support or contest a department action in the course of an adjudicative proceeding, except to the extent that new facts or argument are limited by other laws and rules.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-045, filed 8/5/08, effective 9/5/08.]

WAC 332-08-055 Discovery. What limits apply to discovery in adjudicative proceedings being conducted by the department? Discovery in any adjudicative proceeding must comply with Civil Rule (CR) 26 through CR 36 unless otherwise agreed by the parties or ordered by the presiding officer.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-055, filed 8/5/08, effective 9/5/08.]

WAC 332-08-065 Exhibits. How may exhibits be presented? Any party intending to offer documentary evidence during the hearing must prepare a minimum of two copies of each document to be offered, and must give one complete copy to each of the other parties of record no later than the date set for the hearing. The presiding officer may in her/his discretion order different requirements so long as consistent with the parties' rights. The presiding officer may exclude from evidence documents that fail to conform to his/her order or this rule unless the offering party shows good cause for the failure.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-065, filed 8/5/08, effective 9/5/08.]

WAC 332-08-075 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. May the parties access the data underlying expert or opinion testimony? The presiding officer or other appropriate officer, in her/his discretion but consistent with the rights of the parties, may cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying expert or opinion testimony including testimony based on economic and statistical data. Wherever practicable, she/he will restrict to a minimum the placing of such data in the record.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-075, filed 8/5/08, effective 9/5/08.]

PART II PROVISIONS RELATING TO DEPARTMENT

(8/5/08)

ADJUDICATIVE PROCEEDINGS FOR DERELICT AND ABANDONED VESSEL ACTIONS

WAC 332-08-101 Applicability to department actions under the Derelict and Abandoned Vessel Act, chapter 79.100 RCW. When is this chapter applicable to department actions relating to the Derelict and Abandoned Vessel Act? This chapter applies when a challenge to the action of a state agency acting as an authorized public entity is filed with the department under the Derelict and Abandoned Vessel Act as provided in RCW 79.100.120 (2)(a).

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-101, filed 8/5/08, effective 9/5/08.]

WAC 332-08-102 Derelict and abandoned vessel—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

- (1) Be in writing;
- (2) Be signed by the applicant or the applicant's representative;
- (3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and
- (4) Include a copy of the department's written action that is the subject of the appeal.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-102, filed 8/5/08, effective 9/5/08.]

WAC 332-08-111 Derelict and abandoned vessel—Appeal deadline. When must my appeal be filed? An application for an adjudicative proceeding regarding an agency action under chapter 79.100 RCW can be filed with the department as soon as the department issues its notice of its intent to take custody, but the application must be filed no later than twenty days after the date the authorized public entity took custody of the vessel, or if the vessel was redeemed before the authorized public entity took custody, no later than twenty days after the date of redemption.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-111, filed 8/5/08, effective 9/5/08.]

WAC 332-08-121 Derelict and abandoned vessel—Filing location and presiding officer. (1) Where must my appeal be filed? An application for adjudicative proceeding concerning a decision to take temporary possession or custody of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW must be filed at the following address:

Department of Natural Resources
Aquatic Resources Division
Derelict Vessel Removal Program
P.O. Box 47027
Olympia, WA 98504-7027

(2) **Who may serve as the presiding officer?** Adjudicative proceedings governed by subsection (1) of this section will be initially decided through the office of administrative hearings unless the commissioner of public lands decides that he/she will enter a decision.

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[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-121, filed 8/5/08, effective 9/5/08.]

WAC 332-08-135 Derelict and abandoned vessel—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the burden of proof in adjudicative proceedings pursuant to RCW 34.05.413 through 34.05.476 shall be on the department in proceedings concerning the decision to take custody or temporary possession of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-135, filed 8/5/08, effective 9/5/08.]

WAC 332-08-145 Derelict and abandoned vessel—Summary judgment. May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any prehearing order. 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 34.05.220. 08-16-095, § 332-08-145, filed 8/5/08, effective 9/5/08.]

WAC 332-08-155 Derelict and abandoned vessel—Administrative review of initial orders. (1) How may I obtain review of an initial order?

(a) Initial orders in all adjudicative proceedings relating to a decision to take temporary possession or custody of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(b) A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(2) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the policy director or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(3) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(4) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before

the tenth business day after the date the petition for administrative review was served on the party.

(b) If a reply is filed, a copy must be served on all parties or their representatives at the time the reply is filed.

(5) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in support of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(6) **May the parties offer new evidence on review?**

The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-155, filed 8/5/08, effective 9/5/08.]

WAC 332-08-165 Derelict and abandoned vessel—Petition for reconsideration of a final order. May I seek further agency review of the agency's final order?

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall

be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section, is not subject to judicial review.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-165, filed 8/5/08, effective 9/5/08.]

PART III PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR FOREST PRACTICES, CHAPTER 76.09 RCW

WAC 332-08-201 Applicability to department actions under forest practices laws and rules. When is this chapter applicable to the department's forest practices actions? This chapter applies to challenges of notices to comply that the department issues under chapter 76.09 RCW (Forest Practices Act) and chapter 222-46 WAC. These challenges are initially reviewed through brief adjudicative proceedings (BAPs). Other department actions regarding forest practices, including appeals from department BAP actions on notices to comply, are generally subject to review by the forest practices appeals board under chapter 223-08 WAC.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-201, filed 8/5/08, effective 9/5/08.]

WAC 332-08-205 Forest practices—Statutes for brief adjudicative proceedings (BAPs) for notices to comply. What statutes apply to brief adjudicative proceedings (BAPs) for notices to comply? RCW 34.05.482 through 34.05.494 apply to BAPs reviewing forest practices notices to comply.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-205, filed 8/5/08, effective 9/5/08.]

WAC 332-08-215 Forest practices—Appeal of notice to comply—BAP. How do I appeal a notice to comply?

(1) An application for a BAP must be written, and must specify the factual basis for appeal and the issue to be adjudicated in the proceeding.

(2) A copy of the department's written action that is the subject of the appeal must be attached to the application for an adjudicative proceeding.

(3) An application for a BAP concerning a forest practices notice to comply must be filed within fifteen days after the date of service of the notice to comply. The application must be filed with the resource protection and services assistant region manager (RP&S Asst. Reg. Mgr) at the following addresses:

Northwest Region RP&S Asst. Reg. Mgr 919 N Township St Sedro-Woolley, WA 98284	Olympic Region RP&S Asst. Reg. Mgr 411 Tillicum Lane Forks, WA 98331
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(8/5/08)

Pacific Cascade Region
RP&S Asst. Reg. Mgr
601 Bond Rd
Castle Rock, WA 98611
Southeast Region
RP&S Asst. Reg. Mgr
713 Bowers Rd
Ellensburg, WA 98926

South Puget Sound Region
RP&S Asst. Reg. Mgr
950 Farman Ave. N
Enumclaw, WA 98022
Northeast Region
RP&S Asst. Reg. Mgr
P.O. Box 190
Colville, WA 99114

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-215, filed 8/5/08, effective 9/5/08.]

WAC 332-08-225 Forest practices—BAP presiding officer. Who is the decision maker for a BAP? The presiding officer shall be a department region manager or resource protection and services assistant region manager unless otherwise designated by the commissioner of public lands.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-225, filed 8/5/08, effective 9/5/08.]

WAC 332-08-235 Forest practices—BAP scheduling. When will a BAP hearing occur?

(1) The department shall schedule a hearing for a date not more than twenty days after receiving an application for a BAP on a forest practices notice to comply.

(2) The applicant may waive the requirement that a hearing be held within twenty days.

(3) Subject to the approval of the presiding officer, a continuance of any hearing date may be made by agreement of the parties. The presiding officer will provide written documentation to all parties of their decision related to request for continuances.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-235, filed 8/5/08, effective 9/5/08.]

WAC 332-08-245 Forest practices—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the department shall have the burden of proof to support its issuance of a forest practices notice to comply.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-245, filed 8/5/08, effective 9/5/08.]

WAC 332-08-255 Forest practices—Timing of BAP decision. When will a BAP decision be made? Within ten days of completing the BAP hearing on a forest practices notice to comply, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by the recipient of the notice to comply.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-255, filed 8/5/08, effective 9/5/08.]

WAC 332-08-265 Forest practices—Appeal of BAP decision. (1) How do I administratively appeal a BAP decision? The operator, forest land owner, or timber owner subject to a final order of the department on a forest practices notice to comply may, within thirty days from the date of the order, appeal to the forest practices appeals board.

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(2) **Who reviews the BAP decision?** The forest practices appeals board will conduct the review. The provisions of chapter 223-08 WAC govern such appeals.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-265, filed 8/5/08, effective 9/5/08.]

**PART IV
PROVISIONS RELATING TO DEPARTMENT
ADJUDICATIVE PROCEEDINGS FOR OIL AND GAS
DRILLING, CHAPTER 78.52 RCW**

WAC 332-08-301 Oil and gas drilling—Department of natural resources replaces the oil and gas conservation committee. Who replaced the oil and gas conservation committee? The department of natural resources has replaced the Washington oil and gas conservation committee in administering chapter 78.52 RCW and the oil and gas rules. Appeals of department determinations regarding chapter 78.52 RCW and the implementing rules will be governed by the department's practices and procedures rules in Part IV of this chapter and the Administrative Procedure Act, chapter 34.05 RCW.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-301, filed 8/5/08, effective 9/5/08.]

WAC 332-08-311 Applicability to department actions under the oil and gas laws and rules. When is this chapter applicable to department actions relating to the Oil and Gas Conservation Act (chapter 78.52 RCW)? This chapter applies when a challenge is filed against a department action under the Oil and Gas Conservation Act.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-311, filed 8/5/08, effective 9/5/08.]

WAC 332-08-325 Oil and gas drilling—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

- (1) Be in writing;
- (2) Be signed by the applicant or the applicant's representative;
- (3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and
- (4) Include a copy of the department's written determination that is the subject of the appeal.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-325, filed 8/5/08, effective 9/5/08.]

WAC 332-08-335 Oil and gas drilling—Appeal deadline. When must my appeal be filed? An appeal of a department suspension must be filed within fifteen days. Appeals of any other determination regarding oil and gas issues, chapter 78.52 RCW, must be filed within thirty days of the department's determination.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-335, filed 8/5/08, effective 9/5/08.]

WAC 332-08-345 Oil and gas drilling—Filing location and presiding officer. (1) Where must my appeal be filed? Applications for adjudicative proceedings regarding

department determinations under the Oil and Gas Conservation Act, chapter 78.52 RCW must be filed with:

Oil and Gas Supervisor
Division of Geology and Earth Resources
Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

(2) **Who considers my appeal?** Adjudicative proceedings governed by this section will be initially decided through the office of administrative hearings unless the commissioner of public lands decides that he/she will enter a decision.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-345, filed 8/5/08, effective 9/5/08.]

WAC 332-08-355 Oil and gas drilling—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the burden of proof in adjudicative proceedings relating to department determinations under the Oil and Gas Conservation Act, chapter 78.52 RCW, shall be:

(1) On a person challenging the department's decision approving or disapproving an application for an oil and gas permit or permit renewal under chapter 78.52 RCW;

(2) On a person seeking the imposition of any other order of the department; and

(3) On the department to support an enforcement action, such as a suspension, civil penalty, or cancellation of the permit.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-355, filed 8/5/08, effective 9/5/08.]

WAC 332-08-365 Oil and gas drilling—Summary judgment. May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any prehearing order. 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 34.05.220. 08-16-095, § 332-08-365, filed 8/5/08, effective 9/5/08.]

WAC 332-08-375 Oil and gas drilling—Administrative review of initial orders. (1) How may I obtain review of an initial order?

(a) Initial orders in all adjudicative proceedings relating to department actions under the Oil and Gas Conservation Act, chapter 78.52 RCW, shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(b) A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(2) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(3) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(4) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) If a reply is filed, a copy must be served on all parties or their representatives at the time the reply is filed.

(5) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in support of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(6) **May the parties offer new evidence on review?**

The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-375, filed 8/5/08, effective 9/5/08.]

WAC 332-08-385 Oil and gas drilling—Petition for reconsideration of final order. May I seek further agency review of the agency's final order?

(8/5/08)

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section, is not subject to judicial review.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-385, filed 8/5/08, effective 9/5/08.]

PART V PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR SURFACE MINING, CHAPTER 78.44 RCW

WAC 332-08-401 Applicability to department actions under surface mining laws and rules. When is this chapter applicable to department determinations relating to the Surface Mining Act, chapter 78.44 RCW? This chapter applies when a challenge is filed against a department determination made under the Surface Mining Act, chapter 78.44 RCW.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-401, filed 8/5/08, effective 9/5/08.]

WAC 332-08-411 Surface mining—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

(1) Be in writing;

(2) Be signed by the applicant or the applicant's representative;

(3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and

(4) Include a copy of the department's written determination that is the subject of the appeal.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-411, filed 8/5/08, effective 9/5/08.]

WAC 332-08-415 Surface mining—Appeal deadline. **When must my appeal be filed?** Time limits for filing applications for adjudicative proceedings regarding department determinations under the Surface Mining Act, chapter 78.44 RCW, are as follows:

(1) Concerning approval or disapproval of a new or revised reclamation permit, a new, modified, or revised reclamation plan, or reclamation permit transfer - filed within thirty days of the department's determination;

(2) Concerning a civil penalty - served on the department and filed with the pollution control hearings board within thirty days of the date the applicant receives the civil penalty notice, or within thirty days of the date the applicant receives the department's notice of disposition of a timely application for remission or mitigation of the civil penalty under WAC 332-18-05007. The pollution control hearings board's practice and procedure rules govern these proceedings;

(3) Concerning a stop work order to rectify deficiencies, an emergency notice and order to rectify deficiencies or emergency order to suspend surface mining, a suspension order, a cancellation of a permit, an order to submit performance security, or any other appealable surface mining determination - filed within thirty days of the date of the department's service of the order or notice.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-415, filed 8/5/08, effective 9/5/08.]

WAC 332-08-421 Surface mining—Filing location and presiding officer. Where must my appeal be filed? Applications for adjudicative proceedings relating to surface mining must be filed at the location identified below for each of the issues listed below:

(1) Civil penalty.

(a) File with:

Pollution Control Hearings Board
4224 6th Avenue S.E., Building 2, Rowe Six
P.O. Box 40903
Lacey, WA 98504-0903

(b) And serve:

Assistant Division Manager
Division of Geology and Earth Resources
Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

(c) **Who considers my appeal?** The pollution control hearings board will consider properly filed appeals and enter the final decision on appeals of department civil penalties. Chapter 371-08 WAC will govern the proceedings conducted by the pollution control hearings board, except that the burden of proof and standard of proof will be as provided in this chapter.

(2) **Where must my appeal of other department surface mining actions be filed?** All other surface mining related determinations including requests for brief adjudicative proceedings governed by WAC 332-08-445:

(a) File with:

Assistant Division Manager
Division of Geology and Earth Resources

Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

(b) **Who considers my appeal?** Adjudicative proceedings governed by this subsection will be initially decided through the office of administrative hearings unless subject to a brief adjudicative proceeding through WAC 332-08-445 or the commissioner of public lands decides that he/she will enter a decision.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-421, filed 8/5/08, effective 9/5/08.]

WAC 332-08-425 Surface mining—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the burden of proof in adjudicative proceedings regarding department determinations under the surface mining act, chapter 78.44 RCW, shall be:

(1) On the person challenging the department's decision approving or disapproving an application for a new or revised surface mining reclamation permit, new modified, or revised reclamation plan or a reclamation permit transfer under chapter 78.44 RCW;

(2) On the department to show that a reclamation permit holder must submit a modified reclamation plan under RCW 78.44.151;

(3) On the department in proceedings concerning reclamation permit cancellation under chapter 78.44 RCW;

(4) On the department in civil penalty proceedings and proceedings concerning suspension orders; and

(5) On the department in proceedings concerning a declaration of abandonment.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-425, filed 8/5/08, effective 9/5/08.]

WAC 332-08-431 Surface mining—Summary judgment. May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any prehearing order. 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 34.05.220. 08-16-095, § 332-08-431, filed 8/5/08, effective 9/5/08.]

WAC 332-08-435 Surface mining—Administrative review of initial orders. (1) How may I obtain review of an initial order?

(a) Initial orders in all adjudicative proceedings relating to department actions under the Surface Mining Act, chapter 78.44 RCW, shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
 Department of Natural Resources
 P.O. Box 47001
 Olympia, WA 98504-7001

(b) A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(2) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(3) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(4) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) A copy of the reply must be served on all parties or their representatives at the time the reply is filed.

(5) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in support of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(6) **May the parties offer new evidence on review?**

The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-435, filed 8/5/08, effective 9/5/08.]

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WAC 332-08-441 Surface mining—Petition for reconsideration of final order. May I seek further agency review of the agency's final order?

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section, is not subject to judicial review.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-441, filed 8/5/08, effective 9/5/08.]

WAC 332-08-442 Surface mining—Appeal procedures for stop work orders. What appeal procedures apply to surface mining stop work orders?

The procedures in WAC 332-08-401 through 332-08-441 apply to challenges of stop work orders; however, the department shall proceed as quickly as feasible to complete the requested adjudicative proceeding for any immediately effective stop work order. DNR shall request the office of administrative hearings to quickly schedule and hear the matter. Neither the department nor the office of administrative hearings is required to review an appeal more quickly than the parties' agreed timeline. If the department issues a stop work order that is not effective immediately, the department and the office of administrative hearings may proceed on a normal schedule.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-442, filed 8/5/08, effective 9/5/08.]

WAC 332-08-443 Surface mining—Appeal procedures for emergency orders. What appeal procedures apply to emergency surface mining orders?

The procedures in WAC 332-08-401 through 332-08-441 apply to administrative appeals of emergency orders to rectify deficiencies, emergency orders to suspend surface mining, or other enforcement actions under chapter 78.44 RCW that are effective when entered and call for emergency adjudications;

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however, the department shall also follow the provisions of RCW 34.05.479. DNR shall proceed as quickly as feasible to complete any requested adjudicative proceedings regarding these enforcement actions. DNR shall request the office of administrative hearings to quickly schedule and hear these matters. Neither the department nor the office of administrative hearings is required to review an appeal more quickly than the parties' agreed timeline.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-443, filed 8/5/08, effective 9/5/08.]

WAC 332-08-445 Surface mining—Availability of brief adjudicative proceedings (BAPs). When may BAPs be used for surface mining determinations? RCW 34.05.-482 through 34.05.494 apply to BAPs under Part V. The department may use brief adjudicative proceedings (BAPs) where their use will violate no provision of law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. The department may use BAPs for matters relating to surface mining under chapter 78.44 RCW when agreed in writing by all parties and consistent with chapter 34.05 RCW, specifically RCW 34.05.482.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-445, filed 8/5/08, effective 9/5/08.]

WAC 332-08-451 Surface mining—BAP presiding officer. Who is the decisionmaker for a BAP? The presiding officer shall be the nonregulatory assistant division manager for the geology and earth resources division unless otherwise designated by the commissioner of public lands.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-451, filed 8/5/08, effective 9/5/08.]

WAC 332-08-455 Surface mining—Conversion of BAP to formal adjudicative proceeding. When may a BAP be converted to a formal proceeding? Any BAP concerning surface mining under chapter 78.44 RCW may, in the department's discretion, be converted to a formal adjudicative hearing. Formal proceedings are conducted pursuant to procedures of RCW 34.05.413 through 34.05.479 and WAC 332-08-401 through 332-08-441. The decision to convert the proceeding to a formal adjudicative proceeding may be made by either the presiding BAP officer or a geology division manager or assistant manager. Conversion to a formal adjudicative proceeding may be completed by:

- (1) The BAP officer's notification to the parties; or
- (2) A geology division manager or assistant manager's notification to the BAP officer and the parties. Upon conversion, the department shall promptly forward the application for an adjudicative proceeding to the office of administrative hearings.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-455, filed 8/5/08, effective 9/5/08.]

WAC 332-08-461 Surface mining—BAP scheduling. When will the BAP occur? The department shall serve notice of a hearing date within ten days of the parties' written agreement to use a BAP. The BAP hearing is not required to occur within this ten-day period, but should be conducted so

an initial decision can be issued within ninety days of the initial filing of the appeal.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-461, filed 8/5/08, effective 9/5/08.]

WAC 332-08-465 Surface mining—Timing of a BAP decision. When will a BAP decision be made? Within ten days of completing the BAP hearing, the presiding officer shall serve upon each party an initial order, containing a brief written statement of the department's decision and the reasons for the decision.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-465, filed 8/5/08, effective 9/5/08.]

WAC 332-08-471 Surface mining—Appeal of BAP decision and reviewing officer. (1) Who may seek review of a BAP decision? A party affected by an initial order of the department may request administrative review of the initial order. The department may review any BAP decision on its own motion.

(2) How do I appeal a BAP decision? A request for administrative review must be in writing, and must be filed at the following address within twenty-one days after the date of service of the initial order:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(3) Who else gets a copy of my petition? A copy of the petition for review must also be served on all parties or their authorized representatives at the time of filing.

(4) Who considers my appeal of the BAP decision? By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case. The provisions of WAC 10-08-211 apply to petitions for review of initial orders.

(5) When is the initial order final? The initial order becomes a final order if no timely petition for administrative review is filed.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-471, filed 8/5/08, effective 9/5/08.]

PART VI PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR OTHER DEPARTMENT DETERMINATIONS

WAC 332-08-501 Applicability to other department actions. When is this chapter applicable to department determinations that are not expressly identified in this chapter? This chapter applies when a nonproprietary department action is subject to challenge in an adjudicative proceeding.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-501, filed 8/5/08, effective 9/5/08.]

WAC 332-08-511 Other department actions—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

- (1) Be in writing;
- (2) Be signed by the applicant or the applicant's representative;
- (3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and
- (4) Include a copy of the department's written determination that is the subject of the appeal.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-511, filed 8/5/08, effective 9/5/08.]

WAC 332-08-521 Other department actions—Appeal deadline. When must I file my appeal of a department determination that is not expressly discussed in statute or rule? Applications for adjudicative proceedings by the department must be filed within thirty days of the department's action unless a different time period is provided in statute or rule.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-521, filed 8/5/08, effective 9/5/08.]

WAC 332-08-531 Other department actions—Filing location and presiding officer. (1) Where must I file my appeal of "other" department actions? Applications for adjudicative proceedings regarding department actions that are not expressly addressed in this chapter and that are not subject to review according to some other statute or rule must be filed with:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(2) **Who will consider my appeal?** Adjudicative proceedings under this subsection will be initially decided through the office of administrative hearings unless the commissioner of public lands decides that he/she will enter a decision.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-531, filed 8/5/08, effective 9/5/08.]

WAC 332-08-541 Other department actions—Burden of proof. Who has the burden of proof? For adjudicative proceedings that are not specified in other DNR practices and procedures rules, the proponent of an order shall carry the burden of proof in adjudicative proceedings unless otherwise set out in rule, ordered by the presiding officer, or required by law. The department shall have the burden to prove its enforcement actions.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-541, filed 8/5/08, effective 9/5/08.]

WAC 332-08-555 Other department actions—May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any pre-

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hearing order. 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 34.05.220. 08-16-095, § 332-08-555, filed 8/5/08, effective 9/5/08.]

WAC 332-08-575 Other department actions—Administrative review of initial orders. (1) How may I obtain review of an initial order? Initial orders in all adjudicative proceedings relating to other department actions shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(2) **Who else gets a copy of my petition?** A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(3) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(4) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(5) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) A copy of the reply must be served on all parties or their representatives at the time the reply is filed.

(6) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

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(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in support of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(7) May the parties offer new evidence on review?

The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-575, filed 8/5/08, effective 9/5/08.]

WAC 332-08-585 Other department actions—Petition for reconsideration of a final order. May I seek further agency review of the agency's final order?

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section is not subject to judicial review.

[Statutory Authority: RCW 34.05.220. 08-16-095, § 332-08-585, filed 8/5/08, effective 9/5/08.]