

# Chapter 468-10 WAC

## PRACTICE AND PROCEDURE

**WAC**

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- 468-10-080 Official notice—Material facts. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-080, filed 12/20/78. Formerly WAC 252-08-380.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-090 Stipulations and admissions of record. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-090, filed 12/20/78. Formerly WAC 252-08-400.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-100 Form and content of decisions in contested cases. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-100, filed 12/20/78. Formerly WAC 252-08-410.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

- 468-10-010 Appearance and practice before commission or secretary—Who may appear. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-010, filed 12/20/78. Formerly WAC 252-08-010.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-020 Appearance and practice before commission or secretary—Solicitation of business unethical. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-020, filed 12/20/78. Formerly WAC 252-08-030.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-030 Appearance and practice before commission or secretary—Standards of ethical conduct. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-030, filed 12/20/78. Formerly WAC 252-08-040.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-040 Appearance and practice before commission or secretary—Appearance and/or representation by former employee, attorney, or officer. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-040, filed 12/20/78. Formerly WAC 252-08-050.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-050 Computation of time. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-050, filed 12/20/78. Formerly WAC 252-08-070.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-060 Order in presenting evidence—Franchise applications. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-060, filed 12/20/78. Formerly WAC 252-08-265.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-070 Official notice—Matters of law. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-070, filed 12/20/78. Formerly WAC 252-08-370.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-110 Definition of issues before hearing. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-110, filed 12/20/78. Formerly WAC 252-08-420.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-120 Prehearing conference rule—Authorized. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-120, filed 12/20/78. Formerly WAC 252-08-430.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-130 Prehearing conference rule—Record of conference action. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-130, filed 12/20/78. Formerly WAC 252-08-440.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-140 Submission of documentary evidence in advance. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-140, filed 12/20/78. Formerly WAC 252-08-450.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-150 Excerpts from documentary evidence. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-150, filed 12/20/78. Formerly WAC 252-08-460.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-160 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-160, filed 12/20/78. Formerly WAC 252-08-470.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-170 Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-170, filed 12/20/78. Formerly WAC 252-08-480.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).
- 468-10-180 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. [Statu-

tory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-180, filed 12/20/78. Formerly WAC 252-08-490.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-190 Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 468-10-160 or 468-10-170. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-190, filed 12/20/78. Formerly WAC 252-08-500.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-200 Continuances. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-200, filed 12/20/78. Formerly WAC 252-08-510.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-210 Rules of evidence—Admissibility criteria. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-210, filed 12/20/78. Formerly WAC 252-08-520.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-220 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-220, filed 12/20/78. Formerly WAC 252-08-530.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-230 Briefs. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-230, filed 12/20/78. Formerly WAC 252-08-535.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-232 Answer. [Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 83-19-016 (Order 86), § 468-10-232, filed 9/12/83.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-234 Agency action following preparation of proposed decision. [Statutory Authority: RCW 34.04.020 and 34.04.022. WSR 83-19-016 (Order 86), § 468-10-234, filed 9/12/83.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-240 Petitions for rule making, amendment, or repeal—Who may petition. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-240, filed 12/20/78. Formerly WAC 252-08-540.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-250 Petitions for rule making, amendment, or repeal—Requisites. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-250, filed 12/20/78. Formerly WAC 252-08-550.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-260 Petitions for rule making, amendment, or repeal—Agency must consider. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-260, filed 12/20/78. Formerly WAC 252-08-560.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-270 Petitions for rule making, amendment, or repeal—Notice of disposition. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-270, filed 12/20/78. Formerly WAC 252-08-570.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-280 Petitions for rule making, amendment, or repeal—Form. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033

(DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-280, filed 12/20/78. Formerly WAC 252-08-575.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-290 Declaratory rulings—Who may petition—Action of commission or secretary. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-290, filed 12/20/78. Formerly WAC 252-08-580.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-300 Forms. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-300, filed 12/20/78. Formerly WAC 252-08-590.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-310 Stay of final decision. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-310, filed 12/20/78. Formerly WAC 252-08-595.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

468-10-320 Consideration of economic costs and impacts in rule making. [Statutory Authority: 1977 ex.s. c 151. WSR 79-01-033 (DOT Order 10 and Comm. Order 1, Resolution No. 13), § 468-10-320, filed 12/20/78. Formerly WAC 252-08-600.] Repealed by WSR 94-14-101 (Order 145), filed 7/6/94, effective 8/6/94. Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5).

**WAC 468-10-400 Application of this chapter.** This chapter applies to all adjudicative proceedings under the jurisdiction of the department of transportation or the secretary of the department of transportation: Provided, That the rules shall not apply to appeals under RCW 47.28.070 and joint hearings under RCW 47.68.290.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-400, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-410 Adoption of model rules of procedures.** Except as they may be inconsistent with the rules in this chapter, the department of transportation adopts the model rules of procedures as set forth in chapter 10-08 WAC. Where the rules of this chapter conflict with those of chapter 10-08 WAC, the rules of this chapter shall govern. Where the rules of this chapter conflict with chapter 468-100 WAC, the rules of chapter 468-100 WAC shall govern. Where the rules of chapter 468-100 WAC conflict with chapter 10-08 WAC, the rules of chapter 468-100 WAC shall govern.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-410, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-420 Definitions.** The definitions set forth in this section shall apply throughout this chapter unless the context otherwise requires:

"Department" means the Washington state department of transportation.

"Secretary" means the secretary of the Washington state department of transportation.

Where the rules of this chapter use words defined in RCW 34.05.010, those definitions shall govern.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-420, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-430 Application for adjudicative proceeding.** (1) An application for an adjudicative proceeding must be filed in writing within thirty days of the action that is the subject of the appeal.

(2) An application for an adjudicative proceeding shall specify the issue or issues to be adjudicated in the proceeding and must be signed by the applicant or the applicant's representative. The signature of an applicant or the applicant's representative constitutes a certificate by the applicant or applicant's representative that the applicant or applicant's representative has read the application; that to the best of the applicant's or applicant's representative's knowledge, information, and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication. If an application is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the applicant or applicant's representative. If an application is signed in violation of this rule, the presiding officer, upon motion or upon its own initiative, may impose upon the person who signed it, a representative party, or both, an appropriate sanction, which may include dismissal of the case.

(3) An application for an adjudicative proceeding shall be served by certified mail, registered mail, or personal service on the Office of the Secretary of the Washington State Department of Transportation, 3D25 Transportation Building, Olympia, WA 98504-7316. Service by electronic telefacsimile transmission is not allowed.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-430, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-440 Standards of ethical conduct.** All persons appearing in an adjudicative proceeding shall conform to the standards of ethical conduct required of attorneys before the courts of Washington as required by the rules of professional conduct. If any such person does not conform to such standards, the presiding officer may decline to permit such person to appear in a representative capacity in the adjudicative proceeding.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-440, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-450 Appearance and practice—Appearance and/or representation by former employee, attorney or officer.** (1) No person who has served as an officer, attorney, or employee of the department shall appear in an adjudicative proceeding or receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any adjudicative proceeding or application with respect to which such person was directly concerned and in which one personally participated during the period of her or his service or employment.

(2) No person who has served as an officer, attorney, or employee of the department shall appear, except with the permission of the secretary, as an expert witness on behalf of any party, other than the department, in an adjudicative proceeding in which she or he previously took an active part in the matter as a representative of the department.

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[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-450, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-460 Answer.** (1) When the department serves a party with a notice of hearing pursuant to RCW 34.05.413(5), the party shall file an answer stating in short plain terms his/her response or defense to the matters asserted in the notice, and shall admit or deny averments in the notice (other than statements of time, place, and nature of the proceeding). If the party is without knowledge or information to form a belief as to the truth of an averment, the party shall so state and this will have the effect of a denial. When a party intends in good faith to deny any part or qualification of an averment, she/he shall specify so much of it as is true and material and shall deny the remainder. A party may make the denials as specific denials of designated averments or paragraphs, or may generally deny all averments except those expressly admitted.

(2) In his/her answer to the notice, a party shall set forth affirmatively any matter constituting an avoidance or affirmative defense. Defenses not pleaded in the answer are waived.

(3) An answer shall be filed within twenty days after the notice of hearing is served unless the date of hearing is less than forty days from the date the notice of hearing is served in which event an answer must be filed within half the intervening time.

(4) Any defense that the hearing cannot be held because the party served with the notice has been prejudiced because of some irregularity in procedure must be pleaded in the answer by specific averment which shall include such supporting particulars as are within the answering party's knowledge or could have reasonably been learned by the answering party.

(5) No reply to an answer shall be filed. Affirmative averments in the answer shall be deemed denied or avoided.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-460, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-470 Discovery, protective orders.** Discovery will be available in adjudicative proceedings only as follows:

(1) **Methods:** Any party to an adjudicative proceeding may only obtain discovery from another party by written interrogatories, subpoenas duces tecum, and written requests for production of documents. The procedures regarding these methods of discovery are found at CR 33 and CR 34 as now or hereafter amended unless inconsistent with the rules herein.

(2) **Scope of discovery:** Parties may obtain discovery to the extent authorized by CR 26(b).

(3) **Protective order:** Any party may file a motion for protective order regarding discovery. Rulings on such motions shall be made by the presiding officer.

(4) **Order compelling discovery:** The presiding officer is authorized to make any order that a court could make under CR 37(a), including an order awarding expenses of the motion to compel discovery.

(5) **Completion of discovery:** All discovery allowed under this section must be completed at a reasonable time prior to hearing as determined by the presiding officer in a

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discovery schedule. Nothing herein stated shall modify a party's responsibility to promptly supplement responses to discovery rules or otherwise comply with discovery.

(6) **Use at hearing:** Information and documents obtained pursuant to discovery will not become part of the record until received into evidence by the presiding officer upon the motion of any party.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-470, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-480 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 material will be offered, to the presiding officer and to the other parties. 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.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-480, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-490 Motions before presiding officers.**

(1) **Scope of section:** This section governs all motions made to the presiding officer except those made orally on the record during an adjudicative proceeding.

(2) **Form:** A motion must be in writing. It must state the order of relief requested and the grounds for the motion. It may be accompanied by affidavits. It must be supported by legal authorities, set out in the motion or in a supporting brief.

(3) **Response:** Any party may serve and file a response within five days after the motion has been served on that party.

(4) **Filing:** The original and one copy of every motion and response, with supporting papers, must be filed with the presiding officer, along with proof of service.

(5) **Ruling:** When the presiding officer has received a response from all parties, or five days have elapsed since the last party was served, the presiding officer shall rule on the motion without oral argument, unless the presiding officer, in his or her discretion, orders that argument be heard.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-490, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-500 Prehearing conference.** (1) **Conference:** The presiding officer, as a matter of discretion, with or without a motion from a party, may direct the applicant or applicant's representative to appear before the presiding officer for a conference to consider:

- (a) The definition and simplification of issues;
- (b) The necessity or desirability of amendments to the pleadings;
- (c) The possibility of obtaining admissions of fact and of documents which will be premarked for admission into evidence in order to avoid unnecessary proof;
- (d) The limitations of the number of expert witnesses;
- (e) Briefing schedules;
- (f) Other matters that may aid in the disposition of the proceeding.

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(2) **Order:** The presiding officer shall make a written order that recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions of counsel/party. The order when served and filed controls the subsequent course of the case, unless it is modified at the hearing to prevent manifest injustice.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-500, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-510 Evidence.** (1) **General rules on admissibility:** Presiding officers shall admit and give probative value to evidence that is admissible in the superior courts of the state of Washington in a trial. In addition, a presiding officer may admit and give probative effect to other evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Presiding officers shall give effect to the rules of privileges recognized in the courts of this state. Presiding officers may exclude irrelevant, immaterial, and duly repetitious evidence.

(2) **Stipulations encouraged:** Counsel/parties are requested to mark proposed exhibits in advance of hearing and to stipulate to the admission of all exhibits that are not objectionable.

(3) **Copies of documents and exhibits:** Unless excused from doing so by the presiding officer, a party offering a document or other exhibit in evidence must furnish copies to all other parties.

(4) **Official notice:** The presiding officer may take notice of judicially cognizable facts, and in addition may take notice of general, technical, or scientific facts within his or her specialized knowledge. Any party may, by motion, ask the presiding officer to take official notice of facts or material. When the presiding officer takes official notice of any facts or material, the presiding officer must notify the parties of what is noticed and afford them reasonable opportunity to contest the noticed facts or material. This may be done at any time before the presiding officer's order becomes final.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-510, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-520 Petitions for review of initial orders—Final orders.** (1) Except in brief adjudicative proceedings, initial orders in all adjudicative proceedings before the department will become final without further action by the department unless, within twenty days of the date of service of the initial order, a petition for review is filed with the person named and the address stated in the initial order for such petition of review.

(2) The provisions of WAC 10-08-211 apply to petitions for review of initial orders.

(3) WAC 468-10-530 governs review of orders in brief adjudicative proceedings.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5). WSR 94-14-101 (Order 145), § 468-10-520, filed 7/6/94, effective 8/6/94.]

**WAC 468-10-530 Brief adjudicative proceedings.** (1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where not violative of law and

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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 brief adjudicative proceedings for the following matters:

(a) Actions taken by the department with respect to motorist information sign permit applications and revocations under WAC 468-70-070.

(b) Actions taken by the department with respect to hazardous structures or obstacles that obstruct the air space above ground or water level under RCW 47.68.340 and 47.68.350.

(c) Actions taken by the department after the state patrol has confiscated an overweight permit or overlength permit and the department has suspended or revoked the permit under RCW 46.44.105(9).

(d) Actions taken by the department with respect to its motor carrier service office's permit refund policy.

(2) For matters listed in subsection (1) of this section, the department's notice of action shall provide the name and address of the appropriate office at which an application for a brief adjudicative proceeding must be filed. An application for a brief adjudicative proceeding shall be served on the department by certified mail, registered mail, or personal service.

(3) An application for a brief adjudicative proceeding must be filed within twenty days from the date of service of the department's notice of action. Such application shall contain a written explanation of the party's view of the matter and may be supported by affidavits. Other parties may file a written response, including supporting affidavits, within ten days after receipt of the application for a brief adjudicative proceeding. Copies of the response shall be served on all parties.

(4) Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the secretary. The presiding officer shall have agency expertise in the subject matter but shall not have personally participated in the decision to issue the initiating document.

(5) The presiding officer may, in his or her discretion, entertain oral argument from the parties or their representatives, at a time and place designated by the presiding officer.

(6) No witnesses may appear to testify.

(7) In addition to the record, the presiding officer may employ agency expertise as a basis for decision.

(8) If the party is present at the time any unfavorable action is taken, the presiding officer shall make a brief oral statement of the reasons for the decision. The decision on an application shall be expressed in a written order which shall be served upon all parties within ten days after entry.

(9) The presiding officer's written decision is an initial order. An initial order shall become the final order within twenty-one days of the date of service.

(10) A petition for review of an initial order shall be served by certified mail, registered mail, or personal service upon the Office of the Secretary of the Washington State Department of Transportation, 3D25 Transportation, Olympia, WA 98504-7316, and copies shall be served on all parties. A petition for review of an initial order shall contain an explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect. Responses to a petition for review of an initial order shall be served on the

secretary at the above designated address and on all parties within ten days after receipt of the petition for review.

(11) The secretary or his or her designee shall act as the reviewing officer and shall conduct a review of an initial order upon the timely service of a petition for review or upon his or her own motion. The reviewing officer shall adopt, modify, or reject the initial order; but the reviewing officer shall not take any action on review less favorable to any party without giving that party notice and opportunity to explain the party's view of the matter.

(12) The order on review shall be in writing, shall include a brief statement of the reasons for the decision, and shall be entered within twenty days after the date of the initial order or the petition for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(13) The record in a brief adjudicative proceeding shall consist of any documents regarding the matters that were considered or prepared by the presiding officer for the brief adjudicative proceedings and/or by the reviewing officer for any review.

[Statutory Authority: Chapter 34.05 RCW and RCW 47.01.101(5), WSR 94-14-101 (Order 145), § 468-10-530, filed 7/6/94, effective 8/6/94.]