

WSR 11-09-033
WITHDRAWAL OF
EXPEDITED RULE MAKING
ENVIRONMENTAL HEARINGS OFFICE

[Filed April 14, 2011, 12:16 p.m.]

The purpose of this letter is to inform you that the environmental hearings office is withdrawing its CR-105 filed on February 2, 2011 (WSR 11-05-003) because it contained an error in the reference to the chapter of rules being repealed in the body of the CR-105 notice. Along with this withdrawal notice, the board is e-filing a corrected CR-105 for publication in Issue 11-09.

Please feel free to call (360) 664-9174 or e-mail Kayb@eho.wa.gov if you have any questions.

Kay Brown
 Rules Coordinator

WSR 11-09-034
EXPEDITED RULES
ENVIRONMENTAL HEARINGS OFFICE

(Shorelines Hearings Board)

[Filed April 14, 2011, 12:21 p.m.]

Title of Rule and Other Identifying Information: The environmental hearings office (shorelines hearings board) (EHO and SHB) is repealing chapter 461-12 WAC, Practice and procedure—Public records. These rules, which have not been updated since 1981, have been inadvertently replaced and duplicated, without their repeal, by WAC 461-08-315 through 461-08-330 (the SHB practice and procedural rules regarding board administration and jurisdiction) and chapter 198-12 WAC, the EHO Disclosure of public records—Public meetings.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kay Brown, Rules Coordinator, EHO, P.O. Box 40903, Olympia, WA 98504, e-mail address Kayb@Eho.Wa.Gov, AND RECEIVED BY June 21, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The EHO and SHB have been applying WAC 461-08-315 through 461-08-330, and chapter 198-12 WAC, and not chapter 461-12 WAC, in the past several years. The EHO and SHB were not aware of the existence of chapter 461-12 WAC, which consists of outdated and redundant rules pertaining to public records and board administration and jurisdiction. The EHO and SHB do not anticipate any changes in practice at the agency resulting from this repeal.

Reasons Supporting Proposal: Repeal of chapter 461-12 WAC eliminates unnecessary, outdated, and redundant rules from the Washington Administrative Code.

Statutory Authority for Adoption: This is a repeal only. No rules are being adopted. See RCW 34.05.353 (2)(d).

Statute Being Implemented: This is a repeal only.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [EHO], governmental.

Name of Agency Personnel Responsible for Drafting: Kay Brown, Tumwater, Washington, (360) 664-9174; Implementation and Enforcement: Environmental Hearings Office, Tumwater, Washington, (360) 664-9160.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This is a repeal of an outdated, redundant chapter of agency rules. It is beneficial to individuals that interact with the EHO and SHB to not have an outdated, redundant, and potentially confusing chapter of rules in the SHB's practice and procedural rules.

April 14, 2011
 Andrea McNamara Doyle
 Agency Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 461-12-010	Purpose.
WAC 461-12-020	Definitions.
WAC 461-12-030	Public records available.
WAC 461-12-031	Membership, function and jurisdiction.
WAC 461-12-032	Administration of the board.
WAC 461-12-033	Meetings of the board.
WAC 461-12-034	Quorum.
WAC 461-12-036	Communications with the board.
WAC 461-12-040	Public records officer.
WAC 461-12-050	Office hours.
WAC 461-12-060	Requests for public records.
WAC 461-12-070	Copying.
WAC 461-12-080	Exemptions.
WAC 461-12-090	Review of denials of public records requests.
WAC 461-12-100	Protection of public records.
WAC 461-12-110	Records index.
WAC 461-12-120	Communications with the board.
WAC 461-12-130	Adoption of form.

WSR 11-09-060
EXPEDITED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed April 18, 2011, 3:08 p.m.]

Title of Rule and Other Identifying Information: WAC 220-55-160 Free fishing weekend, 220-55-220 Two pole endorsement, 220-55-230 Columbia River endorsement, 220-56-240 Daily limits forage fish and other food fish not otherwise provided for, and 220-56-270 Smelt—Areas and seasons.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Lori Preuss, Rules Coordinator, Washington Department of Fish and Wildlife, 600 Capitol Way North, Olympia, WA 98501-1091, AND RECEIVED BY June 20, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 220-55-160 Free fishing weekend, language added to clarify that the two pole endorsement and the Columbia River endorsement are not needed during free fishing weekend.

WAC 220-55-220 Two pole endorsement, a portion of Swift Reservoir is removed from the areas where anglers may fish with two poles, due to bull trout holding in this area.

WAC 220-55-230 Columbia River endorsement, stream sections are added to the rule for clarification. Gobar Creek, a Kalama River tributary, was added to the list where the endorsement is required. Cougar Lake was removed, and the description for Swift Reservoir was revised.

WAC 220-56-240 Daily limits forage fish and other food fish not otherwise provided for, clarifies the daily limit of 15 for shiner perch. During the last rule change cycle, shiner perch were inadvertently included in the species that have a 2-fish daily limit.

WAC 220-56-270 Smelt—Areas and seasons, closes fishing for eulachon smelt state-wide, due to their "threatened" listing under the Endangered Species Act. Adds the scientific name for the smelt species to clarify that the closure applies only to this species.

Reasons Supporting Proposal: All of these rule changes were adopted by the Washington fish and wildlife commission on February 5, 2011, to provide for maximum recreational fishing opportunity while conserving fish resources. By the time the Washington department of fish and wildlife (WDFW) filed the rule-making order (CR-103P) on April 12, 2011, to make these rules effective thirty-one days later, the time limit for filing all of the adopted rules except WAC 232-28-619 had expired. This expedited rule making will allow WDFW to file the adopted rules on or after June 21, 2011, to make them effective thirty-one days later. In the meantime,

WDFW will use emergency rules to enact the commission's changes contained in these permanent rules.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

Statute Being Implemented: RCW 77.04.020 and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Craig Burley, 1111 Washington Street S.E., Olympia, WA, (360) 902-2784; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA, (360) 902-2736; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA, (360) 902-2373.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Because these rule changes were already adopted by the Washington fish and wildlife commission on February 5, 2011, the WDFW hopes that the public will reserve their comments until the next cycle of sportfishing rules is proposed, which will be in late summer 2011.

April 18, 2011

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 06-135, filed 6/13/06, effective 7/14/06)

WAC 220-55-160 Free fishing weekend. The Saturday and Sunday following the first Monday in June is declared to be free fishing weekend in Washington. On this weekend a fishing license is not required for any person, regardless of age or residency, to fish for or possess fish and shellfish and a fish and wildlife lands vehicle use permit is not required to utilize department parking facilities except that it is unlawful to fish for or possess any species for which a catch record is required without a valid catch record card in possession. Anglers may fish with two poles in all lakes where it is legal to do so without purchasing a two-pole endorsement, and may also fish in all open areas of the Columbia River and tributaries without purchasing a Columbia River endorsement. During free fishing weekend only the license, endorsements, and permit provided for in this section are affected, and all other rules including the catch record card requirement remain in effect.

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

WAC 220-55-220 Two pole endorsement. Anglers who are in possession of a valid two pole endorsement may fish with two lines in all lakes and ponds open to fishing, with the following exceptions:

Water Body	County
Para-juvenile Lake	Adams
Quail Lake	Adams
Headgate Pond	Asotin
Columbia Park Pond	Benton

Water Body	County		Water Body	County	
Blackbird Island Pond	Chelan		Lake Washington Ship Canal	King	(Including Lake Union, Portage Bay, and Salmon Bay) waters east of a north-south line 400' west of the Chittenden Locks to the MontLake Bridge
Lake Wenatchee	Chelan				
Aldwell Lake	Clallam		Mill Pond	King	Auburn
Beaver Lake	Clallam		Old Fishing Hole Pond	King	Kent
Carrie Blake Pond	Clallam		Portage Bay	King	
Dickey Lake	Clallam		Rattlesnake Lake	King	
Lake Pleasant	Clallam		Ravensdale Lake	King	
Lincoln Pond	Clallam		Salmon Bay	King	
Sutherland Lake	Clallam		Swans Mill Pond	King	
Vancouver Lake	Clark	Includes all other waters west of Burlington-Northern Railroad from Columbia River drawbridge near Vancouver downstream to Lewis River	Koeneman Lake	Kitsap	Formerly Fern Lake
			Easton Lake	Kittitas	
Big Four Lake	Columbia		Kachess Lake	Kittitas	
Dayton Pond	Columbia		Keechelus Lake	Kittitas	
Blue Lake	Cowlitz		Kiwanis Pond	Kittitas	
Castle Lake	Cowlitz		Naneum Pond	Kittitas	
Coldwater Lake	Cowlitz		Cowlitz Falls Reservoir	Lewis	
Lewis River Power Canal	Cowlitz	Includes old Lewis River streambed between Swift No.1 powerhouse and Swift No. 2 powerhouse	Fort Borst Park Pond	Lewis	
			Mayfield Lake	Lewis	Mayfield Dam to Mossyrock Dam
Merrill Lake	Cowlitz		Packwood Lake	Lewis	
Silver Lake	Cowlitz		Scanewa Lake	Lewis	Cowlitz Falls Reservoir
Grimes Lake	Douglas		Walupt Lake	Lewis	
Pit Lake	Douglas		Willame Lake	Lewis	
Long Lake	Ferry		Coffeepot Lake	Lincoln	
Beda Lake	Grant		Cady Lake	Mason	
Brookies Lakes	Grant		Cushman Reservoir	Mason	
Dry Falls Lake	Grant		Prices Lake	Mason	
Dusty Lake	Grant		Stump Lake	Mason	
Homestead Lake	Grant		Aeneas Lake	Okanogan	
Lenice Lake	Grant		Big Twin Lake	Okanogan	
Lenore Lake	Grant		Black Lake	Okanogan	
Merry Lake	Grant		Blue Lake	Okanogan	Near Wannacut Lake
Nunnally Lake	Grant		Blue Lake	Okanogan	Sinlahekin Creek
Ping Pond	Grant		Campbell Lake	Okanogan	
Damon Lake	Grays Harbor		Chopaka Lake	Okanogan	
Mill Creek Pond	Grays Harbor		Cougar Lake	Okanogan	Lost River
Promised Land Pond	Grays Harbor		Davis Lake	Okanogan	
Quigg Lake	Grays Harbor	Located at Friends Landing near Montesano	Ell Lake	Okanogan	
			Green Lake	Okanogan	
Shye Lake	Grays Harbor		Green Lake	Okanogan	Lower Green Lake
Vance Creek Pond #1	Grays Harbor		Hidden Lake	Okanogan	Lost River
Vance Creek Pond #2	Grays Harbor		Rat Lake	Okanogan	
Wynoochee Reservoir	Grays Harbor		Silvermail Lake	Okanogan	
Anderson Lake	Jefferson		Cases Pond	Pacific	
Gibbs Lake	Jefferson		Middle Nemah Pond	Pacific	
Horseshoe Lake	Jefferson		Mooses Pond	Pacific	
Teal Lake	Jefferson		Owens Pond	Pacific	
Lake Sammamish	King		South Bend Mill Pond	Pacific	
Lake Union	King		Browns Lake	Pend Oreille	
Lake Washington	King	Including that portion of Sammamish River from 68th Ave. NE bridge downstream	Muskegon Lake	Pend Oreille	
			Bradley Lake	Pierce	
			De Coursey Pond	Pierce	

Water Body	County	
Ohop Lake	Pierce	
Tanwax Lake	Pierce	
Wapato Lake	Pierce	
Granite Lakes	Skagit	Near Marblemount
Northern State Hospital Pond	Skagit	
Pass Lake	Skagit	
Vogler Lake	Skagit	
Drano Lake	Skamania	(Little White Salmon River) downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Hwy. 14 bridge
Swift Reservoir	Skamania	From (dam to) markers approximately (\pm) 3/8 mile below Eagle Cliff Bridge to bridge
Ebey Lake	Snohomish	Little Lake
Fortson Mill Pond #2	Snohomish	
Jennings Park Pond	Snohomish	
Monte Cristo Lake	Snohomish	
North Gissburg Pond	Snohomish	
Spada Lake	Snohomish	
Amber Lake	Spokane	
Bear Lake	Spokane	
Medical Lake	Spokane	
North Silver Lake	Spokane	
Bayley Lake	Stevens	
Lucky Duck Pond	Stevens	
Mcdowell Lake	Stevens	
Rigley Lake	Stevens	
Kennedy Creek Pond	Thurston	
Long's Pond	Thurston	
Mclane Creek Ponds	Thurston	
Munn Lake	Thurston	
Jefferson Park Pond	Walla Walla	
Lions Park Pond	Walla Walla	College Place
Diablo Lake	Whatcom	
Gorge Lake	Whatcom	
Lake Whatcom	Whatcom	
Ross Lake	Whatcom	
Squalicum Lake	Whatcom	
Garfield Juvenile Pond	Whitman	
Bumping Lake	Yakima	
Clear Lake	Yakima	
Leech Lake	Yakima	White Pass area
Mud Lake	Yakima	
Myron Lake	Yakima	
Rimrock Lake	Yakima	
Sarge Hubbard Park Pond	Yakima	
Yakima Sportsmen's Park Ponds	Yakima	

Note: The two pole endorsement is not valid in the Columbia and Snake rivers except as noted in Lake Roosevelt and Rufus Woods Lake.

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

WAC 220-55-230 Columbia River endorsement.

Anglers fifteen years of age or older must be in possession of a valid Columbia River endorsement to fish for salmon or steelhead in the following waters:

Mainstem Columbia River from the Rocky Point/Tongue Point line to Chief Joseph Dam
 Deep River (Wahkiakum County)
 Grays River (Wahkiakum County) mouth to mouth of South Fork

Grays River, West Fork mouth to hatchery intake foot-bridge

Grays River, East Fork
 Skamokawa River (Wahkiakum County) mouth (Hwy 4 Bridge) to forks below Oatfield and Middle Valley Road
 Elochoman River (Wahkiakum County) mouth to mouth of West Fork

Mill Creek (Lewis County)
 Abernathy Creek (Cowlitz County) mouth to Abernathy Falls
 Germany Creek (Cowlitz County) mouth to end of Germany Creek Road

Coal Creek (Cowlitz County) mouth to 400 feet below falls
 Cowlitz River (Cowlitz County) mouth to mouth of Ohanapecosh and Muddy forks

Blue Creek mouth to Spencer Road

Lacamas Creek

Mill Creek mouth to hatchery road crossing culvert

Olequa Creek

Tilton River mouth to West Fork

Tilton River, East Fork

Tilton River, North Fork

Tilton River, South Fork

Tilton River, West Fork

Mayfield Lake

~~((Riffe Lake))~~

Lake Scanewa

Cispus River (Lewis County) mouth to North Fork

Coweeman River (Cowlitz County)

Toutle River (Cowlitz County) mouth to forks

Toutle River, North Fork

Toutle River, South Fork

Green River (Cowlitz County) mouth to Miner's Creek

~~((Green River (Cowlitz County)))~~

Kalama River (Cowlitz County) mouth to Kalama Falls

Gobar Creek (Cowlitz County)

Lewis River (Clark/Cowlitz counties) mouth to mouth of East Fork

Lewis River, North Fork mouth to Merwin Dam

Lewis River, East Fork

Cedar Creek (Clark County)

Salmon Creek (Clark County) mouth to 72nd Ave. N.E.

Washougal River (Clark County)

Washougal River West, North Fork

Little Washougal

Camas Slough (Clark County) (waters outside the mouth of the Washougal River, north of Lady Island, and downstream of the Highway 14 Bridge at the upstream end of Lady Island)

Drano Lake (Skamania County) little White Salmon River downstream of the markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Highway 14 Bridge

Hamilton Creek (Skamania County)

Rock Creek (Skamania County)

Wind River (Skamania County)

White Salmon River (Klickitat/Skamania counties) mouth to Northwestern (Condit) Dam

Klickitat River (Klickitat County)

Walla Walla River (Walla Walla County) and tributaries

Mill Creek (Walla Walla County)

Touchet River (Columbia/Walla Walla counties) mouth to confluence of North Fork and South Fork

Touchet River, North Fork

Touchet River, South Fork

Touchet River, Wolf Fork

Grande Ronde River (Asotin County)

Snake River mainstem

Palouse River (Whitman County) (below the falls)

Tucannon River (Columbia/Garfield counties)

Yakima River (Benton/Yakima/Kittitas counties) mouth to 400 feet below Prosser Dam and Sunnyside (Parker) Dam to Roza Dam

Wenatchee River mouth to Lake Wenatchee (including Lake Jolanda)

Chelan River (Chelan County) mouth (railroad bridge) to Chelan PUD safety barrier below the powerhouse

Icicle River (Chelan County) mouth to Leland Creek

Lake Wenatchee (Chelan County)

Entiat River (Chelan County) mouth to Entiat Falls

Methow River (Okanogan County) mouth to Foghorn Dam

Okanogan River (Okanogan County)

Lake Osoyoos (Okanogan County)

Similkameen River (Okanogan County) mouth to Enloe Dam

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

WAC 220-56-240 Daily limits forage fish and other food fish not otherwise provided for. It is unlawful for any person to retain more than the following quantities and sizes of food fish taken for personal use. Unless otherwise provided, other food fish fishing is open the entire year:

(1) Forage fish: 10 pounds in the aggregate. The possession limit is two daily limits in fresh form. Additional forage fish may be possessed in frozen or processed form.

(2) Shiner perch: Daily limit 15 fish.

(3) All other marine food fish not otherwise provided for in this chapter except albacore, yellowfin, skipjack, and northern bluefin tuna and all mackerel: Daily limit two fish.

AMENDATORY SECTION (Amending Order 06-67, filed 4/11/06, effective 5/12/06)

WAC 220-56-270 Smelt—Areas and seasons. (1) ~~((Smelt))~~ Unlawful to fish for or possess Columbia River smelt or eulachon (*Thaleichthys pacificus*).

(2) Fishing for smelt other than Columbia River smelt or eulachon (*Thaleichthys pacificus*) is permitted the entire year on Pacific Ocean beaches and in all rivers concurrent with a

salmon or gamefish opening, except closed in the Columbia River and tributaries.

~~((2) Smelt))~~ (3) Fishing for smelt other than Columbia River smelt or eulachon (*Thaleichthys pacificus*) is open in Puget Sound and the Strait of Juan de Fuca the entire year except closed weekly from 8:00 a.m. Wednesday to 8:00 a.m. Friday for all types of gear except forage fish jigger gear and closed year-round in Catch Record Card Area 12. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

~~((3))~~ (4) It is unlawful to possess smelt taken with gear in violation of the provisions of this section. Possession of smelt while using gear in violation of the provisions of this section is a rebuttable presumption that the smelt were taken with such gear. Possession of such smelt is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the smelt are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.

WSR 11-09-061

WITHDRAWAL OF

EXPEDITED RULE MAKING

DEPARTMENT OF REVENUE

(By the Code Reviser's Office)

[Filed April 19, 2011, 9:31 a.m.]

WAC 458-18A-060, proposed by the department of revenue in WSR 10-20-057 appearing in issue 10-20 of the State Register, which was distributed on October 20, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor

Washington State Register

WSR 11-09-062

WITHDRAWAL OF

EXPEDITED RULE MAKING

DEPARTMENT OF HEALTH

(By the Code Reviser's Office)

[Filed April 19, 2011, 9:32 a.m.]

WAC 246-650-991, proposed by the department of health in WSR 10-20-073 appearing in issue 10-20 of the State Register, which was distributed on October 20, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor

Washington State Register

WSR 11-09-083
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed April 20, 2011, 9:27 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-10001 (Rule 101) Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation. Rule 10001 explains the department's adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act, for actions involving revocation of a certificate of registration (tax registration endorsement).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Bridget N. McBryde, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail BridgetM@dor.wa.gov, AND RECEIVED BY June 20, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to update the telephone and fax numbers provided in this rule as the means by which a person may file a petition for review of an initial order. This petition must be made within twenty-one days after service of the initial order is received by the person.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: The telephone and fax numbers need to be current so that taxpayers do not inadvertently miss the twenty-one-day filing requirement.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 34.05.482 through 34.05.494, except for RCW 34.05.491(5) and 82.32.215.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: The department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Bridget N. McBryde, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 524-1579; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1595.

April 20, 2011
 Alan R. Lynn
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-04-056, filed 1/26/11, effective 2/26/11)

WAC 458-20-10001 Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation. (1) **Introduction.** The department of revenue (department) has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494, except for 34.05.491(5), for actions involving revocation of a certificate of registration (tax registration endorsement) pursuant to RCW 82.32.215. This section explains the procedure for these brief adjudicative proceedings. This section does not apply to the following:

- Adjudicative proceedings under WAC 458-20-10002, which addresses converted brief adjudicative proceedings and formal adjudicative proceedings relating to log export enforcements;
- Nonadjudicative proceedings under RCW 82.32.160 and 82.32.170, and WAC 458-20-100;
- Enforcement proceedings under RCW 82.24.550 and 82.26.220; and
- Brief adjudicative proceedings for matters relating to the revocation of reseller permits under WAC 458-20-102.

The department has not adopted RCW 34.05.491(5), which provides that a request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted.

(2) **Brief adjudicative proceedings - procedure.** The following procedure applies to the department's brief adjudicative proceedings for actions involving revocation of a certificate of registration, unless the matter is converted to a formal proceeding as provided in subsection (8) of this section.

(a) **Notice.** The department will set the time and place of the hearing. Written notice shall be served upon the taxpayer(s) at least seven days before the date of the hearing. Service is to be made pursuant to subsection (5)(a) of this section. The notice must include:

- (i) The names and addresses of each taxpayer to whom the proceedings apply and, if known, the names and addresses of the taxpayer's representative(s), if any;
- (ii) The mailing address and the telephone number of the person or office designated to represent the department in the proceeding;
- (iii) The official file or other reference number and the name of the proceeding;
- (iv) The name, official title, mailing address and telephone number of the presiding officer, if known;
- (v) A statement of the time, place and nature of the proceeding;
- (vi) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (vii) A reference to the particular sections of the statutes and/or rules involved;
- (viii) A short and plain statement of the matters asserted by the department against the taxpayer and the potential action to be taken; and
- (ix) A statement that if the taxpayer fails to attend or participate in a hearing, the hearing can proceed and that adverse action may be taken against the taxpayer.

(x) When the department is notified or otherwise made aware that a limited-English-speaking person is a person to whom the proceedings apply, all notices, including the notice of hearing, continuance and dismissal, must either be in the primary language of that person or must include a notice in the primary language of the person which describes the significance of the notice and how the person may receive assistance in understanding and responding to the notice. In addition, the notice must state that if a party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice must include a form to be returned to the department to indicate whether such person, or a witness, needs an interpreter and to identify the primary language or hearing impaired status of the person.

(b) Appearance and practice at a brief adjudicative proceeding. The right to practice before the department in a brief adjudicative proceeding is limited to:

(i) Persons who are natural persons representing themselves;

(ii) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(iii) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(iv) Public officials in their official capacity;

(v) Certified public accountants entitled to practice in the state of Washington;

(vi) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(vii) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(viii) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(c) Hearings by telephone. With the concurrence of the presiding officer and all persons involved in the proceedings, a hearing may be conducted telephonically. The conversation will be recorded and will be made a part of the record of the hearing.

(d) Presiding officer.

(i) The presiding officer must be an assistant director of the department's compliance division, or such other person as the director of the department may designate.

(ii) The presiding officer shall conduct the proceeding in a just and fair manner and before taking action, the presiding officer shall provide the taxpayer an opportunity to be informed of the department's position on the pending matter.

(iii) The presiding officer has all authority granted under chapter 34.05 RCW.

(e) Entry of orders.

(i) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within ten days of issuing the decision, the presiding officer shall serve upon the parties, the initial order

and information regarding any departmental administrative review that may be available.

(ii) The decision and the brief written statement of the basis and legal authority for it is an initial order. The initial order will become a final order if no review is requested as provided in subsection (3) of this section.

(3) Review of initial orders from brief adjudicative proceeding. The following procedure applies to the department's review of a brief adjudicative proceeding conducted pursuant to subsection (2) of this section, unless the matter is converted to a formal proceeding as provided in subsection (8) of this section.

(a) Request for review of the initial order. A party to a brief adjudicative proceeding under subsection (2) of this section may request review of the initial order by filing a written petition for review, or making an oral request for review, with the department's appeals division within twenty-one days after service of the initial order is received or deemed to be received by the party. The address and telephone number of the appeals division is:

Appeals Division
Department of Revenue
P.O. Box 47460
Olympia, Washington 98504-7460
Telephone Number - 360-((570-6140)) 534-1335
Fax - 360-((664-2729)) 534-1340

(i) When a petition of review of the initial order is made, the taxpayer must submit to the appeals division at the time the petition is filed any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider. If the petition for review is made by oral request, the taxpayer must also submit any evidence or written material to the appeals division on the same day that the oral request is made.

(ii) The department may, on its own motion, conduct an administrative review of the initial order as provided for in RCW 34.05.491.

(b) Reviewing officer. The appeals division shall appoint a reviewing officer who shall make such determination as may appear to be just and lawful. The reviewing officer shall provide the taxpayer and the department an opportunity to explain their positions on the matter and shall make any inquiries necessary to ascertain whether the proceeding should be converted to a formal adjudicative proceeding. The review by the appeals division shall be governed by the brief adjudicative procedures of chapter 34.05 RCW and this section; or WAC 458-20-10002 in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding, and not by the processes and procedures of WAC 458-20-100. The reviewing officer shall have the authority of a presiding officer as provided in this section.

(c) Record review. Review of an initial order is limited to the evidence considered by the presiding officer, the initial order, the recording of the initial proceeding, and any records and written evidence submitted by the parties to the reviewing officer. However, the agency record need not constitute the exclusive basis for the reviewing officer's decision.

(i) The reviewing officer may request additional evidence from either party at any time during its review of the

initial order. Once the reviewing officer requests evidence from a party, that party has seven days after service of the request to supply the evidence to the reviewing officer, unless the reviewing officer, in his or her discretion, allows additional time to submit the evidence.

(ii) In addition to requesting additional evidence, the reviewing officer may review any records of the department necessary to confirm that the tax warrant upon which the initial order of revocation was based remains unpaid. In the event that the tax warrant has been satisfied subsequent to the entry of the initial order, but before the issuance of the final order, the reviewing officer shall reinstate the taxpayer's certificate of registration.

(iii) If the reviewing officer determines that oral testimony is needed, he/she may schedule a time for both parties to present oral testimony. Notice of the oral testimony must be given to the parties in the same manner as the notice provided in subsection (2)(a) of this section. Oral statements before the reviewing officer shall be by telephone, unless specifically scheduled by the reviewing officer in his or her discretion to be in person.

(iv) The department will have an opportunity to respond to the taxpayer's request for review and may also submit any other relevant evidence and written material to the reviewing officer. The department must submit its material within seven days of service of the material submitted by the party requesting review of the initial order. The department must also serve a copy of all evidence and written material provided to the reviewing officer to the taxpayer requesting review according to subsection (5) of this section. Proof of service is required under subsection (5)(h) of this section when the department submits material to the taxpayer under this subsection.

(d) **Failure to participate.** If a party requesting review of an initial order under this subsection fails to participate in the proceeding or fails to provide documentation to the reviewing officer upon his or her request, the reviewing officer may uphold the initial order based upon the record.

(e) **The final orders.**

(i) The reviewing officer may issue two final orders. The first final order (the "final order") must include the decision of the reviewing officer and a brief statement of the basis and legal authority for the decision. This order may contain confidential taxpayer information under RCW 82.32.330, and, therefore, cannot be disclosed by the department, except to the taxpayer.

(ii) The reviewing officer may issue a second final order (the "posting order"). The posting order will be issued when the reviewing officer has ordered the revocation of the tax registration certificate. The posting order will state what certificate of registration is being revoked, the listing of the tax warrants involved, and what jurisdictions the tax warrants were filed in.

(iii) Unless specifically indicated otherwise, the term "final order" as used throughout this section shall refer to both the final order and the posting order.

(iv) The parties can expect that, absent continuances, the final order and posting order will be entered within twenty days of the petition for review.

(f) **Reconsideration.** Unless otherwise provided in the reviewing officer's order, the reviewing officer's order represents the final position of the department. A reconsideration of the reviewing officer's order may be sought only if the right to a reconsideration is contained in the final order.

(g) **Judicial review.** Judicial review of the final order of the department is available under Part V, chapter 34.05 RCW. However, judicial review may be available only if a review of the initial decision has been requested under this subsection and all other administrative remedies have been exhausted. See RCW 34.05.534.

(4) **Rules of evidence - record of the proceeding.**

(a) Evidence is admissible if in the judgment of the presiding or reviewing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in conducting their affairs. The presiding and reviewing officer should apply RCW 34.05.452 when ruling on evidentiary issues in the proceeding.

(b) All oral testimony must be recorded manually, electronically, or by another type of recording device. The agency record must consist of the documents regarding the matters that were considered or prepared by the presiding officer, or by the reviewing officer in any review, and the recording of the hearing. These records must be maintained by the department as its official record.

(5) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

- In person;
- By first-class, registered, or certified mail;
- By fax and same-day mailing of copies;
- By commercial parcel delivery company; or
- By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this section.

(g) Service to the reviewing officer must be to the appeals division at the address shown in subsection (3) of this section.

(h) Where proof of service is required, the proof of service must include:

- An acknowledgment of service;
- A certification, signed by the person who served the document(s), stating the date of service; that the person did

serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(6) **Interpreters.** When a party or witness requires an interpreter, chapters 2.42 and 2.43 RCW will apply. When those statutes are silent on an issue before the presiding or reviewing officer, the provisions regarding interpreters in WAC 10-08-150 apply.

(7) **Informal settlements.** The department encourages informal settlement of issues in proceedings under its jurisdiction. The presiding or reviewing officer may not order settlement of the proceedings. Settlement is at the discretion of the parties. Settlement of a proceeding may be concluded by:

(a) A stipulation signed by the taxpayer and the department, or their respective representatives, and/or recited into the record of the proceedings. If the stipulation provides for a payment agreement, the presiding or reviewing officer may order a continuance of the proceedings during the period of repayment and dismissal when all payments have been made. An order providing for the reconvening of the proceedings if the payment agreement is breached is allowed so long as the proceeding is not held less than seven days after notice of the reconvening is provided. Except as provided in this subsection, the presiding or reviewing officer must enter an order in conformity with the terms of the stipulation; or

(b) The entry of an order dismissing the proceedings if the department withdraws the revocation of the certificate of registration.

(8) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding or reviewing officer may at any time, on motion of the taxpayer, the department, or the officer's own motion, convert the brief adjudicative proceeding to a formal proceeding.

(a) The presiding or reviewing officer may convert the proceeding if the officer finds that use of the brief adjudicative proceeding:

- Violates any provision of law,
- The protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, or
- The issues and interests involved warrant the use of procedures governed by RCW 34.05.413 through 34.05.476 or 34.05.479.

(b) WAC 458-20-10002 applies to formal proceedings. In proceedings to revoke a taxpayer's certificate of registration, the converted proceeding is itself the independent administrative review by the department of revenue as provided in RCW 82.32A.020(6).

(9) **Computation of time.** In computing any period of time prescribed by this section, the day of the act or event after which the designated period is to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, or a state legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or state legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and holidays will be excluded in the computation.

(10) **Posting of a final order of revoking a tax registration endorsement - revocation not a substitute for**

other collection methods or processes available to the department. When an order revoking a tax registration endorsement is a final order of the department, the department shall post a copy of the posting order in a conspicuous place at the main entrance to the taxpayer's place of business and it must remain posted until such time as the warrant amount has been paid.

(a) It is unlawful to engage in business after the revocation of a tax registration endorsement. A person engaging in the business after a revocation may be subject to criminal sanctions as provided in RCW 82.32.290. RCW 82.32.290(2) provides that a person violating the prohibition against such engaging in business is guilty of a Class C felony in accordance with chapter 9A.20 RCW.

(b) Any certificate of registration revoked shall not be reinstated, nor a new certificate of registration issued until:

(i) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered; and

(ii) The taxpayer has deposited with the department of revenue as security for taxes, increases and penalties due or which may become due under such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual tax liability of the taxpayer.

(c) Revocation proceedings will not substitute for, or in any way curtail, other collection methods or processes available to the department.