

Chapter 391-08 WAC

RULES OF PRACTICE AND PROCEDURE—PUBLIC EMPLOYMENT RELATIONS

COMMISSION

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 391-08-103 Service of process—Additional time after service by mail. [Order 77-1, § 391-08-103, filed 1/27/77.]
- Repealed by WSR 83-24-031 (Order 83-01), filed

12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-105 Service of process—Extension of time. [Order 77-1, § 391-08-105, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-110 Service of process—By whom served. [Order 77-1, § 391-08-110, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

391-08-130 Service of process—Method of service. [Order 77-1, § 391-08-130, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84.

Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-140 Service of process—Completion of service on parties.
[Order 77-1, § 391-08-140, filed 1/27/77.] Repealed
by WSR 83-24-031 (Order 83-01), filed 12/1/83,
effective 1/1/84. Statutory Authority: RCW
34.04.022, 41.58.050, 41.56.090, 41.59.110 and
28B.52.080.

391-08-150 Service of process—Filing with agency. [Order 77-1,
§ 391-08-150, filed 1/27/77.] Repealed by WSR 83-24-
031 (Order 83-01), filed 12/1/83, effective 1/1/84.
Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-160 Service of process—Opportunity for hearing. [Order
77-1, § 391-08-160, filed 1/27/77.] Repealed by WSR
90-06-070, filed 3/7/90, effective 4/7/90. Statutory
Authority: RCW 41.58.050, 28B.52.080, 41.56.090,
41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060,

41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and
41.59.150.

391-08-170 Service of process—Notice of hearing. [Order 77-1, §
391-08-170, filed 1/27/77.] Repealed by WSR 83-24-
031 (Order 83-01), filed 12/1/83, effective 1/1/84.
Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-200 Definition of issues—Before hearing. [Order 77-1, §
391-08-200, filed 1/27/77.] Repealed by WSR 90-06-
070, filed 3/7/90, effective 4/7/90. Statutory
Authority: RCW 41.58.050, 28B.52.080, 41.56.090,
41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59,
49.08 and 53.18 RCW.

391-08-210 Definition of issues—Prehearing conference.
[Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031
(Order 83-01), § 391-08-210, filed 12/1/83,
effective 1/1/84; Order 77-1, § 391-08-210, filed

1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90,
effective 4/7/90. Statutory Authority: RCW
41.58.050, 28B.52.080, 41.56.090, 41.59.110,
28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1),
41.56.170, 41.59.080, 41.59.100 and 41.59.150.

391-08-220 Definition of issues—Record of action taken during
prehearing conference. [Order 77-1, § 391-08-220,
filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-
01), filed 12/1/83, effective 1/1/84. Statutory
Authority: RCW 34.04.022, 41.58.050, 41.56.090,
41.59.110 and 28B.52.080.

391-08-230 Summary judgment. [Statutory Authority: RCW
28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR
98-14-112, § 391-08-230, filed 7/1/98, effective
8/1/98. Statutory Authority: RCW 41.58.050,
28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3),
28B.52.060, 41.56.060, 41.56.122(1), 41.56.170,
41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, §

391-08-230, filed 3/7/90, effective 4/7/90.

Statutory Authority: RCW 28B.52.080, 41.56.040,
41.58.050, 41.59.110 and 47.64.040. WSR 81-02-034
(Order 81-01), § 391-08-230, filed 1/6/81.] Repealed
by WSR 00-14-048, filed 6/30/00, effective 8/1/00.

Statutory Authority: RCW 28B.52.080, 41.56.090,
41.59.110, 41.58.050.

391-08-320 Subpoenas—Service. [Order 77-1, § 391-08-320, filed
1/27/77.] Repealed by WSR 83-24-031 (Order 83-01),
filed 12/1/83, effective 1/1/84. Statutory
Authority: RCW 34.04.022, 41.58.050, 41.56.090,
41.59.110 and 28B.52.080.

391-08-330 Subpoenas—Fees. [Order 77-1, § 391-08-330, filed
1/27/77.] Repealed by WSR 83-24-031 (Order 83-01),
filed 12/1/83, effective 1/1/84. Statutory
Authority: RCW 34.04.022, 41.58.050, 41.56.090,
41.59.110 and 28B.52.080.

391-08-340 Subpoenas—Proof of service. [Order 77-1, § 391-08-340, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-350 Subpoenas—Quashing. [Order 77-1, § 391-08-350, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-360 Subpoenas—Enforcement. [Order 77-1, § 391-08-360, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-370 Subpoenas—Geographical scope. [Order 77-1, § 391-08-370, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84.

Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-400 Evidence—Examination of witnesses. [Order 77-1, §
391-08-400, filed 1/27/77.] Repealed by WSR 83-24-
031 (Order 83-01), filed 12/1/83, effective 1/1/84.
Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-410 Evidence—Application of rules of evidence. [Order
77-1, § 391-08-410, filed 1/27/77.] Repealed by WSR
83-24-031 (Order 83-01), filed 12/1/83, effective
1/1/84. Statutory Authority: RCW 34.04.022,
41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-420 Evidence—Objections and rulings. [Order 77-1, § 391-
08-420, filed 1/27/77.] Repealed by WSR 83-24-031
(Order 83-01), filed 12/1/83, effective 1/1/84.
Statutory Authority: RCW 34.04.022, 41.58.050,
41.56.090, 41.59.110 and 28B.52.080.

391-08-450 Evidence—Stipulations and admissions of record.

[Order 77-1, § 391-08-450, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-460 Evidence—Submission of documentary evidence. [Order

77-1, § 391-08-460, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-470 Evidence—Excerpts from documentary evidence. [Order

77-1, § 391-08-470, filed 1/27/77.] Repealed by WSR 83-24-031 (Order 83-01), filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080.

391-08-490 Evidence—Refusal of witness to answer. [Order 77-1,

§ 391-08-490, filed 1/27/77.] Repealed by WSR 83-24-

031 (Order 83-01), filed 12/1/83, effective 1/1/84.

Statutory Authority: RCW 34.04.022, 41.58.050,

41.56.090, 41.59.110 and 28B.52.080.

391-08-500 Declaratory rulings authorized. [Order 77-1, § 391-08-500, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

391-08-510 Declaratory rulings—Petition. [Order 77-1, § 391-08-510, filed 1/27/77.] Repealed by WSR 90-06-070, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

391-08-600 Agency decisions—Form and content. [Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-

01), § 391-08-600, filed 12/1/83, effective 1/1/84;
Order 77-1, § 391-08-600, filed 1/27/77.] Repealed
by WSR 90-06-070, filed 3/7/90, effective 4/7/90.
Statutory Authority: RCW 41.58.050, 28B.52.080,
41.56.090, 41.59.110, 35.05.461 [34.05.461],
28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1),
41.56.170, 41.59.080, 41.59.100 and 41.59.150.

391-08-900 Petitions for rule making—Who may petition. [Order
77-1, § 391-08-900, filed 1/27/77.] Repealed by WSR
90-06-070, filed 3/7/90, effective 4/7/90. Statutory
Authority: RCW 41.58.050, 28B.52.080, 41.56.090,
41.59.110 and chapters 34.05, 28B.52, 41.56, 41.58,
41.59, 49.08 and 53.18 RCW.

391-08-910 Petitions for rule making—Form. [Order 77-1, § 391-
08-910, filed 1/27/77.] Repealed by WSR 90-06-070,
filed 3/7/90, effective 4/7/90. Statutory Authority:
RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and

chapters 34.05, 28B.52, 41.56, 41.58, 41.59, 49.08
and 53.18 RCW.

391-08-920 Petitions for rule making—Agency must consider.

[Order 77-1, § 391-08-920, filed 1/27/77.] Repealed
by WSR 90-06-070, filed 3/7/90, effective 4/7/90.

Statutory Authority: RCW 41.58.050, 28B.52.080,
41.56.090, 41.59.110 and chapters 34.05, 28B.52,
41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

391-08-930 Petitions for rule making—Notice of disposition.

[Order 77-1, § 391-08-930, filed 1/27/77.] Repealed
by WSR 90-06-070, filed 3/7/90, effective 4/7/90.

Statutory Authority: RCW 41.58.050, 28B.52.080,
41.56.090, 41.59.110 and chapters 34.05, 28B.52,
41.56, 41.58, 41.59, 49.08 and 53.18 RCW.

~~Reviser's note: Chapter 15, Laws of 1983 recreates the marine employees' commission,
Title 316 WAC, and transfers the authority for the administration of chapter 47.64 RCW to that
agency. Title 391 WAC will reflect some of the changes resulting from this statutory revision.~~

WAC 391-08-001 Application and scope ~~of chapter 391-08~~

~~WAC. Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.340); section 15, chapter 356, Laws of 2002 (RCW 41.76.060); section 7, chapter 6, Laws of 2010 (RCW 49.39.060); and section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess., to promulgate~~The purpose of chapter 391-08 WAC is to provide comprehensive and uniform rules ~~for~~of practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, ~~and should be read in conjunction with the provisions of:~~

~~(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:~~

~~(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;~~

~~(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;~~

~~(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;~~

~~(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;~~

~~(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;~~

~~(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;~~

~~(g) WAC 10-08-150, which is limited by WAC 391-08-315;~~

~~(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;~~

~~(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and~~

~~(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.~~

~~(2) Chapter 391-25 WAC, which regulates representation proceedings.~~

~~(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.~~

~~(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.~~

~~(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.~~

~~(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.~~

~~(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.~~To the extent these rules of practice

and procedure differ from the model rules adopted by the chief administrative law judge under RCW 34.05.250 and found in chapter 10-08 WAC, these rules prevail.

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

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-001, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, and 49.39.060. WSR 10-20-172, § 391-08-001, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060. WSR 03-03-064, § 391-08-001, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 01-14-009, § 391-08-001, filed 6/22/01, effective 8/1/01; WSR 00-14-048, § 391-08-001, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-001, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-001, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-001, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050,

41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-001, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-001, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-001, filed 1/27/77.]

WAC 391-08-003 Policy-Construction-Waiver. The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the ~~agency shall~~ be commission are liberally construed to effectuate the purposes and provisions of the statutes administered by the agency, ~~and~~ n. Nothing in any rule ~~shall be construed to prevent~~s the ~~commission and its authorized agents~~agency from using ~~their~~its best efforts to adjust any labor dispute. The ~~commission and its~~ authorized agentsagency may waive any requirement of the rules unless a party shows that it would be prejudiced by ~~such a~~ waiver.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and 41.58.005(1). WSR 90-06-070, § 391-08-003, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-003, filed 1/27/77.]

WAC 391-08-007 Definitions. As used in Title 391 WAC:

(1) "Agency" means the public employment relations commission, its officers, and its agents;

(2) "Commission" means the commissioners of the public employment relations commission appointed by the governor;

(3) "Executive director" means the officer of that title appointed by the commission ~~pursuant to~~ under RCW 41.58.015(2);

(4) "Labor dispute" means any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(5) ~~"Marine employees' commission" means the marine employees' commission appointed under section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess.~~

~~(6) "Presiding officer" means an agency official(s), examiner, or hearing officer or other person authorized to act on behalf of the agency.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-007, filed 2/15/12, effective 3/17/12. Statutory

Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-007, filed 3/7/90, effective 4/7/90.

Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-007, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-007, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-007, filed 1/27/77.]

WAC 391-08-008 Agency structure. (1) The agency maintains an impartial role in all proceedings pending before it.

(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate under RCW 41.58.010. Commission members serve on a part-time basis only. All commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.

(3) The executive director appointed by the commission under RCW 41.58.015(2) is the full-time agency head with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.

(4) The agency's staff is appointed under RCW 41.58.015(3). Individual members of the agency's staff are assigned to conduct any or all of the types of dispute resolution services provided by the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-630, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.58.010 and [41.58].015. WSR 03-03-064, § 391-08-630, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.58.010 and 41.58.015. WSR 98-14-112, § 391-08-630, filed 7/1/98, effective 8/1/98; WSR 90-06-070, § 391-08-630, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-08-630, filed 9/16/85.]

WAC 391-08-010 ~~Appearance and practice before agency~~ Who may appear before the agency Notice of appearance. (1) ~~No person~~Any of the following may appear in a representative capacity before the agency ~~other than the following~~:

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

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

~~(e)~~ (a) A bona fide officer, employee, or other authorized representative of+ (i) ~~Any~~ employer subject to the jurisdiction of the agency, or (ii) any ~~labor or~~ employee organization, i or

~~(iib)~~ An individual or their authorized representative.

(2) Except where the information is already listed in the agency's docket records for the particular case, a person appearing in a representative capacity shall file and serve a notice of appearance listing the representative's name, email address, mailing address, and telephone number, ~~fax number, and email address.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-058, § 391-08-010, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-010, filed 6/30/00, effective 8/1/00. Statutory

Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-010, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-010, filed 1/27/77.]

WAC 391-08-020 Appearance and practice before agency—

Standards of conduct. Misconduct at any hearing conducted by the ~~commission or a member of its staff~~agency shall be grounds for ~~summary suspension or~~ exclusion from ~~the hearing. Misconduct of an aggravated character, when engaged in by an attorney or other person acting in a representative capacity pursuant to WAC 391-08-010, shall be ground for suspension or disbarment by the~~ commission appearing before the agency after due notice and hearing.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-020, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-020, filed 1/27/77.]

WAC 391-08-030 Appearance and practice before agency—

~~Appearance by f~~Former employee of agency or former member of attorney general's staff as representative. ~~Ne~~A former member of the commission, former employee of the agency, or former member of the attorney general's staff assigned to represent the

agency ~~shall~~may not, at any time after severing ~~his or her~~ employment with the agency or with the attorney general, appear in a representative capacity on behalf of any party in connection with any case or proceeding in which ~~was pending before the agency~~that person participated personally or substantially during the time of ~~his or her~~ employment with the agency or attorney general.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-030, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-030, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-030, filed 1/27/77.]

WAC 391-08-040 Appearance and practice before agency—

Former employee or former member of attorney general's staff as witness. Except upon the express written consent of the ~~commission~~agency, ~~no~~a former member of the commission, former employee of the agency, or former member of the attorney general's staff assigned to represent the agency ~~shall~~may not, at any time after severing ~~his or her~~ employment with the agency or with the attorney general, appear as a witness on behalf of

any party in connection with any case or proceeding in which ~~was~~
~~pending before the agency~~ that person participated personally or
substantially during the time of ~~his or her~~ employment with the
agency or attorney general.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and
41.58.050. WSR 96-07-105, § 391-08-040, filed 3/20/96, effective
4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080,
41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59,
49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-040, filed 3/7/90,
effective 4/7/90; Order 77-1, § 391-08-040, filed 1/27/77.]

WAC 391-08-100 Computation of time. In computing any
period of time prescribed or allowed by any applicable statute
or rule, the day of the act, event, or default after which the
designated period of time begins to run is not ~~to be~~ included.
The last day of the period so computed is ~~to be~~ included, unless
it is a Saturday, Sunday, or a legal holiday, in which event the
period runs until the end of the next day ~~which~~ that is
~~neither~~ not a Saturday, Sunday ~~nor a~~, or legal holiday. When the
period of time prescribed or allowed is less than seven days,
intermediate Saturdays, Sundays, and legal holidays ~~shall be~~
excluded ~~in~~ from the computation.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-100, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-100, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-100, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-100, filed 1/27/77.]

WAC 391-08-120 Filing and service of ~~papers~~documents. (1)

~~Documents filed with the agency shall be filed at the Olympia office.~~The agency will post on its web-site at www.perc.wa.gov information ~~containing the street address for filing by personal delivery, the mailing addresses for filing by mail, the telephone number for filing by fax transmission, and the email address or other method to be used for electronic filing~~for filing using the agency's e-filing system, the email address for filing by email, the mailing address for filing by mail, and the street address for filing by personal delivery.

(2) Documents may be filed with the agency by one of the following methods:

(a) ~~In person.~~E-filing on the agency's website at
www.perc.wa.gov;

(b) Email to filing@perc.wa.gov;

~~(c) By first class, registered, or certified mail-~~to the
agency's Olympia mailing address;

~~(d) By commercial parcel delivery company-~~to the agency's
Olympia office;

(e) Hand delivery to the agency's Olympia office; or

~~(f) Electronically by email, fax transmission, or other~~
methods ~~by~~on the agency website at www.perc.wa.gov.

(3) Documents filed with the agency ~~shall~~must be served
~~upon~~ all parties on the same day the documents are filed.
Service ~~shall~~must be upon counsel and representatives of record,
or upon unrepresented parties or upon their agents designated by
them or by law.

(4) Unless otherwise ordered by the agency in a particular
proceeding, filing and service is complete upon one or a
combination of the following methods:

(a) ~~Hand delivery.~~E-filing. Filing is complete when a
legible copy of the document is successfully uploaded to the e-

filing system. Service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of service.

(b) Email. Filing or service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of filing or service.

~~(b)c~~ Depositing the document(s), ~~properly~~correctly addressed and postage paid, in the U.S. mail.

~~(e)d~~ Acceptance of the document(s) for delivery by a commercial parcel delivery company.

~~(de) Receipt of entire fax transmission by the recipient and receipt by the sending party of confirmation of receipt of the fax transmission. If receipt of a fax commences after office hours, the paper will be deemed filed on the next business day the office is open.~~

~~(e) Receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email or electronic filing constitutes the time of~~

~~service. If an electronic filing is received by the agency after office hours, the documents will be deemed filed on the next business day the office is open.~~Hand delivery.

(5) A document uploaded to the agency's e-filing system or an email received by the agency after 5:00 p.m. is considered filed on the following business day.

~~(5)~~(6) On the same day that filing and service of documents is completed under subsection (3) of this section, the person who completed service ~~shall~~must take one of the following actions:

(a) Obtain ~~an acknowledgment of service from the person who accepted personal service~~the confirmation of filing and service upon the recipient(s) generated by the agency's e-filing system under subsection (4) (a) of this section; ~~or.~~.

(b) Make a certificate stating that the person signing the certificate completed service of the ~~papers~~document(s) by:

(i) ~~Personally delivering a copy under subsection (4) (a)~~Electronically transmitting a copy under subsection (4) (b) of this section; ~~or~~.

(ii) Mailing a copy under subsection (4) (~~b~~c) of this section; ~~or~~

(iii) Depositing a copy ~~under subsection (4) (c) of this section~~ with a commercial parcel delivery company named in the certificate under subsection (4) (d) of this section; or

(iv) ~~Electronically transmitting the documents under subsection (4) (d) or (c)~~ Personally delivering a copy under subsection (4) (e) of this section.

(c) Obtain an acknowledgment of service from the person who accepted personal service under subsection (4) (e) of this section.

~~(67)~~ Where the sufficiency of service is contested, ~~an acknowledgment of service obtained under subsection (5) (a) of this section or~~ a confirmation of filing obtained under subsection (6) (a) of this section, a certificate of service made under subsection (~~5~~6) (b) of this section, or an acknowledgement of service obtained under subsection (6) (c) of this section ~~shall~~ constitutes proof of service.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-05-033, § 391-08-120, filed 2/9/16, effective 3/11/16.

Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (19). WSR 00-14-048, § 391-08-120, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-120, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.010 (6) and (18). WSR 96-07-105, § 391-08-120, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-120, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.58.050, 41.56.090 and 41.59.110. WSR 88-12-053 (Order 88-01), § 391-08-120, filed 5/31/88. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-120, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-120, filed 1/27/77.]

WAC 391-08-155 Adjudicative proceedings-Dispositive

prehearing motions. Unless controlled by WAC 391-08-180, 391-25-170, 391-25-190, 391-45-070, 391-45-210, or 391-45-250, all prehearing motions must be made in writing and filed and served on all parties of record in accordance with WAC 391-08-120.

(1) When a hearing date(s) has not been established, dispositive prehearing motions may be filed at any time after the answer has been filed. The presiding officer shall establish a schedule for any non-moving party to respond to the motion and

for the moving party to file a brief in reply to the response(s).

(2) If a hearing date(s) has been established, all dispositive prehearing motions must be filed with the presiding officer at least 65 days before the first hearing date, unless the presiding officer deems the time frame waivable for good cause shown.

(a) When a dispositive prehearing motion is filed, any non-moving party may file and serve a response to the motion within 21 days from the date on which the motion was filed.

(b) When a response to the dispositive prehearing motion is filed, the moving party may file and serve a reply to the response within seven days from the date on which the response was filed.

(c) The presiding officer must rule on or respond to the motion at least 21 days before the first hearing date.

(3) All motions must state the relief sought, the specific basis for the request, and the supporting legal authorities. Motions may be accompanied by other supporting materials, such as affidavits.

WAC 391-08-180 Continuances. (1) Postponements, continuances, extensions of time, and adjournments may be ordered ~~by the presiding officer on his or her~~on the presiding officer's own motion or may be granted on the timely request of any party, with notice to all other parties, if the party shows good cause.

(2) A request for a continuance may be oral or written. The party seeking the continuance shall notify all other parties of the request. The request for a continuance ~~shall~~must state whether or not all other parties agree to the continuance.

If all parties do not agree to the continuance, the presiding officer shall promptly schedule a prehearing conference or request written submissions to receive argument and to rule on the request.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050. WSR 00-14-048, § 391-08-180, filed 6/30/00, effective 8/1/00; WSR 98-14-112, § 391-08-180, filed 7/1/98, effective 8/1/98; WSR 96-07-105, § 391-08-180, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-180, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050,

41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-180, filed 12/1/83, effective 1/1/84. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-180, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-180, filed 1/27/77.]

~~WAC 391-08-190 Prefiling of collective bargaining~~

~~agreements. The agency shall make available a procedure for parties to proceedings before the agency to prefile collective bargaining agreements with the agency in accordance with this section, and to thereafter incorporate prefiled contracts into other filings, by reference. The prefiled copy will then take the place of filing copies otherwise required by rules in Title 391 WAC.~~

~~(1) An employer and/or exclusive bargaining representative who request prefiling of their collective bargaining agreement under this section may file a written request with the agency.~~

~~(a) The requesting party or parties shall use the form prescribed by the executive director.~~

~~(b) The requesting party or parties shall attach or enclose a complete electronic copy of the collective bargaining~~

~~agreement (in Adobe Acrobat, WordPerfect, or Microsoft Word format).~~

~~(c) The requesting party or parties shall attach photocopies of certain pages of the original collective bargaining agreement, as follows:~~

~~(i) The front cover or first page(s) showing the names of the parties and the identification of the bargaining unit(s) covered;~~

~~(ii) The page(s) containing the effective date and termination dates of the collective bargaining agreement; and~~

~~(iii) The page(s) containing the signatures of the parties' representatives.~~

~~(2) Upon the filing of a request conforming to subsection (1) of this section, the agency shall put the prefiled collective bargaining agreement into an electronic database.~~

~~(a) The collective bargaining agreements contained in the electronic database shall be open to public inspection and copying.~~

~~(b) The agency shall issue the parties a confirmation code unique to that collective bargaining agreement.~~

~~(3) After issuance of a confirmation code under subsection (2)(b) of this section, the parties are authorized to incorporate that prefiled collective bargaining agreement into any paper subsequently filed with the agency under Title 391 WAC, by referring to the confirmation code in the subsequent document.~~

~~(4) The authorization in subsection (3) of this section shall terminate on the expiration date originally stated in the prefiled collective bargaining agreement.~~

~~(5) Any amendments to the original agreement may be filed and incorporated into the original filing under subsection (1) of this section. If either party declines to profile an amendment to a collective bargaining agreement under this rule, a copy of any amendment must be included in any subsequent case filed with the commission.~~

~~[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-190, filed 1/31/08, effective 4/1/08.]~~

WAC 391-08-300 Subpoenas-Discovery. ~~The power of subpoena shall be limited to compelling the testimony of~~

~~witnesses and production of documents or other tangible evidence at hearings conducted by the agency.~~

~~Pursuant to~~Under the authority delegated to the agency by RCW 34.05.446(2), ~~other forms of prehearing~~ discovery ~~shall not~~ beis not available in proceedings before the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.446. WSR 98-14-112, § 391-08-300, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-300, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-300, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-300, filed 1/27/77.]

WAC 391-08-310 Subpoenas-Form-Issuance to parties. The power of subpoena shall beis limited to compelling the testimony of witnesses and production of documents or other tangible evidence at hearings conducted by the agency. (1) Every subpoena ~~shall~~must:

(a) State the name of the agency as+ State of Washington, public employment relations commission;

(b) State the title of the proceeding and case number; and

(c) Identify the party causing issuance of the subpoena.

(2) Every subpoena shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under ~~his or her~~that person's control at the time and place set for the hearing, ~~except no subpoena shall~~. No subpoena shall be issued or given effect to require the attendance and testimony of, or the production of evidence by, anya member of the commission or ~~any member of the~~ agency staff in any proceeding before the agency.

(3) ~~§~~Upon a showing of general relevance and reasonable scope of the testimony or evidence sought, subpoenas may be issued by the commission or ~~its~~a presiding officer:

(a) On the request of counsel or other representative ~~authorized to practice before the agency;~~ or

(b) On the request of a party not represented by counsel or other representative ~~authorized to practice before the agency, but may then be conditioned upon a showing of general relevance and reasonable scope of the testimony or evidence sought.~~

(4) Subpoenas may be issued by attorneys under the authority conferred upon them by RCW 34.05.446(1).

(5) A subpoena may be served by any suitable person over ~~eighteen~~18 years of age, by exhibiting and reading it to the witness, ~~or by giving him or her~~the witness a copy of the subpoena, or by leaving a copy of the subpoena at ~~the place of his or her~~the witness's abode or usual dwelling place. When service is made by any person other than an officer authorized to serve process, proof of service ~~shall~~must be made by affidavit or declaration under penalty of perjury.

(6) The party ~~which~~that issues or requests issuance of a subpoena shall pay the fees and allowances and the cost of producing records required to be produced by subpoena.

(a) Witness fees, mileage, and allowances for meals and lodging ~~shall~~must be at the rates and terms allowed by the superior court for ~~Thurston County~~the county the witness is in when the hearing occurs.

(b) Witnesses ~~shall be~~are entitled to payment in advance for their fees for one day's attendance, together with mileage for traveling to and returning from the place where they are

required to attend, if their demand for payment is made to the officer or person serving the subpoena at the time of service.

(7) The presiding officer, upon motion made at or before the time specified in the subpoena ~~for compliance therewith,~~ may:

(a) Quash or modify the subpoena if it is unreasonable or oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, ~~papers,~~ documents, or ~~tangible~~ things.

(8) Subpoenas ~~shall~~may be enforced as provided in RCW 34.05.588(1).

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.40.010, 5.56.010 and 34.05.446. WSR 00-14-048, § 391-08-310, filed 6/30/00, effective 8/1/00; WSR 99-14-060, § 391-08-310, filed 7/1/99, effective 8/1/99; WSR 98-14-112, § 391-08-310, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-310, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022,

41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-310, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-310, filed 1/27/77.]

WAC 391-08-315 Interpreters. (1) For all adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, ~~and 391-45 and 391-95~~ WAC), the provisions of WAC 10-08-150 ~~as now or hereafter amended shall~~ apply.

(2) For all cases that are not adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-55 and 391-65 WAC), the provisions of WAC 10-08-150 ~~as now or hereafter amended shall~~ apply, except that all interpreter fees and expenses ~~shall~~must be paid by the party ~~which~~that requests the participation of an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 2.42.120 and 2.43.030. WSR 98-14-112, § 391-08-315, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080,

41.59.100, 41.59.150 and chapter 2.42 RCW. WSR 90-06-070, § 391-08-315, filed 3/7/90, effective 4/7/90.]

WAC 391-08-520 Declaratory orders. Any person may petition the commission for a declaratory order~~7~~ under RCW 34.05.240~~7~~ with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the ~~commission~~agency. For purposes of this section, the term person includes natural persons, employee organizations, and employers.

(1) A petition for a declaratory order ~~shall~~must generally adhere to the following form:

(a) At the top of the page ~~shall~~must appear the wording "Before the Public Employment Relations Commission," a caption setting out "In the Matter of the Petition of (name of petitioner to be inserted) for a Declaratory Order," and the title "Petition."

(b) The body of the petition ~~shall~~must set out, in numbered paragraphs:

(i) The name, email address, and mailing address of the petitioner and ~~the name and address, if any,~~ of the petitioner's representative ~~appearing on behalf of the petitioner., if any;~~

(ii) The name(s), email address(es), and mailing address(es) of any other party ~~which~~that the petitioner seeks to have bound by any declaratory order issued by the commission, and the name(s), email address(es), and mailing address(es) of ~~their~~those parties' representatives, if known~~;~~;

(iii) The rule(s), order(s), or statute(s) from which the controversy arises~~;~~;

(iv) The facts ~~which~~that the petitioner wishes the commission to consider ~~in issuing a declaratory order.~~;

(v) The issues ~~which~~that the petitioner wishes the commission to address ~~in its order.~~;

(vi) The relief requested by the petitioner~~;~~; and

(vii) The reasons on which the petitioner relies to show that~~;~~; Uncertainty necessitating resolution exists; there is actual controversy arising from the uncertainty such that a declaratory order will not be merely an advisory opinion; the uncertainty adversely affects the petitioner; and the adverse effect of uncertainty on the petitioner outweighs any adverse effects on others or on the general public that may likely arise from the order requested.

(c) The petition ~~shall~~must be filed ~~at the commission's Olympia office~~and served as required by WAC 391-08-120~~(1)~~, and ~~copies shall be served on other parties named in the petition as required by WAC 391-08-120 (3) and (4).~~

(2) Within ~~fifteen~~15 days after receipt of a petition for a declaratory order, the executive director or designee shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person ~~he or she~~the executive director or designee deems desirable. The notice ~~shall~~must establish a deadline for necessary parties other than the petitioner to file written consent to the determination of the matter by a declaratory order.

(3) The petition and any responses from parties ~~shall~~must be forwarded to the commission for consideration. The commission ~~shall~~may not issue a declaratory order if:

(a) The matter is or could have been the subject of any other adjudicative proceeding before the commission; or

(b) A necessary party whose rights would be substantially prejudiced does not consent, in writing, to the determination of the matter by a declaratory order.

(4) The commission may consider the petition without argument and shall, within ~~thirty~~30 days after receipt of the petition, do one of the following:

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

(b) Set a reasonable time and place for a hearing to be held within ~~ninety~~90 days after receipt of the petition, including submission of evidence by the parties if deemed necessary by the commission, ~~or~~ submission of written argument ~~upon the matter~~ if the material facts are not in dispute. The commission shall give seven days' or more advance written notice to the petitioner and other persons who have been given notice of the petition ~~pursuant to~~under subsection (2) of this section of the time, date, and place for the hearing or submission and of the issues it will be considering;

(c) Set a specified time within ~~ninety~~90 days after receipt of the petition ~~by which~~when it will enter a declaratory order;
~~or~~

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

(5) The commission may extend the time limits of subsection (4) (b) and (c) of this section, for good cause.

(6) The commission may, at any time before taking final action on a petition under this section, request submission of additional facts or argument, which may include setting the case for oral argument.

(7) If the commission proceeds in the manner provided in subsection (4) (b) of this section, it shall within a reasonable time after conclusion of the proceeding:

(a) Issue a declaratory order; or

(b) Notify the petitioner and any other party to the proceeding that no declaratory order will be issued and state the reasons for ~~such~~that action.

(8) A declaratory order entered by the commission or a decision to decline to enter a declaratory order ~~shall~~must be in writing, ~~and shall~~ and be served ~~upon~~ upon all parties identified in subsection (2) of this section. Each declaratory order ~~shall~~must contain the names of all parties to the proceeding on which it

is based, the particular facts on which it is based, and the reasons for its conclusions.

(9) A declaratory order ~~has the same status as any other order entered in an adjudicative proceeding conducted by the commission~~ is a final agency order.

~~(10) In the event a declaratory order is filed involving the application of the provisions of chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-520, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.240. WSR 98-14-112, § 391-08-520, filed 7/1/98, effective 8/1/98.]

WAC 391-08-610 Agency decisions—Service. Every final order issued by the agency ~~shall~~must be served on each party or upon the agency designated by the party or by law to receive service of ~~such papers~~documents; and a copy ~~shall~~must be furnished to any counsel or person appearing for a party in a representative capacity.

[Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.045(3), 28B.52.060, 41.56.060, 41.56.122(1), 41.56.170, 41.59.080, 41.59.100 and 41.59.150. WSR 90-06-070, § 391-08-610, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 83-24-031 (Order 83-01), § 391-08-610, filed 12/1/83, effective 1/1/84; Order 77-1, § 391-08-610, filed 1/27/77.]

~~WAC 391-08-630 Agency structure-Substitution for executive director. (1) The public employment relations commission and its staff maintain an impartial role in all proceedings pending before the agency.~~

~~(2) The commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to RCW 41.58.010. Commission members serve on a part time basis only. All commission members represent the interests of the public. The commission reserves to itself a policy-making and appellate function.~~

~~(3) The executive director appointed by the commission pursuant to RCW 41.58.015(2) is the full time agency head, with authority to act in administrative and personnel matters. Authority is also delegated to the executive director to make substantive decisions in certain types of cases.~~

~~(4) The commission's professional staff is appointed pursuant to RCW 41.58.015(3). A "multifunctional" staffing pattern is used, whereby individual members of the commission's professional staff are assigned from time to time to conduct any or all of the types of dispute resolution services provided by the agency. Authority is delegated to members of the professional staff to make decisions as "examiner" under chapters 391-45 and 391-95 WAC. The executive director may also delegate authority to members of the professional staff to make decisions in certain situations under chapters 391-25 and 391-35 WAC.~~

~~(5) In the event the executive director is disqualified from participation in a decision, the most senior (in terms of length of service with this agency) dispute resolution manager authorized to act as the designee of the executive director to make preliminary rulings on unfair labor practice cases under WAC 391-45-110, who has not been directly involved in the particular circumstances shall make decisions and rulings otherwise required of the executive director. Thereafter, this~~

~~authority passes to the other dispute resolution managers in agency seniority order.~~

~~(6) The marine employees' commission consists of three citizen members appointed by the governor with the advice and consent of the senate, pursuant to and consistent with section 16, chapter 16 (2ESSB 5742), Laws of 2011 1st sp. sess. [Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-630, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, 41.58.010 and [41.58].015. WSR 03-03-064, § 391-08-630, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.58.010 and 41.58.015. WSR 98-14-112, § 391-08-630, filed 7/1/98, effective 8/1/98; WSR 90-06-070, § 391-08-630, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. WSR 85-19-059 (Resolution No. 85-01), § 391-08-630, filed 9/16/85.]~~

WAC 391-08-640 ~~Adjudicative proceedings Appeals~~Amicus ~~briefs-Commission review.~~ Actions by the executive director and other agency staff members in adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-

~~35, 391-45 and 391-95 WAC) are taken under authority delegated by the commission.~~

~~(1) The parties shall have the right to appeal to the commission, as follows:~~

~~(a) Under chapter 391-25 WAC, a direction of election or direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the election or cross-check.~~

~~(b) Under chapter 391-25 WAC, an order issued under WAC 391-25-390 or 391-25-510 and any rulings in the proceedings up to the issuance of the order, as well as rulings that the employer or employees are subject to the jurisdiction of the commission, may be appealed to the commission under WAC 391-25-660.~~

~~(c) Under chapter 391-35 WAC, an order issued under WAC 391-35-190 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-35-210.~~

~~(d) Under chapter 391-45 WAC, an order issued under WAC 391-45-110(1) or 391-45-310 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-45-350.~~

~~(e) Under chapter 391-95 WAC, an order issued under WAC 391-95-150(1) or 391-95-250 and any rulings in the proceedings up to the issuance of the order may be appealed to the commission under WAC 391-95-270.~~

~~(2) For cases decided under chapter 47.64 RCW, the marine employees' commission shall act in place of the commission.~~

~~(3)(1) The commission will only consider amicus ~~(friend of the forum)~~ briefs filed in conformity with this subsection.~~

(a) The person or organization desiring to file an amicus brief must:

(i) Obtain a copy of the decision on appeal, the notice of appeal, and the briefs of the parties;

(ii) Limit any amicus brief to particular issues on appeal;

(iii) Limit any legal analysis to arguments that differ from those advanced by the parties;

(iv) Exclude restatement or reargument of the facts, except as necessary to legal arguments under (a)(iii) of this subsection;

(v) Limit any amicus brief to ~~twenty-five~~25 pages in total length (double-spaced, 12-point type); and

(vi) File the amicus brief with the commission within ~~fourteen~~14 days following the filing and service of the parties' briefs ~~of the parties,~~ and serve copies of ~~any such~~the amicus brief on each of the original parties ~~into~~the case.

(b) The commission may extend the deadline for a party wishing to file an amicus brief if the petitioning party demonstrates good cause for ~~such an~~such an extension.

(c) The original parties to the case may, within ~~fourteen~~14 days following the filing and service of an amicus brief, file and serve written responses to the amicus brief.

(d) A person or organization that files an amicus brief does not ~~thereby acquire~~have any right to reply to the responses filed by the original parties to the case.

(e) A person or organization that files an amicus brief does not ~~thereby~~ become a party to the case for purposes of any further proceedings or appeal.

(~~42~~) The commission may, on its own motion, review any order which is subject to appeal ~~under subsection (1) of this section,~~ by giving written notice to all parties within ~~thirty~~30 days following the issuance of the order.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, 41.80.080, and 49.39.060. WSR 12-05-066, § 391-08-640, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-640, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.464. WSR 98-14-112, § 391-08-640, filed 7/1/98, effective 8/1/98.]

WAC 391-08-650 Case docketing and numbering. The agency maintains a ~~computerized~~ case docketing and numbering system ~~which is used to that~~ tracks and manages all requests for ~~the~~ dispute resolution services ~~provided by the agency~~.

(1) Each case ~~processed by the agency is identified by~~ is assigned an alphanumeric identifier that includes a unique sequential number ~~consisting of three components, an alphabetic~~

letter signifying the type of dispute being processed, and a number indicating the calendar year in which the case was filed.

~~(a) The first component, consisting of a five-digit number, indicates the sequential number of cases docketed since the agency commenced operations on January 1, 1976.~~

~~(b) The second component, consisting of one alphabetic code, indicates the type of dispute being processed, as follows:~~

~~"A" indicates a grievance arbitration proceeding under chapter 391-65 WAC, wherein an agency staff member is to interpret or apply an existing collective bargaining agreement.~~

~~"C" indicates a unit clarification proceeding under chapter 391-35 WAC.~~

~~"D" indicates a declaratory ruling or declaratory order proceeding under the Administrative Procedure Act, and formerly included proceedings under chapter 391-95 WAC concerning assertion of the right of nonassociation by employees subject to union security obligations.~~

~~"E" indicates a representation proceeding under chapter 391-25 WAC.~~

~~"F" indicates a fact-finding proceeding under chapter 391-55 WAC, to recommend the terms of a collective bargaining agreement.~~

~~"G" indicates a grievance mediation proceeding under chapter 391-55 WAC after January 1, 1996, concerning the interpretation or application of an existing collective bargaining agreement.~~

~~"I" indicates an interest arbitration proceeding under chapter 391-55 WAC, to establish the terms of a collective bargaining agreement.~~

~~"M" indicates a mediation proceeding under chapter 391-55 WAC, limited after January 1, 1996, to disputes concerning the terms of a collective bargaining agreement.~~

~~"N" indicates a proceeding under chapter 391-95 WAC after January 1, 1996, concerning assertion of the right of nonassociation by employees subject to union security obligations.~~

~~"P" indicates a request for a list of arbitrators from the commission's dispute resolution panel for grievance arbitration proceedings under chapter 391-65 WAC.~~

~~"S" indicates a settlement mediation proceeding for cases under chapters 391-45 and 391-95 WAC.~~

~~"U" indicates an unfair labor practice proceeding under chapter 391-45 WAC.~~

~~(c) The third component, consisting of a two-digit number, indicates the calendar year in which the case is docketed.~~

(2) Cases involving various departments or divisions of an employer entity are docketed under the name of the employer entity.

(3) Cases filed by an employee organization ~~or labor organization~~ are docketed under the name of the organization, even if employees represented by that organization are named individually in the pleadings or are affected by the outcome of the proceedings.

(4) Cases filed by two or more individual employees are docketed separately for each employee.

(5) Cases filed by an individual employee involving multiple respondents are docketed separately for each respondent.

[Statutory Authority: RCW 28B.52.080, 41.56.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-19-058, § 391-08-650, filed 9/19/16, effective 10/20/16. Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-650, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050 and 34.05.220. WSR 96-07-105, § 391-08-650, filed 3/20/96, effective 4/20/96.]

WAC 391-08-670 Decision numbering—Citation of cases—

Indexing of decisions. (1) Each decision issued by the agency in an adjudicative proceeding under the Administrative Procedure Act is assigned a unique number consisting of ~~two or three~~ or four components, as follows:

(a) The first component, ~~consisting of~~ is a number, ~~and~~ indicates the sequential number of adjudicative proceedings in which one or more decisions has been issued since the agency ~~commenced~~ began operations on January 1, 1976.

(b) The second component (where appropriate) ~~consisting of~~ is a letter in ~~ascending~~ consecutive alphabetical order, ~~and~~ and indicates the second and subsequent

decisions issued in the case ~~to which the numerical component was originally assigned.~~

(c) The third component, ~~consisting of a four letter alphabetic code,~~ is a group of four alphabetical letters that indicates the statute under which the decision was issued:

"COL" ~~indicates cases decided under~~ chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges).

"EDUC" ~~indicates cases decided under~~ chapter 41.59 RCW (Educational Employment Relations Act).

"FCBA" ~~indicates cases decided under~~ chapter 41.76 RCW (~~faculty at public four year institutions of higher education~~ Public Four-Year Institutions of Higher Education—Faculty Labor Relations).

"MRNE" ~~indicates cases decided under~~ chapter 47.64 RCW, ~~relating to the Washington state ferries system~~ (Marine Employees—Public Employment Relations).

"PECB" ~~indicates cases decided under~~ chapter 41.56 RCW (Public Employees' Collective Bargaining Act), including some cases involving port districts.

"PORT" ~~indicates cases decided exclusively under~~ chapter 53.18 RCW (Employment Relations—Collective Bargaining and Arbitration), relating to port districts.

"PRIV" ~~indicates cases decided under~~ chapter 49.08 RCW, relating to private sector employers and employees.

"PSRA" ~~indicates cases decided under RCW 41.06.340 and/or~~ chapter 41.80 RCW (Personnel System Reform Act).

(d) The fourth component is the year in which the decision was issued.

(2) All citations of agency decisions in subsequent agency decisions, in publications of agency decisions, and in briefs and written arguments filed by parties with the agency ~~shall~~must conform to the formats specified in this section:

GENERAL RULE: Citations ~~shall~~must list only the name of the employer *italicized*, the word "Decision" followed by the decision number, and the statute and year the decision was issued (in parentheses).

Examples: *City of Roe*, Decision 1234~~5~~ (PECB, ~~1992~~2022)
City of Roe, Decision 1234~~5~~-A (PECB, ~~1993~~2022)
City of Roe, Decision 1234~~5~~-B (PECB, ~~1994~~2022)

EXCEPTION: For decisions in which an employee organization ~~or labor organization~~ was named as the respondent in an unfair labor practice case, the citation ~~shall~~must list the name of the union (in parentheses) following the name of the employer.

Example: *City of Roe (Doe Union)*, Decision 2345~~6~~ (PECB, ~~1995~~2022)

~~(3) The agency encourages the publication and indexing of its decisions by private firms, but does not contribute~~

~~financial support to any such firm and declines to declare any private firm as the "official reporter" of agency decisions.~~

~~(4)~~To satisfy the requirements of ~~RCW 42.17.260(5)~~RCW 42.56.070(5), the agency publishes its decisions, together with a search engine, on its web-site at: ~~"~~www.perc.wa.gov~~"~~.

[Statutory Authority: RCW 28B.52.080, 34.05.220, 41.56.090, 41.58.050, 41.58.065, 41.59.110, 41.76.060, and 49.39.060. WSR 12-05-066, § 391-08-670, filed 2/15/12, effective 3/17/12. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 41.06.340, 41.76.060, and 34.05.220. WSR 03-11-029, § 391-08-670, filed 5/15/03, effective 6/15/03; WSR 03-03-064, § 391-08-670, filed 1/14/03, effective 2/14/03. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, and 34.05.220. WSR 00-24-044, § 391-08-670, filed 11/30/00, effective 1/1/01; WSR 96-07-105, § 391-08-670, filed 3/20/96, effective 4/20/96.]

WAC 391-08-800 Agency records—Public records officer—

Contact information. (1) Any person wishing to request access to public records of the agency~~r~~ or seeking assistance in making ~~such a~~that request should contact the agency's public records officer ~~of the agency~~:

Public Records Officer~~r~~

Public Employment Relations Commission

P.O. Box 40919

Olympia, Washington 98504-0919

360-570-7300

info@perc.wa.gov

Information is also available ~~at~~on the agency's web-site at
www.perc.wa.gov.

(2) The public records officer will oversee compliance with
the act but another staff member may process the request.

Therefore, these rules refer to the public records officer "or
designee." The public records officer or designee will provide
the "fullest assistance" to requestors, ensure that public
records are protected from damage or disorganization, and
prevent fulfilling public records requests from causing
excessive interference with essential functions of the agency.

[Statutory Authority: RCW 28B.52.080, 41.56.050, 41.59.110,
41.76.060, 41.80.080, 47.64.280(2), 49.39.060. WSR 16-19-058, §
391-08-800, filed 9/19/16, effective 10/20/16. Statutory
Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110,
41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, §
391-08-800, filed 10/6/10, effective 11/6/10. Statutory

Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 34.05.220 and 34.05.476. WSR 98-14-112, § 391-08-800, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090 and 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08, 53.18 and 42.17 RCW. WSR 90-06-070, § 391-08-800, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-800, filed 1/27/77.]

WAC 391-08-810 Agency records—Confidentiality. The agency shall preserve the confidentiality of certain records, as follows:

(1) ~~In order to~~ To protect the privacy of individual employees, the agency shall not ~~permit the disclosure to any person of~~ disclose evidence furnished as a showing of interest in support of a representation petition or motion for intervention.

(2) ~~In order to~~ To respect the confidential nature of mediation, the agency shall not ~~permit the disclosure of~~ disclose notes and memoranda made by any member of the commission or ~~its~~ agency staff as a recording of communication made or received while acting in the capacity of a mediator between the parties to a labor dispute.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110, 41.58.050, 28B.52.060, 41.56.070, 41.56.100, 41.56.440,

41.58.020, 41.59.120 and 49.08.010. WSR 99-14-060, § 391-08-810, filed 7/1/99, effective 8/1/99. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 98-14-112, § 391-08-810, filed 7/1/98, effective 8/1/98. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110, 28B.52.060, 41.56.070, 41.56.100, 41.56.440, 41.58.020, 41.59.120 and 49.08.010. WSR 90-06-070, § 391-08-810, filed 3/7/90, effective 4/7/90; Order 77-1, § 391-08-810, filed 1/27/77.]

WAC 391-08-820 Agency offices. (1) The agency maintains its principal office in ~~the city of~~ Olympia, Washington.

(a) The street address of the Olympia office is:

~~Public Employment Relations Commission~~

112 Henry Street N.E., Suite 300

Olympia, Washington ~~98504-0919~~98506-4470.

(b) The mailing address of the Olympia office is:

~~Public Employment Relations Commission~~

P.O. Box 40919

Olympia, Washington 98504-0919.

(2) The agency maintains a branch office at:

~~Public Employment Relations Commission~~

~~Suite 201~~

9757 N.E. Juanita Drive-NE, Suite 201

Kirkland, Washington 98034.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080. WSR 08-04-059, § 391-08-820, filed 1/31/08, effective 4/1/08. Statutory Authority: RCW 28B.52.080, 41.56.090, 41.59.110 and 41.58.050. WSR 96-07-105, § 391-08-820, filed 3/20/96, effective 4/20/96. Statutory Authority: RCW 41.58.050, 28B.52.080, 41.56.090, 41.59.110 and chapters 28B.52, 41.56, 41.58, 41.59, 49.08 and 53.18 RCW. WSR 90-06-070, § 391-08-820, filed 3/7/90, effective 4/7/90. Statutory Authority: RCW 28B.52.080, 41.56.040, 41.58.050, 41.59.110 and 47.64.040. WSR 80-14-045 (Order 80-4), § 391-08-820, filed 9/30/80, effective 11/1/80; Order 77-1, § 391-08-820, filed 1/27/77.]

WAC 391-08-830 Agency records-Availability-Organization-

Requests. (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the agency's Olympia office ~~of the agency~~.

(2) **Organization of records.** The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and

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disorganization. A requestor ~~shall~~may not take agency records from its offices without the permission of the public records officer or ~~his or her~~ designee. A variety of records ~~is~~are available on the agency web-site at www.perc.wa.gov. Requestors are encouraged to view the documents available on the web-site ~~prior to~~before submitting a records request.

(3) **Making a request for public records+.**

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(a) Any person wishing to inspect or copy the agency's public records ~~of the agency~~ should make the request by ~~letter, fax, or email~~ to info@perc.wa.gov, by letter, or by submitting the request in person at the agency's Olympia office addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) AEmail address, mailing address, and telephone number of the requestor;

(iii) ~~Other contact information, including telephone number and any email address;~~

~~(iv)~~ Identification of the public records adequate for the public records officer or designee to locate the records; and

(iv) The date and time ~~of day~~ of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, ~~he or she~~ the requestor should so indicate and make arrangements to pay for copies of the records or make a deposit. ~~Pursuant to WAC 391-08-860 standard photocopies will be provided at fifteen cents per page.~~

(c) The public records officer or designee may accept oral requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts ~~such an~~ oral request, ~~he or she~~ the records officer will confirm receipt of the information and the substance of the request in writing.

~~(d) If requestors refuse to identify themselves or provide sufficient contact information, the agency will respond to the extent feasible and consistent with the law.~~

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-830, filed 10/6/10, effective 11/6/10.]

WAC 391-08-840 Processing of public records requests. (1)

Providing "fullest assistance." The public records officer or

designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(a) Upon receipt of a request, the agency will assign it a tracking number and enter it into a log.

(b) The public records officer or designee will evaluate the request according to the nature of the request, the volume of requested records, and the availability of the requested records.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying+
by:

(i) If copies are available on the agency's website, providing a link to the website where the requested records are located;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, sending the copies to the requestor;

(~~eb~~) Provide a reasonable estimate of when records will be available (the public records officer or designee may revise the estimate of when records will be available);

(~~ec~~) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor.

~~Such e(i)~~ Clarification may be requested and provided by telephone. ~~The public records officer or designee may revise the estimate of when records will be available; or~~ and memorialized in writing;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the agency need not respond to it. The agency will respond to those portions of a request that are clear.

(~~ed~~) Deny the request.

(~~23~~) **Protecting rights of others.** ~~In the event that~~ If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, ~~prior to~~ before providing the records, give notice to ~~such others~~ any persons whose rights may be affected by the

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disclosure. ~~Such~~That notice should be given so as to make it possible for those other persons to contact the requestor and ask ~~him or her~~the requestor to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(34) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record ~~are being~~were redacted.

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(45) Inspection of records.

(a) Consistent with other demands, the agency shall promptly provide space to inspect public records. ~~No~~A member of the public may not remove a document from the viewing area

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without permission or disassemble or alter any document. The requestor ~~shall~~may indicate which documents ~~he or she wishes~~the requestor would like the agency to copy.

(b) The requestor must claim or review the assembled records within ~~thirty~~30 days of the agency's notification ~~to him or her~~ that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and ~~inform~~ask the requestor ~~that he or she should~~to contact the agency to make arrangements that to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the ~~thirty~~30-day period or make other arrangements, the agency may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(~~5~~6) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

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~~(67)~~ **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if ~~he or she~~ the public records officer or designee reasonably determines that it would be practical to provide the records in that manner. If, within ~~thirty~~30 days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

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~~(78)~~ **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the agency has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

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~~(89)~~ **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to ~~fulfill his or her obligations to~~ inspect the records or pay the deposit or final payment for the requested copies, the public records

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officer will close the request and indicate to the requestor that the agency has closed the request.

(910) ~~Later--discovered documents~~. If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-840, filed 10/6/10, effective 11/6/10.]

WAC 391-08-850 Processing of public records ~~requests--~~
Electronic records. (1) Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records. When a requestor requests electronic records in an electronic format, the public records officer will provide the nonexempt records or portions of ~~such~~ those records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially

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available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) **Customized electronic access to databases services**. With the consent of the requestor, the agency may provide customized access services and assess charges under RCW ~~43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The agency may charge a fee consistent with RCW 43.105.280 for such customized access.~~42.56.120(2)(f). A customized service charge applies only if the agency estimates that the request would require the use of information technology expertise to prepare data compilations or provide customized electronic access services when such compilations and customized access services are not used by the agency for other purposes. The agency may charge a fee consistent with RCW 42.56.120(2)(f) for such customized access.

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-850, filed 10/6/10, effective 11/6/10.]

WAC 391-08-860 Exemptions to public records. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition,

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documents are exempt from disclosure if any other statute exempts or prohibits disclosure.

(2) The agency is prohibited by statute from disclosing lists of individuals for commercial purposes.

[Statutory Authority: [RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060.] WSR 10-20-172, § 391-08-860, filed 10/6/10, effective 11/6/10.]

WAC 391-08-870 Costs ~~ferof~~ providing copies of public records. (1) Inspection. There is no fee for inspecting public records, including records on the agency website at www.perc.wa.gov.

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(2) Costs. A requestor may obtain standard ~~black and white photocopies~~ for ~~fifteen~~15 cents per page ~~and color copies for twenty five cents per page.~~

(~~2~~3) Processing payments. Before beginning to make the copies or processing a customized service, the public records officer or designee may require a deposit of up to ~~ten~~10 percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of

copying an installment before providing that installment. The agency will not charge sales tax when it makes copies of public records.

~~(34) The cost of electronic copies of records shall be one dollar for information on a CD-ROM.~~ Electronic records. There ~~will be~~ is no charge for emailing electronic records to a requestor, unless another cost applies.

(45) Costs of mailing. The agency may also charge actual costs of mailing, including the cost of the shipping container.

~~(56)~~ Payment may be made by cash, check, or money order to the "Public Employment Relations Commission."

[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-870, filed 10/6/10, effective 11/6/10.]

WAC 391-08-880 Review of denial of public records. (1)

Petition for internal administrative review of denial of access.

Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition ~~shall~~ must include a copy of or reasonably identify the written

statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the executive director who will immediately consider the petition and either affirm or reverse the denial within two business days, or a mutually agreed time, following the agency's receipt of the petition, ~~or within such other time as agency and the requestor mutually agree to.~~

(3) Review by the attorney general's office. Under RCW 42.56.530, if the agency denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under ~~the procedure set forth under~~ WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial of ~~such~~the request regardless of any internal administrative appeal.

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[Statutory Authority: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, and 49.39.060. WSR 10-20-172, § 391-08-880, filed 10/6/10, effective 11/6/10.]