PROPOSED RULE MAKING

CR-102 (June 2004)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

Agency: Department of Revenue

X **Preproposal Statement of Inquiry was filed as WSR 10-17-082; or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR ; or**
☐ **Proposal is exempt under RCW 34.05.310(4).**

☒ **Original Notice**
☐ **Supplemental Notice to WSR**
☐ **Continuance of WSR**

Title of rule and other identifying information: WAC 458-20-10001 (Rule 10001) *Adjudicative proceedings — Brief adjudicative proceedings — Certificate of registration (tax registration endorsement) revocation*. This rule explains the Department's adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act.

Hearing location(s):
Department of Revenue
Capitol Plaza Building
Fourth Floor L&P Conference Room
1025 Union Avenue SE
Olympia, Washington 98504

Date: December 8, 2010 Time: 10:00 AM

Date of intended adoption: December 15, 2010
(Note: This is **NOT** the **effective** date)

Submit written comments to:
Name: Bridget N. McBryde
Address: Post Office Box 47453
Olympia, Washington 98504-7453
E-mail: BridgetM@dor.wa.gov
By: December 8, 2010

Assistance for persons with disabilities: Contact Martha Thomas at (360) 725-7497 no later than 10 days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department proposes to amend Rule 10001 to eliminate the discussion of proceedings regarding wholesale and retail cigarette license revocation or suspension. Chapter 154, Laws of 2009 (SHB 1435), provides the Washington State Liquor Control Board with the authority to approve, deny, suspend, or revoke retailer and wholesaler cigarette licenses. The Department also proposes updating the information in the rule regarding adjudicative procedures for certificate of registration revocations.

Copies of draft rules are available for viewing and printing on our website at:
http://dor.wa.gov/content/FindALawOrRule/RuleMaking/default.aspx

Reasons supporting proposal: To recognize 2009 legislation and update information in the current rule.

Statutory authority for adoption: RCW 82.32.300 and 82.01.060

Statute being implemented: RCW 34.05.482 through 34.05.494, except 34.05.491(5), for actions involving revocation of a certificate of registration (tax registration endorsement) pursuant to RCW 82.32.215.

Is rule necessary because of a:

Federal Law?	☐ Yes	X No
Federal Court Decision?	☐ Yes	X No
State Court Decision?	☐ Yes	X No

If yes, CITATION:

Date October 29, 2010

Name Alan R. Lynn

Signature Alan R Lynn

Title
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 29, 2010
TIME: 11:26 AM

WSR 10-22-064

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: Department of Revenue

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Bridget N. McBryde	1025 Union Ave. SE. Ste #544, Olympia ,Wa	(360) 534-1579
Implementation....	Alan R. Lynn	1025 Union Ave. SE. Ste #544, Olympia ,Wa	(360) 570-6125
Enforcement.....	Gilbert Brewer	1025 Union Ave. SE. Ste #544, Olympia ,Wa	(360) 570-6147

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:
Name:
Address:

Phone:
Fax:
E-mai:

X No. Explain why no statement was prepared. **This rule does not impose any new performance requirement or administrative burden on any small business not required by statute.**

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:

Phone:
Fax:
E-mail:

X No: **Please explain: This is not a significant legislative rule as defined in RCW 34.05.328.**

THIS PROPOSED RULE IS SUBMITTED FOR PUBLIC COMMENTS AFTER INPUT FROM INTERESTED PARTIES AND IS TO BE USED SOLELY FOR DISCUSSION PURPOSES AT THE PUBLIC HEARING ON THE PROPOSED RULE. UNDER NO CIRCUMSTANCES IS THIS PROPOSED RULE TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.

AMENDATORY SECTION (Amending WSR 95-07-070, filed 3/14/95, effective 4/14/95)

WAC 458-20-10001 Adjudicative proceedings--Brief adjudicative proceedings((~~--Wholesale and retail cigarette license revocation or suspension~~))--Certificate of registration (tax registration endorsement) revocation. ((~~(1) **Introduction.** The department conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). These adjudicative proceedings include, but are not limited to, wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, certificate of registration (tax registration endorsement) revocation of RCW 82.32.215. The department adopts in this section the brief adjudicative procedures as provided in the APA for wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, and certificate of registration (tax registration endorsement) revocation of RCW 82.32.215. This section explains the procedure and process pertaining to the adopted brief adjudicative proceedings. This section does not apply to log export enforcement actions pursuant to chapter 240-15 WAC, orders to county officials issued pursuant to RCW 84.08.120 and 84.41.120, brief adjudicative proceedings converted to formal adjudicative proceeding under subsection (5) of this section, and other formal adjudicative proceedings which are explained in WAC 458-20-10002. This section also does not apply to the nonadjudicative proceedings as provided in RCW 82.32.160, 82.32.170 and WAC 458-20-100.~~

~~(2) **Adoption of brief adjudicative proceedings.** As provided in RCW 34.05.482 (1)(c), this section adopts RCW 34.05.482 through 34.05.494 and the brief adjudicative procedure for APA adjudicative proceedings which the department of revenue conducts for wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, and certificate of registration (tax registration endorsement) revocation of RCW 82.32.215.~~

~~(3) **Brief adjudicative proceedings - procedure.** The following procedure shall apply to the department's brief adjudicative proceeding.~~

~~(a) **Notice of hearing.** The department shall set the time and place of the hearing. The date of the hearing may not be not less than seven days after written notice is served upon the person(s) to whom the proceedings apply. With the concurrence~~

~~of the presiding officer and all persons involved in the proceedings, the hearing may be conducted by telephone and the recorded conversation shall be made a part of the record of the hearing. The notice shall include:~~

~~(i) The names and addresses of each person to whom the proceedings apply and, if known, the names and addresses of their representative(s);~~

~~(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; and~~

~~(ix) A statement that if a person to whom the proceedings apply fails to attend or participate in a hearing, the hearing may/will proceed and that adverse action may be taken against such person.~~

~~(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, shall either be in the primary language of such person or shall 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 shall state that if a limited-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the person to whom the proceedings apply or witness. The notice shall include a form to be returned to the department for a person to whom the proceedings apply 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)~~ ~~**Presiding officer.**~~

~~(i) When the proceeding is a certificate of registration (tax registration endorsement) revocation pursuant to RCW 82.32.215, the presiding officer shall be the assistant director of the department's compliance division or designee, or such other person as the director of the department of revenue may designate.~~

~~(ii) When the proceeding is a wholesale and retail cigarette license revocation or suspension pursuant to RCW 82.24.550, the presiding officer shall be the assistant director of the department's special program's division or designee, or such other person as the director of the department of revenue may designate.~~

~~(iii) The presiding officer conducts the hearing and before taking action, the presiding officer shall give each person to whom the proceedings apply an opportunity to be informed of the department's view of the matter, and to explain the person's view of the matter.~~

~~(iv) The presiding officer shall have the authority granted by chapter 34.05 RCW including but not limited to:~~

~~(A) Determine the order of the hearing including the presentation of evidence; administer oaths and affirmations; issue subpoenas;~~

~~(B) Rule on procedural matters, objections and motions; rule on offers of proof and receive relevant evidence;~~

~~(C) Ask questions of the person to whom the proceedings apply or the person representing the department, or of the witnesses called by either, in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;~~

~~(D) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by both the person to whom the proceedings apply and the department;~~

~~(E) Take any appropriate action to maintain order during the hearing; permit or require oral argument, briefs, or discovery and determine the time limits for their submission;~~

~~(F) Take any other action necessary and authorized by applicable statute or rule;~~

~~(G) Waive any requirement of this section not specifically required by law unless either the person to whom the proceedings apply or the department shows that it would be prejudiced by such a waiver;~~

~~(H) Convert the proceedings, at any time in the proceeding, from a brief adjudicative proceeding to a formal proceeding pursuant to RCW 34.05.413 through 34.05.479 and WAC 458-20-10002.~~

~~(c)~~ **Appearance and practice at a brief adjudicative proceeding~~.~~**

~~(i) The right to practice before the department in a brief adjudicative proceeding is limited to:~~

~~(A) Persons who are natural persons representing themselves;~~

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

~~(C) 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;~~

~~(D) Public officials in their official capacity;~~

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

~~(F) 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;~~

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

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

~~(ii) 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.~~

~~(d) **Rules of evidence - discovery - record of the proceeding - filing and service of papers.**~~

~~(i) All testimony of a person to whom the proceedings apply, the department and witnesses shall be made under oath or affirmation. Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the presiding officer in the English language, to the best of the interpreter's skill and judgment.~~

~~(ii) Evidence, including hearsay, is admissible if in the judgment of the presiding officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious and shall be guided in evidentiary rulings, where not inconsistent with this section, by RCW 34.05.452, WAC 10-08-140, and by the Washington Rules of Evidence.~~

~~(iii) Discovery (depositions, interrogatories, etc.,) may be conducted only by order of the presiding officer and if ordered, RCW 34.05.446 applies to the proceeding.~~

~~(iv) All hearings shall be recorded by manual, electronic, or other type of recording device. The agency record shall consist of the documents regarding the matter 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 shall be maintained by the department as its official record.~~

~~(v) All notices and other pleadings or papers filed with the presiding officer or reviewing officer shall be served on each person to whom the proceeding apply, the department or their representatives/agents of record. Service shall be made personally; by first-class, registered or certified mail; by telegraph; or electronic telefacsimile (fax) and same-day mailing of copies; or by commercial parcel delivery company. Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by telegraph shall be regarded as completed when deposited with a telegraph company with the charges prepaid. Service by electronic telefacsimile (fax) shall be regarded as completed upon the production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as being completed upon delivery to the parcel delivery company charges prepaid. Service to a person to whom the proceedings apply and/or representative/agent, and, the department and/or presiding officer shall be to the address shown on the notice of subsection (2)(a) of this section. Service to the reviewing officer shall be to interpretation and appeals division at the address shown in subsection (4) of this section. Where proof of service is required, the proofs of service include:~~

~~(A) An acknowledgment of service;~~

~~(B) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names).~~

~~(C) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all or one or more of parties of record by a method of service as provided in this subsection (d)(v) of this section.~~

~~(e)~~ **Impaired persons - interpreters.** ~~When an impaired person is a person to whom the proceedings apply, or a witness, the presiding officer shall, in absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceeding.~~

~~(i) An "impaired person" is any person involved in an adjudicative proceeding who is a hearing impaired person or a limited-English-speaking person.~~

~~(ii) A "hearing impaired person" is a person who, because of a hearing impairment or speech defects, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, or hard of hearing.~~

~~(iii) A "limited-English-speaking person" is a person who~~

~~because of a non-English-speaking cultural background cannot readily speak or understand the English language.~~

~~(iv) A "qualified interpreter" is one who is readily able to interpret spoken and translate written English to and for impaired persons into spoken English and who meets the requirements of (e)(ix) of this subsection: Provided, That for hearing impaired persons a qualified interpreter must be certified by the registry of interpreters for the deaf with a specialist certificate-legal, master's comprehensive skills certificate, or comprehensive skills certificate.~~

~~(v) An "intermediary interpreter" is one who is readily able to interpret spoken and translate written English and who meets the requirements of (e)(ix) of this subsection, and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter for the hearing impaired.~~

~~(vi) When an impaired person is a person to whom the proceedings apply, or a witness in such adjudicative proceeding, the presiding officer shall, in the absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceedings. The right to a qualified interpreter may not be waived except when:~~

~~(A) The impaired person requests a waiver through the use of a qualified interpreter;~~

~~(B) The representative, if any, of the impaired person consents; and~~

~~(C) The presiding officer determines that the waiver has been made knowingly, voluntarily, and intelligently.~~

~~(vii) Waiver of a qualified interpreter shall not preclude the impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding.~~

~~(viii) Relatives of any participant in a proceeding and employees of the department shall not be appointed as interpreters in the proceeding without the consent of the presiding officer and the person(s) to whom the proceedings apply, in the case of an employee of the department, or the department in the case of a relative of the person(s) to whom the proceedings apply or of a witness for such person(s).~~

~~(ix) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired person. This determination shall be based upon the testimony or stated needs of the impaired person, the interpreter's education, certifications, and experience, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. A person to whom the proceedings apply or their representative(s), or the department may question the~~

~~interpreter as to his or her qualifications or impartiality.~~

~~(x) If at any time during the proceeding, in the opinion of the impaired person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired person, the presiding officer shall appoint another qualified interpreter.~~

~~(xi) If the communication mode or language or a hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the presiding officer who shall appoint and pay an intermediary interpreter to assist the qualified interpreter.~~

~~(xii) Mode of interpretation.~~

~~(A) Interpreters for limited-English-speaking persons shall use simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.~~

~~(B) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the qualified interpreter considers to provide the most accurate and effective communication with the hearing impaired person.~~

~~(C) When an impaired person is the person to whom the proceedings apply, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the person to whom the proceedings apply to the extent that the person has the same opportunity to understand all statements made during the proceedings as a nonimpaired party listening to uninterpreted statements would have.~~

~~(xiii) A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.~~

~~(xiv) The presiding officer shall explain to the impaired party that a written decision or order will be issued in English, and that the party may contact the interpreter for a translation of the decision at no cost to the party. The presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.~~

~~(xv) At the hearing, the interpreter for a limited-English-speaking party shall provide to the presiding officer the~~

~~interpreter's telephone number written in the primary language of the impaired party. A copy of such telephone number shall be attached to the decision or order mailed to the impaired party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.~~

~~(xvi) In any proceeding involving a hearing impaired person, the presiding officer may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use as the official transcript of the proceeding. Where simultaneous translation is used for interpreting statements of limited-English-speaking persons, the foreign language statements shall be recorded simultaneously with the English language statements by means of a separate tape recorder.~~

~~(xvii) A qualified interpreter appointed under this section is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The department shall pay such interpreter fee and expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.~~

~~(xviii) This subsection (e) shall apply to a review of the decision under subsection (4) of this section.~~

~~(f)~~ **~~Informal settlements.~~**

~~(i) The department encourages informal settlement of issues which have resulted in a proceeding being commenced. At any time in the proceeding the person(s) to whom the proceeding applies and the department are encouraged to reach agreement. Settlement of a proceeding shall be concluded by:~~

~~(A) Stipulation of the person(s) to whom the proceedings apply and the department signed by each or their representative(s), and/or recited into the record of the proceedings. In the event the stipulation provides for a payment agreement, the order of the presiding officer may be a continuance of these proceedings and dismissal when all payments have been made, but in no case, may the order provide for the reconvening of the proceedings if the payment agreement is breached unless seven days notice of the reconvening is provided. Except as provided in this section, the presiding officer shall enter an order in conformity with the terms of the stipulation; or~~

~~(B) Withdrawal by the department in which case the presiding officer shall enter an order dismissing the proceedings.~~

~~(ii) In the case of revocation of certificate of registration (tax registration endorsement) under RCW 82.32.215, the presiding officer, or the reviewing officer, shall not hear or rule upon (other than the entry of an order as provided in~~

~~(f)(i)(A) and (B) of this subsection) arguments, or motions, etc., for the settlement of the matter. Settlement of the controversy is totally between the person(s) to whom the proceedings apply and the department through its representative at the proceeding. Nothing in this section shall prevent a presiding officer or a reviewing officer from granting a continuance of a hearing, or such other motion as the presiding officer or reviewing officer deems appropriate for the purpose of settlement of the matter between the parties.~~

~~(g)~~ **~~Entry of orders.~~**

~~(i) At the time any unfavorable action is taken, the presiding officer shall serve upon each person to whom the proceeding apply and the department a brief statement of the reasons for the decision. Within ten days of a decision, the presiding officer shall serve upon each person to whom the proceedings apply and the department a brief written statement of the reasons for the decision and the availability of the departmental review procedure as provided in this section.~~

~~(ii) The brief written statement provided the parties, which may include an order where a person to whom the proceedings apply fails to attend or participate in the hearing or other stage of the proceeding, is an initial order and if no review is requested as provided in subsection (4) of this section, the initial order shall become a final order.~~

~~(4)~~ **~~Review of initial orders from brief adjudicative proceeding.~~** ~~If a person to whom the proceedings apply wishes a review of the initial order, the brief written statement of the decision as provided in subsection (3)(g)(i) of this section, the person may request a review by the department by the filing of a petition for review, or the making of an oral request for review, with the department's interpretation and appeals division, within twenty-one days after the service of the initial order on the person to whom the proceedings apply. A request for review should state the reasons the review is sought. The address and telephone number of the interpretation and appeals division is:~~

~~Interpretation and Appeals Division~~
~~Department of Revenue~~
~~P.O. Box 47460~~
~~Olympia, Washington 98504-7460~~
~~Telephone Number - (360) 753-2310~~
~~Fax - (360) 664-2729~~

~~(a) The interpretation and appeals division shall appoint a reviewing officer who shall make such determination as may appear to be just and lawful. The reviewing officer shall give each person to whom the proceedings apply and the department an opportunity to explain each person's view of 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 interpretation and appeals division shall be governed by the brief adjudicative procedures of chapter 34.05 RCW and this section; or subsection (5) of this section 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.~~

~~(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer shall have the authority of a presiding officer as provided in this section.~~

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

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

~~(5)~~ **~~Conversion of a brief adjudicative proceeding to a formal proceeding.~~** ~~The presiding officer, or reviewing officer, may at any time, on motion of a person to whom the proceedings apply, or the department, or his/her own motion, convert the brief adjudicative proceeding to a formal proceeding.~~

~~(a) The presiding/reviewing officer shall convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.~~

~~(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director of the department of revenue, upon notice to the person(s) to whom the proceedings apply and the department, may become the presiding officer, or may designate a replacement presiding officer to conduct the formal proceedings.~~

~~(c) In the conduct of the formal proceedings, WAC 458-20-10002 shall apply to the proceedings. The converted proceeding is itself the independent administrative review by the department of revenue as provided in RCW 82.32A.020(6).~~

~~(6)~~ **~~Court appeal.~~** ~~Court appeal from the final order of the department is available under Part V, chapter 34.05 RCW.~~

~~However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this section and all other administrative remedies have been exhausted. See RCW 34.05.534.~~

~~(7)~~ ~~**Posting of a final order of revoking a certificate of registration (tax registration endorsement) - revocation not a substitute for other collection methods or processes available to the department.**~~ ~~When an order revoking a certificate of registration (tax registration endorsement) is a final order of the department, the department shall post a copy of the order in a conspicuous place at the main entrance to the taxpayer's place of business and it shall 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 certificate of registration (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 (tax registration endorsement) 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 liability of the taxpayer.~~

~~(c) The revocation of a certificate of registration (tax registration endorsement), including any time during the revocation process, shall not be a substitute for, or in any way curtail, other collection methods or processes available to the department.~~

~~(8)~~ ~~**Computation of time.**~~ ~~In computing any period of time prescribed by this regulation or by the presiding officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.~~)) (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
Fax - 360-664-2729

(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.