

Transcript of public hearing for changes to WAC 308-10 Public Records Disclosure and WAC 308-93-087 Disclosure of names and addresses of individual vessel owners

February 21, 2023

Ellis Starret:

Good morning. This is a public hearing before the Washington State Department of Licensing being held to elicit public testimony, both oral and written, with regard to proposed rules regarding WAC 30810, Public Records Disclosure. This proposal includes amendments to WAC 30810-005, WAC 30810-010, 015, 025, 030, 040, 041, 045, 055, 060, 065, 067 and 075, and the repeal of WAC 30810 020, 042. 050 and 070. This hearing is being held via Zoom and at the Highways and Licensing building located in downtown Olympia, Washington at 11:00 AM on Tuesday, February 21st, 2023. Public notice of this hearing was given by notice number WSR 2303 114, filed with the Code Advisor's office on January 18th, 2023. Copies of the proposed rules are available at www.dol.wa.gov/about/rules. The sign-in sheet, your testimony and any documents you provide are public documents. This rule is proposed pursuant to provisions of RCW 4601 110 and RCW 4256.

My name is Ellis Starrett and my title is rules and policy manager. The director of Licensing has designated me to preside over this hearing. Representatives of the Washington State Department of Licensing are present today if there are questions. Megan Jackson, records and disclosure officer, Karen Landes, DOL's public disclosure manager, Matthew Roth with the Law and Justice Unit, Millie Stillwell, public disclosure vehicle and vessel supervisor, Jane Chapman, policy and legislative analyst. The procedures today will be as follows. The department is required to make a record of this hearing by stenographic, mechanical or electronic means. Therefore, we are audio recording this hearing. Anyone wishing to testify today should provide their name to me. I will ask you to provide your contact information, which will be added to a sign-in sheet. This sheet will be used to call forward individuals for testimony and is later used to ensure public hearing participants are notified of rule making results and the agency's response to comments.

You will be called to testify in the order in which I collect your information. To assist in preparing the record of this public hearing, individuals testifying today should state their name, who they represent if they're testifying on behalf of others and whether they support or oppose the proposed rules. The department has received written comments on these proposed rules. For those wishing to provide written comments at a later date, please email them to rulescoordinator@dol.wa.gov, and we will include them in the formal record. Copies of these written comments will be added to the rulemaking file. Now we will hear oral statements from those present.

John Gray:

Good morning. My name is John Gray. I am here... I'm not representing anyone today. I have no client. But the Administrative Loss Section of the Washington State Bar Association has authorized Richard Potter and me to make comments on the issues I will be talking about. I neither support nor oppose. This is primarily informational.

Ellis Starret:

All right. Go ahead. Proceed with your testimony, John.

John Gray:

Thank you for the opportunity to comment on this rulemaking. Richard Potter and I earlier submitted our written comments to the department on February 17th, 2023, just this past Friday. We're here on behalf of the WSBA Administrative Law Section, has active members, but we're not representing any clients. When I say we, I'm referring to Richard Potter and me. It is not the royal we, but I want to include him in this since he's a major part of it. Oh. And I should also add my comments are not addressing all of the rules that you're amending or repealing. I am focusing on -065 and -067.

We want to call your attention to RCW 42.56.070 sub 5, and for shorthand through the rest of this hearing, I'll just refer to it as 070. This statute requires that each state agency shall by rule establish and implement a system of indexing for the identification and location of the following records. And then the statute 070 sub 5 has four categories, final orders and not every order, but those that... And then the statute says, "That an analysis or decision of substantial importance to the agency in carrying out its duties." The second one is declaratory orders with the same requirement as for final orders. And then the third and fourth are interpretive statements and policy statements. 070 sub 5 uses the word shall, meaning it is mandatory. And additionally, we would encourage the department to provide this index online with links to the orders and statements identified in the index. And I would encourage you to look to the references at the bottom of page two and the top of page three of our written comments for the legislative reference.

Note that the requirements in 070 sub 5 are in addition to, not in lieu of, the record keeping requirement found in RCW 34, pardon me, 34.05.220 sub 2, part of the Administrative Procedure Act. The difference is that 220 sub 2 requires agencies to keep all final orders, declaratory orders and so on while 070 sub 5 requires agencies to create that system of indexing for finding those records and to designate final orders and declaratory orders of substantial importance to the agency.

Now, here's our interest in pursuing this and we're we're doing this with other agencies, as well as Department of Licensing. How does a layperson or a lawyer who doesn't usually practice in your subject areas find final orders that may affect a party's case? Courts of Appeal decisions and the Supreme Court decisions are published, even at first some of the unpublished decisions, and there are several ways to find those decisions, but how does someone find Presidential final orders issued by an agency such as Department of Licensing. 070 sub 5 requires a system that can assist in that search. Compliance with 070 sub 5 also helps the state's agencies because 070 sub 6 basically says the agency can rely on this final order or the declaratory order only if it has been indexed in an index available to the public or if the parties have actual or constructive notice of its actual terms. The risk to the agency is that if it relied on an unidentified final order that the decision could be modified or reversed on judicial review.

Richard Potter and I have published articles on this subject. You can find them on the WSBA Administrative Law Section website on its homepage. And there's three additions I'm specifically referring to, Fall of 2018, Winter-Spring of 2020 and Spring of 2020. And yes, I know it repeats itself, but it just depends on when they get the newsletter out. So we urge the department to examine 070 and to make a rule or rules in accordance with that statute. That concludes my remarks. Thank you very much.

Ellis Starret:

Thank you for your statement. At this time, there's no one else in attendance at the public hearing, so thank you for your comments. The department will prepare a concise explanatory statement, which will, among other things, summarize all the oral and written comments received regarding the proposed rules and respond to them by category or subject matter. Copies of the concise explanatory statement will be forwarded to all those who have made oral or written comments. This hearing is adjourned.

John Gray:

Thank you-