



# RULE-MAKING ORDER

## CR-103 (June 2004) (Implements RCW 34.05.360)

Agency: Department of Labor and Industries

- Permanent Rule  
 Emergency Rule

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.  
 Other (specify) See Attachment 1. (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.  
 Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain:

**Purpose:** The purpose of the rulemaking is to amend language in WAC 296-46B-995, regarding appeals. The amendment will move the burden of proof from the appellant to the department for appeals heard before the Office of Administrative Hearings (OAH) or directly by the Electrical Board. An emergency rule was filed on December 4, 2007 to protect the general welfare of the public. This will make the emergency change permanent. Additional changes will be made to continuing education courses, to better accommodate electrical administrators, master electricians, electricians, and L&I. Renewing electrical administrators, master electricians, and electricians must now show that they have taken a NEC code update class on the currently adopted code. The change will allow a 7 month overlap period for taking either the 2005 or 2008 NEC code change update class required for renewal of an electrician or electrical administrator certificate.

**Citation of existing rules affected by this order:**

Repealed: None  
 Amended: WAC 296-46B-970 and WAC 296-46B-955  
 Suspended: None.

**Statutory authority for adoption:** RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551

**Other authority :** None.

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR 08-04-088 on February 5, 2008.

Describe any changes other than editing from proposed to adopted version: No changes were made to the adopted version.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: NA

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
 Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
 e-mail \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.  
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**Date adopted:** April 1, 2008

**NAME (TYPE OR PRINT)**  
Judy Schurke

**SIGNATURE**

**TITLE**  
Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** April 01, 2008

**TIME:** 12:03 PM

**WSR 08-08-084**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	<u>2</u>	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	<u>2</u>	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	<u>2</u>	Repealed	_____

## **Attachment 1**

Specialty Compliance Services Division

Page 1

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WAC 296-46B-970 will be effective on May 2, 2008.

WAC 296-46B-955 will be effective on April 1, 2008. The general welfare of the public is at risk if a violator is able to continue working due to a technicality in the rule.

Licensing/Certification revocation/suspension hearings and unsafe installation and electrical power disconnection hearings are heard directly by the Electrical Board. With the current language, the department will likely lose any case brought directly to the board for appeal. This could result in a contractor or electrician who is incompetent or makes unsafe electrical installations to continue doing business and placing the general public and workers in jeopardy due to their unsafe installations.

The Electrical Board's AAG and L&I's AAG have both informed the board at the regular October board meeting that the current rule language is very likely unconstitutional, can be used as a defense, and may enable appellants to win their appeal based on unconstitutionality rather than technical merit. The Electrical Board unanimously voiced extreme concern with being faced with this type of defense and told L&I to change the rule as quickly as possible. An argument can also be made that appeals taken to the Office of Administrative Hearings could also be lost on the same basis and ultimately have the same safety consequence.

Current cases in which this argument is being made is Edward Marshall and Peninsula Pole Service, Inc. v. DLI. Kitsap Superior Court Cause No. 06-2-027802. Marshall and Peninsula Pole argue that the current rule denies due process and is asking for a writ prohibiting the state from enforcing the rule so there is a state-wide effect of the ruling and a writ mandating a more appropriate burden of proof.

The same argument was also heard at the regular October board meeting in another case where the appellant was represented by council. The council told the board that the case would be appealed to Superior Court on the basis of the constitutional question.

Even more problematic than cases that have been heard at the Office of Administrative Hearings are cases first heard directly by the board. In those cases, the alleged violator is always the appellant and under the current rules has the burden of proof. These types of cases include suspension and revocation of licenses and certificates. Based on the AAGs' input and recommendations to the board, L&I should not put such cases before the board for appeal until the rule is changed. Not moving forward with cases of incompetence or malfeasance will place the general public and the workers at risk.