

Chapter 308-101 WAC

HEARING PROCEDURAL RULES

WAC

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WAC 308-101-010 Applicability. (1) This chapter applies to all adjudicative proceedings under the jurisdiction of the department of licensing or the director of the department of licensing with respect to the following types of cases:

- (a) The implied consent law (RCW 46.20.308);
- (b) The habitual traffic offender law (chapter 46.65 RCW);
- (c) The Uniform Commercial Driver's License Act (chapter 46.25 RCW);
- (d) Any formal hearing affecting the driving privilege conducted pursuant to the provisions of RCW 46.20.329 through 46.20.333.

(2) Unless otherwise specified, this chapter does not apply to administrative interviews conducted under RCW 46.20.323 through 46.20.327.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-010, filed 5/21/18, effective 9/4/18.]

WAC 308-101-020 Hearings examiners. All adjudicative proceedings under this chapter shall be conducted by a department hearings examiner, who is appointed a referee or presiding officer for such purposes. The director may also appoint additional referees or presiding officers from the employees of the department to conduct hearings. The director retains the discretion to revoke or limit an appointment at any time.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-020, filed 5/21/18, effective 9/4/18.]

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WAC 308-101-030 Computation of time. (1) In computing any period of time prescribed or allowed by any applicable statute or rule, RCW 1.12.040 shall apply;

(2) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation;

(3) Whenever a person has the right to request a hearing or other proceeding within a prescribed period after "notice is given" by the department under Title 46 RCW or 308 WAC, such notice is deemed to be given on the third day after the notice is deposited into the state mailing service;

(4) Whenever a person has the right to request a hearing or other proceeding within a prescribed period after "receiving notice" from the department under Title 46 RCW or 308 WAC, such notice is deemed to be "received" by a person on the third day after the notice is deposited into the state mailing service.

(5) A request for a hearing or interview under Title 46 RCW is deemed complete on the day the request is post-marked or, if sent electronically, the date the request is received by the department.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-030, filed 5/21/18, effective 9/4/18.]

WAC 308-101-040 Eligibility for hearing. (1) A person is eligible for a hearing whenever the department proposes an adverse action against the driving privilege and the opportunity for a hearing or an interview is required by law. A person is also eligible for a hearing in the following circumstances:

(2) **HTO stay hearings:** A habitual traffic offender is eligible for a stay hearing under RCW 46.65.060 so long as the following conditions have been met:

(a) There is an alcohol/drug assessment on file completed after the last drug or alcohol related offense on the driving record;

(b) The person is not revoked for a violation of a stay or probation previously granted under RCW 46.65.060 or 46.65.080;

(c) If a stay has previously been denied after a hearing, there is evidence of alcoholism or drug addiction (substance dependence) with new treatment information.

(3) **HTO reinstatement hearings:** A habitual traffic offender is eligible for a reinstatement hearing if all of the following conditions have been met:

(a) At least four years have elapsed since the beginning of the habitual traffic offender revocation or if a habitual traffic offender stay has been violated, at least four years have elapsed since the date of the new revocation notice;

(b) The person submits a declaration stating that he or she has not driven within two years prior to the request for a hearing. A record of any traffic infraction or conviction is

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conclusive evidence that a person drove within the past two years;

(c) Any period of additional revocation imposed following a habitual traffic offender reinstatement probation violation must be completed;

(d) If there has been a previous denial of a petition for reinstatement by a hearings examiner, at least one year has elapsed since the denial unless a shorter time is ordered by the hearings examiner.

(4) **HTO reinstatement without a hearing:** The department may grant a habitual traffic offender a reinstatement without a hearing if the person is eligible for a hearing under subsection (4) of this section and at the time of the request for a hearing:

(a) There are no other suspensions or revocations in effect;

(b) There are no vehicular homicide or vehicular assault convictions on the driver's record; and

(c) There is no more than one alcohol or drug-related incident on the driver's record. An alcohol or drug-related incident shall include an alcohol-related offense as defined in RCW 46.01.260, or an incident for which a sworn report was received under RCW 46.20.308 or 46.25.120, or similar incidents involving drugs and alcohol (including minor in possession laws), so long as the same incident is not counted more than once.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-040, filed 5/21/18, effective 9/4/18.]

WAC 308-101-060 Service on petitioner. Service on the petitioner: Except as provided in WAC 308-101-080(10), the hearings and interviews unit provides all final orders and correspondence to the petitioner at the petitioner's address of record, unless the petitioner is represented, in which case service on the legal representative is deemed service on the petitioner. Documents may be provided to a petitioner via electronic distribution only, with the petitioner's agreement.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-060, filed 5/21/18, effective 9/4/18.]

WAC 308-101-070 Signatures. (1) Legal representative signatures. An electronic document which requires a legal representative's signature may be signed in the following manner:

/s/ Jane Attorney
State Bar Number 12345
ABC Law Firm
123 South Fifth Avenue
Seattle, WA 98104
Telephone: 206-123-4567
Fax: 206-123-4567
Email: Jane.Attorney@lawfirm.com

(2) Nonattorney signatures. An electronic document which requires a nonattorney's signature may be signed in the following manner:

/s/ John Citizen
123 South Fifth Avenue
Seattle, WA 98104
Telephone: 206-123-4567

Fax: 206-123-4567

Email: John.Citizen@email.com

(3) Law enforcement officer signatures on documents signed under penalty of perjury. Any document initiated by a law enforcement officer is presumed to have been signed when the officer uses his or her user ID and password to electronically submit the document to a court or prosecutor through the statewide electronic collision and traffic online records application, the justice information network data exchange, or a local secured system that the presiding judge designates by local rule. Unless otherwise specified, the signature shall be presumed to have been made under penalty of perjury under the laws of the state of Washington and on the date and at the place set forth in the report and/or citation.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-070, filed 5/21/18, effective 9/4/18.]

WAC 308-101-080 Requests for hearing. (1) A request for a hearing shall be in writing;

(2) When no deadline for requesting a hearing or interview is provided in Title 46 RCW, or other law or rule of the department, a hearing or interview request must be post-marked or received by the hearings and interviews unit within fifteen days after notice is given;

(3) The hearing request form provided by the department shall include a statement that if the parties or witness(es) are hearing or speech impaired and/or non-English speaking, a qualified interpreter will be appointed at no cost to the parties or witnesses. The form shall include a section where the petitioner may request an interpreter and where he or she may identify the language and/or nature of the interpretive services needed;

(4) The request for hearing shall include the following information with respect to the petitioner:

- (a) Full name;
- (b) Mailing address;
- (c) Daytime telephone number, including area code;
- (d) Date of birth; and
- (e) Driver's license number.

(5) The written request for hearing shall be accompanied by the applicable nonrefundable filing fee, unless the petitioner is entitled to a waiver of the filing fee because of indigence, in which case a request to waive the hearing fee for indigence must be submitted with the hearing request and be on a form approved by the department;

(6) When the department denies an application for an indigent fee waiver, the petitioner shall be granted an additional ten days to submit payment of the hearing fee;

(7) **Submitting hearing request with fees:** The request for a hearing may be submitted to: Department of Licensing, Hearings and Interviews Unit, P.O. Box 9048, Olympia, WA 98507-9048;

(8) **Submitting hearings request without a fee:** If there is not filing fee or if the petitioner is entitled to or applies for a waiver of the filing fee because of indigence, the request must be submitted to: Department of Licensing, Hearings and Interviews Unit, P.O. Box 9031, Olympia, WA 98507-9031;

(9) The request for a hearing may also be submitted online if the petitioner meets the qualifications described on the web site at www.dol.wa.gov;

(10) If a request for hearing is denied, the department shall notify the petitioner and the petitioner's legal representative, if any, stating the reason(s) for the denial;

(a) The department (or a hearings examiner) may set aside a denial of a hearing due to an untimely request if the petitioner establishes good cause for the failure to timely request a hearing;

(b) In the alternative, the department may grant a hearing on the merits subject to a preliminary determination by a hearings examiner on the issue of whether the hearing request was timely filed or, if untimely, whether there was good cause to file a late hearing request. If the petitioner fails to establish the hearing request was timely filed or that there was good cause for a late hearing request, the department's action shall be sustained or affirmed without further review.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-080, filed 5/21/18, effective 9/4/18.]

WAC 308-101-090 Scheduling—Notice of hearing.

(1) The department shall mail a hearing notice to the petitioner or petitioner's legal representative in the time frame prescribed in Title 46 RCW. If no period is prescribed, the petitioner shall be served with a notice of hearing at least ten days before the date set for the hearing.

(2) The department's hearing notice will include the assigned examiner's name, a phone number at which he or she may be contacted, and other information concerning the hearing. The department's notice will also include a telephone number and a TDD number that any party or witness may call to request special accommodations. The notice must also include:

(a) A statement of the time, place, and nature of the hearing.

(b) A statement of the legal authority under which the hearing is to be held;

(c) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-090, filed 5/21/18, effective 9/4/18.]

WAC 308-101-100 Place of hearing. (1) All hearings and interviews will be scheduled telephonically, unless the hearing is required by law to be in person or an in-person hearing is requested in accordance with subsection (2) of this section.

(2) The petitioner or petitioner's legal representative may request that all or part of the hearing or interview be conducted in person. Such a request must be in writing stating the reasons and be directed to the assigned hearings examiner upon receipt of the hearing notice. The hearings examiner will have the sole discretion to grant or deny this request.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-100, filed 5/21/18, effective 9/4/18.]

WAC 308-101-110 Notice of appearance. (1) If a petitioner has legal representation at the administrative hearing, the department shall be provided with the legal representative's name, address, and telephone number. The department may require the legal representative to file a written notice of

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appearance or to provide documentation that an absent petitioner has authorized the legal representative to appear on the party's behalf. The legal representative shall file a notice of withdrawal upon withdrawal of representation.

(2) When a legal representative has appeared in a matter, documents related to the hearing, including final orders, will only be served on the legal representative. Documents may be provided to a petitioner's legal representative via electronic distribution only, with the legal representative's agreement.

(3) For the purposes of this section, a "legal representative" means an attorney or supervised legal intern that is authorized to practice law in the state of Washington.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-110, filed 5/21/18, effective 9/4/18.]

WAC 308-101-120 Continuances. (1) After a hearing has been scheduled, it may be continued, rescheduled, or adjourned only at the discretion of the hearings examiner.

(2) Requests for a continuance, to reschedule, or to adjourn must be made in writing, to the assigned hearings examiner, and shall include the basis for the request.

(3) Except in the case of an emergency, the hearings examiner must receive the continuance request at least two business days before the scheduled hearing. Absent an emergency, requests made with less than two business days' notice may be summarily denied.

(4) The hearings examiner may continue, reschedule, or adjourn at any time, including on the date of the administrative hearing.

(5) A party shall not consider a hearing continued, rescheduled, or adjourned until notified by the hearings examiner or his or her designee.

(6) The hearings examiner may require the party who requests a continuance, to reschedule, or to adjourn to submit documentary evidence that substantiates the reason for the request.

(7) A second request for a continuance, to reschedule, or to adjourn will only be granted in the event of an emergency and at the discretion of the assigned hearings examiner.

(8) Notwithstanding any provisions of this section to the contrary, a hearings examiner may continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear. The hearings examiner must continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear and the petitioner is a holder of a commercial driver's license or was operating a commercial motor vehicle at the time of the driver's arrest. A hearing continued under this subsection must be adjourned until such time as the subpoena may be enforced under RCW 7.21.060.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-120, filed 5/21/18, effective 9/4/18.]

WAC 308-101-130 Agreements to schedule hearings under RCW 46.20.308 past the time frame required by law. (1) The department presumes any of the following actions taken by the petitioner is a request that the department agree to extend the hearing beyond the time frame required by RCW 46.20.308:

(a) A request for a continuance;

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(b) A request to hold an in-person hearing when the request cannot be accommodated within the time frame required;

(c) A request to set aside a default order;

(d) A request for a subpoena when service cannot be accommodated within the time frame required;

(e) Remitting insufficient funds to satisfy the hearing fee;

(f) Any other action taken by the petitioner that makes the scheduling of the hearing within the time frame required by law impracticable.

(2) A hearings examiner's decision to grant any of the petitioner's requests in subsection (1) of this section constitutes the department's assent to extend the hearing past the time frame required by law.

(3) If a person requests one of the actions in subsection (1) of this section but affirmatively declines to agree to extend the time frame required by law, the hearings examiner may direct the hearing to proceed as originally scheduled or may take any other action that protects the petitioner's right to be heard and the public's interest in a speedy resolution of the matter.

(4) The department must stay a driver's license suspension any time a timely hearing request has been received but it is otherwise impracticable to hold the hearing within the time frame required by law.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-130, filed 5/21/18, effective 9/4/18.]

WAC 308-101-140 Cancellation of hearings. (1) If the petitioner elects to cancel his or her request for a hearing, he or she must notify the department of his or her intent to do so in writing or orally on the record.

(2) **Entry into deferred prosecution:** A stay of a suspension or revocation granted pursuant to the provisions of RCW 46.20.308(9) does not automatically result in a cancellation of a requested hearing. Absent a written cancellation under subsection (1) of this section, the hearing will proceed and the results will be sent to the petitioner. If the suspension is sustained after the hearing, the stay of the action shall continue but any appeal of the findings and conclusions must be undertaken within thirty days of service of the results.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-140, filed 5/21/18, effective 9/4/18.]

WAC 308-101-150 Subpoenas. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 46.20.308(7). All subpoenas shall direct the witness to appear by telephone unless otherwise agreed to by the hearings examiner.

(2) Every subpoena shall be submitted on a form approved by the department, available on the internet at www.dol.wa.gov, for approval by a hearings examiner. If approved, the hearings examiner may either sign and issue the subpoena back to the party requesting the subpoena or direct the requesting party, by telephone, electronic mail, or other reliable means, to note the hearings examiner's approval on the subpoena.

(a) A subpoena to a person to provide testimony at a hearing shall specify the date and time set for hearing.

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(b) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for hearing, or another reasonably convenient time and place in advance of the hearing.

(3) A subpoena must be personally served by a suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. Proof of service shall be made by affidavit or declaration under penalty of perjury, and must be filed with the hearings examiner at least two days prior to the hearing. If the subpoena is served by personal service, proof of service must include a copy of the subpoena that shows it was received by the law enforcement agency. Service by certified mail must be preapproved by the hearings examiner. Service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.

(4) The hearings examiner may condition issuance of the subpoena upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) A subpoena must be properly served five days prior to the date of the hearing.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-150, filed 5/21/18, effective 9/4/18.]

WAC 308-101-155 Filing of exhibits and other documents with the department. (1) Any document submitted to the hearings and interviews unit must include the petitioner's case number assigned by the unit, if a case number has been assigned.

(2) A petitioner may submit documents for consideration via any one of the following methods:

(a) U.S. mail addressed to: Department of Licensing, Hearings and Interviews Unit, P.O. Box 9030, Olympia, WA 98507-9030.

(b) Facsimile transmission to the assigned hearings examiner.

(c) An internet portal made available by the department.

(d) Email to the hearings examiner, but only with the hearings examiner's preapproval.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-155, filed 5/21/18, effective 9/4/18.]

WAC 308-101-160 Evidence. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of these rules.

(2) Evidence including testimony and documentary evidence, is admissible if received prior to, or during, the hearing.

(3) The hearings examiner shall rule on the admissibility and weight to be accorded to all evidence submitted at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the hearings examiner it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The hearings examiner may exclude evidence that is irrelevant, immaterial, or unduly repetitious. The admissibility of evidence shall be

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liberally construed to effect the intent and purpose of the hearings covered by these rules.

(4) **Oral testimony:** Law enforcement officers or other persons with knowledge relevant to the hearing may appear and testify without notice. Such testimony shall not preclude the admissibility of any documents submitted.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the hearings examiner, be grounds for striking all testimony previously given by such witness on related matter.

(6) **Documentary evidence:** Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. When only portions of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(7) Official notice may be taken of: (a) Any judicially cognizable facts; (b) technical or scientific facts within the agency's specialized knowledge; and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during the hearing of the material so noticed and the sources thereof and they shall be afforded an opportunity to contest the facts and materials so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-160, filed 5/21/18, effective 9/4/18.]

WAC 308-101-170 Video evidence. If the petitioner wishes to submit video evidence, the petitioner shall be responsible for the costs of preparing a copy to be admitted as evidence. Video evidence shall be submitted sufficiently in advance of the hearing to allow the hearings examiner the opportunity to review it prior to the hearing. The hearings examiner may require a time waiver from the petitioner in order to reschedule the hearing and satisfy this provision when needed. Video evidence must be submitted by DVD and in a format which allows the DVD to be viewed on the department's equipment. Any costs associated with this requirement is to be the responsibility of the petitioner.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-170, filed 5/21/18, effective 9/4/18.]

WAC 308-101-180 Format and length for briefs. (1) The text of any brief must be typed or printed in a proportionally spaced typeface and must appear in print as twelve point or larger type with no more than ten characters per inch and double-spaced. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as ten point or larger type and be the equivalent of single-spaced. Quotations may be the equivalent of single-spaced. Except for materials in an appendix, the typewritten or printed material in the brief may not be reduced or condensed by photographic or other means.

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(2) Briefs shall not exceed twenty pages. For the purpose of determining compliance with this rule, appendices are not included. For good cause, the hearings examiner may grant a motion to file an over-length brief.

(3) Unpublished opinions of the Washington court of appeals are those opinions not published in the *Washington Appellate Reports*. Unpublished opinions of the court of appeals have no precedential value and are not binding on any court. However, unpublished opinions of the court of appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the hearings examiner deems appropriate.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-180, filed 5/21/18, effective 9/4/18.]

WAC 308-101-190 Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in an adjudicative proceeding, the department shall appoint an interpreter to assist the party or witness during the hearing. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in hearings are governed by the provisions of chapters 2.42 and 2.43 RCW.

(2) Relatives of any participant in a proceeding and employees of the department involved in a proceeding shall not be appointed as interpreters in the proceeding unless authorized by the petitioner.

(3) The appointing authority shall make a determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired or non-English-speaking person. This determination shall be based upon the testimony or stated needs of the impaired or non-English-speaking person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to his or her qualifications and impartiality.

(4) If in the opinion of the impaired or non-English-speaking person, the appointing authority or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired or non-English-speaking person, the appointing authority shall appoint another interpreter.

(5) The department shall attach to or include in the decision or order a telephone number to request a visual translation or sight translation.

(6) If the party has a right to review the order or decision, the hearings examiner shall orally inform the party during the hearing of the right and of the time limits to request review.

(7) The department shall pay interpreter fees and expenses.

(8) The consecutive mode of foreign language interpretation shall be used unless the hearings examiner and interpreter agree that simultaneous interpretation will advance fairness and efficiency.

(9) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermedi-

ary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-190, filed 5/21/18, effective 9/4/18.]

WAC 308-101-200 Testimony under oath or affirmation. Every person called as a witness and who is giving oral testimony in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060. If the witness is testifying from outside the jurisdiction, the hearings examiner may require the witness to agree to be bound by the laws of the state of Washington for purposes of the oath or affirmation.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-200, filed 5/21/18, effective 9/4/18.]

WAC 308-101-210 Conduct of hearings. Hearings are open to public observation. To the extent that a hearing is conducted by telephone or other electronic means, the availability of public observation is satisfied by giving members of the public an opportunity to hear or inspect the agency's record. The hearings examiner's authority includes, but shall not be limited to, the authority to:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas pursuant to RCW 46.20.308(7);
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on offers of proof and receive relevant evidence;
- (6) Order the exclusion of witnesses upon a showing of good cause;
- (7) Afford the petitioner the opportunity to respond, present evidence, conduct cross-examination, and submit rebuttal evidence. The hearings examiner may question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;
- (8) Call additional witnesses and request and/or obtain additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by the petitioner;
- (9) Examine and admit the official records of the department, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;
- (10) Examine and admit public records including, but not limited to, maps, policy and procedure manuals, breath testing equipment manuals and the Washington state patrol breath test section web site at any time before, during, or after the hearing, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;
- (11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (12) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (13) Issue an order of default;

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(14) Recess the hearing to a later time to accommodate scheduling conflicts. Hearings are ordinarily scheduled to be one hour in length;

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

(16) Waive any requirement of these rules unless petitioner shows that he or she would be prejudiced by such a waiver.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-210, filed 5/21/18, effective 9/4/18.]

WAC 308-101-220 Default. (1) In the event that the person who requested an interview or hearing is not available at the time it is scheduled via the manner of appearance directed in the notice of interview or hearing, or as subsequently modified in writing or orally on the record, no interview or hearing shall be held. An order of default shall be entered and the department's proposed action shall be sustained.

(2) A person who fails to appear at an interview waives his or her right to request a formal hearing.

(3) Within seven days after service of a default order, the petitioner may file a written motion requesting that the order of default be vacated, and stating the grounds relied upon for the motion. In determining whether the default should be set aside, the hearings examiner shall consider whether there was good cause for the nonappearance.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-220, filed 5/21/18, effective 9/4/18.]

WAC 308-101-230 Final orders. (1) Every decision and final order shall:

- (a) Be correctly captioned as to the name of the department of licensing and name of the proceeding;
- (b) Designate all parties and representatives participating in the proceeding;
- (c) Contain a final order disposing of all contested issues; and
- (d) Contain a statement describing the right to appeal.

(2) In the event the original hearings examiner is unavailable, the department may assign a case to another hearings examiner to either hear the case if the record has not closed, or in a case where the record is closed, make a determination as to the findings of fact and conclusions of law based on the record submitted.

(3) At any stage prior to commencement of the hearing the department may reassign a matter to a different hearings examiner.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-230, filed 5/21/18, effective 9/4/18.]

WAC 308-101-240 Probation in habitual traffic offender matters. (1) Upon reinstatement after a habitual traffic offender revocation, a person must be placed on probation for one year.

(2) Every stay order issued under RCW 46.65.060 and any reinstatement order of the driving privilege granted under RCW 46.65.080 or 46.65.100 are granted subject to the following probationary terms and conditions:

(5/21/18)

(a) The individual must not be convicted of or found to have committed any of the following types of offenses during the period of probation or the duration of the stay:

- (i) Vehicular homicide - RCW 46.61.520;
 - (ii) Vehicular assault - RCW 46.61.522;
 - (iii) Driving under the influence - RCW 46.61.502;
 - (iv) Driver under twenty-one consuming alcohol or marijuana - RCW 46.61.503;
 - (v) Physical control of vehicle under the influence - RCW 46.61.504;
 - (vi) Driving a commercial motor vehicle with alcohol or THC in system;
 - (vii) Driving while license suspended or revoked 1st or 2nd degree (includes driving violation of an occupational/restricted driver's license) - RCW 46.20.342;
 - (viii) Hit and run (occupied) - RCW 46.52.020;
 - (ix) Reckless driving - RCW 46.61.500;
 - (x) Attempting to elude a police vehicle - RCW 46.61.024;
 - (xi) Felony involving motor vehicle - RCW 46.20.285
- (4)
- (xii) Ignition interlock violation - RCW 46.20.720;
 - (xiii) Violation of an occupational or restricted license - RCW 46.20.410;
 - (xiv) Operating a vehicle without an ignition interlock device - RCW 46.20.740;
 - (xv) Circumventing ignition interlock device - RCW 46.20.750;
 - (xvi) Open container violation (alcoholic beverages) - RCW 46.61.519;
 - (xvii) Open container violation (marijuana) - RCW 46.61.745;
 - (xviii) A conviction for any reduced or amended alcohol or drug-related driving offense.

(b) Two or more moving violations received within a twelve-month period as defined in WAC 308-104-160 during the period of probation or the duration of the stay;

(c) Any of the following:

- (i) A reported driving incident with a detectable alcohol concentration;
- (ii) A revocation or disqualification for refusing a breath or blood test as provided by RCW 46.20.308, 46.20.3101, 46.25.090, or 46.25.120 from an incident;
- (iii) Entry into a deferred prosecution program for any alcohol or drug-related offense;
- (iv) A report of positive drug/alcohol test or refusal - RCW 46.25.090;
- (v) A violation of the terms of any mandatory court probation - RCW 46.61.5055.

(d) Compliance with a state approved alcohol/drug treatment program as set forth in chapter 70.96A RCW and WAC 308-104-170.

(3) A violation of these terms will result in:

(a) If on probation as a habitual traffic offender: The revocation of the driving privilege for the balance of the habitual traffic offender revocation period as well as any further driving while revoked revocation(s), or for one year, whichever is longer;

(b) If subject to a stay: Cancellation of the stay and revocation of the driving privilege for seven years.

(4) Review of violations of the terms and conditions of the probation or stay may be sought via the procedure provided in RCW 46.20.245.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-240, filed 5/21/18, effective 9/4/18.]

WAC 308-101-250 Reconsideration of final order. (1) Motions for reconsideration are limited to cases heard under the implied consent law, RCW 46.20.308.

(2) Grounds for a petition for reconsideration are limited to evidence or legal argument which are material to the petitioner and were not produced at the time of the hearing, or for other good and sufficient reason as determined by the hearings examiner.

(3) The petition must state with particularity any new evidence or new legal argument that is proposed and why it could not have been discovered using due diligence prior to the hearing. The petition must specify with particularity the portions of the initial order to which the petition applies.

(4) A petition for reconsideration of an order shall be filed with the hearings and interviews unit within ten days of the date the final order was mailed to the petitioner.

(5) The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(6) If the petition is granted in whole or in part, a new order shall be issued in the same form as the original order, and shall include the designation "amended" in its title. This amended order shall reference the petition for reconsideration in its preamble, which sets out what the hearings examiner considered. Any amended order shall include the "findings of fact and conclusions of law" from the original final order with amendments.

(7) The relief granted pursuant to a petition for reconsideration is limited to review of the designated evidence and/or argument as identified in the petition. At the hearings examiner's discretion, a supplemental hearing may be scheduled. Such a petition is not grounds for a new hearing, and the record already established shall remain undisturbed.

(8) A petition for reconsideration does not stay the department's action on the petitioner's driving privilege as ordered by the original final order. A petitioner seeking a stay must file a separate petition for that purpose. The hearings examiner will grant a stay only if the hearings examiner determines that it is likely that the petitioner will prevail and the action be reversed and that denying the stay will create irreparable harm to the petitioner. If the hearings examiner grants such a petition for a stay, the hearings examiner shall sign an order releasing the action and crediting any time already served, and subsequently sign an order sustaining or reversing the action, as determined by the amended final order. Disposition denying a stay is not subject to review.

(9) An amended final order shall be issued either denying reconsideration or, in the event reconsideration is granted, dissolving or modifying the original final order. The date of the amended final order begins the thirty-day period for the petitioner to appeal the amended final order.

(10) The filing of a petition for reconsideration is not a prerequisite for filing an appeal. An order denying reconsideration is not subject to appeal.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-250, filed 5/21/18, effective 9/4/18.]

WAC 308-101-260 Significant decisions in driver license cases. (1) The department will use the process outlined in this section to nominate, select, and index significant decisions hearings related to driver's licenses in the following types of adjudicative proceedings related to a sanction of the driving privilege:

- (a) The implied consent law (RCW 46.20.308);
- (b) The financial responsibility law (chapter 46.29 RCW);
- (c) The habitual traffic offender law (chapter 46.65 RCW);
- (d) The Uniform Commercial Driver's License Act (chapter 46.25 RCW);
- (e) Any formal hearing affecting the driving privilege conducted pursuant to the provisions of RCW 46.20.329 through 46.20.333.

(2) For the purposes of this section, a significant decision is a final order or a portion of a final order in an adjudicative proceeding that is of substantial importance to the department in carrying out its duties. Generally, an order is of substantial importance only if it analyzes and applies a statute or rule under the department's authority, demonstrates the department's reasoning as to a frequently recurring legal issue, provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts.

(3) Any person may nominate a final adjudicative order to be evaluated for indexing by completing an Order Index Nomination Request form. The form can be obtained from the department's web site at www.dol.wa.gov and returned to: Hearings and Interviews Unit, P.O. Box 9031, Olympia, WA 98507-9031, along with a copy of the nominated order.

(4) The director or director's designee shall make a final decision as to whether to select the nominated order as a significant decision based on the criteria in subsection (2) of this section, and that decision is not appealable.

(5) A decision that has been selected by the director as significant shall be maintained in a separate index. The index shall at a minimum contain a description of the type of document, name of parties, brief description of the legal subjects and pertinent legal citation. A copy of the index and a copy of the significant decision will be made available on the department's web site at www.dol.wa.gov. The general public records index maintained under WAC 308-10-067 will contain a reference to the specific location and identification of significant decision index and copies of the significant decisions.

(6) The department shall periodically update and review the index to verify that the indexed documents continue to meet the criteria in subsection (2) of this section. The department may, at any time, delete a document from an index. Under RCW 42.56.070(6), a significant decision may not be cited in a proceeding if it has not been indexed.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-101-260, filed 5/21/18, effective 9/4/18.]