

WSR 23-01-143

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed December 21, 2022, 9:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-103.

Title of Rule and Other Identifying Information: Update Title 308 WAC chapters to clarify business practices, procedures, and guidelines as it pertains to financial responsibility hearings.

Hearing Location(s): On January 25, 2023, at 11:00 a.m. Join Zoom meeting [https://dol-wa.zoom.us/j/89768286169?](https://dol-wa.zoom.us/j/89768286169?pwd=QS9neTBWeHJzemI4dm9jYUJWRDI5UT09)

Meeting ID 897 6828 6169, Passcode 281890; one-tap mobile, +12532158782,,89768286169#,,,,*281890# US (Tacoma); or dial by your location +1 253 215 8782 US (Tacoma), Meeting ID 897 6828 6169, Passcode 281890. Find your local number <https://dol-wa.zoom.us/u/kevHQ3imEw>. If you are having trouble accessing the public hearing at the time of the hearing, please call 360-902-3846.

Date of Intended Adoption: January 26, 2023.

Submit Written Comments to: Ellis Starrett, P.O. Box 9020, Olympia, WA 98507-9020, email rulescoordinator@dol.wa.gov, 360-902-3846.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update procedures, guidelines, and language of the financial responsibility judgment hearings.

Reasons Supporting Proposal: This proposal will provide clearer guidance that will align with the intent of chapter 46.29 RCW.

Statutory Authority for Adoption: RCW 34.05.030 (2)(b) and 46.01.110 Rule-making authority, 46.01.040(10) Powers, duties, and functions relating to motor vehicle laws vested in department, subsection (10), the administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Colton Myersi, 1125 Washington Street S.E., Olympia, WA 98504, 360-634-5094; Implementation and Enforcement: Marta Reinhold, 1125 Washington Street S.E., Olympia, WA 98504, 360-664-1488.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Proposed rule making is an administrating language clean up and does not impose any costs.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These changes represent administrative changes that do not impose any cost on businesses.

December 21, 2022

OTS-4234.2

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-004 Presiding officer. Hearings ~~((,))~~ and informal interviews ~~((and document reviews))~~ held under this chapter shall be conducted by a presiding officer who shall be delegated the authority to conduct such hearings ~~((, informal document reviews))~~ and informal interviews by the director. The presiding officer shall have the powers and duties provided by chapter 34.05 RCW, and may be authorized by the director to make final determinations regarding the issuance, denial, cancellation, or suspension or revocation of a driver's license or a nonresident's privilege to drive. If the presiding officer is authorized by the director to make final determinations, the decision shall be final.

If the presiding officer is not authorized to make final decisions the results shall be subject to review by the director or his ~~((or))~~ her, or their designated representative. The director or his ~~((or))~~ her, or their designated representative upon review of the records, the evidence, and the findings of the presiding officer shall promptly render his ~~((or))~~ her, or their decision sustaining, modifying, or reversing any order entered by the department.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-004, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 96-20-089, filed 10/1/96, effective 11/1/96)

WAC 308-102-006 Correspondence address. All correspondence shall be addressed to the Department of Licensing, Hearings and Interviews Section, P.O. Box ~~((9030))~~ 9031, Olympia, WA 98507-~~((9030))~~ 9031, or sent by facsimile transmission (fax) to ~~((360) 664-8492, at-~~ 360-570-4950, or emailed to ~~ention Hearings and Interviews Section)~~ hearings@dol.wa.gov. Any correspondence must include the driver's full name and license number, or case number if assigned.

[Statutory Authority: RCW 46.01.110 and 46.20.205. WSR 96-20-089, § 308-102-006, filed 10/1/96, effective 11/1/96. Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-006, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-008 Property damage threshold. In the case of property damage, the provisions of the Financial Responsibility Act shall apply where the damage to the property of any one person is of an apparent extent equal to or greater than ~~((five hundred dollars))~~ \$1,000. In the event that this amount differs from that established by the chief of the Washington state patrol under the provisions of RCW 46.52.030, the amount established ~~((by the chief of the Washington state patrol shall prevail))~~ in WAC 446-85-010.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-008, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-010 Order fixing amount of security. Whenever under the Financial Responsibility Act, the department fixes the amount of the security required of any person it shall ~~((forthwith))~~ notify the person of the amount so required by mailing to the ~~((person at his or her))~~ person's address ~~((as shown by department records))~~ of record, a notice of security stating the amount of the security required, the date by which the security must be posted, ~~((which shall be not less than twenty nor more than sixty days following the date of mailing,))~~ and ~~((which notice shall contain))~~ containing instructions ~~((pertaining to the filing of))~~ on how to file the proof of financial responsibility. The date by which the security must be posted shall not be less than 20 nor more than 60 days following the date of mailing.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-010, filed 3/25/92, effective 4/25/92; Order 103-MV, § 308-102-010, filed 8/17/71; Order 101-MV, § 308-102-010, filed 3/8/71.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-011 Amount of security—How determined. The department shall determine the amount of security deposit required of any person upon the basis of reports submitted, such reports to be in a form provided by the department which must be completed by the parties who sustain a loss, or their successors in interest, or upon the basis of other information or evidence received by the department which provides sufficiently specific information for the department to enter its decision concerning the amount of security with reasonable certainty: Provided, That a fatality or fatalities will create the presumption that the amount shall be for the full amount of the limit provided by RCW 46.29.090 in reference to the acceptable limits of a policy or bond. Failure to respond to a request for specific information within ~~((thirty))~~ 30 days will allow the department to conclude that no claim is being pursued.

The department shall determine the amount of security deposit required by a person based on the reports submitted to the department or based on other information or evidence received by the department which provides sufficiently specific information for the department to enter its decision concerning the amount of security with reasonable certainty. Any submitted reports must be in a form provided by the department and must be completed by the parties who sustained the loss or their successor in interest. A fatality or fatalities will create the presumption that the amount shall be for the full amount of the limit provided by RCW 46.29.090 in reference to the acceptable limits of a policy or a bond. Failure to respond to a request for specific information within 30 days will allow the department to conclude that no claim is being pursued.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-011, filed 3/25/92, effective 4/25/92; Order 228, § 308-102-011, filed 12/31/74.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-020 Notice of intent to suspend. (1) The department shall mail a notice of intent to suspend:

(a) At the time the department mails a notice of security (~~it shall also mail a notice of intent to suspend.~~); or

(b) At the time the department receives all required certifications from a judgment creditor pursuant to RCW 46.29.230.

(2) The notice of intent to suspend sent with the notice of security under subsection (1)(a) of this section shall give notice to the person required to post security of the department's intention to suspend the person's driving privilege, the effective date of such suspension to be not less than (~~twenty~~) 20 and not more than (~~sixty~~) 60 days from the date of mailing. The grounds stated in the notice shall (~~be:~~) communicate that failure to deposit the security (~~requirements~~) amount and (~~to~~) file proof of financial responsibility (~~.~~) is the basis for the license suspension. A person receiving (~~a~~) this notice of intent to suspend may apply for administrative (~~review~~) relief under WAC 308-102-100. Failure to apply for administrative (~~review~~) relief within the time limits of WAC 308-102-100 shall constitute a default and shall result in the suspension becoming effective on the date indicated on the notice of intent to suspend and the loss of the right to further administrative (~~review~~) relief. In the event the person so notified posts the security and files proof of financial responsibility for the future within the time allowed for such purposes, no suspension shall be (~~effected~~) affected. (~~The department may extend the effective date of the suspension where it appears the person suspended has made a bona fide attempt to file proof of financial responsibility for the future within the time permitted and will in all probability be able to do so within thirty days.~~)

(3) The notice of intent to suspend, sent at the time the department receives all required certifications from a judgment creditor pursuant to RCW 46.29.230, shall give notice to the person of the department's intention to suspend the person's driving privilege. The effective date of the suspension shall not be less than 20 nor more

than 60 days from the date of mailing. The notice shall advise the person that the suspension is required under chapter 46.29 RCW and shall include:

(a) The name of the court where the civil judgment has been entered;

(b) The dollar amount of the judgment;

(c) The date of the collision of theft of motor vehicle collision; and

(d) The cause number.

A person receiving this notice of intent may contest the proposed action by formal hearing under WAC 308-102-200(2). Failure to submit a request to contest the suspension within 15 days of the notice of intent shall constitute a default and shall result in the suspension becoming effective on the date indicated on the notice of intent to suspend. In the event the department receives a certified copy or abstract of judgment indicating the default judgment has been resolved, no suspension shall occur.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-020, filed 3/25/92, effective 4/25/92; Order 103-MV, § 308-102-020, filed 8/17/71; Order 101-MV, § 308-102-020, filed 3/8/71.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-085 Agreements for payment of damages—Effect on administrative proceedings. ~~((An individual))~~ A person that submits a written payment agreement to the department in accordance with RCW 46.29.140, waives any further review to the validity of the department's action. Any pending ~~((document review,))~~ administrative interview~~((,))~~ or formal hearing shall be canceled upon receipt of the written payment agreement.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-085, filed 5/21/18, effective 9/4/18.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-100 Request for informal settlement—Effect, timeliness. Pursuant to WAC 10-08-230, regarding informal settlements, any person notified of the requirement of depositing security and suspension for failure to deposit security under the Financial Responsibility Act, chapter 46.29 RCW, may within ~~((fifteen))~~ 15 days of the date of the notice of intent to suspend his ~~((or))~~, her, or their driver's license or nonresident privilege to drive request an interview before a presiding officer. The request ~~((may be oral or))~~ must be written ~~((, but if made orally, such request must be confirmed by the person in writing within five days following such request))~~.

Upon receipt of a timely request for interview, the suspension shall be stayed pending the outcome of the document review or interview.

If the person does not request an interview within the time specified above, or fails to attend an interview scheduled at the person's request, said person shall have waived his ~~((or))~~, her, or their right to any further administrative remedies, including the formal hearing, and the suspension of the person's driver's license or driving privilege shall become effective. If the person shows good cause as to why they failed to appear, the default may be vacated.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-100, filed 5/21/18, effective 9/4/18; WSR 92-08-045, § 308-102-100, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-100, filed 3/12/86; Order 466-DOL, § 308-102-100, filed 12/30/77; Order MV-302, § 308-102-100, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-140 Informal settlement—Interview. The interview only applies to notices to suspend arising under WAC 308-102-020(2). The interview shall be held before a presiding officer who, in making the decision, shall consider any of the following:

- (1) Oral testimony or argument offered by, for, or on behalf of the person seeking review by their legal representative;
- (2) Affidavits from the individuals claiming the loss and/or from a representative of any insurance carrier that has a subrogated interest therein;
- (3) Investigating officer's reports of the accident in question;
- (4) Court records of convictions ~~((or bail forfeitures))~~ submitted to the department of licensing and arising out of the accident in question;
- (5) The department's financial responsibility files concerning the person seeking review;
- (6) Affidavits or witness testimony ~~((of))~~ offered by the person seeking review; and
- (7) Any other evidence relevant to the issues to be determined.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-140, filed 3/25/92, effective 4/25/92; Order 466-DOL, § 308-102-140, filed 12/30/77; Order MV-302, § 308-102-140, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-190 Informal settlement—Interview—Decision. Upon conclusion of an interview the presiding officer shall make findings on the matter under consideration and shall sustain, modify, or reverse the department's notice of intention to suspend ~~((and/or))~~, address, and confirm the amount of security required. The department shall ~~((notify the person of the presiding officer's decision and said person's))~~ send a copy of the presiding officer's decision (findings) with the notice of the decision and right to request a formal adminis-

trative hearing in writing by first class mail sent to the last address of record (~~. A copy of the presiding officer's findings shall be sent to the person with the notice of the decision and right to a formal hearing~~), or email, provided the driver or their legal representative has consented to electronic receipt of the interview decision. Upon receipt of a timely request for formal hearing the order for the deposit of security and suspension for failure to deposit security shall ~~((be))~~ remain stayed pending the results of the hearing.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-190, filed 5/21/18, effective 9/4/18; WSR 92-08-045, § 308-102-190, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-190, filed 3/12/86; Order MV-302, § 308-102-190, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-102-200 Request for adjudicative proceeding—Formal hearing. (1) Any person ((who is aggrieved by the interview of the department)) may request a formal hearing ((on the matter)) if they disagree with the presiding officer's decision following an administrative interview. The request for formal hearing must be in writing and must be addressed to the department of licensing and postmarked within ~~((fifteen))~~ 15 days following the mailing of the decision of the department to the person or the notices of suspension for failure to satisfy a judgment. Failure to make timely request for a formal hearing to the department shall be considered a withdrawal of the person's request for adjudicative proceedings and shall result in a waiver of the person's right to such hearing and the decision of the department shall become final.

(2) If a timely request for a formal hearing is made, the department shall notify the person of the time of such hearing in writing, and mail such notice to the person's last address of record, at least ((twenty)) 10 days in advance of the hearing date. In accordance with RCW 34.05.449(3), the hearing shall be by telephone or other electronic means. ((If in the discretion of the presiding officer an in-person hearing is necessary, the hearing shall be held within a reasonable distance of the county wherein the person resides, or, if the person is a nonresident of Washington, in the county where the accident occurred.)) The notice shall include the information required by RCW 34.05.434(2).

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-102-200, filed 5/21/18, effective 9/4/18; WSR 92-08-045, § 308-102-200, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-200, filed 3/12/86; Order 466-DOL, § 308-102-200, filed 12/30/77; Order MV-302, § 308-102-200, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-250 Issues to be determined—Formal hearing. (1)

Only the following issues shall be considered at any formal hearing held on request of a person for failing to deposit sufficient security funds:

~~((1))~~ (a) Whether the person was the owner or driver of any motor vehicle of a type subject to registration under the motor vehicle laws of this state which was in any manner involved in an accident within this state;

~~((2))~~ (b) Whether the accident resulted in bodily injury or death of any person or damage to the property of any one person in an amount meeting or exceeding the property damage threshold established by WAC 308-102-008;

~~((3))~~ (c) Whether there is a reasonable possibility of a judgment being entered against the person in the amount required by the order of the department fixing such security;

~~((4))~~ (d) Whether the amount of security to be deposited, if any, is sufficient to satisfy any judgment or judgments resulting from such accident as may be recovered against the person, not to exceed the amount listed in chapter 46.29 RCW; and

~~((5))~~ (e) Whether the person is entitled to an exception to the requirement of security pursuant to RCW 46.29.080.

(2) The following issues shall be considered at any formal hearing held on request of a person for failure to satisfy a judgment pursuant to RCW 46.29.330; whether the department received the following from the judgment creditor:

(a) A certified copy or abstract of such judgment;

(b) A certificate of facts relative to such judgment; and

(c) Where the judgment is by default, a certified copy or abstract of that portion of the record which indicates the manner in which service of the summons was effectuated and all the measures taken to provide the defendant with timely and actual notice of the suit against him, her, or them.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-250, filed 3/25/92, effective 4/25/92; Order 467-DOL, § 308-102-250, filed 12/30/77; Order MV-302, § 308-102-250, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-255 Determination of possibility of judgment.

For the purposes of WAC 308-102-250~~((3))~~ (1)(c), the department may presume that there is a reasonable possibility of a judgment being entered against a person if:

(1) The person was convicted of ~~((or forfeited bail for))~~ a traffic violation arising out of the accident~~((τ))~~ i or

(2) A law enforcement officer investigating the accident completed a report which specified that a violation of a rule of the road contributed to the accident regardless of whether a citation was issued~~((τ))~~ i or

(3) The person was negligent, having committed an act which a reasonably careful and prudent person would not have done under the same or similar circumstances, or failed to act in a way which a reasonably careful and prudent person would have acted under the same or similar circumstances, and such act or omission was a proximate cause of the accident.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-255, filed 3/25/92, effective 4/25/92.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-260 Presiding officer—Duties. (1) The presiding officer, in making his ~~((or))~~, her, or their decision at the formal hearing held on request of a person for failing to deposit security, shall consider:

~~((1))~~ (a) Evidence as allowed under RCW 34.05.452;

~~((2))~~ (b) Court records of convictions ~~((or bail forfeitures))~~ submitted to the department of licensing and arising out of the accident in question;

~~((3))~~ (c) Traffic collision reports completed by a police officer who investigated the accident, all reports and other information submitted to the department by the individual(s) who sustained the loss or the insurance carrier who has a subrogated interest therein, records and documents in the possession of the department of which it desires to avail itself, repair estimates, repair and medical bills, towing bills and any other reasonable accounting of a loss proximately arising from an accident or photocopies thereof; and

~~((4))~~ (d) Any other evidence related to the issues before the hearing which have probative value commonly accepted by reasonable, prudent persons in the conduct of their affairs.

(2) The presiding officer, in making his, her, or their decision, at the formal hearing, held at the request of a person who failed to satisfy a judgment, shall consider whether the department received all the certificates required by RCW 46.29.310.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-260, filed 3/25/92, effective 4/25/92; WSR 82-03-046 (Order 668 DOL), § 308-102-260, filed 1/19/82; Order 466-DOL, § 308-102-260, filed 12/30/77; Order MV-302, § 308-102-260, filed 3/31/75.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-265 Formal hearing—Failure to appear. In the event that a final default order is entered against the person who requested a formal hearing pursuant to this chapter ~~((fails to appear at the time and place of the scheduled hearing))~~, no hearing shall be held. The case shall be remanded to the department, and the previous department order requiring security shall be affirmed: Provided, That the presiding officer:

(1) May consider evidence as to whether the amount of security to be deposited is sufficient to satisfy any judgment or judgments as may be recovered against the person, and may adjust the amount of security required accordingly; or

(2) Determine whether the department received the certificates required by RCW 46.39.330, and if not, may enter a decision to cancel the suspension.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-265, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-102-265, filed 3/12/86.]

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-290 Formal hearings—Findings, conclusions and decisions. At the conclusion of the formal hearing, the presiding officer shall, as soon as practical, ~~((make and enter))~~ issue findings of fact, conclusions of law, and enter an order as provided by RCW 34.05.461.

If the order of the department is affirmed, the department shall suspend the driver's license or nonresident driving privilege of the person required to deposit security or satisfy judgment, but the order of suspension shall carry an effective date of ~~((thirty))~~ 30 days after the date of mailing, during which time the person may comply with the terms of the order.

If the order of the department is reversed, the department shall cancel its previous order.

If the order of the department is modified, the department shall ~~((nonetheless))~~ suspend the driver's license or nonresident driving privilege of the person required to deposit security, but the order of suspension shall carry an effective date of ~~((thirty))~~ 30 days after the date of mailing, during which time the person may comply with the terms of the order.

Petitions for reconsideration, as provided by RCW 34.05.470, shall be filed with the presiding officer within ~~((ten))~~ 10 days of service of the final order. The department is deemed to have denied the petition for reconsideration if, within ~~((twenty))~~ 20 days from the date the petition is filed, the department does not either: (a) Dispose of the petition; or (b) serve the parties with a written notice specifying the date by which it will act on the petition.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-290, filed 3/25/92, effective 4/25/92; WSR 82-03-046 (Order 668 DOL), § 308-102-290, filed 1/19/82; Order MV-349, § 308-102-290, filed 1/28/76; Order MV-302, § 308-102-290, filed 3/31/75.]