

WSR 24-22-126

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 5, 2024, 12:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-082.

Title of Rule and Other Identifying Information: Creating a new chapter in Title 308 WAC to define business rules, guidelines, and the process for conducting administrative reviews and interviews.

Hearing Location(s): On December 11, 2024, at 10:00 a.m., via Microsoft Teams, Meeting ID 248 845 176 769, Passcode s2n6ec; or dial in by phone +1 564-999-2000,,650370153# United States, Olympia, 833-22-1218,,650370153# United States (Toll-free), Phone Conference ID 650 370 153#. For organizers, [contact agency for links]. Please note that there is both an in-person and a virtual option. If you are not able to sign in using Teams, your only option may be phone. Please plan on attending in person if the call-in option is not a preferred method of participating.

Date of Intended Adoption: December 12, 2024.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by December 11, 2024.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by December 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: While administrative reviews/interviews are defined in RCW 46.20.245, the specifics of conducting the document review or interview must be defined by the department of licensing and applicable business area. Standard procedures include eligibility, evidence to be reviewed, authority of the review, and other legal remedies available post-review.

Reasons Supporting Proposal: The creation of this new chapter in WAC will provide greater clarity by defining business rules, guidelines, and the process for conducting administrative reviews and interviews.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority.

Statute Being Implemented: RCW 46.20.245 Mandatory revocation—Persons subject to suspension, revocation, or denial who are eligible for certain full credit—Notice—Administrative, judicial review—Rules—Application.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Colton Myers, 1125 Washington Street S.E., Olympia, WA 98504, 564-464-5716; 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.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to vio-

lation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

November 5, 2024

Ellis Starrett

Rules and Policy Manager

**OTS-5954.1**

**Chapter 308-111 WAC**

**RULES OF PROCEDURES FOR ADMINISTRATIVE REVIEWS AND INTERVIEWS UNDER  
RCW 46.20.245**

NEW SECTION

**WAC 308-111-010 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 mandatory suspension, revocation, cancellation, and disqualification or denial of a license or identicard based on court action or actions of any other reporting agency or entity (RCW 46.20.245 and 46.20.291);

(b) Violation of the terms of probation under the Habitual Traffic Offenders Act (chapter 46.65 RCW);

(c) Violation of probation under effect of accumulation of traffic offenses (RCW 46.20.2892 and WAC 308-104-027);

(d) Violation of probation for continuing offenses (RCW 46.20.291);

(e) Failure to submit to or provide documentation in support of relicensing based on medical condition, examination of driving skills, or treatment concerns (RCW 46.20.031, 46.20.041, 46.20.291, 46.20.305, and 46.61.5056);

(f) Failure to respond to a traffic infraction for a moving violation, failure to appear at a hearing for a moving violation, or failure to comply with the terms of a criminal complaint or criminal citation for a moving violation (RCW 46.20.289); and

(g) Violation of the Uniform Commercial Driver's License Act (RCW 46.25.090).

(2) Unless otherwise specified, this chapter does not apply to administrative interviews conducted under RCW 46.20.322 through 46.20.328.

NEW SECTION

**WAC 308-111-020 Administrative review referees.** All adjudicative proceedings under this chapter shall be conducted by a paralegal appointed by the director. The director retains the discretion to revoke or limit the appointment at any time.

NEW SECTION

**WAC 308-111-030 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 an administrative review or interview within a prescribed period after notice is provided 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 or immediately when the notice is sent via electronic mail.

(4) A request for an administrative review or interview, under Title 46 RCW or 308 WAC, is deemed received by the department on the third day after the request is postmarked. A request for an administrative review or interview, under Title 46 RCW or 308 WAC, sent via electronic mail is deemed received by the department on the date filed.

NEW SECTION

**WAC 308-111-040 Eligibility for administrative review or interview.** (1) A person is eligible for an administrative review whenever the department proposes an adverse action against the driving privilege under this chapter and the request for an administrative review is received timely by the department.

(2) Upon timely request for an administrative review, the action subject to the department's notification shall be stayed pending the conclusion of the administrative review.

(3) A person who fails to submit the request for administrative review in the prescribed period or according to the department's instructions shall be denied an administrative review. The department shall notify the petitioner, in writing, of the reason for denial of the administrative review, and the department's sanction will go into effect as stated on the original notice.

(a) The department referee may set aside a denial of the administrative review if the petitioner establishes good cause.

(b) Good cause, which is defined as extending the administrative review or interview request deadline may include, but is not limited to:

- (i) Military deployment;
- (ii) Medical treatment or hospitalization;
- (iii) Housing instability;
- (iv) Language barriers;

- (v) Domestic violence; or
- (vi) Incarceration.

NEW SECTION**WAC 308-111-080 Requests for administrative review or interview.**

- (1) A request for administrative review or interview shall be in writing.
- (2) When no deadline for requesting the review or interview is provided in Title 46 RCW, or other law or rule of the department, a review or interview request must be postmarked or received by the administrative law office within 15 days after notice is given.
- (3) The administrative review or interview 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 the petitioner may identify the language and/or nature of the interpretive services needed.
- (4) The request for review or interview 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 must be submitted on a form approved by the department. The request for a review or interview may also be submitted online if the petitioner meets the qualifications described on the website at [www.dol.wa.gov](http://www.dol.wa.gov).

NEW SECTION**WAC 308-111-090 Scheduling review—Notice of interview.**

- (1) The department's referee shall conduct the administrative review on the department's electronic record and any documentation filed by the petitioner.
- (2) A petitioner submitting the request for administrative review may request an administrative interview. The department may, in its discretion, grant the petitioner an administrative interview, which shall be conducted by telephone or other electronic means.
- (3) The department shall send a notice to the petitioner, either deposited into the state mailing service or through electronic mail, no less than 10 days before the date set for the administrative interview.
- (4) The notice of the administrative interview shall include:
- (a) The date and time of the administrative interview;
  - (b) The assigned referee's name and contact information;
  - (c) The case name and reference number of the proceeding;
  - (d) The legal authority and jurisdiction under which the interview is to be conducted; and

(e) A statement that a petitioner who fails to participate in the administrative interview may be held in default.

NEW SECTION

**WAC 308-111-100 Scope of administrative review or interview.**

(1) The administrative review or interview shall solely address:

(a) Whether the records relied on by the department identify the correct person; and

(b) Whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity.

(2) A person requesting administrative review or interview has the burden of showing by a preponderance of evidence that the person is not subject to the withholding of the driving privilege.

NEW SECTION

**WAC 308-111-110 Notice of appearance.** (1) If a petitioner has legal representation for the administrative review or interview, the petitioner shall provide the department with the legal representative's name, address, email address, and telephone number. The legal representative shall file a written notice of appearance with the department and, if applicable, shall file a notice of withdrawal.

(2) When a legal representative has appeared in a matter, documents related to the review or interview, including final orders, will be served upon the legal representative. Documents may be provided to a petitioner's legal representative via electronic mail, with the legal representative's agreement.

(3) For the purposes of this section, a "legal representative" means an attorney licensed to practice law in the state of Washington and in good standing with the Washington state bar association.

NEW SECTION

**WAC 308-111-120 Continuances.** (1) If, at the discretion of the department, an administrative interview has been scheduled, the petitioner may request a continuance or reschedule.

(2) The petitioner shall file the request for continuance or reschedule:

(a) In writing at least 48 hours prior to the scheduled appointment;

(b) Directed to the assigned referee and describe why the request is being made; and

(c) Include at least two replacement interview dates.

(3) Continuance or reschedule requests beyond the first request require the petitioner establish good cause, which is defined as justification for extending the interview date and may include, but are not limited to:

(a) Military deployment;

(b) Medical treatment or hospitalization;

- (c) Housing instability;
- (d) Language barriers;
- (e) Domestic violence; or
- (f) Incarceration.

(6) The petitioner shall not consider an administrative interview continued or rescheduled until notified affirmatively by the assigned referee. The referee may, on its own motion, continue or reschedule the interview at any time, including on the date of the interview.

(7) The referee may require the petitioner who requests a continuance or reschedule beyond the first request to submit documentary evidence that substantiates the reason for the request.

(8) If the petitioner elects to cancel their request for an interview, the petitioner must notify the department of their intent to do so in writing.

#### NEW SECTION

**WAC 308-111-155 Evidence.** (1) A petitioner may submit any exhibit or document for consideration by the referee in an administrative review or interview. Submittals may be made via any one of the following methods:

- (a) U.S. mail addressed to: Department of Licensing, Administrative Law Office, P.O. Box 9031, Olympia, WA 98507-9031.
- (b) Facsimile transmission to the assigned department referee.
- (c) An internet portal made available by the department.
- (d) Email to: Hearings@dol.wa.gov.

(2) Exhibits or documents submitted electronically must be submitted in pdf format.

(3) The petitioner shall submit any exhibits or documents on or before the deadline listed in the notice of administrative review or administrative interview.

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

#### NEW SECTION

**WAC 308-111-190 Interpreters.** (1) When the petitioner in an administrative interview has a hearing or speech impairment, cannot readily understand or communicate in a spoken language or is a non-English speaking person, the department shall appoint an interpreter to assist the petitioner during the administrative interview.

(2) The department is responsible for the cost of the interpreter pursuant to RCW 2.43.040.

(3) The department shall use interpreters certified by the administrative office of the courts unless good cause is found and noted on the record by the referee. Good cause includes, but is not limited to, the determination that:

- (a) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved,

the services of a certified interpreter are not reasonably available to the department; or

(b) The current list of certified interpreters maintained by the administrative office of the courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(4) If good cause is found for using a qualified interpreter, the referee shall make a preliminary determination on the record, that the proposed interpreter:

(a) Is capable of communicating with the referee and the petitioner; and

(b) Has read, understands, and will abide by the code of ethics for language interpreters established by court rules.

#### NEW SECTION

**WAC 308-111-220 Default.** (1) In the event that the person who requested an administrative interview does not participate by telephone at the time it is scheduled, an order of default shall be entered, and the department's proposed action shall be sustained.

(2) 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 reasons why petitioner did not participate in the administrative interview. In determining whether the default should be set aside, the referee shall consider whether there was good cause for the nonappearance.

#### NEW SECTION

**WAC 308-111-230 Final result.** (1) The referee shall enter a final result when completing the administrative review or interview.

(2) The judicial review of the final result in an administrative review or interview shall be available in the same manner as provided in RCW 46.20.308(8).

(3) A petition for judicial review of a final result under this section shall be served on the department and the attorney general within 30 days after service of the final result.