

Chapter 308-102 WAC

ADMINISTRATION OF THE FINANCIAL RESPONSIBILITY ACT—PROCEDURES

WAC

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 308-102-150 Issues to be determined. [Order 467-DOL, § 308-102-150, filed 12/30/77; Order MV-302, § 308-102-150, filed 3/31/75.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.
 308-102-160 Determination of possibility of judgment. [Order MV-302, § 308-102-160, filed 3/31/75.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

308-102-013 Amount of security—Exemption because of age of damaged vehicle. [Order 467-DOL, § 308-102-013, filed 12/30/77; Order 228, § 308-102-013, filed 12/31/74.] Repealed by WSR 82-03-046 (Order 668 DOL), filed 1/19/82. Statutory Authority: RCW 46.01-110.
 308-102-030 Request for hearing—Form, effect, timeliness. [Order 103-MV, § 308-102-030, filed 8/17/71; Emergency Order 102-MVX, § 308-102-030, filed 4/2/71; Emergency Order 103-MVX, § 308-102-030, filed 6/4/71; Order 101-MV, § 308-102-030, filed 3/8/71.] Repealed by Order 102-MV, filed 5/12/71. See later adoption, Order 103-MV, § 308-102-0301, filed 8/17/71.
 308-102-0301 Request for hearing—Form, effect, timeliness. [Order 103-MV, § 308-102-0301, filed 8/17/71, Formerly § 308-102-030, filed 3/8/71. See chapter digest for disposition of § 308-102-030.] Repealed by Order MV-302, filed 3/31/75.
 308-102-035 Financial responsibility hearing committee established. [Order 103-MV, § 308-102-035, filed 8/17/71.] Repealed by Order MV-302, filed 3/31/75.
 308-102-040 Hearing—Procedural rules. [Order 101-MV, § 308-102-040, filed 3/8/71.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.
 308-102-045 Hearing procedures. [Order 103-MV, § 308-102-045, filed 8/17/71.] Repealed by Order MV-302, filed 3/31/75.
 308-102-050 Hearing—Issues. [Order 101-MV, § 308-102-050, filed 3/8/71.] Repealed by Order 102-MV, filed 5/12/71.
 308-102-055 Issues to be determined by hearing committee. [Order 103-MV, § 308-102-055, filed 8/17/71.] Repealed by Order MV-302, filed 3/31/75.
 308-102-060 Hearing officer—Powers. [Order 101-MV, § 308-102-060, filed 3/8/71.] Repealed by Order 102-MV, filed 5/12/71.
 308-102-065 Notice that hearing may be requested. [Order 103-MV, § 308-102-065, filed 8/17/71.] Repealed by Order MV-302, filed 3/31/75.
 308-102-070 Correspondence address. [Order 103-MV, § 308-102-070, filed 8/17/71.] Repealed by Order MV-302, filed 3/31/75.
 308-102-075 Hearing committee—Powers. [Order 103-MV, § 308-102-075, filed 8/17/71.] Repealed by Order MV-302, filed 3/31/75.

308-102-170 Notice that interview or document review may be requested. [Order 466-DOL, § 308-102-170, filed 12/30/77; Order MV-302, § 308-102-170, filed 3/31/75.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.
 308-102-180 Correspondence address. [Order 466-DOL, § 308-102-180, filed 12/30/77; Order MV-302, § 308-102-180, filed 3/31/75.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.
 308-102-210 Formal hearing—Time and place. [Statutory Authority: RCW 46.01.110. WSR 82-03-046 (Order 668 DOL), § 308-102-210, filed 1/19/82; Order MV-302, § 308-102-210, filed 3/31/75.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.
 308-102-220 Formal hearing—Notice of proceeding. [Order MV-302, § 308-102-220, filed 3/31/75.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.
 308-102-230 Hearing officer. [Order MV-302, § 308-102-230, filed 3/31/75.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.
 308-102-240 Financial responsibility—Formal hearing. [Order MV-302, § 308-102-240, filed 3/31/75.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.
 308-102-270 Hearing officer—Powers. [Order MV-302, § 308-102-270, filed 3/31/75.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.
 308-102-280 Formal hearing. [Order MV-302, § 308-102-280, filed 3/31/75.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.
 308-102-295 Formal hearings—Habitual traffic offenders. [Statutory Authority: RCW 46.01.110. WSR 82-21-002 (Order 697-DOL), § 308-102-295, filed 10/7/82.] Repealed by WSR 92-08-045, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.01.110.

WAC 308-102-002 Declaration of purpose—Procedural rules. Chapter 308-102 WAC contains the rules of procedure used in the administration of the Financial Responsibility Act, chapter 46.29 RCW. Adjudicative proceedings

conducted under the Financial Responsibility Act shall be held in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and the rules published in chapter 10-08 and 308-08 WAC insofar as those rules are consistent with the rules adopted herein.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-002, filed 3/25/92, effective 4/25/92.]

WAC 308-102-004 Presiding officer. Hearings, 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 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 designated representative. The director or his or her designated representative upon review of the records, the evidence, and the findings of the presiding officer shall promptly render his or her 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.]

WAC 308-102-006 Correspondence address. All correspondence shall be addressed to the Department of Licensing, Hearings and Interviews Section, P.O. Box 9030, Olympia, WA 98507-9030, or sent by facsimile transmission (fax) to (360) 664-8492, attention Hearings and Interviews Section.

[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.]

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. 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.

[Statutory Authority: RCW 46.01.110. WSR 92-08-045, § 308-102-008, 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 address as shown by department records, 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 instructions pertaining to the filing of proof of financial responsibility.

[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.]

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 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.]

WAC 308-102-012 Amount of security—Effect of comparative negligence. The department may determine the percentage of negligence attributable to any person claiming injury or damage in twenty-five percentile units and then may reduce the amount of security in proportion to that percentage: Provided, That the department shall not require security if the person claiming injury or damage is ninety percent or more negligent.

[Statutory Authority: RCW 46.01.110. WSR 82-03-046 (Order 668 DOL), § 308-102-012, filed 1/19/82; Order 228, § 308-102-012, filed 12/31/74.]

WAC 308-102-020 Notice of intent to suspend. At the time the department mails a notice of security, it shall also mail a notice of intent to suspend. The notice of intent to suspend 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 and not more than sixty days from the date of mailing. The grounds stated in the notice shall be: "Failure to deposit the security requirements and to file proof of financial responsibility." A person receiving a notice of intent to suspend may apply for administrative review under WAC 308-102-100. Failure to apply for administrative review 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. 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. 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.

[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.]

WAC 308-102-090 Agreements for payment of damages—Default notice. The department shall accept a notice of default on a payment agreement that was entered in lieu of the security deposit requirements as being effective only if that notice is received within three years of the date of the accident.

[Statutory Authority: RCW 46.20.391, 46.01.110 and 46.65.020, WSR 86-07-018 (Order DS 2), § 308-102-090, filed 3/12/86; Order MV-172, § 308-102-090, filed 7/16/73.]

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 days of the date of the notice of intent to suspend his or her driver's license or nonresident privilege to drive request either an interview or document review before a presiding officer. The request may be oral or 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 or document review, the suspension shall be stayed pending the outcome of the document review or interview.

If the person does not request a document review or 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 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.

[Statutory Authority: RCW 46.01.110, 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.]

WAC 308-102-130 Informal settlement—Document review. Document review shall be held before a presiding officer who, in making the decision, shall consider any of the following:

- (1) Affidavits filed by, for, and/or on behalf of the person seeking review, and/or by, for and/or on behalf of the individual(s) claiming the loss;
- (2) The financial responsibility files concerning the person seeking review;
- (3) The investigating officer's report of the accident;
- (4) Court records of any conviction or bail forfeiture of a traffic violation arising out of the accident; and
- (5) Any other evidence relevant to the issues to be determined.

[Statutory Authority: RCW 46.01.110, WSR 92-08-045, § 308-102-130, filed 3/25/92, effective 4/25/92; Order MV-302, § 308-102-130, filed 3/31/75.]

(10/1/96)

WAC 308-102-140 Informal settlement—Interview. 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;
- (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 financial responsibility files concerning the person seeking review;
- (6) Affidavits or witness testimony of 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.]

WAC 308-102-190 Informal settlement—Document review or interview—Decision. Upon conclusion of a document review or 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 the amount of security required. The department shall notify the person of the presiding officer's decision and said person's right to request a formal administrative 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. 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 stayed pending the results of the hearing.

[Statutory Authority: RCW 46.01.110, 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.]

WAC 308-102-200 Request for adjudicative proceeding—Formal hearing. Any person who is aggrieved by the interview or document review decision of the department may request a formal hearing on the matter. The request for formal hearing must be in writing and must be addressed to the department of licensing and postmarked within fifteen days following the mailing of the decision of the department to the person. 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.

If a timely request for a formal hearing is made, the department shall notify the person of the time and place of such hearing in writing, and mail such notice to the last address of record, at least twenty days in advance of the hearing date. The hearing shall be held within a reasonable distance of the county wherein the person resides, or, if the per-

son 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 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.]

WAC 308-102-250 Issues to be determined—Formal hearing. Only the following issues shall be considered at any formal hearing held on request of a person:

(1) 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) 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) 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) 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; and

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

[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.]

WAC 308-102-255 Determination of possibility of judgment. For the purposes of WAC 308-102-250(3), 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, 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, 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.]

WAC 308-102-260 Presiding officer—Duties. The presiding officer, in making his or her decision at the formal hearing, shall consider:

(1) Evidence as allowed under RCW 34.05.452;

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

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(3) 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) 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.

[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.]

WAC 308-102-265 Formal hearing—Failure to appear. In the event that 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 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.

[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.]

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 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, but the order of suspension shall carry an effective date of thirty 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 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 days of service of the final order. The department is deemed to have denied the petition for reconsideration if, within twenty 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.]