

WAC 446-65-040 Compliance review hearing process. (1) A carrier that receives a written notice of penalty from the state patrol has twenty business days from receipt of notice to:

- (a) Pay the penalty as stated in the notice; or
- (b) Submit a written application for mitigation of the penalty;

or

- (c) Submit a written request for an administrative hearing.

(2) **Mitigation.** A carrier may submit a request for mitigation of a penalty, except as provided in RCW 46.32.100.

- (a) A carrier's request for mitigation must:

- (i) Be in writing;
- (ii) Contain a statement explaining what the steps the carrier has taken to come into compliance, or what steps the carrier proposes to take in the future to come into compliance;
- (iii) Contain a notarized signature of the requestor; and
- (iv) Be received by the state patrol within twenty business days of the receipt of notice.

(b) Upon timely receipt of a written request for mitigation of a penalty, the state patrol will:

- (i) Review the materials submitted by the requestor; and
- (ii) Notify the carrier in writing of the disposition of the request for mitigation.

(3) **Administrative hearing.** A carrier may request an administrative hearing to contest the violation or penalty, or both.

- (a) A carrier's request for an administrative hearing must:

- (i) Be in writing; and
- (ii) Be received by the state patrol within twenty business days after receipt of the notice of penalty **or** receipt of the disposition of a request for mitigation.

(b) A carrier may request an administrative hearing without first requesting mitigation of the penalty.

(c) An administrative hearing will be conducted under chapter 34.05 RCW (Washington Administrative Procedure Act).

(d) The following process applies to administrative hearings under this chapter:

(i) The state patrol will notify the assistant attorney general of the carrier's request for an administrative hearing.

(ii) The assistant attorney general will draft an administrative complaint and send it to the carrier and to the office of administrative hearings.

(iii) The office of administrative hearings will schedule a hearing date, and will notify the carrier, assistant attorney general, and patrol in writing of the hearing date, time, and location.

(iv) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings.

(v) At the hearing, the assistant attorney general will present witnesses and other evidence on behalf of the WSP.

(vi) At the hearing, the carrier may be represented by an attorney or may choose to represent himself or herself. The carrier or his/her attorney will be allowed to present witnesses and other evidence.

(e) Nothing in this section will prevent the parties from resolving the administrative matter by settlement agreement prior to conclusion of the administrative hearing.

(4) **Initial and final order.** At the conclusion of the hearing, the administrative law judge will prepare an initial order and send it to the carrier and the assistant attorney general.

(a) Either the carrier or the assistant attorney general, or both, may file a petition for review of the initial order with the patrol within twenty days of the date of service of the initial order. A petition for review must:

(i) Specify the portions of the initial order to which exception is taken;

(ii) Refer to the evidence of record which is relied upon to support the petition; and

(iii) Be filed with the patrol within twenty days of the date of service of the initial order.

(b) A party on whom a petition for review has been served may, within ten days of the date of service, file a reply to the petition. Copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(c) The administrative record, the initial order, and any exceptions filed by the parties will be submitted to the chief or his/her designee for review. Following this review, the chief or his/her designee will enter a final order that is appealable under the provisions of chapter 34.05 RCW.

[Statutory Authority: RCW 46.30.020 and Title 49 Code of Federal Regulations (C.F.R.). WSR 10-01-129, § 446-65-040, filed 12/21/09, effective 1/21/10.]