

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-020 Definitions. As used in this chapter, unless the context requires otherwise, the term:

- (1) "Department" refers to the department of licensing;
- (2) "Hearing" means a formal hearing as authorized and conducted pursuant to RCW 46.20.308(8);
- (3) "Hearing office" refers to the physical location from which a hearing officer conducts hearings under RCW 46.20.308. Where appropriate, the term "hearing office" also refers to the staff assigned to a hearing office;
- (4) "Hearing officer" means a person who is appointed by the director of the department to conduct hearings under RCW 46.20.308;
- (5) "Legal representative" means an attorney licensed and authorized to practice law in the state of Washington;
- (6) "Petitioner" refers to (~~a driver~~) an individual subject to the provisions of RCW 46.20.308 who has requested a hearing.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-040 Requests for hearings. The request for a hearing shall be in compliance with the following requirements:

- (1) The petitioner must submit his or her formal request for hearing:
 - (a) Within (~~thirty~~) twenty days of the date notice is given under RCW 46.20.308(6) if the petitioner submitted to a breath test;
 - (b) Within (~~thirty~~) twenty days of the date notice is given under RCW 46.20.308(6) if the petitioner is alleged to have refused the breath or blood test; or
 - (c) Within (~~thirty~~) twenty days of the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test;
- (2) If a request for a hearing is mailed, it must be received by the department within seven days of the date the request was post-marked in order to be considered timely under this section. This provision may be waived if the request is received by the department within (~~thirty~~) twenty days of the date of arrest, or within (~~thirty~~) twenty days of the date notice is given in the event notice is given by the department following a blood test, or if the petitioner and the department agree to (~~a waiver of~~) waive the sixty-day hearing requirement;
- (3) The request for a hearing shall be in writing. The petitioner may use the form provided by the department for this purpose or any other writing. The petitioner may request a hearing online if the petitioner meets the qualifications described on the web site at www.dol.wa.gov;
- (4) 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;

(5) 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;

(6) If petitioner will have legal representation at the administrative hearing, the request shall also include the legal representative's name, mailing address, and daytime telephone number, including area code;

(7) The request for a hearing shall be submitted to the Department of Licensing, (~~Driver Services Division,~~) Hearings & Interviews, P.O. Box 9048, Olympia, Washington 98507-9048. If the petitioner is entitled to or (~~applying~~) applies for a waiver of the filing fee because of indigence, the request must be submitted to the Department of Licensing, (~~Driver Services Division,~~) Hearing & Interviews, P.O. Box 9031, Olympia, Washington 98507-9031;

(8) 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 and justification for the fee waiver shall accompany the hearing request;

(9) A petitioner who has been denied a court-appointed attorney on the underlying related criminal charge because he or she is deemed "not indigent" is not eligible for a fee waiver;

(10) Indigence may be established as follows:

(a) Written verification of court-appointed legal counsel on the associated underlying criminal charge;

(b) Written verification of current involuntary commitment to a public mental health facility;

(c) Verification of current receipt of general assistance, temporary assistance for needy families, refugee resettlement benefits, food stamps, supplemental security income, or medicaid; or

(d) Submission and approval of the department's "Application for Waiver of Hearing Fee" form;

(11) Failure to timely submit a hearing request and/or failure to include the filing fee or application for waiver with the hearing request shall be deemed a waiver of the petitioner's right to a hearing; and

(12) 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 denial.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-050 Scheduling—Notice of hearing. (1) Upon receipt of a timely request for a hearing, the department shall schedule a telephone hearing within sixty days following the arrest or following

the date the notice has been given by the department following a blood test, unless otherwise agreed to by the department and the person.

(2) The petitioner or petitioner's legal representative may state a preferred range of hearing dates or unavailable dates. To the extent that such requests can be accommodated within the applicable time limits and hearing officer availability, the department will attempt to do so.

(3) The department shall mail a hearing notice to the petitioner or petitioner's legal representative at least ten days prior to the date of the hearing.

(4) The department's scheduling notice and brochure will include the assigned hearing officer's name, a phone number at which he or she may be contacted, and other information concerning the administrative 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.

(5) The petitioner or petitioner's legal representative may request that all or part of the hearing be conducted "in person." Such request must be in writing stating the reasons therefore and directed to the assigned hearing officer immediately upon receipt of the scheduling notice. The hearing officer will have the sole discretion to grant or deny this request, and may require a waiver of the ~~((sixty-day hearing))~~ requirement that the hearing be held within sixty days, the requirement that the hearing be held in the county of arrest, or both requirements as a condition to granting the request.

(6) Each party shall ensure that his or her address and telephone number on file is correct and shall immediately notify the department and/or hearing officer of any change of address or telephone number that occurs during the course of the proceeding.

(7) The administrative hearing may be reassigned to a different hearing officer without notice to the parties.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02, effective 6/3/02)

WAC 308-103-060 Notice of appearance. 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 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 written notice of appearance and))~~ shall file a notice of withdrawal upon withdrawal of representation.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-070 Continuances. (1) After a hearing has been scheduled, it may be continued, rescheduled, or adjourned only at the discretion of the hearing officer.

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

(3) Except in the case of an emergency, the hearing officer 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 hearing officer may continue, adjourn, or reschedule at any time, including on the date of the administrative hearing.

(5) Hearings that are continued, rescheduled, or adjourned may be reset to a date within sixty days of the driver's arrest, or within sixty days of the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test, unless a written waiver of the sixty-day hearing requirement of RCW 46.20.308 accompanies the written continuance request, or unless the petitioner is deemed to have "waived" the statutory time frame.

(6) A petitioner is deemed to have waived the statutory requirement that the hearing be held within sixty days if petitioner requests an action that cannot be accommodated within the sixty-day period.

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

(8) The hearing officer may require the party who requests a continuance, reschedule, or adjournment to submit documentary evidence that substantiates the reason for the request.

(9) A second request for a continuance, reschedule, or adjournment will only be granted in the event of an ~~((extreme))~~ emergency and at the discretion of the assigned hearing officer.

(10) Notwithstanding any provisions of this section to the contrary, a hearing officer may continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear. The hearing officer 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. Action taken by the hearing officer to enforce a subpoena issued on the petitioner's behalf is considered to be at the request of the petitioner for purposes of WAC 308-103-070(6).

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-080 Deferred prosecutions—~~((Withdrawals))~~ Cancellation of hearings. (1) In the event a petitioner elects to seek a deferred prosecution, ~~((the petitioner shall notify the assigned hearing officer and file a notice of Intent to Seek Deferred Prosecution, on a form provided by the department, with the hearing officer or the department. To))~~ he or she may be eligible for a stay~~((7))~~. The petitioner must not have previously entered a deferred prosecution pro-

gram, must have taken the breath or blood test, and must indicate that he or she intends to seek a deferred prosecution. If the petitioner is eligible, a stay of the administrative action shall be entered on the driver's record pursuant to RCW 46.20.308(~~(+10)~~). ~~If the petitioner is not eligible, he or she will be so notified by the department and the administrative action will continue~~) (9).

(2) If a stay is entered under subsection (1) of this section, the hearing will proceed and the results will be sent to the petitioner. As provided by RCW 46.20.308(~~(+10)~~) (9), the stay of the action shall continue but any appeal of the Findings and Conclusion must be undertaken within thirty days of service of the results.

(3) If the petitioner elects to (~~withdraw~~) cancel his or her request for a hearing, he or she must notify the department in writing of his or her intent to do so. Upon receiving such a request for a withdrawal, the department shall proceed with the administrative action against the petitioner's driving privilege, unless a stay has been entered on the driver's record due to the filing of a notice of Intent to Seek a Deferred Prosecution.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-090 Subpoenas. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 46.20.308(~~(+8)~~) (7). All subpoenas shall direct the witness to appear by telephone unless otherwise agreed to by the hearing officer.

(2) Every subpoena shall be submitted on a form approved by the department, available on the internet at www.dol.wa.gov, and must be signed and issued by a hearing officer. An approved form may be obtained from the department.

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

(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. Service by certified mail must be preapproved by the hearing officer. Service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.

(4) The hearing officer 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 ten days prior to the date of the hearing, excluding weekends and holidays, in order to have full force and effect.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-110 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 hearing officer the opportunity to review it prior to the hearing. The hearing officer 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 in a format which allows it to be viewed on the department's equipment. Any costs associated with this requirement is to be the responsibility of the petitioner.

NEW SECTION

WAC 308-103-125 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.

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

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02, effective 6/3/02)

WAC 308-103-130 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.

(a) If a hearing impaired person is a party or witness to an adjudicative proceeding, a qualified interpreter shall be appointed to interpret the proceedings. Under RCW ((~~2.42.050~~)) 2.42.110, a "qualified interpreter" means a visual language interpreter who is certified by the state or is certified by the registry of interpreters for the deaf.

(b) Whenever an interpreter is appointed to assist a non-English-speaking person, a qualified or certified interpreter shall be appoin-

ted to assist the person during the hearing. Under RCW 2.43.020, a "qualified interpreter" means a person who is able readily to interpret or translate spoken and written English for a non-English-speaking person. A "certified interpreter" means an interpreter who is certified by the office of the administrator for the courts.

(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) Mode of interpretation:

(a) The consecutive mode of foreign language interpretation shall be used unless the hearing officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency;

(b) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary 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;

(c) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall translate all statements made by other hearing participants, unless waived by the petitioner. The hearing officer shall ensure that sufficient extra time is provided to permit translation and the hearing officer shall ensure that the interpreter translates the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding as a nonimpaired or English-speaking party listening to uninterpreted statements would have.

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

(5) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the hearing officer conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-150 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 hearing officer'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(~~(+8)~~) (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

hearing officer 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 and during 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;

(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.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-170 ((Temporary license.)) Reserved. ((A temporary license issued by a law enforcement officer pursuant to RCW 46.20.308 may be extended when:

(1) A hearing is conducted and a decision on the outcome of the hearing is taken under advisement by the hearing officer; or

(2) A hearing is continued or rescheduled outside of the initial sixty day effective period of the temporary license.))

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-180 Final order. (1) Every decision and order shall:

((1)) (a) Be correctly captioned as to the name of the department of licensing and name of the proceeding;

((2)) (b) Designate all parties and representatives participating in the proceeding;

((3)) (c) Contain a final order disposing of all contested issues; and

((4)) (d) Contain a statement describing the right to appeal.

(2) In the event the original hearing officer is unavailable, the department may assign the case to another hearing officer 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 finding of fact and conclusions of law based on the record submitted.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

WAC 308-103-190 Reconsideration and appeals. (1) The petitioner's rights to appeal are provided in RCW 46.20.308(~~((+9+))~~) (8), and nothing herein is intended to detract from that statute.

(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 hearing officer.

(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 a final order shall be filed with the hearing officer who signed that final order, within ten days of the date the final order is mailed to the petitioner.

(5) The petition shall be reviewed by the hearing officer who entered the original final order, if reasonably available. If the original hearing officer assigned to the case is unavailable, the department, within its discretion, may assign the case to another hearing officer to preside over the motion. 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 hearing officer 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 hearing officer'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 hearing officer will grant a stay only if the hearing officer 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 hearing officer grants such a petition for a stay, the hearing officer 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, and there is no longer a right to appeal the original 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.