
Washington Administrative Code Notice of Permanent Rules for Chapter 308-103 WAC

This explanatory statement concerns the **Washington State Department of Licensing's adoption of chapter 308-103 WAC, pertaining to rules of procedure for hearings conducted under RCW 46.20.308 (Implied Consent).**

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. This statement must be provided to anyone who gave comment about the proposed rule making.

Once persons who gave comment during this rule making have had a chance to receive this document, the Department of Licensing will file the amended rules with the Office of the Code Reviser. These rule changes will become effective 31 days after filing (approximately August 13, 2015).

The Department of Licensing appreciates your involvement in this rule making process. If you have any questions, please contact Damon Monroe, Agency Rules Coordinator, at (360) 902-3843 or e-mail at dmonroe@dol.wa.gov.

What are the agency's reasons for adopting this rule?

Clarify, revise, and make technical corrections to procedures and filing requirements regarding hearings conducted by the Department under RCW 46.20.308. Add a new section, WAC 308-103-125, to specify format and length for briefs to be submitted for a hearing

Summary of all public comments received on this rule proposal and the agency's response to those comments:

The Department received comments from Patricia Fulton, Attorney with Burg Criminal Defense, and Teresa Mathis, Executive Director of the Washington Association of Criminal Defense Lawyers, regarding proposed changes to WAC 308-103-040(8) and 308-103-110, and proposed new section WAC 308-103-125. The comments on these three sections were similar and have been consolidated for purposes of this summary and response from the Department:

1. WAC 308-103-040(8): Concerns were expressed over the addition of the term "nonrefundable" to describe the hearing filing fee under RCW 46.20.308(7), as the Department's policy is to provide refunds in the event no arrest report is sent in by law enforcement. Request was made that clarifying language be added indicating that the fee will be refunded in such an event.

Response: While the Department does routinely refund the hearing fee in cases where law enforcement has failed to forward an arrest report, the fee is not refundable in cases that have been properly reported to the Department.

The purpose of WAC 308-103-040 is to specify the requirements for a petitioner to request a hearing. The rule is not intended to address instances when no hearing will be required. The Department believes that it is necessary that a petitioner clearly understand in advance that no refund of the filing fee will be available under normal circumstances and it doesn't want to introduce any potential confusion by addressing circumstances beyond the scope of the rule. Accordingly, the Department declines to amend the rule as requested.

2. WAC 308-103-110: Concerns were expressed regarding the proposed addition of a requirement that a petitioner assume the costs of formatting a video for the Department without any requirement that the Department have common video viewing software available or that the Department provide any guidance in the rule as to what technology is acceptable.

Response: The Department understands the concerns regarding this additional requirement, but intends to clarify this issue by departmental policy. The Department currently uses [DLC media player](#) and [Windows Media Player 12](#), both of which provide support for most popular audio and visual formats. However, due to the volatile nature of software advancement the Department feels it inadvisable to specify acceptable video formats by administrative rule. A departmental policy is being drafted and will soon be adopted that will list current software requirements. This policy will be kept updated by the Department as may become necessary should software requirements change.

3. WAC 308-103-125: Concerns were expressed with the limitations on format and length of briefs, with a suggestion that a requirement that the documents be "legibly written or printed" as specified in GR 14 should be sufficient. There was additional concern that the Department might reject materials filed by a *pro se* petitioner for minor technical issues.

Response: The text of WAC 308-103-125 was taken from the Rules for Courts of Limited Jurisdiction, [RALJ 7.3](#). The Department is of the opinion that since the proposed rule mirrors the requirements of court rule, it does not impose an unreasonable burden on a petitioner. The Department does not intend to refuse to accept briefs that may fail to meet the requirements of the proposed rule and will leave it up to the hearing officer's discretion as to any leniency that may be granted to *pro se* petitioners who fail to meet the requirements. Accordingly, the Department declines to amend the proposed rule as requested. However, the Department requests that any instances where a petitioner believes that a brief has been unjustly rejected be reported to the Administrator of the Hearings and Interviews Section. The Department may reopen this issue for future rulemaking if there is evidence presented of petitioners being substantially harmed by this rule.

WAC Changes:

None.