

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-060 Service on petitioner. Service on the petitioner: Except as provided in WAC 308-101-080(10), the (~~hearings and interviews unit~~) administrative law office provides all final orders and correspondence to the petitioner at the petitioner's address of record, unless the petitioner is represented, in which case service on the legal representative is deemed service on the petitioner. Documents may be provided to a petitioner via electronic distribution only, with the petitioner's agreement.

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-080 Requests for hearing. (1) A request for a hearing shall be in writing;

(2) When no deadline for requesting a hearing or interview is provided in Title 46 RCW, or other law or rule of the department, a hearing or interview request must be postmarked or received by the (~~hearings and interviews unit~~) administrative law office within (~~fifteen~~) 15 days after notice is given;

(3) 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;

(4) 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.

(5) 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 to waive the hearing fee for indigence must be submitted with the hearing request and be on a form approved by the department;

(6) When the department denies an application for an indigent fee waiver, the petitioner shall be granted an additional (~~ten~~) 10 days to submit payment of the hearing fee;

(7) **Submitting hearing request with fees:** The request for a hearing may be submitted to: Department of Licensing, (~~Hearings and Interviews Unit~~) Administrative Law Office, P.O. Box 9048, Olympia, WA 98507-9048;

(8) **Submitting hearings request without a fee:** If there is not filing fee or if the petitioner is entitled to or applies for a waiver of the filing fee because of indigence, the request must be submitted to: Department of Licensing, (~~Hearings and Interviews Unit~~) Administrative Law Office, P.O. Box 9031, Olympia, WA 98507-9031;

(9) The request for a hearing may also be submitted online if the petitioner meets the qualifications described on the website at www.dol.wa.gov;

(10) 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 the denial;

(a) The department (or a hearings examiner) may set aside a denial of a hearing due to an untimely request if the petitioner establishes good cause for the failure to timely request a hearing;

(b) In the alternative, the department may grant a hearing on the merits subject to a preliminary determination by a hearings examiner on the issue of whether the hearing request was timely filed or, if untimely, whether there was good cause to file a late hearing request. If the petitioner fails to establish the hearing request was timely filed or that there was good cause for a late hearing request, the department's action shall be sustained or affirmed without further review.

AMENDATORY SECTION (Amending WSR 23-07-074, filed 3/13/23, effective 4/13/23)

WAC 308-101-155 Filing of exhibits and other documents with the department and calling expert witnesses. (1) Any exhibit or document submitted to the (~~hearings and interviews unit~~) administrative law office must include the petitioner's case number assigned by the unit, if a case number has been assigned. All exhibits or documents submitted electronically, shall only be submitted in a PDF format.

(2) A petitioner may submit documents for consideration via any one of the following methods:

(a) U.S. mail addressed to: Department of Licensing, (~~Hearings and Interviews Unit~~) Administrative Law Office, P.O. Box 9030, Olympia, WA 98507-9030.

(b) Facsimile transmission to the assigned hearings examiner.

(c) An internet portal made available by the department.

(d) Email hearings@dol.wa.gov.

(3) Petitioners are permitted to call expert witnesses, at their own expense. The petitioner must file notice with the (~~hearings unit~~) administrative law office of the following:

(a) Notice of the expert testimony;

(b) A curriculum vitae (CV) of the anticipated expert; and

(c) A summary of their expected testimony at least five business days prior to the hearing. If petitioner fails to comply with these requirements, the expert testimony may be properly excluded and not considered.

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-250 Reconsideration of final order. (1) Motions for reconsideration are limited to cases heard under the implied consent law, RCW 46.20.308.

(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 hearings examiner.

(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 an order shall be filed with the (~~hearings and interviews unit~~) administrative law office within (~~ten~~) 10 days of the date the final order was mailed to the petitioner.

(5) 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 hearings examiner 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 hearings examiner'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 hearings examiner will grant a stay only if the hearings examiner 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 hearings examiner grants such a petition for a stay, the hearings examiner 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~~) 30-day period for the petitioner to appeal the amended 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.

WAC 308-101-260 Significant decisions in driver license cases.

(1) The department will use the process outlined in this section to nominate, select, and index significant decisions hearings related to driver's licenses in the following types of adjudicative proceedings related to a sanction of the driving privilege:

- (a) The implied consent law (RCW 46.20.308);
- (b) The financial responsibility law (chapter 46.29 RCW);
- (c) The habitual traffic offender law (chapter 46.65 RCW);
- (d) The Uniform Commercial Driver's License Act (chapter 46.25 RCW);

(e) Any formal hearing affecting the driving privilege conducted pursuant to the provisions of RCW 46.20.329 through 46.20.333.

(2) For the purposes of this section, a significant decision is a final order or a portion of a final order in an adjudicative proceeding that is of substantial importance to the department in carrying out its duties. Generally, an order is of substantial importance only if it analyzes and applies a statute or rule under the department's authority, demonstrates the department's reasoning as to a frequently recurring legal issue, provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts.

(3) Any person may nominate a final adjudicative order to be evaluated for indexing by completing an Order Index Nomination Request form. The form can be obtained from the department's website at www.dol.wa.gov and returned to: (~~Hearings and Interviews Unit~~) Administrative Law Office, P.O. Box 9031, Olympia, WA 98507-9031, along with a copy of the nominated order.

(4) The director or director's designee shall make a final decision as to whether to select the nominated order as a significant decision based on the criteria in subsection (2) of this section, and that decision is not appealable.

(5) A decision that has been selected by the director as significant shall be maintained in a separate index. The index shall at a minimum contain a description of the type of document, name of parties, brief description of the legal subjects and pertinent legal citation. A copy of the index and a copy of the significant decision will be made available on the department's website at www.dol.wa.gov. The general public records index maintained under WAC 308-10-067 will contain a reference to the specific location and identification of significant decision index and copies of the significant decisions.

(6) The department shall periodically update and review the index to verify that the indexed documents continue to meet the criteria in subsection (2) of this section. The department may, at any time, delete a document from an index. Under RCW 42.56.070(6), a significant decision may not be cited in a proceeding if it has not been indexed.