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

WAC 308-101-020 ((~~Hearings examiners~~)) Law judges. All adjudicative proceedings under this chapter shall be conducted by a department ((~~hearings examiner~~)) law judge, who is appointed as a referee or presiding officer for such purposes. The director may also appoint additional referees or presiding officers from the employees of the department to conduct hearings. The director retains the discretion to revoke or limit an appointment at any time.

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

WAC 308-101-040 Eligibility for hearing. (1) A person is eligible for a hearing whenever the department proposes an adverse action against the driving privilege and the opportunity for a hearing or an interview is required by law. A person is also eligible for a hearing in the following circumstances:

(2) **HTO stay hearings:** A habitual traffic offender is eligible for a stay hearing under RCW 46.65.060 so long as the following conditions have been met:

(a) There is an alcohol/drug assessment from a state approved treatment agency on file that indicates substance dependence, and it was completed after the last drug or alcohol related offense on the driving record;

(b) The person is not revoked for a violation of a stay or probation previously granted under RCW 46.65.060 or 46.65.080;

(c) If a stay has previously been denied after a hearing, there is evidence of substance dependence with new treatment information from a state approved treatment agency.

(3) **HTO reinstatement hearings:** A habitual traffic offender is eligible for a reinstatement hearing if all of the following conditions have been met:

(a) At least four years have elapsed since the beginning of the habitual traffic offender revocation or if a habitual traffic offender stay has been violated, at least four years have elapsed since the date of the new revocation notice or the period of time set by the department has been satisfied;

(b) The person submits a declaration stating ((~~that he or she has~~)) they have not driven within two years prior to the request for a hearing. A record of any traffic infraction or conviction is conclusive evidence that a person drove within the past two years;

(c) The driver's record does not show any traffic infractions or criminal cases indicative of driving within the past two years. A conviction is conclusive evidence that a person drove in the past two years;

(d) Any period of additional revocation imposed following a habitual traffic offender reinstatement probation violation must be completed;

(e) If there has been a previous denial of a petition for reinstatement by a ((~~hearings examiner~~)) law judge, at least one year has

elapsed since the denial unless a shorter time is ordered by the ((~~hearings examiner~~)) law judge;

(f) The person is not incarcerated at the time of the hearing; and

(g) The person has complied with any department required treatment obligations.

(4) **HTO reinstatement without a hearing:** The department may grant a habitual traffic offender a reinstatement without a hearing if the person is eligible for a hearing under subsection (3) of this section and at the time of the request for a hearing:

(a) There are no other suspensions or revocations in effect;

(b) There are no vehicular homicide or vehicular assault convictions on the driver's record;

(c) The person has no unresolved court cases involving driving offenses; and

(d) The person is not revoked for a violation of a stay or probation previously granted under RCW 46.65.060 or 46.65.080.

(5) **Notification if ineligible:** The department shall notify any person seeking ((~~a~~)) reinstatement or a stay, of any finding of ineligibility and the basis for the ineligibility. If a hearing request is denied for a lack of eligibility, once the reason for the ineligibility has been resolved, the driver may make another request for a hearing.

AMENDATORY SECTION (Amending WSR 25-12-044, filed 5/28/25, effective 6/28/25)

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 administrative law office within 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~~)) they 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 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, Administrative Law Office, P.O. Box 9048, Olympia, WA 98507-9048;

(8) **Submitting hearings request without a fee:** If there is ((~~not~~)) no 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, 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~~)) law judge) 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~~)) review 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 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-100 Place of hearing. (1) All hearings and interviews will be scheduled telephonically, unless the hearing is required by law to be in person or an in-person hearing is requested in accordance with subsection (2) of this section.

(2) The petitioner or petitioner's legal representative may request that all or part of the hearing or interview be conducted in person. Such a request must be in writing stating the reasons and be directed to the assigned ((~~hearings examiner~~)) law judge upon receipt of the hearing notice. The ((~~hearings examiner~~)) law judge will have the sole discretion to grant or deny this request.

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

WAC 308-101-120 Continuances. (1) After a hearing has been scheduled, it may be continued or rescheduled only at the discretion of the ((~~hearings examiner~~)) law judge.

(2) Requests for a continuance((~~,~~)) or ((~~to~~)) reschedule((~~,~~)) must include all of the following:

(a) A written request directed to the assigned ((~~hearings examiner~~)) law judge;

(b) The basis for the request; and

(c) At least two proposed reschedule dates.

(3) A party may make one continuance or reschedule request without judicial review.

(4) A party requesting a second or later continuance or reschedule must file the request at least two business days before the scheduled hearing, except upon showing of good cause.

(5) Good cause is defined as substantive reason or legal justification for failing to meet the reschedule deadline. Good cause may include, but are not limited to:

(a) Military deployment;

(b) Medical treatment or hospitalization;

(c) Housing instability;

(d) Language barriers;

(e) Domestic violence; or

(f) Incarceration.

(6) The ((~~hearings examiner~~)) law judge may continue or reschedule the hearing at any time, including on the date of the hearing.

(7) A party shall not consider a hearing continued or rescheduled until notified affirmatively by the ((~~hearings examiner or his, her,~~)) law judge or their designee.

(8) The ((~~hearings examiner~~)) law judge may require the party who requests a second or later continuance or reschedule to submit documentary evidence that substantiates the reason for the request.

(9) Notwithstanding any provisions of this section to the contrary, a ((~~hearings examiner~~)) law judge may continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear. The ((~~hearings examiner~~)) law judge 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.

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

WAC 308-101-130 Agreements to schedule hearings under RCW 46.20.308 past the time frame required by law. (1) The department presumes any of the following actions taken by the petitioner is a request that the department agree to extend the hearing beyond the time frame required by RCW 46.20.308:

(a) A request for a continuance;

(b) A request to hold an in-person hearing when the request cannot be accommodated within the time frame required;

(c) A request to set aside a default order;

(d) A request for a subpoena when service cannot be accommodated within the time frame required;

(e) Remitting insufficient funds to satisfy the hearing fee;

(f) Any other action taken by the petitioner that makes the scheduling of the hearing within the time frame required by law impracticable.

(2) A ((~~hearings examiner's~~)) law judge's decision to grant any of the petitioner's requests in subsection (1) of this section constitutes the department's assent to extend the hearing past the time frame required by law.

(3) If a person requests one of the actions in subsection (1) of this section but affirmatively declines to agree to extend the time frame required by law, the ((~~hearings examiner~~)) law judge may direct the hearing to proceed as originally scheduled or may take any other action that protects the petitioner's right to be heard and the public's interest in a speedy resolution of the matter.

(4) The department must stay a driver's license suspension any time a timely hearing request has been received but it is otherwise impracticable to hold the hearing within the time frame required by law.

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

WAC 308-101-150 Subpoenas. (1) Subpoenas shall be issued and enforced, as provided in RCW 46.20.308(7). All subpoenas shall direct the witness to appear by telephone unless otherwise ordered by the ((~~hearings examiner~~)) law judge.

(2) Every subpoena shall be submitted on a form approved by the department, available on the internet at www.dol.wa.gov, for approval by a ((~~hearings examiner~~)) law judge. If approved, the ((~~hearings examiner~~)) law judge will sign and issue the subpoena back to the party requesting the subpoena.

(3) A subpoena to a person to provide testimony at a hearing shall:

(a) Specify the date and time set for hearing; and

(b) The hearing department's contact information. This contact information must enable the person receiving the subpoena to request an alternative date and time for the department to receive their testimony, if they are unavailable on the date of the hearing.

(4) A subpoena duces tecum requesting a person to produce designated books, documents, or things under ((~~his or her~~)) their control shall direct the person to produce the books, documents, or things by a reasonable time in advance of the hearing.

(5) A subpoena must be personally served by a suitable person over 18 years of age, by exhibiting and reading it to the witness, or by giving ((~~him or her~~)) them a copy thereof, or by leaving such copy at the place of ((~~his or her~~)) their residence. Proof of service shall be made by affidavit or declaration under penalty of perjury, and must be filed with the ((~~hearings examiner~~)) law judge at least two days prior to the hearing. If the subpoena is served by personal service, proof of service must include a copy of the subpoena that shows it was received by the law enforcement agency. Service by certified mail must be preapproved by the ((~~hearings examiner~~)) law judge. Service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.

(6) A subpoena must be properly served five days prior to the date of the hearing.

AMENDATORY SECTION (Amending WSR 25-12-044, filed 5/28/25, effective 6/28/25)

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 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, Administrative Law Office, P.O. Box 9030, Olympia, WA 98507-9030.

(b) Facsimile transmission to the assigned ((~~hearings examiner~~)) law judge.

(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 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 308-101-160 Evidence. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of these rules.

(2) Evidence including testimony and documentary evidence, is admissible if received prior to, or during, the hearing.

(3) The ((~~hearings examiner~~)) law judge shall rule on the admissibility and weight to be accorded to all evidence submitted at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the ((~~hearings examiner~~)) law judge it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The ((~~hearings examiner~~)) law judge may exclude evidence that is irrelevant, immaterial, or unduly repetitious. The admissibility of evidence shall be liberally construed to effect the intent and purpose of the hearings covered by these rules.

(4) **Oral testimony:** Law enforcement officers or other persons with knowledge relevant to the hearing may appear and testify without notice. Such testimony shall not preclude the admissibility of any documents submitted.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the ((~~hearings examiner~~)) law judge, be grounds for striking all testimony previously given by such witness on related matter.

(6) **Documentary evidence:** Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. When only portions of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(7) Official notice may be taken of: (a) Any judicially cognizable facts; (b) technical or scientific facts within the agency's specialized knowledge; and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during the hearing of the material so noticed and the sources thereof and they shall be afforded an opportunity to contest the facts and materials so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

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

WAC 308-101-170 Video evidence. (1) 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 ((~~hearings examiner~~)) law judge the opportunity to review it prior to the hearing. The ((~~hearings examiner~~)) law judge 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 by DVD or flash drive and in a format which allows the DVD or flash drive to be viewed on the department's equipment. Any costs associated with this requirement is to be the responsibility of the petitioner.

(2) Video evidence may be submitted in the following ways: On a DVD, on a flash drive, or submitted electronically in a digital format. If the petitioner wishes to submit a digital copy of video evidence, the petitioner shall email hearings@dol.wa.gov with the evidence and any instructions on viewing the evidence. The video must be in a format that allows the video to be viewed on the department's equipment. Any costs associated with this requirement is to be the responsibility of the petitioner.

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

WAC 308-101-180 Briefs, motions, memoranda, and other pleadings. (1) The text of all documents filed with this department should be double-spaced, except footnotes and block quotations, which may be single-spaced. In a document produced using word processing software, all text, including footnotes and block quotations, should appear in a 14-point font serif equivalent to Times New Roman or San serif font equivalent to Arial.

(2) **Brief length and certificate of compliance:** All documents filed with this department and produced using word processing software should contain a short statement above the signature line certifying the number of words contained in the document, exclusive of words contained in the appendices, the title sheet, the table of contents, the certificate of compliance, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, exhibits). The signor may rely on the word count calculation of the word processing software used to prepare the brief or motion. Motions/briefs shall not exceed 5,000 words or 20 pages if handwritten. Any appendices or attachments are not to be included in the length. For good cause, a ((~~hearings examiner~~)) law judge may permit an over-length brief.

(3) Citations to the legal authority shall comply with the Washington state court general rules 14 and 14.1.

(4) All exhibits or documents submitted electronically shall be submitted only in a PDF format.

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

WAC 308-101-200 Testimony under oath or affirmation. Every person called as a witness and who is giving oral testimony in a hearing shall swear or affirm that the testimony ((~~he or she is~~)) they are about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060. If the witness is testifying from outside the jurisdiction, the ((~~hearings examiner~~)) law judge may require the witness to agree to be bound by the laws of the state of Washington for purposes of the oath or affirmation.

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

WAC 308-101-210 Conduct of hearings. Hearings are public proceedings. Public access is achieved through providing a copy of the audio recording and admitted exhibits in compliance with a public records request. The ((~~hearings examiner's~~)) law judge'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(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 ((~~hearings examiner~~)) law judge may question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;

(8) Call additional witnesses deemed necessary to complete the record and receive such testimony 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 website at any time before, during, or after 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 so long as neither the department nor the petitioner is prejudiced by such a waiver.

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

WAC 308-101-220 Default. (1) In the event that the person who requested an interview or hearing is not available at the time it is scheduled via the manner of appearance directed in the notice of interview or hearing, or as subsequently modified in writing or orally on the record, no interview or hearing shall be held. An order of default shall be entered and the department's proposed action shall be sustained.

(2) A person who fails to appear at an interview waives ((~~his or her~~)) their right to request a formal hearing.

(3) Within seven days after service of a default order, the petitioner may file a written motion requesting that the order of default be vacated, and stating the grounds relied upon for the motion. In determining whether the default should be set aside, the ((~~hearings examiner~~)) law judge shall consider whether there was good cause for the nonappearance.