

Chapter 2: RULES FOR ADMINISTRATIVE HEARINGS

SUMMARY: These rules describe the conduct of civil administrative hearings held by the Bureau of Motor Vehicles pursuant to Title 29-A M.R.S.A. and Title 5 M.R.S.A., Chapter 375, Subchapter IV, to deny, suspend, revoke, probate or otherwise modify a license, registration certificate or plate, motor vehicle driver's license, permit, certificate of title, operating authority, license or fuel use identification decal.

These rules set out legal notice requirements, discovery provisions, conduct of hearings, the presentation of evidence, the creation of a hearing record, issuance of decisions, and appeal rights.

SECTION 1. Scope of rules.

These rules are applicable to hearings held before the Secretary of State or any of his or her deputies or designees that involve the denial, suspension, revocation, probation or other modification of a license, certificate, registration certificate and plate, motor vehicle driver's license, permit, certificate of title, or fuel use identification decal pursuant to Title 29-A M.R.S.A.

SECTION 2. Notice of opportunity for hearing.

Subject to the provisions of 29-A M.R.S.A. §2458 (4), the Secretary of State upon suspending or revoking a person's license, certificate of registration, title or other such certificate or license, shall notify that person that the person has a right to and may request a hearing. The notice must state:

1. The reason and statutory grounds for the suspension or revocation;
2. The effective date of the suspension or revocation;
3. The procedure for requesting a hearing; and
4. The date by which that request for hearing must be made.

If the suspension or revocation is based on a law enforcement officer's report, a copy of that report and any blood-alcohol test certificate will be provided to the person upon request to the Secretary of State.

SECTION 3. Request for hearing.

Unless the Secretary of State has set a date certain for a hearing, after a notice of suspension or revocation and opportunity for hearing has been sent or delivered to a person, that person has ten

days from the effective date of the suspension or revocation to request in writing a hearing. For suspensions issued pursuant to Chapter 1, Rules for Administrative Suspension Relating to Demerit Point Accumulation, Convictions and Adjudications, a hearing may be requested by telephone.

If a request is made after the ten day period and the Secretary of State finds that the person was unable to make a timely request due to lack of actual notice of the suspension or due to factors of physical incapacity, the Secretary of State shall waive the period of limitation, reopen the matter and grant the hearing request, except a stay may not be granted.

SECTION 4. Notice of hearing.

Unless otherwise provided or notice is waived, notice must be mailed to the last address on record with the Secretary of State of the party requesting the hearing or to the person ordered to appear at the hearing at least ten days prior to the hearing date. If an attorney requests a hearing on behalf of a person, all subsequent correspondence and communication from the Secretary of State relative to the hearing will be forwarded to the attorney and no further correspondence or communication will be forwarded directly to the person. In the event an attorney no longer represents the person, the person or the attorney shall file a written statement of this fact with the Secretary of State, allowing subsequent correspondence and communication from the Secretary of State to be directed to the person. The notice must state:

1. Issues contestable; and
2. Failure to appear will result in a finding by default.

SECTION 5. Disposition without full hearing.

Unless otherwise provided by law, the Bureau of Motor Vehicles may:

1. Make informal disposition of any adjudicatory proceeding by stipulation, agreed settlement or consent order;
2. Make informal disposition of any adjudicatory proceeding by default, provided that notice has been given that failure to take required action may result in default, and further provided that any such default may be set aside by the Bureau for good cause shown; and
3. Limit the issues to be heard or vary any procedure prescribed by Bureau rule if the parties and the Bureau agree to such limitation or variation, and if no prejudice to any party will result.

SECTION 6. Default.

1. If a party who requested a hearing fails to appear at the hearing, the hearing request shall be dismissed. If within ten days following the dismissal a party submits information demonstrating good cause for the failure to appear, the request for hearing may be reinstated, at the discretion of the Hearing Examiner.

2. Good cause. The following circumstances constitute good cause for the purpose of Subsection 1:
 - A. a death or serious illness in the family;
 - B. a personal injury or illness which reasonably prevents the party from attending the hearing;
 - C. an emergency or unforeseen event which reasonably prevents the party from attending the hearing;
 - D. an obligation or responsibility which a reasonable person in the conduct of his or her affairs could reasonably conclude takes precedence over attendance at the hearing;
 - E. lack of receipt of adequate or timely notice; or
 - F. excusable neglect, excusable inadvertence, or excusable mistake.

SECTION 7. Participation at Hearing.

1. Intervention by persons substantially and directly affected by proceeding.
 - A. Petition. A person, including any agency of federal, state or local government, who establishes that the person is or may be substantially and directly affected by the proceeding, may file a timely petition to intervene as a party to the proceeding. All petitions must be made in writing and received by the Secretary of State, Hearings Section, at least five days before the scheduled proceeding. Untimely petitions may not be accepted or considered.
 - B. Information required. The petition must include:
 - (1) a statement of facts demonstrating that the petitioner's interests are or may be substantially and directly affected by the proceeding or that the petitioner qualifies as an intervenor pursuant to any provision of State law; and
 - (2) a statement of the reasons and purposes for which intervention is sought.
 - C. Responsibilities of Hearing Examiner. Prior to the conduct of the proceeding, the Hearing Examiner shall issue an order granting or denying each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The order shall be entered on the formal record of the proceeding. The Hearing Examiner may modify the order at any time, stating the reasons on the record therefore.

- (1) Factors Hearing Examiner must consider. The Hearing Examiner shall consider the following factors when considering petitions for intervention:
 - (a) the nature of the petitioner's right pursuant to any statute to be made party to the proceeding;
 - (b) the precise nature and extent of the petitioner's interest in the subject matter or outcome of the proceeding;
 - (c) the effect of any order which may be entered in the proceeding on the petitioner's interest;
 - (d) the nature of the contested issues;
 - (e) the availability of other means whereby the petitioner's interest may be protected, e.g., presentation of written views or argument;
 - (f) the extent to which the petitioner's interests will be represented by existing parties;
 - (g) the extent to which the petitioner's participation may reasonably be expected to assist in the development of a sound record;
 - (h) the extent to which the participation of the petitioner will broaden the issues or delay the proceeding;
 - (i) the ability of the petitioner to present relevant evidence and argument; and
 - (j) the effect of the participation of the petitioner on existing parties to the proceeding.
2. Conditions imposed on intervenors. The Hearing Examiner may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at any subsequent time. The Hearing Examiner is responsible for establishing reasonable conditions on intervenors in order to limit the presentation of redundant evidence, to reasonably restrict interrogation and argument to relevant matters, to protect the interests of the parties, including the right to a timely decision, and to prevent avoidable delay. Such conditions may include, but are not limited to, the following:
 - A. restricting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceeding; and
 - B. limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

- C. requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceeding.
3. Intervention by other interested persons.
- A. Petition. An interested person may file a timely petition to intervene as full or limited party to the proceeding. All petitions must be made in writing and received by the Secretary of State, Hearings Section, at least five days before the scheduled proceeding. Untimely petitions may not be accepted or considered. The granting of a petition for intervention by an interested person is discretionary with the Secretary of State.
 - B. Information required. The petition must include:
 - (1) a statement of facts demonstrating that the petitioner's interest is or may be affected by the proceeding, and
 - (2) a statement of the reasons and purposes for which intervention is sought.
 - C. Responsibilities of Hearing Examiner. The responsibilities of the Hearing Examiner are those listed in Section 1(C), and the Hearing Examiner must consider the factors outlined in Section 1(C) (1).

SECTION 8. Pre-hearing conference.

Prior to any hearing, the Hearing Examiner may, at the request of a party or in the Examiner's discretion, confer with the parties. If a pre-hearing conference is scheduled, all parties will be notified and given an opportunity to participate. Conferences may be held by telephone or in person or may be conducted in writing. Frequently, such conferences are held immediately prior to the scheduled hearing and may include such matters as: the parties' estimation of the time required for the hearing; the identification of the legal issues likely to arise at hearing; the development of stipulations and admissions; the identification and, if possible, agreement as to admissibility of any evidence; the clarification of the issues; the resolution of disputes as to evidence requested to be produced by subpoena or otherwise; or any other action which will aid in the proper and fair conduct of the hearing.

SECTION 9. Discovery and subpoenas.

- 1. Discovery. Prior to the scheduled hearing, a party has the right to obtain copies of any documents, records or exhibits intended to be introduced into evidence at the hearing. Problems or disagreements shall be made known to the Hearing Examiner at least five days prior to the scheduled hearing date.
- 2. Subpoenas.
 - A. Right to issuance. A party has the right to the issuance of subpoenas in the name of the Secretary of State to require the attendance and testimony of witnesses and the production of evidence relevant to any issue of fact at the hearing.

- B. Petition to vacate or modify subpoena. Any witness issued a subpoena may petition the Secretary of State to vacate or modify the subpoena. The Secretary of State shall promptly give notice of such petition to the party who requested the issuance of the subpoena. The Secretary of State may conduct an investigation as deemed necessary and appropriate. The Secretary of State may, to protect a person subject to or affected by the subpoena, vacate or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and assures that the person to whom the subpoena is issued will be reasonably compensated, the Secretary of State may order appearance or production only upon specified conditions.
- (1) Factors to be considered in deciding petitions. In addition to any other applicable statutory provisions, the Secretary of State shall consider the following factors when deciding to vacate or modify subpoenas:
- (a) whether the information sought by the subpoena is relevant to the proceeding;
 - (b) whether the subpoena allows a reasonable time for compliance;
 - (c) whether the subpoena requires a person to incur a substantial expense to travel more than one hundred miles one way to attend the hearing;
 - (d) whether the subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies;
 - (e) whether the subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information; and
 - (f) whether the subpoena subjects a person to undue burden.

SECTION 10. Conduct of hearings.

1. Hearings shall be scheduled by the Secretary of State without undue delay.
2. The Hearing Examiner shall have full and exclusive control of the conduct of the hearing. In cases of disorder or refusal to comply with the rules of the hearing or orders of the Hearing Examiner, the Hearing Examiner shall use reasonable means to control the hearing. Parties, representatives, and witnesses shall not engage in bitter exchanges, vulgarities, or abuse or make offensive or insulting comments. When such conduct occurs, the Hearing Examiner shall admonish the offender, reminding the person that such behavior does not contribute to a fair hearing and impedes the orderly disposition of a case. If the offense is repeated and further admonition appears fruitless, the Hearing Examiner shall exclude a disorderly person from the hearing. If a disorderly person's offensive conduct is so flagrant that it prevents the completion of the case, the disorderly

person shall be removed from the hearing room and the hearing will proceed without the attendance of the disorderly person.

3. All witnesses shall be sworn.
4. Persons may be represented by counsel or other representatives in a hearing before the Secretary of State.
5. Continuances. A hearing may be continued to a later time at the request of a party or a material witness or upon the Secretary of State's or a Hearing Examiner's own initiative as justice may require. Continuances may be granted only for good cause and are discretionary with the Secretary of State. Requests for continuances must be made at least twenty-four hours prior to the scheduled hearing. Emergency requests for continuances may be entertained at any time and are discretionary with the Secretary of State. A continuance may be granted on the condition that a party waives any applicable time limits. All parties and witnesses must be informed of continuances or denials of requests for continuances in a timely manner.
 - A. Grounds for granting continuances. The grounds for granting a continuance include but are not limited to the following:
 - (1) to accommodate the appearance of a witness;
 - (2) to implement a party's rights regarding choice of representation at hearing;
 - (3) to assure that a party has adequate opportunity for preparation and presentation of evidence and argument;
 - (4) to assure that a party has adequate opportunity to review, evaluate, and respond to new evidence; or where appropriate, to require that a party review, evaluate and respond to new evidence;
 - (5) to permit a party to reconsider a previous action or decision;
 - (6) to permit or require performance of actions not previously taken; and
 - (7) to secure additional time or to permit or require additional activity by a party as justice may require.

SECTION 11. Issues resolved at the hearing.

The issues at the hearing shall be limited to those outlined in the applicable statute and shall be stated for the record by the Hearing Examiner at the beginning of each hearing.

SECTION 12. Hearings recorded.

All hearings must be recorded.

SECTION 13. Ex parte communication.

No Hearing Examiner shall communicate directly or indirectly about any material issue involved in a hearing with any party, except upon notice and opportunity for all parties to participate. This section does not prohibit a Hearing Examiner from communicating in any respect with other Bureau members or having the aid or advice of Bureau members, counsel or consultants retained by the Bureau who have not participated and will not participate in that hearing in an advocate capacity.

SECTION 14. Presentation of evidence; official notice.

1. Persons may present evidence bearing directly on the issues involved in the hearing, call and examine witnesses, and cross-examine adverse witnesses. In lieu of live testimony, video and telephone testimony may be offered.
2. The Administrative Procedure Act, 5 M.R.S.A. Chapter 375, Subchapter IV, shall control the admissibility of evidence at hearings. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.
3. The rules of privilege recognized by law shall be observed.
4. The Hearing Examiner may exclude evidence that is irrelevant or unduly repetitious.
5. The Hearing Examiner may take official notice of records maintained by the Secretary of State, e.g., accident reports, affidavits and any information of which a court could take judicial notice. Parties shall be notified of the material so noticed, and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed. Facts officially noticed shall be included and indicated as such in the record.

SECTION 15. Record.

1. The Hearing Examiner shall make a record consisting of:
 - A. A brief statement of the issues to be decided;
 - B. Evidence received or considered;
 - C. A statement of facts officially noticed;
 - D. Offers of proof, objections and ruling thereon;
 - E. Proposed findings and objections, if any;
 - F. The recommended decision, opinion, or report, if any, by the Hearing Examiner;
 - G. Staff memoranda;

- H. The decision.
2. Copies of recordings, transcriptions of recordings and copies of the full record shall be available to any person at actual cost. Affected parties may object to the release of confidential, proprietary, or otherwise protected material or information.
 3. All material the Hearing Examiner utilizes as evidence in making a decision shall be offered and made a part of the record and no other factual information or evidence, other than that offered by a party or intervenor and admitted, shall be considered in rendering a decision.

SECTION 16. Recommended findings and decision.

In any case in which law or regulations or special instructions from the Secretary of State dictate that an individual other than the Hearing Examiner will make a final hearing decision, the Hearing Examiner will prepare a recommended decision rather than a final hearing decision. A recommended decision will be made on the same basis and in the same form as a final decision.

Copies of recommended decisions will be provided to all parties who will have an opportunity to submit responses and exceptions to the final decision maker. These written responses and exceptions will be due within twenty days of receipt of the recommended decision and copies provided to all parties, the Hearing Examiner, the Secretary of State and/or the Secretary of State's designee.

The responses and exceptions shall contain:

1. a clear statement of the party's position and the reason for it;
2. a listing of any errors or omissions made by the Hearing Examiner during the hearing;
3. any relevant legal arguments the party wishes to offer.

Additional factual information which could have been presented and considered during the hearing need not be considered by the final decision maker.

SECTION 17. Decisions.

1. Decisions shall be in writing or stated in the record, and shall include findings of fact sufficient to apprise the person involved of the basis for the decision.
2. A copy of any written decision shall be delivered or mailed to the person involved and his or her representative.
3. The decision of the Hearing Examiner constitutes the final agency action by the Secretary of State.

SECTION 18. Notice of right to appeal; request for stay.

Written notice of the person's right to appeal the decision to the Superior Court, of the action required to file or perfect the appeal, and the time within which this action must be taken in order to exercise the rights of appeal must be given with the decision.

Requests for stay of administrative suspension pending appeal to the Superior Court must be made in writing first to the Director of the Division of Legal Affairs, Adjudications and Hearings, Bureau of Motor Vehicles. A stay may be issued only upon showing of irreparable injury to the petitioner, a strong likelihood of success on the merits and no substantial harm to adverse parties or the general public.

The Director or a designee shall issue a prompt response to any request, basing the decision on whether the hearing was conducted in accordance with all applicable rules, regulations and statutes, whether the decision is supported by the evidence, whether an appeal is likely to succeed, and whether the petitioner's prior driving record indicates the petitioner does not present a significant threat to the safety of the motoring public.

SECTION 19. Correction or amendment of hearing decision.

Either at the request of a party or sua sponte, a Hearing Examiner may correct or amend a decision to correct a ministerial or typographical error, to clarify or correct the record, or to rule upon any issue that was heard but not ruled upon. If the correction or amendment is substantive, the Hearing Examiner shall reiterate the mechanism for appeal of the decision.

SECTION 20. Reopening of hearings.

Either at the request of a party or sua sponte, the Hearing Examiner may upon notice to all parties reopen the record of any hearing under the following circumstances:

1. a party to the original hearing has discovered new evidence which could reasonably have affected the outcome of the proceeding but could not have been discovered by due diligence in time to present during the original proceeding, or;
2. there was fraud or misrepresentation regarding an issue of fact material to the original proceeding, which could reasonably be determined to have affected the outcome of the proceeding, if known at the time or;
3. all parties agree to reopen.

A motion to request to amend or reconsider a decision or to reopen the hearing does not extend the statutory appeal period (which is jurisdictional).

SECTION 21. Advisory rulings.

An interested person may request the Department of the Secretary of State, Bureau of Motor Vehicles to make an advisory ruling with respect to the applicability of any statute or rule administered by the Bureau to the person or the person's property or actual state of facts. All

advisory rulings must be in writing and are not deemed binding upon the Bureau. An interested person shall direct the written request for an advisory ruling to: Bureau of Motor Vehicles, 29 State House Station, Augusta, Maine 04333.

STATUTORY AUTHORITY: 29-A MRSA §153

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