



MARYLAND ALCOHOL, TOBACCO, AND CANNABIS COMMISSION

STANDARDIZED OPERATING PROCEDURE		
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Policy: Administrative Hearing Procedure		
Effective Date: 11/1/22	Revision Date: 12/13/23	
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Approving Officer: Jeffrey A. Kelly, Executive Director		

Purpose: To outline the process and duties of staff in the conduct of informal hearings related to license actions, disposition of seized property, and other necessary contested fact-finding proceedings before the Alcohol, Tobacco, and Cannabis Commission (ATCC). Hearings will be conducted in a prompt, impartial, and professional manner with an eye toward clear correspondence and record keeping at each stage.

Responsible Staff: The Director and Assistant Director of the Legal and Legislative Division, The Director and Agent-in-Charge of the Field Enforcement Division, The Executive Associate of the Executive Director, any other hearing officer as designated by the Executive Director. Others involved include: Agents of the Field Enforcement Division involved in the agency action, and any Licensing and Trade Practices Specialists involved in the agency action.

Staff Monitor: Compliance with these procedures will be monitored by the Executive Director, The Director of the Field Enforcement Division, and the Director of the Legal and Legislative Division.

Policy: Preparation and Conduct of Administrative Hearings

1. Designation of Hearing Officer:

- a. The Executive Director may delegate the authority to conduct administrative hearings¹ and does so by issuing an official delegation letter to be stored in the employee's personnel file.
- b. Unless otherwise determined by the Executive Director, the Assistant Director of the Legal and Legislative Division will be the assigned hearing officer for matters arising from proposed actions to deny, revoke, or suspend a license, or for disposition of seized property.

¹ Md. Code Ann., Alcoholic Beverages § 1-315.



2. Involvement in Investigations by Hearing Officer and Procedures for Recusal:

- a. To the greatest extent possible, the assigned hearing officer presiding over an action shall not be involved in investigative or final decision-making on the matter until the action has been formally referred for a hearing.
 - b. Any communications with the hearing officer that are made prior to the formal referral and are related to facts material to the determination must be preserved in the agency file. Independent communications with the hearing officer by the parties after initiation must also be preserved.² These statements will be available to be incorporated into the record during a hearing if they relate to any issue in the matter, subject to any redaction necessary for protection of personally identifiable information of third parties, tax information, or other reasonable confidentiality concerns.
 - c. At any time prior to the initiation of a proceeding or the calling of any witnesses at a hearing, the hearing officer may recuse themselves from the matter and request the Executive Director assign another hearing officer.³ This decision may be initiated by the hearing officer to preserve impartiality in the decision-making, upon a consideration of a motion by a party, or upon recommendation of Counsel for the agency. The hearing officer alone will have discretion to recuse themselves and request the Executive Officer assign the matter to a different hearing officer. The Executive Director shall determine the appropriate successor hearing officer in the event of recusal.
3. **Location of Hearings:** Hearings will generally be held in the ATCC's offices at Suite 300, 1215 Fort Avenue, Baltimore, MD, subject to availability and other necessary considerations such as space or privacy.
4. **Initiation of Hearing Procedure:** Preparation for an administrative hearing can be triggered in several different ways, depending on the nature of action or decision involved. The Director of the Legal and Legislative Division will review requests for hearings and, with the assistant of the Executive Associate, will log cases in the appropriate ATCC administrative hearing database. Hearings may be initiated as follows:
- a. Following an FED investigation or a referral from another law enforcement agency, state or local health department, or local liquor board, the Director of the Legal and Legislative Division may make a recommendation to the Executive Director for Administrative Action based on alleged or apparent misconduct by the license holder.
 - b. Following a Notice of Proposed Action to deny an application for issuance or renewal of a license or permit, the affected party may request a hearing. Such a request must be received in writing no later than 30 days following issuance of the Notice. Absent a request for a hearing, the proposed action will become final

² Md. Code Ann., State Government § 10-219.

³ If a basis for recusal arises during the course of a hearing, the hearing officer may elect to withdraw from the proceeding or terminate the hearing without prejudice, as appropriate. See Md. Code Ann., State Government § 10-219(e)(1)



without a hearing following the 30th day of the response period. When a request for a hearing is received, the Director of the Legal and Legislative Division will review it for timeliness and other legal requirements to be eligible for a hearing, and will then refer the matter to the Hearing Officer for a hearing to be scheduled as appropriate.

- c. Upon Seizure of property pursuant the ATCC's authority under the Alcoholic Beverages Article, the Business Regulations Article, or the Tax General Article, a person with interest in the property may file a protest to seizure within 30 days.⁴ In the case of motor vehicles and conveyances, a person with interest in the property may file a protest of seizure within 30 days of publication of notice of the seizure. In either case, the protest must be received in writing and state the basis for the person's interest in the property. When a protest or request for a hearing on a claim is received, the Director of the Legal and Legislative Division will review it for timeliness and other legal requirements to be eligible for a hearing, and will then refer the matter to the Hearing Officer for a hearing to be scheduled as appropriate. As discussed below, the ATCC will not hold a hearing concerning the seizure of property under this subsection if there is a related criminal case regarding the seizure of property that is still pending.
5. **Scheduling of Hearings:** The Director of the Legal and Legislative Division, in consultation with staff, will determine when to refer the matter to a hearing officer and initiate the scheduling of a hearing. The Hearing Officer or their designee will schedule the hearing. Hearings will be scheduled promptly, generally within 90 business days of the referral above, subject to the following considerations:
- a. Hearings following a recommendation for agency action to revoke or suspend a license: a hearing will be scheduled to occur after the conclusion of any State or Federal criminal or civil court proceeding related to the same conduct or incident. A proceeding is deemed concluded after any period for notice of appeal or motion for new trial has elapsed following a conviction, acquittal, nolle-pros, or dismissal of the proceeding. Other investigating law enforcement agencies may also request a hold on the administrative hearing in the interest of justice for some other reason. The Director of the Legal and Legislative Division will determine if a hearing should be scheduled, and the duration of any hold.
 - b. Hearings related to seized property will be scheduled within 90 business days of the receipt by the agency of a complete written claim or protest.
6. **Notice:**
- a. Upon receipt of a timely request for a hearing, the Director of the Legal and Legislative Division or the designated Hearing Officer will work with the Executive Associate to reserve a meeting room and will begin to prepare notices to be issued, using the attached templates as a guide.

⁴Also called a "Claim for Return of Seized Property. See Md. Code Ann., Alcoholic Beverages§ 6-104; Md. Code Ann., Tax General §§ 13-837, 13-839, 13-840.



- b. The notice shall be mailed using certified mail, with a return receipt requested, to the most recent address of the license holder on file with the ATCC.
 - c. The Executive Associate will be responsible for the following as it relates to notice:
 - i. Sending the notice;
 - ii. Retaining the receipt to be stored in the agency file; and
 - iii. When necessary to ensure receipt, hearing notices may be hand delivered by an agent or inspector to the license holder, and the Executive Associate will collect and preserve any signed receipt or documentation of in-person service efforts.
 - d. The notice should contain the following⁵:
 - i. The date, time, and place of the hearing.
 - ii. The statutory or regulatory authority for the ATC's action or proposed action.
 - iii. A summary of the facts that may warrant the action.
 - iv. Advisement that the person may present witnesses or documents at the hearing.
 - v. Advisement that the person may be represented by an attorney or non-attorney at the hearing.⁶ If the person chooses to be represented by an attorney at the hearing, then that attorney must be currently barred in the State of Maryland.
 - vi. Advisement that a failure to appear for the scheduled hearing will be treated as a withdrawal of the person's request for a hearing, and will result in finalization of the ATCC's proposed action or forfeiture of any claimed interest in seized property.
 - vii. The notice should include instructions on how to access the hearing.
7. **Inquiries by Parties upon receipt of notice:** Following receipt of a notice of the hearing, the respondent or local regulatory and law enforcement authorities may request additional information from the Legal and Legislative Division to prepare for the hearing.
- a. **Entries of Appearance:** If a Respondent elects to be represented by an attorney, the assigned attorney should send a notice of an entry of appearance of counsel in writing electronically via email to the hearing officer and the Director of the

⁵ See Attachment A, Notice of Hearing Template.

⁶ Md. Code Ann., State Government § 10-208(b)(5), modeled after COMAR 28.02.01.08.



Legal and Legislative Division, accompanied by a mailed copy if preferred, to ensure that counsel identified as the appropriate point of contact.

- b. **Request for Agency File:** Upon request, Respondents or their counsel may review evidence contained in the agency file to be offered by the ATCC during the hearing. The respondent should make a request in writing electronically via email if they wish to review these materials prior to their appearance at the hearing. This request should be directed to the Director of the Legal and Legislative Division. Parties do not need to submit a Maryland Public Information Act request for this purpose. The Executive Associate or Director will send copies of the materials electronically to the Respondent or counsel, but may elect to redact any personally identifiable information or make other reasonable redactions to protect the identity of a reporting entity, a whistleblower, or other sensitive information.
8. **Postponement Policy:** The hearing officer has discretion to postpone a scheduled hearing for good cause. The process for postponement requests is as follows:
 - a. A party may request a postponement by submitting a written request to the hearing officer no fewer than 5 days before the hearing. The request should state the reason for the postponement request, and the hearing officer may request additional documentation of the reason for the request.
 - b. A party may make a request for postponement fewer than 5 days before a hearing only for an emergency. An “emergency” means a sudden, unforeseen occurrence requiring immediate attention of the person, which arose within 5 days of the hearing. Emergency requests can be made via phone or email, but the hearing officer may require additional documentation of the reasons for the postponement request before approving the request.
9. **Conduct of the hearing:**
 - a. **Scheduling Call:** At their discretion, the Hearing Officer may hold a scheduling call with the parties prior to issuance of a hearing notice to discuss hearing scheduling and the number and availability of expected witnesses.
 - b. **Recording:** The Hearing Officer shall be responsible for recording the hearing⁷ on behalf of the State and procuring any necessary equipment to do so. No personal recordings may be made by the parties during the proceeding. Recordings shall be preserved in the agency file.
 - c. **Translation and Interpretation:** If requested by any of the parties, the Hearing Officer will arrange for the services of a qualified interpreter for the hearing or arrange for translation of documents.⁸
 - d. **Witnesses:** A party may produce witnesses in support of their position. Individuals called to testify or present evidence before the Hearing Officer will be

⁷ COMAR 28.02.01.22 (B)(9), COMAR 03.01.01.04.(F)(1)(a).

⁸ Md. Code Ann., State Government § 10-212.1, COMAR 28.02.01.09.



required, by affirmation or oath, to do so honestly and fully, to the best of their knowledge.⁹

- i. Additionally, a party may request that the hearing officer issue subpoenas for the appearance of witnesses, but only in writing at least 10 days before the hearing and with an explanation for why the subpoena is necessary. The Hearing Officer may decline to issue the subpoena if the Hearing Officer deems it:¹⁰
 1. to be over burdensome;
 2. to be unnecessary to resolve the merits of the matter;
 3. is impracticable to enforce;
 4. to be against the interests of justice
 5. is untimely; or
 6. would result in an unreasonable delay in the proceedings
 - ii. The hearing officer may question any witnesses and may produce, by subpoena or otherwise, additional witnesses.
 - iii. Parties may question any witnesses called by a party or the Hearing Officer.
- e. **Presentation of Case:** At the beginning of the proceeding the Hearing Officer will address the parties and make advisements as to any stipulations or determinations about the conduct of the hearing. The Hearing Officer will note for the record any documents or communications to be incorporated into the record, and these materials will be made available for review of the parties. The moving party will make their presentation of witnesses, documents, and evidence in support of their position. The party in opposition will have an opportunity to question any witnesses, and present evidence, witnesses, and arguments in support of their position.
- f. **Evidence:** The Hearing Officer shall consider probative evidence without regard to any technical rules, and may consider copies of documents or request originals as appropriate. The Hearing Officer may reject evidence, which is incompetent, irrelevant, immaterial, unduly repetitious, or not responsive. When considering the weight to give a piece of evidence, the hearing officer should consider the fairness of the hearing, including factors such as the ability of opposing parties to review and respond to documents or exhibits submitted during or shortly before a hearing. The hearing officer shall note on the record, or in the written determination, any evidence which was offered but rejected.

⁹ Md. Code Ann., Tax General § 11-711.

¹⁰ COMAR 03.01.01.04.(F)(1)(c); Md. Code Ann., Alcoholic Beverages § 6-204.



- g. **Conclusion of Hearing and Preservation of Materials:** The Hearing Officer may conclude the hearing following presentations by each party, but may allow a person time to provide additional evidence or written arguments, and may reconvene the hearing if necessary. After the adjournment of the hearing, the Hearing Officer shall promptly issue a report of the proceedings. Reports and findings will generally be issued within 30 days of the conclusion of the hearing, but may be extended as necessary. All documentary or other evidence will be retained for 60 days after the resolution of the case, and may be destroyed thereafter unless the owner makes a written request for its return.¹¹ The hearing officer should advise the parties that they must notify the ATC of their request for return of any submissions within 60 days. The hearing officer, with the support of the executive associate, should make reasonable accommodations for the party to retrieve any items in a timely fashion, and advise the party that if the items are not collected promptly as arranged they are subject to destruction.

10. Maintenance of the Agency Hearing File: The Executive Associate will be responsible for maintaining a paper and electronic file for each initiated hearing.

- a. **Contents of File:** This file should contain originals and/or copies of:
 - i. Any reports, recommendations, or notices at issue in the matter.
 - ii. Any correspondence received from or sent to any parties to the matter, including receipts for any certified mailings or acknowledgements of hand-delivery.
 - iii. Any evidence or documents submitted by the parties or presented at the hearing.
 - iv. Any memoranda or deliberative communications relevant to the determination of the matter.
 - v. The electronic file will also contain recordings of the proceeding and any recommendations or orders issued.
- b. **Labeling and Storage of Files:** The agency file should be labeled with the license holder's name, the date of the alleged violation if applicable, and any case number associated with the action. Paper files are to be stored in a secure record area, organized in a manner to be determined by the Legal and Legislative Division. Electronic files are to be stored in the ATCC common drive, in the folder designated for Administrative Hearings. All files are to be preserved pursuant to all laws governing Maryland State records, and subject to any particular document preservation orders or litigation hold requests properly received from a law enforcement agency, Court, or other entity.

11. Contents of Report and Recommended Action: The Hearing Officer's report shall summarize conduct of the hearing and the facts found by a preponderance of the

¹¹ COMAR 03.01.01.04(F)(2)(c).



evidence¹² based on accepted testimony and documents. This report and any final determination may be modelled off the attached template.¹³

- a. **Submission of Report:** The Hearing Officer will submit this report to the Executive Director and inform the Executive Director of the final order or may make a recommendation of the proposed action, as appropriate.
- b. **Final Orders:**
 - i. **Tobacco Cases:** In the case of hearings for the return of seized property, the denial of a license, or a revocation or suspension of a tobacco license pursuant to the Business Regulations Article, the recommendation of the Hearing Officer shall constitute a final order.
 - ii. **Alcoholic Beverage Cases:** In the case of hearings for the suspension or revocation of an alcoholic beverages license, the Executive Director shall issue the final determination of action based on the factual findings of the Hearing Officer.

12. **Final Order on Revocation or Suspension of a License:** In the case of a hearing on a proposed suspension or revocation of a license, the written determination of the Hearing Officer of Executive Director will be effective no earlier than 5 business days following the issuance of the determination.

- a. **Offer of Compromise:**
 - i. **Alcoholic Beverage Cases:** In the case of a suspension of an alcoholic beverages license, and if the license holder initiates the action, the license holder may make an offer of compromise consisting of money in lieu of serving the suspension pursuant to Alcoholic Beverages Article § 3-606.
 - ii. **Tobacco Cases:** In the case of a suspension or revocation of a tobacco license which is not related to a prohibited sale to a person under 21, the license holder may make an offer of compromise consisting of money in lieu of serving the suspension or revocation pursuant to the appropriate section of the Business Regulation Article. Acceptance of an offer of compromise shall be at the discretion of the Executive Director.

13. **Service of a Final Order:** Final orders following an administrative proceeding shall be issued via certified mail to the party against whom the action is taken. Additionally, an agent or inspector of the ATC shall hand-deliver a copy of the final order to the place of business of the license holder or other address as appropriate, and document that the order was delivered to the party or the party's agent on site. Orders will be effective on the date they are executed by the Executive Director or designated officer, and will state the initiation date of any administrative sanction. This time period encompasses time for delivery of the order via mail to the licensed premises.

¹² Md. Code Ann., State Government § 10-217

¹³ See Attachment B, Final Determination Template.



14. Requests for Reconsideration or Stay of Administrative Sanction: Followed the issuance of an order, a party may make a written request to the Executive Director for reconsideration of the finding of violation or determination of penalty. Additionally, a party may request a stay of the imposition of a sanction for a reasonable time to allow for consideration of the party's offer of compromise, request for reconsideration, or appeal for judicial review. This must be filed within 5 days of the issuance of the determination, or contemporaneously with any offer of compromise. If the Executive Director takes no affirmative action on the request prior to the date of the initiation of any sanction, it is deemed denied and does not act to stay the imposition of that sanction.

15. Appeal for Judicial Review:

- a. If parties wish to appeal the final determination, a petition for judicial review must be filed with the circuit court for the county where any party resides or has a principal place of business¹⁴ within thirty (30) days of the latest of:¹⁵
 - i. the date of the order or action for which review is sought;
 - ii. the date the administrative agency sent notice of the order or action to the petitioner;
 - iii. the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.
- b. Specific to Appeals for return of property seized pursuant to the Tax General Article: appeals from a final adverse determination relating to the seizure of alcoholic beverages, tobacco products, and motor fuel/conveyances may be filed with the Tax Court.¹⁶
- c. Regarding final determinations as to licenses issued by the Office of the Executive Director, the filing of a petition for judicial review from a final determination does not, of itself, stay the enforcement of the proposed action.¹⁷ The Executive Director has the discretion to postpone or delay a suspension determination subject to the request in writing by the license holder.
- d. Upon receiving notice of judicial review, the Hearing Officer will collect the agency case file, to include the hearing notice, procedural requests, audio recordings, exhibits (all documentary evidence and copies thereof), findings, orders, and post-hearing motions or petitions related to the case. The Hearing Officer will then deliver the agency case file to the Office of the Attorney General for the purposes of representing the ATC in Circuit Court.

Approved,

Thomas R. Akras

Thomas R. Akras, Esq.
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¹⁴ Md. Code Ann., State Government § 10-222(c)

¹⁵ MD Rules, Rule 7-203.

¹⁶ Md. Code Ann., Tax General § 13-510(a)(5), Md. Code Ann., Tax General § 13-839(b).

¹⁷ COMAR 03.01.01.04(H)(3)(b).

