

DEPARTMENT OF TRANSPORTATION

DIVISION OF MOTOR VEHICLES

Driver Services

Statutory Authority: 18 Delaware Code, Section 2503, 21 Delaware Code, Section 302, and 29 Delaware Code, Sections 101 and 8404 (18 **Del.C.** 2503, 21 **Del.C.** §302 & 29 **Del.C.** §§101 & 8404)
2 **DE Admin. Code** 2203

FINAL

ORDER

2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17)

Pursuant to the authority provided by 21 *Del. C.* §302 18 *Del. C.* §2503, and 29 *Del. C.* §101, the Delaware Division of Motor Vehicles (DMV), adopted the Implied Consent and Administrative Per Se Other Administrative Hearings of Record. The Division of Motor Vehicles uses this regulation to initiate program requirements.

Findings of Fact and Conclusions of Law

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed revisions
2. The proposed revisions are useful and proper, and the Department believes that the adoption of this regulation is appropriate.

Decision and Effective Date

Based on the provision of Delaware law and the record of this docket, I hereby adopt the Implied Consent and Administrative Per Se Other Administrative Hearings of Record as set forth in the version attached, to be effective December 11, 2022.

It is ordered on this 17 day of November 2022.

Nicole Majeski, Secretary
Delaware Department of Transportation

2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (~~Formerly Reg. No. 17~~)

1.0 Authority

The authority to promulgate this regulation is 21 **Del.C.** §302 and 29 **Del.C.** §10115 §302.

2.0 Purpose

This policy regulation establishes administrative procedures regarding the administrative hearing process for implied consent, administrative per ~~se~~ se, and other administrative hearings of record.

3.0 Applicability

This policy regulation interprets the following sections found in 21 **Del.C.** §2740 through §2750 in their entirety. This policy contains procedures necessary to implement the sections referenced above and other administrative hearings of record pertaining to license revocations, suspension, ~~disqualifications~~ disqualifications, and other DMV actions or decisions.

4.0 Substance of Policy

- 4.1 The arresting officer shall personally issue to the defendant the original copy of the MV 529 form at the time of issuance in all cases regardless of whether a temporary license was issued as well.
- 4.2 The following documents shall be submitted to the Division of Motor Vehicles Administration Office 303 Transportation Circle PO Box 698 Dover, DE 19903 immediately following issuance of the MV 529 Official Notice and Order of Revocation and Temporary License:
 - 4.2.1 MV 529 Official Notice and Order of Revocation
 - 4.2.2 Form 333 Probable Cause and Implied Consent form
 - 4.2.3 Delaware driver's license

- 4.3 Documents referenced in subsection 4.2 above of this regulation that are not received by the Division within 30 days from the date of issuance will not be processed and no action will result against the defendant. The Division shall process all MV 529 Official Notice and Order of Revocation, where no administrative hearing is requested, within 30 days of receipt.
- 4.4 The defendant, the defendant's legal representative, or person acting on the defendant's behalf may request an administrative hearing within 15 days of the issue date on the MV 529 form. If the 15th day falls on a Saturday, Sunday, legal holiday, or any other day when the Division is not open for business the defendant will be given until the next succeeding business day to make the defendant's request. The request may be made in person at any Division of Motor Vehicles office, by mail, or by facsimile. The request for a hearing must be in written form.
- 4.5 Failure of the defendant, the defendant's legal representative, or person acting on the defendant's behalf to request the hearing within the 15-day time period will result in a the license being immediately revoked upon processing of the MV 529 Notice and Order of Revocation by the Division for the appropriate period of time pursuant to 21 **Del.C.** §2742 & §2743.
- 4.6 A notice scheduling the hearing must be sent within 30 days of the hearing request. The scheduling notice shall be sent to the defendant, the arresting officer, and the defendant's legal representative if the Division has knowledge of the legal representative at the time the scheduling notice is sent.
- 4.7 A request for a continuance by the defendant, legal representative, or police officer will be considered as outlined below follows:
- 4.7.1 One continuance request will be granted to either party (defense or State) regardless of reason provided the request is received at least 1 business day prior to the hearing date.
- 4.7.2 A subsequent request for a continuance will be considered provided the request is in writing and received at least 1 business day prior to the hearing date. The request must contain travel documents, medical documents, employment documents, court documents, training documents, or other documents to support the continuance request.
- 4.7.3 ~~An~~ A continuance request made on the day of the hearing will be considered in the event of an emergency. Documentation to verify the emergency must be submitted.
- 4.7.4 Continuance requests should be made directly to the Hearing Officer of record or in the Hearing Officer's absence, to the Driver Improvement Unit, Revocation Section, Hearing Staff, Driver Improvement Manager or Driver Improvement Assistant Manager.
- 4.8 The decision of the Hearing Officer following the administrative hearing shall be rendered within 15 working days.
- 4.9 The decision of the Hearing Officer is forwarded to a Motor Vehicle Specialist in the Administration Office who in turn will send notice of the Hearing Officer's decision to the defendant, law enforcement officer and the defendant's legal representative.
- 4.10 All hearings will be ~~taped recorded~~ and the ~~tapes recordings~~ will be retained by the Hearing Officer for one (1) year should the hearing officer rule in favor of the State. However, if the ruling is in favor of the defendant, the ~~tape recording~~ does not need to be retained and may be ~~reused and/or~~ erased immediately. The hearing ~~tapes recordings~~ are considered internal working documents and will not be released to either party regardless of the Hearing Officer's decision unless directed by the Division's Deputy Attorney General or by the court. A copy of the hearing ~~tape recording~~ will be made available to an approved transcription service in the event of an appeal of a ruling against the defendant.
- 4.11 Upon receipt of an appeal a copy of all printed material shall be made available to the Deputy Attorney General representing the Division of Motor Vehicles. Contact shall be made with an approved transcription service to determine the cost of the transcript and necessary copies. Contact shall be made with the Hearing Officer to make a copy of the specific hearing being appealed. The Hearing Officer shall forward a copy of the ~~tape recording~~ to the Administration Office where the transcription service shall pick up the ~~tape recording~~. Upon receipt of the transcription copies they shall be distributed as follows: One copy each to the defendant, the defendant's legal representative, the Deputy Attorney General, the court, and the defendant's DMV case file.
- 4.12 The appellant will be responsible for the cost of preparing the transcript of the hearing in the event of an appeal. The cost will include five (5) copies of said transcript.
- 4.13 Copies of the Hearing Officer's decision will be available to the defense and the State only upon request of an appeal of the decision.
- 4.14 The following personnel classifications are designated to hold administrative hearings for the Division of Motor Vehicles:
- 4.14.1 Chief of Driver Services
- 4.14.2 Driver Improvement Manager

- 4.14.3 Driver Improvement Assistant Manager Hearing Officer
- 4.14.4 Driver Improvement Hearing Officer

5.0 Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulation ~~shall be~~ became effective June 11, 2006. Amendments to the regulation will become effective 10 days from the date the order is signed and it is they are published in its final form in the Register of Regulations ~~Register of Regulations~~ Register of Regulations in accordance with 29 **Del.C.** §10118(e).

9 DE Reg. 1988 (06/01/06)

26 DE Reg. 492 (12/01/22) (Final)