

11.01: Purpose

(1) To provide an opportunity for a hearing within 15 days of the date of suspension for refusing a chemical test pursuant to M.G.L. c. 90, § 24(1)(f)(1).

(2) To establish procedures for hearings held by the Registry of Motor Vehicles pursuant to M.G.L. c. 90, § 24(1)(g).

REGULATORY AUTHORITY

540 CMR 11.00: M.G.L. c. ~~90, § 24(1)(g), M.G.L. c. 90, § 31, M.G.L. c. 30A, § 9-16, § 9~~. M.G.L. c. 6C, § 56

CHAPTER 11.00: OPERATORS LICENSES SUSPENDED PURSUANT TO M.G.L. C. 90, § 24(1)(f). (IMPLIED CONSENT STATUTE)

540 CMR 11.02 (2005)

11.02: Scope and Applicability

(1) Any person who receives notification from the Registrar, or from any Police Department on behalf of the Registrar, advising that his or her operator's license, permit, or right to operate has been ~~or will be~~ suspended for a period of time pursuant to M.G.L. c. 90, § 24(1)(f)(1) by reason of having refused to submit to a chemical test or analysis of his or her breath, or in cases where the operator was brought for treatment to a medical facility pursuant to M.G.L. c. 90, § 24(1)(f)(1) and refused a test of his or her blood, may obtain a ~~heating~~ hearing in accordance with the procedures outlined in said notice, at the Boston office of the Registry of Motor Vehicles, or wherever said notice specifies to appear.

(2) For purposes of this hearing, and pursuant to M.G.L. c. 90, § 24(1)(f)(1), the operator shall be deemed to have consented to a breath test, and not a blood test unless brought to a medical facility for treatment. If an operator consents to and completes a breath test requested and administered by a police officer, the operator may elect to obtain a comparison blood test pursuant to M.G.L. c. 90, § 24(1)(e).

(3) An operator desiring such a hearing shall appear at the Registry and submit a formal request for the hearing, on a form which shall be provided at the hearing.

(4) The Registry of Motor Vehicles will compile a record of said hearing, including any testimony or evidence submitted by the operator. It shall be the responsibility of the operator to include any and all relevant testimony in written form for the record. The Registry shall provide forms for witnesses to transcribe their testimony to submit it for inclusion in the record, and shall provide reasonable assistance to facilitate such transcription, should it be requested by the operator. The Registry shall also allow the operator to have the proceeding transcribed or recorded by a court reporter, at the operator's own expense, if he or she so chooses. A copy of

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any transcription or recording shall be supplied to the Registry and made part of the record of said hearing.

(5) The procedure at any such hearing shall be as follows:

(a) A hearings officer will examine the Report of Refusal forwarded to the Registry pursuant to the provisions of M.G.L. c. 90, § 24(1)(f)(1) to determine if it meets the requirements of said statute. The Registry shall have a reasonable period to obtain said report in any instance where an electronic transmission may have been incomplete or not received. If after examining the Report of Refusal, the hearings officer determines the requirements are not met, the hearings officer shall forthwith reinstate the operator's license, permit or right to operate, whichever is applicable, if previously suspended by the Registrar; or if such operator's license, permit or right to operate has not been suspended as of the time of the hearing, the hearings officers shall take appropriate measures to rescind any suspension relating to the refusal due to take effect.

(b) If the hearings officer determines the Report of Refusal meets the statutory requirements, the burden is on the operator to show that one of the following factual issues, as set forth in M.G.L. c. 90, § 24(1)(g), was in the negative:

1. did the police officer have reasonable grounds to believe that such person had been operating a motor vehicle while under the influence of intoxicating liquor upon any way or in any place to which members of the public have a right of access or upon any way or in any place to which members of the public have a right of access as invitees or licensees;
2. was such person placed under arrest, and
3. did such person refuse to submit to such test or analysis.

(c) The hearings officer shall have leave to adjourn the hearing at any point to obtain further evidence on any one of the issues detailed in 540 CMR 11.02(5)(b). The operator will be allowed to review such additional evidence and submit such counter affidavits or other rebuttal evidence as he or she desires, before the hearings officer concludes the hearing.

(6) The hearings officer will ~~then~~ conclude the hearing once all relevant evidence and applicable case law has been received and reviewed by the hearing officer. ~~and~~ The hearing officer shall render a decision within ten business days from the conclusion of the hearing.

REGULATORY AUTHORITY

540 CMR 11.00: M.G.L. c. 90, § 24(1)(g), M.G.L. c.90, § 31, M.G.L. c.30A, §9+6, § 9, M.G.L. c. 6C, § 56

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