**94-591 MOTOR CARRIER REVIEW BOARD**

**Chapter 3: HEARING PROCEDURES**

**SUMMARY**: This chapter contains the procedure to be followed when a hearing is conducted by the Board upon the appeal of a motor carrier (a) whose privilege to operate a commercial motor vehicle has been suspended by the Secretary of State upon the recommendation of the Bureau of Motor Vehicles; (b) whose privilege to operate a commercial motor vehicle has been suspended by the Secretary of State pursuant to 29-A M.R.S. §2458(2); or (c) upon the request of the Bureau or a motor carrier to determine whether a motor carrier has satisfied conditions imposed by the Secretary of State for reinstatement of the motor carrier’s privilege to operate a commercial motor vehicle.

**SECTION 1. Purpose**

This rule sets forth the procedures to be followed by the Board when a hearing is conducted regarding a carrier’s appeal from the suspension of its privilege to operate a commercial motor vehicle or a request for reinstatement of the privilege.

**SECTION 2. Procedures in General**

1. The Board shall conduct hearings in accordance with the *Maine Administrative Procedure Act*, 5 M.R.S. §401 *et seq*. (“APA”), 29-A M.R.S. §§ 111and 112 and rules adopted by the Board.

**SECTION 3. Notice of Hearing**

The Board shall provide notice of the hearing to the carrier pursuant to the APA.

1. The notice shall include a statement that the hearing is conducted pursuant to the Board’s authority set forth in 29-A M.R.S §562 and Chapters 2 and 3 of the Board’s Rules.
2. The notice shall include a statement that the hearing is being conducted to review the decision of the Secretary of State to suspend a carrier’s privilege to operate a commercial motor vehicle in the state; that the Board, upon the basis of the operating and safety record of the carrier, will determine what action, if any, shall be taken with regard to the carrier’s privilege to operate a commercial motor vehicle in the state; and that the Board will make a recommendation to the Secretary of State whether to uphold, modify or rescind the suspension.
3. The notice shall include the time and place of the hearing.
4. The notice shall include a statement that the carrier has the right to be represented by counsel; to present evidence and arguments; and to call, examine and cross-examine witnesses.
5. The Board shall include with the notice a copy of this Chapter 3.

**SECTION 4. Presiding Officer**

* 1. The Board Chair shall select the person to serve as Presiding Officer.

2. The Presiding Officer shall administer oaths and affirmations, rule on the admissibility of evidence, regulate the course of proceedings and take such action as authorized by statute or agency rule consistent with the APA.

3. The Presiding Officer may hold a pre-hearing conference in order to identify issues, the witnesses, documents to be presented and to set the order of proceedings.

4. If a pre-hearing conference is held, the Presiding Officer shall prepare a report of the conference.

**SECTION 5. Order of Proceedings**

1. The purpose of the proceedings shall be limited to whether or not the determination of the Bureau to suspend the carrier’s privilege to operate a commercial motor vehicle in the state should be upheld, modified or rescinded.

2. The carrier and the Bureau may make brief opening statements.

3. The Bureau shall first present evidence through witnesses or documentary evidence in support of its decision to suspend the carrier’s privilege to operate a commercial motor vehicle. The carrier may then cross examine each witness offered by the Bureau. The Bureau may then conduct re-direct examination limited to matters raised during cross examination. The carrier may then conduct re-cross examination.

4. Upon the completion of the presentation by the Bureau, the carrier may present evidence through witnesses and documentary evidence. There shall then be cross-examination by the Bureau, re-direct examination and re-cross examination.

5. The Board members may ask question of the witnesses at any time.

6. After the close of the evidence the Board shall decide whether it will hear oral closing arguments or offer the parties the opportunity to submit written argument.

7. The Board shall then consider and deliberate the evidence presented. Deliberations shall be conducted in public session.

8. At the close of deliberations, the Board shall issue a decision on what action, if any, shall be taken with regard to the carrier’s privilege to operate a commercial motor vehicle in the state. The decision shall be in writing and include findings of fact sufficient to apprise the carrier and the public of the basis for the decision. The decision shall be in the form of a recommendation to the Secretary of State.

**SECTION 6. Action by Secretary of State**

1. The Board shall provide the Secretary of State with a copy of its decision and recommendations.

2. The Board shall provide the carrier a copy of its written decision. The carrier shall have 10 days after receipt of the decision to file a response or exceptions to the decision. The carrier shall file its response with the Secretary of State.

3. Within 30 days after receipt of the decision, the Secretary of State shall issue a decision on the recommendation of the Board. The Secretary of State may adopt, reject, or modify any action recommended by the Board.

**SECTION 7. Standard of Review**

1. In rendering a decision, the Secretary of State shall determine whether by a preponderance of the evidence a carrier’s operating and safety record shows that the carrier poses an unacceptable risk to highway safety.

**SECTION 8. Appeal**

1. The decision of the Secretary of State is final agency action and may be subject to judicial review pursuant to 5 M.R.S. §11001 *et seq*. and M.R. Civ. P. 80C. A party must file a petition for review within thirty (30) days after receipt of the notice of decision.

**SECTION 9. Other Action**

1. Nothing in this rule prevents the Secretary of State from taking action pursuant to 29-A M.R.S. §2458(2).

STATUTORY AUTHORITY: 29-A MRS §562(4)

EFFECTIVE DATE:

 September 28, 1996 - as "Review Process"

AMENDED:

 September 1, 1998 (included filing of electronic text)

REPEALED AND REPLACED:

 November 10, 2003 - as "Hearing Procedures," filing 2003-411

AMENDED:

 July 1, 2012 – filing 2012-172

AMENDED:

 July 24, 2018 – filing 2018-139