



Standard Operating Procedure

Preparation and Conduct of Administrative Hearings

Division: Legal and Legislative Division

Policy Area: Administrative Hearing Procedure

Policy Drafter: Jeffrey Hann, Assistant Director, LLD

Approving Officer: Jeffrey A. Kelly, Executive Director

Effective Date:

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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 authority to conduct administrative hearings¹ and does so by issuing an official delegation letter to be stored in the employee's personnel file.
- b. **Designation & Supervision of the Assistant Director as Hearing Officer:** Unless otherwise determined by the Executive Director, the Assistant Director of the Legal and Legislative Division shall serve as the primary Hearing Officer. In their capacity as Hearing Officer, the Assistant Director shall report directly to, and be supervised solely by, the Executive Director. To preserve the independence of the adjudicatory process, the Director of the Legal and Legislative Division shall exercise no supervisory authority over the Hearing Officer regarding any adjudicatory functions, findings, or recommended penalties. In matters assigned to a hearing officer outside of the Legal and Legislative Division, and subject to

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

section 2, the hearing officer may seek assistance of the Director or Assistant Director of the Legal and Legislative Division or the assigned Assistant Attorney General for drafting and procedural assistance as appropriate.

2. Separation of Functions, Ex Parte Communications, and Recusal:

- a. **Separation of Functions (The Conflict Wall):** To comply with Due Process and administrative fairness, the agency shall maintain a strict separation of functions between the prosecution of a case and its adjudication. The Director of the Legal and Legislative Division or their designee shall act as the ATCC Representative to present the agency's case during the hearing. The Hearing Officer shall not be involved in the investigation, charging, or prosecution of any matter they are assigned to hear.
 - b. **Prohibition on Ex Parte Communications:** The Hearing Officer and the ATCC Representative are strictly prohibited from discussing the merits, facts, or legal arguments of any pending contested case outside the presence of the respondent or their counsel (*ex parte*). Any inadvertent *ex parte* communications related to facts material to the determination must be promptly disclosed to all parties on the record and preserved in the agency file. Independent communications with the hearing officer by the parties after initiation must also be preserved.
 - c. **Recusal:** 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. This decision may be initiated by the hearing officer to preserve impartiality, upon consideration of a motion by a party, or upon consultation with Counsel for the agency. The hearing officer alone will have discretion to recuse themselves. In the event of recusal, the Executive Director shall determine the appropriate successor hearing officer.
3. **Location of Hearings:** Hearings will generally be held in the ATCC's offices at 1215 E. Fort Avenue, Suite 300, 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 assistance of the Executive Associate, will log cases in the appropriate ATCC administrative hearing database. Hearings may be initiated as follows:
 - a. **Agency-Initiated Actions (Suspensions & Revocations):** Following an FED investigation or a referral from another law enforcement agency, state or local health department², or local liquor board, the Director of the Legal and Legislative Division may make a recommendation to the Executive Director for Administrative Action. If the agency proposes to suspend or revoke an active license, the matter

² See SOP 1.02 for procedure for administrative hearing referrals related to tobacco retail licenses and underage tobacco sales violations.

will be referred to the Hearing Officer so that a disciplinary hearing can be scheduled.

- b. **Licensee-Initiated Appeals (Denials of Issuance or Renewal):** Following a Notice of Proposed Action regarding the *denial* of the issuance or renewal of a license or permit, the affected party may request a hearing. Such a request must be filed (postmarked) or received in writing no later than 30 days following issuance of the Notice. Absent a timely request for a hearing, the denial will become final. When a request for a hearing is received, the Director of the Legal and Legislative Division will review it for timeliness and refer the matter to the Hearing Officer.
 - c. **Seized Property Protests:** Upon Seizure of property pursuant to 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.³ 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: Generally 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, unless there is a pending criminal or civil case related to the seizure of property by the ATCC or in

³Also 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.

which the property is held as evidence. In such cases the Director of the Legal and Legislative Division will schedule the hearing after the conclusion of the criminal court proceeding.

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.
- b. The notice shall be mailed using certified mail, with a return receipt requested, to the mailing address identified on the license or 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 following⁴:
 - i. The date, time, and place of the hearing.
 - ii. The statutory or regulatory authority for the ATCC'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 of the right to be represented by counsel. The person may be represented by an attorney that is authorized to practice law 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

⁴ See Attachment A: Notice of Hearing Template.

finalization of the ATCC's proposed action or forfeiture of any claimed interest in seized property.

vii. Instructions on how to access the hearing.

viii. Advisement that the person may request that the Executive Director issue a summons for the appearance of a witness, but must make that request 10 days before the hearing. The request must include an explanation for why the summons is necessary, and the Executive Director may decline the request.

ix. That a copy of the hearing procedure is available on request.

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 Legal and Legislative Division, accompanied by a mailed copy if preferred, to ensure that counsel is 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:** The Director of the Legal and Legislative Division will select a prompt hearing date in consultation with the Hearing Officer and the Executive Associate. At their discretion, the Hearing Officer may hold a scheduling call with the parties prior to issuance of a hearing notice or upon a request for postponement to discuss hearing scheduling and the number and availability of expected witnesses.
- b. **Recording:** The Hearing Officer shall be responsible for recording the hearing⁵ on behalf of the State and operating 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 and Executive Associate will arrange for the services of a qualified interpreter for the hearing or arrange for translation of documents.⁶
- 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 required, by affirmation or oath, to do so honestly and fully, to the best of their knowledge.⁷
 - i. Additionally, a party may request that the hearing officer issue a summons for the appearance of a witness, but only in writing at least 10 days⁸ before the hearing and with an explanation for why the summons is necessary. The Hearing Officer may decline to issue the summons if the Hearing Officer determines it is:⁹
 1. over burdensome;
 2. unnecessary to resolve the merits of the matter;
 3. impracticable to enforce;
 4. against the interests of justice;
 5. untimely; or
 6. would result in an unreasonable delay in the proceedings.
 - ii. The hearing officer may question any witnesses and may produce, by summons or otherwise, additional witnesses.
 - iii. Parties may question any witnesses called by a party or the Hearing Officer.

⁵ Md. Code Ann., State Gov't §§ 10-215 and 10-218.

⁶ Md. Code Ann., State Government § 10-212.1, COMAR 28.02.01.09.

⁷ Md. Code Ann., State Gov't § 10-213

⁸ The party requesting a summons is responsible for securing service of the summons by an authorized law enforcement officer and should make a request for summons sufficiently in advance of any separate deadlines established by the Sheriff or other police agency in the jurisdiction.

⁹ COMAR 03.01.01.04.(F)(1)(c); Md. Code Ann., Alcoholic Beverages § 6-204.

- e. **Presentation of Case:** At the beginning of the proceeding the Hearing Officer will address the parties and state 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.
 - 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. The hearing officer should advise the parties that they must notify the ATCC 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 (Segregation of Records):** To comply with the Maryland Administrative Procedure Act and protect agency privilege, the hearing file must be strictly segregated into two separate sub-files:
 - i. **Official Record:** This file contains the documents required by Md. Code Ann., State Gov't § 10-218 and is subject to transmittal for judicial review or MPIA requests. It must contain the originals and/or copies of:
 - 1. Any reports, recommendations, or notices at issue in the matter.

2. Any correspondence received from or sent to any parties to the matter, including receipts for any certified mailings or acknowledgements of hand-delivery.
3. Any evidence or documents submitted by the parties or presented at the hearing.
4. Recordings and/or transcripts of the proceeding.
5. Any Proposed Decisions, Written Exceptions, or Final Orders issued.

ii. **Internal Deliberative File (Privileged):** This separate file shall contain any internal memoranda, legal advice from counsel, or pre-decisional deliberative communications relevant to the matter. These documents may be subject to the deliberative process privilege, attorney-client privilege, or other statutory exemptions under the Maryland Public Information Act (MPIA). Because the deliberative process privilege is qualified and discretionary, documents in this file shall not be automatically transmitted to the Circuit Court for judicial review or released pursuant to an MPIA request. Any determination to disclose or withhold materials in this file shall be made by the ATCC's designated PIA Officer or official records custodian, with the advice of Counsel.

b. **Labeling and Storage of Files:** The agency file should be labeled with the license holder's name, 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 evidence¹⁰ based on accepted testimony and documents. This report and any final or proposed decision may be modelled off the attached template.¹¹

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.

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

¹¹ See Attachments B1 and B2: Proposed Decision Templates for Alcohol/Tobacco Hearings.

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 Hearing Officer shall issue a Proposed Decision. This decision will contain the Hearing Officer's findings of fact, conclusions of law, and a specific recommended disposition or penalty (e.g., revocation or suspension duration).
 1. **Exceptions:** The licensee shall be given **fifteen (15)** days to file written exceptions with the Executive Director. The statutory opportunity to present an argument shall be satisfied by the filing of these Written Exceptions. Requests for Oral Argument before the Executive Director are granted solely at the Executive Director's discretion.
 2. **Summary Affirmance:**¹² If no exceptions are filed within the statutory 15-day period, the Executive Director will issue a Summary Affirmance Order, adopting the findings and recommended penalty of the Hearing Officer without further hearing.

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 or 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.

¹² See Attachment C: Summary Affirmance Order Template

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 ATCC 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.¹³ 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.

14. Requests for Reconsideration or Stay of Administrative Sanction: Following 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 petition 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. Petition 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 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

¹³ See Attachment D: Certificate of Delivery Template

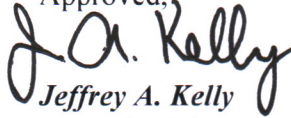
¹⁴ Md. Code Ann., State Government § 10-222(c)

¹⁵ Md. Rules, Rule 7-203.

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

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.

- i. The Executive Director will consider the following factors when evaluating a request for a stay: the severity of the violation, any ongoing risk to public health or safety, the licensee's past compliance history, whether an offer of compromise is actively under review.
 - ii. Stays pending judicial review shall generally be denied absent a showing by the licensee of extraordinary circumstances. If the Executive Director takes no affirmative action on the request prior to the effective date of a sanction, the request for stay is deemed denied.
- 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 ATCC in Circuit Court.

Approved,

Jeffrey A. Kelly

Executive Director
Alcohol, Tobacco, and Cannabis Commission

¹⁷ COMAR 03.01.01.04(H)(3)(b).



[Date of Letter]

[Business name of license holder/party]

[Trade name of license holder/party]

[Mailing Address of local business/party]

Certified Mail – Return Receipt Requested

RE: [Alcohol/Tobacco license type] License Action

License Number(s): [number (year), list each license # active during violations and current active license]

Control Numbers: [Com Registration number/Control number]

Dear License Holder:

A hearing has been scheduled for the above referenced [Cigarette/Other Tobacco Products/Electronic Smoking Device, or Alcoholic Beverages] license(s). The hearing is the license holder's opportunity to show cause why the license(s) should not be suspended or subject to other administrative action under Maryland Code, [Business Regulation Article, Titles 16, 16.5, 16.7, and 16.9 *and/or* Alcoholic Beverages Article, Title 3, Subtitle 6; Tax General Article], because of a violation of Maryland Code, [Criminal Law Article §10-107, Maryland Code, Health General Article §24-307 or §24-305, or any other local jurisdictional law or ordinance related to selling cigarettes, other tobacco products and/or electronic nicotine delivery systems to underage persons; and/or violating the provisions of the Business Regulation Article Titles §16, §16.5, §16.7, and/or §16.9 *or* Alcoholic Beverages Article, §xx, and COMAR 14.23.xx.xx].

This administrative action arises from incidents which occurred on or about [date of citation or observed violation] in [County]. [Summary of action or facts supporting the citation or violation, and disposition of related criminal or civil proceedings that have concluded in the county].

You, or a company representative, are directed to appear for this hearing at the following location on [Weekday, date] at [time].

**Alcohol, Tobacco, and Cannabis Commission
Office of the Executive Director
1215 E. Fort Avenue, Suite 300
Baltimore, Maryland 21230**

Pursuant to Maryland Code, Alcoholic Beverages Article §1-315 the Executive Director may delegate authority to conduct hearings on violations of the Alcoholic Beverages Article, provisions of the Tax—General Article relating to alcoholic beverages or tobacco, and provisions of the Business Regulation Article relating to tobacco. This hearing will be conducted by **[Jeffrey Hann, Assistant Director of the Legal and Legislative Division *or other assigned hearing officer*]**.

You may present witnesses or documents in support of your position at the hearing. You may request that the hearing officer issue a summons for the appearance of a witness, but such a request must be made in writing sent by mail to the address above, at least 10 days before the hearing. The request must include an explanation for why the summons is necessary, and the ATC may decline your request. Additionally, you have the right to be represented by counsel, but an attorney will not be provided for you. Failure to appear at this hearing will be deemed a default or withdrawal of your request for a hearing and could result in a suspension or revocation of your Alcoholic Beverages, Tobacco and/or Electronic Smoking Device Retail License(s), or a forfeiture of property seized by the Alcohol and Tobacco Commission in connection with its investigation.

A copy of the procedure for administrative hearings before the ATCC is available on our website. If you have any questions, please call **[office number for Director of Legal and Legislative Division or alternate case presenter]** or email **[email address for Director of Legal and Legislative Division or alternate case presenter]**. Requests for postponement of the hearing should be made in writing by mail, sent to the address above, and must be received no fewer than 5 business days before the hearing. If an emergency basis for postponement arises fewer than 5 days before the hearing, please call or email me. Please advise if you need the services of an interpreter or translator in order to participate in the hearing, and we will arrange for those services.

Sincerely,

Thomas R. Akras, Esq.
Director, Chief of Strategy
Legal and Legislative Division
Alcohol, Tobacco, and Cannabis

Commission

cc: Jessica Honeycutt, *Executive Associate*
Jeffrey Hann, *Assistant Director*



Click or tap to enter a date.

PROPOSED HEARING DECISION AND RECOMMENDED DISPOSITION

[Reprimand / Suspension] # of days to suspend Days

License Information	Case Information
License Holder: Click or tap here to enter text. T/A: Click or tap here to enter text. License Type: Choose an item. License No(s): Click or tap here to enter text. Control No(s): Click or tap here to enter text. Location Address: Click or tap here to enter text. Mailing Address: same	ATCC Case No. Click or tap here to enter text. Hearing Date: Enter a date. Notice Date: Enter a date. County: Choose county.

Introduction

On Enter a date. an in-person administrative hearing was held by the Maryland Alcohol, Tobacco, and Cannabis Commission (ATCC) at 1215 E. Fort Avenue, Suite 300, Baltimore, Maryland to determine if the license(s) held by **[license holder]** should be suspended, revoked, or subject to other penalty based on violations of Maryland Law governing a license regulated by the Executive Director of the ATCC. Jeffrey M. Hann presided over the hearing as the hearing officer designated by Executive Director Jeffrey A. Kelly under MD Code, Alcoholic Beverages and Cannabis, § 1-315. The Executive Director has the authority to hold a hearing on this matter under MD Code, AB § 1-603(a). This Proposed Hearing Decision and Order states the findings of fact, conclusions of law, and recommended sanction submitted to the Executive Director for consideration. The parties have the right to file written exceptions to this proposed decision within fifteen (15) days of the date of the order, as discussed in the Exceptions and Appeals section below.

This matter was scheduled for an administrative hearing before the ATCC following an investigation conducted by **[unit or agency]** involving alleged [nature of violation under investigation] in violation of MD Code, AB § **[X-XXX (“statute title in parenthesis”)]**. On the date noted above the ATCC issued a notice by USPS certified mail to the license holder to appear for an administrative hearing. The hearing officer reviewed the letter and mailing history and found that sufficient notice of the hearing was provided to the license holder as required by MD Code, State Government Article, Title 10, and the procedures for license suspension or revocation hearings under the Alcoholic Beverages and Cannabis Article.

Hearing Participants:

ATCC Representative(s)

Hearing Officer: Jeffrey Hann, Assistant Director, Legal and Legislative Division

Case Presenter: Thomas Akras, Chief of Strategy, Legal and Legislative Division

[name], [title], [unit/division]

License Holder Representative(s)

[Full name, title/role in business]

[Full name, title/role in business]

Counsel: [Attorney name, Firm name if different]

Findings of Fact

At the outset of the informal hearing at ATCC on *[hearing date]*, *[Replace following with summary of facts presented at hearing if contested]* Counsel for the respondent and *[the ATCC Case Presenter]* agreed to proceed with a stipulation of facts based on the narrative summary contained in the hearing notice, followed by mitigation testimony and information presented by the license holders. The ATCC proffered the factual narrative contained in the notice of hearing and several documents and reports of investigation. No witness testimony was introduced by the ATCC. The agreed factual stipulation offered by the parties was as follows:

[Factual summary from notice of hearing or stipulated version presented if different]

Additionally, the ATCC presented exhibits which included *[summary or listing of supporting evidence and exhibits]*.

The license holder, through the representative(s) present for the hearing, was given an opportunity to be heard and present evidence. The license holders presented various exhibits and testimony, including *[summary or listing of evidence and exhibits]*.

Oral testimony during the hearing was recorded, and that record and the documents or other evidence presented by the parties and accepted as evidence are incorporated here by reference. Based on the evidence presented during the hearing, the hearing officer finds that it is more likely than not (a preponderance of the evidence standard) that the license holder *[violation type or description of unlawful conduct]*.

Conclusions of Law

The notice of hearing asserts that *[license holder]* violated MD Code, AB § *[citation (statute title)]* by *[conduct]*. The hearing officer concludes that [Licensee name] did **commit violation / act beyond the scope of their license** and violate provisions of the Alcoholic Beverages and Cannabis Article. *[This is the introduction paragraph, briefly identify laws to be discussed and conclusion reached, then elaborate below]*

[Discussion of laws and how they apply to the facts of the case. Best to discuss each law in its own paragraph or section. Quote or summarize the text of the law, any caselaw, precedent or guidance that interprets the law, and then apply the facts of the case to each part or element of the law.]

The hearing officer therefore concludes that *[license holder]* violated MD Code, AB § *[citation]* by *[conduct]* on and before *[date or date range of violation]*.

Recommended Disposition

Based on the information presented during the hearing and the findings of fact and conclusions of law stated above, the hearing officer recommends that a period of suspension of the license for *[period in days]* is the appropriate penalty in this matter, to serve the following disciplinary purposes:

1. It will deter future violations of this nature.
2. It will provide the owners, operators, managers, and staff of the licensed business to implement or instruct staff on practices that comply with the law.
3. *[any other relevant purposes consistent with the role of ATCC.]*

The hearing officer therefore **RECOMMENDS that the *[license type]* held by *[license holder]* be SUSPENDED FOR A PERIOD OF *[#]* DAYS.**

During a period of suspension ordered by the Executive Director, the license holder will not be authorized to exercise any of the privileges granted by their license. The license holder may not *[produce, distribute, or serve]* any alcoholic beverage product under the license during the period of suspension. The license holder may remain open to conduct other lawful business.

Exceptions and Appeals

This document is a proposed decision of the hearing officer designated to conduct the administrative hearing in this matter, and is not a final decision of the Executive Director of the Alcohol, Tobacco, and Cannabis Commission. The Executive Director will review this Proposed Decision and will issue a Final Order stating the disposition of this matter, including the duration and start date of any suspension or revocation imposed on the license.

The license holder has the right to submit written exceptions to the findings or conclusions of the hearing officer stated in the Proposed Decision **within 15 days**. Exceptions must be submitted in writing and must be filed by hand or mailed and postmarked on or before the 15th calendar day following the date of this Proposed Decision. The license holder is encouraged to include a statement of the basis for each exception and any other argument in support of the exception that should be considered by the Executive Director. If no exceptions are submitted, the Executive Director will issue an Order affirming the finding and recommended disposition of the hearing officer after the exception period. If the Executive Director determines that the Proposed Decision and Recommended Disposition are not appropriate, the Executive Director will issue a Final Order which includes an explanation of the reasons for each change, modification, or amendment.

The license holder also has the right to submit an offer of compromise to be considered by the Executive Director pursuant to Md. Code Ann., Alcoholic Beverages and Cannabis § 3-606. The license holder may submit an offer at any time before the effective date of a suspension ordered by the Executive Director. However, the License holder is encouraged to submit the offer

of compromise as early as possible to allow it to be reasonably considered. The license holder may include it within the same submission as any exception to the Proposed Order.

An offer of compromise consisting of money in lieu of serving the suspension. The Executive Director will consider the offer of compromise and may accept an offer of compromise if he or she finds that the public welfare and morals would not be impaired by allowing the License Holder to operate during the period of suspension, and that the proposed offer will achieve the disciplinary purposes of the proposed suspension. An offer of compromise should include an argument to support each of the required factors.

All other requests for reconsideration or for judicial review available to the parties may be made following a final order issued by the Executive Director.

This concludes the findings and determination of the hearing officer for the ATCC.

Signed and Ordered: **Click or tap** to enter a date.

[Name]

Hearing Officer

[Title, Division]

Alcohol, Tobacco, and Cannabis Commission

Main Line: 443-300-6990

[Email address]



Click or tap to enter a date.

HEARING DECISION AND SUSPENSION ORDER

of days to suspend Days – start date (14 days after order) through last day of suspension

License Information

License Holder: Click or tap here to enter text.
T/A: Click or tap here to enter text.
License Type: Choose an item.
License No(s): Click or tap here to enter text.
Control No(s): Click or tap here to enter text.
Location: Click or tap here to enter text.
Mailing Address: Click or tap here to enter text.

Case Information

ATCC Case No. Click or tap here to enter text.
Hearing Date: Enter a date.
Notice Date: Enter a date.
Refer Date: Enter a date.
County: Choose county.

Introduction

On [Date] an in-person administrative hearing was held by the Maryland Alcohol, Tobacco, and Cannabis Commission (ATCC) at 1215 E. Fort Avenue, Suite 300, Baltimore Maryland to determine if the license(s) held by [license holder] should be suspended, revoked, or subject to other penalties based on violations of Maryland Law governing a license regulated by the Executive Director of the ATCC. Jeffrey M. Hann presided over the hearing as the hearing officer designated by Executive Director Jeffrey A. Kelly under MD Code, Alcoholic Beverages and Cannabis, § 1-315. The Executive Director has the authority to hold a hearing on this matter under Maryland Code, Business Regulation Article § 16-210, § 16.5-20, and/or 16.7-207.

This matter was referred for an administrative hearing before the ATCC based on two or more incidents of underage access to or sales of tobacco products by the license holder within one year. On the date noted above the ATCC issued a notice by USPS registered mail to the license holder to appear for an administrative hearing. The hearing officer reviewed the letter and mailing history and finds that sufficient notice of the hearing was provided to the license holder as required by MD Code, State Government Article, Title 10, and the procedures for license suspension or revocation hearings under the Alcoholic Beverages and Cannabis Article and the Business Regulations Article.

Hearing Participants:

ATCC Representative(s)

Hearing Officer: Jeffrey Hann, Assistant Director, Legal and Legislative Division

Case Presenter: Thomas Akras, Chief of Strategy, Legal and Legislative Division

Referring Agency Representative(s)

[Name, title, agency]

License Holder Representative(s)

[Full name, title/role in business]

Counsel: [Attorney name, Firm name if different]

[*optional for FTA*: No representatives appeared on behalf of the licensed business despite timely notice issued via letter at least 10 days prior to the hearing. The hearing officer confirmed using USPS tracking records that the notice was sent by certified mail and delivered to the address of the licensed business. The hearing proceeded pursuant to Maryland Business Regulations Article §§ 16-211(e), 16.5-209(e), and 16.7-208(e), which authorize the hearing officer, as delegated by the Executive Director, to hear and determine the matter in their absence.]

Findings of Fact

During the administrative hearing the hearing officer reviewed and accepted into evidence the referral letter, records of license(s) issued to the business at the time of the alleged violations, and local court and administrative records of the referred violations. Local records include the citations and accompanying reports completed by the inspecting officers in the jurisdiction and include copies of records showing any payments submitted in satisfaction of a fine, or final orders issued by the Court or other administrative officer with jurisdiction over the citations. The hearing officer takes official notice of any judicial or administrative findings and disposition of the violations established in the records.

The license holder, through its representative(s) present for the hearing, was given an opportunity to be heard and present evidence. The hearing officer considered any information provided in records or testimony related to the operation of the business, how the violations occurred if relevant, and any measures taken to improve the business' technology, policies, and operations following these events.

All oral testimony during the hearing was recorded, and that record and the documents or other evidence presented by the parties and accepted as evidence are incorporated here by reference. Based on the evidence presented during the hearing, the hearing officer finds that it is more likely than not (a preponderance of the evidence standard) that the license holder committed the violations listed in the table below.

Violations Proven by a Preponderance of the Evidence:

	Event Date	Law/Code	Product	Disp. Date	Disposition
1	Click or tap to enter a date.	Choose an item.	OTP	Click or tap to enter a date.	Payment of the fine without contesting the violation
2	Click or tap to enter a date.	Choose an item.	Cigarette	Click or tap to enter a date.	Payment of the fine without contesting the violation

The Hearing Officer makes the following findings of fact based on the evidence presented and admitted during the hearing: 1) that the licensee did sell Cigarettes, an Other Tobacco Product, and/or an Electronic Smoking Device to a minor on the dates listed in the table above; 2) that the

business held a license regulated by the ATCC at the time, and 3) that the violations occurred at the licensed premises and were made by agents acting on behalf of the license holder.

Conclusions of Law

The cigarette, other tobacco products, and/or electronic smoking device licenses issued to the business do not allow the illegal sale of these regulated tobacco products to an individual under 21 years old. The underlying offenses reported by the referring agency include conduct that violates the Health General Article or local health ordinances. The elements of these offenses are substantively similar to MD Code, Criminal Law article § 10-107, in that they prohibit a person engaged in the business of selling or distributing tobacco products for commercial purposes from distributing any tobacco product to a person under 21 years of age (with limited exceptions that do not apply to the facts presented here). Guided by precedent established by the Appellate Court of Maryland in *Comptroller of the Treasury v. Two Farms, Inc.*, 234 Md. App. 674 (2017), the hearing officer concludes that license holder's violations establish a preponderance of evidence of unlawful conduct by a license holder that is beyond the scope of its license to sell tobacco products.

The ATCC finds by a preponderance of the evidence that the license holder violated the provisions of Title 16, 16.5, and/or 16.7 of the Business Regulation Article. This determination is based on the hearing officer's finding that the license holder or its agents engaged in conduct on the dates discussed above that establish grounds for reprimand, suspension, or revocation of a license under Business Regulation Article § 16-210, § 16.5-210, and/or § 16.7-209 respectively.

Order

Based on the information presented during the hearing, the hearing officer has determined that a period of suspension is the appropriate penalty in this matter, to serve the following disciplinary purposes:

1. It will deter future violations of this nature.
2. It will allow time for the license holder to make changes to the equipment, signs, or staff training programs.
3. It will encourage the owners, operators, managers, and staff of the licensed business to adopt or enforce better practices to prevent underage people having access to age regulated products.

It is **ORDERED** by the Office of the Executive Director of the ATCC, with the authority granted by the Alcoholic Beverages and Cannabis Article, and Business Regulation Article, § 16-210, § 16-212, § 16.5-208, § 16.5-210, §16.7-207, §16.7-209, §16.9-207, §16.9-209 and the Code of Maryland Regulations (COMAR), after consideration of all evidence presented, that:

The [] license(s) held by [name of license holder] is hereby SUSPENDED FOR A PERIOD OF [#] DAYS. The SUSPENSION shall begin on Click or tap to enter a date. **and end after** Click or tap to enter a date..

The license holder shall not sell any cigarettes, other tobacco products, or electronic smoking devices to any consumer while the license is suspended. The license holder also shall not display or offer any of those products for sale, and should move or cover the tobacco products

during the suspension period and make it clear to consumers that these products are not available for sale while the suspension is in effect. The license holder can however remain open to conduct other lawful business or sell other products.

This concludes the findings and determination of the hearing officer for the ATCC.

Signed and Ordered: Click or tap to enter a date.

[Name of hearing officer]

Hearing Officer

[Title of hearing officer]

Alcohol, Tobacco, and Cannabis Commission

Main Line: 443-300-6990

[Email address of hearing officer]

CONSEQUENCES FOR FURTHER VIOLATIONS

Failure to stop all sales of cigarettes and other tobacco products as ordered will constitute a new offense and may result in an extended term of suspension or a revocation of the license. When an offense involves the sale of tobacco products to an underage person, no “offer of compromise” or payment of a fine in place of the suspension is authorized, and the length of suspension will increase based on the number of times the license holder has committed an offense. Under Maryland Code, Business Regulations Article §§ 16-212, 16.5-210, and 16.7-209, for a first offense the Executive Director may suspend the license for a consecutive period of not less than 5 business days, but not more than 20 days. For a subsequent offense, the Executive Director may suspend the license for a period of not less than 20 business days and not more than 6 months. The Executive Director may revoke the license if the license holder willfully and persistently engages in an act or omission which is a ground for discipline, or if the license holder violates Business Regulations Article Titles 16, 16.5, 16.7, or 16.9, Tax General Article Title 12, or regulations adopted by the Executive Director.

In the case of a revocation of a permit or license, the Executive Director “shall deny a license to any applicant who has had a license revoked under this section until: (1) 1 year has passed since the license was revoked; and (2) it satisfactorily appears to the Executive Director that the applicant will comply with this title and any regulations adopted under this title.” See MD Code, Business Regulations Article §§ 16-210(c), 16.5-208(b), and 16.7-207(b).

REQUESTS FOR RECONSIDERATION OR JUDICIAL REVIEW

You may request reconsideration of this decision in writing within five (5) days of the issuance of this notice, and shall submit that request via mail to the ATCC. A courtesy copy of your request should also be submitted by email to the hearing officer. Your request should state the basis or facts in support of reconsideration. The Office of the Executive Director may decline to reconsider. If the Office of the Executive Director has not issued an order modifying this determination in writing prior to the date on which the suspension begins, the request to reconsider is deemed denied, and the suspension shall begin as ordered.

In the alternative, "a party to a proceeding before the Executive Director who is aggrieved by a final decision of the Executive Director in a contested case, as defined in § 10-202 of the State Government Article, may take an appeal as allowed in §§ 10-222 and 10-223 of the State Government Article." See MD Code, Business Regulations Article §§ 16-213, 16.5-211, and 16.7-210, Judicial Review. pursuant to Md.

Code Ann., Alcoholic Beverages & Cannabis Article § 3-901 and State Government Article § 10-222, any party aggrieved by this Final Decision and Order is entitled to judicial review of the decision. Proceedings for judicial review are instituted by filing a Petition for Judicial Review in the Circuit Court for the county where any party resides or has a principal place of business.

In accordance with Title 7, Chapter 200 of the Maryland Rules of Civil Procedure (specifically Maryland Rule 7-203), the Petition must be filed within thirty (30) days after the final order is transmitted, mailed or delivered to the parties. A copy of the Petition should be concurrently served upon the Office of the Executive Director of the Alcohol, Tobacco, and Cannabis Commission. Pursuant to State Government Article § 10-222(e), Filing a request for judicial review will not automatically toll the suspension while the appeal is under review, unless the Court so orders. You may however request that the Executive Director hold the suspension pending the review by using the procedure for a reconsideration request described above.



Click or tap to enter a date.

FINAL ORDER AND SUMMARY AFFIRMANCE

[Reprimand / Suspension] # of days to suspend Days

License Information	Case Information
License Holder: Click or tap here to enter text. License No(s): Click or tap here to enter text.	ATCC Case No. Click or tap here to enter text.

PROCEDURAL HISTORY

On [Date of Proposed Decision], the duly appointed Hearing Officer for the Alcohol, Tobacco, and Cannabis Commission (ATCC) issued a Proposed Decision in the above-referenced matter. The Hearing Officer determined that the License Holder committed the alleged violations and recommended a penalty of *[Insert recommended penalty, e.g., a 5-day suspension of the license]*.

The License Holder was provided a copy of the Proposed Decision and notified of their statutory right to file written exceptions within fifteen (15) days pursuant to Md. Code Ann., State Gov't § 10-220.

The statutory fifteen-day period has expired, and no written exceptions were filed by the License Holder.

ORDER

Upon final review of the official record, it is this ____ day of _____, 20____, by the Executive Director of the Alcohol, Tobacco, and Cannabis Commission:

ORDERED, that the Hearing Officer's findings of fact and conclusions of law contained in the Proposed Decision are hereby **ADOPTED** and affirmed in their entirety; and it is further

ORDERED, that the License Holder is subject to the following administrative sanction: *[Insert Final Penalty, e.g., SUSPENSION of the license for a period of 5 days]*, to become effective on *[Insert Effective Date]*; and it is further

ORDERED, that this document constitutes the Final Administrative Decision of the Executive Director for the Alcohol, Tobacco, and Cannabis Commission.

Signed and Ordered: Click or tap to enter a date.

Jeffrey A. Kelly
Executive Director
Alcohol, Tobacco, and Cannabis Commission

Notice of Right to Appeal

" A person aggrieved by a final decision of the Executive Director in a contested case under this title may seek judicial review in accordance with the Administrative Procedure Act." See MD Code, Alcoholic Beverages Article § 3-901. Pursuant to Md. Code Ann., Alcoholic Beverages & Cannabis Article § 3-901 and State Government Article § 10-222, any party aggrieved by this Final Decision and Order is entitled to judicial review of the decision. Proceedings for judicial review are instituted by filing a Petition for Judicial Review in the Circuit Court for the county where any party resides or has a principal place of business.

In accordance with Title 7, Chapter 200 of the Maryland Rules of Civil Procedure (specifically Maryland Rule 7-203), the Petition must be filed within thirty (30) days after the final order is transmitted, mailed or delivered to the parties. A copy of the Petition should be concurrently served upon the Office of the Executive Director of the Alcohol, Tobacco, and Cannabis Commission. Pursuant to State Government Article § 10-222(e), Filing a request for judicial review will not automatically toll the suspension while the appeal is under review, unless the Court so orders. You may however request that the Executive Director hold the suspension pending the review by using the procedure for a reconsideration request described above.

Within 5 days of the issuance of this order, the License Holder may submit a request for reconsideration, request for a stay, or an offer of compromise consisting of money in lieu of serving the suspension to the Executive Director.



Wes Moore
Governor

Aruna K. Miller
Lt. Governor

Jeffrey A. Kelly
Executive Director



[Business name of license holder/party]

[Trade name of license holder/party]

[Physical Address of local business/party]

Delivery Certificate

[Hearing Decision/Final Order] in Case [Case number]

Received by: _____

Date: _____

Print Name: _____

I certify that I hand delivered the Decision to the above individual.

Served by: _____

Print Agent Name/ Signature

Title

Service Notes: