

THE FULL TEXT OF THE PROPOSED RULE AMENDMENT IS:

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

Division of Driver Licenses

RULE NO: RULE TITLE

15A-6: ADMINISTRATIVE SUSPENSION REVIEW HEARINGS

15A-6.005: Notice of Suspension/ Disqualification

15A-6.006: Request for Review

15A-6.009: Venue

15A-6.011: Notice of Hearing; Prehearing Order

15A-6.012: Subpoenas

15A-6.013: Formal Review; Introduction of Evidence; Order

15A-6.014: Preservation of Testimony

15A-6.015: Failure to Appear

15A-6.018: Informal Review

15A-6.019: Judicial Review

15A-6.020: Forms

THE FULL TEXT OF THE PROPOSED RULE IS:

15A-6.005 Notice of Suspension/Disqualification.

(1) The issuance of the Uniform Traffic Citation, HSMV Form 75903, or HSMV Form 75904, will inform the driver of the following:

~~(a) The driver has been arrested for a violation of Section 316.193, Florida Statutes.~~

~~(a)(b)~~ The suspension or disqualification of the driving privilege ~~upon the date of arrest for a violation of Section 316.193, F.S., if~~ the driver's blood-alcohol or breath-alcohol level is .08 or higher or the driver refused to submit to a breath, urine or blood test.

~~(b)(c)~~ The issuance of a 10 day ~~30-day~~ temporary driving permit commencing upon the date of issuance of the notice of suspension ~~arrest~~ and expiring at midnight on the 10th ~~30th~~ day following the date of suspension ~~arrest~~, provided that the driver is otherwise eligible to drive. The provisions of Rule 15A-6.004, F.A.C., shall not apply to this paragraph.

~~(c)(d)~~ The driver's right to request a formal or informal review, and the procedures to be followed in obtaining a formal or informal review.

~~(d)(e)~~ The issues to be considered by the division in a formal or informal review.

~~(e)(f)~~ A copy of the notice of suspension ~~citation~~ submitted by a law enforcement or correctional officer shall constitute evidence that the driver received a temporary permit and notice of the reason for the ~~arrest and~~ suspension.

(2) The issuance of a notice of suspension, HSMV Form 78103 ~~72103~~, pursuant to Section 322.2616, F.S., will inform the driver of the following:

(a) through (e) No change.

(3) If the notice of suspension/disqualification has been mailed by the division, the suspension or disqualification shall be effective 20 days from the date of issuance of the notice. The provisions of Rule 15A-6.004, F.A.C., shall not apply to this subsection. For the purpose of this rule, the date of mailing shall be deemed the date of issuance of the notice. The notice of suspension/disqualification issued by the division, HSMV Form 78031 ~~72031~~, shall inform the driver of the following:

(a) The suspension or disqualification of the driving privilege ~~for a violation of Section 316.193, F.S.~~, if the driver's blood-~~alcohol or breath~~-alcohol level is .08 percent or higher or the driver refused to submit to a breath, urine or blood test, shall be effective 20 days from the date of the notice.

(b) through (c) No change.

Specific Authority 322.2615(12), 322.2616(13), 322.02(4), 322.251, 322.64(12) FS. Law Implemented 322.2615, 322.2616, 322.64 FS. History--New 10-1-90, Amended 10-17-90, 10-7-91, 1-12-94, 1-2-96, 7-3-97, _____

15A-6.006 Request for Review.

(1) Initiation of a formal or informal review shall be made by a written request for review to the division. HSMV Form 78065 ~~72065~~ may be used for this purpose.

(2) All requests for review shall include:

(a) No change.

(b) A statement of the date of suspension ~~the arrest~~ and the county where the driver ~~was arrested and~~ received notice of suspension or disqualification of the driving privilege.

(c) A copy of the ~~uniform traffic citation or~~ notice of suspension/disqualification issued to the driver.

(3) Any request for a formal or informal review must be postmarked or filed with the clerk of the appropriate division office within ten (10) days following the date of the ~~arrest of the driver or~~ issuance of the notice of suspension/disqualification ~~whichever is later~~.

(4) through (7) No change.

Specific Authority 322.2615(12), 322.2616(13), 322.02(4), 322.251, 322.64(12) FS. Law Implemented 322.2615(1), 322.2616, 322.64(1) FS. History--New 10-1-90, Amended 10-17-90, 10-7-91, 1-2-96, 7-3-97, _____.

15A-6.009 Venue.

Hearings shall be held in the judicial circuit where the notice of suspension was issued, ~~or where the arrest occurred which resulted in the suspension or disqualification of the driving privilege~~, unless otherwise ordered by the hearing officer with the consent of the driver.

Specific Authority 322.2615(12), 322.2616(13), 322.02(4), 322.64(12) FS. Law Implemented 322.2615, 322.2616, 322.64 FS. History--New 10-1-90, Amended 10-7-91, 1-2-96, 7-3-97, _____.

15A-6.011 Notice of Hearing; Prehearing Order.

(1) Whenever a formal review is to be conducted, the division shall issue and serve upon the driver a notice of hearing, HSMV Form 78059 ~~72059~~. The notice shall state the time and place of the hearing, shall include a statement of the legal authority and jurisdiction under which the hearing is to be held, and shall refer to the particular statutes and rules involved. The driver shall be served notice of the hearing at least fourteen (14) days prior to the scheduled hearing.

(2) The notice of hearing shall include a prehearing order requiring the driver to provide a prehearing statement, HSMV Form 78061 ~~72061~~, of relevant issues of fact and law. The prehearing order shall direct the driver to identify witnesses, exhibits and documentary evidence.

(a) through (d) No change.

Specific Authority 322.2615(12), 322.02(4), 322.271, 322.64(12) FS. Law Implemented 322.2615, 322.64 FS. History--New 10-1-90, Amended 10-17-90, 1-2-96, _____.

15A-6.012 Subpoenas.

(1) The driver may request a subpoena/subpoena duces tecum, HSMV Form ~~78066~~ 72066, for signature and issuance by the clerk or by the hearing officer, for the officers and witnesses identified in documents submitted pursuant to Section 322.2615(2), F.S. These documents include the following: the driver license; an affidavit stating the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages or chemical or controlled substances; the results of any breath or blood test or an affidavit stating that a breath, blood or urine test was requested by a law enforcement officer or correctional officer and that the person refused to submit; the officer's description of the person's field sobriety test if any; the notice of suspension; and a copy of the crash report, if any, if requested at or prior to the a hearing. The hearing officer may issue a subpoena on his or her own initiative without the request of the driver. Such subpoena forms may be submitted ex parte to the division for issuance and shall be submitted as an original form with one copy.

(a) If a driver requests a subpoena/subpoena duces tecum, the driver shall submit a typed HSMV Form ~~78066~~ 72066 containing the name and address of the witness whose attendance is requested, the time and place at which the witness is to appear, and the driver's name and address;

(b) If a subpoena duces tecum is requested, the driver shall also describe with particularity and specificity any material to be produced and the relevancy of such material. Materials requested pursuant to a subpoena duces tecum are limited to a time period not to exceed three months prior to the date of suspension ~~arrested~~.

(c) through (7) No change.

Specific Authority 322.2615(12), 322.2616(13), 322.02(4), 322.64(12) FS. Law Implemented 322.2615, 322.2616, 322.64 FS. History--New 10-1-90, Amended 10-7-91, 1-2-96, 7-3-97, _____.

15A-6.013 Formal Review; Introduction of Evidence; Order.

(1) No change.

(a) through (b) No change.

(2) The hearing officer ~~may shall~~ consider any report or photocopies of such report submitted by a law enforcement officer, correctional officer or law enforcement or correctional agency relating to the suspension ~~arrest~~ of the driver, the administration or analysis of a breath or blood test, the maintenance of a breath testing instrument, or a refusal to submit to a breath, blood, or urine test, which has been filed prior to or at the review. Any such reports submitted to the hearing officer ~~Such reports, which~~ shall be in the record for consideration by the hearing officer. ~~include:~~

~~(a) The uniform traffic citation or notice of suspension issued to the driver;~~

~~(b) An affidavit stating the officer's grounds for belief that the person arrested was in violation of Section 316.193;~~

~~(c) An affidavit of any breath, urine or blood test refusal, submitted by a law enforcement officer;~~

~~(d) The results of any breath or blood test documenting the driver's alcohol level;~~

~~(e) The officer's alcohol influence report or a description of the field sobriety test;~~

~~(f) Any video or audio tape of the driver incidental to the arrest, including any field sobriety test performed or attempted to be performed by the driver;~~

~~(g) Notice of Commercial Driver's License/Privilege Disqualification, HSMV Form 72005;~~

~~(h) Certification of Blood Withdrawal, FDLE/ICP Form 11;~~

~~(i) Breath Test Result Affidavit, FDLE/ICP Form 14;~~

~~(j) Blood Test Result Affidavit, FDLE/ICP Form 15; or~~

~~(k) Agency Inspection Checklist, FDLE/ICP Form 24.~~

No extrinsic evidence of authenticity as a condition precedent to admissibility is required.

(3) through (10) No change.

(11) The hearing officer is authorized to enter a final order. The hearing officer shall file the original order, HSMV Form 78060 ~~72060~~, with the clerk and the division shall transmit a copy of the order to the driver no later than seven (7) working days from the close of the hearing, unless waived by the driver.

(12) No change.

Specific Authority 322.2615(12), 322.2616(13), 322.02(4), 322.64(12) FS. Law Implemented 322.2615, 322.2616, 322.64 FS. History--New 10-1-90, Amended 10-17-90, 10-7-91, 1-12-94, 1-2-96, 7-3-97, _____.

15A-6.014 Preservation of Testimony.

(1) The division shall provide for the ~~tape~~ recording of all testimony. The Department shall retain the recording of tape ~~on which the proceedings were recorded~~ and the case files for a period of 60 days following the issuance of the final order by the hearing officer. In the event a driver appeals a final order as provided in Rule 15A-6.019, F.A.C., the Department shall retain the recording tape of the proceedings in the case files until the conclusion of such appeal. The driver or his representative may obtain a copy of the recording tape during such retention period upon written request accompanied by the appropriate medium ~~a blank cassette tape or tapes~~ sufficient in length to record the hearing.

(2) No change.

Specific Authority 322.2615(12), 322.02(4), 322.64(12) FS. Law Implemented 322.2615, 322.64 FS. History--New 10-1-90, Amended 10-7-91, _____.

15A-6.015 Failure to Appear.

(1) If the driver fails to appear at a scheduled hearing, the formal review shall be waived. The division shall inform the driver of his failure to appear by HSMV Form 78064 ~~72064~~, and shall include a final order.

(2) The driver, or a properly subpoenaed witness who fails to appear at a scheduled hearing may submit to the hearing officer a written statement showing just cause for such failure to appear within (2) two days of the hearing.

(a) For the purpose of this rule, just cause shall mean extraordinary circumstances beyond the control of the driver, the driver's attorney, or the witness which prevent that person from attending the hearing.

(b) If just cause is shown, the hearing shall be continued and notice given

(c) No hearing shall be continued for a second failure to appear.

(d) Notification to the department of a witness's non-appearance with just cause prior to the start of a scheduled formal review shall not be deemed a failure to appear.

(3) No change.

Specific Authority 322.2615(12), 322.2616(13), 322.02(4), 322.64(12) FS. Law Implemented 322.2615, 322.2616, 322.64 FS. History--New 10-1-90, Amended 10-7-91, 2-21-93, 1-12-94, 1-2-96, 7-3-97, _____.

15A-6.018 Informal Review.

(1) through (2) No change.

(3) The hearing officer is authorized to enter a final order. The hearing officer shall file the original order, HSMV Form 78060 ~~72060~~, with the clerk and transmit a copy to the driver no later than seven working days after completion of the review, unless waived by the driver.

(4) The date of rendition of a final order shall be the date of mailing entered on the driver license record.

Specific Authority 322.2615(12), 322.2616(13), 322.02(4), 322.64(12) FS. Law Implemented 322.2615(13), 322.2616, 322.64(13) FS. History—New 10-1-90, Amended 10-17-90, 10-7-91, 1-2-96, 7-3-97, _____.

15A-6.019 Judicial Review.

A driver may appeal a final order entered by the division by a petition for writ of certiorari filed with the circuit court pursuant to Sections 322.2615(13), 322.2616(14) or 322.64(13) and 322.31, F.S. A law enforcement agency may appeal any decision of the department invalidating a suspension by a petition for writ of certiorari to the circuit court in the county wherein a formal or informal review was conducted pursuant to Section 322.2615(13), F.S. Review by petition for writ of certiorari shall not stay the suspension or disqualification or provide for a de novo appeal.

Specific Authority 322.2615(12), 322.2616(13), 322.02(4), 322.64(12) FS. Law Implemented 322.2615(13), 322.2616, 322.64(13) FS. History—New 10-1-90, Amended 10-7-91, 7-3-97, _____.

15A-6.020 Forms.

The forms identified by this rule are listed below by number, title and effective date. Each form is incorporated by reference. Copies may be obtained by contacting the nearest office of the Division of Driver's Licenses, Bureau of Administrative Reviews ~~Bureau of Driver Improvement~~.

~~(1)~~ Florida DUI Uniform Traffic Citation HSMV Form 75903, and notice of suspension (effective 10-01-90, revised 10/91, ~~10/93~~),

~~(1)(2)~~ Florida DUI Uniform Traffic Citation HSMV Form 75904, and notice of suspension (effective 10-01-90, revised 10/91, 10/93, 10/06),

~~(2)(3)~~ Application for Formal Review or Informal Review of Driver License Suspension/Disqualification HSMV Form 78065 ~~72065~~, (effective 10-01-90, revised 07-01-91, 03/93, 10-06),

~~(3)(4)~~ Notice of Formal Review Hearing/Prehearing Order HSMV Form 78059 ~~72059~~, (effective 10-01-90, 06/93, revised 01/94, 10/06),

~~(4)(5)~~ Driver's Prehearing Statement HSMV Form 78061 ~~72061~~, (effective 10-01-90, 10/06),

~~(5)(6)~~ Subpoena/Subpoena Duces Tecum HSMV Form 78066 ~~72066~~, (effective 10-01-90, revised 07-01-91, 10/06),

~~(6)(7)~~ Affidavit of Refusal to Submit to Breath, Urine or Blood Test HSMV Form 78054 ~~72054~~, (revised 10-01-90, 07-01-91, 07/93, 03/03),

~~(7)(8)~~ Order – Results of Review Hearing HSMV Form 78060 ~~72060~~ (A), (B), (C) and (D), (effective 10-01-90, revised 08/92, 01/94, 10-06),

~~(8)(9)~~ Failure to Appear Notice HSMV Form 78064 ~~72064~~, (effective 10-01-90, 10-01-06),

~~(9)(10)~~ Notice of License Suspension/Disqualification HSMV Form 78031 ~~72031~~, (effective 10-01-90, revised 07-01-91, 01/94, 10/06),

~~(10)~~(11) Notice of Suspension HSMV Form ~~78103~~ ~~72103~~, (effective 09-01-96, revised 09/05),

~~(11)~~(12) Notice of Commercial Driver's License/Privilege Disqualification HSMV Form ~~78005~~ ~~72005~~, (effective 04-91, revised 10/97).

~~(13) Order of License Suspension/Disqualification HSMV Form 72008 (effective 07-01-91).~~

~~(14) Certification of Blood Withdrawal, FDLE/ICP Form 11, (October, 1993).~~

~~(15) Breath Test Result Affidavit, FDLE/ICP Form 14, (October, 1993).~~

~~(16) Blood Test Result Affidavit, FDLE/ICP Form 15, (October, 1993).~~

~~(17) Agency Inspection Checklist, FDLE/ICP Form 24, (October, 1993).~~

~~(18) Department Inspection Checklist, FDLE/ICP Form 25, (October, 1993).~~

Specific Authority 322.2615(12), 322.2616(13), 322.02(4), 322.64(12) FS. Law Implemented 322.2615, 322.2616, 322.64 FS. History--New 10-1-90, Amended 10-17-90, 10-7-91, 7-6-92, 1-12-94, 7-3-97,_____.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:

Danny C. Watford, Bureau Chief, Department of Highway Safety and Motor Vehicles, Division of Driver Licenses, Bureau of Administrative Reviews 2900 Apalachee Parkway, C305, MS 81, Tallahassee Florida 32399-0561

NAME OF SUPERVISOR OR PERSON WHO APPROVED PROPOSED RULE:

Peter Stoumbelis, Manager, Program Operations, Department of Highway Safety and Motor Vehicles, Division of Driver Licenses, 2900 Apalachee Parkway, Tallahassee, Florida 32399-0561

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: September 29, 2006.

DATE NOTICE OF PROPOSED RULE AMENDMENT PUBLISHED IN FAW: October 27, 2006.

CHAPTER 15A-6

STATEMENTS OF FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The purpose of the proposed rule action is to amend the current rule to reflect the 2006 revision to section 322.2615 Florida Statute, Suspension of license; right to review. This rule chapter sets forth the standards for proceedings relating to the review of a suspension or disqualification of a person's driving privilege pursuant to sections 322.2615, 322.2616, or 322.64, F.S. Currently a law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of a person who has been arrested by a law enforcement officer for a violation of Section 316.193, F.S., relating to unlawful blood-alcohol level or breath-alcohol level, or of a person who has refused to submit to a breath, urine, or blood test authorized by Section 316.1932, F.S. The changes reflected in the 2006 revision to section 322.2165, Florida Statute, provide for further separation of the suspension of the driving privilege and the criminal charge for a violation of Section 316.193, F.S., Driving Under the Influence (DUI). These changes make the suspension purely an administrative function pursuant to Section 322.2615 F.S. The lawful arrest for the criminal charge for DUI is no longer an issue to be considered at a review hearing conducted pursuant to Section 322.2615 F.S.

The changes allows for the crash report to be submitted into evidence for the hearing officer consideration when making their decision and hearing officers are only authorized to issue subpoenas to officers and witnesses identified in particular documents submitted pursuant to Section 322.2615(2) F.S. In addition a law enforcement agency may appeal any decision of the department invalidating a suspension by a petition for writ of certiorari.

FEDERAL COMPARISON STATEMENT

A federal rule on the same subject as that covered by the proposed amendments to this rule does not exist.

SUMMARY OF RULE

The changes reflected in the 2006 revision to section 322.2165, Florida Statute, provide for further separation of the suspension of the driving privilege and the criminal charge for a violation of Section 316.193, F.S., Driving Under the Influence (DUI). The lawful arrest for the criminal charge for DUI is no longer an issue to be considered at a review hearing conducted pursuant to Section 322.2615 F.S. The changes allows for the crash report to be submitted into evidence for the hearing officer consideration when making their decision and hearing officers are only authorized to issue subpoenas to officers and witnesses identified in particular documents submitted pursuant to Section 322.2615(2) F.S. In addition a law enforcement agency may appeal any decision of the department invalidating a suspension by a petition for writ of certiorari

SUMMARY OF HEARING

The proposed rule development was noticed in the September 29, 2006, Florida Administrative Weekly, Volume 32, Number 39. The proposed rule amendment was noticed in the October 27, 2006, Florida Administrative Weekly, Volume 32, Number 43. No request for a workshop was received by the agency. A Notice of Public Hearing advertising the January 30, 2007, Governor and Cabinet Meeting was noticed in the January 5, 2007, Florida Administrative Weekly, Volume 33, Number 01. A second Notice of Public Hearing advertising the January 30, 2007, Governor and Cabinet Meeting was noticed in the January 18, 2007, Florida Administrative Weekly, Volume 33, Number 03.