

**THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**



**RULES OF PROCEDURE FOR  
ADMINISTRATIVE LICENSE  
SUSPENSION HEARINGS  
TITLE 1, PART 7  
CHAPTER 159  
(Effective January 20, 2009)**

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**TITLE 1. ADMINISTRATION**  
**PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**CHAPTER 159. RULES OF PROCEDURE FOR ADMINISTRATIVE LICENSE**  
**SUSPENSION HEARINGS**

**SUBCHAPTER A. GENERAL**

**§159.1. Scope.**

(a) This chapter applies to contested hearings before SOAH concerning administrative suspension, denial, or disqualification of drivers' licenses under the Administrative License Revocation (ALR) Program governed by Texas Transportation Code, Chapters 522, 524, and 724.

(b) These regulations shall be construed to ensure the fair and expeditious determination of every action.

(c) These rules shall supplement the procedures required by law, but to the extent they conflict with Texas Government Code, Chapter 2001, the provisions of this chapter shall prevail.

**§159.3. Definitions.**

In this chapter, the following terms have the meaning indicated:

(1) Adult--An individual twenty-one years of age or older.

(2) ALR suspension--An administrative driver's license disqualification, suspension, or denial under the ALR Program which is the subject of this chapter.

(3) Alcohol concentration--Defined in Texas Penal Code §49.01.

(4) Alcohol-related or drug-related enforcement contact--Defined in Texas Transportation Code §524.001.

(5) Certified breath test technical supervisor--A person who has been certified by DPS to maintain and direct the operation of a breath test instrument used to analyze breath specimens of persons suspected of driving while intoxicated.

(6) Contested case--A proceeding brought under Texas Transportation Code, Chapter 522, Subchapter I; Chapter 524, Subchapter D; or Chapter 724, Subchapter D.

(7) Defendant--One who holds a license as defined in Texas Transportation Code, Chapter 521, or an unlicensed driver, whose legal rights, duties, statutory entitlement, or privileges may be affected by the outcome of a contested case under this chapter.

(8) Denial--The non-issuance of a license or permit, and loss of the privilege to obtain a license or permit.

(9) DPS--The Texas Department of Public Safety.

- (10) Driver--A person who drives or is in actual physical control of a motor vehicle.
- (11) Final decision--The decision issued by a judge who hears the contested case or another judge who reviewed the record in its entirety and who is authorized under appropriate law to issue final decisions in an ALR case.
- (12) Intoxicated--Defined in Texas Penal Code §49.01(2).
- (13) Minor--An individual under twenty-one years of age.
- (14) Operate--To drive or be in actual physical control of a motor vehicle.
- (15) Peace officer--A person elected, employed, or appointed as a peace officer under Texas Criminal Procedure Code §2.12 or other law. A peace officer may also be referred to as an arresting officer.
- (16) Public place--Defined in Texas Penal Code, Chapter 1, and Texas Transportation Code, Chapter 524.
- (17) Test--The taking of blood or breath specimens as set out in Texas Transportation Code, Chapters 522, 524 and 724.
- (18) The following terms are defined in 1 Texas Administrative Code §155.5 (relating to Definitions): Administrative Law Judge or judge; APA; authorized representative; Chief Judge; law; party; person; and SOAH.

#### **§159.5. Computation of Time.**

In computing time periods prescribed by this chapter or by a judge's order, the day of the act, event, or default on which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, a Sunday, an official state holiday, or another day on which SOAH is closed, in which case the time period will be deemed to end on the next day that SOAH is open. When these rules specify a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days, unless otherwise provided in this chapter or a judge's order. However, if the period within which to act is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted, unless this chapter or a judge's order otherwise specifically provides.

#### **§159.7. Other SOAH Rules of Procedure.**

Other SOAH rules of procedure found at Chapters 155 of this title (relating to Rules of Procedure), 157 of this title (relating to Temporary Administrative Law Judges) and 161 of this title (relating to Requests for Records) may apply in contested cases under this chapter unless there are specific applicable procedures set out in this chapter. The rules that specifically apply include:

- (1) Subchapter D, §155.151 of this title (relating to Assignment of Judges to Cases);
- (2) Subchapter D, §155.153 of this title (relating to Powers and Duties);

- (3) Subchapter E, §155.201 of this title (relating to Representation of Parties);
- (4) Subchapter I, §155.417 of this title (relating to Stipulations);
- (5) Subchapter I, §155.425 of this title (relating to Procedure at Hearing);
- (6) Subchapter I, §155.431 of this title (relating to Conduct and Decorum);
- (7) §157.1 of this title (relating to Temporary Administrative Law Judges); and
- (8) §161.1 of this title (relating to Charges for Copies of Public Information).

## **SUBCHAPTER B. REPRESENTATION**

### **§159.51. Withdrawal of Counsel.**

- (a) An attorney may seek to withdraw from representing a defendant only upon written motion for good cause shown. If another attorney is to be substituted as attorney for the defendant, the motion shall state the substituted attorney's name, address, telephone number, and telecopier number and state that the attorney approves the substitution.
- (b) If the defendant has no substitute attorney, the withdrawing attorney must include the defendant's last known address and a statement indicating whether the defendant consents to the withdrawal. If defendant does not consent to the withdrawal, the attorney also must affirm that the defendant has been informed of the right to object to the motion.
- (c) If the motion to withdraw is granted, the withdrawing attorney shall immediately notify the defendant in writing of any additional settings or deadlines of which the attorney has knowledge at the time of the withdrawal and about which the attorney has not already notified the defendant.

## **SUBCHAPTER C. WITNESSES AND SUBPOENAS.**

### **§159.101. Breath Test Operator and Technical Supervisor.**

(a) Upon receipt of a timely request for the appearance of the certified breath test operator who administered the test and obtained the defendant's specimen to determine the level of alcohol concentration in the defendant's body and/or the certified breath test technical supervisor, DPS shall ensure that the requested individuals appear at the hearing. If the requested witness does not appear without good cause, the results of the test will not be admitted into evidence. If good cause is established for the witness's failure to appear, DPS will be entitled to a continuance.

(b) Requests for witnesses under this section are limited to cases under Texas Transportation Code §522.081(b)(4) and §522.081(d)(3)(C) and Chapter 524.

### **§159.103. Subpoenas.**

(a) Scope.

(1) A subpoena may command a person to give testimony for an ALR hearing and/or produce designated documents or tangible things in the actual possession of that person.

(2) The party who causes a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served.

(3) If a party that requests or issues a subpoena fails to timely appear at the hearing, any subpoenaed witnesses will be released.

(b) Attorney-issued subpoenas. An attorney who is authorized to practice law in the State of Texas may issue up to two subpoenas for witnesses to appear at a hearing. One subpoena may be issued to compel the presence of the peace officer who was primarily responsible for the defendant's stop or initial detention and the other may be issued to compel the presence of the peace officer who was primarily responsible for finding probable cause to arrest the defendant. If the same officer was primarily responsible for both the defendant's stop and arrest, the attorney may issue only one subpoena.

(c) Subpoena request filed with judge. No later than ten days prior to the hearing, a party may file a subpoena request with SOAH that demonstrates good cause to compel a witness's appearance in person or by telephone or video conference, when:

(1) a party intends to call more than two peace officers to testify as witnesses;

(2) a party seeks to compel the presence of witnesses who are not peace officers; or

(3) a defendant, who is not represented by an attorney, seeks to compel the presence of witnesses.

(d) Subpoena form. A subpoena must be issued on the form provided at [www.soah.state.tx.us](http://www.soah.state.tx.us).

(e) Judge's discretion. The decision to issue a subpoena, as described in subsection (c) of this section, shall be in the sound discretion of the judge assigned to the case. The judge shall refuse to issue a subpoena if:

- (1) the testimony or documentary evidence is immaterial, irrelevant, or would be unduly repetitious; or
- (2) good cause has not been demonstrated.

(f) Service upon witness.

- (1) The party who issues or is granted a subpoena shall be responsible for having the subpoena served in accordance with Texas Rule of Civil Procedure 176.5, or by accepted alternative methods established by a peace officer's law enforcement agency.
- (2) A subpoena must be served at least five calendar days before the hearing.
- (3) After a subpoena issued by an attorney or judge is served upon a witness, a witness fee check or money order in the amount of \$10 and the return of service of the subpoena must be filed at SOAH at least three calendar days prior to the hearing. In addition, if the witness will be traveling more than 25 miles round-trip to the hearing from the witness's office or residence, mileage reimbursement must also be filed with SOAH at the same time. The amount of mileage reimbursement will be that listed in the state mileage guide at <http://ecpa.cpa.state.tx.us/mileage/Mileage.jsp>.
- (4) If special equipment will be required in order to offer subpoenaed documents or tangible things, the party seeking their admission shall be required to supply the necessary equipment. The party requesting a subpoena duces tecum may be required to advance the reasonable costs of reproducing the documents or tangible things requested.

(g) Service upon opposing party.

- (1) A party that issues a subpoena under subsection (b) of this section must serve the opposing party with a copy of the subpoena on the same date it is issued.
- (2) A party that requests a subpoena under subsection (c) of this section must serve the opposing party with a copy of the request at the time it is filed with SOAH.
- (3) A party that serves a subpoena must provide the opposing party with a copy of the return of service when the subpoena has been served and not later than three calendar days prior to the hearing.

(h) Continuing effect. A properly issued subpoena remains in effect until the judge releases the witness or grants a motion to quash or for protective order. If a hearing is rescheduled and a subpoena is extended, and unless the judge specifically directs otherwise, the party who requested the continuance shall promptly notify any subpoenaed witnesses of the new hearing date.

(i) Motion to quash or for protective order.



(1) On behalf of a subpoenaed witness, a party may move to quash a subpoena or for a protective order. A party that moves to quash a subpoena must serve the motion on the other party at the time the motion is filed with SOAH.

(2) A party may seek an order from the judge at any time after the motion to quash or motion for protective order has been filed.

(3) In ruling on motions to quash or for protection, the judge must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The judge also may impose reasonable conditions on compliance with a subpoena.

(4) If a subpoena request is denied or if a subpoena is quashed, any witness fee or mileage reimbursement fee that has been tendered to a witness or filed with SOAH shall be returned to the party who tendered the fees.

## **SUBCHAPTER D. DISCOVERY**

### **§159.151. Prehearing Discovery.**

The scope of prehearing discovery in these proceedings is as follows:

(1) A defendant shall be allowed to review, inspect and obtain copies of any non-privileged documents or records in DPS's ALR file or in the possession of DPS's ALR Division. All requests for discovery must be in writing and shall be served upon DPS as prescribed in 37 TAC §17.16 (relating to Service on the Department of Certain Items Required to be Served on, Mailed to, or Filed with the Department). The request for discovery may not be filed with DPS sooner than the date of the request for hearing and may not be filed sooner than five days from the date of the notice of suspension. Upon a showing of harm by the defendant, and upon a showing of a proper request for discovery, no document in the ALR Division's actual possession will be admissible unless it was provided to the defendant within five business days of the receipt of the request for production. If the ALR Division does not have any or all the documents in its actual possession, it shall respond within five business days of defendant's request, setting out that it does not have the documents in its actual possession. DPS has a duty to supplement all its discovery responses within five business days from the time DPS's ALR Division receives possession of the discoverable documents. If a document is received by the defendant fewer than ten calendar days prior to the scheduled hearing, the judge shall grant a continuance on the request of a party. The judge may grant only one continuance for DPS's production of documents fewer than ten calendar days prior to the scheduled hearing.

(2) If a request for inspection, maintenance and/or repair records for the instrument used to test the defendant's specimen is made by the defendant, and those records are in the actual possession of DPS, DPS shall supply such records to the defendant within five days of receipt of the request, provided however, that the records to be provided shall be for the period covering 30 days prior to the test date and 30 days following the test date. If DPS fails to provide the properly requested records after the defendant has paid reasonable copying charges for the records, evidence of the breath specimen shall not be admitted into evidence.

(3) Depositions, interrogatories, and requests for admission shall not be permitted in ALR proceedings.

(4) Notwithstanding paragraph (1) of this section, if a party believes evidence from a third party is relevant and probative to the case, the party may request issuance of a subpoena duces tecum pursuant to §159.103 of this title (relating to Subpoenas) to have the evidence produced at the hearing. If a person subpoenaed under this section does not appear, the judge may grant a continuance to allow for enforcement of the subpoena.

(5) Notwithstanding anything to the contrary contained in this section, DPS has the right to request non-privileged documents from the defendant. Except in cases where sanctions may be sought for abuse of discovery under §155.157 of this title (relating to Sanctioning Authority), all requests from DPS shall be made under the provisions of this section.

## **SUBCHAPTER E. HEARING AND PREHEARING**

### **§159.201. Scheduling and Notice of Hearing.**

- (a) On receipt of a timely request for hearing, DPS shall schedule a hearing to be conducted by a SOAH judge.
- (b) The location of the hearing will be set in accordance with the requirements of Texas Transportation Code §524.034 and §724.041. SOAH or DPS may change the hearing site upon agreement of all parties.
- (c) Once DPS issues the notice of hearing scheduling the hearing by telephone or videoconference, the hearing may be removed from that docket only upon timely request pursuant to §159.207 of this title (relating to Continuances) or by agreement of the parties and with the ALJ's consent.
- (d) It is a rebuttable presumption that DPS mailed the notice of the hearing to the defendant on the same date as the date listed in the notice.

### **§159.203. Waiver or Dismissal of Hearing.**

- (a) Waiver of Request for Hearing. The defendant may waive the request for hearing at any time before the administrative order is final. If the defendant requests a waiver after the notice of hearing is issued, the judge will enter an order accepting the waiver.
- (b) Rescission of Notice of Suspension. If, after issuing a notice of hearing, DPS rescinds a notice of suspension, it shall immediately inform SOAH and the defendant of the rescission. A judge may, on his or her own motion, dismiss the case from its docket once the notice of suspension has been rescinded.

### **§159.205. General Request for Relief.**

After a hearing has been scheduled before SOAH, any party making a request that requires an interim order must file a motion that describes the relief requested. The motion must contain a certificate of service and a certificate of conference stating whether the opposing party has agreed to the request. Motions must be filed no later than five days before the hearing date, but for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at a hearing.

### **§159.207. Continuances.**

- (a) A request for continuance will be considered in accordance with the provisions of Texas Transportation Code §524.032(b) and (c) (relating to rescheduling a hearing upon a defendant's request), §524.039 (relating to appearance of technicians), and Texas Transportation Code §724.041(g). DPS shall immediately notify SOAH of a continuance request under Texas Transportation Code §524.032(b).
- (b) A judge may grant a continuance if a subpoenaed witness is unavailable for the hearing.

(c) The granting of continuances shall be in the sound discretion of the judge, provided however, that the judge shall expedite the hearings whenever possible. A party requesting a continuance shall supply three dates on which the parties will be available for rescheduling of the hearing. The judge will consider these dates in resetting the case. Failure to include a certificate of service, a certificate of conference, and three alternative dates may result in denial of the continuance request or subsequent continuance requests in the same case.

(d) With the exception of a hearing that is rescheduled in accordance with Texas Transportation Code §524.032(b), no party is excused from appearing at a hearing until notified by SOAH that a motion for continuance has been granted.

#### **§159.209. Participation by Telephone or Videoconference.**

(a) Consent of the parties. The judge may, with consent of the parties and if SOAH has been notified of a telephone or videoconference hearing request at least 14 days prior to the hearing date, conduct all or part of the hearing on the merits by telephone or videoconference if each participant in the hearing has an opportunity to participate in and hear the entire proceeding. The judge may conduct all or part of a hearing on preliminary matters by telephone or videoconference, on the judge's own motion, if each participant has an opportunity to participate in and hear the entire proceeding.

(b) Before a witness is allowed to give testimony by telephone, the judge will confirm that the witness is the person he or she has been represented to be.

(c) Procedural Rights and Duties. All substantive and procedural rights and duties apply to telephone or videoconference hearings, subject only to the limitations of the physical arrangement. The parties shall notify SOAH of their telephone or videoconference numbers for the purpose of their appearances at the hearing. The parties shall contact their respective witnesses to assure their availability at the hearing.

(d) Documentary evidence. To be offered in a telephone or videoconference hearing, copies of exhibits should be marked and must be filed with SOAH and all parties no later than two business days prior to the scheduled hearing, unless otherwise agreed by the parties. If a witness, in preparation for or during testimony, reviews any document that has not been prefiled and the opposing party requests an opportunity to review the document, the judge may go off the record and allow the witness to read the document to the opposing party.

(e) Default. For a telephone or videoconference hearing, the following may be considered a failure to appear and grounds for default, if the conditions exist for more than ten minutes after the scheduled time for hearing:

(1) failure to answer the telephone or videoconference line;

(2) failure to free the line for the proceeding; or

(3) failure to be ready to proceed with the hearing or a prehearing or post-hearing conference, as scheduled.

## **§159.211. Hearings.**

### **(a) Procedures.**

(1) Hearings shall be conducted in accordance with the APA, Texas Government Code, Chapter 2001, when applicable, and with this chapter, provided that if there is a conflict between the APA and this chapter, this chapter shall govern. If a conflict exists between this chapter and the Texas Transportation Code, Chapters 522, 524, or 724, and these rules cannot be harmonized with those chapters, the applicable Texas Transportation Code provision controls.

(2) Once the hearing has begun, the parties may be off the record only when the judge permits. If a discussion off the record is pertinent, the judge will summarize it for the record.

(3) In the interest of justice and efficiency, the judge may question witnesses.

(4) The judge shall exclude testimony or any evidence which is irrelevant, immaterial, or unduly repetitious.

(b) Evidence. Pursuant to Texas Government Code §2001.081, the rules of evidence as applied in a non-jury civil case in a district court of this state shall apply in ALR proceedings.

### **(c) Witnesses and affidavits.**

(1) All witnesses shall testify under oath.

(2) An officer's sworn report of relevant information shall be admissible as a public record. However, the defendant shall have the right to subpoena the officer in accordance with §159.103 of this title (relating to Subpoenas). If the defendant timely subpoenas an officer and the officer fails to appear without good cause, information obtained from that officer shall not be admissible. In the alternative, if the party who requested the subpoena wants to seek enforcement of the subpoena, the judge may grant the party a continuance.

(3) The judge, on his or her own motion or on request of a party and with the consent of all parties, may allow the testimony of any witness to be taken by telephone or videoconference, provided that all parties have the opportunity to participate in and hear the proceeding. All substantive and procedural rights apply to the telephone or videoconference appearance of a witness, subject to the limitations of the physical arrangement as described in §159.209(b) of this title (relating to Participation by Telephone or Videoconference).

### **(d) Record of hearing.**

(1) The judge shall make an accurate and complete recording of the oral proceedings of the hearing.

(2) SOAH will maintain a case file that includes the recording, pleadings, evidence, and the judge's decision.

(3) SOAH will maintain case files in accordance with the terms of its records retention schedule.

(e) Interpreters. When an interpreter will be needed for all or part of a proceeding, a party shall file a written request at least seven days before the hearing. SOAH shall provide and pay for:

(1) an interpreter for deaf or hearing impaired parties and subpoenaed witnesses in accordance with §2001.055 of the APA;

(2) reader services or other communication services for blind and sight-impaired parties and witnesses; and

(3) a certified language interpreter for parties and witnesses who need that service.

(f) If the defendant fails to make a timely request, the judge may provide an interpreter or may continue the hearing to secure an interpreter.

**§159.213. Failure to Attend Hearing and Default.**

(a) Upon proof by DPS that notice of the hearing on the merits was mailed to defendant's or defense counsel's last known address, if defendant has legal representation, and that notwithstanding such notice, defendant failed to appear, defendant's right to a hearing on the merits is waived. A rebuttable presumption that proper notice was given to the defendant may be established by the introduction of a notice of hearing dated not earlier than eleven days prior to the hearing date and addressed to defendant's or defense counsel's last known address, as reflected on defendant's notice of suspension, request for hearing, driving record or similar documentation presented by DPS. Under those circumstances, the judge will proceed in defendant's absence and enter a default order.

(b) Within ten business days of the default, the defendant may file a written motion with SOAH and DPS requesting that the default order be vacated because the defendant had good cause for failing to appear. In the motion, the defendant must state whether DPS opposes the motion, and if DPS does oppose the motion, list dates and times for a hearing on the motion that are agreeable to both parties. Whether or not DPS opposes the motion, the judge may rule on the motion without setting a hearing or may set a hearing to consider the motion. A hearing on a motion to vacate a default order may be held by telephone conference call. If the judge finds good cause for the defendant's failure to appear, the judge shall vacate the default order and reset the case for a hearing.

## **SUBCHAPTER F. DISPOSITION OF CASE**

### **§159.251. Hearing Disposition.**

(a) If the judge finds that DPS proved the requisite facts as specified in Texas Transportation Code §522.105, §524.035, or §724.042 by a preponderance of the evidence, the judge shall grant DPS's petition.

(b) If the judge finds that DPS did not prove all of the requisite facts by a preponderance of the evidence, the judge shall deny DPS's petition, and DPS shall not be authorized to suspend or deny the defendant's license or disqualify the defendant from receiving a license for the conduct at issue.

### **§159.253. Decision of the Judge.**

(a) Upon conclusion of the hearing, the judge shall issue a written decision that includes findings of fact and conclusions of law.

(b) The decision of the judge is final and appealable. No party shall file a motion for rehearing with SOAH.

### **§159.255. Appeal of Judge's Decision.**

(a) The record on appeal shall consist of the following:

- (1) the first file-marked or stamped copy of all parties' motions or other pleadings;
- (2) all written orders or decisions issued by the judge and any evidence of transmittal to the parties;
- (3) all exhibits admitted into evidence;
- (4) all exhibits not admitted into evidence but made a part of the record by a party as an offer of proof or bill of exceptions; and
- (5) a transcription of the proceedings electronically recorded by SOAH.

(b) A person who appeals a suspension may obtain a transcript of the administrative hearing by sending a written request to SOAH within ten days of filing the appeal and paying the applicable fees. The fees shall not exceed the actual cost of preparing or copying the transcript, and upon receipt of the fees, SOAH shall promptly furnish the reviewing court and both parties a certified copy of the record. The transcription of the electronic recording made by SOAH constitutes the official record for appellate purposes. For three years after notice of an appeal is filed, SOAH will maintain the file and original recording of proceedings. A copy of the file and recording will be available for review by the parties or a reviewing court, if needed.

(c) If a case is remanded for taking of additional evidence, the appellant must file with SOAH, within ten days of the signing of the reviewing court's remand order, a request for relief, including setting a hearing on remand. The request must include a copy of the remand order and an estimate of the time required to present the additional evidence, if a hearing is requested.

(d) A remand under this section does not stay the suspension of a driver's license.