

14 Day Review IRP Hearing Policy

Background:

Drivers may apply to the Superintendent of Motor Vehicles (the Superintendent) for a review of an Immediate Roadside Prohibition (IRP) within seven days of being served with a Notice of Driving Prohibition (IRP notice). Generally drivers apply for and schedule a review at ICBC Driver Licensing Offices throughout the province.

Under section 215.5(6) of the *Motor Vehicle Act* (the Act), the Superintendent has 21 days from the date the IRP notice was served to send out the review decision and reasons to the applicant. The Act also provides authority to the Superintendent to extend the 21 day timeline if the Superintendent is unable to send the decision to the applicant within the 21 day period. If the Superintendent extends the review decision timeline, the Superintendent may also stay the applicant's driving prohibition for the period of the extension.

Rationale:

This policy is intended to support both the purpose of the IRP legislation in providing swift and immediate sanctions for alcohol-affected driving as well as the procedural fairness of the IRP review process.

Since the inception of the IRP program in 2010, applicants have been allowed to select a range of review dates at any point up to the legislated 21 day timeline. This approach has led the Superintendent to extend a number of reviews, particularly those scheduled near the end of the 21 day timeline.

A policy that encourages applicants to schedule a review within 14 days of the date of the service of the IRP notice will support the Superintendent in meeting the 21 day timeline under the Act and as a result, will ensure that applicants receive a timely review decision.

This policy also ensures that applicants who are unable or unwilling to schedule a review within the 14 day period are aware of actions that the Superintendent may or may not take as a result; depending on the circumstances of each application.

Policy:

When an application for a review of an IRP is made, the policy outlined herein is to ask applicants to schedule a date and time for the review that is within 14 days of the date police served the driver with the IRP notice. The Superintendent will offer an applicant a minimum of 3 review slots during the 14 day timeframe.

If applicants are unable or unwilling to schedule the review within the 14 day period from the date the IRP notice was served by the police, they will be advised that the Superintendent may not be able to provide a decision to the applicants within the 21 day timeline.

In circumstances where the Superintendent is unable to provide a decision to the applicant within 21 days, the Act provides the Superintendent with the authority under s.215.5(8)(a) to extend the timeline for a decision, as well as the authority to decide whether to stay the applicant's driving prohibition for a period equal to the extension. The Superintendent's decision on whether to provide

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a stay is a discretionary one, which means that the Superintendent is not obligated to grant a stay each time that the Superintendent extends the time for making a decision. Rather in exercising this discretion the Superintendent must give proper and genuine consideration to the merits of each decision.

In general, in addition to the public safety interest, the principal factors that are considered by the Superintendent in determining whether a stay is warranted, are: the date the review hearing was scheduled for, the timing of disclosure and the amount of time that will be needed by the Superintendent to render a decision outside the 21 day timeframe.

In deciding whether to stay an applicant's driving prohibition, the Superintendent will consider the reason(s), if any, that the applicant provides for scheduling the review on a date and time after the 14 day period set out in this policy, and will balance the personal circumstances provided by the applicant against the person's driving record, including the history, if any, of alcohol affected driving. The reason(s) and/or personal circumstances must be beyond the reasonable control of the applicant.

Effective Date: November 21, 2016