

Reconsideration Hearing Guide

Introduction

This document provides an overview of the Commercial Vehicle Safety and Enforcement Branch's reconsideration hearing process. It is intended to assist you in understanding your rights and obligations in applying for a hearing and in making a reconsideration submission. The information in this document may be amended from time to time.

Right to Request Reconsideration

The Director (or delegate) may reconsider the decision to cancel a safety certificate, inspector authorization, or facility designation. Keep in mind that the right to request a reconsideration is not a right to an appeal or a chance to re-argue your case.

Reconsideration hearings are an opportunity for the decision-maker to review possible legal errors in the original decision or consider new relevant evidence. Because reconsiderations are not granted in all cases, your submission needs to demonstrate the grounds on which you are requesting a reconsideration.

If a reconsideration is granted by the Director, it will generally be heard by the original decision-maker (the "Adjudicator") and will normally be conducted on the basis of written submissions. If you believe that an oral hearing is necessary, you must apply in writing to the Director and state why you believe an oral hearing is warranted. Such an application must be accompanied by your request for reconsideration.

A request for reconsideration will not stay the action.

Application

A request for reconsideration must be:

- ★ in written form and state the grounds upon which the reconsideration is requested;
- ★ delivered to the Director within 10 business days of receiving the reasons for decision; and
- ★ accompanied by the prescribed \$200.00 fee.

A business day is any day other than a Saturday, a Sunday or a holiday (as defined in the *Interpretation Act*).

The fee will be refunded if the Director finds in your favour.

Grounds

A request for reconsideration must state the grounds for the request, which can include:

- ★ You have new and relevant evidence that was not available at the time of the original decision;
- ★ The Adjudicator made a legal error in deciding the case; or
- ★ There was a lack of administrative fairness.

Please note - the following are NOT considered grounds for reconsideration:

- ★ a proposal or action plan explaining how you intend to comply with regulatory requirements; and
- ★ additional arguments based on the original evidence.

New and Relevant Evidence

You are responsible for being fully prepared for the show cause hearing, including collecting and supplying all relevant evidence. On an application for reconsideration, you must be able to show that:

- ★ the evidence is new;
- ★ the evidence was not available or did not exist at the time of the original hearing. If the evidence did exist but was not presented, you must be able to prove that you did not know about it or could not have known about it; and
- ★ the evidence is relevant to the matter. "Relevant" means that evidence that relates to or has a bearing upon the carrier's road safety performance or the authorized inspector or facility's vehicle inspection performance, or evidence that may prove or disprove some evidence presented at the show cause hearing.

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Legal Errors

A legal error may have occurred if:

- ★ the Adjudicator misinterpreted evidence;
- ★ the Adjudicator did not consider relevant factors or relied on irrelevant factors when making his or her decision; or
- ★ the Adjudicator applied the law incorrectly.

Administrative Fairness

Examples of when a breach of administrative fairness may arise include:

- ★ there was a lack of adequate notice or disclosure;
- ★ a request for an adjournment or an oral hearing was unreasonably denied; or
- ★ there was bias or a reasonable apprehension of bias on the part of the Adjudicator, and the objection was raised at the show cause hearing.

Decision to Hold a Reconsideration Hearing

Whenever possible, the Director will issue a decision whether to proceed with a reconsideration hearing prior to the cancellation date.

The reconsideration might not proceed, or may be dismissed, if the request:

- ★ does not provide a complete description of the reason for reconsideration;
- ★ does not demonstrate the grounds for a reconsideration;
- ★ discloses no basis on which the decision can be set aside or amended;
- ★ is frivolous, vexatious, or trivial or was not initiated in good faith; or
- ★ is not pursued diligently.

You must ensure your submission is clear and complete. The Director will not contact you for clarification or additional information.

The Reconsideration Decision

If the reconsideration proceeds, the decision and all the other information that was submitted to request the reconsideration will be provided to the National Safety Code or Vehicle Inspection Program Office in order to respond to any new evidence before the reconsideration is completed.

The Adjudicator will advise you in writing of the outcome and provide the reasons for the decision.

If you are not satisfied with the reconsideration decision, you may apply to the Supreme Court of British Columbia for judicial review.

Contact Information

Mailing Address:

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Statement of Limitations: Information in this brochure is effective February 1, 2010. So that this information is easy to understand, the language is not the same as the legal and technical terminology of the applicable Acts or Regulations. Any contradiction, dispute or difference between the contents of this fact sheet and the legislation shall be resolved only by reference to the appropriate Acts or Regulations.