

§6210. Procedure for administrative assessment of penalty for pecuniary gain

The department in an adjudicatory proceeding may impose an administrative penalty for a violation of section 6575-K or section 6864, subsection 7-A equal to the pecuniary gain from that violation in accordance with this section. [PL 2013, c. 485, §1 (AMD).]

1. Definition. As used in this section, unless the context otherwise indicates, "pecuniary gain" means the amount of money or the value of property at the time a person violates section 6575-K or section 6864, subsection 7-A that the person derives from the violation. [PL 2013, c. 485, §1 (AMD).]

2. Initiation and notice. If the Chief of the Bureau of Marine Patrol delivers to the commissioner a written statement under oath that the chief has probable cause to suspect that a violation of section 6575-K or section 6864, subsection 7-A has been committed, the commissioner shall immediately examine the statement and determine whether to conduct an adjudicatory proceeding for the purpose of imposing an administrative penalty under this section. If the commissioner determines that the imposition of a penalty is necessary, the commissioner shall immediately notify the person who is alleged to have violated the law in accordance with Title 5, section 9052. The notice must state that the person may request a hearing in writing within 10 days of the notice. The notice is deemed received 3 days after the mailing. [PL 2015, c. 172, §2 (AMD).]

3. Hearing. If a hearing is requested pursuant to subsection 2, it must be held within 30 business days after receipt by the commissioner of the request for a hearing, except that a hearing may be held more than 30 business days after the request if the delay is requested by the person requesting the hearing and mutually agreed to in writing. The hearing must be held in accordance with the Maine Administrative Procedure Act, except that:

A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether the person requesting the hearing committed a violation of section 6575-K or section 6864, subsection 7-A; and [PL 2013, c. 485, §1 (AMD).]

B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under Title 5, section 9062 must be made not more than 10 business days after completion of the hearing. The presiding officer must be the commissioner or the commissioner's designee. [PL 2013, c. 468, §8 (NEW).]

Any decision to impose an administrative penalty under this section must be based on evidence in the record of the pecuniary gain, which may include evidence of the fair market value of any elvers illegally possessed by the person at the time the violation was committed. The penalty may be based on evidence of the amount of money or value of property the person received for elvers sold in violation of section 6575-K or section 6864, subsection 7-A. [PL 2013, c. 485, §1 (AMD).]

4. Appeal. A decision of the commissioner or the commissioner's designee to assess an administrative penalty for pecuniary gain pursuant to this section may be appealed to the Superior Court if the appeal is filed with the court within 30 days of the decision. [PL 2013, c. 468, §8 (NEW).]

5. Request for hearing on penalty amount; place of hearing. The license holder may request a hearing regarding the amount of the administrative penalty assessed under this section. A hearing must be requested in writing within 10 days from the receipt of the notice of the penalty. The hearing must be held within 10 days of the request unless a longer period of time is mutually agreed to by the commissioner or the commissioner's designee and the license holder who requests the hearing in writing. The hearing must be conducted in the Augusta area. [PL 2013, c. 468, §8 (NEW).]

6. Disposition of penalty. The commissioner shall deposit any payments for administrative penalties collected pursuant to this section into the Eel and Elver Management Fund established under section 6505-D.

[PL 2013, c. 468, §8 (NEW).]

7. Renewal of licenses. If a holder of a license issued under section 6302-A, 6505-A or 6864 fails to make payment of a pecuniary gain penalty assessed under this section, the commissioner may refuse to renew that holder's license until the holder complies with the payment requirements.

[PL 2015, c. 172, §3 (NEW).]

SECTION HISTORY

PL 2013, c. 468, §8 (NEW). PL 2013, c. 485, §1 (AMD). PL 2015, c. 172, §§2, 3 (AMD).

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