

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

1.04: Pleadings

(1) Initial Pleading.

- (a) Definition. An initial pleading, as used herein, shall refer to any paper or document by which an adjudicatory proceeding may be commenced. Such papers or documents shall include but not be limited to applications, petitions, complaints, protests, and appeals from decisions of the Director of the Transportation Oversight Division.
- (b) Content. Every initial pleading shall be on the form provided by the Department, and if no form is provided, the pleading, as far as possible, shall contain the following:
1. A title which indicates either the nature of the proceedings or the parties involved therein.
 2. The complete name and address of the party filing the pleading.
 3. If the party filing the pleading is represented by counsel, the name and address of the attorney.
 4. The name and address of all other petitioners.
 5. A clear and concise statement of the facts upon which the pleading is maintained.
 6. In the case of appellate proceedings, a clear and concise statement of the appellant's objections to the decision or action from which the appeal was taken.
 7. A reference to the statute under which relief is sought.
 8. A prayer setting forth the relief sought.
 9. As part of the initial petition pursuant to M.G.L. c. 164, § 9; or pursuant to M.G.L. c. 159, §§ 19, 20, the company shall file a copy of the proposed notice as set forth in 220 CMR 5.06 and a list of newspapers in which it proposes to publish such notice.
- (c) Application for Permission to Establish Rates on Less than Statutory Notice. Application for permission to establish rates on less than statutory notice shall have attached thereto, as an exhibit, a copy of the proposed tariff or schedule. When the tariff is to meet the existing rate of a competing common carrier, the petition shall state the name, address, and the particular rate or rates of the competing carrier to be met and shall be signed, under oath, by the carrier filing the application. A contract carrier shall not be deemed a competing carrier in the consideration of such applications.
- (d) Protest of a Tariff. Petitions addressed to the Department complaining of and seeking suspension on a tariff or objecting to a contract carrier contract shall be filed with the Department in triplicate at least ten days before the effective date of such tariff or contract and one copy of such petition shall simultaneously be served by the protestants upon the publishing company, freight forwarder or agent and, in case of contracts, on the contracting parties. In default of such filing and service no such application for suspension of rates or objection to contract

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shall be entertained. The particular tariff or contract protested shall be identified by its proper M.D.P.U. number or contract identification and attention directed to the items specifically objected to, together with the grounds in support of the protest.

- (2) Answer. Except where a different period is specified, an answer shall be filed within 14 days after service of the document to which the answer is directed.
- (3) Amendments to Pleadings. Leave to file amendments to any pleading will be allowed or denied as a matter of discretion. If amendment is made to an initial pleading, an answer to said amended pleading, if permitted, shall be filed within such time as may be directed by the Commission or the presiding officer.
- (4) Withdrawal of Pleadings.
 - (a) Prior to Commencement of Hearing. A party may withdraw an initial pleading filed with the Department at any time prior to the commencement of a hearing on such pleading. A notice of withdrawal of pleadings shall be served on the Department and each party in accordance with 220 CMR 1.05(1)
 - (b) After Commencement of Hearing. A party desiring to withdraw an initial pleading after the commencement of hearing on such pleading shall file a motion for withdrawal, in accordance with 220 CMR 1.04(5). If any person has an objection thereto, he shall within ten days after receipt of said motion, file a statement with the Department setting forth the reasons for his objection and serve a copy of same, in accordance with 220 CMR 1.05(1), on each person entitled thereto. Such an objecting person shall, if a party, have a hearing on the motion to withdraw if, at the time of filing, he so requests. In the absence of objections or a request for hearing, within 30 days after the filing thereof, the motion of withdrawal shall be deemed allowed, unless otherwise ordered.
- (5) Motions.
 - (a) General. An application to the Department to take any action or to enter any order after initial pleading or after commencement of an investigation by the Department shall be by motion which, unless made during a hearing, shall be made in writing, shall state specifically the grounds therefor, and shall set forth the action or order sought. A copy of all motions made in writing, or reduced to writing at the request of the Commission, shall be served upon all persons entitled thereto in accordance with 220 CMR 1.05(1).
 - (b) Delay of Adjudicatory Proceeding. Except as otherwise directed by the presiding officer or the Commission, the filing of a motion, either prior to or during any adjudicatory proceeding, and any action thereon shall not delay the conduct of such proceeding.
 - (c) Motion Prior to Hearing. A motion shall be in writing and may be filed prior to hearing by any party or by a person whose petition filed pursuant to 220 CMR 1.03(1) is pending. Any party may file a written answer to such motion no later than five days after such filing.
 - (d) Motions During Hearing. With the exception of motions to withdraw pleadings filed pursuant to 220 CMR 1.04(4) and petitions filed pursuant to 220 CMR 1.03(1), upon the

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making of a motion in the course of a hearing, replies thereto and argument thereon shall be permitted within the time and in the manner directed by the presiding officer.

- (e) Motion for Protection from Public Disclosure. Documents in the possession of the Department are presumed to be public records. To overcome this presumption and protect information from public disclosure, a party must file with the Department a written motion for a protective order. If no such motion is made at the time the record is filed with the Department, the Department may make the information available to the public without further notice.

The party moving for a protective order shall substantiate its motion, which shall be treated as a public record, with the following information:

1. the time period for which confidential treatment is desired;
2. the reason the record was provided to the Department, and the date of submittal;
3. a precise description of the information to be protected;
4. the reasons for the claim of confidentiality, including proof that an exemption to public disclosure applies;
5. proof of the harm of public disclosure;
6. the extent to which the record or its contents has been disclosed to other persons or to federal, state and local agencies, including the status of any requests for confidentiality; and
7. a certification to the best of the moving party's knowledge, information and belief, that the information is not customarily available in the public domain.

In conjunction with a motion for protection from public disclosure, one unredacted copy of the materials for which protection is sought must be filed directly with the Hearing Officer. The unredacted copy should be submitted in a sealed envelope, clearly marked with the words "CONFIDENTIAL" on the outside of the envelope as well as on each page of the materials. A redacted copy of the materials, marked "REDACTED," must also be filed for the public docket.