

520 CMR 16.00: ENFORCEMENT OF CIVIL FINES FOR EXPIRED ELEVATOR CERTIFICATES

Section

16.01: Purpose, Scope, and Definitions

16.02: Assessment of Fines for Operation of Elevator Beyond Certificate Expiration Date

16.03: Appeal for Administrative Review

16.01: Purpose, Scope, and Definitions

(1) Purpose and Scope. The purpose of 520 CMR 16.00 is to establish reasonable standards for the issuance of civil fines pursuant to M.G.L. c. 143, § 65 by authorized personnel of the Department for the operation of an elevator beyond its certificate expiration date.

(2) Definitions.

Board. The Board of Elevator Regulations.

Commissioner. The Commissioner of the Department of Public Safety.

Department. The Department of Public Safety.

Elevator. Moving stairways, dumbwaiters, moving walks, material lifts wheelchair lifts, automatic people movers, vertical reciprocating conveyors, orchestra lifts, car lifts, and other associated devices within the elevator industry recognized by the Board of Elevator Regulations (524 CMR), except inclined stair lifts located and installed in residential homes.

16.02: Assessment of Fines for Operation of Elevator Beyond Certificate Expiration Date

(1) 520 CMR 16.02 establishes the standards for the assessment of fines for operating an elevator after the expiration of its certificate in violation of M.G.L. c. 143, § 65.

(2) No elevator shall be operated without a valid inspection certificate issued by the Department. An elevator shall be deemed to be operating for the purposes of 520 CMR 16.00 unless it has been placed out of service or decommissioned in accordance with a procedure approved by the Board.

(3) The Department shall fine an owner or operator of an elevator for \$100 per day that an elevator is in operation without a valid certificate.

(4) Fines shall stop accruing on the date on which the Department receives a written request from the owner or operator for an inspection of the elevator by the Department, or on which the elevator has been placed out of service or decommissioned in accordance with a procedure approved by the Board, whichever comes first.

(5) Upon application for an annual inspection, the owner or operator shall provide to the Department a current mailing address for the location of the elevator and a current mailing address for the owner of the elevator.

(6) Maximum Fines.

(a) For any elevator that has a travel distance of 25 feet or less, and is located in a single-family owner-occupied residence in accordance with M.G.L. c. 143, § 64, the maximum fine shall be \$5,000.00

(b) For all other elevators, the maximum fine shall be \$20,000.00

(7) Notice. The Commissioner or the Commissioner's designee, or another person as the Commissioner may specifically authorize, may issue a written notice of violation under M.G.L. c. 22, § 22 for a violation of 520 CMR 16.02. The Notice shall specify:

(a) The provision(s) of the law or regulation with which there has been non-compliance;

(b) The amount that is being assessed as a penalty for each alleged violation;

(c) The procedure for requesting an administrative review as set forth in 520 CMR 16.03.

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(8) Unless the violator files an appeal for administrative review pursuant to 520 CMR 16.03, fines shall be due within 30 days of receipt of the notice of violation.

(9) Failure to Pay Fines. If a violator fails to pay a fine issued pursuant to 520 CMR 16.02 or file an appeal for administrative review under 520 CMR 16.03 within 30 days of receipt of the notice of violation, the Department may shut down the elevator(s) pursuant as provided in applicable sections of ~~to~~ 524 CMR, *Board of Elevator Regulations*, and the external codes and authorities referenced therein, concerning failure to comply.  
~~7.03: Reference to Other Applicable Laws or Regulatory Codes and 8.03: Power to Seal Equipment.~~

16.03: Appeal for Administrative Review

(1) 520 CMR 16.03 establishes the administrative review process for all fines assessed pursuant to 520 CMR 16.00.

(2) Request for Review. A person aggrieved by the issuance of a fine may make written demand upon the Commissioner for an administrative review by the Commissioner or his or her designee on forms approved by the Department. The request for review must fully state and support the reasons why a waiver or reduction of a fine is warranted, including specific reference to all relevant factors under 520 CMR 16.03(5) and any and all supporting documentation. The Commissioner or his or her designee shall conduct an administrative review based solely on the evidence presented within the written request and Department records, and shall issue a written decision. An appellant may request a hearing within 30 days upon receipt of the decision after administrative review if the requested relief was denied in whole or in part. The Department's written decision after administrative review shall constitute the final decision if a hearing is not requested within 30 days of its receipt.

(3) Fees. The Commissioner may assess a fee for appeals for administrative review filed under 520 CMR 16.03, to be determined by the secretary of administration and finance under M.G.L. c. 7, § 3B.

(4) Waiver of Administrative Review. The failure to appeal within 30 days of the issuance of a fine constitutes a waiver of the right to administrative review and all fines set forth in the notice shall be imposed. The payment of a fine constitutes a waiver of the right to administrative review.

(5) Waiver or Reduction of Fines. ~~The Commissioner or the Commissioner's designee may waive all or a portion of the \$100 per day fine assessed for operating an elevator after the expiration of its certificate in violation of M.G.L. c. 143, § 65, except upon a finding of severe financial hardship, in which case the Commissioner or the Commissioner's designee shall waive the fine. -In determining whether to waive all or a portion of the fine, the Department may consider the following factors:~~

- ~~(a) Willfulness of the violation.~~
- ~~(b) Previous violations of 520 CMR 16.02.~~
- ~~(c) Clerical Errors. Substantial evidence of a clerical error shall include, but not be limited to, inadvertent errors on the application for annual inspection.~~
- ~~(d) Inaccurate Assessment. Substantial evidence of an inaccurate assessment shall be limited to evidence that a fine was issued in excess of statutory authority, regulation or based on incorrect information.~~
- ~~(e) Lack of Prior Use. Substantial evidence of lack of prior use shall include proof that the unit was not capable of being operated at the time that the fine was assessed.~~
- ~~(f) De minimis Risk of Injury to Public. Substantial evidence of a de minimis risk of injury shall include proof that members of the public were incapable of accessing the elevator for the entire period of operation without a valid certificate. Per 520 CMR 16.02(2), an elevator is deemed operational unless it has been placed out of service or decommissioned in accordance with a procedure approved by the Board.~~

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(g) Financial Hardship. For elevators owned by individuals or corporate entities, organizations, municipalities, religious institutions, or other entities, demonstrated financial hardship shall mean financial difficulty paying the fine as determined by the Commissioner or his or her designee based on the evidence provided by the owner or his or her representative.

(h) Other Factors. Any reason for appeal or relief from the imposed fine other than those enumerated herein, supported by credible evidence.

~~(a) Willfulness of the violation.~~

~~(b) Previous violations resulting in the imposition of administrative penalties.~~

~~(c) Clerical Errors.~~ Substantial evidence of a clerical error shall include, but not be limited to, inadvertent errors on the application for annual inspection.

~~(d) Inaccurate Assessment.~~ Substantial evidence of an inaccurate assessment shall be limited to evidence that a fine was issued in excess of statutory authority, regulation or based on incorrect information.

~~(e) Lack of Prior Use.~~ Substantial evidence of lack of prior use shall include proof that that the unit was not capable of being operated at the time that the fine was assessed.

~~(f) — De minimis Risk of Injury to Public.~~ Substantial evidence of a *de minimis* risk of injury shall include proof that members of the public were incapable of accessing the elevator for the entire period of operation without a valid certificate. Per 520 CMR 16.02(2), an elevator is deemed operational unless it has been placed out of service or decommissioned in accordance with a procedure approved by the Board.

~~(g) — Severe Financial Hardship.~~

~~1. For elevators owned by individuals, severe financial hardship shall mean the inability to provide necessities of life including food, shelter, and clothing for the owner or the owner's dependents and/or the inability to meet mortgage obligations or any other payment(s) necessary to retain ownership of all or part of the building. The owner must~~

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~~at a minimum provide a listing of all assets and liabilities greater than \$1,000 including valuations for any companies owned and an affidavit from the owner or owner's representative detailing why payment of the fine will cause severe financial hardship. The owner may also include any other records demonstrating that a severe financial hardship would result if the elevator owner were required to pay the fines assessed including but not limited to tax records or bankruptcy filings.~~

~~2. For elevators owned by corporate entities, organizations, municipalities, religious institutions, or other entities, severe financial hardship shall mean the inability to meet financial obligations critical to survival or to carry out essential organizational functions, missions or initiatives. The owner must at a minimum provide: a current annual operating budget; a listing of all assets and liabilities greater than \$1,000; and an affidavit from the owner's representative detailing why payment of the fine will cause severe financial hardship. The owner may also include any other records demonstrating that a severe financial hardship would result if the elevator owner were required to pay the fines assessed including but not limited to tax returns or bankruptcy filings.~~

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(6) Payment of Fine and Appeal After Administrative Review. If a fine is upheld, payment is due within 30 days of the date of the decision. Upon the finding of any factor under 520 CMR 16.03(5) in the aggrieved person's favor, the Commissioner or the Commissioner's designee may, in his or her discretion, allow an extended period of time in which to pay. Such extension shall not exceed six months from the date of the decision except upon a showing of extraordinary circumstances by the aggrieved person. If a violator fails to pay a fine upheld on administrative review within 30 days of the date of the decision or within the extension period granted by the Commissioner or the Commissioner's designee, the Department may shut down the elevator(s) as provided in applicable sections of 524 CMR, Board of Elevator Regulations, and the external codes and authorities referenced therein, concerning failure to comply pursuant to 524 CMR 7.03: Reference to Other Applicable Laws or Regulatory Codes and 524 CMR 8.03: Power to Seal Equipment. Any person aggrieved by a determination of the Department after administrative review may appeal to the Superior Court in accordance with M.G.L. c. 30A, § 14.

REGULATORY AUTHORITY

520 CMR 16.00: M.G.L. c. 22, § 22 and c. 143, § 65.

NON-TEXT PAGE