

211 CMR: DIVISION OF INSURANCE

211 CMR 121.00: PROCEDURES CONCERNING RATE FILINGS MADE PURSUANT TO M.G.L. c. 176K, AND THE CONDUCT OF HEARINGS ON SUCH FILINGS

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121.01: Definitions

As used in 211 CMR 121.00, the following words shall mean:

Amended Filing. A Rate Filing that the Presiding Officer, in his or her discretion, has permitted to be amended.

Commissioner. The Commissioner of Insurance appointed pursuant to M.G.L. c. 26, § 6, or his or her designee.

Division. The Division of Insurance established pursuant to M.G.L. c. 26, § 1.

Docket Clerk. The person who controls and maintains the docket files that contain the records of Hearings held at the Division.

Filer. An Issuer or a Health Maintenance Organization that files a Rate Filing in accordance with the provisions of M.G.L. c. 176K.

Hearing. The part of a Proceeding in which sworn testimony, oral and written, and Papers and other documentary evidence are submitted for consideration by the Commissioner.

Information Request. A written request to a Party for production of documents or tangible things.

Intervenor. A person, agency or organization likely to be substantially and specifically affected by a Rate Filing that is granted Intervenor status pursuant to conditions established by the Presiding Officer.

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Issuer. A company, as defined in M.G.L. c. 175, § 1, that is authorized to write accident and health insurance; a hospital service corporation as defined in M.G.L. c. 176A, § 1; a medical service corporation as defined in M.G.L. c. 176B, § 1; a Fraternal Benefit Society, authorized under M.G.L. c. 176; or a Health Maintenance Organization licensed under M.G.L. c. 176G; that in the Commonwealth offers, sells, delivers or otherwise makes effective, or renews in Massachusetts Medicare Supplement Insurance Policies. For purposes of determining whether an Issuer is offering a non-network Medicare Supplement plan, an Issuer shall include the Issuer, its parent company or companies, its affiliated companies, and/or its subsidiary companies.

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Medicare. "Health Insurance for the Aged Act," Title XVIII of the Social Security Act Amendments of 1965.

Medicare Supplement Insurance or Policy. A type of health insurance issued by a carrier, other than a policy issued pursuant to a contract under Section 1876 or Section 1833 of the federal Social Security Act (42 U.S.C. Section 1395 *et seq.*), or a policy issued under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. Unless specified otherwise, references in 211 CMR 121.00 to Medicare Supplement Insurance or Policy are intended to refer collectively to Medicare Supplement Insurance or Policy and Medicare Select Insurance or Policy.

Medicare Select Insurance or Policy. A Medicare Supplement Insurance or Policy that contains Restricted Network Provisions. Unless specified otherwise, references in 211 CMR 121.00 to Medicare Supplement Insurance or Policy are intended to refer collectively to Medicare Supplement Insurance or Policy and Medicare Select Insurance or Policy.

Papers. All written documents filed in a proceeding, including Rate Filings, Responsive Filings, motions, pleadings, briefs, memoranda and other communications.

Participant. A person, agency, or organization that is granted permission to participate in a Proceeding on a limited basis as determined by the Presiding Officer.

Party. A Filer, the State Rating Bureau, a Statutory Intervenor, or an Intervenor.

Policy. Any Policy, Certificate, contract, agreement, statement of coverage, rider or endorsement issued by an Issuer as defined herein which provides Medicare Supplement Insurance as defined herein other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 *et seq.*) or an issued policy under a demonstration project specified in 42 U.S.C. § 1395ss(g)(1), which provides Medicare Supplement Insurance as defined herein. The term "Policy," unless stated otherwise within 211 CMR 71.00: *Medicare Supplement Insurance to Facilitate the Implementation of M.G.L. c. 176K and Section 1882 of the Federal Social Security Act*, includes any Alternate Innovative Benefits Riders. Policy does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under § 1833(a)(1)(A) of the Social Security Act.

Presiding Officer. The Commissioner or a person or persons designated by the Commissioner to conduct Proceedings pursuant to 211 CMR 121.00.

Proceeding. The public hearing process under M.G.L. c. 176K, § 7(g), by which the Commissioner reviews and addresses a Rate Filing.

Public Comment Hearing. The part of a Proceeding in which persons are given an opportunity to make oral statements about a Rate Filing. Written statements may be submitted at a Public Comment Hearing or at any time prior to the closing of the Proceeding.

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Rate Filing or Filing. Documents filed with the Commissioner by a Filer pursuant to M.G.L. c. 176K.

Record Request. A request for production of documents or tangible things made to a Party during a Proceeding.

Responsive Filing. Any recommendations, including supporting information or commentary, concerning a Rate Filing, or any portion thereof, filed in accordance with 211 CMR 121.09.

Revised Rate Filing. A Rate Filing that has been revised to respond to the issues that resulted in disapproval of a Rate Filing.

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State Rating Bureau. The rating bureau in the Division established pursuant to M.G.L. c. 26, § 8E.

Statutory Intervenor. A person, agency or organization, including, but not limited to, the Attorney General, that has a statutory right to appear as an Intervenor in a Proceeding.

Technical Conference. A conference convened by the Presiding Officer to enable the Parties to narrow the issues in dispute. A Technical Conference may involve examination and cross-examination of sworn witnesses in order to clarify the technical aspects of a Rate Filing. Topics of such inquiry may include the data relied upon by the Filer, the projection trends selected, and applicable federal law.

121.02: Purpose and Scope

211 CMR 121.00 shall govern the conduct of Hearings concerning Rate Filings made pursuant to M.G.L. c. 176K.

121.03: General Provisions

(1) Filing. The provisions in 211 CMR 121.00 apply when a Hearing is required by statute, M.G.L. c. 176K, § 7(g), or by the Commissioner, M.G.L. c. 176K, § 7(d). The provisions in 211 CMR 121.00 apply independently of any other filings that are prescribed by the Commissioner in a different form or manner.

(a) Papers.

1. Filing of Papers for a Hearing. All Papers must be filed at the Division's principal office during its usual business hours, 8:45 A.M. to 5:00 P.M. daily, except Saturdays, Sundays and legal holidays. Papers must be sent to the attention of the Docket Clerk, Legal Division. Except for a Rate Filing or Amended Rate Filing, the requirements for which are addressed in 211 CMR 121.05 and 121.06, and a Responsive Filing, the requirements for which are addressed in 211 CMR 121.09, an original and one copy of Papers must be filed, unless more copies are specified in 211 CMR 121.00 or by the Presiding Officer. At least one copy must be submitted in an unbound format. The Presiding Officer may permit electronic filing in his or her discretion.

2. Pagination of a Rate Filing That Is the Subject of a Hearing. The pages of a Rate Filing must be numbered sequentially from the first through the last page, using Arabic numerals at the bottom right of each page. Any internal numbers applied to separate parts or sections of a Rate Filing must be located elsewhere on the page. The Presiding Officer may reject a Rate Filing that does not comply with the mandatory numbering requirement.

3. Service of Papers on Parties. A Party or Participant shall serve, concurrently with filing with the Division, a copy of Papers on all Parties by hand delivery, or by electronic transmission promptly followed by delivery by first-class mail, postage pre-paid, unless otherwise permitted by the Presiding Officer or agreed to by the Parties.

(2) Timely Filing. Papers must be filed within the time limits specified in M.G.L. c. 176K. The date of filing shall be determined as follows:

- (a) Papers delivered by hand during regular business hours will be deemed filed on that day.
- (b) Papers delivered by hand at other times will be deemed filed on the next regular business day.

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(c) Papers mailed to the Division's principal office will be deemed filed on the day the Division receives them.

(3) Computation of Time. Computation of a time period specified in 211 CMR 121.00 begins with the first day after the date of the initiating act. The last day of the period so computed is included unless it is a day when the Division's principal office is closed, in which case the period runs until the end of the next business day. When a time period is five days or fewer, Saturdays, Sundays and legal holidays are excluded from the computation.

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(4) Modifications of Time Periods. Except for time periods prescribed by statute, the Presiding Officer has the discretion to modify a time limit prescribed or allowed by 211 CMR 121.00, for good cause shown. A request for an extension must be made before the expiration of the period originally prescribed or previously extended.

(5) Signatures. The filing Party or its counsel or authorized representative shall sign all Papers. Signature certifies that the signer has read the document and knows the content thereof, that the statements contained therein are believed to be true, that the document is not interposed for delay and that the signer has full power and authority to sign the document.

(6) Notice of Appointment of Counsel or Other Representative and Appearances. Other than the State Rating Bureau, each Party shall enter an appearance by filing and serving a notice that contains the name, address, e-mail address, fax number, and telephone number of the Party's counsel or authorized representative. All Papers served on a Party must be given to the counsel or representative named in that Party's notice.

121.04: Pre-filing Notice for Rate Filings under M.G.L. c. 176K, § 7(g)

A Filer must notify the Division in writing of its intent to submit a Rate Filing under M.G.L. c. 176K, § 7(g), not less than 30 days before submitting the Rate Filing. A Filer shall provide a copy of the pre-filing notice to the State Rating Bureau, all Statutory Intervenors, and all other Intervenors permitted to appear in the Filer's last Proceeding for that insurance product. The notice must identify all products for which the Filer will submit a proposed Rate Filing and the date on which the Filer expects to submit the Rate Filing to the Division. The notice also must inform all Intervenors permitted to appear in the Filer's last Proceeding, other than the State Rating Bureau and Statutory Intervenors, that they should advise the Filer if they do not want to receive a copy of the Rate Filing. If a Filer fails to provide a pre-filing notice, the Rate Filing shall be deemed to be filed 30 days after it is submitted to the Division.

121.05: Rate Filings under M.G.L. c. 176K, § 7(g)

(1) Purpose. Rate Filings under M.G.L. c. 176K, § 7(g), must furnish sufficient evidence to substantiate the Filer's compliance with the requirements of M.G.L. c. 176K, including, but not limited to, compliance with the anticipated minimum loss ratio standards of M.G.L. c. 176K, § 7(e). The Rate Filing constitutes the Filer's direct case in support of its Rate Request.

(2) Contents. The Rate Filing must consist of sequentially numbered pages and contain:

- (a) a title stating the nature of the Proceeding and the complete name and address of the Filer submitting the Filing;
- (b) the name, address and other contact information of counsel or other authorized representative, as prescribed in 211 CMR 121.03(6);
- (c) an executive summary describing, in narrative form, each element of the Rate Filing and the reasons for the proposed Rate Filing;
- (d) sworn written testimony in support of each element of the Rate Filing;
- (e) for every witness whose testimony is part of the Rate Filing, the following information:
 1. name and business address,
 2. the specific part of the Rate Filing that is the subject matter of the witness's testimony, and
 3. the witness's qualifications to testify on that subject matter;

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- (f) all information, including data, statistics, schedules and exhibits that the Filer intends to present for consideration at the Hearing and all information upon which the proposed Rate Filing are based;
- (g) all information required to be included by 211 CMR 71.12(10): *Rate Filings*;
- (h) an actuarial opinion and a legal opinion that the Filer is in compliance with the provisions of M.G.L. c. 176K;
- (i) the proposed effective date for the rate changes in the Rate Filing, which is at least 90 days after the filing date of the Rate Filing; and
- (j) other information as prescribed from time to time by the Commissioner or the Presiding Officer.

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(3) Amendments. A Filer may move in writing to amend or make additions or corrections to its Rate Filing, for good cause shown. The Presiding Officer, in his or her discretion, may deny or allow, in whole or in part, a Filer's motion to amend or make additions or corrections to its Rate Filing. Filing of an Amended Rate Filing, when permitted, shall be made in the same manner as a Rate Filing.

(4) Copies. In addition to submitting its Rate Filing to the Division in the form and manner prescribed by the Commissioner for all rate and form filings, a Filer making a Rate Filing under M.G.L. c. 176K, § 7(g) also shall concurrently file five copies of the Rate Filing with the Docket Clerk, unless the Presiding Officer directs otherwise. The text and data included in the Rate Filing also must be filed electronically in a format determined by the Presiding Officer. Concurrently, the Filer shall serve two copies of its Rate Filing on the State Rating Bureau, and one copy on each Statutory Intervenor and any Intervenor permitted to appear in the Filer's last rate Hearing for that insurance product, unless such person has advised the Filer that a copy is not wanted. The Filer shall serve a copy of its Rate Filing on a person permitted to intervene within two business days after issuance of an order allowing the person to intervene. By agreement of the Parties concerned, copies may be served on a Party electronically.

The Filer of an Amended Rate Filing shall comply with 211 CMR 121.05(4). 211 CMR 121.15 addresses Revised Rate Filings.

121.06: Rate Filings under M.G.L. c. 176K, § 7(d)

In a Proceeding under M.G.L. c. 176K, § 7(d), the Rate Filing submitted to the Division in the form and manner prescribed by the Commissioner for all rate and form filings shall constitute the Filer's direct evidence, but the Filer shall submit to the Docket Clerk five additional copies of the Rate Filing, unless the Presiding Officer directs otherwise. The Presiding Officer may permit or order the Filer to supplement its Rate Filing with additional material in advance of the commencement of the Proceeding. The Filer shall submit to the Docket Clerk five copies of any supplemental information, unless the Presiding Officer directs otherwise.

The Filer shall serve two copies of its Rate Filing and any supplemental information on the State Rating Bureau, and one copy on each Statutory Intervenor and any Intervenor permitted to appear in the Filer's last rate Hearing for that insurance product, unless such person has advised the Filer that a copy is not wanted. The Filer shall serve a copy of its Rate Filing and any supplemental information on a person permitted to intervene within two business days after issuance of an order allowing the person to intervene. By agreement of the Parties concerned, copies may be served on a Party electronically.

121.07: Hearing Notice

The Filer shall arrange to publish a Hearing notice issued by the Commissioner. For Proceedings pursuant to M.G.L. c. 176K, § 7(g), the Filer shall arrange to publish the Hearing notice at least 21 days before the scheduled date of a Hearing in newspapers of general circulation in Boston, Brockton, Fall River, Pittsfield, Springfield, Worcester, New Bedford, and Lowell. For Proceedings pursuant to M.G.L. c. 176K, § 7(d), the Filer shall arrange to publish the Hearing notice at least 21 days before the scheduled date of a Hearing in newspapers of general circulation in Boston, Springfield, and Worcester. For all Proceedings, concurrently with publication, the Filer shall give notice of the Hearing to the State Rating Bureau and to all Statutory Intervenor. The Filer shall file proof of publication with the Division within 14 days after publication.

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121.08: Intervention and Participation

- (1) State Rating Bureau. The State Rating Bureau need not file and serve a notice of appearance on the Filer or Statutory Intervenors.
- (2) Statutory Intervenors. No later than four days after publication of the Hearing notice under 211 CMR 121.07, a Statutory Intervenor intending to take part in the Proceeding shall file and serve a notice of appearance on the Filer, the State Rating Bureau, and any other Statutory Intervenors.

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(3) Intervenors and Participants. No later than ten days after publication of the Hearing notice under 211 CMR 121.07, a person who wishes to appear and take part in the Proceeding, other than the State Rating Bureau, Statutory Intervenors, or the Filer, shall file, and serve upon the Filer, the State Rating Bureau and all Statutory Intervenors a petition for leave to intervene or to participate. The petition must state the petitioner's name and address; the name, address and other contact information of counsel or other designated authorized representative, as prescribed in 211 CMR 121.03(6); the statutory or other authority for the petition; how the Rate Request substantially and specifically affects the petitioner; the petitioner's contentions; the relief petitioner seeks; and a description of the scope of the petitioner's proposed intervention or participation. The petition shall describe the nature of the evidence, if any, the petitioner seeks to present; state the reasons why the petitioner's interests would not be represented adequately by the Filer, the State Rating Bureau, Statutory Intervenors or Intervenors already taking part and explain how the petitioner will avoid introduction of repetitive testimony and not unduly delay the Hearing.

(4) Responses to Petitions. A Party opposing a petition to intervene or participate shall file a written objection, setting forth the grounds for its opposition, no later than five days after service of the petition.

(5) Action on Petition. The Presiding Officer may schedule a conference to address the petition to intervene or participate. The Presiding Officer shall determine whether the petitioner will be allowed to participate as an Intervenor or as a Participant, and the extent of its participation in the Proceeding. In the Presiding Officer's discretion, participation may be limited to submitting written or oral argument at the close of the Hearing. The Presiding Officer may order two or more petitioners to consolidate their appearances or presentations if consolidation will facilitate and expedite the Proceeding.

121.09: Responsive Filings

(1) Purpose. A Responsive Filing shall state the grounds upon which a Party supports or contests the Rate Filing. Direct testimony and the documents or other exhibits in the Responsive Filing constitute the direct case of that Party.

(2) Timing. A Party, other than the State Rating Bureau, shall file a Responsive Filing no later than ten days after the transcript of the cross-examination of the Filer's witnesses is filed. The State Rating Bureau may file a Responsive Filing no later than two days after the other Responsive Filings are due.

(3) Contents. A Responsive Filing must consist of sequentially numbered pages, must use any format prescribed by the Presiding Officer and, subject to limits on intervention set pursuant to 211 CMR 121.08, must contain:

- (a) a title stating the nature of the Proceeding, and the complete name and address of the Party submitting the Responsive Filing;
- (b) the name and address of counsel, or other representative, if the Party is represented, as prescribed in 211 CMR 121.03(6);
- (c) a statement of the issues the Party is presenting for consideration;
- (d) a statement of the specific components of the Rate Filing that the Party is addressing;
- (e) a statement of the legal grounds on which the Party relies to support or oppose the Rate Filing as a whole, or any part of the Rate Filing;

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- (f) any alternative rate adjustment that the Party recommends;
- (g) sworn written testimony of all witnesses that includes all information and commentary submitted in support of any recommendations;
- (h) for every witness whose testimony is part of the Responsive Filing, the following information:
 1. name and business address;
 2. the specific part of the Responsive Filing that is the subject matter of the witness's testimony; and
 3. the witness's qualifications to testify on that subject matter;

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- (i) all information, including data, statistics, schedules, and exhibits, submitted in support of recommendations;
- (j) other information as prescribed from time to time by the Presiding Officer.

(4) Form of Evidence. In his or her discretion, the Presiding Officer may permit a Party to introduce evidence orally rather than in pre-filed written format.

(5) Amendments. A Party may move to amend or make additions or corrections to its Responsive Filing, for good cause shown. In his or her discretion, the Presiding Officer may deny or allow, in whole or in part, a motion to amend or make additions or corrections to a Responsive Filing.

(6) Copies. A Party shall file five copies of its Responsive Filing, unless the Presiding Officer directs otherwise. The text and data in the Responsive Filing also must be filed electronically in a format determined by the Presiding Officer. Concurrently, a Party shall serve two copies of its Responsive Filing on the State Rating Bureau, and one copy on every other Party. By agreement of the Parties concerned, copies may be served on a Party electronically.

121.10: Hearing Procedures

(1) Timing and Order of Presentation of the Hearing. The Hearing will begin within 30 days after the filing of the Rate Filing with the Division. The Hearing generally will be conducted in the following order, and in accordance with the orders issued by the Presiding Officer: Public Comment Hearing, Technical Conference, pre-hearing conferences, examination on the Rate Filing, and examination on Responsive Filings. The Presiding Officer may alter the order of presentation on his or her own initiative, or on request by a Party.

(2) Motions to Dismiss or Strike. Motions to dismiss or strike must be filed in accordance with the following schedule:

- (a) no later than 14 days after the date the Hearing notice is published, a Party may move to dismiss the Rate Filing on the ground that it contains insufficient evidence to substantiate the proposed Rate Filing, or otherwise fails to comply with the filing requirements established in 211 CMR 121.00 or 211 CMR 71.12(10): *Rate Filings*;
- (b) no later than seven days after the filing of a Responsive Filing, the Filer may move to strike it on the ground that it contains insufficient evidence to substantiate that Party's contest of the Rate Filing;
- (c) the Presiding Officer may, in his or her discretion, permit a Party to amend its Rate Filing or Responsive Filing in order to address the issues raised by motions to dismiss or strike;
- (d) the filing of a motion to dismiss or strike will not affect the time periods provided in 211 CMR 121.00 unless otherwise ordered by the Presiding Officer.

(3) Public Comment. Members of the public may make oral statements prior to the start of the Hearing or at another time permitted by the Presiding Officer. The Presiding Officer may specify the amount of time allowed speakers. If the Presiding Officer determines that an oral statement is irrelevant, immaterial or unduly repetitious, he or she may further restrict the time allowed to a speaker. Written public statements may be filed at any time before the record of the Hearing is closed.

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- (4) Conferences. A Presiding Officer may hold a Technical Conference and other conferences.
- (a) Technical Conference. The Presiding Officer may hold a Technical Conference with all Parties, or if no other Party is involved in the Hearing with the Filer. A Technical Conference may involve examination and cross-examination of sworn witnesses in order to clarify the technical aspects of a Rate Filing. Topics of such inquiry may include, but will not be limited to, the data relied on by the Filer, the projection trends selected, and applicable federal law. The Filer shall arrange for the Technical Conference to be stenographically recorded. In his or her discretion, the Presiding Officer may order that all or part of a Technical Conference transcript be admitted as a part of the Hearing record.

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(b) Other Conferences. The Presiding Officer may hold one or more conferences to address such matters as clarifying or narrowing issues, entering into stipulations, identifying admitted facts, limiting the number of witnesses, eliminating cumulative evidence, scheduling testimony, organizing exhibits, and other matters, including discovery, that may expedite the Hearing.

(5) Rebuttal and Surrebuttal Filings. A Party, except as otherwise provided by law or 211 CMR 121.00, shall have the right to submit Rebuttal and Surrebuttal Filings. Rebuttal and surrebuttal evidence shall be limited to denial of an affirmative fact that another Party has endeavored to prove. To the extent that any Party intends to introduce rebuttal or surrebuttal evidence, it shall inform the Presiding Officer, as soon as practicable, of its intention, the subject of the proposed evidence and the identity of any witnesses. Rebuttal and Surrebuttal Filings shall be filed and served in the same manner as are Rate and Responsive Filings, respectively.

(6) Conclusion of the Proceeding. The Proceeding shall conclude, for purposes of M.G.L. c. 176K, § 7(g), when the Presiding Officer issues an Order Closing the Proceeding.

121.11: Discovery

(1) Information Requests.

(a) Subject to any limits on intervention imposed pursuant to 211 CMR 121.08, a Party may serve upon another Party that has submitted a Rate Filing or Responsive Filing, within ten days of the filing of that Party's Filing, written Information Requests to produce or make available documents or tangible things, not privileged, and not previously supplied, that are in the custody or control of the Party upon whom the request is served. An Information Request must set forth, with reasonable particularity, the items to be provided. The Presiding Officer, in his or her discretion, may permit Information Requests to be served on a Party after the start of the examination of that Party's witnesses and before the conclusion of the Hearing. Discovery must be conducted expeditiously and, except for good cause, will not be grounds to delay the Hearing.

(b) All Information Requests must be filed and served on all Parties. A Party requesting documents from the Division or the State Rating Bureau shall pay the Division the fee per page for copies as determined from time to time by the Executive Office for Administration and Finance, unless the Presiding Officer, in his or her discretion, waives the fee.

(2) Record Requests. Subject to any limits on intervention imposed pursuant to 211 CMR 121.08, a Party may, at the discretion of the Presiding Officer, make oral Record Requests of another Party during testimony or conferences, seeking discovery in the manner permitted for Information Requests in 211 CMR 121.11(1).

(3) Uniform Definitions in Discovery Requests. As used in 211 CMR 121.00, the following words shall mean:

(a) Incorporation by Reference and Limitations. The full text of the definitions set forth in 211 CMR 121.11(3)(c) is deemed incorporated by reference into all Information Requests and Record Requests, but shall not preclude the definition of other terms specific to the particular litigation, the use of abbreviations or a narrower definition of a term defined in 211 CMR 121.11(3)(c).

(b) Effect on Scope of Discovery. 211 CMR 121.11(3) is not intended to broaden or narrow the scope of discovery permitted by 211 CMR 121.00.

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(c) Definitions. The following definitions apply to all Information Requests and Record Requests, unless otherwise ordered by the Presiding Officer:

1. Communication. The term communication means the transmittal of information (in the form of facts, opinions, ideas, inquiries, or otherwise).
2. Document. The term document is defined to be synonymous in meaning and equal in scope to the usage of this term in Mass. R. Civ. P. 34(a). An earlier draft is a separate document within the meaning of this term.
3. Identify (with Respect to Persons). When referring to a natural person, to identify means to state, to the extent known, the person's:

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- a. full name;
- b. present or last known address; and
- c. the present or last known place of employment.

Once a person has been identified in accordance with 211 CMR 121.11(3)(c)3., only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

4. Identify (with Respect to Entities). When referring to an entity, to identify means to state, to the extent known,

- a. the entity's full name, including (when not apparent from the name) the nature of the entity (*e.g.*, corporation, limited liability corporation, partnership, or professional corporation);
- b. present or last known address of its headquarters or principal place of business; and
- c. the state in which the entity is incorporated or otherwise created.

Once an entity has been identified in accordance with this subparagraph, only the name of that entity need be listed in response to subsequent discovery requesting the identification of that entity.

5. Identify (with Respect to Documents). When referring to documents, to identify means to state, to the extent known:

- a. the type of document;
- b. the general subject matter;
- c. the date of the document;
- d. the author or authors, according to the document; and
- e. the persons to whom, according to the document, the document (or a copy) was to be sent.

6. Parties. The term Party, as well as a Party's full or abbreviated name or a pronoun referring to a Party, mean the Party and, where applicable, its officers, directors, employees, partners, corporate parent, and subsidiaries. Party is not intended to impose a discovery obligation on any person who is not a Party to the Proceeding.

7. Person. The term Person means any natural person or any business, legal, or governmental entity.

8. Concerning. The term Concerning means referring to, describing, offering evidence of, or constituting.

9. State the Basis or State All Facts. When an Information Request or Record Request calls upon a Party to State the Basis for or to State All Facts concerning a particular matter (or uses comparable language), the Party shall provide a substantial summary of the factual basis supporting the matter at the time of the response to the Request. The summary shall: identify the essential acts or failures to act forming the substance of the matter, identify the persons and entities that, through firsthand information or possession of documents, are the sources of the Party's information regarding the matter, and, when the basis of the matter is one or more documents, identify (or provide as part of the response a copy of) each such document. In stating the basis, a Party may not withhold information from the response because it derives from attorney work product or was obtained in anticipation of litigation if the Party intends to offer this information at the Hearing.

(4) Responses to Discovery.

(a) Answers to Information or Record Requests. Answers to Information Requests or Record Requests must be filed and served upon all Parties no more than five days after

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receipt of the Request. A Party upon which a discovery Request is served may, within the time period established for response, file objections or move for a protective order with respect to specified portions of the Request, provided that it first has attempted in good faith to resolve the grounds for its objection or motion with the Party seeking discovery. Objections or a motion for a protective order must be served upon all Parties.

(b) Obligation to Attempt to Resolve Discovery Issues. If a Party's discovery Request is not honored in whole or in part, or if it opposes an objection or a motion for protective order, the requesting Party must first attempt in good faith to resolve the issue with the other Party. If the issue cannot be resolved, the requesting Party may, within three days of service of the objection or motion, file a motion to compel a response. The Presiding Officer may schedule a proceeding to address the motion.

121.11: continued

(c) Objections to Information Requests or Record Requests. General objections to Information Requests or Record Requests are prohibited. Each objection to a Request shall be specific to that Request and shall have a good faith basis. If a Party refuses to answer an Information Request or Record Request, the Party shall so state and identify each objection asserted to justify the refusal to answer. If a Party, after having asserted an objection, answers the Information Request or Record Request, the answer shall state either:

1. notwithstanding the objection no information has been withheld from the answer, or
2. information has been withheld from the answer because of the objection.

Where information has been withheld from the answer, the objecting Party shall describe the nature of the information withheld and identify each objection asserted to justify the withholding.

(d) Objections to Requests for the Production of Documents and Things.

1. Where a Party serves a response to a Request for production of documents and things before production is completed, the response may include general objections. Where general objections are made, however, the responding Party shall prepare and serve a supplemental response no later than five days after the completion of production.

2. Once production is completed, general objections to Requests for production of documents and things are prohibited. As to each Request, the supplemental response shall state either:

- a. notwithstanding prior general objections, all responsive documents or things in the possession, custody, or control of the responding Party have been produced;
- b. after diligent search no responsive documents or things are in the possession, custody, or control of the responding Party; or
- c. the specific objection made to the Request.

When specific objection is made, the response shall describe the nature of all responsive documents or things in the possession, custody, or control of the responding Party that have not been produced because of the objection.

3. In the initial written response, the responding Party shall articulate with clarity the scope of the search conducted or to be conducted. If the scope of the search changes during production, the responding Party in a supplemental written response shall articulate with clarity the change in scope. If the scope of the search does not include all locations, including electronic storage locations, where responsive documents or things reasonably might be found, the responding Party shall explain why these locations have been excluded from the scope of the search.

(5) Rulings with Respect to Discovery. The Presiding Officer may compel a response to the discovery sought and may, where justice requires, issue protective orders to protect a Party from annoyance, embarrassment, oppression or undue burden or expense, or to prevent undue delay in the Proceeding. The Presiding Officer may order limits on the scope, method, time and place for discovery or impose provisions for protecting confidential or privileged information or documents, consistent with applicable statutes. The Presiding Officer may in his or her discretion and upon proper motion, allow the parties additional time to make or respond to discovery requests.

121.12: Conduct of Proceedings

(1) Presiding Officer. The Presiding Officer conducts the Proceeding and makes all decisions on the admission or exclusion of evidence and other procedural matters that arise in the course of the Hearing. The Presiding Officer may issue orders he or she finds proper, expedient or

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necessary to enforce and administer the provisions of 211 CMR 121.00, M.G.L. c. 176K and M.G.L. c. 30A. The Presiding Officer may administer oaths and affirmations, schedule Hearings and order the consolidation of related Proceedings. The Presiding Officer may impose sanctions on a Party that does not comply with an order issued in a Proceeding. Such sanctions can include entering orders or decisions on one or more issues, limiting the introduction of evidence, limiting a Party's participation in the Proceeding, and addressing other matters he or she deems appropriate. The Presiding Officer may shorten or terminate a phase of the Proceeding for a Party's failure, without good cause, to comply with the prescribed schedule or to proceed expeditiously.

121.12: continued

(2) Ex Parte Communications.

(a) Within the time frame set forth in 211 CMR 121.12(2)(b), until the rendering of a final decision, no person who is not employed by the Division shall communicate *ex parte* with the Commissioner, the Presiding Officer, or any Division employee involved in the decision process for the Proceeding in question, with respect to the merits of the Proceeding. A request for a report concerning the status of a Proceeding or an inquiry as to the Division's practice or procedure shall not be considered an *ex parte* communication.

(b) The prohibitions of 211 CMR 121.12(2) apply from the time a person knows or reasonably should know that a Proceeding will be initiated. Otherwise, for Proceedings pursuant to M.G.L. c. 176K, § 7(g), the prohibitions apply from the time the Filer submits a pre-filing notice in accordance with 211 CMR 121.04; for Proceedings under M.G.L. c. 176K, § 7(d), the prohibitions apply from the time the Commissioner issues the Hearing notice. In all cases, the prohibitions apply as long as a Proceeding is open.

(c) If the Presiding Officer determines that a Party has violated 211 CMR 121.12(2), the Presiding Officer may exclude that Party from the Hearing or decide against that Party with prejudice. If the Presiding Officer determines that a person not a Party has violated 211 CMR 121.12(2), the Presiding Officer may exclude that person from the Hearing.

(3) Motions. A Party requesting a ruling shall make a motion that states the ruling sought and the grounds for the request. The Presiding Officer may require that a motion be made in writing. A Party shall file an opposition to a written motion no later than five days after the motion is filed and served. The Presiding Officer may, in his or her discretion, allow, deny, or require oral argument on a motion.

(4) Official Notice. The Presiding Officer may take official notice of a fact that can be judicially noticed by Massachusetts courts and may take official notice of general, technical or scientific facts within his or her specialized knowledge or experience. The Presiding Officer shall notify all Parties of the material so noticed and shall permit a Party, upon timely request, to contest the facts noticed. The Presiding Officer may use his or her technical experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

(5) Evidence. The Presiding Officer need not observe the rules of evidence observed by Massachusetts or United States courts, but shall observe the rules of privilege recognized by Massachusetts law. Evidence can be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Presiding Officer may exclude evidence that he or she determines is unduly repetitious, or that will delay the Proceeding unnecessarily. All evidence on which the Presiding Officer's decision is based, including records and documents in the Division's possession, will be made a part of the record, and no other factual information can be considered, except for facts officially noticed, as is provided in 211 CMR 121.12(4). Documentary evidence may be received in evidence in the form of copies or excerpts, at the discretion of the Presiding Officer.

(6) Control of Evidence. The Presiding Officer may question witnesses. At any stage of the Proceeding, the Presiding Officer may call for further evidence on an issue, and require a Party to present that evidence. The Presiding Officer may limit, strike or terminate irrelevant, immaterial or repetitious evidence. The Presiding Officer, in his or her discretion, may permit a Party to introduce exhibits and raise issues not included in its Rate Filing or Responsive Filing, for good cause shown. If, despite an order from the Presiding Officer, a witness fails to be present for his or her examination or unreasonably obstructs examination, the Presiding Officer

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may find the witness to be unavailable. Upon finding a witness to be unavailable, the Presiding Officer may order stricken from the record all testimony by the witness and evidence submitted through the witness.

(7) Offers of Proof. A Party may make an offer of proof following a ruling by the Presiding Officer excluding proffered evidence. The offer of proof must include a statement of the substance of proposed oral testimony and copies of proffered documents. The Presiding Officer may require that offers of proof be made in writing.

121.12: continued

(8) Stipulations. At any stage of the Proceeding, the Parties may stipulate to a fact or issue. If the Presiding Officer rejects a stipulation, he or she shall state this on the record and, if appropriate, permit the Parties to present evidence and argument on the matter.

(9) Conduct of Persons Present. All persons present at a Proceeding shall conduct themselves in a manner consistent with the standards of decorum commonly observed in Massachusetts courts. If a person's conduct is not consistent with 211 CMR 121.12(9), the Presiding Officer may issue orders appropriate to maintain order, including the exclusion of a disorderly person from the Proceeding. If the person excluded is a Party or its representative, the Presiding Officer may decide against the Party with prejudice.

(10) Transcripts. The Filer shall engage a qualified stenographer to record and transcribe the Proceeding expeditiously. The Filer shall pay the cost of the stenographer's fees, and the cost of providing the Division with copies of the transcript in the quantity and format determined by the Presiding Officer, which may include electronic copies, and of providing one copy to the State Rating Bureau and to every Statutory Intervenor. Other Parties and Participants may obtain copies of the transcript from the stenographer at cost, unless the Presiding Officer determines that the Filer should provide a transcript to a Party or Participant.

121.13: Briefs

(1) Briefs. Parties, and any Participant who has been permitted to do so, may file briefs within a period set by the Presiding Officer. Each Party and permitted Participant shall file five copies of its brief and serve one copy on each Party and on each Participant who has been allowed to file a brief, unless the Presiding Officer directs otherwise. Briefs also shall be filed on computer disk or by other electronic means in a format determined by the Presiding Officer. The Presiding Officer may set a page limit for briefs. Each brief must include:

- (a) a concise statement of the case;
- (b) the arguments of the Party or Participant with specific identification of all the evidence relied upon to support its positions, with references to where this supporting evidence appears in the record;
- (c) a statement of the specific relief requested on every contested issue; and
- (d) any other information required by the Presiding Officer.

(2) Reply Briefs. Parties may submit reply briefs at the discretion of the Presiding Officer, within a period set by the Presiding Officer, which will be no more than four days following the filing of an opposing Party's brief. Reply briefs must comply with the format, filing and service requirements of 211 CMR 121.13(1).

121.14: Decision

(1) The Presiding Officer's decision shall be in writing or stated on the record no more than 30 days following the conclusion of the Proceeding as prescribed by 211 CMR 121.10(6). The Presiding Officer shall notify all Parties of the decision, of their right to appeal it, and of the time within which to appeal.

(2) Filed rates that are approved may be effective no earlier than 30 days after approval. For a filed rate that is disapproved, the Presiding Officer may indicate an alternative rate or component, if any, that he or she would find to be reasonable. The Filer may then make a

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Revised Rate Filing that incorporates the rate or rate components that the Presiding Officer indicated would be reasonable.

(3) The submission and approval of a revised Rate Filing will not affect the Filer's right to appeal the disapproval of any elements of its Rate Filing.

121.15: Revised Rate Filing

(1) Contents. Within the time period specified in the Presiding Officer's decision, a Filer may file a Revised Rate Filing in the docket opened for the Rate Filing. The Revised Rate Filing must contain all information and meet all other requirements set forth in the Presiding Officer's decision, and must comply with the format, filing and service requirements of 211 CMR 121.05, but otherwise need not comply with 211 CMR 121.05.

(2) Hearing on Revised Rate Filings. The Presiding Officer may hold a Hearing on a Revised Rate Filing, and shall hold a Hearing on a Revised Rate Filing if a Party requests one within five days of the filing of the Revised Rate Filing. At such a Hearing, the Presiding Officer may hear argument and receive evidence regarding compliance with the decision on the Rate Filing. The Presiding Officer shall approve a Revised Rate Filing if it meets the requirements for approval set forth in the decision on the Rate Filing. The Presiding Officer may permit a Filer further to revise a Revised Rate Filing to meet the requirements for approval set forth in the decision on the Rate Filing.

121.16: Appeals

A person aggrieved by a Presiding Officer's decision that is not affirmed by the Commissioner may appeal that decision to the Commissioner in accordance with M.G.L. c. 26, § 7.

A person aggrieved by a decision of the Commissioner, including a Commissioner's simultaneous affirmation of a Presiding Officer's decision, may, within 20 days from the filing of the decision, file a petition in the Supreme Judicial Court for Suffolk County for review of the decision.

121.17: Suspension or Modification of the Requirements of Filing or Prior Approval of Rates

The Commissioner may, by written order pursuant to M.G.L. c. 176K, § 7(k), suspend or modify the requirements of filing or prior approval of rates.

121.18: Severability

If any section or portion of a section of 211 CMR 121.00 or the applicability thereof to any person, entity, or circumstance is held to be invalid by a court of competent jurisdiction, the remainder of 211 CMR 121.00 or the applicability of such provision to other persons, entities or circumstances, shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 121.00: M.G.L. chs. 176K and 30A.