

220 CMR 149.00: PROCEDURES FOR THE DETERMINATION OF VIOLATIONS AND FOR ENFORCEMENT OF M.G.L. c. 159A AND M.G.L. c. 159B

Section

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149.01: Purpose And Scope

- (1) 220 CMR 149.00 establishes the procedures for determining the nature and extent of violations of the provisions of M.G.L. c. 159A and M.G.L. c. 159B, or any regulation promulgated or order issued thereunder. It also sets out the procedures for issuance of a notice of probable violation ("NOPV"), a remedial order or a consent order with respect to such violations.
- (2) Every common carrier of passengers or property and commercial motor vehicle operator under the jurisdiction of the Department of Public Utilities ("Department") shall report suspected violations of M.G.L. c. 159A and M.G.L. c. 159B to the Department. Any other person may report a suspected violation of M.G.L. c. 159A or M.G.L. c. 159B to the Department.

149.02: Notice of Probable Violation: Commencement of Enforcement Proceedings

- (1) The Department shall, within 30 days after a report of a suspected violation, either issue the NOPV or issue a statement of reasons for declining to issue the NOPV.
- (2) The Department may begin a proceeding by issuing a NOPV if the Department has reason to believe that a violation of M.G.L. c. 159A, M.G.L. c. 159B, or any regulation promulgated or order issued thereunder, has occurred or is continuing to occur.
- (3) The NOPV shall state the factual basis for the allegation of a violation and the proposed remedial action to be taken by the person served ("respondent") if the Department finds a violation. The respondent has a right
 - (a) to reply in writing to the NOPV within 30 days from the date of the NOPV or
 - (b) to appear at an informal conference with the Department on a designated day which is at least 30 days from the date of the NOPV, and the NOPV shall so state.
- (4) Any written reply must be filed with the Department on or before the day scheduled for the informal conference and must be signed by the respondent's designee. It must include a complete statement of all relevant facts and authority, and a full description of the reasons that the respondent disputes the violations alleged in the NOPV.
- (5) If the respondent or his representative fails, without good cause, either to file a written reply or to appear at the informal conference, the respondent shall be deemed to have admitted the accuracy of the factual allegations and legal conclusions stated in the NOPV, and the respondent shall be held liable to take the remedial action proposed in the NOPV through the issuance of a remedial order pursuant to 220 CMR 149.05.

149.03: Informal Review

- (1) An informal review shall be conducted by a hearing officer designated by the Department. The informal review shall consist of an informal conference, if the respondent has chosen this option under 220 CMR 149.02, or an analysis of the respondent's written reply.

149.03: continued

(2) At any informal conference, the respondent shall have the right to be represented by an attorney or other person. The respondent shall have the right to present relevant documents to the hearing officer. The hearing officer shall make available to the respondent any evidence in the Department's possession which indicates that the respondent may have violated M.G.L. c. 159A, M.G.L. c. 159B, or any regulation promulgated or order issued thereunder, and the respondent or his representative shall have the opportunity to rebut this evidence. However, this informal conference shall not be construed to be an adjudicatory proceeding as defined in M.G.L. c. 30A.

(3) The hearing officer shall make a decision in writing. If the respondent is not satisfied with the decision, he may request an adjudicatory hearing, provided that the respondent makes such a request in writing within seven days of the date the decision is issued. Failure to request an adjudicatory hearing will be considered an admission of the factual allegations and legal conclusions stated in the hearing officer's decision, and the respondent shall be held liable to take the remedial action proposed in the NOPV through the issuance of a remedial order under 220 CMR 149.05.

149.04: Adjudicatory Hearing

(1) The adjudicatory hearing shall be a *de novo* hearing, shall be an adjudicatory proceeding as defined in M.G.L. c. 30A, and shall be conducted pursuant to the Department's procedural regulations, 220 CMR 1.00.

(2) At the adjudicatory hearing, the respondent shall have the right to be represented by an attorney or other person.

(3) If the Department finds, after the adjudicatory hearing, that the respondent has violated M.G.L. c. 159A, M.G.L. c. 159B, or any regulation promulgated or order issued thereunder, it may issue a remedial order pursuant to 220 CMR 149.05.

149.05: Remedial Orders

(1) If the Department finds that a violation has occurred or is continuing to occur, it may issue a remedial order. The remedial order shall include a written opinion setting the factual and legal basis of the Department's findings and shall direct any party to take, or refrain from taking, any action, consistent with said party's obligations under M.G.L. c. 159A, M.G.L. c. 159B, or any regulation promulgated or order issued thereunder.

(2) A remedial order issued by the Department under 209 CMR 149.05 shall be effective upon issuance, in accordance with its terms, unless stayed, suspended, modified or rescinded.

(3) A remedial order is a final decision of the Commission within the meaning of M.G.L. c. 25, § 5, and thereby subject to review by the Supreme Judicial Court.

(4) If the respondent fails either to appeal a remedial order to the Supreme Judicial Court or to comply fully with the order within 20 days, the Department may refer the case to the Attorney General with a request that an action be brought in the Superior Court to seek appropriate relief.

(5) The Department may waive the requirement for notice and hearing under 220 CMR 149.02 through 149.04 before issuing a remedial order pursuant to 220 CMR 149.05 when the Commission determines that failure to do so would result in serious harm to life or property. The Department shall include in any such order an opportunity for a hearing pursuant to 220 CMR 149.04, as soon as practicable after issuance of the order.

149.06: Consent Orders

- (1) Notwithstanding any other provision to the contrary, the Department may at any time resolve an outstanding enforcement issue with a consent order. A consent order must be signed by the person to whom it is issued, or a duly authorized representative of that person, and must indicate agreement with the terms therein. A consent order need not contain an admission by any person that a violation has occurred, and without such a term, does not constitute such an admission.
- (2) A consent order is a final order of the Department, having the same force and effect as a remedial order issued pursuant to 220 CMR 149.05.
- (3) A consent order shall not be appealable and shall include an express waiver of appeal and judicial review rights that might otherwise attach to a final order of the Department.

149.07: Waiver

On its own motion, or for good cause shown, the Department may waive any provision of 220 CMR 149.00.

REGULATORY AUTHORITY

220 CMR 149.00: M.G.L. c. 159A, M.G.L. c. 159B

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