

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: Appeals

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 and appeal 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.

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. The maximum fines for all elevators shall be in accordance with M.G.L. c. 143, § 65.

(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.

(8) Unless the violator requests an administrative review pursuant to 520 CMR 16.03(2), fines shall be due within 30 days of receipt of the notice of violation.

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(9) Failure to Pay Fines. If a violator fails to pay a fine issued pursuant to 520 CMR 16.02 or file an appeal requesting administrative review under 520 CMR 16.03(2) within 30 days of receipt of the notice of violation, the Department may shut down the elevator(s) pursuant to and as provided in the applicable provisions of 524 CMR pertaining to noncompliance with Department directives and violations of M.G.L. c. 143, §§ 62 through 71G, c. 22, § 22, 524 CMR: *Board of Elevator Regulations* and 520 CMR 16.00.

16.03: Appeals

(1) Purpose and Scope. 520 CMR 16.03 establishes procedures and standards for the appeal of all fines assessed pursuant to 520 CMR 16.00, including administrative review and requests for hearings.

(2) Initial Request for Administrative 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(6) 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.

(3) Request for Hearing. 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. Upon receipt of a valid request, the Department shall schedule and conduct a hearing and shall issue a written decision thereon.

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

(5) Waiver of Appeal. The failure to file an appeal requesting administrative review within 30 days of receipt of the notice of violation constitutes a waiver of the right to appeal, and all fines set forth in the notice shall be imposed. The payment of a fine constitutes a waiver of the right to appeal.

(6) 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. In determining whether to waive all or a portion of the fine, the Department may consider the following factors:

- (a) Willfulness or lack thereof;
- (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 or contrary to statutory authority or 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 during the period for which 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) Financial Hardship. For all elevator owners, including individuals and 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 substantial evidence provided by the owner or his or her representative. Upon a finding of severe financial hardship, the Commissioner or the Commissioner's designee shall waive the fine; and

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(h) Other Factors. Any reason for appeal or relief from the imposed fine other than those in 520 CMR 16.03(6)(a) through (g), supported by substantial evidence.

(7) Payment of Fines Upheld on Appeal. Unless the violator requests a hearing, fines shall be due within 30 days of receipt of the written decision provided for in 520 CMR 16.03(2). If a hearing is requested, and the fine is upheld in whole or in part, payment is due within 30 days of receipt of the hearing decision. If a violator fails to pay the fine within the applicable timeframe, the Department may shut down the elevator(s) pursuant to and as provided in the applicable provisions of 524 CMR pertaining to noncompliance with Department directives and violations of M.G.L. c. 143, §§ 62 through 71G, c. 22, § 22, 524 CMR: *Board of Elevator Regulations* and 520 CMR 16.00.

(8) Extensions of Time. If a fine is upheld in whole or in part, the Commissioner or the Commissioner's designee may, in his or her discretion, allow an extended period of time in which to pay upon the violator's submission of substantial evidence of an inability to pay within the applicable timeframe. Such extension shall not exceed three months from the date of the decision except upon a showing of extraordinary circumstances.

(9) Judicial Review. Any person aggrieved by a determination of the Department following a hearing 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.