

555 CMR 11.00: REGULATORY ACTION AND ADVISORY OPINIONS

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11.01: Scope

- (1) 555 CMR 11.00 governs:
  - (a) The submission, consideration and disposition of a petition requesting regulatory action, pursuant to M.G.L. c. 30A, § 4;
  - (b) Regulatory action by the Commission other than in response to a petition, pursuant to M.G.L. c. 6E and c. 30A;
  - (c) The submission, consideration, and disposition of a petition requesting the issuance of an advisory opinion, pursuant to M.G.L. c. 30A, § 8; and
  - (d) The issuance of an advisory opinion by the Commission other than in response to a petition, pursuant to M.G.L. c. 6E, § 3(a).
- (2) Nothing in 555 CMR 11.00 is intended to:
  - (a) Obligate the Commission to take or decline to take any regulatory action, or to issue or decline to issue any advisory opinion;
  - (b) Preclude the Commission from taking regulatory action or issuing an advisory opinion in the absence of a request, or from issuing other types of opinions, answers to questions, or forms of guidance;
  - (c) Create an attorney-client, principal-agent, or confidential relationship between the Commission, any Commissioners, or any member of the Commission's staff and any petitioner, other person, or other entity;
  - (d) Establish a standard of care or create any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection on the part of any other person or entity, except as expressly provided; or
  - (e) Otherwise waive any power, right, benefit, entitlement, remedy, cause of action, claim, defense, immunity, privilege, or protection that may be available to the Commission.

11.02: Definitions

- (1) 555 CMR 11.00 incorporates all definitions and rules of construction set forth in 555 CMR 2.02: *Definitions* and 555 CMR 2.03: *Construction*, except those definitions of terms that are defined in 555 CMR 11.02(2).
- (2) For the purposes of 555 CMR 11.00, the following terms have the following meanings, unless the context requires otherwise:

Advisory Opinion. An advisory ruling with respect to the applicability to any person, property, or state of facts of any statute or regulation enforced or administered by the Commission, under M.G.L. c. 30A, § 8, or any other opinion that relates to the Commission's authority or responsibilities and is formally issued in writing by the Commission.

Agency. An "agency" as defined in M.G.L. c. 30A, § 1.

Commission. The Massachusetts Peace Officer Standards and Training Commission established under M.G.L. c. 6E, § 2 as an agency, including its Commissioners and its staff.

Executive Director. The Executive Director of the Commission appointed pursuant to M.G.L. c. 6E, § 2(g), or that person's designee for relevant purposes.

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Law Enforcement Agency. A “law enforcement agency” as defined in M.G.L. c. 6E, § 1.

Officer. A “law enforcement officer” as defined in M.G.L. c. 6E, § 1.

Petition. A request for regulatory action or the issuance of an advisory opinion submitted to the Commission.

Petitioner. A person or entity who submits a request for regulatory action or the issuance of an advisory opinion to the Commission.

Regulation. A “regulation” as defined in M.G.L. c. 30A, § 1.

Regulatory Action. The adoption, amendment, or repeal of a regulation.

Vote of the Commissioners. A vote sufficient to satisfy the requirements of M.G.L. c. 6E, § 2(e).

11.03: Petition for Regulatory Action or an Advisory Opinion

(1) Any person or entity may submit to the Commission a petition requesting the adoption, amendment, or repeal of a regulation, or the issuance of an advisory opinion, concerning a matter related to the Commission’s authority and responsibilities.

(2) A petitioner should:

(a) Submit a written petition containing the following:

1. The petitioner’s name;
2. The petitioner’s certification number, if the petitioner has been certified as a law enforcement officer by the Commission;
3. The name, an address, a telephone number, and an email address of an attorney at law who is representing the petitioner in relation to the matter, if the petitioner is so represented;
4. An address, a telephone number, and an email address of the petitioner, if the petitioner is not represented by an attorney at law in relation to the matter;
5. The name of each organization on behalf of which the petitioner is submitting the petition, and any title or role that the petitioner has with each such organization, if the petitioner is submitting the petition on behalf an organization;
6. A clear indication at the outset of the petition whether the petitioner is requesting regulatory action or the issuance of an advisory opinion;
7. A precise description of the action being requested;
8. A clear and concise statement of any facts relevant to the petition, which statement may be relied on by the Commission in rendering any opinion;
9. Citations to applicable sources of law that could be identified with reasonable effort;
10. A listing of any other governmental regulations or advisory opinions concerning the same subject matter that have been issued or requested and could be identified with reasonable effort;
11. The signature of the petitioner or any attorney at law representing the petitioner in relation to the matter, which shall constitute a certification that the signer has read the petition and that any facts recited therein are true to the best of the signer’s belief; and
12. A certificate of service, stating the name and contact information of each person and entity upon which a copy of the petition was served pursuant to 555 CMR 11.04(2)(c);

(b) Submit the petition in an electronic format, by electronic means, and using any form or email address designated for such a purpose on the Commission’s website; and

(c) Serve a copy of the petition upon each person and entity that can fairly be deemed to be in a direct, adverse position to the petitioner with respect to the matter.

(3) The Commission further requests that the petitioner include in the petition:

(a) The text of any regulation or regulatory amendment desired by the petitioner, if the petitioner is requesting regulatory action;

(b) Any arguments against the action requested by the petitioner; and

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(c) Names of persons and entities that would be impacted by the action requested by the petitioner, and the form and extent of such impact.

(4) A petitioner may also include in the petition any supporting data, views, or arguments that the petitioner believes to be pertinent.

(5) A petitioner should immediately notify the Commission if, at any point in time, the petitioner or any attorney at law representing the petitioner in relation to the matter becomes aware that any facts recited in a petition are inaccurate or any circumstances referenced in the petition have changed.

(6) Officers and law enforcement agencies are obligated to ensure the accuracy of any information that they submit to the Commission in relation to a petition, or in relation to any other regulatory action or issuance of an advisory opinion by the Commission, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), and 5(c).

The failure of an officer or a law enforcement agency to comply with 555 CMR 11.03(6) may constitute grounds for disciplinary action, pursuant to M.G.L. c. 6E, §§ 3(a), 4(f)(4), 5(c), 8, 9, and/or 10.

11.04: Initial Processing of a Petition

(1) Where a petitioner has taken all steps listed in 555 CMR 11.03(2)(a) through (c):

(a) The Commission staff shall, with reasonable promptness, acknowledge to the petitioner that the petition was received;

(b) The Commission staff shall ensure that the petition is provided to the Commissioners and the Executive Director;

(c) At the direction of the Chair or the request of four Commissioners, the subject of the petition shall be placed on the agenda of a Commission meeting to be held in accordance with M.G.L. c. 6E, § 2(e) and c. 30A; and

(d) If the subject of the petition is placed on the agenda for a public Commission meeting, the Commission shall provide notice to the petitioner of that fact with reasonable promptness, and in no event less than two business days before the meeting.

(2) Where a petitioner has not taken all steps listed in 555 CMR 11.03(2)(a) through (c), the Commission may nevertheless follow the steps listed in 555 CMR 11.04(1) or otherwise consider the petition in accordance with any applicable provisions of law.

(3) The Commission may provide a copy of a petition to any other person or entity, and may utilize any information provided in a petition in any manner, where not precluded from doing so by law.

(4) The Commission shall maintain a copy of any petition received.

(5) With respect to any matter involving regulatory action or the issuance of an advisory opinion, or contemplation of the same, whether or not the Commission has received a petition related to the matter:

(a) The Commission should take steps to communicate with any other governmental entity that possesses interests, powers, or duties that may be implicated with respect to the matter; and

(b) The Commission may:

1. Issue a request for public comment about the matter;

2. Request information or advocacy about the matter from any person or entity; or

3. Ask any person or entity to speak about the matter, or otherwise appear, at a Commission meeting.

11.05: Regulatory Action

- (1) The Commission may take or decline to take any regulatory action, whether or not such action is requested by a petitioner, provided the action is allowed by law.
- (2) In pursuing any regulatory action, the Commission shall proceed in accordance with M.G.L. c. 30A and 950 CMR 20.00: *Preparing and Filing Regulations*.
- (3) If the Commission schedules any public hearing or commences any other public comment process related to proposed regulatory action in response to a petition, the Commission shall provide notice of the public hearing or other public comment process to:
  - (a) The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
  - (b) Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable.
- (4) At any hearing conducted by the Commission with respect to proposed regulatory action, the presiding official:
  - (a) Shall be designated by the Chair;
  - (b) May impose reasonable restrictions on the speaking time or the presentation of testimony or materials; and
  - (c) May adjourn and continue the hearing to a specified time and place upon determining that the initial time allotted for the hearing has proven to be insufficient.
- (5) Following any public hearing or other public comment process concerning proposed regulatory action, the Commission may, by a vote of the Commissioners, approve revisions to the proposed regulatory action, whether or not such revisions were suggested in such a public hearing or other public comment process.
- (6) If the Commission takes any regulatory action in response to a petition, the Commission shall provide notice of the action to:
  - (a) The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
  - (b) Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable.
- (7) If the Commission decides not to take a regulatory action requested by a petitioner:
  - (a) The Commission shall provide notice of the decision to the petitioner with reasonable promptness; and
  - (b) Unless the Commission expressly indicates otherwise, the decision shall not represent an affirmative adoption of a position contrary to the petitioner's, and no weight should be assigned to the decision.
- (8) Following the Commission's approval of any regulation, any statement in response to a petition, or any related document, the Commission staff may make revisions to the document that are not substantive and are needed to correct clear errors in names, dates, numbers, citations, quotations, spelling, typography, or formatting.

11.06: Issuance of an Advisory Opinion

- (1) The Commission may issue or decline to issue any advisory opinion, whether or not such action is requested by a petitioner, provided the action is allowed by law.
- (2) The Commission shall issue an advisory opinion only if its issuance and its general substance are approved by a vote of the Commissioners, either before or after the development of a draft advisory opinion.
- (3) Any advisory opinion:
  - (a) Shall be in writing;
  - (b) Shall be issued in the name of the Commission;
  - (c) Shall include a statement of reasons supporting any conclusion reached; and
  - (d) May be signed by an individual on behalf of the Commission.

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- (4) If the Commission issues an advisory opinion in response to a petition, the Commission:
  - (a) Shall provide a copy of the advisory opinion to:
    1. The petitioner, or where there are multiple petitioners, to any one of the petitioners; and
    2. Each person or entity referenced in any certificate of service that accompanied the petition, unless such a step would be impracticable;
  - (b) Shall afford the petitioner the opportunity to request, within a reasonable and specified period of time, that the Commission omit the petitioner's name from any publicized version of the opinion;
  - (c) Shall honor any timely request made under 555 CMR 11.06(4)(b), unless the Commission decides otherwise by a vote of the Commissioners;
  - (d) Shall maintain a copy of the advisory opinion; and
  - (e) Except as provided in 555 CMR 11.06(4)(c), may publish an advisory opinion on its website or otherwise, where such publication is not precluded by law.
- (5) If the Commission decides not to issue an advisory opinion in response to a petition:
  - (a) The Commission shall provide notice to the petitioner of the decision with reasonable promptness; and
  - (b) Unless the Commission expressly indicates otherwise, the decision shall not represent an affirmative adoption of a position contrary to the petitioner's, and no weight should be assigned to the decision.
- (6) Following the Commission's approval of any advisory opinion, any statement in response to a petition, or any related document, the Commission staff may make revisions to the document that are not substantive and are needed to correct clear errors in names, dates, numbers, citations, quotations, spelling, typography, or formatting.

11.07: Effect of an Advisory Opinion

- (1) The Commission's issuance of an advisory opinion shall, in any Commission proceeding, provide a defense to a person or entity that acted in accordance with that opinion, where:
  - (a) The circumstances at issue in the Commission proceeding are not materially different than those upon which the advisory opinion was based;
  - (b) The person or entity has not acted inconsistently with 555 CMR 11.03(5); and
  - (c) The person or entity has not failed to comply with an obligation under 555 CMR 11.03(6).
- (2) At any time, the Commission may rescind or revise an advisory opinion. Where the original advisory opinion was issued in response to a petition, the Commission shall promptly provide notice to the petitioner of any rescission or revision.
- (3) An advisory opinion shall have no force or effect:
  - (a) With respect to circumstances that are materially different than those upon which it was based;
  - (b) If it is rescinded;
  - (c) If it is materially revised in relevant part;
  - (d) If it is rendered invalid by a change in law; or
  - (e) If a court issues a binding decision that is inconsistent with it.
- (4) The circumstances described in 555 CMR 11.07(3) shall not invalidate or negate any prior Commission action or decision other than an advisory opinion, unless the Commission or any source of law expressly requires the invalidation or negation of such action or decision.

11.08: Representation by an Attorney at Law

- (1) Any action that 555 CMR 11.00 contemplates being taken by a petitioner may be taken on a petitioner's behalf by an attorney at law representing the petitioner in relation to the matter.
- (2) Where a petitioner, another person, or another entity is represented by an attorney at law in relation to a petition, any communication between the Commission and that petitioner, person, or entity should be made through the attorney, unless the attorney authorizes otherwise in writing.

REGULATORY AUTHORITY

555 CMR 11.00: M.G.L. c. 6E, § 3(a), and M.G.L. c. 30A, §§ 4 and 8.