

700 CMR 2.00: RULES FOR ADOPTING, AMENDING, OR REPEALING ADMINISTRATIVE REGULATIONS, AND FOR ISSUING ADVISORY RULINGS

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2.01: Scope and Purpose

(1) Scope. The provisions of 700 CMR 2.00 pertain to the following enumerated administrative actions that the Massachusetts Department of Transportation (the MassDOT) may take under, or consistent with, the State Administrative Procedure Act (M.G.L. c. 30A).

(a) Adoption, Amendment, or Repeal of a Regulation After a Hearing. The MassDOT undertakes actions within this category in accordance with the provisions of the State Administrative Procedure Act, M.G.L. c. 30A, §§ 1(5) and 2.

(b) Adoption, Amendment, or Repeal of a Regulation Without a Hearing. The MassDOT undertakes actions within this category in accordance with the provisions of the State Administrative Procedure Act, M.G.L. c. 30A, §§ 1(5) and 3.

(c) Issuance of an Advisory Ruling. The MassDOT undertakes actions within this category in accordance with the provisions of the State Administrative Procedure Act, M.G.L. c. 30A, § 8.

(2) Purpose. The purpose of 700 CMR 2.00 is to advise interested persons and entities concerning the process that the MassDOT uses to take administrative action, specifically in relation to rulemaking activity and the clarification of rules and policy through advisory rulings. The intent of 700 CMR 2.00 is to maximize the MassDOT's opportunities to receive from interested persons or entities an accurate and balanced view of the issues that the MassDOT decides to consider and to set out procedures for the MassDOT's taking efficient action with respect to such issues. However, the MassDOT is not required to engage in rulemaking or to issue advisory rulings at the request of an interested person or entity. 700 CMR 2.00 does not alter the MassDOT's discretion as to such matters.

2.02: Petition by an Interested Person or Entity

(1) Scope. In accordance with M.G.L. c. 30A, §§ 4, 700 CMR 2.02 governs the procedure by which an interested person or entity may submit a petition to the MassDOT requesting that it take administrative action under one of the categories specified in 700 CMR 2.01(1).

(2) Who may petition. Any person or entity with an interest in the subject matter (a petitioner) may submit a petition to the MassDOT.

(3) Duty of the petitioner. In furtherance of the MassDOT's desire to obtain as accurate and balanced a view as practicable of the issues that petitions submitted under 700 CMR 2.02 present, a petitioner shall make all reasonable efforts to ensure that a petition:

- (a) is complete and accurate in all material respects; and
- (b) is not misleading because of an undue emphasis on information or views favorable to the petitioner or a de-emphasis of information or views unfavorable to the petitioner.

(4) Content of the petition. A petition under 700 CMR 2.02 need not be on or in a prescribed form, but must contain in clear and concise language all of the following information to the best of the petitioner's information and belief and in conformance with the obligation of candor set forth in 700 CMR 2.02(3):

- (a) the name, address, and telephone number of the petitioner and, if applicable, of the attorney representing the petitioner with respect to the petition;

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- (b) the nature of the petitioner's interest;
- (c) if the petitioner is requesting that the MassDOT adopt or amend a regulation, the complete text of the proposed new regulation or amendment; if the petitioner is requesting that the MassDOT repeal a regulation or portion of a regulation, a precise description of the regulation affected; and, if the petitioner is requesting that the MassDOT issue an Advisory Ruling, a concrete statement of the facts and a specific legal question that may serve as the focus of the MassDOT's ruling;
- (d) a statement of the need for the requested action;
- (e) a statement of fact and argument in support of the requested action;
- (f) a statement of legal authorities, if any, supporting the requested action;
- (g) a statement disclosing the existence and general nature of any past, continuing, or anticipated litigation or collective bargaining related to the subject of the petition;
- (h) a statement disclosing the identity and interests of any persons or entities, or groups of people or entities, that the petitioner has reason to believe that the requested action might adversely affect or that otherwise might have a significant interest in the subject of the petition; and
- (i) the signature of the petitioner or the petitioner's attorney.

(5) Continuing duty to inform. From the time that the petitioner files a petition under 700 CMR 2.02 until the time that the MassDOT acts upon the petition, the petitioner is under a continuing duty to amend the petition as soon as practicable after learning of any newly discovered information that 700 CMR 2.02 would have required the petitioner to include in the petition at the time of filing or that materially alters the information that the petitioner presents in the petition. An amendment need not be on or in a prescribed form, but must be in writing, signed by the petitioner or the petitioner's attorney, refer specifically to the petition, and contain a clear and concise description of the newly discovered information.

(6) Filing with the MassDOT. A petition or an amendment consists of one signed original and two complete and clear copies. The petitioner or the petitioner's designee may submit a petition or amendment in person at the main offices of the MassDOT during regular business hours or mail a petition or amendment to the chief legal advisor of the MassDOT or such other person as the MassDOT may designate (referred to simply as the "general counsel"), at the main offices of the MassDOT. In either case, a petition or amendment must be placed in an envelope clearly marked on the outside with the following words: "Attention General Counsel: Petition or Amendment Under 700 CMR 2.00." A petition or amendment may not be submitted by telefacsimile. The MassDOT considers a petition or amendment filed on the date that the MassDOT receives it in conformance with the requirements of 700 CMR 2.02(6). Upon receipt, the general counsel notes the date of filing on the original and both copies of a petition or amendment.

2.03: Initial Determinations With Respect to a Petition

(1) Scope. 700 CMR 2.03 governs the procedures by which the MassDOT makes initial determinations regarding the nature of a petition and whether it conforms to the requirements of 700 CMR 2.02.

(2) Who makes the initial determinations. Subject to 700 CMR 2.03(6), the general counsel makes the initial determinations under 700 CMR 2.03.

(3) Nature of the petition. The general counsel determines the nature of the petition by:

- (a) classifying it as one of the types of administrative action noted in 700 CMR 2.01(1);
- (b) classifying it as more than one type of administrative action noted in 700 CMR 2.01(1) and recommending that the petitioner amend the petition so that the MassDOT can appropriately consider it under each of such categories; or
- (c) concluding that the MassDOT should not consider the petition. One basis upon which the general counsel may conclude that the MassDOT should not consider the petition under 700 CMR 2.00 is that the petition seeks adjudicatory rather than rulemaking action.

2.03: continued

- (4) Conformance with 700 CMR 2.02. The general counsel determines whether the petition conforms with the requirements of 700 CMR 2.02.
- (5) Referral to the MassDOT for consideration. Upon completion of the initial determinations specified in 700 CMR 2.03, the general counsel refers the petition and determinations to the Secretary of Transportation for consideration in accordance with 700 CMR 2.04.
- (6) No requirement to make an initial determination. Notwithstanding the provisions or requirements of any other subsection of 700 CMR 2.03, the MassDOT may decide as a matter of policy or in any instance to dispense with the process of initial determination and to proceed directly to a decision under 700 CMR 2.04.

2.04: Decision by the MassDOT With Respect to a Petition

- (1) Scope. 700 CMR 2.04 governs the procedure by which the MassDOT determines how to proceed with a petition submitted under 700 CMR 2.02.
- (2) Alternative actions. The MassDOT may consider any recommendations or determinations that the general counsel makes under 700 CMR 2.03 with respect to a petition or may consider a petition alone. The MassDOT may decide to:
  - (a) take no further action on a petition;
  - (b) postpone action on a petition until the petitioner has redrafted or supplemented it to meet stated deficiencies;
  - (c) postpone action on a petition to a subsequent meeting or indefinitely;
  - (d) proceed under 700 CMR 2.06, and in accordance with the requirements of M.G.L. c. 30A, § 2, to adopt, amend, or repeal a regulation of the MassDOT after a hearing;
  - (e) proceed under 700 CMR 2.07, and in accordance with the requirements of M.G.L. c. 30A, § 3, to adopt, amend, or repeal a regulation of the MassDOT without a hearing;
  - (f) proceed under 700 CMR 2.08, and in accordance with the requirements of M.G.L. c. 30A, § 8, to issue an Advisory Ruling; or
  - (g) take any other action that the MassDOT deems appropriate.
- (3) Change of decision. At any time, and for any reason, the MassDOT may change a decision taken under 700 CMR 2.04(2), including a change that results in the MassDOT's taking no further action on the petition.
- (4) Notification. As soon as practicable after taking an action under 700 CMR 2.04(2) or (3), the MassDOT mails a notice to the petitioner of the action to the address specified on the petition. The MassDOT is not required to explain or substantiate the reasons for any action that it takes under 700 CMR 2.04(2) or (3).

2.05: Initiation of an Action by the MassDOT

The MassDOT may, at its own initiative and at any time, decide to proceed under 700 CMR 2.06 or 2.07.

2.06: Adoption, Amendment, or Repeal of a Regulation After a Hearing

- (1) Scope. 700 CMR 2.06 governs the procedure by which the MassDOT, acting either in response to a petition submitted under 700 CMR 2.02 or on its own initiative, acts to adopt, amend, or repeal a regulation after a hearing.
- (2) Requirement of a hearing. The MassDOT takes action to adopt, amend, or repeal a regulation in conformance with 700 CMR 2.06 if M.G.L. c. 30A, § 2, requires a hearing.
- (3) Notice. The MassDOT provides notice in accordance with the requirements of M.G.L. c. 30A, § 2, and any other applicable law, prior to the adoption, amendment, or repeal of a regulation as to which a hearing is required.

2.06: continued

(4) Conduct of the hearing. A hearing takes place on the date and at the place specified in the notice provided under 700 CMR 2.06(3). The MassDOT conducts the hearing in conformance with M.G.L. c. 30A, § 2, and the following provisions.

(a) One or more MassDOT designees, the general counsel, or a hearing officer designated by the MassDOT (referred to simply as the hearing officer) may conduct a hearing.

(b) The hearing officer may impose reasonable time or other restrictions on the presentation of testimony or materials in order to make best use of the time initially allotted for the hearing.

(c) The hearing officer may adjourn and continue the hearing to a specified time and place if the hearing officer determines that the initial time allotted for the hearing has proven to be insufficient in view of the goal of providing the MassDOT with as accurate and balanced a view of the relevant facts and issues as is practicable.

(d) The hearing officer shall submit a report to the MassDOT, either orally or in writing as the MassDOT determines, that includes a summary of the proceedings, any recommendations that the hearing officer may wish to make, and all materials submitted at the hearing in accordance with 700 CMR 2.06(5).

(5) Submission of Materials. An interested person may submit oral or written testimony, or written materials, at or after the hearing in accordance with the following procedures.

(a) An interested person may mail, or deliver in person, to the general counsel at the MassDOT's main office a notice of intent to testify or to submit written or other materials at a hearing (a notice of intent). The general counsel must receive a notice of intent not later than five business days before the hearing. One complete copy of any written materials intended to be submitted at the hearing must be included with the notice of intent. The hearing officer may allow persons who have submitted a notice of intent to testify at the hearing before those who have not and may exclude testimony relating to written materials not submitted in a timely manner with a notice of intent. The hearing officer may exclude from the hearing or subsequent presentation to the MassDOT any exhibits or materials on the basis that their transportation or storage is impracticable, but shall inform the MassDOT of any such decision.

(b) The MassDOT, at its discretion and at any time prior to making a decision under 700 CMR 2.06(6), may accept from an interested person any additional oral or written testimony or materials concerning the subject matter of the hearing. Any person making such a submission shall indicate in writing the reason that the testimony or materials were not offered or accepted at the hearing.

(6) Decision. In making its decision regarding the proposed adoption, amendment, or repeal of a regulation, the MassDOT may take into account in whatever manner and to whatever extent it deems appropriate:

(a) any oral or written information, opinion, or argument presented at a hearing, including the report of the hearing officer;

(b) any other testimony or material submitted under 700 CMR 2.06(5)(b);

(c) any other oral or written information, opinion, or argument, from whatever source and however obtained, that the MassDOT wishes to consider in order to assist it in reaching a decision.

(7) Form of the regulation. The MassDOT may adopt, amend, or repeal a regulation in a revised form in a manner that is consistent with the requirements of 700 CMR 2.06(3).

(8) Emergency regulation. Notwithstanding the provisions or requirements of any other subsection of 700 CMR 2.06, the MassDOT may adopt an emergency regulation under the circumstances described by, and in conformance with, M.G.L. c. 30A, § 2.

2.07: Adoption, Amendment, or Repeal of a Regulation Without a Hearing

(1) Scope. 700 CMR 2.07 governs the procedure by which the MassDOT, acting either in response to a petition submitted under 700 CMR 2.02 or on its own initiative, acts to adopt, amend, or repeal a regulation without a hearing.

2.07: continued

- (2) Determination that a hearing is not required. The MassDOT takes action to adopt, amend, or repeal a regulation in conformance with 700 CMR 2.07 if M.G.L. c. 30A, § 3, does not require a hearing.
- (3) Notice. The MassDOT provides notice in accordance with the requirements of M.G.L. c. 30A, § 3, and any other applicable law prior to the adoption, amendment, or repeal of a regulation as to which a hearing is not required.
- (4) Submission of materials. An interested person may submit written materials to the MassDOT relating to the subject matter of the proposed adoption, amendment, or repeal of a regulation. Such materials are addressed to the general counsel at the main office of the MassDOT or delivered in person to the main office during regular business hours. The written materials must identify the sender by name and address, and the general counsel must receive the materials not later than five business days before the date set out in the notice under 700 CMR 2.07(3). The MassDOT may specify in the notice provided under 700 CMR 2.07(3) the manner, place, and time that interested persons may orally present data, views, or argument if the MassDOT determines that oral presentations are desirable and practicable.
- (5) Decision. In making its decision regarding the proposed adoption, amendment, or repeal of a regulation, the MassDOT may take into account in whatever manner and to whatever extent it deems appropriate any oral or written information, opinion, or argument presented under 700 CMR 2.07(4) and any other oral or written information, opinion, or argument that the MassDOT decides to consider in order to assist it in reaching a decision.
- (6) Form of the regulation. The MassDOT may decide to adopt, amend, or repeal a regulation in a revised form in a manner that is consistent with the requirements of 700 CMR 2.07(3).
- (7) Emergency regulation. Notwithstanding the provisions or requirements of any other subsection of 700 CMR 2.07, the MassDOT may adopt an emergency regulation under the circumstances described by, and in conformance with, M.G.L. c. 30A, § 3.

2.08 Issuance of an Advisory Ruling

The MassDOT may issue an Advisory Ruling in response to a petition submitted under 700 CMR 2.02. The MassDOT is disinclined to answer hypothetical or abstract questions or questions that inquire generally about the construction or application of a particular statute, regulation, or policy absent a specific factual underpinning set forth in the petition.

2.09: Filing, Publication, and Public Access

The MassDOT conforms to the filing requirements of M.G.L. c. 30A, § 5, with respect to actions that the MassDOT takes under 700 CMR 2.06 or 2.07 and provides to the state secretary all documents required to be provided under M.G.L. c. 30A, § 6, for publication in the *Massachusetts Register*. The MassDOT provides public access to the regulations of the MassDOT in conformance with the requirements of M.G.L. c. 30A, § 6B. The MassDOT also provides public access to all Advisory Rulings issued under 700 CMR 2.08 at its main office during normal business hours and provides copies of Advisory Rulings upon request for a reasonable fee.

REGULATORY AUTHORITY

700 CMR 2.00: M.G.L. c. 6C; c. 30A, §§ 1, 2, 3, 4 and 8.

NON-TEXT PAGE