

## 740 CMR: MASSACHUSETTS PORT AUTHORITY

### 740 CMR 2.00: GENERAL PROVISIONS

#### Section

- 2.01: Scope, Purpose and Authority
- 2.02: Non-discrimination
- 2.03: Petitions
- 2.04: Hearings
- 2.05: Executive Director's Memoranda
- 2.06: Suspension of Regulations
- 2.07: References to Government Agencies and Regulatory Citations
- 2.08: References to Masculine or Feminine
- 2.09: Severability

#### 2.01: Scope, Purpose and Authority

(1) The Massachusetts Port Authority ("Authority") is a body politic and corporate organized and operating pursuant to the provisions of St. 1956, c. 465, as amended. As so constituted, the Authority is empowered to and has promulgated Rules and Regulations governing the regulation of its affairs, the conduct of its business, and the use of its facilities, including Logan International Airport, Laurence G. Hanscom Field, Maurice J. Tobin Memorial Bridge, and the Port properties of the Authority; and to fix penalties for the violation thereof. Promulgation by the Authority of 740 CMR 2.00 has been, and will continue to be, consistent with and pursuant to the provisions of the state's Administrative Procedure Act, M.G.L. c. 30A, except insofar as 740 CMR 2.00 is in conflict with the provisions of the Authority's Enabling Act, St. 1956, c. 465, and particularly §§ 2, 3 and 23. Accordingly, 740 CMR 2.00 has been submitted to the Secretary of the Commonwealth for publication in the Code of Massachusetts Regulations.

(2) The Authority reserves the right from time to time to amend, supplement, revise, alter, rescind, or add to 740 CMR 2.00 either in part or in its entirety.

#### 2.02: Non-discrimination

To the extent permitted by law, the Authority shall maintain and enforce a policy of non-discrimination and affirmative action in employment at all facilities. Accordingly, no person doing business with the Authority as a lessee, tenant, licensee or permittee at any facility governed by 740 CMR 2.02, shall discriminate in the provision of goods, services or employment on the basis of race, color, creed, national origin, age, or sex, or be in violation of any provisions of local, state or federal law regarding non-discrimination and equal employment opportunities.

#### 2.03: Petitions

(1) In accordance with M.G.L. c. 30A, § 4, any interested person may petition the Authority requesting the adoption, amendment or repeal of any regulation, and may accompany such petition with such data, views and arguments as that person considers pertinent.

- (2) The procedure for the submission, consideration and disposition of such petitions is as follows:
- (a) All petitions hereunder shall be in writing, signed by the individual petitioner, or by an individual acting on behalf of any petitioning group or organization, and shall include the complete address and telephone number of said individual.
  - (b) The Executive Director, within 30 days of receipt by the Authority of any valid petition, shall notify the petitioners, and may notify other interested persons or parties, of the schedule and procedure for consideration and disposition of such petitions.
  - (c) Within 30 and 120 days of so notifying the petitioners, the Executive Director shall have carried out those procedures and shall have placed on the agenda for Authority action his recommendation on the disposition of the petition and the Authority shall take appropriate action.

2.04: Hearings

(1) Introduction. Notwithstanding the provisions of M.G.L. c. 90C, 740 CMR 2.04 sets forth the procedures for hearings for violations of 740 CMR 1.00 *et seq.* A person issued a notice of a violation of a provision of 740 CMR 1.00 *et seq.* may make a written request for an appeal hearing before a hearing officer as provided in 740 CMR 2.04.

(2) Definitions. Refer to all definitions included in M.G.L. c. 30A and in 740 CMR 1.00 *et seq.* In addition, the following words when used in 740 CMR 2.04 shall have the following meaning.

Hearing shall mean an adjudicatory proceeding held under 740 CMR 2.04.

Hearing Officer shall mean the individual(s) authorized by law or designated by the Authority to conduct a hearing. A violation clerk as defined in 740 CMR 1.00 *et seq.* may be designated a hearing officer.

Notice of Violation shall mean the notice of the violation of a provision of 740 CMR 1.00.

Party shall mean any person who is the subject of a notice of a violation of one or more provisions of 740 CMR 1.00 *et seq.*

(3) Representation.

(a) Appearance. An individual may appear on his or her own behalf, or may be accompanied, represented and advised by an authorized representative.

(b) Authorized Representative. An Authorized Representative shall appear by filing a written notice with the Authority or hearing officer signed by the party represented, except the party's signature is not required when an attorney at law is the authorized representative. The notice shall contain the name, address, telephone number, facsimile number and e-mail address, if available, of the authorized representative and of the party represented and may limit the purpose of the appearance. The filing by an attorney of any pleading, motion or other paper shall constitute an appearance by the attorney who signs it unless the paper states otherwise. An authorized representative may exercise on a party's behalf any rights and powers vested in that party by 740 CMR 2.04.

(4) Time.

(a) Timely Filing. Parties must file papers required or permitted to be filed with the Authority at the office of the hearing officer as identified on the notice of violation.

(b) Manner of Filing. All papers filed by U.S. mail shall be deemed filed on the date contained in the U.S. postal cancellation stamp or U.S. postmark, and not the date contained on a postal meter stamp. Papers filed by all other means shall be considered hand-delivered, and shall be deemed filed on the date received by the Authority prior to 5:00 P.M. Papers received after 5:00 P.M. shall be deemed filed on the following business day.

(c) Notice of Authority Action. Notice of actions and other communications from the Authority or its designated hearing officer, shall be presumed to be received on the day of hand delivery or, if mailed, three days after deposit in the U.S. mail. The postmark shall be evidence of the date of mailing.

(d) Computation of Time. Unless otherwise specifically provided by applicable law, computation of any time period referred to in 740 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is included unless it is a Saturday, Sunday or legal holiday or any other day on which the office of the Authority is closed, when the period shall run until the end of the next following business day.

(5) Filing Format. Papers filed with the Authority shall be titled with the identifying number of the violation notice, the name of the party, the name of the authorized representative, if any, the signature of the party or authorized representative and the address and telephone number of the person signing the papers.

(6) Initiation of Hearing. A party may request a hearing by submitting a written request for a hearing in the specified form and within the specified time period as provided on the applicable violation notice.

2.04: continued

(7) Notice of Hearing. If a party requests a hearing, the Authority shall schedule a hearing to determine whether the Authority shall affirm or dismiss the finding of violation or assessment of penalty. The hearing officer shall give the party written notice of the time, date, place and purpose of the hearing.

(8) Failure to Attend. If the party or an authorized representative fails to attend the hearing as scheduled, the hearing officer may enter a default against the party and dismiss the appeal, and the party shall have no further right to appeal either the finding of violation or assessment of penalty.

(9) Rights and Duties of Parties. Each party may present his or her own case, and may be assisted by an authorized representative at the party's expense. The party or authorized representative shall have a right to:

- (a) present witnesses;
- (b) present and establish all relevant facts and circumstances by oral testimony and documentary evidence;
- (c) advance any pertinent arguments without undue interference;
- (d) question or refute any testimony including an opportunity to cross examine adverse witnesses; and
- (e) examine and introduce evidence from his or her case record, and examine and introduce any other pertinent documents.

(10) Evidence. The hearing officer shall admit and consider evidence in accordance with M.G.L. c. 30A, § 11.

(11) Decision. After the completion of the hearing, the hearing officer shall render a decision as promptly as administratively feasible in accordance with M.G.L. c. 30A, § 11(8). The decision shall be final. The party shall have the right to appeal the decision in accordance with M.G.L. c. 30A, § 14.

2.05: Executive Director's Memoranda

The Executive Director may issue an Executive Director's Memorandum to interpret or clarify the meaning or application of a Massport regulation.

2.06: Suspension of Regulations

The Executive Director may, with prior notice to the Members of the Authority, suspend application or enforcement of any one or more of Massport regulations for a period not to exceed six months. Any such suspension beyond that period shall only be by a vote of the Members of the Authority, and in accordance with applicable law.

2.07: References to Government Agencies and Regulatory Citations

(1) All references to a federal or state agency, department, administration, service, office, secretariat or other governmental entity (individually or collectively, Agency or Agencies), contained in 740 CMR shall mean the Agency and/or the functional successor to that Agency (*e.g.*, the Transportation Security Administration is the functional successor to the Federal Aviation Administration for purposes of aviation security).

(2) All references to a rule, regulation, order, directive, advisory, ruling, opinion, guidance document, or the like, issued by any Agency (Regulation), contained in 740 CMR shall mean that Regulation and/or the successor to or replacement for that Regulation (*e.g.*, 49 CFR Part 1542 is the successor Regulation to 14 CFR Part 107).

2.08: References to Masculine or Feminine

All references to masculine or feminine pronouns shall mean both masculine and feminine forms.

740 CMR: MASSACHUSETTS PORT AUTHORITY

2.09: Severability

If any section, sub-section, sentence, clause or phrase of 740 CMR 2.00 is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect or impair any of the remaining provisions.

REGULATORY AUTHORITY

740 CMR 2.00: St. 1956, c. 465.