

211 CMR: DIVISION OF INSURANCE

211 CMR 110.00: PROCEDURES CONCERNING RATE FILINGS AND THE CONDUCT OF HEARINGS FOR WORKERS' COMPENSATION INSURANCE

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110.01: Purpose, Scope and Authority

211 CMR 110.00, promulgated pursuant to M.G.L. c. 152, § 53A, governs the form and content of Rate Filings and Advisory Filings, and the conduct of proceedings, including hearings, on those Filings.

110.02: Definitions

As used in 211 CMR 110.00, the following words mean:

Advisory Filing: Any recommendations, including supporting information or commentary, concerning a Rate Filing, or any portion thereof, filed in accordance with 211 CMR 110.05.

Commissioner: The Commissioner of Insurance, appointed pursuant to M.G.L. c. 26, § 6.

Division: The Division of Insurance, established pursuant to M.G.L. c. 26, § 1.

Filing Party: An insurer or rating organization which makes a Rate Filing.

Insurer: Any corporation, association, partnership, group or other person authorized to write workers' compensation insurance in Massachusetts.

Interested Party: Any person, agency or organization which has been granted permission to appear and present testimony at a hearing.

Oral Statement: A statement of position made during a hearing, with the permission of the Presiding Officer, by any person who is not an Interested Party.

Papers: All written documents filed in a proceeding, including Rate Filings, Advisory Filings, motions, pleadings, briefs, memoranda and other communications.

Presiding Officer: The Commissioner, or any person or persons designated by the Commissioner, who conducts hearings and related proceedings on workers' compensation Rate Filings.

Proceeding: A hearing and related procedural matters, conducted under 211 CMR 110.00, to consider the Commissioner's approval of classifications of risks, premiums, and manual rules for workers' compensation insurance.

Rate Filing: Documents filed with the Commissioner by a Filing Party, pursuant to M.G.L. c. 152, § 53A, requesting modification of its manuals of classifications, rates, or rules. A rate filing will initiate a Proceeding under 211 CMR 110.00 unless the Commissioner, in his or her discretion, determines that the request seeks a minor modification to such manuals and requires no Proceeding under 211 CMR 110.00.

110.02: continued

Rating Organization: An organization licensed by the Commissioner pursuant to M.G.L. c. 152, § 52C.

Statutory Intervenor: Any person, agency or organization including, but not limited to, the Attorney General, which has a statutory right to appear as an Interested Party in any hearing conducted pursuant to 211 CMR 110.00.

Workers' Compensation Advisory Council: The council established pursuant to M.G.L. c. 23E, § 15 which participates in a Proceeding as authorized by M.G.L. c. 152, § 53A, 6(a) and (b).

Workers' Compensation Insurance: Insurance as provided for in M.G.L. c. 152.

110.03: General Provisions

(1) Filings. All papers relating to a Rate Filing shall be filed at the Division's principal office during regular business hours, addressed to the Docket Clerk, Hearings and Appeals. Unless otherwise specified in 211 CMR 110.00, the Presiding Officer shall determine how many copies of papers shall be filed. A party filing papers in a Proceeding shall serve a copy thereof on other parties to the Proceeding, by hand delivery or by United States mail, postage prepaid, sent to the address of record in the Proceeding. Failure to comply with 211 CMR 110.03(1) shall be grounds for refusal by the Division to accept papers for filing.

(2) Timely Filing. Papers filed in a Proceeding must be filed at the Division's principal office within the specified time limits. The date of filing shall be determined as follows:

- (a) Papers hand-delivered during regular business hours shall be deemed filed on that day.
- (b) Papers hand-delivered at other times shall be deemed filed on the next regular business day.
- (c) Papers mailed to the Division's principal office shall be deemed filed on the day the Division receives them.

(3) Computation of Time. Computation of any period of time referred to in 211 CMR 110.00 shall begin with the first day after the date of the initiating act. The last day of the period so computed is to be included unless it is a day when the principal office of the Division is closed, in which case the period shall run until the end of the next business day. When the time period is five days or fewer, Saturdays, Sundays and legal holidays shall be excluded from the computation.

(4) Extensions of Time. The Presiding Officer may, in his or her discretion, extend any time limit prescribed or allowed by 211 CMR 110.00 for good cause shown. All requests for extensions shall be made by motion before the expiration of the period originally prescribed or as previously extended.

(5) Signatures. All papers shall be signed by the filing party, its authorized representative or its counsel.

(6) Appearances. An appearance shall be made in a Proceeding by filing a written notice thereof and serving a copy on all persons who have previously appeared.

110.04: Rate Filings

(1) Prefiling Requirements.

- (a) A Rating Organization, 60 days before it submits a Rate Filing, shall submit to the Division all loss, premium, exposure and expense data relating to workers' compensation insurance experience in Massachusetts including, without limit, all data on which the Rate Filing will be based, other than data previously supplied to the Division.
- (b) An Insurer, 60 days before it submits a Rate Filing, shall submit to the Division all loss, premium, exposure and expense data relating to that insurer's workers' compensation insurance experience in Massachusetts including, without limit, all data on which the Rate Filing will be based, other than data previously supplied to the Division.

110.04: continued

(2) Filing Requirements.

(a) Every Rate Filing shall contain the information listed below. The Filing Party shall use any forms prescribed by the Division for such filings.

1. a title which indicates the nature of the proceedings; and
2. the complete name and address of the Filing Party and the name, address and telephone numbers of every authorized representative or counsel, if any, representing the Filing Party.

(b) all material, including all data, statistics, schedules and exhibits, which the Filing Party wishes to be considered at the hearing and all information upon which its recommendations are based.

(c) narrative statements including all information and commentary necessary to substantiate and explain the Filing Party's recommendations.

(d) the direct testimony of witnesses for the Filing Party. The direct testimony shall support every element of the Rate Filing and may be presented in a question and answer format.

(e) if applicable, the Filing Party's policy form for the Commissioner's approval, in accordance with M.G.L. c. 152, § 55.

No additions, amendments, or corrections to the Rate Filing shall be allowed except as permitted or requested by the Presiding Officer or in accordance with 211 CMR 110.08(8).

(f) A Filing Party shall submit ten copies of its Rate Filing to the Division and shall send one copy of it to each interested party which participated in the Filing Party's last rate proceeding.

The Filing Party shall also provide a copy to any other interested party which is granted permission to participate in the hearing.

(3) Supplementary Information. The Presiding Officer may require any Filing Party to furnish any additional data or information which the Presiding Officer determines to be necessary or appropriate in connection with the submission of any Rate Filing.

(4) Rejection of Rate Filings. The Presiding Officer may reject any Rate Filing if he or she determines that the Filing Party has not complied with applicable laws or the procedures and forms prescribed by 211 CMR 110.00. A Filing Party whose Rate Filing has been rejected may, pursuant to M.G.L. c. 152, § 53A(3), resubmit such Rate Filing with appropriate modifications.

(5) Consolidation of Rate Filings for Purposes of Hearing. If the Presiding Officer determines that two or more Filing Parties have submitted Rate Filings which are similar in scope, the Presiding Officer may, in his or her discretion, consolidate such Rate Filings for the purposes of hearing.

110.05: Advisory Filings

(1) Advisory Filing by the State Rating Bureau. The State Rating Bureau shall submit its Advisory Filing 14 days after the conclusion of the cross-examination of witnesses whose direct testimony is included in a Rate Filing.

(2) Advisory Filing by Statutory Intervenor. No fewer than ten days before the scheduled date of the initial hearing, a Statutory Intervenor shall file a notice of intent to appear as an Interested Party. Any Statutory Intervenor appearing as an Interested Party shall submit its Advisory Filing ten days after the conclusion of the cross-examination of witnesses whose direct testimony is included in a Rate Filing.

(3) Petitions for Leave to Participate and Advisory Filings by Interested Parties. No more than four days after publication of a notice of hearing in accordance with 211 CMR 110.06, any person, agency or organization that wishes to appear and present testimony at the hearing, other than the State Rating Bureau, Statutory Intervenor, or the Filing Party, may submit a petition for leave to participate as an Interested Party. Such petition shall state the grounds for the petition. Not more than three days after receipt of such petition, the Presiding Officer shall issue a decision on it. If the petition is granted, the Interested Party shall submit its Advisory Filing ten days after the conclusion of the cross-examination of witnesses whose direct testimony is included in a Rate Filing.

110.05: continued

(4) Content and Form of Advisory Filings. Any person making an Advisory Filing shall submit five copies to the Division, unless the Presiding Officer directs otherwise, and shall serve copies on the Filing Party, State Rating Bureau, statutory intervenors and interested parties. Each Advisory Filing shall fully raise all issues the party making the filing is presenting for consideration at the hearing, and shall include complete narrative statements and information necessary to explain those issues, all data, statistics, schedules and exhibits necessary to substantiate the party's recommendations, and the direct testimony of any witness offered by that party.

(5) Supplementary Information. If the Presiding Officer determines that the material presented in an Advisory Filing is irrelevant, immaterial or insufficient, he or she may order the party making the filing to submit additional information.

(6) Rejection of Advisory Filings. The Presiding Officer may reject any Advisory Filing if he or she determines that it does not comply with applicable law or the procedures and format prescribed by 211 CMR 110.00.

(7) Consolidation of Presentations on Advisory Filings. If the Presiding Officer determines that two or more petitioners have submitted Advisory Filings which are similar in scope, he or she may, in his or her discretion, require those petitioners to consolidate their presentations.

(8) Notice of Appearance of Counsel or Authorized Representative. Any person making an Advisory Filing shall submit with the filing a notice of appearance of counsel or other authorized representative.

110.06: Hearing Notice

At least 21 days before the scheduled date of an initial hearing in a Proceeding, the Commissioner shall give notice of the hearing by publication of a hearing notice in at least one newspaper of general circulation in the Commonwealth. The Filing Party shall pay the cost of publishing the notice of hearing. The Commissioner shall concurrently give notice of the hearing to the State Rating Bureau, the Attorney General, the Massachusetts Workers' Compensation Advisory Council, and to any person who has filed a written request with the Division to receive notice of such Proceedings. The hearing notice shall contain:

- (a) the date, time and location of the initial hearing;
- (b) a statement of the subjects and issues involved in the Proceeding; and
- (c) a statement of procedures for making oral statements at the hearing or for participating in the Proceeding.

The initial hearing on a Rate Filing shall commence no more than 60 days after it is filed with the Division.

110.07: Pre-Hearing Procedures

(1) Pre-Hearing Conference. The Presiding Officer may hold one or more pre-hearing conferences before or after the initial hearing. No more than seven days before the date of the initial hearing, the Presiding Officer may hold a pre-hearing conference to develop a schedule for subsequent hearings, taking into account the statutory period in which a decision must be rendered.

The Presiding Officer may direct the parties to confer with him or her, or with each other to consider:

- (a) simplification of issues;
- (b) the possibility of obtaining stipulations or admissions of fact and agreements as to documents to avoid unnecessary proof;
- (c) limits on the number of expert witnesses;
- (d) stipulations as to the qualifications of experts;
- (e) limits on the time to be allowed for cross-, redirect, and recross-examination;
- (f) rulings as to evidentiary disputes; and
- (g) such other matters as may aid in the prompt disposition of the Proceeding.

110.07: continued

(2) Discovery.

(a) Any party to a workers' compensation Proceeding may request any other party to produce or make available any documents or tangible things, not privileged and not previously supplied, which are in the possession, custody or control of the party to whom the request is made. Requests may be served on a party after submission of its Rate Filing or Advisory Filing and shall set forth the items to be provided with reasonable particularity. The party receiving the request shall respond within a period of ten days unless the Presiding Officer establishes a different time period. The Division or the State Rating Bureau, in responding to requests for documents, shall be entitled to the fee per page for copies as determined from time to time by the Executive Office for Administration and Finance.

(b) The party receiving the request for discovery may, within five days of service of the request, file objections to it or move for a protective order. The Presiding Officer may, in his or her discretion, schedule a hearing on the objections or motion. The Presiding Officer may issue protective orders to protect a party from annoyance, embarrassment, oppression or undue burden or expense. The Presiding Officer may also order limits on the scope, method, time and place for discovery and provisions for protecting confidential information or documents.

(c) A Party may file a motion to compel discovery if a request for documents is not honored, in whole or in part.

110.08: Conduct of the Proceeding

(1) Presiding Officer. The Presiding Officer, in conducting the Proceeding, may administer oaths and affirmations, and shall make all decisions on the admission or exclusion of evidence and testimony and on any other procedural matters which arise in the course of the Proceeding. The Presiding Officer may shorten or terminate any phase of the Proceeding for a party's failure, without good cause, to comply with the schedule or to proceed with expedition. The Presiding Officer may grant an extension of time or allow a party's motion for an extension if he or she determines that an extension is appropriate.

(2) Ex Parte Communications. From the start of a Proceeding under 211 CMR 110.00 until the rendering of a final decision, no person who is not employed by the Division shall communicate *ex parte* with the Commissioner, the Presiding Officer, or any Division employee involved in the decision process for the proceeding in question, with respect to the merits of the proceeding. A request for a report concerning the status of a proceeding or an inquiry as to the Division's practice or procedure shall not be considered an *ex parte* communication. If the Presiding Officer determines that a party has violated 211 CMR 110.08(2), the Presiding Officer may exclude such party from the hearing or decide against that party with prejudice. If the Presiding Officer determines that a person not a party has violated 211 CMR 110.08(2), the Presiding Officer may exclude that person from the hearing.

(3) Oral Statements. Oral Statements are generally heard at the commencement of an initial hearing, but the Presiding Officer may, in his or her discretion, permit Oral Statements later in the course of a Proceeding. Persons making Oral Statements shall not be sworn as witnesses. The Presiding Officer may specify the amount of time allowed to any person making an Oral Statement and, if the Presiding Officer determines that an Oral Statement is irrelevant, immaterial or unduly repetitious, may further restrict the time allowed

(4) Motions. A party may, by motion, request a ruling from the Presiding Officer. The motion shall state the ruling sought and the grounds therefor. The Presiding Officer may require a party to submit a motion in writing and may, in his or her discretion, hear oral argument on the motion before rendering a decision.

(5) Official Notice. The Presiding Officer may take official notice of any fact which may be judicially noticed by the courts of this Commonwealth and, in addition, may take official notice of general, technical or scientific facts within his or her specialized knowledge; provided that the Presiding Officer shall notify all parties of the material so noticed and shall, upon timely request, permit any party to contest the facts so noticed. The Presiding Officer may utilize his or her technical experience, technical competence, and specialized knowledge in the evaluation of the

evidence presented.

110.08: continued

(6) Evidence. The Presiding Officer need not observe the rules of evidence observed by the courts of Massachusetts or of the United States, but shall observe the rules of privilege recognized by Massachusetts law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The Presiding Officer may exclude testimony or evidence which he or she determines is unduly repetitious, or will have an unreasonably dilatory effect upon the Proceeding, or should have been submitted as part of a Rate Filing or Advisory Filing. All evidence, including any records, investigative reports and documents in the possession of the Division, which the Presiding Officer desires to use in making a decision, shall be offered and made a part of the record in the Proceeding, and no other factual information or evidence shall be considered except as provided in 211 CMR 110.08. Documentary evidence may be submitted in the form of copies or excerpts, or by incorporation by reference.

(7) Cross-Examination and Rebuttal Evidence. Every party, except as otherwise provided by law, shall have the right to submit written testimony, to cross-examine witnesses, and to submit rebuttal evidence in denial of an affirmative fact which an adverse party has endeavored to prove. To the extent that any party intends to introduce rebuttal and surrebuttal evidence, it shall inform the Presiding Officer, as soon as practicable, of its intention, the subject of the proposed evidence and the identity of any witnesses.

(8) Additional Evidence. At any stage of the hearing, the Presiding Officer may call for further evidence upon any issue, and may require any party or parties, or the State Rating Bureau, to present such evidence. The Presiding Officer may, in his or her discretion and for good cause shown, permit a party during the hearing to introduce exhibits and to raise issues not included in its Advisory Filing or Rate Filing.

(9) Control of Testimony. If the Presiding Officer determines that the testimony of a witness is irrelevant, immaterial or repetitious, he or she may order the witness to limit or omit further testimony on a particular subject or to cease testifying. The Presiding Officer shall have the right to question witnesses at any time in the course of their testimony.

(10) Offers of Proof. A party may make an offer of proof after a ruling by the Presiding Officer excluding proposed evidence. The offer of proof shall include a summary of the substance of proposed oral testimony and copies of documents. The Presiding Officer may require that the offer of proof be made in writing. All written offers of proof shall be marked for identification.

(11) Stipulations. At any stage of the Proceeding, the parties may stipulate to any pertinent facts, either orally or in writing. If the Presiding Officer rejects a stipulation, in whole or in part, he or she shall so state on the record and shall, as appropriate, allow the parties to present evidence and argument on the issue.

(12) Oral Argument. After completion of evidentiary hearings in a Proceeding, the Presiding Officer may, on his or her own or on the motion of any party, allow oral argument. In determining whether oral argument should be allowed, the Presiding Officer shall consider the complexity or importance of the issues, the public interest to be served, and the availability of time.

(13) Conduct of Persons Present. All persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the Massachusetts courts. When such standards are not observed, the Presiding Officer may take such action as he or she deems appropriate to maintain order, including the exclusion of any disorderly person from the hearing. If the person so excluded is a party, its counsel or its authorized representative, the Presiding Officer may decide against such party with prejudice.

(14) Transcripts. The Filing Party shall engage a qualified stenographer officially to record and transcribe a Proceeding. The Filing Party shall pay the stenographer's fees, together with the cost of providing two copies of the transcript to the Division, in the format determined by the Presiding Officer, and one copy to each Statutory Intervenor. Other parties may obtain copies of the transcript from the stenographer at cost.

110.09: Briefs

The Presiding Officer shall set a briefing schedule. A party may request an extension of time to file a brief by motion made before expiration of the scheduled time. Each party shall file five copies of its brief, unless the Presiding Officer orders otherwise, and shall serve a copy on each interested party. Each brief shall contain:

- (a) a concise statement of the case;
- (b) a summary of arguments with supporting evidence; and
- (c) a conclusion specifying the relief requested.

110.10: Decisions

The Presiding Officer's decision shall be in writing or stated on the record. It shall be accompanied by a statement of reasons therefor, including determination of each issue of fact or law necessary to the decision. The Presiding Officer shall notify all parties of their right to appeal the decision, and the time within which to appeal.

110.11: Appeals

(1) Appeal of Decisions to the Commissioner. Any person aggrieved by a final decision in a Proceeding conducted by a Presiding Officer designated by the Commissioner, which the Commissioner has not affirmed, may appeal the decision to the Commissioner, pursuant to M.G.L. c. 26, § 7.

(2) Review by the Commissioner. Upon the docketing of an appeal under M.G.L. c. 26, § 7, the Commissioner shall set a date by which the aggrieved person must file a brief which states the grounds for the appeal and the relief requested. A person who fails to timely file a brief thereby waives its right to appeal. The Commissioner shall notify all parties of the appeal, and of the filing date for the appeal brief. If the Commissioner determines, upon review of the brief and the record, that the appeal is without substantial merit, he or she may issue a decision on it. Otherwise, the Commissioner shall set a filing date for briefs by parties to the Proceeding and shall issue a decision after that date. The Commissioner may modify, affirm or reverse the Presiding Officer's decision, in whole or in part.

REGULATORY AUTHORITY

211 CMR 110.00: M.G.L. c. 152, § 53A.

NON-TEXT PAGE