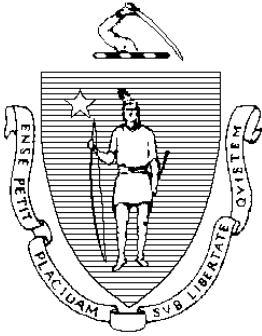


The Massachusetts Register

Published by:
The Secretary of the Commonwealth,
William Francis Galvin, Secretary

\$15.00



THE COMMONWEALTH OF MASSACHUSETTS
Secretary of the Commonwealth - William Francis Galvin

The Massachusetts Register
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MASSACHUSETTS REGISTER (THE) (ISSN-08963681) is published biweekly for \$300.00 per year by the Secretary of the Commonwealth, State House, Boston, MA 02133. Second Class postage is paid at Boston, MA. POSTMASTER: Send address change to: Massachusetts Register, State Bookstore, Room 116, State House, Boston, MA 02133.

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Notice of Expiration of Emergency Regulation

There are no *Notices of Expiration* in this *Massachusetts Register*.

Emergency Regulations

322 CMR	Division of Marine Fisheries	
6.00	Regulation of Catches	43
	<i>Requires that any entity that attracts, captures or performs research on or attempts to attract, capture or perform research on a white shark within the waters under the jurisdiction of the Commonwealth hold a scientific research permit from the Division of Marine Fisheries. This requirement is necessary to restrict white shark - human interactions that may result in harming the shark or threatening public safety.</i>	

Permanent Regulations

205 CMR	Massachusetts Gaming Commission	
101.00	M.G.L. c. 23K Adjudicatory Proceedings	45
	<i>Governs the adjudicatory proceedings of the Commission, including: hearings before the Commission, orders, review process and decisions.</i>	
136.00	Sale and Distribution of Alcoholic Beverages at Gaming Establishments	47
	<i>Governs the sale and distribution of alcoholic beverages at gaming establishments.</i>	
150.00	Protection of Minors and Underage Youth	49
	<i>Governs the protection of minors and underage youth at gaming establishments.</i>	
151.00	Requirements for the Operations and Conduct of Gaming at a Gaming Establishment	51
	<i>Governs the requirements that a gaming establishment has to satisfy before the Commission issues an Operation Certificate.</i>	
152.00	Individuals Excluded from a Gaming Establishment	53
	<i>Governs the requirements for the exclusion of individuals from gaming establishments.</i>	

302 CMR Department of Conservation and Recreation

18.00 Aquatic Nuisance Control Program 55

Establishes an aquatic nuisance control program designed to suppress, eradicate, control, and otherwise mitigate or reduce the risk of the spread of aquatic nuisances. This is accomplished by prohibiting the placement or transportation of aquatic nuisance species (ANS) or any boat or related equipment containing ANS in or upon inland waters of the Commonwealth. Requires all vessels in inland waters to be decontaminated upon leaving the water, and sets forth types of acceptable decontamination techniques. Additionally, vessels and related equipment are subject to inspection for the presence of ANS; and the DCR Commissioner is authorized to issue quarantines and emergency bans to aid in the enforcement of the regulation.

322 CMR Division of Marine Fisheries

8.00 Coastal Fisheries and Conservation Management 57

Rescinds the one-year old provision that allows the use of small mesh trawls in state-waters south of Martha's Vineyard and Nantucket after June 10th to fish for squid.

Acts 2015

CHAPTER NUMBER	BILL NUMBER	TITLE	DATE
1	H 44	Establishing a Sick Leave Bank for Maryellen Dean, an Employee of the Department of Developmental Services. <i>The foregoing was laid before the Governor on the twenty-ninth day of January, 2015 and after ten days has the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.</i>	1/29/2015
2	H 52	Addressing the Fiscal Year 2015 Budget Shortfall.	2/13/2015
3	H 45	Establishing a Sick Leave Bank for Michelle Shuman, an Employee of the Trial Court.	2/20/2015
4	S 16	Establishing a Sick Leave Bank for Matthew Arpano, an Employee of the Department of Correction.	3/6/2015
5	H 48	Establishing a Sick Leave Bank for Robert Paterwic, an Employee of the Department of Industrial Accidents.	3/10/2015
6	S 10	Establishing a Sick Leave Bank for James Goguen, an Employee of the Department of Developmental Services.	3/10/2015
7	S 15	Establishing a Sick Leave Bank for Audreu Graham Smith, an Employee of the Executive Office of Health and Human Services.	3/10/2015
8	H 46	Establishing a Sick Leave Bank for Lisa Carlson, an Employee of the Department of the State Police.	3/10/2015
9	H 50	Establishing a Sick Leave Bank for David Ogar, an Employee of the Massachusetts Department of Transportation.	3/17/2015
10	H 3333	Making Appropriations for the Fiscal Year 2015 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects.	3/31/2015
11	H 3187	Providing for the Financing of Certain Improvements to Municipal Roads and Bridges.	4/9/2015
12	H 64	Establishing a Sick Leave Bank for Simon Valedi, an Employee of the Massachusetts Department of Transportation.	4/10/2015
13	H 55	Authorizing the Town of Scituate to Establish the Date of its Annual Town Election.	4/17/2015
14	S 18	Establishing a Sick Leave Bank for James O'Brien, an Employee of the Department of Developmental Services.	4/24/2015
15	H 2370	Exempting the Police Department of the Town of Westwood from the Civil Service Law.	4/24/2015
16	H 63	Relative to the Town of Reading Home Rule Charter.	4/24/2015

Acts 2015

CHAPTER NUMBER	BILL NUMBER	TITLE	DATE
17	S 34	Relative to Sewer Commissioners in the Town of Wareham.	5/1/2015
18	H 3341	Establishing a Sick Leave Bank for Edward Conley, an Employee of the Middlesex Sheriff's Office.	5/1/2015
19	H 3353	Relative to State Personnel.	5/4/2015
20	S 1917	Establishing a Sick Leave Bank for Christine Chrzanowski, an Employee of the Department of Mental Health.	5/6/2015
21	S 42	Establishing a Sick Leave Bank for Marlo Carter, an Employee of the Department of Correction.	5/6/2015
22	H 3185	Establishing a Sick Leave Bank for Joseph Esposito, an Employee of the Massachusetts Department of Transportation.	5/8/2015
23	H 3206	Authorizing the City of Revere to Pay a Certain Sum of Money to Cynthia A. Penta (Adreani).	5/8/2015
24	H 3330	Exempting the Position of Deputy Police Chief in the City of Haverhill from the Civil Service Law.	5/8/2015
25	H 3188	Exempting the Police Department in the Town of Burlington from the Civil Service Law.	5/8/2015
26	H 3324	Relative to Certain Elections in the City of Newton.	5/20/2015
27	H 3338	Establishing a Sick Leave Bank for Ignacio Farias, an Employee of the Massachusetts Department of Transportation.	5/21/2015
28	H 2281	Establishing a Sick Leave Bank for Lisa Renaud, an Employee of the Department of Correction.	5/22/2015
29	H 3205	Establishing a Sick Leave Bank for Steven Goler, an Employee of the Massachusetts Department of Transportation.	5/29/2015
30	H 3204	Establishing a Sick Leave Bank for Deborah Hawkins, an Employee of the Department of the State Auditor.	6/5/2015



center
for health
information
and analysis

2015 JUN -1 PM 3:13

Administrative Bulletin 15-06

957 CMR 5:00: Health Care Claims, Case Mix and Charge Data Release Procedures

Effective June 1, 2015

All-Payer Claims Data Fee Schedule

The Center for Health Information and Analysis ("Center"), pursuant to 957 CMR 5.08(1) and (2), is issuing this Administrative Bulletin to update its All-Payer Claims Database ("APCD") Fee Schedule. All fees and definitions in the APCD Fee Schedule remain unchanged, however, the criteria for fee waivers has been expanded. Payers, providers and provider organizations that are required to file data with the Center pursuant to M.G.L. c. 12C and are current with all such data filings and reporting requirements are now eligible for a fee waiver. This Administrative Bulletin shall supersede Administrative Bulletin 15-02 which established the previous APCD Fee Schedule.

This Administrative Bulletin reports the fees established for APCD data and related application and support fees, in connection with APCD data released pursuant to the Center's regulation, 957 CMR 5.00: Health Care Claims, Case Mix and Charge Data Release Procedures. The established fees reflect the cost of systems analysis, program development, computer production, vendors' fees, consulting services and other costs related to the production of the requested data.

An applicant requesting APCD data must remit the application fee with the application and, if such application is approved, the applicant must remit the established fee prior to the release of the requested data. The established fees listed below retain the previous effective or start date of July 19, 2013. All fees stated are for one data extract. Additional extracts of data with the same specifications are discounted 50%.

Definitions

As referenced below, the following terms shall have the following meanings:

"Academic Researchers" shall mean data requests by researchers affiliated with public or private universities or medical schools for non-commercial uses, such as health care research or other health care related projects.

501 BOYLSTON STREET
BOSTON, MA 02118

T 617 701 9100
F 617 727 7660

“Others-Single Use” shall mean data requests by non-academic researchers for one-time uses such as those that cover one project or study. The “product” of a single use is a journal article, seminar, or other report on the project or study that may contain summaries of the data pertinent to the research or analysis.

“Others-Multiple Use” shall mean data requests by non-academic researchers for either:

- 1) a project or study involving limited ancillary uses, such as:
 - a) development and sale of custom reports for specific clients where the data is part of a larger analytical service;
 - b) analyses by a provider, plan or other organization where use of the data functions as a site license; or
 - c) development and sale of analytical tools such as severity indices or weights where the data is a component used in deriving the tool but the tool does not access or disclose the data; or
- 2) multiple primary uses, such as:
 - a) development and sale of reports principally composed of all or a portion of the data;
 - b) development and sale of a product facilitating the use of all or a portion of the data; or
 - c) integrating the data with data from other permitted sources, with or without related query tools.

Fee Waivers

In accordance with 957 CMR 5.08(2), applicants may qualify for a full or partial fee waiver, which shall be granted at the Center’s discretion. Such applicants include: (1) student directed research; (2) payers who submit data to the APCD that are requesting their own data; (3) government entities; (4) qualified researchers conducting studies directly tied to evaluation or improvement of current State government initiatives; (5) researchers who can demonstrate that the imposition of fees would constitute an undue financial hardship; and (6) payers, providers and provider organizations that are required to file data with the Center pursuant to M.G.L. c. 12C and are current with all such data filings and reporting requirements.

The established fees for APCD data and related applications are as follows:

Application Fees

Application Fee (Level 1 Data Elements Only)	\$100
Application Fee (All Other Applications)	\$300

Support/Production Fees

Support/Production	\$140 per hour
--------------------	----------------

APCD Data Fees—Effective July 19, 2013

Requests for Level 1 (De-identified) Data Elements			
File	Academic Researchers	Others -- Single Use	Others -- Multiple Use
Membership	\$1,000	\$3,000	\$20,000
Medical Claims	\$1,000	\$3,000	\$20,000
Pharmacy Claims	\$1,000	\$3,000	\$20,000
Dental Claims	\$500	\$1,500	\$10,000
Provider	\$1,000	\$3,000	\$20,000
Product	\$1,000	\$3,000	

Requests for Level 2 Data Elements			
File	Academic Researchers	Others -- Single Use	Others -- Multiple Use
Membership	\$2,500	\$7,500	\$37,500
Medical Claims	\$2,500	\$7,500	\$37,500
Pharmacy Claims	\$2,500	\$7,500	\$37,500
Dental Claims	\$1,000	\$3,000	\$15,000
Provider	\$2,500	\$7,500	\$37,500
Product	\$2,500	\$7,500	\$37,500

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Administrative Bulletin 15-07

957 CMR 5.00: Health Care Claims, Case Mix and Charge Data Release Procedures

Effective June 1, 2015

Hospital Case Mix and Charge Data Fee Schedule

The Center for Health Information and Analysis ("Center"), pursuant to 957 CMR 5.08(1) and (2), is issuing this Administrative Bulletin to update its Hospital Case Mix and Charge Data (Case Mix and Charge Data) Fee Schedule. All fees and definitions in the Case Mix and Charge Data Fee Schedule remain unchanged, however, the criteria for fee waivers has been expanded. Payers, providers and provider organizations that are required to file data with the Center pursuant to M.G.L. c. 12C and are current with all such data filings and reporting requirements are now eligible for a fee waiver. This Administrative Bulletin shall supersede Administrative Bulletin 13-09 which established the previous Case Mix and Charge Data Fee Schedule.

This Administrative Bulletin reports the fees established for Case Mix and Charge Data together with related application and support fees in connection with Case Mix and Charge Data released pursuant to the Center's regulation, 957 CMR 5.00: Health Care Claims, Case Mix and Charge Data Release Procedures. The established fees reflect the cost of systems analysis, program development, computer production, vendors' fees, consulting services and other costs related to the production of the requested data.

An applicant requesting Case Mix and Charge Data must remit the application fee with the application and, if such application is approved, the applicant must remit the established fee prior to the release of the requested data. The established fees listed below retain the previous effective or start date of December 27, 2013. All fees stated are for one data extract. Additional extracts of data with the same specifications are discounted 50%. The Center will charge fees for the highest applicable category of use where an applicant's data request and stated use involve one or more categories.

Definitions

As referenced below, the following terms shall have the following meanings:

501 BOYLSTON STREET
BOSTON, MA 02116

T 617 794 8100
F 617 794 7881

“Single Use” shall mean data requests for one-time uses such as those that cover one project or study. The “product” of a single use is a journal article, seminar, or other report on the project or study that may contain summaries of the data pertinent to the research or analysis.

“Limited Multiple Use” shall mean data requests for a project or study involving limited ancillary uses, such as: (1) development and sale of custom reports for specific clients where the data is part of a larger analytical service; (2) analyses by a provider, plan or other organization where use of the data functions as a site license; and (3) development and sale of analytical tools such as severity indices or weights where the data is a component used in deriving the tool but the tool does not access or disclose the data.

“Multiple Use” shall mean data requests for multiple primary uses, such as: (1) development and sale of reports principally composed of all or a portion of the data; (2) development and sale of a product facilitating the use of all or a portion of the data; and (3) integrating the data with data from other permitted sources with or without related query tools.

Fee Waivers

In accordance with 957 CMR 5.08(2), applicants may qualify for a full or partial fee waiver, which shall be granted at the Center’s discretion. Such applicants include: (1) student directed research; (2) payers who submit Case Mix and Charge Data to the Center that are requesting their own data; (3) government entities; (4) qualified researchers conducting studies directly tied to evaluation or improvement of current State government initiatives; (5) researchers who can demonstrate that the imposition of fees would constitute an undue financial hardship; and (6) payers, providers and provider organizations that are required to file data with the Center pursuant to M.G.L. c. 12C and are current with all such data filings and reporting requirements.

The established fees for Case Mix and Charge Data and related applications, effective December 27, 2013, are as follows:

Application Fees

Application Fee (Level 1 Data Elements Only)	\$100
Application Fee (All Other Applications)	\$300

Support/Production Fees

Support/Production	\$140 per hour
--------------------	----------------

Data Element Fees

Requests for Level 1 (De-identified) Data Elements

	Single Use	Limited Multiple Use	Multiple Use
Data File			
Inpatient Discharge	\$1,050	\$2,100	\$7,000
Outpatient Observation	\$420	\$840	\$1,680
Emergency Department	\$1,050	\$2,100	\$7,000

Requests for Level 2 and Above Data Elements			
	Single Use	Limited Multiple Use	Multiple Use
Data File			
Inpatient Discharge	\$1,050	\$2,100	\$7,000
Outpatient Discharge	\$420	\$840	\$1,680
Emergency Department	\$1,050	\$2,100	\$7,000



The Commonwealth of Massachusetts
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Governor

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Lieutenant Governor

MARYLOU SUDDERS
Secretary

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www.mass.gov/eohhs

Administrative Bulletin 15-06

101 CMR 413.00: Payments for Youth Intermediate-Term Stabilization Services

Effective July 1, 2015

Rates for Continuum Group Home Placements

Under the authority of 101 CMR 413.03(5) and at the request of the Department of Mental Health (DMH) and the Department of Children and Families (DCF), the Executive Office of Health and Human Services is adjusting the following two service program rates for Youth Intermediate-Term Stabilization Services provided pursuant to 101 CMR 413.00.

In order to ensure access to group home placements within the Caring Together Continuum in FY2016 and to allow providers time to develop capacity for these placements, the rates noted below shall be in effect from July 1, 2015, until December 31, 2015.

Program Type	Model	Per Diem Rate
Continuum	Adjusted GH 1:3	\$324.70
Continuum	Adjusted GH 1:4	\$272.34

2015 JUN -5 PM 2:51
SECRETARY OF STATE
REGISTRATION DIVISION



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Executive Office of Health and Human Services
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Administrative Bulletin 15-07

101 CMR 413.00: Payments for Youth Intermediate-Term Stabilization Services

Effective July 1, 2015

Rates for Intensive Residential Treatment Program (IRTP)

Under the authority of 101 CMR 413.03(5) and at the request of the Department of Mental Health (DMH), the Executive Office of Health and Human Services has extended five service program rates for Youth Intermediate-Term Stabilization Services provided pursuant to 101 CMR 413.00. These rates shall be in effect from July 1, 2015, to December 31, 2015. The monthly billing rate will fluctuate for each provider based on actual program utilization during that month, rounded to the nearest percentage.

Program	Utilization	<i>Per Diem</i> Rate
IRTP	85%	\$574.72
	80%	\$610.64
	75%	\$651.35
	70%	\$697.88
	65%	\$751.56

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Administrative Bulletin 15-08

101 CMR 413.00: Payments for Youth Intermediate-Term Stabilization Services

Effective July 1, 2015

Blended Rates for Continuum Services

Under the authority of 101 CMR 413.03(5) and at the request of the Department of Mental Health (DMH) and the Department of Children and Families (DCF), the Executive Office of Health and Human Services is amending the implementation of the blended rate outlined in Youth Intermediate-Term Stabilization Services pursuant to 101 CMR 413.03(4)(b). Payment rates for services provided from July 1, 2015, to December 31, 2015, shall be in accordance with the fees listed under 101 CMR 413.03(4)(a) for Community Based Services or for placement and support services under 101 CMR 411.00: *Rates for Certain Placement and Support Services*.

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REGISTRATION DIVISION



David Pierce
Acting Director

Commonwealth of Massachusetts

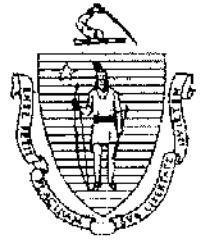
Division of Marine Fisheries

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Boston, Massachusetts 02114

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Governor

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Lieutenant Governor

Matthew A. Beaton
Secretary

George N. Peterson, Jr.
Commissioner

Mary-Lee King
Deputy Commissioner

DIRECTOR'S DECLARATION:

DAYS-OUT IN THE ATLANTIC SEA HERRING MANAGEMENT AREA 1A FISHERY

FOR TRIMESTER 2 JUNE 1, 2015 – SEPTEMBER 30 2015

Pursuant to the notice and public comment requirements of G.L. c.30A, §§ 2 and 3 and under the authority of G.L. c.130 §§ 17A, 21 and 80 and 322 CMR §§ 7.01(7) and 9.05, the Director of the Division of Marine Fisheries, with the approval and consent of the Marine Fisheries Commission, hereby makes the following Declaration of the Trimester 2 days-out schedule for the Atlantic sea herring Management Area 1A:

1. **June 1 – July 5:** During this period, or until further notice, vessels in the directed fishery for Atlantic sea herring area authorized to land Atlantic sea herring taken from Management Area 1A on Mondays beginning at 0001 hours and continuing through Fridays ending at 2359 hours. Vessels fishing for Atlantic sea herring in Management Area 1A will take days-out on Saturdays beginning at 0001 hours and continuing through Sundays ending at 2359 hours. On any day-out a vessel may land up to 2,000 pounds of Atlantic sea herring taken from Management Area 1A per trip, provided the vessel does not land more than once per day.
2. **July 6 – September 30:** During this period, or until further notice, vessels in the directed fishery for Atlantic sea herring area authorized to land Atlantic sea herring taken from Management Area 1A seven days per week; no days-out will be taken.

Dated: June 4, 2015

By: David Pierce

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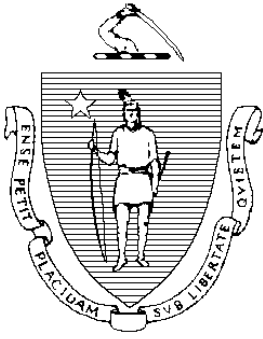
Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston, MA 02128-2909
Telephone (617) 568-5000
www.massport.com

NOTICE OF NIGHTTIME FIELD USE CHARGES AT L.G. HANSCOM FIELD

In accordance with Section 25.04 of the Massachusetts Port Authority Regulations (740 CMR 25.04), the Authority's Executive Director has calculated the annual Consumer Price Index adjustment to the nighttime field use charge for L.G. Hanscom Field, and establishes the following nighttime field use charges for L.G. Hanscom Field, effective July 1, 2015:

<u>Aircraft Type</u>	<u>Charge</u>
Aircraft 12,500 lbs and under:	\$ 58
Aircraft over 12,500 lbs:	\$ 424

Thomas P. Glynn
CEO & Executive Director
MASSACHUSETTS PORT AUTHORITY
One Harborside Drive / Suite 200S
East Boston, MA 02128-2909



THE COMMONWEALTH OF MASSACHUSETTS
Secretary of the Commonwealth - William Francis Galvin

**NOTICES OF PUBLIC REVIEW OF PROSPECTIVE REGULATIONS
PUBLISHED IN COMPLIANCE WITH M.G.L. c. 30A, §§ 2 AND 3**

June 19, 2015

Health Policy Commission	958 CMR 3.000 & 4.000	7/8/15 @ 9:30 A.M. Written testimony and comments accepted until 8/7/15 @ 5:00 P.M.
Massachusetts Gaming Commission	205 CMR 102.00 & 134.00	6/30/15 @ 10:00 A.M. Written comments accepted until 6/30/15 @ 5:00 P.M.



STUART H. ALTMAN
CHAIR

The Commonwealth of Massachusetts
HEALTH POLICY COMMISSION
50 MILK STREET, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109
(617) 979-1400

DAVID M. SELTZ
EXECUTIVE DIRECTOR

NOTICE OF PUBLIC HEARING

Pursuant to M.G.L. c. 30A, § 2 and M.G.L. c. 6D, the Health Policy Commission (the "Commission") will hold a public hearing regarding the following regulations related to the Office of Patient Protection (OPP):

958 CMR 3.000 – Health Insurance Consumer Protection
958 CMR 4.000 – Health Insurance Open Enrollment Waivers

Scheduled hearing date and location:

Wednesday, July 8, 2015, 9:30 AM
Health Policy Commission
50 Milk Street, 8th Floor
Boston, MA 02109

2015 JUN -5 PM 2:16

SECRETARY OF STATE
REGULATIONS DIVISION

The proposed updates to 958 CMR 3.000 are authorized by M.G.L. c. 6D, §16 and M.G.L. c. 176O as amended by Chapter 165 of the Acts of 2014. The proposed updates to 958 CMR 4.000 are authorized by M.G.L. c. 6D, §16 and M.G.L. c. 176J.

958 CMR 3.000 has been updated to bring the OPP regulation into compliance with amended Massachusetts law. The amended law clarifies that plan members, prospective plan members, and their health care providers may obtain medical necessity criteria, including proprietary criteria from their health plans. The changes to this regulation will clarify the parameters of access to proprietary and non-proprietary medical necessity criteria for market participants.

958 CMR 4.000 sets forth the waiver process for consumers who are seeking to buy non-group insurance outside of the open enrollment periods. It has been revised to bring the OPP regulation into compliance with certain eligibility rules that have been changed in the Affordable Care Act and related Massachusetts law.

The Commission encourages all interested parties to submit written testimony and comments to the following address: HPC-regulations@state.ma.us. All submissions must include the sender's full name and address. Parties who are unable to submit electronic comments should mail submissions to Jenifer Bosco, Director, Office of Patient Protection, Health Policy Commission, 50 Milk Street, 8th Floor, Boston, MA 02109. **All testimony and comments must be received by 5:00 PM on August 7, 2015.**

All written or oral comments submitted to the Commission may be posted on the Commission's website and released in response to a request for public records.





The Commonwealth of Massachusetts
HEALTH POLICY COMMISSION
50 MILK STREET, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109
(617) 979-1400

DAVID M. SELTZ
EXECUTIVE DIRECTOR

June 5, 2015

SMALL BUSINESS IMPACT STATEMENT

In order to accurately predict the impact the adoption, amendment, or repeal of a regulation will have on small businesses, the promulgating authority must conduct a thorough analysis that not only considers the potential effects of the action but also quantifies the costs, if any, associated with each. The questions below are designed to aid promulgating authorities in conducting their analysis.

Agency Submitting Regulation: Health Policy Commission

Subject Matter of Regulation: Health Insurance Consumer Protection

Regulation No: 958 CMR 3.000

Statutory Authority: M.G.L. c. 6D, §16 and M.G.L. c. 176O as amended by Chapter 165 of the Acts of 2014

Other Agencies Affected: None

Other Regulations That May Duplicate or Conflict with the Regulation: None

Describe the Scope and Objectives of the Regulation: The proposed updates to 958 CMR 3.000 are authorized by Chapter 165 of the Acts of 2014, M.G.L. c. 6D, §16 and M.G.L. c. 176O and clarify the parameters of access to proprietary and non-proprietary medical necessity criteria for market participants.

Business Industry(ies) Affected by the Regulation: 524114, Health insurance carriers offering fully-insured health plans in Massachusetts

Types of Businesses Included in the Industry(ies): Health insurance companies.

Total Number of Small Businesses Included in the Regulated Industry(ies): 0

Number of Small Businesses Potentially Subject to the Proposed Regulation: 0

Based on a search of the SBA's online database of self-certified small businesses, none of the small businesses appear to be subject to 958 CMR 3.00.

Effective Date Used In Cost Estimate: June 5, 2015

Yes	No	<i>*Note: For each question, please answer "yes" or "no" and offer a brief explanation. Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.</i>
Yes	No	Will small businesses have to create, file, or issue additional reports?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Will small businesses have to implement additional recordkeeping procedures?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Will small businesses have to provide additional administrative oversight?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Will small businesses have to hire additional employees in order to comply with the proposed regulation?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Are performance standards more appropriate than design standards?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Will the regulation have the effect of creating additional taxes and/or fees for small businesses?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Can the regulation provide for less stringent compliance or reporting requirements for small businesses?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Yes	No	Can the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can the compliance or reporting requirements be consolidated or simplified for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? It is not clear that any of the identified small businesses would be subject to this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Were any small businesses or small business organizations contacted during the preparation of this document? If so, please describe. It is not clear that any of the identified small businesses would be subject to this regulation.



The Commonwealth of Massachusetts
HEALTH POLICY COMMISSION
50 MILK STREET, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109
(617) 979-1400

DAVID M. SELTZ
EXECUTIVE DIRECTOR

June 5, 2015

SMALL BUSINESS IMPACT STATEMENT

In order to accurately predict the impact the adoption, amendment, or repeal of a regulation will have on small businesses, the promulgating authority must conduct a thorough analysis that not only considers the potential effects of the action but also quantifies the costs, if any, associated with each. The questions below are designed to aid promulgating authorities in conducting their analysis.

Agency Submitting Regulation: Health Policy Commission

Subject Matter of Regulation: Health Insurance Open Enrollment Waivers

Regulation No: 958 CMR 4.000

Statutory Authority: M.G.L. c. 6D, §16 and M.G.L. 176J §4

Other Agencies Affected: None

Other Regulations That May Duplicate or Conflict with the Regulation: None

Describe the Scope and Objectives of the Regulation:

The proposed updates to 958 CMR 4.000 are authorized by M.G.L. c. 6D, §16 and M.G.L. c. 176J §4 and are necessary to bring the regulation into compliance with certain eligibility rules that have been changed in the Affordable Care Act and related Massachusetts law.

Business Industry(ies) Affected by the Regulation: 524114, Health insurance carriers offering fully-insured health plans in Massachusetts

Types of Businesses Included in the Industry(ies): Health insurance companies.

Total Number of Small Businesses Included in the Regulated Industry(ies): 0

Number of Small Businesses Potentially Subject to the Proposed Regulation: 0

Based on a search of the SBA's online database of self-certified small businesses, none of the small businesses appear to be subject to 958 CMR 4.000.

Effective Date Used In Cost Estimate: June 5, 2015

Yes	No	<i>*Note: For each question, please answer "yes" or "no" and offer a brief explanation. Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.</i>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports?

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design standards?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will the regulation have the effect of creating additional taxes and/or fees for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can the regulation provide for less stringent compliance or reporting requirements for small businesses?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Can the regulation establish less stringent schedules or deadlines for compliance or

<input type="checkbox"/>	<input checked="" type="checkbox"/>	reporting requirements for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can the compliance or reporting requirements be consolidated or simplified for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? It is not clear that any of the identified small businesses would be subject to this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Were any small businesses or small business organizations contacted during the preparation of this document? If so, please describe. It is not clear that any of the identified small businesses would be subject to this regulation.

SECRETARY OF STATE
REGULATIONS DIVISION

2015 JUN -5 PM 1:36



Notice of Public Hearing

Notice is hereby provided that in accordance with G.L. c.30A, §2, the Massachusetts Gaming Commission ("Commission") will convene a public hearing for purposes of gathering comments, ideas, and information relative to proposed amendments to 205 CMR. The proposals were developed pursuant to G.L. c.23K, §5(a) as part of the Commission's regulation promulgation process. The proposals include the following amendments:

205 CMR 102.00: Construction and Application – The amendment deletes reference to 101.00 through 131.00 in 205 CMR 102.03(04) and expands it to cover all of 205 CMR. This amended regulation allows the Commission to waive or grant a variance from any provision or requirement contained in 205 CMR.

205 CMR 134.00: Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations – The amendment to 205 CMR 134.03 allows a gaming licensee to temporarily allow an individual(s) to assist with gaming employee training and related purposes without having to become licensed or registered.

Scheduled hearing date and time: Tuesday, June 30, 2015 at 10:00 a.m.

Hearing location: Massachusetts Gaming Commission, 101 Federal Street, 23rd floor, Boston, MA

A complete copy of the draft regulations referenced above may be downloaded by visiting www.massgaming.com and clicking on the 'Regulations' tab. Anybody wishing to offer comment on any of the draft regulations may appear at the public hearing at the designated date and time or submit written comments. Those who wish to submit written comments on the draft regulations may do so by sending an email to mgccomments@state.ma.us with 'draft regulations comment' in the subject line. Please be certain to identify in your comments the section number of the regulation for which you are commenting. Comments must be received by **5 p.m. on Tuesday, June 30, 2015.**

Additionally, attached please find the accompanying Small Business Impact Statements in accordance with M.G.L. c.30A, §2.



Massachusetts Gaming Commission



SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission ("Commission") hereby files this small business impact statement in accordance with G.L. c.30A, §2 relative to the proposed amendments in 205 CMR 102.00: Construction and Application; notice of which was filed this day with the Secretary of the Commonwealth. These amendments were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth. This regulation currently restricts the Commission's ability to waive or grant a variance from any provision or requirement contained in 205 CMR. This amendment deletes reference to 101.00 through 131.00 in 205 CMR 102.03(04) and expands it to cover all of 205 CMR. This amendment will allow the Commission to waive or grant a variance from any provision or requirement contained in 205 CMR. These regulations are largely governed by G.L. c.23K, § 5.

To the extent that the Commission waives or grants a variance from any provision or requirement pertaining to a vendor, small businesses may be impacted. In accordance with G.L. c.30A, §2, the Commission offers the following responses:

1. Estimate of the number of small businesses subject to the proposed regulation:

It is difficult to project, with any precision, the number of small businesses that may be impacted by this regulation. This is a largely administrative regulation that applies equally to any person that has business before the Commission. Accordingly, uniformity is essential.

2. State the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation:

There are no projected additional reporting, recordkeeping or administrative costs created by these regulations that would affect small businesses unless they elect to pursue a waiver or variance.

3. State the appropriateness of performance standards versus design standards:

These amendments do not implicate a design or performance standard. As a general matter, the procedures for granting a waiver or variance must be prescriptive in nature in order to ensure uniform process.

4. Identify regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation:



Massachusetts Gaming Commission

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth:

G.L. c.23K was enacted to create a new industry in the Commonwealth and to promote and grow local small businesses and the tourism industry, including the development of small businesses such as lodging, dining, retail, cultural and social facilities. The proposed regulations, as part of the overall process, are designed to effectuate those intentions and growth.

Massachusetts Gaming Commission

By:



Cecelia M. Porché

Paralegal/Legal Division

Dated:

June 4, 2015



Massachusetts Gaming Commission



SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission ("Commission") hereby files this small business impact statement in accordance with G.L. c.30A, §2 relative to the proposed amendments in 205 CMR 134.00: Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations; notice of which was filed this day with the Secretary of the Commonwealth. These amendments were developed as part of the process of promulgating regulations governing the operation of gaming establishments in the Commonwealth. These amendments allow a gaming licensee to temporarily allow an individual(s) to assist with gaming establishment employee training and related purposes without having to become licensed or registered. These regulations are largely governed by G.L. c.23K, § 30.

These amendments apply solely to the gaming establishment employees and accordingly are unlikely to have an impact on small businesses. In accordance with G.L. c.30A, §2, the Commission offers the following responses:

1. Estimate of the number of small businesses subject to the proposed regulation:

There are no small businesses that the Commission anticipates will be impacted by these regulations.

2. State the projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation:

There are no projected reporting, recordkeeping or administrative costs created by these regulations that would affect small businesses.

3. State the appropriateness of performance standards versus design standards:

As a general matter, for this subject a prescriptive, uniform process is essential.

4. Identify regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation:

There are no conflicting regulations in 205 CMR, and the Commission is unaware of any conflicting or duplicating regulations of any other agency or department of the Commonwealth.

Massachusetts Gaming Commission

84 State Street, 10th Floor, Boston, Massachusetts 02109 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com

The text of the regulations published in the electronic version of the Massachusetts Register is unofficial and for informational purposes only. The official version is the printed copy which is available from the State Bookstore at <http://www.sec.state.ma.us/cpr/sprcat/calidx.htm>

5. State whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth:

G.L. c.23K was enacted to create a new industry in the Commonwealth and to promote and grow local small businesses and the tourism industry, including the development of small businesses such as lodging, dining, retail, cultural and social facilities. The proposed regulations, as part of the overall process, are designed to effectuate those intentions and growth.

Massachusetts Gaming Commission

By:



Cecelia M. Porché
Paralegal/Legal Division

Dated:

June 4, 2015



Massachusetts Gaming Commission

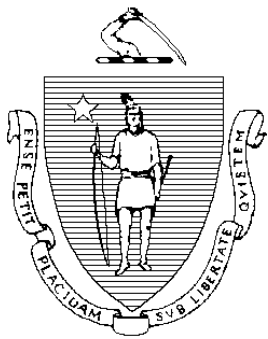
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THE COMMONWEALTH OF MASSACHUSETTS
Secretary of the Commonwealth - William Francis Galvin
2015 CUMULATIVE TABLE TO THE MASSACHUSETTS REGISTER
1277 - 1289

The cumulative Table lists all regulations and amendments thereto published in the Massachusetts Register during the current year. The Table is published in each Register.

State agencies are listed in the Table as they appear in the Code of Massachusetts Regulations (CMR or Code) in CMR numerical order which is based on the cabinet structure. For example, all Human Service agencies are prefaced by the number "1" and are designated as 101 CMR through 130 CMR.

The Cumulative Tables published in the last issue of previous years will have a listing of all regulations published for that year. These Registers are:

April 6, 1976 - 1977	Register: # 88	Date: 1997	Register: # 833
1978	138	1998	859
1979	193	1999	885
1980	241	2000	911
1981	292	2001	937
1982	344	2002	963
1983	396	2003	989
1984	448	2004	1016
1985	500	2005	1042
1986	546	2006	1068
1987	572	2007	1094
1988	598	2008	1120
1989	624	2009	1146
1990	650	2010	1172
1991	676	2011	1198
1992	702	2012	1124
1993	729	2013	1250
1994	755	2014	1276
1995	871		
1996	Supp. # 2 807		

Effective
Issue Date

101 CMR	Executive Office of Health and Human Services		
19.00	Workplace Violence Prevention and Crisis Response Plan.	1282	2/15/15

		<i>Issue</i>	<i>Effective Date</i>
204.00	Rates of Payment to Resident Care Facilities - <i>Emergency</i>	1288	6/1/15
206.00	Standard Payments to Nursing Facilities - <i>Emergency</i>	1278	1/1/15
	- <i>Emergency Correction</i> (MA Reg. # 1278).	1285	1/1/15
	- <i>Emergency Re-file</i> (MA Reg. # 1278).	1285	1/1/15
	- <i>Compliance</i> (MA Reg. # 1278).	1285	1/1/15
306.00	Rates of Payment for Mental Health Services		
	- <i>Emergency Re-file</i> (MA Reg. # 1258).	1278	3/27/14
	- <i>Emergency Re-file</i> (MA Reg. # 1258).	1284	3/27/14
418.00	Payments for Youth Short-term Stabilization and Emergency Placement Services - <i>Correction</i> (MA Reg. # 1273).	1280	11/7/14
103 CMR	Department of Correction		
430.00	Inmate Discipline - <i>Compliance</i> (MA Reg. # 1275).	1280	11/14/14
483.00	Visiting Procedures - <i>Emergency</i>	1278	12/23/14
	- <i>Compliance</i> (MA Reg. # 1278).	1282	12/23/14
104 CMR	Department of Mental Health		
30.00	Fiscal Administration.	1286	5/8/15
33.00	Designation and Appointment of Qualified Mental Health Professionals - <i>Compliance</i> (MA Reg. # 1273).	1279	10/14/14
105 CMR	Department of Public Health		
150.000	Licensing of Long-term Care Facilities		
	- <i>Correction</i> (MA Reg. # 1276).	1277	12/19/14
158.000	Licensure of Adult Day Health Programs.	S1277	1/2/15
	- <i>Correction</i> (MA Reg. # S1277).	1279	1/2/15
222.000	Massachusetts Immunization Information System (MIIS).	1277	1/2/15
114 CMR	Division of Health Care Finance and Policy		
114.3			
6.00	Rates of Payment for Mental Health Services Provided in Community Health Centers and Mental Health Centers		
	- <i>Emergency Re-file</i> (MA Reg. # 1258).	1278	3/27/14
	- <i>Emergency Re-file</i> (MA Reg. # 1258).	1284	3/27/14
130 CMR	Division of Medical Assistance		
405.000	Community Health Center Services.	S1277	1/2/15
	- <i>Correction</i> (MA Reg. # S1277).	1280	1/2/15
406.000	Pharmacy Services.	S1277	1/2/15
408.000	Adult Foster Care Services - <i>Emergency</i>	1286	4/17/15
410.000	Outpatient Hospital Services.	S1277	1/2/15
	S1277	1/2/15
	S1277	1/2/15
	- <i>Correction</i> (MA Reg. # S1277).	1280	1/2/15
415.000	Acute Inpatient Hospital Services.	S1277	1/2/15
416.000	Hearing Instrument Specialist Services.	S1277	1/2/15

		<i>Issue</i>	<i>Effective Date</i>
421.000	Family Planning Agency Services.	S1277	1/2/15
423.000	Freestanding Ambulatory Surgery Center Services.	S1277	1/2/15
	- <i>Correction</i> (MA Reg. # S1277).	1280	1/2/15
424.000	Podiatrist Services.	S1277	1/2/15
426.000	Audiologist Services.	S1277	1/2/15
429.000	Mental Health Center Services - <i>Emergency Re-file</i> (MA Reg. # 1258).	1278	3/27/14
	- <i>Emergency Re-file</i> (MA Reg. # 1258).	1284	3/27/14
433.000	Physician Services.	S1277	1/2/15
	S1277	1/2/15
	- <i>Correction</i> (MA Reg. # S1277).	1280	1/2/15
435.000	Chronic Disease and Rehabilitation Inpatient Hospital Services		
	- <i>Emergency</i>	1286	4/17/15
450.000	Administrative and Billing Regulations.	S1277	1/2/15
484.000	Abortion Clinic Services.	S1277	1/2/15
485.000	Sterilization Clinic Services.	S1277	1/2/15
205 CMR	Massachusetts Gaming Commission		
14.00	Supplemental Licensure Procedure		
	- <i>Emergency Re-file</i> (MA Reg. # 1275).	1282	11/21/14
	- <i>Compliance</i> (MA Reg. # 1282).	1288	11/21/14
101.00	M.G.L. c. 23K Adjudicatory Proceedings.	1289	6/19/15
102.00	Construction and Application - <i>Emergency</i>	1287	5/8/15
122.00	Capital Investment - <i>Correction</i> (MA Reg. # 1274).	1286	8/8/14
134.00	Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations		
	- <i>Emergency Re-file</i> (MA Reg. # 1275).	1282	11/21/14
	- <i>Compliance</i> (MA Reg. # 1275).	1284	11/21/14
	- <i>Emergency</i>	1288	5/15/15
136.00	Sale and Distribution of Alcoholic Beverages at Gaming Establishments.	1289	6/19/15
138.00	Uniform Standards of Accounting Procedures and Internal Controls.	1288	6/5/15
140.00	Gross Gaming Revenue Tax Remittance and Reporting.	1287	5/22/15
149.00	Race Horse Development Fund - <i>Emergency Re-file</i> (MA Reg. # 1275).	1282	11/21/14
	- <i>Compliance</i> (MA Reg. # 1275).	1284	11/21/14
150.00	Protection of Minors and Underage Youth.	1289	6/19/15
151.00	Requirements for the Operations and Conduct of Gaming at a Gaming Establishment.	1289	6/19/15
152.00	Individuals Excluded from a Gaming Establishment.	1289	6/19/15
209 CMR	Division of Banks and Loan Agencies		
32.00	Disclosure of Consumer Credit Costs and Terms.	1277	1/2/15
211 CMR	Division of Insurance		
121.00	Procedures Concerning Rate Filings Made Pursuant to M.G.L. c. 176K, and the Conduct of Hearings on Such Filings.	1278	1/16/15
	- <i>Correction</i> (MA Reg. # 1278).	1280	1/16/15
129.00	Life and Health Insurance Agreements.	1277	1/2/15

		<i>Issue</i>	<i>Effective Date</i>
220 CMR	Department of Public Utilities		
18.00	Net Metering - <i>Compliance</i> (MA Reg. # 1274).....	1279	11/4/14
225 CMR	Department of Energy Resources		
19.00	Energy Management Services (EMS) Contracts Requests for Qualifications Process.	1278	1/16/15
243 CMR	Board of Registration in Medicine		
2.00	Licensing and the Practice of Medicine.	1277	1/2/15
262 CMR	Board of Registration of Allied Mental Health and Human Services Professionals		
2.00	Requirements for Licensure as a Mental Health Counselor.	1288	6/5/15
6.00	Disciplinary Action.	1288	6/5/15
7.00	Continuing Education.	1288	6/5/15
8.00	Ethical Codes and Standards of Conduct.....	1288	6/5/15
10.00	Requirements for Licensure as an Applied Behavior Analyst and Assistant Applied Behavior Analyst.	1288	6/5/15
301 CMR	Executive Office of Energy and Environmental Affairs		
41.00	Toxic or Hazardous Substance List.....	1278	1/16/15
302 CMR	Department of Conservation and Recreation		
18.00	Aquatic Nuisance Control Program.....	1289	6/19/15
310 CMR	Department of Environmental Protection		
7.00	Air Pollution Control..... S1277		1/2/15
	- <i>Correction</i> (MA Reg. # S1277).....	1284	1/2/15
30.000	Hazardous Waste.....	1278	1/16/15
40.0000	Massachusetts Contingency Plan - <i>Correction</i> (MA Reg. # 1259)....	1279	4/25/14
	- <i>Correction</i> (MA Reg. # 1259).....	1280	4/25/14
60.00	GWSA Requirements for the Transportation Sector and MassDOT. S1277		1/2/15
70.00	Environmental Results Program Certification.....	1278	1/16/15
80.00	Underground Storage Tank Systems..... S1277		1/2/15
	- <i>Correction</i> (MA Reg. # S1277).	1286	1/2/15
321 CMR	Division of Fisheries and Wildlife		
3.00	Hunting.	1288	6/5/15
5.00	Coldwater Fish Resources - <i>Correction</i> (MA Reg. # 1275).	1277	12/5/14

		<i>Issue</i>	<i>Effective Date</i>
322 CMR	Division of Marine Fisheries		
6.00	Regulation of Catches - <i>Emergency</i>	1279	1/13/15
	- <i>Compliance</i> (MA Reg. # 1279).....	1285	1/13/15
	1285	4/24/15
	- <i>Correction</i> (MA Reg. # 1285).....	1288	4/24/15
	- <i>Emergency</i>	1286	4/16/15
	- <i>Emergency</i>	1286	4/24/15
	- <i>Emergency</i>	1289	6/5/15
8.00	Coastal Fisheries and Conservation Management - <i>Emergency</i>	1286	4/16/15
	1289	6/19/15
12.00	Protected Species - <i>Emergency</i>	1279	1/13/15
	- <i>Compliance</i> (MA Reg. # 1279).....	1285	1/13/15
16.00	Shellfish Harvest and Handling.....	1286	5/8/15
330 CMR	Department of Agricultural Resources		
31.00	Plant Nutrient Application Requirements for Agricultural Land and Land Not Used for Agricultural Purposes.	1288	6/5/15
454 CMR	Department of Labor Standards		
25.00	Occupational Safety and Health for State Workers.....	1278	1/16/15
26.00	Apprentice Standards - <i>Correction</i> (MA Reg. # 1275).....	1282	12/5/14
27.00	Minimum Wage.....	1278	1/16/15
455 CMR	Division of Occupational Safety		
2.00	Minimum Wage.....	1278	1/16/15
502 CMR	Office of the State Fire Marshall		
5.00	Permit and Inspection Requirements of Aboveground Storage Tanks of More than Ten Thousand Gallons Capacity.....	1278	1/16/15
	- <i>Correction</i> (MA Reg. # 1278).	1285	1/16/15
520 CMR	Department of Public Safety		
5.00	Amusement Devices.	1281	2/27/15
527 CMR	Board of Fire Prevention Regulations		
1.00	Massachusetts Comprehensive Fire Safety Code.	1277	1/1/15
2.00	The Manufacture, Storage, Transportation and Use of Fireworks. ...	1277	1/1/15
3.00	Dry Cleaning and Dry Dyeing and the Keeping, Storage and Use of Cleaning and Dyeing Fluids.	1277	1/1/15
4.00	Oil Burning Equipment.	1277	1/1/15
5.00	Operation and Maintenance of Buildings or Other Structures Used as Garages, Service Stations and the Related Storage, Keeping and Use of Gasoline or Other Motor Fuel.	1277	1/1/15
6.00	Liquified Petroleum Gas Containers and Systems	1277	1/1/15

		<i>Issue</i>	<i>Effective Date</i>
7.00	Manufacture and Handling of Plastics..	1277	1/1/15
8.00	Transportation of Flammable and Combustible Liquids..	1277	1/1/15
9.00	Tanks and Containers.	1277	1/1/15
10.00	Fire Prevention, General Provisions.	1277	1/1/15
11.00	Commercial Cooking Operations.	1277	1/1/15
13.00	Explosives.	1277	1/1/15
14.00	Flammable and Combustible Liquids, Flammable Solids or Flammable Gases..	1277	1/1/15
15.00	The Use, Storage and Handling of Flammable and Combustible Liquids on Waters of the Commonwealth, Including Requirements for Marine Fueling Facilities, Mobile Marine Fuel Vehicles, Fuel Barges and Fuel Vessels.	1277	1/1/15
16.00	Model Rockets..	1277	1/1/15
17.00	Forest Products.	1277	1/1/15
18.00	Flammable Liquids in Bulk Plant Loading and Unloading Facilities. .	1277	1/1/15
19.00	Tentage..	1277	1/1/15
20.00	Use and Maintenance of Temporary Portable Space Heating Devices and Equipment Used in the Construction Industry.	1277	1/1/15
21.00	Decorations, Curtains, Draperies, Blinds and Other Window Treatments.	1277	1/1/15
22.00	Canon or Mortar Firing.	1277	1/1/15
23.00	Issuance of Certificates for the Servicing of Portable Fire Extinguishers and the Installing and Servicing of Fixed Fire Extinguishing Systems..	1277	1/1/15
24.00	Fire Warning Systems Installed in Building Within the Commonwealth of Massachusetts.	1277	1/1/15
25.00	Obstructions and Hazards in Certain Buildings and on Public and Private Ways..	1277	1/1/15
26.00	Compressed Natural Gas Containers and Systems.	1277	1/1/15
27.00	Emergency and Standby Power Systems..	1277	1/1/15
28.00	Combustible Fibers.	1277	1/1/15
29.00	Upholstered Furniture, Molded Seating and Re-upholstered Furniture.	1277	1/1/15
30.00	Unvented Propane or Natural Gas-fired Space Heaters.	1277	1/1/15
31.00	Carbon Monoxide Alarms.	1277	1/1/15
32.00	Approved Smoke Detectors..	1277	1/1/15
33.00	Hazardous Material Process or Processing.	1277	1/1/15
34.00	Rubbish Handling.	1277	1/1/15
35.00	Crop Ripening or Color Processes..	1277	1/1/15
37.00	Pesticide Storage.	1277	1/1/15
38.00	Minimum Standards for Motion Picture and Television Production Studio Soundstages, Production Facilities, Production Locations and Activities Relating Thereto..	1277	1/1/15
39.00	Welding and Cutting Processes.	1277	1/1/15
40.00	Inspection, Testing and Maintenance of Water-based Fire Protection Systems..	1277	1/1/15
49.00	Appendices..	1277	1/1/15
50.00	Petitions for Adoption, Amendment or Repeal of Regulations.. . . .	1277	1/1/15

		<i>Issue</i>	<i>Effective Date</i>
540 CMR	Registry of Motor Vehicles		
2.00	Motor Vehicle Regulations.	1278	1/16/15
603 CMR	Department of Elementary and Secondary Education		
4.00	Vocational Technical Education.	1283	3/27/15
651 CMR	Executive Office of Elder Affairs		
12.00	Certification Procedures and Standards for Assisted Living Residences.	1279	1/30/15
760 CMR	Department of Housing and Community Development		
67.00	Eligibility for Emergency Assistance (EA).	1277	1/2/15
780 CMR	Board of Building Regulations and Standards		
51.00	Massachusetts Residential Code.	1277	1/2/15
801 CMR	Executive Office for Administration and Finance		
4.00	Rates.. . . .	1278	1/16/15
807 CMR	Teachers' Retirement Board		
24.00	Shared Employees.	1286	5/8/15
830 CMR	Department of Revenue		
63.00	Taxation of Corporations.. . . .	S1277	1/2/15
	- <i>Correction</i> (MA Reg. # S1277)..	1281	1/2/15
63.00	Taxation of Corporations.. . . .	S1277	1/2/15
63.00	Taxation of Corporations.. . . .	S1277	1/2/15
63.00	Taxation of Corporations.. . . .	S1277	1/2/15
63.00	Taxation of Corporations.. . . .	S1277	1/2/15
950 CMR	Office of the Secretary of the Commonwealth		
14.00	General Provisions - <i>Emergency</i>	1279	1/15/15
	1284	4/10/15
956 CMR	Commonwealth Health Insurance Connector Authority		
13.00	Risk Adjustment Procedures for Small and Non-group Market.	1285	4/24/15
958 CMR	Health Policy Commission		
7.00	Notices of Material Change and Cost and Market Impact Reviews. . .	1277	1/2/15
	- <i>Correction</i> (MA Reg. # 1277).	1279	1/2/15

		<i>Issue</i>	<i>Effective Date</i>
961 CMR	State Lottery Commission		
2.00	Rules and Regulations - <i>Emergency</i>	1280	1/27/15
970 CMR	Office of Campaign and Political Finance		
1.00	Campaign Finance Activity.	1277	1/2/15
	- <i>Correction</i> (MA Reg. # 1277).	1279	1/2/15
2.00	Political Expenditures.	1277	1/2/15
	- <i>Correction</i> (MA Reg. # 1277).	1279	1/2/15
3.00	Rules of Procedure.	1277	1/2/15



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **322 CMR 6.00**CHAPTER TITLE: **Regulation of Catches**AGENCY: **Division of Marine Fisheries**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

This regulation requires that any entity that attracts, captures or performs research on or attempts to attract, capture or perform research on a white shark within the waters under the jurisdiction of the Commonwealth hold a scientific research permit from the Division of Marine Fisheries. This requirement is necessary to restrict white shark - human interactions that may result in harming the shark or threatening public safety.

REGULATORY AUTHORITY: **G.L. c.30A, § 2 and G.L. c. 130 § 80**AGENCY CONTACT: **Daniel J. McKiernan**PHONE: **617-626-1536**ADDRESS: **251 Causeway Street, Suite 400, Boston, MA****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

This is being filed as an emergency regulation because it is necessary for the preservation of public safety.

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

DFG - 3/27/15

ANF - 6/2/15

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **N/A - Emergency Action**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: **May restrict any white shark tourism businesses that have developed.**

For the first five years: **N/A - This emergency action will expire in 90-days**

No fiscal effect:

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: **N/A - Emergency Action**

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

322 CMR 6.37(4)

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: SIGNATURE ON FILE DATE: Jun 2 2015

Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1289 DATE: 06/19/2015

EFFECTIVE DATE: 06/05/2015

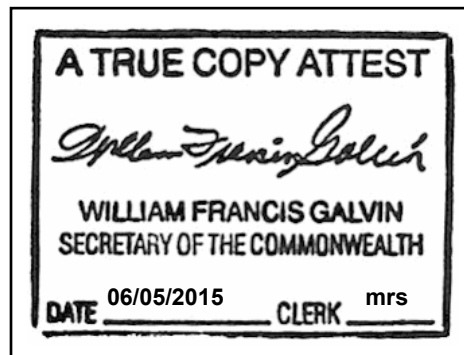
CODE OF MASSACHUSETTS REGULATIONS

Remove these pages:

Insert these pages:

This is an Emergency Regulation

There are no Replacement Pages.



6.37: Coastal Shark Conservation and Management

(1) Purpose. 322 CMR 6.37 seeks to ensure coordinated state and federal management towards establishing healthy self-sustaining populations of Atlantic coastal sharks. Coastal shark conservation and management is interstate and state-federal in nature; effective assessment and management can be enhanced through cooperative efforts with all Atlantic state and federal scientists and fisheries managers. 322 CMR 6.37 creates two groups of sharks: Permitted Species that are allowed to be harvested, and Prohibited Species that are protected and may not be harvested unless specifically authorized by the Director or NOAA Fisheries.

For purposes of 322 CMR 6.37, coastal sharks do not include spiny dogfish, *Squalus acanthias*, which are managed separately under 322 CMR 6.35.

(2) List of Species by Groups. The following sections contain the species categorized as prohibited or permitted. Each species is listed as its common name along with its associated taxonomic name.

(a) Permitted Shark Species. The following species are allowed to be harvested under the provisions of 322 CMR 6.37(3):

Atlantic sharpnose (*Rhizoprionodon terraenovae*)
 Blacknose (*Carcharhinus acronotus*)
 Blacktip (*Carcharhinus limbatus*)
 Blue (*Prionace glauca*)
 Bonnethead (*Sphyrna tiburo*)
 Bull (*Carcharhinus leucas*)
 Common thresher (*Alopias vulpinus*)
 Finetooth (*Carcharhinus isodon*)
 Great hammerhead (*Sphyrna mokarran*)
 Lemon (*Negaprion brevirostris*)
 Nurse (*Ginglymostoma cirratum*)
 Oceanic whitetip (*Carcharhinus longimanus*)
 Porbeagle (*Lamna nasus*)
 Scalloped hammerhead (*Sphyrna lewini*)
 Shortfin mako (*Isurus oxyrinchus*)
 Smooth dogfish (*Mustelus canis*)
 Smooth hammerhead (*Sphyrna zygaena*)
 Spinner (*Carcharhinus brevipinna*)
 Tiger (*Galeocerdo cuvier*)

(b) Prohibited Shark Species. The following species are prohibited from harvest under the provisions of 322CMR 6.37(3):

Atlantic angel (*Squatina dumeril*)
 Basking (*Cetorhinus maximus*)
 Bigeye sand tiger (*Odontaspis noronhai*)
 Bigeye sixgill (*Hexanchus nakamurai*)
 Bigeye thresher (*Alopias superciliosus*)
 Bignose (*Carcharhinus altimus*)
 Bluntnose sixgill (*Hexanchus griseus*)
 Caribbean reef (*Carcharhinus perezii*)
 Caribbean sharpnose (*Rhizoprionodon porosus*)
 Dusky (*Carcharhinus obscurus*)
 Galapagos (*Carcharhinus galapagensis*)
 Longfin mako (*Isurus paucus*)
 Narrowtooth (*Carcharhinus brachyurus*)
 Night (*Carcharhinus signatus*)
 Sandbar (*Carcharhinus plumbeus*)
 Sand tiger (*Carcharias taurus*)
 Sharpnose sevengill (*Heptranchias perlo*)
 Silky (*Carcharhinus falciformis*)
 Smalltail (*Carcharhinus porosus*)
 Whale (*Rhincodon typus*)
 White (*Carcharodon carcharias*)

6.37: continued

(3) Regulation of Catches.(a) Permitted Species Size Limits. All sharks shall be measured from the tip of the snout to the fork of the tail.1. Recreational Fishing Size Limits.

- a. There shall be no recreational minimum size limit for smooth dogfish, Atlantic sharpnose, bonnethead, finetooth and blacknose sharks;
- b. For great hammerhead, scalloped hammerhead, and smooth hammerhead sharks, it shall be unlawful to possess or land a shark that is less than 78 inches in length; and
- c. For all other Permitted Shark Species, it shall be unlawful to possess or land a shark that is less than 54 inches in length.

2. Commercial Size Limits. For commercial fishermen, there shall be no minimum size for any of the Permitted Species.(b) Permitted Species Possession Limits.1. Recreational Catch Limits. A recreational shore angler may harvest only one fish among all Permitted Species and one additional Bonnethead, one additional Atlantic sharpnose, and one additional smooth dogfish per trip. A recreational vessel may possess on board or land only one fish among all Permitted Species per trip regardless of the number of recreational fishermen aboard, and one additional Bonnethead, one additional Atlantic sharpnose, and one additional smooth dogfish per person.2. Commercial Catch Limits. Commercial fishermen shall not retain:

- a. more than 100 pounds of smooth dogfish per trip or per day, whichever is the longer period of time; or
- b. any quantity of a Permitted Shark Species after the Director has announced a commercial fishery closure.

(c) Gear Restrictions.1. Recreational Gears. Recreational fishermen may take coastal sharks only by rod and reel or handline.2. Commercial Gears. Commercial fishermen may take coastal sharks by rod and reel, handlines, gillnets, trawl nets, pound nets, fish traps, and weirs. It shall be unlawful to fish for, possess on board, or land coastal sharks taken by a longline of any length.(d) Catch Disposition.

1. It shall be unlawful for:

- a. any fisherman to fillet sharks at sea;
- b. any fisherman to remove fins or tails from sharks;
- c. recreational fishermen to possess on board or land sharks whose heads, tails, and fins are not attached naturally to the carcass;
- d. commercial fishermen to possess on board or land sharks whose fins and tails are not attached naturally to the carcass.

Exception: Commercial fishermen may cut fins as long as the fins remain attached to the carcass with at least a small portion of uncut skin.

2. Commercial fishermen may eviscerate sharks and remove the heads.

3. All sharks caught incidental to fisheries directed toward other species must be released in such manner as to ensure maximum probability of survival.

(e) Authorization to Possess Prohibited Species. The Director may authorize persons to land and possess certain Prohibited Species for research or other scientific purposes. Commercial fishermen who possess authorization from NOAA Fisheries to harvest certain species from federal waters may fish for, possess on board, or land those species in Massachusetts provided said fish were taken lawfully from federal waters.(f) Dealer Measures. All dealers purchasing Atlantic Coastal Shark species from commercial fishermen must obtain a federal Commercial Shark Dealer Permit from the National Marine Fisheries Service.(4) White Shark Conservation Measures.(a) Definitions.Attract means to conduct any activity that lures or may lure any white shark to a person or vessel by using food, bait, chum, dyes, decoys, acoustics or any other means, excluding the mere presence of persons on the water including those persons conducting commercial or recreational fishing activity.

6.37: continued

Capture means to forcefully gain control of a white shark. Capture includes, without limitation, the restraint or detention of a white shark or any act of intrusive research performed on a white shark. Capture shall not include the incidental catch of white sharks during the course of lawfully permitted fishing activity.

Chum means fish, chopped fish, fish fluids or other organic materials disposed of in the water for the purpose of attracting white sharks.

Director means the Director of the Division of Marine Fisheries.

Intrusive Research means a procedure conducted for scientific research involving a break or a cut in the skin, the application or insertion of an instrument, the introduction of a foreign substance or object onto the animal's immediate environment, or a stimulus directed at animals that may affect white shark behavior.

(b) Restricted Activities Related to White Sharks. It shall be unlawful for any person to attract or capture a white shark, unless the person has been issued a special white shark project permit by the Director in accordance with 322 CMR 7.01(4): *Special Permits*.

6.38: Shellfish Landing Restrictions Necessitated by Marine Biotoxins

(1) Purpose and Scope. To protect public health, welfare, and safety, the Director may determine through studies and reports regarding concentration levels of toxic phytoplankton and associated biotoxin levels in certain shellfish species that the harvest of certain species should be restricted. In addition to closures enacted within waters under the jurisdiction of the Commonwealth under authority of M.G.L. c. 130, §§ 74A and 75, the Director may restrict the taking of certain shellfish species and the landing of those products by any vessel registered under the laws of the Commonwealth from areas determined to contain levels of toxic phytoplankton, including waters within the Exclusive Economic Zone, that may place the public health at risk from consumption of shellfish products.

(2) Emergency Closure Areas. The Director shall determine areas where the taking of certain shellfish species and shellfish products and/or the landing of such species and product is prohibited to protect public health.

(3) Prohibited Species and Products. The Director shall determine those species and products for which it shall be prohibited to harvest and/or possess for commercial or recreational purposes within the Commonwealth.

(4) Procedure. These closures and landing prohibitions shall apply to any vessel registered under the laws of the Commonwealth provided that:

- (a) a notice has been filed with the Massachusetts Register;
- (b) a copy of the notice has been emailed via the Marine Fisheries Listserv and posted on the Division's website; and
- (c) said notice contains the rationale for the closure.

After the effective date of the closure the Director shall consider any written comments on the closure from the public or state or federal agency. Based on these comments the Director may alter, amend or rescind the closure pursuant to the procedural requirements of 322 CMR 6.38.

6.39: Loligo Squid Management

(1) Season. It is unlawful for any commercial fisherman to land or possess *Loligo* squid using small-mesh otter trawls as specified in 322 CMR 8.07: *Mesh Size Restrictions* from June 10th through April 22nd, unless the period when trawlers are allowed to use small-mesh nets to fish for squid is amended by the Director.

(2) Possession Limits. It is unlawful for commercial fishermen using mobile gear to land or possess greater than 2,500 pounds of *Loligo* squid per vessel per 24-hour day when:

6.39: continued

- (a) NOAA Fisheries has announced that the federal incidental trip limit is in effect;
- (b) the Director has filed a notice with the *Massachusetts Register*; and
- (c) the Director has posted a notice on the *Marine Fisheries* listserv and website.

(3) Commercial Fishery Limit Adjustments. The director may adjust *Loligo* squid commercial fishery landing/possession limits to correspond to limits established by NOAA Fisheries.

6.40: Tautog Fishery Limits(1) Definitions.

- (a) Commercial Fisherman means any person fishing under the authority of a permit issued in accordance with M.G.L. c. 130, § 80 and 322 CMR 7.01(2): *Commercial Fisherman Permits*.
- (b) Dealer means any person permitted in accordance with M.G.L. c. 130, § 80 and 322 CMR 7.01(3): *Dealer Permits* to process, distribute, sell or re-sell fish.
- (c) Fall Open Season means that period when commercial fishing is allowed that begins on September 1st and ends when the Director projects 100% of the quota is taken and the fishery is closed through Declaration of Closure issued in accordance with 322 CMR 6.41(2).
- (d) Quota means the Commonwealth's annual total allowable commercial catch of tautog as allocated by the Atlantic States Marine Fisheries Advisory Commission.
- (e) Recreational Fisherman means anglers that are authorized pursuant to M.G.L. c. 130, § 17C and 322 CMR 7.10: *Recreational Saltwater Fishing Permits* to take or attempt to take finfish for personal or family use, sport or pleasure and which are not sold, traded or bartered.
- (f) Spring Open Season means that period when commercial fishing is allowed that begins on April 16th and ends when the Director projects that 28% of the quota is taken and the fishery is closed through a Declaration of Closure issued in accordance with 322 CMR 6.41(2).
- (g) Tautog means that species of fish known as *Tautoga onitis*.

(2) Minimum Size. It shall be unlawful for any person to retain or possess a tautog that measures less than 16 inches in total length.

(3) Recreational Fisherman Possession Limits. It shall be unlawful for any recreational fisherman to possess or land more than three tautog per calendar day.

(4) Commercial Fisherman Possession Limits.

- (a) Open Season Limits. It shall be unlawful for a commercial fisherman to possess more than 40 tautog within any calendar day during the Spring Open Season or Fall Open Season.
- (b) Closed Season Limits. It shall be unlawful for a commercial fisherman to possess any tautog during the time period outside of the Spring Open Season and Fall Open Season.

6.41: Further Regulation of Catches

(1) Definitions. for the purpose of 322 CMR 6.41, the following terms and words shall have the following meanings:

Domicile means a place of permanent residence.

Temporary Residence means any place where an individual may reside on a temporary basis, including but not limited to a hotels, motels, campgrounds, and rental properties.

(2) Commercial Fishing.

- (a) Possession of Fish Parts by Commercial Fishermen. When commercial fishermen, permitted pursuant to 322 CMR 7.01(2): *Commercial Fisherman Permits*, are authorized at 322 CMR to fillet or mutilate fish at sea, those fillets and parts of fish will be multiplied by three to determine compliance with species specific commercial possession limits at 322 CMR. 322 CMR 6.41(2) shall not apply to whole-gutted or gilled fish, cod parts regulated at 322 CMR 6.03(3)(b) and (6) and monkfish parts regulated at 322 CMR 6.03(10).

6.41: continued

(b) Trip Limits for All Quota Managed Species. Except as otherwise specifically provided for in any provision of 322 CMR, all possession limits shall be applied to the vessel per calendar day, regardless of the number of commercial fishing permits or letters of authorization carried on board the vessel.

(c) Procedure to Close Quota and Quota Allocation Managed Fisheries. Quota managed species include but are not limited to black sea bass, bluefish, dogfish, fluke, horseshoe crabs, menhaden, scup, sea herring, striped bass, and tautog. The Division of Marine Fisheries manages these commercial fisheries by an annual quota that corresponds to Massachusetts' annual share of the Atlantic States Marine Fisheries Commission's coast-wide quota for that species. In certain instances, the Massachusetts annual quota is divided into period or seasonal allocations that ensure the annual Massachusetts quota is available to the various commercial fishermen that target the species. To prevent an overage of the annual Massachusetts quota or a period or seasonal quota allocation, when the Director projects that 100% of an annual Massachusetts quota or a period or seasonal allocation will be landed, based upon data compiled by the Division, the Director shall issue a Declaration of Closure to close the fishery. This Declaration of Closure shall set forth the closure date for the quota managed fishery. A written copy of the Declaration of Closure shall be:

1. Filed with the Secretary of State, for publication in the *Massachusetts Register*;
2. distributed via the Division's e-mail list-serve;
3. posted a written Declaration of Closure on the Division's Legal Notice webpage; and
4. distributed by fax or e-mail to all primary buyers of the quota managed species, permitted in accordance with 322 CMR 7.01(3): *Dealer Permits* and 322 CMR 7.07: *Dealers Acting as Primary Buyers*.

(3) Recreational Fishing(a) Filleting Catch.

1. Black Sea Bass and Scup. Recreational fishermen may fillet black sea bass and scup, provided the recreational fisherman complies with the following conditions to determine compliance with the daily recreational bag limits:

- a. it shall be unlawful to possess a fillet that does not have all the skin affixed until the recreational fisherman reaches their domicile or temporary residence; and
- b. it shall be unlawful to possess more than two times the number of fillets than the recreational bag limits for black sea bass and scup specified at 322 CMR 6.28.

2. Groundfish Species. Recreational fishermen may fillet any groundfish species, managed under the authority of 322 CMR 6.03, provided the recreational fisherman complies with the following conditions to determine compliance with the daily recreational bag limits:

- a. it shall be unlawful to possess a fillet that does not have at least two inches of skin affixed to the fillet until the recreational fisherman reaches their domicile or temporary residence; and
- b. it shall be unlawful for any person or vessel to possess more than two times the number of fillets than the species specific possession limits at 322 CMR 6.03.

(b) Comingling of Recreational Catch. In instances where recreational fishermen have comingled their catch, the comingled catch will be divided by the number of anglers on board the vessel to determine compliance with per angler or per vessel bag limits and fillet limits.

(c) Liability for Violations Onboard For-hire Recreational Vessels. With respect to recreational for-hire fishing operations permitted in accordance with 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, an individual patron, as well as the named for-hire permit holder or for-hire vessel operator, may each be held liable for any violations of recreational size, possession or daily bag limits established at 322 CMR that are attributable to the patron fishing onboard the for-hire recreational fishing vessel. In enforcing 322 CMR 6.41(3)(c), law enforcement officers may exercise their discretion on whether to cite the named for-hire permit holder or for-hire vessel operator for such violations in instances where the best industry practices required by 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels* have been used on the for-hire vessel.

6.42: Restrictions on Hook and Line Gears

Use of Natural Bait with Embedded or Attached Weights. It shall be unlawful for any person to fish with natural bait that has been rigged with embedded or attached weights or other materials, unless such weights or other materials are attached to the end of the fishing line.

6.43: Atlantic Menhaden Management

(1) Purpose. The purpose of 322 CMR 6.43 is to comply with the Interstate Fishery Management Plan for Atlantic Menhaden to manage the Atlantic menhaden fishery in a manner that is biologically, economically, socially and ecologically sound, while protecting the resource and those who benefit from it.

(2) Definitions.

Atlantic Menhaden means that species known as *Brevoortia tyrannus* or commonly referred to as pogey or bunker.

Bait Dealer means any person issued a bait dealer permit in accordance with 322 CMR 7.01(3)(g): *Bait Dealer*.

Bycatch means the non-targeted commercial catch and possession of a species.

Commercial Fisherman means any person fishing under the authority of a permit issued in accordance with 322 CMR 7.01(2): *Commercial Fisherman Permits*.

Declare means to file an advisory notification with the *Massachusetts Register* and publish it via the MarineFishes electronic mailing list and website.

Director means the Director of the Division of Marine Fisheries.

Land means to transfer or attempt to transfer the catch of fish from any vessel to any other vessel or onto any land, pier, wharf, dock or other artificial structure, or for a fishing vessel with any fish on board to tie up to any dock, pier or other artificial structure.

Quota means the Commonwealth of Massachusetts' annual commercial Atlantic menhaden quota adopted by the Atlantic States Marine Fisheries Commission and amended by required paybacks and authorized quota transfers and rollovers.

Trip means the time period that begins when a vessel departs from any land, pier, wharf, dock or other artificial structure to carry out commercial fishing operations, including the at-sea transfer and transport of fish, and that terminates with a return to any land, pier, wharf, dock or other artificial structure.

(3) Regulated Fishery Permit Endorsement Requirement. It shall be unlawful for any fisherman or vessel to take, land, or possess Atlantic menhaden in excess of 6,000 pounds per trip or 24-hour day, whichever duration is longer, without a regulated commercial fishery permit endorsement for Atlantic menhaden issued by the Director, in accordance with 322 CMR 7.01(4)(a)4: *Renewals*.

(4) Commercial Fishing Limits.

(a) Regulated Fishery Trip Limits. Commercial fishermen who have been issued a regulated Atlantic menhaden fishery permit endorsement, in accordance with 322 CMR 6.43(3) and 7.01(4)(a)4.: *Renewals*, shall abide by the following trip limits:

1. Until the Director declares that 75% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 125,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever duration is longer;
2. Once the Director has declared that 75% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 25,000 pounds of menhaden in the coastal waters of the Commonwealth per trip or calendar day, whichever duration is longer; and
3. Once the Director has declared that 95% of the commercial menhaden quota has been landed, it shall be unlawful to possess or land more than 6,000 pounds of menhaden in the coastal waters of the Commonwealth during per trip or calendar day, whichever duration is longer.

6.43: continued

(b) Open Access Fishery Trip Limits. Commercial fishermen who have not been issued a regulated Atlantic menhaden fishery permit in accordance with 322 CMR 6.43(3) and 7.01(4)(a)4.: *Renewals* may possess and land up to 6,000 lbs of Atlantic menhaden per trip or 24-hour day, whichever duration is longer.

(c) Closure. It shall be unlawful to catch and retain or land Atlantic menhaden once the Director has declared that 100% of the quota has been harvested, except as provided at 322 CMR 6.43(4)(d).

(d) Bycatch Tolerance. When the commercial quota has been harvested and the commercial fishery is closed, commercial fishermen may possess or land up to 1,000 pounds of Atlantic menhaden bycatch per trip or per 24-hour day, whichever is longer. The weight of the Atlantic menhaden bycatch shall not exceed 5% of the weight of the entire catch being landed.

(5) Daily Catch Reporting. All regulated Atlantic menhaden fishery permit endorsement holders must obtain a bait dealers permit, as defined at 322 CMR 7.01(3)(g): *Bait Dealer*, and report to the Division of Marine Fisheries their directed commercial Atlantic menhaden landings in the Commonwealth on a daily basis on forms provided by the Director.

REGULATORY AUTHORITY

322 CMR 6.00: M.G.L. c. 130, §§ 2, 17A, 80, 100A and 104.

NON-TEXT PAGE

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **205 CMR 101.00**CHAPTER TITLE: **M.G.L. c. 23K Adjudicatory Proceedings**AGENCY: **Massachusetts Gaming Commission**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***These new regulations govern the adjudicatory proceedings of the Commission, including: hearings before the Commission, orders, review process and decisions.**REGULATORY AUTHORITY: **M.G.L. c. 23K and 30A**AGENCY CONTACT: **Cecelia M. Porche** PHONE: **617-979-8478**ADDRESS: **101 Federal Street, 23rd Floor, Boston, MA 02110****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***LGAC - 3/27/15; Boston Globe - 4/27/15; Boston Herald - 4/27/15; Cape Cod Times - 4/27/15; Sun Chronicle - 4/27/15; and Springfield Republican - 4/27/15.**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*Date of public hearing or comment period: **5/21/15**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: _____

For the first five years: _____

No fiscal effect: The Commission does not anticipate any fiscal impact by these regulations.

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: 5/29/15

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Hearings, Orders, Decisions

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

New regulations in 205 CMR 101

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: SIGNATURE ON FILE DATE: Jun 5 2015

Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1289 DATE: 06/19/2015

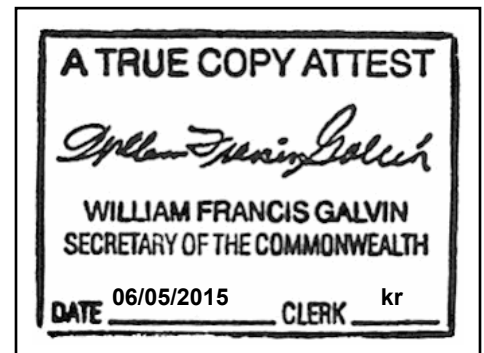
EFFECTIVE DATE: 06/19/2015

CODE OF MASSACHUSETTS REGULATIONS

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Section

- 101.01: Hearings Before the Commission
- 101.02: Orders Issued by the Bureau or the Racing Division
- 101.03: Review of Orders Issued by the Bureau or the Racing Division
- 101.04: Review by the Commission of Decisions of the Hearing Officer
- 101.05: Review of a Commission Decision

101.01: Hearings Before the Commission

- (1) Hearings held before the full commission pursuant to 205 CMR 101.01 shall be adjudicatory proceedings pursuant to 801 CMR 1.01: *Formal Rules*.
- (2) The following types of adjudicatory hearings shall be held by the commission:
 - (a) Suitability hearings before the commission pursuant to M.G.L. c. 23K, § 17(f), concerning any findings of fact, recommendations and/or recommended conditions by the bureau relative to the suitability of the applicant for an initial gaming license or renewal of a gaming license, including without limitation, recommendations and recommended conditions resulting from the RFA-1 or new qualifier process pursuant to 205 CMR 115.00: *Phase 1 and New Qualifier Suitability Determinations, Standards and Procedures*.
 - (b) Hearings regarding the termination, revocation or suspension of a category 1 or category 2 gaming license issued by the commission pursuant to M.G.L. c. 23K or the termination, revocation or suspension of a license to conduct a horse racing meeting pursuant to M.G.L. c. 128A.
 - (c) Hearings regarding the transfer of a category 1 or category 2 gaming license or the transfer of a license to conduct a horse racing meeting.
- (3) Standing. No person other than an aggrieved applicant and/or gaming licensee shall have standing to challenge Phase 1 or new qualifier findings of fact and recommendations or a recommendation to terminate, revoke or suspend a category 1 or category 2 gaming license.
- (4) Only the aggrieved applicant and the gaming licensee or the horse racing meeting licensee shall have the right to participate in the hearing under 205 CMR 101.01(2)(a), (b) or (c) unless otherwise ordered by the commission.
- (5) Pursuant to M.G.L. c. 23K, § 3(h), the chair may direct that all of the commissioners participate in the hearing and decision of the matter before the commission. In the alternative, pursuant to M.G.L. c. 23K, § 3(h), the chair with the concurrence of one other commissioner may appoint a presiding officer to preside over the hearing. The notice scheduling the time and place for the pre-hearing conference shall specify whether the commission or a designated individual shall act as presiding officer in the particular case.
- (6) Burden of Proof. The applicant shall have the affirmative obligation to establish by clear and convincing evidence both its affirmative qualification for licensure and the absence of any disqualification for licensure. In the case of a recommendation to terminate, revoke or suspend a category 1 or category 2 gaming license, or a license to conduct a horse racing meeting, the bureau or the racing division, as appropriate, shall have the affirmative obligation to establish by substantial evidence why the commission should terminate, revoke or suspend the licensee's category 1 or category 2 gaming license or the licensee's license to conduct a horse racing meeting.
- (7) Decisions. Upon completion of the hearing, the commission shall render a written decision as promptly as administratively feasible, in accordance with M.G.L. c. 30A, § 11(8). The written decision of the commission shall be the final decision of the commission.
- (8) No Appeal from Commission's Determination of Suitability. Pursuant to M.G.L. c. 23K, § 17(g), the applicant and/or the gaming licensee shall not be entitled to any further review from the commission's determination of suitability.

101.01: continued

(9) Decisions by the commission concerning the termination, revocation or suspension of a category 1 or category 2 gaming license or the termination, revocation or suspension of a license to conduct a horse racing meeting may be reviewed by the appropriate court pursuant to the provisions of M.G.L. c. 30A

101.02: Orders Issued by the Bureau or the Racing Division

(1) Pursuant to M.G.L. c. 23K the bureau may issue orders or fines, or may revoke, suspend, terminate or condition the license of the holder of any license issued pursuant to M.G.L. c. 23K except for category 1 or category 2 gaming. Such orders or fines are subject to commission review pursuant to 205 CMR 101.03 and 101.04 and include, but are not limited to:

- (a) an order to cease any activity which violates the provisions of M.G.L. c. 23K, 205 CMR 101.00 or any other law related to gaming;
- (b) an order for the imposition of civil administrative penalties in support of an order to cease and desist, or as part of an order to deny, revoke, suspend or terminate a license or as a penalty for failure to comply with any provision of M.G.L. c. 23K, 205 CMR 101.00 or any law related to gaming;
- (c) an order requiring the placement of a person on the exclusion list;
- (d) an order denying, revoking, suspending or conditioning a key gaming employee license; a gaming employee standard license; a gaming employee license; a gaming service employee license; gaming employee registration; a gaming vendor license; or a gaming vendor qualifier or other similar license issued under 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*.
- (e) an order denying, revoking, suspending or conditioning a gaming beverage license or an order denying the transfer of a gaming beverage license.
- (f) any other order or fine as may be issued pursuant to M.G.L. c. 23K or 205 CMR 101.00.

(2) Pursuant to M.G.L. c. 128A and 128C judges or stewards may issue orders or fines, or may deny, revoke, suspend, terminate or condition the license of the holder of any license issued pursuant to M.G.L. c. 128A or 128C except for a license to conduct a horse racing meeting. Such orders or fines include, but are not limited to:

- (a) an order or fine issued for violation of the rules and regulations of racing as provided in 205 CMR 3.00 through 14.00;
- (b) an order denying, revoking, suspending, terminating or conditioning an occupational license.
- (c) an order ejecting an individual from the grounds of the race meeting.
- (d) any other order or fine as may be provided pursuant to M.G.L. c. 128A, c. 128C or 205 CMR 3.00 through 14.00.

(3) Each order or fine issued by the bureau or by the judges or stewards of the racing division shall be in writing and shall include a description of the basis for the order or fine, including the time, date and place of the activity which constitutes the basis for the order or fine, the statutory basis for the issuance of the order or fine, the amount of the fine or penalty assessed and any other the remedial action required. Each order shall further state in clear and concise language that the party subject to the order or the fine may request review of the order or fine and the process for requesting such review. The order shall also state that the review of the order shall be held pursuant to 801 CMR 1.02: *Informal/Fair Hearing Rules* and 205 CMR 101.03 and 101.04.

101.03: Review of Orders Issued by the Bureau or the Racing Division

(1) A request for review of an order or fine issued by the bureau or the judges or stewards shall be filed with the clerk of the commission on a form provided by the clerk. A request for review shall not operate as a stay of the order or fine issued by the bureau or the judges or stewards unless the request for review includes a request for a stay and such stay is granted by the hearing officer.

101.03: continued

(2) The request for review of a civil administrative penalty issued by the bureau pursuant to M.G.L. c. 23K § 36 shall be filed not later than 21 days after the date of the bureau's notice of issuance of the civil administrative penalty. All other requests for review must be filed not later than 30 days from the date of the order or fine issued by the bureau or the judges or stewards. Requests for review filed later than 30 days from the date of the order or fine issued by the judges or stewards shall be forwarded to the hearing officer for review.

(3) The request for review shall include:

- (a) the name, address and contact information, including telephone number and email, if any, of the party requesting review;
- (b) the name and address of counsel representing the party requesting review, if any, and
- (c) a brief description of the basis for the request for review.

(4) Each request for review shall include a copy of the order or fine that is the subject of the request for review.

(5) When the request for review is received by the clerk, the clerk will docket the request for review. The clerk shall assign the request for review to a hearing officer and schedule the hearing on the request for review. Such hearing shall not occur sooner than 30 days after the request for review is filed with the clerk unless upon the request of a party and for good cause shown the hearing officer orders an accelerated hearing.

(6) The clerk shall request each party to file a brief stating why the order or fine should or should not be upheld and the relief requested. Such brief shall be no longer than ten pages and shall be due no later than ten days prior to the date of the hearing.

(7) A party may request permission to file a brief longer than ten pages. Such request shall be filed with the clerk who will forward it to the hearing officer for review. The request must be in writing and state the number of additional pages requested. It shall be up to the discretion of the hearing officer as to whether to grant such request. If the hearing officer grants a request for additional pages, the clerk shall forward the order of the hearing officer to all parties and all parties shall have the right to file such additional number of pages. Along with the submission of the brief, each party shall submit a copy of all written evidence to be considered by the hearing officer as well as a list of witnesses that the party wishes to present at the hearing.

(8) All requests for extensions of time to file a brief or to reschedule a hearing date shall be made in writing and filed with the clerk. The clerk shall forward the request for extension of time or to reschedule the hearing date to the hearing officer and the hearing officer may provide an extension of time to file a brief or reschedule a hearing date in the hearing officer's discretion and for good cause shown. The clerk shall send the hearing officer's order granting an extension of time to file a brief or the rescheduling of a hearing date to all the parties. Any order shall include the amount of days granted for the extension of time or the new date for the rescheduled hearing.

(9) All hearings shall be heard by a hearing officer appointed by the commission. All hearings under 205 CMR 101.03 and 101.04 shall be adjudicatory proceedings held pursuant to 801 CMR 1.02: *Informal/Fair Hearing Rules* and 205 CMR 101.03 through 101.05 unless a party to the hearing requests that the hearing be held pursuant to 801 CMR 1.01: *Formal Rules* and the hearing officer, after review of the request, grants the request to hold the hearing pursuant to 801 CMR 1.01: *Formal Rules*. If the hearing officer grants a request that a hearing be held pursuant to 801 CMR 1.01: *Formal Rules*, the provisions of 801 CMR 1.01(1) through (3), (5) through (8), (11) and (14) shall not apply and the provisions of 205 CMR 101.03 through 101.05 shall govern.

(10) There shall be no motions or discovery allowed in hearings under 205 CMR 101.03 and 101.04 unless upon the request of a party and for good cause shown, the hearing officer orders such motions or discovery.

(11) A written transcript shall be created of each hearing and all witnesses presenting testimony shall be sworn to testify under oath.

101.03: continued

(12) In addition to the duties and powers of the hearing officer under 801 CMR 1.02(10)(f), the hearing officer shall determine if the party requesting review has standing to request review. The hearing officer may ask questions of a party or a witness at the hearing. The hearing officer shall determine the credibility of all witnesses providing testimony at the hearing. The hearing officer can request additional information from any party and may recess or continue the hearing to a later date. The hearing officer may request a post hearing brief from the parties and shall determine the page limit for such brief and the time by which it must be submitted.

(13) The standard of review of an order or fine issued by the bureau or the racing division shall be the substantial evidence standard unless a different standard is required by M.G.L. c. 23K or c. 128A or c.128C. The hearing officer shall determine whether the order or fine issued by the bureau or the racing division is supported by substantial evidence in accordance with the decisions of the Massachusetts courts regarding administrative review of agency decisions.

(14) The hearing officer shall issue a written decision as soon as administratively feasible after the close of the hearing. The written decision shall include findings of fact and conclusions of law and shall clearly state the basis for the hearing officer's decision. The hearing officer shall file its decision with the clerk. The decision of the hearing officer shall be the final decision of the commission unless a request for review by the commission is filed by a party to the proceeding within 30 days of the date of the hearing officer's decision.

(15) The clerk shall send a copy of the decision to all parties and shall include with the decision a letter stating that a party may request review of the hearing officer's decision to the commission and describing the process for requesting a review by the commission.

101.04: Review by the Commission of Decisions of the Hearing Officer

(1) A request for review of the decision issued by a hearing officer shall be filed with the clerk of the commission on a form provided by the clerk. A request for review shall not operate as a stay of the decision of the hearing officer, unless, along with the filing of a request for review, the party requesting review includes a request for a stay of the decision and such stay is granted by the commission.

(2) The request for review must be filed not later than 30 days from the date of the decision issued by the hearing officer. Requests for review filed later than 30 days from the date of the order or fine issued by the judges or stewards shall be forwarded to the commission for review. Orders regarding requests for review filed later than 30 days from the date of the order or fine issued by the judges may be issued by a single commissioner appointed by the chairman to issue such orders.

(3) The request for review shall include:

- (a) the name, address and contact information, including telephone number and email, if any, of the party requesting review;
- (b) the name and address of counsel representing the party requesting review, if any, and
- (c) a brief description of the basis for the request for review.

(4) Each request for review shall include a copy of the decision of the hearing officer that is the basis for the request for review.

(5) Upon receipt of the request for review by the commission, the clerk shall docket the request and request a copy of the written record of the hearing from the hearing officer. The hearing officer shall provide a copy of the written record to the clerk no later than ten days after the clerk's request. The written record shall include the decision of the hearing officer, any briefs submitted by the parties, the evidence submitted to the hearing officer and the transcript of the adjudicatory hearing before the hearing officer. The clerk shall provide a copy of the written record to all parties involved in the matter to be reviewed by the commission.

101.04: continued

(6) The clerk shall schedule a date for review by the commission. The clerk shall request that each party file a brief stating why the decision of the hearing officer be affirmed, vacated or modified and the relief requested. Such brief shall be no longer than ten pages and shall be due no later than 15 days prior to the date of review by the commission. The briefs shall be filed with the clerk. Each party shall serve a copy of its brief on the other party(ies) to the hearing.

(7) The clerk shall provide copies of the briefs and a copy of the written record to the commission.

(8) A party may request permission to file a brief longer than ten pages. Such request must be in writing. The clerk shall forward the request to the commission. It shall be up to the discretion of the commission as to whether to grant such request. If the commission grants a request for additional pages, the clerk shall forward a copy of the commission's order to all parties to the hearing and all parties shall have the right to file such additional number of pages. Requests to file a brief longer than ten pages may be granted by an order issued by a single commissioner appointed by the chairman to issue such orders.

(9) All requests for extensions of time to file a brief shall be made in writing to the clerk. The clerk shall forward the request for an extension of time to file a brief to the commission. It shall be up to the discretion of the commission as to whether to grant the request for an extension of time to file a brief. If the commission grants the request for an extension of time to file a brief, the clerk shall forward a copy of the commission's order to the parties and all parties shall have the extension of time to file a brief. Requests for an extension of time to file a brief may be granted by an order issued by a single commissioner appointed by the chairman to issue such orders.

(10) The commission's review of the decision of the hearing officer shall be on the written record submitted by the parties. The written record shall include the decision of the hearing officer, any briefs submitted by the parties, the evidence submitted to the hearing officer and the transcript of the adjudicatory hearing before the hearing officer. The commission, in its sole discretion and upon its own motion, may request oral argument on the request to review the decision of the hearing officer.

(11) Issues not raised before the hearing officer shall not be raised in the briefs to the commission or otherwise considered by the commission. The commission shall not accept as part of the request for review additional or new evidence not submitted to the hearing officer and not already included in the written record.

(12) The standard of review of a decision by the hearing officer shall be a substantial evidence standard unless a different standard is required by M.G.L. c. 23K or c. 128A or c.128C. The commission shall determine whether the decision of the hearing officer is supported by substantial evidence in accordance with the decisions of the Massachusetts courts regarding administrative review of agency decisions.

(13) The commission shall conduct a review of the decision of the hearing officer based upon the entire record submitted to the hearing officer, provided however, that findings made by the hearing officer regarding credibility of witnesses shall not be reviewed by the commission.

(14) The commission may affirm the decision of the hearing officer, vacate the decision of the hearing officer, modify the decision of the hearing officer or remand the matter back to the hearing officer for further action in accordance with the commission's decision. The commission may affirm, vacate or modify the decision of the hearing officer in whole or in part. In making its decision, the commission may rely on any evidence contained in the record and is not limited to the evidence cited by the hearing officer in support of hearing officer's decision.

(15) The Commission shall issue a written decision as soon as administratively feasible and file it with the clerk. The clerk will provide a copy of the commission's decision to all parties.

101.05: Review of a Commission Decision

Decisions by the commission pursuant to 205 CMR 101.00 may be reviewed by the appropriate court pursuant to the provisions of M.G.L. c. 30A and M.G.L. c. 23K

REGULATORY AUTHORITY

205 CMR 101.00: M.G.L. c. 7, § 4H; c. 23K, §§ 3(h); 4(15), (28), (29), (37); 5; 13; 17(f), (g); 30(g); 31; 35(g); 36(c), (d), (f); and c. 30A.



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **205 CMR 136.00**CHAPTER TITLE: **Sale and Distribution of Alcoholic Beverages at Gaming Establishments**AGENCY: **Massachusetts Gaming Commission**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***These new regulations govern the sale and distribution of alcoholic beverages at gaming establishments.**REGULATORY AUTHORITY: **M.G.L. c. 23K, s. 4, 5, 26, and 36**AGENCY CONTACT: **Cecelia M. Porche** PHONE: **617-979-8478**ADDRESS: **101 Federal Street, 23rd. Floor, Boston, MA 02110****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***LGAC - 3/27/15; Boston Globe - 4/27/15; Boston Herald - 4/27/15; Cape Cod Times - 4/27/15; Sun Chronicle - 4/27/15; and Springfield Republican - 4/27/15.**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*Date of public hearing or comment period: **5/21/15**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: As allowed by the statute, the issuance of a gaming beverage license is intended to enhance industry in the Commonwealth.

For the first five years: As allowed by the statute, the issuance of a gaming beverage license is intended to enhance industry in the Commonwealth.

No fiscal effect: _____

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: 5/29/15

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Gaming Beverage License, Licensed area, Special Event Beverage Permit, Forms of Identification, Quality of Beverage

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

New regulations in 205 CMR 136

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: SIGNATURE ON FILE DATE: Jun 5 2015

Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1289 DATE: 06/19/2015

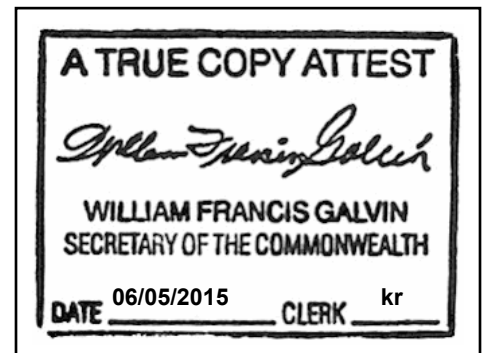
EFFECTIVE DATE: 06/19/2015

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages: Insert these pages:

487 & 488

487 - 488.6



205 CMR 136.00: SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES AT GAMING ESTABLISHMENTS

Section

- 136.01: Definitions
- 136.02: General Provisions
- 136.03: Issuance of License and Permit
- 136.04: Gaming Beverage License Application
- 136.05: Fees
- 136.06: Term and Renewal of License
- 136.07: Practices and Conditions of License
- 136.08: Form of the Gaming Beverage License

136.01: Definitions

As used in 205 CMR 136.00, the following words and phrases shall have the following meaning, unless the context clearly requires otherwise. Moreover, the definitions contained in M.G.L. c. 138, § 1, to the extent to which they are not in conflict with 205 CMR 136.00 or M.G.L. c. 23K, § 2, are fully incorporated by reference. In the event of any definitional conflict, M.G.L. c. 23K shall prevail followed by M.G.L. c. 138 followed by 205 CMR 136.01:

ABCC means the Alcoholic Beverages Control Commission

Bottle Service means the sale of a distilled spirit by the bottle, typically accompanied by the provision of mixers, for consumption by more than one patron within a licensed area in conjunction with the private use of part of a licensed area.

Complimentary or Free of Charge means without payment of money or other form of monetary-like consideration (*e.g.* gift cards, rewards points).

Gaming Beverage License means a license issued in accordance with M.G.L. c. 23K, § 26 for the sale and distribution of alcoholic beverages to be drunk on the premises of a gaming establishment.

Gaming Beverage Licensee means the gaming licensee that is issued a gaming beverage license pursuant to 205 CMR 136.03(4).

Jointly Responsible Person means an entity licensed or registered as a vendor in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations* that operates a licensed area under agreement with the gaming licensee and is designated by the gaming beverage licensee pursuant to 205 CMR 136.04 to be responsible for the sale and distribution of alcoholic beverages within a particular licensed area.

Licensed Area means a specific, limited and defined space within a gaming establishment wherein the sale, distribution, or storage of alcoholic beverages to be drunk on the premises of the gaming establishment is permitted pursuant to a gaming beverage license as determined by the commission pursuant to 205 CMR 136.03(4).

Manager or Other Principal Representative means an individual who is licensed or registered in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations* who the gaming beverage licensee or jointly responsible person has delegated to ensure compliance with 205 CMR 136.00 and all terms and conditions of the gaming beverage license applicable in the licensed area.

Special Event means an event for which the consumption of alcoholic beverages is permitted by the commission in an area of the gaming establishment that is not a licensed area for a specific limited period of time.

136.02: General Provisions

- (1) No person may sell or distribute alcoholic beverages to be drunk on the premises of a gaming establishment except as allowed by a gaming beverage license. Alcoholic beverages served in a licensed area in accordance with the terms of a gaming beverage license may be consumed in any part of the premises of the gaming establishment subject to any restrictions or conditions placed on the gaming beverage license in the interest of the integrity of gaming and/or public health, welfare, or safety.
- (2) A gaming beverage licensee shall be responsible for compliance with 205 CMR 136.00 in all licensed areas and the gaming establishment as a whole. A gaming beverage licensee may allow a jointly responsible person to operate a licensed area but shall remain responsible for compliance with 205 CMR 136.00 within the licensed area. A gaming beverage licensee or jointly responsible person shall designate at least one manager or other principal representative to oversee compliance with 205 CMR 136.00 and the terms of the gaming beverage license in the licensed area for which they are responsible.
- (3) A gaming beverage licensee shall not transfer a gaming beverage license, transfer operations of a licensed area to a new jointly responsible person, add a new manager or other principal representative, or add, delete or materially alter the size, configuration or use of a licensed area without the commission's prior written approval.

136.03: Issuance of License and Permit

- (1) Authority. Pursuant to M.G.L. c. 23K, § 26, the commission may grant a gaming beverage license to a gaming licensee for purposes of allowing the sale and distribution of alcoholic beverages within all licensed areas of the gaming establishment as identified and defined in the license subject to 205 CMR 136.00 to be drunk on the premises of the gaming establishment, subject to any restrictions imposed on the license.
- (2) Hearings and Additional Information. After reviewing a gaming beverage license application submitted pursuant to 205 CMR 136.04(1), an application to amend a licensed area, or an application for a special event beverage permit submitted pursuant to 205 CMR 136.04(3), and prior to taking action on the application the commission or the commission's Division of Licensing may request additional information from the applicant to complete or supplement the application, may request that the applicant modify the application in the interests of the integrity of gaming and/or public health, welfare, or safety, or may schedule a hearing for the applicant to address any issues that relate to the application.
- (3) Gaming Beverage License and Licensed Areas. Applications for licensure shall be submitted to the commission's Division of Licensing. Upon receipt of a complete application for a gaming beverage license, a complete application to amend, alter, or add a licensed area, and the fees required by 205 CMR 136.05, the Division of Licensing shall review the application to determine whether it contains all of the elements required in accordance with 205 CMR 136.04. If the Division of Licensing is satisfied that the application meets the requirements of 205 CMR 136.04 and M.G.L. c. 23K, § 26, and that any modifications requested in accordance with 205 CMR 136.03(2) have been satisfactorily addressed, it shall forward the application to the commission with a recommendation that it be approved. If it is not satisfied that the application meets the requirements of 205 CMR 136.04, or that a modification requested in accordance with 205 CMR 136.03(2) has been satisfactorily addressed, it shall engage in the process outlined in 205 CMR 136.03(2) or deny the application and advise the applicant that it may appeal the decision to the commission.
- (4) The commission shall review the application upon receipt from the Division of Licensing and may approve the application, or parts thereof, and issue the gaming beverage license if it meets all of the requirements of 205 CMR 136.00 and M.G.L. c. 23K, § 26, or deny or condition the gaming beverage license, or parts thereof, if it determines that the application does not meet all of the requirements of 205 CMR 136.00 and M.G.L. c. 23K, § 26 or would in some way compromise the integrity of gaming and/or public health, welfare, or safety.

136.04: Gaming Beverage License Application

(1) Gaming Beverage License Application. A gaming licensee may apply to the commission for a gaming beverage license or renewal of a gaming beverage license by filing with the commission an application form prescribed by the commission, which application form must contain at least the following information:

- (a) The gaming licensee name and contact information;
- (b) Proof of insurance in accordance with 205 CMR 136.07(1);
- (c) A licensed area application form as specified in 205 CMR 136.04(2) for each area of the gaming establishment in which the gaming licensee seeks to sell or distribute alcoholic beverages; and
- (d) a description of the parts of the premises of the gaming establishment in which the consumption of alcoholic beverages will not be allowed for purposes of ensuring the integrity of gaming, the public health, welfare, or safety, or other reason.

(2) Licensed Area Application. A gaming licensee shall file, as part of its application for a gaming beverage license, as part of a renewal of a gaming beverage license, or as an independent application to amend a licensed area of a gaming beverage license, a licensed area application on a form prescribed by the commission, which application form must contain at least the following information:

- (a) A floor plan showing the location of the area within the gaming establishment which the applicant seeks to establish as a licensed area and a diagram of that specific area;
- (b) A description of the licensed area including the proposed capacity and number and location of alcoholic beverage dispensing areas, and placement of exits including whether the area is closed or open space, and whether bottle service will be offered in the licensed area;
- (c) A description of the manner in which alcoholic beverages will be stored and secured during times that the licensed area is not open. If storage will be outside of the licensed area, a depiction of the storage area shall be provided on the map referenced in 205 CMR 136.04(2)(a).
- (d) A description of the business concept and the hours of operation for the business;
- (e) The identity of the manager(s) or other principal representative(s) for the licensed area including their employee license or registration number issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*;
- (f) The identity of the jointly responsible person, if any, for the licensed area including the contact information and vendor license or registration number issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*; and
- (g) If a jointly responsible person will be operating a licensed area, evidence satisfactory to the commission that the gaming beverage licensee maintains at all times during the life of the license the legal authority to monitor the jointly responsible person's compliance with and ability to remove a jointly responsible person from the gaming establishment for a violation of 205 CMR 136.00.

(3) Special Event Beverage Permit. A gaming beverage licensee seeking to serve alcoholic beverages on the premises of a gaming establishment in a location that is not a licensed area may submit a special event beverage permit application to the Division of Licensing for the sale of wines and malt beverages only, or either of them, or for all alcoholic beverages, on a form prescribed by the commission in order to request approval to do so for a temporary duration. The Division of Licensing may approve the application and issue the special event beverage permit if it determines that the application contains all of the required information and issuance would not compromise the integrity of gaming, or the public health, welfare, or safety. The application should be submitted at least ten calendar days prior to the proposed event. The application form shall contain, at a minimum, the following information:

- (a) Name and description of the event;
- (b) A description and mapped location of the event;
- (c) Date, time, and duration of the event;
- (d) A copy of the advertisement, program and promotional material for the event;
- (e) Number of persons anticipated to attend the event;
- (f) Admission price to the event;

136.04: continued

- (g) Type of alcoholic beverages to be served;
- (h) Security and staffing arrangements;
- (i) The identity of the jointly responsible person, if any, for the special event area including the contact information and vendor license or registration number issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*;
- (j) The identity of the managers or other principal representatives for the special event area including their employee license or registration number issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*; and
- (k) A copy of the written agreement, if any, between an entity for which the special event beverage permit was applied and the gaming beverage licensee.

136.05: Fees

- (1) The application fee and renewal fee for the gaming beverage license application pursuant to 205 CMR 136.04(1) is \$15,000.
- (2) The fee for an application to amend a licensed area pursuant to 205 CMR 136.04(2) or an application for special event beverage permit pursuant to 205 CMR 136.04(3) is \$100.
- (3) If the commission's costs for reviewing a gaming beverage application, application to amend or add a licensed area, or an application for a special event beverage permit, in accordance with the fee schedule posted by the commission to its website, exceed the application fees provided in 205 CMR 136.05(1) and (2), the gaming beverage licensee shall pay the additional amount within 30 days after notification of insufficient fees or the application shall be rejected.
- (4) All fees pursuant to 205 CMR 136.05 must be submitted to the commission's Division of Licensing in the form of a certified check, cashier's check, or electronic funds transfer payable to the Commonwealth of Massachusetts. All fees pursuant to 205 CMR 136.05(1) and (2) must be submitted to the Division of Licensing prior to or along with the application.

136.06: Term and Renewal of License

- (1) Gaming Beverage License. A gaming beverage license shall expire three years from the date of issuance. To ensure uninterrupted use of the license, the gaming beverage licensee shall submit an application for renewal in the form prescribed in 205 CMR 136.04(1) at least 45 days prior to expiration.
- (2) Special Event Beverage Permit. The special event beverage permit shall be valid for the dates and times specified by the permit, but in no case longer than seven days.

136.07: Practices and Conditions of License

- (1) Insurance. The gaming beverage licensee must at all times maintain liquor liability insurance for bodily injury or death for a minimum amount of \$250,000 on account of injury to or death of one person, and \$500,000 on account of any one accident resulting in injury to or death of more than one person. The policy shall have no annual aggregate limit.
- (2) Price Restrictions. The gaming beverage licensee, or jointly responsible person, shall maintain a schedule of the prices charged for all alcoholic beverages to be served in a licensed area. Such prices shall be effective and remain constant for not less than one calendar week. An alcoholic beverage must be either served free of charge in the gaming area in accordance with a gaming licensee's complimentary distribution program consistent with 205 CMR 138.09: *Retention, Storage and Destruction Records* or at the price set in the schedule. The distribution of a free alcoholic beverage may not be conditioned on the purchase of an alcoholic beverage. 205 CMR 136.07(2) shall not apply to private functions not open to the public and shall be subject to the provisions of 205 CMR 136.07(4).

136.07: continued

Nothing contained in 205 CMR 136.00 shall be construed to prohibit licensees from offering complimentary food or entertainment at any time; or to prohibit licensees from including an alcoholic beverage as part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one person; or to prohibit a licensee from offering room services to registered hotel guests.

A gaming beverage licensee and/or jointly responsible person may conduct alcoholic beverage tastings in a licensed area of beer/malt, wine, liqueurs, cordials and alcoholic beverages provided that food is served in conjunction with the tasting and the IEB is provided 24 hour advance written notice specifying the date, time, location, and type of samples to be offered at the event. Tasting quantities shall be limited as follows:

- (a) beer/malt beverage tasting samples shall be limited to two ounces per serving;
- (b) wine tasting samples shall be limited to one ounce per serving; and
- (c) Other alcoholic beverages including liqueur and cordial samples shall be limited to ¼ of an ounce per serving.

(3) Vendor and Employee License and Registration. Each jointly responsible person must possess a vendor license or registration issued pursuant to 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations* and each manager or other principal representative of a jointly responsible person must possess an employee license or registration issued pursuant to 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*. No gaming beverage licensee or jointly responsible person may receive alcoholic beverages from a supplier unless the supplier possesses a valid vendor license or registration pursuant to 205 CMR 134.04: *Vendors*. Moreover, said supplier of alcoholic beverages must first possess the legal authority, pursuant M.G.L. c. 138 to supply alcoholic beverages to a retailer licensed to operate an "on-premises" license under M.G.L. c. 138, § 12.

(4) Distribution of Alcoholic Beverages Free of Charge. Pursuant to M.G.L. c. 23K, § 26(c) and St. 2011, c. 194, § 107, a gaming beverage licensee or jointly responsible person may only distribute alcoholic beverages free of charge for on-premises consumption to patrons in the gaming area. Complimentary distribution must be offered in accordance with the gaming licensee's complimentary distribution program submitted in accordance with 205 CMR 138.13. Provided, alcoholic beverages may be provided to patrons in a licensed area outside of the gaming area at no cost to the patron if the alcoholic beverages are paid for by a third party other than the gaming beverage licensee or jointly responsible person. Documentation of any such third party payment shall be maintained by the gaming beverage licensee for inspection upon request by the commission, or its agents, including agents of the gaming liquor enforcement unit of the ABCC.

(5) Postings. The gaming beverage licensee shall post in a location continuously conspicuous to the public within each licensed area and wherever alcoholic beverages are served:

- (a) a copy of the licensed area addendum pursuant to 205 CMR 136.09(2) for the licensed area, and
- (b) a summary of M.G.L. c. 90, § 24 prohibiting driving under the influence and stating the maximum penalties provided therefore.

(6) Bottle Service. If the gaming beverage licensee intends to offer bottle service it shall detail its policies and protocols for such service as part of its application submitted in accordance with 205 CMR 136.04(1), which shall include, at a minimum, a requirement that alcoholic beverages be poured by an employee of the gaming licensee who is licensed in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*.

(7) Prohibited Distribution. A gaming beverage licensee, jointly responsible person, and their respective agents and employees, except as otherwise provided by 205 CMR 136.07:

- (a) may not offer or deliver more than two drinks to one individual at a time (except that a bottle of wine may be served to one or more patrons);
- (b) may not sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price (*i.e.* open bar), except at invitation-only private functions not open to the public;

136.07: continued

- (c) may not increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week;
- (d) may not offer or deliver malt beverages or mixed drinks by the pitcher except to two or more persons at any one time;
- (e) may not encourage or permit any game or contest which involves drinking alcoholic beverages or the awarding of alcoholic beverages as prizes;
- (f) may not serve an alcoholic beverage to any person who is visibly intoxicated;
- (g) may not serve an alcoholic beverage to any person who is younger than 21 years old; and
- (h) may not serve or distribute alcoholic beverages at the gaming establishment between 2:00 A.M. and 8:00 A.M.

(8) Forms of Identification.

- (a) A gaming beverage licensee or jointly responsible person shall use an identification scanner to detect fraudulent identification and may rely on the following forms of identification to demonstrate proof that a person 21 years of age or older:
 - 1. a liquor purchase identification card issued pursuant to M.G.L. c. 138, § 34B or a motor vehicle driver's license issued pursuant to M.G.L. c. 90, § 8, or a liquor purchase identification card or driver's license issued by another State in the United States or government of a foreign country, or district therein, recognized by the United States government;
 - 2. an identification card issued pursuant to M.G.L. c. 90, § 8E or the equivalent issued by another State in the United States;
 - 3. a valid passport issued by the United States government, or by a government of a foreign country recognized by the United States government; or
 - 4. a valid United States issued military identification card;
- (b) If a gaming beverage licensee or jointly responsible person reasonably relies on the forms of identification described in 205 CMR 136.07(8)(a) for proof of person's identity and age, the gaming beverage licensee or jointly responsible person shall not suffer any disciplinary action for delivering or selling alcoholic beverages to a person younger than 21 years old. If reliance was reasonable, such reliance creates a rebuttable presumption that the individual so relying exercised due care in making such delivery or sale of alcoholic beverages to a individual younger than 21 years old for purposes of 205 CMR 136.07. Provided, this presumption shall not affect the applicability of 205 CMR 138.07(7)(f).

(9) Employee Policies.

- (a) The gaming beverage licensee or the jointly responsible person must appoint in writing one or more managers or other principal representatives for each licensed area.
- (b) At least one manager or other principal representative must be present in each licensed area at all times that alcoholic beverages are available for sale or distribution, and shall be available to the division of gaming liquor enforcement of the ABCC, the IEB, the Division of Licensing, and the gaming enforcement unit at any such time. Further, assigned managers or principal representatives shall be responsible to ensure that alcohol is properly stored and secured at all times in accordance with the gaming beverage licensee's policies and protocols approved in accordance with 205 CMR 138.12: *Alcoholic Beverage Control* and in accordance with 205 CMR 138.04(2)(c).
- (c) Before beginning employment, the gaming beverage licensee or jointly responsible person must receive proof that managers or other principal representatives successfully completed a recognized alcoholic beverage server training program, such as Training for Intervention Procedures (TIPS). The gaming beverage licensee and jointly responsible person must ensure that all other employees involved in the service or delivery of alcoholic beverages complete such program within 30 days of hire. Any employee who fails to obtain such training within 30 days of hire shall not be eligible to serve alcoholic beverages until such time as said training is completed. The gaming beverage licensee and jointly responsible person shall be responsible for ensuring that all employees read, understand, and comply with the rules and regulations of the commission and 205 CMR 136.00. The gaming beverage licensee must ensure that all employees abide by the gaming beverage licensee's policy for responsible alcoholic beverage services in accordance with 205 CMR 138.12: *Alcoholic Beverage Control*.

136.07: continued

(d) No gaming beverage licensee or jointly responsible person may take any adverse employment action against an employee for declining to serve, or refusing to allow another to serve, a patron who he or she believes, in good faith, is younger than 21 years old, intoxicated, engaged in illegal activity, or causing a disturbance.

(10) Quality of Beverages.

(a) Substitution of Beverages. The substitution of any alcoholic beverages of a kind or brand different from that ordered by a purchaser is prohibited unless it is done with the consent of the person making the purchase.

(b) Dilution. No gaming beverage licensee or jointly responsible person shall dilute, change, or in any manner tamper with any alcoholic beverage authorized to be sold under such license so as to change its composition or alcoholic content. Possession on the premises of the gaming establishment or a licensed area of any alcoholic beverage differing in composition or alcoholic content from such beverage when received from the manufacturer or wholesaler and importer from whom it was purchased, except cocktails and other mixed drinks, shall be *prima facie* evidence that the said beverage has been diluted, changed or tampered with in violation of 205 CMR 136.07(10)(b).

(c) Entry and Samples. The commission, or its agents, including agents of the gaming liquor enforcement unit of the ABCC, may at any time enter upon any area of the gaming establishment, including any licensed area, for purposes of enforcement of M.G.L. c. 23K or 205 CMR 136.00. The commission or its agents, including agents of the gaming liquor enforcement unit of the ABCC, may at any time take samples for analysis from any beverages or alcohol kept on such premises, and the vessel or vessels containing such samples shall be sealed on the premises in the presence of a representative of the gaming beverage licensee or jointly responsible person.

(11) Resealing of Partially Consumed Bottles of Wine.

(a) No gaming beverage licensee or jointly responsible person shall permit a patron to retain and take off the premises of the gaming establishment so much of a bottle of wine purchased by that patron with a meal and not totally consumed by that patron during the meal, except when the bottle is re-sealed in compliance with 205 CMR 136.07(11).

(b) Only one partially consumed bottle of wine per patron may be resealed and removed from the gaming establishment.

(c) A receipt that prominently displays the date of the purchase of the meal must be furnished to the patron. The receipt must show both the purchase of the meal and the purchase of the bottle of wine.

(d) Proper re-sealing requires:

1. securely resealing the bottle of wine;
2. placing the resealed bottle in a one-time use tamper proof transparent bag that insures the patron cannot gain access to the bottle while in transit after the bag is sealed;
3. securely sealing the bag; and
4. affixing the receipt to the sealed bag.

(12) Public Safety. No gaming beverage licensee or jointly responsible person shall permit disorder, disturbance, or illegality of any kind in a licensed area or any portion of the premises of the gaming establishment in which alcoholic beverages are permitted to be consumed. A gaming beverage licensee must maintain and exercise close supervision and control over the service of alcoholic beverages in the licensed areas at all times. The commission or its agents, including agents of the gaming liquor enforcement unit of the ABCC, may, as required in cases of public disturbance, order gaming beverage licensees and jointly responsible persons not to sell, give away, or deliver any alcoholic beverages in the gaming establishment, or within a specific licensed area(s), for a period not exceeding three days at any one time. At the gaming beverage licensee's request, a hearing in accordance with 205 CMR 101.00 shall promptly be scheduled in the event that such order is issued to determine the need for continuation of the order.

136.08: Form of the Gaming Beverage License

(1) Gaming Beverage Licensee. The commission, after granting a gaming beverage license application for one or more licensed areas in a gaming establishment shall issue a formal license document that contains the following:

- (a) A complete identification of the gaming beverage licensee's identity, and the contact information for a responsible individual;
- (b) The term of the license;
- (c) An official commission serial number;
- (d) A statement that all conditions set forth in M.G.L. c. 23K and 205 CMR 136.00 are incorporated by reference, included as if completely set forth therein and made a part of the issued form of the gaming beverage license;
- (e) A statement that all additional conditions set forth by the commission shall also be incorporated by reference, included as if completely set forth therein and also made a part of the issued form of the gaming license;
- (f) The official seal of the Commonwealth of Massachusetts;
- (g) The signature of the chair or his designee after receiving a commission vote authorizing such license issuance and signature execution;
- (h) Such other conditions, limitations, or restrictions on the sale or distribution of alcoholic beverages at the gaming establishment as determined by the commission;
- (i) A listing of all licensed areas covered by the gaming beverage license, and the jointly responsible person, if any, for each licensed area; and
- (j) A statement incorporating by reference all licensed area addenda issued pursuant to 205 CMR 136.08(2).

(2) Licensed Area Addendum. As part of the Gaming Beverage License, the commission shall issue a licensed area addendum for each licensed area approved pursuant to 205 CMR 136.03(4). Each licensed area addendum shall contain the following:

- (a) A precise, complete and defined description of the of the licensed area;
- (b) A complete identification of the gaming beverage licensee's identity;
- (c) The term of the license;
- (d) An official commission serial number;
- (e) The official seal of the Commonwealth of Massachusetts;
- (f) The signature of the chair or his designee;
- (g) A statement incorporating by reference all applicable conditions attached to the gaming beverage license;
- (h) Any unique conditions, restrictions or limitations which apply to the licensed area;
- (i) The identity of the jointly responsible person, if any; and
- (j) The identity and contact information for all managers or other principal representatives.

REGULATORY AUTHORITY

205 CMR 136.00: M.G.L. c. 23K, §§ 4, 5, 26, 36; and c. 138, § 34B.



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **205 CMR 150.00**CHAPTER TITLE: **Protection of Minors and Underage Youth**AGENCY: **Massachusetts Gaming Commission**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***These new regulations govern the protection of minors and underage youth at gaming establishments.**REGULATORY AUTHORITY: **M.G.L. c. 23K, s. 5(a), 21(a), 25(h), 54, 58, and 59**AGENCY CONTACT: **Cecelia M. Porche** PHONE: **617-979-8478**ADDRESS: **101 Federal Street, 23rd fl., Boston, MA 02110****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***LGAC - 3/27/15; Boston Globe - 4/27/15; Boston Herald - 4/27/15; Cape Cod Times - 4/27/15; Sun Chronicle - 4/27/15; and Springfield Republican - 4/27/15.**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*Date of public hearing or comment period: **5/21/15**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: _____

For the first five years: _____

No fiscal effect: The Commission does not anticipate any fiscal impact by these regulations.

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: 5/29/15

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Minors, Underage Youth, Alcohol, Gambling, Advertising and Marketing Guidelines, Parking Areas, Unattended Minors

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

New regulations in 205 CMR 150

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: SIGNATURE ON FILE DATE: Jun 5 2015

Publication - *To be completed by the Regulations Division*

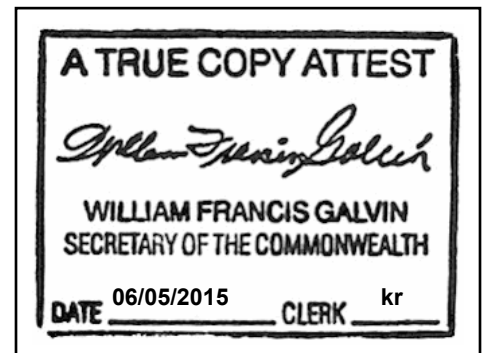
MASSACHUSETTS REGISTER NUMBER: 1289 DATE: 06/19/2015

EFFECTIVE DATE: 06/19/2015

CODE OF MASSACHUSETTS REGULATIONS

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205 CMR 150.00: PROTECTION OF MINORS AND UNDERAGE YOUTH

Section

150.01: Preventing Gambling and Entry to Gaming Area by Underage Persons

150.02: Monitoring the Premises for Unattended Minors

150.03: Advertising and Marketing Guidelines

150.04: Preventing the Service of Alcohol to Underage Persons

150.05: Reporting Requirements Related to Minors and Underage Persons

150.01: Preventing Gambling and Entry to Gaming Area by Underage Persons

Each gaming licensee shall implement policies, procedures, and practices designed to prevent persons younger than 21 years old from gambling and, except for an employee 18 years of age or older who is licensed or registered pursuant to M.G.L. c. 23K and 205 CMR and acting in the performance of the duties the employee is licensed or registered to undertake, from entering a gaming area. The policies, procedures, and practices shall include but not be limited to an ongoing program of training for personnel at the gaming establishment that emphasizes the responsibility of personnel for identifying and preventing such activity by persons younger than 21 years old. Identifiable winnings or losses arising as a result of such prohibited gaming in a gaming establishment by a person younger than 21 years old shall be remitted to the commission for deposit into the Gaming Revenue Fund established in M.G.L. c. 23k, § 59.

150.02: Monitoring the Premises for Unattended Minors

(1) Each gaming licensee shall establish policies, procedures, and practices requiring its security and surveillance personnel, or equivalent personnel, to conduct regular checks of parking areas for minors left in motor vehicles and for the immediate report of any such finding to the police department in the host community and to the state police in the Gaming Enforcement Unit.

(2) Each gaming licensee shall establish policies, security procedures, and security practices to ensure the safety of minors on the premises of a gaming establishment, including but not limited to monitoring the premises of the gaming establishment for unattended minors.

150.03: Advertising and Marketing Guidelines

No gaming licensee shall authorize or conduct marketing, advertising, and/or promotional communications or activity relative to gaming that specifically targets persons younger than 21 years old.

150.04: Preventing the Service of Alcohol to Underage Persons

Each gaming licensee shall implement policies, procedures, and practices in accordance with 205 CMR 138.12: *Alcoholic Beverage Control* to prevent the service of alcoholic beverages to underage persons upon the premises of the gaming establishment.

150.05: Reporting Requirements Related to Minors and Underage Persons

Each gaming licensee shall submit an underage person report to the IEB by the tenth day of each month reporting the following information:

- (1) The number of persons younger than 21 years old found in the gaming area;
- (2) The number of persons younger than 21 years old found gaming at tables;
- (3) The number of persons younger than 21 years old found gaming at slot machines or other electronic gaming devices;
- (4) The number of persons younger than 21 years old found consuming alcohol;
- (5) The number of persons younger than 21 years old turned over to the proper law enforcement authority; and

150.05: continued

- (6) The number of persons younger than 21 years old escorted from the gaming area.

REGULATORY AUTHORITY

205 CMR 150.00: M.G.L. c. 23K, §§ 5(a); 21(a); 25(h), 54, 58 and 59.



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **205 CMR 151.00**CHAPTER TITLE: **Requirements for the Operations and Conduct of Gaming at a Gaming Establishment**AGENCY: **Massachusetts Gaming Commission**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

These new regulations govern the requirements that a gaming establishment has to satisfy before the Commission issues an Operation Certificate.

REGULATORY AUTHORITY: **M.G.L. c. 23K, s. 25 and 205 CMR 138**AGENCY CONTACT: **Cceelia M. Porche** PHONE: **617-979-8478**ADDRESS: **101 Federal Street, 23rd Floor, Boston, MA 02110****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

LGAC - 3/31/15 & 4/9/15; Boston Globe - 4/27/15; Boston Herald - 4/27/15; Cape Cod Times - 4/27/15; Sun Chronicle - 4/27/15; and Springfield Republican - 4/27/15.

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **5/21/15**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: As a statutory requirement, these regulations are intended to enhance industry in the Commonwealth

For the first five years: As a statutory requirement, these regulations are intended to enhance industry in the Commonwealth

No fiscal effect: _____

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: 5/29/15

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Operation Certificate, Test Period, Floor Plan

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

New regulations in 205 CMR 151

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: SIGNATURE ON FILE DATE: Jun 5 2015

Publication - *To be completed by the Regulations Division*

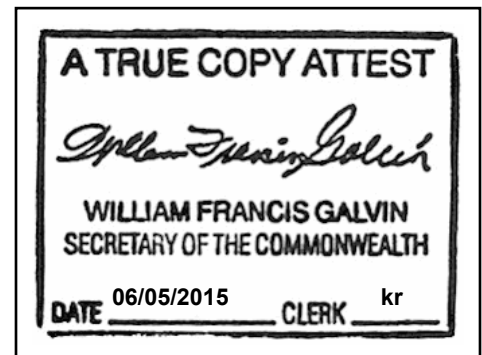
MASSACHUSETTS REGISTER NUMBER: 1289 DATE: 06/19/2015

EFFECTIVE DATE: 06/19/2015

CODE OF MASSACHUSETTS REGULATIONS

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205 CMR 151.00: REQUIREMENTS FOR THE OPERATIONS AND CONDUCT OF GAMING AT A GAMING ESTABLISHMENT

Section

- 151.01: Issuance and Posting of Operation Certificate
- 151.02: Floor Plan
- 151.03: Operation Certificate: Test Period
- 151.04: Operation Certificate: Effective Date; Duration
- 151.05: Operation Certificate: Amendment to Conform to Approved Changes
- 151.06: Temporary Amendments for Pit and Slot Zone Configurations or Reconstitutions

151.01: Issuance and Posting of Operation Certificate

(1) Before conducting gaming at a gaming establishment, or commencing operations of non-gaming amenities, other than for testing purposes in accordance with 205 CMR 151.03, a gaming licensee must request and obtain from the commission an Operation Certificate. The Operation Certificate shall not issue until the commission has conducted all reviews, including on-site tests and inspections required in accordance with 205 CMR 151.00 and otherwise deemed necessary by the commission. The commission may authorize a designee to issue a conditional Operation Certificate, subject to ratification by the full commission, subsequent to a successful test period in accordance with 205 CMR 151.03 and satisfaction of any other outstanding condition.

(2) The Operation Certificate shall be conspicuously posted within the gaming establishment and shall state the number of gaming positions by type, *i.e.*, slot machines, electronic gaming devices, table games or such other forms of gaming positions approved by the commission.

(3) An Operation Certificate shall not issue unless the gaming licensee has demonstrated to the commission that it has complied with all requirements of M.G.L. c. 23K, 205 CMR, and all applicable laws. Such compliance includes, but is not limited to:

- (a) Approval of its system of internal controls in accordance with 205 CMR 138.02(2) including implementation of all approved policies and procedures required in accordance with 205 CMR 138.02(4);
- (b) Compliance with all elements of M.G.L. c. 23K, § 25(a);
- (c) Provision of a current list of all gaming employees;
- (d) For category 1 and category 2 gaming licensees, the gaming area and other essential ancillary entertainment services and non-gaming amenities, as determined by the commission, have been built and are of a superior quality and comply with any applicable conditions of licensure;
- (e) For category 1 gaming licensees, documentation to confirm that total infrastructure improvements onsite and around the vicinity of the gaming establishment, including projects to account for traffic mitigation, are completed in accordance with M.G.L. c. 23K, § 10(c) and the conditions of the gaming licensee's license;
- (f) For the category 2 gaming licensee, documentation to confirm that any infrastructure improvements necessary to increase visitor capacity and account for traffic mitigation are completed in accordance with M.G.L. c. 23K, § 11 and the gaming licensee's license conditions;
- (g) A copy of an emergency response plan filed with the commission and filed with fire department and police department of the host community, which plan shall include, but not be limited to:
 - 1. a layout identifying all areas within the facility and grounds, including support systems and the internal and external access routes;
 - 2. the location and inventory of emergency response equipment and the contact information of the emergency response coordinator for the gaming establishment;
 - 3. the location of any hazardous substances and a description of any public health or safety hazards present on site;
 - 4. a description of any special equipment needed to respond to an emergency at the gaming establishment;
 - 5. an evacuation plan; and

151.01: continued

- 6. any other information relating to emergency response as requested by the commission, the fire department or the police department of the host community.
- (h) A copy of the certificate of occupancy issued by a building commissioner or inspector of buildings of the host community in accordance with 780 CMR 111.00: *Certificate of Occupancy* that includes an approval under 521 CMR: *Architectural Access Board*, indicating the necessary use and occupancy to operate the gaming establishment; as well as copies of any other permits required to be issued by the host community prior to the opening of a like facility;
- (i) A copy of all certification of operation for all elevators in accordance with M.G.L. c. 143, § 63 and 524 CMR: *Board of Elevator Regulations*; and
- (j) Compliance with all applicable terms and condition of the gaming licensee's license.

151.02: Floor Plan

(1) Prior to the issuance or amendment of an Operation Certificate and the commencement of gaming or simulcast wagering, a gaming licensee shall obtain commission approval for the floor plans of its gaming area, simulcasting area (if any), and any restricted areas. The gaming establishment shall be arranged in such a manner as to provide optimum security for the gaming establishment operations.

(2) Each floor plan required by 205 CMR 151.02(1) shall accurately depict the entire layout, including equipment positioning, in the gaming area and support areas; shall be drawn to at least one-eighth inch scale ($\frac{1}{8}$ inch = one foot); and shall depict, at a minimum, the location of the following:

- (a) The gaming area, and any simulcasting facility, including, at a minimum, the proposed total square footage thereof and a clear delineation of the respective perimeter of each;
- (b) Each gaming pit, its pit location number, and any alternate configurations;
- (c) Each table game, noting its pit and table game location number;
- (d) Each CCTV camera, noting its type and camera number;
- (e) Each slot booth, noting its booth number;
- (f) Each cashier's cage and its component offices and areas;
- (g) Each separate master coin bank;
- (h) Each window at the cashiers' cage, noting its window number;
- (i) Each count room;
- (j) Each slot zone, its slot zone location letter or number and the total number of authorized slot machine locations within that slot zone, and at the gaming licensee's option, a maximum of four alternate configurations or locations for that slot zone and the alternate slot zone location number for each (for example, Slot Zone 2A);
- (k) Each authorized slot machine or other gaming device location, which location shall contain no more than one slot machine and bill changer at a time, noting its slot machine location number and any slot zone location letter or number;
- (l) Each slot stool authorized for use, if any;
- (m) Each automated coupon redemption machine, noting its location number;
- (n) Each automated jackpot payout machine, noting its location number;
- (o) Each gaming voucher redemption machine, noting its location number;
- (p) Each satellite cage and its component offices and areas;
- (q) Each coin vault;
- (r) Each area approved for the storage of gaming chips or plaques;
- (s) Each room or area approved for the storage of dice or playing cards;
- (t) Each other room or area that is accessible directly from the gaming area;
- (u) For those establishments with a simulcasting facility:
 - 1. Each simulcast counter and any ancillary simulcast counter, along with their component offices, areas and equipment;
 - 2. Each credit voucher machine, noting its location number;
 - 3. Each self-service pari-mutuel machine, noting its location number; and
 - 4. Each other area or room designated by the commission.

151.02: continued

(3) A gaming licensee, after obtaining the commission's approval of its floor plans submitted in accordance with 205 CMR 151.02, shall not commence gaming or simulcast wagering in the areas depicted on the floor plan until an Operation Certificate has been issued, and a copy of the floor plans has been delivered to the commission's IEB office in the establishment, an electronic copy has been sent to the IEB's main office, and a printed copy thereof has been delivered to each of the following:

- (a) The gaming licensee's security podium; and
- (b) The gaming licensee's monitoring rooms.

151.03: Operation Certificate: Test Period

(1) Prior to the issuance of a Operation Certificate, a gaming licensee shall successfully complete an evaluation and test period in accordance with such terms and conditions as are reasonably calculated by the commission to allow the commission to assess whether the licensee is in compliance with M.G.L. c. 23K, § 25(a) and 205 CMR 151.01(3).

(2) The commission will provide the gaming licensee with the terms and conditions of the test period promptly upon receipt of the licensee's request for an Operation Certificate.

(3) The terms and conditions of the test period as determined by the commission, or its designee, shall incorporate, at a minimum, the following:

- (a) The dates and times of the test period. Provided, said schedule may be increased or decreased by the commission or its designee as necessary to determine compliance with M.G.L. c. 23K, § 25(a) and 205 CMR 151.01(3);
- (b) The areas and operations of the gaming establishment that will be tested, inspected, and reviewed including a review of the layout of the gaming establishment in comparison to that depicted in the floor plan submitted in accordance with 205 CMR 151.02;
- (c) Any actions necessary to preserve and to assure an effective evaluation of the gaming licensee during such test period including permitting, limiting, restricting or prohibiting the gaming licensee from:
 - 1. Accepting currency at table games during all or any part of such period; and
 - 2. Allowing the count rooms to process cash.
- (d) Any interim approval to operate slot machines or other gaming devices approved and certified in accordance with 205 CMR 144.00: *Approval of Slot Machines and Electronic Gaming Equipment and Testing Laboratories* subject to issuance of the Operation Certificate in accordance with 205 CMR 151.04.

151.04: Operation Certificate: Effective Date; Duration

(1) Upon the successful completion of the test period in accordance with 205 CMR 151.03, the commission shall establish the effective date of the Operation Certificate and the scope of the gaming licensee's authority to conduct gaming and, if applicable, simulcast wagering thereunder.

(2) Each certificate, once issued, shall remain in effect throughout the term of the gaming license under such terms and conditions as the commission may impose, and shall not be altered, modified or amended except in accordance with the commission's authority to revoke, suspend, limit or otherwise alter an Operation Certificate pursuant to M.G.L. c. 23K and 205 CMR.

(3) Each gaming licensee to which an Operation Certificate is issued shall operate its gaming establishment or simulcasting facility strictly in accordance with the terms of its original Operation Certificate, and shall not change any of the items to which the Operation Certificate applies except in accordance with 205 CMR 151.05.

151.05: Operation Certificate: Amendment to Conform to Approved Changes

(1) Prior to making a change to any approved component of its gaming establishment, a gaming licensee shall petition the commission to amend the Operation Certificate. The application shall include, without limitation, the following:

- (a) If applicable, a description of any proposed changes in the number of authorized gaming positions, by category, to be played in the gaming establishment;

151.05: continued

(b) If applicable, a revised floor plan of the gaming establishment, simulcasting area, or any restricted area reflecting the proposed change, which revised floor plan shall be filed with the commission at the office of its Senior Supervising Agent in the establishment. Such petition shall also include the following information:

1. a comparison showing the presently authorized square footage of the gaming area, simulcasting area, or restricted area to be amended with that which will result if the proposed change is made;
2. A clear delineation of any proposed change to the perimeter of the gaming area, simulcasting area, or restricted area;
3. A narrative from the architect certifying the floor plan that clearly describes the change to be made by the proposal, noting with particularity any such change to the perimeter of the gaming area, simulcasting area, or restricted area; and
4. A description of any alternate gaming pit or slot zone configurations of locations. Prior to any change to and offering to the public of an approved alternate configuration or location:
 - a. The gaming licensee shall provide the Senior Supervising Agent with at least 24 hours prior written notice of the change; and
 - b. A physical and CCTV inspection of the alternate configuration or location shall be performed and approved by the commission, or its designee.

(2) Within three business days of a gaming licensee filing an application pursuant to 205 CMR 151.05(1), the commission, or its designee, shall review the proposed change set forth in the application for compliance with M.G.L. c. 23K and 205 CMR. Unless the commission, or its designee, notifies the gaming licensee in writing that the proposed change is to be scheduled for a full hearing by the commission at a public meeting or is disapproved, the gaming licensee, after obtaining all approvals required by federal, state or local government officials and providing a copy or other acceptable written evidence of such approvals to the commission, may begin implementing such change upon the earlier of the following:

- (a) The expiration of the three-day period; or
- (b) Receipt of written commission approval for the change.

(3) The gaming licensee shall notify the commission in writing upon final completion of any proposed change set forth in the application and for which the gaming licensee is prepared to seek final approval pursuant to 205 CMR 151.05(4). A floor plan in the form prescribed by 205 CMR 151.02(2) that depicts the changes made shall accompany the notice.

(4) Promptly after the filing of a notice pursuant to 205 CMR 151.05(3), the commission or its designee shall inspect the physical changes made to the gaming establishment, simulcasting facility and/or any restricted area to ensure that those changes conform to the floor plan accompanying the notice and the description previously submitted to the commission. Following such inspection, the commission, or its designee, shall notify the gaming licensee in writing as to which physical change is approved and which is rejected, whereupon, in the event any change is rejected, the gaming licensee shall either:

- (a) Correct any rejected change to conform with the approved floor plan;
- (b) Submit a new application for the proposed change; or
- (c) Take such other action as the commission, or its designee, may direct to ensure that the currently approved floor plan accurately depicts the physical layout of the gaming establishment, the simulcasting area (if any) and/or any restricted area.

(5) The Operation Certificate shall be amended to conform to each change approved in accordance with 205 CMR 151.05(4).

151.06: Temporary Amendments for Pit and Slot Zone Configurations or Reconstitutions

(1) A gaming licensee may temporarily reconfigure one or more pits or slot zones by filing a notice with the commission at the IEB office in the gaming establishment to temporarily reconfigure for each specific pit or slot zone, which notice shall be filed at least 24 hours prior to implementing such alternate configuration. If the gaming licensee does not receive a response to the petition within that 24 hour period, the gaming licensee may proceed with the reconfiguration or reconstitution.

151.06: continued

- (2) A reconfigured pit shall not:
 - (a) Exceed the dimensions approved for the pit that existed immediately prior to the reconfiguration; nor
 - (b) Include any change requiring the approval of a building official without having first obtained that approval and the approval of the commission.
- (3) Each pit operating under an approved configuration shall have an alarm system, approved by the commission, which enables a pit clerk or a pit supervisor to transmit a signal that is audibly and visually reproduced in each of the following locations whenever there is an emergency in the pit:
 - (a) The surveillance monitoring rooms; and
 - (b) The casino security department.

REGULATORY AUTHORITY

205 CMR 151.00: M.G.L. c. 23K, §§ 10, 11 and 25.

NON-TEXT PAGE

**THE COMMONWEALTH OF MASSACHUSETTS****William Francis Galvin**

Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **205 CMR 152.00**CHAPTER TITLE: **Individuals Excluded from a Gaming Establishment**AGENCY: **Massachusetts Gaming Commission**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.***These new regulations govern the requirements for the exclusion of individuals from gaming establishments.**REGULATORY AUTHORITY: **M.G.L. c. 23K, s. 45**AGENCY CONTACT: **Cecelia M. Porche**PHONE: **617-979-8478**ADDRESS: **101 Federal Street, 23rd floor, Boston, MA 02110****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.***LGAC - 4/3/15 & 4/9/15; Boston Globe - 4/27/15; Boston Herald - 4/27/15; Cape Cod Times - 4/27/15; Sun Chronicle - 4/27/15; and Springfield Republican - 4/27/15.**PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*Date of public hearing or comment period: **5/21/15**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: _____

For the first five years: _____

No fiscal effect: The Commission does not anticipate any fiscal impact by these regulations.

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: 5/29/15

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Excluded Persons, Exclusion List, Forfeiture of Winnings, Criteria for Exclusion

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

New regulations in 205 CMR 152

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: SIGNATURE ON FILE DATE: Jun 5 2015

Publication - *To be completed by the Regulations Division*

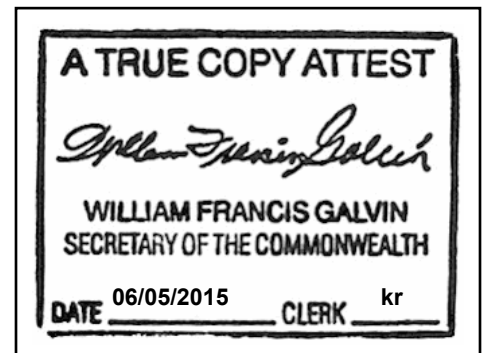
MASSACHUSETTS REGISTER NUMBER: 1289 DATE: 06/19/2015

EFFECTIVE DATE: 06/19/2015

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages: _____ *Insert these pages:* _____

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205 CMR 152.00: INDIVIDUALS EXCLUDED FROM A GAMING ESTABLISHMENT

Section

- 152.01: Scope and Authority
- 152.02: Maintenance and Distribution of List
- 152.03: Criteria for Exclusion
- 152.04: Duties of the IEB
- 152.05: Procedure for Entry of Names
- 152.06: Information Contained on List
- 152.07: Duty of Gaming Licensee
- 152.08: Petition to Remove Name From Exclusion List
- 152.09: Forfeiture of Winnings

152.01: Scope and Authority

The provisions of 205 CMR 152.00 shall provide for the establishment and maintenance of a list, and associated protocols and procedures, for exclusion of individuals from gaming establishments in accordance with M.G.L. c. 23K, §§ 45(a) through (e) and 45(j). Such list shall be maintained separately from that established and maintained in accordance with M.G.L. c. 23K, § 45(f) through (h).

152.02: Maintenance and Distribution of List

- (1) The Commission shall maintain a list of persons to be excluded or ejected from a gaming establishment which shall be posted on the commission's website (<http://massgaming.com/>).
- (2) Each gaming licensee shall ensure that its accesses and reviews the list on a regular basis and that it is made available to all employees of the gaming establishment.

152.03: Criteria for Exclusion

- (1) In the commission's discretion, an individual may be placed on the exclusion list if the commission determines that the individual meets one or more of the following criteria:
 - (a) the individual has been convicted of a criminal offense under the laws of any state or the United States that is punishable by more than six months in a state prison, a house of correction or any comparable incarceration, a crime of moral turpitude or a violation of the gaming laws of any state;
 - (b) the individual has violated or conspired to violate M.G.L. c. 23K or any laws related to gaming;
 - (c) the individual has a notorious or unsavory reputation which would adversely affect public confidence and trust that the gaming industry is free from criminal or corruptive elements;
 - (d) the individual is an associate of an individual who falls into a category identified in 205 CMR 152.03(1)(a) through (c);
 - (e) there exists the potential of injurious threat to the interests of the commonwealth if the individual is permitted in a gaming establishment.
- (2) In determining whether there exists the potential of injurious threat to the interests of the commonwealth if an individual is permitted in a gaming establishment in accordance with 205 CMR 152.03(1)(e), the commission may consider the following:
 - (a) Whether the individual is a known cheat;
 - (b) Whether the individual has had a license or registration issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*, or a like license or registration issued by another jurisdiction, suspended or revoked or has been otherwise subjected to adverse action;
 - (c) Whether the individual poses a threat to the safety of the patrons or employees of a gaming establishment;
 - (d) Whether the individual has a documented history of conduct involving the undue disruption of gaming operations in any jurisdiction;

152.03: continued

(e) Whether the individual is subject to a no trespass order at any casino or gaming establishment in any jurisdiction.

(3) The commission shall not base a finding to place an individual on the excluded list on an individual's race, color, religion, religious creed, national origin, ancestry, sexual orientation, gender identity or expression, age (other than minimum age requirements), marital status, veteran status, genetic information, disability or sex.

152.04: Duties of the IEB

(1) The IEB shall, on its own initiative, or upon referral by the commission or a gaming licensee, investigate any individual who may meet one or more criterion for inclusion on the list in accordance with 205 CMR 152.03.

(2) If, upon completion of an investigation, the IEB determines that an individual meets one or more criterion contained in 205 CMR 152.03 and should be placed on the exclusion list, the IEB shall refer the matter to the commission by way of a report that identifies the individual and sets forth a factual basis as to why the IEB believes the individual meets one or more criterion for inclusion on the list in accordance with 205 CMR 152.03.

152.05: Procedure for Entry of Names

(1) The commission shall consider all reports received from the IEB in accordance with 205 CMR 152.04(2) at a public meeting. After review, the commission may place an individual on the exclusion list upon a finding of good cause shown that the individual meets one or more criterion contained in 205 CMR 152.03 and should be excluded from gaming establishments. Prior to placing a name on the list, the commission may, in its discretion, schedule a hearing on the matter and provide the individual notice in accordance with 205 CMR 152.05(2).

(2) Whenever the commission places an individual on the list of excluded persons in accordance with 205 CMR 152.05(1), the commission shall promptly serve written notice upon that individual by personal service, registered or certified mail return receipt requested to the last ascertainable address or by publication in a daily newspaper of general circulation for one week. The notice shall contain a description of the cause for the exclusion, notice that the individual is prohibited from being present at and gambling in a gaming establishment, and an explanation of the hearing process and manner in which the individual may request a hearing in accordance with 205 CMR 152.05(3).

(3) (a) Within 30 days of receipt of service of notice by mail or 60 days after the last publication under 205 CMR 152.05(2), an individual placed on the list of excluded persons may request an adjudicatory hearing before the commission under M.G.L. c. 30A and show cause as to why the individual should be removed from the list of excluded persons. Such request shall be made by the individual in writing. Failure to demand a hearing within the time allotted in 205 CMR 152.05(3)(a) shall preclude the individual from having an administrative hearing, but shall not affect the individual's right to petition for judicial review.

(b) Upon receipt of a demand for hearing, the commission shall set a time and place for the hearing. This hearing shall be held not later than 30 days after receipt of the demand for the hearing, unless the time of the hearing is changed by agreement of the commission and the individual demanding the hearing. The hearing shall be conducted in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.

(c) If upon completion of the hearing the commission determines that the individual was wrongfully placed on the list of excluded persons, the commission shall remove the individual's name from the list of excluded persons and notify all gaming licensees.

(d) A person aggrieved by a final decision of the commission in an adjudicatory proceeding under 205 CMR 152.05 may petition for judicial review under M.G.L. c. 30A, § 14.

(4) Upon receipt of notice from a district court that an individual has been prohibited from gaming in gaming establishments in accordance with M.G.L. c. 23K, § 45(i) the commission shall place the name of an individual on the excluded list.

152.06: Information Contained on List

The following information and data, where available, shall be provided for each excluded individual:

- (1) The full name and all aliases the individual is believed to have used;
- (2) A description of the individual's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the individual;
- (3) The individual's date of birth;
- (4) The effective date of the order mandating the exclusion of the individual;
- (5) A photograph, if obtainable, and the date thereof; and
- (6) Such other information deemed necessary by the commission for the enforcement of 205 CMR 152.00.

152.07: Duty of Gaming Licensee

- (1) Upon identification, a gaming licensee shall exclude or eject from its gaming establishment any individual who has been placed on the list in accordance with 205 CMR 152.00.
- (2) If an excluded individual enters, attempts to enter, or is in a gaming establishment and is recognized by the gaming licensee, the gaming licensee shall immediately notify the IEB.
- (3) It shall be the continuing duty of a gaming licensee to inform the commission in writing of the names of individuals it believes are appropriate for placement on the exclusion list.
- (4) The commission may revoke, limit, condition, suspend or fine a gaming licensee if it knowingly or recklessly fails to exclude or eject from its gaming establishment any individual placed by the commission on the list of excluded persons.

152.08: Petition to Remove Name from Exclusion List

- (1) An individual who has been placed on the list in accordance with 205 CMR 152.00 may petition the commission in writing to request that their name be removed from the list. Except in extraordinary circumstances, such a petition may not be filed sooner than five years from the date an individual's name is initially placed on the list.
- (2) The individual shall state with particularity in the petition the reason why the individual believes they no longer satisfy one or more criterion for inclusion on the list in accordance with 205 CMR 152.03.
- (3) The commission shall schedule a hearing on any properly filed petitions and provide written notice to the petitioner identifying the time and place of the hearing. Such a hearing shall be conducted in accordance with 205 CMR 101.00: *M.G.L. c. 23K Adjudicatory Proceedings*.
- (4) An individual who was placed on the excluded list by virtue of an order of the district court in accordance with M.G.L. c. 23K, § 45(i) may not petition for removal in accordance with 205 CMR 152.08.

152.09: Forfeiture of Winnings

- (1) An individual who is on the excluded list shall not collect any winnings or recover losses arising as a result of prohibited gaming in a gaming establishment and such winnings shall be forfeited to the commission and deposited into the Gaming Revenue Fund pursuant to M.G.L. c. 23K, §§ 45(j) and 59.

152.09: continued

- (2) Upon verification that an individual who is present in its gaming establishment is on the excluded list, a gaming licensee shall take steps to:
- (a) Remove the individual from the gaming establishment;
 - (b) Where possible, lawfully cause the individual to forfeit any winnings or things of value obtained from engaging in a gaming transaction including:
 - 1. gaming chips, gaming plaques, slot machine tokens and vouchers, and gaming vouchers;
 - 2. any electronic gaming device or slot machine jackpot won by the individual;
 - 3. any cashable credits remaining on an electronic gaming device or slot machine credit meter played by the individual.
 - (c) Deliver any winnings or things of value obtained from the individual to the cashiers' cage, where they shall be converted into cash, and the cash value transmitted to the commission for deposit in the Gaming Revenue Fund.
 - (d) In conjunction with a forfeiture of winnings or things of value, a gaming licensee shall prepare a form known as a Notice of Forfeiture, which shall include, without limitation, the name of the individual on the list and the manner in which the individual's identity was established, the total value of the forfeited winnings or things of value, the date, time, and a description of the incident leading to the forfeiture. The Notice of Forfeiture shall be signed and attested to by the prohibited individual, unless the individual refuses to sign or is unknown, the employee delivering the winnings or things of value to the cashiers' cage, and the cashiers' cage employee who received the winnings or things of value.
- (3) If an individual wishes to contest the forfeiture of winnings or things of value, the individual may request a hearing in writing with the commission within 15 days of the date of the forfeiture. The request shall identify the reason why the winnings or things of value should not be forfeited. The commission shall schedule a hearing on such request and provide notice to the petitioner.

REGULATORY AUTHORITY

205 CMR 152.00: M.G.L. c. 23K, §§ 4(28), 4(37), and 45.



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin
Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **302 CMR 18.00**CHAPTER TITLE: **Aquatic Nuisance Control Program**AGENCY: **Department of Conservation and Recreation**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

This regulation establishes an aquatic nuisance control program designed to suppress, eradicate, control, and otherwise mitigate or reduce the risk of the spread of aquatic nuisances. This is accomplished by prohibiting the placement or transportation of aquatic nuisance species (ANS) or any boat or related equipment containing ANS in or upon inland waters of the Commonwealth. The regulation requires all vessels in inland waters to be decontaminated upon leaving the water, and sets forth types of acceptable decontamination techniques. Additionally, vessels and related equipment are subject to inspection for the presence of ANS; and the DCR Commissioner is authorized to issue quarantines and emergency bans to aid in the enforcement of the regulation.

REGULATORY AUTHORITY: **M.G.L. c.21, s. 37B**AGENCY CONTACT: **Laura Dietz** PHONE: **617.626.1315**ADDRESS: **251 Causeway Street, Boston, MA 02114****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

Notice to LGAC 9/12/2014; Exec. Office of Energy and Environmental Affairs approved 5/1/2015; Exec. Office for Administration and Finance approved 5/15/2015.

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **public comments: 9/19-11/3/2014, 12/8-12/26/2014; public hearings: 9/29/14, 9/30/14, 10/20/14, 10/21/14**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: n/a

For the first five years: n/a

No fiscal effect: No fiscal effect.

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: 5/19/2015

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
Boating; Recreation; Aquatic Nuisance; Invasive Species

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

New regulation 302 CMR 18.00. (No effect on existing regulations.)

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: SIGNATURE ON FILE DATE: Jun 5 2015

Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1289 DATE: 06/19/2015

EFFECTIVE DATE: 06/19/2015

CODE OF MASSACHUSETTS REGULATIONS

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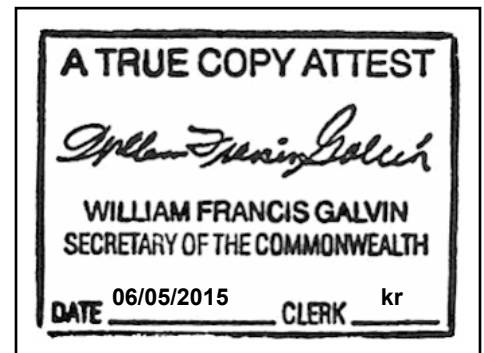


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NON-TEXT PAGE

302 CMR 18.00: AQUATIC NUISANCE CONTROL PROGRAM

Section

- 18.01: General Provisions
- 18.02: Definitions
- 18.03: Prohibited Activities
- 18.04: Aquatic Nuisance Control Program
- 18.05: Orders, Quarantines, and Emergencies
- 18.06: Penalties
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18.01: General Provisions

(1) Purpose. 302 CMR 18.00 is intended to protect Massachusetts fresh water systems from Aquatic Nuisance Species by establishing an aquatic nuisance control program with enforceable standards, criteria and procedures that will enable the Department to suppress, eradicate, control and otherwise mitigate or reduce the risk of the spread of Aquatic Nuisance Species.

(2) Construction.

- (a) 302 CMR 18.00 shall be liberally construed to permit the Department of Conservation and Recreation to discharge its statutory functions.
- (b) The Commissioner may, in the public interest, or in an emergency, suspend the application of any section of 302 CMR 18.00. DCR will notify the Department of Fish and Game, if feasible, before any such action is taken; otherwise, DCR will notify the Department of Fish and Game as soon thereafter as practicable. DCR will Post notice of any such suspension.
- (c) No provision of 302 CMR 18.00 shall make unlawful any act necessarily performed by any officer or employee of the Department of Conservation and Recreation performed in connection with the implementation of 302 CMR 18.00 in the line of duty or as part of his or her work duties, or by any person acting as an agent of the Department or its employees. This shall be true for any person or his or her agents engaged in performing the proper and necessary execution of the terms and conditions of any agreement with the Department.
- (d) Nothing in 302 CMR 18.00 shall be construed to or have the effect of limiting the authority of the Division of Fisheries and Wildlife to manage and regulate inland fisheries resources and other wildlife pursuant to M.G.L. c. 131 or M.G.L. c. 131A.
- (e) Severability. If any chapter, section, subsection, division or subdivision of 302 CMR 18.00 shall be determined to be invalid, such determination shall apply to the particular chapter, section, subsection, division or subdivision, and all other provisions of 302 CMR 18.00 shall remain valid and in effect.

18.02: Definitions

The following words and phrases, when used in 302 CMR 18.00, shall have the meanings respectively ascribed to them in 302 CMR 18.02 except in those instances where the context clearly indicates a different meaning or is otherwise stated.

Whenever any words and phrases used in 302 CMR 18.00 are not defined in 302 CMR 18.02, such word or phrase shall be construed according to its generally accepted meaning as noted in a dictionary of general usage.

Aquatic Nuisance(s) means undesirable or excessive substances or populations that interfere with the recreational or ecological potential of a body of water or interfere with the natural resources thereof. Aquatic Nuisance includes, but is not limited to, rooted aquatic vegetation and algae populations, *dreissena* mussels, spiny water fleas, and any other invasive species that the Commissioner declares to be an Aquatic Nuisance.

Aquatic Nuisance Species (ANS) means non-native species or non-native Aquatic Nuisances that interfere with or threaten the diversity or abundance of native species, the ecological stability of infested waters, and/or any commercial, agricultural, aquacultural, or recreational activities dependent on such waters. ANS include non-native Aquatic Nuisances and non-native species that may occur within Inland Waters and that presently or potentially threaten ecological processes or natural resources.

18.02: continued

Authorized Personnel means DCR personnel so designated, the director of the Office of Law Enforcement (OLE), deputy directors of OLE, deputy chiefs of OLE, Massachusetts Environmental Police Officers (EPOs), deputy EPOs, Massachusetts State Police, local police officers assigned to harbor patrol, fish and game wardens, city and town police officers assigned to patrol the waters of the Commonwealth, or an officially-appointed harbor master within the municipality's jurisdiction.

Boat Transporter means any vehicle combination including a Low-boy Boat Transporter, a Stinger-steered Boat Transporter or a Truck-trailer Boat Transporter, designed and used specifically for the transport of assembled boats and boat hulls; provided, however, that such boats may be partially disassembled to facilitate transportation.

Clean Boat Certification Program means a program that is established and administered by the Department, sometimes in coordination with OFBA, at certain public access facilities.

Commissioner means the Commissioner of the Department of Conservation and Recreation.

DCR or Department means the Department of Conservation and Recreation.

Inland Water(s) means all waters within the jurisdiction of the Commonwealth other than coastal waters.

Inspection means an activity undertaken by authorized DCR personnel to check any Vessel, vehicle, Boat Transporter, Personal Watercraft, or other equipment that touches the water for the presence of an Aquatic Nuisance Species. Inspection occurs upon entering or leaving inland waters or while in transport on land.

Low-boy Boat Transporter means a semi-trailer unit, the trailer of which is designed and used specifically for the transport of assembled boats and hulls; provided, however, that the top surface of the deck platform of such semi-trailer shall not be more than 36 inches above the surface on which the wheels of the vehicle rest.

Office of Fishing and Boating Access or OFBA means the office within the Department of Fish and Game.

Personal Watercraft means a Vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by persons sitting, standing or kneeling on the Vessel.

Post or Posting means to display in a place of public view in electronic or printed form, including on the DCR website (www.mass.gov/eea/agencies/dcr).

Stinger-steered Boat Transporter means a Boat Transporter configured as a semitrailer combination on which the fifth wheel is located on a drop frame located behind and below the rear-most axle of the power unit.

Truck-trailer Boat Transporter means any automobile Boat Transporter combination that typically uses a ball and socket connection, including a Boat Transporter combination consisting of a truck towing a trailer typically using a ball and socket connection with the trailer axle thereon located substantially at the trailer center of gravity, rather than at the rear of the trailer, so as to maintain a downward force on the trailer tongue.

Vessel means as defined in M.G.L. c. 90B, § 1.

Watercraft means any boat, ship, Vessel, or craft that operates on water, whether moved by oars, paddles, sails or power mechanisms, inboard or outboard, or any other Vessel floating, whether capable of self-locomotion or not, and may include, but is not limited to, house boats, barges, and similar floating objects.

18.03: Prohibited Activities

- (1) No person shall, except as otherwise authorized by the Department, knowingly or intentionally place, or cause to be placed, an ANS in or upon Inland Waters.
- (2) No person shall, except as otherwise authorized by the Department, place or cause to be placed in or upon Inland Waters any Vessel, Boat Transporter, Truck-trailer Boat Transporter or any other equipment used in conjunction with them that has any plants or animals growing thereon or attached thereto unless such Vessel, Boat Transporter, Truck-trailer Boat Transporter or any other equipment used in conjunction with them has been cleaned or decontaminated to remove the plants or animals in accordance with the requirements of 302 CMR 18.04.
- (3) No person shall, except as otherwise authorized by the Department, transport any Vessel, Boat Transporter, Truck-trailer Boat Transporter or any other equipment used in conjunction with them that has any plants or animals growing thereon or attached thereto.

18.04: Aquatic Nuisance Control Program

- (1) Inspections.
 - (a) Authorized Personnel may inspect Vessels, Boat Transporters, Personal Watercraft, and other related equipment, including, but not limited to, outboard motors, for the presence of Aquatic Nuisance Species.
 - (b) No person may refuse an Inspection by Authorized Personnel on public property.
- (2) Decontamination.
 - (a) Standard Techniques. Each person who owns or operates a Vessel, vehicle, Boat Transporter, Personal Watercraft, or other related equipment must:
 1. Check/Clean. Immediately upon leaving any Inland Water, remove all plants and animals, except for legally harvested fish and game, from the Vessel, motor, boat trailer, anchors, or any other equipment and dispose of them on land, well away from the water, or in a trash can;
 2. Drain. Dispose of livewell, cooling, bilge and ballast water away from the shore after each use in Inland Water. Purchased or collected bait need not be drained unless there has been an exchange of lake water; and
 3. Dry. All equipment must be dried prior to its use on another Inland Water body.
 - (b) Public Access Facilities. Where a decontamination facility is administered or approved by DCR, in coordination with OFBA, and offered at a public access facility, Vessels, vehicles, Boat Transporters, Personal Watercraft, and other related equipment that utilize such facility ramp shall be decontaminated at the decontamination facility as a condition of their use of the public access facility. Where there is no decontamination facility available or in operation at a public access facility, users of public access facilities shall comply with all other applicable decontamination, certification and Inspection requirements in 302 CMR 18.04(1) and (2).
 - (c) Clean Boat Certification Program. A determination that an Inland Water body is at high or moderate risk for ANS, including, without limitation, zebra mussels, will be made when the Inland Water body is found to have physical conditions, such as water chemistry, that would allow the establishment of zebra mussels or any other ANS. When the Department makes such a determination, the self reporting program known as the "Clean Boat Certification Program" applies. Additionally, the DCR website (www.mass.gov/eea/agencies/dcr) will include a list of Inland Water bodies where compliance with the Clean Boat Certification Program is required.
 1. In addition to, or in *lieu* of, Inspections and decontamination procedures required for all Vessels, vehicles, Boat Transporters, Personal Watercraft, or other related equipment, users of a water body determined to be at high or moderate risk for specific ANS, or users of a public access facility, shall comply with the Clean Boat Certification Program established for that water body or facility.
 2. At each such Inland Water body or facility, the presence of the Clean Boat Certification Program will be posted at or near boat ramps and other authorized entry points to the Inland Water body or facility, and the certification forms required to be completed by users will be provided.

18.04: continued

3. On each visit to a water body, users of designated Inland Water bodies or public access facilities must certify in writing that their Vessels, vehicles, Boat Transporters, Personal Watercraft, or other related equipment have been properly decontaminated. Certification forms should be placed inside the user's vehicle so it can be seen from outside while at the facility.

18.05: Orders, Quarantines, and Emergencies

(1) Orders. The Commissioner may issue such orders as he or she deems necessary to aid in the enforcement of 302 CMR 18.00. Such orders may include, but shall not be limited to, orders requiring persons to cease any activity which is in violation of 302 CMR 18.00, or to carry out activities necessary to bring such person into compliance. Orders shall apply to all users of an Inland Water body, including residents living on the shores of the Inland Water body. Orders may be specific to a particular Inland Water body or region, or specific to a particular Aquatic Nuisance Species. DCR will Post its Orders on the DCR website (www.mass.gov/eea/agencies/dcr) and, if a particular location is affected, at that location. Such Order may include, but is not limited to, boat ramps, swim beaches, and public access sites.

(2) Quarantines. Upon a finding that an ANS may interfere with the recreational use or ecological stability of a body of water or interfere with the natural resources thereof, the Commissioner, with notice to the Commissioner of the Department of Fish and Game, may issue a temporary or permanent quarantine on the use of such Inland Waters of the Commonwealth. Such a finding will be made after a risk assessment that evaluates factors including, but not limited to, whether an ANS infestation in an Inland Water body is new to the Commonwealth, the risk of spread of the ANS beyond the Inland Water body, the geographic location of the infestation, and anticipated ecological, recreational, and economic impacts of the infestation. Quarantines may include, but are not limited to, boat ramps, swim beaches, and public access sites. DCR will Post notice of its quarantine at the location of the water body and on the Department's website (www.mass.gov/eea/agencies/dcr). A quarantine shall apply to all uses and users of an Inland Water body, including residents living on the shores of the Inland Water body.

(3) Emergency Authority to Regulate Surface Use. When the Commissioner determines that an Aquatic Nuisance Species has infested an Inland Water body such that the infestation may be made worse or significantly spread by using Vessels on the Inland Water body, the Commissioner, with notice to the Commissioner of the Department of Fish and Game, may issue an emergency order to restrict, restrict access to, or ban any use of any Vessel, or any activity that causes or may cause the spread of Aquatic Nuisance Species, on all or part of such Inland Water body. Such order may include, but is not limited to, boat ramps, swim beaches, and public access sites. The order must be for a specific period of time. The order may require that any Vessel on the water body be removed at specified locations. The order may further require that those boats, trailers, and equipment be inspected and cleaned by designated boat inspectors upon being taken out of the water at specified locations. DCR will Post notice of its emergency order at the location of the water body and on the Department's website (www.mass.gov/eea/agencies/dcr).

18.06: Penalties

(1) The following violations will subject a person to a fine of not less than \$25 nor more than \$100 for the first violation; by a fine of not less than \$100 nor more than \$500 for a second such violation; and by a fine of not less than \$1,000 or imprisonment in a house of correction for not more than 60 days, or both, for a third or subsequent such violation:

- (a) Knowingly or intentionally placing, or causing to be placed, an ANS in or upon Inland Waters.
- (b) Violation of any section of 302 CMR 18.00.
- (c) Placing or causing to be placed in or upon Inland Waters any Vessel, Boat Transporter, Truck-trailer Boat Transporter or any other equipment used in conjunction with them that has any plants or animals growing thereon or attached thereto, except for legally harvested fish or game, unless such Vessel, Boat Transporter, Truck-trailer Boat Transporter or any other equipment used in conjunction with them has been cleaned or decontaminated to remove the plants or animals in accordance with the requirements of 302 CMR 18.00.

18.06: continued

(d) Transporting any Vessel, Boat Transporter, Truck-trailer Boat Transporter or any other equipment used in conjunction with them that has any plants or animals growing thereon or attached thereto.

(e) Violating any order or quarantine issued by the Commissioner.

(2) Any person who knowingly and willfully resists or obstructs the Department from suppressing or eradicating the spread of Aquatic Nuisance Species shall be subject to a civil assessment of not more than \$5,000 for each violation; provided, however, that each day such violation occurs or continues shall be deemed a separate violation; provided further, that the penalty may be assessed by the Department and may be recovered in an action brought on behalf of the Commonwealth by the attorney general in the superior court.

(3) In addition to applicable penalties and assessments, the Department may bring an action for injunctive relief in the superior court relative to any violation noted in 302 CMR 18.06(1) or (2).

(4) A person notified to appear before the clerk of the district court as provided in M.G.L. c. 21A, § 10G for a violation of M.G.L. c. 21, § 37B may so appear within the time specified and pay a fine of \$50.

(5) The director of the Massachusetts Environmental Police may suspend, revoke, or cancel the certificate of number issued to whoever is convicted of violating M.G.L. c. 21, § 37B. Such suspension, revocation, or cancellation shall be in addition to the criminal penalties set forth in M.G.L. c. 90B, § 5D.

18.07: Enforcement

(1) Authorized Personnel may enforce aquatic nuisance laws and regulations on Inland Water bodies and boat ramps.

(2) DCR Rangers shall have the authority to enforce the ANS law and regulations on all properties owned or managed by DCR.

18.08: Waiver

(1) General. The Commissioner may waive any provision or requirement contained in 302 CMR 18.00 not specifically required by law where the Commissioner finds:

(a) that strict compliance with such provision or requirement would result in an undue hardship and would not serve to further the intent of M.G.L. c. 21, § 37B; M.G.L. c. 21A, § 10H; M.G.L. c. 90B § 5D; and

(b) that the waiver is necessary to accommodate an overriding community, regional, or state public interest.

(2) Filing. All requests for waivers shall:

(a) be in writing and mailed to Director of Water Supply Protection, Department of Conservation and Recreation, 251 Causeway Street, Boston, Massachusetts 02114;

(b) contain reference to the specific criteria or provision for which the waiver is requested; and

(c) contain all documentation that the waiver applicant seeks to present in support of the waiver.

REGULATORY AUTHORITY

302 CMR 18.00: M.G.L. c. 21, §§ 37B, 37C, 37D; c. 21A, § 10H; and c. 90B, § 5D.

NON-TEXT PAGE



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*CHAPTER NUMBER: **322 CMR 8.00**CHAPTER TITLE: **Coastal Fisheries and Conservation Management**AGENCY: **Division of Marine Fisheries**SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

This regulation rescinds the one-year old provision that allowed the use of small mesh trawls in the waters south of Martha's Vineyard and Nantucket after June 10th to fish for squid.

REGULATORY AUTHORITY: **G.L. c.30A, §§ 2 & 3 and G.L. c. 130 §§ 17A & 104**AGENCY CONTACT: **Daniel J. McKiernan** PHONE: **617-626-1536**ADDRESS: **251 Causeway Street, Suite 400, Boston, MA****Compliance with M.G.L. c. 30A**EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

MFAC: 3/5/15**DFG: 4/16/15****ANF: 6/2/15**

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: **PC: 12/19/14 - 1/23/15; PH: 1/14/15, 1/15/15 & 1/20/15**

FISCAL EFFECT - *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: Relative to reduced commercial catch of squid by vessels operating in applicable waters.

For the first five years: Relative to reduced commercial catch of squid by vessels operating in applicable waters.

No fiscal effect: _____

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: 6/2/2015

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number:*

322 CMR 8.07(1)(b)(2)

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: SIGNATURE ON FILE DATE: Jun 5 2015

Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: 1289 DATE: 06/19/2015

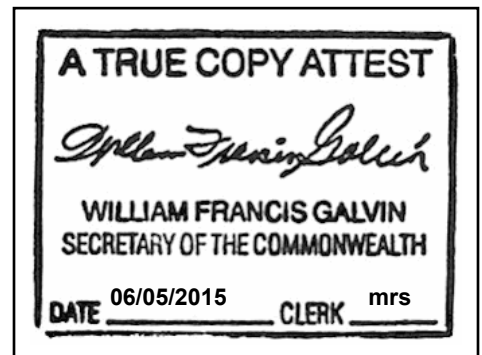
EFFECTIVE DATE: 06/19/2015

CODE OF MASSACHUSETTS REGULATIONS

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71 & 72

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8.05: Vessel Length Limits

Vessels greater than 90 feet registered length may not conduct fishing activities in any waters under the jurisdiction of the Commonwealth.

8.06: Minimum Size and Possession Limits(1) Weakfish.

- (a) It is unlawful for any person to possess weakfish less than 16 inches in total length.
- (b) It is unlawful for recreational fishermen to possess more than one weakfish per day.
- (c) It is unlawful for commercial fishermen to possess on board or land more than 100 pounds of weakfish per 24-hour day or trip, whichever period is longer.

(2) White Perch.

- (a) It is unlawful for recreational fishermen to possess white perch less than eight inches in total length.
- (b) It is unlawful for recreational fishermen to possess more than 25 white perch at any time.
- (c) The limits established by 322 CMR 8.06(8)(a) and (b) apply only to white perch harvested in coastal waters as defined by M.G.L. c. 130, § 1.

8.07: Mesh Size Restrictions(1) Trawl Net Mesh Minimum Size.

(a) A minimum size of 6½ inches throughout the cod-end and six inches throughout the remainder of the net shall apply for all vessels fishing with trawls in waters under the jurisdiction of the Commonwealth north and east of Cape Cod from January 1st through December 31st, within an area circumscribed by an imaginary line beginning at the intersection of the Loran C line 9960-Y-43940 with the Chatham shoreline; thence seaward following the Loran C line 9960-Y-43940 to the territorial seas line; thence in a northerly direction following the territorial seas line to the Massachusetts/New Hampshire boundary; thence in a westerly direction following the Massachusetts/New Hampshire boundary to the shoreline; thence following the shoreline in a southerly direction to the starting point.

(b) A minimum mesh size of 6½ inches throughout the cod-end and six inches throughout the remainder of the net shall apply for all vessels fishing with trawls in waters under the jurisdiction of the Commonwealth south of Cape Cod from November 1st through April 22nd, within an area circumscribed by an imaginary line beginning at the intersection of the Loran C line 9960-Y-43940 with the Chatham shoreline; thence seaward following the Loran C line 9960-Y-43940 to the territorial seas line; thence in a southerly directions following the territorial seas line to its intersection with the 70° W meridian; thence in a southerly direction along the 70° W meridian to its intersection with the territorial seas line; thence following the territorial seas line in a southerly direction and south of Nantucket Island and Martha's Vineyard to the Massachusetts/Rhode Island boundary; thence in a northerly direction following the Massachusetts/Rhode Island boundary to the shoreline; thence following the shoreline in an easterly direction to the starting point.

Exception for Squid Trawling. From April 23rd through June 9th, a commercial fisherman permitted in accordance with 322 CMR 7.05: *Coastal Access Permit (CAP)* and 322 CMR 8.08(5), may fish trawl gear with a minimum mesh sizes less than 6½ inches throughout the cod-end and six inches throughout the remainder of the net in the area described in 322 CMR 8.07(1)(b). The Director may extend the small-mesh squid trawling season if he or she determines that continued fishing with small mesh will not result in large catches of small squid less than five inches mantle length and/or juvenile scup, black sea bass, or fluke.

8.07: continued

(c) No mesh size less than 6½ inches throughout the cod-end and six inches throughout the remainder of the net shall be possessed by vessels fishing from June 10th through April 22nd in the area defined in 322 CMR 8.07(1)(b).

(d) No mesh size less than 6½ inches throughout the cod-end and six inches throughout the remainder of the net shall be possessed by vessels fishing in the area defined in 322 CMR 8.07(1)(b) when more than a total of 100 pounds of winter flounders, yellowtail flounder, fluke, or windowpane flounder, in any combination, is in possession.

(2) Small Mesh Exemption for Vessels Fishing for Whiting. Vessels may use raised footrope trawls as defined in 322 CMR 8.14(2) to fish for whiting in two areas:

(a) Cape Ann Whiting Area during September as defined in 322 CMR 3.02(2)

(b) Upper Cape Cod Bay Whiting Area during September through November 20th as defined in 322 CMR 8.14.

(3) Experimental Fisheries. The Director may in his discretion authorize small-mesh trawling in other areas and times for the purposes of collecting data to determining other appropriate times and places that small-mesh trawling may be appropriate. Vessels must request and obtain a letter of authorization to conduct experimental fishing.

(4) Mesh Measurements. Mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and thickness of 3.2 millimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the cod end will be measured at least ten meshes from the lacings beginning at the after-end and running parallel to the long axis. The Director may approve in writing the use of other mesh size gauges or methods.

(5) Net Modifications. No fishing vessel may use any means, device, or material, including but not limited to ropes, lines, chafing gear, liners, net strengtheners, or double nets, if it obstructs the meshes of the net or otherwise diminishes the size of meshes of the net described in 322 CMR 8.07. All netting in trawl nets not made on a braiding machine, whether of braided or twisted twine, whether machine made or hand made, shall use only one knot, the weavers knot or sheet bend or a knot by another name, which in *only* a weavers knot. The ends of the twine, called the bars, that exit the knot are constructed so their lay does not cross or twist. One splitting strap and one bull rope (if present) consisting of line or rope no more than two inches in diameter, may be used if such splitting strap and/or bull rope does not obstruct the meshes of the net or otherwise diminish the size of meshes of the net. Canvas, netting, or other material may be attached to the underside of the cod end to reduce wear and prevent damage provided that no more than 25% of the meshes are obstructed.

8.08: Permits

In addition to any other permit required by law, the following permits are required for the following activities:

(1) At-sea Processing. At-sea processing of any fish or shellfish in any waters under the jurisdiction of the Commonwealth, including all of Nantucket Sound and Cape Cod Bay, requires a special permit of the Director pursuant to 322 CMR 7.01: *Form, Use and Contents of Permits*, unless otherwise authorized pursuant to 322 CMR 11.00: *Internal Waters Processing*, or unless 25 pounds or less of fish fillets per person are in possession and intended for personal use only and not for purposes of sale, barter, or exchange. The 25-pound limit on fillets does not apply to fish caught by hook and line recreational fishing, and it does not apply to species which cannot be mutilated, such as striped bass.

(2) Fish and Shellfish. Fishing for scup, sea bass or conch by means of a pot requires a special permit of the Director pursuant to 322 CMR 7.01: *Form, Use and Contents of Permits*.

