

The

Regulations

Manual

May 2016

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

**OFFICE OF THE SECRETARY OF THE COMMONWEALTH
STATE PUBLICATIONS AND REGULATIONS DIVISION**

REGULATIONS MANUAL

Introduction	1
CMR	2
Register	2
Judicial Notice	2
PART I THE REGULATION PROCESS	
Notice of Public Hearing or Public Comment	3
Small Business Impact Statement	3
Executive Order #145: <i>Consultation with Cities & Towns on Administrative Mandates</i>	4
Availability of the Proposed Regulation	4
Conduct of the Hearing	4
Emergency Regulations	5
Incorporation by Reference	6
Charts, Drawings, Maps and Other Graphics	6
Forms/Appendices/Guidelines/Prefaces	7
Bulletins, Administrative Notices, Manuals, and Other Regulation-related Documents	7
Preparation of Draft Copy of a Proposed Regulation System	7
The Regulation Process in Brief	8
PART II DRAFTING REGULATIONS	
Organization of the CMR	9
Writing in Clear, Simple English	11
PART III FILING REGULATIONS	
Filing and Publication Form	13
Fiscal Effect	13
Amended Small Business Impact Statement	14
Attestation	14
Publication, Effective Date and Future Effective Date	14
Supplemental Registers	15
Corrections	15
PART IV ADDITIONAL INFORMATION	
<i>State Administrative Procedure</i> (M.G.L. Chapter 30A)	16
950 CMR 20.00: <i>Preparing and Filing Regulations</i>	42
Executive Order #145: <i>Consultation with Cities & Towns on Administrative Mandates</i>	46
Executive Offices and State Agencies in Alphabetic Order	49
Executive Offices and State Agencies in CMR Number Order	54
Filing Form	59
Notice of Compliance	61
Notice of Correction	63
Register Publication Schedule - 2022	65
Register Publication Schedule - 2023	66
Index	67

REGULATIONS MANUAL

INTRODUCTION

The *Regulations Manual* is intended to assist agency personnel in the entire process of drafting, proposing and filing regulations that are procedurally correct and easy to understand. This *Manual* is issued as of May 2016 and replaces all previous manuals issued by the Secretary of the Commonwealth.

Part I of the *Manual* describes the promulgation process from initial draft through adoption and final publication in the *Massachusetts Register*.

Part II concerns the preparation of regulations so that they meet the requirements for CMR format and standard drafting conventions.

Part III is related to the filing and publication of permanent and emergency regulations.

Part IV, the final part of the *Manual*, contains additional information necessary for a complete understanding of the regulatory process. Included in Part IV are M.G.L. c. 30A, the *Administrative Procedure Act*, 950 CMR 20.00: *Preparing and Filing Regulations*, Executive Order #145, an alphabetic and numeric list of state agencies; sample Filing, Compliance and Correction forms and the 2016 - 2017 schedules for *Register* publication.

REGULATIONS MANUAL

CODE OF MASSACHUSETTS REGULATIONS (CODE OR CMR) AND MASSACHUSETTS REGISTER (REGISTER)

Massachusetts General Law Chapter 30A (the State Administrative Procedure Act) establishes the *Massachusetts Register* (Register) and the Code of Massachusetts Regulations (CMR) and governs the process state agencies must follow when adopting, repealing or amending regulations. The Secretary's regulation, 950 CMR 20.00: *Preparing and Filing Regulations* adopted under the authority of M.G.L. c. 30A, § 6 establishes the format and filing requirements and publication dead-lines.

CMR

The first *Register*, published in April 1976, was the original publication of the CMR. This first edition served as the "benchmark" for the codification of the CMR which was published by the Secretary as of January 1, 1978. From 1978 through 1986, the weekly *Register* published only the actual amendments to existing regulations and the full text when a new, complete regulation was adopted. The CMR was kept up-to-date by the issuance of new or replacement pages published in quarterly supplements. Since 1987, the *Register* has been published biweekly incorporating amendments into the existing regulations and publishing the new CMR pages.

The CMR is the entire body of administrative law for Massachusetts. It is published by the Secretary in a loose-leaf format. With few exceptions, the CMR is organized by agency within the cabinet structure rather than function. Every agency is assigned a unique three digit CMR number which is referred to as the "title" number. See Organization of the Code in this *Manual* and the alphabetic and numeric lists of agencies.

REGISTER

The *Register* is published biweekly and is the initial, official state publication of regulations. Also published in the *Register* are the notices of Public Review of Proposed Regulations, Executive Orders of the Governor, Opinions of the Attorney General, the State Register of Historic Places, the list of Acts and Resolves enacted during the current legislation session and other items that the Secretary considers to be of sufficient public interest. Every *Register* also contains a Cumulative Table listing all regulations adopted by agencies during the calendar year including the Register number and effective date. Subscribers to the *Register* are urged to retain the Cumulative Table from the most recent calendar year and from the final December issue of previous years as a research tool. Each issue of the *Register* is intended to be taken apart and the permanent CMR pages inserted into the CMR volumes. The filing forms are retained to verify that the CMR has been maintained accurately and for historic research.

JUDICIAL NOTICE

Massachusetts courts accept the CMR and *Register* as evidence, treating them as a copy of the original documents that agencies are required to file with the State Secretary.

REGULATIONS MANUAL

PART I - THE REGULATION PROCESS

NOTICE OF PUBLIC HEARING OR PUBLIC COMMENT

Prior to adopting a regulation, an agency is required to hold a public hearing (M.G.L. c. 30A, § 2), or to have a public comment period (M.G.L. c. 30A, § 3). The distinction between regulations subject to public hearing and those for which an agency need only provide an opportunity for written comment is not always clear. A public hearing is required if:

- violation of the regulations is punishable by fine or imprisonment; or
- a statute requires the hearing; or
- there is a constitutional right to a hearing.

If there is uncertainty, it is usually more prudent to conduct a public hearing.

An agency must provide written notice at least 21 days in advance of the public hearing or the close of the public comment period. The notice must be:

- advertised in a daily newspaper of general distribution;
- sent to any person or group of persons who have requested notification. The notification request is renewed in writing every December;
- advertised in the *Register*. Advertisement in the *Register* must be at least one week prior to the hearing or close of the comment period. Check the *Register* publication schedule carefully. It is possible to meet the 21 day newspaper requirement and miss the one week *Register* publication requirement.

An agency can choose to advertise the notice in several newspapers throughout the state and can choose to publish the notice in trade journals or professional publications. An agency can also choose to hold several hearings. Some agencies are required by their own regulations to have a hearing followed by a public comment period.

The notice must include the following:

- the statutory authority for the agency's action;
- the text of the proposed amendment or regulation or a summary of it;
- the time, date and place of the hearing; or
- the person and place where comments can be sent and the deadline for accepting comments; (Deadline must have specific date/time and not a general statement such as "by close of business")
- the person and place where copies of the proposed regulation can be obtained.

SMALL BUSINESS IMPACT STATEMENT

A small business impact statement shall be filed with the state secretary on the same day that the public hearing or comment notice is filed and shall accompany the notice. This statement shall include, but not be limited to, the following:

1. An estimate of the number of small businesses subjected to the proposed regulation;
2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;
3. The appropriateness of performance standards versus design standards;
4. An identification of regulations of the promulgating agency, or any other state agency, which may duplicate or conflict with the proposed regulation; and
5. An analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the state.

REGULATIONS MANUAL

EXECUTIVE ORDER # 145: Consultation with Cities & Towns on Administrative Mandates

Executive Order # 145 created the requirement that notice of proposed regulations be sent to the Local Government Advisory Committee (LGAC) 14 days before giving notice of the public hearing or comment period under M.G.L. c. 30A. An agency must provide a brief statement describing the proposed action which emphasizes the agency's best judgment of elements which might impact on local government including, when feasible, preliminary cost estimates. When an agency knows that a regulation or amendment will definitely have an effect on local governments the draft of the regulation should also be sent to expedite the review process. A copy of Executive Order # 145 is included in this *Manual* on page 46. Notices should be sent via email or regular mail to:

Department of Housing and
Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114
617-573-1446
DHCDExec145Notice@mass.gov

and

Dave Koffman
Massachusetts Municipal Association
3 Center Plaza, Suite 610
Boston, MA 02108
617-426-7272
dkoffman@mma.org

AVAILABILITY OF THE PROPOSED REGULATION

Proposed regulations are not published in the *Register*, but the agency is required to have copies available for the public.

CONDUCT OF THE HEARING

There are no statutory requirements for the conduct of a regulatory hearing or the procedure for a public comment period. Some agencies have unique rule making procedures that need to be regarded and some issues or specific programs may be subject to federal or other procedural requirements. If there are none of these unique requirements, agencies may conduct the hearing at their discretion, but should retain a tape or written record of the review process.

EMERGENCY REGULATIONS

An agency can adopt a regulation without having a public hearing or comment period when *"the immediate adoption, amendment or repeal of a regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice.....would be contrary to the public interest"* (M.G.L. c. 30A, §§ 2 and 3.) An emergency regulation becomes effective when the printed version of the Regulation Filing Form attested with the original signature in ball point pen of an authorized person is filed with the State Secretary or a later date if required by law or specified by the agency. It is published in the *Register* and remains in effect for **three months from the filing date**. *"An emergency regulation shall not remain in effect for longer than three months unless during that time the agency gives notice and holds a public hearing as required in this section, and files notice of compliance with the state secretary."* (M.G.L. c. 30A, § 2), or *"unless during that time, the agency gives notice and affords interested persons an opportunity to present data, views, or arguments as required in this section, and files notice of compliance with the state secretary."* (M.G.L. c. 30A, § 3).

An agency must file a standard Regulation Filing Form stating the nature of the emergency with electronic and paper copy of the emergency regulation with the State Secretary. The Filing Form itself must be submitted in both electronic and printed versions. The electronic version must be submitted on our website at <http://www.sec.state.ma.us/spr/sprmareg/inforegi.htm> while the printed version attested with the original signature in ball point pen of an authorized person must be delivered on or before the filing deadline to:

Office of the Secretary of the Commonwealth
State Publications & Regulations Division
State House, Room 117
Boston, MA 02133

During the three months the regulation is in effect, the agency **shall** hold a public hearing or have a comment period if the intent is to adopt a permanent regulation, as required by M.G.L. c. 30A, § 2 or 3 as well as comply with Executive Order #145.

When an emergency regulation remains the same after the public hearing or comment period, the agency files a Notice of Compliance with the State Secretary. (The notice must be filed in both electronic and printed form in the same manner as the Regulation Filing Form.) This notice is published in the *Register* with the permanent CMR pages. The regulation maintains the same effective date from its original adoption as an emergency.

When an emergency regulation changes after the public hearing or comment period, the agency files a standard Regulation Filing Form with the State Secretary. The agency should mark in red any changes to the emergency on the emergency regulation pages and include these pages with the filing. The agency shall not file new electronic copy unless there are substantial changes to the Emergency regulation as a result of the public hearing or comment period. The regulation becomes effective when published in the *Register*. To be certain there is no gap in the enforcement of a changed emergency regulation, the agency should check the *Register* publication schedule.

Emergency adoption of a regulation is not intended as a means to avoid having a public hearing or comment period nor does it anticipate re-adoption of the same emergency regulation. It is the agency's responsibility to insure the requirements of M.G.L. c. 30A, § 2 or 3 regarding emergency regulations are met.

If an emergency regulation is neither replaced nor complied with after three months the Secretary will publish a Notice of Expiration to remove the regulation.

REGULATIONS MANUAL

INCORPORATION BY REFERENCE

Some agencies choose to adopt a professional or technical standard that has been developed by another entity, usually a national professional technical or industrial association, or federal agency or state (other than Massachusetts) agency. This adopted standard is "incorporated by reference" and is an intrinsic part of the regulations. M.G.L. c. 30A, § 6 does not require the standard to be published in the *Register*, but, because the incorporated document is considered a regulation, the adoption of the document must be subject to the formal public review process and must adhere to the following standards:

- the incorporated document must be recognized as a national standard in terms of reliability, circularity and availability
- the incorporated document must be identified by title, edition, publisher (including address) and publishing date
- **a copy of the incorporated document must be filed with the Secretary's Regulations Division at the time the regulation is filed.**

It is **not** possible to incorporate by reference a document that in itself incorporates yet another document. Each referenced document must be separately adopted and issued.

It is **not** possible to incorporate future editions of the document. Phrases like "as from time to time amended" cannot be added to the provision stating the incorporation by reference.

Cross references to federal laws or regulations (CFR or U.S.C.), or to Massachusetts General Laws, or another Massachusetts agency's regulations are not incorporation by reference. Lists of "Reference Standards" appended to a regulation are not incorporation by reference since these standards are not intended to stand "word for word" in place of the regulation, but to amplify and interpret the regulation.

Documents that are not published in the *Register* do not have the "rebuttable presumption" of validity that *Register* publication conveys for regulations under M.G.L. c. 30A, § 6. The agency's statutory authority to establish specific standards, together with the circularity and reliability of the incorporated document, establish these "incorporated by reference" regulations as having the same force of law as if they were published in the *Register*.

The completed Regulation Filing Form stating the agency's adoption of the document and designating the document as a chapter, or part of a chapter within the agency's CMR title, and those additional provisions or exceptions unique to its application in Massachusetts are generally all that is published in the *Register*. For reasons of accessibility, the Secretary may decide to publish an "incorporated by reference" document in the *Register*.

CHARTS, DRAWINGS, MAPS, AND OTHER GRAPHICS

Any non-text material is considered graphics whether it is a drawing, map, chart or the state seal. The inclusion of graphics in regulations should be considered essential to the effectiveness and enforcement of the regulation. The critical effect of the graphic material is lost when an electronic form of the regulation is used with equipment that is not capable of reading or printing it. When graphic material is included, electronic and paper copy should be filed with the State Secretary. Copy used in any graphic must always be clean and in sharp detail as it is possible the Regulations Division may need to "scan" the graphic to insert it into the regulation.

REGULATIONS MANUAL

FORMS/APPENDICES/GUIDELINES/PREFACES

Frequently an agency will want to include forms in their regulations on the basis that compliance with their regulations requires using the correct form. **Forms/Appendices/Guidelines/Prefaces by their nature are not regulations and should not be part of a regulation.** Agencies should assign short descriptive titles or acronyms and numbers to the required forms/appendices/guidelines noting each by title and number in the appropriate regulation and even stating where forms/appendices/guidelines are available. Some agencies have developed a system of Information Bulletins or Manuals and use this as a vehicle for distributing forms/appendices/guidelines.

BULLETINS, ADMINISTRATIVE NOTICES, MANUALS, AND OTHER REGULATION RELATED DOCUMENTS

Information such as administrative interpretations and rulings, newsletters, forms and instructions for completing forms and other similar documents developed to facilitate compliance are frequently distributed by an agency to specific target groups. These documents are not regulations since they are usually specific and therefore do not meet the definition standard of a regulation as having "general application". Whatever title the agency uses to identify these documents they are clearly outside the regulation and offer an agency the advantage of being able to issue them as needed without the formal rule making procedures required by M.G.L. c. 30A.

If the bulletin or manual has a sufficiently broad audience it is possible that the Secretary's Bookstore will distribute it.

PREPARATION OF DRAFT COPY OF A PROPOSED REGULATION

At least 21 days prior to the adoption of a regulation, 950 CMR 20.04(1) requires that an agency submit to the Secretary's Regulation Division electronic and paper copy of the *proposed changes* to the CMR, with the notice of public hearing or comment period. Small changes to the regulation should be clearly marked on the paper copy. Substantial changes should be noted on the paper copy and only these changes should be included in the electronic copy. Agencies shall not file entire chapters of regulations unless the chapter is new, or it is re-written, or it is substantially changed.

An agency can submit electronic copy by bringing a CD to the Division, or by attaching a file to an e-mail. Any e-mail should be sent to: regs@sec.state.ma.us.

The proposed regulation is prepared by the Regulations Division as "draft" CMR 8 ½" x 14" galley pages. These "draft" pages are sent to the agency for any final changes that result from the public hearing or comment period. It is the responsibility of the agency to proofread the "draft" pages for typographical or mechanical errors. The agency should mark in red any changes to the "draft" on the regulation galley pages and include these pages when filing.

SYSTEM

While the Secretary's Regulations Division uses WordPerfect to maintain the CMR, documents may also be filed in Microsoft Word.

REGULATIONS MANUAL

THE REGULATION PROCESS IN BRIEF

PERMANENT REGULATIONS

35 days before hearing/comment period Notify Local Government Advisory Committee (Department of Housing and Community Development and the Massachusetts Municipal Association - *See* page 4).

21 days before hearing/comment period Newspaper advertisement of public hearing or comment period;
Notice to any person or Group of Persons who have requested notification;
Notice to Regulations Division to be published in *Massachusetts Register* (at least one week prior) accompanied by Small Business Impact Statement;
Electronic and paper copy of proposed changes to Regulations Division;
Proposed regulation available by the agency to the public.

Hold hearing and review comments.

After public hearing or CMR comment period File amended small business impact statement prior to adopting regulation;
File printed and electronic* versions of Regulation Filing Form, “draft” pages prepared by the Regulations Division marked in red to indicate changes, and any items “Incorporated by Reference”.

EMERGENCY REGULATIONS

File printed and electronic* versions of Regulation Filing Form with the emergency regulation in electronic and paper copy;
Notify Local Government Advisory Committee (Department of Housing and Community Development and the Massachusetts Municipal Association - *See* page 4).

Within the three months that the emergency regulation is in effect complete the process for permanent regulation.

After public hearing or comment period If unchanged from emergency, file electronic* and printed versions of Notice of Compliance.
If changed, file electronic* and printed versions of Regulation Filing Form, CMR emergency pages marked in red to indicate changes.

If no agency action is taken after three months, the Secretary will issue a Notice of Expiration which is published in the *Massachusetts Register*.

* The electronic version of the Filing Form must be submitted on our website at www.sec.state.ma.us/spr/sprmareg/inforegi.htm.

REGULATIONS MANUAL

PART II - DRAFTING REGULATIONS

The most important factor in drafting regulations that are easy to understand and enforce is the ability of the drafter to carefully analyze the elements of the regulation and construct them in a logical consistent order. The drafter must clearly understand the enabling statute and the persons or groups affected by the regulation, and begin with a well thought out outline.

Text should be organized in a sequence that promotes reader understanding and facilitates reference. While there is no blueprint that fits all regulations, most can be written in some variation of the following:

<u>Function</u>	<u>Subject</u>	<u>Comments</u>
Introductory Provisions	Purpose Scope and Applicability Definitions	These provisions must always come at the beginning so that one can easily determine whether regulation applies to them
General Provisions	Positive requirements in chronological or importance or other logical sequence	Put general, more important and frequently used provisions before specific and seldom used, put permanent before temporary
Administrative Provisions	Record keeping requirements and the direct results of non-compliance	

ORGANIZATION OF THE CMR

Unless specifically exempted under 950 CMR 20.06, all regulations must be organized in the following CMR structure. The components of the CMR in order are title, chapter, section, subsection, division and subdivision.

TITLES - Titles are the basic structure of the CMR. Each regulatory agency is a title and all regulations promulgated by the agency are published under this title. A title is a three digit number identifying the agency originally based on executive cabinet structure. For example Environmental Affairs agencies are designated by a number beginning with "3" and the Department of Environmental Protection is designated as 310 CMR. The Regulations Division assigns the CMR number to each agency. An alphabetic and numeric list of state agencies is included in this *Manual* beginning on page 49.

CHAPTERS - Titles are arranged in chapters which are designated by a whole number, a decimal point, and two zeros. The Department of Environmental Protection regulations has a chapter entitled *WETLANDS PROTECTION* cited as 310 CMR 10.00. The chapter name is always published in the CMR in upper-case letters.

REGULATIONS MANUAL

Every chapter begins with a list of the sections to serve as a guide to users of the regulation. This list may reserve sections that are titled and not yet adopted, but it may not reserve untitled sections. If an agency has its own Adjudicatory Proceedings regulations, those regulations should be assigned chapter 1.00, otherwise the chapter shall be reserved.

The Regulations Division assigns the chapter number for agencies. Once a chapter number has been assigned a name, it is not possible to use that number with another name, nor is it possible to use a previously assigned name with another chapter number.

SECTION - The primary element of a chapter is the section which is designated as a whole number after the chapter number and decimal point. Every section must have a simple descriptive title. In the Department of Environmental Protection example used here, *Statement of Jurisdiction* is designated as 310 CMR 10.02.

The title of a section should be brief but definitive. If it cannot be described simply, it is probable that the subject of the section should be in several sections. For unusually long or complex regulations, consider sections numbered from .001 through .999 achieving a broader range than the customary CMR structure which numbers sections from .01 through .99.

It is not possible to reserve untitled sections.

SUBSECTION - The secondary element of a chapter is a subsection designated as a number enclosed in parentheses. In the Department of Environmental Protection example, *Activities Subject to Regulation under M.G.L. c. 131, § 40* is designated as 310 CMR 10.02(2). A subsection may be titled or may be a series of designated paragraphs. A minimum of two titles or designated paragraphs must be included if this level of organization is used.

DIVISION - A division is lettered in parentheses. The Department of Environmental Protection regulations have *Activities within the Buffer Zone* as 310 CMR 10.02(2)(b). There is no prescribed style for division headings. A minimum of two divisions must be included if this level of organization is used.

SUBDIVISION - Subdivisions are numbered within a division. The *minor activities within the buffer zone* in the Department of Environmental Protection regulations is cited as 310 CMR 10.02(2)(b)1. In most regulations, the Division and Subdivision level of the CMR organization is used for lists. As with divisions, more than one subdivision must be used.

RESERVED - There are numerous references to the word "Reserved" throughout the CMR. This term refers to certain cites in the Code that have previously existed, but have subsequently been repealed by an agency. In some cases, the term refers to a specific (titled) cite for future use. It is important to note that only chapters and titled items can be reserved. It is not possible to reserve untitled Sections, Subsections, Divisions, or Subdivisions.

REGULATIONS MANUAL

WRITING IN CLEAR, SIMPLE ENGLISH

Language simplification will not make a badly organized regulation better, but it will make an organized regulation easier to understand. Use simple everyday words. Compound words or technical terms should be avoided. Technical terms, when used, should always be defined in a separate section at the beginning of the chapter and the same term used consistently. Avoid Latin terms.

Sentences should not be more than 25 words, and paragraphs should not be more than 75.

When two or more complex conditions must be met before a regulatory provision applies, state the provision first and then list the conditions. The list should include related provisions or conditions that are all in the same category. The construction, substance, and language of each item in the list should be the same. Never use "and/or" in the same list because the phrase is ambiguous.

Other drafting conventions that help to make a regulation easier to understand are:

- Define terms used in the regulation in a separate section and in alphabetical order. Definitions are not numbered. **Only terms used within the regulation should be defined.**
- Use the same term to mean the same thing.
- Avoid pairs of words that mean the same or when one meaning includes the other as in "null and void" or "means and includes".
- Use singular rather than plural nouns to avoid the problem of whether a regulation applies to a member of a group or to a group as a whole.
- Have a subject that is a person, committee or entity capable of action when the words "shall" and "may" or "may not" are used. The subject of these words is not a result or condition. These words usually mean the following:
 - "shall" means an obligation to act;
 - "may" means a discretionary right or privilege is conferred."may not" is used instead of "shall not" when a right, privilege or power is abused or restrained.
- Use simple action verbs instead of verb phrases, participles, infinitives, gerunds or other passive verbs. Do not split verbs.
- Use pronominal indefinite adjectives like "any", "each" and "every" sparingly and follow these conventions:
 - if a right, privilege or power is conferred, use "a" or "any" as in "any person may";
 - if an obligation is imposed, use "each" as in "each applicant shall";
 - if a right, privilege or power is to be limited or an obligation to abstain from acting is imposed, use "no person may ...".
- Express exceptions or limitations as positive statements.
- Write out numbers ten and under. Express numbers over ten as Arabic numbers. Do not repeat a number parenthetically.
- Express age as ". . . years of age or older" or "younger than . . . years old". Do not say ". . . years of age or over" or "under . . . years of age".
- Express time accurately. Regulations speak to the time they apply. Using relational words such as "currently" or "now" is not acceptable. Do not abbreviate dates and always spell out the month. Use the present tense.
- Refer to Massachusetts as "Massachusetts", or the "Commonwealth of Massachusetts".

REGULATIONS MANUAL

- Use specific citations when referring to sections of the CMR, the Massachusetts General Laws, or federal regulations or laws. Vague references to "these regulations", "this section", or "the regulations of another department" must not be used. For example, "Activities within the buffer zone contained in these regulations" must be written as "310 CMR 10.02(2)(b): *Activities Within the Buffer Zone*". Indefinite references within regulations will be changed to specific citations.
- Specify applicable laws or regulations. Do not use statements like "all other applicable laws or regulations".
- Refer to Massachusetts General Laws by the chapter number, not by popular name or by "the Act". For example, "the Administrative Procedure Act" should be designated as M.G.L. c. 30A. Indefinite references to the Massachusetts General Laws within regulations will be changed to specific citations.
- Avoid references to laws adopted during a legislative session (session laws) unless the session law is a special act that does not amend a Massachusetts General Law. Use the reference to the Massachusetts General Law instead. References to session laws, when used, must be written as "St., year, chapter number" not by title as in St. 1995, c. 5 instead of Welfare Reform Act of the Acts of 1995.
- Do not use "provisos" (provided that ..) because they tend to require negative verbs that cloud the meaning.
- Do not use statements like "as amended from time to time". It is not possible to regulate prospectively. Any time a regulation, M.G.L., or item incorporated by reference changes, an agency must go through the regulatory process to include the amended version in the regulations.

REGULATIONS MANUAL

PART III - FILING REGULATIONS

There is no general rule governing the time that should elapse after the hearing or close of the public comment period and before filing the regulation with the Secretary for publication and enforcement. A few Massachusetts agencies are specifically required by their own regulations or enabling statute to allow additional time after the hearing for written comments. Other agencies are required to get additional approvals after the hearing and prior to publication. In general, however, it is possible for an agency to file a regulation for publication immediately after the hearing or comment period.

The CMR draft copy provided to an agency by the Regulations Division must be marked in red to indicate any changes resulting from public hearing or comment period, and returned to the Regulations Division. The Regulations Division uses this draft copy with marked edits to publish the regulations in the *Register*. Even if there are no changes to the regulations after public hearing or comment, the prepared draft copy must be returned to the Regulations Division.

If the changes after public hearing or comment period are extensive, it may be necessary to submit a new final version in electronic and paper copy. Regulations with extensive changes requiring preparation by the Regulations Division could be delayed in publication in the *Register* since the Division *requires prepared* galley pages for publication.

FILING AND PUBLICATION FORM

The prepared CMR draft copy of the regulation is filed with the Secretary at the Regulations Division with a completed Regulation Filing Form. The filing form itself must be submitted in both electronic and printed versions. The electronic version of the form must be submitted on our website at www.sec.state.ma.us/spr/sprmareg/inforegi.htm, while the printed version of the form attested with the original signature in ball point pen of an authorized person must be delivered on or before the filing deadline to:

Office of the Secretary of the Commonwealth
State Publications & Regulations Division
State House, Room 117
Boston, MA 02133

Agencies are required to use the forms provided by the Regulations Division, and must not create their own forms. Only filing forms provided by the Regulations Division will be accepted. The Regulation Filing Form serves as a recitation of the agency's compliance with M.G.L. c. 30A (the Administrative Procedure Act) and is published in the *Register* with the regulation. The summary should state in simple terms the persons affected by the regulation and the general requirements and purpose of the amendments. As far as possible the summary should be brief. It is not sufficient to state that the regulation "updates existing provisions" or other similar statements.

FISCAL EFFECT

M.G.L. c. 30A, § 5 requires that agencies state the fiscal effect of a regulation on both the public and private sectors for the first and second years and for the first five years; or state that there is no fiscal effect if that is the case. This requirement does not mean the cost/benefit analysis that accompanies federal regulations, but rather an agency's best judgment of the "out of pocket" expenses that will be incurred in complying with the regulation.

REGULATIONS MANUAL

AMENDED SMALL BUSINESS IMPACT STATEMENT

M.G.L. c. 30A, § 5 requires each agency to file an amended small business impact statement with the State Secretary **prior to the adoption of a proposed regulation**. (This requirement relies on the federal standard of small business which is published in the *Federal Register*, Volume 54, # 244 dated 12/21/89, pages 52634-52675, 13 CFR Part 121. These standards are very broad defining “small business” by specific industry, trade or service and by the number of employees or the dollar amount of annual reports.) If the purpose of the regulation is to set rates for the state, this section shall not apply. The amended statement shall consider whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the proposed regulation:

- (1) establishing less stringent compliance or reporting requirements for small businesses;
- (2) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) consolidating or simplifying compliance or reporting requirements for small businesses;
- (4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation;
- (5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth;
- (6) minimizing adverse impact on small businesses by using alternative regulatory methods.

When responding to both the statement of fiscal effect and small business impact, it is not adequate for an agency to state that it is the law and not the regulation that creates the effect, or to state that the existing regulation might create such an effect but not the amendment to the regulation.

The promulgating agency must also provide the date the amended small business impact statement was filed with the Regulations Division on the filing form.

*****Please Note: The amended small business impact statement must be filed with the State Secretary’s Regulations Division before the filing form is signed and submitted by the authorized attester of the filing agency.**

ATTESTATION

Some state agencies have a statutory or internal rule that dictates who may attest a regulation, but in general there is no standard. The standard used by the Secretary in accepting a regulation is that the person attesting must be able to "stand in the shoes" of the agency; that is, the attester must be able to speak to the purpose and statutory authority of the regulation as well as the process by which the regulation was adopted. The attesting signature appears on the original paper copy maintained in the Regulations Division. (Please note: all regulatory filing forms, including the Notice of Correction and Notice of Compliance Forms, must now be attested by an authorized person from each agency.)

PUBLICATION, EFFECTIVE DATE, AND FUTURE EFFECTIVE DATE

M.G.L. c. 30A, § 6 states that regulations shall become effective only when published in the *Register* or when a law or the agency require a later effective date. Emergency regulations are effective when filed with the State Secretary or a later date if required by law or specified by the agency. The *Massachusetts Register* is unique in administrative law publication by issuing amendments as replacement pages to the CMR which assures that the CMR is always up to date and

REGULATIONS MANUAL

meets the Secretary's obligation under M.G.L. c. 30A, § 6A by "keeping the *Code of Massachusetts Regulations* as current as possible".

When a future effective date is deemed to be essential by an agency, the Secretary will publish the regulation in a separate section of the *Register* and then republish it in the *Register* closest to the effective date so that CMR pages will not be removed while the current regulation still applies. It should be emphasized that future effective dates should be used only if required by law or in *extremely special circumstances*. Some agencies ill-advisedly attempt to adopt future effective dates in order to give the public advance notice that their regulation will be going into effect. In fact, our experience has revealed that this only serves to confuse the public. Some code users inevitably make the mistake of incorporating the regulation with the future effective date into the CMR when it is first published, even though it may not be in effect for another six months.

Future effective date regulations are not intended to be a draft copy of the regulations and cannot be amended prior to becoming effective.

The *Massachusetts Register* publication schedule is printed on pages 65 and 66. A new schedule is available every year from the Regulations Division.

SUPPLEMENTAL REGISTERS

When a regulation is lengthy (usually over 100 pages) it may be published as a Supplemental Register. Supplemental Registers have the same legal effect as the *Register* and are usually published on the same date.

CORRECTIONS

950 CMR 20.01 states that "Any change in text would be considered a change in regulations so as to require compliance with M.G.L. c. 30A", and M.G.L. c. 30A does not provide a process for the correction of nonsubstantial typographical or mechanical errors. The Regulations Division will publish a Notice of Correction to reissue a CMR page when such typographical or mechanical errors occur. (The Notice of Correction Form must be attested by an authorized person from the agency.) An agency should be able to prove that the error is in fact clerical and does not change the focus of what was the subject of public review. It is not considered a correction to update a cite or an edition of an incorporated by reference document. It is the responsibility of an agency to proof-read the "draft" pages provided to them by the Regulations Division. Corrections should be made on the "draft" copy prior to publication in the *Register*.

REGULATIONS MANUAL

PART IV ADDITIONAL INFORMATION

STATE ADMINISTRATIVE PROCEDURE ACT (M.G.L. CHAPTER 30A)

SECTION

- 1 Definitions
- 1A Department of Correction; Application of Chapter
- 1B Department of Youth Services; Application of Chapter
- 1C Parole Board; Application of Chapter
- 1D Criminal Record Review Board; Application of Chapter
- 2 Regulations Requiring Hearings; Adoptions, Amendments or Repeals; Small Business Impact Statement; Emergency Regulations
- 3 Regulations Not Requiring Hearings; Small Business Impact Statement; Adoptions, Amendments or Repeals
- 3A Publication of Required Notices
- 4 Petitions for Adoption, Amendment or Repeal of Regulations
- 5 Regulations; Filing; Small Business Impact Statement
- 5A Review of Rules and Regulations Regarding Economic Impact on Small Businesses
- 6 Massachusetts Register; Publication of Filed Documents and Regulations; Legal Effect; Distribution of Issues
- 6A Code of Massachusetts Regulations, Publication
- 6B Agencies to Purchase Register Issues; Public Access
- 6C Failure to Comply with Section 6B; Report
- 6D Expected Regulations; Publication of List
- 6E Failure to Comply with Section 6D: Report
- 7 Judicial Review of Regulations
- 8 Advisory Rulings by Agencies
- 9 Standard Rules; Substitute Rules; Amendments to Rules
- 10 Adjudicatory Proceedings; Appeals
- 10A Damage to Environment; Intervention in Adjudicatory Proceeding; Procedure
- 11 Adjudicatory Proceedings; Additional Requirements
- 11A Repealed
- 11A^{1/2} Repealed
- 11B Studies of State Boards, Commissions and Authorities; Notice to City or Town Affected
- 11C Hearings in Municipalities
- 12 Adjudicatory Proceedings; Subpoenas
- 13 Licenses; Revocations, *etc.*; Hearings; Exceptions, Student Loan Defaulters
- 13A Issuance and Renewal of Licenses; Social Security Number of Applicant; Information provided to IV-D Agency
- 14 Judicial Review
- 15 Supreme Judicial and Appeals Court; Concurrent Jurisdiction
- 16 Supreme Judicial Court; Powers
- 17 Partial Invalidity; Effect
- 18 Definitions Applicable to Secs. 18-25
- 19 Division of Open Government; Open Meeting Law Training; Open Meeting Law Advisory Commission; Annual Report

REGULATIONS MANUAL

- 20 Meetings of a Public Body to be Open to the Public; Notice of Meeting; Remote Participation; Recording and Transmission of Meeting; Removal of Persons for Disruption of Proceedings; Office Holders to Certify Receipt of Open Meeting Law and Educational Materials
- 21 Meeting of Public Body in Executive Session
- 22 Minutes of Meetings
- 23 Enforcement of Open Meeting Law; Complaints; Hearing; Civil Action
- 24 Investigation by Attorney General of Violations of Open Meeting Law
- 25 Authority of Attorney General to Promulgate Rules and Regulations, letter rulings and Advisory Opinions

SECTION 1. Definitions.

For the purposes of this chapter

(1) "Adjudicatory proceeding" means a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing. Without enlarging the scope of this definition, adjudicatory proceeding does not include (a) proceedings solely to determine whether the agency shall institute or recommend institution of proceedings in a court; or (b) proceedings for the arbitration of labor disputes voluntarily submitted by the parties to such disputes; or (c) proceedings for the disposition of grievances of employees of the commonwealth; or (d) proceedings to classify or reclassify, or to allocate or reallocate, appointive offices and positions in the government of the commonwealth; or (e) proceedings to determine the equalized valuations of the several cities and towns; or (f) proceedings for the determination of wages under section twenty-six T of chapter one hundred and twenty-one.

(2) "Agency", any department, board, commission, division or authority of the state government or subdivision of any of the foregoing, or official of the state government, authorized by law to make regulations or to conduct adjudicatory proceedings, but does not include the following: the legislative and judicial departments; the governor and council; military or naval boards, commissions or officials; the department of correction; the department of youth services; the parole board; the division of dispute resolution of the division of industrial accidents; the personnel administrator; the civil service commission; and the appellate tax board.

(3) "Party" to an adjudicatory proceeding means:- (a) the specifically named persons whose legal rights, duties or privileges are being determined in the proceeding; and (b) any other person who as a matter of constitutional right or by any provision of the General Laws is entitled to participate fully in the proceeding, and who upon notice as required in paragraph (1) of section eleven makes an appearance; and (c) any other person allowed by the agency to intervene as a party. Agencies may by regulation not inconsistent with this section further define the classes of persons who may become parties.

(4) "Person" includes all political subdivisions of the commonwealth.

(4A) "Proposed regulation", a proposal by an agency to adopt, amend or repeal an existing regulation.

(5) "Regulation" includes the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it, but does not include (a) advisory rulings issued under section eight; or (b) regulations concerning only the internal management or discipline of the adopting agency or any other agency, and not substantially affecting the rights of or the procedures available to the public or that portion of the public affected by the

agency's activities; or (d) regulations relating to the use of the public works, including streets and highways, when the substance of such regulations is indicated to the public by means of signs or signals; or (e) decisions issued in adjudicatory proceedings.

(5A) "Small business", a business entity or agriculture operation, including its affiliates, that: (i) is independently owned and operated; (ii) has a principal place of business in the commonwealth; and (iii) would be defined as a "small business" under applicable federal law, as established in the United States Code and promulgated from time to time by the United States Small Business Administration.

(6) "Substantial evidence" means such evidence as a reasonable mind might accept as adequate to support a conclusion.

SECTION 1A. Department of Correction; Application of Chapter

The department of correction shall be subject to sections one through eight, inclusive, and shall not otherwise be subject to this chapter, notwithstanding the exclusion of said department from the definition of the word "agency" in section one.

SECTION 1B. Department of Youth Services; Application of Chapter

The department of youth services shall be subject to sections one to eight, inclusive, and shall not otherwise be subject to this chapter, notwithstanding the exclusion of said department from the definition of the word "agency" in section one.

SECTION 1C. Parole Board; Application of Chapter

The parole board shall be subject to sections one to eight, inclusive, and shall not otherwise be subject to this chapter, notwithstanding the exclusion of said board from the definition of the word "agency" in section one.

SECTION 1D. Criminal Record Review Board; Application of Chapter

The criminal record review board shall be subject to sections 1 to 8, inclusive, and shall not otherwise be subject to this chapter.

SECTION 2. Regulations Requiring Hearings; Adoptions, Amendments or Repeals; Small Business Impact Statement; Emergency Regulations

A public hearing is required prior to the adoption, amendment, or repeal of any regulation if: (a) violation of the regulation is punishable by fine or imprisonment; or, (b) a public hearing is required by the enabling legislation of the agency or by any other law; or, (c) a public hearing is required as a matter of constitutional right.

Prior to the adoption, amendment, or repeal of any regulation as to which a public hearing is required, an agency shall hold a public hearing. Within the time specified by any law, or, if no time is specified, then at least twenty-one days prior to the date of the public hearing, the agency shall give notice of such hearing by (a) publishing notice of such hearing in such manner as is specified by any law, or, if no manner is specified, then in such newspapers, and, where appropriate, in such trade, industry or professional publications as the agency may select; (b) notifying any person to whom specific notice must be given, such notice to be given by delivering or mailing a copy of

the notice to the last known address of the person required to be notified; (c) notifying any person or group filing a written request for notice of agency rule making hearings such request to be renewed annually in December, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person or group required to be notified; and (d) filing a copy of such notice with the state secretary.

The notice shall refer to the statutory authority under which the action is proposed; give the time and place of the public hearing; either state the express terms or describe the substance of the proposed regulation; and include any additional matter required by any law.

A small business impact statement shall be filed with the state secretary on the same day that the notice is filed and shall accompany the notice. Notwithstanding section 6, the state secretary shall include the full text of said small business impact statement on the electronic website of the state secretary; provided, however, that the full text of the small business impact statement may also be inspected and copied in the office of the state secretary during business hours.

That small business impact statement shall include, but not be limited to, the following:

- (1) an estimate of the number of small businesses subject to the proposed regulation;
- (2) projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;
- (3) the appropriateness of performance standards versus design standards;
- (4) an identification of regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation; and
- (5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth;

The public hearing shall comply with any requirements imposed by law, but shall not be subject to the provisions of this chapter governing adjudicatory proceedings.

If the agency finds that immediate adoption, amendment or repeal of a regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and a public hearing would be contrary to the public interest, the agency may dispense with such requirements and adopt, amend or repeal the regulation as an emergency regulation. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the state secretary under section five. An emergency regulation shall not remain in effect for longer than three months unless during that time the agency gives notice and holds a public hearing as required in this section, and files notice of compliance with the state secretary.

This section does not relieve any agency from compliance with any law requiring that its regulations be approved by designated persons or bodies before they become effective.

SECTION 3. Regulations Not Requiring Hearings; Small Business Impact Statement; Adoptions, Amendments or Repeals

Prior to the adoption, amendment, or repeal of any regulation for which a public hearing is not required under section two, the agency shall give notice and afford interested persons an opportunity to present data, views, or arguments as follows:

The agency shall, within the time specified by law, or, if no time is specified, then at least twenty-one days prior to its proposed action: (a) publish notice of its proposed action in such manner as is specified by any law, or, if no manner is specified, then in such newspapers, and, where appropriate, in such trade, industry or professional publications as the agency may select; (b) notify any person to whom specific notice must be given, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person required to be notified; (c) notify any

REGULATIONS MANUAL

person or group filing written request for notice of agency rule making proceedings, such request to be renewed annually in December, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person or groups required to be notified; and (d) file a copy of such notice with the state secretary.

The notice shall refer to the statutory authority under which the action is proposed; give the time and place of any public hearing or state the anticipated time of agency action; state the manner in which data, views, or arguments may be submitted to the agency by any interested person; either state the express terms or describe the substance of the proposed action; and include any additional matter required by any law.

A small business impact statement shall be filed with the state secretary on the same day the notice is filed and shall accompany the notice. Notwithstanding section 6, the state secretary shall include the full text of said small business impact statement on the electronic website of the state secretary; provided, however, that the full text of the small business impact statement may also be inspected and copied in the office of the state secretary during business hours.

That small business impact statement shall include, but not be limited to, the following:

- (1) an estimate of the number of small businesses subject to the proposed regulation;
- (2) projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation;
- (3) the appropriateness of performance standards versus design standards;
- (4) an identification of regulations of the promulgating agency, or of another agency or department of the commonwealth, which may duplicate or conflict with the proposed regulation; and
- (5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth;

The agency shall afford interested persons an opportunity to present data, views or arguments in regard to the proposed action orally or in writing. If the agency finds that oral presentation is unnecessary or impracticable, it may require that presentation be made in writing.

If the agency finds that the immediate adoption, amendment or repeal of a regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and affording interested persons an opportunity to present data, views, or arguments would be contrary to the public interest, the agency may dispense with such requirements and adopt, amend or repeal the regulation as an emergency regulation. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the state secretary under section five. An emergency regulation shall not remain in effect for longer than three months unless, during that time, the agency gives notice and affords interested persons an opportunity to present data, views, or arguments as required in this section, and files notice of compliance with the state secretary.

This section does not relieve any agency from compliance with any law requiring that its regulations be approved by designated persons or bodies before they may become effective.

SECTION 3A. Publication of Required Notices

Notices filed in accordance with sections two and three shall be published by the state secretary as required by section six no later than one week prior to the date of any hearing or action to which such notices relate.

SECTION 4. Petitions for Adoption, Amendment or Repeal of Regulations

Any interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany his petition with such data, views and arguments as he thinks pertinent. Each agency shall prescribe by regulation the procedure for the submission, consideration and disposition of such petitions.

SECTION 5. Regulations; Filing; Small Business Impact Statement

Two attested copies of the regulations of each agency shall be filed with the state secretary together with a citation of the law by authority of which the same purport to have been issued, and together with the dates of approval by other boards or agencies if required and any other information necessary to show compliance with statutory requirements relative to issuance of such regulations. Upon receipt of agency regulations prepared in accordance with this chapter, the state secretary shall accept them for filing and endorse thereon the time and date of the filing.

No rule or regulation so filed with the state secretary shall become effective until an estimate of its fiscal effect including that on the public and private sector, for its first and second year, and a projection over the first five-year period, or a statement of no fiscal effect has been filed with said state secretary. In addition, no rule or regulation so filed, unless filed for the purposes of setting rates within the commonwealth, shall become effective until an agency has filed with the state secretary a statement considering the impact of said regulation on small business. The requirements to file small business impact statements under this section and sections 2, 3 and 5A shall be enforceable by a civil action for mandamus relief, but the sufficiency of the statement filed shall not be grounds for invalidating or staying the effect of the regulation. Said state secretary shall forthwith notify all agencies required to file rules or regulations pursuant to this section.

Prior to the adoption of a proposed regulation, an agency shall file an amended small business impact statement, which considers, without limitation, whether any of the following methods of reducing the impact of the proposed regulation on small businesses would hinder achievement of the purpose of the proposed regulation:

- (1) establishing less stringent compliance or reporting requirements for small businesses;
- (2) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (3) consolidating or simplifying compliance or reporting requirements for small businesses;
- (4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation;
- (5) an analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the commonwealth; and
- (6) minimizing adverse impact on small businesses by using alternative regulatory methods.

The state secretary shall make and publish rules and regulations, not otherwise inconsistent with law, with respect to the deadlines to be met and the form to be employed by any agency in preparing and filing regulations, hearing schedules and any other materials which the secretary may require. Compliance with such rules and regulations shall be a condition precedent to the effectiveness of agency regulations.

SECTION 5A. Review of Rules and Regulations Regarding Economic Impact on Small Businesses

Rules and regulations shall be reviewed at least once every 12 years after their publication as the final rules or regulations to ensure that those rules and regulations minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

In reviewing a rule or regulation to minimize economic impact of the rule or regulation on small businesses, the agency shall file a small business impact statement which considers the following factors:

- (1) the continuing need for the rule or regulation;
- (2) the nature of complaints or comments received concerning the rule or regulation from the public;
- (3) the complexity of the rule or regulation;
- (4) the extent to which the rule or regulation overlaps, duplicates or conflicts with other federal, state and local governmental rules and regulations;
- (5) the length of time since the rule or regulation has been enacted, changed, amended or modified; and
- (6) the degree to which technology, economic conditions or other factors have changed in the subject areas affected by the rule or regulation.

SECTION 6. Massachusetts Register; Publication of Filed Documents and Regulations; Legal Effect; Distribution of Issues

Documents required or authorized to be published by this section shall be printed and distributed by the state secretary in a serial publication entitled the "Massachusetts Register". The state secretary shall contract and arrange, subject to all pertinent statutes, for the biweekly printing and distribution of the Massachusetts Register. The prices to be charged for the Massachusetts Register may be set without reference to the statutory charges for public documents fixed by reference to chapter two hundred and sixty-two.

There shall be published in the Massachusetts Register the following documents: (1) executive orders, except those not having general applicability and legal effect or effective only against state agencies or persons in their capacity as officers, agents or employees thereof; (2) all regulations filed in accordance with section five; (3) all notices filed in accordance with section two and three, except that the secretary may summarize the content of any notice filed; provided, however, that he indicate that the full text of the notice may be inspected and copied in the office of the state secretary during business hours; and (4) any other item or portion thereof which the state secretary deems to be of sufficient public interest.

Each issue of the Massachusetts Register shall begin with a table of contents listing the documents contained therein which shall include a brief summary for each document identifying the purpose of any proposed regulations and whether small business is likely to be substantially affected by said regulations.

Each biweekly issue shall contain all documents required or authorized to be published, filed with the state secretary up to the day fixed by the secretary as the printing deadline for that issue, except that the secretary may omit from the biweekly issue of the register any document which he deems unduly cumbersome or expensive to publish. In such cases, he shall describe the nature of the omitted document and shall publish a supplemental issue of the register containing the text of the document as soon as practicable and in any event within thirty days. Supplemental issues shall be published as the state secretary deems necessary, and shall in all ways have the full force and

effect of the regular biweekly issues of the register.

Regulations other than emergency regulations, which are adopted under sections two and three, shall become effective only when published in accordance with this section, or, in the case of any regulation as to which a later effective date is required by any law, or is specified in such regulation by the agency adopting the same, upon such later date or upon such publication, whichever last occurs. Emergency regulations shall become effective when filed with the state secretary, or at such later time as may be required by law or be specified therein, and shall remain in effect no longer than three months following filing except as provided in sections two and three.

The state secretary shall make available upon request of any person or group the biweekly issues of the Massachusetts Register. He shall transmit, without charge, a copy of each issue thereof to (1) the clerk of the house of representatives; (2) the clerk of the senate; (3) the house counsel and senate counsel; and (4) the state librarian.

The state secretary shall mail upon receipt of the subscription price a sheet containing the table of contents or other information sufficient to enable the reader to determine whether he wishes to purchase that issue of the register.

The publication in the Massachusetts Register of a document creates a rebuttable presumption (1) that it was duly issued, prescribed, or promulgated; (2) that all the requirements of this chapter and regulations prescribed under it relative to the document have been complied with; and (3) that the text of the regulations as published in the Massachusetts Register is a true copy of the attested regulation as filed by the agency.

For the purpose of this section and section six A the word "regulation" shall not include any regulation whose principal purpose and effect is to prescribe or approve rates chargeable for goods, services, or other things by specifically named persons and shall not include any portion of an existing publication which has been adopted as and incorporated by reference in a regulation of any agency, and which the state secretary determines is unnecessary to republish by reason of its already being reasonably available to that portion of the public affected by said agency's activities.

The contents of the Massachusetts Register shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number.

SECTION 6A. Code of Massachusetts Regulations, Publication

Prior to publication of the first issue of the Massachusetts Register, the state secretary shall first cause to be published all currently effective agency regulations in a special publication of the Massachusetts Register to be designated as the "Code of Massachusetts Regulations".

The state secretary shall regulate the supplementation and the collation and republication of the printed codification with a view to keeping the Code of Massachusetts Regulations as current as possible.

SECTION 6B. Agencies to Purchase Register Issues; Public Access

Each agency shall purchase a copy or copies of the issues of the register which contain regulations or notices of that agency and make at least one copy readily available in a prominent place at each of the agency's offices for the purpose of public inspection and copying. To assist interested persons dealing with it, each agency having authority to adopt regulations shall prepare and make available for inspection in a prominent place at each of its offices serving the public a list of its regulations and a description of its central and field organization, including the location of persons and places from which the public can secure information, make submittals or requests or obtain decisions. All such lists and descriptions shall be kept current.

SECTION 6C. Failure to Comply with Section Six B; Report

If the state secretary finds that any agency fails to comply with any provision of section six B, he shall report the matter to the governor and the attorney general.

SECTION 6D. Expected Regulations; Publication of List

The state secretary shall publish, annually, in the first issue of the Massachusetts Register a plan submitted by each executive office containing a list of regulations expected to be promulgated during the next twelve month period. The state secretary shall publish a semi-annual update of said list six months after the initial plan is published. For the purposes of this section, "executive office" shall include the board of regents and the department of education.

Each executive office shall publish on its website a list of statutes passed in the previous 24 months for which regulations are required and for which regulations have not been adopted, identifying the session law in which the statutory authority was passed and containing a brief statement as to the agency's plan to adopt the regulations. Semi-annually, the plan shall be updated on the website and filed with the clerks of the house of representatives and the senate and the chairs of the joint committee on state administration and regulatory oversight.

SECTION 6E. Failure to Comply with Section 6D; Report

If the state secretary finds that any agency fails to comply with any provision of section six D, he shall report such noncompliance to the governor and the attorney general.

SECTION 7. Judicial Review of Regulations

Unless an exclusive mode of review is provided by law, judicial review of any regulation or of the sufficiency of the reasons for its adoption as an emergency regulation may be had through an action for declaratory relief in the manner and to the extent provided under chapter two hundred and thirty-one A.

SECTION 8. Advisory Rulings by Agencies

On request of any interested person, an agency may make an advisory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by that agency. In issuing the advisory ruling, the agency need not comply with the requirements of this chapter with respect to regulations.

SECTION 9. Standard Rules; Substitute Rules; Amendments to Rules

The commissioner of administration shall file with the state secretary prior to July first, nineteen hundred and seventy-eight, rules and regulations for the conduct of adjudicatory proceedings which shall be promulgated pursuant to the rule making procedures of this chapter and which shall be in effect for all state agencies within the executive offices except as provided in this section. Rules established by the commissioner of administration pursuant to the provisions of this section shall be referred to as the "standard rules". Said standard rules shall include, but not be limited to, provisions relating to the keeping of records of adjudicatory proceedings, the form of a pleading and answer, the form and service of motions, the rights of intervention of persons,

procedures for taking depositions, conducting hearings, providing transcripts, submission of oral and written testimony to the agency, and administrative review of the agency's decision. Said standard rules shall take effect ninety days after they are published by the secretary in accordance with the provisions of section six, and shall govern adjudicatory proceedings commenced after said ninety days except as otherwise provided in this section.

Agencies within each of the executive offices may, with the approval of the commissioner of administration, file with the secretary rules for the conduct of adjudicatory proceedings in said agency which substitute in whole or in part, or are additions to the standard rules filed by the commissioner. Such substitute rules shall be promulgated pursuant to the rule making procedures of this chapter and shall be filed with the state secretary within sixty days of the publication of the standard rules which shall govern adjudicatory proceedings commenced after ninety days from the publication thereof by the secretary, and shall take effect at the same time as the standard rules.

Thereafter, at any time the commissioner may file amendments to the standard rules. Agencies within any of the executive offices may subject to the approval of the commissioner of administration file substitute rules. Such amendments to the standard rules and such substitute rules shall take effect in accordance with section six.

SECTION 10. Adjudicatory Proceedings; Appeals

In conducting adjudicatory proceedings, as defined in this chapter, agencies shall afford all parties an opportunity for full and fair hearing. Unless otherwise provided by any law, agencies may (1) place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing and of his responsibility to request the hearing; (2) make informal disposition of any adjudicatory proceeding by stipulation, agreed settlement, consent order or default; (3) limit the issues to be heard or vary the procedures prescribed by section eleven, if the parties agree to such limitation or variation; and (4) allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose, as the agency may order.

When a party to an adjudicatory proceeding has the opportunity, by provision of any law or by regulation, to obtain more than one agency hearing on the same question, whether before the same agency or before different agencies, it shall be sufficient if the last hearing available to the party complies with the requirements of this chapter, and the earlier hearings need not so comply.

When a party has the opportunity to obtain an agency hearing, followed by one or more appeals before the same agency or before different agencies, such appeals being limited to the record made at the hearing, the appeal procedure need not comply with any requirement of this chapter for the conduct of adjudicatory proceedings except paragraphs (7) and (8) of section eleven.

When, under a provision of any law, a hearing is required only upon direction of an agency or upon request made in accordance with such provision by a person entitled to make such request, the requirements of this chapter governing the conduct of adjudicatory proceedings shall not apply unless and until such direction or request is in fact made.

SECTION 10A. Damage to Environment; Intervention in Adjudicatory Proceeding; Procedure

Notwithstanding the provisions of section ten, not less than ten persons may intervene in any adjudicatory proceeding as defined in section one, in which damage to the environment, as defined in section seven A of chapter two hundred and fourteen, is or might be at issue; provided, however,

that such intervention shall be limited to the issue of damage to the environment and the elimination or reduction thereof in order that any decision in such proceeding shall include the disposition of such issue. In any proceeding pursuant to chapter 91, at least 5 of the 10 persons shall reside in the municipality in which the license or permitted activity is located. The intervention shall clearly and specifically state the facts and grounds for intervening and the relief sought, and each intervening person shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative. Notwithstanding any other provision of this chapter, an intervener under this section may introduce evidence, present witnesses and make written or oral argument, except that the agency may exclude repetitive or irrelevant material. Any such intervener shall be considered a party to the original proceeding for the purposes of notice and any other procedural rights applicable to such proceeding under the provisions of this chapter, including specifically the right of appeal.

SECTION 11. Adjudicatory Proceedings; Additional Requirements

In addition to other requirements imposed by law and subject to the provision of section ten, agencies shall conduct adjudicatory proceedings in compliance with the following requirements:-

(1) Reasonable notice of the hearing shall be accorded all parties and shall include statements of the time and place of the hearing. Parties shall have sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues.

(2) Unless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses.

(3) Every party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence.

(4) All evidence, including any records, investigation reports, and documents in the possession of the agency of which it desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered, except as provided in paragraph (5) of this section. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference.

(5) Agencies may take notice of any fact which may be judicially noticed by the courts, and in addition, may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

(6) Agencies shall make available an official record, which shall include testimony and exhibits, and which may be in narrative form, but the agency need not arrange to transcribe shorthand notes or sound recordings unless requested by a party. If so requested, the agency may, unless otherwise provided by any law, require the party to pay the reasonable costs of the transcript before the agency makes the transcript available to the party.

(7) If a majority of the officials of the agency who are to render the final decision have neither heard nor read the evidence, such decision, if adverse to any party other than the agency, shall be made only after (a) a tentative or proposed decision is delivered or mailed to the parties containing a statement of reasons and including determination of each issue of fact or law necessary to the tentative or proposed decision; and (b) an opportunity is afforded each party adversely affected to file objections and to present argument, either orally or in writing as the agency may order, to a majority of the officials who are to render the final decision. The agency may by regulation provide that, unless parties make written request in advance for the tentative or proposed decision, the agency shall not be found to comply with the procedures of this paragraph.

(8) Every agency decision shall be in writing or stated in the record. The decision shall be accompanied by a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision, unless the General Laws provide that the agency need not prepare such statement in the absence of a timely request to do so. Parties to the proceeding shall be notified in person or by mail of the decision; of their rights to review or appeal the decision within the agency or before the courts, as the case may be; and of the time limits on their right to review or appeal. A copy of the decision and of the statement of reasons, if prepared, shall be delivered or mailed upon request to each party and to his attorney of record.

SECTION 11A, 11A½. Repealed, 2009, 28, Sec. 17

SECTION 11B. Studies of State Boards, Commissions and Authorities; Notice to City or Town Affected

All state boards and commissions and the governing boards or bodies of all such authorities which conduct a study affecting or relating to the use of an area of a city or town shall notify the mayor or city manager, if any, of the city and the presiding officer of the city council, or the chairman of the board of selectmen of the town, of the study and shall invite their participation therein. No determination shall be made and no results of the study shall be released to the public until such notification has been given with a reasonable opportunity to participate in it.

SECTION 11C. Hearings in Municipalities

Any agency which is required by law to conduct hearings, shall, if the subject matter of such hearing solely concerns a single municipality, hold such hearing or a substantial portion thereof in such municipality upon receipt of a written request from the mayor of a city, the board of selectmen of a town, or the council of a municipality having a manager-council form of government received by the agency not less than fourteen days before the scheduled date of the hearing. If the subject matter of such hearing solely concerns a particular geographic area of the commonwealth, the agency shall hold such hearing or a substantial portion thereof within such geographic area upon receipt of written requests from a majority of the mayors, boards of selectmen and councils of the cities and towns which constitute such geographic area received by the agency not less than fourteen days before the scheduled date of the hearing. The municipality in which the hearing is held shall provide a hearing room and other necessary facilities for such hearing. If no suitable place for holding such hearing is available in the municipality, the municipality may arrange for the holding of the hearing in another city or town that is reasonably convenient. This section shall not apply to hearings held as part of an adjudicatory proceeding, but this sentence shall not be construed to restrict an agency from holding an adjudicatory hearing in an appropriate location.

SECTION 12. Adjudicatory Proceedings; Subpoenas

In conducting adjudicatory proceedings, agencies shall issue, vacate, modify and enforce subpoenas in accordance with the following provisions:-

(1) Agencies shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Agencies may administer oaths and affirmations, examine witnesses, and receive evidence. The power to issue subpoenas may be exercised by any member of the agency or by any person or persons designated by the agency for such purpose.

(2) The agency may prescribe the form of subpoena, but it shall adhere, in so far as practicable, to the form used in civil cases before the courts. Witnesses shall be summoned in the same manner as witnesses in civil cases before the courts, unless another manner is provided by any law. Witnesses summoned shall be paid the same fees for attendance and travel as in civil cases before the courts, unless otherwise provided by any law.

(3) Any party to an adjudicatory proceeding shall be entitled as of right to the issue of subpoenas in the name of the agency conducting the proceeding. The party may have such subpoenas issued by a notary public or justice of the peace, or he may make written application to the agency, which shall forthwith issue the subpoenas requested. However issued, the subpoena shall show on its face the name and address of the party at whose request the subpoena was issued. Unless otherwise provided by any law, the agency need not pay fees for attendance and travel to witnesses summoned by a party.

(4) Any witness summoned may petition the agency to vacate or modify a subpoena issued in its name. The agency shall give prompt notice to the party, if any, who requested issuance of the subpoena. After such investigation as the agency considers appropriate it may grant the petition in whole or part upon a finding that the testimony, or the evidence whose production is required, does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested.

(5) Upon the failure of any person to comply with a subpoena issued in the name of the agency and not revoked or modified by the agency as provided in this section, any justice of the superior court, upon application by the agency or by the party who requested that the subpoena be issued, may in his discretion issue an order requiring the attendance of such person before the agency and the giving of testimony or production of evidence. Any person failing to obey the court's order may be punished by the court for contempt.

SECTION 13. Licenses; Revocations, etc.; Hearings; Exceptions; Student Loan Defaulters

"License", as used in this section, includes any license, permit, certificate, registration, charter, authority or similar form of permission required by law.

Except as otherwise provided in this section, no agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with sections ten, eleven and twelve. If a licensee has, in accordance with any law and with agency regulations, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency. Any agency that has authority to suspend a license without first holding a hearing shall promptly upon exercising such authority afford the licensee an opportunity for hearing in conformity with sections 10, 11 and 12.

REGULATIONS MANUAL

This section shall not apply-

(1) Where a provision of the General Laws expressly provides that an agency is not required to grant a hearing in regard to revocation, suspension or refusal to renew a license, as the case may be; or

(2) Where the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a court conviction or judgment; or

(3) Where the revocation, suspension or refusal to renew is based solely upon failure of the licensee to file timely reports, schedules, or applications, or to pay lawfully prescribed fees, or to maintain insurance coverage as required by any law or by regulation; or

(4) Where there is a refusal to renew the license of a foreign insurance company by the commissioner of insurance, under authority of section one hundred and fifty-one of chapter one hundred and seventy-five or where there is a revocation of the license of a foreign insurance company by said commissioner under authority of section five of chapter one hundred and seventy-five, if such refusal or revocation is upon the grounds that such company is insolvent or is in an unsound financial condition, or that its condition or management is such as to render its further transaction of business hazardous to the public or its policyholders, or that the amount of its funds, net cash or contingent assets is deficient or that its capital stock or deposit or guaranty capital or guaranty fund is impaired, as set forth in section twenty-three A of said chapter one hundred and seventy-five, or that such capital stock, deposit or guaranty capital or guaranty fund has been reduced below the amount required by section one hundred and fifty-one of said chapter one hundred and seventy-five.

Any board of registration operating under the provisions of chapter one hundred and twelve, upon receiving a written list of names of educational loan defaulters from the Massachusetts Education Financing Authority established pursuant to section four of chapter fifteen C or the Massachusetts Higher Education Assistance Corporation created under chapter two hundred and ninety-eight of the acts of nineteen hundred and fifty-six, shall deny issuance of a professional or occupational certificate, registration, license, or authority to any applicant who is in such default on an educational loan made under any of the programs administered by said authority or corporation, hereinafter referred to in this paragraph as the loan agency. Any such applicant so denied a certificate, registration, license or authority due to such applicant's default on an educational loan shall be informed by the applicable board of registration of the availability of the following review procedure provided by this paragraph. Within thirty days of the receipt of such denial, the applicant may request the loan agency which notified the board of registration of the default to conduct a review of the applicant's alleged loan default. Upon receipt of a request for review, the loan agency shall notify the board of registration that the applicant has requested a review, whereupon the board of registration shall provisionally grant the certificate, registration, license or authority until the board of registration is notified by said loan agency of the disposition of the review. Such review shall include a determination that said loan agency has complied with all federal requirements applicable to student loan defaulters, and any further requirements specified by the secretary of consumer affairs and business regulation. If the educational loan agency which conducts the review determines that the notice of default was in error, or enters into an arrangement for repayment or enters into any other arrangement with the applicant, the loan agency shall promptly notify the applicable board of registration and such board shall issue the certificate, registration, license or authority to the applicant, provided the applicant meets all other requirements therefor. If the loan agency determines that the notice of default was warranted, the loan agency shall notify the applicable board of registration, to revoke said provisional certificate, registration, license or authority previously issued. The director of consumer affairs and business regulation is hereby

authorized to promulgate regulations pursuant to sections one to eight, inclusive, to enforce the provisions of this paragraph.

SECTION 13A. Issuance and Renewal of Licenses; Social Security Number of Applicant; Information Provided to IV-D Agency.

Agencies and political subdivisions of the commonwealth, that issue a license under section 13 shall require an applicant for issuance or renewal of such license to provide a social security number as a condition of issuing or renewing such license and shall record such social security number in the applicant's record; provided, however, that the applicant may, on the face of the license, use a number other than his social security number as permitted under any other provision of law of the commonwealth; provided further, that the agency issuing the license shall provide information in its records, including the social security number of applicants, to the IV-D agency as set forth in chapter 119A, using the method and format required by said IV-D agency.

SECTION 14. Judicial Review.

Except so far as any provision of law expressly precludes judicial review, any person or appointing authority aggrieved by a final decision of any agency in an adjudicatory proceeding, whether such decision is affirmative or negative in form, shall be entitled to a judicial review thereof, as follows:

Where a statutory form of judicial review or appeal is provided such statutory form shall govern in all respects, except as to standards for review. The standards for review shall be those set forth in paragraph (7) of this section, except so far as statutes provide for review by trial de novo. Insofar as the statutory form of judicial review or appeal is silent as to procedures provided in this section, the provisions of this section shall govern such procedures.

Where no statutory form of judicial review or appeal is provided, judicial review shall be obtained by means of a civil action, as follows:

(1) Proceedings for judicial review of an agency decision shall be instituted in the superior court for the county (a) where the plaintiffs or any of them reside or have their principal place of business within the commonwealth, or (b) where the agency has its principal office, or (c) of Suffolk. The court may grant a change of venue upon good cause shown. The action shall, except as otherwise provided by law, be commenced in the court within thirty days after receipt of notice of the final decision of the agency or if a petition for rehearing has been timely filed with the agency, within thirty days after receipt of notice of agency denial of such petition for rehearing. Upon application made within the thirty-day period or any extension thereof, the court may for good cause shown extend the time.

(2) Service shall be made upon the agency and each party to the agency proceeding in accordance with the Massachusetts Rules of Civil Procedure governing service of process. For the purpose of such service the agency upon request shall certify to the plaintiff the names and addresses of all such parties as disclosed by its records, and service upon parties so certified shall be sufficient. All parties to the proceeding before that agency shall have the right to intervene in the proceeding for review. The court may in its discretion permit other interested persons to intervene.

(3) The commencement of an action shall not operate as a stay of enforcement of the agency decision, but the agency may stay enforcement, and the reviewing court may order a stay upon such terms as it considers proper. Notwithstanding the foregoing, if the sex offender registry board issues a stay of a final classification in a sex offender registry board proceeding, then such stay shall be for

REGULATIONS MANUAL

not more than 60 days but if a court issues a stay of a final classification in a court appeal held pursuant to section 178M of chapter 6, then such hearing shall be expedited and such stay shall be for not more than 60 days, without written findings and good cause shown.

(4) The agency shall, by way of answer, file in the court the original or a certified copy of the record of the proceeding under review. The record shall consist of (a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties. The expense of preparing the record may be assessed as part of the costs in the case, and the court may, regardless of the outcome of the case, assess any one unreasonably refusing to stipulate to limit the record, for the additional expenses of preparation caused by such refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court.

(6) If application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material to the issues in the case, and that there was good reason for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of such additional evidence and shall file with the reviewing court, to become part of the record, the additional evidence, together with any modified or new findings or decision.

(7) The court may affirm the decision of the agency, or remand the matter for further proceedings before the agency; or the court may set aside or modify the decision, or compel any action unlawfully withheld or unreasonably delayed, if it determines that the substantial rights of any party may have been prejudiced because the agency decision is -

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the agency; or
- (c) Based upon an error of law; or
- (d) Made upon unlawful procedure; or
- (e) Unsupported by substantial evidence; or
- (f) Unwarranted by facts found by the court on the record as submitted or as amplified under paragraph (6) of this section, in those instances where the court is constitutionally required to make independent findings of fact; or
- (g) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

The court shall make the foregoing determinations upon consideration of the entire record, or such portions of the record as may be cited by the parties. The court shall give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.

If the court finds that the action of the appointing authority in discharging, removing, suspending, laying off, lowering in rank or compensation or abolishing his position, or the action of the commission confirming the action taken by the appointing authority, was not justified, the employee shall be reinstated in his office or position without loss of compensation and the court shall assess reasonable costs against the employer.

SECTION 15. Supreme Judicial Court and Appeals Court; Concurrent Jurisdiction

The supreme judicial court and the appeals court shall have concurrent jurisdiction to review any proceedings had, determinations made, and orders or judgments entered in the superior court pursuant to section fourteen. The supreme judicial court or the appeals court, subject to the provisions of section 13 of chapter 211A, may by rule vary the procedure authorized or required for such review upon a finding that the review by the court will thereby be made more simple, speedy and effective.

SECTION 16. Supreme Judicial Court; Powers.

The supreme judicial court shall have the power to make rules of pleading, practice and procedure supplementary to and not inconsistent with the provisions of this chapter relating to judicial review of administrative action, and to amend such rules, for the purpose of securing a simple, speedy and effective judicial review of administrative action.

SECTION 17. Partial Invalidity; Effect.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application.

SECTION 18. Definitions Applicable to Secs. 18 to 25

As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Deliberation", an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that "deliberation" shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any part of a meeting of a public body closed to the public for deliberation of certain matters.

"Intentional violation", an act or omission by a public body or a member thereof, in knowing violation of the open meeting law.

"Meeting", a deliberation by a public body with respect to any matter within the body's jurisdiction; provided, however, "meeting" shall not include:

- (a) an on-site inspection of a project or program, so long as the members do not deliberate;
- (b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;
- (c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host

body and do not deliberate;

(d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or

(e) a session of a town meeting convened under section 9 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

"Minutes", the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.

"Open meeting law", sections 18 to 25, inclusive.

"Post notice", to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

"Preliminary screening", the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

"Public body", a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

"Quorum", a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

SECTION 19. Division of Open Government; Open Meeting Law Training; Open Meeting Law Advisory Commission; Annual Report

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

- (1) the general background of the legal requirements for the open meeting law;
- (2) applicability of sections 18 to 25, inclusive, to governmental bodies;
- (3) the role of the attorney general in enforcing the open meeting law; and

(4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

- (1) the number of open meeting law complaints received by the attorney general;
- (2) the number of hearings convened as the result of open meeting law complaints by the attorney general;
- (3) a summary of the determinations of violations made by the attorney general;
- (4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
- (5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
- (6) the number of actions filed in superior court seeking relief from an order of the attorney general; and
- (7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

SECTION 20. Meetings of a Public Body to be Open to the Public; Notice of Meeting; Remote Participation; Recording and Transmission of Meeting; Removal of Persons for Disruption of Proceedings; Office Holders to Certify Receipt of Open Meeting Law and Educational Materials

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to the meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of the meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within the district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county

REGULATIONS MANUAL

public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in the places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website under the procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division in the state secretary's office.

The attorney general may prescribe or approve alternative methods of notice where the attorney general determines the alternative methods will afford more effective notice to the public.

(d) The attorney general may, by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided further, that a quorum of the body, including the chair, are present at the meeting location. The authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the chair shall inform other attendees of any recordings.

(g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated under section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application under section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

SECTION 21. Meeting of a Public Body in Executive Session

(a) A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

- (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

SECTION 22. Minutes of Meetings

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

SECTION 23. Enforcement of Open Meeting Law; Complaints; Hearing; Civil Action

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general

REGULATIONS MANUAL

may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

- (1) compel immediate and future compliance with the open meeting law;
 - (2) compel attendance at a training session authorized by the attorney general;
 - (3) nullify in whole or in part any action taken at the meeting;
 - (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
 - (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
 - (6) compel that minutes, records or other materials be made public; or
 - (7) prescribe other appropriate action.
- (d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

SECTION 24. Investigation by Attorney General of Violations of Open Meeting Law

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

SECTION 25. Authority of Attorney General to Promulgate Rules and Regulations, Letter Rulings and Advisory Opinions

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

950 CMR 20.00: PREPARING AND FILING REGULATIONS

Section

- 20.01: Scope and Purpose
- 20.02: Definitions
- 20.03: Preparing Regulations
- 20.04: Filing Regulations
- 20.05: Emergency Regulations
- 20.06: Exceptions

20.01: Scope and Purpose

950 CMR 20.00 establishes standards for preparing, filing and publishing state agency regulations and is applicable to all regulations filed pursuant to M.G.L. c. 30A, §§ 1 through 6A. 950 CMR 20.00 establishes the organization and numbering system used in the Code of Massachusetts Regulations and the requirements that must be met by every agency filing regulations with the Secretary. Any change in text would be considered a change in regulations so as to require compliance with M.G.L. c. 30A. The purpose of 950 CMR 20.00 is the promotion of uniformity, clarity and coherence in form; timeliness and economy in printing and distribution, and public accessibility.

20.02: Definitions

As used in 950 CMR 20.00:

Agency means every executive office, department, board, commission division or authority of the state government or sub-division of any of the foregoing, or state official authorized by law to make regulations or to conduct adjudicatory proceedings.

Code or CMR means the Code of Massachusetts Regulations which contains the regulations of state agencies as published by the Secretary.

Draft Regulation means the proposed regulation pages prepared by the Regulations Division as CMR "draft".

Notice of Compliance means the notice filed when an agency makes an emergency regulation permanent by completion of public review requirements. A Notice of Compliance can only be used when there are no changes to the emergency regulation.

Notice of Expiration means the notice published by the Secretary when no agency action has been taken on an emergency regulation after three months.

Register means the *Massachusetts Register* which contains the regulations of state agencies as filed with the Secretary in accordance with M.G.L. c. 30A, §§ 1 through 6A and 950 CMR 20.00. The *Register* is published bi-weekly on Fridays.

REGULATIONS MANUAL

Regulation means the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it and filed with the Secretary in accordance with M.G.L. c. 30A, §§ 5 and 6 and 950 CMR 20.00 for publication in the *Register* and Code.

Regulations Manual means the guide containing procedures, policy and instructions for promulgating regulations. The *Manual* is available from the State Publications and Regulations Division, State House, Room 117, Boston, MA 02133 and at the following website: www.sec.state.ma.us/spr/sprpdf/manual.pdf.

Secretary means the Office of the Secretary of the Commonwealth.

Small Business Impact Statement means a statement filed with the Secretary in accordance with M.G.L. c. 30A, §§ 2 and 3 which considers the impact of a proposed regulation on small business.

20.03: Preparing Regulations

Except as otherwise allowed by specific exception granted by the Secretary under 950 CMR 20.06, agencies shall prepare regulations in a form that permits prompt insertion into the Code and meets the following additional requirements as to form:

- (1) Readable Language. To the extent practical, regulations shall be written in short sentences using language that is readily understandable to the public.
- (2) Organization and Numbering of Code Provisions. Provisions that will appear in the Code shall be identified by using the agency title numbers assigned by the Secretary and shall be organized and numbered sequentially by chapter, section, subsection, division and subdivision, in the manner of existing agency provisions appearing in the Code.
- (3) Chapter and Section Headings. Regulations shall include a short subject heading for every chapter and section of the Code and shall include a list of section headings at the beginning of every chapter.
- (4) Regulatory Authority. Regulations shall include a list of the regulatory authority for every chapter. This list should be unnumbered and appear at the end of each chapter.
- (5) Regulations shall be in conformance with the Secretary's policies as stated in the *Regulations Manual*.

REGULATIONS MANUAL

20.04: Filing Regulations

- (1) Prior to Adoption. At least 21 days before a public hearing or the close of a public comment period and prior to the adoption of a regulation, an agency shall submit to the Secretary a notice of public hearing or comment period on agency letterhead which shall be accompanied on the same day by a small business impact statement along with the draft of the proposed regulation in both a printed and electronic format. The small business impact statement shall meet the five requirements as set forth in M.G.L. c. 30A, §§ 2 and 3. The Secretary shall prepare the draft regulation as it will appear in the *Register* and Code and return the proposed draft regulation to the agency for verification. It is the agency's responsibility to ensure the accuracy of the returned draft.

- (2) After Public Hearing/Comment. An agency shall file the following with the Secretary:
 - (a) Prior to the adoption of a regulation, an agency shall file an amended small business impact statement as required by M.G.L. c. 30A, § 5.
 - (b) After the amended small business impact statement has been filed, an agency shall file a completed Filing and Publication Form in both a printed and electronic format. The electronic form is to be submitted on the State Publications and Regulations Division website at www.sec.state.ma.us/spr/sprmareg/inforegi.htm. The printed form must include an original signature in black or blue ballpoint pen of an authorized person. The filing form shall include the following information:
 1. The chapter number and title;
 2. The name of the agency;
 3. A concise summary of the regulation written in simple language easily understandable to the public;
 4. The name and phone number of the agency person to be contacted for further information;
 5. A statement of the fiscal effect of the regulation on both the public and private sector over the first and second years, and the first five years;
 6. The date the amended small business impact statement was filed;
 7. An attestation; and
 8. Any other information required by the Secretary.
 - (c) A copy of the draft regulation prepared by the State Publications and Regulations Division clearly marked to show any changes.

- (3) Where and When to File. Regulations may be filed with the Secretary at the State Publications and Regulations Division at Room 117, State House, Boston, MA 02133 from Monday through Friday excluding legal holidays. The hours of operation are 8:45 A.M. and 5:00 P.M. weekdays; however, the deadline for filing regulations for publication in the *Register* is 4:00 P.M. on the Friday two weeks prior to the publication date.

- (4) Correction of Errors. Errors that are clearly typographical, mechanical or clerical in nature shall be corrected by the agency by filing a Notice of Correction.

REGULATIONS MANUAL

20.05: Emergency Regulations

- (1) Emergency regulations are exempt from the provisions of 950 CMR 20.04(1) at the time of filing.
- (2) If the emergency regulation is intended to become permanent it is the responsibility of the agency to ensure that the requirements of M.G.L. c. 30A, § 2 or 3 and 950 CMR 20.04(1) are met within the three months the emergency regulation is in effect.
 - (a) If the emergency is unchanged after public hearing/comment, the agency files a Notice of Compliance and the regulation continues in effect from the original emergency effective date.
 - (b) If the emergency regulation is changed after public hearing/comment, a standard filing form is filed. The regulation supersedes the emergency and becomes effective when published in the *Massachusetts Register*.
 - (c) If the emergency regulation is not complied with or replaced within the three months it is in effect, the Secretary will publish a Notice of Expiration to remove the emergency regulation from the Code.

20.06: Exceptions

The Secretary may grant agency requests for exception from one or more of the format requirements of 950 CMR 20.03(2) or (3) where the Secretary finds that an exception would be in the public interest. Requests for an exception must be submitted in writing at least one week prior to an agency filing the notice of public hearing/comment in compliance with M.G.L. c. 30A, § 2 or 3 and 950 CMR 20.04(1). In considering whether any exception would be in the public interest the Secretary will consider the extent to which:

- (1) the exception would impair the uniformity and readability of the Code;
- (2) the exception would foster uniformity of regulations nationally;
- (3) an exception would contribute to public understanding of the regulation; and
- (4) an exception would otherwise contribute to the public interest.

REGULATORY AUTHORITY

950 CMR 20.00: M.G.L. c. 30A, §§ 5, 6 and 6A.

REGULATIONS MANUAL

EXECUTIVE ORDER NO. 145 CONSULTATION WITH CITIES & TOWNS ON ADMINISTRATIVE MANDATES

WHEREAS municipal officials must be able to consider statewide agency policy and regulatory actions which have significant financial, procedural, or organizational impact on local governments in order to effectively provide services to their citizens; and

WHEREAS state agencies ought to consider the impact on local governments of policy and regulatory mandates which include significant financial, procedural, or organizational obligations in order to make informed, credible decisions regarding the application of such policies and regulations; and

WHEREAS the Governor recognizes that state-local cooperation in the formulation of the Commonwealth's administrative policies and regulations affecting local governments is essential to the successful implementation of viable policies and regulations; and

WHEREAS, affirmative steps are necessary to ensure that municipal officials are fully informed of proposed agency policies and regulations which affect local governments, prior to their promulgation; and

WHEREAS, state administrative mandates may place significant additional financial burdens on municipalities;

NOW, THEREFORE, I, Michael S. Dukakis, Governor of the Commonwealth by virtue of the authority vested in me as supreme executive magistrate, do hereby order as follows.

SECTION I: DECLARATION OF POLICY

Agencies shall take no action (as defined in Section II) without having followed the consultation procedures as set forth in Section III to inform and thereafter receive advice from local governments of the potential impact on local governments of the proposed action.

SECTION II: DEFINITIONS

Agency is defined as any agency, department, board, commission, authority or other instrumentality of the Commonwealth.

Action is defined as (a) the adoption, repeal or amendment of any rule or regulation subject to the Mass. Administrative Procedure Act (hereinafter called A.P.A.), M.G.L. c. 30A; (b) any administrative action that either places additional expenditure, procedural, or organizational requirements on local governments or limits the discretionary powers of local officials or agencies on a statewide basis. Enforcement of duly enacted laws and regulations is not within the scope of this executive order.

The Local Government Advisory Committee established pursuant to Executive Order No. 123 (1976) is hereinafter called L.G.A.C. The Department of Community Affairs is hereinafter called D.C.A.

REGULATIONS MANUAL

SECTION III: PROCEDURES

1. In the case of action subject to the A.P.A., at least 14 calendar days prior to the initiation of compliance with the A.P.A., agencies shall initiate the procedures set forth below. In the case of actions not subject to the A.P.A., agencies shall initiate said procedures at least 45 calendar days prior to the proposed implementation of said action.
2. Agencies shall provide L.G.A.C. and D.C.A. with a brief statement describing the proposed action which emphasizes the responsible agency officials' best judgement of those elements which might impact on local governments including, when feasible, preliminary cost estimates.
3. Within 21 calendar days of receipt of said notice, either L.G.A.C. or D.C.A. shall notify the originating agency as to whether or not it believes the proposed action presents potential for significant impact. Failure to so notify within 21 calendar days shall be deemed to constitute a judgement of no significant impact.
4. Any such notice shall set forth the aspects of the proposed action which the L.G.A.C. or the D.C.A., as the case may be, believes present potential for significant impact.
5. Within 14 calendar days of the receipt of a notice under Section III 3, 4, the originating agency shall convene a meeting of representatives of the agency, L.G.A.C., and D.C.A. to review and discuss the potentially significant impact of the proposed action.

SECTION IV: EMERGENCY ACTION

Agencies may initiate emergency actions under relevant sections of the Administrative Procedure Act without prior compliance with this order, provided that compliance shall be initiated as soon as practicable follow the emergency action and in any event to making any emergency action permanent.

SECTION V: DETERMINATION OF SIGNIFICANT IMPACT

In determining whether the proposed action may present potential or significant impact, agencies, L.G.A.C., and the D.C.A. shall consider the extent to which the proposed action might require municipalities:

- (a) to significantly expand existing services;
- (b) to employ additional personnel;
- (c) to significantly alter administrative and work procedures;
- (d) to realign organizational structures;
- (e) to increase disbursements which are not reimbursed by the federal or state government; or
- (f) to limit the discretion exercised by local officials.

Each agency head, or a designee of the agency head, shall have responsibility within that agency for reviewing proposed administrative policies and regulations to ensure compliance with this order.

SECTION VI: EFFECTIVE DATE

This order shall take effect on November 20, 1978, provided, however, that it shall not apply to any action subject to the A.P.A. for which compliance with the A.P.A. is initiated prior to November 20, 1978.

SECTION VII

This order shall continue in effect until amended, superseded or terminated by subsequent Executive Order.

REGULATIONS MANUAL

EXECUTIVE OFFICES AND STATE AGENCIES IN ALPHABETIC ORDER

Access Board, Public (324 CMR)
Accountancy, Board of Registration in Public (252 CMR)
Adjutant General, Office of the (510 CMR)
Administration and Finance, Executive Office for (801 CMR)
Aeronautics Division (702 CMR)
Agricultural Resources, Department of (330 CMR)
Alcoholic Beverages Control Commission (204 CMR)
Allied Health Professionals, Board of Registration of (259 CMR)
Allied Mental Health and Human Services Professions, Board of Registration of (262 CMR)
Appellate Tax Board (831 CMR)
Architects, Board of Registration of (231 CMR)
Architectural Access Board (521 CMR)
Athletic Commission, State (523 CMR)
Attorney General, Office of the (940 CMR)
Auditor, Department of the State (965 CMR)
Auto Damage Appraisers Licensing Board (212 CMR)

Banks and Loan Agencies, Division of (209 CMR)
Barbers, Board of Registration of (232 CMR)(will be incorporated into 240 CMR)
Bay Transportation Authority, Massachusetts (703 CMR)
Blind, Massachusetts Commission for the (111 CMR)
Boiler Rules, Board of (522 CMR)
Boxers' Fund Board (529 CMR)
Building Regulations and Standards, State Board of (780 CMR)

Campaign and Political Finance, Office of (970 CMR)
Capital Asset Management and Maintenance, Division of (810 CMR)
Center for Health Information and Analysis (957 CMR)
Child Care Services, Office for (102 CMR)
Children and Families, Department of (110 CMR)
Chiropractors, Board of Registration of (233 CMR)
Civil Service Commission (812 CMR)
Community Health Workers, Board of Certification of (272 CMR)
Comptroller's Division (815 CMR)
Connecticut River Atlantic Salmon Commission (325 CMR)
Conservation and Recreation, Department of (302 CMR)
Consumer Affairs and Business Regulation, Office of (201 CMR)
Corrections, Department of (103 CMR)
Cosmetology, Board of Registration of (240 CMR) (will be renamed Cosmetology & Barbering)
Criminal Justice Information Services, Department of (803 CMR)
Cultural Council, Massachusetts (962 CMR)

Deaf and Hard of Hearing, Commission for the (112 CMR)
Dentistry, Board of Registration in (234 CMR)
Designer Selection Board (811 CMR)

REGULATIONS MANUAL

Development Finance Agency, Massachusetts (946 CMR)
Developmental Services, Department of (115 CMR)
Devens Enterprise Commission (974 CMR)
Dietitians/Nutritionists, Board of Registration of (268 CMR)
Disabled Persons Protection Commission (118 CMR)
Discrimination, Massachusetts Commission Against (804 CMR)
Drinking Water Supply Facilities, Board of Certification of Operators of (236 CMR)

Early Education and Care, Department of (606 CMR)
Economic Assistance Coordinating Council (402 CMR)
Education, Board of Higher (610 CMR)
Education, Executive Office of (601 CMR)
Elder Affairs, Executive Office of (651 CMR)
Electricians, State Examiners of and Board of Electrician Appeals (237 CMR)
Electrologists, Board of Registration of (238 CMR)(will be incorporated into 240 CMR)
Elementary and Secondary Education, Department of (603 CMR)
Elevator Regulations, Board of (524 CMR)
Embalming and Funeral Directing, Board of Registration in (239 CMR)
Emergency Board (975 CMR)
Energy and Environmental Affairs, Executive Office of (301 CMR)
Energy Facilities Siting Board (980 CMR)
Energy Resources, Division of (225 CMR)
Engineers and Land Surveyors, Board of Registration of Professional (250 CMR)
Environmental Protection, Department of (310 CMR)
Ethics Commission, State (930 CMR)

Finance and Governance Board, State (976 CMR)
Fire Marshall, Office of the State (502 CMR)
Fire Prevention Regulations, Board of (527 CMR)
Fire Safety Commission (530 CMR)
Fish and Game, Department of (320 CMR)
Fisheries and Wildlife, Division of (321 CMR)

Gaming Commission, Massachusetts (205 CMR)
Genetic Counselors, Board of Registration of (270 CMR)

Hazardous Waste Facility Site Safety Council (990 CMR)
Hazardous Waste Site Cleanup Professionals, Board of Registration of (309 CMR)
Health Care Finance and Policy (formerly Rate Setting Commission) (114 CMR)
Health Care Quality and Cost Council (129 CMR)
Health, Department of Public (105 CMR)
Health and Human Services, Executive Office of (101 CMR)
Health Facilities Appeals Board (113 CMR)
Health Insurance Connector Authority, Commonwealth (956 CMR)
Health Officers, Board of Certification of (241 CMR)
Health Policy Commission (958 CMR)
Hearing Instrument Specialist, Board of Registration of (265 CMR)

REGULATIONS MANUAL

Highways, Department of (720 CMR)
Home Inspectors, Board of Registration of (266 CMR)
Home Mortgage Finance Agency, Massachusetts (761 CMR)
Housing and Community Development, Department of (760 CMR)
Housing and Economic Development, Executive Office of (400 CMR)

Industrial Accidents, Department of (452 CMR)
Inspector General, Office of the (945 CMR)
Insurance, Division of (211 CMR)
Insurance Commission, Group (805 CMR)
Insurance Premium Finance Board (955 CMR)

Labor Standards, Department of (454 CMR)
Labor and Workforce Development, Department of (453 CMR)
Labor and Workforce Development, Executive Office of (429 CMR)
Labor Relations, Department of (456 CMR)
Landscape Architects, Board of Registration of (242 CMR)
Law Enforcement, Division of (323 CMR)
Library Commissioners, Board of (605 CMR)
Lottery Commission, State (961 CMR)
Low Level Radioactive Waste Management Board (345 CMR)

Marine Fisheries, Division of (322 CMR)
Massage Therapy, Board of Registration of (269 CMR)
Medical Assistance, Division of (130 CMR)
Medical Examiner, Office of the Chief (505 CMR)
Medical Security, Department of (117 CMR)
Medicine, Board of Registration in (243 CMR)
Mental Health, Department of (104 CMR)
Metropolitan District Commission (350 CMR)
Milk Marketing, Bureau of (331 CMR)
Motor Vehicles, Registry of (540 CMR)
Municipal Police Training Committee (550 CMR)

Nursing, Board of Registration in (244 CMR)
Nursing Home Administrators, Board of Registration of (245 CMR)

Old King's Highway Regional Historic District Commission (972 CMR)
Operational Services Division (802 CMR)
Opticians, Board of Registration of Dispensing (235 CMR)
Optometry, Board of Registration in (246 CMR)
Outdoor Advertising Board (711 CMR)

REGULATIONS MANUAL

Parole Board (120 CMR)
Perfusionists, Board of Registration of (267 CMR)
Pesticide Board (333 CMR)
Pharmacy, Board of Registration in (247 CMR)
Physicians Assistants, Board of Registration of (263 CMR)
Pilot Commissioners: District One (995 CMR)
Pipefitters, Refrigeration Technicians and Sprinkler Fitters, Bureau of (528 CMR)
Plumbers and Gas Fitters, Board of State Examiners of (248 CMR)
Podiatry, Board of Registration in (249 CMR)
Port Authority, Massachusetts (740 CMR)
Professional Licensure, Division of (230 CMR)
Psychologists, Board of Registration of (251 CMR)
Public Employee Retirement Administration (840 CMR)
Public Utilities, Department of (220 CMR)
Purchased Services, Division of (808 CMR)

Real Estate Appraisers, Board of Registration of (264)
Real Estate Brokers and Salesmen, Board of Registration of (254)
Recreational Tramway Board (526 CMR)
Refugees and Immigrants, Office for (121 CMR)
Rehabilitation Commission, Massachusetts (107 CMR)
Respiratory Care, Board of (261 CMR)
Retirement, State Board of (941 CMR)
Revenue, Department of (830 CMR)

Safety, Department of Public (520 CMR)
Safety and Security, Executive Office of Public (501 CMR)
Sanitarians, Board of Registration of (255 CMR)
School Building Authority, Massachusetts (963 CMR)
Secretary of the Commonwealth, Office of the (950 CMR)
Security and Privacy Council (806 CMR)
Sheet Metal Workers, Board of Examiners of (271 CMR)
Social Workers, Board of Registration of (258 CMR)
Soldiers' Home in Holyoke (119 CMR)
Soldiers' Home in Massachusetts (CSH) (122 CMR)
Special Investigations, Bureau of (809 CMR)
Speech-Language Pathology and Audiology, Board of Registration in (260 CMR)
Standards, Division of (202 CMR)
State Parks and Recreation, Division of (304 CMR)
State Police, Department of (515 CMR)
State 911 Department (560 CMR)
Supplier Diversity Office (425 CMR)

Teachers' Retirement Board (807 CMR)
Telecommunications and Cable, Department of (207 CMR)
Transitional Assistance, Department of (106 CMR)
Transportation and Public Works, Executive Office of (701 CMR)

REGULATIONS MANUAL

Treasurer and Receiver General (960 CMR)

Turnpike Authority, Massachusetts (730 CMR)

Underground Storage Tank Petroleum Product Cleanup Administrative Review Fund Board (503 CMR)

Underwater Archaeological Resources, Board of (312 CMR)

Unemployment Assistance, Department of (430 CMR)

Veterans Services, Department of (108 CMR)

Veterinary Medicine, Board of Registration in (256 CMR)

Wastewater Treatment Facilities, Board of Certification of Operators of (257 CMR)

Water Pollution Control, Division of (314 CMR)

Water Resource Authority, Massachusetts (360 CMR)

Water Supply Protection, Division of (313 CMR)

Youth Services, Department of (109 CMR)

REGULATIONS MANUAL

EXECUTIVE OFFICES AND STATE AGENCIES IN CMR NUMBER ORDER

- 101 EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
- 102 Office of Child Care Services (Repealed by 2008, c. 215, still regs. on file/see 606 CMR)
- 103 Department of Correction
- 104 Department of Mental Health
- 105 Department of Public Health
- 106 Department of Transitional Assistance
- 107 Massachusetts Rehabilitation Commission
- 108 Department of Veterans' Services
- 109 Department of Youth Services
- 110 Department of Children and Families
- 111 Massachusetts Commission for the Blind
- 112 Commission for the Deaf and Hard of Hearing
- 113 Health Facilities Appeals Board
- 114 Division of Health Care Finance and Policy
- 115 Department of Developmental Services
- 117 Department of Medical Security (No regulations currently on file)
- 118 Disabled Persons Protection Commission
- 119 Soldiers' Home in Holyoke (No regulations currently on file)
- 120 Parole Board
- 121 Office for Refugees and Immigrants
- 122 Soldiers' Home in Massachusetts (CSH)
- 129 Health Care Quality and Cost Council (Repealed by 2012, c. 224, § 7, still regs. on file)
- 130 Division of Medical Assistance

- 201 Office of Consumer Affairs and Business Regulation
- 202 Division of Standards
- 203 Massachusetts Consumers' Council (no longer operational)
- 204 Alcoholic Beverages Control Commission
- 205 Massachusetts Gaming Commission
- 207 Department of Telecommunications and Cable
- 209 Division of Banks and Loan Agencies
- 211 Division of Insurance
- 212 Auto Damage Appraisers
- 220 Department of Public Utilities
- 225 Division of Energy Resources
- 230 Division of Professional Licensure
- 231 Board of Registration of Architects
- 232 Board of Registration of Barbers (will soon be incorporated into 240 CMR)
- 233 Board of Registration of Chiropractors
- 234 Board of Registration in Dentistry
- 235 Board of Registration of Dispensing Opticians
- 236 Board of Certification of Operators of Drinking Water Supply Facilities
- 237 Board of State Examiners of Electricians and Board of Electricians' Appeals
- 238 Board of Registration of Electrologists (will soon be incorporated into 240 CMR)
- 239 Board of Registration in Embalming and Funeral Directing

REGULATIONS MANUAL

- 240 Board of Registration of Cosmetology (to be renamed Bd. of Reg. of Cosmet. & Barbering)
- 241 Board of Certification of Health Officers
- 242 Board of Registration of Landscape Architects
- 243 Board of Registration in Medicine
- 244 Board of Registration in Nursing
- 245 Board of Registration of Nursing Home Administrators
- 246 Board of Registration in Optometry
- 247 Board of Registration in Pharmacy
- 248 Board of State Examiners of Plumbers and Gas Fitters
- 249 Board of Registration in Podiatry
- 250 Board of Registration of Professional Engineers and Land Surveyors
- 251 Board of Registration of Psychologists
- 252 Board of Registration in Public Accountancy
- 253 Board of Registration of Radio and Television Technicians (Abolished by 2014, c. 236, § 38)
- 254 Board of Registration of Real Estate Brokers and Salesmen
- 255 Board of Registration of Sanitarians
- 256 Board of Registration of Veterinary Medicine
- 257 Board of Registration of Operators of Wastewater Treatment Facilities
- 258 Board of Registration of Social Workers
- 259 Board of Registration of Allied Health Professionals
- 260 Board of Registration in Speech-Language Pathology and Audiology
- 261 Board of Respiratory Care
- 262 Board of Registration of Allied Mental Health and Human Services Professionals
- 263 Board of Registration of Physician Assistants
- 264 Board of Registration of Real Estate Appraisers
- 265 Board of Registration of Hearing Instrument Specialists
- 266 Board of Registration of Home Inspectors
- 267 Board of Registration of Perfusionists
- 268 Board of Registration of Dieticians and Nutritionists
- 269 Board of Registration of Massage Therapy
- 270 Board of Registration of Genetic Counselors
- 271 Board of Examiners of Sheet Metal Workers
- 272 Board of Certification of Community Health Workers

- 301 EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
- 302 Department of Conservation and Recreation
- 304 Division of State Parks and Recreation
- 309 Board of Registration of Hazardous Waste Site Cleanup Professionals
- 310 Department of Environmental Protection
- 312 Board of Underwater Archaeological Resources
- 313 Division of Water Supply Protection
- 314 Division of Water Pollution Control
- 320 Department of Fish and Game
- 321 Division of Fisheries & Wildlife
- 322 Division of Marine Fisheries
- 323 Division of Law Enforcement
- 324 Public Access Board

REGULATIONS MANUAL

- 325 Connecticut River Atlantic Salmon Commission
- 330 Department of Agricultural Resources
- 331 Bureau of Milk Marketing
- 333 Pesticide Board
- 345 Low-level Radioactive Waste Management Board
- 350 Metropolitan District Commission
- 360 Massachusetts Water Resource Authority

- 400 EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT
- 402 Economic Assistance Coordinating Council
- 425 Supplier Diversity Office
- 429 EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
- 430 Department of Unemployment Assistance
- 452 Department of Industrial Accidents
- 453 Department of Labor and Workforce Development (Repealed by 2011, c. 3, § 17, still regs. on file)
- 454 Department of Labor Standards
- 455 Division of Minimum Wage (Repealed and incorporated into 454 CMR)
- 456 Department of Labor Relations
- 457 Board of Conciliation and Arbitration (Abolished by 2007, c. 145, § 6)

- 501 EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY
- 502 Office of the State Fire Marshall
- 503 Underground Storage Tank Petroleum Product Cleanup Fund Administrative Review Board
- 505 Office of the Chief Medical Examiner
- 510 Office of the Adjutant General
- 515 Department of State Police
- 520 Department of Public Safety
- 521 Architectural Access Board
- 522 Board of Boiler Rules
- 523 State Athletic Commission
- 524 Board of Elevator Regulations
- 525 Board of Elevator Appeals (No regulations currently on file)
- 526 Recreational Tramway Board
- 527 Board of Fire Prevention Regulations
- 528 Bureau of Pipefitters, Refrigeration Technicians & Sprinkler Fitters
- 529 Boxers' Fund Board
- 530 Fire Safety Commission
- 540 Registry of Motor Vehicles
- 550 Municipal Police Training Committee
- 560 State 911 Department

- 601 EXECUTIVE OFFICE OF EDUCATION (No regulations currently on file)
- 602 Board of Regional Community Colleges (Repealed by 1980, c.329, § 111)
- 603 Department of Elementary and Secondary Education

REGULATIONS MANUAL

- 605 Board of Library Commissioners
- 606 Department of Early Education and Care
- 610 Board of Higher Education

- 651 EXECUTIVE OFFICE OF ELDER AFFAIRS

- 700 Department of Transportation
- 701 EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS
- 702 Aeronautics Division
- 703 Massachusetts Bay Transportation Authority
- 711 Outdoor Advertising Board (No regulations currently on file)
- 720 Department of Highways
- 730 Massachusetts Turnpike Authority
- 740 Massachusetts Port Authority
- 760 Department of Housing and Community Development
- 761 Massachusetts Home Mortgage Finance Agency
- 780 State Board of Building Regulations and Standards

- 801 EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
- 802 Operational Services Division
- 803 Department of Criminal Justice Information Services
- 804 Massachusetts Commission Against Discrimination
- 805 Group Insurance Commission
- 806 Security and Privacy Council
- 807 Teachers' Retirement Board
- 808 Division of Purchased Services
- 809 Bureau of Special Investigations (No regulations currently on file)
- 810 Division of Capital Asset Management and Maintenance
- 811 Designer Selection Board
- 812 Civil Service Commission
- 815 Comptroller's Division
- 820 Division of Administrative Law Appeals (No regulations currently on file)
- 830 Department of Revenue
- 831 Appellate Tax Board
- 840 Public Employee Retirement Administration

- AGENCIES INDEPENDENT OF CABINET STRUCTURE
- 930 State Ethics Commission
- 940 Office of the Attorney General
- 941 State Board of Retirement
- 945 Office of the Inspector General
- 946 Massachusetts Development Finance Agency
- 950 Office of the Secretary of the Commonwealth
- 955 Insurance Premium Finance Board
- 956 Commonwealth Health Insurance Connector Authority
- 957 Center for Health Information Analysis
- 958 Health Policy Commission

REGULATIONS MANUAL

- 960 Office of the State Treasurer & Receiver General
- 961 State Lottery Commission
- 962 Massachusetts Cultural Council
- 963 Massachusetts School Building Authority
- 965 Department of the State Auditor
- 970 Office of Campaign and Political Finance
- 971 Massachusetts Municipal Wholesale Electric Company (No regulations currently on file)
- 972 Old King's Highway Regional Historic District Commission
- 974 Devens Enterprise Commission
- 975 Emergency Board
- 976 State Finance and Governance Board
- 980 Energy Facilities Siting Board
- 990 Hazardous Waste Facility Site Safety Council
- 995 Pilot Commissioners: District One



Docket #

THE COMMONWEALTH OF MASSACHUSETTS
William Francis Galvin
Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: _____

CHAPTER TITLE: _____

AGENCY: _____

SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

REGULATORY AUTHORITY: _____

AGENCY CONTACT: _____ PHONE: _____

ADDRESS: _____

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 Committee.*

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: _____

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: _____

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: _____

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:*

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

SIGNATURE: _____ DATE: _____

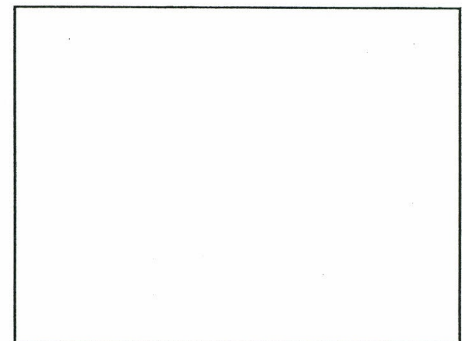
Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: _____ DATE: _____

EFFECTIVE DATE: _____

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages: | Insert these pages:





Docket #

THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin
Secretary of the Commonwealth

Notice of Compliance

Regulation Filing To be completed by filing agency

CHAPTER NUMBER: _____

CHAPTER TITLE: _____

AGENCY: _____

THIS REGULATION WAS ORIGINALLY FILED AS AN EMERGENCY:

Published in Massachusetts Register Number: _____ Date: _____

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 Committee.*

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: _____

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: _____

AGENCY CONTACT: _____ PHONE: _____

ADDRESS: _____

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

SIGNATURE: _____ DATE: _____

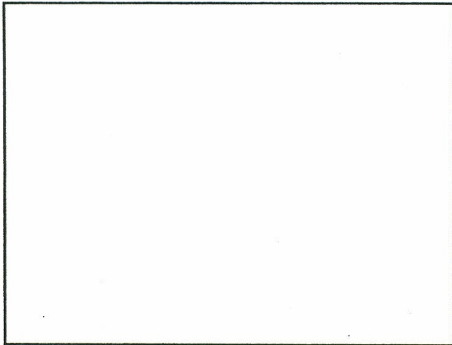
Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: _____ DATE: _____

EFFECTIVE DATE: _____

CODE OF MASSACHUSETTS REGULATIONS

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





Docket #

THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin
Secretary of the Commonwealth

Notice of Correction

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: _____

CHAPTER TITLE: _____

AGENCY: _____

ORIGINAL PUBLICATION REFERENCE: _____ Date: _____

SUMMARY OF CORRECTION:

AGENCY CONTACT: _____ PHONE: _____

ADDRESS: _____

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

SIGNATURE: _____ DATE: _____

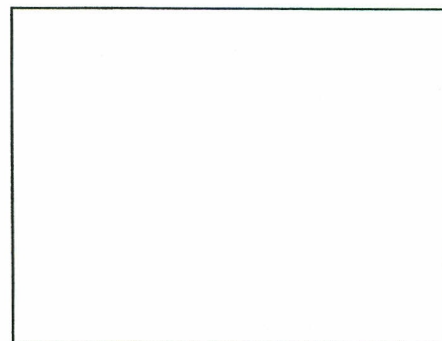
Publication *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: _____ DATE: _____

EFFECTIVE DATE: _____

CODE OF MASSACHUSETTS REGULATIONS

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



The Commonwealth of Massachusetts
Office of the Secretary of the Commonwealth
State Publications and Regulations Division
State House, Room 117
Boston, MA 02133

MASSACHUSETTS REGISTER - 2022 PUBLICATION SCHEDULE

Filing Deadline	Publication Date	Register Number
December 24, 2021	January 7, 2022	1460
January 7, 2022	January 21, 2022	1461
January 21, 2022	February 4, 2022	1462
February 4, 2022	February 18, 2022	1463
February 18, 2022	March 4, 2022	1464
March 4, 2022	March 18, 2022	1465
March 18, 2022	April 1, 2022	1466
April 1, 2022	April 15, 2022	1467
April 15, 2022	April 29, 2022	1468
April 29, 2022	May 13, 2022	1469
May 13, 2022	May 27, 2022	1470
May 27, 2022	June 10, 2022	1471
June 10, 2022	June 24, 2022	1472
June 24, 2022	July 8, 2022	1473
July 8, 2022	July 22, 2022	1474
July 22, 2022	August 5, 2022	1475
August 5, 2022	August 19, 2022	1476
August 19, 2022	September 2, 2022	1477
September 2, 2022	September 16, 2022	1478
September 16, 2022	September 30, 2022	1479
September 30, 2022	October 14, 2022	1480
October 14, 2022	October 28, 2022	1481
October 28, 2022	November 11, 2022	1482
November 11, 2022	November 25, 2022	1483
November 25, 2022	December 9, 2022	1484
December 9, 2022	December 23, 2022	1485
December 23, 2022	January 6, 2023	1486

The Commonwealth of Massachusetts
Office of the Secretary of the Commonwealth
State Publications and Regulations Division
State House, Room 117
Boston, MA 02133

MASSACHUSETTS REGISTER - 2023 PUBLICATION SCHEDULE

Filing Deadline	Publication Date	Register Number
December 23, 2022	January 6, 2023	1486
January 6, 2023	January 20, 2023	1487
January 20, 2023	February 3, 2023	1488
February 3, 2023	February 17, 2023	1489
February 17, 2023	March 3, 2023	1490
March 3, 2023	March 17, 2023	1491
March 17, 2023	March 31, 2023	1492
March 31, 2023	April 14, 2023	1493
April 14, 2023	April 28, 2023	1494
April 28, 2023	May 12, 2023	1495
May 12, 2023	May 26, 2023	1496
May 26, 2023	June 9, 2023	1497
June 9, 2023	June 23, 2023	1498
June 23, 2023	July 7, 2023	1499
July 7, 2023	July 21, 2023	1500
July 21, 2023	August 4, 2023	1501
August 4, 2023	August 18, 2023	1502
August 18, 2023	September 1, 2023	1503
September 1, 2023	September 15, 2023	1504
September 15, 2023	September 29, 2023	1505
September 29, 2023	October 13, 2023	1506
October 13, 2023	October 27, 2023	1507
October 27, 2023	November 10, 2023	1508
November 10, 2023	November 24, 2023	1509
November 24, 2023	December 8, 2023	1510
December 8, 2023	December 22, 2023	1511
December 22, 2023	January 5, 2024	1512

Index

- Administrative Notices, Bulletins, and Manuals, 7
- Amended Small Business Impact Statement, 14
 - considerations, 14
 - federal standard, 14
 - filing exception, 14
 - when to file, 14, 21
- Appendix
 - used in regulations, 7
- Attestation, 14
- Bulletins, 7
- Charts, 6
- CMR
 - history of, 2
 - maintenance, 7
 - organization of, 9
 - reserved, 10
- Comment Periods
 - notice of, 3, 8
 - procedure for, 4
 - time elapsed before promulgation, 13
- Department of Housing and Community Development, 4
- Draft Regulations
 - extensive changes to, 13
 - preparation of, 7
- Drawings, 6
- Effective Date
 - compliance, 5
 - emergency, 5, 14
 - emergency not complied with, 5
 - future, 14
 - permanent filing, 5, 14
- Emergency Regulations, 5
 - comment period, 5
 - hearing, 5
 - in effect for, 5
 - process for promulgating, 5
 - when effective, 5
- Executive Order #145
 - Notice to Local Government Advisory Committee, 4
 - text of, 46
- Forms
 - Filing Form, 13
 - used in regulations, 7
- Graphics, 6

Guidelines

used in regulations, 7

Hearings

conduct of, 4

notice of, 3, 8

time elapsed before promulgation, 13

Incorporated by Reference, 6

copy filed with Regulations Division, 6

cross references, 6

force of law, 6

incorporating future editions, 6

rebuttable presumption, no, 6

Judicial Notice, 2, 23

Local Government Advisory Committee, 4

Department of Housing and Community Development, 4

giving notice to, 4, 8

Massachusetts Municipal Association, 4

Maps, 6

Massachusetts Municipal Association, 4

Prefaces, 7

Proposed Regulations

availability of, 4

Draft Copy, 7

electronic copy, 7

process, 7

timeline, 8

Rebuttable Presumption

creating, 23

unpublished in Register, 6

Reserved, 10

Small Business

definition of, 18

Small Business Impact Statement, 3

what to include, 3, 19, 20

when to file, 3, 8, 19, 20