

The

Regulations

Manual

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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 September 2008 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 2011 - 2012 schedules for *Register* publication.

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

Massachusetts General Law Chapter 30A (the 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 deadlines.

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.

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. 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;
- the person and place where copies of the proposed regulation can be obtained.

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

Executive Order #145 creates 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 38. Notices should be sent to:

Marilyn Contreas
Department of Housing and
Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114
617-573-1359

and

John Robertson
Massachusetts Municipal Association
One Winthrop Square
Boston, MA 02110
617-426-7272

AVAILABILITY OF 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/info regi.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
One Ashburton Place, Room 1613
Boston, MA 02108

During the three months the regulation is in effect, the agency **must** hold a public hearing or have a comment period, 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.

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.

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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 disk or CD-Rom 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 CMR "draft" 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 proof read the "draft" pages for typographical or mechanical errors. The agency should mark in red any changes to the "draft" on the regulation pages and include these pages when filing.

SYSTEM

The Secretary's Regulations Division uses WordPerfect to maintain the CMR.

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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 <i>Register</i> (published at least one week prior) Electronic and paper copy 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 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.

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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 41.

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.

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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.

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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 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 adjective or noun 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 thanyears 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".

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- 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.

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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* a **prepared** draft copy 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/info regi.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
One Ashburton Place, Room 1613
Boston, MA 02108

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.

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SMALL BUSINESS IMPACT

In addition to the fiscal effect an agency must also state the impact of the regulation on small business. 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 receipts. Except for those regulations that set rates for the state, an agency should assume that most regulations will have an impact on small business.

An agency must also describe the "appropriateness of performance standards versus design standards". A simple example of the performance/design standard criteria is regulations governing exits in buildings. The Department of Public Health in regulations governing *Safe and Sanitary Housing* establishes a performance standard in 105 CMR 410.450 by providing that the number of exits "....will allow for the safe passage of all people". The Board of Building Standards and Regulations establishes a design standard in the *State Building Code* in 780 CMR 1010.2 by providing that the minimum number of exits be "... based on the occupant load, except as modified in 780 CMR 1010.3." and includes a table showing the number of exits related to the occupant load of the building. In complying with this provision an agency must identify any other regulation which may duplicate or conflict with the regulation at hand.

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.

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 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

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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 at the end of this *Manual*. 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 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*.

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PART IV ADDITIONAL INFORMATION

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

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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 26T 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.

(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 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.

(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 2. Regulations Requiring Hearings; Adoptions, Amendments or Repeals; 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.

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 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; 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:-

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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 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.

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

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 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. Such statement of consideration shall include, but not be limited, to a description of the projected reporting, record keeping and other compliance requirements of the proposed regulations, the appropriateness of performance standards versus design standards and an identification of all relevant regulations of the promulgating agency which may duplicate or conflict with the proposed regulation. Said state secretary shall forthwith notify all agencies required to file rules or regulations pursuant to this section.

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 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.

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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.

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 Proceedings 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. Definitions

The following terms as used in section eleven A $\frac{1}{2}$ shall have the following meanings: -

"Deliberation", a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction.

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

"Executive session", any meeting or part of a meeting of a governmental body which is closed to certain persons for deliberation on certain matters.

"Governmental body", a state board, committee, special committee, subcommittee or commission, however created or constituted within the executive or legislative branch of the commonwealth or the governing board or body of any authority established by the general court to serve a public purpose in the commonwealth or any part thereof, but shall not include the general court or the committees or recess commissions thereof, or bodies of the judicial branch, or any 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, nor shall it include the board of bank

incorporation, or the Policyholders Protective Board.

"Made public", when the records of an executive session have been approved by the members of the respective governmental body attending such session for release to the public and notice of such approval has been entered in the records of such body.

"Meeting", any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which any public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on site inspection of any project or program.

"Quorum", a simple majority of a governmental body unless otherwise defined by constitution, charter, rule or law applicable to such governing body.

SECTION 11A½. Open Meetings of Governmental Bodies

All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members of the governmental body have voted to go into executive session and the vote of each member recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitations contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and after a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual to be discussed in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties.

A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(c) to speak in his own behalf.

(2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which

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involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(c) to speak in his own behalf.

(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 governmental body, and to conduct collective bargaining sessions.

(4) To discuss the deployment of security personnel or devices.

(5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.

(6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

(7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.

This section shall not apply to any chance meeting or social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction, or advisory power.

Except in an emergency, a notice of every meeting of a governmental body subject to this section shall be filed with the secretary of state, and a copy thereof posted in the office of the executive office for administration and finance at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to the time of such meeting. The notice shall be printed in easily readable type and shall include the date, time and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meetings.

A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions. No votes taken in open session shall be by secret ballot.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, a member shall be furnished by the state secretary with a copy of this section. Each member shall sign a written acknowledgment that he has been provided with such a copy.

The attorney general shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions of this section, any justice of the supreme judicial court or any justice of the superior court sitting in the county in which the governmental body customarily meets or in the absence of such sitting of court then any justice of the superior court sitting in Suffolk county shall

issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provision at future meetings. Any such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney for the district in which the governmental body is located. The order of notice on the complaint shall be heard no later than ten days after the filing thereof or on such day thereafter 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 with respect to any of the matters referred to in this section 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 this section. In the hearing of such complaint the burden shall be on the respondent to show by a preponderance of the evidence that the actions complained of in such complaint were in accordance with and authorized by this section, by section nine G of chapter thirty-four or by section twenty-three B of chapter thirty-nine. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy.

The rights of an individual set forth in this section, relative to his appearance before a meeting in an executive or open session are in addition to the rights that an individual may have from any other source, including, but not limited to rights under any laws or collective bargaining agreements, and the exercise or nonexercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

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.

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

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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.

(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.

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. It 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 and supplemented 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 6 and 950 CMR 20.00. The Register is published bi-weekly on Fridays in a form designed to be new or replacement pages to be inserted in the Code.

20.02: continued

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 Massachusetts Regulations Division, Room 1613, One Ashburton Place, Boston, MA 02108.

Secretary means the Office of the Secretary of the Commonwealth.

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.
- (5) Machine Compatible Format. No regulation that will appear in the Code will be accepted unless submitted in a format that can be read by equipment used by the Secretary.
- (6) Regulations shall be in conformance with the Secretary's policies as stated in the Regulations Manual.

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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 the draft of the proposed regulation in machine compatible format. The Secretary shall prepare the regulation as it will appear in the Register and Code and return the proposed draft regulation to the agency for verification.

(2) After Public Hearing/Comment. An agency shall file the following with the Secretary:

- (a) A completed *Filing and Publication Form* which includes 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 understand-able to the public;
 4. A statement of the impact on small businesses which includes:
 - a. a description of reporting, record keeping and other compliance requirements,
 - b. the appropriateness of performance versus design standards,
 - c. whether the regulation duplicates or conflicts with any other regulations;
 5. The name and phone number of the agency person to be contacted for further information;
 6. 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;
 7. An attestation; and
 8. Any other information required by the Secretary.
- (b) A copy of the draft regulation clearly marked to show any changes.

(3) Where and When to File. Regulations may be filed with the Secretary at the Massachusetts Regulations Division at Room 1613, One Ashburton Place, Boston, between the hours of 8:45 A.M. and 5:00 P.M. weekdays. The Register is published bi-weekly on Fridays. The deadline for filing regulations for publication in the Register is 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*.

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 insure 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.

20.05: continued

- (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 CMR.

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 before an agency files 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, 6A.

EXECUTIVE ORDER NO. 145
CONSULTATION WITH CITIES & TOWN 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.

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.

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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 Commission, Massachusetts (702 CMR)
Alcoholic Beverages Control Commission (204 CMR)
Allied Health Professionals, Board of Registration of (259 CMR)
Allied Mental Health Professionals, Board of Registration of (262 CMR)
Appellate Tax Board (831 CMR)
Architects, Board of Registration of (231 CMR)
Architectural Access Board (521 CMR)
Arts Lottery Council (962 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)
Blind, Massachusetts Commission for the (111 CMR)
Boiler Rules, Board of (522 CMR)
Boxers' Fund Board (529 CMR)
Boxing Commission, State (523 CMR)
Building Regulations and Standards, State Board of (780 CMR)

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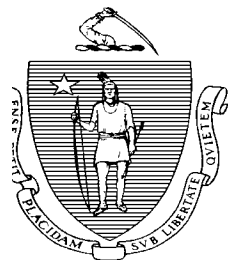
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