

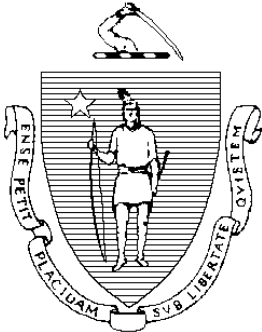
The

Massachusetts

Register

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

\$15.00



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

The Massachusetts Register
TABLE OF CONTENTS

Page

THE GENERAL COURT

Acts and Resolves 1

DIVISION OF MARINE FISHERIES

Notice of Fishery Closure: 2022 Commercial Tautog Fishery 3

Notice of Fishery Closure: 2022 Commercial Atlantic Sea Herring Fishery in
Management Area 1A 5

ADMINISTRATIVE PROCEDURES

Notices of Public Review of Prospective Regulations 7

Cumulative Table 51

Notice of Expiration of Emergency Regulations -

Emergency Regulations 61

Permanent Regulations 71

Future Date Regulations -

Notice of Expiration of Emergency Regulations

There is no Notice of Expiration of Emergency Regulations

Emergency Regulations

101 CMR	Executive Office of Health and Human Services	
204.00	Rates of Payment to Resident Care Facilities	61
	<i>Provides increased funding to rest homes in order to ensure that rest homes remain adequately funded for the current rate year.</i>	
206.00	Standard Payments to Nursing Facilities - Correction	63
514.00	Hospital Assessment	65
	<i>Facilitates collection and administration of the new hospital assessment structure established through the FY23 GAA.</i>	
614.00	Health Safety Net Payments and Funding	67
	<i>Necessary conforming edits accompanying the new hospital assessment regulation, 101 CMR 514.00, which implements the new hospital assessment structure. The hospital assessment went into effect on October 1, 2022, per statutory requirement.</i>	
807 CMR	Teachers' Retirement Board	
13.00	Transfer of Membership of RetirementPlus Members	69
	<i>Brings certainty and definiteness to the requirements of M.G.L. c. 32, § 5(4) and St. 2022, c. 134, governing the elections regarding the enhanced superannuation retirement plan, "RetirementPlus", provided in that statute for Transferees. Specifically, the purpose is to clarify the election opportunities available to: (1) members transferring into the Massachusetts Teachers' Retirement System (MTRS) whether they have already made an election regarding RetirementPlus, or who have failed to do so; (2) members who have taken refunds; (3) members transferring out of the MTRS, consistent with the statutory requirement that all such elections be irrevocable; and (4) members who are mandatory RetirementPlus participants who transfer out of the MTRS.</i>	

Permanent Regulations

101 CMR	Executive Office of Health and Human Services	
446.00	COVID-19 Payment Rates for Certain Community Health Care Providers	71
	<i>Governs the payment rates paid by MassHealth and other governmental purchasers for certain COVID-19-related community health care services rendered to publicly aided individuals by providers.</i>	

103 CMR	Department of Correction	
481.00	Inmate Mail	73
	<i>Establishes rules governing the sending and receiving of mail by inmates confined in state correctional institutions. The Department of Correction (Department or DOC) recognizes the importance of the use of mail by inmates to maintain appropriate contact with the community.</i>	
310 CMR	Department of Environmental Protection	
9.00	Waterways	75
	<i>Protects and promotes the public's interest in tidelands, Great Ponds, and non-tidal rivers and streams. Ratifies and confirms MassDEP approval of 16 previously approved Municipal Harbor Plans in response to a July 2022 Massachusetts Supreme Judicial Court decision.</i>	
555 CMR	Peace Officer Standards and Training Commission	
6.00	Use of Force by Law Enforcement Officers - <i>Compliance</i>	79
603 CMR	Department of Elementary and Secondary Education	
49.00	Notification of Bullying or Retaliation	81
	<i>Governs the requirements related to the duty of the principal or leader of a public school, approved private day or residential school, collaborative school, or charter school to notify the parents or guardians of a target and an aggressor (when the aggressor is a student) when there is an incident of bullying or retaliation, and to notify the local law enforcement agency when criminal charges may be pursued against the aggressor. Conforms the regulatory definition of bullying to the statutory definition in M.G.L. c. 71, § 37O, as amended by St. 2012, c. 38, § 72, and also makes non-substantive changes in formatting and numbering.</i>	
605 CMR	Board of Library Commissioners	
6.00	Library Improvement Program - Public Library Construction	83
	<i>Administers a program of grants in aid to municipalities of the Commonwealth for the planning, reconstruction, construction, design, acquisition of real property, renovation, preservation, rehabilitation, demolition or expansion costs of a facility to be used as a free public library under M.G.L. c. 78.</i>	
651 CMR	Executive Office of Elder Affairs	
12.00	Certification Procedures and Standards for Assisted Living Residences <i>Compliance</i>	85

830 CMR Department of Revenue

62C.00 State Tax Administration

87

830 CMR 62C.47A.2 explains the process regarding professional license non-issuance, suspension or revocation if it is determined that a licensee or license applicant or provider has neglected or refused to file any returns or to pay any taxes required under M.G.L. c. 62C. This regulation is being repealed as the process described in the current regulation is obsolete due to statutory and technology changes.

Acts 2022

CHAPTER NUMBER	BILL NUMBER	TITLE	DATE
235	H 4664	Authorizing the Town of Plainville to Grant an Additional License for the Sale of All Alcoholic Beverages Not to Be Drunk on the Premises.	10/12/2022
236	S 1596	Further Regulating Public Safety in the City of Somerville.	10/17/2022
237	H 4669	Authorizing the Town of Clinton to Grant an Additional License for the Sale of All Alcoholic Beverages Not to Be Drunk on the Premises.	10/17/2022
238	H 4665	Authorizing the City of Salem to Grant an Additional License for the Sale of Wine and Malt Beverages Not to Be Drunk on the Premises.	10/17/2022
239	H 4668	Authorizing the Town of Milford to Grant an Additional License for the Sale of Alcoholic Beverages Not to Be Drunk on the Premises.	10/17/2022
240	S3111	Authorizing the Town of Bernardston to Continue the Employment of Fire Department Member Lloyd Grover.	10/19/2022
241	H 3901	Authorizing the Town of Mendon to Establish a Means-tested Senior Citizen Property Tax Exemption.	10/19/2022
242	H 4275	Changing the Number of Members of the Insurance Advisory Committee for the Town of Milford.	10/19/2022
243	H 4556	Changing the Board of Selectmen of the Town of Milford to a Select Board.	10/24/2022
244	H 3023	Eliminating the Requirement for the Geriatric Authority to Make Payment to the Town of Milford in Lieu of Taxes.	10/27/2022
245	H 5045	Relative to Revere and Son Heritage Trust Corporation.	10/27/2022
246	H 4980	Authorizing the Leasing of a Certain Parcel of Land in the City of Gardner.	10/27/2022
247	H 2774	Further Regulating the Powers and Duties of the Fire Chief of the Ward Fire Department.	10/27/2022
248	H 4846	Separating the Positions of Town Clerk and Treasurer-Tax Collector in the Town of Deerfield.	10/31/2022
249	H 5156	Authorizing the Division of Capital Asset Management and Maintenance to Convey a Certain Parcel of Land to the School Department in the City of Westfield.	10/31/2022
250	H 5230	Establishing a Sick Leave Bank for Molly Urquhart, an Employee of the Department of Children and Families.	11/1/2022
251	H 2147	Abolishing the Permanent Intermittent Police Force in the City of Methuen.	11/1/2022

Acts 2022

CHAPTER NUMBER	BILL NUMBER	TITLE	DATE
252	H 4779	Establishing an Assistant Clerk of the City Council in the City of Methuen.	11/1/2022
253	S 3112	Authorizing the Town of Avon to Grant 1 Additional License for the Sale of All Alcoholic Beverages Not to Be Drunk on the Premises.	11/1/2022
254	H 4929	Relative to Step Therapy and Patient Safety.	11/1/2022
255	H 3117	Designating July 8 as Massachusetts Emancipation Day Also Know as Quock Walker Day.	11/1/2022
256	H 3756	Exempting the Positions of Police Chief and Police Captain in the City of Leominster from the Civil Service Law.	11/2/2022
257	S 3116	Authorizing the Town of Northfield to Establish the Grandin Water District.	11/3/2022
258	S 2575	Establishing a Special Fund for Recaptured Funds from Demolition Liens or Related Grants in the Town of Templeton.	11/7/2022
259	H 4559	Authorizing the Town of Shutesbury to Establish a Means-tested Senior Citizen Property Tax Exemption.	11/7/2022
260	S 2503	Authorizing the City of Fall River Housing Authority to Convey a Certain Parcel of Land to Southcoast Hospitals Group, Inc.	11/10/2022
261	H 3997	Providing for the Appointment and Removal Authority of the Town Administrator of the Town of Wilbraham.	11/10/2022
262	H 4850	Exempting Certain Affordable Housing in the City of Worcester from Public Procurement Laws.	11/10/2022
263	H 5094	Providing for Provisional Licensure for Speech-Language Pathologists.	11/10/2022
264	H 4717	Authorizing the Town of Middlefield to Continue the Employment of Rondal Radwich.	11/10/2022
265	H 4871	Authorizing the City of Newburyport to Continue the Employment of Police Officer Charles Vorderis.	11/10/2022
266	H 3378	Expanding Membership Opportunities in Local Cultural Councils.	11/10/2022
267	H 4690	Amending the Charter of the City of Methuen.	11/10/2022
268	H 5374	Relating to Economic Growth and Relief for the Commonwealth.	11/10/2022



The Commonwealth of Massachusetts

Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114

p: (617) 626-1520 | f: (617) 626-1509

www.mass.gov/marinefisheries



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

BETHANY A. CARD
Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

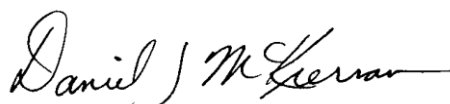
NOTICE OF FISHERY CLOSURE

2022 COMMERCIAL TAUTOG FISHERY

Pursuant to the notice and public comment requirements of G.L. c. 30A, §3 and under the authority of G.L. c. 130, §§ 17A, 21 and 80 and 322 CMR §§ 6.41(2)(c) and 7.01(7), the Commonwealth's 2022 commercial tautog quota, as established at 322 CMR § 6.40(2), is projected to be taken on Sunday, October 30, 2022. In accordance with 322 CMR §6.40(5)(d), the 2022 commercial tautog fishery in Massachusetts will be closed effective 0001 hours on Monday, October 31, 2022.

The commercial tautog fishery will remain closed through August 31, 2023. During this period, it shall be unlawful for any fisherman to possess or land tautog in a manner that does not conform with the recreational tautog limits at 322 CMR 6.40(4), or to offer for sale or sell any tautog. Additionally, pursuant to 322 CMR 7.07(5)(b), it is unlawful for seafood dealers, permitted in accordance with G.L. c. 130 § 80 and 322 CMR §7.01(3) to purchase or receive tautog from any fisherman during this closed period.

Dated: October 28, 2022

By: 

Daniel J. McKiernan, Director



The Commonwealth of Massachusetts

Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114
p: (617) 626-1520 | f: (617) 626-1509
www.mass.gov/marinefisheries



CHARLES D. BAKER

Governor

KARYN E. POLITO

Lt. Governor

KATHLEEN A. THEOHARIDES

Secretary

RONALD S. AMIDON

Commissioner

DANIEL J. MCKIERNAN

Director

NOTICE OF FISHERY CLOSURE:

2022 COMMERCIAL ATLANTIC SEA HERRING FISHERY IN MANAGEMENT AREA 1A

The directed Atlantic sea herring fishery in Management Area 1A is projected to have harvested its 2022 Atlantic sea herring quota allocation, as established at 322 CMR §9.01. Accordingly, pursuant to the notice and public comment requirements at G.L. c. 30A, §3 and under the authority of G.L. c. 130, §§ 2, 17A, 21, and 80, and 322 CMR §§ 6.41(2)(c), 7.01(7), and 9.03(3), the directed Atlantic sea herring fishery in Management Area 1A is closed effective at 1800 hours (6PM Eastern Standard Time) on Monday, November 7, 2022. The directed Atlantic sea herring fishery will remain closed through the remainder of the calendar year.

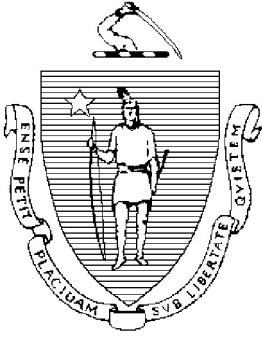
The incidental catch and small-scale fishery allowance during closed periods, as established at 322 CMR 9.05(4), allows vessels to retain, possess, and land up to 2,000 pounds of Atlantic sea herring taken from Management Area 1A during a quota closure. This allowance applies per calendar day or per trip, whichever duration of time is longer. Vessels may transit Management Area 1A during a quota closure in possession of non-conforming quantities of Atlantic sea herring, provided all fish was lawfully caught outside of Management Area 1A and all gear is stowed in a manner that is unavailable for immediate use.

This quota closure also applies to seafood and bait dealers, authorized in accordance with G.L. c. 130, §80 and 322 CMR §§7.01(3) and 7.07(3), to purchase Atlantic sea herring directly from commercial fishers. In accordance with 322 CMR §§7.01(7), 7.07(5)(b), and 9.05, and except as otherwise authorized, seafood and bait dealers are prohibited from purchasing or receiving more than 2,000 pounds of Atlantic sea herring from any commercial fisher or vessel during any calendar day from a fishing trip occurring within Management Area 1A.

Dated: November 7, 2022

By:

Daniel J. McKiernan, Director



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

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

November 25, 2022

Elementary and Secondary Education, Department of	603 CMR 7.00	Deadline for public comment submission is 1/3/23 by 5:00 P.M.
Fire Prevention Regulations, Board of	527 CMR 12.00	12/14/22 @ 10:00 A.M. Comments must be received no later than 12/13/22 by 4:00 P.M.
Health and Human Services, Executive Office of	101 CMR 31.00	12/9/22 @ 10:00 A.M. Written testimony accepted until 12/9/22 @ 5:00 P.M.
	101 CMR 204.00	12/2/22 @ 9:00 A.M. Written testimony accepted through 12/2/22 @ 5:00 P.M.
	101 CMR 514.00 & 614.00	12/2/22 @ 1:00 P.M. Written testimony accepted until 12/2/22 @ 5:00 P.M.
Insurance, Division of	211 CMR 59.00 *Editor's Notice of Correction: Originally published in MA Register #1482 as chapter 46.00. Now corrected to chapter 59.00.	12/1/22 @ 11:00 A.M. Written comments accepted until 12/8/22 @ 5:00 P.M.
Peace Officer Standards and Training Commission	555 CMR 8.00	12/6/22 from 10:00 A.M. - 12:00 P.M. Comments will be received until 12/6/22 @ 5:00 P.M.
	555 CMR 10.00	12/6/22 from 10:00 A.M. - 12:00 P.M. Comments accepted until 12/6/22 @ 5:00 P.M.

Public Health, Department of	105 CMR 171.000	12/5/22 @ 2:00 P.M. All comments accepted until 12/7/22 by 5:00 P.M.
Public Safety and Security, Executive Office of	501 CMR 8.00	12/2/22 from 10:00 A.M. - 12:00 P.M. Comments accepted until 12/16/22 @ 5:00 P.M.
Registry of Motor Vehicles	540 CMR 2.00 & 23.00	12/2/22 @ 11: 00 A.M. Written comments accepted until 12/2/22 by 8:00 P.M.



Jeffrey C. Riley
Commissioner

Massachusetts Department of Elementary and Secondary Education

75 Pleasant Street, Malden, Massachusetts 02148-4906

Telephone: (781) 338-3000
TTY: N.E.T. Relay 1-800-439-2370

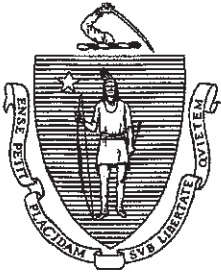
NOTICE OF PUBLIC COMMENT

Pursuant to its authority under M.G.L. c. 69, § 1B, and c. 71, § 38G, and in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, the Massachusetts Board of Elementary and Secondary Education is soliciting public comment on proposed amendments to 603 CMR 7.00, Educator Licensure and Preparation Program Approval Regulations.

The proposed amendments would:

- Extend the Pilot of Alternative Assessments by one year through June 30, 2025, and update language regarding the pilot period;
- Add a new Provisional license option for Principals/Assistant Principals;
- Add a new Military Spouse license, per M.G.L. c. 71, § 38G;
- Create a new option for out-of-state candidates to meet the Sheltered English Immersion endorsement requirement; and
- Streamline and update other references within the regulations.

Copies of the proposed amendments are available on the Department's website at <http://www.doe.mass.edu/lawsregs/>, or by calling 781-338-6220. The Department has issued a survey to collect public comment that is available [here](#). In addition, written comments on the proposed amendments may be submitted by mail to: Educator Effectiveness, Department of Elementary and Secondary Education, 75 Pleasant Street, Malden, MA 02148, by fax to: 781-338-3395, or by e-mail to: edprep@doe.mass.edu (please include "Public Comment" in the subject line). The deadline for submission of public comment is January 3, 2023, by 5:00 p.m. The Board is expected to vote on the proposed amendments at its regular monthly meeting scheduled for February 28, 2023.



Massachusetts Department of Elementary and Secondary Education

75 Pleasant Street, Malden, Massachusetts 02148-4906

Telephone: (781) 338-3000
TTY: N.E.T. Relay 1-800-439-2370

Small Business Impact Statement Pursuant to M.G.L. c. 30A, §2

This statement accompanies the filing by the Department of Elementary and Secondary Education of the proposed amendments to 603 CMR 7.00 Educator Licensure and Preparation Program Approval Regulations.

The proposed amendments would:

- Extend the Pilot of Alternative Assessments by one year through June 30, 2025, and update language regarding the pilot period;
- Add a new Provisional license option for Principals/Assistant Principals;
- Add a new Military Spouse license, per M.G.L. c. 71, § 38G;
- Create a new option for out-of-state candidates to meet the Sheltered English Immersion endorsement requirement; and
- Streamline and update other references within the regulations.

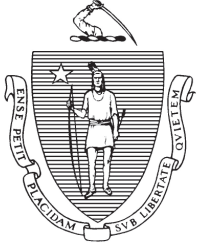
1. The proposed amendments do not affect small businesses.
2. Since the proposed amendments do not affect small businesses, the following considerations are not applicable:
 - a. Reporting, record keeping or other administrative costs required of small businesses for compliance associated with the amendments.
 - b. Appropriateness of performance standards vs. design standards.
 - c. Regulations of this agency or any other state agency, which may duplicate or conflict with the proposed amendments.
 - d. Analysis of whether the proposed amendments are likely to deter or encourage the formation of new business in the state.

Submitted by:

Rhoda E. Schneider

Rhoda E. Schneider, on behalf of the Department of Elementary and Secondary Education

Date: 11/9/22



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LT. GOVERNOR

TERRENCE M. REIDY
SECRETARY

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Department of Fire Services

P.O. Box 1025 ~ State Road

Stow, Massachusetts 01775

(978) 567~3100 Fax: (978) 567~3121

www.mass.gov/dfs



PETER J. OSTROSKY
STATE FIRE MARSHAL

Notice of Public Hearing
Board of Fire Prevention Regulations
Massachusetts Electrical Code

In accordance with M.G.L. c. 22D, s. 4; c. 148, s.10; c.30A, s.2 and s.3 and c. 143, s. 3L, notice is hereby given of a public hearing to be held by the Board of Fire Prevention Regulations (BFPR) at the Department of Fire Services, State Road, Stow, MA., in A-117 on **Wednesday, December 14, 2022 at 10:00 a.m.** for the purpose of hearing public comment on proposed amendments to the Massachusetts Electrical Code (527 CMR 12.00), including the adoption of the National Electrical Code (NFPA 70, 2023 Edition), with amendments particular to Massachusetts. 527 CMR 12.00 establishes standards for the installation, maintenance and repair of electrical wires, fixtures, equipment and related items throughout the Commonwealth. The proposed regulation adopts nationally recognized standards and assures that the Commonwealth promulgates regulations that keep up with industry advancements and assures the highest level of public safety. Written or oral comments may be submitted at the time and place of the hearing. One may also submit written comments by mailing or e-mailing comments to Mary Ann Smith, Executive Director of the Board of Fire Prevention Regulations (MaryAnn.E.Smith@mass.gov) P.O. Box 1025, State Rd, Stow, MA 01775 (Tel. 978-567-3713). To be considered by the Board, mailed or emailed comments must be received no later than 4:00 p.m., **Tuesday, December 13, 2022.** Copies of the proposed regulations are also available on the BFPR's web page at: <https://www.mass.gov/doc/527-cmr-1200-amendment-package/download>

Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 527 CMR 12.00, Massachusetts Electrical Code

Estimate of the Number of Small Businesses Impacted by the Regulation:

Undetermined number. The Massachusetts State Electrical Code establishes standards for the installation, maintenance and repair of electrical wires, fixtures, equipment and related items throughout the Commonwealth. The proposed technical code amendments, for cost or impact purposes, do not impact, focus or target any industry, business or group in particular since the scope and applicability of the regulation applies to all new electrical installations or related maintenance activity conducted throughout the state. It is noted that the proposed amendments reflect technical amendments made to the base NFPA 70. These amendments are, in large part, corrective in nature and/or provide more detail or clarity to existing technical installation methods, thus improving the code for the end users.

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? No additional requirements from current Electrical Code.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No additional requirements for this proposal.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No additional administrative requirements for this proposal.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? No new or additional requirements for this proposal.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? No new or additional requirements for this proposal.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? The code applies to all new electrical installations throughout the Commonwealth and does not focus, with particularity on any one or set of small business categories. These amendments are, in large part, corrective in nature or provide more detail or clarity to existing technical installation methods installations and in some instances eliminate unnecessary/redundant requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.)

		Due to the Massachusetts statutes in this regard and the technical nature of these amendments and related subject matter, the proposed amendments represent the best and proven method to achieve the desired public safety objective.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? The proposed amendments to the code are the product of specialized committees, at both the national and state level, representing a cross section of individuals from the building and specialized code trades.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? This set of amendments require no new or additional requirements to the current code. It should be noted that the code does not impact, focus or target any industry, business or group in particular, since the scope and applicability of the regulation applies to all new electrical related installations conducted throughout the state.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? These amendments add no new or additional educational requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? Since the proposed revised 527 CMR 12.00 is based on the National Electrical Code which is adopted on a national basis, the proposed regulation, as well as these proposed amendments should be very familiar to those “out of state” persons and/or entities who may be considering conducting business in the Commonwealth. This predictability tends to foster and encourage growth of new businesses
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? Since 527 CMR 12.00 is based on the National Electrical Code which is applied on a national basis, the regulation and the associated proposed amendments are familiar to those out of state persons and/or entities who may be considering conducting business in the Commonwealth. Using the National Code in Massachusetts allows for more predictable considerations while making business decision which tends to encourage and foster the growth of new small businesses in the Commonwealth.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? The proposed amendments do not add additional requirements to the current code. It should be noted that the code does not impact, focus or target any industry, business or group in particular, since the scope and applicability of the regulation applies to all new electrical related installations conducted throughout the state.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? The proposed regulation does not establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses from those already established in the present code.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? The agency did not consolidate or simplify compliance or reporting requirements for small businesses. The code and associated proposed amendments are the minimal standards based upon industry practice and technology and its compliance and enforcement methods are established by state law.

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective?</p> <p>Due to the related Massachusetts statutes and the technical and specific nature of the subject matter of the code, there is minimal opportunity for performance based standards.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Are there alternative regulatory methods that would minimize the adverse impact on small businesses?</p> <p>There are no known methods that would minimize impact without jeopardizing public safety.</p>

**Commonwealth of Massachusetts
Executive Office of Health and Human Services**

NOTICE OF PUBLIC HEARING

Pursuant to the authority of M.G.L. c. 6A, section 16 and in accordance with M.G.L. c. 30A, a remote public hearing will be held on December 9, 2022, at 10:00 a.m. relative to the adoption of

101 CMR 31.00: Administration and Enforcement of the Loan Repayment Assistance Program

The proposed adoption of 101 CMR 31.00: *Administration and Enforcement of the Loan Repayment Assistance Program* will implement standards and requirements relating to the administration and enforcement of the loan repayment assistance program for health and human service workers in the Commonwealth. The proposed rule will also allow EOHHS to employ one or more contractors to administer the program. It also sets processes for suspending or waiving service requirements and enforcing repayment if service requirements are breached.

The regulatory changes are proposed to go into effect no sooner than March 3, 2023. There is no fiscal impact on cities and towns.

If you would like to testify at the hearing, please register online at www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings. To join the hearing online, go directly to [EHS Public Hearings Meeting Room](#). Alternatively, go to <https://zoom.us/join> and enter meeting ID 935 397 8200 and passcode 800606. To join the hearing by phone, call (646) 558-8656 and enter meeting ID 935 397 8200# when prompted.

You may also submit written testimony instead of, or in addition to, live testimony. To submit written testimony, please email your testimony to ehs-regulations@mass.gov as an attached Word or PDF document or as text within the body of the email with the name of the regulation in the subject line. All written testimony must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit testimony by email should mail written testimony to EOHHS, c/o D. Briggs, 100 Hancock Street, 6th Floor, Quincy, MA 02171. Written testimony must be submitted by 5:00 p.m. on December 9, 2022. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care.

To review the emergency regulations, go to www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings or request a copy in writing from MassHealth Publications, 100 Hancock Street, 6th Floor, Quincy, MA 02171.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at ADAAccommodations@state.ma.us or by phone at (617) 847-3468 (TTY: (617) 847-3788 for people who are deaf, hard of hearing, or speech disabled). Please allow two weeks to schedule sign language interpreters.

EOHHS may adopt a final, revised version of the emergency regulation taking into account relevant comments and any other practical alternatives that come to its attention.

In case of inclement weather or other emergency, hearing cancellation announcements will be posted on the MassHealth website at www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings.

November 18, 2022

Small Business Impact Statement
(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 101 CMR 31.00: Administration and Enforcement of the Loan Repayment Assistance Program

Estimate of the Number of Small Businesses Impacted by the Regulation: EOHHS does not expect small businesses to be directly impacted; instead the regulation will implement standards around the administration and enforcement of the loan repayment assistance program for individual awardees.

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? No. Small businesses will not have to create, file, or issue additional reports as a result of the proposed regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No. Small businesses will not have additional responsibilities to keep records as a result of the proposed regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No. Small businesses are not required by this regulation to provide additional administrative oversight as a result of the proposed regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? No. This regulation does not require small businesses to hire additional employees to remain in compliance.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? No. Small businesses are not required by this regulation to hire other professionals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? No. This regulation does not require small businesses to purchase any particular product or make any capital investments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) No. The regulation is required by statute under Chapter 102 of the Acts of 2021 and Chapter 24 of the Acts of 2021.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No. No regulations duplicate or conflict with this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?

		No. The regulation does not require small businesses to periodically comply with audits, inspections, and other regulatory activities.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? No. The regulation does not require small businesses to provide educational services to keep up to date with the regulatory requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? No. The regulation is not likely to deter or encourage the formation of small businesses in Massachusetts as this regulation will implement standards around the administration and enforcement of the loan repayment assistance program for individual awardees.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? No. The regulation is not likely to deter or encourage the formation of small businesses in Massachusetts as this regulation will implement standards around the administration and enforcement of the loan repayment assistance program for individual awardees.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No. The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? No. The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No. The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? No. The regulation establishes uniform standards around the administration and enforcement of the loan repayment assistance program for individual awardees. These requirements are applied uniformly to maintain consistency.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? No. The regulation does not have an adverse impact on small businesses.

**Commonwealth of Massachusetts
Executive Office of Health and Human Services**

NOTICE OF PUBLIC HEARING

Pursuant to the authority of M.G.L. c. 118E and in accordance with M.G.L. c. 30A, a remote public hearing will be held on Friday, December 2, 2022, at 9:00 a.m. relative to the emergency adoption of amendments to

101 CMR 204.00: Rates of Payment to Resident Care Facilities.

The amendments, proposed to be effective December 1, 2022, were calculated according to the following methodology.

- Update the base year from 2019 to 2020.
 - Calculate allowed variable, fixed cost, equity, and working capital per diems using 2020 costs.
 - Cap variable costs at the 85th percentile, or \$148.06. With a 13.57% cost adjustment factor (CAF) applied, the cap is at \$168.15.
 - Fixed cost and equity components are limited to the amounts described in 101 CMR 204.08(2)(a)1.d.
 - The methodology used to set the proposed rates applies a 90% occupancy standard when calculating per diem costs.
- For each rest home, the preliminary rate is the sum of the components listed above.
- For each rest home, calculate its DTA days percentage by dividing its DTA days by the facility's total resident days, based on the 2020 cost report. The facility's DTA days percentage adjustment is equal to its DTA days percentage multiplied by \$13.28.
- For each rest home that had residents who were receiving MassHealth-covered GAFC services as of October 15, 2020, the proposed GAFC adjustment is equal to the GAFC adjustment the facility is receiving on November 30, 2022.
- For each rest home, calculate a new rate, effective December 1, 2022, equal to the greater of
 - the sum of the preliminary rate, the DTA days percentage adjustment, the GAFC adjustment, and a resident care add-on of \$8.00;
 - the sum of the facility's certified rate in effect on November 30, 2022, and a resident care add-on of \$8.00; or
 - \$95.
- If the rate calculated above exceeds the current rate effective November 30, 2022, plus \$34, the facility will receive a negative adjustment such that the new rate effective December 1, 2022, will be equal to the current rate effective November 30, 2022, plus \$34.
- For rates effective December 1 through December 31, 2022, apply an annualization adjustment of 493.55% of the difference between the new rate and the current rate, to cover the 153 days from July 1 through November 30, 2022.

The amendments to the regulation also describe a Resident Care Cost Quotient (RCC-Q). Beginning in SFY2023, facilities must have an RCC-Q of at least 80%. A downward rate adjustment may be applied in future rate years to facilities that failed to meet the RCC-Q threshold of 80%.

The proposed amendments to 101 CMR 204.00, in conjunction with amendments to residential care unit rates established at 101 CMR 206.00: *Standard Payments to Nursing Facilities*, meet FY23 state budget appropriation requirements. The proposed amendments to 101 CMR 204.00 will result in an approximate annual increase of \$9.93 million to eligible resident care providers. Due to the annualization adjustment, the full \$9.93 million in fiscal impact is expected to be realized in FY2023.

The proposed amendments contain rates effective for dates of service on or after December 1, 2022. There is no fiscal impact on cities and towns.

To register to testify at the hearing and to get instructions on how to join the hearing online, go to www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings. To join the hearing by phone, call (646) 558-8656 and enter meeting ID 935 397 8200# when prompted.

You may also submit written testimony instead of, or in addition to, live testimony. To submit written testimony, please email your testimony to ehs-regulations@mass.gov as an attached Word or PDF document or as text within the body of the email with the name of the regulation in the subject line. All written testimony must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit testimony by email should mail written testimony to EOHHS, c/o D. Briggs, 100 Hancock Street, 6th Floor, Quincy, MA 02171. Written testimony will be accepted through 5:00 p.m. on Friday, December 2, 2022.

To review the current draft of the regulation, go to www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings or request a copy in writing from MassHealth Publications, 100 Hancock Street, 6th Floor, Quincy, MA 02171. To view or download supporting materials, go to www.mass.gov/service-details/proposed-regulations-supporting-materials.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at ADAaccommodations@mass.gov or by phone at (617) 847-3468 (TTY: (617) 847-3788 for people who are deaf, hard of hearing, or speech disabled). Please allow two weeks to schedule sign language interpreters.

EOHHS may adopt a final, revised version of the proposed action taking into account relevant comments and any other practical alternatives that come to its attention.

In case of inclement weather or other emergency, hearing cancellation announcements will be posted on the MassHealth website at www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings.

November 11, 2022

Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 101 CMR 204.00: Rates of Payment to Resident Care Facilities

Estimate of the Number of Small Businesses Impacted by the Regulation: 60

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? The regulation does not establish new reporting requirements for resident care facilities.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? The regulation does not require additional recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? The regulation does not require additional administrative oversight.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? Compliance does not require hiring additional employees.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? Compliance does not require hiring other professionals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? The regulation does not require purchases or capital investments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design or operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) Performance standards are not more appropriate than design or operational standards.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No other regulations duplicate or conflict with the proposed regulation.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? All resident care facilities using the rates under the regulation are subject to audit, if determined necessary by EOHHS, and the regulation amendment explicitly acknowledges such audit power. The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? The regulation does not require small businesses to provide educational services to keep up to date with regulatory requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? The regulation establishes new and updated payment methodologies for providers and is unlikely to deter or encourage the formation of small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? The regulation establishes new and updated payment methodologies for providers and is unlikely to deter or encourage the formation of small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?

		The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? Distinguishing small businesses from other businesses would not be practicable for this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? Payment methodologies for resident care facilities are required by statute to be established through regulation.

**Commonwealth of Massachusetts
Executive Office of Health and Human Services**

NOTICE OF PUBLIC HEARING

Pursuant to the authority of M.G.L. c. 118E and in accordance with M.G.L. c. 30A, a remote public hearing will be held on Friday, December 2, 2022, at 1 p.m. relative to the emergency adoption of the following regulations.

1. 101 CMR 514.00: Hospital Assessment. 101 CMR 514.00 is a new regulation that is intended to facilitate the collection and administration of the new hospital assessment structure, which was established via the FY23 GAA and approved by the Centers for Medicare & Medicaid Services effective October 1, 2022.

101 CMR 514.00 defines the hospital groups paying the assessment, the rate payments for each group, penalty and enforcement provisions for late payments, requirements to comply with audits or requests for information, and provisions explaining how EOHHS will address new, closing, merging, or acquired/acquiring hospitals.

2. 101 CMR 614.00: Health Safety Net Payments and Funding. Updates to 101 CMR 614.00 are needed to remove and reserve existing provisions for administering the previous uniform and broad-based hospital assessment. These provisions are no longer applicable and are replaced by the new regulations at 101 CMR 514.00.

These regulations were filed as emergencies on November 3, 2022. There is no fiscal impact on cities and towns.

To register to testify at these hearings and to get instructions on how to join the hearings online, go to www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings. To join the hearings by phone, call (646) 558-8656 and enter meeting ID 935 397 8200# when prompted.

You may also submit written testimony instead of, or in addition to, live testimony. To submit written testimony, please email your testimony to ehs-regulations@mass.gov as an attached Word or PDF document or as text within the body of the email with the name of the regulation in the subject line. All written testimony must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit testimony by email should mail written testimony to EOHHS, c/o D. Briggs, 100 Hancock Street, 6th Floor, Quincy, MA 02171. Written testimony will be accepted through 5:00 p.m. on Friday, December 2, 2022. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care.

To review the emergency regulations, go to www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings or request a copy in writing from MassHealth Publications, 100 Hancock Street, 6th Floor, Quincy, MA 02171.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at ADAAccommodations@mass.gov or by phone at (617) 847-3468 (TTY: (617) 847-3788 for people who are deaf, hard of hearing, or speech disabled). Please allow two weeks to schedule sign language interpreters.

EOHHS may adopt a final, revised version of the emergency regulations taking into account relevant comments and any other practical alternatives that come to its attention.

In case of inclement weather or other emergency, hearing cancellation announcements will be posted on the MassHealth website at www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings.

November 10, 2022

Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 101 CMR 514.00: Hospital Assessment

Estimate of the Number of Small Businesses Impacted by the Regulation: There are approximately 87 hospitals subject to the updated assessment.

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? The regulation implements the new hospital assessment structure established through chapter 126 of the acts of 2022 (the FY23 GAA). The hospital assessment primarily relies on existing reporting requirements but requires additional reporting/document production upon EOHHS' request EOHHS, for example, to aid in data verification.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? The regulation does not require small businesses to implement additional recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? The regulation does not require additional administrative oversight.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? Compliance does not require hiring additional employees.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? Compliance does not require hiring other professionals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? The regulation does not require purchases or capital investments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design or operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) Performance standards are not more appropriate than design or operational standards.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No other regulations duplicate or conflict with the proposed regulation.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? The regulation requires all hospitals to comply with audits and produce records requested by EOHHS. The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? The regulation does not require small businesses to provide educational services to keep up to date with regulatory requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? The regulation establishes a broad-based health care related tax on hospitals in Massachusetts, and is unlikely to encourage or deter the formation of small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? The regulation establishes a broad-based health care related tax on hospitals in Massachusetts, and is unlikely to encourage or deter the formation of small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? The regulation does not distinguish between small and other businesses.

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? Distinguishing small businesses from other businesses would not be practicable for this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? The regulations are required by statute to administer the new hospital assessment structure, established by the FY23 GAA.

Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 101 CMR 614.00: Health Safety Net Payments and Funding

Estimate of the Number of Small Businesses Impacted by the Regulation: There are approximately 87 hospitals subject to the updated assessment.

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? The amendments do not require the regulated party to create, file, or issue additional reports.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? The amendments do not require small businesses to implement additional recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? The amendments do not require additional administrative oversight.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? Compliance does not require hiring additional employees.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? Compliance does not require hiring other professionals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? The amendments do not require purchases or capital investments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design or operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) Performance standards are not more appropriate than design or operational standards.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No other regulations duplicate or conflict with the proposed regulation.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? The amendments do not implement additional requirements with respect to with audits or inspections. The regulated party is already required to cooperate with audits and produce records requested by EOHHS. The amendments do not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? The amendments do not require small businesses to provide educational services to keep up to date with regulatory requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? The amendments are unlikely to encourage or deter the formation of small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? The amendments are unlikely to encourage or deter the formation of small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? The amendments do not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? The amendments do not distinguish between small and other businesses.

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? The amendments do not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? Distinguishing small businesses from other businesses would not be practicable for this regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? The amendments are necessary corresponding changes to accompany new regulations required by statute to administer the new hospital assessment structure, established by the FY23 GAA.



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF INSURANCE

1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
<http://www.mass.gov/doi>

MIKE KENNEALY
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

EDWARD A. PALLESCHI
UNDERSECRETARY

GARY D. ANDERSON
COMMISSIONER OF INSURANCE

NOTICE OF HEARING

Proposed Regulation 211 CMR 59.00 Docket No. G2022-06

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) under G.L. c. 175, § 20A, a public hearing will be held on December 1, 2022, at 11:00 a.m. to hear comments on proposed regulation 211 CMR 59.00, Term and Universal Life Insurance Reserve Financing. The hearing will be held virtually using TEAMS, a digital meeting program. A copy of the proposed regulation is available for inspection upon request to the Division of Insurance (“Division”) at doidocket.mailbox@mass.gov and may be found on the Division’s website: <http://www.mass.gov/doi> under the Division of Insurance Public Hearings, Year 2022 Public Hearings page. It is accessible through the Insurance Regulatory Information link on the Division’s main page.

211 CMR 59.00 incorporates a model regulation developed by the National Association of Insurance Commissioners that each of its member jurisdictions must promulgate in order to remain accredited by that organization. Its stated purposes are to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed non-level gross premiums, guaranteed non-level benefits and universal life insurance policies with secondary guarantees; and to ensure that for each such financing arrangement funds consisting of Primary Security and Other Security are held by or on behalf of ceding insurers in the forms and amounts required by the regulation.

This proceeding has been designated as Docket No. G2022-06. Any person requesting to comment orally on the proposed regulation at the virtual hearing must submit to doidocket.mailbox@mass.gov a Notice of Intent to Comment no later than November 29, 2022, at 5:00 p.m. Any person requesting solely to attend the hearing must submit a request to register to doidocket.mailbox@mass.gov no later than 12:00 p.m. on November 30, 2022. Notices or requests must include the person’s name, telephone number and email address. An email with instructions for joining the hearing will be sent no later than 5:00 p.m. on November 30, 2022.

Any person who wishes to submit written comments on the proposed regulation may send a statement by electronic mail to doidocket.mailbox@mass.gov no earlier than 11:00 a.m. on December 1, 2022. Written comments may be submitted to that address by electronic mail no later than December 8, 2022, at 5:00 p.m. or such other date as ordered by the presiding officer. All notices and written statements must refer to DOI Docket No. G2022-06.

Dated: October 27, 2022

Gary D. Anderson
Commissioner of Insurance

Small Business Impact Statement
(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 211 CMR 59.00 – Term and Universal Life Insurance Reserve Financing

Estimate of the Number of Small Businesses Impacted by the Regulation: 0

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? No additional reports are required.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No additional recordkeeping procedures for small businesses are required.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No small businesses will have to provide additional administrative oversight.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? No small businesses will have to hire additional employees in order to comply with the proposed regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? No small businesses will have to hire other professionals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? No small businesses will have to purchase or make any other capital investments.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) This regulation was drafted in a performance standard manner when appropriate.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? There are no duplicate or conflicting regulations.

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? No small businesses will be required to cooperate with audits, inspections or other regulatory enforcement activities.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? No small businesses will have to provide any educational services.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? The regulation is unlikely to deter the formation of small businesses in Massachusetts.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? The regulation is unlikely to encourage the formation of small businesses in Massachusetts.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? The regulation does not provide for less stringent compliance or reporting requirements for small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? The regulation does not establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? The regulation does not affect compliance or reporting requirements for small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? The regulation was written with performances standards in mind when appropriate.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? There are no alternative regulatory methods that would minimize the adverse impact on small businesses.



MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

NOTICE OF PUBLIC HEARING

Pursuant to M.G.L. c. 30A, the Massachusetts Peace Officer Standards and Training Commission (the “Commission”) will conduct a public hearing to gather comments, ideas, and information concerning a proposed set of regulations, 555 CMR 8:00: *Databases and Dissemination of Information*.

CHAIR

Margaret R. Hinkle

COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

Summary of Proposed Regulations: The Massachusetts General Laws require the Commission to maintain a public database with certain forms of information concerning law enforcement officers, to publish various materials on its website, and to furnish certain records to members of the public upon request. At the same time, the General Laws direct the Commission to consider the health and safety of officers in developing its public database, require certain Commission information to be kept confidential, restrict the Commission and other state agencies from disclosing particular types of information, call for them to correct inaccurate records, and describe certain precautions they must take in maintaining data. The proposed regulations prescribe specific steps for the Commission to take in order to ensure that the Commission satisfies its obligations under these various laws, that critical information is made publicly available, and that non-disclosable and inaccurate information is treated appropriately.

EXECUTIVE DIRECTOR

Enrique A. Zuniga

Availability of Proposed Regulations: The proposed regulations are available on the Commission’s website at: <https://www.mass.gov/orgs/post-commission>. You may obtain a written copy by e-mailing a request to POSTC-comments@mass.gov or mailing a request to General Counsel Randall E. Ravitz, Massachusetts Peace Officer Standards and Training Commission, 100 Cambridge Street, 14th Floor, Boston, MA 02114.

Hearing Details: The hearing will be held virtually, using the Zoom platform, on Tuesday, December 6, 2022, from 10:00 a.m. to 12:00 p.m. All persons desiring to be heard on this matter should appear at that time. If you are interested in offering comments, you are encouraged, but not required, to pre-register by sending an email to POSTC-comments@mass.gov with a subject line stating, “Database and Dissemination Regulations.” To join via computer, click on the following link: <https://zoom.us/j/94604914089>. You may need to allow extra time to download Zoom. To join via telephone (audio only), dial 309-205-3325 and use the following conference ID: 946 0491 4089. Given the volume of comments anticipated, the Commission may limit a speaker’s time to five minutes. Attendees should dress and conduct themselves as if attending in person.

Submission of Comments: The submission of written comments or testimony in advance of the hearing is welcome and may be made by e-mail to POSTC-comments@mass.gov with a subject line stating, “Database and Dissemination Regulations” or by mail to General Counsel Randall E. Ravitz at the physical address listed above. Comments received after December 6, 2022 at 5:00 p.m. might not be considered.

100 Cambridge Street, 14th Floor
Boston, Massachusetts 02114

TEL: 617.701.8401

mass.gov/orgs/post-commission

Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 555 CMR 8.00

Estimate of the Number of Small Businesses Impacted by the Regulation: 0

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No X	Will small businesses have to create, file, or issue additional reports? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Will small businesses have to implement additional recordkeeping procedures? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Will small businesses have to provide additional administrative oversight? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Will small businesses have to hire additional employees in order to comply with the proposed regulation? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Do any other regulations duplicate or conflict with the proposed regulation? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? This regulation does not impact or regulate small businesses.

Yes <input type="checkbox"/>	No X	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? This regulation does not impact or regulate small businesses.



MASSACHUSETTS PEACE OFFICER STANDARDS & TRAINING COMMISSION

NOTICE OF PUBLIC HEARING

Pursuant to M.G.L. c. 30A, the Massachusetts Peace Officer Standards and Training Commission (the “Commission”) will conduct a public hearing to gather comments, ideas, and information concerning a proposed set of regulations, 555 CMR 10.00: *Specialized Certification for School Resource Officers*.

CHAIR

Margaret R. Hinkle

COMMISSIONERS

Hanya H. Bluestone

Lawrence Calderone

Clementina Chéry

Larry E. Ellison

Marsha V. Kazarosian

Charlene D. Luma

Kimberly P. West

Michael Wynn

EXECUTIVE DIRECTOR

Enrique A. Zuniga

Summary of Proposed Regulations: M.G.L. c. 6E, § 3(b) provides that the Commission may “issue a specialized certification for an individual acting, or intending to act, as a school resource officer,” as defined in M.G.L. c. 71 § 37P, and that “a person shall not be appointed as a school resource officer” “unless specially certified as such.” The proposed regulations set forth certain requirements, and certain procedures to be followed by law enforcement officers and the Commission, for this type of certification to be awarded. They also set forth procedures for the Commission to follow in denying or conditioning such a certification, and for applicants to follow in seeking review of any adverse decision.

Availability of Proposed Regulations: The proposed regulations are available on the Commission’s website at: <https://www.mass.gov/orgs/post-commission>. You may obtain a written copy by e-mailing a request to POSTC-comments@mass.gov or mailing a request to General Counsel Randall E. Ravitz, Massachusetts Peace Officer Standards and Training Commission, 100 Cambridge Street, 14th Floor, Boston, MA 02114.

Hearing Details: The hearing will be held virtually, using the Zoom platform, on Tuesday, December 6, 2022, from 10:00 a.m. to 12:00 p.m. All persons desiring to be heard on this matter should appear at that time. If you are interested in offering comments, you are encouraged, but not required, to pre-register by sending an email to POSTC-comments@mass.gov with a subject line stating, “School Resource Officer Regulations.” To join via computer, click on the following link: <https://zoom.us/j/94604914089>. You may need to allow extra time to download Zoom. To join via telephone (audio only), dial 309-205-3325 and use the following conference ID: 946 0491 4089. Given the volume of comments anticipated, the Commission may limit a speaker’s time to five minutes. Attendees should dress and conduct themselves as if attending in person.

Submission of Comments: The submission of written comments or testimony in advance of the hearing is welcome and may be made by e-mail to POSTC-comments@mass.gov with a subject line stating, “School Resource Officer Regulations” or by mail to General Counsel Randall E. Ravitz at the physical address listed above. Comments received after December 6, 2022 at 5:00 p.m. might not be considered.

Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

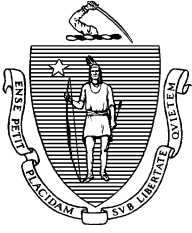
CMR No: 555 CMR 10.00

Estimate of the Number of Small Businesses Impacted by the Regulation: 0

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No X	Will small businesses have to create, file, or issue additional reports? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Will small businesses have to implement additional recordkeeping procedures? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Will small businesses have to provide additional administrative oversight? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Will small businesses have to hire additional employees in order to comply with the proposed regulation? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Do any other regulations duplicate or conflict with the proposed regulation? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? This regulation does not impact or regulate small businesses.

Yes <input type="checkbox"/>	No X	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? This regulation does not impact or regulate small businesses.



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

MARYLOU SUDDERS
Secretary

Margret R. Cooke
Commissioner

Tel: 617-624-6000
www.mass.gov/dph

NOTICE OF PUBLIC HEARING

Notice is hereby given pursuant to M.G.L. c. 30A, §2, that the Department of Public Health will hold a public hearing and comment period on proposed amendments to 105 CMR 171.000: *Massachusetts First Responder Training*. This regulation establishes training standards in first aid and cardiopulmonary resuscitation (CPR) for first responders, defined as certain police officers, firefighters and lifeguards. The proposed amendments modernize and streamline the regulation to align with current practice and national training standards.

The public hearing will be held on **December 5, 2022, at 2:00 p.m.** The hearing will be conducted on a **moderated conference call**. The information for the moderated conference call is:

Dial-in Telephone Number: 1-888-390-5007
Participant Passcode: 2833229

A copy of the proposed amendments to 105 CMR 171.000 may be viewed on the Department's website at <http://mass.gov/dph/proposed-regulations> or requested from the Office of the General Counsel by calling 617-624-5220.

The Department requests that speakers who testify at the public hearing also provide a written copy of their comments. The Department encourages all interested parties to submit comments to Reg.Testimony@mass.gov or to William Anderson, Office of the General Counsel, Department of Public Health, 250 Washington Street, Boston, MA 02108. All submissions must include the sender's full name and address.

When electronically submitting comments, type "OEMS –First Responder Training" in the subject line and attach a Word document with your comments or type your comments in the body of your email.

The Department will post on its website all testimony that complies with the instructions in this notice. **All comments must be submitted by 5:00 p.m. on December 7, 2022.** Comments received by the Department may be released in response to requests for public records.

If you are deaf, hard of hearing, or are a person with a disability who requires accommodation, please contact Marita Callahan at least 5 days before the hearing at Tel # 617-519-1410, an email addressed to Marita.Callahan@mass.gov, or TTY # 617-624-6001.

Small Business Impact Statement
(As required by M.G.L. c. 30A §§ 2, 3 & 5)

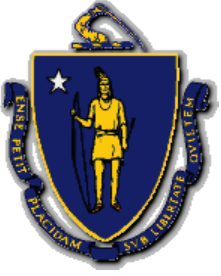
CMR No: 105 CMR 171.000

Estimate of the Number of Small Businesses Impacted by the Regulation: It is likely that some entities that employ first responders identify as a small business, but the exact number is not known.

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Will small businesses have to create, file, or issue additional reports?</p> <p><i>Small businesses will not have to create, file, or issue additional reports as a result of these proposed amendments.</i></p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Will small businesses have to implement additional recordkeeping procedures?</p> <p><i>Small businesses will have to maintain additional recordkeeping procedures as a result of these proposed amendments.</i></p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Will small businesses have to provide additional administrative oversight?</p> <p><i>Small businesses will not have to provide additional administrative oversight as a result of these proposed amendments.</i></p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Will small businesses have to hire additional employees in order to comply with the proposed regulation?</p> <p><i>Small businesses will not have to hire additional employees as a result of these proposed amendments.</i></p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?</p> <p><i>Compliance with the proposed amendments will not require small businesses to hire other professionals.</i></p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?</p> <p><i>The proposed amendments do not require small businesses to purchase a product or make any other capital investments.</i></p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.)</p> <p><i>The first responder training statute, MGL c. 111, section 201, mandates this regulation, as the statute leaves it to the Department to define the standards of this critical training.</i></p>

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? <i>Other regulations do not conflict or duplicate the proposed regulation.</i>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? <i>The regulation does not require small businesses to cooperate with audits or inspections.</i>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? <i>First responders are required to be compliant with training requirements, including continuing education.</i>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? <i>Proposed amendments to this regulation are not likely to deter or encourage the formation of small businesses in Massachusetts.</i>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? <i>Proposed amendments to this regulation are not likely to deter or encourage the formation of small businesses in Massachusetts.</i>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? <i>The proposed amendments to this regulation do not provide for less stringent compliance or reporting requirements for small businesses.</i>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? <i>The proposed amendments do not establish less stringent schedules or deadlines for compliance or reporting requirements.</i>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? <i>The proposed amendments do not consolidate or simplify compliance or reporting requirements for small businesses.</i>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? <i>The first responder training statute, MGL c. 111, section 201, mandates this regulation, as the statute leaves it to the Department to define the standards of this critical training.</i>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? <i>There are no alternative regulatory methods that would minimize adverse impact on small businesses.</i>



The Commonwealth of Massachusetts Executive Office of Public Safety and Security

One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775
TTY Tel: (617) 727-6618
Fax: (617) 727-4764
www.mass.gov/eopss

CHARLES D. BAKER
Governor

TERRENCE M. REIDY
Secretary

KARYN E. POLITO
Lt. Governor

NOTICE OF PUBLIC HEARING

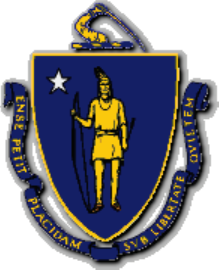
Under the provisions of M.G.L. c. 30A, the Executive Office of Public Safety and Security (“EOPSS”) will conduct a public hearing for the purposes of gathering comments, ideas, and information concerning proposed amendments to 501 CMR 8.00, which governs standards for the use of electronic control weapons in the Commonwealth.

Summary of Proposed Amendments: The Executive Office of Public Safety and Security is updating its regulation in response to chapter 253 of the Acts of 2020, “*An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth*,” commonly referred to as “police reform.” Police reform defined who qualifies as a “law enforcement officer” and requires standardized training and certification to perform police duties and functions. Police reform, as well changes in caselaw, necessitate updating 501 CMR 8.00.

Availability of Proposed Amendments: The amended regulations may be obtained by visiting EOPSS’s website at: <https://www.mass.gov/orgs/executive-office-of-public-safety-and-security>. A written copy of the amended regulations may be obtained by e-mailing a request to john.melander@mass.gov or by mailing a request to Deputy General Counsel John H. Melander, Jr., Executive Office of Public Safety and Security, One Ashburton Place, Suite 2133, Boston MA 02108.

Hearing Details: The hearing will be held virtually, using the Microsoft Teams platform, on December 2, 2022, from 10:00 a.m. to 12:00 p.m. To join via computer, click on the following link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzJhNjFkNGMtMDMxZS00MjJlTlkZGIYjExYTcwNDVmNzgz%40tHread.v2/0?context=%7b%22Tid%22%3a%223e861d16-48b7-4a0e-9806-8c04d81b7b2a%22%2c%22Oid%22%3a%22281c7f88-3318-4602-94e1-655072aca885%22%7d



The Commonwealth of Massachusetts Executive Office of Public Safety and Security

One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775
TTY Tel: (617) 727-6618
Fax: (617) 727-4764
www.mass.gov/eopss

CHARLES D. BAKER
Governor

TERRENCE M. REIDY
Secretary

KARYN E. POLITO
Lt. Governor

To join via telephone (audio only), dial [+1 857-327-9245](tel:+18573279245) and use the following conference ID: [690477115#](tel:690477115). If you are joining by computer, you may need to allow extra time to download Microsoft Teams. While it is not required, you are encouraged to pre-register if you are interested in offering comments at the hearing by sending an email to john.melander@mass.gov with a subject line stating, "501 CMR 8.00 comment." Attendees should otherwise dress and conduct themselves as if attending the hearing in person.

Submission of Comments: Written comments or testimony in advance of the hearing are welcome and may be submitted by e-mail to john.melander@mass.gov with a subject line stating, "501 CMR 8.00 comment" or by mail to Deputy General Counsel John H. Melander, Jr., Executive Office of Public Safety and Security, One Ashburton Place, Suite 2133, Boston MA 02108. Comments received after December 16, 2022, at 5:00 PM may not be accepted. All persons desiring to be heard on this matter should appear at the designated time and event. Depending on the volume of comments received, the EOPSS may limit requests to speak to no longer than five minutes.

Small Business Impact Statement
(As required by M.G.L. c. 30A §§ 2, 3 & 5)

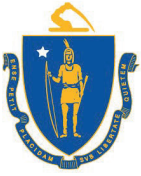
CMR No: 501 CMR 8.00

Estimate of the Number of Small Businesses Impacted by the Regulation: 0

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? This regulation does not impact or regulate small businesses.

Yes <input type="checkbox"/>	No X	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? This regulation does not impact or regulate small businesses.
Yes <input type="checkbox"/>	No X	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? This regulation does not impact or regulate small businesses.



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Jamey Tesler, Secretary & CEO
Colleen Ogilvie, Registrar



Notice of Public Hearing and Public Comment Period

Notice is hereby given pursuant to M.G.L. c. 30A, § 2, that the Massachusetts Department of Transportation, Registry of Motor Vehicles Division (“RMV”) will hold a virtual public hearing on **Friday, December 2, 2022, beginning at 11:00 a.m.** relative to the adoption of amendments to the following regulations:

540 CMR 2.00 — Motor Vehicle regulations

540 CMR 23.00 — Licensing, certification and operating requirements for professional driving school instructors

The purpose of 540 CMR 2.00 is to promote and protect public safety by ensuring the proper administration of motor vehicle registrations and Massachusetts driving and identification credentials, including noncommercial, commercial and professional school transport driver’s licenses. The purpose of 540 CMR 23.00 is to regulate the licensing and operation of professional driving schools. The proposed amendments are chiefly intended to implement the provisions of *An Act Relative to Work and Family Mobility*, St. 2022, c. 81, which takes effect on July 1, 2023, in addition to other changes and technical edits.

The RMV is holding this hearing remotely on the date and time specified above. To join the hearing, register online at: <https://www.mass.gov/orgs/massachusetts-department-of-transportation/events>.

Individuals who notify MassDOT of their intent to testify during the hearing will be afforded an earlier opportunity to speak. Speakers are strongly encouraged to notify MassDOT of their intention to testify at the hearing by emailing Matthew.Landry@dot.state.ma.us with the subject line “Regulation Hearing Comment – 540 CMR 2.00.” Individuals may also submit written testimony by emailing Matthew.Landry@dot.state.ma.us with the subject line “Regulation Hearing Comment – 540 CMR 2.00” or by mail to:

Matthew P. Landry, Esq.
Chief Legal Counsel
Registry of Motor Vehicles
10 Park Plaza, Suite 3510
Boston, Massachusetts 02116

All written comments must be submitted by **8:00 pm on Friday, December 2, 2022.**

(continued next page)

A current draft of the proposed actions may be obtained by visiting the above hyperlink.

This hearing is **accessible to participants with disabilities. For accommodation or language assistance requests, please contact MassDOT's Chief Diversity & Civil Rights Officer by phone at (857) 368-8580, TTD/TTY at (857) 266 0603, fax (857) 368 0602 or by email to MassDOT.CivilRights@dot.state.ma.us. Requests should be made as soon as possible, ideally at least ten business days before the hearing.**

The RMV may adopt a revised version of the proposed action taking into account relevant comments received and any other practical alternatives that come to its attention.

Small Business Impact Statement
(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 540 CMR 2.00

Estimate of the Number of Small Businesses Impacted by the Regulation: Indeterminable at this Time

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design or operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.)
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?

Small Business Impact Statement
(As required by M.G.L. c. 30A §§ 2, 3 & 5)

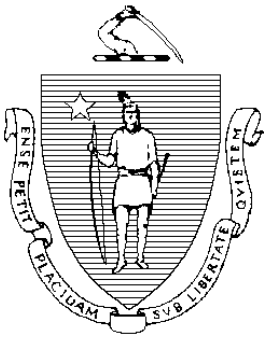
CMR No: 540 CMR 23.00

Estimate of the Number of Small Businesses Impacted by the Regulation: Indeterminable at this Time

Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design or operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.)
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective?
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses?



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

2022 CUMULATIVE TABLE TO THE MASSACHUSETTS REGISTER
1483

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

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

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

April 6, 1976 - 1977	Register: # 88	Date: 2000	Register: #911
1978	138	2001	937
1979	193	2002	963
1980	241	2003	989
1981	292	2004	1016
1982	344	2005	1042
1983	396	2006	1068
1984	448	2007	1094
1985	500	2008	1120
1986	546	2009	1146
1987	572	2010	1172
1988	598	2011	1198
1989	624	2012	1224
1990	650	2013	1250
1991	676	2014	1276
1992	702	2015	1302
1993	729	2016	1329
1994	755	2017	1355
1995	871	2018	1381
1996	Supp. # 2 807	2019	1407
1997	833	2020	1433
1998	859	2021	1459
1999	885		

		<i>Issue</i>	<i>Effective Date</i>
101 CMR	Executive Office of Health and Human Services		
23.00	COVID-19 Vaccinations for Staff at Certain Agency Facilities		
	- <i>Compliance</i> (MA Reg. # 1454)	1460	10/1/21
28.00	Disability Employment Tax Credit.	1473	7/8/22
30.00	Statewide Long-term Care Ombudsman Program	1475	8/5/22
204.00	Rates of Payment to Resident Care Facilities - <i>Emergency</i>	1463	2/4/22
	. . . . .	1468	4/29/22
	- <i>Correction</i> (MA Reg. # 1468)	1469	4/29/22
	- <i>Emergency</i>	1474	7/1/22
	. . . . .	1477	9/2/22
	- <i>Emergency</i>	1483	11/10/22
206.00	Standard Payments to Nursing Facilities - <i>Emergency Refile</i> (MA Reg. # 1454)	1460	10/1/21
	. . . . .	1465	3/18/22
	- <i>Correction</i> (MA Reg. # 1465)	1467	3/18/22
	- <i>Emergency</i>	1474	7/1/22
	- <i>Compliance</i> (MA Reg. # 1474)	1480	7/1/22
	- <i>Emergency</i>	1480	10/1/22
	- <i>Correction</i> (MA Reg. 1480).	1481	10/1/22
	- <i>Correction</i> (MA Reg. 1480).	1483	10/1/22
310.00	Rates for Adult Day Health Services	1465	3/18/22
	- <i>Emergency</i>	1474	7/1/22
	- <i>Compliance</i> (MA Reg. # 1474)	1480	7/1/22
312.00	Rates for Family Planning Services	1461	1/21/22
313.00	Rates for Freestanding Clinics Providing Abortion and Sterilization Services.	1461	1/21/22
314.00	Rates for Dental Services - <i>Compliance</i> (MA Reg. # 1455)	1462	10/15/21
320.00	Rates for Clinical Laboratory Services.	1474	8/1/22
322.00	Rates for Durable Medical Equipment, Oxygen and Respiratory Therapy Equipment Services	1474	7/22/22
324.00	Nonpublic Ambulance Service Reimbursement Trust Fund Assessment and Funding	1461	1/21/22
	- <i>Emergency</i>	1482	11/1/22
327.00	Rates of Payment for Ambulance and Wheelchair Van Services.	1461	1/21/22
	- <i>Emergency</i>	1482	11/1/22
339.00	Rates for Restorative Services	1465	3/18/22
	- <i>Correction</i> (MA Reg. # 1465)	1467	3/18/22
343.00	Rates for Hospice Services.	1480	10/14/22
345.00	Rates for Temporary Nursing Services - <i>Emergency Refile</i> (MA Reg. # 1455)	1460	10/7/21
	. . . . .	1461	1/21/22
346.00	Rates for Certain Substance-related and Addictive Disorders Programs.	1472	6/24/22
348.00	Day Habilitation Program Services	1465	3/18/22
	- <i>Emergency</i>	1474	7/1/22
	- <i>Compliance</i> (MA Reg. # 1474)	1480	7/1/22
351.00	Rates for Certain Adult Foster Care Services.	1472	6/24/22
352.00	Rates of Payment for Certain Children’s Behavioral Health Services - <i>Correction</i> (MA Reg. # 1459)	1470	12/24/21

		<u>Issue</u>	<u>Effective Date</u>
358.00	Rates for Applied Behavior Analysis	1479	9/30/22
361.00	Rates for Continuous Skilled Nursing Services	1465	3/18/22
410.00	Rates for Competitive Integrated Employment Services	1472	6/24/22
411.00	Rates for Certain Placement, Support, and Shared Living Services. . .	1472	6/24/22
412.00	Rates for Family Transitional Support Services.	1472	6/24/22
414.00	Rates for Family Stabilization Services		
	- <i>Correction</i> (MA Reg. # 1459)	1461	12/24/21
418.00	Payments for Youth Short-term Stabilization and Emergency Placement Services	1481	10/28/22
420.00	Rates for Adult Long-term Residential Services	1472	6/24/22
423.00	Rates for Certain In-home Basic Living Supports	1472	6/24/22
424.00	Rates for Certain Developmental and Support Services.	1472	6/24/22
425.00	Rates for Certain Young Parent Support Programs	1472	6/24/22
426.00	Rates for Certain Adult Community Mental Health Services	1472	6/24/22
445.00	COVID-19 Payment Rates for Certain Day Programs	1476	8/19/22
446.00	COVID-19 Payment Rates for Certain Community Health Care Providers	1483	11/25/22
447.00	Rates for Certain Home- and Community-based Services Related to Section 9817 of the American Rescue Plan Act - <i>Emergency</i>	1460	12/23/21
	. . . . .	1464	3/4/22
	. . . . .	1481	10/28/22
448.00	Workforce Investment Rates for Certain Health and Human Services Programs - <i>Emergency</i>	1463	2/4/22
	. . . . .	1476	8/19/22
	- <i>Compliance</i> (MA Reg. # 1463)	1468	2/4/22
449.00	Rates for Certain Home- and Community-based Services Related to Workforce Development	1478	9/2/22
452.00	Rates for Workforce Investment for Certain Health and Human Services Programs - <i>Emergency</i>	1474	7/1/22
	- <i>Emergency</i> (MA Reg. # 1474)	1477	7/1/22
	- <i>Compliance</i> (MA Reg. # 1474)	1477	7/1/22
453.00	Enhanced Rates for Certain Home- and Community-based Services Related to Section 9817 of the American Rescue Plan Act		
	- <i>Emergency</i>	1474	7/1/22
	. . . . .	1477	9/2/22
514.00	Hospital Assessment - <i>Emergency</i>	1483	11/3/22
613.00	Health Safety Net Eligible Services - <i>Emergency</i>	1474	7/8/22
	- <i>Compliance</i> (MA Reg. # 1474)	1481	7/8/22
614.00	Health Safety Net Payments and Funding - <i>Emergency</i>	1483	11/3/22
103 CMR	Department of Correction		
481.00	Inmate Mail.	1483	11/25/22
104 CMR	Department of Mental Health		
28.00	Licensing and Operational Standards for Community Services.	1479	9/30/22
105 CMR	Department of Public Health		
120.000	The Control of Radiation	1480	10/14/22
130.000	Hospital Licensure	1471	6/24/22

		<i>Issue</i>	<i>Effective Date</i>
153.000	Licensure Procedure and Suitability Requirements for Long-term Care Facilities	1479	9/30/22
164.000	Licensure of Substance Use Disorder Treatment Programs	1482	11/11/22
172.000	Reporting of Unprotected Exposures to Infectious Diseases Dangerous to the Public Health	1466	4/1/22
216.000	Massachusetts Wellness Tax Credit Incentive	1468	4/29/22
300.000	Reportable Diseases, Surveillance, and Isolation and Quarantine Requirements	1470	5/27/22
301.000	Cancer Registry	1462	2/4/22
106 CMR	Department of Transitional Assistance		
364.000	Supplemental Nutrition Assistance Program: Determining Household Eligibility and Benefit Level	1472	6/24/22
366.000	Supplemental Nutrition Assistance Program Additional Certification Functions	1480	10/14/22
701.000	Transitional Cash Assistance Programs: General Policies - <i>Emergency</i>	1461	1/4/22
	- <i>Compliance</i> (MA Reg. # 1461)	1465	1/4/22
702.000	Transitional Cash Assistance Programs: Eligibility Process - <i>Emergency</i>	1461	1/4/22
	- <i>Compliance</i> (MA Reg. # 1461)	1465	1/4/22
703.000	Transitional Cash Assistance Programs: Nonfinancial Eligibility - <i>Emergency</i>	1461	1/4/22
	- <i>Compliance</i> (MA Reg. # 1461)	1465	1/4/22
704.000	Transitional Cash Assistance Programs: Financial Eligibility - <i>Emergency</i>	1461	1/4/22
	- <i>Compliance</i> (MA Reg. # 1461)	1465	1/4/22
706.000	Transitional Cash Assistance Programs: Auxiliary Activities - <i>Emergency</i>	1461	1/4/22
	- <i>Compliance</i> (MA Reg. # 1461)	1465	1/4/22
110 CMR	Department of Children and Families		
11.00	Medical Authorizations	1475	8/5/22
111 CMR	Massachusetts Commission for the Blind		
11.00	Release of Information to City or Town Assessor's Office	1465	3/18/22
130 CMR	Division of Medical Assistance		
403.000	Home Health Agency	1472	7/1/22
405.000	Community Health Center Services	1461	1/21/22
	. . . . .	1461	1/21/22
406.000	Pharmacy Services	1461	1/21/22
408.000	Adult Foster Care Services	1472	7/1/22
409.000	Durable Medical Equipment Services	1472	7/1/22
410.000	Outpatient Hospital Services	1461	1/21/22
	. . . . .	1461	1/21/22
	- <i>Emergency</i>	1472	6/10/22
	- <i>Compliance</i> (MA Reg. # 1472)	1478	6/10/22

		<i>Issue</i>	<i>Effective Date</i>
414.000	Independent Nurse	1478	9/16/22
419.000	Day Habilitation Center Services	1481	10/28/22
433.000	Physician Services	1461	1/21/22
	- <i>Emergency</i>	1472	6/10/22
	- <i>Compliance</i> (MA Reg. # 1472)	1478	6/10/22
438.000	Continuous Skilled Nursing Agency	1478	9/16/22
447.000	Acupuncture Services	1461	1/21/22
450.000	Administrative and Billing Regulations	1461	1/21/22
455.000	Urgent Care Clinic Services	1461	1/21/22
484.000	Abortion Clinic Services - <i>Emergency</i>	1472	6/10/22
	- <i>Compliance</i> (MA Reg. # 1472)	1478	6/10/22
504.000	Health Care Reform: MassHealth: Citizenship and Immigration.	1476	8/19/22
518.000	MassHealth: Citizenship and Immigration	1476	8/19/22
630.000	Home- and Community-based Services Waivers	1470	5/27/22
205 CMR	Massachusetts Gaming Commission		
116.00	Persons Required to Be Licensed or Qualified.	1477	9/2/22
133.00	Voluntary Self-exclusion	1474	7/22/22
134.00	Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations	1460	1/7/22
138.00	Uniform Standards of Accounting Procedures and Internal Controls	1469	5/13/22
	. . . . .	1481	10/28/22
147.00	Uniform Standards of Rules of the Games	1469	5/13/22
202.00	Sports Wagering: Authority and Definitions - <i>Emergency</i>	1482	10/21/22
211.00	Category 1, Category 2, and Category 3 Sports Wagering License Applications - <i>Emergency</i>	1481	10/7/22
234.00	Sports Wagering Vendors - <i>Emergency</i>	1482	10/21/22
240.00	Adjusted Gross Sports Wagering and Adjusted Gross Fantasy Wagering Receipts Tax Remittance and Reporting - <i>Emergency</i>	1481	10/7/22
244.00	Approval of Sports Wagering Equipment and Testing Laboratories - <i>Emergency</i>	1479	9/15/22
209 CMR	Division of Banks and Loan Agencies		
42.00	The Licensing of Mortgage Lenders and Mortgage Brokers	1470	5/27/22
211 CMR	Division of Insurance		
130.00	Credit for Reinsurance	1473	7/8/22
	- <i>Correction</i> (MA Reg. # 1473)	1475	7/8/22
220 CMR	Department of Public Utilities		
20.00	Steam Distribution Companies	1468	4/29/22
	- <i>Correction</i> (MA Reg. # 1468)	1470	4/29/22
249 CMR	Board of Registry in Podiatry		
3.00	Application and Licensure	1470	10/14/22
4.00	Practice of Podiatric Medicine	1470	10/14/22

		<i>Issue</i>	<i>Effective Date</i>
259 CMR	Board of Registration of Allied Health Professionals		
7.00	Continuing Competence	1468	4/29/22
273 CMR	Board of Registration in Naturopathy		
2.00	Purpose, Definitions and Severability	1468	4/29/22
3.00	Licensure of Individual Naturopathic Doctors	1468	4/29/22
4.00	Scope of Practice	1468	4/29/22
5.00	Professional and Ethical Standards in Conduct	1468	4/29/22
6.00	Continuing Education	1468	4/29/22
7.00	Investigations, Complaints and Board Actions.	1468	4/29/22
8.00	Reporting Requirements	1468	4/29/22
301 CMR	Executive Office of Energy and Environmental Affairs		
16.00	Cranberry Bog Renovation Tax Credit.	1471	6/10/22
302 CMR	Department of Conservation and Recreation		
11.00	Parkways, Traffic, and Pedestrian Rules	1471	6/10/22
12.00	Parks and Recreation Rules	1471	6/10/22
304 CMR	Division of State Parks and Recreation		
12.00	Forests and Parks Rules	1471	6/10/22
310 CMR	Department of Environmental Control		
7.00	Air Pollution Control - <i>Emergency</i>	1461	12/30/21
	- <i>Correction</i> (MA Reg. # 1413)	1463	3/20/20
	- <i>Correction</i> (MA Reg. # 1461)	1464	12/30/21
	- <i>Correction</i> (MA Reg. # 1461)	1467	12/30/21
	- <i>Compliance</i> (MA Reg. # 1461)	1467	12/30/21
	. . . . .	1480	10/14/22
	. . . . .	1482	11/11/22
9.00	Waterways	1483	11/25/22
19.000	Solid Waste Management - <i>Emergency</i>	1467	3/30/22
	- <i>Compliance</i> (MA Reg. # 1467)	1473	3/30/22
314 CMR	Division of Water Pollution Control		
4.00	Massachusetts Surface Water Quality Standards - <i>Correction</i> (MA Reg. # 1456)	1460	11/12/21
16.00	Notification Requirements to Promote Public Awareness of Sewage Pollution	1460	1/7/22
	- <i>Correction</i> (MA Reg. # 1460)	1461	1/7/22
	- <i>Correction</i> (MA Reg. # 1460)	1464	1/7/22
321 CMR	Division of Fisheries & Wildlife		
3.00	Hunting	1470	5/27/22
	- <i>Correction</i> (MA Reg. # 1470)	1473	5/27/22

		<i>Issue</i>	<i>Effective Date</i>
322 CMR	Division of Marine Fisheries		
4.00	Fishing and Shellfish Equipment	1463	2/18/22
6.00	Regulation of Catches - <i>Correction</i> (MA Reg. # 1442)	1460	4/30/21
	- <i>Correction</i> (MA Reg. # 1460)	1461	4/30/21
	. . . . .	1463	2/18/22
	- <i>Emergency</i>	1469	4/29/22
	. . . . .	1469	5/13/22
	- <i>Emergency</i>	1475	7/14/22
	. . . . .	1476	8/19/22
	- <i>Emergency</i>	1478	8/30/22
	. . . . .	1481	10/28/22
7.00	Permits	1469	5/13/22
8.00	Coastal Fisheries Conservation and Management	1463	2/18/22
12.00	Protected Species	1463	2/18/22
323 CMR	Office of Law Enforcement		
6.00	Commercial Uses on the Deerfield River	1468	4/29/22
330 CMR	Department of Agricultural Resources		
8.00	Apiary Inspection Regulations	1469	5/13/22
32.00	Hemp Production	1475	8/5/22
35.00	Regulations Implementing the Act to Prevent Cruelty to Farm Animals	1471	6/10/22
350 CMR	Metropolitan District Commission		
3.00	Pedestrian Rules	1471	6/10/22
4.00	Traffic Rules	1471	6/10/22
5.00	Parking and Penalties Therefore	1471	6/10/22
400 CMR	Executive Office of Housing and Economic Development		
6.00	Notice to Quit Attestation Form	1478	9/16/22
425 CMR	Supplier Diversity Office		
2.00	Certification - <i>Future Effective Date</i>	1472	7/11/22
	. . . . .	1474	7/11/22
430 CMR	Department of Unemployment Assistance		
6.00	Waiver Regulations - <i>Emergency</i>	1469	4/19/22
	- <i>Emergency</i>	1475	7/15/22
501 CMR	Executive Office of Public Safety and Security		
17.00	Medical Parole	1467	4/15/22
	- <i>Correction</i> (MA Reg. # 1467)	1470	4/15/22
	- <i>Correction</i> (MA Reg. # 1467)	1471	4/15/22

		<i>Issue</i>	<i>Effective Date</i>
540 CMR	Registry of Motor Vehicles		
4.00	Annual Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semi-trailers and Converter Dollies . . .	1480	10/14/22
13.00	International Registration Plan Regulations	1477	9/2/22
20.00	Suspension of a Person's License and Right to Operate a Motor Vehicle as a Result of the Conviction of a Violation of a Controlled Substance Act	1477	9/2/22
550 CMR	Municipal Police Training Committee		
6.00	Use of Force by Law Enforcement Officers - <i>Correction</i> (MA Reg. # 1453)	1470	10/1/21
	- <i>Emergency</i>	1480	9/27/22
555 CMR	Peace Officer Standards and Training Commission		
1.00	Procedural Rules	1472	6/24/22
2.00	Construction; Application of Rules; Notice	1472	6/24/22
6.00	Use of Force by Law Enforcement Officers - <i>Correction</i> (MA Reg. # 1453)	1474	10/1/21
	- <i>Emergency</i>	1476	8/5/22
	- <i>Compliance</i> (MA Reg. # 1476)	1483	8/5/22
7.00	Recertification - <i>Emergency</i>	1472	6/10/22
	- <i>Compliance</i> (MA Reg. # 1472)	1479	6/10/22
603 CMR	Department of Elementary and Secondary Education		
1.00	Charter Schools - <i>Correction</i> (MA Reg. # 1451)	1469	9/3/21
2.00	Accountability and Assistance for School Districts and Schools. . . .	1474	7/22/22
7.00	Educator Licensure and Preparation Program Approval	1474	7/22/22
28.00	Special Education - <i>Correction</i> (MA Reg. # 1363)	1466	4/20/18
	. . . . .	1481	10/28/22
30.00	Massachusetts Comprehensive Assessment and Standards for Competency Determination	1477	9/2/22
31.00	Massachusetts Certificate of Mastery and State Seal of Biliteracy . . .	1481	10/28/22
49.00	Notification of Bullying or Retaliation.	1483	11/25/22
605 CMR	Board of Library Commissioners		
6.00	Library Improvement Program - Public Library Construction	1483	11/25/22
606 CMR	Department of Early Education and Care		
10.00	Subsidized Child Care	1480	10/14/22
15.00	Early Education and Out of School Time Capital Fund Program	1460	1/7/22
	- <i>Correction</i> (MA Reg. # 1460)	1461	1/7/22
610 CMR	Board of Higher Education		
13.00	Financial Assessment and Risk Monitoring of Institutions of Higher Education	1482	11/11/22

		<i>Issue</i>	<i>Effective Date</i>
651 CMR	Executive Office of Elder Affairs		
6.00	Statewide Long-term Care Ombudsman Program	1475	8/5/22
12.00	Certification Procedures and Standards for Assisted Living Residences - <i>Emergency</i>	1479	9/7/22
	- <i>Compliance</i> (MA Reg. # 1479)	1483	9/7/22
13.00	Statewide Assisted Living Ombudsman Program	1475	8/5/22
700 CMR	Department of Transportation		
7.00	Use of the Massachusetts Turnpike and the Metropolitan Highway System.	1467	4/15/22
14.00	Prequalification of Contractors and Subcontractors.	1480	10/14/22
720 CMR	Department of Highways		
5.00	Prequalification of Contractors and Prospective Bidders for Statewide Engineering Field Survey Services	1480	10/14/22
	- <i>Correction</i> (MA Reg. # 1480)	1482	10/14/22
760 CMR	Department of Housing and Community Development		
24.00	Massachusetts Housing Stabilization Fund	1466	4/1/22
67.00	Eligibility for Emergency Assistance (EA)	1461	1/21/22
801 CMR	Executive Office for Administration and Finance		
4.00	Rates	1468	4/29/22
	. . . . .	1482	11/11/22
807 CMR	Teachers' Retirement Board		
4.00	Eligibility and Continued Membership	1467	4/15/22
13.00	Transfer of Membership of RetirementPlus Members - <i>Emergency</i>	1483	11/14/22
830 CMR	Department of Revenue		
58.00	General Provisions Relative to Taxation	1478	9/16/22
62C.00	State Tax Administration	1483	11/25/22
62F.00	Limitation on the Growth of State Tax Revenues	1481	10/28/22
840 CMR	Public Employee Retirement Administration Commission		
28.00	Electronic Signatures	1479	9/30/22
935 CMR	Cannabis Control Commission		
500.000	Adult Use of Marijuana - <i>Correction</i> (MA Reg. # 1434)	1467	1/8/21
941 CMR	State Board of Retirement		
2.00	Administrative Regulations	1465	3/18/22

961 CMR	State Lottery Commission		
2.00	Rules and Regulations - <i>Emergency</i>	1475	7/18/22
	- <i>Compliance</i> (MA Reg. # 1475)	1480	7/18/22
970 CMR	Office of Campaign and Political Finance		
1.00	Campaign Finance Activity	1465	3/18/22
2.00	Political Expenditures	1465	3/18/22
3.00	Rules of Procedures	1465	3/18/22
995 CMR	Pilot Commissioners		
2.00	Pilotage within District One	1482	11/11/22



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **101 CMR 204.00**

CHAPTER TITLE: **Rates of Payment to Resident Care Facilities**

AGENCY: **Executive Office of Health and Human Services**

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

101 CMR 204.00 governs payment rates for resident care services (“rest homes”) provided to publicly aided individuals by governmental units.

REGULATORY AUTHORITY: **M.G.L. c. 118E**

AGENCY CONTACT: **Deborah Briggs, MassHealth Publications** PHONE: **617-847-3302**

ADDRESS: **100 Hancock Street, 6th Floor, Quincy, MA 02171**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

101 CMR 204.00 is being filed on an emergency basis to provide increased funding to rest homes in order to ensure that rest homes remain adequately funded for the current rate year.

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

Executive Order 562 approval: 11/2/22

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

Date of public hearing or comment period: _____

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

For the first and second year: estimated annual cost of \$9.93 million

For the first five years: _____

No fiscal effect: _____

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

Date amended small business impact statement was filed: N/A

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

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

101 CMR 204.00 is being amended.

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Nov 10 2022

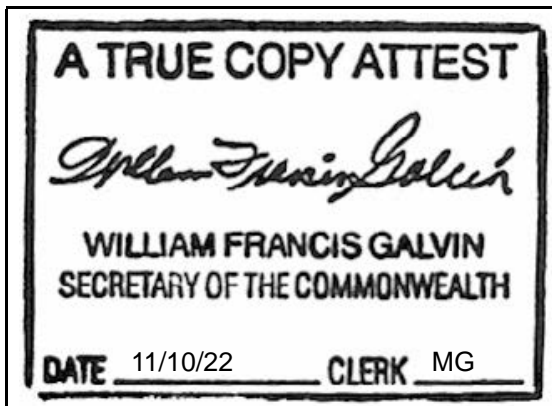
Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 11/10/22

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
This is an Emergency Regulation.	There are no Replacement Pages.



101 CMR 204.00: RATES OF PAYMENT TO RESIDENT CARE FACILITIES

Section

- 204.01: General Provisions
- 204.02: General Definitions
- 204.03: General Rate Provisions
- 204.04: Variable Cost Allowance
- 204.05: Capital and Other Fixed Costs
- 204.06: Equity and Use and Occupancy Allowance
- 204.07: Reporting Requirements
- 204.08: Other Provisions
- 204.09: COVID-19 Payment Provisions
- 204.10: Resident Care Cost Quotient

204.01: General Provisions

(1) Scope. 101 CMR 204.00 governs the payment rates for services provided by resident care facilities to publicly aided and industrial accident residents. Residential care units of nursing facilities are governed by 101 CMR 206.00: *Standard Payments to Nursing Facilities*.

(2) Applicable Dates of Service. Rates contained in 101 CMR 204.00 apply for services provided on or after December 1, 2022.

(3) Disclaimer of Authorization of Services. 101 CMR 204.00 is not authorization for or approval of the substantive services or the time period for which rates are determined pursuant to 101 CMR 204.00. Governmental units and insurers that purchase services from eligible providers are responsible for the definition, authorization, and approval of services provided to publicly aided or industrial accident residents.

204.02: General Definitions

As used in 101 CMR 204.00, unless the context requires otherwise, terms have the meanings in 101 CMR 204.02.

Actual Utilization Rate. The percentage of occupancy of a resident care facility. It is calculated by dividing total resident days by maximum available bed days.

Additions. New units or enlargements of existing units that may or may not be accompanied by an increase in licensed bed capacity.

Average Equity Capital. The average of the difference between a provider's beginning and ending allowable book value and the provider's beginning and ending balances for allowable long-term liabilities, calculated pursuant to 101 CMR 204.06.

Base Year. The calendar year or portion of the calendar year that is used to compute the prospective rates as defined in 101 CMR 204.04. The base year for rates effective December 1, 2022 is 2020.

Building. The structure that houses residents. Building costs include the direct cost of construction of the shell and expenditures for service equipment and fixtures such as elevators, plumbing, and electrical fixtures that are made a permanent part of the structure. Building costs also include the cost of bringing the building to productive use, such as permits, engineering and architect's fees, and certain legal fees. Building costs include interest paid during construction, but not mortgage acquisition costs. When the fixed assets of a facility are sold, the allowable book value of all improvements will become part of the allowable basis of the building for the buyer.

Center. The Center for Health Information and Analysis (CHIA), established under M.G.L. c. 12C.

204.02: continued

Change of Ownership. A *bona fide* transfer, for reasonable consideration, of all the powers and *indicia* of ownership. A change of ownership may not occur between related parties and must be a sale of assets of the facility rather than a method of financing. A change in the legal form of the provider does not constitute a change of ownership, unless the other criteria are met.

Community Support Facility. A resident care facility licensed by the Department in compliance with 105 CMR 150.000: *Standards for Long-term Care Facilities* that provides or makes arrangements to provide appropriate mental health services in addition to the minimum basic care and services required by 105 CMR 150.000 for residents who do not routinely require nursing or other medically related services.

Community Support Resident. An individual in need of resident care facility services, who is 50 years of age or older, and who, upon the written consent of the individual (if he or she is competent to give such consent) or guardian (if he or she is not competent), and a physical evaluation by a psychiatrist or other physician, and a psychiatric evaluation by a psychiatrist, is deemed appropriate by both for residency and services provided by a community support facility pursuant to 105 CMR 150.000: *Licensing of Long Term Care Facilities* or its most recent applicable regulation. Any exceptions and additional factors used to determine whether a resident is a community support facility resident will be in accordance with 105 CMR 150.000.

Community Support Resident Days. The number of days of occupancy by community support residents in a community support facility or a resident care facility with community support residents. Community support resident days include the day of admission, but not the day of discharge. Where admission and discharge occur on the same day, one community support resident day will be used. Those days a bed is held vacant for a publicly aided community support resident temporarily placed in a different care situation, pursuant to an agreement between the provider and the Department of Transitional Assistance in accordance with duly established policies of said Department, are included as community support resident days. Those days a bed is held vacant for a non-publicly aided resident, whether or not there is a charge for such reservation by the facility, are included as community support resident days.

Constructed Bed Capacity. A resident care facility's bed capacity (or clinical bed capacity) as defined in 105 CMR 100.100: *Definitions*, which states: the capacity of a building to accommodate a bed and the necessary physical appurtenances in accordance with the applicable standards imposed as a condition of operation under state law. It includes a room designed or able to accommodate a bed and necessary physical appurtenances, whether or not a bed and all such appurtenances are actually in place, with any necessary utilities (*e.g.*, drinking water, sprinkler lines, oxygen, electric current, electric signals, *etc.*), with either outlets or capped lines within the room.

Deferred Charges. Expenditures, such as prepaid insurance, rent or licenses, not recognized as a cost of operations for the period in which they were incurred, but carried forward to be written off in one or more future periods. Deferred charges are not expenditures that can be identified with and justified as relating to physical assets that will contribute services to future operations.

Department. The Massachusetts Department of Public Health.

Department of Transitional Assistance Days (DTA Days). Days of resident care facility services provided to residents who are recipients of Emergency Assistance for the Elderly, Disabled and Children (EAEDC) or Supplemental Security Income/State Supplemental Payments (SSI/SSP) funded by DTA.

Desk Audit. A comprehensive audit performed at the Center's offices in which the auditor evaluates the accuracy of the information in the cost reports and supporting documentation in accordance with an audit program.

Direct Restorative Therapy. Services of physical therapists, occupational therapists, and speech, hearing, and language therapists provided directly to individual residents to reduce physical or mental disability and to restore the resident to maximum functional level. Direct restorative therapy services are provided only upon written order of a physician, physician assistant, or nurse practitioner who has indicated anticipated goals and frequency of treatment to the individual resident.

204.02: continued

Resident Care Facility (Facility). A facility licensed by the Department in compliance with 105 CMR 150.000: *Standards for Long-term Care Facilities* or exempt from licensure under M.G.L. c. 111, § 73B providing protective supervision in addition to the minimum basic care required by 105 CMR 150.000 for residents who do not routinely require nursing or other medically related services.

Resident Days. The number of days of occupancy by residents in a facility. Included in the computation of resident days is the day of admission, but not the day of discharge. Where admission and discharge occur on the same day, one resident day is used. Those days in which a bed is held vacant and reserved for a publicly aided resident temporarily placed in a different care situation, are included as resident days. Those days on which a bed is held vacant and reserved for a non-publicly aided resident, whether or not there is a charge for such reservation by the facility, are included as resident days.

Responsible Person. A person 21 years of age or older who has received a high school diploma, is of good moral character, and has the ability to communicate orally and in writing in English or the primary language used by residents of the facility, and who will make mature and accurate judgments regarding the care needs of the residents as required by 105 CMR 150.000: *Standards for Long-term Care Facilities*.

Sole Proprietor. A business enterprise other than a corporation or partnership in which the net worth belongs entirely to one individual.

Support Service Coordinator. A person who has received a BA or BS degree in a human service field of study such as psychology, nursing, or social work and who is employed by a community support facility to identify, monitor, and meet the support service needs of community support residents.

Support Services. Those services provided for the benefit of community support resident(s) in order to enhance psycho-social and physical functioning as defined by the Department in 105 CMR 150.000: *Standards for Long-term Care Facilities*.

Unit. Unit has the same definition as in 105 CMR 150.000: *Standards for Long-term Care Facilities*.

Variable Costs. Costs that change depending on the volume of occupancy. Variable costs include the allowable amounts reported in the following accounts from the cost report: administrator/responsible person salaries and benefits; clerical salaries; EDP/payroll/bookkeeping services; office supplies; telephone, except directory advertising; motor vehicle expense; conventions and meetings; advertising, help wanted; licenses and dues, resident care related; total education and training; total employee benefits, except officers, profit sharing and other benefits; accounting services not related to appeals; total payroll taxes, except officer; nonprofit DES claims; malpractice and general liability insurance; total Workers' Compensation, except officer; total group life/health, except officer; total plant operations; total dietary; total laundry; total housekeeping; total nursing; quality assurance professional; community support coordinator; total physician services; house supplies, not resold; pharmacy consultant; social service worker; indirect therapy salaries; indirect therapy consultants; total recreation, except transportation; realty company variable add-back; management company variable and fixed cost add-back, less non-allowable self-disallowances; vending machine income; and other operating cost recoverable income.

204.03: General Rate Provisions

(1) General. EOHHS will determine a payment rate for dates of service on or after December 1, 2022, for each facility as follows.

- (a) Preliminary Rate. The facility's preliminary rate is equal to the sum of
1. allowable variable costs determined under 101 CMR 204.04;
 2. allowable capital and other fixed costs and working capital allowance as determined under 101 CMR 204.05; and

204.03: continued

3. allowable equity or use and occupancy allowance determined under 101 CMR 204.06.
 - (b) Rate Adjustments. The preliminary rate as calculated in 101 CMR 204.03(1)(a) will be adjusted as follows.
 1. DTA Days Percentage Adjustment.
 - a. For each facility, calculate its DTA days percentage by dividing its DTA days by the facility's total resident days, as reported on Schedule 3 of the 2020 HCF-4.
 - b. Each facility will receive a DTA days percentage adjustment equal to \$13.28 multiplied by the percentage calculated in 101 CMR 204.03(1)(b)1.a.
 2. GAFC Adjustment. For each eligible facility, apply the GAFC adjustment in the same amount as applied to the rate in effect on November 30, 2021.
 - (c) Payment Rate. Subject to the Payment Rate Maximum Increase as described in 101 CMR 204.03(1)(d), the facility's December 1, 2022, payment rate is equal to the greater of
 1. the sum of the preliminary rate as determined in 101 CMR 204.03(1)(a) and the payment rate adjustments as determined in 101 CMR 204.03(1)(b), plus \$8.00;
 2. the facility's certified rate in effect on November 30, 2022, plus \$8.00; or
 3. \$95.
 - (d) Payment Rate Maximum Increase. If the facility's payment rate as calculated in 101 CMR 204.03(1)(c) is greater than the facility's certified rate in effect on November 30, 2022, plus \$34, the facility will receive a downward adjustment such that the total payment rate effective December 1, 2022, is equal to the facility's certified rate in effect on November 30, 2022, plus \$34.
 - (e) Annualization Adjustment. For the period from December 1, 2022, through December 31, 2022, EOHHS will apply an annualization adjustment of 493.55% of the difference between the facility's December 1, 2022, rate as determined in 101 CMR 204.03(1)(c) and (d) and its certified rate in effect on November 30, 2022, which accounts for the period July 1, 2022, through November 30, 2022.
- (2) Other Provisions.
- (a) Audits. EOHHS will establish rates after a comprehensive desk audit of the base year cost report. The Center may also, whenever possible, conduct on-site field audits to ensure the accuracy of the claims for reimbursement and consistency in reporting. EOHHS will disallow any cost for which the provider does not produce adequate documentation requested by the Center during a desk or field audit.
 - (b) General Cost Principles. In order to be reimbursed, a cost must
 1. be ordinary, necessary, and directly related to the care of publicly aided residents;
 2. be consistent with the prudent buyer concept;
 3. be for goods and services actually provided in the resident care facility;
 4. not have the transaction effect of circumventing 101 CMR 204.00 under the principle that the substance of the transaction must prevail over form;
 5. actually be paid by the provider. Examples of costs that are not considered paid for purposes of reimbursement include, but are not limited to, costs that are discharged in bankruptcy; forgiven; converted to a promissory note; and accruals of self-insured costs based on actuarial estimates; and
 6. not be paid to a related party that has not been identified on the reports.
 - (c) Non-allowable Costs. Rates will not include those costs that are not reimbursable, as defined below, are reimbursed through an allowance, or are for services that are billed directly.
 1. Costs that are not reimbursable include
 - a. bad debts, refunds, charity and courtesy allowances, and contractual adjustments to the Commonwealth and other third parties;
 - b. recovery of expense items, that is, expenses that are reduced or eliminated by applicable income including, but not limited to, rental of quarters to employees and others, income from meals sold to persons other than residents, telephone income, vending machine income, and medical records income. Vending machine income will be recovered against the variable cost, included in the variable cost allowance;
 - c. federal and state income taxes, except the non-income related portion of the Massachusetts corporate excise tax;

204.03: continued

- d. expenses that are not directly related to the provision of resident care including, but not limited to, expenses related to other business activities and fundraising, gift shop expenses, research expenses, rental expense for space not required by the Department and expenditure of funds received under federal grants for compensation paid for training personnel, and expenses related to grants or contracts for special projects;
 - e. compensation and fringe benefits for residents on a provider's payroll;
 - f. any amounts in excess of any schedule or limitation contained in 101 CMR 204.00;
 - g. penalties and interest incurred because of late payment of loans or other indebtedness, late filing of federal and state tax returns, or from late payment of municipal taxes;
 - h. any increase in compensation or fringe benefits granted as an unfair labor practice after a final adjudication by the court of last resort;
 - i. accrued expenses that remain unpaid more than 120 days after the close of the reporting year, excluding vacation and sick time accruals, are not included in the prospective rates. When the Center receives satisfactory evidence of payment, EOHHS may reverse the adjustment and include that cost, if otherwise allowable, in the applicable prospective rates. Except as provided above, a cost must actually be paid by the provider in order to be reimbursable. Examples of costs that are not considered paid for purposes of reimbursement include, but are not limited to, costs that are discharged in bankruptcy; costs that are forgiven; costs that are converted to a promissory note; and accruals of self-insured costs that are based on actuarial estimates;
 - j. expenses for purchased service nursing services purchased from temporary nursing agencies that are not registered with the Department under 105 CMR 157.000: *The Registration and Operation of Temporary Nursing Service Agencies*;
 - k. any expense or amortization of a capitalized cost relating to costs incurred prior to the opening of the facility;
 - l. expenses relating to the financing of or otherwise supporting political or lobbying activities regarding legislation to affect reimbursement methods; campaign contributions; and advertising to create goodwill or otherwise affect payments made by governmental units;
 - m. all legal expenses; and those accounting expenses and filing fees associated with any appeal process;
 - n. additional rental payments or charges based upon receipts or income will not be considered as additional rental expense;
 - o. interest payments and charges based upon the provider's receipts or income will not be considered as allowable interest expense;
 - p. any costs that were incurred in periods other than the base year;
 - q. an adjustment to base year costs to reflect the difference between the rates charged to private residents in the base year if those rates are less than the public rates certified in the base year. EOHHS will multiply the difference between the base year rate for publicly aided residents and the average rate charged private residents corresponding to the base year above. The adjustment is calculated as follows: $[(\text{private income/resident private patient days}) - \text{public base year rate per diem}] \times (\text{base year resident private patient days/base year patient days}) = \text{the per diem amount by which the publicly aided rate will be reduced}$. In no instances will the certified rate be lower than the lowest private rate assigned to an individual for that period;
 - r. any costs, including rental and leasehold expenses, for buildings and equipment that are not located at the site of the resident care facility will not be allowable as fixed costs; and
 - s. costs of ancillary services that are required to be billed on a direct basis to the purchasing government agency.
2. Cost reimbursed through an allowance or other specified methodology include the following.
- a. Other Recoverable Income. Other recoverable income will be recovered against an account in the appropriate cost group category, such as variable cost allowance and fixed costs.
 - b. Working Capital Interest. Interest on short-term or working capital obligations is not allowed, but will be reimbursed pursuant to the working capital allowance under 101 CMR 204.05(4)(a).

204.03: continued

3. Costs for Services Billed Directly. The following supplies or services must be billed directly to the purchaser in accordance with the purchaser's regulations or policies.
 - a. Physician. Direct physician services to individual residents, including emergency physician services required by 105 CMR 150.000: *Standards for Long-term Care Facilities*.
 - b. Medical Supplies. Direct medical services or supplies in accordance with the regulations or written policy of the governmental unit responsible for paying for such services or supplies in the *per diem* rates.
 - c. Prescriptions. Pharmacy costs related to legend drug prescriptions and prescribed legend drugs for individual residents.
 - d. Therapy. Direct restorative services provided upon written order of a physician.

204.04: Variable Cost Allowance

- (1) Scope. EOHHS will include in each provider's rate a variable cost allowance to compensate for variable costs.
- (2) Base Year Variable Cost Per Diem. EOHHS will calculate the base year variable cost *per diem* for each provider by dividing the total allowable base year variable costs by the greater of base year resident days or 90% of the mean licensed bed capacity in the base year times the days in the base year. For providers that are organized as sole proprietors, EOHHS will include an imputed amount of \$113,834 for the personal services of an owner.
- (3) Cost Adjustment Factor. EOHHS will apply a cost adjustment factor of 13.57% to 2020 base year costs. If there has been a change of ownership in the base year, and the rates are based on the new owner's reported base year costs, EOHHS will modify the cost adjustment factor to reflect the number of months from the midpoint of the new owner's reporting period to the midpoint of the prospective rate period.
- (4) Variable Cost Allowance. The variable cost allowance equals the lower of base year variable cost *per diem* or \$148.06, which is further adjusted by the cost adjustment factor.
- (5) Special Provisions.
 - (a) Accrued Expenses. EOHHS will not allow accrued expenses that remain unpaid for more than 120 days after the close of the reporting year, excluding vacation and sick time accruals. If the provider submits evidence of satisfactory payment to the Center, EOHHS may reverse the adjustment and include that cost, if otherwise allowable, in the applicable rates.
 - (b) Accounting and Auditing Expenses. Reasonable and necessary accounting and auditing expenses in matters directly related to providing adequate care to publicly aided residents are included, provided that the books and records of the provider are maintained in accordance with generally accepted accounting principles.
 - (c) Staff Training Expenses. The net cost, which is the cost of required staff training activities less any reimbursement from grants, tuition, specific donations, employee contributions, or other sources is included, only if the training is
 1. conducted within the Commonwealth of Massachusetts;
 2. directly related to improving resident care to publicly aided residents; and
 3. conducted by a recognized school, other authorized organization, or a qualified professional as required in 105 CMR 150.000: *Standards for Long-term Care Facilities*.
 - (d) Advertising Expenses. The reasonable and necessary expense of newspaper or other public media advertisements for the purpose of hiring necessary employees.
 - (e) Generally Available Employee Benefits. The extent of the facility's contribution to the cost of generally available fringe benefits are included so long as they are nondiscriminatory.
 - (f) Membership Dues. Reasonable and necessary membership dues are included if the organization's function and purpose are directly related to the development and operation of the facility and providing adequate resident care.
 - (g) Services of Volunteer Workers. Services performed under an agreement between the organization and the provider for the performance of the services without direct payment. The value of services normally provided on a voluntary basis, such as distribution of magazines and newspapers to residents, does not constitute a reasonable variable cost. The net value of services for unpaid persons in positions customarily held by paid employees, performing such services on a regular basis as unpaid members of religious or other organizations, is allowable as a variable cost if

204.05: continued

Asset	Life	Rate
Building Class I or II as classified by the Dept. of Public Safety	40 years	2.5%
Class III or IV as classified by the Dept. of Public Safety	33 years	3.0%
Building Improvements and Leasehold Improvements	Varies	up to 5%
Equipment, Furniture, and Fixtures	ten years	10%
Motor Vehicle Equipment	four years	25%
Limited Life Assets Acquired after December 31, 1996	three years	33.3%

(d) Change of Ownership.

1. Building and Building Improvements. EOHHS will add building and building improvements to determine the buyer's allowable basis for building. The buyer's allowable basis will be depreciated over the remaining useful life of the building.
2. Equipment and Limited Life Assets. Equipment and limited life assets will be depreciated in accordance with 101 CMR 204.05(3)(c).
3. Depreciation on Assets. EOHHS will limit the annual amount of depreciation on transferred assets to the seller's annual allowed depreciation.

(4) Interest. A facility's rate will include reasonable and necessary interest expense determined as follows.

(a) Interest on Working Capital. EOHHS will not reimburse interest on short-term working capital. In lieu of this expense, EOHHS will add an allowance for the financing of current operations, determined by multiplying the variable cost allowance by $\frac{1}{12}$ of the annual prime lending rate. The prime lending rate of 5.50% was used to determine rates effective December 1, 2022.

(b) Interest on Long-term Debt. EOHHS will include reasonable and necessary interest on allowable long-term debt, supported by depreciable fixed assets subject to 101 CMR 204.05(2). EOHHS will not reimburse long-term interest expense on debt that exceeds the allowable basis of fixed assets.

1. Long-term Loans. Long-term interest will be limited to an annually determined percentage of simple interest on all outstanding long-term loans, weighted by the dollar amount of the funds borrowed. For allowable long-term loans secured prior to January 1, 1984, the annually determined percentage will be the rate as stated in the debt instrument at the time of borrowing. For allowable long-term loans secured on or after January 1, 1984, the annually determined percentage will be the lower of the rate as stated in the debt instrument at the time of borrowing or the percentage equal to the monthly rate of interest on special issues of public debt obligations issued to the federal Hospital Insurance Trust Fund for the third month prior to the month in which the financing occurred, plus 3%. EOHHS will limit the allowable interest rate to 15%.

2. Refinancing.

a. EOHHS will recognize the refinancing of an existing allowable debt under the following circumstances.

- i. Crossover. When the accumulated principal payments on the existing allowable debt exceeds the accumulated depreciation allowed by EOHHS on the allowable fixed assets financed by that debt;
- ii. Demand Note. When an existing, allowable debt becomes payable on demand;
- iii. Lowered Expense. When the long-term interest expense over the life of the refinanced debt is lower than it would have been under the remainder of the existing, allowable debt. The provider must submit comparative schedules showing total long-term interest expense under the existing allowable debt and the refinanced debt; or

204.05: continued

- iv. Allowable Additions. When a provider refinances for an amount greater than the existing allowable debt, and the purpose of the additional indebtedness is to finance a significant addition of allowable fixed assets. EOHHS will not reimburse long-term interest expense for additional refinancing that exceeds the amount of allowable fixed assets.
 - b. Allowable Interest Rate. The allowable interest rate for an allowable or partially allowable refinancing will be determined in accordance with 101 CMR 204.05(4)(b)1.
 - c. When a refinancing, or a portion of a refinancing, is not allowable under 101 CMR 204.05(4)(b)2., EOHHS will calculate allowable long-term interest as though the non-allowable refinancing did not occur.
- (c) Other Provisions.
- 1. Interest. Interest related to the financing of newly acquired fixed assets will be allowed only if the asset acquisition and financing occur concurrently. If the provider presents documentation sufficient to demonstrate that all reasonable attempts were made to finance the asset at the time of acquisition, EOHHS will recognize financing obtained no more than 90 days after the date of acquisition of the assets.
 - 2. Loans from Owner, Officer, or Related Party. Interest expense does not include interest on loans to the facility from an owner, officer, or related party.
 - 3. Mortgage Acquisition Costs. Mortgage acquisition costs must be amortized over the life of the mortgage. Amortized mortgage acquisition costs are treated as long-term interest expense. For allowable long-term debts secured on or after January 1, 1984, mortgage acquisition costs are subject to the ceiling on maximum interest rates in accordance with 101 CMR 204.05(4)(b).

204.06: Equity and Use and Occupancy Allowance

- (1) General. EOHHS will include a return on average equity capital for proprietary providers. EOHHS will include a use and occupancy allowance for nonprofit providers.
- (2) Average Equity Capital Allowance. Average equity capital is the difference between the provider's allowable book value of fixed assets, including land, at the beginning and end of the year, and the provider's allowable long-term liabilities at the beginning and end of the year. The average equity capital is then multiplied by a rate of 3.00%.
- (a) EOHHS will reduce average equity capital by building, improvements, equipment, and software depreciation allowed in prior years.
 - (b) EOHHS will not include mortgage acquisition costs, such as capitalized legal fees and prepaid interest on long-term obligations, or equity in buildings or equipment not located at the resident care facility, in average equity capital.
 - (c) EOHHS will not reduce average equity capital by long-term loans for which interest has been excluded as a result of debt not supported by allowable fixed assets.
 - (d) If a facility replaces beds, reimbursable equity will be recalculated using the newly established allowable fixed assets and allowable debt.
 - (e) EOHHS will calculate the *per diem* average equity capital by multiplying the average equity capital by a rate of 3.00% then dividing by the constructed bed capacity times the days in the rate year times the greater of 90% or the actual utilization rate in the base year.
- (3) Use and Occupancy Allowance. EOHHS will increase nonprofit providers' rates to reflect the cost of use and occupancy of net allowable fixed assets. The use and occupancy allowance equals $\frac{1}{3}$ of the allowance calculated pursuant to 101 CMR 204.06(2).

204.07: Reporting Requirements

- (1) Required Reports.
- (a) Resident Care Facility Cost Report. Each provider must complete and file a residential care cost report each calendar year with the Center, containing the facility's claim for reimbursement and the complete financial condition of the facility, including all applicable management company, central office, and real estate expenses.

204.09: continued

(b) The costs of services described in 101 CMR 204.09(4)(a) are not included in the resident care facility standard payment rates determined under 101 CMR 204.03. The costs of providing such services will be considered non-allowable costs under 101 CMR 204.03(2)(c).

(c) Requests for payment submitted by the resident care facility for the services described in 101 CMR 204.09(4)(a) are paid at the rates established under 101 CMR 446.03(2): *Medicine*. Such payments are considered payment in full for such services.

(d) EOHHS or purchasing governmental unit may establish, through administrative bulletin or other written issuance, the specific codes and billing instructions for such services.

(5) Written Communication. EOHHS may establish or rely on existing rules, by administrative bulletin or other written issuance, governing various aspects of the COVID-19 payment provisions established under 101 CMR 204.09 including, but not limited to, reporting and compliance requirements, and penalties for noncompliance.

204.10: Resident Care Cost Quotient

(1) Beginning July 1, 2022, residential care facilities must have a Resident Care Cost Quotient (RCC-Q), as described in 101 CMR 204.10, that meets or exceeds a threshold of 80%, and which may be updated from time to time by EOHHS by administrative bulletin. For the rate year beginning in SFY2024, a residential care facility's rate may be subject to a downward adjustment if the facility fails to be at or above the specified RCC-Q threshold in the previous state fiscal year.

(2) The RCC-Q will be calculated by dividing certain resident care expenses by the facility's total revenue, excluding the revenue for non-residential care facility lines of business, and excluding endowment income. EOHHS may further identify or clarify these certain resident care expenses by administrative bulletin or other written issuance. A multiplier may be applied to certain resident care expenses related to one or more resident care workforce position types. EOHHS may establish the workforce position types eligible for any multiplier, details related to application of such multiplier, and the magnitude of such multiplier in calculating the RCC-Q, by administrative bulletin or other written issuance.

(3) All residential care facilities, including facilities described in 101 CMR 204.10(5), will be required to submit an interim compliance report by February 1st of each year and a final compliance report by September 1st of each year. The interim report will be used to inform facilities if they are on track to meet the RCC-Q threshold in the reporting period. The final compliance report will be used for determining whether the facility met that threshold and whether a downward adjustment will be applied to the facility's rate in the following rate year.

(4) The downward adjustment to the rate will be applied in the following rate year to facilities that failed to meet the RCC-Q threshold or failed to submit the final report by the final compliance report due date. Such downward adjustment will be established by administrative bulletin or other written issuance.

(5) Residential care facilities that have fewer than the RCC-Q minimum paid DTA days for a particular state fiscal year, starting the state fiscal year of July 1, 2022, through June 30, 2023, except for the facilities that failed to submit the final compliance report by September 1st in accordance with 101 CMR 204.10(3) immediately following the end of the particular state fiscal year, will be exempt from the downward adjustment established at 101 CMR 204.10(4). For purposes of 101 CMR 204.10(5), the RCC-Q minimum paid DTA days will be established by EOHHS by administrative bulletin or other written issuance.

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

204.10: continued

(6) EOHHS may issue an administrative bulletin or other written issuance to clarify provisions of 101 CMR 204.10, and as otherwise provided at 101 CMR 204.10.

REGULATORY AUTHORITY

101 CMR 204.00: M.G.L. c. 118E.



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin
Secretary of the Commonwealth

Notice of Correction

Regulation Filing To be completed by filing agency

CHAPTER NUMBER: 101 CMR 206.00

CHAPTER TITLE: Standard Payments to Nursing Facilities

AGENCY: Executive Office of Health and Human Services

ORIGINAL PUBLICATION REFERENCE: 1480 Date: 10/14/22

SUMMARY OF CORRECTION:

Meets the statutory requirement in M.G.L. c. 118E, § 13D to set rates for nursing facilities by October 1st of each year, and to ensure that nursing facility rates continue to be adequate to meet the costs incurred by efficiently and economically operated facilities as required under M.G.L. c. 118E, § 13C. CORRECTION: Corrects footer for Emergency pages 401 - 420. Instead of 10/15/22, footer date should read 10/14/22. CORRECTIONS: *In 206.02, in the definition of Reported Costs, remove the 1. after the word "report." *In 206.02(b), in the fifth row of the Criteria Based on CMS Rating table, correct the typo in the last date so that it reads "had a score of 5 Stars as of June 2021" *in 206.06(2)(c), in the header row for the DPH NFSPT Score table, correct the typo in the date so that it reads DPH NFSPT Score as of July 1, 2022 *In 206.06(2)(d), in the sixth row of the Criteria based on DPH FSPT Score table, correct 'Facility experienced a decrease of 1, 2, or 3 points from July 1, 2021 to July 1, 2021' to read 'Facility experienced a decrease of 1, 2, or 3 points from July 1, 2021, to July 1, 2022'

AGENCY CONTACT: Deborah M. Briggs PHONE: 617-847-3302

ADDRESS: 100 Hancock Street, 6th Floor, Quincy, MA 02171

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

SIGNATURE: SIGNATURE ON FILE DATE: Nov 10 2022

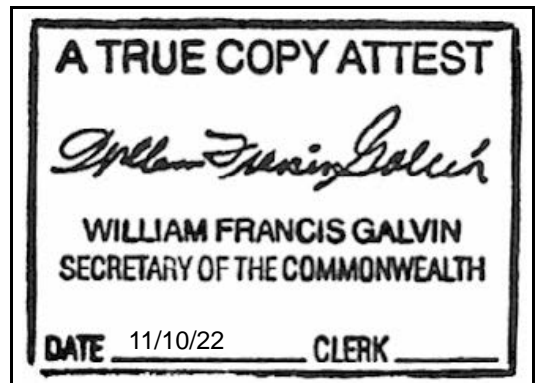
Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 10/1/22

CODE OF MASSACHUSETTS REGULATIONS

Table with 2 columns: Remove these Pages: and Insert these Pages:
This is an Emergency Regulation. | There are no Replacement Pages.



206.02: continued

Management Minutes. A method of measuring resident care intensity, or case mix, by discrete care-giving activities or the characteristics of residents found to require a given amount of care.

Massachusetts Corporate Excise Tax. Those taxes that have been paid to the Massachusetts Department of Revenue in connection with the filing of Form 355A, Massachusetts Corporate Excise Tax Return.

Mortgage Acquisition Costs. Those costs (such as finder's fees, certain legal fees, and filing fees) necessary to obtain long-term financing through a mortgage, bond, or other long-term debt instrument.

Nursing Costs. Nursing costs include the reported costs for director of nurses, registered nurses, licensed practical nurses, nursing aides, nursing assistants, orderlies, nursing purchased services, and the workers compensation expense, payroll tax expense, and fringe benefits, including pension expense, associated with those salaries.

Nursing Facility. A nursing or convalescent home; an infirmary maintained in a town; a charitable home for the aged, as defined in M.G.L. c. 111, § 71; or a nursing facility operating under a hospital license issued by the Department of Public Health pursuant to M.G.L. c. 111, and certified by the Department of Public Health for participation in MassHealth. It includes facilities that operate a licensed residential care unit within the nursing facility.

Operating Costs. Operating costs include, but are not limited to, the following reported costs: plant, operations and maintenance; dietary; laundry; housekeeping; ward clerks and medical records librarian; medical director; advisory physician; Utilization Review Committee; employee physical exams; other physician services; house medical supplies not resold; pharmacy consultant; social service worker; indirect restorative and recreation therapy expense; other required education; job related education; quality assurance professionals; Management Minute Questionnaire nurses; staff development coordinator; motor vehicle expenses including, but not limited to, depreciation, mileage payments, repairs, insurance, excise taxes, finance charges, and sales tax; and administrative and general costs.

Patient Days. The total number of days of occupancy by residents in the facility. The day of admission is included in the computation of patient days; the day of discharge is not included. If admission and discharge occur on the same day, one resident day is included in the computation. It includes days for which a provider reserves a vacant bed for a publicly aided resident temporarily placed in a different care situation, pursuant to an agreement between the provider and the MassHealth agency. It also includes days for which a bed is held vacant and reserved for a non-publicly aided resident.

Private Nursing Facility. A nursing facility that formerly served only non-Medicaid residents and does not have a provider agreement with the MassHealth agency to provide services to public residents.

Provider. A nursing facility providing care to publicly aided residents or industrial accident residents.

Prudent Buyer Concept. The assumption that a purchase price that exceeds the market price for a supply or service is an unreasonable cost.

Publicly Aided Resident. A person for whom care in a nursing facility is in whole or in part subsidized by the Commonwealth or a political subdivision of the Commonwealth. Publicly aided residents do not include residents whose care is in whole or in part subsidized by Medicare.

Rate Year. The 12-month period from October 1st through September 30th.

206.02: continued

Related Party. An individual or organization associated or affiliated with, or that has control of, or is controlled by, the provider; or is related to the provider, or any director, stockholder, trustee, partner, or administrator of the provider by common ownership or control or in a manner specified in §§ 267(b) and (c) of the Internal Revenue Code of 1954; provided, however, that 10% is the operative factor as set out in §§ 267(b)(2) and (3). Related individuals include spouses, parents, children, spouses of children, grandchildren, siblings, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law.

Replacement Facility. A nursing facility that replaces its entire building with a newly constructed facility pursuant to an approved determination of need under 105 CMR 100.000: *Determination of Need*. A facility that renovates a building previously licensed as a nursing facility is not a replacement facility.

Reported Costs. All costs reported in the cost report.

Required Education. Educational activities, conducted by a recognized school or authorized organization, required to maintain a professional license of employees that provide care to publicly aided residents. Required education also includes training for nurses' aides.

Residential Care. The minimum basic care and services and protective supervision required by the Department of Public Health in accordance with 105 CMR 150.000: *Licensing of Long-term Care Facilities* for residents who do not routinely require nursing or other medically related services.

Residential Care Unit. A unit within a nursing facility licensed by the Department of Public Health to provide residential care.

State Fiscal Year (SFY). The 12-month period from July 1st through June 30th.

Unit. A unit is an identifiable section of a nursing facility such as a wing, floor, or ward as defined in 105 CMR 150.000: *Licensing of Long-term Care Facilities*.

206.03: General Payment Provisions

(1) General. Nursing facility payments are prospective rates based on reported costs for a prior base year.

(a) The nursing standard payments and the operating cost standard payments are established in 101 CMR 206.04. The base year for the nursing standard payments and the operating cost standard payments effective October 1, 2022, is 2019. The nursing and operating payments are increased from the base year by a cost adjustment factor of 4.60%.

(b) The capital payments are established in 101 CMR 206.05. The base year for the capital payments effective October 1, 2022, is 2019. The capital payments are increased from the base year by a cost adjustment factor of 1.05%.

(c) Payments may be adjusted to include additional payments in accordance with 101 CMR 206.06.

(2) Ancillary Costs. Unless a provider participates in the Ancillary Pilot Program with the MassHealth agency, or a provider's payments include ancillary services pursuant to the regulations or written policy of the purchasing agency, the provider must bill ancillary services directly to the purchaser in accordance with the purchaser's regulations or policies.

(3) Disclaimer of Authorization of Services. 101 CMR 206.00 is not authorization for or approval of the substantive services, or lengths of time, for which rates are determined pursuant to 101 CMR 206.00. Governmental units that purchase services from eligible providers are responsible for the definition, authorization, and approval of services and lengths of time provided to publicly aided individuals. Information concerning substantive program requirements must be obtained from purchasing governmental units.

206.05: continued

2. The revised capital payment shall be the total calculated in 101 CMR 206.05(3)(c)1., and shall be the new capital rate, in place of the rate calculated under 101 CMR 206.05(1) or 101 CMR 206.05(2), effective on the later of the date the facility submits their request for the revised capital payment, including all required documentation, or the effective date of the change in licensed beds.
- (4) Maximum Capital Payment. Capital payments shall not exceed \$37.60.
- (5) New or Relocated Nursing Facilities. A nursing facility that becomes operational on or after November 1, 2019, an existing nursing facility that replaces its current building on or after November 1, 2019, or an existing nursing facility that fully relocates to a newly constructed location on or after November 1, 2019, will be eligible for a capital payment in the amount of \$37.60. Such facility will not be eligible for additional capital payments as listed 101 CMR 206.05(1) or for an adjustment to its capital payment as described in 101 CMR 206.05(2).
- (6) Licensed Bed Changes. A nursing facility will not receive an adjustment to its capital payment rate solely because of an increase or decrease in its number of licensed beds, except as described in 101 CMR 206.05(3)(a)3.
- (7) Rate Adjustments. EOHHS may adjust any capital payment upon EOHHS's determination that there was a material error in the calculation of the payment or in the facility's documentation of its capital costs.

206.06: Adjustments to Standard Nursing Facility Rates

- (1) Certification of Public Expenditures of a Nursing Facility Owned and Operated by a Municipality.
- (a) Within 60 days after the filing of its Medicare CMS-2540 cost report, a nursing facility, which is owned and operated by a municipality, may submit a request for Certified Public Expenditures (CPE) to EOHHS. This CPE will account for its public expenditures of providing Medicaid services to eligible Medicaid recipients. The submission will be based on the inpatient routine service cost reported on the CMS-2540 Medicare cost report.
- (b) Following review of the nursing facility's submission, EOHHS will, within 60 days of the submission, approve, deny, or revise the amount of the CPE request based upon its evaluation of the reported costs and payments. The final approved amount will be equal to the difference between the Medicaid interim payments and the total allowable Medicaid costs as determined by EOHHS. This final determined amount will be certified by the municipality as eligible for federal match.
- (c) Interim payments are based on the standard payment methodology pursuant to 101 CMR 206.00.
- (d) EOHHS will determine total allowable Medicaid costs based on the Medicare CMS-2540 Cost Report and will determine a *per diem* rate calculated as follows.
1. Medicaid Allowable Skilled Nursing Facility Costs. Total allowable costs (Worksheet B, Part I, Line 30, Col 18), divided by total days (Worksheet S-3, Line 1, Col 7), times Medicaid days (Worksheet S-3, Line 1, Col 5).
 2. Medicaid Allowable Nursing Facility Costs. Total allowable costs (Worksheet B, Part I, Line 31, Col 18), divided by total days (Worksheet S-3, Line 3, Col 7), times Medicaid days (Worksheet S-3, Line 3, Col 5).
 3. Total Allowable Medicaid Costs. The sum of the amount determined in 101 CMR 206.06(1)(d)1. and 2.
- (e) EOHHS will calculate an interim reconciliation based on the difference between the interim payments and total allowable Medicaid costs from the as-filed CMS-2540 Cost Report. The nursing facility must notify EOHHS immediately if the CMS-2540 is reopened or an audit is completed. Within 60 days after receiving notification of the final Medicare settlement EOHHS will retroactively adjust the final settlement amount.

206.06: continued

(2) **Quality Adjustments.** Effective October 1, 2022, a nursing facility may be eligible for a quality adjustment in the form of an increase or decrease applied to the facility's nursing standard rate and operating standard rate at each management minute category. The quality adjustment will be equal to the sum of the percent increase or decrease assessed for performance on each of the following four quality measures: Quality Achievement Based on CMS Score, Quality Improvement Based on CMS Score, Quality Achievement Based on DPH Score, and Quality Improvement based on DPH Score.

(a) **Quality Achievement Based on CMS Score.** The quality adjustment a nursing facility will incur under the measure "Quality Achievement Based on CMS Score" will be based on the facility's overall rating on the Centers for Medicare and Medicaid Services Nursing Home Compare 5-Star Quality Rating Tool as of June 2022, as described in the table below. Facilities that CMS has designated as not rated due to a history of serious quality issues (i.e., Special Focus Facilities) will be considered to have a score of 1 for the purposes of this quality adjustment.

CMS Overall Score as of June 2022	Adjustment Percentage
1	-1.00%
2	-0.75%
3	0.00%
4	0.75%
5	1.00%

(b) **Quality Improvement Based on CMS Score.** The quality adjustment a nursing facility will incur under the measure "Quality Improvement Based on CMS Score" will be based on the facility's overall rating on the Centers for Medicare and Medicaid Services Nursing Home Compare 5-Star Quality Rating Tool, as follows. If a facility has a score of 5 Stars as of June 2022, its adjustment for this measure will be 2.0%, regardless of whether it meets any other criteria in the following table. If a facility meets the criteria for "CMS Chronic Low Quality," its adjustment for this measure will be -3.0%, regardless of whether it meets any other criteria in the following table. Facilities that CMS has designated as not rated due to a history of serious quality issues (i.e., Special Focus Facilities) will be considered to meet the criteria for "CMS Chronic Low Quality" for the purposes of this quality adjustment.

Criteria based on CMS Rating	Adjustment Percentage
Facility has a score of 5 Stars as of June 2022	2%
Facility experienced an increase of 2 or more Stars from June 2021, to June 2022	1.5%
Facility experienced an increase of 1 Star from June 2021, to June 2022	1%
Facility experienced no change to its Star rating from June 2021, to June 2022	0%
Facility experienced a decrease of 1 Star from June 2021, to June 2022, and had a score of 5 Stars as of June 2021	0%
Facility experienced a decrease of 1 Star from June 2021, to June 2022, and did not have a score of 5 Stars as of June 2021	-2%
Facility experienced a decrease of 2 or more Stars from June 2021, to June 2022	-2.5%
CMS Chronic Low Quality: The average of a facility's scores as of June 2019, June 2020, June 2021, and June 2022 is less than or equal to 1.5 Stars	-3%

(c) **Quality Achievement Based on DPH Score.** The quality adjustment a nursing facility will incur under the measure "Quality Achievement Based on DPH Score" will be based on the facility's performance on the Department of Public Health's Nursing Facility Survey Performance Tool (DPH NFSPT) as of July 1, 2022, as follows:

DPH NFSPT Score as of July 1, 2022	Adjustment Percentage
110 or less	-1.00%
111 – 115	-0.75%
116 – 119	0.00%
120 – 123	0.75%
124+	1.00%

206.06: continued

(d) Quality Improvement Based on DPH Score. The quality adjustment a nursing facility will incur under the measure "Quality Improvement Based on DPH Score" will be based on the facility's performance on the DPH NFSPT, as follows. If a facility has a DPH NFSPT score of 124 or higher as of July 1, 2022, its adjustment for this measure will be 2.0%, regardless of whether it meets any other criteria in the following table. If a facility meets the criteria for "DPH Chronic Low Quality", its adjustment for this measure will be -3.0%, regardless of whether it meets any other criteria in the following table.

Criteria based on DPH FSPT Score	Adjustment Percentage
Facility has a score of 124 or higher as of July 1, 2022	2.0%
Facility experienced an increase of 4 or more points from July 1, 2021, to July 1, 2022	1.5%
Facility experienced an increase of 1, 2, or 3 points from July 1, 2021, to July 1, 2022	1.0%
Facility experienced no change to its score from July 1, 2021 to July 1, 2022	0.0%
Facility experienced a decrease of 1, 2, or 3 points from July 1, 2021 to July 1, 2022, and had a score of 124 or higher as of July 1, 2021	0.0%
Facility experienced a decrease of 1, 2, or 3 points from July 1, 2021 to July 1, 2022, and did not have a score of 124 or higher as of July 1, 2021	-2.0%
Facility experienced a decrease of 4 or more points from July 1, 2021 to July 1, 2022	-2.5%
DPH Chronic Low Quality: Facility had a score of less than 100 as of each of the following dates: July 1, 2020; July 1, 2021; and July 1, 2022	-3%

(3) Kosher Food Services. Nursing facilities with kosher kitchen and food service operations may receive an add-on of up to \$5 per day to reflect the additional costs of these operations.

(a) Eligibility. To be eligible for this add-on, the nursing facility must

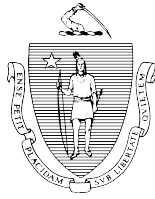
1. maintain a fully kosher kitchen and food service operation that is, at least annually, rabbinically approved or certified; and in accordance with all applicable requirements of law related to kosher food and food products including, but not limited to, M.G.L. c. 94, § 156;
2. provide to the Center a written certification from a certifying authority, including the complete name, address, and phone number of the certifying authority, that the applicant's nursing facility maintains a fully kosher kitchen and food service operation in accordance with Jewish religious standards. For purpose of 101 CMR 206.06(3)(a)2., the phrase "certifying authority" will mean a recognized kosher certifying organization or rabbi who has received Orthodox rabbinical ordination and is educated in matters of Orthodox Jewish law;
3. provide a written certification from the administrator of the nursing facility that the percentage of the nursing facility's residents requesting kosher foods or products prepared in accordance with Jewish religious dietary requirements is at least 50%; and
4. upon request, provide the Center with documentation of expenses related to the provision of kosher food services including, but not limited to, invoices and payroll records.

(b) Payment Amounts.

1. To determine the add-on amount, EOHHS will determine the statewide median dietary expense per day for all facilities. The add-on equals the difference between the eligible nursing facility's dietary expense per day and the statewide median dietary expense per day, not to exceed \$5 per day. In calculating the per day amount, EOHHS will include allowable expenses for dietary and dietician salaries, payroll taxes and related benefits, food, dietary purchased service expense, dietician purchased service expense, and dietary supplies and expenses. The days used in the denominator of the calculation will be the higher of the nursing facility's actual days or 96% of available bed days.
2. EOHHS will compare the sum of the add-on amounts multiplied by each nursing facility's projected annual rate period Medicaid days to the state appropriation. In the event that the sum exceeds the state appropriation, each nursing facility's add-on will be proportionally adjusted.

206.06: continued

- (5) Leaves of Absence. If a purchasing agency pays for leaves of absence, the payment rate for a leave of absence day is \$80.10 per day, unless otherwise determined by the purchasing agency.
- (6) Nursing Cost. Eligible facilities will receive an \$87 per diem add-on to reflect the difference between the standard payment amounts and actual base year nursing spending. To be eligible for such payment, the Department of Public Health must certify to EOHHS that over 75% of the nursing facility's residents have a primary diagnosis of multiple sclerosis.
- (7) Pediatric Nursing Facilities.
- (a) Effective October 1, 2022, EOHHS will determine payments to facilities licensed to provide pediatric nursing facility services using allowable reported costs for nursing and other operating costs, excluding administrative and general costs, from the nursing facility's 2019 Cost Report. EOHHS will include an administrative and general payment based on the 85th percentile of the 2019 statewide administrative and general costs. EOHHS will apply an appropriate cost adjustment factor to nursing, other operating, and administrative and general costs.
 - (b) The nursing and operating components of the rate is increased by a cost adjustment factor of 4.60%.
 - (c) Facilities licensed to provide pediatric nursing facility services will receive the rates which are the greater of
 1. the rates calculated as described in 101 CMR 206.06(7)(a) and (b); or
 2. the Nursing Standard and Operating Cost Standard rates as listed in 101 CMR 206.04(1) and (2).
- (9) Receiverships. EOHHS may adjust the rate of a receiver appointed under M.G.L. c. 111, § 72N solely to reflect the reasonable costs, as determined by EOHHS and the MassHealth agency, associated with the court-approved closure of the nursing facility.
- (10) Residential Care Beds. Effective October 1, 2022, the total payment for nursing and other operating costs for residential care beds in a dually licensed nursing facility is \$120.45.
- (11) State-operated Nursing Facilities. A nursing facility operated by the Commonwealth will be paid at the nursing facility's reasonable cost of providing covered Medicaid services to eligible Medicaid recipients.
- (a) EOHHS will establish an interim *per diem* rate using a base year CMS-2540 cost report inflated to the rate year using the cost adjustment factor calculated pursuant to 101 CMR 206.06(11)(b) and a final rate using the final rate year CMS-2540 cost report.
 - (b) EOHHS will determine a cost adjustment factor using a composite index using price level data from the CMS Nursing Home without capital forecast, and regional health care consumer price indices, and the Massachusetts-specific consumer price index (CPI), optimistic forecast. EOHHS will use the Massachusetts CPI as proxy for wages and salaries.
 - (c) EOHHS may retroactively adjust the final settled amount when the Medicare CMS-2540 cost report is reopened or for audit adjustments.
- (12) Low Occupancy Adjustment. Effective October 1, 2022, a nursing facility may be subject to a Low Occupancy Adjustment to its payment rate, according to the following methodology:
- (a) Each facility's occupancy is calculated as follows:
 1. Determine the facility's total resident days as reported on quarterly User Fee Assessment Forms covering the period of July 1, 2021, through June 30, 2022;
 2. Determine the facility's total number of licensed beds as of June 30, 2022, minus licensed Level IV beds. Multiply the result by the number of days in the year.
 3. Calculate the facility's occupancy by dividing the result of 101 CMR 206.06(12)(a)1. by the result of 101 CMR 206.06(12)(a)2. and rounding the result to the nearest hundredth of a percent.
 - (b) Based on the occupancy calculated in 101 CMR 206.06(12)(a), a facility may face a reduction to its nursing standard rate and operating rate, applied at each management minute category as follows:



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **101 CMR 514.00**

CHAPTER TITLE: **Hospital Assessment**

AGENCY: **Executive Office of Health and Human Services**

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

101 CMR 514.00 facilitates collection and administration of the new hospital assessment structure established through the FY23 GAA.

REGULATORY AUTHORITY: **M.G.L. c. 118E**

AGENCY CONTACT: **Deborah M. Briggs, MassHealth Publications** PHONE: **617-847-3302**

ADDRESS: **100 Hancock Street, 6th Floor, Quincy, MA 02171**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

This new regulation is necessary to implement the new hospital assessment structure, which by statutory requirement went into effect on October 1, 2022. The regulations must be effective prior to the first assessment collection.

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

Executive Order 145 Notification: November 3, 2022

Executive Order 562 Approval: November 2, 2022

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

Date of public hearing or comment period: _____

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

For the first and second year: **Total annual assessed amount, per the statutory requirement, is \$880,000,000**

For the first five years:

No fiscal effect:

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

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

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

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

101 CMR 514.00 is being adopted.

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

SIGNATURE: SIGNATURE ON FILE DATE: **Nov 03 2022**

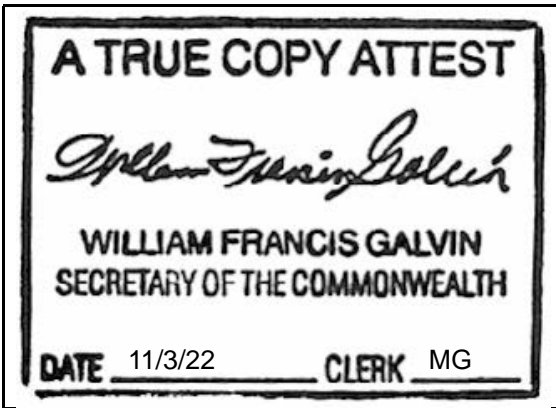
Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: **1483** DATE: **11/25/22**

EFFECTIVE DATE: **11/3/22**

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
This is an Emergency Regulation.	There are no Replacement Pages.



101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

(101 CMR 513.00: RESERVED)

NON-TEXT PAGE

101 CMR 514.00: HOSPITAL ASSESSMENT

Section

- 514.01: General Provisions
- 514.02: Definitions
- 514.03: Hospital Groups
- 514.04: Calculation of Hospital Assessment
- 514.05: Payment of Hospital Assessment
- 514.06: Reporting Requirements
- 514.07: Other Provisions

514.01: General Provisions

101 CMR 514.00 governs the collection of the hospital assessment established under M.G.L. c. 118E, § 67.

514.02: Definitions

As used in 101 CMR 514.00, unless the context requires otherwise, terms have the following meanings.

Acute Hospital. A hospital licensed under M.G.L. c. 111, § 51 that contains a majority of medical-surgical, pediatric, obstetric, and maternity beds, as defined by the Department of Public Health.

Assessed Charges. Gross patient service revenue attributable to all patients less gross patient service revenue attributable to programs administered pursuant to Titles XVIII, XIX, and XXI of the Social Security Act in each hospital's fiscal year 2019.

Assessment. The total payment due by each hospital each month or quarter, as set forth in 101 CMR 514.00.

Centers for Medicare & Medicaid Services (CMS). The federal agency under the U.S. Department of Health and Human Services that is responsible for administering the Medicare and Medicaid programs.

Department of Public Health (DPH). An agency of the Commonwealth of Massachusetts, established under M.G.L. c. 17, § 1.

Executive Office of Health and Human Services (EOHHS). The executive department of the Commonwealth of Massachusetts established under M.G.L. c. 6A, § 2 that, through the Department of Elder Affairs and other agencies within EOHHS, as appropriate, operates and administers the programs of medical assistance and medical benefits under M.G.L. c. 118E and that serves as the single state agency under section 1902(a)(5) of the Social Security Act.

Fiscal Year (FY). The 12-month period that hospitals use for financial reporting and budgeting.

Gross Patient Service Revenue. The total dollar amount of a hospital's charges for services rendered in a hospital's fiscal year, as reported to the Center for Health Information and Analysis (CHIA) through Hospital Cost Reports in 2019.

Health Safety Net. The payment program established and administered in accordance with M.G.L. c. 118E, §§ 8A, and 64 through 69 and regulations promulgated thereunder, and other applicable legislation.

Health Safety Net Office. The office within the Office of Medicaid established under M.G.L. c. 118E, § 65.

Health Safety Net Trust Fund. The fund established under M.G.L. c. 118E, § 66.

514.02: continued

Hospital Cost Report. The Massachusetts Hospital Statement of Costs, Revenues, and Statistics required to be reported to CHIA pursuant to 957 CMR 9.00: *Hospital Financial Data Reporting Requirements*.

Licensee. Any natural person, corporation, partnership, trust, estate, or other legal entity holding a license to operate a nonpublic acute or non-acute hospital in Massachusetts; and, in the case of a licensee that is not a natural person, includes

- (1) any shareholder owning not less than five percent, any officer, and any director of any corporate licensee;
- (2) any limited partner owning not less than five percent and any general partner of a partnership licensee;
- (3) any trustee of any trust licensee;
- (4) any sole proprietor of any licensee that is a sole proprietorship; or
- (5) any mortgagee in possession and any executor or administrator of any licensee that is an estate.

MassHealth Program (MassHealth). The medical assistance benefits plans operated and administered by EOHHS pursuant to M.G.L. c. 118E, § 1 *et seq.* and 42 U.S.C. § 1396 *et seq.*, Title XXI of the Social Security Act (42 U.S.C. 1397), and other applicable laws and waivers to provide and pay for medical services to eligible members (Medicaid).

Medicare. The federal health insurance program for people who are 65 years of age or older, certain younger people with disabilities, and people with end-stage renal disease (permanent kidney failure requiring dialysis or a transplant, sometimes called ESRD) established by Title XVIII of the Social Security Act.

Non-public Gross Patient Service Revenue. Total gross patient service revenues (as defined in Gross Patient Service Revenue) minus gross patient service revenues attributable to Medicare, Medicaid, and Out-of-state Medicaid, as determined by EOHHS.

Non-acute Hospital. A nonpublic hospital that is

- (1) licensed by the Department of Public Health under M.G.L. c. 111, § 51 but not defined as an acute-care hospital under M.G.L. c. 111, § 25B; or
- (2) licensed as an inpatient facility by the Department of Mental Health (DMH) under M.G.L. c. 19, § 19 and regulations promulgated thereunder, but not categorized as Class VII licensees under the regulations.

Rate Year (RY). The 12 months from October 1st through September 30th.

Total Assessment Amount. A fixed amount equal to \$880,000,000, plus 50% of the estimated cost, as determined by the Secretary of Administration and Finance, of administering the Health Safety Net and related assessments in accordance with M.G.L. c. 118E, §§ 65 to 69.

514.03: Hospital Groups

(1) Hospital Assessment Liability. Hospital assessment liability will vary by hospital group and by inpatient versus outpatient revenues. The five groups of hospitals for purposes of 101 CMR 514.00 are defined as follows.

- (a) Group I: Any acute hospital identified as a safety net hospital in the MassHealth demonstration waiver approved under subsection (a) of section 1115 of Title XI of the federal Social Security Act and in effect as of October 1, 2022.
- (b) Group II: Any acute hospital that is an academic medical center, teaching hospital, or specialty hospital, as determined by CHIA as of September 30, 2019, but excluding any hospital included in Group I.
- (c) Group III: Any private acute hospital operating as of September 30, 2019, but excluding any hospital included in Group I or Group II.
- (d) Group IV: The Commonwealth's only non-state-owned public hospital, operating as of September 30, 2019.
- (e) Group V: Any nonpublic non-acute hospital operating as of September 30, 2019.

514.03: continued

(2) Consistent Application of Assessment. Hospitals will remain in the group they are in as of October 1, 2022, and will be subject to the same assessment rate established for their group, except as follows.

(a) New Acute Hospitals. New acute hospitals that come into operation subsequent to October 1, 2022, or for whom there is no FY 2019 hospital-specific gross patient service revenue data (as reported by CHIA based on the annual collection of cost report data), or acute hospitals otherwise not included in the approved waiver application, will be considered Group III hospitals, under 101 CMR 514.03(1), until EOHHS determines the hospital's group eligibility.

(b) New Non-acute Hospitals. New non-acute hospitals that come into operation subsequent to October 1, 2022, or for whom there is no FY 2019 hospital-specific gross patient service revenue data (as reported by CHIA based on the annual collection of cost report data), or non-acute hospitals otherwise not included in the approved waiver application, will be considered Group V hospitals, under 101 CMR 514.03(1), until EOHHS determines the hospital's group eligibility.

(c) Hospital Closures. If a hospital subject to the assessment closes, with no successor in interest or assignee as determined by EOHHS consistent with the criteria described in 101 CMR 514.03(2)(d), the former hospital will no longer be subject to the assessment, provided that the hospital is subject to the assessment up to and included its date of closure. No changes will be made to the assessment rates for remaining assessed hospitals as a result of a hospital's closure when there is no successor in interest or assignee.?

(d) Mergers and Acquisitions. The assessment obligation of any hospital is applied to and an obligation of any successor in interest or assignee of such hospital, as determined by EOHHS. A successor in interest may include, but is not limited to, any purchaser of the assets or stock, any new licensee of an existing acute or non-acute hospital, any surviving entity resulting from merger or liquidation, or any receiver or any trustee of the original hospital. The assessment obligation of the successor in interest or assignee with respect to the acquired or merged hospital(s) will be equal to the assessment obligation of the affected hospitals prior to the merger or acquisition. The assessment will be applied to hospitals that merge, or hospitals that acquire another or are acquired, as if no such merger or acquisition occurred.

514.04: Calculation of Hospital Assessment

(1) To determine each hospital's annual assessment liability, the assessment rates established in 101 CMR 514.04(3) are applied to a static fiscal year 2019 dataset of non-public gross patient service revenues, except as described in 101 CMR 514.04(2).

(2) For new acute hospitals described in 101 CMR 514.03(2)(a) and new non-acute hospitals described in 101 CMR 514.03(2)(b), the assessment rates established in 101 CMR 514.04(3) are applied to an annual projection of non-public gross patient service revenues, provided by the hospital in accordance with 101 CMR 514.06(2), until such time as CHIA includes the new hospital in their release of fiscal year cost report data.

(a) For new acute hospitals, beginning with the first complete calendar month following the date of the new acute hospital's inclusion in CHIA's fiscal year cost report data, the assessment rates established in 101 CMR 514.04(3) are applied to the static data included in such fiscal year cost report data.

(b) For new non-acute hospitals, beginning with the first complete calendar quarter following the date of the new non-acute hospital's inclusion in CHIA's fiscal year cost report data, the assessment rates established in 101 CMR 514.04(3) are applied to the static data included in such fiscal year cost report data.

(3) Effective October 1, 2022, the assessment will be applied as follows.

Assessment Group	Hospital Group Description	Inpatient Assessment Rate	Outpatient Assessment Rate
Group I	Safety Net	16.05430%	1.19950%
Group II	Academic Medical Center, Teaching, Specialty	4.66730%	0.74400%
Group III	Other Private Acute	8.58690%	0.89340%
Group IV	Non-state Owned Public	1.61490%	0.55320%
Group V	Non-Acute	1.35000%	1.35000%

514.04: continued

- (4) EOHHS will provide each hospital its total annual assessment liability, and its required monthly or quarterly assessment amounts, as applicable, prior to the due date of the first payment.

514.05: Payment of Hospital Assessment

- (1) Acute Hospital Monthly Assessment. Beginning October 1, 2022, each acute hospital must pay a monthly assessment to EOHHS in a form and manner specified by the Health Safety Net Office, equal to one twelfth of its total annual assessment.

- (2) Non-acute Hospital Quarterly Assessment. Beginning October 1, 2022, each non-acute hospital must pay a quarterly assessment to EOHHS in a form and manner specified by the Health Safety Net Office, equal to one fourth of its total annual assessment.

- (3) Due Date.

(a) Acute hospital assessment payments are due on a monthly basis, with each assessment payment due on the last day of each month.

(b) Non-acute hospital assessment payments are due on a quarterly basis, with each quarterly assessment payment due on the last day of each calendar quarter.

(c) If a hospital closes, it must pay any outstanding hospital assessment obligations within 30 days of the date of closure. If a hospital is acquired by or merges with another hospital, any outstanding hospital assessments owed by the hospital being acquired or merging must be paid within 30 days of the date of the acquisition or merger.

- (4) Administration. EOHHS may provide updates and further details, by administrative bulletin or other written issuance, regarding procedures for the payment and collection of the hospital assessment.

- (5) Interest and Late Fees.

(a) EOHHS may assess interest and late fees on unpaid liabilities. If a hospital fails to remit an assessment by the due date, EOHHS may assess interest at up to 3% per month on the outstanding balance and calculate the interest from the due date. EOHHS will calculate the interest on the outstanding balance as of the due date.

(b) EOHHS may assess up to an additional 3% penalty against the outstanding balance and prior penalties for each month that a hospital remains delinquent. EOHHS will credit partial payments from delinquent hospitals to the current outstanding liability. If any amount remains from the partial payment, EOHHS will then credit such amount to the penalty amount.

(c) In determining the penalty amount, EOHHS may consider factors including, but not limited to, the hospital's payment history, financial situation, and relative share of the payments.

- (6) Assessment Revenue. An amount equal to the total amount of assessments collected, plus any penalties and interest, will be credited to the Health Safety Net Trust Fund.

514.06: Reporting Requirements

- (1) General. Each hospital must file or make available information that EOHHS deems reasonably necessary for calculating and collecting the hospital assessment.

(2) Required Reporting for Hospitals with Change of Status. Any new hospital, merging hospital, acquiring or acquired hospital, or closing hospital, as described in 101 CMR 514.03(2)(a) through (c), must inform EOHHS of its change in status at least 14 days prior to such change in status. Any new acute or non-acute hospital, as described in 101 CMR 514.03(2)(a) and (b), must provide projected annual revenue information, and any additional supporting documentation as requested by EOHHS, in the form and format requested by EOHHS within 30 days of beginning operations.

- (3) Additional Documentation. Each hospital must submit any additional documentation requested by EOHHS or its designee to verify the accuracy of the data submitted.

514.06: continued

(4) Audit. EOHHS or its designee may inspect and copy the records of a hospital for purposes of auditing its calculation of the assessment. If EOHHS or its designee determines that a hospital has either overpaid or underpaid the assessment, it will notify the hospital of the amount due or refund the overpayment.

(5) Penalties. EOHHS may impose a *per diem* penalty of \$100 per day if a hospital fails to furnish documentation required or requested under 101 CMR 514.06 within the timeframes specified in 101 CMR 514.05(3) or as specified by EOHHS upon request, or in administrative bulletins or other written issuances.

514.07: Other Provisions

(1) Severability. The provisions of 101 CMR 514.00 are severable. If any provision or the application of any provision is held to be invalid or unconstitutional, such invalidity will not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 514.00 or the application of such provisions.

(2) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify policies, update administrative requirements, and specify information and documentation necessary to comply with 101 CMR 514.00.

REGULATORY AUTHORITY

101 CMR 514.00: M.G.L. c. 118E.

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

(101 CMR 515.000 THROUGH 612.00: RESERVED)

(PAGES 1063 THROUGH 1100 ARE RESERVED FOR FUTURE USE)



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin
Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **101 CMR 614.00**

CHAPTER TITLE: **Health Safety Net Payments and Funding**

AGENCY: **Executive Office of Health and Human Services**

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

101 CMR 614.00 governs Health Safety Net payments and funding, including payments to Acute Hospitals and Community Health Centers and payments from Acute Hospitals and Surcharge Payers.

REGULATORY AUTHORITY: **M.G.L. c. 118E**

AGENCY CONTACT: **Deborah M. Briggs, MassHealth Publications** PHONE: **617-847-3302**

ADDRESS: **100 Hancock Street, 6th Floor, Quincy, MA 02171**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

These amendments are necessary conforming edits accompanying the new hospital assessment regulation, 101 CMR 514, which implement the new hospital assessment structure. The hospital assessment went into effect on October 1, 2022, per statutory requirement.

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

Executive Order 145 Notification: November 3, 2022
Executive Order 562 Approval: November 2, 2022

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

Date of public hearing or comment period: _____

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

For the first and second year: **Total annual assessed amount, per the statutory requirement, is \$880,000,000**

For the first five years:

No fiscal effect:

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

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

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

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

101 CMR 614.00 is being amended.

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

SIGNATURE: SIGNATURE ON FILE DATE: **Nov 03 2022**

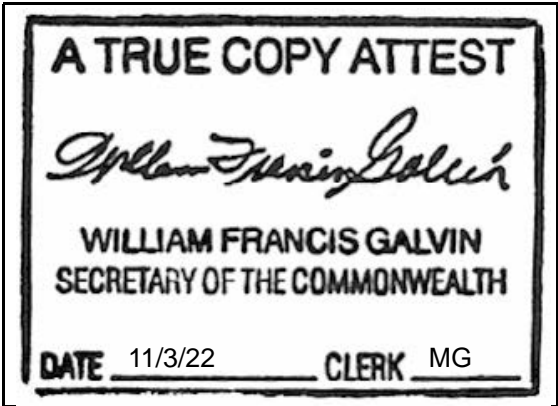
Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: **1483** DATE: **11/25/22**

EFFECTIVE DATE: **11/3/22**

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
This is an Emergency Regulation.	There are no Replacement Pages.



101 CMR 614.00: HEALTH SAFETY NET PAYMENTS AND FUNDING

Section

- 614.01: General Provisions
- 614.02: Definitions
- 614.03: Sources and Uses of Funds
- 614.05: Surcharge on Acute Hospital Payments
- 614.06: Payments to Acute Hospitals
- 614.07: Payments to Community Health Centers
- 614.08: Reporting Requirements
- 614.09: Special Provisions

614.01: General Provisions

Scope, Purpose, and Effective Date. 101 CMR 614.00 governs Health Safety Net payments and funding effective for dates of service beginning October 1, 2022, including payments to Acute Hospitals and Community Health Centers and payments from Acute Hospitals and Surcharge Payers. The criteria for determining services for which Acute Hospitals and Community Health Centers may be paid by the Health Safety Net are set forth in 101 CMR 613.00: *Health Safety Net Eligible Services*

614.02: Definitions

As used in 101 CMR 614.00, unless the context otherwise requires, terms have the following meanings. All defined terms in 101 CMR 614.00 are capitalized.

340B Provider. An Acute Hospital or Community Health Center eligible to purchase discounted drugs through a program established by § 340B of United States Public Law 102-585, the Veterans Health Act of 1992, permitting certain grantees of federal agencies access to reduced cost drugs for their Patients, and registered and listed as a 340B Provider within the United States Department of Health and Human Services, Office of Pharmacy Affairs (OPA) database. Services of a 340B pharmacy may be provided at on-site or off-site locations.

Acute Hospital. A hospital licensed under M.G.L. c. 111, § 51 that contains a majority of medical-surgical, pediatric, obstetric, and maternity beds, as defined by the Department of Public Health.

Administrative Day. A day of inpatient hospitalization on which a Patient's care needs can be provided in a setting other than an inpatient Acute Hospital in accordance with the standards in 130 CMR 415.000: *Acute Inpatient Hospital Services* and on which the Patient is clinically ready for discharge.

Ambulatory Surgical Center. Any distinct entity that operates exclusively for the purpose of providing surgical services to Patients not requiring hospitalization and meets the Centers for Medicare and Medicaid Services (CMS) requirements for participation in the Medicare program.

Ambulatory Surgical Center Services. Services described for purposes of the Medicare program pursuant to 42 U.S.C. § 1395k(a)(2)(F)(i). These services include only facility services and do not include physician fees.

Bad Debt. An account receivable based on services furnished to a Patient that is

- (a) regarded as uncollectible, following reasonable collection efforts consistent with the requirements in 101 CMR 613.06: *Allowable Bad Debt*;
- (b) charged as a credit loss;
- (c) not the obligation of a governmental unit or the federal government or any agency thereof; and
- (d) not a Reimbursable Health Service.

614.02: continued

Center. The Center for Health Information and Analysis established under M.G.L. c. 12C.

Centers for Medicare & Medicaid Services (CMS). The federal agency that administers Medicare, Medicaid, and the State Children's Health Insurance Program.

Charge. The uniform price for a specific service charged by a Provider.

Community Health Center. A health center operating in conformance with the requirements of § 330 of the Public Health Service Act (42 U.S.C. § 254b), including all Community Health Centers that file cost reports with the Center. Such a health center must

- (a) be licensed as a freestanding clinic by the Massachusetts Department of Public Health pursuant to M.G.L. c. 111, § 51;
- (b) meet the qualifications for certification (or provisional certification) by the MassHealth Agency and enter into a Provider agreement pursuant to 130 CMR 405.000: *Community Health Center Services*; and
- (c) operate in conformance with the requirements of 42 U.S.C. § 254b.

Disproportionate Share Hospital (DSH). An Acute Hospital where a minimum of 63% of the Gross Patient Service Revenue is attributable to Title XVIII and Title XIX of the Social Security Act or other government payers, including the Premium Assistance Payment Program Operated by the Health Connector and the Health Safety Net.

Eligible Services. Services eligible for Health Safety Net payment pursuant to 101 CMR 613.03: *Eligible Services Requirements*. Eligible Services include

- (a) Reimbursable Health Services to Low Income Patients;
- (b) Medical Hardship; and
- (c) Bad Debt as further specified in 101 CMR 613.00: *Health Safety Net Eligible Services* and 614.00.

Emergency Bad Debt. The amount of uncollectible debt for Emergency Services that meets the criteria set forth in 101 CMR 613.06: *Allowable Bad Debt*.

Emergency Services. Medically Necessary Services provided to an individual with an Emergency Medical Condition as defined in 101 CMR 613.02: *Definitions*.

Federal Poverty Level (FPL). The federal poverty income guidelines issued annually in the *Federal Register*.

Financial Requirements. An Acute Hospital's requirement for revenue that includes, but is not limited to, reasonable operating, capital, and working capital costs, and the reasonable costs associated with changes in medical practice and technology.

Fiscal Year (FY). The time period of 12 months beginning on October 1st of any calendar year and ending on September 30th of the following calendar year.

Governmental Unit. The Commonwealth, any department, agency, board, or commission of the Commonwealth, and any political subdivision of the Commonwealth.

Gross Patient Service Revenue. The total dollar amount of a hospital's charges for services rendered in a Fiscal Year.

Guarantor. A person or group of persons who assumes the responsibility of payment for all or part of an Acute Hospital's or Community Health Center's charge for services.

Health Connector. Commonwealth Health Insurance Connector Authority or Health Connector established pursuant to M.G.L. c. 176Q, § 2.

Health Safety Net. The payment program established and administered in accordance with M.G.L. c. 118E, §§ 8A, and 64 through 69 and regulations promulgated thereunder, and other applicable legislation.

614.02: continued

Source Year. The Fiscal Year two Fiscal Years prior to the regulation effective date, from which data is collected to calculate current payment rates, unless otherwise specified by the Health Safety Net Office through administrative bulletin.

Surcharge Payer. An individual or entity that

- (a) makes payments for the purchase of health care Hospital Services and Ambulatory Surgical Center Services; and
- (b) meets the criteria set forth in 101 CMR 614.05(1)(a).

Surcharge Percentage. The percentage assessed on certain payments to Acute Hospitals and Ambulatory Surgical Centers determined pursuant to 101 CMR 614.05(2).

Third Party Administrator. An entity that administers payments for health care services on behalf of a client plan in exchange for an administrative fee. A Third Party Administrator may provide client services for a self-insured plan or an insurance carrier's plan. A Third Party Administrator is deemed to use a client plan's funds to pay for health care services whether the Third Party Administrator pays Providers with funds from a client plan, with funds advanced by the Third Party Administrator subject to reimbursement by the client plan, or with funds deposited with the Third Party Administrator by a client plan.

Total Surcharge Amount. An amount equal to \$160,000,000 plus 50% of the estimated cost, as determined by the Secretary of Administration and Finance, of administering the Health Safety Net and related assessments in accordance with M.G.L. c. 118E, §§ 65 through 69.

Urgent Care Services. Medically Necessary Services provided in an Acute Hospital or Community Health Center after the sudden onset of a medical condition, whether physical or mental, manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson would believe that the absence of medical attention within 24 hours could reasonably expect to result in placing a Patient's health in jeopardy, impairment to bodily function, or dysfunction of any bodily organ or part. Urgent Care Services are provided for conditions that are not life threatening and do not pose a high risk of serious damage to an individual's health. Urgent Care Services do not include Primary or Elective Care, as defined in 101 CMR 613.02: *Definitions*.

614.03: Sources and Uses of Funds(2) Payments from the Health Safety Net Trust Fund.

(a) Payment Adjustments. Acute Hospital payments established under 101 CMR 614.06 may be adjusted to reflect additional funding made available during the Fiscal Year or to reflect the shortfall allocation in accordance with 101 CMR 614.03(2). The Health Safety Net may reserve up to 10% of available funding to ensure that funding is available for the entire Fiscal Year. The Health Safety Net may reserve an additional amount of available funding to ensure that funds are available to pay for claims that were denied or held during the Fiscal Year, but are later remediated in a subsequent Fiscal Year.

(b) Shortfall Allocation. The Health Safety Net Office, using the best data available, estimates the projected total Reimbursable Health Services provided by Acute Hospitals and Community Health Centers; total Medical Hardship services; total Bad Debt for Emergency and Urgent Care Services; and total Health Safety Net administrative expenses. If the Health Safety Net Office determines that, after adjusting for projected Community Health Center payments and administrative expenses, Health Safety Net payments to Acute Hospitals will exceed available funding, the Health Safety Net Office allocates the funding in a manner that reflects each Acute Hospital's proportional Financial Requirements for Health Safety Net payments through a graduated payment system. The Health Safety Net Office allocates the shortfall to Disproportionate Share Hospitals and other Acute Hospitals as follows.

1. Disproportionate Share Hospital. The Health Safety Net Office determines Disproportionate Share Hospital status using data reported on the Hospital Cost Report for the Source Year.

614.03: continued

2. Allocation Method. The Health Safety Net Office allocates the shortfall as follows.
 - a. Determine the ratio of each Acute Hospital's total Patient care costs to the sum of all Acute Hospitals' total Patient care costs.
 - b. Multiply this ratio by the total Shortfall Amount.
 - c. If calculated amount is greater than an Acute Hospital's allowable Health Safety Net payments, then the shortfall allocation is limited to the Acute Hospital's allowable Health Safety Net payments. If an Acute Hospital's allowable Health Safety Net payment is a negative amount, then the shortfall allocation is limited to zero.
 - d. The Health Safety Net's gross liability to each Acute Hospital is limited by the Acute Hospital's allowable Health Safety Net payments less the Shortfall Amount calculated in 101 CMR 614.03(2)(b)2.a. through c.
 - e. Each Disproportionate Share Hospital is paid the greater of
 - i. 85% of its allowable Health Safety Net payments; or
 - ii. the revised payment calculated according to the shortfall methodology in 101 CMR 614.03(2)(b)2.a. through e.
- (c) Final Settlement. The Health Safety Net Office may implement a final settlement between the Health Safety Net and an Acute Hospital for the Fiscal Year. The final settlement is calculated based on the Health Safety Net's gross liability to the Acute Hospital calculated pursuant to 101 CMR 614.06, and the payments made to the Acute Hospital during the Fiscal Year. The final settlement may occur when the Health Safety Net Office determines that it has sufficiently completed relevant claims adjudication and audit activity. For the purposes of the final settlement, the Health Safety Net Office may cease paying for claims that exceed the billing deadlines or other billing rules established at 101 CMR 613.00: *Health Safety Net Eligible Services*.

614.05: Surcharge on Acute Hospital Payments

- (1) General. There is a surcharge on certain payments to Acute Hospitals and Ambulatory Surgical Centers. The surcharge amount equals the product of payments subject to surcharge as defined in 101 CMR 614.05(1)(b) and the Surcharge Percentage as defined in 101 CMR 614.05(2).
 - (a) Surcharge Payer.
 1. A Surcharge Payer is an individual or entity that makes payments for the purchase of health care Hospital Services and Ambulatory Surgical Center Services, including a Managed Care Organization; provided, however, that the term "surcharge payer" does not include Title XVIII and Title XIX of the Social Security Act programs and their beneficiaries or recipients, except Managed Care Organizations; other governmental programs of public assistance and their beneficiaries or recipients; and the workers' compensation program established pursuant to M.G.L. c. 152.
 2. The same entity that pays that Acute Hospital or Ambulatory Surgical Center for services must pay the surcharge. If an entity such as a Third Party Administrator acts on behalf of a client plan and uses the client plan's funds to pay for the services, or advances funds to pay for the services for which it is reimbursed by the client plan, it must also act on behalf of the client plan and use the client plan's funds to pay the surcharge or advance funds to pay the surcharge for which it will be reimbursed by the client plan.
 - (b) Payments Subject to Surcharge. Payments subject to surcharge include
 1. direct and indirect payments made by Surcharge Payers to Massachusetts Acute Hospitals for the purchase of Acute Hospital Services and to Massachusetts Ambulatory Surgical Centers for the purchase of Ambulatory Surgical Center Services, with the following exceptions:
 - a. except for Managed Care Organization payments for MassHealth members and Commonwealth Care enrollees, the surcharge applies to all payments made on or after January 1, 1998, regardless of the date services were provided; and
 - b. for Managed Care Organization payments for MassHealth members younger than 65 years old and for Commonwealth Care enrollees, the surcharge applies to all payments made on or after December 1, 2010, regardless of the date services were provided;

614.05: continued

2. payments made by national health insurance plans operated by foreign governments and payments made by an embassy on behalf of a foreign national not employed by the embassy;
 3. direct payments made under an employer health plan by a health care reimbursement arrangement funded by the employer; and
 4. payments made by Medicare supplemental plans and other health insurance plans secondary to Medicare.
- (c) Payments Not Subject to Surcharge. Payments not subject to surcharge include
1. payments, settlements, and judgments arising out of third party liability claims for bodily injury that are paid under the terms of property or casualty insurance policies;
 2. payments made on behalf of MassHealth members by MassHealth, Medicare beneficiaries by Medicare (including Medicare Advantage plans) except as provided in 101 CMR 614.05(1)(b), persons enrolled in the Premium Assistance Payment Program Operated by the Health Connector, or persons enrolled in policies issued pursuant to M.G.L. c. 176K or similar policies issued on a group basis, except that payments made by Managed Care Organizations on behalf of MassHealth members younger than 65 years old who are not enrolled in an integrated care organization and Commonwealth Care enrollees are subject to surcharge;
 3. payments made by an Acute Hospital to a second Acute Hospital for services that the first Acute Hospital billed to a Surcharge Payer;
 4. payments made by a group of Providers, including one or more Massachusetts Acute Hospitals or Ambulatory Surgical Centers, to member Acute Hospitals or Ambulatory Surgical Centers for services that the group billed to an entity licensed or approved under M.G.L. chs. 175, 176A, 176B, 176G, or 176I;
 5. payments made on behalf of an individual covered under the Federal Employees Health Benefits Act at 5 U.S.C. 8901 *et seq.*;
 6. payments made on behalf of an individual covered under the workers' compensation program under M.G.L. c. 152; and
 7. payments made on behalf of foreign embassy personnel who hold a Tax Exemption Card issued by the United States Department of State.
- (d) The surcharge is distinct from any other amount paid by a Surcharge Payer for the services provided by an Acute Hospital or Ambulatory Surgical Center. Surcharge amounts paid are deposited in the Health Safety Net Trust Fund.
- (e) The Health Safety Net Office may issue additional guidance to clarify policies and understanding of substantive provisions of 101 CMR 614.05(1).
- (2) Calculation of the Surcharge Percentage. The Health Safety Net Office uses the following methodology to calculate the percentage of the surcharge to be assessed on certain payments to Acute Hospitals and Ambulatory Surgical Centers, established in M.G.L. c. 118E, § 68. The Health Safety Net Office establishes the Surcharge Percentage before September 1st of each year, as follows.
- (a) The Health Safety Net Office determines the total amount to be collected by adjusting the Total Surcharge Amount for any over or under collections from Institutional Payers and individuals in previous years, including audit adjustments, as well as any over or under collections projected for October or November of the coming year.
 - (b) The Health Safety Net Office projects annual aggregate payments subject to the surcharge based on historical data, excluding projected annual aggregate payments made by Managed Care Organizations on behalf of MassHealth members and Commonwealth Care enrollees, with any adjustments the Health Safety Net Office deems necessary.
 - (c) The Health Safety Net Office divides the amount determined in 101 CMR 614.05(2)(a) by the amount determined in 101 CMR 614.05(2)(b).
- (3) Payer Registration.
- (a) Except for non-United States national insurers that have made fewer than ten payments per year in the prior three years to Massachusetts Acute Hospitals and/or Ambulatory Surgical Centers, all Institutional Payers must register with the Health Safety Net Office by completing and submitting the Surcharge Payer Registration form. These payers must submit the registration form to the Health Safety Net Office within 30 days after making a payment to any Massachusetts Acute Hospital or Ambulatory Surgical Center.

614.05: continued

(b) The Health Safety Net Office compiles lists of registered Institutional Payers, and updates the lists quarterly. The Health Safety Net Office distributes these lists to Acute Hospitals and Ambulatory Surgical Centers upon request.

(c) Institutional Payers must register only once, except that an Institutional Payer that is also a Managed Care Organization must register separately as a Managed Care Organization. A registered payer is automatically registered for the next Fiscal Year.

(4) Billing Process for Institutional Payers.

(a) Each Acute Hospital and Ambulatory Surgical Center must send a bill for the Health Safety Net surcharge to Surcharge Payers, as required by M.G.L. c. 118E, § 68. Acute Hospitals and Ambulatory Surgical Centers must send this bill to Surcharge Payers from whom they have received payment for services in the most recent four quarters for which data is available. The bill must state the Surcharge Percentage. Acute Hospitals and Ambulatory Surgical Centers must send this bill to payers before September 1st of each Fiscal Year and before the effective date of any Surcharge Percentage.

(b) Each Acute Hospital and Ambulatory Surgical Center must also send a bill for the surcharge at the same time as the bill for services provided to Institutional Payers who have not registered with the Health Safety Net Office pursuant to 101 CMR 614.05(3)(a) and from whom they have received payment. The bill must be sent within 30 days of receiving the payment from the unregistered payer. The bill must state the Surcharge Percentage, but not the dollar amount owed, and must include notification of the surcharge payment process set forth below, as well as a registration form specified by the Health Safety Net Office. Until the Acute Hospital or Ambulatory Surgical Center receives the Registered Payer List, it must send a bill for the surcharge at the same time as the bill for services provided to Institutional Payers that it did not already bill pursuant to 101 CMR 614.05(4)(a).

(5) Payment Process for Institutional Payers.

(a) Monthly Surcharge Liability. After the end of each calendar month, each Institutional Payer must determine the surcharge amount it owes to the Health Safety Net Trust Fund for that month. The amount owed is the product of the amount of payments subject to surcharge, as defined in 101 CMR 614.05(1)(b), by the Surcharge Percentage in effect during that month. The Institutional Payer may adjust the surcharge amount owed for any surcharge over- or under-payments in a previous period.

1. Institutional Payers that pay a global fee or capitation for services that include Acute Hospital or Ambulatory Surgical Center Services, as well as other services not subject to the surcharge, must develop a reasonable method for allocating the portion of the payment intended to be used for services provided by Acute Hospitals or Ambulatory Surgical Centers. Such Institutional Payers must file this allocation method by October 1st of each Fiscal Year. If there is a significant change in the global fee or capitation payment arrangement that necessitates a change in the allocation method, the Institutional Payer must file the new method with the Health Safety Net Office before the new payment arrangement takes effect. Institutional Payers may not change the allocation method later in the year unless there is a significant change in the payment arrangement.

a. The Health Safety Net Office will review allocation plans within 90 days of receipt. During this review period the Health Safety Net Office may require an Institutional Payer to submit supporting documentation or to make changes in this allocation method if it finds that the method does not reasonably allocate the portion of the global payment or capitation intended to be used for services provided by Acute Hospitals or Ambulatory Surgical Centers.

b. An Institutional Payer must include the portion of the global payment or capitation intended to be used for services provided by Acute Hospitals or Ambulatory Surgical Centers, as determined by this allocation method, in its determination of payments subject to surcharge.

2. An Institutional Payer must include all payments made as a result of settlements, judgments, or audits in its determination of payments subject to surcharge. An Institutional Payer may include payments made by Massachusetts Acute Hospitals or Ambulatory Surgical Centers to the Institutional Payer as a result of settlements, judgments, or audits as a credit in its determination of payments subject to surcharge.

614.05: continued

(b) Monthly Payments. Institutional Payers must make payments to the Health Safety Net Trust Fund monthly. Each Institutional Payer must remit the surcharge amount it owes to the Health Safety Net Trust Fund, determined pursuant to 101 CMR 614.05(5)(a), to the Health Safety Net Office for deposit in the Health Safety Net Trust Fund. Institutional Payers must remit the surcharge payment by the first business day of the second month following the month for which the surcharge amount was determined. For example, surcharge payments based on payments made to Acute Hospitals and Ambulatory Surgical Centers in January are due by March 1st.

(c) Biannual Surcharge Payment Option.

1. An Ambulatory Surgical Center may request a biannual surcharge payment option if

- a. it has remitted four or fewer payments during the previous Fiscal Year;
- b. it has remitted all required surcharge payments and submitted all monthly coupons;
- c. it submitted a Surcharge Verification Form for the previous Fiscal Year; and
- d. it has reported less than \$10,000 in surcharge payments in the Surcharge Verification Form.

2. The Health Safety Net Office notifies payers eligible for the biannual option. The Payer may elect to receive biannual surcharge notices or to continue to receive monthly notices. Each biannual surcharge payment equals the product of the appropriate surcharge percentage and all payments made by the payer to Massachusetts Acute Hospitals and Ambulatory Surgical Centers for the prior six months.

(d) All surcharge payments must be payable in United States dollars and drawn on a United States bank. The Health Safety Net Office assesses a \$30.00 penalty on any Surcharge Payer whose check is returned for insufficient funds.

(e) Any Institutional Payer, except Third Party Administrators, that has a surcharge liability of less than \$5.00 in any month or biannual payment period may delay payment until its surcharge liability is at least \$5.00. For example, XYZ Company's surcharge liability for July is \$3.50 and its liability for August is \$2.00. XYZ Company may delay payment in July but must remit a check for \$5.50 in August.

(6) Payment Process for Individual Payers (Self-pay). There is a surcharge on certain payments made by Individual Payers to Acute Hospitals and Ambulatory Surgical Centers.

(a) Billing.

1. Acute Hospitals and Ambulatory Surgical Centers must include the surcharge amount on all bills to Individual Payers unless

- a. the Patient's liability is less than the individual payment threshold of \$10,000;
- b. the Patient is a non-Massachusetts resident for whom the Acute Hospital or Ambulatory Surgical Center can verify that the Patient's income would otherwise qualify the Patient as a Low Income Patient under 101 CMR 613.04: *Eligible Services to Low Income Patients*; or
- c. the Patient is approved for Medical Hardship in accordance with the requirements of 101 CMR 613.05: *Medical Hardship*. The bill must direct Individual Payers to pay the surcharge to the Acute Hospital or Ambulatory Surgical Center when making payment for services.

2. The amount of the surcharge billed is the product of the Patient's liability to the Acute Hospital or Ambulatory Surgical Center, and the Surcharge Percentage in effect on the billing date.

3. The amount of the surcharge owed by an Individual Payer is the product of the total amount paid by the individual to an Acute Hospital or Ambulatory Surgical Center and the Surcharge Percentage in effect on the payment date. Payments greater than or equal to the threshold received by Acute Hospitals and Ambulatory Surgical Centers from Individual Surcharge Payers are subject to the surcharge.

(b) Acute Hospitals and Ambulatory Surgical Centers must remit to the Health Safety Net Office the surcharge amount owed by Individual Payers for every payment greater than or equal to the threshold made by Individual Payers. If an Individual Payer makes separate payments over a 12-month period that are equal to or greater than the threshold and relate to an outpatient visit or inpatient stay, the surcharge amount due applies to the aggregate amount paid for the outpatient visit or inpatient stay. The first surcharge payment is due to the Health Safety Net Office when the total Individual Payer payment amount reaches the threshold.

614.05: continued

(c) Acute Hospitals and Ambulatory Surgical Centers must remit such surcharge payments by the first business day of the second month following the month during which the surcharge was received. For example, surcharge payments received by Acute Hospitals and Ambulatory Surgical Centers in January are due to the Health Safety Net Office on March 1st. Acute Hospitals and Ambulatory Surgical Centers may deduct collection agency fees for the collection of surcharge payments from Individual Payers from the total amount of surcharge payments forwarded to the Health Safety Net Office.

(d) All payments must be payable in United States dollars and drawn on a United States bank. The Health Safety Net Office assesses a \$30.00 penalty on any Surcharge Payer whose check is returned for insufficient funds.

(e) If an embassy of a foreign government pays an Acute Hospital or Ambulatory Surgical Center bill on behalf of an individual, the Provider may either bill the embassy for the individual's surcharge according to the billing and payment process for Individual Payers set forth in 101 CMR 614.05(6) or bill the embassy according to the billing process for Institutional Payers as set forth in 101 CMR 614.05(4). If the Provider chooses to bill the embassy as an Institutional Payer and the embassy is not listed on the Registered Payer List, the Provider must include the embassy on the Unmatched Payer Report and send surcharge payer registration information to the embassy.

(7) Penalties. If an Acute Hospital, Ambulatory Surgical Center, or Surcharge Payer fails to forward surcharge payments pursuant to 101 CMR 614.05, the Health Safety Net Office imposes an additional 1.5% interest penalty on the outstanding balance. The interest is calculated from the due date. For each month a payment remains delinquent, an additional 1.5% penalty accrues against the outstanding balance, including prior penalties.

(a) The Health Safety Net Office credits partial payments first to the current outstanding liability, and second to the amount of the penalties.

(b) The Health Safety Net Office may reduce the penalty at the Health Safety Net Office's discretion. In determining a waiver or reduction, the Health Safety Net Office's consideration includes, but is not limited to, the entity's payment history, financial situation, and relative share of the payments to the Health Safety Net Trust Fund.

(8) Administrative Review. The Health Safety Net Office may conduct an administrative review of surcharge payments at any time.

(a) The Health Safety Net Office reviews data submitted by Acute Hospitals, Ambulatory Surgical Centers, and Institutional Payers pursuant to 101 CMR 614.08, the Surcharge Payer Registration forms submitted by Institutional Payers pursuant to 101 CMR 614.05(3)(a), and any other pertinent data. All information provided by, or required from, any Surcharge Payer, pursuant to 101 CMR 614.00 is subject to audit by the Health Safety Net Office. For surcharge payments based upon a global fee or capitation allocated according to an allocation method accepted by the Health Safety Net Office pursuant to 101 CMR 614.05(5)(a)1., the Health Safety Net Office's review is limited to determining whether this method was followed accurately and whether the amounts reported were accurate.

(b) The Health Safety Net Office may require the Surcharge Payer to submit additional documentation reconciling the data it submitted with data received from Acute Hospitals.

(c) If the Health Safety Net Office determines through its review that a Surcharge Payer's payment to the Health Safety Net Trust Fund was materially incorrect, the Health Safety Net Office may require a payment adjustment. Payment adjustments are subject to interest penalties and late fees, pursuant to 101 CMR 614.05(7), from the date the original payment was owed to the Health Safety Net Trust Fund.

(d) Processing of Payment Adjustments.

1. Notification. The Health Safety Net Office notifies a Surcharge Payer of its proposed adjustments. The notification is in writing and contains a complete listing of all proposed adjustments, as well as the Health Safety Net Office's explanation for each adjustment.

2. Objection Process. If a Surcharge Payer wishes to object to a Health Safety Net Office proposed adjustment contained in the notification letter, it must do so in writing, within 15 business days of the mailing of the notification letter. The Surcharge Payer may request an extension of this period for cause. The written objection must, at a minimum, contain

a. each adjustment to which the Surcharge Payer is objecting;

614.05: continued

- b. the Fiscal Year for each disputed adjustment;
 - c. the specific reason for each objection; and
 - d. all documentation that supports the Surcharge Payer's position.
3. Upon review of the Surcharge Payer's objections, the Health Safety Net Office notifies the Surcharge Payer of its determination in writing. If the Health Safety Net Office disagrees with the Surcharge Payer's objections, in whole or in part, the Health Safety Net Office provides the Surcharge Payer with an explanation of its reasoning.
4. The Surcharge Payer may request a conference on objections after receiving the Health Safety Net Office's explanation of reasons. The Health Safety Net Office schedules such conference on objections only when it believes that further articulation of the Surcharge Payer's position is beneficial to the resolution of the disputed adjustments.
- (e) Payment of Adjustment Amounts. Adjustment amounts and any interest penalty and late fee amounts are due to the Health Safety Net Trust Fund 30 calendar days following the mailing of the notification letter. If the Surcharge Payer submitted a written objection, then adjustment amounts and any interest penalty and late fee amounts are due to the Health Safety Net Trust Fund 30 calendar days following the mailing of the Health Safety Net Office's determination. The Health Safety Net Office may establish a payment schedule for adjustment amounts.

614.06: Payments to Acute Hospitals(1) General Provisions.

(a) The Health Safety Net pays Acute Hospitals based on claims in accordance with the requirements of 101 CMR 613.00: *Health Safety Net Eligible Services*. The Health Safety Net Office monitors the volume of claims submitted and may adjust or withhold payments if it appears that there has been a substantial change in the Provider's service delivery patterns and/or billing activity including, but not limited to, unbundling of services, upcoding, or other billing maximization activities.

(b) Payment Types.

1. The Health Safety Net Office calculates Health Safety Net payments for each Acute Hospital for the following categories of claims for which the Health Safety Net is the primary payer:

- a. Inpatient - Medical (under 101 CMR 614.06(2)(a) and (b));
- b. Inpatient - Psychiatric (under 101 CMR 614.06(2)(c));
- c. Inpatient - Rehabilitation (under 101 CMR 614.06(2)(d));
- d. Outpatient Services (under 101 CMR 614.06(3));
- e. Physician Services (under 101 CMR 614.06(4));
- f. Dental Services (under 101 CMR 614.06(5));
- g. Acute Hospital Outpatient Pharmacies (under 101 CMR 614.06(6));
- h. Vaccine Administration (under 101 CMR 614.06(7));
- i. Emergency Bad Debt - Inpatient Medical (under 101 CMR 614.06(9));
- j. Emergency Bad Debt - Inpatient Psychiatric (under 101 CMR 614.06(9));
- k. Emergency Bad Debt - Outpatient (under 101 CMR 614.06(9)); and
- l. Medical Hardship (under 101 CMR 614.06(10)).

2. Under 101 CMR 614.06(8), the Health Safety Net Office establishes payments for claims which the Health Safety Net is the secondary payer.

3. The Health Safety Net Office reduces payments by the amount of Emergency Bad Debt recoveries and investment income on free care endowment funds. The Health Safety Net Office determines the offset of free care endowment funds by allocating free care endowment income between Massachusetts residents and nonresidents using the best data available and offsetting the Massachusetts portion against Health Safety Net claims.

(c) Method of Payment. The Health Safety Net may make payments to Acute Hospitals for Eligible Services through a safety net care payment under the Massachusetts Section 1115 Demonstration Waiver, a MassHealth supplemental Acute Hospital rate payment, or a combination thereof. The Health Safety Net Office may limit an Acute Hospital's payment for Eligible Services to comply with requirements under the Massachusetts Section 1115 Demonstration Waiver governing safety net care, including cost limits or any other federally required limit on payments under 42 U.S.C. § 1396a(a)(13) or 42 CFR 447.

614.06: continued

(d) Provider Preventable Conditions. The Health Safety Net does not pay for services related to Provider Preventable Conditions defined in 42 CFR 447.26. The Health Safety Net Office may issue administrative bulletins clarifying billing requirements and payment specifications for Provider Preventable Conditions.

(2) Pricing for Inpatient Services. The Health Safety Net Office prices Acute Hospital claims in accordance with the Medicare Inpatient Prospective Payment System (IPPS) for non-psychiatric claims and the Inpatient Psychiatric Facility Prospective Payment System (IPF-PPS) for psychiatric claims for the current Fiscal Year. Medicare pricing data is published in the *Federal Register* and pricing methodologies are described in 42 CFR 412. Claims from Acute Hospitals classified by Medicare as Critical Access Hospitals (CAHs), PPS-exempt Hospitals, Medicare Dependent Rural Hospitals, and Sole Community Hospitals are priced in accordance with 101 CMR 614.06(2)(b).

(a) Inpatient Medical Pricing - Standard. The Health Safety Net Office uses Medicare pricing data and the most current version of the Medicare severity diagnostic related group (MS-DRG) weights to calculate the inpatient medical pricing according to the IPPS for all Acute Hospitals except other Acute Hospitals in accordance with 101 CMR 614.06(2)(b). The Health Safety Net Office may update values as needed to conform to changes implemented by the Medicare program during the Fiscal Year. The pricing calculation includes Medicare adjustments for items such as high-cost outliers, transfer cases, special pay post-acute DRGs, partially eligible stays, and participation in the Acute Hospital Inpatient Quality Reporting program.

(b) Inpatient Medical Pricing - Other Acute Hospitals.

1. Critical Access Hospitals and PPS-exempt Hospitals. The Health Safety Net Office calculates a per discharge payment for discharges occurring at Medicare Critical Access Hospitals and PPS-exempt cancer and Pediatric Hospitals as follows.

a. The Health Safety Net Office determines the average charge per discharge using adjudicated and eligible Health Safety Net claims data from the Source Year that is available at the time of rate calculation.

b. The Health Safety Net Office determines an average cost per discharge by multiplying the average charge per discharge by an inpatient cost to charge ratio using data as reported on the Hospital Cost Report for the Source Year.

c. The average cost per discharge is increased by a cost adjustment factor determined by the percent change from the IPPS index level for the Source Year and the IPPS index level forecast for the Fiscal Year, as calculated by the Health Safety Net Office as of October 1st of the Fiscal Year, and an additional factor of 1%. The product of this calculation is the per discharge payment applicable to all discharges occurring during the current Fiscal Year, except that partially eligible stays are paid pursuant to 101 CMR 614.06(2)(b)3.

d. If the Acute Hospital has fewer than 20 discharges in the Source Year, the Health Safety Net Office sets a payment on account factor for the Acute Hospital.

e. If a case qualifies as a transfer case under Medicare rules, the Health Safety Net Office calculates a *per diem* rate, capped at the full discharge payment. The *per diem* rate is the hospital-specific payment calculated under 101 CMR 614.06(2)(b)1., divided by the Acute Hospital's average length of stay.

2. Sole Community Hospitals. The Health Safety Net Office calculates a hospital-specific per discharge amount for Acute Hospitals classified as Sole Community Hospitals, rather than the adjusted standardized amount. This amount is based on the hospital-specific rate provided by the Medicare fiscal intermediary, adjusted for inflation. The payments may include transfer, outlier, and special pay amounts, using the hospital-specific rate in these calculations, for qualifying cases. Partially eligible stays are paid pursuant to 101 CMR 614.06(2)(b)3.

3. Medicare Dependent Rural Hospitals. The Health Safety Net Office calculates a blended payment consisting of 75% of a hospital-specific payment and 25% of the Operating DRG Payment for Acute Hospitals classified by Medicare as Medicare Dependent Rural Hospitals. The payments may include transfer, outlier, and special pay amounts, using the hospital-specific blended rate in these calculations, for qualifying cases. Partially eligible stays are paid pursuant to 101 CMR 614.06(2)(b)3.

(c) Inpatient Psychiatric Pricing.

614.06: continued

1. Psychiatric Case. A case is classified as psychiatric if
 - a. the Acute Hospital has a Medicare psychiatric unit;
 - b. the primary diagnosis is related to a psychiatric disorder; and
 - c. the claim includes psychiatric accommodation charges.
 2. Psychiatric Pricing. The Health Safety Net Office uses Medicare pricing data to calculate a *per diem* price according to the IPF-PPS. The Health Safety Net Office may update values as needed to conform to changes implemented by the Medicare Program during the Fiscal Year. The pricing calculation includes Medicare adjustments such as a teaching hospital adjustment, electroconvulsive therapy (ECT) adjustment, high-cost outliers, adjustments for participation in the Inpatient Psychiatric Facilities Quality Reporting program, and any other adjustments in accordance with Medicare pricing provisions pursuant to 42 CFR 412.424, including adjustments for specific DRGs, the presence of comorbidities, Patient age, and length of stay.
- (d) Inpatient Rehabilitation Pricing.
1. Rehabilitation Case. A case is classified as rehabilitation if
 - a. the Acute Hospital has a Medicare rehabilitation unit; and
 - b. the claim includes rehabilitation accommodation charges.
 2. Payment. Rehabilitation cases are paid on a *per diem* basis. The payment is determined using the Acute Hospital's most recently filed CMS-2552 Cost Report. The rate is the sum of total rehabilitation PPS payments and reimbursable bad debts, divided by total rehabilitation days.
- (e) Hospital-acquired Conditions.
1. All Acute Hospitals, including but not limited to PPS-exempt Acute Hospitals, are required to report the present on admission indicator for all diagnosis codes on inpatient claims.
 2. The Health Safety Net Office does not assign an inpatient case to a higher paying MS-DRG if a hospital-acquired condition that was not present on admission occurs during the stay. For Hospital Services paid pursuant to 101 CMR 614.06(2)(a) and (b), the DRG payment is reduced in accordance with Medicare principles.
- (f) Serious Reportable Events. The Health Safety Net does not pay for services related to Serious Reportable Events as defined in 105 CMR 130.332(A): *Definitions Applicable to 105 CMR 130.332* based on standards by the National Quality Forum. The Health Safety Net Office may issue administrative bulletins clarifying billing requirements and payment specifications for such services.
- (g) Administrative Days. The Health Safety Net pays Administrative Days at the *per diem* rate established by MassHealth pursuant to the Acute Hospital Request for Applications for the current Fiscal Year when the Health Safety Net is the primary payer. When the Health Safety Net is not the primary payer, Administrative Days are paid per 101 CMR 614.06(8).
- (3) Pricing for Outpatient Services. The Health Safety Net pays a per visit amount for each outpatient visit that exceeds \$20.00. An outpatient visit includes all outpatient services, excluding hospital-based physician services provided in a single day, except for dental and pharmacy services, as described in 101 CMR 614.06(5) and (6). The outpatient per visit amount is determined as follows.
- (a) For each Acute Hospital, the Health Safety Net Office calculates an average outpatient charge per visit, using such adjudicated and eligible Health Safety Net claims data from the Source Year as of June 15, 2016. Charges for dental claims, charges for claims that are \$20.00 or below, and charges for outpatient claims within 72 hours of an inpatient admission are excluded. For Critical Access Hospitals and PPS-exempt Hospitals, only charges for claims within 24 hours of an inpatient admission are excluded.
 - (b) The Health Safety Net Office determines a hospital-specific Medicare payment on account factor (PAF), defined as the percent of Medicare outpatient charges that are paid on average. The PAF is calculated using the best available data and subject to review and adjustment by the Health Safety Net Office.
 - (c) The Health Safety Net Office determines an outpatient payment per visit by multiplying the average outpatient charge per visit by the Medicare PAF. This product is further increased by a cost adjustment factor as calculated in 101 CMR 614.06(2)(b)1.c.
 - (d) Disproportionate Share Hospitals and non-teaching Acute Hospitals receive a transitional add-on of 25% of the outpatient per visit payment rate.

614.06: continued

- (e) The per visit payment for PPS-exempt cancer and Pediatric Hospitals and Medicare Critical Access Hospitals are determined using the ratio of costs to charges as reported on the Hospital Cost Report for the Source Year rather than the Medicare payment on account factor data.
- (f) Claims for visits that are less than or equal to \$20.00 are paid by multiplying the Medicare payment on account factor by the billed charges.
- (4) Pricing for Physician Services. The Health Safety Net Office prices hospital-based physician service claims according to the Medicare Physician Fee Schedule.
- (5) Dental Services. The Health Safety Net Office prices claims from Acute Hospitals for outpatient dental services provided at Acute Hospitals and Hospital Licensed Health Centers using the lesser of the allowable charges billed to the HSN, or the fees established in 101 CMR 314.00: *Dental Services*. No additional outpatient per visit payment is paid for dental services.
- (6) Acute Hospital Outpatient Pharmacies.
- (a) Prescribed Drugs. For Acute Hospitals with outpatient pharmacies, the Health Safety Net Office prices prescribed drugs using rates set forth in 101 CMR 331.00: *Prescribed Drugs*. The rate is reduced by the amount of Patient cost-sharing set forth in 101 CMR 613.00: *Health Safety Net Eligible Services*. Claims are adjudicated by the MassHealth Pharmacy Online Payment System.
- (b) Part B Covered Services. Medical supplies normally covered by the Medicare Part B program that are dispensed by Acute Hospital outpatient pharmacies that are not Part B Providers are priced at 20% of the rates set forth in 101 CMR 322.00: *Durable Medical Equipment, Oxygen, and Respiratory Therapy Equipment* and 101 CMR 331.00: *Prescribed Drugs*.
- (7) Vaccine Administration. The Health Safety Net Office allows for separate payment for a vaccine administration and an individual medical visit only if the vaccine administration is not occurring on the same day as the office visit. A separate fee for the administration of vaccines is payable only when the sole purpose for a visit is vaccine administration. The fee is priced in accordance with the provisions of 101 CMR 317.00: *Rates for Medicine Services*.
- (8) Secondary Payer. The Health Safety Net pays claims for which it is not the primary payer as follows.
- (a) 95% Rule. If a claim billed to the Health Safety Net has a ratio of total billed net charges to total claim charges that is greater than 95%, the Health Safety Net pays the claim in accordance with the applicable primary payment rules.
- (b) Medicare as Primary Payer. For any allowable claim for which Medicare or a Medicare Advantage plan (as defined in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003) is the primary payer, the Health Safety Net pays in accordance with 101 CMR 613.03(1)(c)8. If Medicare or a Medicare Advantage plan denied services on a claim as non-covered services and those services are Eligible Services, the payment for the services is the product of the net billed charges and the Medicare payment on account factor as defined in 101 CMR 614.06(3)(b), except as provided at 101 CMR 614.06(8)(e).
- (c) MassHealth as Primary Payer. Health Safety Net pays allowable claims with MassHealth as the primary payer in accordance with 101 CMR 613.03(1)(c).
- (d) Premium Assistance Payment Program Operated by the Health Connector as the Primary Payer. Health Safety Net pays allowable claims with Premium Assistance Payment Program Operated by the Health Connector as the primary payer in accordance with 101 CMR 613.03(1)(c).
- (e) Private Insurance and Other Primary Payers. For any allowable claim for which a payer other than the payers discussed in 101 CMR 614.06(8)(b) through (d) is the primary payer, the Health Safety Net pays claims in accordance to 101 CMR 613.03(1)(c)4. The payment is the product of the net billed charges and the Medicare payment on account factor as defined in 101 CMR 614.06(3)(b). For inpatient services, the payment will not exceed the amount the Health Safety Net Office would have paid if it were the primary payer.

614.06: continued

(9) Bad Debt Pricing. Except as provided at 101 CMR 614.06(9)(a), the Health Safety Net Office calculates Emergency Bad Debt payments for inpatient, psychiatric, and outpatient Eligible Services, using the methodology in 101 CMR 614.06(2) and (3), except that the Emergency Bad Debt outpatient rate does not include the transitional add-on cited in 101 CMR 614.06(3)(d).

(a) If an Acute Hospital has fewer than 20 Emergency Bad Debt claims during the Source Year, the Health Safety Net Office sets the Emergency Bad Debt rate as the outpatient primary per visit rate established in 101 CMR 614.06(3), excluding the transitional add-on under 101 CMR 614.06(3)(d).

(b) The Health Safety Net Office pays Hospital Licensed Health Centers 75% of the PPS Rate as published by Medicare for Bad Debt claims for Urgent Care Services that meet the requirements in 101 CMR 613.00: *Health Safety Net Eligible Services*.

(10) Medical Hardship. The Health Safety Net pays for claims for Patients deemed eligible for Medical Hardship pursuant to 101 CMR 613.00: *Health Safety Net Eligible Services*. The Health Safety Net Office reduces the amount of the billed charges by any third-party payments, third-party contractual discounts, Patient payments, and the amount of the Medical Hardship contribution. If the adjusted charges are less than the total claim charges, the claim is paid as a secondary claim in accordance with the provisions of 101 CMR 614.06(8). If the billed charges are not reduced, the Health Safety Net pays the claim as if it were a primary Health Safety Net claim.

(11) Other. The Health Safety Net makes an additional payment of \$3.85 million to freestanding Pediatric Hospitals with more than 1,000 Medicaid discharges during the Source Year for which a standard payment amount per discharge was paid by MassHealth pursuant to the Acute Hospital Request for Applications, as determined by paid claims in the Medicaid Management Information System as of June 15, 2016, and for which MassHealth was the primary payer. The Health Safety Net may make an additional payment adjustment for the two Disproportionate Share Hospitals with the highest relative volume of free care costs in FY2006.

(12) Remediated Claims. Remediated claims include claims that were paid or voided during a prior Fiscal Year, but due to hospital resubmission or actions of the Health Safety Net Office were remediated by a payment or void during the current Fiscal Year. The Health Safety Net Office adjusts the payment or void amounts to reflect the applicable payment methods that would have been in use at the time of the original claim payment.

614.07: Payments to Community Health Centers(1) General Provisions.

(a) The Health Safety Net pays Community Health Centers based on claims submitted to the Health Safety Net Office, less applicable cost sharing amount, in accordance with the requirements of 101 CMR 613.00: *Health Safety Net Eligible Services* and claims specifications determined by the Health Safety Net Office. The Health Safety Net Office monitors the volume of claims submitted and may adjust or withhold payments if it appears that there has been a substantial change in the Provider's service delivery patterns including, but not limited to, unbundling of services, upcoding, or other billing maximization activities.

(b) The Health Safety Net will pay a Community Health Center for prescribed drugs only if the Community Health Center is providing prescribed drugs in accordance with 101 CMR 613.03(2).

(2) Payments for Services.

(a) The Health Safety Net will pay Community Health Centers a Medicare-based rate per Patient per day for Reimbursable Health Services unless otherwise specified by the table below. Payment will be either the PPS Rate, or the total charges applicable under the PPS Rate for services furnished, whichever is less. The PPS Rate will be adjusted for geographic differences in the cost of services based on the Medicare FQHC PPS Geographic Adjustment Factors. In addition, the PPS Rate will be increased according to 42 CFR 405.2467 when a Community Health Center furnishes care to a Patient that is new to the Community Health Center or to a Patient receiving a comprehensive initial visit or an annual wellness visit.

614.07: continued

(b) The PPS Rate applies to Individual Medical Visits, surgical procedures, behavioral health diagnostic and treatment services, diagnostic vision care, medical nutrition therapy, diabetes self-management treatment, and tobacco cessation services. Only one visit per Patient per day can be billed with the following exceptions:

1. when a mental health visit occurs on the same day as a medical visit; or
2. when an illness or injury necessitating a visit occurs on the same day as another visit.

(c) For Reimbursable Health Services not included in the PPS Rate, the Health Safety Net pays Community Health Centers according to the following table, except for claims for Bad Debt for Urgent Care Services. Payments are based on regulations named. Some Reimbursable Health Services under 101 CMR 614.07(2) may be listed as individual consideration in the regulations named. For individual consideration codes billable to the Health Safety Net, the payment rate is calculated as (total payments made to Community Health Centers by MassHealth for the code) / (total number of claims paid by MassHealth for the code) during the Source Year. If MassHealth payment and claims information for a code is not available for Source Year, the rate for the code will be based on Medicare fee schedules or other relevant sources. The Health Safety Net pays only for services listed in the HSN CHC Billable Procedure Codes list.

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

614.07: continued

Type of Service	Payment Rules	Payment Source
Medical Visit - Urgent Care (code 99051)	Payable separately from an Individual Medical Visit.	Rate for 99050 in 101 CMR 304.00: <i>Rates for Community Health Centers</i>
Pulmonary Diagnostic (technical component only)	Payable separately only if not occurring on the same day as an Individual Medical Visit.	101 CMR 317.00: <i>Rates for Medicine Services.</i>
Cardiology Diagnostic (technical component only)	Payable separately from an Individual Medical Visit.	101 CMR 317.00: <i>Rates for Medicine Services.</i>
Obstetrical Services	Payable separately from an Individual Medical Visit	101 CMR 316.00: <i>Rates for Surgery and Anesthesia Services</i>
Behavioral Health (group treatment, medication management, psychological testing, and methadone services)	Payable separately from an Individual Medical Visit.	For group treatment and medication visits, rates in 101 CMR 306.00: <i>Rates of Payment for Mental Health Services Provided in Community Health Centers and Mental Health Centers</i> ; for psychological testing, rates in 101 CMR 329.00: <i>Psychological Testing, Treatment, and Related Services</i> ; for methadone services, rates in 101 CMR 346.00: <i>Rates for Certain Substance-related and Addictive Disorders Programs</i>
Radiology	Payable separately from an Individual Medical Visit.	101 CMR 318.00: <i>Rates for Radiology Services</i>
Clinical Laboratory	Payable separately from an Individual Medical Visit.	101 CMR 320.00: <i>Rates for Clinical Laboratory Services</i>
Dental	Payable separately from an Individual Medical Visit.	Lesser of allowable charges billed to the HSN, or fees established in 101 CMR 314.00: <i>Rates for Dental Services</i>
340B Pharmacy Services	Payment will be reduced by the amount of Patient cost-sharing set forth in 101 CMR 613.00: <i>Health Safety Net Eligible Services.</i>	101 CMR 331.00: <i>Prescribed Drugs</i>
Vision Care (dispensing and repair)	Payable separately from an Individual Medical Visit.	101 CMR 315.00: <i>Vision Care Services and Ophthalmic Materials</i>
Family Planning Services	Family planning counseling, prescribed drugs, family planning supplies, and related laboratory tests can be billed in addition to an Individual Medical Visit. An Individual Medical Visit is not payable for the sole purpose of replenishing a Patient's supply of contraceptives.	101 CMR 312.00: <i>Rates for Family Planning Services</i>
Preventive Services/Risk Factor Reduction (code 99402)	Payable separately from an Individual Medical Visit.	101 CMR 312.00: <i>Rates for Family Planning Services</i>
Immunization Visits	Payable separately only if not occurring on the same day as an Individual Medical Visit.	101 CMR 317.00: <i>Rates for Medicine Services</i>
Vaccines Not Included in the Individual Medical Visit or Supplied by the Department of Public Health	Payable separately from an Individual Medical Visit.	101 CMR 317.00: <i>Rates for Medicine Services</i>

614.07: continued

(3) Bad Debt Payments for Urgent Care Services. The Health Safety Net pays Community Health Centers at 75% of the payment rates in 101 CMR 614.07(2) for Bad Debt claims for Urgent Care Services that meet the requirements in 101 CMR 613.00: *Health Safety Net Eligible Services.*

614.08: Reporting Requirements

(1) General. Each Provider, Surcharge Payer, and Ambulatory Surgical Center must file with or make available to the Health Safety Net Office or to an entity designated by the Health Safety Net Office to collect data, as applicable, information that is required or that the Health Safety Net Office deems reasonably necessary for implementation of 101 CMR 614.00.

(a) The Health Safety Net Office may revise the data specifications, the data collection scheduled, or other administrative requirements by administrative bulletin.

(b) The Health Safety Net Office or its designee may audit data submitted under 101 CMR 614.00 to ensure accuracy. The Health Safety Net Office may adjust payments to reflect audit findings. Providers must maintain records sufficient to document compliance with all documentation requirements of 101 CMR 613.00: *Health Safety Net Eligible Services* and 614.00.

(2) Acute Hospitals.

(a) The Health Safety Net Office may require Acute Hospitals to submit interim data on revenues and costs to the Health Safety Net or to an entity designated by the Health Safety Net Office to collect data to monitor compliance with federal upper limit, cost limit, and disproportionate share payment limits. Such data may include, but not be limited to, gross and net patient service revenue for Medicaid non-managed care, Medicaid managed care, the Premium Assistance Payment Program Operated by the Health Connector, and all payers combined; and total patient service expenses for all payers combined.

(b) Surcharge Payment Data.

1. Unmatched Payer Report. Each Acute Hospital must submit to the Health Safety Net Office a quarterly Unmatched Payer Report. The Acute Hospital must report the total amount of payments for services received from each Institutional Payer that does not appear on the Registered Payer List. The Acute Hospital must report these data in an electronic format specified by the Health Safety Net Office.

2. Quarterly Report for Private Sector Payments. Each Acute Hospital must report to the Health Safety Net Office total payments made by the largest Institutional Surcharge Payers. The Health Safety Net Office specifies the Institutional payers for which reporting is required, the periods for which reporting is required, and the reporting format. The Health Safety Net Office may modify the reporting requirements by administrative bulletin.

(c) Penalties. The Health Safety Net Office may deny payment for Eligible Services to any Acute Hospital that fails to comply with the reporting requirements of 101 CMR 613.00: *Health Safety Net Eligible Services* or 614.00 until such Acute Hospital complies with the requirements. The Health Safety Net Office notifies such Acute Hospital in advance of its intention to withhold payment.

(3) Community Health Centers. The Health Safety Net Office may deny payment for Eligible Services to any Community Health Center that fails to comply with the reporting requirements of 101 CMR 613.00: *Health Safety Net Eligible Services* or 614.00 until such Community Health Center complies with the requirements. The Health Safety Net Office notifies such Community Health Center in advance of its intention to withhold payment.

(4) Surcharge Payers.

(a) Monthly Surcharge Payment Report. The Health Safety Net Office may require that an Institutional Payer submit to the Health Safety Net Office monthly reports of payments to Acute Hospitals and Ambulatory Surgical Centers.

614.08: continued

(b) Third Party Administrators. A Third Party Administrator Surcharge Payer that makes payments to Acute Hospitals and Ambulatory Surgical Centers on behalf of one or more insurance carriers must file an annual report with the Health Safety Net Office. The report must include the name of each insurance carrier for which it makes surcharge payments. The Health Safety Net Office may also specify additional reporting requirements concerning payments made on behalf of self-insured plans. Reports must be in an electronic format specified by the Health Safety Net Office. Said reports must be filed by July 1st of each year for the time period requested by the Health Safety Net Office.

(c) Penalties. Any Surcharge Payer that fails to file data, statistics, schedules, or other information with the Health Safety Net Office pursuant to 101 CMR 614.08(4) or that falsifies same, is subject to a civil penalty of not more than \$5,000 for each day on which such violation occurs or continues, which penalty may be assessed in an action brought on behalf of the Commonwealth in any court of competent jurisdiction. The Attorney General brings any appropriate action, including injunction relief, as may be necessary for the enforcement of the provisions of 101 CMR 614.00.

(5) Ambulatory Surgical Centers.

(a) Unmatched Payer Report. Each Ambulatory Surgical Center must submit a quarterly Unmatched Payer Report to the Health Safety Net Office in accordance with a schedule specified by the Health Safety Net Office. The Ambulatory Surgical Center must report the total amount of payments for services received from each Institutional Surcharge Payer that does not appear on the Registered Payer List. The Ambulatory Surgical Center must report these data in an electronic format specified by the Health Safety Net Office.

(b) Quarterly Report for Private Sector Payments. Each Ambulatory Surgical Center must report to the Health Safety Net Office total payments made by the largest Institutional Surcharge Payers. The Health Safety Net Office specifies the Institutional Payers for which reporting is required, the periods for which reporting is required, and the reporting format. The Health Safety Net Office may modify the reporting requirements by administrative bulletin.

614.09: Special Provisions(1) Financial Hardship. An Acute Hospital or Surcharge Payer may request a deferment or partial payment schedule due to financial hardship.

(a) In order to qualify for such relief, the Acute Hospital or Surcharge Payer must demonstrate that its ability to continue as a financially viable going concern will be seriously impaired if payments pursuant to 101 CMR 614.05 were made.

(b) If the Health Safety Net Office finds that payments would be a financial hardship, the Health Safety Net Office may, at its discretion, establish the terms of any deferment or partial payment plan deferment. The deferment or payment schedule may include an interest charge.

1. The interest rate used for the payment schedule does not exceed the prime rate plus 2%. The prime rate used is the rate reported in the *Wall Street Journal* dated the last business day of the month preceding the establishment of the payment schedule.
2. A Surcharge Payer may make a full or partial payment of its outstanding liability at any time without penalty.
3. If a Surcharge Payer fails to meet the obligations of the payment schedule, the Health Safety Net Office may assess penalties pursuant to 101 CMR 614.05.

(2) Severability. The provisions of 101 CMR 614.00 are severable. If any provision or the application of any provision to any Acute Hospital, Community Health Center, surcharge payer, or Ambulatory Surgical Center or circumstances is held to be invalid or unconstitutional, and such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 614.00 or the application of such provisions to Acute Hospitals, Community Health Centers, or circumstances other than those held invalid.

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

614.09: continued

(3) Administrative Bulletins. The Health Safety Net Office may issue administrative bulletins to clarify policies and understanding of substantive provisions of 101 CMR 614.00 and specify information and documentation necessary to implement 101 CMR 614.00.

REGULATORY AUTHORITY

101 CMR 614.00: M.G.L. c. 118E.



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin
Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **807 CMR 13.00**

CHAPTER TITLE: **Transfer of Membership of RetirementPlus Members**

AGENCY: **Teachers' Retirement Board**

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

The purpose of 807 CMR 13.00 is to bring certainty and definiteness to the requirements of M.G.L. c. 32, § 5(4) and Chapter 134 of the Acts of 2022, governing the elections regarding the enhanced superannuation retirement plan, "RetirementPlus," provided in that statute for Transferees. Specifically, the purpose is to clarify the election opportunities available to: (1) members transferring into the Massachusetts Teachers' Retirement System ("MTRS") whether they have already made an election regarding Retirement Plus, or who have failed to do so; (2) members who have taken refunds; (3) members transferring out of the MTRS, consistent with the statutory requirement that all such elections be irrevocable; and (4) members who are mandatory RetirementPlus participants who transfer out of the MTRS.

REGULATORY AUTHORITY: **807 CMR 13.00: M.G.L. c. 15, § 16 and c. 32, § 20(5)(b)**

AGENCY CONTACT: **James O'Leary, General Counsel** PHONE: **617-679-6838**

ADDRESS: **500 Rutherford Avenue, Suite 210, Charlestown, MA 02129**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

This regulation is adopted as an emergency because the election period within which retirement system members may make a corrective election to participate in the Retirement Plus program begins on January 1, 2023 and ends on June 30, 2023. This corrective election was made possible by Chapter 134 of the Acts of 2022. While notice and comment occur as necessary under adoption on an emergency basis, the MTRS is simultaneously preparing educational materials and election packages, as engaging in the required procurement process for Commonwealth Agencies in order to secure a vendor to assist with the task of implementing the election. The different processes that must be coordinated to provide a timely and effective opportunity to make an election whether or not to participate in the plan, in the very short time window between passage of the Act and the opening of the election window, constitute an emergency.

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

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

Date of public hearing or comment period: 12/14/2022

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

For the first and second year: 0
For the first five years: 0
No fiscal effect: 0

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

Date amended small business impact statement was filed: _____

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

Retirement Board, Teachers

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

807 CMR 13 will amend the MTRS's existing regulation regarding Retirement Plus participation for public employees who become teachers and transfer from a Commonwealth, Regional, or Local Retirement System into the Massachusetts Teachers' Retirement Syst

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Nov 7 2022

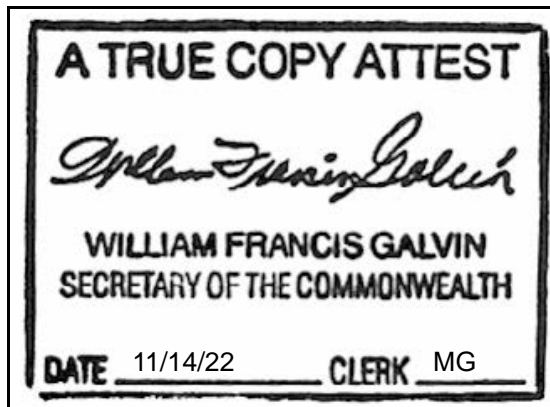
Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 11/14/22

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
This is an Emergency Regulation.	There are no Replacement Pages.



807 CMR: TEACHERS' RETIREMENT BOARD

807 CMR 13.00: TRANSFER OF MEMBERSHIP OF RETIREMENTPLUS MEMBERS

Section

- 13.01: Purpose
- 13.02: Definitions
- 13.03: Refunds
- 13.04: Transfers In
- 13.05: Transfers Out

13.01: Purpose

The purpose of 807 CMR 13.00 is to bring certainty and definiteness to the requirements of M.G.L. c. 32, § 5(4) and St. 2022, c. 134, governing the elections regarding the enhanced superannuation retirement plan, "RetirementPlus," provided in that statute for Transferees. Specifically, the purpose is to clarify the election opportunities available to:

- (1) members transferring into the Massachusetts Teachers' Retirement System ("MTRS") whether they have already made an election regarding RetirementPlus, or who have failed to do so;
- (2) members who have taken refunds;
- (3) members transferring out of the MTRS, consistent with the statutory requirement that all such elections be irrevocable; and
- (4) members who are mandatory RetirementPlus participants who transfer out of the MTRS.

13.02: Definitions

For purposes of 807 CMR 13.00, the following terms shall have the following meanings:

Elect or Election shall mean the filing with the MTRS of a written decision, in a form prescribed by the MTRS, to participate or not to participate in the RetirementPlus program.

Election Opportunity shall mean the 180-day election "window" available to some Transferees in M.G.L. c. 32, § 5(4). Said election "window" shall begin on the date when the MTRS notifies the member that it has received the transfer of the member's account from the other contributory retirement system. A surviving spouse who is eligible for a member survivor allowance may make an election within this period if the member had not previously made an election. An election made during the "window" will relate back to the first day the MTRS received payroll deductions on behalf of the member.

"Make up Payments shall mean payments the amount of which equals the difference between the contributions received by the MTRS, and the contribution rate in effect for RetirementPlus from the member's regular compensation through the date the MTRS first invoices the member, plus buyback interest accruing after the initial due date of this invoice through the date of MTRS's receipt of its full payment.

RetirementPlus shall mean the enhanced superannuation retirement allowance provided for in M.G.L. c. 32, § 5(4). This term includes the Teachers' Alternate Retirement Program ("TARP") of the State-Boston Retirement System.

Transferee shall mean any member of another M.G.L. c. 32 contributory retirement system who is transferring his or her membership to the MTRS, or a member of the MTRS who is transferring to a M.G.L. c. 32 contributory retirement system other than the MTRS or the State-Boston Retirement System.

13.03: Refunds

Any MTRS member who takes a refund of accumulated total deductions pursuant to M.G.L. c. 32, § 10(4) and after July 1, 2001 re-establishes membership with the MTRS or the State-Boston Retirement System shall be a mandatory participant in RetirementPlus.

Any MTRS member who takes a refund of accumulated total deductions pursuant to M.G.L. c. 32, § 10(4) and after July 1, 2001 establishes membership with another contributory retirement system other than the State-Boston Retirement System, and later transfers to the MTRS, shall be treated like any other Transferee.

13.04: Transfers In

(1) Except as provided in 807 CMR 13.04(2) and (3), any Transferee into the MTRS who is not a mandatory RetirementPlus participant shall have an Election Opportunity.

(2) Because an election opportunity is irrevocable, any Transferee into the MTRS who, since his/her date of membership (or re-establishment of membership after a refund), has made an election to participate or not participate in RetirementPlus (or who failed to so elect when an opportunity was available), shall not have another Election Opportunity. The rights of such a Transferee shall be governed by his or her previous election or non-election.

(3) Any Transferee into the MTRS who is or was a mandatory participant in RetirementPlus shall not have an Election Opportunity.

13.05: Transfers Out

In transferring the account of a Transferee who was not a mandatory participant in RetirementPlus to another contributory retirement system, the MTRS will transfer the entire account and break out for the other retirement system the difference between the "excess" RetirementPlus contributions and the non-RetirementPlus retirement contribution rate.

REGULATORY AUTHORITY

807 CMR 13.00: M.G.L. c. 15, § 16 and c. 32, § 20(5)(b).



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **101 CMR 446.00**

CHAPTER TITLE: **COVID-19 Payment Rates for Certain Community Health Care Providers**

AGENCY: **Executive Office of Health and Human Services**

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

101 CMR 446.00 governs the payment rates paid by MassHealth and other governmental purchasers for certain COVID-19-related community health care services rendered to publicly aided individuals by providers.

REGULATORY AUTHORITY: **M.G.L. c. 118E**

AGENCY CONTACT: **Deborah M. Briggs, MassHealth Publications** PHONE: **617-847-3302**

ADDRESS: **100 Hancock Street, 6th Floor, Quincy, MA 02171**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

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

Executive Order 145 Notification: July 20, 2022
Executive Order 562 Approval: November 10, 2022

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

Date of public hearing or comment period: **August 26, 2022**

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

For the first and second year: The estimated annual fiscal impact is \$23.08 million

For the first five years: _____

No fiscal effect: _____

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

Date amended small business impact statement was filed: N/A

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

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

101 CMR 446.00 is being amended.

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Nov 10 2022

Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 11/25/22

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
4.5 - 4.6 1050.19 - 1050.24.6	4.5 - 4.6 1050.19 - 1050.24.12

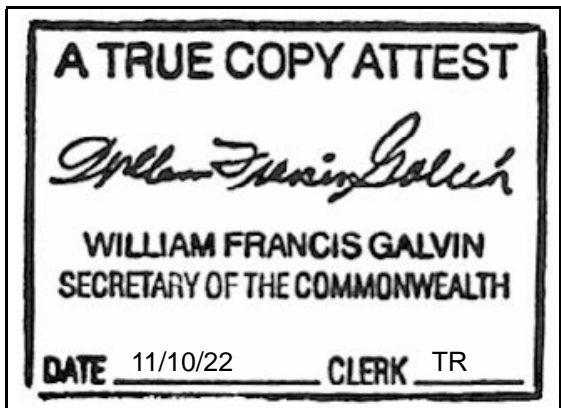


Table of Contents

	<u>Page</u>
101 CMR 429.00: RATES FOR CERTAIN SEXUAL AND DOMESTIC VIOLENCE SERVICES	1045
Section 429.01: General Provisions	1045
Section 429.02: Definitions	1045
Section 429.03: Rate Provisions	1046
Section 429.04: Filing and Reporting Requirements	1048
Section 429.05: Severability	1049
101 CMR 430.00: RATES FOR PROGRAM OF ASSERTIVE COMMUNITY TREATMENT SERVICES	1050.1
Section 430.01: General Provisions	1050.1
Section 430.02: Definitions	1050.1
Section 430.03: Rate Provisions	1050.2
Section 430.04: Filing and Reporting Requirements	1050.2
Section 430.05: Severability	1050.3
101 CMR 431.00: RATES FOR CERTAIN RESPITE SERVICES	1050.5
Section 431.01: General Provisions	1050.5
Section 431.02: Definitions	1050.5
Section 431.03: Rate Provisions	1050.5
Section 431.04: Filing and Reporting Requirements	1050.6
Section 431.05: Severability	1050.6.1
101 CMR 432.00: RATES FOR CERTAIN LEAD AGENCY SERVICES	1050.7
Section 432.01: General Provisions	1050.7
Section 432.02: Definitions	1050.7
Section 432.03: Rate Provisions	1050.8
Section 432.04: Filing and Reporting Requirements	1050.9
Section 432.05: Severability	1050.9
101 CMR 433.00: RATES FOR CERTAIN HEALTH AND HUMAN SERVICES PROGRAMS	1050.11
Section 433.01: General Provisions	1050.11
Section 433.02: Definitions	1050.12
Section 433.03: Rate Provisions	1050.12
Section 433.04: Filing and Reporting Requirements	1050.12.6
Section 433.05: Severability	1050.12.6
(101 CMR 434.00 THROUGH 443.00: RESERVED)	1050.12.10
101 CMR 444.00: RATES FOR CERTAIN SUBSTANCE USE DISORDER SERVICES	1050.13
Section 444.01: General Provisions	1050.13
Section 444.02: Definitions	1050.13
Section 444.03: Reporting Requirements	1050.14
Section 444.04: Rate Provisions	1050.14
Section 444.05: Severability	1050.15
101 CMR 445.00: RESERVED	1050.17

Table of Contents

	<u>Page</u>
101 CMR 446.00: PUBLIC HEALTH EMERGENCY PAYMENT RATES FOR CERTAIN COMMUNITY HEALTH CARE PROVIDERS	1050.19
Section 446.01: General Provisions	1050.19
Section 446.02: Definitions	1050.19
Section 446.03: General Rate Provisions and Payment	1050.21
Section 446.04: Special Contracts	1050.24.8
Section 446.05: Reporting Requirements	1050.24.8
Section 446.06: Severability	1050.24.8
 (101 CMR 447.00 AND 101 CMR 448.00: RESERVED)	 1050.25
101 CMR 449.00: RATES FOR CERTAIN HOME- AND COMMUNITY-BASED SERVICES RELATED TO WORKFORCE DEVELOPMENT	1050.121
Section 449.01: General Provisions	1050.121
Section 449.02: Definitions	1050.121
Section 449.03: Rate Provisions	1050.122
Section 449.04: Filing and Reporting Requirements	1050.123
Section 449.05: Severability	1050.123
 (101 CMR 450.00 THROUGH 451.00: RESERVED)	 1050.125
101 CMR 452.00: SUPPLEMENTAL RATES FOR WORKFORCE INVESTMENT FOR CERTAIN HEALTH AND HUMAN SERVICES PROGRAMS	1050.127
Section 452.01: General Provisions	1050.127
Section 452.02: Definitions	1050.128
Section 452.03: Rate Provisions	1050.128
Section 452.04: Filing and Reporting Requirements	1050.133
Section 452.05: Severability	1050.134
101 CMR 453.00: ENHANCED RATES FOR CERTAIN HOME- AND COMMUNITY-BASED SERVICES RELATED TO SECTION 9817 OF THE AMERICAN RESCUE PLAN ACT	1050.135
Section 453.01: General Provisions	1050.135
Section 453.02: Definitions	1050.135
Section 453.03: Rate Provisions	1050.136
Section 453.04: Filing and Reporting Requirements	1050.142
Section 453.05: Severability	1050.142
 (101 CMR 454 THROUGH 511.000: RESERVED)	 1050.143

101 CMR 446.00: PUBLIC HEALTH EMERGENCY PAYMENT RATES FOR CERTAIN
COMMUNITY HEALTH CARE PROVIDERS

Section

- 446.01: General Provisions
- 446.02: Definitions
- 446.03: General Rate Provisions and Payment
- 446.04: Special Contracts
- 446.05: Reporting Requirements
- 446.06: Severability

446.01: General Provisions

(1) Scope and Purpose. 101 CMR 446.00 governs the rates of payment to certain community health care providers to be used by all governmental units for services provided to publicly aided individuals. The rates set forth in 101 CMR 446.03(1), (4) and (5) also apply to such services paid for by governmental units for individuals covered by M.G.L. c. 152 (the Workers' Compensation Act). These rates are for services related to Coronavirus Disease 2019 (COVID-19).

(2) Applicable Dates of Service. Rates contained in 101 CMR 446.00 apply for dates of service on or after November 25, 2022, except as otherwise noted.

(3) Disclaimer of Authorization of Services. 101 CMR 446.00 is not authorization for or approval of the services for which rates are determined pursuant to 101 CMR 446.00. Governmental units that purchase services are responsible for the definition, authorization, and approval of care and services provided to publicly aided individuals.

(4) Coverage. The rates of payment in 101 CMR 446.00 constitute payment in full for all services provided by an eligible provider, including administration and professional supervision services. The payment rates will apply to COVID-19 services provided by eligible providers to publicly aided individuals under the conditions described by the purchasing governmental unit.

(5) Coding Updates and Corrections. EOHHS may publish service code updates and corrections in the form of an administrative bulletin. Updates may reference coding systems including, but not limited to, the Healthcare Common Procedure Coding System (HCPCS). The publication of such updates and corrections will list

- (a) codes for which the code numbers change, with the corresponding cross references between existing and new codes and the codes being replaced. Rates for such new codes are set at the rate of the code that is being replaced;
- (b) codes for which the code number remains the same, but the description has changed;
- (c) deleted codes for which there are no corresponding new codes; and
- (d) codes for entirely new services that require pricing, or codes that had been previously added at individual consideration (I.C.). EOHHS may list and price these codes according to the rate methodology used in setting rates when Medicare fees are available. When Medicare fees are not available, EOHHS may apply I.C. payment for these codes until appropriate rates can be developed.

(6) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify its policy on and understanding of substantive provisions of 101 CMR 446.00, or to issue coding updates and corrections under 101 CMR 446.01(5).

446.02: Definitions

As used in 101 CMR 446.00, terms have the meanings in 101 CMR 446.02, except as otherwise provided.

446.02: continued

Clinical Care Team. The staff necessary to provide I&R Services to guests at an I&R site. The clinical care team may include physicians, nurse practitioners, physician assistants, registered nurses, licensed practical nurses, certified nursing assistants, home health aides, masters of social work, licensed independent clinical social workers, and administrative support staff. EOHHS may approve other staff types to be part of the clinical care team, including staff with different clinical qualifications than those listed herein, as appropriate. The make-up of the clinical care team for each I&R community health center will be established in the special conditions amendment to each I&R community health center's provider contract.

Commonwealth COVID-19 Vaccination Plan. The plan describing the administration of COVID-19 vaccinations within the Commonwealth, including eligibility criteria and phasing, available at www.mass.gov/info-details/massachusetts-covid-19-vaccination-phases.

COVID-19 Services. Services relating to the March 10, 2020 Declaration of State of Emergency within the Commonwealth due to the 2019 novel coronavirus (COVID-19), for which payment rates are set under 101 CMR 446.00.

Eligible Additional Individuals. As determined by the governmental unit or its designee, any

- (a) family member of an eligible resident currently residing in the eligible resident's household; or
- (b) home health worker who provides regular care to an eligible resident in the eligible resident's household.

Eligible Provider. A person, partnership, corporation, governmental unit, or other entity that provides authorized COVID-19 services and that also meets such conditions of participation as have been or may be adopted from time to time by a governmental unit purchasing COVID-19 services.

Eligible Resident. A Massachusetts resident determined to be eligible for in-home vaccination services by the governmental unit or its designee.

EOHHS. The Executive Office of Health and Human Services established under M.G.L. c. 6A.

Governmental Unit. The Commonwealth of Massachusetts or any of its departments, agencies, boards, commissions, or political subdivisions.

Household. A home or residence within the Commonwealth in which at least one eligible resident resides, including congregate care facilities and other congregate housing, but excluding any facility or unit licensed by DPH as a long-term-care facility or unit pursuant to 105 CMR 150.000: *Standards for Long-Term Care Facilities*.

In-home Vaccination Provider. An eligible provider who provides in-home vaccination services pursuant to a contract between the governmental unit and the eligible provider.

In-home Vaccination Services. COVID-19 vaccine administration services performed in a household by an in-home vaccination provider pursuant to a contract between the governmental unit and the in-home vaccination provider.

I&R Community Health Center. A community health center that has agreed to provide services at an I&R site through an executed special conditions amendment to its provider contract.

I&R Services. The services that the clinical care team at an I&R community health center must provide, as provided by the special conditions amendment to the provider contract.

I&R Site. A location, such as a hotel or motel, that separately contracts with EOHHS to provide safe, isolated lodging for individuals with a COVID-19 diagnosis.

446.02: continued

Other Vaccinable Individuals. Residents of the Commonwealth who are neither eligible residents nor eligible additional individuals, but who are otherwise eligible to receive a COVID-19 vaccination in accordance with the Commonwealth's COVID-19 vaccination plan.

Publicly Aided Individual. A person for whose medical and other services a governmental unit is in whole or in part liable under a statutory program.

Waste Prevention Vaccinations. COVID-19 vaccinations administered by an in-home vaccination provider to other vaccinable individuals in any setting solely to avoid wasting COVID-19 vaccine doses that would otherwise spoil.

446.03: General Rate Provisions and Payment

(1) Community Health Centers.

(a) General Rate Determination. Rates of payment for services for which 101 CMR 446.03(1) applies are the lowest of

1. the eligible provider's usual fee to patients other than publicly aided individuals;
2. the eligible provider's actual charge submitted; or
3. the schedule of allowable fees set forth in 101 CMR 446.03(1)(c), taking into account appropriate modifiers and any other applicable rate provisions in accordance with 101 CMR 446.03(1).

(b) Defined Terms. Terms used in 101 CMR 446.03(1), that have not been defined elsewhere in 101 CMR 446.00, have the meanings ascribed to those terms in 101 CMR 304.02: *Definitions*.

(c) Allowable Fee for I&R Services through Alternative Payment Methodology.

1. Governmental units may pay I&R community health centers for I&R services they provide through a weekly, facility-specific, all-inclusive rate established through the alternative payment methodology described in 101 CMR 446.03(1)(c)a. through 2. This rate must be set forth and agreed to by each I&R community health center and the governmental unit through a contract or special conditions amendment to the provider contract, sufficient to cover the following allowable costs associated with the provision of I&R services, as agreed to by the governmental unit and the I&R community health center.

- a. The direct labor costs for the clinical care team, staffed appropriately to meet the clinical and administrative needs of the I&R site.
- b. The costs to acquire and maintain sufficient amounts of medical supplies necessary to provide I&R services at the I&R site.
- c. Appropriate set-up and other one-time costs associated with the provision of I&R services at the I&R site, which may include information technology equipment and services and office supplies.
- d. For the costs described in 101 CMR 446.03(1)(c)1. through 2. to be considered allowable, the cost must, at a minimum, be reasonable, directly related to the provision of I&R services, and identified in the contract or special conditions amendment to the I&R community health center's provider contract.

2. Billing and Disbursement of Payment. I&R community health centers must bill the governmental unit for the I&R services provided pursuant to 101 CMR 446.03(1)(c) and a contract or special conditions amendment to the provider contract through weekly invoice. The government unit will pay the I&R community health center for such services weekly, upon receipt of such invoice, consistent with the terms of the contract or special conditions amendment to the provider contract.

(d) Supplemental Payments to Community Health Centers.

1. Subject to federal approval, community health centers that are federally qualified health centers in Massachusetts will receive one-time, health center-specific supplemental payments to account for services rendered during calendar year 2021. The one-time, health center-specific supplemental payment will be paid to each community health center by the end of the second calendar quarter of 2021. A community health center's health center-specific supplemental payment was calculated based on the following components:

446.03: continued

- a. an amount equal to a portion of the community health center's average monthly claims, based on annualized data from January and February 2020, paid by MassHealth and MassHealth managed care entities, as determined by EOHHS;
 - b. as applicable, the amount that would have been paid to the community health center, if not for the scheduled decrease to the community health center's 340B supplemental payment under 101 CMR 304.04(3): *340B Transition Supplemental Payments*, which took effect on January 1, 2021; and
 - c. as applicable, an amount determined by EOHHS for the heightened costs faced by community health centers with greater than 100,000 annual individual medical visits, based on annualized data from January and February 2020.
2. The supplemental payments, as described in 101 CMR 446.03(1)(d)1., will equal the following amounts for each community health center:

Community Health Center	Supplemental Payment
Boston Health Care for the Homeless	\$4,839,557
Brockton Neighborhood Health Center, Inc.	\$2,810,993
Caring Health Center, Inc.	\$1,318,873
Charles River Community Health	\$666,458
Community Health Center of Cape Cod	\$774,741
Community Health Center of Franklin County	\$353,940
Community Health Connections Family Health Center	\$1,418,345
Community Health Programs CHC	\$491,729
Dimock Community Health Center	\$876,407
Duffy Health Center	\$361,499
Edward M. Kennedy Community Health Center	\$1,713,369
Family Health Center of Worcester	\$2,545,653
Fenway Community Health Center	\$1,700,062
Greater Lawrence Family Health Center, Inc.	\$5,340,713
Greater New Bedford Community Health Center	\$1,329,984
Harbor Health Services, Inc.	\$1,780,265
Harvard Street Neighborhood Health Center	\$379,641
Healthfirst Family Care Center, Inc.	\$841,430
Hilltown Community Health Centers, Inc.	\$295,175
Holyoke Health Center	\$2,910,268
Island Health Care	\$30,351
Lowell Community Health Center	\$2,738,370
Lynn Community Health Center	\$3,909,622
Manet Community Health Center	\$832,276
Mattapan Community H C	\$402,987
North End Waterfront Health	\$336,460
North Shore Community Health, Inc.	\$815,613
Outer Cape Health Services, Inc.	\$586,726
South Cove Community Health Center	\$1,978,226
Springfield Health Services for the Homeless	\$138,746
Stanley Street Treatment and Resources (SSTAR)	\$2,832,520
Uphams' Corner Health Center	\$715,148
Whittier Street Health Center	\$908,376
TOTAL	\$48,974,525

(2) Medicine.

(a) General Rate Determination. Rates of payment for services for which 101 CMR 446.03(2) applies are the lowest of

1. the eligible provider's usual fee to patients other than publicly aided individuals;
2. the eligible provider's actual charge submitted; or
3. the schedule of allowable fees set forth in 101 CMR 446.03(2)(e), taking into account appropriate modifiers and any other applicable rate provisions in accordance with 101 CMR 446.03(2).

446.03: continued

(b) Individual Consideration. Medical services services designated "I.C." are individually considered items. The governmental unit or purchaser analyzes the eligible provider's report of services rendered and charges submitted under the appropriate unlisted services or procedures category. The governmental unit or purchaser determines appropriate payment for procedures designated I.C. in accordance with the following standards and criteria:

1. the amount of time required to perform the service;
2. the degree of skill required to perform the service;
3. the severity or complexity of the patient's disease, disorder, or disability;
4. any applicable relative-value studies;
5. any complications or other circumstances that may be deemed relevant;
6. the policies, procedures, and practices of other third-party insurers;
7. the payment rate for prescribed drugs as set forth in 101 CMR 331.00: *Prescribed Drugs*; and
8. a copy of the current invoice from the supplier.

(c) Defined Terms. Terms used in 101 CMR 446.03(2) that have not been defined elsewhere in 101 CMR 446.00 have the meanings in 101 CMR 317.02: *General Definitions*.

(d) Codes and Modifiers.

1. Except as otherwise provided, the codes and modifiers for the services described in 101 CMR 446.03(2) are as defined in 101 CMR 317.04(3): *Modifiers* and 101 CMR 317.04(4): *Fee Schedule*.
2. The modifier "SL": State supplied vaccine or antibodies. This modifier is to be applied to codes to identify vaccine or antibodies provided at no cost, whether by the Massachusetts Department of Public Health or other federal or state agency. No payment shall be made for codes with this modifier.

(e) Allowable Fee for Remote Patient Monitoring (RPM) Bundled Services. The following code, modifier, and fee apply for the provision of RPM bundled services.

Code	Allowable Fee	Description of Code
99423 - U9	\$870.72	<p>Online digital evaluation and management service, for an established patient, for up to seven days, cumulative time during the seven days; 21 or more minutes.</p> <p>(Used for COVID-19 remote patient monitoring bundled services provided through any appropriate technology or modality, including up to seven days of daily check-ins for evaluation and monitoring; multidisciplinary clinical team reviews of a member's status and needs; appropriate physician oversight; necessary care coordination; and provision of a thermometer and pulse oximeter for remote monitoring.)</p>

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

446.03: continued

(f) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after April 1, 2021. The following codes and fees apply for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
91303 SL	\$0.00	Janssen COVID-19 Vaccine (SARSCOV2 VAC AD26 0.5 ml IM)
0031A	\$45.87	Janssen COVID-19 Vaccine Administration (ADM SARSCOV2 VAC AD26 0.5 ml)
91300 SL	\$0.00	Pfizer-Biontech COVID-19 Vaccine (Purple Cap) (SARSCOV2 VAC 30MCG/0.3ML IM)
0001A	\$45.87	Pfizer-Biontech COVID-19 Vaccine Administration (Purple Cap) – First Dose (ADM SARSCOV2 30MCG/0.3ML 1st)
0002A	\$45.87	Pfizer-Biontech COVID-19 Vaccine Administration (Purple Cap) – Second Dose (ADM SARSCOV2 30MCG/0.3ML 2ND)
91301 SL	\$0.00	Moderna COVID-19 Vaccine (SARSCOV2 VAC 100MCG/0.5ML IM)
0011A	\$45.87	Moderna COVID-19 Vaccine Administration – First Dose (ADM SARSCOV2 100MCG/0.5ML1ST)
0012A	\$45.87	Moderna COVID-19 Vaccine Administration – Second Dose (ADM SARSCOV2 100MCG/0.5ML2ND)
D1701	\$45.87	Pfizer-BioNTech COVID-19 Vaccine Administration – First Dose (SARSCOV2 COVID-19 VAC mRNA 30mcg/0.3mL IM DOSE 1)
D1702	\$45.87	Pfizer-BioNTech COVID-19 Vaccine Administration – Second Dose (SARSCOV2 COVID-19 VAC mRNA 30mcg/0.3mL IM DOSE 2)
D1703	\$45.87	Moderna COVID-19 Vaccine Administration – First Dose (SARSCOV2 COVID-19 VAC mRNA 100mcg/0.5mL IM DOSE 1)
D1704	\$45.87	Moderna COVID-19 Vaccine Administration – Second Dose (SARSCOV2 COVID-19 VAC mRNA 100mcg/0.5mL IM DOSE 2)
D1707	\$45.87	Janssen Covid-19 Vaccine Administration (SARSCOV2 COVID-19 VAC Ad26 5x1010 VP/.5mL IM SINGLE DOSE)

(g) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after August 12, 2021. The following codes and fees apply for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
0003A	\$45.87	Pfizer-BioNTech COVID-19 Vaccine (Purple Cap) Administration – Third Dose (ADM SARSCOV2 30MCG/0.3ML 3RD)
0013A	\$45.87	Moderna COVID-19 Vaccine Administration – Third Dose (ADM SARSCOV2 100MCG/0.5ML3RD)

(h) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after September 22, 2021. The following code and fee applies for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
0004A	\$45.87	Pfizer-BioNTech COVID-19 Vaccine (Purple Cap) Administration – Booster (ADM SARSCOV2 30MCG/0.3ML BST)

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

446.03: continued

(i) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after October 20, 2021. The following codes and fees apply for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
0034A	\$45.87	Janssen COVID-19 Vaccine Administration - Booster[(ADM SARSCOV2 VAC AD26 .5ML B)
91306 SL	\$0.00	Moderna COVID-19 Vaccine (Low Dose) (SARSCOV2 VAC 50MCG/0.25ML IM)
0064A	\$45.87	Moderna COVID-19 Vaccine (Low Dose) Administration – Booster (ADM SARSCOV2 50MCG/0.25MLBST)

(j) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after October 29, 2021. The following codes and fees apply for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
91307 SL	\$0.00	Pfizer-BioNTech COVID-19 Pediatric Vaccine (Orange Cap)
0071A	\$45.87	Pfizer-BioNTech COVID-19 Pediatric Vaccine (Orange Cap) - Administration - First dose (ADM SARSCV2 10MCG TRS-SUCR 1)
0072A	\$45.87	Pfizer-BioNTech COVID-19 Pediatric Vaccine (Orange Cap) - Administration - Second dose (ADM SARSCV2 10MCG TRS-SUCR 2)

(k) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after January 3, 2022. The following codes and fees apply for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
91305 SL	\$0.00	Pfizer-BioNTech COVID-19 Vaccine Pre-Diluted (Gray Cap) (SARSCOV2 VAC 30 MCG TRS-SUCR)
0051A	\$45.87	Pfizer-BioNTech COVID-19 Vaccine Pre-Diluted (Gray Cap) Administration - First dose (ADM SARSCV2 30MCG TRS-SUCR 1)
0052A	\$45.87	Pfizer-BioNTech COVID-19 Vaccine Pre-Diluted (Gray Cap) Administration - Second dose (ADM SARSCV2 30MCG TRS-SUCR 2)
0053A	\$45.87	Pfizer-BioNTech COVID-19 Vaccine Pre-Diluted (Gray Cap) Administration - Third dose (ADM SARSCV2 30MCG TRS-SUCR 3)
0054A	\$45.87	Pfizer-BioNTech COVID-19 Vaccine Pre-Diluted (Gray Cap) Administration – Booster (ADM SARSCV2 30MCG TRS-SUCR B)
0073A	\$45.87	Pfizer-BioNTech COVID-19 Pediatric Vaccine (Orange Cap) - Administration - Third dose (ADM SARSCV2 10MCG TRS-SUCR 3)

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

446.03: continued

(l) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after March 22, 2022. The following codes and fees apply for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
D1708	\$45.87	D1708 Pfizer-BioNTech COVID-19 vaccine administration – third dose (SARSCOV2 COVID-19 VAC mRNA 30mcg/0.3mL IM DOSE 3)
D1709	\$45.87	D1709 Pfizer-BioNTech Covid-19 vaccine administration – booster dose (SARSCOV2 COVID-19 VAC mRNA 30mcg/0.3mL IM DOSE BOOSTER)
D1710	\$45.87	D1710 Moderna COVID-19 vaccine administration – third dose (SARSCOV2 COVID-19 VAC mRNA 100mcg/0.5mL IM DOSE 3)
D1711	\$45.87	D1711 Moderna COVID-19 vaccine administration – booster dose (SARSCOV2 COVID-19 VAC mRNA 50mcg/0.25mL IM DOSE BOOSTER)
D1712	\$45.87	D1712 Janssen COVID-19 vaccine administration - booster dose (SARSCOV2 COVID-19 VAC Ad26 5x1010 VP/0.5mL IM DOSE BOOSTER)
D1713	\$45.87	D1713 Pfizer-BioNTech COVID-19 vaccine administration tris-sucrose pediatric – first dose (SARSCOV2 COVID-19 VAC mRNA 10mcg/0.2mL tris-sucrose IM DOSE 1)
D1714	\$45.87	D1714 Pfizer-BioNTech COVID-19 vaccine administration tris-sucrose pediatric – second dose (SARSCOV2 COVID-19 VAC mRNA 10mcg/0.2mL tris-sucrose IM DOSE 2)

(m) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after March 29, 2022. The following codes and fees apply for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
91309 SL	\$0.00	Moderna Covid-19 Vaccine (Aged 6 years through 11 years or aged 18 years and older) (Blue Cap with purple border) 50MCG/0.5ML (SARSCOV2 VAC 50MCG/0.5ML IM)
0094A	\$45.87	Moderna Covid-19 Vaccine (Aged 18 years and older) (Blue Cap with purple border) 50MCG/0.5ML Administration – Booster (ADM SARSCOV2 50MCG/0.5 MLBST)

(n) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after May 17, 2022. The following code and fee applies for the listed COVID-19 vaccine and its administration.

Code	Allowable Fee	Description of Code
0074A	\$45.87	Pfizer-BioNTech COVID-19 Pediatric Vaccine (Orange Cap) - Administration – Booster (ADM SARSCV2 10MCG TRS-SUCR B)

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

446.03: continued

(o) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after June 17, 2022. The following codes and fees apply for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
91308 SL	\$0.00	Pfizer-BioNTech Covid-19 Pediatric Vaccine (Aged 6 months through 4 years) (Maroon Cap) (SARSCOV2 VAC 3MCG TRS-SUCR)
0081A	\$45.87	Pfizer-BioNTech Covid-19 Pediatric Vaccine (Aged 6 months through 4 years) (Maroon Cap) Administration - First dose (ADM SARSCOV2 3MCG TRS-SUCR 1)
0082A	\$45.87	Pfizer-BioNTech Covid-19 Pediatric Vaccine (Aged 6 months through 4 years) (Maroon Cap) Administration - Second dose (ADM SARSCOV2 3MCG TRS-SUCR 2)
0083A	\$45.87	Pfizer-BioNTech Covid-19 Pediatric Vaccine (Aged 6 months through 4 years) (Maroon Cap) Administration - Third dose (ADM SARSCOV2 3MCG TRS-SUCR 3)
0091A	\$45.87	Moderna Covid-19 Pediatric Vaccine (Aged 6 years through 11 years) (Blue Cap with purple border) Administration - First dose (ADM SARSCOV2 50 MCG/.5 ML1ST)
0092A	\$45.87	Moderna Covid-19 Pediatric Vaccine (Aged 6 years through 11 years) (Blue Cap with purple border) Administration - Second dose (ADM SARSCOV2 50 MCG/.5 ML2ND)
0093A	\$45.87	Moderna Covid-19 Pediatric Vaccine (Aged 6 years through 11 years) (Blue Cap with purple border) Administration - Third dose (ADM SARSCOV2 50 MCG/.5 ML3RD)
91311 SL	\$0.00	Moderna Covid-19 Pediatric Vaccine (Aged 6 months through 5 years) (Blue Cap with magenta border) 250MCG/0.25ML (SARSCOV2 VAC 25MCG/0.25ML IM)
0111A	\$45.87	Moderna Covid-19 Pediatric Vaccine (Aged 6 months through 5 years) (Blue Cap with magenta border) Administration - First dose (ADM SARSCOV2 25MCG/0.25ML1ST)
0112A	\$45.87	Moderna Covid-19 Pediatric Vaccine (Aged 6 months through 5 years) (Blue Cap with magenta border) Administration – Second dose (ADM SARSCOV2 25MCG/0.25ML2ND)
0113A	\$45.87	Moderna Covid-19 Pediatric Vaccine (Aged 6 months through 5 years) (Blue Cap with magenta border) Administration - Third dose (ADM SARSCOV2 25MCG/0.25ML3RD)

(p) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after July 13, 2022. The following codes and fees apply for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
91304 SL	\$0.00	Novavax Covid-19 Vaccine, Adjuvanted (Aged 12 years and older) (SARSCOV2 VAC 5MCG/0.5ML IM)
0041A	\$45.87	Novavax Covid-19 Vaccine, Adjuvanted Administration – First Dose (ADM SARSCOV2 5MCG/0.5ML 1ST)
0042A	\$45.87	Novavax Covid-19 Vaccine, Adjuvanted Administration – Second Dose ADM SARSCOV2 5MCG/0.5ML 2ND

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

446.03: continued

(q) Allowable Fee for COVID-19 Vaccine and Vaccine Administration Applicable for Dates of Service on or after August 31, 2022. The following codes and fees apply for the listed COVID-19 vaccines and their administration.

Code	Allowable Fee	Description of Code
91313 SL	\$0.00	Moderna COVID-19 Vaccine, Bivalent Product (Aged 18 years and older) (Dark Blue Cap with gray border) (SARSCOV2 VAC BVL 50MCG/0.5ML)
0134A	\$45.87	Moderna COVID-19 Vaccine, Bivalent (Aged 18 years and older) (Dark Blue Cap with gray border) Administration – Booster Dose (ADM SARSCV2 BVL 50MCG/.5ML B)
91312 SL	\$0.00	Pfizer-BioNTech COVID-19 Vaccine, Bivalent Product (Aged 12 years and older) (Gray Cap) (SARSCOV2 VAC BVL 30MCG/0.3M)
0124A	\$45.87	Pfizer-BioNTech COVID-19 Vaccine, Bivalent (Gray Cap) Administration – Booster Dose (ADM SARSCV2 BVL 30MCG/.3ML B)

(r) Allowable Fee for COVID-19 Treatment Applicable for Dates of Service on or after May 6, 2021. The following codes and fees apply for the listed COVID-19 treatment services.

Code	Allowable Fee	Description of Code
Q0243 SL	\$0.00	Injection, casirivimab and imdevimab, 2400 mg
M0243	\$450.00	Intravenous infusion, casirivimab and imdevimab includes infusion and post administration monitoring
M0244	\$750.00	Intravenous infusion, casirivimab and imdevimab includes infusion and post administration monitoring in the home or residence; this includes a beneficiary’s home that has been made provider-based to the hospital during the federal COVID-19 public health emergency
Q0245 SL	\$0.00	Injection, bamlanivimab and etesevimab, 2100 mg
M0245	\$450.00	Intravenous infusion, bamlanivimab and etesevimab, includes infusion and post administration monitoring
M0246	\$750.00	Intravenous infusion, bamlanivimab and etesevimab, includes infusion and post administration monitoring in the home or residence; this includes a beneficiary’s home that has been made provider-based to the hospital during the federal COVID-19 public health emergency

(s) Allowable Fee for COVID-19 Treatment Applicable for Dates of Service on or after May 26, 2021. The following codes and fees apply for the listed COVID-19 treatment services.

Code	Allowable Fee	Description of Code
Q0247	\$2,394.00	Injection, sotrovimab, 500 mg
M0247	\$450.00	Intravenous infusion, sotrovimab, includes infusion and post administration monitoring
M0248	\$750.00	Intravenous infusion, sotrovimab, includes infusion and post administration monitoring in the home or residence; this includes a beneficiary’s home that has been made provider-based to the hospital during the federal COVID-19 public health emergency

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

446.03: continued

(t) Allowable Fee for COVID-19 Treatment Applicable for Dates of Service on or after June 3, 2021. The following codes and fees apply for the listed COVID-19 treatment service.

Code	Allowable Fee	Description of Code
Q0244 SL	\$0.00	Injection, casirivimab and imdevimab, 1200 mg

(u) Allowable Fee for COVID-19 Treatment Applicable for Dates of Service on or after June 24, 2021. The following codes and fees apply for the listed COVID-19 treatment services.

Code	Allowable Fee	Description of Code
Q0249	\$6.57	Injection, tocilizumab, for hospitalized adults and pediatric patients (2 years of age and older) with COVID-19 who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or extracorporeal membrane oxygenation (ECMO) only, 1 mg
M0249	\$450.00	Intravenous infusion, tocilizumab, for hospitalized adults and pediatric patients (2 years of age and older) with COVID-19 who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or extracorporeal membrane oxygenation (ECMO) only, includes infusion and post administration monitoring, first dose
M0250	\$450.00	Intravenous infusion, tocilizumab, for hospitalized adults and pediatric patients (2 years of age and older) with COVID-19 who are receiving systemic corticosteroids and require supplemental oxygen, non-invasive or invasive mechanical ventilation, or extracorporeal membrane oxygenation (ECMO) only, includes infusion and post administration monitoring, second dose

(v) Allowable Fee for COVID-19 Treatment Applicable for Dates of Service on or after July 31, 2021. The following codes and fees apply for the listed COVID-19 treatment services.

Code	Allowable Fee	Description of Code
Q0240 SL	\$0.00	Injection, casirivimab and imdevimab, 600 mg
M0240	\$450.00	Intravenous infusion or subcutaneous injection, casirivimab and imdevimab includes infusion or injection, and post administration monitoring, subsequent repeat doses
M0241	\$750.00	Intravenous infusion or subcutaneous injection, casirivimab and imdevimab includes infusion or injection, and post administration monitoring in the home or residence, this includes a beneficiary's home that has been made provider-based to the hospital during the COVID-19 public health emergency, subsequent repeat doses

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

446.03: continued

(w) Allowable Fee for COVID-19 Treatment Applicable for Dates of Service on or after December 8, 2021. The following codes and fees apply for the listed COVID-19 treatment services.

Code	Allowable Fee	Description of Code
Q0220 SL	\$0.00	Injection, tixagevimab and cilgavimab, for the pre-exposure prophylaxis only, for certain adults and pediatric individuals (12 years of age and older weighing at least 40kg) with no known sars-cov-2 exposure, who either have moderate to severely compromised immune systems or for whom vaccination with any available COVID-19 vaccine is not recommended due to a history of severe adverse reaction to a COVID-19 vaccine(s) and/or covid-19 vaccine component(s), 300 mg
M0220	\$150.50	Injection, tixagevimab and cilgavimab, for the pre-exposure prophylaxis only, for certain adults and pediatric individuals (12 years of age and older weighing at least 40kg) with no known sars-cov-2 exposure, who either have moderate to severely compromised immune systems or for whom vaccination with any available COVID-19 vaccine is not recommended due to a history of severe adverse reaction to a COVID-19 vaccine(s) and/or COVID-19 vaccine component(s), includes injection and post administration monitoring
M0221	\$250.50	Injection, tixagevimab and cilgavimab, for the pre-exposure prophylaxis only, for certain adults and pediatric individuals (12 years of age and older weighing at least 40kg) with no known sars-cov-2 exposure, who either have moderate to severely compromised immune systems or for whom vaccination with any available COVID-19 vaccine is not recommended due to a history of severe adverse reaction to a COVID-19 vaccine(s) and/or COVID-19 vaccine component(s), includes injection and post administration monitoring in the home or residence; this includes a beneficiary's home that has been made provider-based to the hospital during the COVID-19 public health emergency

(x) Allowable Fee for COVID-19 Treatment Applicable for Dates of Service on or after February 11, 2022. The following codes and fees apply for the listed COVID-19 treatment services.

Code	Allowable Fee	Description of Code
Q0222 SL	\$0.00	Injection, bebtelovimab, 175 mg
M0222	\$350.50	Intravenous injection, bebtelovimab, includes injection and post administration monitoring
M0223	\$550.50	Intravenous injection, bebtelovimab, includes injection and post administration monitoring in the home or residence; this includes a beneficiary's home that has been made provider-based to the hospital during the covid-19 public health emergency

446.03: continued

(y) Allowable Fee for COVID-19 Treatment Applicable for Dates of Service on or after April 24, 2022. The following code and fee applies for the listed COVID-19 treatment service.

Code	Allowable Fee	Description of Code
Q0221 SL	\$0.00	Injection, tixagevimab and cilgavimab, for the pre-exposure prophylaxis only, for certain adults and pediatric individuals (12 years of age and older weighing at least 40kg) with no known sars-cov-2 exposure, who either have moderate to severely compromised immune systems or for whom vaccination with any available covid-19 vaccine is not recommended due to a history of severe adverse reaction to a covid-19 vaccine(s) and/or covid-19 vaccine component(s), 600 mg

(z) Allowable Fee for COVID-19 Treatment Applicable for Dates of Service on or after April 1, 2022. The following code and fee applies for the listed COVID-19 treatment services.

Code	Allowable Fee	Description of Code
J0248	\$5.51	Injection, remdesivir, 1 mg

(aa) Allowable Fee for COVID-19 Treatment Applicable for Dates of Service on or after August 15, 2022. The following code and fee applies for the listed COVID-19 treatment service.

Code	Allowable Fee	Description of Code
Q0222	\$2394.00	Injection, bebtelovimab, 175 mg

(3) Durable Medical Equipment, Oxygen and Respiratory Therapy Equipment, and Supplies.

(a) General Rate Determination. Rates of payment for services for which 101 CMR 446.03(3) applies are the lowest of

1. the eligible provider's usual fee to patients other than publicly aided individuals;
2. the eligible provider's actual charge submitted; or
3. the schedule of allowable fees set forth in 101 CMR 446.03(3)(d), (e), (f), and (g), taking into account appropriate modifiers and any other applicable rate provisions in accordance with 101 CMR 446.03(3).

(b) Defined Terms. Terms used in 101 CMR 446.03(3) have the meaning defined in 101 CMR 322.02: *General Definitions*.

(c) Codes and Modifiers. Except as otherwise provided, the codes and modifiers for the DME services described in 101 CMR 446.03(3) are as defined in 101 CMR 322.03(13): *Modifiers* and 101 CMR 322.06: *Allowable Fees and Rate Schedule*.

(d) Allowable Fee for Distribution of Personal Protective Equipment (PPE).

1. Authorization for the provision of, and billing and payment for, distribution of PPE to certain MassHealth members is governed by an executed special conditions amendment to a MassHealth DME provider's provider contract.
2. The fee and modifier in 101 CMR 446.03(3)(d)2. apply for distribution of PPE.

446.03: continued

Code	Allowable Fee	Description of Code
E1399 U9	\$40.00	Durable medical equipment, miscellaneous. (Used for PPE distribution services, specifically the packaging, preparing, and delivering or shipping of a two-week supply PPE kit to an authorized individual during the COVID-19 public health emergency)

(e) Allowable Fee for Nonsterile Gloves. The following fee in 101 CMR 446.03(3)(e) is in effect for nonsterile gloves.

Code	Allowable Fee	Description of Code
A4927	\$11.00	Gloves, non-sterile, per 100

(f) Allowable Fee for Over-the-counter Diagnostic Tests for SARS-CoV-2. For over-the-counter diagnostic tests for SARS-CoV-2 supplied through pharmacies to MassHealth members for dates of service on or after January 14, 2022, EOHHS may set allowable fees no higher than \$12.00 per test. EOHHS may set the allowable fee for particular tests below \$12.00 per test, so long as the allowable fee is equal to or greater than the lowest retail rate available to MassHealth members in Massachusetts. For over-the-counter tests supplied through pharmacies for MassHealth members, EOHHS will designate allowable fees via Pharmacy Facts, provider bulletin, or other written issuance, consistent with this section. The \$12.00 maximum allowable fee per test rate may be adjusted via administrative bulletin if guidance from the federal Departments of Labor, Health and Human Services, or the Treasury changes regarding rates payable by commercial plans.

(g) Allowable Fee for Formula and Thickening Agents. For formula and thickening agents dispensed through pharmacies to MassHealth members for dates of service on or after December 16, 2021, the allowable fee is the wholesale acquisition cost. For purposes of this section, the wholesale acquisition cost means the manufacturer's price published in a national price compendium or other publicly available source or an adjusted list price.

(h) Reporting Requirements. Reporting requirements for 101 CMR 446.03(3) are those in 101 CMR 322.04: *Reporting Requirements*.

446.03: continued

(4) Ambulance and Wheelchair Van Services.

(a) General Rate Determination. Rates of payment for services for which 101 CMR 446.03(4) applies are the lowest of

1. the eligible provider's usual fee to patients other than publicly aided individuals;
2. the eligible provider's actual charge submitted; or
3. the schedule of allowable fees set forth in 101 CMR 446.03(4)(c), taking into account appropriate modifiers and any other applicable rate provisions in accordance with 101 CMR 446.03(4).

(b) Defined Terms. Terms used in 101 CMR 446.03(4) that have not been defined elsewhere in 101 CMR 446.00 have the meanings in 101 CMR 327.02: *General Definitions*.

(c) Allowable Fees for Ambulance and Wheelchair Van Services. The following code and allowable fee applies, notwithstanding the definition of "trip" in 101 CMR 327.02: *General Definitions*.

Code	Allowable Fee	Description of Code
A0998	\$157.88	Ambulance response and treatment, no transport (Used for medically necessary visits to patients to obtain and transport specimens for COVID-19 diagnostic testing)
A0120	\$100.00	Nonemergency transportation: mini-bus, mountain area transports, or other transportation systems. (Each way. Used only for non-emergency wheelchair van transport for a person under investigation or known to have COVID-19.)

(d) Billing Certification. Each eligible provider who submits an invoice to a governmental unit for authorized ambulance services must certify the accuracy of the level of services provided, as listed on its invoice.

(e) Reporting Requirements. Reporting requirements under 101 CMR 446.03(4) are those in 101 CMR 327.05: *Reporting Requirements*.

(5) Prescribed Drugs.

(a) Defined Terms. Terms used in 101 CMR 446.03(5) that have not been defined elsewhere in 101 CMR 446.00 have the meanings in 101 CMR 331.02: *General Definitions*.

(b) Delivery Fee. Eligible providers will receive a payment adjustment to the professional dispensing fee when medications are delivered to a personal residence (including homeless shelters). The payment adjustment will be the lower of the provider's usual and customary charge for prescription delivery or \$8.00, and will be made only when the MassHealth agency is the primary payer. Payment of this fee by MassHealth will occur only in such circumstances as as designated by Pharmacy Facts, provider bulletin, or other written issuance from the MassHealth agency.

(c) Reporting Requirements. Reporting requirements for 101 CMR 446.03(5) are those in 101 CMR 331.03: *Reporting Requirements*.

(6) Testing Services.

(a) General Rate Determination. Rates of payment for services under which 101 CMR 446.03(6) applies are the lowest of

1. the eligible provider's usual and customary charge to patients, other than publicly aided individuals;
2. the eligible provider's actual charge submitted; or
3. the schedule of allowable fees set forth in 101 CMR 446.03(6)(d) through (f), taking into account appropriate modifiers and any other applicable rate provisions in accordance with 101 CMR 446.03(6).

(b) Defined Terms. Terms used in 101 CMR 446.03(6), that have not been defined elsewhere in 101 CMR 446.00, have the meanings in 101 CMR 320.02: *Definitions*.

446.03: continued

(c) Individual Consideration (I.C.). Unlisted procedures and laboratory tests designated I.C. are individually considered items. The eligible provider's bill for such a test must be accompanied by a brief report of the procedure or test performed and the eligible provider's usual and customary charge for that procedure or test. Determination of appropriate payments for procedures and tests designated I.C. are in accordance with the following standards and criteria:

1. time required to perform the procedure;
2. degree of skill required in the procedure performed;
3. severity or complexity of the patient's disease, disorder, or disability;
4. policies, procedures, and practices of other third-party purchasers of care;
5. prevailing medical-laboratory ethics and accepted custom of the medical-laboratory community; and
6. such other standards and criteria as may be adopted by EOHHS. In no event may an eligible provider bill or be paid in excess of the usual and customary charge for the service.

(d) Allowable Fees for Certain Individual COVID-19 Testing Services – Not Including Laboratory Analysis. The allowable fees in 101 CMR 446.03(6)(d) apply for the listed COVID-19 testing services performed by an eligible provider at a mobile testing site where the eligible provider is not required to perform, pay for, or contract for the laboratory analysis.

Allowable Fee	Description of Service
\$20.81	Ordering, resulting, and follow-up counseling services, per COVID-19 test completed by an eligible mobile testing vendor where the provider is not required to perform, pay for, or contract for the laboratory analysis
\$60.00	COVID-19 specimen collection completed by an mobile testing vendor, including test administration or observation, and specimen transport services, per hour, per staff member

(e) Allowable Fees for Certain Individual COVID-19 Testing Services – Including Laboratory Analysis. The allowable fees in 101 CMR 446.03(6)(e) apply for the listed COVID-19 testing services where the eligible provider is required to perform, pay for, or contract for the laboratory analysis.

Allowable Fee	Description of Service
\$144.27	Site-based or mobile COVID-19 testing service administered or observed by an eligible provider, including specimen collection, laboratory processing, ordering, resulting, and follow-up counseling services, per test
Individual Consideration	Self-administered COVID-19 testing service completed by an eligible provider, including transport of testing materials, laboratory processing, ordering, resulting, and follow-up counseling services, per test

(f) Allowable Fees for Certain Pooled COVID-19 Testing Services – Including Laboratory Analysis.

1. Effective for dates of service on or after February 4, 2021, governmental units may pay eligible providers for pooled COVID-19 testing services, including laboratory analysis, through a per-pool rate and a rate for individual testing, if any, provided by the pooled testing provider as part of a pooled testing program. The rates must be set forth and agreed to by each eligible provider and the governmental unit through a contract or special conditions amendment to the provider contract. Specimen collection costs, specimen transport costs, and administrative fees may be billed separately from testing services.
2. Eligible providers must bill the governmental unit for the pooled COVID-19 testing services provided pursuant to 101 CMR 446.03(6)(f) and a contract or special conditions amendment to the provider contract, consistent with the terms of the contract or special conditions amendment to the provider contract. The governmental unit will pay the eligible provider for such services, upon receipt of such invoice, consistent with the terms of the contract or special conditions amendment to the provider contract.

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

446.03: continued

(g) Billing Certification. Each eligible provider who submits an invoice to a governmental unit for authorized services under 101 CMR 446.03(6) must certify to the accuracy of the level of services provided, as listed on its invoice.

(7) Allowable Fee for In-home Vaccination Services and Waste Prevention Vaccinations Provided Pursuant to a Contract between an In-home Vaccination Provider and a Governmental Unit.

(a) General Rate Determination. Rates of payment for services for which 101 CMR 446.03(7) applies are the lowest of

1. the in-home vaccination provider's usual fee to patients other than publicly aided individuals;
2. the in-home vaccination provider's actual charge submitted; or
3. the schedule of allowable fees set forth in 101 CMR 446.03(7)(c), taking into account appropriate modifiers and any other applicable rate provisions in accordance with 101 CMR 446.03(7).

(b) Defined Terms. Terms used in 101 CMR 446.03(7) that have not been defined elsewhere in 101 CMR 446.00 have the meanings ascribed to those terms in the contract between the in-home vaccination provider and the governmental unit.

(c) Allowable Fee for In-home Vaccination Services and Waste Prevention Vaccinations Provided by In-home Vaccination Providers. The following fees apply for the listed in-home vaccination services and waste prevention vaccinations rendered by in-home vaccination providers.

Service	Allowable Fee
In-home vaccination services rendered to eligible residents, in-home vaccination services rendered to eligible additional individuals, or waste prevention vaccinations administered to other vaccinable individuals	\$150.00 per COVID-19 vaccine dose administered

446.04: Special Contracts

Notwithstanding 101 CMR 446.03, a governmental unit may enter into a special contract with an eligible provider under which the governmental unit will pay for services authorized, but not listed herein, or authorized services performed in exceptional circumstances.

446.05: Reporting Requirements

(1) Required Reports. Except as otherwise provided, reporting requirements are governed by 957 CMR 6.00: *Cost Reporting Requirements*.

(2) Penalty for Noncompliance. Except as otherwise provided, the purchasing governmental unit may impose a penalty in the amount of up to 15% of its payments to any provider that fails to submit required information. The purchasing governmental unit will notify the provider in advance of its intention to impose a penalty under 101 CMR 446.05(2).

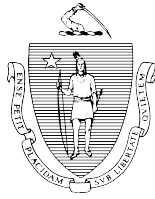
446.06: Severability

The provisions of 101 CMR 446.00 are severable and if any provisions of 101 CMR 446.00 or the application of such provisions to any person or circumstances is held to be invalid or unconstitutional, such invalidity will not be construed to affect the validity or constitutionality of any remaining provisions of 101 CMR 446.00 or application of such provisions to eligible providers or circumstances other than those held invalid.

REGULATORY AUTHORITY

101 CMR 446.00: M.G.L. c. 118E.

NON-TEXT PAGE



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **103 CMR 481.00**

CHAPTER TITLE: **Inmate Mail**

AGENCY: **Department of Correction**

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

The purpose of 103 CMR 481.00 is to establish rules governing the sending and receiving of mail by inmates confined in state correctional institutions. The Department of Correction (Department or DOC) recognizes the importance of the use of mail by inmates to maintain appropriate contact with the community.

REGULATORY AUTHORITY: **103 CMR 481.00: M.G.L. c. 124, § 1(b), 1(c), 1(q), and M.G.L. c. 127, § 87**

AGENCY CONTACT: **Heidi Handler** PHONE: **6177273300**

ADDRESS: **70 Franklin Street, Suite 600 Boston, MA 02110**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

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

08/12/2022 - Department of Housing and Community Development

08/12/2022 - Massachusetts Municipal Association

08/29-30/2022 - General public, DOC Facilities, Interested Parties

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

Date of public hearing or comment period: **09/21/2022**

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

For the first and second year: None

For the first five years: None

No fiscal effect: None

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

Date amended small business impact statement was filed: 10/24/2022

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

103 CMR 403.00

103 CMR 481.00

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

Repeal and replace 103 CMR 481.00 effective 04/02/2021.

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Oct 28 2022

Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 11/25/22

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
9 & 10 223 - 230.4	9 & 10 223 - 230.4

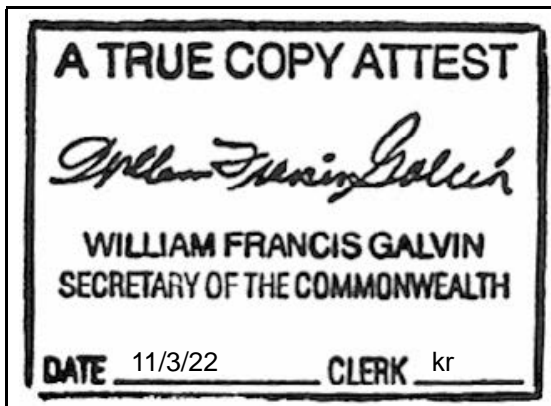


Table of Contents

	<u>Page</u>
(103 CMR 466.00 THROUGH 470.00: RESERVED)	201
103 CMR 471.00: RELIGIOUS PROGRAMS AND SERVICES	203
Section 471.01: Purpose	203
Section 471.02: Cancellation	203
Section 471.03: Applicability	203
Section 471.04: Access to Regulations	203
Section 471.05: Definitions	203
Section 471.06: Inmate Access to Religious Programs and Services	205
Section 471.07: Supervision of Inmate Religious Programs and Services	206
Section 471.08: Range of Religious Activities and Services	207
Section 471.09: Access of Visiting Clergy	208
Section 471.10: Community Participation in Inmate Religious Activities	208.1
Section 471.11: Access of Volunteer Chaplains	208.1
Section 471.12: Program Assessment and Planning	208.1
Section 471.13: Pre-release Center Application	208.1
Section 471.14: Annual Review Date	208.1
Section 471.15: Severability Clause	208.1
Section 471.16: Emergency	208.2
(103 CMR 472.00 THROUGH 476.00: RESERVED)	209
103 CMR 477.00: AVOCATION PROGRAMS	211
Section 477.01: Purpose	211
Section 477.02: Authorization	211
Section 477.03: Cancellation	211
Section 477.04: Applicability	211
Section 477.05: Access to Policy	211
Section 477.06: Definitions	211
Section 477.07: General Policy	212
Section 477.08: Institution Regulations	212
Section 477.09: Sale of an Avocation or Avocation Materials	213
Section 477.10: General Provisions	213
Section 477.11: Responsible Staff	213
Section 477.12: Review Date	213
Section 477.13: Severability Clause	214
103 CMR 478.00: LIBRARY SERVICES	215
Section 478.01: Purpose	215
Section 478.02: Cancellation	215
Section 478.03: Applicability	215
Section 478.04: Access to Regulation	215
Section 478.05: Definitions	215
Section 478.06: Staff	216
Section 478.07: Budget	217
Section 478.08: Facilities and Equipment	217
Section 478.09: General Library Services	217
Section 478.10: Legal Services	217
Section 478.11: Operating Procedures	218
Section 478.12: Collection Development	218
Section 478.13: Responsible Staff	219
Section 478.15: Annual Review	219
Section 478.16: Severability	219

Table of Contents

	<u>Page</u>
(103 CMR 479.00 through 480.00: RESERVED)	221
103 CMR 481.00: INMATE MAIL	223
Section 481.01: Purpose	223
Section 481.02: Cancellation	223
Section 481.03: Applicability	223
Section 481.04: Access to Regulation	223
Section 481.05: Definitions	223
Section 481.06: Institutional Procedures	225
Section 481.07: Collection and Distribution of Mail	225
Section 481.08: Amount of Mail	225
Section 481.09: Free Postage for Indigent Inmates	225
Section 481.10: Privileged Mail	225
Section 481.11: Identification and Processing of Privileged Mail	226
Section 481.12: Inspection of Non-privileged Mail	227
Section 481.13: Reading/Censoring/Disapproval of Incoming Non-privileged Mail/ Publications/Excess Pages	229
Section 481.14: Reading/Disapproval of Outgoing Non-privileged Mail/Publications/ Excess Pages	230
Section 481.15: Procedural Requirements for Disapproval of Incoming Non-privileged Mail/Publications/Excess Pages	230.1
Section 481.16: Procedural Requirements for Disapproval of Outgoing Mail	230.1
Section 481.17: Return Address on Outgoing Mail	230.2
Section 481.18: COD Mail Prohibited	230.2
Section 481.19: Prohibited Non-privileged Mail	230.2
Section 481.20: Prohibition on Inmate-to-Inmate Mail	230.2
Section 481.21: Forwarding Mail	230.3
Section 481.22: Time Limits	230.3
Section 481.23: Emergencies	230.3
Section 481.24: Responsible Staff	230.3
Section 481.25: Annual Review	230.3
Section 481.26: Severability Clause	230.3
103 CMR 482.00: TELEPHONE ACCESS AND USE	231
Section 482.01: Purpose	231
Section 482.02: Cancellation	231
Section 482.03: Applicability	231
Section 482.04: Access to Regulation	231
Section 482.05: Definitions	231
Section 482.06: Institution Procedures for Inmate Telephone Access and Use	232
Section 482.07: Inmate Telephone Use for Court, Attorney Contact, Consular Officer/Diplomat Contact, Preapproved Ordained Clergymen Contact, and Licensed Psychologist, Social Worker, and/or Mental Health and Human Service Professionals Contact	233
Section 482.08: Telephone Access and Use for Special Status Inmates	233
Section 482.09: Telephone Monitoring	234
Section 482.10: Downloading Recorded Voice Conversations	234
Section 482.11: Responsible Staff	234
Section 482.12: Annual Review	234
Section 482.13: Severability Clause	234.1

103 CMR 481.00: INMATE MAIL

Section

- 481.01: Purpose
- 481.02: Cancellation
- 481.03: Applicability
- 481.04: Access to Regulation
- 481.05: Definitions
- 481.06: Institutional Procedures
- 481.07: Collection and Distribution of Mail
- 481.08: Amount of Mail
- 481.09: Free Postage for Indigent Inmates
- 481.10: Privileged Mail
- 481.11: Identification and Processing of Privileged Mail
- 481.12: Inspection of Non-privileged Mail
- 481.13: Reading/Censoring/Disapproval of Incoming Non-privileged Mail/Publications/Excess Pages
- 481.14: Reading/Disapproval of Outgoing Non-privileged Mail/Publications/Excess Pages
- 481.15: Procedural Requirements for Disapproval of Incoming Non-privileged Mail/Publications/Excess Pages
- 481.16: Procedural Requirements for Disapproval of Outgoing Mail
- 481.17: Return Address on Outgoing Mail
- 481.18: COD Mail Prohibited
- 481.19: Prohibited Non-privileged Mail
- 481.20: Prohibition on Inmate-to-inmate Non-privileged Mail
- 481.21: Forwarding Mail
- 481.22: Time Limits
- 481.23: Emergencies
- 481.24: Responsible Staff
- 481.25: Annual Review
- 481.26: Severability Clause

481.01: Purpose

The purpose of 103 CMR 481.00 is to establish rules governing the sending and receiving of mail by inmates confined in state correctional institutions. The Department of Correction (Department or DOC) recognizes the importance of the use of mail by inmates to maintain appropriate contact with the community.

481.02: Cancellation

103 CMR 481.00 cancels all previous Department and institutional policy statements, bulletins, directives, orders, notices, rules or regulations regarding inmate mail or correspondence, which are inconsistent with 103 CMR 481.00.

481.03: Applicability

103 CMR 481.00 is applicable to all employees and inmates at all state correctional institutions within the Department; however, the Superintendent of MASAC may waive the applicability of 103 CMR 481.00 in whole or in part.

481.04: Access to Regulation

103 CMR 481.00 shall be maintained within the Central Policy File of the Department and shall be accessible to all Department employees. A copy of 103 CMR 481.00 shall also be maintained in each Superintendent's Central Policy File and at each inmate library.

481.05: Definitions

Attorney Verification System (AVS). System consisting of numerical codes and/or individualized stickers, which is utilized to verify legitimate privileged mail.

481.05: continued

Commissioner. The chief executive officer of the Department of Correction.

Court Official. A judge, court or an employee of a court of the United States or of the Commonwealth of Massachusetts, or an attorney employed by a state or federal governmental agency.

Deputy Superintendent. A deputy administrative officer of a state correctional institution.

Excess Pages. Excess pages include any portion extracted, photocopied, or clipped from a non-privileged publication, provided, however, that an inmate may receive a maximum of five pages per day, except Sundays and postal holidays, of a portion extracted, photocopied, or clipped from such items as an attachment to non-privileged personal mail. Nothing in Excess Pages shall be construed to limit the number of pages attached to, or enclosed with, privileged mail.

Indigent Inmate. Upon request for waiver of fees or cost, an inmate may be declared indigent if:

- (a) At the time of the request, the inmate has, in all accounts to which the inmate has access, a total amount less than or equal to \$10.00 plus the cost or fees sought to be waived; and
- (b) At no time for the 60 days immediately preceding said request, have the inmate's accounts contained more than \$10.00 plus the cost or fees sought to be waived. (*e.g.* request to waiver \$5.00 on July 1, 2015; indigent if, at no time since May 1, 2015, total in accounts has been more than \$15.00).

In addition to 103 CMR 481.05: Indigent Inmate(a) or (b), the Superintendent may in the Superintendent's discretion, designate an inmate as indigent if the inmate has less than \$2.00 in their account at the time of the request, or in other circumstances as the Superintendent deems appropriate.

Inmate. For the purposes of 103 CMR 481.00 only, an individual, whether in pretrial, unsentenced, or sentenced status, who is confined in a correctional institution, including those individuals admitted for evaluation or commitment to the Bridgewater State Hospital, and at the Massachusetts Treatment Center.

Mail. The term "mail" in this policy refers to correspondence, packages, or other physical mailings sent *via* the United States Postal System, or other authorized carrier.

Mail Officer. The employee at a correctional institution whose duties include the processing of mail.

Nudity. A pictorial depiction where genitalia, buttocks or breasts of individuals identifying as female are exposed. Publications containing nudity illustrative of medical, educational, or anthropological content may be excluded from this definition.

Privileged Mail Logbook. A logbook utilized to document the inmate's receipt of privileged mail.

Publication. Any non-privileged book, booklet, pamphlet, magazine, periodical, newsletter, newspaper, or self-published document, published by any individual, organization, company, or corporation, or governmental entity, which is generally available to the public through any means or media in printed or electronic form.

Sexually Explicit. A pictorial depiction of actual or simulated sexual acts, including sexual intercourse, anal or oral sex, or masturbation or material which promotes itself based upon such depictions on a routine or regular basis or in individual one-time issues.

Superintendent. The chief administrative officer of a state correctional institution.

481.06 Institutional Procedures

The Superintendent at each correctional institution shall develop written institutional policies designed to implement 103 CMR 481.00. Institutional policies regarding mail shall conform to the requirements set forth in 103 CMR 481.00 and shall be subject to the approval of the Commissioner or a designee.

481.07 Collection and Distribution of Mail

(1) Outgoing mail shall be collected directly from a locked mail box by a Department employee, in accordance with an established schedule, at least once each day, except Sundays and postal holidays. Prior to outgoing mail being placed in the locked mailbox, staff shall verify that the inmate depositing mail into the box is in fact the inmate whose name and return address appear on the envelope and that the envelope is sealed.

All outgoing mail shall be stamped on the reverse side of the envelope with language indicating that the correspondence is sent from a correctional institution. Mail shall be stamped in blue ink only; the stamp shall read as follows:

"This correspondence is forwarded from a Massachusetts Correctional Institution. The contents may not have been evaluated and the Department is not responsible for the substance or content of the enclosed material. If you have received unwanted correspondence from this inmate, call 1-866-684-2846 to stop future correspondence."

At no time shall outgoing mail be collected or otherwise handled by an inmate. All outgoing mail, including inter and intra-office mail, shall be processed through the institutional mailroom.

(2) Incoming mail shall be distributed to the receiving inmate by a DOC employee or electronically in accordance with an established schedule, at least once every day except Sundays and postal holidays, unless an article of mail is held pursuant to the provisions of 103 CMR 481.15 and 481.16. At no time shall incoming mail be distributed or otherwise handled by an inmate nor shall mail be left by the distributing employee in a commonly accessible place. Nothing in 103 CMR 481.00 shall limit the right of a Superintendent to withhold delivery of Publications from an inmate serving disciplinary detention.

(3) Outgoing mail shall be collected from the inmates and delivered to the post office, and incoming mail shall be picked up from the post office and processed in accordance with 103 CMR 481.07(2), except when an article of mail is held pursuant to the provisions of 103 CMR 481.16 and 481.17.

481.08: Amount of Mail

Except as provided in 103 CMR 481.09, there shall be no limitation placed on the number of persons with whom an inmate may correspond, nor shall there be any limitation on the separate mailings an inmate may send or receive.

481.09: Free Postage for Indigent Inmates

Indigent inmates shall be permitted to mail three letters first class weighing one ounce or less each week at institution expense. In addition, an indigent inmate shall be permitted, where necessary, to send an unlimited number of letters of any weight to any court official at institution expense. A charge shall not be placed against future deposits to an inmate's account for the cost of postage and materials supplied in accordance with 103 CMR 481.10.

481.10: Privileged Mail

(1) Mail sent by the following persons shall be considered privileged mail, and inmates shall be permitted to send and receive mail from the following persons in accordance with the procedures set forth in 103 CMR 481.11:

- (a) Any officer of a court of the United States, of the Commonwealth of Massachusetts, or of any court of any state of the United States (*e.g.*, judge, government attorney, court clerk, parole board members, probation or parole officers);
- (b) The President or Vice President of the United States or the Governor of the Commonwealth of Massachusetts;

481.10: continued

- (c) Any member of the Congress of the United States or any member (*e.g.*, legislator) of the General Court of the Commonwealth of Massachusetts;
- (d) The Attorney General of the United States or the Attorney General of the Commonwealth of Massachusetts;
- (e) The Director or any agent of the Federal Bureau of Investigation; and
- (f) The Superintendent of the state correctional institution in which the inmate is confined, an Assistant Deputy Commissioner or Deputy Commissioner of Correction, or the Commissioner of the Massachusetts Department of Correction.

(2) Inmates and persons with whom inmates may correspond as provided in 103 CMR 481.10(1) shall not use or permit others to use authorized privileged mail for personal, non-legal or non-official correspondence, the transmission of contraband, or the transmittal of communications to be given or forwarded to persons not specified in 103 CMR 481.10(1). Persons receiving unauthorized privileged mail, intended for a party other than the addressee, or privileged mail for forwarding, shall submit such mail to the Superintendent of the institution in which the inmate is confined. Inmates who fail to submit such mail to the Superintendent shall be subjected to disciplinary action.

(3) Attorneys shall be allowed to provide self-addressed, meter-stamped envelopes to their inmate clients. The envelope should be addressed to the law firm or to the individual attorney, contain only a meter-stamp (not a postage stamp) and may not be altered in any way. Should an inmate alter or attempt to utilize the meter-stamped envelope to send mail to anyone other than the original addressee, a disciplinary report shall be issued.

481.11: Identification and Processing of Privileged Mail

(1) Outgoing privileged mail shall not be opened for inspection or any other purpose or otherwise impeded in its transmission, if it meets the following requirements:

- (a) it is addressed to a person listed in 103 CMR 481.10(1);
- (b) if the inmate acknowledges that they are the sender of the correspondence or package, the inmate will be asked to open the correspondence or package for inspection;
- (c) it has been marked by the institution to indicate to the addressee that it has not been inspected or opened; and
- (d) it successfully passes a fluoroscope examination for contraband material if mailed from a medium or maximum security level facility, or, if mailed from a minimum or prerelease security level facility, it successfully passes a fluoroscope examination for contraband material when requested by the Superintendent and approved by the Commissioner.

(2) Outgoing privileged mail that does not successfully pass a fluoroscope examination shall be processed as follows:

- (a) the inmate whose name appears on the return address shall be notified of the unsuccessful fluoroscope examination of the privileged mail;
- (b) if the inmate acknowledges that they are the sender of the privileged mail, the inmate will be asked to open the privileged mail for inspection; and
- (c) if an inmate refuses to open such privileged mail for inspection upon request, the addressee's permission to open and inspect the privileged mail will be sought unless circumstances require the matter to be referred to the appropriate law enforcement agency by the Superintendent (*e.g.*, U.S. Postal Service, State Police, Federal Bureau of Investigation, District Attorney) for handling as appropriate, and the Commissioner shall be notified.

(3) Incoming privileged mail may be required to successfully pass a fluoroscope examination for contraband material but shall not be opened by a DOC employee except in the presence of the addressee inmate. A Privileged Mail Logbook shall be utilized to document the inmate's receipt of the privileged mail. The purpose of the inspection will be to receive and receipt any funds enclosed for the inmate, and/or to prevent the transmission of contraband to the inmate. The processing of funds, and/or contraband found in mail shall be in accordance with 103 CMR 403.00: *Inmate Property* and 103 CMR 481.00.

481.11: continued

(4) In order to prevent fraudulent privileged mail from entering DOC facilities, the DOC may implement an Attorney Verification System (AVS). If an AVS is established, the Department shall create internal procedures, that at a minimum, consist of the following:

- (a) Any attorney wishing to send privileged mail must attempt to participate in the AVS;
- (b) Forms/applications to participate in the AVS must be completed in their entirety;
- (c) Procedures to process mail from an attorney who does not attempt to comply with the AVS, or if the Department is not able to verify the privileged mail through the AVS;
- (d) Incoming privileged mail may not be opened by a Department employee except in the presence of the addressee inmate and for the purpose of receiving and receipting of any funds enclosed for the inmate and/or ascertaining that its contents are free of contraband. Privileged mail which complies with the AVS is presumed to have no contraband. Notwithstanding the use of an AVS, the Department retains and reserves the right to employ in its discretion internal procedures including, but not limited to, the use of K-9 Units, fluoroscopes, photocopying, and field testing, to ensure that the mail is legitimate privileged correspondence, and does not include contraband, and to conduct further investigation as warranted.
- (e) Nothing in 103 CMR 481.11 shall prohibit the Department from developing an additional system for delivery of privileged mail through electronic mail.

481.12: Inspection of Non-privileged Mail(1) Processing of Non-privileged Mail.

- (a) All outgoing, non-privileged mail being sent from a maximum or medium security level facility shall be required to successfully pass a fluoroscope examination for contraband materials. All outgoing non-privileged mail being sent from a minimum or pre-release security level facility may be required to successfully pass a fluoroscope examination for contraband materials when requested by the Superintendent and approved by the Commissioner. The opening and inspection of outgoing non-privileged mail at all security level facilities shall be at the discretion of the Superintendent to prevent the transmission of materials and/or information which represents a threat to security, order, rehabilitation or public safety, or appears to contain material not addressed to the addressee, but rather, material intended for other parties.
- (b) All incoming non-privileged mail may be required to successfully pass a fluoroscope examination for contraband materials, and shall be opened and inspected before delivery to the inmate. The purpose of inspection will be to receive and receipt any funds enclosed for the inmate; to verify and record the receipt of permitted personal property; and/or to prevent the transmission of contraband to the inmate. The processing of funds, permitted personal property and contraband found in mail shall be in accordance with 103 CMR 403.00: *Inmate Property*.
- (c) Notice shall be sent to the sender and the addressee, for both outgoing and incoming non-privileged mail, whenever contraband is confiscated, provided that the address is known. Such notice shall satisfy the requirements of 103 CMR 481.15 and 481.16. Any money order, cash, or check(s), confiscated as contraband shall be processed pursuant to 103 CMR 403.17(2).

(2) Mail Monitoring of Non-privileged Mail.

- (a) The Superintendent may authorize the reading or censoring of an individual inmate's incoming and outgoing non-privileged mail only to prevent interference with institutional goals of security, order, discipline, or if it might facilitate, encourage or instruct in criminal activity. Authorization for reading mail shall never be based upon an employee's personal views or for retaliation against an inmate.
- (b) In circumstances where staff has received specific information that a particular inmate's mail contains information which jeopardizes institutional security in accordance with the categories listed in 103 CMR 481.13(2)(a) through (j):
 1. Staff shall submit a Request for Inmate Mail Monitor form *via* Inmate Management System (IMS) to the Superintendent, which will include a detailed explanation as to the reason for the request in accordance with 103 CMR 481.13(2) and 481.14(2).
 2. The Superintendent will approve or deny said request *via* IMS. The mail monitor will expire 90 days from the date of approval.

481.12: continued

3. A one-time extension may be granted by the Superintendent for monitoring beyond the 90 days contingent upon a substantial belief that the initial condition under which the mail monitor was initially approved still exists. The request for this extension will be completed *via* the extension tab located on the original mail monitor request form that was submitted *via* IMS.

4. If additional time is requested, the Superintendent shall be prudent and exercise conservative judgment when determining the necessity to continue the mail monitor. In this case, a new request *via* IMS will need to be initiated and approved for an additional 90 days.

(3) Upon approval of a mail monitor by the Superintendent, the following recordkeeping and oversight will be established:

(a) An approved mail monitor should not in any way delay delivery of incoming mail to the inmate or outgoing mail to the post office. The only exception to this time frame should be in those instances where mail is confiscated in accordance with 103 CMR 481.15 and 481.16.

(b) A central file shall be established and maintained by the Inner Perimeter Security (IPS). This file shall include copies of any mail that included information supporting the original request.

(c) An electronic log shall be maintained in IMS to be used whenever a staff member reads inmate mail pursuant to an approved mail monitor. Content of the log will include, but is not limited to:

- (1) Inmate name and commitment number;
- (2) Name of staff reviewing mail and date reviewed;
- (3) Dates of monitor approval and expiration;
- (4) Type of mail, *i.e.*, incoming/outgoing;
- (5) Name and address of sender/receiver;
- (6) Type of intelligence received; and
- (7) Superintendent review.

(d) The electronic mail monitor log shall be reviewed by the Superintendent every 90 days and documented in the mail monitor log.

(4) Photocopying of Incoming Non-privileged Inmate Mail.

(a) In the event that all incoming inmate non-privileged mail at a particular institution creates an unacceptable risk for introduction of contraband, the Commissioner may authorize that all incoming non-privileged inmate mail at that institution shall be photocopied prior to distribution to inmates, and all newly received non-privileged paper mail shall be deemed contraband unless otherwise provided for in 103 CMR 481.00. When all incoming non-privileged inmate mail at an institution is photocopied, the Superintendent shall ensure that the following directives are followed:

1. All inmates shall receive a photocopy of all authorized, non-privileged mail addressed to them. An electronic copy of the photocopy shall be sufficient if the inmate possesses an electronic tablet which permits the inmate to read and store the mail.

2. All inmates shall receive a photocopy of authorized photographs mailed to them. Multiple pictures may be fitted to a standard size copy paper.

3. In most instances, photocopies will be black/white photocopies of incoming non-privileged inmate mail. Color photocopies should be utilized for incoming non-privileged mail consisting of colored or crayon drawings, color photographs/pictures and greeting cards utilizing color. Color photocopies should not be used to photocopy colored paper or envelopes, yellow lined paper, letterhead, return address labels, signatures or postmarks appearing in color.

4. Photographs emanating from verifiable photo-printing companies do not need to be photocopied. If the recipient inmate is housed at an institution for which the Commissioner has authorized incoming inmate non-privileged mail to be photocopied, photographs from a verifiable photo printing company may be sent directly to the institution

5. Publications sent directly from publishers, shall not be photocopied or deemed Excess Pages when sent to an institution which is authorized by the Commissioner to photocopy all incoming inmate non-privileged mail; however any inserts, flyers and/or advertising

481.12: continued

materials included within said Publication, as well as any correspondence from publishers which includes all envelopes, may be photocopied. At institutions for which the Commissioner has authorized photocopying of all incoming inmate non-privileged mail, the Superintendent may provide either the original Publication, work with the sender to obtain a digital copy of the Publication, or create a single digital copy to forward to the recipient inmate electronically.

(b) In the Event that the Commissioner does not authorize the photocopying of non-privileged mail at an institution, the Superintendent reserves the right to authorize the photocopying of individual pieces of mail that are suspected of contraband.

(c) Contraband mail shall be processed in accordance with 103 CMR 403.15(1)(b). Photocopies of contraband items may be made. An inmate shall receive notices of contraband as required by 103 CMR 403.15: *Disposal of Inmate Property*, by way of paper or electronic notice, or paper or electronic posting. The inmate may choose to have the original mail sent to a designated person at the inmate's expense.

(d) If an inmate is transferred to a Department institution that is photocopying non-privileged inmate mail, photocopied mail and digital mail shall be transferred along with the inmate. Any original paper mail that the inmate has within /their possession shall be deemed contraband and treated in accordance with 103 CMR 403.15: *Disposal of Inmate Property*, with the exception of previously authorized photographs (which the inmate may retain). The inmate may request that any original paper correspondence, previously approved for cell retention, be photocopied and transferred at the Department's expense (up to the amount that the inmate is authorized to maintain in cell).

(e) For inmates being transferred to another jurisdiction that does not support digital mail, the inmate may request that digital mail and/or photographs be downloaded and printed at the Department's expense in order to allow for transfer of such mail.

(f) Department institutions which photocopy non-privileged mail shall ensure that the time frames set forth in 103 CMR 481.07(3) are adhered to, specifically: "Outgoing mail shall be collected from the inmates and delivered to the post office, and incoming mail shall be picked up from the post office and processed in accordance with 103 CMR 481.07(2), except when an article of mail is held pursuant to the provisions of 103 CMR 481.14 and 481.15."

481.13: Reading/Censoring/Disapproval of Incoming, Non-privileged Mail/Publications/ExcessPages

(1) Incoming Mail. 00It is the policy of the Department not to read, censor, or disapprove incoming mail, except where necessary to protect legitimate governmental interests.

(2) The Superintendent may authorize the reading, censoring or disapproval of incoming non-privileged mail only to prevent interference with institutional goals of security, order, discipline, or if the non-privileged mail might facilitate, encourage, or instruct in, criminal activity. Disapproval of incoming, non-privileged mail shall not be based upon an employee's personal views about the mail. The Deputy Superintendent or designee may disapprove receipt by an inmate of non-privileged mail, the contents of which fall as a whole or in significant part into any one of the following categories:

(a) The non-privileged mail contains depictions or descriptions of procedures for the construction or use of weapons, ammunition, bombs or incendiary devices;

(b) The non-privileged mail contains depictions, descriptions or encouragement of methods of escape from correctional facilities, or contains blueprints, drawings or similar descriptions of any correctional institution within the Commonwealth;

(c) The non-privileged mail contains depictions or descriptions of procedures for the brewing of alcoholic beverages, or the manufacture of drugs;

(d) The non-privileged mail is written, in whole or in part, in code;

(e) The non-privileged mail contains depictions, descriptions or encouragement of activities that may lead to the use of physical violence or group disruption;

(f) The non-privileged mail contains encouragements or instructions in the commission of criminal activity;

(g) The non-privileged mail contains sexually explicit pictorial material or material which features nudity which, by its nature or content, poses a threat to the security, good order, or discipline of the institution; and

481.13: continued

- (h) The non-privileged mail facilitates the introduction of contraband drugs and other contraband.
- (i) The non-privileged mail, including any attachments or enclosures, contains Excess Pages.

(3) Incoming Publications.

- (a) The Deputy Superintendent may reject a Publication within a reasonable time of receipt to prevent interference with institutional goals of security, order, rehabilitation, or if the Publication facilitates, encourages, and/or instructs in criminal activity. The Deputy Superintendent may not reject a Publication solely because its content is religious, philosophical, political, social, or because its content is unpopular or repugnant. Publications which may be rejected by a Deputy Superintendent include, but are not limited to, Publications which fall within one of the categories listed in 103 CMR 481.14(2)(a) through (i). An inmate may not receive more than one copy of a particular issue of a Publication.
- (b) Publications may be excluded solely because they contain sexually explicit material or feature nudity as defined in 103 CMR 481.05. In addition, the Deputy Superintendent of the Treatment Center, with the approval of the Commissioner, may exclude additional types of material that may interfere with the treatment and rehabilitation process at that institution.
- (c) It is the Deputy Superintendent's decision as to whether or not a Publication should be excluded.
- (d) Sexually explicit material does not include material of a news or information type, or material illustrative of medical, educational, or anthropological content.
- (e) Deputy Superintendents may not establish an excluded list of Publications. Deputy Superintendents should review each issue of a subscription Publication prior to rejection of the issue. Rejection of several issues of a subscription Publication is not sufficient reason to reject the subscription in its entirety.
- (f) Where a Publication is rejected, the procedural requirements of 103 CMR 481.15 shall be followed. The notice required by 103 CMR 481.15 shall contain reference to the specific article(s) or material(s) considered objectionable.

- (4) Any employee reading inmate incoming mail pursuant to the Superintendent's authorization shall record such action in a logbook maintained for such purpose.

481.14: Reading/Disapproval of Outgoing Non-privileged Mail/Publications/Excess Pages

It is the policy of the Massachusetts Department of Correction not to read or censor outgoing mail, except where necessary to protect legitimate governmental interests.

- (1) The Superintendent may authorize the reading of outgoing non-privileged mail when in the Superintendent's opinion such action is necessary to prevent the transmission of materials and/or information which represents a threat to security, order, rehabilitation or to the public safety.
- (2) For outgoing mail, such authorization may be granted when the Superintendent has received specific information that mail contains information which may jeopardize security, order, rehabilitation or the public safety. Ordinarily, such specific information shall indicate that the contents of the outgoing non-privileged mail fall as a whole or in significant part into any one of the following categories:
 - (a) The non-privileged mail contains a transmittal of plans for escape or to introduce contraband into the prison;
 - (b) The non-privileged mail contains plans for criminal activity or any activity which violates any Departmental or institutional rule, regulation, order or policy;
 - (c) The non-privileged mail is written, in whole or in part, in code;
 - (d) The non-privileged mail contains threatening or harassing language or material, including sexually explicit material, intended for unwilling recipients;
 - (e) The non-privileged mail contains or appears to contain unsanitary or hazardous material (e.g. feces, insects, dirt, debris);
 - (f) The non-privileged mail contains an extortion demand(s);
 - (g) The non-privileged mail contains cash, drugs, jewelry or other contraband for transmittal outside the prison;

481.14: continued

- (h) The non-privileged mail is addressed to a recipient who has previously requested not to receive correspondence from the inmate pursuant to 103 CMR 481.19;
- (i) The non-privileged mail has an improper or no return address; or
- (j) The non-privileged mail contains material not intended for the addressee, but rather, material intended for other parties.

Where outgoing mail is read pursuant to 103 CMR 481.14, and prohibited information is found, the mail or relevant portion thereof may be confiscated or copied in the furtherance of an investigation. Notice of a confiscation shall be given to the inmate in accordance with 103 CMR 481.16.

(3) No employee may read outgoing non-privileged inmate mail, unless such reading is done in accordance with 103 CMR 481.14(1) and (2).

(4) Any employee reading inmate outgoing non-privileged mail pursuant to the Superintendent's authorization shall record such action in a log book maintained for such purpose.

481.15: Procedural Requirements for Disapproval of Incoming Non-privileged Mail/Publications/Excess Pages

(1) Incoming Non-privileged Mail. When any non-privileged mail or portion thereof, addressed to an inmate, is received at the institution, but is not delivered to the inmate for any reason set forth in 103 CMR 481.13, the inmate, and the sender when identifiable, shall be promptly notified, in writing, of the following:

- (a) the reason(s) for refusing to deliver the non-privileged mail or a portion thereof to an inmate; and
- (b) the fact that a written appeal may be submitted by the inmate or sender to the Superintendent.

(2) Publications. When any Publication addressed to an inmate is received at the institution, but is not delivered to an inmate for any reason set forth in 103 CMR 481.13, the inmate, and the publisher when identifiable, shall be promptly notified, in writing, of the following:

- (a) the reason(s) for refusing to deliver the Publication to an inmate(s); and
- (b) the fact that a written appeal may be submitted by the inmate or publisher to the Superintendent.

(3) A single notice of rejection to the publisher from a particular institution or the Department shall be sufficient where more than one inmate at the institution or within the Department receives the subscription Publication.

(4) The Deputy Superintendent may permit an inmate an opportunity to inspect, in the presence of correctional personnel, any disapproved material for purposes of filing an appeal, unless such review may provide the inmate with information of a nature which is deemed a threat or detriment to the security, good order or discipline of the institution or which might encourage or instruct in criminal activity. An inmate has the right to appeal the disapproval to the Superintendent by submission of a written appeal within seven calendar days of receipt of the Disapproved Mail/Publication/Excess Pages and Contraband Notice.

(5) The Superintendent shall, within a reasonable time from receipt of such an appeal, make a decision and notify the inmate.

(6) Where criminal activity is suspected, in addition to the foregoing procedures, the matter shall be referred to the appropriate law enforcement agency by the Superintendent (*e.g.*, U.S. Postal Service, FBI, State Police, district attorney), and the Commissioner shall be promptly notified.

481.16: Procedural Requirements for Disapproval of Outgoing Mail

(1) When any mail, or a portion thereof, whether privileged or non-privileged, is not mailed either because it fails to successfully pass a fluoroscope examination or its contents fall as a whole or in significant part into any one of the categories listed in 103 CMR 481.14(2)(a) through (j), the inmate shall be promptly notified in writing of the following:

481.16: continued

- (a) the reason for the refusal; and
- (b) notice that a written appeal may be submitted by the inmate to the Superintendent or designee.

(2) The Superintendent or designee shall, within a reasonable time of the receipt of such an appeal, make a decision and notify the inmate.

(3) Where criminal activity is suspected, in addition to the foregoing procedures, the matter shall be referred to the appropriate law enforcement agency by the Superintendent (*e.g.*, U.S. Postal Service, Federal Bureau of Investigation, State Police, District Attorney), and the Commissioner shall be notified.

481.17: Return Address on Outgoing Mail

(1) It shall be the inmate's responsibility to place their return address on the outside of all outgoing mail. The return address shall include the inmate's name and the address designated by the institution for inmate non-privileged mail. Mail without a return address, or where the inmate denies that they are the sender of outgoing non-privileged mail bearing their name, will not be forwarded to the post office.

(2) In addition, all outgoing mail shall be stamped on the reverse side of the envelope with language indicating that the mail is sent from a correctional institution. Mail shall be stamped in blue ink only; the stamp shall read as follows: "This correspondence is forwarded from a Massachusetts Correctional Institution. The contents may not have been evaluated and the Department of Correction is not responsible for the substance or content of the enclosed material. If you have received unwanted correspondence from this inmate, call 1-866-684-2846 to stop future correspondence."

481.18: COD Mail Prohibited

No collect-on-delivery (COD) mail of any kind shall be sent or accepted for an inmate, except with the approval of the Superintendent or designee.

481.19: Prohibited Non-privileged Mail

Notwithstanding any other provisions of 103 CMR 481.00, an inmate may be prohibited by the Superintendent from corresponding with a particular person if that person, or the person's parent or legal guardian in the case of a minor, has requested in writing that such non-privileged mail from the inmate be terminated. Whenever such non-privileged mail is not mailed, the inmate shall be notified. Such notice shall satisfy the requirements of 103 CMR 481.16

481.20: Prohibition on Inmate-to-Inmate Mail

An inmate may be permitted to send mail to an inmate confined in any other correctional or penal institution in the Commonwealth only if the other inmate is either a member of the inmate's immediate family or is a party in a legal action in which both inmates are parties representing themselves. The Superintendent may approve such mail in other exceptional circumstances, with particular regard to the nature of the relationship between the two inmates, and the security level of the institution. The following additional limitations apply:

- (1) The Superintendents at both the sending and receiving institutions must approve of the mail;
- (2) Such incoming or outgoing mail at institutions of all security levels may, for reasons of safety or security, be inspected and read by staff at either the sending and/or receiving institution pursuant to the authorization of the Commissioner or institution Superintendent in accordance with applicable guidelines and requirements set forth in 103 CMR 481.12, 481.13 and 481.14.

481.20: continued

(3) When an inmate's request to send inmate-to-inmate mail is approved by both Superintendents, a copy of the approval document(s) shall be placed in each inmate's six-part folder, and a copy shall be maintained in the mail room of both institutions.

(4) Superintendents shall develop a logging process to show approvals and disapprovals for inmate-to-inmate mail. Approved inmate-to-inmate non-privileged mail shall be reviewed every 90 days.

(5) The prohibition on inmate-to-inmate mail applies only to Department of Correction inmates incarcerated in a Department of Correction or county facility in Massachusetts.

481.21: Forwarding Mail

(1) Mail received for an inmate who has been transferred or released from the institution where the mail is received shall be forwarded promptly, whenever possible, or returned to the sender.

(2) Change of address cards shall be readily available at each institution for issue to inmates, upon request, who are scheduled for transfer or release from the institution. Inmates shall be responsible for notifying their correspondents and the publishers of their subscriptions of any change of address.

(3) Mail for inmates who are on escape status shall have their mail marked "Return to Sender" and returned to the post office. Where appropriate, return may be delayed until such time as appropriate law enforcement officials are notified.

481.22: Time Limits

Time limits set forth in 103 CMR 481.15 and 481.16 are directory and may be modified by the Superintendent or the Commissioner, under appropriate circumstances.

481.23: Emergencies

Whenever in the opinion of the Commissioner, Deputy Commissioner or the Superintendent of a state correctional institution, an emergency exists which requires suspension of all or part of 103 CMR 481.00, they may order such suspension, except that any such suspension lasting beyond 48 hours must be authorized by the Commissioner.

481.24: Responsible Staff

The Superintendent of each institution shall be responsible for implementing and monitoring 103 CMR 481.00.

481.25: Annual Review

103 CMR 481.00 shall be reviewed at least annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

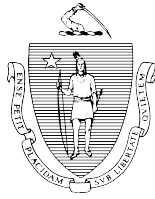
481.26: Severability Clause

If any article, section, subsection, sentence, clause or phrase of 103 CMR 481.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 481.00.

REGULATORY AUTHORITY

103 CMR 481.00: M.G.L. c. 124, § 1(b), 1(c), 1(q), and M.G.L. c. 127, § 87.

NON-TEXT PAGE



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **310 CMR 9.00**

CHAPTER TITLE: **Waterways**

AGENCY: **Department of Environmental Protection**

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

The general purpose of these regulations is to protect and promote the public's interest in tidelands, Great Ponds, and non-tidal rivers and streams. These amendments ratify and confirm MassDEP approval of 16 previously approved Municipal Harbor Plans in response to a July 2022 Massachusetts Supreme Judicial Court decision.

REGULATORY AUTHORITY: **M.G.L. c. 91 and c. 91A, § 18**

AGENCY CONTACT: **Daniel Padien** PHONE: **857-329-3574**

ADDRESS: **1 Winter Street, Boston, MA 02108**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

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

- 9/13/2022 Legislature: Joint Committee on Environment, Natural Resources and Agriculture, House Ways and Means Committee, Senate Ways and Means Committee**
- 4/30/2021 Secretary for Energy and Environmental Affairs**
- 4/30/2021 Department of Public Utilities**
- 4/30/2021 Department of Public Health**
- 4/30/2021 Mass. Historical Commission**

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

Date of public hearing or comment period: **Hearings 6/8/2021 and 7/27/2021**

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

For the first and second year: _____

For the first five years: _____

No fiscal effect: **Amendment ratifies previously approved municipal harbor plans affirming licenses issued under those plans.**

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

Date amended small business impact statement was filed: 11/7/2022

CODE OF MASSACHUSETTS REGULATIONS INDEX - List key subjects that are relevant to this regulation: **waterways, tidelands, municipal harbor plan, approved municipal harbor plan, license**

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

Amend 310 CMR 9.00

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Nov 10 2022

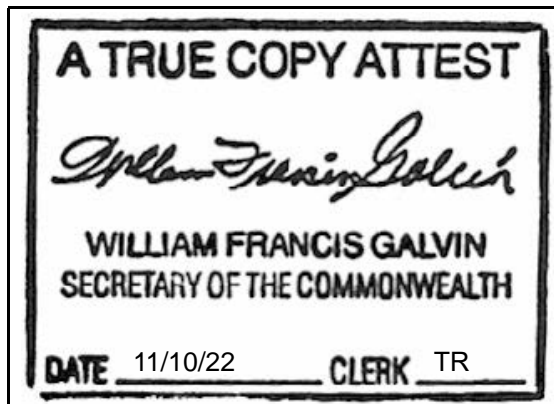
Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 11/25/22

CODE OF MASSACHUSETTS REGULATIONS

Remove these Pages: _____ Insert these Pages: _____
Please see attached for Page Instructions.



Remove these pages

4.1, 4.2
261 - 264
267, 268
277, 278
281-286
293, 294
297, 298
311, 312
315, 316
316.3-316.6
316.9-316.18
261 - 264
267, 268
277, 278
281-286
293, 294
297, 298
311, 312
315, 316
316.3-316.6
316.9-316.18

Insert these pages

4.1, 4.2
261 - 264
267, 268
277, 278
281-286
293, 294
297, 298
311, 312
315, 316
316.3-316.6
316.9-316.18
261 - 264
267, 268
277, 278
281-286
293, 294
297, 298
311, 312
315, 316
316.3-316.6
316.9-316.60

Table of Contents

	<u>Page</u>
310 CMR 9.00: WATERWAYS (continued)	
Section 9.33: Environmental Protection Standards	314
Section 9.34: Conformance with Municipal Zoning Law and Approved Municipal Harbor Plans	315
Section 9.35: Standards to Preserve Water-related Public Rights	316
Section 9.36: Standards to Protect Water-dependent Uses	316.3
Section 9.37: Engineering and Construction Standards	316.4
Section 9.38: Use Standards for Recreational Boating Facilities	316.5
Section 9.39: Standards for Marinas/Boatyards/Boat Ramps	316.6
Section 9.40: Standards for Dredging and Dredged Material Disposal	316.8
Section 9.51: Conservation of Capacity for Water-dependent Use	316.9
Section 9.52: Utilization of Shoreline for Water-dependent Purposes	316.12
Section 9.53: Activation of Commonwealth Tidelands for Public Use	316.12
Section 9.54: Consistency with Coastal Zone Management Policies	316.14
Section 9.55: Standards for Nonwater-dependent Infrastructure Facilities	316.15
Section 9.56: Standards for Facilities of Limited Accommodation	316.15
Section 9.57: Approved Municipal Harbor Plans	316.18
 310 CMR 10.00: WETLANDS PROTECTION	 317
All Wetlands	
Section 10.01: Introduction and Purpose	324
Section 10.02: Statement of Jurisdiction	324
Section 10.03: General Provisions	328
Section 10.04: Definitions	334
Section 10.05: Procedures	350
Section 10.06: Emergencies	369
Section 10.07: Compliance with M.G.L. c. 30, §§ 61 through 62H	373
Section 10.08: Enforcement Orders	374
Section 10.09: Severability	374
Section 10.10: Effective Date	374
Section 10.11: Actions Required Before Submitting a Notice of Intent for an Ecological Restoration Project	376
Section 10.12: Notice of Intent for an Ecological Restoration Project	377
Section 10.13: Eligibility Criteria for Restoration Order of Conditions	379
Section 10.14: Restoration Order of Conditions	381
 Coastal Wetlands	
Section 10.21: Introduction	384
Section 10.22: Purpose	385
Section 10.23: Additional Definitions for 310 CMR 10.21 through 10.37	385
Section 10.24: General Provisions	387
Section 10.25: Land under the Ocean	396
Section 10.26: Designated Port Areas	397
Section 10.27: Coastal Beaches	398
Section 10.28: Coastal Dunes	400
Section 10.29: Barrier Beaches	401
Section 10.30: Coastal Banks	402
Section 10.31: Rocky Intertidal Shores	404
Section 10.32: Salt Marshes	405
Section 10.33: Land under Salt Ponds	406
Section 10.34: Land Containing Shellfish	407
Section 10.35: Banks of or Land under the Ocean, Ponds, Streams, Rivers, Lakes or Creeks that Underlie Anadromous/Catadromous ("Fish Run")	408
(Section 10.36: Reserved: Variance Provision is Found at 310 CMR 10.05(10))	410
Section 10.37: Estimated Habitats of Rare Wildlife (for coastal wetlands)	410

Table of Contents

	<u>Page</u>
310 CMR 10.00: WETLANDS PROTECTION (continued)	
Inland Wetlands	
Section 10.51: Introduction	411
Section 10.52: Purpose	411
Section 10.53: General Provisions	412
Section 10.54: Bank (Naturally Occurring Banks and Beaches)	422
Section 10.55: Bordering Vegetated Wetlands (Wet Meadows, Marshes, Swamps and Bogs)	424
Section 10.56: Land under Water Bodies and Waterways (under any Creek, River, Stream, Pond or Lake)	427
Section 10.57: Land Subject to Flooding (Bordering and Isolated Areas)	429
Section 10.58: Riverfront Area	432
Section 10.59: Estimated Habitats of Rare Wildlife (for inland wetlands)	440.2
Section 10.60: Wildlife Habitat Evaluations	440.3

310 CMR 9.00: WATERWAYS

Section

- 9.01: Purpose
- 9.02: Definitions
- 9.03: Scope of Jurisdiction
- 9.04: Geographic Areas Subject to Jurisdiction
- 9.05: Activities Subject to Jurisdiction
- 9.06: Requests for Determination of Applicability
- 9.07: Activities Subject to Annual Permit
- 9.08: Enforcement
- 9.09: Effective Date and Severability
- 9.10: Simplified Procedures for Small Structures Accessory to Residences
- 9.11: Application Requirements
- 9.12: Determination of Water-dependency
- 9.13: Public Notice and Participation Requirements
- 9.14: Decision on License and Permit Applications
- 9.15: Terms
- 9.16: Fees
- 9.17: Appeals
- 9.18: Recording
- 9.19: Certificate of Compliance
- 9.20: Authorization of Emergency Actions
- 9.21: Variances
- 9.22: Maintenance, Repair, and Minor Project Modifications
- 9.23: Transfer of License Upon Change of Ownership
- 9.24: Amendments
- 9.25: Expiration and Renewal
- 9.26: Revocation and Nullification
- 9.27: Removal of Previously Licensed Structures
- 9.28: Amnesty
- 9.29: General License Certification
- 9.30: Permitting of Test Projects
- 9.31: Summary of License and Permit Requirements
- 9.32: Categorical Restrictions on Fill and Structures
- 9.33: Environmental Protection Standards
- 9.34: Conformance with Municipal Zoning Law and Approved Municipal Harbor Plans
- 9.35: Standards to Preserve Water-related Public Rights
- 9.36: Standards to Protect Water-dependent Uses
- 9.37: Engineering and Construction Standards
- 9.38: Use Standards for Recreational Boating Facilities
- 9.39: Standards for Marinas/Boatyards/Boat Ramps
- 9.40: Standards for Dredging and Dredged Material Disposal
- 9.51: Conservation of Capacity for Water-dependent Use
- 9.52: Utilization of Shoreline for Water-dependent Purposes
- 9.53: Activation of Commonwealth Tidelands for Public Use
- 9.54: Consistency with Coastal Zone Management Policies
- 9.55: Standards for Nonwater-dependent Infrastructure Facilities
- 9.56: Standards for Facilities of Limited Accommodation
- 9.57: Approved Municipal Harbor Plans

9.01: Purpose

(1) Authority. 310 CMR 9.00 is adopted by the Commissioner of the Department of Environmental Protection (DEP) under the authority of M.G.L. c. 91, § 18 to establish procedures, criteria, and standards for uniform and coordinated administration of the provisions of M.G.L. c. 91, §§ 1 through 63 and M.G.L. c. 21A, §§ 2, 4, 8 and 14. 310 CMR 9.00 also form part of the Massachusetts Coastal Zone Management (CZM) Program, established by M.G.L. c. 21A, § 4A, and codified at 301 CMR 20.00: Coastal Zone Management Program. The interpretation and application of 310 CMR 9.00 shall be consistent with the policies of the CZM Program, 301 CMR 20.00, to the maximum extent permissible by law.

9.01: continued

(2) Purpose. 310 CMR 9.00 is promulgated by the Department to carry out its statutory obligations and the responsibility of the Commonwealth for effective stewardship of trust lands, as defined in 310 CMR 9.02. The general purposes served by 310 CMR 9.00 are to:

- (a) protect and promote the public's interest in tidelands, Great Ponds, and non-tidal rivers and streams in accordance with the public trust doctrine, as established by common law and codified in the Colonial Ordinances of 1641-47 and subsequent statutes and case law of Massachusetts;
- (b) preserve and protect the rights in tidelands of the inhabitants of the Commonwealth by ensuring that the tidelands are utilized only for water-dependent uses or otherwise serve a proper public purpose;
- (c) protect the public health, safety, and general welfare as it may be affected by any project in tidelands, great ponds, and non-tidal rivers and streams;
- (d) support public and private efforts to revitalize unproductive property along urban waterfronts, in a manner that promotes public use and enjoyment of the water; and
- (e) foster the right of the people to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment under Article XCVII of the Massachusetts Constitution.

9.02: Definitions

Abutter means the owner of land which shares, along the water's edge, a common boundary or corner with a project site, as well as the owner of land which lies within 50 feet across a water body from such site. Ownership shall be determined according to the records of the local tax assessors office.

Accessory Use means a use determined to be accessory to a water-dependent use, in accordance with the provisions of 310 CMR 9.12(3).

Aggrieved Person means any person who, because of a decision by the Department to grant a license or permit, may suffer an injury in fact, which is different either in kind or magnitude, from that suffered by the general public and which is within the scope of the public interests protected by M.G.L. c. 91 and c. 21A.

Applicant means any person submitting a license or permit application or other request for action by the Department pursuant to 310 CMR 9.00, and shall include the heirs, assignees, and successors in interest to such person.

Approved Municipal Harbor Plan means any Municipal Harbor Plan listed in 310 CMR 9.57(1).

Area of Critical Environmental Concern (ACEC) means an area which has been so designated by the Secretary pursuant to 301 CMR 12.00: *Areas of Critical Environmental Concern*.

Base Flood Elevation means the maximum elevation of flood water, including wave heights if any, which will theoretically result from the statistical 100-year frequency storm. Said elevation shall be determined by reference to the most recently available flood profile data prepared for the municipality within which the work is proposed under the National Flood Insurance Program, currently administered by FEMA; and in accordance with Wetlands Protection Act regulations at 310 CMR 10.57: *Land Subject to Flooding (Bordering and Isolated Areas)*.

Beach Nourishment means the placement of clean sediment, of a grain size compatible with existing beach sediment, on a beach to increase its width and volume for purposes of storm damage prevention, flood control, or public recreation. The seaward edge of the nourished beach shall not be confined by any structure.

Berth means any space wherein a vessel is confined by wet slip, dry stack, float, mooring, or other type of docking facility.

Boatyard means a facility whose function is the construction, repair, or maintenance of boats, which may include boat storage and docking for boatyard services.

9.02: continued

Boston Waterfront Decision means the decision of the Massachusetts Supreme Judicial Court in *Boston Waterfront Development Corporation vs. Commonwealth*, 378 Mass. 629, 393 N.E.2d 356 (1979).

Channel means a navigable route for the passage of vessels, established by customary use or under the authority of federal, state, or municipal law.

Coastal Atlas means the volume of maps of the coastal zone at a scale of 1:40,000 prepared as part of the CZM Program and available for public review at CZM offices.

Coastal Beach means unconsolidated sediment subject to wave, tidal, and coastal storm action which forms the gently sloping shore of a body of salt water and including tidal flats. Coastal beaches extend from the low water line landward to the dune line, coastal bank line or the seaward edge of existing man-made structures, when these structures replace one of the above lines, whichever is closest to the ocean.

Coastal Dune means any natural hill, mound or ridge of sediment landward of a coastal beach deposited by wind action or storm overwash. Coastal dune also means sediment deposited by artificial means and serving the purpose of storm damage prevention or flood control.

Coastal High Hazard Area means an area subject to high velocity waters, as defined in accordance with FEMA regulations and as designated on a Flood Insurance Rate Map, as issued and as may be revised or amended hereafter by FEMA.

Coastal or Shoreline Engineering Structure means any breakwater, bulkhead, groin, jetty, revetment, seawall, weir, riprap or any other structure which by its design alters wave, tidal, current, ice, or sediment transport processes in order to protect inland or upland structures from the effects of such processes.

Coastal Processes means natural forces which can modify coastal lands and waters through the action of wind, waves, tides, currents, or ice.

Coastal Zone means that area subject to the CZM Program and defined in 301 CMR 20.02: *Definitions*.

Combined Application means an application that may serve as a Notice of Intent pursuant to 310 CMR 10.00: *Wetlands Protection*, an application for a 401 Water Quality Certification pursuant to 314 CMR 9.00: *401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth*, and/or an application for a Chapter 91 license, permit or other written approval for a water-dependent use pursuant to 310 CMR 9.00. Notwithstanding the foregoing, a Combined Application may not serve as an application for an annual permit for a mooring, float, raft or small structure accessory to a residence in accordance with 310 CMR 9.07, an application for a Chapter 91 license for a small structure accessory to a residence in accordance with the simplified process set forth in 310 CMR 9.10, or the certification submitted as an application for a General License in accordance with 310 CMR 9.29.

Combined Permit means a decision issued in response to a Combined Application that serves as two or more of the following: a Superseding Order of Conditions issued pursuant to 310 CMR 10.00: *Wetlands Protection*; a 401 Water Quality Certification issued pursuant to 314 CMR 9.00: *401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth*; and/or a Chapter 91 permit, license or other written approval issued pursuant to 310 CMR 9.00.

Commonwealth Tidelands means tidelands held by the Commonwealth, or by its political subdivisions or a quasi-public agency or authority, in trust for the benefit of the public; or tidelands held by a private person by license or grant of the Commonwealth subject to an express or implied condition subsequent that it be used for a public purpose. In applying 310 CMR 9.02: *Definitions*: Commonwealth Tidelands, the Department shall act in accordance with the following provisions:

9.02: continued

(a) the Department shall presume that tidelands are Commonwealth tidelands if they lie seaward of the historic low water mark or of a line running 100 rods (1650 feet) seaward of the historic high water mark, whichever is farther landward; such presumption may be overcome only if the Department issues a written determination based upon a final judicial decree concerning the tidelands in question or other conclusive legal documentation establishing that, notwithstanding the *Boston Waterfront* decision of the Supreme Judicial Court, such tidelands are unconditionally free of any proprietary interest in the Commonwealth;

(b) the Department shall presume that tidelands are not Commonwealth tidelands if they lie landward of the historic low water mark or of a line running 100 rods (1650 feet) seaward of the historic high water mark, whichever is farther landward; such presumption may be overcome only upon a showing that such tidelands including, but not limited to, those in certain portions of the Town of Provincetown, are not held by a private person.

Commissioner means the Commissioner of the Department of Environmental Protection (DEP).

CZM means the Massachusetts Coastal Zone Management Office.

CZM Program means the Massachusetts Coastal Zone Management Program established pursuant to M.G.L. c. 21A and codified in 301 CMR 20.00: *Coastal Zone Management Program*.

Date of Receipt means the date of delivery to an office, home or usual place of business by mail or hand delivery. The Department will presume that a document is received three business days after it is mailed, certified mail return receipt requested, to the correct address, unless good cause is shown otherwise.

DCR means the Department of Conservation and Recreation.

Department means the Department of Environmental Protection (DEP).

Designated Port Area (DPA) means an area that has been so designated by CZM in accordance with 301 CMR 25.00: *Designation of Port Areas*.

Development Site means the area owned, controlled, or proposed for development by the applicant in which a project will occur.

DPA Master Plan means the component of an Approved Municipal Harbor Plan pertaining to lands and waters of a DPA within the municipality. Such master plan or portion thereof shall take effect under 310 CMR 9.00 only upon written approval by the Secretary in accordance with 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans* and any associated written guidelines of CZM and approval by the Department through the adoption of the substitute provisions of Approved Municipal Harbor Plans listed in 310 CMR 9.57.

Dredged Material means rocks, bottom sediment, debris, refuse, plant or animal matter, or other materials which are removed by dredging.

Dredged Material Disposal means the discharge of dredged material, the transportation of such material prior to discharge, and the dispersion, deposition, assimilation or biological uptake or accumulation of such material after transportation or discharge.

Dredging means the removal of materials including, but not limited to, rocks, bottom sediments, debris, sand, refuse, plant or animal matter, in any excavating, cleaning, deepening, widening or lengthening, either permanently or temporarily, of any flowed tidelands, rivers, streams, ponds or other waters of the Commonwealth. Dredging shall include: improvement dredging, maintenance dredging, excavating and backfilling or other dredging and subsequent refilling.

Ecological Restoration Project means a project whose primary purpose is to restore or otherwise improve the natural capacity of a Resource Area(s) to protect and sustain the interests identified in M.G.L. c. 131, § 40, when such interests have been degraded or destroyed by anthropogenic influences. Ecological Restoration Project shall not include projects specifically intended to

9.02: continued

Historic Low Water Mark means the low water mark which existed prior to human alteration of the shoreline by filling, dredging, excavating, impounding or other means. In areas where there is evidence of such alteration by fill, the Department shall make its determination of the position of the historic low water mark in the same manner as described in 310 CMR 9.02: *Definitions: Historic High Water Mark*.

Improvement Dredging means any dredging under a license or a permit in an area which has not been previously dredged or which extends the original dredged width, depth, length, or otherwise alters the original boundaries of a previously dredged area.

Infrastructure Crossing Facility means any infrastructure facility which is a bridge, tunnel, pipeline, aqueduct, conduit, cable, or wire, including associated piers, bulkheads, culverts, or other vertical support structures, which is located over or under the water and which connects existing or new infrastructure facilities located on the opposite banks of the waterway. Any structure which is operationally related to such crossing facility and requires an adjacent location shall be considered an ancillary facility thereto. Such ancillary facilities generally include, but are not limited to, power transmission substations, gas meter stations, sewage headworks and pumping facilities, toll booths, tunnel ventilation buildings, drainage structures, and approaches, ramps, and interchanges which connect bridges or tunnels to adjacent highways or railroads.

Infrastructure Facility means a facility which produces, delivers, or otherwise provides electric, gas, water, sewage, transportation, or telecommunication services to the public.

Innovative Technology means technology that has not been commercially deployed or is in limited deployment in Massachusetts, and includes, but is not limited to, energy technology that obtains energy from the ocean, waterway, or conditions associated with the ocean or waterway, other forms of renewable energy technology.

Landlocked Tidelands means any filled tidelands which on January 1, 1984 were entirely separated by a public way or interconnected public ways from any flowed tidelands, except for that portion of such filled tidelands which are presently located:

- (a) within 250 feet of the high water mark, or
- (b) within any Designated Port Area. Said public way or ways shall also be defined as landlocked tidelands, except for any portion thereof which is presently within 250 feet of the high water mark.

Licensee means the person to whom a license is issued and shall include the heirs, assignees, and successors in interest to such person.

Local Economic Development Authority means a municipal planning board, zoning board, or other board or commission so designated by a municipality; community development corporations designated in accordance with M.G.L. c. 40H; municipal economic development and industrial corporations designated in accordance with M.G.L. c. 121C; municipal housing authorities designated in accordance with M.G.L. c. 121B, § 3; municipal redevelopment authorities designated in accordance with M.G.L. c. 121B, § 4; urban development corporations designated in accordance with M.G.L. c. 121A; and 40B district planning commissions established under M.G.L. c. 40B, including, but not limited to, the Cape Cod Commission, the Martha's Vineyard Commission and the Boston Redevelopment Authority.

Low Water Mark means the present mean low tide line, as established by the present arithmetic mean of water heights observed at low tide over a specific 19-year Metonic Cycle (the National Tidal Datum Epoch), and shall be determined using hydrographic survey data of the National Ocean Survey of the U.S. Department of Commerce.

Maintenance Dredging means dredging in accordance with a license or permit in any previously authorized dredged area which does not extend the originally dredged depth, width, or length.

Marina means a berthing area with docking facilities under common ownership or control and with berths for ten or more vessels, including commercial marinas, boat basins, and yacht clubs. A marina may be an independent facility or may be associated with a boatyard.

9.02: continued

Marine Industrial Park means a multi-use complex on tidelands within a DPA, at which:

- (a) the predominant use is for water-dependent industrial purposes; in general, at least $\frac{2}{3}$ of the park site landward of any project shoreline must be used exclusively for such purposes;
- (b) spaces and facilities not dedicated to water-dependent industrial use are available primarily for general industrial purposes; uses that are neither water-dependent nor industrial may occur only in a manner that is incidental to and supportive of the water-dependent industrial uses in the park, and may not include general residential or hotel facilities; and
- (c) any commitment of spaces and facilities to uses other than water-dependent industry is governed by a comprehensive park plan, prepared in accordance with M.G.L. c. 30, §§ 61 through 62H, if applicable, and accepted by the Department in a written determination issued pursuant to 310 CMR 9.14.

MEPA means the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62H, and 301 CMR 11.00: *MEPA Regulations*.

MOU means a Memorandum of Understanding between the Department and another public agency. The draft text of any such document or other written interagency agreement shall be published in the *Environmental Monitor* for public review and comment, and the final text shall be published therein upon adoption and made available by the Department upon request.

Municipal Harbor Plan (MHP) means a document (in words, maps, illustrations, and other media of communication) setting forth, among other things: a community's objectives, standards, and policies for guiding public and private utilization of land and water bodies within a defined harbor or other waterway planning area; and an implementation program which specifies the legal and institutional arrangements, financial strategies, and other measures that will be taken to achieve the desired sequence, patterns, and characteristics of development and other human activities within the harbor area. Such plan shall take effect under 310 CMR 9.00 only upon approval by the Department through the adoption of the substitute provisions of Approved Municipal Harbor Plans listed in 310 CMR 9.57.

Municipal Official means 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.

Natural High Water Mark means the historic high water mark of a Great Pond.

Natural Low Water Mark means the historic low water mark of a Great Pond.

Net Operating Income means the rental income from a Facility of Limited Accommodation within the licensed structure minus its operating expenses and property taxes calculated as an amount per square foot for the licensed structure or a comparable value if owner occupied. Operating expenses may include expenses for management, legal and accounting services, insurance, janitorial and security services, maintenance, supplies, and utilities.

Noncommercial Community Docking Facility means a facility for berthing of recreational vessels accessory to residential or nonprofit seasonal camp use (*e.g.*, summer camps).

Nonprofit Organization means an organization exempt from federal income taxation under § 501(c)(3) of the U.S. Internal Revenue Code.

Nonwater-dependent Use means a use as specified in 310 CMR 9.12.

Nonwater-dependent Use Project means a project consisting of one or more nonwater-dependent uses, or a mix of water-dependent and nonwater-dependent uses, as specified in 310 CMR 9.12(1).

Notification Date means a specified date by which a public notice must be published in the newspaper and/or the *Environmental Monitor*, and mailed to municipal officials, and on which the public comment period commences.

9.07: continued

(c) Standards. The local permitting program must find that the structure is limited to the minimum size necessary to achieve the intended water-related purposes, will not significantly interfere with any public rights to use waterways for fishing, fowling, navigation and other lawful purposes, mitigates for any interference by providing lateral access or other mitigation according to guidance issued by the Department, and complies with the provisions of 310 CMR 9.07.

(d) Application Requirements. The initial application shall be accompanied by plans or other documentation sufficient to accurately show the location and size of the structure. For proposed structures, the applicant must provide an Order of Conditions, a negative or conditional negative Determination of Applicability, or evidence of written request for action by the Conservation Commission and subsequent failure of the Conservation Commission to respond. For existing structures, no permit shall be issued if the Conservation Commission has determined that the structure or fill is in violation of the Wetlands Protection Act, M.G.L. c. 131, § 40. The applicant shall provide notice to the Selectmen or Mayor, the Conservation Commission, and to abutters for proposed structures and for previously unauthorized structures. The applicant shall also publish a public notice of the project in a newspaper of general circulation, which may serve as joint notice for M.G.L. c. 91 and M.G.L. 131, § 40. Notices must be provided or published at least ten business days prior to the deadline for receipt of applications established by the local permitting program. Notices must include the applicant's name and address, the location and a concise description of the project, the address to which comments may be sent, and the deadline for receipt of comments.

(e) Program Requirements. The local program shall send to the Department a copy of each permit issued for proposed or previously unauthorized structures, but not renewals. The local program shall maintain in the municipality a list of applicants and permittees, and provide the list to any person upon written request. The local permitting program shall annually publish a public notice of its intention to renew permits for small structures in specifically named water bodies at least ten business days prior to the renewal date, identifying the address where information on the renewal applications may be obtained and comments should be sent, and specifying the deadline for receipt of comments. A copy of the annual notice and a list of permittees shall be sent to the Department. Any written comments within the scope of M.G.L. c. 91 submitted to the local permitting program on any permit application shall be considered, and a permit may not be issued prior to the close of the public comment period. A copy of any permit on which public comment was received shall be sent immediately upon issuance or renewal to persons submitting comments and to the Department.

(f) Renewals and Transfer. Projects meeting the provisions of 310 CMR 9.07(3), which previously obtained an annual permit, license, amnesty license or interim approval, may apply for extension of authorization under 310 CMR 9.07 as a renewal. No individual notice is required for renewals, unless specifically requested by the local permitting program. A permit for an eligible small structure attached to land under 310 CMR 9.07(3) is transferrable upon change of ownership of the land to a new owner.

(4) Terms and Conditions Applicable to All Annual Permits.

(a) No permit may be valid for a period longer than to the end of any given calendar year.

(b) No permit may authorize structures other than the placement of moorings, floats, rafts or eligible small structures accessory to residences under 310 CMR 9.07.

(c) No permit shall be construed as authorizing the placement of moorings, floats, rafts, or other structures on private tidelands of anyone other than the applicant if objected to by the owner or owners thereof.

(d) No permit may authorize the placement of moorings, floats, rafts or other structures in any navigation channel or turning basin formally designated by the federal or state government or by a municipality pursuant to an Approved Municipal Harbor Plan, unless the designating authority or other agency with jurisdiction over said area has previously approved such placement.

(e) No permit shall be inconsistent with an Approved Municipal Harbor Plan, if any, or unless permitted under 310 CMR 9.07(2)(b), be issued for a project extending beyond the harbor line.

9.07: continued

(f) No mooring, float, raft, or other small structure may interfere with public rights associated with a common landing, public easement, or other historic legal form of public access that may exist on or adjacent to the project site.

(g) Any person receiving a permit for a small structure accessory to a residence shall post signage as required by the city or town in accordance with guidance issued by the Department.

(5) Review of Local Decision.

(a) Any applicant aggrieved by a refusal to permit a mooring, float, raft, or small structure accessory to a residence or by any condition or restriction imposed relative thereto, may request a review in writing to the Department within 30 days after receiving notice of such refusal or of the imposition of such condition or restriction. The failure of the harbormaster, other local official, or local program to act upon a complete application within a reasonable time shall be deemed by the Department to be a denial of a permit. A copy of the request shall be sent at the same time to the harbormaster, other local official, or local permitting program.

(b) The Department may review any permit within 30 days of receipt, with notification to the applicant, harbormaster or other local official, or local program, and may either affirm the permit, set such action aside or amend such action by imposing its own conditions and restrictions as deemed necessary. The Department may review a permit upon its own initiative or may initiate a review upon written request of any person who submitted written comments on a permit application to a harbormaster, other local official, or local permitting program and who sends the request to the Department within ten days of the postmarked date of the permit or of the decision on a renewal.

(c) The Department shall consider all written comments from the harbormaster, other local official, local permitting program, the applicant, and interested persons that are submitted within 30 days of the date of receipt of the request by the Department pursuant to 310 CMR 9.07(5)(a), or of the date the Department initiates a review pursuant to 310 CMR 9.07(5)(b).

(d) The Department may conduct a site inspection or a public hearing if deemed appropriate.

(e) After reviewing the request and other relevant documents, the Department shall render a written determination either affirming the local action, setting such action aside, or amending such action by imposing its own conditions and restrictions as deemed necessary.

(f) The Department shall affirm the local decision except upon a finding that:

1. it is arbitrary, capricious, or an abuse of discretion;
2. it conflicts with an overriding state, regional, or federal public interest;
3. it fails to meet any requirement contained in 310 CMR 9.07;
4. it was based on plans or other documentation submitted with the application which contained substantially inaccurate or incomplete depictions of the structure and its surroundings; or
5. it allows floats, rafts, or small structures which significantly interfere with public rights to use waterways for fishing, fowling, and navigation or for other lawful purposes.

The Department shall issue its decision within 30 days of the close of the period for comments described in 310 CMR 9.07(5)(c).

(g) The Department's decision shall be the final administrative review under 310 CMR 9.07; there shall be no right to an adjudicatory hearing.

9.08: Enforcement

(1) The Department may seek discontinuation of use, removal, or other remedial action in the case of any fill or structure in waterways that is determined to be a public nuisance, in accordance with M.G.L. c. 91, § 23 or as otherwise provided by law. Such fill or structures include those not previously authorized by the Department or the Legislature, those for which a grant or license is not presently valid pursuant to 310 CMR 9.00, or those not conforming to the terms and conditions of a grant or license.

(2) In accordance with M.G.L. c. 91, § 49B, the Department shall remove or cause to be removed any fill or structure in waterways which, in the opinion of the Department, is dilapidated, unsafe, a menace to navigation, or is a source of floating debris that is, or is liable to become, a menace to navigation.

9.10: continued

If plans certified by an engineer or surveyor are not required under M.G.L. c. 131, § 40, the Wetlands Protection Act pursuant to 310 CMR 10.00: *Wetlands Protection*, certification for projects meeting the eligibility requirements of 310 CMR 9.10(1) will generally not be required. However, based on comments submitted during the public comment period or other relevant information, the Department may require plans to be certified by a Registered Professional Engineer or Registered Land Surveyor for a structure when it finds that the preparation of plans by a professional is necessary to ensure:

1. an adequate review of public access;
2. the preservation of public navigational rights;
3. structural integrity;
4. the accuracy of stated distances from property boundaries; or
5. that the plan is sufficiently clear and accurate to allow a licensing decision which otherwise could result in significant interference with public rights or environmental interests in tidelands, Great Ponds, and other waterways. The Department will provide a statement of reasons to support this finding.

When plans have not been prepared under M.G.L. c. 131, § 40, the Wetlands Protection Act, a plot plan or other scaled plan with structures to be licensed measured accurately from lot lines or other structures shall be prepared in accordance with application instructions.

(b) Applications for Projects within Great Ponds. The Department shall publish an inventory of Great Ponds which shall be available upon written request. Prior to the addition of any pond to the inventory, the Department will hold a public hearing in the vicinity of the pond. After a pond is added to the inventory, the Department will provide an opportunity for owners of existing structures that require licenses to come into compliance with M.G.L. c. 91 regulatory requirements by submission of an application within six months from the date of the addition of the pond to the inventory. The Department will take no enforcement action against the owners of a structure on a Great Pond not listed on the inventory, unless and until the Great Pond has been added to the inventory and the opportunity for compliance has been afforded.

(c) Coordination with the Conservation Commission. At least 45 days prior to issuance of a license, the Department and the applicant shall coordinate with the Conservation Commission as follows:

1. The Department will not require Conservation Commission approval for existing structures built before enactment of M.G.L. c. 131, § 40, the Wetlands Protection Act (1963 for coastal wetlands and 1965 for inland wetlands) and not substantially altered subsequently. Applicants should consult their local Conservation Commission regarding application of M.G.L. c. 131, § 40, the Wetlands Protection Act to maintenance or alteration of existing structures.
2. For structures built between 1963 or 1965 (as applicable) and December 31, 1983, and not substantially altered after the latter date, the applicant shall provide notice of the application to the Conservation Commission. The Department shall proceed with licensing, unless the Conservation Commission informs the Department that it has provided written notice to the applicant prior to the close of the public comment period to promote compliance with or to enforce M.G.L. c. 131, § 40, the Wetlands Protection Act.
3. For structures proposed, built, or substantially altered on or after January 1, 1984, applicants shall provide an Order of Conditions, a negative or conditional negative Determination of Applicability, or a Certificate of Compliance. The Department may waive this requirement based upon evidence of a written request for action by an applicant to a Conservation Commission, and subsequent failure of the Conservation Commission to respond.

(d) The applicant shall submit the notice of the application included in the application package to the Board of Selectmen or Mayor, the planning board, zoning authority and the Conservation Commission of the town or city where the work will be performed. The Department shall presume compliance with applicable state and local requirements, unless it receives information to the contrary during the public comment period. Unless the Department receives a contrary determination from the proper zoning authority, signed by the Clerk of the affected municipality, compliance with applicable zoning ordinances and bylaws pursuant to 310 CMR 9.34(1) shall be deemed certified 45 days after notice to that

9.10: continued

zoning authority and clerk. Proposed structures must also conform to plans for waterways developed by agencies or commissions with legal authority, such as Approved Municipal Harbor Plans developed pursuant to 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans* and listed in 310 CMR 9.57, or lake, regional commission, or other formal area-wide policies or plans developed pursuant to 310 CMR 9.38(2)(b).

(e) Public Notice and Notice to Abutters. The applicant shall publish in a newspaper of general circulation in the area where the project is located a public notice including the applicant's name and address, the project location, a description of the project, a statement that written comments will be accepted within 30 days of the Notification Date stated therein, the address where comments may be sent, and a statement that a municipality, ten citizen group or any aggrieved person who has submitted written comments within the public comment period may appeal the Department's decision and that failure to submit written comments within the public comment period will result in the waiver of any right to an adjudicatory hearing. A copy of the notice shall also be sent by the applicant to the landowner if not the applicant, to any person having a record easement interest in the property where the structure is or may be located, and to all abutters to the property where the structure is or may be located, by certified mail, return receipt requested. Joint notice under 310 CMR 10.05(4): *Notices of Interest*, 310 CMR 9.10 and 314 CMR 9.05(3): *Public Notices of an Application* may be published and sent to persons entitled to notification, provided it contains the requisite information and meets the requisite standards pursuant to each statute.

(f) Fees. For structures totaling more than 300 square feet pursuant to 310 CMR 9.10(1)(a), applicants for simplified licenses shall pay an application fee, or the renewal fee, in accordance with the provisions of 310 CMR 4.10(8)(f) and (l) respectively. All other applicants for licenses under simplified procedures shall pay the application fee, or the renewal fee in accordance with the provisions of 310 CMR 4.10(8)(f) and (l) respectively. No tidewater displacement fees shall be assessed. Any person granted a license from the Department in, on or over any land the title to which is in the Commonwealth shall compensate the Commonwealth for the rights granted in such lands through payment of an occupation fee (\$1 per square yard per year for the term of the license), in accordance with the provisions of 310 CMR 9.16. No occupation fee shall be assessed by the Department for structures within the enhanced portion of Great Ponds. An occupation fee shall be assessed for the portion of any structure that the Department determines, after opportunity for public comment, extends below the natural high water mark into the historic portion of the Great Pond. Enhanced Great Ponds are those which contain a surface area greater than their historic natural state, resulting from alteration by damming or other human activity.

(4) Decision on Applications. The Department shall issue a license, draft license, or written determination to deny a license within 90 days of a complete application, commencing no earlier than the close of the public comment period.

(5) Terms and Recordation for Licenses from the Department. The license term shall be 15 years, unless the Department determines that a shorter term is necessary to protect the public interest. In accordance with M.G.L. c. 91, § 18, the license, with the plan as an exhibit, shall be recorded at the Registry of Deeds within the chain of title of the affected property within 60 days of the date of issuance. Failure to record the license and accompanying plan within 60 days will render the license void in accordance with M.G.L. c. 91, § 18.

(6) Renewal and Transfer of Licenses from the Department. A license may be renewed provided the structure remains sound and conforms to plans submitted with the original application. At the time an application for renewal is submitted, the applicant shall send a notice of application for renewal included in the application package to the mayor or board of selectmen, planning board, and conservation commission of the city or town where the project site is located. The Department may require additional public notice based on comments received about the structure or other relevant information. If such additional public notice for renewal is required, the public comment period is 30 days. Applicants for renewal shall pay a renewal fee (*see* 310 CMR 4.10(8)(1)). Any person applying for a renewal under 310 CMR 9.10, including renewals of interim approvals or licenses originally granted under the Amnesty Program, shall compensate the Commonwealth for the rights granted in such lands through

9.10: continued

payment of an occupation fee (\$1 per square yard per year for the term of the license), in accordance with the provisions of 310 CMR 9.16. Unless otherwise provided in the license, a valid license shall run with the land and shall automatically be transferred upon a change of ownership of the affected property within the chain of title of which the license has been recorded. All rights, privileges, obligations, and responsibilities specified in the license shall be transferred to the new landowner upon recording of the changed ownership.

(7) Appeals. The appeal provisions in 310 CMR 9.17 apply to projects licensed under 310 CMR 9.10.

9.11: Application Requirements(1) Pre-application Consultation

(a) Upon request of a prospective applicant for a license for any large or complex project, including those required to file an EIR, the Department shall conduct a pre-application consultation meeting in order to receive a presentation of the project proposal, provide preliminary guidance on the applicability of the substantive standards of 310 CMR 9.00 to the project, explain the necessary licensing procedures, and answer any appropriate inquiries concerning the program or 310 CMR 9.00. When appropriate, the Department may invite representatives of CZM, any other state agency, or representatives of the municipality in which the project is located, including the lead agency responsible for implementation of a Municipal Harbor Plan. The participants in the pre-application consultation meeting may make arrangements for further consultation sessions and for co-ordinated review of the project.

(b) In the case of an unusually large and complex set of activities undertaken by a public agency the Department may establish, in cooperation with the prospective applicant, a special procedure for the review of one or more applications for such activities. Such procedure may include, without limitation, as deemed appropriate by the Department, consolidation procedures, expedited review, and single or multiple licenses, permits, or written determinations. Public notice of any such procedure established under 310 CMR 9.11 shall be published in the *Environmental Monitor*.

(2) Application Review Schedules.

(a) For a water-dependent use project, the Department shall, within 45 days of receipt of the information required under 310 CMR 9.11(3)(a) and (b), assign a file number, make a determination of water-dependency under 310 CMR 9.12, and issue a public notice under 310 CMR 9.13(1). Within 20 days of the notification date, the Department may hold a public hearing under 310 CMR 9.13(2). The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. Within 60 days of the close of the public comment period and notification by the applicant that the public notice has been published, the Department shall conduct an administrative completeness review under 310 CMR 9.11(3)(c) and either determine the application to be complete or request additional information. Within 90 days of making a determination of administrative completeness, the Department shall complete a technical review and issue either a draft license or a final license as specified in 310 CMR 9.14.

(b) For a nonwater-dependent use project, the applicant may elect one of four application options by submitting the selected category of application under the Timely Action and Fee Schedule at 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.

1. Partial Application. Within 45 days of receiving an application with all information identified in 310 CMR 9.11(3)(a) and (b), the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, and issue a public notice under 310 CMR 9.13(1). The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. Within 20 days of the notification date, the Department shall hold the public hearing under 310 CMR 9.13(3). The applicant shall submit the information identified in 310 CMR 9.11(3)(c)2. prior to the close of the public comment period, and the information identified in 310 CMR 9.11(3)(c)1. and 3. prior to the issuance of the written determination. Within 30 days of the close of the public comment period and notification by the applicant that the public notice has been published, the Department

9.11: continued

shall conduct its administrative completeness review and determine the application to be complete or request additional information. Within 60 days of determining the application to be complete, or 90 days from the close of the public comment period, whichever comes later, the Department shall issue the written determination under 310 CMR 9.14(1). The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

2. Full Application. Within 45 days of receiving an application with all information identified in 310 CMR 9.11(3)(a), and 310 CMR 9.11(3)(b)1., 2., 6., and 7., and 310 CMR 9.11(3)(c)1. through 3., the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, conduct an administrative completeness review of the information received, and determine the application to be complete or request additional information. The Department shall issue a public notice under 310 CMR 9.13(1) upon determination that the application is complete. The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. The Department shall provide upon request the draft license conditions seven days prior to the public hearing. Within 20 days of the notification date, the Department shall hold the public hearing under 310 CMR 9.13(3). Within 60 days from the close of the public comment period and notification by the applicant that the public notice has been published, or the submission of the information identified in 310 CMR 9.11(3)(c)4., and 5., whichever is later, the Department shall issue the written determination under 310 CMR 9.14(1). The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

3. Municipal Harbor Plan Application. For a project within an area governed by and in compliance with an Approved Municipal Harbor Plan approved under 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans* and listed in 310 CMR 9.57, within 45 days of receiving an application containing the information identified in 310 CMR 9.11(3)(a) and (b), the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, and issue a public notice under 310 CMR 9.13(1). The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. Within 20 days of the notification date, the Department shall hold the public hearing under 310 CMR 9.13(3). Within 30 days of the close of the public comment period and notification by the applicant that the public notice has been published, the Department shall conduct its administrative completeness review and determine an application to be complete or request additional information. Within 45 days of determining an application to be complete, the Department shall issue a written determination under 310 CMR 9.14(1). The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

4. Joint MEPA EIR Application. An applicant may initiate coordinated review under MEPA and 310 CMR 9.00 by specifying in the Environmental Notification Form (ENF) filing under 301 CMR 11.05: *ENF Preparation and Filing* the intent to pursue a joint filing. The Draft EIR submitted under 301 CMR 11.07(3) shall also include information to meet the application requirements of 310 CMR 9.11(3)(a) through (c)2. for pre-application review by the Department. Within 25 days of receipt of a Final EIR meeting the requirements of 310 CMR 9.11(3)(a) through (c)2., the Department shall assign a file number, make a determination of water-dependency under 310 CMR 9.12, conduct an administrative completeness review, and issue the text for the public notice under 310 CMR 9.13(1). The Department shall hold a public hearing within 20 days of the notification date or ten days after the date of the Secretary's Final Certificate, whichever is later. The public comment period shall begin at the notification date and end no less than 30 days and no more than 60 days from the notification date. The Department shall send to the applicant, within ten days of the close of the public comment period and receipt by the Department of notification from the applicant that the public notice has been published, whichever is later, any public comment submitted within the comment period for response and may request additional information or determine the application to be complete in accordance with 310 CMR 9.11(3)(c). Any response to comments provided by the applicant shall also be distributed by the applicant to all persons that

9.11: continued

submitted comments during the public comment period. The Department shall issue the written determination under 310 CMR 9.14(1) within 30 days of receipt of the response to comments, or a determination that the application is complete, whichever is later. The Department shall issue the final license under 310 CMR 9.14(5) within 45 days of the expiration of the appeal period or final decision, or 15 days from the date of the Governor's signature, whichever is later.

(c) For a project requiring a permit under 310 CMR 9.05(2), the Department shall, within 45 days of receiving an application with all information identified in 310 CMR 9.11(3)(a) and (b), assign a file number, make a determination of water dependency, issue a public notice under 310 CMR 9.13(1), conduct an administrative completeness review, and determine the application to be complete or request additional information. The public comment period shall be 15 days from the notification date. Within 45 days from the date the application is complete the Department shall issue a permit decision.

(3) Filing and Completion of Application.

(a) An applicant for a license or permit shall submit a written application on forms provided by the Department, signed by the applicant and the landowner if other than the applicant. In lieu of the landowner's signature, the applicant may provide other evidence of legal authority to submit an application for the project site. The application shall be prepared in accordance with all applicable instructions contained in the Department's application package. A partial application under 310 CMR 9.11(2)(b)1. requires only the information identified in 310 CMR 9.11(3)(a) and (b). If the project is a water-dependent use project, the application may be a Combined Application.

(b) The Department shall assign a file number to the project only after receipt of an application which includes the following information:

1. the names and addresses of the applicant, all landowners, any representative thereof and the abutters to the project site;
2. detailed description of the proposed project which identifies:
 - a. the location of the project site, and whether it lies within a DPA, ACEC, or Ocean Sanctuary; and
 - b. the specific use(s) of existing and proposed fill and structures and, if dredging is involved, estimates of the volume of dredged material and a description of the dredged material disposal area;
3. a set of plans containing at least the applicable information specified in 310 CMR 9.11(3)(a) through (c); the Department may accept appropriately-scaled preliminary plans in lieu of final plans certified in accordance with 310 CMR 9.11(3)(c)1., provided such preliminary plans are prepared by:
 - a. a Registered Professional Engineer, Land Surveyor, or Architect, as deemed appropriate by the Department; and
 - b. in the case of a nonwater-dependent use project requiring an EIR, a Registered Landscape Architect, unless otherwise deemed appropriate by the Department;
4. a list of state environmental regulatory programs with which the project must comply, in accordance with the applicable provisions of 310 CMR 9.33; a copy of the Notice of Intent if the project is subject to M.G.L. c. 131, § 40, and 310 CMR 10.00: *Wetlands Protection* which may be provided in a Combined Application; and a copy of any state and local approvals which must be obtained and have been obtained by the project as specified in 310 CMR 9.11(3)(c)3.;
5. any other preliminary information specified in the application instruction package;
6. payment of the application fee in accordance with the provisions of 310 CMR 9.16(1); and
7. if the project triggers M.G.L. c. 30, §§ 61 through 62H review, a copy of the Environmental Notification Form (ENF) and a Certificate from the Secretary of the Executive Office of Energy and Environmental Affairs demonstrating compliance with MEPA, with the exception of a joint MEPA Application under 310 CMR 9.11(2)(b)4. For a project subject to MEPA, the Department will not hold a public hearing until the Secretary has issued a Certificate on the Final EIR.

(c) The Department shall determine an application to be complete only if the following information has been submitted:

9.11: continued

1. a set of final plans which are prepared in accordance with the format standards required for recording of licenses in the appropriate Registry of Deeds or Land Court for the district in which the licensed activity is to be performed; and which are certified by a Registered Professional Engineer or Land Surveyor, as deemed appropriate by the Department containing, at a minimum, the following:
 - a. an appropriately-scaled location map of the project site, and of any area where dredged material disposal will occur;
 - b. appropriately-scaled principal dimensions and elevations of proposed and existing fill and structures and, if dredging is involved, the principal dimensions of all relevant footprints, contours and slopes;
 - c. a delineation of the present high and low water marks, as relevant;
 - d. a delineation of the historic high and low water marks, as relevant and in a manner acceptable to the Department in accordance with the definitions thereof at 310 CMR 9.02;
 - e. references to any previous licenses or other authorizations for existing fill, structures, or dredging at the project site, and a delineation thereof as well as a delineation of any historic dredging, filling, or impoundment;
 - f. indication of any base flood elevation of the statistical 100-year storm event, or of any coastal high hazard area, which is located on the project site; and
 - g. indication of the location of any on-site or nearby state harbor lines, federal pier and bulkhead lines, federal channel lines, and public landings or other easements for public access to the water.
2. a statement as to how the project serves a proper public purpose, provides greater benefit than detriment to public rights in tidelands or Great Ponds, and is consistent with the policies of the Coastal Zone Management Program, as applicable, in accordance with the provisions of 310 CMR 9.31(2); and a description of how the project conforms to any applicable provisions of an Approved Municipal Harbor Plan, pursuant to 310 CMR 9.34(2);
3. final documentation relative to other state and local approvals which must be obtained by the project, including:
 - a. if the project is subject to zoning, but will not require any municipal approvals thereunder, a certification to that effect pursuant to 310 CMR 9.34(1);
 - b. a certification that a copy of the license application has been submitted to the planning board of each city or town where the work is to be performed, except in the case of a proposed bridge, dam, or similar structure across a river, cove, or inlet, in which case notice shall be given to the planning board of every municipality into which the tidewater of said river, cove, or inlet extends;
 - c. if an EIR is required, the Certificate of the Secretary stating that it adequately and properly complies with M.G.L. c. 30, §§ 61 through 62H; and, if applicable, any Notice of Project Change and any determination issued thereon in accordance with M.G.L. c. 30, §§ 61 through 62H;
 - d. a final Order of Conditions and a Water Quality Certificate, if applicable pursuant to 310 CMR 9.33, unless the application is a Combined Application, and a certification of compliance with municipal zoning, if applicable pursuant to 310 CMR 9.34(1); or a satisfactory explanation as to why it is appropriate to postpone receipt of such documentation to a later time prior to license or permit issuance; and
 - e. copies of all other state regulatory approvals if applicable pursuant to 310 CMR 9.33; or a satisfactory explanation as to why it is appropriate to postpone receipt of such documentation to a later time prior to license or permit issuance, or to issue the license or permit contingent upon subsequent receipt of such approvals.
4. responses to public comment submitted to the Department within the public comment period, as deemed appropriate by the Department; and adequate proof that the responses were sent to all persons that submitted comments during the public comment period; and
5. any additional plans, documentation, and other information which have been requested by the Department, or a statement by the applicant indicating that no further information will be forthcoming in response to such request.

9.14: continued

(4) If the project includes a set of activities including, without limitation, those to which 310 CMR 9.11(1)(b) applies, which cannot reasonably be incorporated into a single license, the Department may upon request of the applicant issue a consolidated written determination which allows for multiple licenses to be issued independently for phases of said project, provided the Department finds that the licenses can be sequenced or conditioned in a manner which ensures that overall public benefits will exceed public detriments as each portion of the project is completed. Notwithstanding 310 CMR 9.14(3), licenses may be issued pursuant to a consolidated written determination issued under this provision for up to five years, with opportunity for extensions as deemed appropriate by the Department.

(5) The Department shall issue a license, permit, draft license, draft permit, or written determination, as appropriate after the application is determined to be complete by the Department, in accordance with the provisions of 310 CMR 9.11(3)(c). The Department may extend such deadline upon request by the applicant. Where a draft license, draft permit, or written determination is issued, the final license or permit shall not be issued prior to receipt of the state and local approvals specified in 310 CMR 9.11(3)(c)3. Notwithstanding the foregoing, the Department may issue a license, permit, draft license, draft permit or written determination as part of a Combined Permit or as a separate license, permit, draft license, draft permit or written determination issued at the same time as the issuance of or after the issuance of the final Order of Conditions and/or Water Quality Certification.

(6) Upon issuance, the Department shall send a copy of the license, permit, or written determination to:

- (a) the applicant;
- (b) any intervenor and any person who has requested a copy of said license, permit, or written determination;
- (c) CZM or DCR, for projects identified for participation pursuant to 310 CMR 9.13(2); and
- (d) the municipal official, conservation commission, planning board, and harbormaster, if any, of the city or town where the project is located.

In the case of a draft license or draft permit, the Department shall send copies to all parties listed in 310 CMR 9.14(6)(a) through (c) and to any party listed in 310 CMR 9.14(6)(d) who has commented on the application within the public comment period.

(7) The Department shall issue a license or permit after the completion of any appeal period established pursuant to 310 CMR 9.17(2) or the receipt of any plans, documentation, or other information requested by the Department in a written determination, whichever is later, unless a notice of claim for adjudicatory hearing has been filed pursuant to 310 CMR 9.17.

9.15: Terms

(1) Term of License

(a) All licenses issued by the Department shall contain a condition stating the term for which license is in effect, if any. All licenses shall be in effect for a fixed term not to exceed 30 years, unless otherwise deemed appropriate by the Department in accordance with 310 CMR 9.15(1)(b) through (d).

(b) Notwithstanding 310 CMR 9.15(1)(a), the Department may issue a license that establishes an extended fixed term, in accordance with the following provisions:

- 1. said term shall not exceed 65 years for any project or portion thereof which, upon completion, will be located on flowed tidelands or other waterways, and shall not exceed 99 years for any project or portion thereof which will be located on filled tidelands or Great Ponds; in the event the project site includes both flowed and filled tidelands, the Department may upon request of the applicant establish a single weighted average term for the entire project, or for a portion thereof as deemed appropriate by the Department, based on the relative amounts of the surface area of the flowed and filled tidelands associated therewith;
- 2. the applicant shall provide justification that an extended term is warranted given the expected life of the structure, typical financing requirements, consistency with an Approved Municipal Harbor Plan, if any, appropriateness of long-term dedication of tidelands to the proposed use(s) in the particular location, and any other relevant factors;

9.15: continued

3. for projects on Commonwealth tidelands or Great Ponds, the Department shall conduct a public hearing and issue written findings concerning the extended term, in accordance with the provisions of 310 CMR 9.13(3) and 9.14;
 4. for projects on Commonwealth tidelands or Great Ponds held by the Commonwealth, the licensee shall pay an occupation fee based on an appraisal, in accordance with the provisions of 310 CMR 9.16(3)(b) through (c); and
 5. the Department shall require the licensee to submit periodic license compliance inspection reports as a condition of the license for nonwater-dependent use projects, and for other projects as deemed appropriate by the Department.
- (c) The Department shall issue a license for an unlimited term for any project whose entire control, development, and operation is undertaken by a public agency for the provision of services directly to the public (or to another public agency for such provision to the public) by the public agency, its contractor or agent, unless an unlimited term is not deemed appropriate by the Department.
- (d) Notwithstanding the terms of license specified in 310 CMR 9.15(1)(b) and (c):
1. in Designated Port Areas, the term of license for any nonwater-dependent use in a marine industrial park shall not exceed 65 years; the term of license for any supporting DPA use shall not exceed 30 years; and the term of license for any temporary use shall not exceed ten years; and
 2. outside of Designated Port Areas, the term of license for any stationary vessel for uses as described in 310 CMR 9.32(1)(a)6. shall not exceed 30 years.
- (e) The term of a license may be renewed in accordance with the provisions of 310 CMR 9.25(2).
- (2) Term of Permit. Any permit shall be valid for a fixed term not to exceed five years; provided, however, that maintenance dredging may be performed for up to ten years after the permit has been issued, if such terms are so stated in the permit.

9.16: Fees

- (1) Application Fee. An application fee shall be charged in accordance with the accompanying fee schedule (Table 1) per application for a determination of applicability, license, permit, amendment, interim approval, General License Certification or certificate of compliance. An application fee is non-refundable and shall be paid at the time of submission of the original application or Certification, by check or money order made payable to the Commonwealth of Massachusetts, DEP.
- (2) Tidewater Displacement Fee. Except as provided in 310 CMR 9.16(4), prior to issuance of a license or General License Certification for any fill or structure that will displace tidewaters below the high water mark, the applicant, or his or her heirs or assignees responsible for such displacement, shall, at the direction of the Department:
- (a) pay to the Commonwealth a tidewater displacement fee, based on the net amount of tidewater displaced between the elevations of the high and the low water marks, at the rate set forth in the accompanying fee schedule (Table 1); or
 - (b) excavate, in some part of the same harbor, previously filled tidelands between the high and low water marks, subject to the requirements of 310 CMR 9.00 and the approval of the Department, in order to form a basin for a quantity of water equal to that displaced; or
 - (c) improve public harbor facilities in tidelands in any other manner satisfactory to the Department, provided that the cost of such improvement is comparable to the amount otherwise due for displacement; any improvements identified under 310 CMR 9.16 shall be in addition to any actions required under 310 CMR 9.31 through 9.40 and 310 CMR 9.51 through 9.55; the Department may consider the following improvements:
 1. a harbor cleanup activity which is part of a plan approved by a public agency;
 2. a shellfish reseedling program;
 3. a beach nourishment program on beaches open to the public;
 4. a contribution to a special fund or other program managed by a public agency or non-profit organization in order to directly provide public harbor improvements.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.16: continued

TABLE 1 - FEES

Application Type	Permit Code	Fee Reg Citation (310 CMR 4.00)
Determination of Waterways Applicability	WW04	4.10(8)(d)
General License Certification	WW24	4.10(8)(f)(2)
Test Project Permit	WW25	4.10(8)(f)(3)
Combined Application with Water Quality Certification and/or Notice of Intent	WW26	4.10(8)(1)
Combined Application for Amendment with Water Quality Certification	WW27	4.10(8)(l)(1)
Chapter 91 Waterways License - Water-dependent ¹		
Water-dependent Residential Project, accessory to a residential use of four units or less	WW01a	4.10(8)(a)
Other Water-dependent Use Projects	WW01b	4.10(8)(a)
Water-dependent License with extended terms	WW01c	4.10(8)(a)
Chapter 91 Simplified License		
Water Dependent Use of Small Structures, Accessory to Residence	WW06	4.10(8)(f)
Renewal, Water-dependent Use of Small Structures, Accessory to Residence	WW12	4.10(8)(f)(1)
Chapter 91 Waterways License - Non Water-dependent		
Partial Initial Application - Non Water-dependent Residential four units or less	WW14a	4.10(8)(a)(1)
Partial Initial Application - Other Non Water-dependent Use Projects	WW14b	4.10(8)(a)(1)
Partial Initial Application Non Water-dependent Use Project with Extended Terms	WW14c	4.10(8)(a)(1)
Full Initial Application - Non Water-dependent Residential Use, four units or less	WW15a	4.10(8)(a)(2)
Full Initial Application - Other Non Water-dependent Use Projects	WW15b	4.10(8)(a)(2)
Full Initial Application Non W-D Use Project with Extended Terms	WW15c	4.10(8)(a)(2)
Application for License within an Approved Municipal Harbor Plan - Residential Non Water-dependent Project, four units or less	WW16a	4.10(8)(a)(3)
Application for License within an Approved Municipal Harbor Plan, Other Non Water-dependent Projects	WW16b	4.10(8)(a)(3)
Application for License within an Approved Municipal Harbor Plan, Non Water-dependent Use Project with Extended Terms	WW16c	4.10(8)(a)(3)

¹ Except for facilities subject to 310 CMR 9.16(3)(b)(2), for which the applicable fees shall be the same as those listed for license with extended terms

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.16: continued

TABLE 1 - FEES (continued)

Application Type	Permit Code	Fee Reg Citation (310 CMR 4.00)
License Application with joint MEPA application, Residential Non Water-dependent Projects, four units or less	WW17a	4.10(8)(a)(4)
License Application with joint MEPA application, Other Non Water-dependent Projects	WW17b	4.10(8)(a)(4)
License Application Non Water-dependent Use Project with joint MEPA application and extended terms	WW17c	4.10(8)(a)(4)
License or Permit Amendment		
Chap 91 Amendment; Residential Water-dependent Use Project, four units or less	WW03a	4.10(8)(c)
Chap 91 Amendment; Other Water-dependent Use Projects	WW03b	4.10(8)(c)
Amendment; Residential Non Water-dependent Use Project, four units or less	WW03c	4.10(8)(c)
Amendment; Other Non Water-dependent Use Projects	WW03d	4.10(8)(c)
Amendment to License with extended terms	WW03e	4.10(8)(c)
Certificate of Compliance		
Certificate of Compliance: Water-dependent	WW05a	4.10(8)(e)
Certificate of Compliance: Non Water-dependent	WW05b	4.10(8)(e)
Certificate of Compliance: License with Extended Terms	WW05c	4.10(8)(e)
Tidewater Displacement Fee (per cubic yard)		
	Rate	
Water-dependent Projects	\$2.00	
Non Water-dependent Projects	\$10.00	
Licenses with Extended Terms	\$10.00	
Any Small Scale Project under 310 CMR 9.10	N/A	
Occupation Fee² (per square yard of land held by the Commonwealth)		
	Rate	
Water-dependent Projects	\$1.00 x term of license	
Non Water-dependent Projects	\$2.00 x term of license	
Licenses with Extended Terms	Appraisal	
Simplified License per 310 CMR 9.10	\$1.00 x term of license	

² The fee is calculated by multiplying the dollar rate shown by the length of the license term, in years, and by the area of occupied land held by the Commonwealth. This is a fixed fee for the term of the license and is assessed on a lump sum basis, except as provided in 310 CMR 9.16(3)(d)

9.30: continued

The applicant shall also send a copy of the notice to the persons identified in 310 CMR 9.13(1)(a) by certified mail, return receipt, and provide proof of such notice to the Department. With the agreement of the conservation commission, joint notice under M.G.L. c. 131, § 40, and M.G.L. c. 91 may be published and sent to abutters, provided it contains the requisite information and meets the requisite standards pursuant to each statute and its implementing regulations. Joint notice may be provided even if the applicant does not submit a Combined Application.

(5) Fees. All applicants for a permit under these procedures shall pay the application fee, or the renewal fee, in accordance with the provisions of 310 CMR 9.16. No tidewater displacement fees or occupation fees shall be assessed.

(6) Decision on Applications. The Department shall issue a permit or permit denial within 30 days of the close of the public comment period or receipt of the Order of Conditions, whichever is later.

(7) Term. A permit issued under 310 CMR 9.30 shall be valid for no more than one year.

(8) Extension of Permit. Upon request of the Permittee, the Department may extend the term of the permit for one additional one year period, without the filing of a new application. Notice of the extension request shall be published by the Permittee and distributed to the persons identified in 310 CMR 9.30(4) above at least 30 days prior to the expiration of the permit.

(9) Appeals. The appeal provisions in 310 CMR 9.17 shall apply to proceedings under 310 CMR 9.30; provided, however, that if the Department determines that an application submitted for a permit under 310 CMR 9.30 is not eligible for permitting as a Test Project pursuant to 310 CMR 9.30, the applicant shall seek authorization for the proposed project in accordance with the applicable permit or licensing procedures set forth in 310 CMR 9.11 through 9.27 and the performance standards set forth in 310 CMR 9.32 through 9.55 in lieu of requesting an adjudicatory hearing.

9.31: Summary of License and Permit Requirements

(1) Basic Requirements. No license or permit shall be issued by the Department for any project subject to 310 CMR 9.03 through 9.05 and 9.09, unless said project:

- (a) includes only fill and structures for uses that have been categorically determined to be eligible for a license, according to the provisions of 310 CMR 9.32;
- (b) complies with applicable environmental regulatory programs of the Commonwealth, according to the provisions of 310 CMR 9.33;
- (c) conforms to applicable provisions of an Approved Municipal Harbor Plan, if any, and local zoning law, according to the provisions of 310 CMR 9.34;
- (d) complies with applicable standards governing the preservation of water-related public rights, according to the provisions of 310 CMR 9.35;
- (e) complies with applicable standards governing the protection of water-dependent uses, according to the provisions of 310 CMR 9.36;
- (f) complies with applicable standards governing engineering and construction of structures, according to the provisions of 310 CMR 9.37;
- (g) complies with applicable standards governing use and design of boating facilities for recreational or commercial vessels, according to the provisions of 310 CMR 9.38 and 9.39;
- (h) complies with applicable standards governing dredging and disposal of dredge materials, according to the provisions of 310 CMR 9.40; and
- (i) does not deny access to its services and facilities to any person in a discriminatory manner, as determined in accordance with the constitution of the Commonwealth of Massachusetts, of the United States of America, or with any statute, regulation, or executive order governing the prevention of discrimination.

(2) Proper Public Purpose Requirement. No license or permit shall be issued by the Department for any project on tidelands or Great Ponds, except for water-dependent use projects located entirely on private tidelands, unless said project serves a proper public purpose which provides greater benefit than detriment to the rights of the public in said lands. In applying 310 CMR 9.31(2), the Department shall act in accordance with the following provisions:

9.31: continued

- (a) Water-dependent Use Projects - The Department shall presume 310 CMR 9.31(2) is met if the project is a water-dependent use project.
- (b) Nonwater-dependent Use Projects - The Department shall presume 310 CMR 9.31(2) is met if the project is a nonwater-dependent use project which:
1. complies with the standards for conserving and utilizing the capacity of the project site to accommodate water-dependent use, according to the applicable provisions of 310 CMR 9.51 through 9.52; and complies with the additional standard for activating Commonwealth tidelands for public use, according to the applicable provisions of 310 CMR 9.53;
 2. if located in the coastal zone, complies with the standard governing consistency with the policies of the Massachusetts Coastal Zone Management Program, according to 310 CMR 9.54; and
 3. if consisting entirely of infrastructure facilities, to which 310 CMR 9.31(2)(b)1. does not apply, complies with the special mitigation and public access standards governing such facilities, according to 310 CMR 9.55.
- (3) Rebuttal of Presumptions. The presumptions of 310 CMR 9.31(2) may be overcome only if:
- (a) the basic requirements specified in 310 CMR 9.31(1) have not been met; or
 - (b) a clear showing is made by a municipal, state, regional, or federal agency that requirements beyond those contained in 310 CMR 9.00 are necessary to prevent overriding detriment to a public interest which said agency is responsible for protecting; in the case of a project for which a final EIR has been prepared, the presumption may be overcome only if such detriment has been identified during the M.G.L. c. 30, §§ 61 through 62H review process.
- (4) Requirements for Projects with Special Legislative Authorization. Notwithstanding the provisions of 310 CMR 9.31(1) through (3), the Department shall issue a license or permit where the project comprises fill or structures that have been specifically authorized in a grant or other enactment of the legislature, provided that the Department may prescribe such alterations and conditions as it deems necessary to ensure the project conforms with:
- (a) any requirements contained in the legislative authorization; and
 - (b) the standards of 310 CMR 9.31 through 9.60, to the extent consistent with the legislative authorization.

9.32: Categorical Restrictions on Fill and Structures

- (1) The Department has determined that in certain situations fill or structures categorically do not meet the statutory tests for approval under M.G.L. c. 91 or are otherwise not in keeping with the purposes of 310 CMR 9.00. Accordingly, a project shall be eligible for a license only if it is restricted to fill or structures which accommodate the uses specified below, within the geographic areas specified in 310 CMR 9.32(1)(a) through (e).
- (a) Tidelands (Outside of ACECs and DPAs).
1. fill or structures for any use on previously filled tidelands;
 2. fill or structures for water-dependent use located below the high water mark, provided that, in the case of proposed fill, reasonable measures are taken to minimize the amount of fill, including substitution of pile-supported or floating structures and relocation of the use to a position above the high water mark;
 3. structures to accommodate public pedestrian access on flowed tidelands, provided that it is not reasonable to locate such structures above the high water mark or within the footprint of existing pile-supported structures or pile fields;
 4. pile-supported structures located below the high water mark for nonwater-dependent uses which replace or modify existing, previously authorized wharves, piers, pile fields, or other filled or pile-supported structures, in accordance with the provisions of 310 CMR 9.51(3)(a) and (b);
 5. new fill located below the high water mark for accessory or nonwater-dependent use provided that:
 - a. the purpose of such fill is to eliminate irregularities in previously altered portions of the project shoreline; and

9.33: continued

- (j) Mineral Resources Act, M.G.L. c. 21, §§ 54 through 58.
- (k) Massachusetts Drinking Water Act, M.G.L. c. 111, §§ 159 through 174A, and 310 CMR 22.00: *Land Application of Sludge and Septage*.
- (l) Underwater Archeological Resources Act, M.G.L. c. 91 and c. 6, §§ 179 and 180, and 312 CMR 2.00: *Massachusetts Underwater Archaeological Resources*.
- (m) Hazardous Waste Management Act, M.G.L. c. 21C, and 310 CMR 30.000: *Hazardous Waste*.
- (n) Solid Waste Disposal Act, M.G.L. c. 16, §§ 18 through 24, and 310 CMR 16.00: *Site Assignment Regulations for Solid Waste Facilities*.
- (o) Air Pollution Act, M.G.L. c. 111, §§ 142A through I, and 310 CMR 7.00: *Air Pollution Control*.
- (p) State Highway Curb Cuts, M.G.L. c. 81, § 21.
- (q) Energy Restructuring Act, M.G.L. c. 164, §§ 69G through S, and 980 CMR 1.00 through 12.00.
- (r) Regional land use control statutes, including the Martha's Vineyard Commission Act, St. 1974, c. 637, c. 831, and the Cape Cod Commission Act, St. 1989, c. 716.

(2) Where a state or regional agency has authority to issue regulatory approval, issuance of such approval shall be conclusive as to compliance with the regulatory program in question.

(3) With respect to M.G.L. c. 131, § 40, and 310 CMR 10.00: *Wetlands Protection*, if the Department has issued a final order of conditions the project shall be presumed to comply with the statute and the final order shall be deemed to be incorporated in the terms of the license or permit, with no additional wetland conditions imposed. If an order of conditions has been issued by the conservation commission and the Department has not taken jurisdiction, the Department shall presume the project complies with state wetland standards, except upon a clear showing of substantial noncompliance with such standards. In that event, the Department shall impose such additional conditions in the license or permit as will make the project substantially comply with state wetlands standards.

(4) Where a state agency has statutory responsibility but no authority to issue regulatory approval, the Department shall act in accordance with any MOU with said agency governing incorporation of its standards and requirements into waterways licenses and permits. In the absence of an MOU, the Department shall presume that the project complies with the statutes and regulations in question, unless the responsible state agency informs the Department otherwise. In that event, the Department shall consult with the responsible state agency and may adopt any formal recommendations received therefrom, provided such recommendations do not conflict with 310 CMR 9.00 or the purposes of M.G.L. c. 91.

9.34: Conformance with Municipal Zoning and Approved Municipal Harbor Plans

(1) Zoning Law. Any project located on private tidelands or filled Commonwealth tidelands must be determined to comply with applicable zoning ordinances and bylaws of the municipality(ies) in which such tidelands are located. The Department shall find this requirement is met upon receipt of written certification issued by the municipal clerk, or by another municipal official responsible for administering said zoning ordinances and bylaws, and signed by the municipal clerk, stating that the activity to be licensed is not in violation of said ordinances and bylaws. Compliance with zoning does not apply to any public service project that is exempted from such requirements by law including, but not limited to, action of the Department of Public Utilities pursuant to M.G.L. c. 40A, § 3.

(2) Approved Municipal Harbor Plan.

- (a) If the project is located within an area covered by an Approved Municipal Harbor Plan, said project must conform to the provisions of said plan to the degree applicable under plan approval at 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans*, including substitute provisions adopted by the Department and listed in 310 CMR 9.57. In making this determination the Department shall take into account all relevant information in the public record, and shall act in accordance with the following provisions:

9.34: continued

1. the Department shall consult with the planning board or other municipal body with lead responsibility for plan implementation, as appropriate and in accordance with the provisions of 310 CMR 9.11(1). In the event a written recommendation as to plan conformance is submitted by such board or other body, the Department shall presume that the requirement is met or not met in accordance with said recommendation, except upon a clear showing to the contrary and except as otherwise provided in 310 CMR 9.34(2)(a)2.;
 2. the Department shall not find the requirement has been met if the project requires a variance or similar form of exemption from the substantive provisions of the Approved Municipal Harbor Plan, unless the Department determines the deviation to be *de minimis* or unrelated to the purposes of M.G.L. c. 91 or 310 CMR 9.00;
- (b) If the project conforms to the Approved Municipal Harbor Plan, the Department shall:
1. apply the use limitations or numerical standards specified in the Approved Municipal Harbor Plan and listed in 310 CMR 9.57 as a substitute for the respective limitations or standards contained in 310 CMR 9.32(1)(b)3., 9.51(3), 9.52(1)(b)1., and 9.53(2)(b) and (c), in accordance with the criteria specified in 310 CMR 9.32(1)(b)3., 9.51(3), 9.52(1)(b)1., and 9.53(2)(b) and (c) and in associated plan approval at 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans* and associated guidelines of CZM;
 2. adhere to the greatest reasonable extent to applicable guidance specified in the Approved Municipal Harbor Plan which amplifies any discretionary requirements of 310 CMR 9.00, in accordance with the criteria specified in 301 CMR 23.00: *Review and Approval of Municipal Harbor Plans* and associated guidelines of CZM; and
 3. determine that the requirement of 310 CMR 9.54, governing consistency with CZM policies, has been met, if applicable, except upon a written showing by CZM for a project identified in 310 CMR 9.13(2)(a) for CZM participation that the project conflicts with CZM policy in effect when the license application was completed, in a manner that was not reasonably foreseeable at the time of plan approval.

9.35: Standards to Preserve Water-related Public Rights

(1) General. The project shall preserve any rights held by the Commonwealth in trust for the public to use tidelands, Great Ponds and other waterways for lawful purposes; and shall preserve any public rights of access that are associated with such use. In applying this standard the Department shall act in accordance with the provisions of 310 CMR 9.35(2) through (6), and shall give particular consideration to applicable guidance specified in an Approved Municipal Harbor Plan, as provided in 310 CMR 9.34(2)(b)2. Further, in assessing the significance of any interference with public rights pursuant to 310 CMR 9.35(2) and(3), the Department shall take into account that the provision of public benefits by certain water-dependent uses may give rise to some unavoidable interference with certain water-related public rights. Such interference may be allowed provided that mitigation is provided to the greatest extent deemed reasonable by the Department, and that the overall public trust in waterways is best served.

(2) Public Rights Applicable to All Waterways.

(a) Navigation. The project shall not significantly interfere with public rights of navigation which exist in all waterways. Such rights include the right to conduct any activity which entails the movement of a boat, vessel, float, or other watercraft; the right to conduct any activity involving the transport or the loading/unloading of persons or objects to or from any such watercraft; and the natural derivatives thereof.

1. The Department shall find that the standard is not met in the event a project will:
 - a. extend seaward of any state harbor line, unless said project is specifically authorized by law or, if not so authorized, is a pipeline, conduit or cable which is entirely embedded in the soil and does not in any part occupy or project into such tidewater beyond the harbor line, provided also that the Department may at any time require any pipeline, conduit or cable to be removed or relocated if channel changes or alterations demand the same, as required by M.G.L. c. 91, § 14;
 - b. extend into or over any existing channel such as to impede free passage;
 - c. impair any line of sight required for navigation;
 - d. require the alteration of an established course of vessels;
 - e. interfere with access to adjoining areas by extending substantially beyond the projection of existing structures adjacent to the site;

9.35: continued

(d) The Department may include conditions in a license which restrict public pedestrian access in order to protect public health, safety, or the environment, and shall specify such additional access-related requirements as are deemed appropriate to offset any significant loss of benefits to the public which may be associated with such restrictions.

(6) Limitation on Liability. If a project includes measures to accommodate public pedestrian access in accordance with any provision of 310 CMR 9.35, the licensee shall be considered to be a private landowner who opens land to public recreational use without a fee and who is therefore not liable, pursuant to M.G.L. c. 21, § 17C, for injuries to persons or property due to public use, unless the owner's conduct is willful or reckless.

9.36: Standards to Protect Water-dependent Uses

(1) General. The project shall preserve the availability and suitability of tidelands, Great Ponds, and other waterways that are in use for water-dependent purposes, or which are reserved primarily as locations for maritime industry or other specific types of water-dependent use. In applying this standard the Department shall act in accordance with 310 CMR 9.36(2) through (5), and shall give particular consideration to applicable guidance specified in an Approved Municipal Harbor Plan, as provided in 310 CMR 9.34(2)(b)2.

(2) Private Access to Littoral or Riparian Property. The project shall not significantly interfere with littoral or riparian property owners' right to approach their property from a waterway, and to approach the waterway from said property, as provided in M.G.L. c. 91, § 17. In evaluating whether such interference is caused by a proposed structure, the Department may consider the proximity of the structure to abutting littoral or riparian property and the density of existing structures. In the case of a proposed structure which extends perpendicular to the shore, the Department shall require its placement at least 25 feet away from such abutting property lines, where feasible.

(3) The project shall not significantly disrupt any water-dependent use in operation, as of the date of license application, at an off-site location within the proximate vicinity of the project site. The project shall include such mitigation and/or compensation measures as the Department deems appropriate to avoid such disruption.

(4) The project shall not displace any water-dependent use that has occurred on the site within five years prior to the date of license application, except upon a clear showing by the applicant that said use:

- (a) did not take place on a reasonably continuous basis, for a substantial period of time; or
- (b) has been or will be discontinued at the site by the user, for reasons unrelated to the proposed project or as a result of voluntary arrangements with the applicant.

Absent the above showings, the project shall include arrangements determined to be reasonable by the Department for the water-dependent use to be continued at its existing facility, or at a facility at an alternative location having physical attributes, including proximity to the water, and associated business conditions which equal or surpass those of the original facility and as may be identified in an Approved Municipal Harbor Plan, if any. Permanent relocation to an off-site facility may occur in order to accommodate a public service project for which relocation arrangements are governed by law, or if the Department determines that it is not appropriate for the water-dependent use to continue on the site. Otherwise, only temporary relocation may occur as necessary for project construction.

(5) The project shall not include fill or structures for nonwater-dependent or water-dependent, non-industrial uses which preempt water-dependent-industrial use within a Designated Port Area (DPA). In applying this standard the Department shall act in accordance with the following provisions:

9.36: continued

(a) such fill or structures shall not occupy tidelands which the Department determines are necessary to accommodate a competing party who intends to develop such tidelands for water-dependent industrial use, provided written notice of such party's intention is submitted to the Department prior to the close of the public comment period on the license application; such determination shall be based upon a clear showing, within a period of time deemed reasonable by the Department, that the competing project would promote water-dependent-industrial use of the DPA to a greater degree than the proposed project, and that the competing party:

1. is a state or local government agency, or is a maritime business or other organization with the expertise, experience, and financial ability to implement the competing project;
2. has prepared detailed development plans for the competing project, including appropriate feasibility studies;
3. has tendered an offer to purchase title or other rights to the tidelands in question, at fair market value for water-dependent-industrial use; and
4. has proposed waterways license conditions or other arrangements which will restrict the tidelands in question to the uses contained in the competing projects for a period of time deemed appropriate by the Department;

(b) reasonable arrangements shall be made to prevent commitments of space or facilities that would significantly discourage present or future water-dependent-industrial activity on the project site or elsewhere in the DPA; such arrangements shall include, but are not limited to, the following:

1. in general, no structures shall be built or altered which cannot be subsequently removed or converted to water-dependent-industrial use with relative ease; otherwise, the Department may impose, as a condition of the license, a requirement for removal or restoration of such structures upon expiration of the license;
2. nonwater-dependent uses shall not be located in any spaces or facilities with attributes that are necessary to maintain the utility of the project site for prospective water-dependent-industrial use, especially that for which it is among the most suitable in the harbor in question; at a minimum, such nonwater-dependent uses shall not occur in new structures within the water-dependent use zone;
3. within a marine industrial park, conditions governing the duration of tenancy or other mechanisms must be established to ensure that nonwater-dependent activity occurs in a manner that preserves adequate flexibility over time for the park to accommodate water-dependent-industrial uses; at a minimum, reasonable steps shall be taken to assign a priority for said uses to occupy spaces or facilities as they become available in the future;
4. in the case of supporting DPA use, conditions governing the nature and extent of operational or economic support must be established to ensure that such support will be effectively provided to water-dependent-industrial uses.

9.37: Engineering and Construction Standards

(1) All fill and structures shall be designed and constructed in a manner that:

- (a) is structurally sound, as certified by a Registered Professional Engineer;
- (b) complies with applicable state requirements for construction in flood plains, in accordance with the State Building Code, 780 CMR and as hereafter may be amended, and will not pose an unreasonable threat to navigation, public health or safety, or adjacent buildings or structures, if damaged or destroyed in a storm; and
- (c) does not unreasonably restrict the ability to dredge any channels.

(2) In the case of a project within a flood zone, the project shall comply with the following requirements:

- (a) In coastal high hazard areas as defined in 310 CMR 9.02, new or expanded buildings for residential use shall not be located seaward of the high water mark.
- (b) New buildings for nonwater-dependent use intended for human occupancy shall be designed and constructed to:
 1. withstand the wind and wave forces associated with the statistical 100-year frequency storm event; and

9.37: continued

2. incorporate projected sea level rise during the design life of the buildings; at a minimum, such projections shall be based on historical rates of increase in sea level in New England coastal areas.
- (3) Projects with coastal or shoreline engineering structures shall comply with the following:
 - (a) any seawall, bulkhead, or revetment shall be located landward of the high water mark unless it must lie below the high water mark to permit proper tieback placement, to obtain a stable slope on bank areas, or to be compatible with abutting seawalls, bulkheads, or revetments in terms of design, size, function, and materials, or unless it is associated with new fill permitted according to the provisions of 310 CMR 9.32;
 - (b) any breakwater or similar structure designed to dissipate or otherwise reduce wave energy or to interfere with current flow shall not:
 1. cause or contribute to water stagnancy;
 2. reduce the ability of adjacent water bodies to flush adequately; or
 3. cause or contribute to sedimentation problems in adjacent or nearby navigation channels, anchorages, or wetland resource areas, or cause increased erosion to inland or coastal beaches, banks, or other wetland resource areas;
 - (c) in evaluating coastal or shoreline engineering structures, the Department shall require non-structural alternatives where feasible;
 - (d) the Department shall evaluate coastal or shoreline engineering structures for compatibility with abutting coastal or shoreline engineering structures in terms of design, size, function, and materials;
 - (e) if the Department finds significant adverse effects on the project site or adjacent or downcoast and downstream areas after construction of any coastal or shoreline engineering structure, the Department may, after an opportunity for a hearing, require modification of said structure the cost of which may not exceed 25% of the replacement cost of said structure, or may require the removal of said structure; 310 CMR 9.37(3)(e) shall be specifically stated in the license.
 - (4) Pipelines and conduits and their valves and protrusions shall be buried so that they will not present a hazard to navigation; will be adequately protected from scouring; will not be uncovered by sediment transport; and will not present a hazard or obstruction to fishing gear. Bottom contours shall be restored after burial. Pipelines carrying hazardous substances (*e.g.*, oil) shall also be protected from anchor dragging and fish trawls. When the burial of pipelines, conduits, valves, and protrusions is not feasible, equivalent protection shall be provided by shrouding or other means.

9.38: Use Standards for Recreational Boating Facilities

- (1) Public Recreational Boating Facilities. Any project that includes a public recreational boating facility, any portion of which is located on Commonwealth tidelands or Great Ponds, shall include measures to ensure patronage of such facility by the general public. In applying this standard the Department shall act in accordance with the following provisions:
 - (a) all vacant berths shall be assigned in a fair and equitable manner to the public patrons of said facility, by means of a waiting list or other comparably unbiased method; nothing in this provision shall be construed to prevent berthing assignments based on vessel characteristics, or the offer of first refusal rights to existing patrons of the facility who wish to relocate to a vacant berth;
 - (b) any contract or other agreement for exclusive use of berths at said facility shall have a maximum term of one year, and may be renewable upon each expiration for an additional period of up to one year;
 - (c) reasonable arrangements shall be made to accommodate transient boaters, including, at a minimum, a procedure for making any berth available for transient use during periods of vacancy in excess of 24 hours;
 - (d) all exterior pedestrian facilities on the project site shall be open to the general public, except where access restrictions are necessary in order to avoid significant interference with the operation of the facility or to maintain security at slips, ramps, floats, and other docking facilities; any such access restrictions shall be stated in the license.

9.38: continued

(2) Private Recreational Boating Facilities.

(a) Any project that includes a private recreational boating facility, any portion of which is located on Commonwealth tidelands or Great Ponds, shall include measures to avoid undue privatization in the patronage of said facility. In applying this standard, the Department shall act in accordance with the following provisions:

1. no berth in a marina shall be assigned pursuant to any contract or other agreement that makes use of the berth contingent upon ownership or occupancy of a residence or other nonwater-dependent facility of private tenancy;
2. no berth in a marina shall be assigned pursuant to a contract or other agreement for exclusive use with a maximum term that exceeds one year, unless:
 - a. for existing marinas, the lease agreement, master lease agreement or notice thereof for such berths was recorded at the Registry of Deeds prior to July 6, 1990 in which event all berths subject to such agreement shall be exempt from the provisions of 310 CMR 9.38(2)(b); or
 - b. for new marinas or berths in an existing marina not grandfathered pursuant to 310 CMR 9.38(2)(a), the following conditions are met:
 - i. said marina is located on tidelands outside of Designated Port Area;
 - ii. the Department expressly authorizes the assignment of long-term exclusive use of such berths in the license, and the license includes a condition requiring written notification to any assignee that said license does not convey ownership of Commonwealth tidelands;
 - iii. the number of berths authorized in the license does not exceed 50% of the total berths in said marina; and
 - iv. said marina provides water-related public benefits commensurate with the degree of privatization, as deemed appropriate by the Department.

(b) No project shall include a private recreational boating facility with fewer than ten berths on Commonwealth tidelands or Great Ponds, if the Department receives written certification from the municipal official or planning board of the municipality in which the project is located that such facility does not conform to a formal, areawide policy or plan which establishes municipal priorities among competing uses of the waterway, unless the Department determines that such certification:

1. is arbitrary, capricious, or an abuse of discretion; or
2. conflicts with an overriding state, regional, or federal interest.

9.39: Standards for Marinas, Boatyards, and Boat Ramps(1) Marinas.

(a) Design Standards for Marinas. Any project that includes a new marina, or any expansion thereof to ten or more berths greater than the number of berths existing on the effective date of 310 CMR 9.00, shall comply with the following design requirements:

1. all docking facilities, including passageways, shall be certified to be structurally sound by a registered professional engineer;
2. safe and unobstructed navigational ingress and egress to docking facilities shall be provided;
3. sanitary facilities shall be provided, including:
 - a. an adequate number of restrooms and refuse receptacles appropriate for the number of berths at the marina; in general, there should be one toilet fixture per sex for every 50 berths, and refuse receptacles at every gangway and restroom area; and
 - b. sewage pumpout facilities shall be provided as appropriate based on the number of berths and type of vessels at the marina, the availability of such facilities nearby, and environmental considerations including the water circulation patterns of the waterway and the proximity of shellfish resources; in general, there should be a sewage pumpout facility for marinas with more than 50 berths, or as otherwise specified in an Approved Municipal Harbor Plan; documentation shall be provided showing compliance with local, state, and federal requirements for said facilities;
4. any utility services provided at the marina shall be constructed and maintained in compliance with all applicable local and state requirements;
5. all lighting at the marina shall be designed to minimize interference with navigation by reflection, glare, or interference with aids to navigation;

9.40: continued

(4) Operational Requirements for Dredged Material Disposal.

(a) Where determined to be reasonable by the Department, clean dredged material shall be disposed of in a manner that serves the purpose of beach nourishment, in accordance with the following provisions:

1. in the case of a publicly-funded dredging project, such material shall be placed on publicly-owned eroding beaches; if no appropriate site can be located, private eroding beaches may be nourished if easements for public access below the existing high water mark can be secured by the applicant from the owner of the beach to be nourished; or
2. in the case of a privately-funded dredging project, such material may be placed on any eroding beach.

(b) In the event ocean disposal of dredged material is determined to be appropriate by the Department, the licensee or permittee shall:

1. publish in the *Notice to Mariners* the date, time, and proposed route of all ocean disposal activities and the coordinates of the ocean disposal site, as deemed appropriate by the U.S. Coast Guard;
2. ensure that transport vessels are not loaded beyond capacity; are equipped with sudden, high volume release mechanisms; and are at a complete stop when the material is released; and
3. ensure that disposal occurs within the boundaries of an approved or otherwise formally designated ocean disposal site; and that the discharge location is marked during disposal operations by a buoy equipped with a flashing light and radar reflectors which allow it to be located under variable sea/weather conditions.

(5) Supervision of Dredging and Disposal Activity.

(a) The licensee or permittee shall inform the Department in writing at least three days before commencing any authorized dredging or dredged material disposal.

(b) The licensee or permittee shall provide, at his or her expense, a dredging inspector approved by the Department who shall accompany the dredged material while in transit and during discharges, either upon the scows containing the dredged material or upon the boat towing them, for the following activities:

1. any offshore disposal;
2. any onshore disposal of dredged material greater than 10,000 cubic yards; or
3. the disposal of materials defined by the Department as potentially degrading or hazardous.

(c) The name, address, and qualifications of the dredging inspector shall be submitted to the Department as part of the license or permit application for approval.

(d) Within 30 days after the completion of the dredging, a report shall be submitted to the Department certified by the dredging inspector, including daily logs of the dredging operation indicating volume of dredged material, point of origin, point of destination, and other appropriate information.

9.51: Conservation of Capacity for Water-dependent Use

A nonwater-dependent use project that includes fill or structures on any tidelands shall not unreasonably diminish the capacity of such lands to accommodate water-dependent use. In applying this standard, the Department shall take into account any relevant information concerning the utility or adaptability of the site for present or future water-dependent purposes, especially in the vicinity of a water-dependent use zone; and shall adhere to the greatest reasonable extent to applicable guidance specified in an Approved Municipal Harbor Plan, as provided in 310 CMR 9.34(2)(b)2. At a minimum, the Department shall act in accordance with the following provisions:

(1) If the project includes nonwater-dependent facilities of private tenancy, such facilities must be developed in a manner that prevents significant conflict in operation between their users and those of any water-dependent facility which reasonably can be expected to locate on or near the project site. Characteristics of the respective facilities that may give rise to such user conflict include, but are not limited to:

- (a) presence of noise and odors;
- (b) type of equipment and accessory services;
- (c) hours of operation and spatial patterns of activity;
- (d) traffic flows and parking needs;

9.51: continued

- (e) size and composition of user groups;
- (f) privacy and security requirements; and
- (g) requirements for public infrastructure.

(2) If the project includes new structures or spaces for nonwater-dependent use, such structures or spaces must be developed in a manner that protects the utility and adaptability of the site for water-dependent purposes by preventing significant incompatibility in design with structures and spaces which reasonably can be expected to serve such purposes, either on or adjacent to the project site. Aspects of built form that may give rise to design incompatibility include, but are not limited to:

- (a) the total surface coverage by buildings and other permanent structures, insofar as it may affect the amount of open space where flexibility to serve water-dependent purposes will be retained;
- (b) the layout and configuration of buildings and other permanent structures, insofar as they may affect existing and potential public views of the water, marine-related features along the waterfront, and other objects of scenic, historic or cultural importance to the waterfront, especially along sight lines emanating in any direction from public ways and other areas of concentrated public activity;
- (c) the scale of buildings and other permanent structures, insofar as it may affect wind, shadow, and other conditions of the ground level environment that may affect users of water-dependent facilities; and
- (d) the landscape design of exterior open spaces, insofar as it may affect the attainment of effective pedestrian and vehicular circulation within and to areas of water-dependent activity.

(3) The Department shall find that the standard is not met if the project does not comply with the following minimum conditions which, in the absence of an Approved Municipal Harbor Plan which promotes the policy objectives stated herein with comparable or greater effectiveness, are necessary to prevent undue detriments to the capacity of tidelands to accommodate water-dependent use:

- (a) new pile-supported structures for nonwater-dependent use shall not extend beyond the footprint of existing, previously authorized pile-supported structures or pile fields, except where no further seaward projection occurs and the area of open water lost due to such extension is replaced, on at least a 1:1 square foot basis, through the removal of existing, previously authorized fill or pile-supported structures or pile fields elsewhere on the project site; as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the on-site replacement requirement if the project conforms to an Approved Municipal Harbor Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions in said plan, specifies alternative replacement requirements which ensure that no net loss of open water will occur for nonwater-dependent purposes, in order to maintain or improve the overall capacity of the state's waterways to accommodate public use in the exercise of water-related rights, as appropriate for the harbor in question;
- (b) Facilities of Public Accommodation, but not nonwater-dependent Facilities of Private Tenancy, shall be located on any pile-supported structures on flowed tidelands and at the ground level of any filled tidelands within 100 feet of a project shoreline. The Department may allow any portion of the equivalent area of a Facility of Public Accommodation to be relocated within the building footprint, or in other buildings owned, controlled or proposed for development by the applicant within the Development Site if the Department determines the alternative location would more effectively promote public use and enjoyment of the project site. As provided in 310 CMR 9.34(2)(b)1., the Department shall waive the above use limitations if the project conforms to an Approved Municipal Harbor Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions in said plan, specifies alternative limitations and other requirements which ensure that no significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent purposes, in order that such areas will be generally free of uses that conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the water-dependent use zone, as appropriate for the harbor in question;

9.51: continued

(c) new or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows:

1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet; and
2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and
3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet.

As provided in 310 CMR 9.34(2)(b)1., the Department shall waive the above numerical standards if the project conforms to an Approved Municipal Harbor Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions in said plan, specifies alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access associated therewith, as appropriate for the harbor in question;

(d) at least one square foot of the project site at ground level, exclusive of areas lying seaward of a project shoreline, shall be reserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site; in the event this requirement cannot be met by a project involving only the renovation or reuse of existing buildings, ground level open space shall be provided to the maximum reasonable extent; as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the above numerical standard if the project conforms to an Approved Municipal Harbor Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions in said plan, specifies alternative site coverage ratios and other requirements which ensure that, in general, buildings for nonwater-dependent use will be relatively condensed in footprint, in order that an amount of open space commensurate with that occupied by such buildings will be available to accommodate water-dependent activity and public access associated therewith, as appropriate for the harbor in question;

(e) new or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark; as provided in 310 CMR 9.34(2)(b)1., the Department shall waive such height limits if the project conforms to an Approved Municipal Harbor Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions in said plan, specifies alternative height limits and other requirements which ensure that, in general, such buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor in question;

(4) the requirements of 310 CMR 9.51(1) through (3), shall also apply in the event a nonwater-dependent use project is located on a Great Pond;

(5) the requirements of 310 CMR 9.51(3), shall not apply to projects on filled tidelands in Designated Port Areas involving temporary uses, supporting DPA uses that are industrial, and marine industrial parks.

9.52: Utilization of Shoreline for Water-dependent Purposes

A nonwater-dependent use project that includes fill or structures on any tidelands shall devote a reasonable portion of such lands to water-dependent use, including public access in the exercise of public rights in such lands. In applying this standard, the Department shall take into account any relevant information concerning the capacity of the project site to serve such water-dependent purposes, especially in the vicinity of a water-dependent use zone; and shall give particular consideration to applicable guidance specified in an Approved Municipal Harbor Plan, as provided in 310 CMR 9.34(2)(b)2. Except as necessary to protect public health, safety, or the environment, the Department shall act in accordance with the following provisions.

(1) In the event the project site includes a water-dependent use zone, the project shall include at least the following:

(a) one or more facilities that generate water-dependent activity of a kind and to a degree that is appropriate for the project site, given the nature of the project, conditions of the water body on which it is located, and other relevant circumstances; in making this determination, the Department shall give particular consideration to:

1. facilities that promote active use of the project shoreline, such as boat landing docks and launching ramps, marinas, fishing piers, waterfront boardwalks and esplanades for public recreation, and water-based public facilities as listed in 310 CMR 9.53(2)(a); and
2. facilities for which a demonstrated need exists in the harbor in question and for which other suitable locations are not reasonably available; and

(b) a pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a); at a minimum, such network shall consist of:

1. walkways and related facilities along the entire length of the water-dependent use zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in an Approved Municipal Harbor Plan, shall be no less than ten feet in width; and
2. appropriate connecting walkways that allow pedestrians to approach the shoreline walkways from public ways or other public access facilities to which any tidelands on the project site are adjacent. Such pedestrian access network shall be available to the public for use in connection with fishing, fowling, navigation, and any other purposes consistent with the extent of public rights at the project site.

(2) In the event the project site does not include a water-dependent use zone, the project shall provide connecting public walkways or other public pedestrian facilities as necessary to ensure that sites containing water-dependent use zones will not be isolated from, or poorly linked with, public ways or other public access facilities to which any tidelands on the project site are adjacent.

(3) The requirements of 310 CMR 9.52(1) and (2), shall also apply in the event a nonwater-dependent use project is located on a Great Pond.

9.53: Activation of Commonwealth Tidelands for Public Use

A nonwater-dependent use project that includes fill or structures on Commonwealth tidelands, except in Designated Port Areas, must promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes. In applying this standard, the Department shall take into account any factor affecting the quantity and quality of benefits provided to the public, in comparison with detriments to public rights associated with facilities of private tenancy, especially those which are nonwater-dependent; and shall give particular consideration to applicable guidance specified in an Approved Municipal Harbor Plan, as provided in 310 CMR 9.34(2)(b)2. At a minimum, the Department shall act in accordance with 310 CMR 9.53(1) through (4).

9.53: continued

(1) The project shall not include fill or structures for nonwater-dependent use of Commonwealth tidelands which the Department determines are necessary to accommodate a public agency which intends to pursue a water-dependent use project on such lands, provided written notice of such agency's intention is submitted to the Department prior to the close of the public comment period on the license application. Such determination shall be based upon a clear showing, within a period of time deemed reasonable by the Department, that the agency's project has met the criteria of 310 CMR 9.36(5)(a)2. through 4.

(2) The project shall attract and maintain substantial public activity on the site on a year-round basis, through the provision of water-related public benefits of a kind and to a degree that is appropriate for the site, given the nature of the project, conditions of the waterbody on which it is located, and other relevant circumstances. In making this determination, the Department shall act in accordance with 310 CMR 9.53(2)(a) through (e):

(a) in the event the project site includes a water-dependent use zone, at least one facility utilizing the shoreline in accordance with the provisions of 310 CMR 9.52(1)(a) must also promote water-based public activity; such facilities include, but are not limited to, ferries, cruise ships, water shuttles, public landings and swimming/fishing areas, excursion/charter/rental docks, and community sailing centers;

(b) the project shall include exterior open spaces for active or passive public recreation, examples of which are parks, plazas, and observation areas; such open spaces shall be located at or near the water to the maximum reasonable extent, unless otherwise deemed appropriate by the Department, and shall include related pedestrian amenities such as lighting and seating facilities, restrooms and trash receptacles, children's play areas, and safety ladders along shoreline walkways, as appropriate; such facilities shall be sized in accordance with 310 CMR 9.53(2)(b)1. through 2.:

1. the amount of such space shall be at least equal to the square footage of all Commonwealth tidelands on the project site landward of a project shoreline and not within the footprint of buildings, less any space deemed necessary by the Department to accommodate other water-dependent uses; the Department may also allow a portion of such open space to be devoted to public ways and/or surface parking open to the public, including users of the facility of public accommodation, provided that below grade or structured parking is not a reasonable alternative and that the open space devoted to public vehicular use does not exceed that devoted to public pedestrian use;

2. as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the requirements of 310 CMR 9.53(2)(b)1., if the project conforms to an Approved Municipal Harbor Plan which, as determined by the Secretary in the approval of said plan and by the Department through the adoption of substitute provisions in said plan, specifies alternative requirements for public outdoor recreation facilities that will establish the project site as a year-round locus of public activity in a comparable and highly effective manner;

(c) the project shall devote interior space to facilities of public accommodation, other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative amenities for public use; such public interior space shall be located at the ground level of all buildings containing nonwater-dependent facilities of private tenancy, unless the Department determines that an alternative location would more effectively promote public use and enjoyment of the project site or is appropriate to make ground level space available for water-dependent use or upper floor accessory services; the extent of such interior space shall be determined in accordance with 310 CMR 9.53(2)(c)1. through 2.:

1. such space shall be at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy;

2. as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the requirements of 310 CMR 9.34(2)(c)1., if the project conforms to an Approved Municipal Harbor Plan which, as determined by the Secretary in the approval of said plan, and by the Department through the adoption of substitute provisions in said plan, specifies alternative requirements for interior facilities of public accommodation that will establish the project site as a year-round locus of public activity in a comparable and highly effective manner;

9.53: continued

(d) the project shall include a management plan for all on-site facilities offering water-related benefits to the public, to ensure that the quantity and quality of such benefits will be effectively sustained; management elements which may be covered by the plan include, but are not limited to, signage, maintenance, hours and rules of operation, organizational arrangements and responsibilities, pricing, financing, and procedures for resolving use conflicts; if deemed appropriate, the Department may require the applicant to offer to the public, in the form of an easement, an enforceable right of access to or use of a proposed water-dependent facility of public accommodation; and

(e) in the event that water-related public benefits which can reasonably be provided on-site are not appropriate or sufficient, the Department may consider measures funded or otherwise taken by the applicant to provide such benefits elsewhere in the harbor or otherwise in the vicinity of the project site.

(3) The project shall promote other development policies of the Commonwealth, through the provision of nonwater-related benefits in accordance with applicable governmental plans and programs and in a manner that does not detract from the provision of water-related public benefits. In making this determination, the Department shall act in accordance with 310 CMR 9.53(3)(a) through (d):

(a) the Department shall take into account any guidance forthcoming from a state, federal, regional, or municipal agency as to the extent to which the project will contribute to or detract from the implementation of any specific policy, plan or program relating to, among other things: education; employment; energy; environmental protection; historic or archeological preservation; housing; industry; land use; natural resources; public health and safety; public recreation; and transportation.

(b) the Department shall act in accordance with the written recommendation of the Secretary of any state Executive Office in whose area of agency or program jurisdiction the proposed project falls, provided that said recommendation is made pursuant to an MOU or other written agreement with the Department as to the manner and extent to which the nonwater-related policies, plans, and programs of said Executive Office will be promoted in relation to water-related public interests.

(c) the Department shall give primary consideration to the implementation of policies, plans, or programs that:

1. have been officially adopted by statute, regulation, or other formal instrument of legislative or administrative action; and
2. complement measures taken by the project to serve water-related public purposes; examples of such complementary policies include the improvement of public transportation systems in order to foster ease of public movement to and from waterfront facilities, and the inclusion of affordable housing in residential development in order to make waterfront tenancy and access available to a broader segment of the public than would be the case under prevailing market conditions;

(d) the Department shall consider only those nonwater-related benefits accruing to the public in a manner that is reasonably direct, rather than remote, diffuse, or theoretical. Examples of direct public benefits include meeting a community need for mixed-income residential development, creating a large number of permanent jobs on-site, and reutilizing idle waterfront properties. Corresponding examples of indirect public benefits include increasing the general supply of market-rate housing, improving overall economic conditions, and expanding the property tax base of a municipality.

(4) In the event a nonwater-dependent use project is located on Great Ponds, the Department shall apply the provisions of 310 CMR 9.53(1) through (3), to the portion of the project site lying below the natural low water mark.

9.54: Consistency with Coastal Zone Management Policies

Nonwater-dependent use projects located in the coastal zone shall be consistent with all policies of the Massachusetts Coastal Zone Management Program, pursuant to 301 CMR 20.05(3). In applying this standard for projects identified for CZM participation in license or permit proceedings pursuant to 310 CMR 9.13(2)(a), the Department shall consider any written statement submitted by the Coastal Zone Management Office pursuant to 310 CMR 9.13(2), and shall act in accordance with the following provisions:

9.54: continued

(1) If the Department concurs with the conclusions and recommendations of CZM, said written statement shall be adopted as part of the written determination on license application.

(2) If the Department disagrees with any conclusions or recommendations of CZM and the disagreement cannot be resolved through routine consultation, the assistance and direction of the Secretary shall be sought in accordance with the provisions of M.G.L. c. 21A, § 4, governing mediation of administrative and jurisdictional conflicts within EOEEA. If the disagreement is not eliminated through such mediation, the Department shall include in the written determination an explanation of the specific basis for its final decision on consistency with CZM policies.

If the project site is within an area covered by an Approved Municipal Harbor Plan, the Department shall presume this standard is met, in accordance with the provisions of 310 CMR 9.34(2)(b)3.

9.55: Standards for Nonwater-dependent Infrastructure Facilities

(1) The requirements of 310 CMR 9.51 through 9.53, shall not apply to nonwater-dependent use projects consisting of infrastructure facilities on tidelands or Great Ponds. Such projects shall include mitigation and/or compensation measures as deemed appropriate by the Department to ensure that all feasible measures are taken to avoid or minimize detriments to the water-related interests of the public. Such interests include, but are not limited to:

- (a) the protection of maritime commerce, industry, recreation and associated public access;
- (b) the protection, restoration, and enhancement of living marine resources;
- (c) the attainment of water quality goals;
- (d) the reduction of flood and erosion-related hazards on lands subject to the 100-year storm event or to sea level rise, especially those in damage-prone or natural buffer areas;
- (e) the protection and enhancement of public views and visual quality in the natural and built environment of the shoreline; and
- (f) the preservation of historic sites and districts, archaeological sites, and other significant cultural resources near waterways.

(2) All nonwater-dependent use projects consisting of infrastructure facilities on tidelands or Great Ponds shall take reasonable measures to provide open spaces for active or passive recreation at or near the water's edge, wherever appropriate. Such measures may be provided by any means consistent with the need to avoid undue interference with the infrastructure facilities in question, and to protect public health, safety, or the environment.

9.56: Standards for Facilities of Limited Accommodation

Facilities of Limited Accommodation may be authorized on filled Commonwealth Tidelands or filled Private Tidelands under certain circumstances where a project site cannot support Facilities of Public Accommodation for a period of time. Projects including Facilities of Limited Accommodation as a substitution for Facilities of Public Accommodation described in 310 CMR 9.53(2)(c) and referenced in 310 CMR 9.51(3)(b) must meet any otherwise applicable requirements of 310 CMR 9.00. The substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation fulfills the requirements for licensing under 310 CMR 9.31(2)(b)1., provided otherwise applicable requirements are met. The calculation of the required amount of Facilities of Public Accommodation or the amount of the payment to allow the substitution shall be based on Facilities of Limited Accommodation located on the ground floor of buildings on filled Commonwealth Tidelands or Private Tidelands within 100 feet of the project shoreline. The substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation may not be inconsistent with an Approved Municipal Harbor Plan under 310 CMR 9.34(2).

9.56: continued

(1) An application for a building less than or equal to 75' in height, may substitute Facilities of Limited Accommodation in up to 50% of the interior space required to be devoted to Facilities of Public Accommodation. The remainder of the required ground floor interior space, with the exception of Upper Floor Accessory Services, shall be devoted to Facilities of Public Accommodation. The requirement that no less than 25% of the otherwise required ground floor interior space be devoted to Facilities of Public Accommodation may not be waived by the Department, regardless of foot traffic, density, level of economic development, or the absence of potential revenues generated by the Facility of Public Accommodation. The Applicant shall provide notice of the project to the Local Economic Development Authority and any response it has received from the authority. If the Local Economic Development Authority responds in writing that the project area has a sufficient level of development to support a Facility of Public Accommodation, the Department shall not authorize the substitution of a Facility of Limited Accommodation. If the authority concurs in writing that the project area lacks sufficient development to support a Facility of Public Accommodation or does not respond to the notice and the Department does not request additional information within 60 days of receipt of a license application, the Local Economic Development Authority will be deemed to concur with the request and the substitution of a Facility of Limited Accommodation shall be authorized. The first floor design shall be capable of accommodating a Facility of Public Accommodation. 20% of the net operating income per year generated from the Facilities of Limited Accommodation shall be paid annually by the project to fund specific construction or activities, approved by the Department, to activate the waterfront in geographic proximity to the project site. The activation provided by the specific construction or activities shall extend to evening and/or weekend hours wherever feasible to compensate for any lack of activation that may result in the substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation. The funding of specific construction or activities shall be in addition to applicable requirements at 310 CMR 9.52(1) and 9.53(2). The specific construction or activities to be funded shall be identified by the Applicant and approved by the Department prior to licensing.

A condition of the license shall include, on or before the 15th anniversary of the first certificate of occupancy, a requirement for the Department to review the uses of the Facilities of Limited Accommodation to determine whether the project site could support Facilities of Public Accommodation, typically based upon foot traffic and density, based on information provided by the Licensee. The Licensee shall file any relevant information at least six months prior to the 15th anniversary. If the Department determines that Facilities of Public Accommodation can be supported and the project is unable to obtain a contrary opinion as referenced in 310 CMR 9.56(2)(d), the Department shall provide the Licensee with a schedule for submittals for transition to such uses. If the Department determines that Facilities of Public Accommodation cannot be supported or the Licensee obtains such an opinion as referenced in 310 CMR 9.56(2)(d), the Department shall specify a time period for a subsequent review. The Licensee shall certify annually to the Department the amount of space devoted to Facilities of Limited Accommodation, the use of the space, the net operating income from the Facilities of Limited Accommodation, and a demonstration of payment for the substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation as specified in 310 CMR 9.56(2)(f). The Licensee shall provide an electronic copy of the certifications and notice of any information submitted six months prior to the 15th anniversary review, upon request to any person who filed comments during the public comment period on the written determination for the project.

9.56: continued

(2) An application for a building greater than 75' in height that can demonstrate that its project site is unable to fully support Facilities of Public Accommodation, based on foot traffic and density, may apply for a short-term condition in a license to authorize up to 50% of the interior space required to be devoted to Facilities of Limited Accommodation in accordance with 310 CMR 10.51 and 10.53 for some portion of the ground floor interior space otherwise required to be devoted to Facilities of Public Accommodation, provided that no less than 25% of such required interior space shall be devoted to Facilities of Public Accommodation. The requirement that no less than 25% of the ground floor interior space otherwise required be devoted to Facilities of Public Accommodation may not be waived by the Department, regardless of foot traffic, density, level of economic development, or the absence of potential revenues generated by the Facility of Public Accommodation. The short-term condition in the license may not exceed ten years. At the expiration of the term, the ground floor shall be devoted to Facilities of Public Accommodation, unless the licensee applies for an extension for no more than ten years and proves that the provisions of 310 CMR 9.56(2)(a) through (d) are met. Applications for extensions prior to expiration of the term may be allowed only where necessary to maintain occupancy. For an Applicant seeking a short-term condition in the license to authorize Facilities of Limited Accommodation in the interior space otherwise required to be devoted to Facilities of Public Accommodation, 20% of net operating income per year generated from the Facilities of Limited Accommodation shall be paid by the licensee annually to fund specific construction or activities, approved by the Department, to activate the waterfront. The activation provided by the specific construction or activities shall extend to evening and/or weekend hours wherever feasible to compensate for any lack of activation that may result in the substitution of Facilities of Limited Accommodation for Facilities of Public Accommodation. The specific construction or activities to be funded shall be identified by the Applicant and approved by the Department prior to licensing. The funding of specific construction or activities shall be in addition to applicable requirements at 310 CMR 9.52(1) and 9.53(2). A project seeking a short term condition in a license shall:

- (a) not be inconsistent with any substitutions, offsets or conditions of approval established in an Approved Municipal Harbor Plan as provided in 310 CMR 9.34(2);
- (b) demonstrate that marketing efforts for at least one year have failed to identify any prospective Facility of Public Accommodation, even with the offer of up to 50% below market rents to civic or cultural not-for-profit organizations and a diligent good faith attempt to locate tenants which shall include advertisements in at least two commercial real estate marketing publications and listing with a commercial real estate brokerage;
- (c) comply with the conditions in the license requiring Facilities of Public Accommodation unless or until another use is authorized; this requirement may not be waived by the Department, regardless of foot traffic, density, level of economic development, or the absence of potential revenues generated by the Facility of Public Accommodation;
- (d) obtain the written concurrence of the Local Economic Development Authority that the project area lacks the level of development to support a Facility of Public Accommodation at the time of licensing or amendment. If the Local Economic Development Authority does not respond to the notice and the Department does not request additional information within 60 days of receipt of a license application, the Local Economic Development Authority will be deemed to concur with the request;
- (e) ensure that the first floor design will be capable of accommodating a Facility of Public Accommodation at the end of the term; and
- (f) certify annually the space devoted to Facilities of Limited Accommodation, the use of the space, the net operating income from those facilities, and demonstration of payment.

(3) A licensee may request an amendment of an existing license to authorize Facilities of Limited Accommodation, provided the request meets the requirements for an amendment at 310 CMR 9.24, the requirements identified in 310 CMR 9.56(2)(a) through (d), and other applicable requirements of 310 CMR 9.56(1) or (2). A short-term license condition for Facilities of Limited Accommodation amending an existing license may be for a limited term of ten years or 15 years, depending on the height of the building.

9.57: Approved Municipal Harbor Plans

(1) The following Municipal Harbor Plans are Approved Municipal Harbor Plans:

- (a) East Boston Waterfront District Municipal Harbor Plan (July 15, 2002, as renewed and amended on December 17, 2008, March 4, 2009, and August 2, 2012);
- (b) Fort Point Downtown (Boston) Municipal Harbor Plan Phase I (October 10, 2002, as renewed on February 12, 2013);
- (c) Fort Point Downtown (Boston) Municipal Harbor Plan Phase II (March 8, 2004, as renewed on April 9, 2014);
- (d) Harborpark (Boston) Plan (May 22, 1991, as renewed and amended on July 29, 1999, October 12, 2006, and April 4, 2008);
- (e) South Boston Waterfront District Municipal Harbor Plan (December 6, 2000, as renewed and amended on December 31, 2002, October 22, 2009, and December 21, 2016);
- (f) Cohasset Municipal Harbor Plan (November 25, 2020);
- (g) Central Waterfront (Everett) Municipal Harbor Plan (February 10, 2014);
- (h) Gloucester Municipal Harbor Plan and DPA Master Plan (July 6, 1999, as renewed and amended on December 11, 2009 and December 19, 2014);
- (i) Lynn Municipal Harbor Plan and DPA Master Plan (June 28, 2010, as renewed and amended on November 25, 2020);
- (j) Nantucket and Madaket Municipal Harbor Plan (December 21, 2009);
- (k) New Bedford Fairhaven Municipal Harbor Plan and DPA Master Plan (September 24, 2002, as renewed and amended on June 14, 2010);
- (l) Provincetown Harbor Management Plan (May 4, 1999, as renewed and amended on February 29, 2012 and April 10, 2019);
- (m) Salem Municipal Harbor Plan and DPA Master Plan (June 24, 2008);
- (n) Hull Harbor Plan (February 14, 2000);
- (o) South Coastal Harbor (Chatham) Management Plan (August 19, 1994, as renewed on July 23, 1999, October 21, 2005, and May 12, 2015); and
- (p) Edgartown Municipal Harbor Plan (October 2, 1997, as renewed on April 30, 2003).

(2) Approved Substitute Provisions: Substitute Standards, Offsets, Amplifications, and Other Provisions.

(a) East Boston Waterfront District Municipal Harbor Plan, (July 15, 2002, as renewed and amended on December 17, 2008, March 4, 2009, and August 2, 2012).

1. Table 1. Substitute Standards and Offsetting Measures.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
Clippership Wharf (2002)			
<p>310 CMR 9.51(3): Conservation of Capacity for Water-dependent Use (Location of Facilities of Private Tenancy (“FPT”).</p>	<p>“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”</p>	<p>FPTs may occupy a portion of the ground floors of nonwater-dependent structures located on private tidelands within 100 feet of the project shoreline (measured from the high water shoreline) and on Commonwealth tidelands, provided that the amount of Facility of Public Accommodation (“FPA”) space is greater than or equal to amount of interior space where FPT would otherwise be prohibited; all ground floor FPTs seaward of Marginal Street that would otherwise be for FPAs is for artist live/work space; and does not exceed 12,500 SF of area that would be otherwise required to be FPA.</p>	<ol style="list-style-type: none"> 1. A minimum of 6,000 SF of additional WDUZ on the western side of the site with associated outdoor programming; offset at 1:2 ratio (FPT:WDUZ). 2. Arts-related ground floor FPA space at the harbor-most end of building on westerly wharf of no less than 2,000 SF at no cost for rental or fit-out for life of the c. 91 license (1:1 ratio). 3. 1,000 SF of FPA space in buildings facing water on western side of site on Private Tidelands (1:1 ratio). 4. 1,000 SF environmental/arts education FPA use on western side of project at no cost for rental and fit-out for license term (1:1 ratio FPT:FPA). 5. 1,000 SF of community FPA space at no cost for rental or fit-out for license term (1:1 ratio on western side, 1:2 ratio -FPT:FPA elsewhere) 6. On Private Tidelands, 5,000 SF of FPA space in buildings facing Lewis Mall (1:2 ratio)

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>Clippership Wharf (2002) (continued)</u>			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	Reconfigured WDUZ, provided no loss of area, measured from the project shoreline as defined by the high-water mark along upland shorelines and filled wharves. Public parking for up to two hours allowed in WDUZ on the western pier parallel to and landward of the public way to encourage public use of the site. Minimum width of 100 feet along the high water mark except for area immediately southwest of the Boston Housing Authority ("BRA") Heritage Apartments where it shall be a minimum of 25 feet; a minimum of 100 feet from high water mark along the solid fill wharf ends; minimum setbacks of 45 feet on the western side of the project, 40 feet on the eastern side of the westerly wharf, and 30 feet on the western side of the easterly wharf.	N/A
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	All buildings located along Sumner Street and within 100 feet of the high water mark at the wharf ends shall be no taller than 65 feet in height; landward of the wharf ends building height(s) may increase at the ratio of one vertical foot for every two additional feet from the 100 foot line up to a maximum 80 feet for the entire site, provided all buildings shall be set back a minimum of 100 feet from the high water mark along the solid fill wharf ends, all buildings shall have minimum setbacks of 45 feet on the western side of the project, 40 feet on the eastern side of the westerly wharf, and 30 feet on the western side of the easterly wharf. To accommodate greater floor-to-ceiling dimensions in FPAs, buildings may be up to 86 feet, provided that Net New Shadow ("NNS") is offset.	N/A

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
Hodge Boiler Works (2002)			
<p>310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation) and 310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)</p>	<p>“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”</p>	<p>FPTs may occupy a portion of the ground floor of non-water-dependent structures located within 100 feet of the project shoreline, provided that the total area of ground floor FPA space is greater or equal to the amount of interior space where FPT would otherwise be prohibited; at least 50% of the FPA SF must be at the ground level of any non-water-dependent use structure located within 100 feet of the project shoreline adjacent to LoPresti Park; and no FPA SF is used to offset the SF for other non-water-dependent use structures within 100 feet of the project shoreline.</p>	<p>N/A</p>
<p>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</p>	<p>“new or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone...”</p>	<p>Reconfigured WDUZ, provided no loss of area, measured from the project shoreline as defined by the high-water mark along upland shorelines and filled wharves. Minimum setback is 75 feet except for the shoreline corner in common with LoPresti Park, where it may be 40 feet and, in order to accommodate a non-water-dependent use public activity structure at the London Street extension, 25 feet.</p>	<p>N/A</p>
<p>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</p>	<p>New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.</p>	<p>All buildings located along Sumner Street and within 100 feet of the high water mark at the wharf ends shall be no taller than 65 feet in height; landward of this line, building height(s) may increase at the ratio of one vertical foot for every two additional feet from the 100 foot line up to a maximum 80 feet for the entire site, provided all buildings shall be set back a minimum of 100 feet from the high water mark except at the corner shared with LoPresti Park, where the setback may be 40 feet. To accommodate greater floor-to-ceiling dimensions in FPAs, buildings may be up to 86 feet, provided that NNS is offset.</p>	<p>N/A</p>

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>Plan-wide (2002)</u>			
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	At a minimum, the pedestrian access network shall be no less than 12 feet wide, with 10 feet clear of an obstruction.	N/A
<u>6-26 New Street (2008)</u>			
310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation)	“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”	Up to approximately 1,200 square feet of interior and exterior non-water dependent Facilities of Private Tenancy will be allowed to be located within 100 feet of the project shoreline, but not less than 70 feet from the project shoreline.	At least an equivalent area of Facilities of Public Accommodation (FPA) will be provided adjacent to other FPA space on the site, expanding the location of FPAs beyond 100 feet of the project shoreline.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	The minimum width will be widened to 12 feet (10 feet clear). These enhancements shall replace the existing standard of 10 feet.	N/A
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Allow non water-dependent buildings up to a height of 70 feet within 100 feet landward of the high-water mark in locations as generally indicated in the plans diagrams. Appurtenant to the nine-story building redevelopment project, façade treatments, fenestration, and exterior or enclosed balconies will be allowed up to the top of the existing structure and shall be considered part of the building footprint.	N/A

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
102-148 Border Street (2009) (continued)			
<p>310 CMR 9.51(3)(b): Conservation of Capacity for Water-Dependent Use (Location of facilities of private tenancy and facilities of public accommodation)</p>	<p>“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”</p>	<p>“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”</p>	<p>A minimum of 25% of the ground floor (excluding upper floor accessory uses) shall be devoted to Facilities of Public Accommodation, including but not limited to: gallery, archway, exhibition space, teaching space, maritime history interpretive exhibit space, community meeting room, and community center. These facilities will be located within the ground floor to effectively promote public use and enjoyment of the project site. The facilities will be managed and programmed to establish the project as a year-round locus of public activity. The McKay Community Gallery will be provided in accordance with the Plan, built-out and rent-free for the license term and the public archway shall be provided in accordance with the Plan.</p>

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>102-148 Border Street (2009) (continued)</u>			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	“new or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone...”	A reconfigured WDUZ will be established that will allow a minimum setback from the project shoreline of 25 feet for buildings containing nonwater-dependent uses, as shown in the plans and diagrams in the Plan, while maintaining at least the same overall area (approximately 22,806sf) as the standard requirement.	The reconfigured WDUZ will provide setbacks along the waterfront and Harborwalk and setbacks in different areas of the site that are contiguous to the DPA and the proposed historic maritime interpretive area. There shall be no loss of WDUZ area.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	At a minimum, the pedestrian access network shall be no less than 12 feet wide, with 10 feet clear of an obstruction.	N/A
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	The height of new or expanded buildings for non-water-dependent uses shall not exceed 85 feet as shown in the Plan’s massing and building diagrams.	Provisions of at least 2,201 SF of open space in addition to the standard requirement (1:2 open space-shadow ratio) that shall include paved pedestrian access, amenities such as benches and special landscaping features, and public recreational features to promote public access and use.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
125 Sumner Street (2009)			
<p>310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)</p>	<p>“the project shall include interior space to facilities of public accommodation other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community needs...such space shall be at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy...”</p>	<p>Permit facilities of private tenancy to occupy 75% of the ground floor (excluding upper floor accessory uses), provided that the site remains under the ownership or control of the Boston Housing Authority with the primary purpose to provide affordable housing to City residents.</p>	<p>A minimum of 25% of the ground floor (excluding upper floor accessory uses) shall be devoted to facilities of public accommodation including, but not limited to: gallery, exhibition space, maritime history interpretive exhibit space, community meeting room, and community center. These facilities will be located within the ground floor to effectively promote public use and enjoyment of the project site. The facilities will be managed and programmed to establish the project site as a year-round locus of public activity.</p>

9.57: continued

2. Table 2: Summary of Amplifications

Regulatory Provision	Chapter 91 Standard	Approved Amplification	Implementation Mechanism
6-26 New Street (2008)			
310 CMR 9.53(2)(b): Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)	"the project shall include exterior open space for active or passive recreation, examples of which are parks, plazas and observation areas; such open spaces shall be located at or near the water to the maximum reasonable extent..."	The location of the open space features that serve to activate the public open space on the site may be distributed within both Commonwealth and private tidelands in a manner that will enhance interest, access, and use. Additional activation of the Harborwalk and waterfront open space will be provided through the use of historic interpretive elements and displays. The particular type and location of exhibits will be appropriate to this particular location in the harbor and will follow guidance provided in Section 9 and Appendix 1 of the Plan Amendment.	Plan Amendment Appendix 1, Section 9

3. Table 3: Summary of Planning Principles and Priorities.

Planning Principle/Priority	Decision Standard	Implementation Mechanism	Notes
6-26 New Street (2008)			
Preserve and enhance capacity of DPA for Water-dependent industrial use ("WDIU")	Preserve and enhance capacity of DPA for WDIU	Removal or restoration of all on-site piles (both DPA and non-DPA watersheet areas); site-wide reconstruction of all deteriorated sections of the bulkhead; and inclusion of a permanent vehicular access route from New or Sumner Street to the DPA and WDUZ; provision of buffer between uses; provision of language in lease forms or deeds regarding existence of WDIU; docking facility for water taxi; site improvements for DPA area to be accessible.	N/A

9.57: continued

Planning Principle/Priority	Decision Standard	Implementation Mechanism	Notes
102-148 Border Street (2009)			
Preserve and enhance capacity of DPA for WDIU	Preserve and enhance capacity of DPA for WDIU	Additionally, DPA improvements at the site will enhance water-dependent uses: <ul style="list-style-type: none"> ● Removal of dilapidated pile fields ● Restoration of seawalls and adjacent surfaces ● Regrading and remediation of site ● Language in lease forms with notice of nearby WDIU ● Use of appropriate construction materials for the non-water dependent (“non-WD”) building to mitigate adverse impacts of neighboring WDIU ● Provision of buffer land uses along the ground floor of the non-WD building 	

(b) Fort Point Downtown (Boston) Waterfront Municipal Harbor Plan Phase 1 (October 10, 2002, as renewed on February 12, 2013).

1. Table 1. Substitute Standards and Offsetting Measures.

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
500 Atlantic Avenue (2002)			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Allows building heights up to 55 feet in the Height Zone 1 (0 to 35 feet from the high water mark); 63 feet in Height Zone 2 (35 to 70 feet); 132 feet in Height Zone 3 (70 to 79 feet); and 239 feet in Height Zone 4 (more than 79 feet) to the cornice line height of the maximum habitable space.	N/A

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
Plan-wide (2002)			
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	"...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width..."	At a minimum, the pedestrian access network shall be no less than twelve feet wide, with ten feet clear of an obstruction.	N/A

(c) Fort Point Downtown (Boston) Municipal Harbor Plan Phase II (March 8, 2004, as renewed on April 9, 2014).

1. Table 1. Substitute Standards and Offsetting Measures.

Russia Wharf (2004)			
Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
310 CMR 9.51(3)(c) Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	To accommodate the preservation of the historic structure, a reconfigured WDUZ that results in a loss of not more than 2,700 SF of WDUZ.	N/A

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Russia Wharf (2004) (continued)			
Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	To accommodate the preservation of the historic structure, approximately 65,130 SF may be occupied by the redevelopment of structures within the existing footprint with slight alterations.	Secondary ramping system to Channel Walk West from the Fort Point Channel Watersheet Activation Plan ("FPCWAP"), Congress Street Bridge Lighting Project; improvements to Congress Street sidewalk; and provision of interpretive signage (Historic Piers Network Plan), combined value of \$1,125,000
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	The roof of the highest occupied floor of 395 feet, provided that the elevation of the existing Tufts roof (91 feet) shall be maintained for a horizontal distance 15 feet landward of the present mean high water line and increase at the rate of 4.5 vertical feet for each additional foot landward to a maximum height of 395 feet.	Additional FPA space (25,000 SF more than required under c. 91), including two of the FPA spaces as SPDFs (6,000-7,000 SF total); \$1,000,000 to implementation of FPCWAP and maintenance of Children's Wharf Park (1/2 each).
Russia Wharf and Plan-wide (2004)			
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-Dependent Purposes (Pedestrian access network)	"...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width..."	At a minimum, the pedestrian access network shall be no less than twelve feet wide, with ten feet clear of an obstruction.	N/A

9.57: continued

Table 2. Summary of Amplifications.

Regulatory Provision	Chapter 91 Standard	Approved Amplification	Implementation Mechanism
<u>Russia Wharf and Plan-wide (2004)</u>			
310 CMR 9.53(2)(a), (c), and (d): Activation of Commonwealth Tidelands for Public Use (Facilities for water-based public activity, interior facilities of public accommodation, management plan)	The project shall attract and maintain substantial public activity on the site on a year-round basis, through the provision of water-related public benefits of a kind and to a degree that is appropriate for the site, given the nature of the project, conditions of the waterbody on which it is located, and other relevant circumstances... Where there is a WDUZ, the project must include at least one facility that promotes water-based public activity; the project shall devote interior space to FPAs; and the project shall include a management plan.	<ul style="list-style-type: none"> ● Where there is a WDUZ, the project shall provide at least one facility recommended by the FPCWAP that promotes water-based public activity in the WDUZ or provide a monetary contribution for implementation of the FPCWAP. ● The project shall devote interior space to FPAs with special consideration given to facilities that enhance the year round destination value of the waterfront. ● Management plan for water-based activities. 	FPCWAP, Section III.C and Section V of the Decision,

(d) Harborpark (Boston) Plan (May 22, 1991, as renewed and amended on July 29, 1999, October 12, 2006, and April 4, 2008).

1. Table 1. Substitute Standards and Offsetting Measures.

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>Charlestown Navy Yard (1991)</u>			
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage) and 310 CMR 9.53(2)(b) Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	Within the Charlestown Navy yard, the aggregate of open space of all lots in the subdistrict exclusive of the Historic Monument Area must be equal to or greater than 50% (excluding roads and surface parking) at all times.	N/A
310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)	“the project shall include interior space to facilities of public accommodation other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community needs...such space shall be at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy...”	Any project with more than 10,000 SF of floor area must include at least 40 percent of the ground floor to public facilities (not including public parking).	Requirement 4a

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

+

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
Charlestown Gateway and North End (1991)			
<p>310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation)</p>	<p>“the project shall include interior space to facilities of public accommodation other than public parking, with special consideration given to facilities that enhance the destination value of the waterfront by serving significant community needs...such space shall be at least equal in amount to the square footage of all Commonwealth tidelands on the project site within the footprint of buildings containing nonwater-dependent facilities of private tenancy...”</p>	<p>Any project with more than 10,000 SF of floor area must include at least 40 percent of the ground floor to public facilities; at least 50 percent of the ground floor spaces within all buildings containing nonwatery-dependent FPTs on pile-supported structures on flowed tidelands shall be FPAs in accordance with Requirement 8 not including public parking; and any project with non-water-dependent use containing ground floor interior public space within 100 feet of a project shoreline, such space is for FPAs unless an alternative location would promote public use and enjoyment of the project site in a clearly superior manner, is necessary for upper floor accessory services, or is appropriate to accommodate or to avoid detriments to WDU.</p>	<p>Requirement 4b-c</p>
Charlestown Navy Yard, Charlestown Gateway, and North End (1991)			
<p>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</p>	<p>New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.</p>	<p>35 feet along shoreline and ends of piers, 12 feet along sides of piers based upon existing or new pile-supported structures that meets the criterion of 310 CMR 9.32(1)(a)(3); otherwise computed in accordance with 310 CMR 9.51(3)(c), but not less than 25 feet from the ends and not less than 10 from the sides; and only if such reconfiguration promotes public use or other water-dependent activity in a clearly superior manner with no net loss of area and in accordance with a specific plan for vessel-related programming or a set of guidelines for determining sufficient setback space for various types of water-based activity</p>	<p>Requirement 5</p>

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>Charlestown Navy Yard, Charlestown Gateway, and North End (1991) (continued)</u>			
<p>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</p>	<p>New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.</p>	<ul style="list-style-type: none"> ● 75 feet for Sargents and Tudor Wharf; ● 90-135 feet on Parcel 4/4A and 125-155 feet on Parcel 6/7 (Charlestown Navy Yard) 	<p>Development and contribution/compliance with a special mitigation program to avoid or minimize adverse wind, shadow, and other impacts to ground-level environment (the program shall specific standards, guidelines, or other parameters to serve as a framework for reaching appropriate mitigation decisions).</p>
<p>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</p>	<p>“nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline.”</p>	<p>FPTs over flowed tidelands are allowed only at the following locations:</p> <ul style="list-style-type: none"> ● Battery Wharf (North End) ● Tudor Wharf (Charlestown Gateway) ● Pier 5 (Charlestown Navy Yard) <p>Provided that all buildings are no higher than 55 feet and conform to setback requirements of 5(a-c), and site coverage limits of 310 CMR 9.51(3)(d); no more than 50% of ground floor within such buildings may be occupied by FPTs, including upper-floor accessory uses, and no parking is seaward of high water mark; residential uses only on Battery Wharf and Pier 5, but not at ground level and only on the second level if accompanied by a commensurate increase in one or a combination of public open space, building setbacks, interior facilities of public accommodation, or water-based public activities; and shall avoid conflict/minimize incompatibility with nearby water-dependent and/or public activities.</p>	<p>Requirements 7 and 8: Harborpark Plan must be revised to include one or more plans to develop a network of SPDFs within interior spaces along or near the Harborwalk, primarily at the ground level.</p>

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>226 Causeway (1999)</u>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Maximum height of 155 feet to the top of the highest occupiable floor, insignificant net new shadow and no significant deterioration in wind conditions.	Maintenance of Port Park (DCR) for the term of the c. 91 license; fall and spring clear-up of the Prince Street Park for ten years; 13,000 SF of FPAs on building ground floor; provisions for the sale of tickets for ferry/water transportation in the building lobby; additional landscaping, planting along 226 Causeway Street; 10% of residential units for affordable housing for 20 years (14 of which are restricted for elderly tenants for indefinite tenancy).
<u>Lovejoy Wharf (2006)</u>			
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	At a minimum, the pedestrian access network shall be no less than 12 feet wide, with ten feet clear of an obstruction.	N/A
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	Reconfigured, no net loss: minimum 76 feet from seaward edge of wharf, except for a 15 feet to accommodate Pavilion building on easterly portion of site (which will include upper level public viewing platform, foot access <i>via</i> interior and exterior stairways, and handicapped access <i>via</i> elevator).	N/A

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
Lovejoy Wharf (2006) (continued)			
310 CMR 9.51(3)(d): Conservation of Capacity for Water-dependent Use (Lot coverage)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	All exterior space not within the footprint of the buildings (42,949 SF) or the Pavilion (5,819 SF) shall be open space and all open space seaward of the building shall be for pedestrian use only.	4,429 SF of upper level terrace on the Pavilion with associated public access (<i>see</i> WDUZ requirement), public restrooms, and ground level, rent-free space for a visitor center or other public use.
310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Heights ranging from 115 feet to 155 feet (to the roof of the highest occupiable floor) as shown in municipal harbor planning area (MHPA), provided wind meets Boston Redevelopment Authority's (BRA) standards and minimal NNS.	\$150,000 annual water transportation facility operations subsidy for five years, maintenance of dock and shoreside facility for ten years.

(e) South Boston Waterfront District Municipal Harbor Plan (December 6, 2000, as renewed and amended on December 31, 2002, October 22, 2009, and December 21, 2016).

1. Table 1. Substitute Standards and Offsetting Measures.

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
Plan-wide (2000, not including 100 Acres Master)			
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	"...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width..."	At a minimum, the pedestrian access network shall be no less than 12 feet wide, with ten feet clear of an obstruction.	N/A

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
Plan-wide (2000, not including 100 Acres Master) (continued)			
<p>310 CMR 9.51(3)(b): Conservation of Capacity for Water-dependent Use (Location of facilities of private tenancy and facilities of public accommodation) and 310 CMR 9.53(2)(b)1.: Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)</p>	<p>At a minimum, at least 50% of the project site must be reserved as open space for water-dependent activity and public access. The open space must be located on land (<i>i.e.</i>, cannot include watershed) and be accessible to the general public at all times. On Commonwealth Tidelands, a maximum of 50% of the required open space (<i>i.e.</i>, 25% or more of the total project site) can be devoted to streets and ways.</p>	<p>All projects within the harbor planning area must comply, at a minimum, with the 50% open space area requirements of the Waterways Regulations. However, only a maximum of 20% of the lot area can be devoted to streets and ways, and surface parking lots are not allowed.</p>	<p>N/A</p>
<p>310 CMR 9.53(2)(c): Activation of Commonwealth Tidelands for Public Use (Interior facilities of public accommodation) and 310 CMR 9.02: <i>Definitions</i> (Facilities of private tenancy and facilities of public accommodation)</p>	<p>A project within Commonwealth Tidelands must provide Facilities of Public Accommodation on the ground floor of all buildings containing Facilities of Private Tenancy (FPTs). At a maximum, ground floor accessory uses to upper floor FPTs must not exceed 25% of the area of the building footprint.</p>	<p>The amount of ground floor space that can be devoted to upper floor FPT accessory uses cannot exceed 20% of the building footprint. Further, residential lobbies and entrances cannot front along the waterside of any building(s).</p>	<p>N/A</p>

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
Fan Pier (2000)			
<p>310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)</p>	<p>New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.</p>	<p>Moving landward from WDUZ, proposed height zones increase from 175 feet to 250 feet to 275 feet and 300 feet along Old Northern Avenue and Courthouse Way, except for Parcels H (175 feet) and J (75 feet).</p>	<ul style="list-style-type: none"> ● 42,400 square feet of additional open space, in excess of 50% of the site area, at a ratio of 2:1; ● Approximately 21,000 square feet of publicly accessible space on the surface of the breakwater, at a ratio of 1:1; ● 15,500 square feet of the footprint of the civic building on Parcel J, at a ratio of 1:1; and ● Approximately 30,000 square feet of pedestrian-usable open space, calculated as part of the 20% of the site area that could be devoted to streets and ways, at a ratio of 1:1. If other offsets are required under the formula, they may be provided from any of the above categories. In addition, the following offsets may be used: <ul style="list-style-type: none"> ● No more than 15% of the total allowable offset in the form of water transportation benefits in excess of the baseline Chapter 91 requirements; and ● No more than 10% of the total allowable offset as improvements to water-related public access facilities within the Boston Harbor Islands National Park Area.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>Fan Pier (2000) (continued)</u>			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	<ul style="list-style-type: none"> ● 150 feet along fan edge ● 60-75 feet along cove edge ● 30 feet (preference for 40 feet) along civic site ● No net loss of WDUZ area 	N/A
<u>Pier 4 (2000)</u>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Landward of a 200-foot no-build zone at the seaward end of the pier, heights may increase from 100 feet to 170 feet to 250 feet.	200-foot no-build zone and 1 SF of open space for every 2 SF of NNS
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	<ul style="list-style-type: none"> ● 46 feet along cove edge ● 100 feet at seaward end of pier (with additional 100 feet as height offset) ● 26 feet along easterly edge of Pier 4 ● No net loss of WDUZ area 	N/A

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>McCourt/Broderick Parcels A, B, C and D</u>			
<p>310 CMR 9.51(3)(c): Conservation of Capacity for Water-Dependent Use (Water-dependent use zone) and 310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)</p>	<p>New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access. At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.</p>	<p>No open space is required</p>	<p>Parcel E (approximately 8,100 SF) will be 100% public open space; open space requirements for Parcels A-D, F shall be aggregated on Parcel E at a 1:1 ratio until Parcel E is completed and then at a 1.25:1 ratio on the McCourt Fan Pier Gateway Project property (i.e., outside of jurisdiction, thus 25% more open space), all of which shall be located adjacent to land subject to c. 91 jurisdiction and with a visual connection to the waterfront; all open space must be standards for open space on Commonwealth Tidelands and provided concurrent with impacts of individual projects.</p>
<p>310 CMR 9.51(3)(e): Conservation of Capacity for Water-Dependent Use (Building height)</p>	<p>New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.</p>	<p>Parcel A: 200 feet Parcels B and C: 250 feet Parcel D: 75 feet</p>	<p>For Parcels A-C: 1 SF of open space for every 2 SF of NNS No offset for Parcel D</p>

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>Barking Crab (2000)</u>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	75 feet	
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	12 feet wide coincident with public access structure, which may be an interior arcaded walkway within the first floor of the new structure	N/A
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone) and 310 CMR 9.51(3)(d): Conservation of Capacity for Water-dependent Use (Lot coverage)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access. At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	No open space is required.	Payment into open space fund.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>Barking Crab (2000) (continued)</u>			
<p>310 CMR 9.51(3)(b): Conservation of Capacity for Water-dependent Use (Location of facilities of private tenancy and facilities of public accommodation)</p>	<p>“...nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline...”</p>	<p>FPTs allowed on pile-support structures, except on the first, second and top floors; all structures must be within the existing pile field FPTs allowed on second floor if the exterior docking facilities, marine services, and interior space dedicated to WD uses are fully retained.</p>	<p>Top floor public observation area (100% of the gross floor area (GFA) on the top floor), capable of being enclosed for all-season use; with appropriate amenities; fully accessible; identified prominently by signage; no purchase required.</p>
<u>Fort Point Historic North District (2000)</u>			
<p>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone) and 310 CMR 9.51(3)(d): Conservation of Capacity for Water-dependent Use (Lot coverage)</p>	<p>New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access. At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.</p>	<p>No open space is required.</p>	<p>1)The City-owned parcel located on Sleeper Street, immediately adjacent to the MBTA Mitigation Park and Parcel “E”, should be designated as the specific locus for investment of the Open Space Fund, unless the City can propose an alternative site that meets the same standards. 2) 33 Sleeper Street, 11-13 Sleeper Street, and 321-323 Congress Street shall participate in the City’s Open Space Fund as provided in the MHP, in accordance with the schedule of contribution proposed in the MHP. 3) The Open Space Fund contributions of 33 Sleeper Street, 11-13 Sleeper Street, and 321-323 Congress Street should be used specifically for the design and construction of open space on the City-owned Sleeper Street parcel, compatible with and supplemental to open space designs for the MBTA Mitigation Park and Parcel “E”. 4) At a minimum, the final design and construction of open space provided to meet these requirements shall satisfy the Chapter 91 standards for open space located on Commonwealth Tidelands.</p>

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>Fort Point Historic North District (2000) (continued)</u>			
			<p>5) All open space commitments must be provided concurrent with the individual development projects. However, overall project work may be phased; for example, one project's contribution may be sufficient to fund the design of a proposed open space, with construction dependent upon contributions from other projects. If necessary, any shortfall in funding beyond the project-specific contributions shall be made up from other sources to fully complete the design and construction of designated open spaces.</p> <p>6) The City shall develop a system that accounts for the status of the aggregation program, and shall maintain a running balance of the parcel to which open space funds are to be credited. Using this open space accounting system, the City shall include a certification of open space status to DEP as part of its Section 18 recommendation on Waterways licenses.</p>
<u>Fort Point Historic South and Industrial Districts (2000)</u>			
<p>310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)</p>	<p>New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.</p>	<p>Historic South District: 150 feet south of Summer Street and 100 feet for remainder of district, except at 60 Necco Court, which is limited to 80 feet.</p>	<p>NNS offset at 2:1 ratio</p>

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
Fort Point Historic South and Industrial Districts (2000) (continued)			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	18 feet along edge of Fort Point Channel for 60 Necco Court, no net loss of WDUZ area in rest of Fort Point Historic South District.	N/A
ICA (2002)			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	Fourth-floor gallery space may cantilever over WDUZ at least 40 feet vertically above grade.	N/A

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
ICA (2002) (continued)			
310 CMR 9.53(2)(b): Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)	At a minimum, at least 50% of the project site must be reserved as open space for water-dependent activity and public access. The open space must be located on land (<i>i.e.</i> , cannot include watershed) and be accessible to the general public at all times. On Commonwealth Tidelands, a maximum of 50% of the required open space (<i>i.e.</i> , 25% or more of the total project site) can be devoted to streets and ways.	Public grandstand setback approximately 24 feet from project shoreline, not less than 74 feet from the project shoreline to the structure at the northeastern edge of the building and not less than 68 feet from the project shoreline to the northwestern edge of the building.	N/A
100 Acres (2009)			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	“New or expanded buildings for non waterdependent use... shall not be located within a waterdependent use zone”. The WDUZ in the MHP area includes a setback for non-water dependent uses that would vary from 80 to 100 feet, depending upon location and characteristics of projects that may be proposed.”	An alternative WDUZ will be established that generally increases the minimum setback to 110 feet from the project shoreline, except for that portion of the planning area between the Fort Point Channel and 60 Necco Court which will have a setback of 18 feet.	The reconfigured WDUZ will provide at least the same land area as would occur under the standard provisions. The WDUZ is larger throughout most of the planning area and will enhance public access and enjoyment of this area of the waterfront. No net loss of WDUZ will occur.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	The minimum width will be widened to 18 feet clear in areas where the WDUZ is at least 100 feet wide and 12 feet clear along the remainder of the shoreline.	The substitution directly benefits the public through enhanced access (open 24 hours/seven days per week); no offsetting public benefit is required.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>100 Acres (2009) (continued)</u>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Allow non water-dependent buildings ranging in height from 80 feet to 180 feet.	The substitution results in a required offset for net new shadow. The proposed offset is additional public open space. This offset is permitted on a 1:2 ratio of additional open space to net new shadow.
<u>150 Seaport Boulevard (2016)</u>			
310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Allow height up to 250 feet Proposed building will create 16,640 sf in net new shadow.	\$1.5 million to improve open space within or adjacent to the South Boston MHP planning area, specifically Martin’s Park at Children’s Wharf. Interior public waiting area and reception space on the ground floor of the proposed development integrated within the general lobby areas, including amenities and programming described above with clear signage on the interior and exterior of the building.
310 CMR 9.51(3)(d): Conservation of Capacity for Water-dependent Use (Lot coverage)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	Up to 75% lot coverage may be permitted.	
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	“New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone”. On the Development Site, the required WDUZ would total 5,768 sf.	The required WDUZ dimensions may be reconfigured as long as a minimum width of ten feet is maintained along the project shoreline and as long as the modification results in no net loss of WDUZ area.	The reconfigured WDUZ will include the ten ft. setback from the existing project shoreline (except that area which is under the cantilevered balcony areas) and one of two alternative areas of approximately 2,000 sf described above, with a preference for “Massport Wharf”.

9.57: continued

2. Table 2: Summary of Amplifications.

Regulatory Provision	Chapter 91 Standard	Approved Amplification	Implementation Mechanism
<u>100 Acres (2009)</u>			
310 CMR 9.52: Utilization of Shoreline for Water-dependent Purposes	“A facility that promotes active use of the project shoreline and requires the provision of a pedestrian network of a kind and to a degree appropriate for the project site.”	<p>The amplification of these requirements directs the implementation of these regulations to the provision of the boating dock facility and pedestrian network envisioned in the Fort Point Channel Watersheet Activation Plan.</p> <p>Additional activation of the Harborwalk and waterfront open space will be provided through the use of historic interpretive elements and displays. The particular type and location of exhibits will be appropriate to this particular location in the harbor, and will follow guidance provided in Section 9 and Appendix 1 of the Plan.</p>	FPCWAP and South Boston Waterfront District Municipal Harbor Planning Area (SBWDMHPA), Section 9 and Appendix 1
310 CMR 9.53: Activation of Commonwealth Tidelands for Public Use	Nonwater-dependent use projects located on Commonwealth Tidelands must promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth and that ensures that private advantages of use are not primary merely incidental to the achievement of public purposes.	The amplification of this requirement will provide public benefits recommended by the Fort Point Channel Watersheet Activation Plan in the WDUZ and adjacent watersheet to promote public uses and enjoyment of Commonwealth tidelands.	FPCWAP

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Amplification	Implementation Mechanism
150 Seaport Boulevard (2016)			
310 CMR 9.53(2)(b): Activation of Commonwealth Tidelands for Public Use (Exterior open space for public recreation)	At a minimum, at least 50% of the project site must be reserved as open space for water-dependent activity and public access. The open space must be located on land (<i>i.e.</i> , cannot include watersheet) and be accessible to the general public at all times. On Commonwealth Tidelands, a maximum of 50% of the required open space (<i>i.e.</i> , 25% or more of the total project site) can be devoted to streets and ways.	5,000 SF of exterior open space on a deck beyond the existing project shoreline.	Easements with Massport

(f) Cohasset Municipal Harbor Plan (November 25, 2020).

1. Table 1. Substitute Standards and Offsetting Measures.

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	New or expanded buildings shall not exceed 35 feet in height above Base Flood Elevation within the Harbor Village District (HVB) Overlay District.	No offset is required because, no new or expanded non-water dependent buildings will be greater than the waterways maximum numerical standard of 55 feet in height.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	Walkways within the HVB Overlay District shall be along the entire length of the water-dependent use zone adjacent to the project shoreline and shall be no less than 25 feet in width.	N/A

9.57: continued

(g) Central Waterfront (Everett) Municipal Harbor Plan (February 10, 2014)

1. Table 1. Substitute Standards and Offsetting Measures

Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measures
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	<p>“New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone”.</p> <p>On the Development Site, the required WDUZ would be 100 feet from the southernmost shoreline along the Mystic River, 85 feet along the embayment, and 100 feet from the northern portion of the shoreline along the embayment.</p>	The required WDUZ dimensions may be modified as long as a minimum width of 25 feet is maintained along the project shoreline and as long as the modification results in no net loss of WDUZ area.	The reconfigured WDUZ will provide at least the same land area as would occur under the standard provisions. A minimum of 25 feet will be maintained along the project shoreline and only Facilities of Public Accommodation will be allowed on the ground floor of any portions of buildings that are located within 50 feet of the project shoreline. No net loss of WDUZ will occur.
310 CMR 9.51(3)(b): Conservation of Capacity for Water-dependent Use (Location of Facilities of Private Tenancy and Facilities of Public Accommodation)	“...nonwater-dependent Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands, nor at the ground level of any filled tidelands within 100 feet of the project shoreline...”	Lower Broadway: FPTs may be allowed within 100 feet of the shoreline.	At least an equivalent area of Facilities of Public Accommodation as required by the regulations will be provided elsewhere on the site in appropriate locations to effectively promote the public use and enjoyment of the project site. FPTs are not allowed within 50 feet of the project shoreline.
310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	<p>Wynn Everett: Allow heights up to 55 feet in Area A and up to 400 feet in Area B, as shown in Figure 2.</p> <p>Lower Broadway: Allow heights up to 105 feet in Area A and up to 150 feet in Area B, as shown in Figure 2.</p>	Where increased heights result in net new shadow, one square foot of new/additional open space beyond what is required in the Waterways regulations will be provided in the Harbor Planning area within or immediately adjacent to jurisdiction for every one square foot of net new shadow.

9.57: continued

Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measures
<p>310 CMR 9.51(3)(d): Conservation of Capacity for Water-dependent Use (Lot coverage)</p>	<p>At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.</p>	<p>Up to 60% lot coverage (resulting in 40% open space) may be permitted.</p>	<p>For Lower Broadway scenario development exceeding 50% lot coverage, one or more of the following open space improvements or public amenities must be provided:</p> <p>As a first priority, and to be pursued before alternative offsets below, unless proven unfeasible due to property ownership or other restrictions, construct and maintain a continuous landscaped pedestrian/bicycle connection between on-site riverfront pathways and DCR open space at Gateway Park, including a minimum of 50,000 square feet of off-site open space located on the MBTA-owned peninsula along and underneath the commuter rail line and/or other portions of the Gateway Center property.</p> <p>For Wynn scenario development, and if the priority offset above is not feasible for the Lower Broadway scenario, one or more of the following should be provided (in prioritized order) to equal at least the amount of lot coverage in excess of the 50% baseline:</p> <ul style="list-style-type: none"> ● For the first 10,000 square feet, provide and maintain a facility to provide river access by boat in Gateway Park (such as a canoe/kayak launch); ● For the next 20,000 square feet, provide and maintain a fishing platform or pier with associated amenities; ● For the next 10,000 square feet, provide and maintain 3,000 linear feet of improved walking and/or bicycle paths in Gateway Park, widened to a minimum of ten feet clear; and ● For every remaining one square foot, provide 25 square feet of ongoing maintenance of DCR facilities and/or property in the planning area which is not already maintained by Gateway Center.

9.57: continued

(h) Gloucester Municipal Harbor Plan and DPA Master Plan (July 6, 1999, as renewed and amended on December 11, 2009 and December 19, 2014).

1. Table 1. Substitute Standards and Offsetting Measures.

Plan-wide (2009, 2014)			
Regulatory Provision	Chapter 91 Standard	Substitution	Offsetting Measures
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows: 1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet; and 2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and 3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet.	For project sites that meet the eligibility standard, the required WDUZ dimensions may be modified as long as a minimum width of 25 feet is maintained along the project shoreline and the ends of piers and wharfs and a minimum of 10 feet along the sides of piers and wharves, and as long as the modification results in no net loss of WDUZ area.	Substitution provision can only be applied to those project sites where it is shown that application of the c. 91 standard would result in an inefficient siting of uses in the WDUZ, and where the reconfiguration achieves greater effectiveness in the use of the water's edge for water-dependent industrial use. The reconfigured zone must be adjacent to the waterfront and result in an increase in WDUZ immediately adjacent to the water. In no case will a reconfigured WDUZ that results in an area separated from the waterfront or in a net loss of WDUZ be allowed.

9.57: continued

Table 2. Summary of Amplifications.

Plan-wide (2009, 2014 (continued))		
Regulatory Provision	Chapter 91 Standard	Approved Amplification
310 CMR 9.36(4)(b): Standards to Protect Water-dependent Uses (Displacement of water-dependent uses)	“...the project shall include arrangements determined to be reasonable by the Department for the water-dependent use to be continued at its existing facility, or at a facility at an alternative location having physical attributes, including proximity to the water, and associated business conditions which equal or surpass those of the original facility and as may be identified in a municipal harbor plan...”	No project will displace existing commercial fishing vessel berthing in Gloucester Harbor without providing reasonably equivalent berthing space on site or at a suitable alternative site not already used by commercial fishing vessels.
310 CMR 9.36(5)(b)4.: Standards to Protect Water-dependent Uses (Supporting DPA Use)	“...in the case of supporting DPA use, conditions governing the nature and extent of operational or economic support must be established to ensure that such support will be effectively provided to water-dependent-industrial uses...”	For properties with a water-dependent industrial hub port use, economic support from the supporting use to the hub use will be presumed. If no water-dependent industrial use exists or is proposed on the site, an investment in on-site waterfront infrastructure (piers, wharves, dredging) to improve capacity for water-dependent industrial use will be required. Whenever feasible, maintenance of existing berthing and creation of new berthing for commercial vessels should be required. If, and only if, none of the above can be achieved adequately, a contribution to the Gloucester Port Maintenance and Improvement Fund will be required as mitigation. This fund shall be used only for investment in water dependent industrial infrastructure (piers, wharves, dredging) within the DPA.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	To the extent practicable for a site, public access facilities shall be integrated into a project to activate the waterfront as part of the open space required with a non-water dependent supporting DPA use but must be sited to be compatible with and not interfere with water-dependent industrial uses and activities. Open areas used to support working waterfront activities seasonally during the year shall accommodate temporary public access when possible. Within the WDUZ no use shall be licensed, unless it provides access to water-borne vessels wherever possible.

9.57: continued

	Plan-wide (2009, 2014) continued	
Regulatory Provision	Chapter 91 Standard	Approved Amplification
310 CMR 9.12(2)(b): Determination of Water-dependency (Water-dependent industrial uses)	The Department shall find to be water-dependent industrial the following uses: 1. Marine terminals and related facilities for the transfer between ship and shore, and the storage of bulk materials or other goods transported in waterborne commerce 2. Facilities associated with commercial passenger vessel operations 3. Manufacturing facilities relying primarily on the bulk receipt or shipment of goods by waterborne transportation 4. Commercial fishing and fish processing facilities 5. Boatyards, dry docks, and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures 6. Facilities for tugboats, barges, dredges, or other vessels engaged in port operations or marine construction 7. Any water-dependent use listed in 310 CMR 9.12(2)(a)9. through 14., provided the Department determines such use to be associated with the operations of a Designated Port Area 8. Hydroelectric power generating facilities 9. Offshore renewable energy infrastructure facilities in the Commonwealth, including ocean wave energy facilities used to deliver electricity, natural gas or Telecommunications services to the public from an offshore facility located outside the Commonwealth; and 10. Other industrial uses or infrastructure facilities which cannot reasonably be located at an inland site as determined in accordance with 310 CMR 9.12(2)(c) or (d).	In addition to existing allowable water-dependent industrial uses, MassDEP may find that marine research, testing or development activities are water-dependent industrial uses if they include the following characteristics: 1. Access to coastal waters for research, testing or development; and 2. Commercial fishing facilities, including those engaged in research, testing, or development related to commercial fishing safety, conservation, and sustainability; or 3. Boatyards, dry docks, and other fishing facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures engaged in marine science and technology, including research, development, or testing; or 4. Facilities for tugboats, barges, dredges, or other vessels engaged in port operations or marine construction, including those related to marine research, development, or testing.

Table 3: Planning Principles and Priorities.

Planning Principle/Priority	Decision Standard	Implementation Mechanism
Allow up to 50% DPA supporting commercial uses on filled tidelands for most properties within the DPA by transferring the supporting use allowances for certain key parcels that will be 100% water-dependent industrial use.	MassDEP shall not license commercial DPA supporting uses within the Gloucester DPA within filled and flowed tidelands in the following areas: on the State Fish Pier; the U.S. Coast Guard Facility; Cruiseport Gloucester; or within or on any DPA roadway or pile-supported pier. MassDEP may license commercial DPA supporting uses on up to 50% of a project site on filled tidelands on DPA properties not listed above.	Chapter 91 Licensing

9.57: continued

(i) Lynn Municipal Harbor Plan and DPA Master Plan (June 28, 2010, as renewed and amended on November 25, 2020).

1. Table 1. Substitute Standards and Offsetting Measures.

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<p>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</p>	<p>New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows:</p> <ol style="list-style-type: none"> 1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet; and 2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and 3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet. 	<p>A minimum WDUZ setback of 100 feet from the shoreline, with a net total WDUZ area equal to or greater than the area of a 200 feet WDUZ setback for the project site. Applies to the harbor focus area only.</p>	<p>No offset is required as the substitution increases the WDUZ required under 310 CMR 9.51(3)(c).</p>
<p>310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)</p>	<p>“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”</p>	<p>Minimum walkway width of 15 to 30 feet outside of the DPA and within the harbor focus area, unless the width is physically constrained. In no cases will the allowed width be less than ten feet. Width shall be consistent with the guidance provided in the 2019 Waterfront Open Space Master Plan (“2019 WOSMP”) included as Appendix A. All opportunities to provide the appropriate width should be considered, including cantilevering as appropriate.</p>	<p>No offset is required because in all cases the waterfront promenade will be no less than the waterways minimum numerical standard of ten feet wide.</p>

9.57: continued

2. Table 2. Summary of Amplifications

Regulatory Provision	Chapter 91 Standard	Approved Amplification
310 CMR 9.52: Utilization of Shoreline for Water-dependent Purposes	A nonwater-dependent use project that includes fill or structures on any tidelands shall devote a reasonable portion of such lands to water-dependent use, including public access in the exercise of public rights in such lands. In applying this standard, the Department shall take into account any relevant information concerning the capacity of the project site to serve such water-dependent purposes, especially in the vicinity of a water-dependent use zone; and shall give particular consideration to applicable guidance specified in a municipal harbor plan, as provided in 310 CMR 9.34(2)(b)2.	Applies the tidelands standards at 310 CMR 9.53(2) for public use to any tideland areas within the expanded WDUZ outside of the DPA and within the harbor focus area, with specific guidance from the 2019 Waterfront Open Space Master Plan (2019 WOSMP). This amplification requires that these areas are designed to “maintain substantial public activity on the site on a year-round basis, with public parks, plazas, and observation areas that also have public amenities that shall include seating, lighting, trash receptacles, restrooms, and children’s play areas, as appropriate” and must be consistent with the 2019 WOSMP.
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	A pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a).	Design, materials, and layout for the waterfront promenade within the WDUZ and outside of the DPA and within the harbor focus area shall be consistent with the guidelines provided in the 2019 WOSMP.
310 CMR 9.52(1)(b)2.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	A pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a); at a minimum, such network shall consist of: appropriate connecting walkways that allow pedestrians to approach the shoreline walkways from public ways or other public access facilities to which any tidelands on the project site are adjacent. Such pedestrian access network shall be available to the public for use in connection with fishing, fowling, navigation, and any other purposes consistent with the extent of public rights at the project site.	Specifies locations, with a process for substitute locations, for public access walkways to connect the Lynnway to the project shoreline through the harbor planning area (HPA). Design and amenity requirements for these lateral accessways shall be as shown and described in the 2019 WOSMP.

3. Table 3: Planning Principles and Priorities.

Planning Principle/Priority	Decision Standard	Implementation Mechanism
Continue lateral pedestrian access network with consistent design and amenities to the Lynnway	Lateral accessways shall be in the locations and with design and amenity requirements as shown and described in the 2019 WOSMP for entire length	Required through the Secretary’s discretionary provisions for a public benefits determination under 301 CMR 13.00

9.57: continued

Planning Principle/Priority	Decision Standard	Implementation Mechanism
Require the use of nature-based shorelines and incorporation of increased elevation to address future climate-related impacts.	Where feasible and appropriate, consistent with guidance from the 2019 WOSMP	Chapter 91 licensing

(j) Nantucket and Madaket Municipal Harbor Plan (December 21, 2009)

1. Table 1. Summary of amplifications

Regulatory Provision	Chapter 91 Standard	Amplification
310 CMR 9.51: Conservation of Capacity for Water-dependent Use	A nonwater-dependent use project on any tidelands shall not unreasonably diminish the capacity of such lands to accommodate water-dependent use. Facilities of Private Tenancy must be developed in a manner that prevents significant conflicts in operation with water-dependent uses that can reasonably be expected to locate on or near the water.	The amplification of these requirements prohibits any new non-water dependent use, or extension of an existing non-water dependent use, that would: <ol style="list-style-type: none"> 1. displace or significantly disrupt an existing water dependent use; 2. unreasonably disrupt an existing water-dependent use; 3. unreasonably diminish the capacity of the site to accommodate future water-dependent uses; and 4. impede or infringe upon existing public access
310 CMR 9.51: Conservation of Capacity for Water-dependent Use and 310 CMR 9.35(2)(a): Standards to Preserve Water-related Public Rights (Public Navigation Rights Applicable to All Waterways)	A nonwater-dependent use project on any tidelands shall not unreasonably diminish the capacity of such lands to accommodate water-dependent use. Facilities of Private Tenancy must be developed in a manner that prevents significant conflicts in operation with water-dependent uses that can reasonably be expected to locate on or near the water. The project shall not significantly interfere with public rights of navigation.	The amplification of these requirements prohibits certain water-dependent uses determined in the Plan to conflict with the traditional and historic use and character of the Harbor Overlay District, including: <ul style="list-style-type: none"> ● Cruise ship terminals or support services; ● Personal watercraft rental; and ● New facilities of private tenancy.
310 CMR 9.35(3)(a)1. and 2.: Standards to Preserve Water-related Public Rights (Public Rights of Fishing and Fowling Applicable to Tidelands and Great Ponds) and 310 CMR 9.35(2)(a): Standards to Preserve Water-related Public Rights (Public Navigation Rights Applicable to All Waterways)	The project shall not: <ol style="list-style-type: none"> 1. pose a substantial obstacle to the public's ability to fish or fowl in waterway areas adjacent to the project site; 2. result in the elimination of a traditional fishing or fowling location used extensively by the public; or 3. interfere with public rights of navigation 	The amplification of these requirements prohibits the construction of new private docks or piers, but exempts certain public or commercial water-dependent dock and pier projects within the Harbor Overlay District.

9.57: continued

(k) New Bedford Fairhaven Municipal Harbor Plan and DPA Master Plan (September 24, 2002, as renewed and amended on June 14, 2010)

1. Table 1. Substitute Standards and Offsetting Measures

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>Shoreline within MHP Planning Area and outside of the DPA</u>			
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network)	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	Plan proposes to establish a dedicated 20-foot wide public access walkway along the portion of New Bedford and Fairhaven shoreline that is located outside the DPA and within that portion of the harbor bounded by the hurricane barrier on the South and the Rt. 195 bridge on the North.	No offsetting measures were necessary as the proposed substitution “will promote, with comparable or greater effectiveness, the state tidelands policy objectives.”

2. Table 2: Planning Principles and Priorities.

Planning Principle/Priority	Decision Standard	Implementation Mechanism	Notes
<u>Area-wide</u>			
2010 MHP and 2020 MHP Clarification approved Potential Navigational Dredge Areas (PNDA) and potential Waterfront Development Shoreline Facility (WDSF) locations. Inclusion in the MHP and Clarification allowed these areas to be eligible for navigational dredging and potential filling of shoreline facilities with clean material through a stream-lined permitting process within the Superfund Regulations known as the State Enhanced Remedy (SER).	EPA makes all final decisions on SER Work Plans for PNDA’s and WDSFs. Approved SER activities are exempt from all state and federal procedural regulatory requirements, but must continue to meet all substantive environmental standards.	MADEP coordinates the SER Work Plan reviews and inputs from state and federal agencies. EPA makes all final decisions on SER Work Plans for PNDA’s and WDSFs.	<i>See 2020 MHP Clarification for potential PNDA and WDSF location.</i>

(l) (Provincetown Harbor Management Plan (May 4, 1999, as renewed and amended on February 29, 2012 and April 10, 2019)

9.57: continued

1. Table 1. Substitute standards and offsetting measures

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<u>Fisherman's Wharf</u>			
310 CMR 9.32(1)(a): Categorical Restrictions on Fill and Structures [Tideland (Outside of ACECs and DPAs)]	Public walkway must be located within the footprint of the existing pile supported structure	The required ten feet wide walkway on the western side of the wharf may be located either within the existing pier footprint or cantilevered beyond the footprint of the existing pier.	Payment of \$205,500 to the Harbor Access Gift Fund
<u>227R Commercial Street</u>			
310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone.	WDUZ reconfiguration (no net loss); no less than 25 feet setback	N/A
310 CMR 9.51(3)(d): Conservation of Capacity for Water-Dependent Use (Lot coverage)	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	Lot Coverage shall not exceed 60%	Monetary contribution to Harbor Access Fund; Public amenities. Amount to be determined at time of licensing

2. Table 2. Summary of Amplifications.

Regulatory Provision	Chapter 91 Standard	Approved Amplification
310 CMR 9.16(2)(c): Fees (Tidewater displacement fee)	Except as provided in 310 CMR 9.16(4), prior to issuance of a license for any fill or structure that will displace tidewaters below the high water mark, the applicant, or his or her heirs or assignees responsible for such displacement, shall, at the discretion of [DEP] [consider] a contribution to a special fund or other program managed by a public agency or nonprofit organization in order to directly provide public harbor improvements.	The Provincetown Harbor Plan requires that tidewater displacement fees levied by DEP be paid directly to the Provincetown Harbor Access Fund, as described in Section 6(a)(2) of this Plan.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Amplification
<p>310 CMR 9.22(1): Maintenance, Repair, and Minor Project Modifications (Maintenance and repair of fill and structures)</p>	<p>“No application for license or license amendment shall be required for [maintenance and repair] activity. Maintenance and repair include... restoration to the original license specifications of licensed fill or structures that have been damaged by catastrophic events, provided that no change in use occurs and that... in the case of flood related damage, the cost of such restoration does not exceed 50% of the cost of total replacement according to the original license specifications...”</p>	<p>The Provincetown Harbor Plan calls for a strict enforcement of this requirement and for close coordination between DEP and the Provincetown Building Inspector, to determine when further licensing is required for structures that have been damaged beyond the 50% replacement cost limit.</p>
<p>310 CMR 9.22(3): Maintenance, Repair, and Minor Project Modifications (Minor project modifications)</p>	<p>The licensee may undertake minor modifications to a license project without filing an application for license or license amendment. Such modifications are limited to... No such modifications shall be undertaken until the licensee has submitted written notice to the Department describing the proposed work in sufficient detail with reference to any relevant license plans, for the Department to determine compliance with the above conditions.</p>	<p>The Provincetown Harbor Plan calls for strict enforcement of this requirement and for DEP to provide the Harbor Committee with opportunity to review and comment upon any written notice of proposed minor project modification.</p>

9.57: continued

(m) Salem Municipal Harbor Plan and DPA Master Plan (June 24, 2008)

1. Table 1. Substitute Standards and Offsetting Measures

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
<p>310 CMR 9.51(3)(c): Conservation of Capacity for Water-dependent Use (Water-dependent use zone)</p>	<p>New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows:</p> <p>1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet;</p>	<p>The minimum width of the WDUZ along the waterfront will be no less than 20 feet; the remaining area required by the Chapter 91 WDUZ calculation may be redistributed to create pedestrian/view corridors.</p> <p>Applies only to Sub-area A South Commercial Waterfront District.</p>	<p>There can be no net loss of WDUZ area. Requires the creation of two permanent pedestrian access corridors and one permanent view corridor linking the downtown area of Salem to the waterfront.</p>
<p>310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)</p>	<p>New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.</p>	<p>Allow non-water dependent buildings to be 70 feet in height, consistent with local zoning.</p> <p>Applies only in Sub-area A in the South Harbor District.</p>	<p>Additional public open space is required on the site calculated by determining the additional shadow cast at the ground level by the additional building mass during full sun conditions on October 23rd between 9:00 A.M. and 3:00 P.M. No more than half the additional open space may be used for parking.</p>
<p>310 CMR 9.51(3)(e): Conservation of Capacity for Water-dependent Use (Building height)</p>	<p>New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.</p>	<p>Allow non-water dependent buildings to be 70 feet in height, consistent with local zoning.</p> <p>Applies only in the Waterfront Complex site at Pickering Wharf.</p>	<p>Require the addition of a ground-level public space in a “turret” portion of the new Harborwalk gateway adjacent to Congress Street. Require additional landscaping and design elements to improve appearance and to screen the gateway from the building’s loading and service areas. Require construction of an observation platform on the southeast corner of Pickering Wharf.</p>

9.57: continued

Regulatory Provision	Chapter 91 Standard	Approved Substitution	Approved Offsetting Measures
310 CMR 9.52(1)(b)1.: Utilization of Shoreline for Water-dependent Purposes (Pedestrian access network).	“...walkways and related facilities along the entire length of the Water-Dependent Use Zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width...”	Require a dedicated 20-foot wide public walkway around the South River, of which a minimum of ten feet shall be an unobstructed pathway. The inland ten feet will be used for landscaping and accessory amenities to enhance the general public’s waterfront experience. Applies only in the South River Waterfront Sub-area	The substitution directly benefits the public through improved access of 20 feet instead of ten feet. No additional offsetting benefit is required.

2. Table 2. Summary of Amplifications.

Regulatory Provision	Chapter 91 Standard	Approved Amplification
310CMR 9.02: <i>Definitions</i> (Supporting DPA Uses)	The amount of supporting Designated Port Area Uses on filled tidelands within a DPA shall not exceed 25% of the area of the project site.	Only water-dependent industrial uses and temporary uses will be allowed in the Industrial Port District sub-area of the DPA.

(n) Hull Harbor Plan (February 14, 2000)

This Approved Harbor Plan does not include any substitute provisions.

(o) South Coastal Harbor (Chatham) Management Plan (August 19, 1994, as renewed on July 23, 1999, October 21, 2005, and May 12, 2015)

This Approved Harbor Plan does not include any substitute provisions.

(p) Edgartown Municipal Harbor Plan (October 2, 1997, as renewed on April 30, 2003)

This Approved Harbor Plan does not include any substitute provisions.

REGULATORY AUTHORITY

310 CMR 9.00: M.G.L. c. 21A, §§ 2, 4, 8 and 14; M.G.L. c. 91, §§ 1 through 63; M.G.L. c. 91, § 18.

NON-TEXT PAGE



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Notice of Compliance

Regulation Filing To be completed by filing agency

CHAPTER NUMBER: 555 CMR 6.00

CHAPTER TITLE: USE OF FORCE BY LAW ENFORCEMENT OFFICERS

AGENCY: Peace Officer Standards and Training Commission

THIS REGULATION WAS ORIGINALLY FILED AS AN EMERGENCY:

Published in Massachusetts Register Number:

1476

Date:

8/19/22

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

Pursuant to G.L. c. 6E, § 15(d) and G.L. c. 6, § 116, the Muni. Police Training Committee approved on 10/26/2022 555 CMR 6.00 for promulgation. Per Exec. Order No. 145, the Local Government Advisory Committee received on 09/19/2022 Notices of Public Hearing and Small Business Impact Stmt.

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

Date of public hearing or comment period: 10/11/2022

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

Date amended small business impact statement was filed: November 2, 2022

AGENCY CONTACT: Randall E. Ravitz PHONE: 617-418-0882

ADDRESS: 100 Cambridge Street, 14th Floor, Boston, MA 02114

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

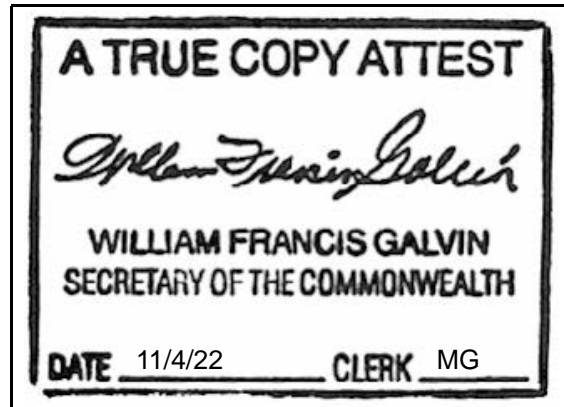
SIGNATURE: SIGNATURE ON FILE DATE: Nov 03 2022

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 8/5/22

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
41 - 46	41 - 46



555 CMR 6.00: USE OF FORCE BY LAW ENFORCEMENT OFFICERS

Section

- 6.01: Purpose and Scope
- 6.02: Authorization
- 6.03: Definitions
- 6.04: Use of Non-deadly Force
- 6.05: Use of Deadly Force
- 6.06: Duty to Intervene
- 6.07: Use of Force Reporting
- 6.08: Mass Demonstrations, Crowd Control, and Reporting
- 6.09: Investigation When Use of Force Results in a Death or Serious Bodily Injury
- 6.10: Use of Force Training

6.01: Purpose and Scope

(1) Purpose. The purpose of 555 CMR 6.00 is to establish rules governing the use of force by law enforcement officers. 555 CMR 6.00 is promulgated pursuant to M.G.L. c. 6E, § 15(d) requiring the Peace Officer Standards and Training Commission and the Municipal Police Training Committee to jointly promulgate rules and regulations governing the use of force by law enforcement officers.

(2) Scope. 555 CMR 6.00 applies to all law enforcement officers as defined in M.G.L. c. 6E, § 1.

6.02: Authorization

555 CMR 6.00 is promulgated pursuant to M.G.L. c. 6E, § 15(d) requiring the Peace Officer Standards and Training Commission and the Municipal Police Training Committee to jointly promulgate rules and regulations governing the use of force by law enforcement officers.

6.03: Definitions

Chokehold. The use of a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of a law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow with the intent of or with the result of causing bodily injury, unconsciousness, or death.

Commission. The Massachusetts Peace Officer Standards and Training Commission as established in M.G.L. c. 6E, § 2.

Committee. The Municipal Police Training Committee as established in M.G.L. c. 6, § 116.

Deadly Force. Physical force that can reasonably be expected to cause death or serious physical injury.

De-escalation Tactics. Proactive actions and approaches used by an officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force including, but not limited to, verbal persuasion, warnings, slowing down the pace of an incident, waiting out a person, and requesting additional resources to resolve the incident including, but not limited to, calling in medical or licensed mental health professionals, as defined in M.G.L. c. 111, § 51½(a), to address a potential medical or mental health crisis. De-escalation shall include, but is not limited to, issuing a summons instead of executing an arrest where feasible

Department/Police Department/Law Enforcement Agency/Agency.

(a) A state, county, municipal or district law enforcement agency including, but not limited to, a city, town or district police department, the office of environmental law enforcement, the University of Massachusetts police department, the department of the state police, the Massachusetts Port Authority police department, also known as the Port of Boston Authority police department, and the Massachusetts Bay Transportation Authority police department;

6.03: continued

- (b) a sheriff's department in its performance of police duties and functions; or
- (c) a public or private college, university or other educational institution or hospital police department.

Dog. For the purposes herein, shall also refer to a K-9, canine or police dog.

Electronic Control Weapon (ECW)/Conducted Energy Devices (CEDs). A portable device or weapon, regardless of whether it passes an electrical shock by means of a dart or projectile *via* a wire lead, from which an electrical current, impulse, wave or beam that is designed to incapacitate temporarily by causing neuromuscular incapacitation or pain so that an officer can regain and maintain control of the subject.

Force. The amount of physical effort, however slight, required by police to compel compliance by an unwilling individual.

Kettling. Confinement or corralling by law enforcement of a group of demonstrators or protesters in a small area without any means of egress as a method of crowd control, management, or restraint.

Law Enforcement Officer/Officer. Any officer of an agency, including the head of the agency; a special state police officer appointed pursuant to M.G.L. c. 22C, § 58 or 63; a special sheriff appointed pursuant to M.G.L. c. 37, § 4, performing police duties and functions; a deputy sheriff appointed pursuant to M.G.L. c. 37, § 3 performing police duties and functions; a constable executing an arrest for any reason; or any other special, reserve, or intermittent police officer.

Non-deadly Force. Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

Officer-involved Injury or Death. Any event during which an officer:

- (a) discharges a weapon, or stun gun, as defined in M.G.L. c. 140, § 121, actually or proximately causing injury or death to another;
- (b) discharges any stun gun as defined in said M.G.L. c. 140, § 121 actually or proximately causing injury or death to another;
- (c) uses a chokehold, in violation of M.G.L. c. 6E, § 14(c), actually or proximately causing injury or death of another;
- (d) discharges tear gas or other chemical weapon, actually or proximately causing injury or death of another;
- (e) discharges rubber pellets from a propulsion device, actually or proximately causing injury or death of another;
- (f) deploys a dog, actually or proximately causing injury or death of another;
- (g) uses deadly force, actually or proximately causing injury or death of another;
- (h) fails to intervene, as required by M.G.L. c. 6E, § 15, to prevent the use of excessive or prohibited force by another officer who actually or proximately causes injury or death of another; or
- (i) engages in a physical altercation with a person who sustains serious bodily injury or requests or receives medical care as a result.

Passive Resistance. An individual who is noncompliant with officer commands that is nonviolent and does not pose an immediate threat to the officer or the public.

Serious Bodily Injury. Bodily injury that results in:

- (a) permanent disfigurement;
- (b) protracted loss or impairment of a bodily function, limb, or organ; or
- (c) a substantial risk of death.

Tear Gas or Other Chemical Weapons (CW). Any weapon that contains chemical compounds that temporarily make people unable to function by causing irritation to the eyes, mouth, throat, lungs, and skin, or that otherwise restrain a person by causing pain. This shall not include oleoresin capsicum (OC) spray.

6.04: Use of Non-deadly Force

- (1) A law enforcement officer shall not use force upon another person, unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary and proportionate to:
 - (a) effect the lawful arrest or detention of a person;
 - (b) prevent the escape from custody;
 - (c) prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm, while protecting the safety of the officer or others; or
 - (d) defend against an individual who initiates force against an officer.
- (2) A law enforcement officer shall use only the amount of force necessary against an individual who is engaged in passive resistance to effect the lawful arrest or detention of said individual and shall use de-escalation tactics where feasible.
- (3) Physically escorting or handcuffing an individual with minimal or no resistance does not constitute a use of force for purposes of 555 CMR 6.04. Use of force does include the pointing of a firearm, ECW, CED or CW at an individual and the use of OC spray on an individual or directed toward an individual.
- (4) Officers shall always provide appropriate medical response to individuals who are exhibiting signs of or complaining of injury or illness following a non-deadly use of force when safe and tactically feasible.
- (5) All law enforcement officers shall be properly trained and certified in the use of any less-lethal weapons before being authorized to carry or use such force options.
- (6) Except to temporarily gain, regain or maintain control of an individual and apply restraints, a law enforcement officer shall not intentionally sit, kneel, or stand on an individual's chest or spine, and shall not force an individual to lie on their stomach. In no event may a law enforcement officer intentionally sit, kneel, or stand on an individual's neck or head.
- (7) A law enforcement officer shall not obstruct the airway or limit the breathing of any individual, nor shall a law enforcement officer restrict oxygen or blood flow to an individual's head or neck. An individual placed on their stomach during restraint should be moved into a recovery position or seated position as soon as practicable.

6.05: Use of Deadly Force

- (1) A law enforcement officer shall not use deadly force upon a person, unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm, and;
 - (a) The imminent harm poses an imminent danger of death or serious bodily injury to the officer or another person;
 - (b) The officer attempts as many de-escalation tactics that are feasible under the circumstances, including utilizing barriers where feasible; and
 - (c) The officer uses only the amount of force that is objectively reasonable.
- (2) A law enforcement officer shall not use a chokehold or other tactics that restrict or obstruct an individual's breathing or oxygen or blood flow to an individual's head or neck. A law enforcement officer shall not be trained to use a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow.
- (3) An officer may not use deadly force against a person who poses only a danger to themselves.
- (4) A law enforcement officer shall not discharge any firearm into or at a moving motor vehicle unless, based on the totality of the circumstances, including the risk of safety to other persons in the area, such discharge is objectively reasonable, necessary to prevent imminent harm to a person and the discharge is proportionate to the threat of imminent harm; and only if the following conditions exist:

6.05: continued

- (a) A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted or are not present or practical, which includes moving out of the path of the vehicle;
- (b) Officers have not intentionally positioned themselves in such a way as to create a likelihood of being struck by an occupied vehicle (*e.g.*, surrounding a vehicle at close proximity while dismounted);
- (c) The officer is not firing strictly to disable the vehicle; and
- (d) The circumstances provide a high probability of stopping or striking the intended target.

(5) A law enforcement officer shall not use deadly force at any point in time when there is no longer an objectively reasonable belief that an individual currently and actively poses an immediate threat of serious bodily harm or death, even if deadly force would have been justified at an earlier point in time.

(6) Where feasible based on the totality of the circumstances, officers shall verbally identify themselves as police officers and issue some warning before using deadly force.

(7) Officers shall always provide appropriate medical response to an individual following a use of deadly force when safe and tactically feasible.

6.06: Duty to Intervene

A law enforcement officer present and observing another officer using or attempting to use physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances, shall intervene to prevent the observed officer's use of unnecessary or unreasonable force, regardless of the rank of the officer so observed, unless intervening would result in imminent harm to the officer or another identifiable individual.

The failure of a law enforcement officer to intervene as set forth in 555 CMR 6.06 may subject the officer to de-certification by the Commission.

6.07: Use of Force Reporting

(1) Law enforcement agencies shall develop and implement a policy and procedure for reporting the use of force. Such policy shall mandate reporting such incidents including, but not limited to, officer-involved injuries or deaths as described in 555 CMR 6.00, and include the use of a standard use of force reporting form as approved by the Committee and the Commission which shall be completed by any officer who uses force.

(2) Law enforcement agencies shall report to the National Use of Force Data Collection Database when actions by a law enforcement officer resulted in the death or serious bodily injury of an individual, or when a law enforcement officer, in the absence of death or serious bodily injury, discharged a firearm at or in the direction of a person.

(3) Law enforcement agencies are not required to report the discharge of a firearm during training or qualification exercises, or for the purposes of animal destruction/euthanasia where necessary.

(4) An officer who observes another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances shall report the incident to an appropriate supervisor as soon as reasonably possible but not later than the end of the officer's shift. The officer shall prepare a detailed written statement describing the incident consistent with uniform protocols. The officer's written statement shall be included in the supervisor's report.

(5) An officer who knowingly makes an untruthful statement concerning a material fact or knowingly omits a material fact from a use of force report may be subject to decertification.

6.07: continued

- (6) Law enforcement agencies shall develop and implement a policy and procedure for law enforcement personnel including, but not limited to, law enforcement officers, to report abuse by other law enforcement personnel including, but not limited to, law enforcement officers, without fear of retaliation or actual retaliation.
- (7) Any harassment, intimidation, or retaliation against any officer who either intervened to prevent or stop an excessive force incident or made, intended to make, or is required to make a report regarding the witnessed excessive force incident shall be reported immediately to an appropriate supervisor and will not be tolerated. Any such actions may result in decertification.
- (8) All use of force reports shall be retained and maintained by the law enforcement agency/department and are subject to discovery and access through the Massachusetts Public Records Law M.G.L. c. 66.

6.08: Mass Demonstrations, Crowd Management, and Reporting

- (1) A police department shall establish plans to avoid and to de-escalate potential or actual conflict between officers and mass demonstration participants. When a police department obtains advance knowledge of a planned mass demonstration within the police department's jurisdiction, the police department shall diligently attempt in good faith to:
 - (a) communicate with organizers of the event before the event occurs in an effort to establish reliable channels of communication between officers and event participants, and
 - (b) discuss and establish logistical plans to avoid or, if necessary, to de-escalate potential or actual conflict between law enforcement officers and mass demonstration participants.
- (2) The department shall designate an officer in charge of de-escalation planning and communication to carry out the above plans within the department.
- (3) A law enforcement officer shall not discharge or order the discharge of tear gas or any other chemical weapon, discharge or order the discharge of a kinetic impact device or rubber pellets from a propulsion device or order the release of a dog to control or influence a person's behavior unless:
 - (a) de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and
 - (b) the measures used are necessary to prevent imminent harm and the foreseeable harm inflicted by the tear gas or the chemical weapon, kinetic impact device, rubber pellets or dog is proportionate to the threat of imminent harm.
- (4) If a law enforcement officer utilizes or orders the use of kinetic impact devices, rubber bullets, CEDs, CWs, ECWs, or a dog against a crowd, the law enforcement officer's appointing agency shall file a report with the Commission detailing all of the measures that were taken in advance of the event to reduce the probability of disorder and all de-escalation tactics and other measures that were taken at the time of the event to de-escalate tensions and avoid the necessity of using said weapons, including a detailed justification of why use of said weapons was objectively reasonable.
- (5) Canines should not be utilized for crowd control, restraint, or management of peaceful demonstrations, but may be deployed for crowd control, restraint, or management of peaceful demonstrations in isolated circumstances related to bomb detection, pursuit of suspects in buildings, and related situations. Utilization does not include circumstances in which the canine remains on a short lead in close proximity to the handler and is well behind the line of contact between law enforcement and civilian personnel.
- (6) The use of Kettling as a means of crowd control, crowd management, or crowd restraint is prohibited.

6.09: Investigation When Use of Force Results in a Death or Serious Bodily Injury

Law enforcement agencies shall develop and implement a policy and procedure for reporting a use of force that results in a death or serious bodily injury.

Whenever an officer uses force that results in a death or serious bodily injury, the Officer-in-charge shall immediately notify the agency head or their designee. The agency shall conduct an investigation according to their policies and protocols.

If the use of force involved a weapon, the agency head or their designee shall secure the weapon or weapons used for examination and maintain the appropriate chain of custody protocols.

6.10: Use of Force Training

(1) The Committee shall develop and periodically deliver use of force training to law enforcement officers consistent with 555 CMR 6.00 including, but not limited to:

- (a) de-escalation tactics;
- (b) handling emergencies involving individuals with mental illness;
- (c) responding to mass gatherings;
- (d) cultural competency;
- (e) progression of force; and
- (f) lawful use of force techniques and equipment on a schedule to be determined by the Committee.

(2) The Commission and the Committee shall jointly develop a model use of force policy. All law enforcement agencies shall have a written use of force policy consistent with the model policy and the agency's particular mission; provided, however, that an agency's use of force policy shall comply with 555 CMR 6.00 and all relevant state and federal laws.

REGULATORY AUTHORITY

555 CMR 6.00: M.G.L. c. 6E, § 15(d).



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **603 CMR 49.00**

CHAPTER TITLE: **Notification of Bullying or Retaliation**

AGENCY: **Department of Elementary and Secondary Education**

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

603 CMR 49.00 governs the requirements related to the duty of the principal or leader of a public school, approved private day or residential school, collaborative school, or charter school to notify the parents or guardians of a target and an aggressor (when the aggressor is a student) when there is an incident of bullying or retaliation, and to notify the local law enforcement agency when criminal charges may be pursued against the aggressor. The current amendments conform the regulatory definition of bullying to the statutory definition in M.G.L. c. 71, s. 37O, as amended by St. 2012, c. 38, sec. 72, and also make non-substantive changes in formatting and numbering.

REGULATORY AUTHORITY: **M.G.L. c. 71, § 37O, and c. 69, § 1B**

AGENCY CONTACT: **Joshua Varon** PHONE: **781-338-3400**

ADDRESS: **75 Pleasant Street, Malden, MA 02148**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

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

Joint Committee on Education, 8/16/22; Massachusetts Municipal Association, 8/16/22; Department of Housing and Community Development, 8/16/22; Requirements of Executive Order # 562 met.

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

Date of public hearing or comment period: **9/2/11 - 9/23/22**

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

For the first and second year: _____

For the first five years: _____

No fiscal effect: XX

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

Date amended small business impact statement was filed: 10/25/22

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

Bullying
Anti-Bullying

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

Amend 603 CMR 49.00

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Nov 09 2022

Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 11/25/22

CODE OF MASSACHUSETTS REGULATIONS

Remove these Pages:	Insert these Pages:
5 & 6	5 & 6
423 - 426	423 - 426

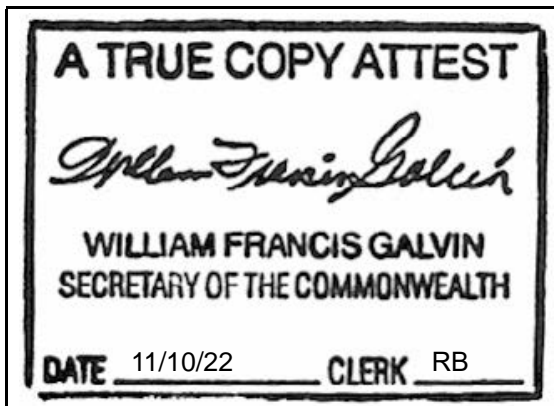


Table of Contents

	<u>Page</u>
(603 CMR 32.00: RESERVED)	327
603 CMR 33.00: ANTI-HAZING REPORTING	333
Section 33.01: Authority	333
Section 33.02: Scope and Purpose	333
Section 33.03: Definitions	333
Section 33.04: Filing of Reports	333
Section 33.05: Notifying the Attorney General	334
(603 CMR 34.00: RESERVED)	335
603 CMR 35.00: EVALUATION OF EDUCATORS	337
Section 35.01: Scope and Purpose	337
Section 35.02: Definitions	337
Section 35.03: Standards and Indicators of Effective Teaching Practice	338.2
Section 35.04: Standards and Indicators of Effective Administrative Leadership Practice	338.3
Section 35.05: Evaluation of Administrators under Individual Employment Contracts	338.5
Section 35.06: Evaluation Cycle	338.5
Section 35.07: Evidence Used in Evaluation	338.7
Section 35.08: Performance Level Ratings	338.7
Section 35.09: Peer Assistance and Review	338.8
Section 35.10: Implementation and Reporting	338.8
(603 CMR 36.00 THROUGH 40.00: RESERVED)	339
603 CMR 41.00: REGIONAL SCHOOL DISTRICTS	383
Section 41.01: Definitions	383
Section 41.02: Reorganization Procedures	384
Section 41.03: Department of Education Approval	384
Section 41.04: Municipal Representatives in Regional School District Collective Bargaining	385
Section 41.05: Regional School District Budgets	386
Section 41.06: Excess and Deficiency Funds	386.3
Section 41.07: Fiscal Control of Regional School Districts by the Commissioner	386.3
(603 CMR 42.00 AND 43.00: RESERVED)	387
603 CMR 44.00: EDUCATOR LICENSE RENEWAL	391
Section 44.01: Purpose	391
Section 44.02: Definitions	391
Section 44.03: General Provisions	392
Section 44.04: Individual Professional Development Plans	393
Section 44.05: Approval of Professional Development Plans	393
Section 44.06: Professional Development Requirements	394
Section 44.07: Inactive and Invalid Licenses	394
Section 44.08: Application Process	394.1
Section 44.09: Documentation and Recordkeeping	394.1
Section 44.10: Reconsideration	394.2
Section 44.11: Failure to Satisfy Renewal Requirements	394.2
Section 44.12: Hardship Waiver or Modification	394.3
(603 CMR 45.00: RESERVED)	395

Table of Contents

	<u>Page</u>
603 CMR 46.00: PREVENTION OF PHYSICAL RESTRAINT AND REQUIREMENTS IF USED	397
Section 46.01: Scope, Purpose and Construction	397
Section 46.02: Definitions	397
Section 46.03: Use of Restraint	399
Section 46.04: Policy and Procedures; Training	399
Section 46.05: Proper Administration of Physical Restraint	401
Section 46.06: Reporting Requirements	402
603 CMR 47.00: LICENSURE OF ADULT BASIC EDUCATION TEACHERS AND PREPARATION PROGRAM APPROVAL	
Section 47.01: Purpose and Authority	403
Section 47.02: Definitions	403
Section 47.03: Adult Basic Education Teacher Preparation Program Approval	405
Section 47.04: Adult Basic Education Panel Review for Licensure	408
Section 47.05: Types of Licenses, Requirements for Licensure, and Requirements for Field-based Experience	408
Section 47.06: Routes to Professional Licensure of Adult Basic Education Teachers	410
Section 47.07: Subject Matter Knowledge Requirements for Adult Basic Education Teachers	411
Section 47.08: Professional Standards for Adult Basic Education Teachers	412
Section 47.09: Standards for Orientation of Adult Basic Education Teachers	413
Section 47.10: Licensure Renewal and Professional Development for Adult Basic Education Teachers	414
Section 47.11: General Provisions	414
603 CMR 48.00: INNOVATION SCHOOLS	419
Section 48.01: Scope, Purpose, and Authority	419
Section 48.02: Definitions	419
Section 48.03: General Provisions	420
Section 48.04: Specific Provisions	420
603 CMR 49.00: NOTIFICATION OF BULLYING OR RETALIATION	423
Section 49.01: Scope and Purpose	423
Section 49.02: Definitions and Terms	423
Section 49.03: Bullying and Retaliation Prohibited	424
Section 49.04: Notice to Parents	425
Section 49.05: Notice to Law Enforcement Agency	425
Section 49.06: Confidentiality of Records	426
603 CMR 50.00: EDUCATIONAL COLLABORATIVES	427
Section 50.01: Scope and Purpose	427
Section 50.02: Definitions	427
Section 50.03: Department Approval	428
Section 50.04: Collaborative Responsibilities	430
Section 50.05: Training	431
Section 50.06: Collaborative Employees	432
Section 50.07: Finance	432
Section 50.08: Reporting	435
Section 50.09: Department Review of Educational Collaboratives	435
Section 50.10: Conditions, Probationary Status, Suspension, and Revocation	436
Section 50.11: Dissolution	437
Section 50.12: General Provisions	438

603 CMR 49.00: NOTIFICATION OF BULLYING OR RETALIATION

Section

- 49.01: Scope and Purpose
- 49.02: Definitions and Terms
- 49.03: Bullying and Retaliation Prohibited
- 49.04: Notice to Parents
- 49.05: Notice to Law Enforcement Agency
- 49.06: Confidentiality of Records

49.01: Scope and Purpose

603 CMR 49.00 governs the requirements related to the duty of the principal or leader of a public school, approved private day or residential school, collaborative school, or charter school to notify the parents or guardians of a target and an aggressor (when the aggressor is a student) when there is an incident of bullying or retaliation, and to notify the local law enforcement agency when criminal charges may be pursued against the aggressor. 603 CMR 49.00 also addresses confidentiality of student record information related to notification of bullying and retaliation.

49.02: Definitions and Terms

Aggressor means perpetrator of bullying or retaliation as defined in M.G.L. c. 71, § 37O.

Approved Private Day or Residential School means a school that accepts, through agreement with a school committee, a student requiring special education pursuant to M.G.L. c. 71B, § 10 and 603 CMR 28.09: *Approval of Public and Private Day and Residential Special Education School Programs*.

Bullying, pursuant to M.G.L. c. 71, § 37O, means the repeated use by one or more students or by a member of a school staff including, but not limited to, an educator, administrator, school nurse, cafeteria worker, custodian, bus driver, athletic coach, advisor to an extracurricular activity or paraprofessional of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a target that:

- (a) causes physical or emotional harm to the target or damage to the target's property;
- (b) places the target in reasonable fear of harm to himself or herself or damage to his or her property;
- (c) creates a hostile environment at school for the target;
- (d) infringes on the rights of the target at school; or
- (e) materially and substantially disrupts the education process or the orderly operation of a school. Bullying shall include cyberbullying.

Charter School, pursuant to M.G.L. c. 71, § 37O, means a Commonwealth charter school or Horace Mann charter school established pursuant to M.G.L. c. 71, § 89.

Collaborative School, pursuant to M.G.L. c. 71, § 37O, means a school operated by an educational collaborative established pursuant to M.G.L. c. 40, § 4E.

Cyberbullying, pursuant to M.G.L. c. 71, § 37O, means bullying through the use of technology or any electronic communication, which shall include, but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications. Cyberbullying shall also include:

- (a) the creation of a web page or blog in which the creator assumes the identity of another person; or

49.02: continued

(b) the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions in 603 CMR 49.03: Bullying(a) through (e). Cyberbullying shall also include the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions in 603 CMR 49.03: Bullying(a) through (e).

Hostile Environment, pursuant to M.G.L. c. 71, § 37O, means a situation in which bullying causes the school environment to be permeated with intimidation, ridicule or insult that is sufficiently severe or pervasive to alter the conditions of the student's education.

Local Law Enforcement Agency means a local police department.

Local Plan means the bullying prevention and intervention plan required to be developed under M.G.L. c. 71, § 37O.

Parent means a student's father or mother, or guardian.

Principal means the administrative leader of a public school, charter school, collaborative school, or approved private day or residential school, or his or her designee for the purposes of implementing the school's bullying prevention and intervention plan.

Retaliation means any form of intimidation, reprisal or harassment directed against a person who reports bullying, provides information during an investigation about bullying, or witnesses or has reliable information about bullying.

School means an approved private day or residential school, collaborative school, or charter school.

School District, pursuant to M.G.L. c. 71, § 37O, means the school department of a city or town, a regional school district or a county agricultural school.

Student Record has the meaning set forth in the Massachusetts Student Records Regulations, 603 CMR 23.02: *Definition of Terms*.

Target means a student victim of bullying or retaliation as defined in M.G.L. c. 71, § 37O.

49.03: Bullying and Retaliation Prohibited

(1) Bullying of a student is prohibited as provided in M.G.L. c. 71, § 37O. Retaliation is also prohibited.

(2) Bullying shall be prohibited on school grounds, property immediately adjacent to school grounds, at a school-sponsored or school-related activity, function or program whether on or off school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or used by a school district or school, or through the use of technology or an electronic device owned, leased or used by a school district or school. Bullying at a location, activity, function or program that is not school-related, or through the use of technology or an electronic device that is not owned, leased or used by a school district or school, shall be prohibited if the bullying:

- (a) creates a hostile environment at school for the target;
- (b) infringes on the rights of the target at school; or
- (c) materially and substantially disrupts the education process or the orderly operation of a school.

(3) Each school district and school shall have procedures for receiving reports of bullying or retaliation; promptly responding to and investigating such reports, and determining whether bullying or retaliation has occurred; responding to incidents of bullying or retaliation; and reporting to parents and law enforcement as set forth in 603 CMR 49.04 and 49.05.

49.04: Notice to Parents

- (1) Upon investigation and determination that bullying or retaliation has occurred, the principal shall promptly notify the parents of the target and the aggressor (when the aggressor is a student) of the determination and the school district or school's procedures for responding to the bullying or retaliation. The principal shall inform the target's parent of actions that school officials will take to prevent further acts of bullying or retaliation. Nothing in 603 CMR 49.04 prohibits the principal from contacting a parent of a target or aggressor (when the aggressor is a student) about a report of bullying or retaliation prior to a determination that bullying or retaliation has occurred.
- (2) Notice required by 603 CMR 49.04 shall be provided in the primary language of the home.
- (3) Each school district and school shall include the requirements and procedures for communicating with the parents of the aggressor (when the aggressor is a student) and target of bullying or retaliation in the local plan.
- (4) A principal's notification to a parent about an incident or a report of bullying or retaliation must comply with confidentiality requirements of the Massachusetts Student Records Regulations, 603 CMR 23.00: *Student Records*, and the Federal Family Educational Rights and Privacy Act Regulations, 34 CFR Part 99, as set forth in 603 CMR 49.06.

49.05: Notice to Law Enforcement Agency

- (1) Before the first day of each school year, the superintendent or designee of a school district and the school leader or designee of an approved private day or residential school, collaborative school, or charter school shall communicate with the chief of police or designee of the local police department about the implementation of 603 CMR 49.05. Such communication may include agreeing on a method for notification, a process for informal communication, updates of prior written agreements, or any other subject appropriate to the implementation of 603 CMR 49.05.
- (2) At any point after receipt of a report of bullying or retaliation, including after an investigation, the principal shall notify the local law enforcement agency if the principal has a reasonable basis to believe that criminal charges may be pursued against the aggressor. Notice shall be consistent with the requirements of 603 CMR 49.00 and established agreements with the local law enforcement agency. The principal shall document the reasons for his or her decision to notify law enforcement. Nothing in 603 CMR 49.05 shall be interpreted to require reporting to a law enforcement agency in situations in which bullying and retaliation can be handled appropriately within the school district or school.
 - (a) In making the determination whether notification to law enforcement is appropriate, the principal may consult with the school resource officer and any other individuals the principal deems appropriate.
 - (b) Nothing in 603 CMR 49.05 shall prevent the principal from taking appropriate disciplinary or other action pursuant to school district or school policy and state law, provided that disciplinary actions balance the need for accountability with the need to teach appropriate behavior.
 - (c) The principal shall respond to the incident as set forth in relevant provisions of the local plan consistent with 603 CMR 49.05.
- (3) If an incident of bullying or retaliation occurs on school grounds and involves a former student younger than 21 years old who is no longer enrolled in the school district or school, the principal of the school informed of the bullying or retaliation shall notify the local law enforcement agency if the principal has a reasonable basis to believe that criminal charges may be pursued against the aggressor.
- (4) Each school district and school shall include the requirements and procedures for communicating with the local law enforcement agency in the local plan.

49.06: Confidentiality of Records

- (1) A principal may not disclose information from a student record of a target or aggressor to a parent unless the information is about the parent's own child.
- (2) A principal may disclose a determination of bullying or retaliation to a local law enforcement agency under 603 CMR 49.05 without the consent of a student or his or her parent. The principal shall communicate with law enforcement officials in a manner that protects the privacy of targets, student witnesses, and aggressors to the extent practicable under the circumstances.
- (3) A principal may disclose student record information about a target or aggressor to appropriate parties in addition to law enforcement in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals as provided in 603 CMR 23.07(4)(e) and 34 CFR 99.31(a)(10) and 99.36. 603 CMR 49.06(3) is limited to instances in which the principal has determined there is an immediate and significant threat to the health or safety of the student or other individuals. It is limited to the period of emergency and does not allow for blanket disclosure of student record information. The principal must document the disclosures and the reasons that the principal determined that a health or safety emergency exists.

REGULATORY AUTHORITY

603 CMR 49.00: M.G.L. 71, § 37O, as amended by St. 2013, c. 38, and St. 2014, c. 86.



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **605 CMR 6.00**

CHAPTER TITLE: **LIBRARY IMPROVEMENT PROGRAM - PUBLIC LIBRARY CONSTRUCTION**

AGENCY: **Board of Library Commissioners**

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

605 CMR 6.00 administers a program of grants in aid to municipalities of the Commonwealth for the planning, reconstruction, construction, design, acquisition of real property, renovation, preservation, rehabilitation, demolition or expansion costs of a facility to be used as a free public library under M.G.L c. 78.

REGULATORY AUTHORITY: **M.G.L c. 78**

AGENCY CONTACT: **Lauren Stara** PHONE: **617-725-1860**

ADDRESS: **90 Canal Street, Suite 500, Boston MA 02114**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

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

Linda Balzotti, Department of Housing and Community Development, 9/12/2022

David Koffman, Massachusetts Municipal Association, 9/12/2022

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

Date of public hearing or comment period: **9/16/22 - 11/3/22**

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

For the first and second year: 0
For the first five years: 0
No fiscal effect: x

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

Date amended small business impact statement was filed: 11/4/2022

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

- Public Libraries
Construction grants
Construction contracts
Procurement

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

605 CMR 6.00 (all sections).

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

SIGNATURE: SIGNATURE ON FILE DATE: Nov 09 2022

Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 11/25/22

CODE OF MASSACHUSETTS REGULATIONS

Table with 2 columns: Remove these Pages, Insert these Pages. Rows: 1 & 2, 19 - 34.4

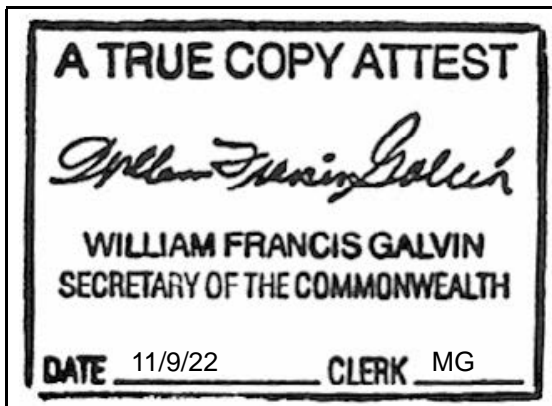


Table of Contents

	<u>Page</u>
(605 CMR 1.00: RESERVED)	3
605 CMR 2.00: ADOPTING ADMINISTRATIVE REGULATIONS	5
Section 2.01: Petition for Adoption of Regulations	5
Section 2.02: Initial Procedure to Handle Recommended Regulations	5
605 CMR 3.00: CERTIFICATION OF LIBRARIANS	9
Section 3.01: Applicability	9
Section 3.02: Terms of Certification	9
Section 3.03: Fees	9
Section 3.04: Requirements for Professional Certificate	10
Section 3.05: Examinations for Professional Certification	10
Section 3.06: Requirements for Sub-Professional Certification	11
Section 3.07: Advisory Committee on Certification	12
Section 3.08: Hearings	12
605 CMR 4.00: FREE PUBLIC LIBRARY SERVICE	13
Section 4.01: Regulations	13
Section 4.02: Nonresident Circulation Offset for Public Libraries	15
(605 CMR 5.00: RESERVED)	17
605 CMR 6.00: LIBRARY IMPROVEMENT PROGRAM - PUBLIC LIBRARY CONSTRUCTION	19
Section 6.01: Scope and Purpose	19
Section 6.02: Definitions	19
Section 6.03: Administrative Procedures and Policies	27
Section 6.04: Project Types	27
Section 6.05: Conditions of Eligibility	28
Section 6.06: Application Procedures	34
Section 6.07: Selection Procedures and Standards	34.2
Section 6.08: Provisional Grant Awards	34.3
Section 6.09: Grant Disbursements	34.4
Section 6.10: Waiting List	34.4
605 CMR 7.00: REGIONAL LIBRARY SYSTEMS	35
Section 7.01: Regional Library Systems; Eligibility Requirements for Participation as a Member of a Regional Library System	35

NON-TEXT PAGE

605 CMR 6.00: LIBRARY IMPROVEMENT PROGRAM - PUBLIC LIBRARY CONSTRUCTION

Section

- 6.01: Scope and Purpose
- 6.02: Definitions
- 6.03: Administrative Procedures and Policies
- 6.04: Project Types
- 6.05: Conditions of Eligibility
- 6.06: Application Procedures
- 6.07: Selection Procedures and Standards
- 6.08: Provisional Grant Awards
- 6.09: Grant Disbursements
- 6.10: Waiting List

6.01: Scope and Purpose

605 CMR 6.00 administers a program of grants in aid to municipalities of the Commonwealth for the planning, reconstruction, construction, design, acquisition of real property, renovation, preservation, rehabilitation, demolition or expansion costs of a facility to be used as a free public library under M.G.L. c. 78. The intent of this program is the provision of financial assistance to municipalities for the planning, design, improvement and expansion of their library facilities so that there is a corresponding improvement in the services offered and access to those services. It is not intended to provide assistance for activities such as repair and maintenance. 605 CMR 6.00 sets forth the requirements to be met, the standards that must be applied, and the procedures to be followed in the awarding of these grants.

6.02: Definitions

Acquisition of Real Property. Obtaining by gift, purchase, devise, grant, eminent domain, or otherwise; land, buildings, appurtenant structures and fixtures attached to buildings or land, including where applicable, all interests in real property, whether created by title, easement or other legal interest.

Addition, Expansion or Extension. Work which will result in an increase in the overall external dimensions of a public library facility.

Alteration. Work required to modify or adjust the interior space arrangement or other physical characteristics of an existing public library facility so that it may be more effectively utilized for its present designated functional purpose.

Applicant. The municipal entity (city or town) having financial authority to enter into a grant contract with the Board for the planning and design phase. An exception to this is made if a library corporation has been designated and empowered by prior legislative action to conduct capital projects, in which case the corporation is the Applicant. In order to be eligible, the Applicant must have an approved strategic plan for library services on file with the Board prior to filing a Letter of Intent for the program. The Applicant must have met the requirements and be certified by the Board to receive State Aid to Public Libraries under M.G.L. c. 78, § 19A and 19B at the time of the Letter of Intent and maintain that certification throughout the application round. To be eligible to receive grant funds, the Applicant must be certified at the time of the grant award and remain certified until project completion and final payment.

Application Round. The period in which grant application materials are available to prospective Applicants, completed applications are reviewed, provisional award requirements are fulfilled, and grants are awarded or projects are placed on the Waiting List.

Approved Capital Equipment. Building components which include the mechanical, electrical, plumbing (MEP), and elevator equipment, including piping, wiring, fixtures, and other accessories, which provide sanitation, lighting, heating, ventilation, fire fighting, and transportation facilities essential for the occupancy of the building or structure. This may include wiring and equipment for the telecommunications infrastructure, but not end user telecommunications equipment. This may include special storage units, service desks, and

6.02: continued

similar items fastened to the walls or floors that are specifically included in the general building contract and specifications. This may also include cantilevered metal shelving with metal end panels, mobile shelving, and unfixed or mobile service desks, and other components as determined by the Board, that may be bid separately from the general construction contract. Final approval of capital equipment as an eligible cost is determined by the Board. *See* 605 CMR 6.02: Eligible Costs.

Approved Public Library Project. An undertaking for the planning, alteration, construction, demolition, reconstruction, renovation, addition, expansion, extension, or rehabilitation of a public library facility as approved by a majority vote of the town at a town meeting or by a majority vote of a city council, with the approval of the mayor, in the case of a city or in a municipality having a town council form of government, by vote of the town council.

Approved Site. The site as approved by the municipality and accepted by the Board during the planning and design phase of a project. The approved site is the only site that may be used in the building project; it may be changed only with prior approval by the Board and only as the result of circumstances entirely unforeseen and beyond the control of the Applicant or Grantee. The site for a library building project must be specified prior to commencement of MPLCP-funded design work with a stamped site plan prepared by an architect registered in Massachusetts and must be delineated by a stamped survey performed within the preceding 15 years by a land surveyor licensed in Massachusetts. The site must include adequate space for parking, grading, utilities, and the library building, including any necessary space for future expansion. Before acceptance by the Board, any site on municipal or school owned land must include documented and official approval defining the site and agreeing that it is to be used for the library for the duration of at least 30 years. If the project is planned on land not owned by the library or the municipality, the Applicant or Grantee must have a signed Purchase and Sale Agreement or a lease of not less than 99 years at the time of acceptance by the Board. *See* 605 CMR 6.02: Title.

As-built Drawings. The revised set of stamped architectural drawings submitted by a contractor upon completion of a project that reflect all deviations from the original drawings during the construction process. These show the exact dimensions, geometry, and location of all elements of the work completed under the contract and serve as a record of differences between the original design as submitted and approved and the completed structure.

Board. The Massachusetts Board of Library Commissioners. *See* 605 CMR 6.02: MBLC.

Building Condition Assessment. *See* 605 CMR 6.02: Condition Assessment.

Building Efficiency. A means of determining the efficiency of the design of a library building based on the ratio of assignable (or net usable) area to gross area. Assignable area is the sum of all areas (measured in square feet) on all floors of a building assignable to or useful for library functions or purposes, including space for books and materials, public seating, service desks, offices, and meeting rooms. Gross area is the sum, in square feet, of all floor areas included within the outside faces of the exterior walls for all levels that have floor surfaces. This includes stairwells, elevator shafts, rest rooms, mechanical rooms, and entryways. Projects funded by the MPLCP must meet or exceed an efficiency rating of 65%. This rating must be determined using either AIA Document D101: *Methods of Calculating Areas and Volumes of Buildings* or ANSI/BOMA Z65.1: *Standard Method for Measuring Floor Area in Office Buildings*.

Building Program. A written document that provides information about library space requirements that must be met in an architectural design in order to make facility improvements to serve the library and information needs of the community. With the exception of Applicants for a Small Population Public Library Project, it is prepared before application to the MPLCP. It is completed either by the library staff and/or the board of trustees or by a library building consultant in cooperation with them. This program must be prepared by the library independently of, and in advance of the appointment of the architect who will prepare designs or studies during the planning and design phase of a project. The elements to be contained in the program are listed in 605 CMR 6.06(6)(c)(1). *See* 605 CMR 6.02: Small Population Public Library Project.

6.02: continued

Catastrophic Loss. An emergency situation created when an existing library is rendered permanently unusable. Loss cannot be the result of deferred maintenance or negligence.

Catastrophic Loss of Library Project. A project made necessary by a catastrophic loss. The project is to remediate the loss of an existing library building that has been assessed to be harmful to the life, health, or safety and the environment based on local, state and federal life and safety codes and has been documented to be permanently unusable. Loss cannot be the result of deferred maintenance or negligence.

Certification of Funds. Certified copies of Town Meeting appropriation votes, City or Town Council appropriation votes, popular ballot votes authorizing required debt exclusions or approving referenda, proof of trust funds, donations in hand, and/or legally binding pledges for the project. For the planning and design phase, local funds must be sufficient to cover the estimated eligible cost for that phase at the time that the Applicant accepts the award. For the construction phase, local funds must be sufficient to cover the estimated total project cost, as determined by the MPLCP Level of Design estimate, at the time that the Grantee accepts the award. State funds cannot exceed 75% of the actual eligible cost. See 605 CMR 6.02: Eligible Costs.

Certification of Project. After notification of a provisional construction award and within the fiscal year of the Board's vote or other deadline as determined by the Board, the Grantee must certify that sufficient funds are available to cover the total project cost of the project as approved by the Board and that the construction start date will take place within six months of the date of acceptance by Board staff of final construction documents. See 605 CMR 6.02: Construction Start Date, Final Construction Documents.

Commissioning. A quality assurance program intended to demonstrate that a building is constructed well and performs as designed. The commissioning agent is responsible for coordinating and carrying out the commissioning process and should be brought on during the design phase. The commissioning agent shall be an independent party, not affiliated or associated with the owner's project manager, designer, contractor, any subcontractors, or CM at Risk, to provide commissioning services with the intent of achieving, verifying, and documenting the performance of building systems in accordance with the design intent and the functional and operational needs of the library.

Condition Assessment. A written report completed by a building sciences firm, a registered engineer, or a registered architect regarding the physical condition of an existing facility's building, site, and grounds as well as future financial risk or liability issues. Elements are evaluated for condition, completion, code compliance, life-cycle costs, appropriateness for intended use, and any issues compromising the structure or systems.

Construction. New construction, alteration, renovation, rehabilitation, or other activity that is intended to result in a significant increase in the internal usable space of a free public library.

Construction Phase. The phase of a Public Library Project that begins after successful completion of the planning and design phase and a contract is executed between the municipality and the MBLC for construction funding.

Construction Project. See 605 CMR 6.02: Public Library Project.

Construction Start Date. The signing date of a construction contract between the Grantee and the general contractor. The construction start date must take place by the final day of the fiscal year after Board staff approves final construction documents.

Continuous Use. The ongoing operation of a library facility that is open to the public and provides basic library services as defined in 605 CMR 4.00: *Free Public Library Service*. In the event that a library facility constructed or renovated with Massachusetts Public Library Construction Program funds is not kept in continuous use as a free public library for 30 years, the city or town must return the amount of the grant award plus interest to the Board of Library Commissioners within 60 days of the date the library building falls out of compliance. The 30 year period begins on the date that the building's final Certificate of Occupancy is issued and survives in the contract after the last grant payment is made.

6.02: continued

Deferred Maintenance. Neglect and postponement of repair and upkeep that contribute to or are a cause of building, systems, or equipment failure.

Demolition. The act or process of tearing down or razing an existing structure or portions of the structure so that the site may be used for an approved public library project.

Design. Plans prepared by an engineering or architectural firm for the design or modification of a facility. Design must include, but are not limited to: drawings, specifications, and other necessary project design documentation.

Designer Selection. The state law required designer selection process for public building projects that meet certain cost criteria according to M.G.L. c. 7C, §§ 44 through 58. The law applies to design service contracts for any building construction, renovation, reconstruction, alteration, remodeling, or repair work. Design services include the following services in connection with a public building project: preparation of studies, surveys, soil tests, cost estimates and programs; preparation of drawings and specifications; supervision or administration of a construction contract; and construction management and scheduling. An official letter on municipal letterhead from the Grantee confirming compliance with designer selection law must be submitted before design work commences.

Director. The Director of the Massachusetts Board of Library Commissioners.

Efficiency. *See* 605 CMR 6.02: Building Efficiency.

Eligible Costs. Those project costs or proportional costs that are eligible for MPLCP grant funding. For the planning and design phase, eligible costs include planning and/or design services incurred after the date of the grant award. For Small Population Public Library Projects, eligible costs include costs for preparing a library building program and a condition assessment as well as planning and/or design services incurred after the date of the grant award. For the construction phase, eligible costs are those project costs or proportional costs directly related to implementing interior and exterior construction of an eligible project, including: acquisition of real property, including purchases within three years prior to the application due date; planning costs; design services; demolition; site preparation; construction; and approved capital equipment of an approved public library project. Where publicly or privately owned real property is to be donated to a project, only so much land as is necessary to provide an adequate library site, up to a maximum of \$1,000,000, may be considered in the calculation of eligible costs, and the value of such land must be documented. Ineligible expenses include but are not limited to costs related to fundraising, municipal bonding, attorney fees and legal proceedings, moving, temporary quarters, furnishings, computers and other equipment, and costs related to any aspect of the exterior grounds or site of the free public library structure including landscaping, walkways, and parking lots, except exterior handicapped ramps. *See* 605 CMR 6.02: Small Population Public Library Project.

Eligible Project. A project for design, demolition, new construction, renovation, or reconstruction which for purposes of 605 CMR 6.00 refers to the legislative definitions of Alteration, Renovation, Preservation, Rehabilitation, and Addition, Expansion, or Extension of a building or other structure used or to be used as a free public library as detailed in the contract documents.

Equalized Valuations (EQV). The determination made by the state of the full and fair cash value of all property in the Commonwealth that is subject to local taxation. The Commissioner of Revenue, in accordance with M.G.L. c. 58, § 10C, is charged with the responsibility of biennially determining an equalized valuation for each town and city in the Commonwealth. EQV may be considered in calculating a need factor. *See* 605 CMR 6.07(5)(a).

Facility Condition Assessment. *See* 605 CMR 6.02: Condition Assessment.

Final Construction Documents. Architectural and engineering plans and specifications which form the basis for construction bids and set forth in detail the requirements for the construction of the project. These must be based on the approved design development documents and any further adjustments in the scope or quality of the project or in the authorized construction budget. They must bear the seal of a design professional registered to practice in Massachusetts.

6.02: continued

Free Public Library. Any library that provides general library services without charge to residents of the Commonwealth. The Applicant must be certified by the Massachusetts Board of Library Commissioners as providing free public library service under 605 CMR 4.00: *Free Public Library Service*.

Geotechnical Report. A scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local geology and processes.

Grantee. An Applicant that has been accepted into the planning and design phase of the program after the independent review process. The Grantee must have met the requirements and be certified by the Board to receive State Aid to Public Libraries under M.G.L. c. 78, § 19A and 19B at the time of the grant award and remain certified until project completion and final payment.

Green Design. See 605 CMR 6.02: Sustainable and Resilient Design.

Guidelines. See 605 CMR 6.02: Standards and Guidelines.

Incentive. A separate award meant to motivate Grantees to pursue specific goals as outlined in the Program Notice for the grant round. This incentive is calculated as a percentage of the total provisional award and offered to Grantees that meet the requirements as detailed in the Program Notice. Each Grantee is eligible to apply for only one incentive per project. In no case can a grant award exceed 75% of eligible project costs, including additional incentives and need factor increases.

International Living Future Institute (IFLI). An environmental non-governmental organization that promotes sustainability in building design, construction, and operation and that administers the Zero Energy certification program.

Joint Public Library. An undertaking by two or more cities or towns to provide public library service to all citizens of both municipalities within a single building. At least one of the municipalities must be an eligible Applicant as defined in 605 CMR 6.02: Applicant. See 605 CMR 6.02: Shared Building.

Large Library Tier. A public library project with gross square footage of 30,000 square feet and above as determined in the building program.

LEED Gold and Platinum Status. The top two levels of the Leadership in Energy and Environmental Design (LEED) green building rating system, developed by the U.S. Green Building Council (USGBC), which provides standards for environmentally sustainable design, construction, and operation of buildings. This certification may be considered as a requirement for an optional incentive award. See 605 CMR 6.02: U.S. Green Building Council and 605 CMR 6.07(5)(b).

Letter of Intent. The form, and any attachments, that a library is required to file in order to initiate the grant application process. Letter of Intent details and instructions are included in the Program Notice for the grant round.

Library Building Program. See 605 CMR 6.02: Building Program.

Local Financial Commitment. The financial commitment required of the eligible Applicant/Grantee to the approved public library project for which the grant is being made. The local financial commitment is determined by the grant funding formula published in the Program

6.02: continued

Notice for the grant round and must be no less than 25% of the project's eligible costs in each phase. The following will be considered eligible in calculating local financial commitments: municipal appropriation; donations in hand or with a binding commitment; trust monies allocated to the project; monies held in a separate account; real property acquisition; and the value of publicly or privately owned land donated to the project within three years prior to the application due date up to a documented value of \$1,000,000 as set forth in 605 CMR 6.02: Certification of Funds, Eligible Costs.

Maintenance. The act or process of maintaining and repairing a facility in order to keep it in appropriate operating condition and in compliance with all relevant codes.

Management Plan. A written preliminary document that addresses management concerns for the operation of a shared building, a joint library facility project, or a project that involves joint ownership between a library association/corporation and a municipality. It must be approved by authorized representatives of all entities participating in the operation of the facility, including town or city officials. The plan is to be used as the basis for a formal agreement among these parties that addresses legal ownership as well as roles and responsibilities for all matters pertaining to the facility. These matters include but are not limited to: space allocation; use of common areas; funding and payment arrangements; facility management and day to day supervision; resolution of conflicts; and the dissolution or early termination of the agreement and subsequent disposition of the facility.

Master Plan. A study, description, or design of an approved public library project which is intended to ensure that various components of an approved public library project are compatible with each other, and that the approved public library project as a whole is compatible with its surroundings. See 605 CMR 6.02: Study.

Medium Library Tier. A library project with gross square footage between 15,000 and 29,999 square feet as determined in the building program.

MBLC. The Massachusetts Board of Library Commissioners, the state agency responsible for administering the MPLCP. See 605 CMR 6.02: MPLCP.

MPLCP. The Massachusetts Public Library Construction Program, a grant program for public library construction administered by the Massachusetts Board of Library Commissioners.

MPLCP Level of Design. Drawings and other documents illustrating the general scope, scale and relationship of project components and based on requirements developed under previous phases, or on program requirements as mandated in 605 CMR 6.08(2)(a). For the purpose of this grant program, MPLCP Level of Design will be based on a library building program that must contain the elements mandated in 605 CMR 6.06(6)(c)(1).

Municipal Census Population. The population of a municipality as determined by the Massachusetts Department of Revenue for the year prior to application to the MPLCP.

Needs Assessment. An element of the library building program that outlines the library service needs of the community, without reference to the existing facility. See 605 CMR 6.02: Building Program.

Negligence. The failure to take reasonable care to avoid or guard against foreseeable harm to people or property.

OPM. See 605 CMR 6.02: Owner's Project Manager.

Owner's Project Manager. A professional who meets state qualifications to represent the Applicant from predesign through post construction phases by providing independent and competent advice on all aspects of a building project and who is hired through adherence with designer selection law. Responsibilities include assistance with designer selection, participation in cost estimating, general contractor and subcontractor prequalification, negotiations with the designer and the general contractor, monitoring of all phases of design and construction, regular communication with the library director, and assistance with MPLCP monthly and final reporting. Public awarding authorities are required to engage the services of an owner's project manager (OPM) for all phases of any building project estimated to cost \$1.5 million or more. The OPM must be hired before the project designer.

6.02: continued

Parking. Projects must provide at least one parking space for every 400 gross square feet of building, not including parking required by Americans with Disabilities standards or staff parking requirements. If the number of parking spaces deviates from this guideline, the Applicant must show that the appropriate local boards have approved an alternative parking plan.

Planning. The preparation of a study, analysis, or similar report, the purpose of which is to define the cost, content, and schedule of an approved public library project, so as to establish a frame of reference prior to design, acquisition, construction, alteration, renovation, rehabilitation, or other activity of an approved public library project. Specific elements may include the establishment of project goals, preparation of a building program, and development of a schematic design and cost estimate.

Planning and Design Phase. The initial phase of an approved public library project, which may include preparation of a study, analysis, or similar report on an existing building or alternative sites, along with cost analysis of options and alternatives, site investigation/selection, and preparation of design drawings, energy modeling, cost estimates, site investigation, and soil studies, *etc.* For Small Population Public Library Projects, this phase also may include the development of a library building program and the preparation of a condition assessment. Eligible costs are limited to those costs that will be incurred after the date of acceptance into the grant program, with the exception of land purchase costs incurred within three years prior to the application due date. *See* 605 CMR 6.02: Eligible Costs, Small Population Public Library Project.

Preservation. The act or process of applying measures to sustain the existing form, integrity, and material of a building or structure. This may include initial stabilization work.

Preservation Consultant. A preservation professional with working knowledge of historic building systems, historic building materials and their deterioration, preservation technologies and methodologies, and the Secretary of the Interior's Standards for Rehabilitation.

Project Manager. *See* 605 CMR 6.02: Owner's Project Manager.

Proportional Project Cost. The cost derived from the amount of space eligible for MPLCP funding when an approved public library project will share building space with other occupants. Funding eligibility is limited to that space designated for public library occupancy plus a proportional share of common spaces and services. This proportionality may be based on space or time utilization and will be approved by the Board. Restrooms and HVAC controls must be located in dedicated library space in order to be considered eligible, and separate restrooms and HVAC controls must serve non-library spaces. A dedicated space for library programming must be provided. *See* 605 CMR 6.02: Shared Building.

Provisional Grant Award. A grant award voted by the Board that is contingent on confirmation of local financial commitment and execution of a contract. A grant award is provisional until after a contract and agreement are in place. Separate provisional awards are voted for the planning and design phase and the construction phase. *See* 605 CMR 6.02: Construction Phase, Local Financial Commitment, Planning and Design Phase.

Public Agency. A department, board, commission, council, or other instrumentality of a city or town.

Public Library Facility. A building, modular unit, or other structure utilized as a free public library in a city or town, including facilities jointly used by more than one municipality and the portion of a shared building utilized as a free public library.

Public Library Project. A project, including a planning and design phase and a phase for new construction, renovation, or addition/renovation, undertaken by a municipality for the purpose of providing free public library services. *See* 605 CMR 6.02: Construction Phase, Free Public Library, Planning and Design Phase.

Reconstruction. The act or process of reproducing by new construction the exact form and detail of a vanished building, structure or object, or a part thereof, as it appeared at a specific period of time.

6.02: continued

Rehabilitation. Work required to restore a public library facility to its former historic condition, or to modify and modernize a public library facility in order to comply with current code requirements and be effectively utilized for its designated functional purpose.

Renovation. Work required to restore and modernize a public library building in order that the facility may be effectively utilized for its designated functional purpose and comply with current code requirements. Such projects consist of work of such scope that, if not completed, the present facility would require complete building replacement. A renovation project must provide a library facility substantially equivalent to that of a new facility and must consist substantially of work other than deferred maintenance.

Repair. The process used to restore a facility or system to such condition that it may continue to be approximately and effectively used for its designated purpose by overhaul, reprocessing, or replacement of parts or materials which have deteriorated by action of the elements or use.

Resilient Design. See CMR 6.02: Sustainable and Resilient Design.

Restoration. The process used to accurately recover the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

Seating Capacity. The number of seats provided for public use including general reading area seats, lounge seats, group study seats, café style seats, or other seating when available on an open basis. Seats at electronic workstations, microform readers, and other such dedicated seating should not be counted in the total seating capacity, nor should seats in rooms such as program rooms, auditoriums, and general meeting rooms that are not open at all times to library patrons. Seats that have the capability for wireless use but are available for other purposes should be included in the total seating capacity.

Shared Building. A facility incorporating a public library and one or more compatible partners independent of the library and housed within one building. Some parts of the building may be shared, such as larger meeting rooms and common areas, upon approval by the Board. See 605 CMR 6.02: Management Plan, Proportional Project Cost.

Site. See 605 CMR 6.02: Approved Site.

Site Preparation. Those activities directly related to the preparation of the site for an approved public library project, including hazardous waste cleanup, demolition of existing structures, excavation, trenching, and installation of utilities.

Small Library Tier. A library project with gross square footage between 6,000 and 14,999 square feet as determined in the building program.

Small Population Public Library Project. A project which includes a preplanning phase, a planning and design phase, and a phase for new construction, renovation, or addition/renovation, undertaken by a municipality with a municipal census population of under 2,500 for the purpose of providing free public library services. See 605 CMR 6.02: Building Program, Condition Assessment, Construction Phase, Municipal Census Population, Planning and Design Phase.

Specialized Stretch Code. Building code as outlined in 225 CMR 23.00 Appendix CC: *Massachusetts Stretch Code and Specialized Code for Commercial Buildings, Massachusetts Municipal Opt-in Specialized Energy Code 2023.* Adherence to this level of code may be considered as a requirement for an optional incentive award.

Stabilization. The act or process of applying measures designed to reestablish a weather resistant enclosure and the structural stability of an unsafe or deteriorated property, while maintaining the essential form and condition as it existed.

Standards and Guidelines. Criteria used in the application process by which library services, programs, and facilities may be measured or assessed. Established by professional organizations, accrediting bodies, or government agencies, the criteria may variously reflect a minimum or ideal, a model procedure or process, a quantitative measure, or a qualitative assessment.

6.02: continued

Strategic Plan. A planning document that includes a library's mission and/or vision statement, user needs assessment, multi year goals and objectives, an annual action plan with measurable objectives, a brief description of the planning methodology, and an indication that it has been approved by the library's governing board. A current strategic plan, with annual action plans and updates as required, must be on file with the Board.

Study. A plan, analysis, or report to identify and evaluate alternative solutions to and recommendations for a solution to the needs and requirements defined by a public agency proposing an approved public library project.

Sustainable and Resilient Design. A practice which aims to reduce environmental impacts during the production and transportation of building components, during the construction process, and during the lifecycle of the building. This design practice emphasizes efficiency of heating and cooling systems, alternative and renewable energy sources, minimization of embodied and operational carbon, appropriate building siting, clean and efficient building systems and components, reused or recycled building materials, on site power generation, and provisions for mitigation of climate change impacts.

Tier. A level of small, medium, or large ascribed to Applicants based on the gross square footage presented in the library building program in the application. *See* 605 CMR 6.02: Large Library Tier, Medium Library Tier, Small Library Tier.

Title. A legal document that confirms that the approved site of an approved public library project is owned by the municipality without any claims by others and no history of past claims that may affect ownership. If the approved site is owned by an association or library corporation, a deed restriction will be placed upon those portions affected by the library, or a Memorandum of Understanding that outlines the jurisdiction and responsibilities of both parties during construction and post-occupancy will be executed between the association or corporation and the municipality. If the site is owned by another organization or entity, evidence of a lease of not less than 99 years is required.

U.S. Green Building Council. A nonprofit trade organization that promotes sustainability in building design, construction and operation and that administers the Leadership in Energy & Environmental Design (LEED) certification program in the United States.

Waiting List. A list, created by the Board, of construction projects approved for funding but awaiting the authorization of funds by the state legislature and its administration.

Zero Energy Certification. A certification developed by the International Living Future Institute (IFLI), which provides standards for constructing highly efficient buildings that rely on clean energy without the onsite combustion of fossil fuels to produce net annual energy demand. This certification may be considered as a requirement for an optional incentive award. *See* 605 CMR 6.02: International Living Future Institute and 605 CMR 6.07(5)(b).

6.03: Administrative Procedures and Policies

(1) The Board may issue administrative procedures related to the application and review process. This may include but is not limited to application round calendars, application procedures and requirements, application evaluation tools, and MPLCP assurances.

(2) Upon recommendation of the Director, the Board may modify or extend the time for compliance with conditions of eligibility, MPLCP requirements and procedures, or other municipal certifications.

6.04: Project Types

(1) Public Library Project. A project which meets the definition in 605 CMR 6.02: Public Library Project, with a planning and design phase with the goal of completing the MPLCP Level of Design for a library building and a construction phase in one of the following categories:

6.04: continued

- (a) New Construction: a project which meets the definition in 605 CMR 6.02: Construction and which will result in a new building for the provision of free public library services;
- (b) Addition/Renovation: a project which meets the definitions in 605 CMR 6.02: Construction, Addition, Expansion or Extension, and Renovation; a project for the alteration of an existing building for free public library services that increases the total square footage of the building;
- (c) Renovation: a project which meets the definitions in 605 CMR 6.02: Construction and Renovation; a project for the alteration of an existing building for free public library services that does not increase the total square footage of the building;
- (d) Joint Public Library: a project which meets the definitions in 605 CMR 6.02: Construction and Joint Public Library; a project for construction of a building in order to provide free public library services to two or more municipalities in one location;
- (e) Shared Building: a project which meets the definitions in 605 CMR 6.02: Construction and Shared Building; a project for construction of a portion of a shared building in order to provide free public library services.

(2) Small Population Public Library Project. A project which meets the definition in 605 CMR 6.02: Small Population Public Library Project, with a preplanning phase, a planning and design phase with the goal of completing the MPLCP Level of Design for a library building, and a construction phase in one of the following categories:

- (a) New Construction: a project which meets the definition in 605 CMR 6.02: Construction and which will result in a new building for the provision of free public library services;
- (b) Addition/Renovation: a project which meets the definitions in 605 CMR 6.02: Construction, Addition, Expansion or Extension, and Renovation; a project for the alteration of an existing building for free public library services that increases the total square footage of the building;
- (c) Renovation: a project which meets the definitions in 605 CMR 6.02: Construction and Renovation; a project for the alteration of an existing building for free public library services that does not increase the total square footage of the building;
- (d) Joint Public Library: a project which meets the definitions in 605 CMR 6.02: Construction and Joint Public Library; a project for construction of a building in order to provide free public library services to two or more municipalities in one location;
- (e) Shared Building: a project which meets the definitions in 605 CMR 6.02: Construction and Shared Building; a project for construction of a portion of a shared building in order to provide free public library services.

(3) Catastrophic Loss of a Library Building. A project which meets the definition in 605 CMR 6.02: Catastrophic Loss, when an existing library is rendered permanently unusable through a disaster or emergency situation. Loss cannot be the result of deferred maintenance or negligence.

6.05: Conditions of Eligibility

- (1) To be eligible to apply for inclusion in the MPLCP grant process, the Applicant must:
 - (a) For the Planning and Design Phase.
 1. be a city or town unless a library corporation has been designated and empowered by prior legislative action to conduct capital projects;
 2. fulfill the definition of an eligible Applicant and an Eligible Project;
 3. submit a Letter of Intent by the deadline established for each application round, in the format prescribed by the Board and published in the Program Notice for the grant round;
 4. be certified by the Board to receive State Aid to Public Libraries under M.G.L. c. 78, § 19A and 19B in the most recent fiscal year prior to the date that the grant round Letter of Intent is filed. Certification must be maintained from the date of application through the date of the final grant payment;
 5. have on file at the Board a library Strategic Plan that meets the definition in 605 CMR 6.02: Strategic Plan;

6.05: continued

6. meet the definition of 605 CMR 6.02: Approved Public Library Project and provide certified documentation of the approval. In the case of town meeting approval, documentation may be submitted following town meeting, but not later than the date published in the Program Notice for the grant round;
 7. propose improvements to a facility whose projected future functional life must be shown to be not less than 30 years;
 8. not have received a construction grant award under the MPLCP in the preceding 30 years. This 30-year period is determined by comparing the date of the final Certificate of Occupancy in the previous project to the potential date of a Board award vote. A potential Applicant may seek an exception from 605 CMR 6.05(1)(a)(8) if the municipality has experienced significant unexpected population growth since the previous construction project. Evidence of significant unexpected population growth must show that the current population of the municipality meets or exceeds the population projection in the prior application;
 9. if the Applicant is a municipality with multiple independent public libraries or with branch libraries, a maximum of one construction grant award will be made every five years. The five years will be determined by comparing the date of the final Certificate of Occupancy in the previous project to the potential date of a Board award. The municipality will determine which library or branch may apply, but only libraries or branches that have not received a construction grant award under the MPLCP in the previous 30 years are eligible. A comprehensive plan for library service town wide or citywide is required of the municipality;
 10. submit an application that meets the requirements of 605 CMR 6.06.
- (b) For the Construction Phase.
1. have completed the planning and design phase in the MPLCP program through MPLCP Level of Design;
 2. meet the criteria for its project type in 605 CMR 6.04;
 3. meet the definition of an Approved Site;
 4. have had the project's MPLCP Level of Design approved by the Board.
- (c) For Catastrophic Loss of Library Projects. A city or town that has experienced the catastrophic loss of a library building as defined in 605 CMR 6.02: Catastrophic Loss of Library Project will be immediately eligible for the planning and design phase of a project. A recommendation for provisional construction funding shall be based on eligible costs as defined in 605 CMR 6.02: Eligible Costs and the funding formula in the Program Notice for the most recent grant round. These grants may be funded with uncommitted funds within a regular grant cycle, through other sources, or a combination. Grants are dependent upon availability of such state funds. Applicants must:
1. be a city or town, unless a library corporation has been designated and empowered by prior legislative action to conduct capital projects;
 2. be certified by the Board to receive State Aid to Public Libraries under M.G.L. c. 78, § 19A and 19B in the most recent fiscal year;
 3. plan to reconstruct or replace a main, joint, branch, or independent library;
 4. plan the reconstruction or replacement of a building for the projected 30 year needs of the community.
- (2) To be eligible to sign a contract and agreement with the Board, the Applicant will:
- (a) Have been approved for inclusion in the MPLCP grant process;
 - (b) Certify by the date set forth in the Program Notice or Board award vote the availability of local funds sufficient to cover the total eligible cost of the current phase of the approved public library project as defined in 605 CMR 6.02: Local Financial Commitment.
 - (c) For the planning and design phase, agree to the following assurances set forth in the planning and design grant contract and agreement:
 1. that new, remodeled or renovated library buildings will be planned for a minimum operational life of 30 years;
 2. that the Applicant will continue the library's participation and qualification in programs established by or the successors to M.G.L. c. 78, § 19A and 19B (State Aid to Public Libraries). Should the Applicant fail to be certified by the Board to receive State Aid during the period from acceptance into the MPLCP grant program, until project completion and final payment, this will be considered a breach of the contract;

6.05: continued

3. that the Applicant and contractors will not knowingly employ, compensate, or arrange to compensate any employee of the Board during the term of the project, unless such arrangement is permitted under the provisions of M.G.L. c. 268A;
4. that the Board will have the authority to review and approve plans, specifications, bid documents, contract awards, payments and all documents of obligation or expenditure for the project;
5. that the owner's project manager, architect and other contractors of an approved public library project were selected using procedures as issued by the Designer Selection Board under the provisions of M.G.L. c. 7C, §§ 44 through 58;
6. that the Applicant will submit the project to local, regional or state boards or agencies for comment and/or approval as may be required by law or regulation;
7. that the Applicant will assist the Board in complying with the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62H;
8. that the building will be designed to minimize or eliminate embodied and operational carbon and use of fossil fuels throughout its life cycle, including construction materials/processes and ongoing operations.
9. that life cycle cost estimates of all technically feasible energy systems as defined in M.G.L. c. 149, § 44M, will be considered during design in order to ensure that the energy system with the lowest life cycle cost estimate will be identified in accordance with the provisions of M.G.L. c. 149, § 44M;
10. that the Applicant will closely monitor the cost effects of building program and design decisions and materials and systems selections so that the facility can be constructed and operated in a cost effective, sustainable, and staff efficient manner considering the type of project and structure;
11. that there will be an evaluation of flood hazard so that the facility to be constructed will be located to prevent potential flood hazards, as far as is practicable;
12. that there will be an evaluation of resiliency measures informed by the guidelines and/or tools detailed in the Program Notice;
13. that the building will be designed to minimize the effects of vandalism, weather conditions and natural conditions and that materials and finishes will be selected to minimize operational costs and maintenance. This includes provision of a fire rated enclosure for any automated or manually operated exterior book or nonprint materials return that penetrates a wall of the building;
14. that the Applicant will comply with M.G.L. c. 9, §§ 26 and 27C and 950 CMR 71.00: *Protection of Properties Included in the State Register of Historical Places* and any additional Massachusetts Historical Commission legal and regulatory requirements, including that which affords the Massachusetts Historical Commissioner the opportunity to review and comment as early as possible in the planning stages of the project;
15. that the building will be designed in compliance with Americans with Disabilities (ADA) federal standards and 521 CMR: *Architectural Access Board*, including those requirements for making alterations to historical properties to ensure that property and building are readily accessible and usable by individuals with disabilities unless a variance has been obtained for all noncompliant features;
16. that the Applicant will provide adequate supervision during the term of the project including architectural supervision and, when required, an owner's project manager that meets the qualifications required by M.G.L. c. 7C, §§ 44 through 58 and M.G.L. c. 149, § 44A½;
17. that the Board will not be held responsible for meeting any increased costs or increasing the amount of the grant award beyond the provisional award;
18. that the Board, the Governor or his designee, the Secretary of Administration and Finance, and the State Auditor or his designee will have the right, at reasonable times and upon reasonable notice, to examine the books, records and other compilations of data of the Applicant which pertain to the performance of the provisions and requirements of this agreement. Upon request, the Applicant will furnish to the Board copies of any such books, records and compilations. In all contracts or subcontracts entered into by the Applicant concerning the project, there will be included a provision requiring similar access by the Board to the contractor's or subcontractor's books, records and other compilations of data which pertain to the project according to Executive Order 195: *Vendor Contracts* of April 27, 1981;

6.05: continued

19. that the Applicant will file required monthly reports, will submit every iteration of design for review by the Board, and will notify the Board when the MPLCP Level of Design of the approved public library project is completed. Within six months of completion, the Applicant must supply a certified reporting of expenditures by category, a list of financial sources, and other documentation;
 20. that all grant funds received by the Applicant from the Massachusetts Public Library Construction Program will be placed in an interest-bearing account separate from other Applicant accounts, and that a copy of the first statement from this account from the financial institution will be provided to the MBLC within 45 days of receipt of the first grant payment. All planning and design grant funds, including interest income, will be retained in this account until they are expended for purposes specified in the planning and design grant application. Purposes specifically excluded include all those specified in the definition in 605 CMR 6.02: Eligible Costs;
 21. that preparation of documents according to 605 CMR 6.08(2)(a) will be completed and submitted within one year of signing a grant agreement with the Board for the planning and design phase, unless the municipality withdraws from the MPLCP before entering the construction phase;
 22. that a grant agreement with the Board for the construction phase of the project will be signed in the fiscal year following the signing of a grant agreement for the planning and design phase, unless the municipality withdraws from the MPLCP before entering the construction phase or the project design is unsuccessful;
 23. that if a municipality chooses to withdraw from the MPLCP after the planning and design phase by either official letter or documented certified vote, or if the project design is unsuccessful, no funds for the construction phase will be disbursed;
 24. that the project will comply with all current state and local building codes for libraries and all applicable standards and procedures.
- (d) For the construction phase, agree to the following assurances set forth in the construction phase agreement:
1. that new, remodeled or renovated library buildings will be planned for a minimum operational life of 30 years;
 2. that the project will be completed as described during the planning and design phase and approved by the Board. Any changes to the project's scope require prior written approval from the Board.
 3. that the completed facility will continue to be used as a free public library for at least 30 years from the date of issuance of the final Certificate of Occupancy. Prior approval from the Board must be obtained if there is any change in proportional use, or if the building is sold or reused for a non-public library function. In the event that the building is not kept in continuous use as a free public library for 30 years, the city or town must return the amount of the grant award plus interest to the Board within 60 days of the date the library building falls out of compliance with 605 CMR 6.05;
 4. that the Grantee will continue the library's participation and qualification in programs established by or the successors to M.G.L. c. 78, § 19A and 19B (State Aid to Public Libraries). Should the Grantee fail to be certified by the Board to receive State Aid during the period from acceptance into the MPLCP grant program, until project completion and final payment, this will be considered a breach of the contract;
 5. that when construction is complete, the Grantee will make all full and good faith efforts to ensure that sufficient funds will be available for the effective operation and maintenance of the facility, in accordance with applicable federal, state and local requirements and standards;
 6. that a sign will be displayed on the construction site stating that the project was funded or funded in part "by the Massachusetts Public Library Construction Program administered by the Massachusetts Board of Library Commissioners" and displaying the MBLC logo, that a plaque will be placed in the completed building stating that the project was funded or funded in part "by the Massachusetts Public Library Construction Program administered by the Massachusetts Board of Library Commissioners", and that MBLC funding will be acknowledged in all project publicity and events;
 7. that the Grantee and contractors will not knowingly employ, compensate, or arrange to compensate any employee of the Board during the term of the project, unless such arrangement is permitted under the provisions of M.G.L. c. 268A;

6.05: continued

8. that the Board will have the authority to review and approve plans, specifications, bid documents, contract awards, payments and all documents of obligation or expenditure for the project, and that the Grantee will submit documents for review and approval by the Board at every iteration from MPLCP Level of Design to 100% Schematic Design, 50% Design Development, 75% Design Development, 90% Design Development, 100% Design Development, 50% Construction Documents, 90% Construction Documents, 100% Construction Documents, and Bid Package levels;
9. that if required, precontract and preconstruction conferences will be held with representative(s) from the Board;
10. that the owner's project manager, architect and other contractors of an approved public library project will be selected using the procedures as outlined by the Designer Selection Board under the provisions of M.G.L. c. 7C, §§ 44 through 58;
11. that all design, construction, construction contracts, and subcontracts will be in conformity with all applicable provisions of state and local law, rules and regulations including, but not limited to, M.G.L. c. 143 and 780 CMR: *State Board of Building Regulations and Standards*. All construction contracts must be bid under M.G.L. c. 149, § 44A or M.G.L. c. 30, § 39M;
12. that the Grantee will be in compliance with the Affirmative Marketing Program (AMP), as established in M.G.L. c. 7C, § 6, which encourages minority business enterprise and women-owned business enterprise participation in state assisted building projects. Applicant shall ensure proper AMP reporting to the Supplier Diversity Office, pursuant to M.G.L. c. 7, § 61. Applicant will also be in compliance with M.G.L. c. 151B.
13. that the Grantee will require that all construction contracts will include the Workforce Participation Goals' percentages in use at the time of bidding as well as the processes it will use to monitor and ensure compliance with those goals. At the time of adoption of 605 CMR 6.00, the Workforce Participation Goals' percentages are 15.3% for minorities and 6.9% for women. The Applicant must not discriminate in any manner because of gender, race, color, religion, national origin, ancestry, age, sex, or handicap;
14. that the Grantee will require that all construction contracts will be in conformity with applicable law and regulations related to minority hiring. Every state-assisted contract for an approved public library project, including subcontracts, will include the Commonwealth's Supplemental Equal Opportunity/Anti Discrimination and Affirmative Action Program as part of the contract;
15. that the Grantee will comply with Executive Order 592: *Order Advancing Workforce Diversity, Inclusion, Equal Opportunity, Non-Discrimination, and Affirmative Action*;
16. that the Grantee will submit the project to local, regional or state boards or agencies for comment and/or approval as may be required by law or regulation;
17. that the Grantee will assist the Board in complying with the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62H;
18. that the building will be designed to minimize or eliminate embodied and operational carbon and use of fossil fuels throughout its life cycle, including construction materials/processes and ongoing operations.
19. that life cycle cost estimates of all technically feasible energy systems as defined in M.G.L. c. 149, § 44M, will be considered in order to ensure that the energy system with the lowest life cycle cost estimate will be identified in accordance with the provisions of M.G.L. c. 149, § 44M;
20. that the Grantee will closely monitor the cost effects of building program and design decisions and materials and systems selections so that the facility can be constructed and operated in a cost effective, sustainable, and staff efficient manner considering the type of project and structure;
21. that the building will be designed for resilience, to withstand the effects of climate change, that resiliency measures informed by the guidelines and/or tools in the Program Notice will be incorporated, and that there will be an evaluation of flood hazard so that the facility to be constructed will be located to prevent potential flood hazards, as far as is practicable;
22. that the building will be designed to minimize the effects of vandalism, weather conditions and natural conditions and that materials and finishes will be selected to minimize operational costs and maintenance. This will include provision for a fire rated enclosure for any automated or manually operated exterior book or nonprint materials return that penetrates a wall of the building;

6.05: continued

23. that the Grantee will comply with M.G.L. c. 9, §§ 26 and 27C and 950 CMR 71.00: *Protection of Properties Included in the State Register of Historical Places* and any additional Massachusetts Historical Commission legal and regulatory requirements, including that which affords the Massachusetts Historical Commission the opportunity to review and comment as early as possible in the planning stages of the project;
24. that the building will be designed and constructed in compliance with Americans with Disabilities (ADA) federal standards and 521 CMR: *Architectural Access Board*, including those requirements for making alterations to historical properties to ensure that property and building are readily accessible and usable by individuals with disabilities unless a variance has been obtained for all noncompliant features;
25. that prior approval from the Board will be obtained for significant budget, program or plan changes and revisions including deduct change orders, excluding change orders of an emergency nature;
26. that the Grantee will provide adequate supervision during the term of the project including architectural supervision, value engineering and the retention of a qualified owner's project manager that meets the qualifications required by M.G.L. c. 7C, §§ 44 through 58 and M.G.L. c. 149, § 44A½;
27. that Board staff will be provided reasonable access to the project and site with consideration for site conditions and with appropriate notification;
28. that the Board will not be held responsible for meeting any increased costs or increasing the amount of the grant award beyond the provisional award. All non-eligible costs are the responsibility of the Grantee;
29. that the project will be completed as described in the planning and design phase and approved by the Board. Any changes to the project's scope require prior written approval from the Board;
30. that the Board, the Governor or his or her designee, the Secretary of Administration and Finance, and the State Auditor or his designee will have the right, at reasonable times and upon reasonable notice, to examine the books, records and other compilations of data of the Grantee which pertain to the performance of the provisions and requirements of this agreement. Upon request, the Grantee will furnish to the Board copies of any such books, records and compilations. In all contracts or subcontracts entered into by the Grantee concerning the project, a provision must be included requiring similar access by the Board to the contractor's or subcontractor's books, records and other compilations of data which pertain to the project according to Executive Order 195: *Vendor Contracts* of April 27, 1981;
31. that the Grantee will file all required reports and the Board will be notified when the approved public library project is completed and a certified reporting of expenditures by category, financial sources, and other documentation will be supplied to the Board by the Applicant within six months of project completion. If the actual expenditures are projected to be less than the estimated eligible cost, the Grantee will alert the Board prior to the issuance of the grant payment associated with the final Certificate of Occupancy milestone;
32. that all grant funds received by the Grantee from the Massachusetts Public Library Construction Program will be placed in an interest-bearing account separate from other Grantee accounts. All grant funds, including interest income, will be retained in this account until they are expended for purposes specified in the construction grant application, and account statements will be included in required reports. Purposes specifically excluded include all those specified in 605 CMR 6.02: Eligible Costs. All interest earned must be expended for the library building project or other library service enhancements;
33. that the municipality will explicitly address all aspects of construction grant management in their regular annual audits for all years when grant funding is received or expended, or that a separate audit for the construction project will be carried out and provided to the MBLC.
34. that the Grantee will file a final evaluation form on the performance of contractors on the project as required by the Division of Capital Asset Management and Maintenance (DCAMM) upon completion of the project;
35. that preparation of construction documents will be completed and submitted within one year of signing a grant agreement for the construction phase with the Board;

6.05: continued

- 36. that the construction start date will take place within six months of the date of acceptance by Board staff of the final construction documents (*see* 605 CMR 6.02: Construction Start Date;
 - 37. that a copy of the as built drawings, in accessible electronic form, will be supplied to the Board with the Final Report;
 - 38. that the Grantee has clear title to the project site or otherwise meets the requirements specified in 605 CMR 6.02: Title;
 - 39. that the project site will remain as described in the planning and design phase;
 - 40. that the construction process will comply with all current state and local building codes, including 225 CMR 23.00: *Massachusetts Stretch Code and Specialized Code for Commercial Buildings*, for libraries and all applicable standards and procedures;
 - 41. that the completed project will meet or exceed a building efficiency rating of 65%.
- (e) Failure by the Grantee to comply with any of the assurances in the grant contract and agreement constitutes a breach of the contract. No further disbursements will be made by the Board, and all funds previously advanced to the Grantee in the construction phase, plus interest earned, must be returned within 60 days of the date the project falls out of compliance with 605 CMR 6.05.

6.06: Application Procedures

- (1) For each application round, the Director will issue a Program Notice to all free public libraries in the Commonwealth.
- (2) The Applicant must file a completed Letter of Intent form by the means indicated and by the date and time announced in the Program Notice.
- (3) If an Applicant's Letter of Intent is substantially incomplete or either the project or the Applicant is not eligible under 605 CMR 6.05, the Applicant will be notified in writing at the earliest practicable date by the Director.
- (4) Attendance at an application workshop by at least one library representative and at least one municipal official with responsibility for planning and/or financial decision making for capital projects is required as part of the application process.
- (5) Application materials will be distributed at the workshops only to those municipalities that have filed a Letter of Intent that meets all requirements.
- (6) Application Submittal Requirements for Small, Medium, and Large Tier Projects. The following are the minimum requirements necessary for consideration for acceptance into the planning and design phase for Small, Medium, and Large Tier projects:
 - (a) Applications must be received by the means indicated in the Program Notice for the grant round and by the date and time listed in the Program Notice, with all required elements complete and on forms prescribed by the Board. Late, incomplete, or nonconforming applications will be rejected.
 - (b) The Applicant must agree to all the assurances for the planning and design phase listed in 605 CMR 6.05(2)(c).
 - (c) Applications for the planning and design phase must include:
 - 1. A copy of the Library Building Program, including:
 - a. a concise history of the library and the community;
 - b. community analysis with demographics and a 30 year population projection
 - c. the library's mission, values, and service roles;
 - d. previous and current facility and organizational planning efforts, if applicable, including strategic plan and/or master plan excerpts involving facility improvement goals;
 - e. description of the existing building;
 - f. analysis of current collections, services, and programs;
 - g. pertinent trends and statistics, including staffing and public use;
 - h. a Needs Assessment
 - i. site and exterior considerations;

6.06: continued

- j. area descriptions including primary services/functions, seating capacity, collection capacity, occupancy, furniture and equipment, architectural or other considerations, adjacencies, and net square footages; for shared building public library projects, area descriptions of any proposed shared spaces must be included;
 - k. preliminary total gross square footage figure based on all area descriptions and guidelines from the publications *Library Space: A Planning Resource for Librarians and Building Blocks for Planning Functional Library Space* and including at least 30% allowance for unassigned space;
 - l. energy-related goals for the library/community;
 - m. diversity, equity, and inclusion priorities for the new building and how this program addresses them;
 - n. special circumstances for the library and/or the community not included elsewhere in the building program;
 - o. requirements for:
 - i. sustainability
 - ii. accessibility
 - iii. security
 - iv. acoustics
 - v. data and telecommunications
 - vi. lighting and electrical
 - vii. furniture, fixtures and equipment
 - viii. ergonomics
 - ix. signage;
 - p. evidence of community engagement efforts in creating the Library Building Program;
 - q. photographs with descriptive captions (site, building exterior, building interior) of existing facility as well as potential new locations, as applicable.
2. An assessment of municipal finances, as mandated in the Program Notice for the grant round.
 3. If considering renovating or restoring the existing library, a condition assessment of the facility prepared by a building science firm, registered engineer, or registered architect retained through adherence to all applicable procurement laws. Elements of the report include but are not limited to:
 - a. site and grounds - pavement, curbs, loading docks, walks, landscaping, irrigation, site drainage, exterior lighting, walls, fencing/railings, signage, and exterior amenities;
 - b. structural systems - Foundations and structural framing of walls, columns, intermediate floors, and roofs;
 - c. building envelope - Roofing systems, exterior finishes, stairs and steps, exterior doors, and windows;
 - d. interior building components - Interior finishes;
 - e. mechanical systems - Electrical, heating ventilation/ air conditioning, plumbing and conveyance systems;
 - f. regulatory compliance - Life safety, fire suppression systems, and general visual review of property compliance to the Americans with Disabilities Act (ADA).
 4. A map showing existing and possible future library sites that meet the criteria in 605 CMR 6.02: Approved Site.
 5. For joint public library projects, applications must also include:
 - a. the combined populations served by the communities to be used in the planning process;
 - b. an official Management Plan, agreed upon by the municipalities proposing the joint public library (*see* 605 CMR 6.02: Management Plan).
 6. For shared building public library projects, applications must also include:
 - a. list of other departments to be housed in the shared building and a description of any overlap of services;
 - b. estimated proportion of building's net square footage dedicated to library services;
 - c. estimated proportion of building's net square footage allocated to shared space the library can utilize;
 - d. an official Management Plan, agreed upon by the municipality and library (*see* 605 CMR 6.02: Management Plan).

6.06: continued

7. Applicants may be asked to furnish additional information or documentation as required by the Board.

(7) Application Submittal Requirements for Small Population Public Library Projects. The following are the minimum requirements necessary for consideration for acceptance into the planning and design phase:

- (a) Applications must be received by the means indicated and by the date and time listed in the Program Notice for the grant round, with all required elements complete and on forms prescribed by the Board. Late, incomplete, or nonconforming applications will be rejected.
- (b) The Applicant must agree to all the assurances for the planning and design phase listed in 605 CMR 6.05(2)(c).
- (c) Applications for the planning and design phase must include:
 - 1. an overview of the library's facility, services, and past planning efforts as mandated in the Program Notice for the grant round.
 - 2. a map showing existing and possible future library sites that meet the criteria in 605 CMR 6.02: Approved Site.
 - 3. photographs with descriptive captions (site, building exterior, building interior) of existing facility, if applicable, as well as potential new locations.
 - 4. an assessment of municipal finances, as mandated in the Program Notice for the grant round.
 - 5. For joint public library projects, applications must also include:
 - a. the combined populations served by the communities to be used in the planning process;
 - b. an official Management Plan, agreed upon by the municipalities proposing the joint public library (*see* 605 CMR 6.02: Management Plan).
 - 6. For shared building public library projects, applications must also include:
 - a. list of other departments to be housed in the shared building and a description of any overlap of services;
 - b. an official Management Plan, agreed upon by the municipality and library (*see* 605 CMR 6.02: Management Plan).

6.07: Selection Procedures and Standards

Projects submitted to the Board for funding under the program are subject to the review process set forth in 605 CMR 6.07(1) through (5).

(1) Applications must be complete, on forms prescribed by the Board, and must meet the application submittal requirements of 605 CMR 6.06.

(2) Applications for the planning and design phase are reviewed and ranked by at least three independent reviewers as defined in the Program Notice for the grant round. A site visit to the existing library and all proposed new locations by one or more review team members and/or Board staff is required.

(3) Applications will be reviewed, ranked and recommended for funding based on the evaluative criteria detailed in the Program Notice for the grant round.

(4) All evaluative information and data from this review process will be tabulated and summarized by Board staff, and the independent reviewers will make recommendations to the Director. In making final recommendations for grants to the Board, the Director will consider the following:

- (a) the results of the application review under 605 CMR 6.07;
- (b) the population size of communities for all projects reviewed in the grant round;
- (c) priority of joint public library projects; and
- (d) the availability of state funds.

(5) Funding Formulas, as set forth in the Program Notice for the grant round, will determine the amount of the potential provisional award for each project recommended for funding:

- (a) In addition, the Board may establish a need factor for each municipality at the time a Program Notice for a grant round is issued.

6.07: continued

- (b) In addition, the Board may establish an Incentive or Incentives at the time of and as detailed in the Program Notice for the grant round.
- (c) In no case can a grant award exceed 75% of actual eligible project costs, including additional incentives and need factor increases. If actual eligible costs are less than the estimated eligible costs used in calculating the grant award, the final grant amount will be reduced proportionally.

6.08: Provisional Grant Awards(1) Planning and Design Phase.

- (a) Based upon the criteria in 605 CMR 6.07, the Director will develop a list of recommended provisional grant awards for the consideration of the Board.
- (b) The Board will consider the Director's recommendations and make provisional grants to Applicants for approved projects.
- (c) The Director will notify all Applicants in writing of the Board's decisions relative to their application.
- (d) Applicants receiving provisional grant awards will have three months to fulfill certifications and other requirements.
- (e) The Board's provisional grant awards are final pending fulfillment of necessary certifications and requirements. The grant amount may not be increased. However, if upon completion of the phase, the actual eligible project costs are lower than those estimated prior to application, the Board reserves the right to reduce the amount of the grant award proportionally.
- (f) An award is final once a grant contract is signed with the Board. This contract will include an agreement containing the assurances listed in 605 CMR 6.05, which are based on full municipal enforcement and compliance with federal, state and local laws, rules and regulations.
- (g) The Director may develop a Waiting List as outlined in 605 CMR 6.10, for projects not receiving an immediate provisional grant. Such list will be considered for approval by the Board.

(2) Construction Phase.

- (a) This phase follows completion of the Planning and Design Phase, after the MPLCP Level of Design is approved by an independent review team as defined in the Program Notice for the grant round. The MPLCP Level of Design includes:
 1. schematic drawings (or more complete drawings as available) prepared by a Massachusetts registered architect, and bearing their registration stamp, including:
 - (a) floor plan(s) with a complete furnishing, shelving, and equipment layout;
 - (b) building sections as appropriate;
 - (c) elevations as appropriate;
 2. tabulation of square footages called for in the library building program and comparison to the square footages shown on the architectural plans;
 3. tabulations of the number of book, periodical, audio visual material, library of things, and all other collections called for in the library building program in comparison to the square footages shown on the architectural plans;
 4. tabulations of the number of seats and staff workspaces called for in the library building program in comparison to the square footages shown on the architectural plans;
 5. an estimated project budget, prepared independently by an experienced professional cost estimator, based on the site plan, building plans, and construction budget;
 6. site plan prepared by a Massachusetts registered architect with parking, grading, building location and designation of utilities (one inch = 40 feet or larger);
 7. a geotechnical report certified by a licensed professional, as defined in 605 CMR 6.02: Geotechnical Report;
 8. a hazardous materials survey report;
 9. a stamped topographic land survey, completed within 15 years of the submission of drawings, delineating boundary lines for entire site to be included in the library building project;
 10. energy modeling as required by code, Mass Save, and/or an MPLCP-approved special certification required to qualify for the Green Library Incentive, if applicable;

6.08: continued

11. other environmental, structural, and energy related reports may be required as deemed necessary and appropriate for individual projects.
- (b) The independent review team will make a recommendation of the project for construction phase funding to the Director. The Director will bring the final recommendation for a provisional grant award to the Board.
- (c) If a project does not pass the evaluation of the independent review team, the Grantee may revise the design for reconsideration within two months of the independent review team's determination or withdraw from the grant round. No additional planning and design funding will be given toward any redesign.
- (d) The Board will consider the Director's recommendation and may make a provisional construction grant to the Grantee. The Grantee will have until the end of the fiscal year of award to secure local funding for the construction phase and to fulfill other certifications and requirements.
- (e) The Board's provisional grant awards are final, pending fulfillment of necessary certifications and requirements. The grant amount may not be increased. However, if the actual eligible project costs are lower than those estimated with the MPLCP Level of Design estimate, the Board reserves the right to reduce the amount of the grant award proportionally.
- (f) An award is final once a grant contract is signed with the Board. This contract will include an agreement containing the assurances listed in 605 CMR 6.05, which are based on full municipal enforcement and compliance with federal, state and local laws, rules and regulations.

6.09: Grant Disbursements

Applicants receiving final awards will be eligible for disbursements according to the schedule in the Program Notice once they have signed a grant agreement with the Board, provided all necessary certifications, and have agreed to all assurances. Payment schedules are subject to adjustment based on the state's capital spending plan and the Board's overall fiduciary responsibility.

6.10: Waiting List

- (1) The Board may establish a Waiting List of projects approved for funding but awaiting the authorization of funds by the Legislature and the Administration.
- (2) The Board may vote to place a project or projects on a Waiting List for a specified period of time and the Board may extend this time, as circumstances require.
- (3) A project placed on the Waiting List will be assigned a number indicating its order on the list. As new projects are approved, they will be added to the end of the list. The numerical order will not change as new projects are added.
- (4) As funds become available, the Board may vote provisional grant awards to projects in the order in which they appear on the list. Once voted a provisional grant award, the library must meet the requirements for acceptance of the award as provided elsewhere in 605 CMR 6.00.
- (5) In order to meet spending targets established in the five year capital plan, the Board may offer a partial payment to a project further down the Waiting List if that project already has local funding in place and is adhering to MPCLP procedures and assurances. Such awards or disbursements require a fully executed one time contract between the Grantee and Board and do not constitute a change in waitlist placement.

REGULATORY AUTHORITY

605 CMR 6.00: M.G.L. c. 78, § 19.



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Notice of Compliance

Regulation Filing To be completed by filing agency

CHAPTER NUMBER: 651 CMR 12.00

CHAPTER TITLE: Certification Procedures and Standards for Assisted Living Residences

AGENCY: Executive Office of Elder Affairs

THIS REGULATION WAS ORIGINALLY FILED AS AN EMERGENCY:

Published in Massachusetts Register Number: 1479 Date: 9/30/22

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

None needed

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

Date of public hearing or comment period: 10/27/2022

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

Date amended small business impact statement was filed: 11/09/2022

AGENCY CONTACT: Matthew Casey PHONE: 781-350-0689

ADDRESS: One Ashburton Place, 5th Floor, Boston, MA 02108

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

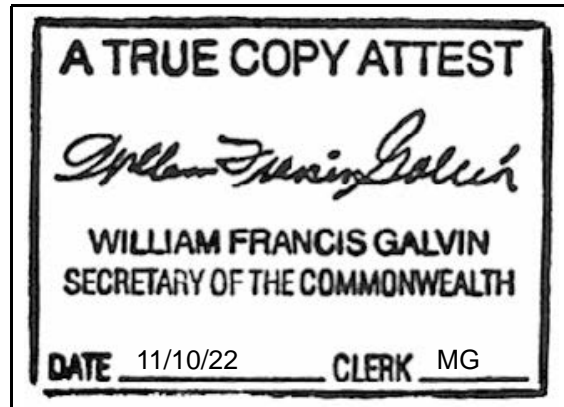
SIGNATURE: SIGNATURE ON FILE DATE: Nov 10 2022

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 9/7/22

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
147 & 148	147 & 148



12.03: continued

2. has ceased to operate such an entity as a result of:
 - a. a settlement agreement arising from a decertification action;
 - b. a settlement agreement in *lieu* of a patient care receivership; or
 - c. a delicensure action or involuntary termination of participation in either the Medical Assistance program or the Medicare program;
3. has been the subject of a substantiated case of patient abuse or neglect involving material failure to provide adequate protection or services for a resident in order to prevent such abuse or neglect; or
4. has over the course of its operation been cited for repeated, serious or willful violations of rules and regulations governing the operation of said health care facility that indicate a disregard for resident safety and an inability to responsibly operate an Assisted Living Residence.

(5) Deemed Certification Pending Approval by Eoea. A Sponsor of an Assisted Living Residence which, on or before July 1, 1995 has commenced construction or operation, or has received official action approval for taxable or tax exempt financing by a governmental issuer, or has received a site approval and market acceptance letter for a loan insured by the Federal Housing Administration, shall, in order to commence or continue operations, file an initial Application with EOEA for each such Assisted Living Residence in accordance with 651 CMR 12.03(2) on a form provided by EOEA. For the purposes of 651 CMR 12.03(5), "commencement of operations" means the Assisted Living Residence is open and providing lodging, meals and services to Residents under a Residency Agreement.

If the completed Application is date stamped by EOEA within 30 days after July 1, 1995 with full payment of the Application fee, the Applicant shall be deemed to be certified to operate and maintain an Assisted Living Residence from January 13, 1995 or from a date thereafter up to July 1, 1995. The Assisted Living Residence shall be Certified until such time as EOEA issues notice to the Applicant regarding the approval or denial of its Application.

The Applicant and Assisted Living Residence shall be subject to completion of all Application and review procedures and must comply with, and shall be subject to, all requirements of St. 1994, c. 354 and 651 CMR 12.00 in order to retain Certification.

(6) Certification Fee. Upon receiving notice of Certification, a Sponsor shall forward within ten days to EOEA a Certification fee, set by the Secretary for Administration and Finance pursuant to M.G.L. c. 7, § 3B based on the number of Units certified on the date of its most recent Application. In the event that the Applicant or Sponsor of an Assisted Living Residence alters the Residence by the addition or removal of Units, a fee adjustment may be made by EOEA. Failure to pay the fee within the ten day period shall result in a finding of non-compliance by EOEA under 651 CMR 12.09. No fee for initial certification or certification renewal shall be due from any Assisted Living Residence created under the HUD Assisted Living Conversion Program.

(7) Renewal Certification Procedures. EOEA shall renew for a term of two years the Certification of a Sponsor of an Assisted Living Residence if EOEA determines that the Sponsor and the Assisted Living Residence meet the requirements of St. 1994, c. 354 and 651 CMR 12.00.

If the Application for renewal of Certification is filed and date-stamped at EOEA at least 30 days before the stated expiration date of the Certification, the Certification shall not expire on such date. The Sponsor and Assisted Living Residence shall be deemed to be certified unless EOEA notifies the Sponsor that the Application for renewal has been denied.

The Application shall be filed on a form provided by EOEA, include an Application fee as set by the Secretary for Administration and Finance and follow the procedures set forth in 651 CMR 12.03.

For the purposes of those Assisted Living Residences deemed certified under 651 CMR 12.03(5), the running of the biennial period for renewal of Certification shall begin on the date of issuance of Certification by EOEA.

12.03: continued

(8) Change of Ownership. Any person or entity who intends to acquire a 25% or greater interest in an existing Assisted Living Residence shall submit an Application for Certification to EOEIA at least 30 days prior to the transfer of the ownership interest. The application for Certification shall also include a statement on a form developed by EOEIA, signed and notarized by the parties, regarding the anticipated transfer of ownership of the Residence. If EOEIA receives these documents at least 30 days prior to the closing date of the change of ownership, the new Applicant shall be considered to be deemed temporarily certified from and after the date of the change of ownership, until such time as EOEIA approves or denies the Applicant's application for Certification; provided that after the transfer of ownership has been completed, the new Applicant has within five days submitted a signed and notarized statement that the transfer of ownership has been completed. The previous Sponsor shall return its Assisted Living Certificate to EOEIA within five days after the transfer of ownership. The current Certification of the Residence shall be deemed valid until the completion of a Certification process for changes sought. In the event of a transfer of ownership interest of an Assisted Living Residence, it is within the Secretary's discretion to conduct a full or partial compliance review.

(9) Non-transferability of Certification.

- (a) Each Certification shall be valid only in the possession of the Residence and the Sponsor to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary;
- (b) No Certification shall be valid for any building premises other than those for which the Certification was originally issued;
- (c) Every Assisted Living Residence Certification must be displayed in a conspicuous place in the Residence; and
- (d) The Certification of a Sponsor to operate an Assisted Living Residence shall be returned by registered mail to EOEIA immediately upon:
 1. Revocation of or refusal to renew the Certification;
 2. Transfer of ownership;
 3. Change of name of the Sponsor; or
 4. Closure or other termination of the Residence's operations.

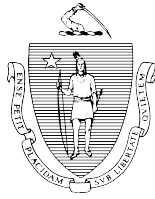
(10) Closure. In the event a Sponsor of an Assisted Living Residence elects to permanently close or sell the Residence for any reason, compliance with the following notification procedures is required:

- (a) Resident Notice. A written notice must be received by the Residents, their Legal Representatives, and their Resident Representatives (if applicable), at least 120 days prior to the date on which the Sponsor intends to close or sell the Residence and cease operations as an Assisted Living Residence. At a minimum, such notice shall include:
 1. The date on which the Sponsor intends to close or sell the Residence and cease operations as an Assisted Living Residence;
 2. A description of the actions the Sponsor will take to assist the Residents in securing comparable housing and services, if necessary; and
 3. A reference to the rights of the Residents that may be exercised under the landlord/tenant laws established under M.G.L. c. 186 or M.G.L. c. 239.
- (b) EOEIA Notice. A written notice must be received by EOEIA at least 120 days prior to the date on which the Sponsor intends to close or sell the Residence and cease operations as an Assisted Living Residence. Such notice shall include a copy of the Resident notice in accordance with 651 CMR 12.03(10)(a), proof of notification of all affected Residents and their Legal Representatives and Resident Representatives (as applicable), and the identification of all Residents receiving additional services, including but not limited to, Group Adult Foster Care.

(11) Suspension of Certification. If EOEIA suspends the Certification of an Assisted Living Residence, the Sponsor shall display the notice of suspension in a prominent place in the Residence, in place of the Certification, so long as the suspension is in effect.

12.04: General Requirements for an Assisted Living Residence

An Assisted Living Residence shall meet the following requirements to obtain and maintain Certification:



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin

Secretary of the Commonwealth

Regulation Filing

To be completed by filing agency

CHAPTER NUMBER: **830 CMR 62C.00**

CHAPTER TITLE: **State Tax Administration**

AGENCY: **Department of Revenue**

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

830 CMR 62C.47A.2 explains the process regarding professional license non-issuance, suspension or revocation if it is determined that a licensee or license applicant or provider has neglected or refused to file any returns or to pay any taxes required under M.G.L. c. 62C. This regulation is being repealed as the process described in the current regulation is obsolete due to statutory and technology changes.

REGULATORY AUTHORITY: **M.G.L. c. 14, § 6; M.G.L. c. 62C, § 3**

AGENCY CONTACT: **Rebecca Forter, Chief** PHONE: **617-852-3106**

ADDRESS: **Department of Revenue, 100 Cambridge Street, 7th Floor, Boston, MA 02114**

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

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

**Approved by the Secretary of Administration and Finance on March 2, 2022.
Notice sent to Local Government Advisory Commission on April 1, 2022.**

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

Date of public hearing or comment period: **May 12, 2022**

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

For the first and second year: No fiscal effect

For the first five years: No fiscal effect

No fiscal effect: No fiscal effect

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

Date amended small business impact statement was filed: November 4, 2022

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

Delinquent licensee
Professional license
License suspension

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

Repeals existing 830 CMR 62C.47A.2

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

SIGNATURE: _____ SIGNATURE ON FILE _____ DATE: Nov 10 2022

Publication - To be completed by the regulations Division

MASSACHUSETTS REGISTER NUMBER: 1483 DATE: 11/25/22

EFFECTIVE DATE: 11/25/22

CODE OF MASSACHUSETTS REGULATIONS

<i>Remove these Pages:</i>	<i>Insert these Pages:</i>
1 & 2	1 & 2
97 & 98	97 & 98
167 & 168	167 & 168
171 & 172	171 & 172

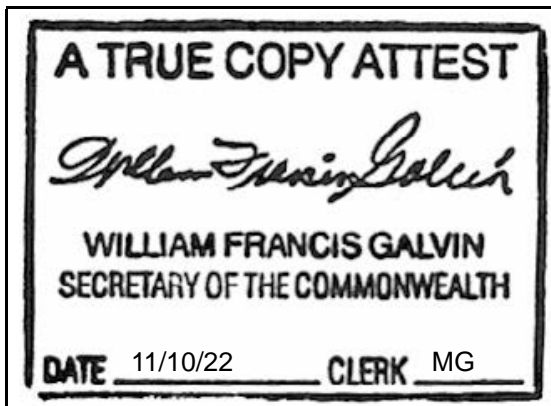


Table of Contents

	<u>Page</u>
(830 CMR 1.00 THROUGH 13.00: RESERVED)	5
830 CMR 14.00: DEPARTMENT OF REVENUE PERSONNEL	6.1
Section 14.3.1: Volunteer Personnel	6.1
(830 CMR 15.00 THROUGH 17.00: RESERVED)	6.3
830 CMR 18.18A.1: COOPERATION WITH CHILD SUPPORT ENFORCEMENT	7
Section 18.18A.1: Cooperation by Applicants for and Recipients of Public Assistance with Efforts by the Child Support Enforcement Division of the Department of Revenue to Establish Parentage and Establish, Modify and Enforce Child Support Orders	7
(830 CMR 19.00 THROUGH 39.00: RESERVED)	10.3
830 CMR 40S.1.1: SMART GROWTH SCHOOL COST REIMBURSEMENT PROCEDURES	10.5
Section 40S.1.1: Smart Growth School Cost Reimbursement Procedures	10.5
(830 CMR 41.00 THROUGH 57.00: RESERVED)	10.11
830 CMR 58.00: LOCAL TAXES	11
Section 58.2.1: Manufacturing Corporations	11
Section 58.3.1: Qualifications of Assessors	23
(830 CMR 59.00 AND 60A.00: RESERVED)	25
830 CMR 62.00: INCOME TAX	33
Section 62.3.1: Rent Deduction	33
Section 62.3.2: Deduction for Charitable Contributions	34.1
Section 62.5A.1: Nonresident Income Tax	35
Section 62.5A.2: Compensation Received by Nonresident Professional Team Athletes	50.9
Section 62.5A.3: Massachusetts Source Income of Nonresidents Telecommuting Due to the COVID-19 Pandemic	50.14
Section 62.6.1: Residential Energy Credit	50.16
Section 62.6.3: Lead Paint Removal Credit	52
Section 62.6.4: Conservation Land Tax Credit	54.1
Section 62.6.5: Angel Investor Tax Credit	54.3
Section 62.6M.1: Community Investment Tax Credit	55
Section 62.10.1: Income Tax on Trusts and Estates	59
Section 62.17A.2: Restatement of Massachusetts Taxation of S Corporations and Their Shareholders	63
Section 62.63.1: Installment Transactions	90.16
830 CMR 62B.00: WITHHOLDING AND ESTIMATED TAXES	91
Section 62B.2.1: Withholding of Taxes on Wages and Other Payments	91
Section 62B.2.2: Pass-through Entity Withholding	96.6
Section 62B.2.3: Motion Picture Production Company Withholding	96.11

Table of Contents

	<u>Page</u>
830 CMR 62C.00: STATE TAX ADMINISTRATION	97
Section 62C.3.1: Department of Revenue (DOR) Public Written Statements	97
Section 62C.4.1: Use of Whole Dollar Method	102
Section 62C.8.1: Massachusetts Reporting Requirements for Third Party Settlement Organizations	102
Section 62C.11.1: Return Due Dates for S Corporations Included in a Combined Group	104
Section 62C.16.2: Sales and Use Tax Returns and Payments	111
Section 62C.21.1: Confidentiality of Tax Information	119
Section 62C.22.1: Exchange of Information with Other Taxing Authorities	125
Section 62C.24A.1: Unified Audit Procedures for Pass-through Entities	126.1
Section 62C.25.1: Record Retention	128
Section 62C.26.1: Assessments	135
Section 62C.26.2: Amended Returns	144.3
Section 62C.30.1: Changes in Federal Taxable Income, Federal Tax Credits, or Federal Taxable Estate	145
Section 62C.30A.1: Changes in Tax Due to Any Other United States or Canadian Jurisdiction	149
Section 62C.31A.1: Responsible Persons	153
Section 62C.33.1: Interest, Penalties, and Application of Payments	161
Section 62C.37.1: Abatements	164
Section 62C.47A.1: List of Licenses and Providers	167
Section 62C.50.1: Lien on Property	171
Section 62C.55A.1: Determination of Amount Exempt from Levy	174.2
Section 62C.64.1: Release of Levy	177
Section 62C.67.1: Display of Certificates of Registration	178
Section 62C.84.1: Spousal Relief from Joint Income Tax Liability	180
830 CMR 62E.00: WAGE REPORTING SYSTEM	187
Section 62E.2.1: Reporting of New Hires	187
830 CMR 62F.00: (RESERVED)	191
830 CMR 63.00: TAXATION OF CORPORATIONS	197
Section 63.29.1: Credits for Insurance Companies	197
Section 63.30.2: Net Operating Loss Deductions and Carryover	200
Section 63.31.1: Add Back of Interest or Intangible Expense	210
Section 63.31N.1: Massachusetts Property Basis Adjustments	210.15
Section 63.32B.1: Combined Returns of Income	210.25
Section 63.32B.2: Combined Reporting	218.1
Section 63.38.1: Apportionment of Income	219
Section 63.38.2: Apportionment of Income of Airlines	224.51
Section 63.38.3: Apportionment of Income of Motor Carriers	224.54
Section 63.38.4: Apportionment of Income of Courier and Package Delivery Services	224.55
Section 63.38.7: Apportionment of Income of Mutual Fund Service Corporations	226
Section 63.38.8: Apportionment of Income of Pipeline Companies	226.7
Section 63.38.10: Apportionment of Income of Electric Industry	226.8
Section 63.38.11: Appointment of Income of Telecommunications Industry	226.8.7
Section 63.38B.1: Massachusetts Taxation of Security Corporations	226.9
Section 63.38M.1: Massachusetts Research Credit	227
Section 63.38N.1: Economic Opportunity Area Credit	240

830 CMR 62C.00: STATE TAX ADMINISTRATION

Section

- 62C.3.1: Department of Revenue (DOR) Public Written Statements
- 62C.4.1: Use of Whole Dollar Method
- 62C.8.1: Massachusetts Reporting Requirements for Third Party Settlement Organizations
- 62C.11.1: Return Due Dates for S Corporations Included in a Combined Group
- 62C.16.2: Sales and Use Tax Returns and Payments
- 62C.21.1: Confidentiality of Tax Information
- 62C.22.1: Exchange of Information with Other Taxing Authorities
- 62C.24A.1: Unified Audit Procedures for Pass-through Entities
- 62C.25.1: Record Retention
- 62C.26.1: Assessments
- 62C.26.2: Amended Returns
- 62C.30.1: Changes in Federal Taxable Income, Federal Tax Credits, or Federal Taxable Estate
- 62C.30A.1: Changes in Tax Due to Any Other United States or Canadian Jurisdiction
- 62C.31A.1: Responsible Persons
- 62C.33.1: Interest, Penalties, and Application of Payments
- 62C.37.1: Abatements
- 62C.47A.1: List of Licenses and Providers
- 62C.50.1: Lien on Property
- 62C.55A.1: Determination of Amount Exempt from Levy
- 62C.64.1: Release of Levy
- 62C.67.1: Display of Certificates of Registration
- 62C.84.1: Spousal Relief from Joint Income Tax Liability

62C.3.1: Department of Revenue (DOR) Public Written Statements(1) Statement of Purpose; Effective Date; Outline of Topics.

(a) Statement of Purpose. Clearly articulated and widely communicated rules, standards and instructions are an important tool in achieving voluntary compliance with Massachusetts tax laws. The Department of Revenue publishes public written statements as well as other documents and forms to explain and communicate the rules that taxpayers and others must follow in order to comply with their obligations, established by law, to file returns and pay all taxes due. The purpose of 830 CMR 62C.3.1 is to describe the various types of public written statements and other documents published or issued by the Department of Revenue and the general procedures followed by the Department in issuing public written statements.

(b) Effective Date. 830 CMR 62C.3.1 is effective April 7, 2017.

(c) Outline of Topics. 830 CMR 62C.3.1 is organized as follows:

1. Statement of Purpose; Effective Date; Outline of Topics;
2. Definitions;
3. General;
4. Regulations;
5. Directives and Technical Information Releases;
6. Letter Rulings;
7. Informational Guideline Releases;
8. Local Finance Opinions; and
9. Materials That Are Not Public Written Statements.

(2) Definitions. The following words used in 830 CMR 62C.3.1 have the following meanings, unless the context otherwise requires:

Commissioner. The Commissioner of Revenue.

Department. The Massachusetts Department of Revenue (DOR).

Massachusetts Tax Laws. The tax statutes of the Massachusetts General Laws that are within the official purview of the Department, the regulations thereunder, and related statutes and regulations that are within the official purview of the Department.

62C.3.1: continued

MASSTAX Guide. An official publication produced by the Department and Thompson Reuters or a successor on an annual basis with periodic supplements containing the Department's public written statements, selected forms and instructions, and other materials.

Public Written Statements. Official pronouncements of the Department, specifically: regulations described in 830 CMR 62C.3.1(4), Directives described in 830 CMR 62C.3.1(5), Technical Information Releases described in 830 CMR 62C.3.1(5), Letter Rulings described in 830 CMR 62C.3.1(6), Informational Guideline Releases described in 830 CMR 62C.3.1(7), and Local Finance Opinions described in 830 CMR 62C.3.1(8). All public written statements in effect are included in the latest published version of the official *MASSTAX Guide* and Supplements or published on the Department's website at <http://www.mass.gov/dor>.

(3) General. The Department may issue regulations and other public written statements relating to the Massachusetts tax laws and other matters within the official purview of the Department. Only public written statements, as defined in 830 CMR 62C.3.1(2), convey the official position of the Department with respect to the interpretation of the Massachusetts tax laws. Other documents issued by the Commissioner that are not public written statements should be viewed as informational only and are not considered to be official policy statements of the Department. The Department shall use public written statements in its oversight and administration of the Massachusetts tax laws until they are revoked, modified, or superseded, whether by a direct DOR pronouncement or as a result of a change in the Massachusetts tax laws, later court decisions, or subsequent public written statements.

(4) Regulations. The Department may adopt, amend or repeal regulations, including emergency regulations, under the authority granted by M.G.L. c. 14, § 6, and in compliance with the provisions of M.G.L. c. 30A and M.G.L. c. 62C, § 3. The Commissioner shall issue notice for the adoption, amendment, or repeal of regulations in accordance with the requirements set forth in M.G.L. c. 30A. A regulation under 830 CMR 62C.3.1 has the same meaning as a "regulation" defined under M.G.L. c. 30A, § 1.

Any interested person may request that the Commissioner adopt, amend or repeal any regulation, and may accompany the request with relevant data, views, and arguments. Requests concerning regulations should be sent in writing to the Bureau Chief, Rulings and Regulations Bureau, Massachusetts Department of Revenue, 100 Cambridge St., Boston, MA 02114.

(5) Directives and Technical Information Releases.

(a) General. In its discretion, the Department may issue Directives and Technical Information Releases (TIRs).

(b) Directives. A Directive is a public written statement, signed by the Commissioner, which clarifies the Department's application and interpretation of the Massachusetts tax laws or the Department's current policies and practices in order to assist taxpayers in complying with their Massachusetts tax obligations.

(c) Technical Information Releases. A TIR is a public written statement, signed by the Commissioner, which informs the public of the Department's response to changes in federal or Massachusetts tax laws, or to court decisions interpreting federal or Massachusetts tax laws. Within four months of a final court decision interpreting Massachusetts tax law, the Department will issue a TIR setting forth the Department's position relative to that decision where required by M.G.L. c. 62C, § 3.

(d) Effect of Directives and TIRs. Directives and TIRs are precedential and state the official position of the Department. Directives and TIRs may be relied upon by taxpayers until they are revoked, modified, or superseded, whether by a direct DOR pronouncement or as a result of a change in the Massachusetts tax laws, later court decisions, or subsequent public written statements.

(6) Letter Rulings.

(a) General. In its discretion, the Department may issue a Letter Ruling in response to a question from an individual or an organization about the application of the Massachusetts tax laws to a particular transaction or other set of facts.

(b) Definition. A Letter Ruling is an "advisory ruling" as defined in M.G.L. c. 30A, § 8, issued by the Department in writing to a taxpayer or the taxpayer's authorized representative that interprets and applies the Massachusetts tax laws to a specific transaction or other set of facts.

62C.47A.1: Lists of Licenses and Providers

(1) Definitions.

Agency, every department board, commission, division, authority or other agency of the Commonwealth or of its subdivisions.

Commissioner, the Commissioner of Revenue.

License, any license or other certificate of authority to conduct a profession, trade or business.

Provider, any person who has agreed to furnish goods, services or real estate space to an agency or subdivision.

Subdivision, every political subdivision of the Commonwealth, including counties, cities, towns, and districts.

(2) Annual Submission of Information.

(a) Every agency or subdivision issuing or renewing a license must annually, on or before February 1, furnish to the Commissioner a report of all licenses issued or renewed by the agency or subdivision during the preceding calendar year.

(b) Every agency or subdivision, except for towns and districts having a population of less than 5,000 and agencies thereof, must annually, on or before August 1, furnish to the Commissioner a report of all providers who have furnished goods, services or real estate space to the agency or subdivision during the preceding fiscal year, under contracts or agreements which, taken together, required the agency or subdivision to pay the provider \$5,000.00 or more during the preceding fiscal year. The Commissioner may waive this requirement with respect to payments by state agencies which have been individually reported to, and certified prior to payment by, the Comptroller's Division of the Executive Office for Administration and Finance. In the event of a waiver of this requirement, such payments will not be taken into account in determining whether the agency was required to pay the provider \$5,000.00 or more during the preceding fiscal year.

(3) Form and Contents.

(a) The information on licenses must include the name, address, and social security or federal identification number of each licensee, his license number, and the type of license issued to him.

(b) The information on providers must include the name, address, and social security or federal identification number of each provider, the provider identification number assigned to him by the agency or subdivision, and the amount paid to him during the preceding fiscal year.

(c) Agencies and subdivisions must provide information either electronically or on magnetic tape, in a format approved by the Commissioner.

(PAGES 169 AND 170 ARE RESERVED FOR FUTURE USE.)

62C.50.1: Lien on Property

(1) Statement of Purpose; Effective Date; Outline of Topics.

(a) Statement of Purpose. 830 CMR 62C.50.1 explains the application of M.G.L. c. 62C, § 50, as amended by St. 2004, c. 262, § 26. This amendment extended the duration of Department of Revenue liens by adopting the federal limitations period of ten years, or such longer period as permitted by § 6322 of the Code and regulations promulgated thereunder. The provisions of M.G.L. c. 62C, § 50 apply to any tax liability, inclusive of penalties, interest, costs, forfeitures or additions to tax which remained due and unpaid as of January 1, 2005. St. 2004, c. 262, § 70.

(b) Effective Date. 830 CMR 62C.50.1 is effective January 22, 2010.

(c) Outline of Topics. 830 CMR 62C.50.1 is organized as follows:

1. Statement of Purpose; Effective Date; Outline of Topics
2. Definitions
3. General
4. Validity of Lien Against Mortgagees, Pledgees, Purchasers and Judgment Creditors
5. Refiling of Notice of Tax Lien

62C.50.1: continued

6. Release of Lien
7. Partial Release of Lien: Certificate of Subordination
8. Revocation of Certificate of Release of Lien; Reinstatement of Lien

(2) Definitions. As used in 830 CMR 62C.50.1:

Adequate and Full Consideration in Money or Money's Worth, a consideration in money or money's worth having a reasonable relationship to the true value of the interest in property acquired. The phrase "money or money's worth" includes any money, a security, tangible or intangible property, services, and other consideration reducible to a money value. The phrase "adequate and full consideration in money or money's worth" includes the consideration in a transaction in which the purchaser has not completed performance of his obligation, such as the consideration in an installment purchase contract, even though the purchaser has not completed the installment payments.

Code, the Internal Revenue Code, as amended and in effect for the applicable period.

Interest in Property, each of the following interests is considered to be an interest in property if it is not a lien or security interest:

- (a) A lease of property;
- (b) A written executory contract to purchase or lease property;
- (c) An option to purchase or lease property and any interest therein; or,
- (d) An option to renew or extend a lease of property.

Judgment Creditor, a person who has obtained a valid judgment in a court of record and of competent jurisdiction for the recovery of specifically designated property or for a certain sum of money. The term judgment does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity. In the case of a judgment for the recovery of a certain sum of money, a judgment on the property involved. A judgment lien does not include an inchoate lien, such as an attachment lien, unless and until such lien has ripened into a judgment.

Mortgagee and Pledgee, a person who holds any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. Such security interest exists at any time:

- (a) If, at such time, the property is in existence and the interest has become protected against a subsequent judgment lien arising out of an unsecured obligation; and,
- (b) To the extent that, at such time, the mortgagee or pledgee has parted with money or money's worth, as defined in 830 CMR 62C.50.1(2).

Purchaser, a person who, for adequate and full consideration in money or money's worth acquires an interest (other than a lien or security interest) in property which is valid against subsequent purchasers without actual notice.

Security, any bond, debenture, note or certificate or other evidence of indebtedness issued by any corporation, including one issued by a governmental or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(3) General.

- (a) Scope of Lien. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount, including any interest, additional amount, addition to tax, assessable penalty or forfeiture together with any costs that may accrue in addition thereto, shall be a lien in favor of the Commonwealth upon all property, or rights to property, whether real or personal, tangible or intangible, belonging to such person. The lien shall also extend to property or rights to property of a trust with respect to tax amounts due from a grantor or other person treated as the owner of a portion of such trust by reason of §§ 671-678 of the Code and to property or rights to property of a disregarded entity with regard to tax amounts due from the owner of the entity. The lien may also extend to property owned by a taxpayer even though a third person holds legal title.

