

103 CMR: DEPARTMENT OF CORRECTION

103 CMR 421.00: DEPARTMENTAL SEGREGATION UNITS

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421.01: Purpose

The purpose of 130 CMR 421.000 is to establish rules whereby an inmate may be confined to a Departmental Segregation Unit because his continued presence in a general institution population would be detrimental to the program of the institution.

421.02: Statutory Authorization

103 CMR 421.000 is issued pursuant to M.G.L. c. 124, §§ 1(b) and (q) and M.G.L. c. 127, § 39.

421.03: Cancellation

Except for 103 CMR 420.00, this order cancels all previous Commissioner's bulletins or other departmental or institutional references regarding transfer and release of inmates from departmental segregation units and procedures for the operation of such units.

421.04: Applicability

103 CMR 421.000 shall be applicable to all state correctional facilities.

421.05: Access to Regulations

This policy shall be maintained within the Central Policy File of the Department and shall be accessible to all Department Employees. A copy of this policy shall also be maintained in each Superintendent's Central Policy File, and at each inmate library.

421.06: Definitions

Awaiting Action in Restrictive Confinement - A restricted area or areas designated by a superintendent or by the Commissioner in which an inmate who has been referred to the DSU Board or is awaiting a final transfer decision by the Commissioner regarding placement in DSU may be confined. An inmate who has been classified to a DSU but is awaiting placement in a DSU may also be temporarily housed in this area. An awaiting action area shall not be used as a substitute for a DSU.

Correction Counselor - A non-clinical case manager assigned to a unit or otherwise distinct population of the Department of Correction.

Commissioner - The Commissioner of Correction.

Departmental Segregation Unit [DSU] - An area or areas in a state correctional facility designated by the Commissioner for any inmate segregated pursuant to 103 CMR 421.09 through 421.17.

DSU Board - A board appointed by the Commissioner for a definite or indefinite term and consisting of three members, one of whom he shall designate as chairperson. Once appointed, the board is empowered to recommend an inmate for placement in a DSU or another Massachusetts or out-of-state institution regardless of his location.

Substantial Evidence - Evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

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

Weekday - Monday through Friday, excluding holidays.

421.07: Referral to a DSU Board

(1) An inmate may be referred to a DSU Board for possible transfer to a DSU by the Commissioner or his designee if there is a reasonable basis to believe that the inmate satisfies the criteria set forth in 103 CMR 421.09. A referral to, or placement in, a DSU is not permitted for disciplinary reasons.

(2) Notwithstanding any rule or regulation of the Department to the contrary, an inmate shall not be referred to a DSU board for committing a specific punishable offense unless a disciplinary board has found him guilty of such offense and has imposed a sanction pursuant to 103 CMR 430.00: *Disciplinary Proceedings*.

421.08: Placement on Awaiting Action Status in Restrictive Confinement

(1) At the discretion of the Superintendent or his designee, an inmate who has been referred to a DSU board pursuant to 103 CMR 421.07 or is awaiting a final transfer decision by the Commissioner regarding placement in a DSU may be placed on awaiting action in restrictive confinement at the institution where he is then confined, or transferred to another Massachusetts institution or an out-of-state institution prior to his DSU hearing.

(2) Placement on awaiting action in restrictive confinement may never be a substitute for placement in a DSU.

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(3) An inmate must be afforded a segregation unit hearing or released within 15 days after placement in awaiting action in restrictive confinement. However, when a prisoner who is in awaiting action is under investigation for a possible disciplinary offense or has been charged with a disciplinary offense, this period may be extended to 30 days. The foregoing time limits of this paragraph may be exceeded only in extraordinary circumstances, and for no longer than necessary. Whenever an inmate has spent 15 days on awaiting action in restrictive confinement, he shall be immediately reviewed, and every 15 days thereafter. If his retention in awaiting action is approved by the Commissioner or his designee, the decision shall be in writing and an explanation of the decision shall be served on the inmate, which shall include an estimate of how much longer he will remain in awaiting action in restrictive confinement and the reason(s) why. Any time spent in awaiting action beyond the above-stated 15 or 30 day time limits shall be credited to the period of the inmate's DSU confinement.

421.09: Placement or Retention of an Inmate in a DSU

An inmate may be placed or retained in a DSU only after a finding by the Commissioner based on substantial evidence that, if confined in the general population of any state correctional facility:

- (1) The inmate poses a substantial threat to the safety of others; or
- (2) The inmate poses a substantial threat of damaging or destroying property; or
- (3) The inmate poses a substantial threat to the operation of a state correctional facility.

An inmate may be placed or retained in a segregation unit only for administrative, and not for disciplinary, reasons.

421.10: Proceedings Before the DSU Board

(1) Within five weekdays of the referral of an inmate to a DSU board, the inmate's correction counselor shall prepare, provide the board, and serve on the inmate a written referral summary which shall include the following:

- (a) the specific aspects of the inmate's record or other information which the board may consider. These may include the inmate's disciplinary record, past criminal record, prison records from past institutionalization, psychological makeup, involvement in criminal activity while incarcerated, attitude toward authority, institutional record on work assignments, adjustment to institutional programs, willingness and ability to live with other inmates, record of violent reactions to stressful situations, habitual conduct or language of a type likely to cause difficult management problems, outstanding criminal investigations.
- (b) the names of any witnesses whom the presenting officer may call to testify; and
- (c) copies of any documents which will be introduced.

(2) The inmate shall be served with a Notice of Referral in the form set forth in Appendix A. The Notice of Referral shall be accompanied by the following: a Referral Summary and its supporting documents; the Powers of the Board and Procedures To Be Followed; a Request for Representation and/or Witnesses form; and, a Waiver of 72 Hour Notice and/or Waiver of Appearance form.

(3) Written notice of the hearing must be given to the inmate, and upon request to his representative, at least 72 hours before the hearing.

(4) The hearing shall be held within a reasonable time. The board may continue the hearing at its discretion with notice to the inmate. The inmate shall be entitled to one continuance for good cause if made in writing and submitted to a staffperson at least 24 hours in advance of the scheduled hearing.

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(5) The inmate may waive his right to 72 hours notice of the hearing and/or his right to appear before the board. Any such waiver shall be documented, and the hearing may proceed accordingly.

(6) If the inmate wishes to be represented by an attorney or law student or have certain witnesses testify, he shall complete the appropriate request form and submit it to a staffperson within 24 hours of receiving it. The staffperson who receives such a completed request shall deliver it to the correctional counselor before the close of his tour of duty. The failure of an inmate to submit the completed request form may, in the discretion of the board chairperson, constitute a waiver of the inmate's rights to call witnesses and/or to be represented at the hearing.

421.11: Assistance and Representation of Inmates and the Recording of Proceedings

(1) Prior to the hearing, the inmate's correctional counselor shall be available to discuss all aspects of the written referral summary, and all matters which may be relevant to the DSU hearing. The correctional counselor shall also provide upon request those portions of the inmate's file which may be disclosed consistent with 103 CMR 157.00: *Access to and Dissemination of Evaluative Information*.

(2) The inmate may be represented by an attorney or a law student at the hearing. It shall be the inmate's responsibility to secure such representation and he shall be allowed to make, or have made on his behalf, any telephone call(s) necessary for that purpose. An inmate's representative may thereafter request a continuance. The correctional counselor shall make a reasonable effort, but shall not be obligated, to schedule a hearing in accordance with the scheduling requirements of the representative. The inmate's representative shall be entitled to make an amended request for the presence of witnesses, provided that in ordinary circumstances such an amended request is communicated to the correctional counselor one weekday prior to the scheduled time for the hearing.

(3) When an inmate is illiterate or non-English speaking, or when the issues presented are complex, the correctional counselor shall recommend, and the Superintendent shall appoint, a staff member to assist the inmate in preparing and presenting the inmate's position at the hearing if the inmate is unable to secure legal representation.

(4) An inmate shall be permitted to request that the board record the hearing and the board shall then do so. At the close of the hearing, the tape shall be delivered to the Superintendent or his designee for safekeeping. The inmate or his representative shall have access to the tape for reference, and upon request shall be provided with a duplicate tape at the inmate's expense, or if the inmate is indigent at no charge. The duplicate tape may be made either at the hearing or thereafter from the original tape. Tapes shall be held in safekeeping for one year or until a duplicate has been provided to the inmate or his representative, whichever is shorter. In no event shall tapes be held for a period shorter than required by the Records Conservation Board, M.G.L. c. 66.

421.12: The DSU Board's General Powers

(1) The chairperson of the DSU board shall govern the conduct of every phase of a hearing before the board including, but not limited to, the application of 103 CMR 421.000 and the conduct of all parties before the board.

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- (2) The members of the DSU board shall be impartial. The inmate may challenge the impartiality of any member of the board at the beginning of the hearing. The inmate shall address his objection to the chairperson and shall state his reasons for believing the board member not to be impartial. The chairperson shall determine if the inmate has stated substantial reasons to support his claim unless the inmate challenges the impartiality of the chairperson, in which case the other, unchallenged member or members of the board shall determine if the inmate has stated a substantial reason to support the claim. A substantial reason would be, for example, where a member of the board has witnessed an event in issue. If a member has been removed from the board, the Commissioner or his designee shall designate a replacement as soon as practicable.
- (3) The DSU board shall not be bound by the rules of evidence observed by the courts of the Commonwealth.
- (4) All parties, counsel, witnesses and other persons present at a hearing shall conduct themselves in a professional manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. The chairperson may take whatever actions are appropriate and necessary to insure the proper conduct of any participant.
- (5) All findings of fact and any decision shall be made upon a majority vote of the board.
- (6) Only members of the DSU board shall be present during the deliberations and other executive sessions of the board, except as provided for in 103 CMR 421.14.

421.13: Fact Finding Aspects of Hearing Before DSU Board

- (1) The chairperson shall conduct a fact finding hearing at which time the correctional counselor may testify and submit, personally or through other witnesses, written, oral or physical evidence. At the discretion of the chairperson, the hearing may be continued in order to call additional witnesses who will be disclosed to the inmate at the time of the continuance. All evidence considered by the board shall be introduced in the presence of the inmate except informant information, which shall be introduced in accordance with the provisions of 103 CMR 421.14.
- (2) The inmate shall be allowed to confront and cross-examine the correctional counselor or any witness presented, with the exception of informants as provided in 103 CMR 421.14. Specific inquiry may be limited, however, as to matters which the chairperson deems:
 - (a) Hazardous to personal safety or institutional security;
 - (b) Irrelevant to placement or retention of the inmate in the DSU;
 - (c) Cumulative or repetitive. In the discretion of the chairperson, testimony may be deemed cumulative or repetitive if contained in the record of a prior DSU hearing or disciplinary hearing, or if capable of having been introduced at a disciplinary hearing.Testimony shall be accepted as relevant if it relates to the inmate's recent good conduct, or to any circumstances which tend to explain or mitigate conduct which the board is considering.
- (3) The inmate shall be allowed to testify and submit, personally or through other witnesses, written, oral, or physical evidence, subject to the limitations set forth in 103 CMR 421.13(2)(a) through (c) and the availability of the requested witness(es). A witness shall be deemed available unless absent for a prolonged period of time due to illness, vacation, authorized absence, or other good cause. In the event an inmate's witness(es) or line of inquiry is excluded, the inmate shall be permitted to state the substance of the expected testimony. The board shall incorporate in its written report a summary of the expected testimony and the board's reasons for the exclusion or limitation. Whenever a Superintendent or other staff member has submitted to the board a recommendation as to DSU confinement, the inmate is entitled to call that person(s) to the hearing for questioning before the board.
- (4) The inmate may present an oral and/or written statement as to why he should be permitted to remain in, or return to, the general institutional population.

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(5) Where a request for an inmate or other witness(es) has been refused pursuant to 103 CMR 421.13(2)(a), the inmate shall be provided assistance with obtaining an affidavit from the requested witness(es).

421.14: Procedures for the Use of Informant Information

The DSU board may consider documentary evidence or testimony involving informant information which is not introduced in the presence of the inmate or his representative. The board is not required to interview the informant in person, and may receive the informant's evidence as oral or written hearsay. Such evidence may be considered only if the board has:

(1) Made a finding that the informant is reliable and that the information is credible. This finding shall be included in the record and shall contain the following information:

- (a) the facts upon which the board based its conclusion that the informant was reliable and that the information was credible;
- (b) any evidence tending to impeach the informant's credibility; and
- (c) a statement of the information provided by the informant which is as specific as possible. No information need be provided which would create a substantial risk of disclosing the identity of the informant. The statement shall demonstrate that the informant had personal knowledge of the information provided.

(2) Made a finding that the disclosure of the documentary evidence or testimony provided by the informant to the inmate or his representative would create a substantial risk of harm to the informant, to any other person, or to the security of the institution. This finding shall be included in the record.

421.15: Deliberation and Decision by the DSU Board

(1) After the close of the presentation of the evidence, the DSU board shall meet in executive session to decide whether to recommend that the Commissioner remove the inmate from the general institutional population and place him in another Massachusetts or out-of-state facility, or place or retain the inmate in the DSU. A recommendation to place or retain the inmate in the DSU shall be based on substantial evidence that, if confined in the general population of any state correctional facility, the inmate would pose a substantial threat as set forth in 103 CMR 421.09(1)(a) through (c). The board shall thereafter return and orally notify the inmate of its decision.

(2) Within two weekdays after the hearing, the board shall serve a written decision on the inmate. The written decision shall contain the following:

- (a) A description of the specific evidence relied upon;
- (b) A particularized statement of the reason(s) for the decision. The statement shall explain why the placement or retention of the inmate in a DSU is for administrative and not disciplinary reasons;
- (c) If placement or retention in a DSU is contemplated:
 1. a conditional release date based on the specific aspects of the inmate's record and other information on which the recommendation is based, including any mitigating information. Conditional release dates shall not exceed six months except in the most extraordinary circumstances. The information may include the factors set forth in 103 CMR 421.10(1)(a); and
 2. conditions that are specifically related to the administrative reasons for the placement or retention. If the inmate meets these conditions he shall be released from the DSU unless a new DSU referral has been made. Conditions may include the inmate's successful participation in specified counseling or evaluation programs, his completion of work assignments, remaining free of disciplinary reports, cooperation with correctional personnel, and maintenance of cell and sanitation standards;
- (d) Where the board has considered informant information, the findings required by 103 CMR 421.14; and

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(e) A notice of the inmate's right to appeal and to submit written objections within five days of the inmate's receipt of the board's written decision. Any appeal and objections should be addressed to the Associate Commissioner of Programs, Treatment and Classification, and submitted by the inmate or his representative to a staffperson. The staffperson shall deliver them to the correctional counselor before the close of his tour of duty. The correctional counselor shall promptly submit the name of any inmate who has filed an appeal to the Associate Commissioner of Programs, Treatment and Classification.

421.16: Review by the Associate Commissioner of Programs, Treatment & Classification

No less than five and no more than ten weekdays after the inmate's receipt of the board's recommendation, the Associate Commissioner shall approve the recommendation of the board, or make his own recommendations concerning the placement of the inmate in a DSU and any conditional release date. Any written statement or objections timely filed by the inmate pursuant to 103 CMR 421.15(2)(e) shall be attached to this recommendation.

421.17: Appeal and Decision by the Commissioner

Whether or not an appeal has been taken, the Commissioner or his designee shall review and act upon the recommendation of the board within five weekdays after review by the Associate Commissioner of Programs, Treatment, and Classification. The Commissioner's action shall be based upon substantial evidence in the record of the hearing. In the event that the Commissioner makes a finding pursuant to 103 CMR 421.09, the Commissioner shall serve upon the inmate a written decision which shall contain the information required by 103 CMR 421.15(2)(a) through (c). The Commissioner may sustain and adopt the recommendation in its entirety, shorten, modify or lengthen the conditional release date, order a rehearing, or entirely reject a recommendation of placement in a DSU or another Massachusetts or out-of-state facility. The Commissioner shall specify and explain any aspects of his decision and reasoning which are different from those of the DSU Board. If the Commissioner decides that, contrary to the DSU board's recommendation, out-of-state or federal placement is warranted, the Commissioner shall allow the inmate five days from receipt of the Commissioner's written decision in which to file a written statement or objections pursuant to 103 CMR 421.15(2)(e).

421.18: Review of DSU Status

Every inmate in a DSU shall be reviewed at 90 day intervals in accordance with the standards and procedures set forth in 103 CMR 421.09 through 421.17.

421.19: Admission Process and Continuing Evaluation

(1) Admission Process.

- (a) The DSU administrator shall enter into a log book all admissions to the DSU. Entries shall include the name of each inmate so admitted, his DSU number, the date admitted, and the date of the initial 90 day review as required by 103 CMR 421.18.
- (b) The DSU administrator or his designee shall open and maintain a file on each inmate who is transferred to a DSU. This file shall contain any monthly review reports, disciplinary reports, and any other material relating to the inmate during his confinement in the DSU.

(2) Monthly Evaluation and Review. A committee composed of the DSU administrator or his designee, a correction officer designated by the DSU administrator, and the correctional counselor of a particular inmate shall meet with the inmate each month to review his case.

- (a) The committee shall prepare a report after each meeting which shall include a summary of the current behavior of the inmate including disciplinary reports, a summary of the program involvement of the inmate, including, for example, education, counseling and recreation activities, and an evaluation of the behavior and attitude of the inmate, and recommendations, if any, for releasing the inmate from the DSU.
- (b) In the event an inmate refuses to attend his monthly review meeting, the committee shall proceed with the evaluation and prepare a written report.

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- (c) Upon oral or written request to the DSU administrator, each inmate shall be permitted to review the monthly report of the committee and to take notes or copy information from the report.

421.20: Operating Procedures

The DSU administrator shall, subject to the approval of the Commissioner, establish procedures for the operation of the DSU within 30 days of the date that the Commissioner designates an area as a DSU. Copies of 103 CMR 421.20 through 421.21 relating to operating procedures and programs shall be given to each inmate transferred to a DSU. The procedures shall cover the following areas:

(1) Security and Control.

- (a) Movement Within the Departmental Segregation Unit. Procedures shall provide for when inmates may be released from their cells and how they are to be supervised, the number of inmates to be permitted out of their cells at any one time, and for visitation of inmates.
- (b) Searches and Seizures. Procedures shall provide for searching an inmate or his cell, times for conducting a search, searching of clothing, laundry or other property, and for the inventory and storage of any property of the inmate which is held or confiscated as a result of a search.
- (c) Inspections. Procedures shall provide for daily tours of inspection by the unit administrator and other officers, and the logging of times of inspections and any observations.
- (d) Log Books. Log books shall be maintained which include: the names of employees on duty during each shift, all special orders of the DSU administrator, the names of all persons entering and leaving the unit, as well as a summary of any events of significance to officers on the subsequent shifts. There shall be special log books for recording the activities of each inmate. Employees shall familiarize themselves with entries in log books each day.
- (e) Disciplinary Offenses. Where an inmate is charged with a punishable offense by the DSU administrator or other employee of the unit, such person shall promptly prepare and submit disciplinary reports to the disciplinary officer of the state correctional facility pursuant to 103 CMR 430.00 *et seq.* Appropriate security measures may be taken prior to the preparation of such reports.
- (f) Maintenance. Procedures shall provide for repairs to be made by maintenance employees, especially repairs which will keep cells well-lighted, well-heated and ventilated, and will keep sinks and toilets operable, and for the inventorying and accounting of all tools and materials that are brought into or taken out of the unit.

(2) Health, Sanitation and Safety.

- (a) Medical and Psychiatric Services. A complete physical examination shall be scheduled for each inmate upon transfer to a DSU. Medical and psychiatric services shall be provided, and observation and treatment shall be provided for inmates who attempt suicide or appear to have emotional difficulties.
- (b) Bathing and Laundry Services. Each inmate shall receive at least three showers each week and the same bedding supplies and laundry services as are available to inmates in the general population.
- (c) Exercise and Recreation. Inmates shall have a daily exercise and recreation period of at least one hour a day at least five days per week, outside if weather permits. Procedures shall provide for curtailment of the exercise and recreation period in exceptional circumstances due to inadequate officer coverage or disruption in the DSU. Alternative plans for the exercise and recreation period are to be made by the DSU administrator whenever a prolonged curtailment is anticipated.
- (d) Sanitation. Procedures shall provide for an inmate cleaning his cell.
- (e) Safety. Procedures for the purposes of fire prevention shall provide for the removal, inventory and storage of excessive accumulations of property in the cell of each inmate.

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- (3) Meals. Inmates shall receive three nutritionally sound meals each day. Procedures shall provide for the manner in which meals are to be served, and an accounting of all utensils that are used by each inmate before and after each meal. The meals shall be the same as are provided to inmates in the general population except that, when the inmate has used food as a weapon or to create a health or sanitation hazard, an alternate nutritionally sound meal may be substituted.
- (4) Haircuts and Shaving. Inmates shall receive haircuts, and shall be permitted to shave each day.
- (5) Cell Furnishings and Fixtures. Each cell shall be furnished with a bed, table, chair, one blanket, two sheets, one pillow, and one pillow case. Other furnishings may include, for example, a radio, television and reading lamp and shall be subject to procedures for their removal and return.
- (6) Clothing. Procedures shall provide for each inmate to receive state issued and other clothing except as inconsistent with the security needs of the DSU.
- (7) Visits. Procedures shall provide for visitation of inmates in areas located within the DSU or at such other areas designated by the superintendent of the state correctional facility. Inmates in segregation shall be afforded visiting privileges which are, as much as practicable, the same as those available to inmates in the general population.
- (8) Correspondence. Procedures shall be the same as those for the general population of the state correctional facility.
- (9) Reading Material. The availability of reading materials shall be the same as for the general population of the state correctional facility. Procedures shall provide for requesting, receiving and returning reading material from the library of the state correctional facility.
- (10) Canteen. Availability of canteen shall be the same as for the general population of the state correctional facility, except as inconsistent with the security needs of the DSU. Procedures shall provide for requesting and receiving items from the canteen in the state correctional facility.
- (11) Religion. Procedures shall provide for access to religious counseling or discussions, and the attendance of an inmate at religious services or other ceremonies within the DSU or at such other places designated by the superintendent of the state correctional facility.

421.21: Programs

Programs shall be the same as are provided to inmates in the general population, except as inconsistent with the security needs of the DSU. An emphasis shall be placed upon making individualized rehabilitative programming available which has as its goal the return of inmates to the general population. Such opportunities shall be provided whenever feasible, and may be used to assess whether an inmate is appropriate for less restrictive confinement.

- (1) Counseling Programs. Counseling sessions shall be arranged upon the request of an inmate confined in a DSU. Counseling shall be coordinated between a correctional counselor assigned to the inmate and a staff member of the Psychological Services of the Department of Correction who shall supervise the counseling of such inmate.
- (2) Education Programs. Education programs may include individual tutoring, correspondence courses, and wherever appropriate, participation in education programs at such other places designated by the superintendent of the state correctional facility.
- (3) Employment Programs. Employment programs may include working within the DSU, and wherever appropriate, working in such other places designated by the superintendent of the state correctional facility. The DSU administrator, after considering space and security requirements, may permit an inmate to pursue an avocational interest.

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(4) Furloughs. An inmate may apply for a furlough and the fact of his confinement in the departmental segregation unit shall not automatically preclude him from receiving a furlough. An inmate may apply to the DSU administrator for consideration in accordance with 103 CMR 463.00: *Furloughs*.

421.22: Reports to the Commissioner

The DSU administrator shall prepare a monthly report on the operation of the departmental segregation unit. This report shall be submitted by the 15th day of the following month to the Commissioner of Correction with a copy to the Deputy Commissioner and the superintendent of the state correctional facility.

421.23: Time Limits

All time limits set forth in 130 CMR 421.000 are directory.

421.24: Emergency

If an emergency requires, the Commissioner may temporarily suspend part or all of 103 CMR 421.000.

421.25: Review Date

This policy shall be reviewed at least annually from the effective date by the Commissioner or his 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.

421.26: Severability Clause

If any article, section, subsection, sentence, clause or phrase of 103 CMR 421.000 is for any reason held by a court of competent jurisdiction 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 this policy.

REGULATORY AUTHORITY

103 CMR 421.000: M.G.L. c. 124, §§ 1(b), 1(q); c. 127, § 39.