

322 CMR: DIVISION OF MARINE FISHERIES

322 CMR 2.00: ADOPTING ADMINISTRATIVE REGULATIONS

Section

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2.01: Definition of Regulation

322 CMR 2.00 govern the procedures to be followed by agencies subject to the State Administrative Procedure Act when promulgating regulations (M.G.L. c. 30A, §§ 2 and 3). The term "regulation" is defined by the Act as "the whole or any part of every rule, regulation, standard or other requirement of general application and future effect adopted by an agency to implement or interpret the law enforced or administered by it." [M.G.L. c. 30A, § 1(5)]. "Regulation" does not, however, include advisory rulings, rules relating to the internal management of an agency and not directly related to the rights or procedures available to the public, regulations concerning the development and management of property of the Commonwealth or of the agency, or decisions rendered in adjudicatory proceedings, etc. Accordingly, these rules apply to agencies which are acting in a quasi-legislative capacity, i.e., either promulgating substantive regulations consistent with applicable statutes or promulgating rules governing their own procedures. Where these rules apply, no agency may waive or otherwise modify them except to the extent specifically provided herein.

2.02: Petition for Adoption of Regulations

Any interested person or his attorney may at any time petition the Division to adopt, amend, or repeal any regulation. The petition shall be addressed to the Division and sent to the clerk or secretary by mail or delivered in person during normal business hours. All petitions shall be signed by the Petitioner or his attorney, contain his address or the address of his attorney, and set forth clearly and concisely the text of the proposed regulation. The petition may be accompanied by any supporting data, views or arguments.

2.03: Initial Procedure to Handle Recommended Regulations

Upon receipt of a petition for the adoption, amendment or repeal of a regulation submitted pursuant to 322 CMR 2.02 or upon written recommendation by a member of a board or commission of the Division that a regulation be adopted, amended or repealed, the Division shall consider the petition or recommendation at a meeting and shall, thereupon, determine whether to schedule the petition or recommendation for further proceedings in accordance with 322 CMR 2.05 or 2.06. If the regulation has been presented to the Division by petition under 322 CMR 2.02, the Division shall within ten days after the meeting notify the petitioner of the Division's action.

2.04: Participation at Preliminary Meeting

During the meeting referred to in 322 CMR 2.03, the Division may, but shall not be required to, entertain comments or questions from members of the audience. The chairman or other presiding officer may at any time terminate participation by the audience.

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2.05: Procedure for the Adoption, Amendment or Repeal of Regulations Where No Public Hearing is Required

Prior to the adoption or amendment *other* than those subject to 322 CMR 2.06, or the *repeal* of any regulation, the Division shall give notice and afford interested persons an opportunity to present data, views or arguments, as follows:

(1) Notice. Notice of the proposed action to adopt regulations shall be given by the agency at least 21 days prior to its proposed action, unless some other time is specified by any applicable law. The agency shall publish the notice in at least two newspapers of general circulation, and where appropriate, in such trade, industry, or professional publications as the agency may select. The agency shall likewise notify in writing any person specified by any law and any person or group which has filed request for notice pursuant to M.G.L. c. 30A, § 3(1)(B).

The notice shall contain the following:

- (a) The agency's statutory authority to adopt the proposed regulation.
- (b) The procedure for submitting data, views or arguments as set forth in 322 CMR 2.05(2).
- (c) The express terms to describe the substance of the proposed action, or state the subjects and issues involved.
- (d) Any additional matter required by any law.

The above notwithstanding, the agency shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.

(2) Procedure. Within 21 days after the publication and sending of notice regarding the proposed action, any interested person may submit a signed letter, brief or other memorandum stating his views or arguments concerning the proposed action. The letter, brief or memorandum shall be addressed to the Division and sent to the clerk or secretary by mail or delivered in person during normal business hours. The agency shall, consider the proposed action. Within 30 days after this meeting, the agency shall give written notice of the disposition of the proposed action to all persons required to receive personal notice under 322 CMR 2.05(1) and such other persons submitting a letter, brief, or other memorandum.

(3) Oral Participation. The agency may afford any interested person or his duly authorized representative, or both, an opportunity to present data, views or arguments orally before the agency during a meeting at which the proposed action is to be considered. If the agency finds that such oral presentation is unnecessary or impracticable, it may require written presentation according to 322 CMR 2.05(2).

(4) Waiver of Notice and Participation. If the agency finds that the requirements of notice and opportunity to present views on its proposed action are unnecessary, impracticable or contrary to the public interest, the agency may dispense with such requirements or any part thereof. The agency's finding and a brief statement of the reasons for its findings shall be incorporated in the regulation, amendment or repeal as filed with the Secretary of State under 322 CMR 2.08.

(5) Other Approval. 322 CMR 2.00 does not relieve any agency from compliance with any law requiring that its regulations be approved by designated persons or bodies before they may become effective.

2.06: Procedure for the Adoption or Amendment of Regulations Where a Public Hearing is Required

Prior to the *adoption* or *amendment* of (a) any regulation as to which a hearing is required by any law, or of (b) any other regulation the violation of which is punishable by fine or imprisonment except a regulation of Division practice or procedure, the Division shall give notice and hold a public hearing, as follows:

2.06: continued

(1) Notice. Notice of a public hearing shall be given at least 21 days prior to the date of the hearing, unless some other time is specified by any applicable law. The agency shall publish the notice in at least two newspapers of general circulation, and where appropriate, in such trade, industry, or professional publications as the agency may select. The agency shall likewise notify in writing any person specified by any law and any person or group which has filed written request for notice pursuant to M.G.L. c. 30A, § 2(1)(b).

The notice shall contain the following:

- (a) The agency's statutory authority to adopt the proposed regulation.
- (b) The time and place of the public hearing.
- (c) The text of the proposed regulation. (If the proposed regulation is lengthy or if for other reason the text is not available at the time the notice is distributed, it need not be set out verbatim; however, the notice should either describe the substance of the proposed regulation or state the subject matter and issues involved.)
- (d) Any additional matter required by any law.

The above notwithstanding, the agency shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.

(2) Procedure. On the date and at the time and place designated in the notice referred to in 322 CMR 2.06(1), the agency shall hold a public hearing. The meeting shall be opened, presided over and adjourned by the Director, or other employee authorized to adopt regulations, or a designee. The public hearing shall comply with any requirements imposed by law, but shall not be subject to the provisions of law or regulation governing adjudicatory proceedings. This rule does not relieve any agency from compliance with any law requiring that its regulations be approved by designated persons or bodies before they become effective. Within ten days after the close of the public hearing, written statements and arguments may be filed with the agency. The agency shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.

(3) Oral Participation. Any interested person or his duly authorized representative, or both, shall be given an opportunity to present orally statements and arguments. In its discretion the agency may limit the length of oral presentation.

(4) Emergency Regulation. If any agency finds that the immediate adoption of a regulation is necessary for the public health, safety or general welfare, and that observance of requirements of notice and public hearing would be contrary to the public interest, the agency may dispense with such requirements and adopt the regulation as an emergency regulation. The agency's finding and a brief statement of the reasons for its find shall be incorporated in the emergency regulation as filed with the Secretary of State in accordance with 322 CMR 2.08. Any emergency regulation so adopted shall state the date on which it is to be effective and the date upon which it shall expire. If no effective date is stated, the regulation shall be presumed to take effect upon being filed with the Secretary of State under 322 CMR 2.08. An emergency regulation shall not remain in effect for longer than three months unless during the time it is in effect the agency gives notice and holds a public hearing and adopts it as a permanent regulation in accordance with these rules.

2.07: Availability of Regulation

The clerk or secretary of the agency shall be responsible for keeping a book containing all the agency regulations. In addition the clerk or secretary shall compile and publish the regulations which are currently in effect. All the regulations of an agency shall be available for inspection during normal business hours at the offices of the Division. Copies of all regulations shall be available to any person on request. The agency may charge a reasonable fee for each copy.

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2.08: Filing of Regulation

Upon the adoption of a regulation, an attested copy shall be filed with the Secretary of State together with a citation of the statutory authority under which the regulation has been promulgated. The regulation shall take effect upon filing unless a later date is required by any law or is specified by the agency in the regulation.

2.09: Advisory Ruling

Any interested person or his attorney may at any time request an advisory ruling with respect to the applicability to any person, property or factual situation of any statute or regulation enforced or administered by the agency. The request shall be addressed to the agency and sent to the clerk or secretary by mail or delivered in person during normal business hours. All requests shall be signed by the person making it or his attorney, contain his address or the address of his attorney, and state clearly and concisely the substance or nature of the request. The request may be accompanied by any supporting data, views or arguments. Upon receipt of the request the agency shall consider it at a meeting and shall within ten days thereafter notify the petitioner that the request is denied or that the agency will render an advisory ruling. The agency may at any time rescind a decision to render an advisory ruling. If an advisory ruling is rendered, a copy of the ruling shall be sent to the person requesting it or his attorney.

REGULATORY AUTHORITY

322 CMR 2.00: M.G.L. c. 30A.