

205 CMR: MASSACHUSETTS GAMING COMMISSION

205 CMR 136.00: SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES AT GAMING ESTABLISHMENTS

Section

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136.01: Definitions

As used in 205 CMR 136.00, the following words and phrases shall have the following meaning, unless the context clearly requires otherwise. Moreover, the definitions contained in M.G.L. c. 138, § 1, to the extent to which they are not in conflict with 205 CMR 136.00 or M.G.L. c. 23K, § 2, are fully incorporated by reference. In the event of any definitional conflict, M.G.L. c. 23K shall prevail followed by M.G.L. c. 138 followed by 205 CMR 136.01:

ABCC means the Alcoholic Beverages Control Commission

Bottle Service means the sale of a distilled spirit by the bottle, typically accompanied by the provision of mixers, for consumption by more than one patron within a licensed area in conjunction with the private use of part of a licensed area.

Complimentary or Free of Charge means without payment of money or other form of monetary-like consideration (*e.g.* gift cards, rewards points).

Gaming Beverage License means a license issued in accordance with M.G.L. c. 23K, § 26 for the sale and distribution of alcoholic beverages to be drunk on the premises of a gaming establishment.

Gaming Beverage Licensee means the gaming licensee that is issued a gaming beverage license pursuant to 205 CMR 136.03(4).

Jointly Responsible Person means an entity licensed or registered as a vendor in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations* that operates a licensed area under agreement with the gaming licensee and is designated by the gaming beverage licensee pursuant to 205 CMR 136.04 to be responsible for the sale and distribution of alcoholic beverages within a particular licensed area.

Licensed Area means a specific, limited and defined space within a gaming establishment wherein the sale, distribution, or storage of alcoholic beverages to be drunk on the premises of the gaming establishment is permitted pursuant to a gaming beverage license as determined by the commission pursuant to 205 CMR 136.03(4).

Manager or Other Principal Representative means an individual who is licensed or registered in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations* who the gaming beverage licensee or jointly responsible person has delegated to ensure compliance with 205 CMR 136.00 and all terms and conditions of the gaming beverage license applicable in the licensed area.

Special Event means an event for which the consumption of alcoholic beverages is permitted by the commission in an area of the gaming establishment that is not a licensed area for a specific limited period of time.

136.02: General Provisions

(1) No person may sell or distribute alcoholic beverages to be drunk on the premises of a gaming establishment except as allowed by a gaming beverage license. Alcoholic beverages served in a licensed area in accordance with the terms of a gaming beverage license may be consumed in any part of the premises of the gaming establishment subject to any restrictions or conditions placed on the gaming beverage license in the interest of the integrity of gaming and/or public health, welfare, or safety.

(2) A gaming beverage licensee shall be responsible for compliance with 205 CMR 136.00 in all licensed areas and the gaming establishment as a whole. A gaming beverage licensee may allow a jointly responsible person to operate a licensed area but shall remain responsible for compliance with 205 CMR 136.00 within the licensed area. A gaming beverage licensee or jointly responsible person shall designate at least one manager or other principal representative to oversee compliance with 205 CMR 136.00 and the terms of the gaming beverage license in the licensed area for which they are responsible.

(3) A gaming beverage licensee shall not transfer a gaming beverage license, transfer operations of a licensed area to a new jointly responsible person, add a new manager or other principal representative, or add, delete or materially alter the size, configuration or use of a licensed area without the commission's prior written approval.

136.03: Issuance of License and Permit

(1) Authority. Pursuant to M.G.L. c. 23K, § 26, the commission may grant a gaming beverage license to a gaming licensee for purposes of allowing the sale and distribution of alcoholic beverages within all licensed areas of the gaming establishment as identified and defined in the license subject to 205 CMR 136.00 to be drunk on the premises of the gaming establishment, subject to any restrictions imposed on the license.

(2) Hearings and Additional Information. After reviewing a gaming beverage license application submitted pursuant to 205 CMR 136.04(1), an application to amend a licensed area, or an application for a special event beverage permit submitted pursuant to 205 CMR 136.04(3), and prior to taking action on the application the commission or the commission's Division of Licensing may request additional information from the applicant to complete or supplement the application, may request that the applicant modify the application in the interests of the integrity of gaming and/or public health, welfare, or safety, or may schedule a hearing for the applicant to address any issues that relate to the application.

(3) Gaming Beverage License and Licensed Areas. Applications for licensure shall be submitted to the commission's Division of Licensing. Upon receipt of a complete application for a gaming beverage license, a complete application to amend, alter, or add a licensed area, and the fees required by 205 CMR 136.05, the Division of Licensing shall review the application to determine whether it contains all of the elements required in accordance with 205 CMR 136.04. If the Division of Licensing is satisfied that the application meets the requirements of 205 CMR 136.04 and M.G.L. c. 23K, § 26, and that any modifications requested in accordance with 205 CMR 136.03(2) have been satisfactorily addressed, it shall forward the application to the commission with a recommendation that it be approved. If it is not satisfied that the application meets the requirements of 205 CMR 136.04, or that a modification requested in accordance with 205 CMR 136.03(2) has been satisfactorily addressed, it shall engage in the process outlined in 205 CMR 136.03(2) or deny the application and advise the applicant that it may appeal the decision to the commission.

(4) The commission shall review the application upon receipt from the Division of Licensing and may approve the application, or parts thereof, and issue the gaming beverage license if it meets all of the requirements of 205 CMR 136.00 and M.G.L. c. 23K, § 26, or deny or condition the gaming beverage license, or parts thereof, if it determines that the application does not meet all of the requirements of 205 CMR 136.00 and M.G.L. c. 23K, § 26 or would in some way compromise the integrity of gaming and/or public health, welfare, or safety.

136.04: Gaming Beverage License Application

(1) Gaming Beverage License Application. A gaming licensee may apply to the commission for a gaming beverage license or renewal of a gaming beverage license by filing with the commission an application form prescribed by the commission, which application form must contain at least the following information:

- (a) The gaming licensee name and contact information;
- (b) Proof of insurance in accordance with 205 CMR 136.07(1);
- (c) A licensed area application form as specified in 205 CMR 136.04(2) for each area of the gaming establishment in which the gaming licensee seeks to sell or distribute alcoholic beverages; and
- (d) a description of the parts of the premises of the gaming establishment in which the consumption of alcoholic beverages will not be allowed for purposes of ensuring the integrity of gaming, the public health, welfare, or safety, or other reason.

(2) Licensed Area Application. A gaming licensee shall file, as part of its application for a gaming beverage license, as part of a renewal of a gaming beverage license, or as an independent application to amend a licensed area of a gaming beverage license, a licensed area application on a form prescribed by the commission, which application form must contain at least the following information:

- (a) A floor plan showing the location of the area within the gaming establishment which the applicant seeks to establish as a licensed area and a diagram of that specific area;
- (b) A description of the licensed area including the proposed capacity and number and location of alcoholic beverage dispensing areas, and placement of exits including whether the area is closed or open space, and whether bottle service will be offered in the licensed area;
- (c) A description of the manner in which alcoholic beverages will be stored and secured during times that the licensed area is not open. If storage will be outside of the licensed area, a depiction of the storage area shall be provided on the map referenced in 205 CMR 136.04(2)(a).
- (d) A description of the business concept and the hours of operation for the business;
- (e) The identity of the manager(s) or other principal representative(s) for the licensed area including their employee license or registration number issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*;
- (f) The identity of the jointly responsible person, if any, for the licensed area including the contact information and vendor license or registration number issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*; and
- (g) If a jointly responsible person will be operating a licensed area, evidence satisfactory to the commission that the gaming beverage licensee maintains at all times during the life of the license the legal authority to monitor the jointly responsible person's compliance with and ability to remove a jointly responsible person from the gaming establishment for a violation of 205 CMR 136.00.

(3) Special Event Beverage Permit. A gaming beverage licensee seeking to serve alcoholic beverages on the premises of a gaming establishment in a location that is not a licensed area may submit a special event beverage permit application to the Division of Licensing for the sale of wines and malt beverages only, or either of them, or for all alcoholic beverages, on a form prescribed by the commission in order to request approval to do so for a temporary duration. The Division of Licensing may approve the application and issue the special event beverage permit if it determines that the application contains all of the required information and issuance would not compromise the integrity of gaming, or the public health, welfare, or safety. The application should be submitted at least ten calendar days prior to the proposed event. The application form shall contain, at a minimum, the following information:

- (a) Name and description of the event;
- (b) A description and mapped location of the event;
- (c) Date, time, and duration of the event;
- (d) A copy of the advertisement, program and promotional material for the event;
- (e) Number of persons anticipated to attend the event;
- (f) Admission price to the event;

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- (g) Type of alcoholic beverages to be served;
- (h) Security and staffing arrangements;
- (i) The identity of the jointly responsible person, if any, for the special event area including the contact information and vendor license or registration number issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*;
- (j) The identity of the managers or other principal representatives for the special event area including their employee license or registration number issued in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*; and
- (k) A copy of the written agreement, if any, between an entity for which the special event beverage permit was applied and the gaming beverage licensee.

136.05: Fees

- (1) The application fee and renewal fee for the gaming beverage license application pursuant to 205 CMR 136.04(1) is \$15,000.
- (2) The fee for an application to amend a licensed area pursuant to 205 CMR 136.04(2) or an application for special event beverage permit pursuant to 205 CMR 136.04(3) is \$100.
- (3) If the commission's costs for reviewing a gaming beverage application, application to amend or add a licensed area, or an application for a special event beverage permit, in accordance with the fee schedule posted by the commission to its website, exceed the application fees provided in 205 CMR 136.05(1) and (2), the gaming beverage licensee shall pay the additional amount within 30 days after notification of insufficient fees or the application shall be rejected.
- (4) All fees pursuant to 205 CMR 136.05 must be submitted to the commission's Division of Licensing in the form of a certified check, cashier's check, or electronic funds transfer payable to the Commonwealth of Massachusetts. All fees pursuant to 205 CMR 136.05(1) and (2) must be submitted to the Division of Licensing prior to or along with the application.

136.06: Term and Renewal of License

- (1) Gaming Beverage License. A gaming beverage license shall expire three years from the date of issuance. To ensure uninterrupted use of the license, the gaming beverage licensee shall submit an application for renewal in the form prescribed in 205 CMR 136.04(1) at least 45 days prior to expiration.
- (2) Special Event Beverage Permit. The special event beverage permit shall be valid for the dates and times specified by the permit, but in no case longer than seven days.

136.07: Practices and Conditions of License

- (1) Insurance. The gaming beverage licensee must at all times maintain liquor liability insurance for bodily injury or death for a minimum amount of \$250,000 on account of injury to or death of one person, and \$500,000 on account of any one accident resulting in injury to or death of more than one person. The policy shall have no annual aggregate limit.
- (2) Price Restrictions. The gaming beverage licensee, or jointly responsible person, shall maintain a schedule of the prices charged for all alcoholic beverages to be served in a licensed area. Such prices shall be effective and remain constant for not less than one calendar week. An alcoholic beverage must be either served free of charge in the gaming area in accordance with a gaming licensee's complimentary distribution program consistent with 205 CMR 138.09: *Retention, Storage and Destruction Records* or at the price set in the schedule. The distribution of a free alcoholic beverage may not be conditioned on the purchase of an alcoholic beverage. 205 CMR 136.07(2) shall not apply to private functions not open to the public and shall be subject to the provisions of 205 CMR 136.07(4).

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Nothing contained in 205 CMR 136.00 shall be construed to prohibit licensees from offering complimentary food or entertainment at any time; or to prohibit licensees from including an alcoholic beverage as part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one person; or to prohibit a licensee from offering room services to registered hotel guests.

A gaming beverage licensee and/or jointly responsible person may conduct alcoholic beverage tastings in a licensed area of beer/malt, wine, liqueurs, cordials and alcoholic beverages provided that food is served in conjunction with the tasting and the IEB is provided 24 hour advance written notice specifying the date, time, location, and type of samples to be offered at the event. Tasting quantities shall be limited as follows:

- (a) beer/malt beverage tasting samples shall be limited to two ounces per serving;
- (b) wine tasting samples shall be limited to one ounce per serving; and
- (c) Other alcoholic beverages including liqueur and cordial samples shall be limited to $\frac{1}{4}$ of an ounce per serving.

(3) Vendor and Employee License and Registration. Each jointly responsible person must possess a vendor license or registration issued pursuant to 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations* and each manager or other principal representative of a jointly responsible person must possess an employee license or registration issued pursuant to 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*. No gaming beverage licensee or jointly responsible person may receive alcoholic beverages from a supplier unless the supplier possesses a valid vendor license or registration pursuant to 205 CMR 134.04: *Vendors*. Moreover, said supplier of alcoholic beverages must first possess the legal authority, pursuant M.G.L. c. 138 to supply alcoholic beverages to a retailer licensed to operate an "on-premises" license under M.G.L. c. 138, § 12.

(4) Distribution of Alcoholic Beverages Free of Charge. Pursuant to M.G.L. c. 23K, § 26(c) and St. 2011, c. 194, § 107, a gaming beverage licensee or jointly responsible person may only distribute alcoholic beverages free of charge for on-premises consumption to patrons in the gaming area. Complimentary distribution must be offered in accordance with the gaming licensee's complimentary distribution program submitted in accordance with 205 CMR 138.13. Provided, alcoholic beverages may be provided to patrons in a licensed area outside of the gaming area at no cost to the patron if the alcoholic beverages are paid for by a third party other than the gaming beverage licensee or jointly responsible person. Documentation of any such third party payment shall be maintained by the gaming beverage licensee for inspection upon request by the commission, or its agents, including agents of the gaming liquor enforcement unit of the ABCC.

(5) Postings. The gaming beverage licensee shall post in a location continuously conspicuous to the public within each licensed area and wherever alcoholic beverages are served:

- (a) a copy of the licensed area addendum pursuant to 205 CMR 136.09(2) for the licensed area, and
- (b) a summary of M.G.L. c. 90, § 24 prohibiting driving under the influence and stating the maximum penalties provided therefore.

(6) Bottle Service. If the gaming beverage licensee intends to offer bottle service it shall detail its policies and protocols for such service as part of its application submitted in accordance with 205 CMR 136.04(1), which shall include, at a minimum, a requirement that alcoholic beverages be poured by an employee of the gaming licensee who is licensed in accordance with 205 CMR 134.00: *Licensing and Registration of Employees, Vendors, Junket Enterprises and Representatives, and Labor Organizations*.

(7) Prohibited Distribution. A gaming beverage licensee, jointly responsible person, and their respective agents and employees, except as otherwise provided by 205 CMR 136.07:

- (a) may not offer or deliver more than two drinks to one individual at a time (except that a bottle of wine may be served to one or more patrons);
- (b) may not sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price (*i.e.* open bar), except at invitation-only private functions not open to the public;

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- (c) may not increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week;
- (d) may not offer or deliver malt beverages or mixed drinks by the pitcher except to two or more persons at any one time;
- (e) may not encourage or permit any game or contest which involves drinking alcoholic beverages or the awarding of alcoholic beverages as prizes;
- (f) may not serve an alcoholic beverage to any person who is visibly intoxicated;
- (g) may not serve an alcoholic beverage to any person who is younger than 21 years old; and
- (h) may not serve or distribute alcoholic beverages at the gaming establishment between 2:00 A.M. and 8:00 A.M.

(8) Forms of Identification.

(a) A gaming beverage licensee or jointly responsible person shall use an identification scanner to detect fraudulent identification and may rely on the following forms of identification to demonstrate proof that a person 21 years of age or older:

1. a liquor purchase identification card issued pursuant to M.G.L. c. 138, § 34B or a motor vehicle driver's license issued pursuant to M.G.L. c. 90, § 8, or a liquor purchase identification card or driver's license issued by another State in the United States or government of a foreign country, or district therein, recognized by the United States government;
2. an identification card issued pursuant to M.G.L. c. 90, § 8E or the equivalent issued by another State in the United States;
3. a valid passport issued by the United States government, or by a government of a foreign country recognized by the United States government; or
4. a valid United States issued military identification card;

(b) If a gaming beverage licensee or jointly responsible person reasonably relies on the forms of identification described in 205 CMR 136.07(8)(a) for proof of person's identity and age, the gaming beverage licensee or jointly responsible person shall not suffer any disciplinary action for delivering or selling alcoholic beverages to a person younger than 21 years old. If reliance was reasonable, such reliance creates a rebuttable presumption that the individual so relying exercised due care in making such delivery or sale of alcoholic beverages to a individual younger than 21 years old for purposes of 205 CMR 136.07. Provided, this presumption shall not affect the applicability of 205 CMR 138.07(7)(f).

(9) Employee Policies.

(a) The gaming beverage licensee or the jointly responsible person must appoint in writing one or more managers or other principal representatives for each licensed area.

(b) At least one manager or other principal representative must be present in each licensed area at all times that alcoholic beverages are available for sale or distribution, and shall be available to the division of gaming liquor enforcement of the ABCC, the IEB, the Division of Licensing, and the gaming enforcement unit at any such time. Further, assigned managers or principal representatives shall be responsible to ensure that alcohol is properly stored and secured at all times in accordance with the gaming beverage licensee's policies and protocols approved in accordance with 205 CMR 138.12: *Alcoholic Beverage Control* and in accordance with 205 CMR 138.02: *Licensee's System of Internal Controls*.

(c) Before beginning employment, the gaming beverage licensee or jointly responsible person must receive proof that managers or other principal representatives successfully completed a recognized alcoholic beverage server training program, such as Training for Intervention Procedures (TIPS). The gaming beverage licensee and jointly responsible person must ensure that all other employees involved in the service or delivery of alcoholic beverages complete such program within 30 days of hire. Any employee who fails to obtain such training within 30 days of hire shall not be eligible to serve alcoholic beverages until such time as said training is completed. The gaming beverage licensee and jointly responsible person shall be responsible for ensuring that all employees read, understand, and comply with the rules and regulations of the commission and 205 CMR 136.00. The gaming beverage licensee must ensure that all employees abide by the gaming beverage licensee's policy for responsible alcoholic beverage services in accordance with 205 CMR 138.12: *Alcoholic Beverage Control*.

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(d) No gaming beverage licensee or jointly responsible person may take any adverse employment action against an employee for declining to serve, or refusing to allow another to serve, a patron who he or she believes, in good faith, is younger than 21 years old, intoxicated, engaged in illegal activity, or causing a disturbance.

(10) Quality of Beverages.

(a) Substitution of Beverages. The substitution of any alcoholic beverages of a kind or brand different from that ordered by a purchaser is prohibited unless it is done with the consent of the person making the purchase.

(b) Dilution. No gaming beverage licensee or jointly responsible person shall dilute, change, or in any manner tamper with any alcoholic beverage authorized to be sold under such license so as to change its composition or alcoholic content. Possession on the premises of the gaming establishment or a licensed area of any alcoholic beverage differing in composition or alcoholic content from such beverage when received from the manufacturer or wholesaler and importer from whom it was purchased, except cocktails and other mixed drinks, shall be *prima facie* evidence that the said beverage has been diluted, changed or tampered with in violation of 205 CMR 136.07(10)(b).

(c) Entry and Samples. The commission, or its agents, including agents of the gaming liquor enforcement unit of the ABCC, may at any time enter upon any area of the gaming establishment, including any licensed area, for purposes of enforcement of M.G.L. c. 23K or 205 CMR 136.00. The commission or its agents, including agents of the gaming liquor enforcement unit of the ABCC, may at any time take samples for analysis from any beverages or alcohol kept on such premises, and the vessel or vessels containing such samples shall be sealed on the premises in the presence of a representative of the gaming beverage licensee or jointly responsible person.

(11) Resealing of Partially Consumed Bottles of Wine.

(a) No gaming beverage licensee or jointly responsible person shall permit a patron to retain and take off the premises of the gaming establishment so much of a bottle of wine purchased by that patron with a meal and not totally consumed by that patron during the meal, except when the bottle is re-sealed in compliance with 205 CMR 136.07(11).

(b) Only one partially consumed bottle of wine per patron may be resealed and removed from the gaming establishment.

(c) A receipt that prominently displays the date of the purchase of the meal must be furnished to the patron. The receipt must show both the purchase of the meal and the purchase of the bottle of wine.

(d) Proper re-sealing requires:

1. securely resealing the bottle of wine;
2. placing the resealed bottle in a one-time use tamper proof transparent bag that insures the patron cannot gain access to the bottle while in transit after the bag is sealed;
3. securely sealing the bag; and
4. affixing the receipt to the sealed bag.

(12) Public Safety. No gaming beverage licensee or jointly responsible person shall permit disorder, disturbance, or illegality of any kind in a licensed area or any portion of the premises of the gaming establishment in which alcoholic beverages are permitted to be consumed. A gaming beverage licensee must maintain and exercise close supervision and control over the service of alcoholic beverages in the licensed areas at all times. The commission or its agents, including agents of the gaming liquor enforcement unit of the ABCC, may, as required in cases of public disturbance, order gaming beverage licensees and jointly responsible persons not to sell, give away, or deliver any alcoholic beverages in the gaming establishment, or within a specific licensed area(s), for a period not exceeding three days at any one time. At the gaming beverage licensee's request, a hearing in accordance with 205 CMR 101.00 shall promptly be scheduled in the event that such order is issued to determine the need for continuation of the order.

136.08: Form of the Gaming Beverage License

(1) Gaming Beverage Licensee. The commission, after granting a gaming beverage license application for one or more licensed areas in a gaming establishment shall issue a formal license document that contains the following:

- (a) A complete identification of the gaming beverage licensee's identity, and the contact information for a responsible individual;
- (b) The term of the license;
- (c) An official commission serial number;
- (d) A statement that all conditions set forth in M.G.L. c. 23K and 205 CMR 136.00 are incorporated by reference, included as if completely set forth therein and made a part of the issued form of the gaming beverage license;
- (e) A statement that all additional conditions set forth by the commission shall also be incorporated by reference, included as if completely set forth therein and also made a part of the issued form of the gaming license;
- (f) The official seal of the Commonwealth of Massachusetts;
- (g) The signature of the chair or his designee after receiving a commission vote authorizing such license issuance and signature execution;
- (h) Such other conditions, limitations, or restrictions on the sale or distribution of alcoholic beverages at the gaming establishment as determined by the commission;
- (i) A listing of all licensed areas covered by the gaming beverage license, and the jointly responsible person, if any, for each licensed area; and
- (j) A statement incorporating by reference all licensed area addenda issued pursuant to 205 CMR 136.08(2).

(2) Licensed Area Addendum. As part of the Gaming Beverage License, the commission shall issue a licensed area addendum for each licensed area approved pursuant to 205 CMR 136.03(4). Each licensed area addendum shall contain the following:

- (a) A precise, complete and defined description of the of the licensed area;
- (b) A complete identification of the gaming beverage licensee's identity;
- (c) The term of the license;
- (d) An official commission serial number;
- (e) The official seal of the Commonwealth of Massachusetts;
- (f) The signature of the chair or his designee;
- (g) A statement incorporating by reference all applicable conditions attached to the gaming beverage license;
- (h) Any unique conditions, restrictions or limitations which apply to the licensed area;
- (i) The identity of the jointly responsible person, if any; and
- (j) The identity and contact information for all managers or other principal representatives.

REGULATORY AUTHORITY

205 CMR 136.00: M.G.L. c. 23K, §§ 4, 5, 26, 36; and c. 138, § 34B.