

205 CMR 2.00 General Rules

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2.01: Foreword

The Massachusetts Gaming Commission, hereinafter called the Commission, was created by an act of the Legislature of the Commonwealth of Massachusetts in the year 2011. M.G.L. c. 23K as inserted by the session laws of 2011, chapter 194, section 16 and amendments states that the Commission shall have full power to prescribe rules, regulations and conditions under which all horse races or horse racing meetings shall be conducted in the Commonwealth.

205 CMR 2.00 applies to all persons or individuals, associations or corporations, which shall hold or conduct any horse racing meeting within the Commonwealth of Massachusetts licensed by the Commission, where horse racing shall be permitted for any stake, purse or reward.

All licensees and participants are charged with knowledge of 205 CMR 2.00. No licensee or other persons shall engage in his or her occupation at any Massachusetts racing facility without first reading 205 CMR 2.00

Should any question arise as to the meaning of any rule or regulation, the Commission or its representatives will be available to provide an explanation.

205 CMR 2.00 is supplemented by the State Administrative Procedure Law found in M.G.L. c. 30A. M.G.L. c. 30A provides the procedures that must be followed by all state agencies on such matters as the amending process and the adjudicatory procedure. Under M.G.L. c. 30A any interested party has the right to attend all hearings conducted by the Commission for the purpose of the adoption or amendment of any rule or regulation. The Commission shall afford any interested person an opportunity to present data, views or arguments in regard to any proposed rule change. Upon written notice to the Commission, a person may request the adoption, amendment or repeal of any regulation with an opportunity to present data, views or arguments in support of such request.

The rules of racing for harness horse racing are contained in 205 CMR 3.00: Harness Horse Racing

The rules of racing for running horse racing are contained in 205 CMR 4.00: Horse Racing

The rules on pari mutuel wagering are located in 205 CMR 6.00: Pari mutuel Rules for Horse Racing, Harness Horse Racing and Greyhound Racing.

2.02: Definitions

Act: is the enabling legislation permitting pari-mutuel racing and wagering in this jurisdiction

Administer or Administration is the introduction of a substance into the body of a horse

Appeal: is a request for the Commission or its designee to investigate, consider and review any decision or rulings of stewards/judges of a meeting

Associated person: is the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that such other person or entity would care for or train a racing animal or perform veterinarian service on a racing animal for the benefit, credit, reputation, or satisfaction of the inactive person.

Association is a person or business entity holding a license from the Commission to conduct racing and/or pari-mutuel wagering

Authorized Agent is a person licensed by the Commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

Authorized Pari-mutuel Wagering Entity (APmWE) is a licensed racetrack association or a licensed secondary pari-mutuel organization (SPMO).

Association Grounds is all real property utilized by the Association in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities and parking lots.

Beneficial Interest is profit, benefit or advantage resulting from a contract or the ownership of an estate as distinct from the legal ownership or control. When considered as designation or character of an estate, is such an interest as a devisee, legatee or donee taken solely for his or her own use or benefit and not as holder of title for use and benefit of another.

Calendar Day is 24 hours ending at midnight.

Commission is the regulatory agency with the authority to regulate racing.

Day shall mean a calendar day.

Ejected shall mean the removal from the grounds of an Association and shall apply to both patrons at racing meetings and participants in racing.

Exclusion is the act of an association preventing a person from entering or remaining on the grounds of that association under the jurisdiction of the commission.

Financial Interest is an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a horse or business entity; or as a result of salary, gratuity or other compensation or remuneration from any person. The lessee and lessor of a horse have a financial interest.

General Partner shall mean the person or persons having full, exclusive and complete control and discretion of the management of the affairs of a Limited Partnership.

Horse is any equine (including and designated as a mare, filly, stallion, colt, ridgeling or gelding) registered for racing; specifically, an intact male five years of age or older.

Inactive Person is any person whose license has been suspended for more than 30 days; whose license has expired or been revoked; or whose license application has been denied.

Jockey is a professional rider licensed to ride in races.

Licensee is any person or entity holding a license from the Commission to engage in racing or a regulated activity.

Limited Partnership shall mean any person holding an interest in a horse, who is not a general partner.

Meeting is the specified period and dates each year during which an association is authorized to conduct racing by approval of the Commission.

Month is a calendar month.

Multiple Ownership shall mean any ownership of a horse by more than one individual.

Owner is a person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse.

Pari-Mutuel System is a manual, electro-mechanical, or computerized system and all software (including the totalisator, account betting system and off-site betting equipment) that is used to record bets and transmit wagering data.

Pari-Mutuel Wagering is a form of wagering on the outcome of an event in which all wagers are pooled and held by an association for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning contestants.

Patron is a member of the public present on the grounds of a pari-mutuel association during a meeting.

Permit is an authorization by the Commission to an association to conduct horse racing with pari-mutuel wagering at a specified location.

Person is any individual, partnership, corporation or other association or entity.

Performance is a schedule of contests conducted on the same day as authorized by the Commission.

Prima Facie Evidence is evidence that, until other evidence overcomes its effect, will suffice as proof of fact in issue.

Program is the published listing of all contests and contestants for a specific performance.

Protest is a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing an act or an owner, trainer, jockey or official prohibited by rules, which, if true, shall exclude that horse/jockey from racing.

Purse is the total cash amount for which a race is contested.

Race is a contest between horses at a licensed meeting.

Race Day A day during a racing meeting when pari-mutuel wagering is conducted on live racing. In the matter of penalties the word “day” shall mean a “calendar day.”

Restricted Area is an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access and members of the Commission and its staff.

Ruled Off shall mean the act of debarring from the grounds of an Association and denying all racing privileges.

Secondary Pari-Mutuel Organization (SPMO) is an entity other than a licensed association that offers and accepts pari-mutuel wagers. This may include a gaming licensee, an off-track wagering system or an account wagering system.

Simulcast is the live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.

Stable Name is a name used other than the actual legal name of an owner or lessee and registered with the Commission.

Steward is a duly appointed racing official with powers and duties specified by rules.

Substantial Evidence is a evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.

Suspended shall mean that any privilege granted to a licensee of the Commission by the officials of a racing meeting or by the Commission has been withdrawn.

Takeout is the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by the statute or rule.

Week is a calendar week and/or any seven consecutive days.

Year is a calendar year.

2.03: Ejection and Exclusion

(1) Pursuant to G.L. 128A, §10A, a Commissioner or any representative of the Commission or any Association may eject or exclude from the association grounds a person whose conduct is detrimental to the proper and orderly conduct of a racing meeting

(2) Any person excluded from the grounds of an Association, by said Association, shall be denied admission to said grounds until written permission for his or her re-entering has been obtained from the licensee association and written notification of such permission shall forthwith be filed with the Commission and approved by the Commission.

(3) A person ejected from the grounds of an Association licensed by the Commission shall be refused admission to the grounds of all other licensed Associations in Massachusetts until he or she has been permitted to re-enter the track where he or she was originally ejected in accordance with the procedure as provided for in 205 CMR 4.20(22).

(4) An appeal of an ejection must be filed with the Commission within 60 days of receipt of ejection. Failure to file an appeal within 60 days of the ejection will result in an automatic one calendar year ejection from all association grounds, after which the ejected person may petition for reinstatement with the Commission.

(5) Upon ejection of an occupational licensee the stewards and/or judges must be immediately notified. The Stewards or Judges shall hold a prompt hearing regarding the ejection of the licensee. The hearing shall be conducted in the same manner as other hearings conducted by the stewards and judges.

(6) Upon the ejection of an occupational licensee the ejector must take reasonable steps to ensure the safety and welfare of the horses are accounted for.

2.04: Due Process and Hearings

All hearings will be conducted in accordance with 205 CMR 101

2.05: Licensing Fees

(a) Harness and running horse racing license fees for a one year license:

- (1) Authorized Agent \$30 annual
- (2) Jockey \$60 annual
- (3) Jockey Apprentice \$60 annual
- (4) Jockey Agent \$60 annual
- (5) Driver \$30 annual
- (6) Owner \$30 annual
- (7) Trainer \$30 annual
- (8) Stable Employee \$5 annual
- (9) Veterinarian \$60 annual
- (10) Blacksmith \$25 annual
- (11) Racing Officials \$25 annual
- (12) Valet \$10 annual
- (13) Vendor \$10 annual
- (14) Stable Name \$60 annual
- (15) Partnership \$50 annual

(16) Other \$10 annual

(b) The Commission may issue a three-year license to participants for three times the annual cost. The licensee may be subject to supplemental background investigations at the discretion of the Commission. The Commission, at its discretion, may also require the licensee to resubmit their fingerprints during the term of the license.

(c) License fees are non-refundable

2.06 Licenses, Registration and Fees for Participants in Racing

(1) Licenses Required

- (a) A person shall not participate in pari-mutuel racing under the jurisdiction of the Commission without a valid license issued by the Commission. License categories shall include the following and others as may be established by the Commission:
1. racing participants and personnel;
 2. racing and operating officials;
 3. persons employed by the association, or employed by a person or concern contracting with or approved by the association or Commission to provide a service or commodity, which requires their presence in a restricted area, or which requires their presence anywhere on association grounds while pari-mutuel wagering is being conducted; and
- (b) Persons required to be licensed shall submit a completed application on forms furnished by the Commission and accompanied by the required fee.
- (c) License applicants may be required to furnish to the Commission a set(s) of fingerprints and a recent photograph and may be required to be re-fingerprinted or re-photographed periodically as determined by the Commission.

(2) Fingerprinting and Licensing Reciprocity

- (a) The Commission may recognize the issuance of racing licenses from jurisdictions in North America for purposes of issuance of licenses in this jurisdiction.
- (b) Only permanent licenses in good standing shall be considered. Temporary or probationary licenses shall not be considered.
- (c) An applicant must be in good standing in each jurisdiction where they hold or have held a racing license.
- (d) The applicant must have submitted fingerprints within the past 36 months, or such other period as is required by this jurisdiction, for the purpose of a criminal records check by the Federal Bureau of Investigation (FBI) or Royal Canadian Mounted Police (RCMP). The applicant shall provide this jurisdiction with proof of licensure from another jurisdiction to which fingerprints were submitted.
- (e) The applicant shall submit the license application form and license fee required by this jurisdiction.

(3) Age Requirement

Applicants for licensing shall be a minimum of 16 years of age unless otherwise specified in these rules. An applicant may be required to submit a certified copy of his/her birth certificate. Persons under the age of 18 may be required to show evidence of active participation in a certified educational program or have a high school diploma or equivalent.

(4) Consent to Investigation and Distribution of Information

The filing of an application for license shall authorize the Commission to investigate criminal, financial and employment records, to engage in interviews to determine applicant's character and qualifications and to verify information provided by the applicant and to distribute information to other racing jurisdictions and government entities.

(5) Consent to Search and Seizure

By acceptance of a license, a licensee consents to search and inspection by the Commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state and federal law. Any drugs, medication or other materials seized may be forwarded by the Commission to the official chemist for analysis. Any seized material may be forfeited.

(6) Protection of Horses

- (a) Each person licensed by the Commission shall do all that is reasonable and within his/her power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by 205 CMR 3.00 or 4.00.
- (b) No licensee or other person under the jurisdiction of the Commission shall subject or permit any animal under his/her control, custody or supervision to be subjected to or incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.
- (c) A licensee shall report to the stewards any knowledge he/she has that a violation of 205 CMR 2.06(6)(a) or (b) has occurred or is reasonably likely to occur.

(7) Substance Abuse/Addiction

- (a) All licensees shall be deemed to be exercising the privileges of their license, and to be subject to the requirements of these rules, when engaged in activities that could affect the outcome of a race or diminish the conditions of safety or decorum required in restricted areas.
- (b) It shall be a violation to exercise the privileges granted by a license from this Commission if the licensee:
 - 1. Is engaged in the illegal sale or distribution of alcohol or a controlled substance;
 - 2. Possesses, without a valid prescription, a controlled substance;
 - 3. Is intoxicated or under the influence of alcohol or a controlled substance;

4. Is addicted, having been determined to be so by a professional evaluation, to alcohol or other drugs and not engaged in an abstinence-based program of recovery acceptable to the Commission; or
5. Has in his/her possession within the enclosure any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled dangerous substance.

(8) Approval or Recommendations by Judges/Stewards

All occupational licenses shall require judges/stewards' prior approval or recommendation.

(9) Acceptance of an application and issuance of a photo id badge does not constitute an occupational license. All licenses are conditioned upon recommendation by the Judges/Stewards and approval by the Massachusetts State Police

(10) Employer Responsibility

- (a) The employment or harboring of any unlicensed person at facilities under the jurisdiction of the Commission is prohibited.
- (b) Every employer shall report the discharge of any licensed employee in writing to the Commission or its designee, including the person's name, occupation and reason for the discharge.

(11) Employer Endorsement of License Applications

The license application of an employee shall be signed by the employer.

(12) Workers' Compensation

Licensed employers shall carry workers' compensation insurance covering their employees as required by M.G.L. c.152

(13) Financial Responsibility

Applicants for a license may be required to submit evidence of financial responsibility and shall maintain financial responsibility during the period for which the license is issued.

(14) License Refusal

The Commission or its designee may refuse to issue a license and give the applicant the option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

(15) License Denial

The Commission may formally deny an application in accordance with these rules. An application denied shall be reported in writing to the applicant stating the reasons for denial, the date when a reapplication may be submitted, and shall be reported to or the Association of Racing Commissioners International.

(16) Grounds for Refusal, Denial, Suspension or Revocation of License

- (a) The Commission or its designee may refuse to issue or may deny a license to an applicant, or may suspend or revoke a license issued, or may order disciplinary measures, if the applicant:
1. has been convicted of a felony or indictable offense;
 2. has been convicted of violating any law regarding gambling, a controlled dangerous substance, moral turpitude, or cruelty to animals;
 3. is unqualified to perform the duties required of the applicant;
 4. has failed to disclose or states falsely any information required in the application;
 5. has been found in violation of statutes or rules governing racing in this jurisdiction or other jurisdictions;
 6. has racing disciplinary charges pending in this jurisdiction or other jurisdictions;
 7. has been or is currently excluded from association grounds by a recognized racing jurisdiction;
 8. has had a license denied, suspended or revoked by any racing jurisdiction;
 9. is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting;
 10. demonstrates financial irresponsibility by accumulating unpaid obligations, defaulting in obligations or issuing drafts or checks that are dishonored or payment refused;
 11. is ineligible for employment pursuant to federal or state law because of age or citizenship; or
 12. has been associated or consorted with an individual who has been convicted of a crime in any jurisdiction.
- (b) A license suspension or revocation shall be reported in writing to the applicant and the Association of Racing Commissioners International.
- (c) The Commission or its designee, for cause, may restrict, limit or place conditions on any license.

(17) Relationships with Inactive Persons Prohibited

- (a) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. This prohibition shall not prevent the partners in a veterinary practice from providing services to horses as long as the inactive person does not receive a pecuniary benefit from those services.
- (b) An associated person of an inactive person shall not:
1. Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;
 2. Complete an entry form for a race on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or
 3. Pay or advance an entry fee for on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(c) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

1. Be paid a salary directly or indirectly by or on behalf of the inactive person;
2. Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration from the inactive person;
3. Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or
4. Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission.

(d) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

1. Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting;
2. Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;
3. Not use the services, directly or indirectly, of current employees of the inactive person; and
4. Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for such expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

(18) Changes in Application Information

During the period for which a license has been issued, the licensee shall report to the Commission changes in information provided on the license applications as to current legal name, marital status, permanent address, pending criminal charges, criminal convictions, license suspensions of 10 days or more or license revocations or fines of \$500 or more in other jurisdictions.

(19) Temporary Licenses

The Commission may establish provisions for temporary licenses or may permit applicants to participate in racing pending action on an application.

(20) More Than One License

More than one license to participate in harness or running horse racing may be granted to a person except when prohibited by 205 CMR 2.00 due to a potential conflict of interest.

(21) Conflict of Interest

- (a) The Commission or its designee may refuse, deny, suspend or revoke the license of a person whose spouse holds a license and which the Commission or judges find to be a conflict of interest.
- (b) A commissioner or Commission employee or racing official shall not be an owner of a horse at a race meeting and shall not accept breeder awards at a race meeting where they have jurisdiction.
- (c) A racing official who is an owner of either the sire or dam of a horse declared to race shall not act as an official with respect to that race.
- (d) A person who is licensed as an owner or trainer, or has any financial interest in a horse registered for racing at a race meeting in this jurisdiction shall not be employed or licensed at that race meeting as a racing or operating official; racetrack director, officer or managing employee; track maintenance supervisor or employee; racetrack security employee; horseshoer; veterinarian; photo finish operator; horsemen's bookkeeper; racing chemist, or testing laboratory employee.

(22) License Presentation

- (a) A person shall present an appropriate license to enter a restricted area.
- (b) The judges or stewards may require visible display of a license in a restricted area.
- (c) A license may only be used by the person to whom it is issued.

(23) Visitor's Pass

Track security may allow authorized unlicensed persons temporary access to restricted areas provided such persons shall be identified and their purpose and credentials verified and approved in writing by track security. A copy of the written approval shall be filed with the Commission or its designee within 48 hours. Such authorization or credential may only be used by the person to whom it is issued.

(24) Knowledge of Rules

- (a) A licensee shall be knowledgeable of the rules of the Commission; and by acceptance of the license, agrees to abide by the rules.
- (b) A licensee shall report to track security or the judges or stewards any knowledge the licensee has that a perceived violation of these rules has occurred, or is reasonably likely to occur.

(25) Eligibility of a racing official

To qualify as a racing official the appointee must be licensed by the Commission after a determination that the person:

- (a) is of good moral character and reputation;
- (b) is experienced in and/or knowledgeable of harness racing;
- (c) is familiar with the duties to which the person is appointed and with the Commission's rules of harness racing; and

(d) is not under suspension or ejection by the USTA or any other racing or gaming commission.

(1) Approval and licensing of a racing or operating official

The Commission, in its sole discretion, may determine the eligibility of a racing or operating official and, in its sole discretion, may approve or disapprove any such official for licensing.

2.07: Rulings in other jurisdictions

(a) Reciprocity

The commission and the stewards/judges shall honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation or eligibility of contestants.

(b) Appeals of Reciprocal Rulings

1. Persons subject to rulings in other jurisdictions shall have the right to request a hearing before the Commission to show cause why such ruling should not be enforced in this jurisdiction.
2. Any request for such hearing must clearly set forth in writing the reasons for the appeal.

2.09: Totalisator Company Requirements and Vendor Requirements

(1) Totalisator Company

A totalisator company, irrespective of whether the actual facility is located in this jurisdiction or operates from a location or locations outside of this jurisdiction, shall be licensed by the Commission. As a condition of licensing and annual license renewal the license application shall include with an application:

- (a) a list of personnel assigned to work in this jurisdiction
- (b) disclosure of all officers, directors, partners, and share holders with a five percent of greater share of ownership or beneficial interest
- (c) a list of all personnel and their current National Racing Compact license number, or their current license number issued by the Commission who have responsibility for or access to systems and facilities employed in the operation of a totalisator system pursuant to a contract with an association or secondary pari-mutuel organization (SPMO) licensed by the Commission,
- (d) certification of compliance with totalisator standards at the facility (s) from which totalisator system will be provided for the licensed association,
- (e) a Type II SAS 70 report, or other independent report in a form acceptable to the commission, completed within the preceding 12 months, to assure adequate financial controls are in place and compliance with totalisator standards,

- (f) agreement to facility inspections and verification by the Commission,
- (g) agreement to testing of hardware and software as may be directed by the Commission.

(2) Other Vendors of Simulcast and Totalisator Systems Services

Entities providing uplink, downlink, and other means of communication or encryption of simulcasting and/or wagering information for APmWE or totalisator companies licensed by the Commission, irrespective of whether they provide, operate, service or otherwise have access to facilities and equipment located in this jurisdiction, must be licensed by the Commission. The license application shall include:

- (a) a copy of the contract(s) to provide services to an APmWE or totalisator company;
- (b) a list of personnel assigned to work in this jurisdiction, and a list of all personnel directly involved in providing such service who are not in this jurisdiction;
- (c) list of all officers, directors, partners, and share holders with a five percent or greater share of ownership or beneficial interest;
- (d) all persons employed by such entities pursuant to (b) and (c) above, who are not licensed by the Commission shall hold a current pari-mutuel vendor employee license issued by the National Racing Compact; and
- (e) a consent by the applicant that as a condition of its license, it will comply with M.G.L. c.128A, M.G.L. c.128C, 205 CMR 6.00, 205 CMR 7.00, and any directives issued by the Commission or its representatives.

2.09 Player rewards program

A player rewards program where no money is returned to the customer and whereby points are accumulated and redeemed for discounts on racing programs, food, non-alcoholic beverages, merchandise from the track gift shop, or other non-wagering type rewards is permissible. No racing meeting licensee shall rebate any money to a bettor based on a wager

2.010 Waivers and Variances

(a) General. The commission may in its discretion waive or grant a variance from any provision or requirement contained in 205 CMR 2.00 through 12.00, not specifically required by law, where the commission finds that:

1. Granting the waiver or variance is consistent with the purposes of M.G.L. c. 128A and 128C;
2. Granting the waiver or variance will not interfere with the ability of the commission or the racing division to fulfill its duties;
3. Granting the waiver or variance will not adversely affect the public interest; and

4. Not granting the waiver or variance would cause a substantial hardship to the person requesting the waiver or variance.

(b) Filings. All requests for waivers or variances shall be in writing, shall set forth the specific provision to which a waiver or variance is sought, and shall state the basis for the proposed waiver or variance.

(c) Determination. The commission may grant a waiver or variance, deny a waiver or variance, or grant a waiver or variance subject to such terms, conditions and limitations as the commission may determine. Any waiver request not acted on by the commission within 60 days of filing shall be deemed denied.