

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 432.000: MINIMUM REQUIREMENTS FOR PERSONAL FLOTATION DEVICES FOR MINOR CHILDREN AT MUNICIPAL AND RECREATIONAL PROGRAMS AND CAMPS

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432.001: Purpose

The purpose of 105 CMR 432.000 is to set forth minimum requirements for municipal and recreational programs and camps to have a system in place to have Coast Guard approved personal flotation devices (PFDs) available to minor children who are in a swimming or diving area, excluding swimming pools, wading pools, and other artificial bodies of water, and who are classified as non-swimmers or at-risk swimmers, in accordance with M.G.L. c. 111, § 127A½.

432.002: Scope

105 CMR 432.000 shall apply to all municipal and recreational programs and camps, including recreational camps for children pursuant to 105 CMR 430.000: *Minimum Standards for Recreational Camps for Children (State Sanitary Code: Chapter IV)*, and public or private school programs that operate outside of the school year, that will have activities at swimming or diving areas, excluding swimming pools, wading pools and other artificial bodies of water.

432.010: Definitions

Artificial Bodies of Water. Areas created by human intervention to retain water filled from a potable water supply for purposes of providing swimming, or swimming areas that operate similar to swimming pools.

At-risk Swimmers. Program or camp participants who are minors that may or may not have passed a Red Cross Level 3 or YMCA Minnow swim proficiency test, or other equivalent classification as approved by the Department, but have been determined to have a physical, psychological, medical or cognitive disability that could have a negative impact on their swimming ability.

Bathing Beach. The land where access to the bathing water is provided pursuant to 105 CMR 445.000: *Minimum Standards for Bathing Beaches (State Sanitary Code, Chapter VII)*. For purposes of 105 CMR 432.000, Bathing Beaches shall not include swimming pools, wading pools and other artificial bodies of water.

Bathing Water. Fresh or salt water adjacent to any bathing beach at the location where it is used for bathing and swimming purposes.

Board of Health. The appropriate and legally designated health authority of the city, town, or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the Board of Health of a city or town or its authorized agent or representative.

Certified Swim Instructor (CSI). An individual, employed or contracted by a municipal and recreational program or camp, who holds a current certificate from a nationally-recognized swim instructor program such as the American Red Cross Water Safety Instructor (WSI), YMCA AQ711B - Lifeguard - 2011, or an equivalent certificate, as determined by the Department.

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Department. Massachusetts Department of Public Health.

Minor. Any child younger than 18 years old including all participants, staff or volunteers at municipal and recreational programs or camps.

Municipal and Recreational Programs and Camps and Municipal or Recreational Program or Camp. Private, non-profit or municipally authorized or operated programs, clinics or camps, including licensed Recreational Camps for Children, as defined by 105 CMR 430.000: *Minimum Standards for Recreational Camps for Children (State Sanitary Code: Chapter IV)*, and public or private school programs that operate outside of the 180 day school year defined by each school district, that use public, semi-public or private bathing beaches for bathing or swimming activities.

Non-swimmers. Program or camp participants who are minors that have not yet passed a Red Cross Level 3 or YMCA Minnow swim proficiency test, or other equivalent classification as approved by the Department.

Operator. The owner, director or official who has care, charge or control of the municipal or recreational program or camp.

PFD. A personal flotation device (or life jacket), excluding any inflatable model, which is an approved USCG Type I, Type II or Type III, or a comparable designation approved by the USCG and marked clearly with the USCG approval number.

School Year. The 180 days designated for educational instruction in the academic calendar for each school district in accordance with 603 CMR 27.03: *School Year Requirements*. For purposes of compliance with 105 CMR 432.000, School Year for a private school shall be the same time period as the school year of the school district in which it is located.

Serviceable Condition. A PFD without rips, tears, holes, visible mold or mildew odor, signs of waterlogging, damaged seams, straps or hardware, or any shrinkage or leaks in the buoyant material, which should not be broken or brittle and should spring back when compressed.

Swim Assessor. An individual, 16 years of age or older, employed by a municipal and recreational program or camp, who:

- (1) holds a current Red Cross Lifeguard Training Certificate, or Royal Bronze Medallion, or Boy Scouts of America Lifeguard Certificate or National YMCA Lifeguard Certificate or an equivalent certification, as determined by the Department;
- (2) holds a current American Red Cross CPR Certificate for the Professional Rescuer or American Heart Association CPR Certificate for the Health Care Provider, or National Safety Council CPR Training, or an equivalent certification, as determined by the Department;
- (3) holds a Red Cross Standard First Aid Certificate, or a Red Cross Community First Aid and Safety Certificate (which certification may be evidenced by a notation on the back of any Red Cross Lifeguard Training Certificate), or National Safety Council First Aid Training, Level 2, or an equivalent certification, as determined by the Department;
- (4) has, at a minimum, observed one and participated in one annual swim test training conducted by a Certified Swim Instructor.

Swim Test. A swimming ability determination conducted at a minimum once per summer for every minor at each program or camp by a certified swim instructor or a swim assessor.

USCG. United States Coast Guard.

YMCA. National Council of Young Men's Christian Associations of the United States of America, d/b/a YMCA of the USA.

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432.020: Applicability

- (A) 105 CMR 432.000 shall apply to all municipal and recreational programs and camps, as defined in 105 CMR 432.010, including Recreational Camps for Children licensed pursuant to 105 CMR 430.000: *Minimum Standards for Recreational Camps for Children (State Sanitary Code: Chapter IV)*, using any public, semi-public or private bathing beaches for bathing or swimming activities.
- (B) The requirements of 105 CMR 432.000 shall not apply to municipal and recreational programs and camps using swimming pools, wading pools or other artificial bodies of water.
- (C) If compliance with 105 CMR 432.000 would violate local bylaws, ordinances, or regulations governing swimming and bathing at any marine bathing beach implemented to prevent swimmers with a PFD from being pulled away from the beach due to currents, then a municipal or recreational program or camp may not operate at the marine bathing beach unless designated non-swimmers and at-risk swimmers whose parents or guardians require the use of a PFD for their child are not allowed to enter the water and are under constant, direct supervision.

432.050: System Requirements

Each operator shall have a system in place that meets the requirements of 105 CMR 432.100 through 432.130 to:

- (A) Determine participant swimming ability;
- (B) Identify non-swimmers and at-risk swimmers whenever they are at a swimming or diving area;
- (C) Confine all participants to dedicated swimming areas consistent with their swimming abilities; and
- (D) Ensure that a PFD is made available to each non-swimmer and at-risk swimmer during all swimming sessions.

432.100: Swim Test Requirements

- (A) Every operator shall ensure that a swim test is conducted at a minimum once per summer for every minor at each program or camp to determine each minor's swimming ability at or before the first swimming session in order to identify and classify non-swimmers and at-risk swimmers. Designated non-swimmers and at-risk swimmers may be re-tested and re-classified at any time.
- (B) The swim test shall be conducted by a Certified Swim Instructor or Swim Assessor.
- (C) All program or camp participants, as well as staff and volunteers who are minors, shall be swim tested regardless of any prior year's swim test results, designations or certifications.
- (D) Swim tests shall be conducted at the marine or freshwater beach venue where swimming will occur whenever possible. Swim tests may be conducted in a permitted swimming pool if the camp or program operator provides lifeguards at the marine or freshwater beach venue at a ratio of one dedicated lifeguard for each 25 participants swimming in the water. However, if lifeguards are not provided at the fresh or marine beach venue, then swim tests shall be conducted either at the fresh or marine beach venue or a comparable location.
- (E) Swim tests shall be conducted under close supervision and without the use of a PFD.
- (F) Swim test results for each child shall be documented in accordance with guidelines issued by the Department. Such swim test results must be readily accessible to staff and maintained in accordance with 105 CMR 432.400(B)(2).

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432.110: Confinement to Certain Swimming Areas

Every operator shall ensure that minors determined to be non-swimmers or at-risk swimmers are confined to swimming areas consistent with the limits of each individual's swimming skills or to swimming areas requiring lesser skills than those for which they have been classified.

432.120: Personal Flotation Devices Made Available by the Operator

(A) Every operator shall ensure that PFDs are made available, in accordance with guidelines issued by the Department, for non-swimmers and at-risk swimmers who will be entering the water for swimming or bathing or entering a diving area for purposes other than diving, excluding such activities at swimming pools, wading pools or other artificial bodies of water.

(B) Any PFDs made available by the program or camp, or by agreement with a bathing beach operator, shall be in serviceable condition and the proper size for the intended wearer (based on body weight and chest size) in accordance with guidelines issued by the Department and USCG.

(C) Operators shall ensure that PFDs are properly sized and assessed for a proper fit on each minor that is a non-swimmer or at-risk swimmer prior to each swimming activity, in accordance with guidelines issued by the Department.

(D) An adequate number and range of sizes of PFDs in a serviceable condition shall be available and accessible for staff to distribute to participants who are present in a swimming or diving area and who are determined to be non-swimmers or at-risk swimmers.

(E) PFDs may also be made available through a contractual agreement between an off-site bathing beach operator and a municipal or recreational program or camp.

432.130: Personal Flotation Devices Provided by Parents or Guardians

(A) In accordance with M.G.L. c. 111, § 127A½, an operator shall not refuse, decline, or otherwise prohibit a parent, guardian or person with custody of a minor to provide a PFD to a municipal or recreational program or camp for the minor's use, for the duration of the minor's attendance at the program or camp.

(B) At no time shall the child be allowed to enter bathing water without wearing this specifically identified PFD except during closely supervised swim tests, swimming or diving lessons, and beach waterfront activities.

(C) The operator shall ensure that the PFD designated for a particular child is clearly and permanently marked with the child's first and last name and a parent's or legal guardian's emergency contact information (name and telephone number).

(D) The operator shall ensure that the PFD provided by a parent or legal guardian is properly sized and fitted for the child, in accordance with guidelines issued by the Department, prior to minor's first bathing or swimming activity.

(E) If, at any time, the PFD provided by a parent or guardian is determined to not be properly fitting, or is damaged or otherwise not in serviceable condition, the municipal or recreational program or camp shall immediately notify the parent or legal guardian who provided the PFD. In such case, the minor shall not be allowed to participate in any swimming/bathing activity pending verbal permission from the parent/legal guardian for the minor to be properly fit tested for a PFD provided by the municipal or recreational program or camp. Any verbal permission shall be subsequently documented in writing within 24 hours, and, at a minimum, provide the date, time and name of the parent/guardian who provided permission.

432.400: Policies and Recordkeeping

The operator of a municipal or recreational program or camp shall:

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(A) Develop and implement, and make available to parents or guardians upon request, written policies and procedures to ensure compliance with the requirements set forth in 105 CMR 432.000, which shall include, but not be limited to:

- (1) an orientation plan for all staff and volunteers describing compliance with statutory and regulatory requirements;
- (2) a daily check-in routine for reviewing and confirming proper swimming level identification for program or camp participants;
- (3) a description of all storage facilities used for PFDs during the season and after the season;
- (4) a current inventory of PFDs;
- (5) procedures for distributing PFDs to and collecting PFDs from participants that have their own PFDs;
- (6) training requirements for appropriate staff to ensure that program and camp participants, as well as staff and volunteers that are minors, are provided a proper swim test;
- (7) training requirements for appropriate staff to ensure that properly-fitting PFDs are made available for applicable program and camp participants, as well as applicable staff and volunteers;
- (8) a procedure for classifying and identifying non-swimmers and at-risk swimmers or other categorizations of swimming ability during the course of the day and prior to each swimming activity;
- (9) a procedure for inspecting the serviceable condition of each PFD at a minimum annually and properly disposing of any that are not determined to be in serviceable condition;
- (10) a procedure for accepting, handling, testing and monitoring a PFD provided by a parent or legal guardian; and
- (11) a procedure to contact a parent or legal guardian that provides their child a PFD that does not fit properly or is not in serviceable condition.

(B) Maintain, at a minimum, for the last three years:

- (1) Readily accessible policies, procedures, contracts, and applicable records for a municipal or recreational program or camp, including all documents required to be developed under 105 CMR 432.400(A);
- (2) records of swim tests documenting the swim test date, swimming ability determination, with the name of the certified swim instructor or swim assessor;
- (3) If required, PFD fit test information for each minor, including PFD type and size, and the name of the individual conducting the fit test;
- (4) records showing current certifications for certified swim instructors employed or designated (contracted) by the operator to conduct swim tests;
- (5) records showing current training for swim instructors and staff fitting PFDs; and
- (6) records of an annual inventory of equipment required by 105 CMR 432.000, and updates as needed.

432.500: Administration and Enforcement

(A) Inspection Authority. In order to properly carry out their respective responsibilities under 105 CMR 432.00 and to properly protect the health and well-being of the residents of the Commonwealth, the Boards of Health and the Department are authorized to enter, examine, or survey at any reasonable time such places as they consider necessary to carry out the provisions of 105 CMR 432.000.

(B) Notices. If, as a result of any inspection or investigation of a recreational camp, the Board of Health or the Department finds a violation of 105 CMR 432.000, the Board of Health or the Department shall issue a notice that sets forth the nature of the violation and warns that a second such violation may result in legal action. However, the Board of Health and the Department shall have the authority to initiate proceedings to enforce 105 CMR 432.000 without prior notice in those circumstances in which the Board of Health or the Department determines that there is an imminent risk to public health or safety.

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(C) Enforcement Against Recreational Camps. The enforcement of 105 CMR 432.000 against the operator of a recreational camp for children shall be carried out pursuant to the enforcement provisions in 105 CMR 430.000: *Minimum Standards for Recreational Camps for Children (State Sanitary Code, Chapter IV)*.

(D) Compliance by Municipal and Recreational Programs. Municipalities shall ensure compliance with 105 CMR 432.000 against the operator of municipal and recreational programs.

(E) Injunctions. The Department may seek to enjoin violations of 105 CMR 432.000 pursuant to M.G.L. c. 214, § 3(12). Boards of Health may seek to enjoin such violations in accordance with applicable law, including M.G.L. c. 111, § 127A½.

(F) Variance. Variances may be granted only as follows:

(1) The Board of Health may vary the application of any provisions of 105 CMR 432.000 with respect to any particular case when, in its opinion:

- (a) the enforcement thereof would do manifest injustice;
- (b) the applicant has proved that the same degree of protection required under 105 CMR 432.00 can be achieved without strict application of the particular provision; and
- (c) when insurance is utilized, the applicant has provided written confirmation from the insurance carrier confirming the continuation of full coverage(s) if the minimum health and safety provision(s) are varied.

(2) Every request for a variance shall be made in writing and shall state the specific variance sought and the reasons therefore.

(3) Any variance granted by the Board of Health shall be in writing. Any denial of a variance shall also be in writing and shall contain a brief statement of the reasons for the denial.

(4) A copy of each variance shall be conspicuously posted for 30 days following its issuance and shall be available to the public at all reasonable hours in the office of the city or town clerk or the office of the Board of Health while it is in effect. Notice of the grant of each variance shall be filed with the Department.

(5) No action shall be taken under any variance until approved, unless the Board of Health or the Department certifies in writing that an emergency exists.

432.600: Severability

If any section, paragraph, sentence, clause, phrase or word of 105 CMR 432.000 shall be declared invalid for any reason whatsoever, that decision shall not affect any other portion of 105 CMR 432.000, which shall remain in full force and effect; and to this end the provisions of 105 CMR 432.000 are hereby declared severable.

REGULATORY AUTHORITY

105 CMR 432.000: M.G.L. c. 111, §§ 3 and 127A½.