

MASSACHUSETTS CONCRETE & AGGREGATE PRODUCERS ASSOCIATION

ANTITRUST COMPLIANCE POLICY AND GUIDELINES

It is the policy of the Massachusetts Concrete & Aggregate Producers Association (“MaCAPA” or the “Association”) to fully comply with all federal and state antitrust laws, rules and regulations as they pertain to the Association.

This document establishes a mandatory Antitrust Compliance Policy and Guidelines to assist the Association and its members in conducting Association meetings and activities within the limits established by applicable antitrust laws.

MaCAPA expects its staff, its members, and all member representatives involved in MaCAPA activities, to be familiar with MaCAPA’s Antitrust Compliance Policy and Guidelines, and the antitrust laws. The sanctions for antitrust violations are severe. All MaCAPA stakeholders must comply at all times with this Antitrust Compliance Policy and Guidelines.

All MaCAPA members must sign a written acknowledgment to confirm the receipt and acceptance of MaCAPA’s Antitrust Compliance Policy and Guidelines. Noncompliance with the Antitrust Compliance Policy may result in expulsion from the Association.

Overview of the Antitrust Laws

Trade associations face unique potential antitrust issues. One reason is that a trade association brings competitors together, creating the circumstances by which collusive action could be taken or perceived to be taken in violation of the antitrust laws. Moreover, many trade association programs, such as standards and certification programs, are subject to scrutiny from an antitrust standpoint.

Trade associations and their members are subject to both federal and state antitrust law. Those laws generally prohibit any agreement or understanding that results in a restraint of trade. Such conduct, which is considered to be unlawful *per se*, consists of practices that clearly restrain competition and have no other redeeming benefits. Examples of such practices include:

- agreements to establish price (price fixing);
- agreements to refuse to deal with third parties (boycotts);
- agreements to allocate customers or markets;

A violation of federal antitrust laws is a felony, punishable by a fine up to \$1 million for individuals and \$100 million for a corporation. An individual can also be imprisoned up to 10 years for a violation. It is important to note that, because the Sherman Act is a criminal

conspiracy statute, an individual may be held liable for merely attending a meeting in which other members engage in a price fixing discussion.

Besides federal law, most states have enacted antitrust laws that are comparable to the federal statutes. Therefore, potential violations of antitrust laws may be investigated and prosecuted by state governments. Lastly, antitrust violations expose an association and its members to lawsuits by individuals that claim injury from alleged anticompetitive behavior.

Accordingly, MaCAPA members should refrain from any discussion that could provide the basis for an inference that the members agreed to take any action that might restrain trade. An “agreement” among association members in antitrust terms is a very broad concept – it may be oral or written, formal or informal, expressed or implied.

The core principle for antitrust compliance is to ensure that no illegal agreements, expressed or implied, are reached or carried out through the Association. Members should also avoid engaging in conduct which may give the appearance of an unlawful agreement.

While antitrust compliance is the responsibility of each MaCAPA member, MaCAPA has created an Antitrust Subcommittee to the Board of Directors that will oversee compliance and enforcement of the MaCAPA Antitrust Compliance Policy and Guidelines. The Antitrust Subcommittee also will administer and address grievances or complaints regarding antitrust matters that are made by Association Members or third parties. Any concerns or grievances about possible or alleged violations of the MaCAPA Antitrust Compliance Policy and Guidelines should be submitted to a member of the Antitrust Subcommittee. The Antitrust Subcommittee will be comprised of three members of the Board of Directors, and will include the Association President, Vice President, and one additional Board member.

Antitrust Compliance Guidelines

Following the guidelines below can minimize the possibility that inferences of antitrust violations might be drawn from MaCAPA meetings:

1. Meetings should be held regularly and when there are items of substance to be discussed sufficient to justify a meeting.
2. Before every meeting, an agenda should be circulated to each member; the agenda should be specific and broad topics should be avoided.
3. This Antitrust Compliance Policy and Guidelines should be reviewed at the beginning of each meeting and a copy should be included in the meeting materials.
4. Participants at the meeting should strictly follow the agenda. In general, subjects not included on the agenda should not be considered at the meeting.

5. If a member brings up for discussion a subject of doubtful legality, that member should be told immediately that the subject is not a proper one for discussion.
6. Minutes of all meetings should be maintained, and they must accurately report what actions, if any, were taken.
7. Secret or “rump” meetings held at the time of the regular meeting should be strictly avoided.
8. The following is a non-exhaustive list of topics that should not be discussed at MaCAPA meetings:
 - Do not discuss current or future prices.
 - Do not discuss fair profit levels.
 - Do not discuss price adjustments.
 - Do not discuss stabilizing prices.
 - Do not discuss cash discounts.
 - Do not discuss credit terms.
 - Do not discuss allocating customers or markets.
 - Do not complain to a competitor that his or her prices constitute unfair practices.
 - Do not divulge a member’s business or operating plans.
 - Do not discuss changes in industry production, capacity, or inventories.
 - Do not disparage other companies or their products or services.
 - Do not discuss action to refuse to deal with certain suppliers, customers, or other competitors.
9. The following are areas of potential MaCAPA activity that should be carefully scrutinized from an antitrust standpoint before any related action decisions are taken:
 - Denial of MaCAPA membership to an applicant
 - Expulsion of a MaCAPA member
 - Membership qualifications
 - Conduct of a statistical reporting or data sharing program
 - Conduct of a standardization or certification program

10. MaCAPA expects its staff, its members, and all member representatives to avoid even the appearance of impropriety.