

Maryland Register

Issue Date: June 28, 2013

Volume 40 • Issue 13 • Pages 1059—1104

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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before June 10, 2013, 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of June 10, 2013.

Brian Morris
Acting Administrator, Division of State Documents
Office of the Secretary of State



Information About the Maryland Register and COMAR

MARYLAND REGISTER

The Maryland Register is an official State publication published every other week throughout the year. A cumulative index is published quarterly.

The Maryland Register is the temporary supplement to the Code of Maryland Regulations. Any change to the text of regulations published in COMAR, whether by adoption, amendment, repeal, or emergency action, must first be published in the Register.

The following information is also published regularly in the Register:

- Governor's Executive Orders
- Attorney General's Opinions in full text
- Open Meetings Compliance Board Opinions in full text
- State Ethics Commission Opinions in full text
- Court Rules
- District Court Administrative Memoranda
- Courts of Appeal Hearing Calendars
- Agency Hearing and Meeting Notices
- Synopses of Bills Introduced and Enacted by the General Assembly
- Other documents considered to be in the public interest

CITATION TO THE MARYLAND REGISTER

The Maryland Register is cited by volume, issue, page number, and date. Example:

- 19:8 Md. R. 815—817 (April 17, 1992) refers to Volume 19, Issue 8, pages 815—817 of the Maryland Register issued on April 17, 1992.

CODE OF MARYLAND REGULATIONS (COMAR)

COMAR is the official compilation of all regulations issued by agencies of the State of Maryland. The Maryland Register is COMAR's temporary supplement, printing all changes to regulations as soon as they occur. At least once annually, the changes to regulations printed in the Maryland Register are incorporated into COMAR by means of permanent supplements.

CITATION TO COMAR REGULATIONS

COMAR regulations are cited by title number, subtitle number, chapter number, and regulation number. Example: COMAR 10.08.01.03 refers to Title 10, Subtitle 08, Chapter 01, Regulation 03.

DOCUMENTS INCORPORATED BY REFERENCE

Incorporation by reference is a legal device by which a document is made part of COMAR simply by referring to it. While the text of an incorporated document does not appear in COMAR, the provisions of the incorporated document are as fully enforceable as any other COMAR regulation. Each regulation that proposes to incorporate a document is identified in the Maryland Register by an Editor's Note. The Cumulative Table of COMAR Regulations Adopted, Amended or Repealed, found online, also identifies each regulation incorporating a document. Documents incorporated by reference are available for inspection in various depository libraries located throughout the State and at the Division of State Documents. These depositories are listed in the first issue of the Maryland Register published each year. For further information, call 410-974-2486.

HOW TO RESEARCH REGULATIONS

An Administrative History at the end of every COMAR chapter gives information about past changes to regulations. To determine if there have been any subsequent changes, check the "Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed" which is found online at www.dsd.state.md.us/CumulativeIndex.pdf. This table lists the regulations in numerical order, by their COMAR number, followed by the citation to the Maryland Register in which the change occurred. The Maryland Register serves as a temporary supplement to COMAR, and the two publications must always be used together. A Research Guide for Maryland Regulations is available. For further information, call 410-260-3876.

SUBSCRIPTION INFORMATION

For subscription forms for the Maryland Register and COMAR, see the back pages of the Maryland Register. Single issues of the Maryland Register are \$15.00 per issue.

CITIZEN PARTICIPATION IN THE REGULATION-MAKING PROCESS

Maryland citizens and other interested persons may participate in the process by which administrative regulations are adopted, amended, or repealed, and may also initiate the process by which the validity and applicability of regulations is determined. Listed below are some of the ways in which citizens may participate (references are to State Government Article (SG), Annotated Code of Maryland):

- By submitting data or views on proposed regulations either orally or in writing, to the proposing agency (see "Opportunity for Public Comment" at the beginning of all regulations appearing in the Proposed Action on Regulations section of the Maryland Register). (See SG, §10-112)
- By petitioning an agency to adopt, amend, or repeal regulations. The agency must respond to the petition. (See SG §10-123)
- By petitioning an agency to issue a declaratory ruling with respect to how any regulation, order, or statute enforced by the agency applies. (SG, Title 10, Subtitle 3)
- By petitioning the circuit court for a declaratory judgment on the validity of a regulation when it appears that the regulation interferes with or impairs the legal rights or privileges of the petitioner. (SG, §10-125)
- By inspecting a certified copy of any document filed with the Division of State Documents for publication in the Maryland Register. (See SG, §7-213)

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CLOSING DATES AND ISSUE DATES through JANUARY 24, 2014

Issue Date	Emergency and Proposed Regulations 5 p.m.*	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.
July 12**	June 24	July 2	June 28
July 26	July 8	July 17	July 15
August 9	July 22	July 31	July 29
August 23	August 5	August 14	August 12
September 6**	August 19	August 26	August 23
September 20**	August 29	September 11	September 9
October 4	September 16	September 25	September 23
October 18	September 30	October 9	October 7
November 1**	October 11	October 23	October 21
November 15	October 28	November 6	November 4
December 2***	November 8	November 18	November 15
December 13	November 25	December 4	December 2
December 27**	December 9	December 16	December 13
January 10**	December 23	December 30	December 27
January 24**	January 6	January 14	January 13

* Due date for documents containing 8 to 18 pages — 48 hours before date shown; due date for documents exceeding 18 pages — 1 week before date shown

NOTE: ALL DOCUMENTS MUST BE SUBMITTED IN TIMES NEW ROMAN, 9 POINT, SINGLE-SPACED FORMAT. THE REVISED PAGE COUNT REFLECTS THIS FORMATTING.

** Note closing date changes

*** Note issue date and closing date changes

The regular closing date for Proposals and Emergencies is Monday.

COMAR Online

The Code of Maryland Regulations is available at www.dsd.state.md.us as a free service of the Office of the Secretary of State, Division of State Documents. The full text of regulations is available and searchable. Note, however, that the printed COMAR continues to be the only official and enforceable version of COMAR.

The Maryland Register is also available at www.dsd.state.md.us.

For additional information, visit www.sos.state.md.us, Division of State Documents, or call us at (410) 974-2486 or 1 (800) 633-9657.

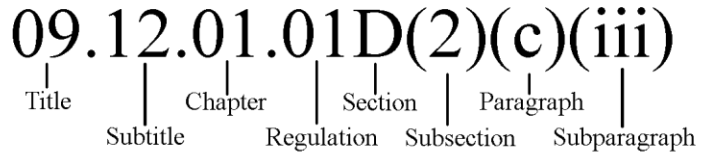
Availability of Monthly List of Maryland Documents

The Maryland Department of Legislative Services receives copies of all publications issued by State officers and agencies. The Department prepares and distributes, for a fee, a list of these publications under the title "Maryland Documents". This list is published monthly, and contains bibliographic information concerning regular and special reports, bulletins, serials, periodicals, catalogues, and a variety of other State publications. "Maryland Documents" also includes local publications.

Anyone wishing to receive "Maryland Documents" should write to: Legislative Sales, Maryland Department of Legislative Services, 90 State Circle, Annapolis, MD 21401.

REGULATIONS CODIFICATION SYSTEM

Under the COMAR codification system, every regulation is assigned a unique four-part codification number by which it may be identified. All regulations found in COMAR are arranged by title. Each title is divided into numbered subtitles, each subtitle is divided into numbered chapters, and each chapter into numbered regulations.



A regulation may be divided into lettered sections, a section divided into numbered subsections, a subsection divided into lettered paragraphs, and a paragraph divided into numbered subparagraphs.

Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed

This table, previously printed in the Maryland Register lists the regulations, by COMAR title, that have been adopted, amended, or repealed in the Maryland Register since the regulations were originally published or last supplemented in the Code of Maryland Regulations (COMAR). The table is no longer printed here but may be found on the Division of State Documents website at www.dsd.state.md.us.

Table of Pending Proposals

The table below lists proposed changes to COMAR regulations. The proposed changes are listed by their COMAR number, followed by a citation to that issue of the Maryland Register in which the proposal appeared. Errata pertaining to proposed regulations are listed, followed by “(err)”. Regulations referencing a document incorporated by reference are followed by “(ibr)”. None of the proposals listed in this table have been adopted. A list of adopted proposals appears in the Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed.

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- 03.01.01.04 • 40:3 Md. R. 221 (2-8-13)
- 03.06.01.08 • 40:3 Md. R. 222 (2-8-13)
- 03.06.01.09 • 40:3 Md. R. 223 (2-8-13)
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- 07.02.11.12 • 40:9 Md. R. 792 (5-3-13)

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- 10.09.04.01,.03,.07 • 40:13 Md. R. 1084 (6-28-13)
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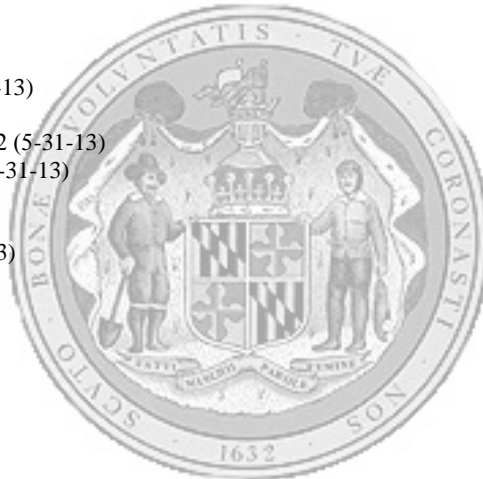
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The Attorney General

OPINIONS

EDUCATION

BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY – SCHOOL BOARD NOMINATING COMMISSION – ALL BOARD MEMBERS APPOINTED BY THE GOVERNOR MUST BE NOMINATED, SELECTED, AND STAND FOR RETENTION REGARDLESS OF WHETHER THEY ARE SEEKING A FIRST OR SECOND TERM

May 22, 2013

Andrew C. Pruski

President

Board of Education Anne Arundel County

On behalf of the Board of Education of Anne Arundel County (“Board”), you have requested our opinion regarding § 3-110 of the Education Article and its application to incumbent Board members who wish to serve a second consecutive term. Under § 3-110, the School Board Nominating Commission of Anne Arundel County (“Nominating Commission”) nominates candidates for any vacancy among the seats that are to be appointed by the Governor. Md. Code Ann., Educ. (“ED”) § 3-110(a)(2), (b)(5).¹ The Governor then appoints one of the candidates, and the appointed member runs to retain the seat in the next general election. ED § 3-110(c)(1). You ask whether this same process applies to incumbents who seek a second term on the Board. You also ask us to explain the Governor’s role in the reappointment process.

In our opinion, an incumbent Board member who seeks a second term must be nominated for that term by the Commission and appointed for that term by the Governor. After that, the member must stand for retention at the next general election. The Governor has the sole authority to appoint and reappoint the Board’s eight non-student members.²

I

Background

The process of becoming and being retained as a member of the Board consists of three steps, each of which is set forth in a different part of § 3-110 of the Education Article. The first step is the nominating process, which is set forth in subsection (b). The Nominating Commission “select[s] nominees to be recommended to the Governor as qualified candidates for appointment to the [Board].” ED § 3-110(b)(1)(ii). The Nominating Commission holds at least two public hearings and submits to the Governor at least two names for each vacant seat, unless there are fewer applicants for a vacancy, in which case a single nominee will suffice. ED § 3-110(b)(1)(iii) and (5). The Governor then appoints one of the Commission’s nominees to the seat. ED § 3-110(a)(2). Appointment is the second step in the process and is set forth in subsection (a) of § 3-110.

The third step in holding board membership—standing for retention before the electorate—is set forth in subsection (c). After appointment, the board member begins to serve immediately, but must stand for “approval or rejection of the registered voters of the

¹ Unless otherwise noted, all statutory references refer to the current version of the Education Article, which is reflected in the 2008 Replacement Volume of the Annotated Code of Maryland and the 2012 Supplement.

² The ninth member of the Board is a student member, who is appointed through a separate process. See ED § 3-110(a)(2), (d). We do not address the process by which the Board’s student member is appointed.

county at the next general election.” ED § 3-110(c)(1). The board member is placed on the ballot, without opposition. ED § 3-110(c)(3)(ii). If the voters reject the board member or the vote is tied, the position becomes vacant by operation of law “10 days after certification of the election returns.” ED § 3-110(c)(4). If the voters retain the board member, he or she may complete the remainder of the five-year term. ED § 3-110(c)(1); see also ED § 3-108(c) (establishing five-year term).

You explain that two incumbent board members plan to seek second consecutive terms and that questions have arisen as to whether they must go through the statutory nomination and election process. The provision that governs reappointments is § 3-110(c)(2): “A member of the county board is eligible for nomination and reappointment for a second consecutive term in accordance with the provisions of subsections (a) and (b) of this section.” As outlined above, subsections (a) and (b) establish the nominating and appointment process, but not the election process.

At least one member of the Nominating Commission has apparently expressed the view that a board member who seeks a second consecutive term is not subject to the Commission’s nomination process. That view is contrary to the advice that the Board received from its counsel.³ The Board’s counsel noted that § 3-110(c)(2) explicitly makes the nomination and appointment process set forth in § 3-110(a) and (b) applicable to a reappointment. The Board’s counsel also concluded that § 3-110(c)(2) does not make the election requirement similarly applicable to reappointed members. Board counsel thereby concluded that if the member is retained and then seeks a second term, the member must repeat the nomination and appointment process pursuant to § 3-110(c)(2).

II

Analysis

The interpretation of every statute begins with ascertaining legislative intent. See, e.g., *Wal-Mart Stores, Inc. v. Holmes*, 416 Md. 346, 359 (2010). The starting point, and often the ending point, of this inquiry is the plain language of the statute. *Id.* But the plain language of a statute is not to be read in a vacuum. Instead, “the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.” *Employees Retirement System of the City of Baltimore v. Dorsey*, 430 Md. 100, 113 (2013) (citations and quotation marks omitted).

The statutory provision we interpret here is ED § 3-110(c)(2), which provides that a member “is eligible for nomination and reappointment for a second consecutive term in accordance with the provisions of subsections (a) and (b) of this section.” Because subsections (a) and (b) lay out the nomination and appointment process, the plain language of (c)(2) requires that a board member who seeks a second term must be re-nominated by the Nominating Commission and re-appointed by the Governor. That much is clear.

Whether a re-appointed member must stand for retention “at the next general election” is less clear. As Board counsel noted, the statute does not appear to resolve the issue; § 3-110(c)(2) refers back to subsections (a) and (b), which address nomination and appointment, but not election. In our view, however, the answer can be found by comparing the current version of § 3-110(c)(1) and (2) to prior versions of that law.

³ At our request, and in compliance with our policy, you provided the opinion of Board counsel on the issues that are the subject of this opinion.

A. The 2007 Legislation

Until 2007, the statute governing membership on the Board called for a board appointed solely by the Governor. *See* former ED § 3-108(a) (2006 Repl. Vol.). The General Assembly changed that procedure in 2007. While the Governor retained the right to appoint the members, the amended statute established the Nominating Commission and the process by which the Governor selects from the Commission's nominees. *See* 2007 Md. Laws, ch. 454, codified at ED § 3-110(b).

The 2007 law also added the requirement that appointed board members stand for a retention election, but it did so through the enactment of separate provisions for first-term and second-term board members. Subsection (c)(1) applied to "the initial appointment of a member" and required the member to stand for retention to complete his or her "first term." 2007 Md. Laws, ch. 454, codified at ED § 3-110(c)(1). Subsection (c)(2), by contrast, applied specifically to second terms: "A member . . . may serve for a second consecutive term subject to the approval of or rejection by the registered voters of the county at the next general election." *Id.*, codified at ED § 3-110(c)(2). Subsection (c)(2) did not, however, refer back to subsections (a) and (b), with the result that a member seeking a second term was not required to go through the nomination and appointment process. So, the process enacted in 2007 required three steps for a new member's first term (*i.e.*, nomination, appointment, retention election) but only one step—the retention election—for a second term.⁴

B. The 2011 Amendments

The General Assembly changed the procedure again in 2011 and gave the statute its current form. *See* 2011 Md. Laws, chs. 177, 178. As we see it, the amendments enacted in 2011 effected two principal changes. First, the amendment added the re-nomination and reappointment process for the second term that is currently set forth in § 3-110(c)(2). The amendment also altered the provisions relating to the election requirement. As amended, the statute no longer describes the retention election as a condition of the member's

⁴ The 2007 legislation included uncodified language providing a separate appointment process for "a member serving a first term on the Anne Arundel County Board of Education on or before June 30, 2008." Such a member:

(a) (1) shall be eligible to be included in the list of nominees submitted by the School Board Nominating Commission of Anne Arundel County to the Governor to serve a second term when the first term ends; and

(2) may be reappointed by the Governor to the Anne Arundel County Board of Education subject to the approval or rejection of the registered voters of the county at the next general election; and

(b) as provided in § 3-108(c)(3) of the Education Article, is not eligible to serve another consecutive term following the second term by a reappointment.

2007 Md. Laws, ch. 454, § 2. Our Office has previously interpreted this uncodified provision to mean that board members serving as of June 30, 2008, need not be re-nominated by the Commission to serve a second term but are instead automatically placed on the list of nominees submitted to the Governor for appointment. If appointed, the member must still stand for retention. *See* Letter of Assistant Attorney General Sandra Benson Brantley to Joshua C. Greene, Chair, Anne Arundel County School Board Nominating Commission (April 8, 2010) ("2010 Advice Letter").

completion of his or her "first term," no longer refers to any election temporally as the general election "following the initial appointment of a member," and no longer contains a separate provision applicable only to a second term. Instead, the statute contains one election provision that is not specific to either the first or the second term. In relevant part, the statute now provides:

Following the appointment of a member of the [Board] by the Governor, a member may serve for the remainder of the member's term . . . subject to the approval or rejection of the registered voters of the county at the next general election.

ED § 3-110(c)(1). It is this 2011 amendment that we construe here.

When construing the "plain language" of a statute, we are to give effect "to every word, clause, and sentence." *Fisher v. Bethesda*, 221 Md. 271, 277 (1960). By way of a corollary to that rule, just as every word is presumed to have been used for a purpose, "every word excluded from a statute must be presumed to have been excluded for a purpose." *See* 2A N. Singer & J. Singer, *Sutherland Statutes and Statutory Construction* § 46.6 (7th ed. 2007); *see also*, *e.g.*, *Briggs v. State*, 413 Md. 265, 277 (2010) (giving weight to the Legislature's use of a particular word "without any qualification").

Read in isolation, the General Assembly's removal of the separate election provision for second-term members would seem to be strong evidence that the General Assembly intended to eliminate the requirement that second-term members stand for retention. But other aspects of the 2011 amendments lead us to the conclusion that removal of the second-term election provision was part of a larger effort to make the election requirement applicable to *all* board members in the same manner. In this respect we find it significant that the General Assembly deleted the words "initial" and "first" from the election provision that had been applicable only to first-term members. Rather than have separate election provisions for first- and second-term members, the statute now has a single provision—subsection (c)(1)—that applies to the election of all board members, whether they are seeking their first term or their second.

To the extent that the current statutory language remains ambiguous on this point, the legislative history, including the fiscal and policy note prepared by the Department of Legislative Services for the General Assembly, confirms the interpretation we reach. *See, e.g., Washington Suburban Sanitary Comm'n v. Phillips*, 413 Md. 606, 629-30 (2010) (inferring legislative intent from the statutory language and the fiscal note). The sponsor of Senate Bill 78, Senator Simonaire, submitted written testimony stating that "[t]he bill was drafted to address the problems documented on April 8, 2010 in the Attorney General's letter in regards to the reappointment process for a 2nd term." *See* S.B. 78, 2011 Leg., Reg. Sess., Hearing Before the Senate Educ., Health and Env't Affairs Comm. (Feb. 9, 2011) (written testimony of Sen. Bryan W. Simonaire) ("Simonaire Testimony"). Senator Simonaire testified that the bill was to provide:

Corrective language to ensure the original intent of the 2007 modification to the Anne Arundel County School Board selection process, specifically:

a. Current law only requires a retention vote of the people to be reappointed

to a 2nd term without the Governor’s action (see AG letter).

b. Ensure that a school board member seeking a 2nd term is first re-appointed by the Governor and then elected through the existing retention election process of the people.

Id. The April 8, 2010 advice letter—described in note 4 above—had concluded, among other things, that a board member who had been nominated and appointed under the process established in 2007 “may serve a second consecutive term subject only to voter approval.” 2010 Advice Letter at 4. The purpose of the bill, then, was to “[a]dd language to require the Governor to reappoint the school board member when a 2nd term is sought by an incumbent member.” Simonaire Testimony at 1.

A co-sponsor of House Bill 220—the House version of Senate Bill 78—provided similar written testimony about the legislation’s “corrective” purpose. Delegate McConkey testified that the 2007 legislation was “ambiguous on the process of reappointment”:

The 2007 change set up a process of vetting prospective members to the school board and making nominations to the Governor for appointment. Unfortunately, *under the current interpretation reappointment is automatic.* HB 200 would require members seeking reappointment to go back through the process.

See H.B. 220, 2011 Leg., Reg. Sess., Hearing Before the House Ways and Means Comm., (Feb. 17, 2011) (written testimony of Del. Tony McConkey) (emphasis in original). Delegate McConkey explained the policy rationale behind the proposed amendments:

The nominating commission is made up of representatives of stakeholders in the public school system. The nominating process is the only means the community has to hold school board candidates accountable; therefore, it is important that after four years, candidates for reappointment go back through the process, to share their experiences and their vision for their second term.

Id. The Floor Reports and Fiscal and Policy Notes all confirm that the purpose of the 2011 legislation was to provide for a single nominating, appointment, and election process that would be applicable to members seeking first or second terms:

This bill specifies that a member of the Anne Arundel County Board of Education

must be appointed by the Governor from a list of nominees submitted by the School Board Nominating Commission, subject to election by the registered voters of the county at the general election following the member’s nomination and appointment, regardless of whether that member is serving a first or second term.

Fiscal and Policy Note (Revised) for Senate Bill 78 (2011) at 1; *see also* Senate Educ., Health and Env’t Affairs Comm., Floor Report, Senate Bill 78 at 1 (2011) (same); House Ways and Means Comm., Floor Report, House Bill 220 at 1 (2011) (same).

In sum, the legislative history makes clear that the General Assembly enacted the 2011 legislation to make the nomination and appointment steps applicable to second terms, and not to change the requirement that both five-year terms be subject to the approval of the voters of the County. The provisions for the nomination and appointment process, § 3-110(a), (b), and for the election and re-election process, § 3-110(c)(1), now apply to all Board members—whether they are seeking a first or second term—and require that they be nominated (or re-nominated) by the Nominating Commission, appointed (or re-appointed) by the Governor, and retained at the next general election.⁵

III Conclusion

In our opinion, an incumbent Board member who seeks a second term must be nominated for that term by the Commission and appointed for that term by the Governor. After that, the member must stand for retention at the next general election. The Governor has the sole authority to appoint and reappoint eight of the Board’s eight non-student members.

Douglas F. Gansler
Attorney General

Elizabeth M. Kameen
Assistant Attorney General

Adam D. Snyder
*Chief Counsel,
Opinions & Advice*

⁵ The 2011 legislation did not carry forward the uncodified language in the 2007 legislation, which we had interpreted, in the 2010 Advice Letter, to mean that Board members serving as of June 30, 2008, need not be re-nominated by the Commission to serve a second term. Given that Board members serve five-year terms, *see* ED § 3-108(c)(1), any Board member who was sitting as of June 30, 2008—and, thus, would have been entitled to *automatic* nomination under the 2007 uncodified language—has already gone through the appointment process for a second term. Going forward, then, *all* Board members must be nominated, be appointed, and stand for retention in the manner set forth in the codified statute.

Open Meetings Compliance Board

SUMMARY OF OPINIONS ISSUED FROM MARCH 29 – JUNE 3, 2013*

8 Official Opinions of the Compliance Board 161 (2013)

Carroll County Commissioners

S. Wayne Carter, Jr., Complainant

March 29, 2013

Topic discussed: Legality of closing a meeting to receive legal advice from outside counsel

8 Official Opinions of the Compliance Board 166 (2013)

University System of Maryland Board of Regents

Craig O'Donnell, Complainant

April 8, 2013

Topics discussed: Procedures to be followed before closing a meeting; scope of the exceptions that permit a public body to close a meeting to discuss personnel matters and confidential personal information

8 Official Opinions of the Compliance Board 170 (2013)

Baltimore County Council

Ralph Jaffe, Complainant

May 13, 2013

Topics discussed: Dismissal of complaints that do not allege any violation of the Open Meetings Act; lack of requirement in Act that public bodies hold meetings to receive public comment

8 Official Opinions of the Compliance Board 173 (2013)

Maryland State Water Quality Advisory Committee

Michele J. Fluss, Complainant

May 15, 2013

Topics discussed: Timely adoption of minutes; provision of draft minutes

8 Official Opinions of the Compliance Board 176 (2013)

Maryland State Board of Elections

Craig O'Donnell, Complainant

May 15, 2013

Topics discussed: Timely adoption of minutes; closed-session minutes

8 Official Opinions of the Compliance Board 180 (2013)

University System of Maryland Board of Regents

Craig O'Donnell, Complainant

May 15, 2013

Topics discussed: Timely adoption of minutes; provision of draft minutes; adoption of minutes in open session

8 Official Opinions of the Compliance Board 182 (2013)

Town of Centreville Town Council

Sveinn R. Storm, Complainant

May 20, 2013

Topics discussed: Steps to be followed before closing a meeting; level of detail required in written statement of the basis for closing and in the summary of the closed session; notice requirement; provision to public of opportunity to observe vote to close

8 Official Opinions of the Compliance Board 188 (2013)

Baltimore City Automated Traffic Violation Enforcement System Task Force

Louis Wilen, Eugene Simmers, Thomas Barrett, Complainants

May 20, 2013

Topics discussed: Notice requirement; retention of copy of written notice; level of detail required in minutes; requirement that meeting be held in location open to the public; steps that help newly-formed public bodies comply with the Open Meetings Act

8 Official Opinions of the Compliance Board 193 (2013)

Board of Trustees of Frederick Community College

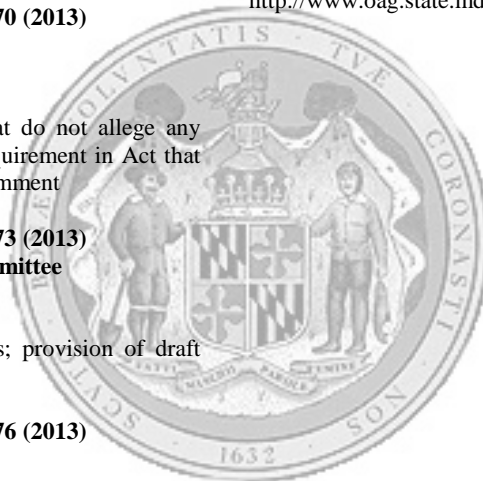
Courtney Mabeus, Complainant

June 3, 2013

Topics discussed: Applicability of administrative exclusion to discussion involving the administration of existing personnel policies; notice and closed-session requirements when Act applies

*The full text of these opinions can be found at <http://www.oag.state.md.us/Opengov/Openmeetings/index.htm>

[13-13-27]



The Judiciary

COURT OF APPEALS OF MARYLAND

DISCIPLINARY PROCEEDINGS

This is to certify that the name **RANDY ALAN WEISS**, 8830 Sleepy Hollow Lane, Potomac, Maryland 20854, has been replaced upon the register of attorneys in the Court of Appeals as of June 5, 2013. Notice of this action is certified in accordance with Maryland Rule 16-781(l).

* * * * *

This is to certify that the name **THOMAS PAUL LINIAK**, 14 Golden Ash Way, Gaithersburg, Maryland 20878, has been replaced upon the register of attorneys in the Court of Appeals as of June 5, 2013. Notice of this action is certified in accordance with Maryland Rule 16-781(l).

[13-13-41]



Emergency Action on Regulations

Symbol Key

- Roman type indicates text existing before emergency status was granted.
- *Italic type* indicates new text.
- [Single brackets] indicate deleted text.

Emergency Regulations

Under State Government Article, §10-111(b), Annotated Code of Maryland, an agency may petition the Joint Committee on Administrative, Executive, and Legislative Review (AELR), asking that the usual procedures for adopting regulations be set aside because emergency conditions exist. If the Committee approves the request, the regulations are given emergency status. Emergency status means that the regulations become effective immediately, or at a later time specified by the Committee. After the Committee has granted emergency status, the regulations are published in the next available issue of the Maryland Register. The approval of emergency status may be subject to one or more conditions, including a time limit. During the time the emergency status is in effect, the agency may adopt the regulations through the usual promulgation process. If the agency chooses not to adopt the regulations, the emergency status expires when the time limit on the emergency regulations ends. When emergency status expires, the text of the regulations reverts to its original language.

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 15 FOOD

10.15.07 Shellfish Sanitation

Authority: Health-General Article, §§18-102, 21-211, 21-234, 21-304, 21-321, and 21-350, Annotated Code of Maryland

Notice of Emergency Action

[13-176-E]

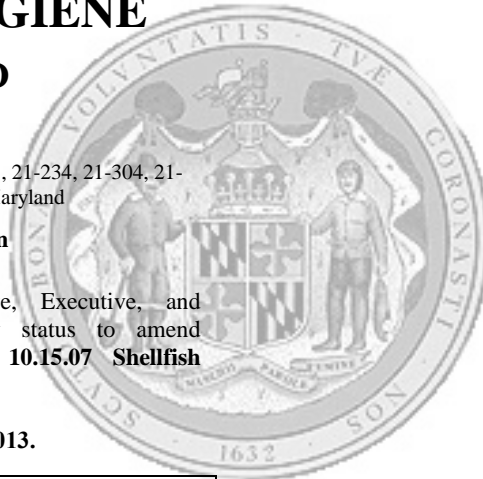
The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amend Regulations .02 and .06 under **COMAR 10.15.07 Shellfish Sanitation**.

Emergency status began: June 1, 2013.

Emergency status expires: November 15, 2013.

Editor's Note: The text of this document will not be printed here because it appears as a Notice of Proposed Action on pages 1090 — 1091 of this issue, referenced as [13-176-P].

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene



Final Action on Regulations

Symbol Key

- Roman type indicates text already existing at the time of the proposed action.
- *Italic type* indicates new text added at the time of proposed action.
- Single underline, italic indicates new text added at the time of final action.
- Single underline, roman indicates existing text added at the time of final action.
- ~~[[Double brackets]]~~ indicate text deleted at the time of final action.

Title 03 COMPTROLLER OF THE TREASURY

Subtitle 04 INCOME TAX

Notice of Final Action

[13-104-F]

On June 17, 2013, the Comptroller of the Treasury adopted amendments to:

(1) Regulation **.01** under **COMAR 03.04.01 General Regulations**;

(2) Regulation **.03** under **COMAR 03.04.02 Individual**;

(3) Regulation **.06** under **COMAR 03.04.03 Corporations**;

(4) Regulation **.01— .03** and **.05** under **COMAR 03.04.09**

Credit for Employer-Provided Long-Term Care Insurance; and
(5) Regulation **.08** under **COMAR 03.04.12 Nonresident Real Estate Withholding Tax**.

This action, which was proposed for adoption in 40:8 Md. R. 726—727 (April 19, 2013), has been adopted as proposed.

Effective Date: July 8, 2013.

PETER FRANCHOT
Comptroller of the Treasury

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.23 Shellfish Aquaculture and Leasing

Authority: Natural Resources Article, §§4-11A-02, 4-11A-09, 4-11A-12, and 4-11A-19, Annotated Code of Maryland

Notice of Final Action

[13-130-F]

On June 18, 2013, the Secretary of Natural Resources adopted amendments to Regulations **.02— .04** under **COMAR 08.02.23 Shellfish Aquaculture and Leasing**. This action, which was proposed for adoption in 40:9 Md. R. 794—796 (May 3, 2013), has been adopted as proposed.

Effective Date: July 8, 2013.

JOSEPH P. GILL
Secretary of Natural Resources

Title 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 12 DIVISION OF LABOR AND INDUSTRY

09.12.81 Elevator, Escalator, and Chairlift Safety

Authority: Public Safety Article, §§12-805, 12-806, 12-809, and 12-812, Annotated Code of Maryland

Notice of Final Action

[13-115-F-I]

On June 12, 2013, the Commissioner of Labor and Industry adopted amendments to Regulation **.01** under **COMAR 09.12.81 Elevator, Escalator, and Chairlift Safety**. This action, which was proposed for adoption in 40:8 Md. R. 730 (April 19, 2013), has been adopted as proposed.

Effective Date: July 8, 2013.

J. RONALD DEJULIIS
Commissioner of Labor and Industry

Subtitle 14 STATE ATHLETIC COMMISSION

09.14.04 Safety and Health Standards for Contestants

Authority: Business Regulation Article, §§4-205, 4-304, 4-304.1, 4-310, 4-314, and 4-315, Annotated Code of Maryland

Notice of Final Action

[13-054-F]

On June 18, 2013, the State Athletic Commission adopted amendments to Regulation **.12** under **COMAR 09.14.04 Safety and Health Standards for Contestants**. This action, which was proposed for adoption in 40:3 Md. R. 237—238 (February 8, 2013), has been adopted as proposed.

Effective Date: July 8, 2013.

PATRICK PANNELLA
Executive Director
State Athletic Commission

Subtitle 14 STATE ATHLETIC COMMISSION

09.14.05 Boxing and Kickboxing Facilities and Equipment

Authority: Business Regulation Article, §4-205(c)(2), Annotated Code of Maryland

Notice of Final Action

[13-051-F]

On June 18, 2013, the State Athletic Commission adopted amendments to Regulation .01 under **COMAR 09.14.05 Boxing and Kickboxing Facilities and Equipment**. This action, which was proposed for adoption in 40:3 Md. R. 238—239 (February 8, 2013), has been adopted as proposed.

Effective Date: July 8, 2013.

PATRICK PANNELLA
Executive Director
State Athletic Commission

Subtitle 14 STATE ATHLETIC COMMISSION

09.14.05 Boxing and Kickboxing Facilities and Equipment

Authority: Business Regulation Article, §4-205, Annotated Code of Maryland

Notice of Final Action

[13-055-F]

On June 18, 2013, the State Athletic Commission adopted amendments to Regulation .03 under **COMAR 09.14.05 Boxing and Kickboxing Facilities and Equipment**. This action, which was proposed for adoption in 40:3 Md. R. 239—240 (February 8, 2013), has been adopted as proposed.

Effective Date: July 8, 2013.

PATRICK PANNELLA
Executive Director
State Athletic Commission

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.48 Targeted Case Management for People with Intellectual and Developmental Disabilities

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

Notice of Final Action

[13-109-F]

On June 17, 2013, the Secretary of Health and Mental Hygiene adopted:

(1) The repeal of existing Regulations .01—.18 under **COMAR 10.09.48 Case Management for Individuals with Developmental Disability**; and

(2) New Regulations .01—.12 under **COMAR 10.09.48 Targeted Case Management for People with Intellectual and Developmental Disabilities**.

This action, which was proposed for adoption in 40:8 Md. R. 734—740 (April 19, 2013), has been adopted with the nonsubstantive changes shown below.

Effective Date: July 8, 2013.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Regulation .01B(14): Corrected punctuation; citation to COMAR is unnecessary and could affect future accuracy if the cited regulation is changed; and remaining additional language provides clarification without changing the substance.

Regulation .01B(22)(b), Regulation .05B(3), Regulation .06B(1)(d), Regulation .06D(2)(a)(i)—(iii), and Regulation .07F(1)(b): Additional language provides clarification without changing the substance.

Regulation .03: Criteria were moved without changing their meaning in order to reflect the process as it occurs over time and to make the criteria easier to understand.

Regulation .04C(9) and (16) and Regulation .06A(3): Makes an implied provision express.

Regulation .04F(2)(e): Provides additional detail to make the provision easier to understand.

Regulation .08B(3): Update of rate, as provided in statute.

.01 Definitions.

A. (proposed text unchanged)

B. *Terms Defined.*

(1)—(13) (proposed text unchanged)

(14) *“Individual plan” means a comprehensive, outcome-directed service plan [[as defined in COMAR 10.22.05]] that is developed and revised by the resource coordinator [[with direction from the individual and input from the team]] in collaboration with the individual and his or her identified representatives.*

(15)—(21) (proposed text unchanged)

(22) *Place of Service.*

(a) (proposed text unchanged)

(b) “Place of service” includes but is not limited to the participant’s home, day program, group home, alternate living arrangement, or place of employment.

(23)—(37) (proposed text unchanged)

.03 Participant Eligibility.

To be eligible for services covered under [[resource coordination]] this chapter, a participant or applicant shall:

A. [[Apply for services that are provided by the DDA]] Be Medicaid eligible; and

B. [[Be Medicaid eligible;]] Either:

(1) Apply for services that are provided by the DDA; or

[[C.]] (2) Be eligible for funding from the DDA as set forth in COMAR [[10.22.12;]] 10.22.12, and meet one of the following conditions:

[[D. Meet one of the following conditions:]]

[[1] The participant is]] (a) Be currently on the DDA waiting list;

[[2] The participant is]] (b) Be receiving comprehensive community services funded by the DDA; or

[[3] The participant is]] (c) Be in the process of transitioning to the community.

.04 Conditions for Participation—General.

A.—B. (proposed text unchanged)

C. *Administrative and Professional Requirements.* To participate in the Program as a provider of services covered under this chapter, the provider shall:

(1)—(8) (proposed text unchanged)

(9) Maintain a toll free number, unless otherwise authorized by the DDA, and an accessible communication system in accordance with the Americans with Disabilities Act of 1990;

(10)—(15) (proposed text unchanged)

(16) Notify the DDA immediately in writing of any critical incidents that affect the health, safety, and welfare of an individual, as well as administrative and quality of care complaints [[as set forth in DDA policy]] as required by State and federal law; and

(17) (proposed text unchanged)

D.—E. (proposed text unchanged)

F. *Technology Requirements.* To participate in the Program as a provider of services covered under this chapter, the provider shall:

(1) (proposed text unchanged)

(2) Adhere to the following information technology requirements:

(a)—(d) (proposed text unchanged)

(e) [[Gain written approval by the DDA before posting information about DDA services on any public website]] Obtain written approval from the DDA before posting on any public website information that describes DDA services.

G.—I. (proposed text unchanged)

.05 Conditions for Participation—Staff Requirements.

A. (proposed text unchanged)

B. *Staff Training Requirements.*

(1)—(2) (proposed text unchanged)

(3) All resource coordination staff shall receive retraining [[or certification renewal as required by the DDA]] on procedures, protocols, processes, and regulations as required by the DDA.

C.—G. (proposed text unchanged)

.06 Covered Services.

A. *Comprehensive Assessment.* Resource coordination services shall include a comprehensive assessment of the individual’s needs

and supports to determine eligibility as noted in COMAR 10.22.12. The assessment shall be completed within 45 days of referral by the DDA and include:

(1)—(2) (proposed text unchanged)

(3) [[A]] Unless otherwise authorized by the DDA, a face-to-face assessment of the participant, preferably at the participant’s residence, to review:

(a)—(n) (proposed text unchanged)

(4)—(5) (proposed text unchanged)

B. *Individual Plan.*

(1) General requirements for the individual plan are that the individual plan shall:

(a)—(c) (proposed text unchanged)

(d) Be completed within 30 days [[of]] after notification of selection as the resource coordination agency and subsequent initial contact with the participant, and, if necessary, updated or modified within 30 days of service initiation;

(e)—(i) (proposed text unchanged)

(2) (proposed text unchanged)

C. (proposed text unchanged)

D. *Monitoring and Follow-Up.*

(1) (proposed text unchanged)

(2) *Frequency of Monitoring and Follow-up Contact.*

(a) For individuals receiving waiting list coordination services, monitoring and follow-up contact activities shall meet the following requirements:

(i) For individuals who meet the criteria for the crisis resolution priority category as set forth in COMAR 10.22.12.07, minimum monthly face-to-face contacts shall be made for the first 90 days, after which [[contact]] face-to-face contacts will be made quarterly;

(ii) For individuals who meet the criteria for the crisis prevention priority category as set forth in COMAR 10.22.12.07, minimum quarterly face-to-face contacts shall be made; and

(iii) For individuals who meet the criteria for the current request priority category as set forth in COMAR 10.22.12.07, minimum annual [[contact]] face-to-face contacts shall be made.

(b)—(c) (proposed text unchanged)

(3) (proposed text unchanged)

.07 Limitations.

A.—E. (proposed text unchanged)

F. *Service Exclusions.*

(1) Unless an individual is transitioning into the community, resource coordination services may not be provided to:

(a) (proposed text unchanged)

(b) Inmates or residents of public institutions.

(2) (proposed text unchanged)

G. (proposed text unchanged)

.08 Payment Procedures.

A. (proposed text unchanged)

B. *Payment Rates.*

(1)—(2) (proposed text unchanged)

(3) For all other services, providers shall be reimbursed [[14.28]] \$14.62 per unit of service.

C.—D. (proposed text unchanged)

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene

Subtitle 34 BOARD OF PHARMACY

Notice of Final Action
[13-114-F]

On June 17, 2013, the Secretary of Health and Mental Hygiene adopted:

- (1) Amendments to Regulations .01 and .03—.05 under **COMAR 10.34.14 Opening and Closing of Pharmacies**; and
- (2) Amendments to Regulation .01 and new Regulation .01-1 under **COMAR 10.34.30 Change to Permit—Pharmacy or Wholesale Distribution Permit Holder**.

This action, which was proposed for adoption in 40:8 Md. R. 741—742 (April 19, 2013), has been adopted as proposed.
Effective Date: July 8, 2013.

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene

Title 15
DEPARTMENT OF
AGRICULTURE

Subtitle 05 PESTICIDE USE CONTROL

15.05.01 Use and Sale of Pesticides, Certification of Pesticide Applicators and Pest Control Consultants, and Licensing of Pesticide Businesses

Authority: Agriculture Article, §§2-103, 5-204, 5-207 and 5-210.2, Annotated Code of Maryland

Notice of Final Action
[13-017-F]

On June 18, 2013, the Secretary of Agriculture adopted amendments to Regulations .01 and .14 under **COMAR 15.05.01 Use and Sale of Pesticides, Certification of Pesticide Applicators and Pest Control Consultants, and Licensing of Pesticide Businesses**. This action, which was proposed for adoption in 40:2 Md. R. 153—155 (January 25, 2013) and repropoed in 40:9 Md. R. 805—806 (May 3, 2013), has been adopted as repropoed.
Effective Date: July 8, 2013.

EARL F. HANCE
Secretary of Agriculture

Subtitle 15 MARYLAND
AGRICULTURAL LAND
PRESERVATION FOUNDATION

15.15.06 Lot Released from Easement for Landowner or Child

Authority: Agriculture Article, §§2-504 and 2-513, Annotated Code of Maryland

Notice of Final Action
[13-127-F]

On June 18, 2013, the Secretary of Agriculture adopted amendments to Regulations .01—.04, the repeal of existing Regulations .05 and .06, and new Regulations .05— .07 under

COMAR 15.15.06 Lot Released from Easement for Landowner or Child. This action, which was proposed for adoption in 40:9 Md. R. 806—808 (May 3, 2013), has been adopted as proposed.
Effective Date: July 8, 2013.

EARL F. HANCE
Secretary of Agriculture

Title 20
PUBLIC SERVICE
COMMISSION

Subtitle 61 RENEWABLE ENERGY
PORTFOLIO STANDARD PROGRAM

Notice of Final Action
[13-112-F]

On June 12, 2013, the Public Service Commission adopted amendments to:

- (1) Regulation .03 under **COMAR 20.61.01 General**;
- (2) Regulations .01 and .03 under **COMAR 20.61.02 Certifiable Renewable Energy Facilities**; and
- (3) Regulation .02 under **COMAR 20.61.03 Renewable Energy Credit**.

This action, which was proposed for adoption in 40:8 Md. R. 763—764 (April 19, 2013), has been adopted as proposed.
Effective Date: July 8, 2013.

DAVID COLLINS
Executive Secretary
Public Service Commission

Title 26
DEPARTMENT OF THE
ENVIRONMENT

Subtitle 11 AIR QUALITY

Notice of Final Action
[13-096-F]

On June 14, 2013, the Secretary of the Environment adopted amendments to:

- (1) Regulation .01 under **COMAR 26.11.01 General Administrative Provisions**; and
- (2) Regulation .14 under **COMAR 26.11.06 General Emission Standards, Prohibitions, and Restrictions**.

This action, which was proposed for adoption in 40:7 Md. R. 621—623 (April 5, 2013), has been adopted as proposed.
Effective Date: July 8, 2013.

ROBERT M. SUMMERS, Ph.D.
Secretary of the Environment

Subtitle 11 AIR QUALITY

Notice of Final Action

[13-095-F]

On June 14, 2013, the Secretary of the Environment adopted amendments to:

(1) Regulation **.01** under **COMAR 26.11.01 General Administrative Provisions**; and

(2) Regulations **.01** and **.02** under **COMAR 26.11.17 Nonattainment Provisions for Major New Sources and Major Modifications**.

This action, which was proposed for adoption in 40:7 Md. R. 623—626 (April 5, 2013), has been adopted as proposed.

Effective Date: July 8, 2013.

ROBERT M. SUMMERS, Ph.D.
Secretary of the Environment

Subtitle 11 AIR QUALITY

26.11.27 Emission Limitations for Power Plants

Authority: Environmental Article, §§1-101, 1-404, 2-101—2-103, 2-301—2-303, 2-1003, 10-102, 10-103, and 10-1002, Annotated Code of Maryland

Notice of Final Action

[13-094-F]

On June 14, 2013, the Secretary of the Environment adopted amendments to Regulations **.02** and **.03** under **COMAR 26.11.27 Emission Limitations for Power Plants**. This action, which was proposed for adoption in 40:7 Md. R. 626—627 (April 5, 2013), has been adopted as proposed.

Effective Date: July 8, 2013.

ROBERT M. SUMMERS, Ph.D.
Secretary of the Environment

Subtitle 11 AIR QUALITY

26.11.37 Outer Continental Shelf Air Regulations

Authority: Environment Article, §§1-101, 1-404, 2-101—2-103, 2-301—2-303, 10-102 and 10-103, Annotated Code of Maryland

Notice of Final Action

[13-093-F]

On June 14, 2013, the Secretary of the Environment adopted new Regulations **.01—04** under a new chapter, **COMAR 26.11.37 Outer Continental Shelf Air Regulations**. This action, which was proposed for adoption in 40:7 Md. R. 627—629 (April 5, 2013), has been adopted as proposed.

Effective Date: July 8, 2013.

ROBERT M. SUMMERS, Ph.D.
Secretary of the Environment

Withdrawal of Regulations

Title 17 DEPARTMENT OF BUDGET AND MANAGEMENT Subtitle 04 PERSONNEL SERVICES AND BENEFITS

17.04.13 State Employees' Health Benefits

Authority: State Personnel and Pensions Article §§2-503 and 4-106,
Annotated Code of Maryland

Notice of Withdrawal [13-121-W]

The Secretary of Budget and Management withdraws the proposed amendments to Regulations .01, .03, .03-1, and .06 under **COMAR 17.04.13 State Employees' Health Benefits** as published in 40:9 Md. R. 808—810 (May 3, 2013).

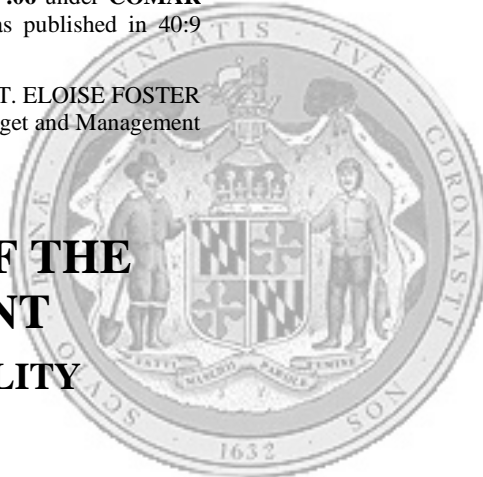
T. ELOISE FOSTER
Secretary of Budget and Management

Title 26 DEPARTMENT OF THE ENVIRONMENT Subtitle 11 AIR QUALITY

Notice of Withdrawal [12-195-W]

The Secretary of the Environment withdraws the proposed amendments to Regulation .08 under **COMAR 26.11.09 Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations**, and amendments to Regulations .06—.07 and adoption of new Regulation .08 under **COMAR 26.11.14 Control of Emissions from Kraft Pulp Mills**, as published in 39:16 Md. R. 1120—1122 (August 10, 2012).

ROBERT M. SUMMERS, Ph.D.
Secretary of the Environment



Proposed Action on Regulations

For information concerning citizen participation in the regulation-making process, see inside front cover.

Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

Title 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

Notice of Proposed Action

[13-180-P]

The Secretary of Natural Resources proposes to amend:

- (1) Regulation .07 under **COMAR 08.02.05 Fish**; and
- (2) Regulation .03 under **COMAR 08.02.12 Endangered and Threatened Fish Species**.

Statement of Purpose

The purpose of this action is to establish regulations for Atlantic menhaden. Menhaden have been found to be in need of conservation, and are being listed as such. The action also establishes a quota, season, license requirements, a bycatch allowance landing permit, a declaration period for the fishery, catch limits, and reporting requirements. The action also allows for the modification of catch limits, quotas, and seasons by public notice.

The Atlantic menhaden fishery is managed cooperatively under the provisions of the Interstate Fishery Management Plan (FMP) for Atlantic Menhaden developed by the Atlantic States Marine Fisheries Commission (ASMFC). Amendment 2 to the Plan was approved in December 2012, establishing a total allowable catch (TAC) for the fishery that resulted in a 20% reduction from the average landings from 2009—2011. New biological reference points were also adopted for biomass with the goal of increasing abundance, spawning stock biomass, and menhaden availability as a forage species. The action also includes provisions for the transfer of quota between states and a bycatch allowance of 6,000 pounds for nondirected fisheries that are operating after a state TAC has been landed. In Maryland, this will allow the continued use of pound nets even after the state TAC has been landed. The action also establishes requirements for reporting and improved biological monitoring.

This action will keep Maryland in compliance with the ASMFC FMP for Atlantic menhaden.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposed action has a negative economic impact.

II. Types of Economic Impact.

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	
	Cost (-)	Magnitude
D. On regulated industries or trade groups:		
(1) Revenue	(-)	146,426
(2) Expenditures	(-)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:		
(1) Bait and Tackle Stores	(-)	Indeterminable
(2) Recreational Fishermen and Crabbers	(-)	Indeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D(1). The projected decrease in revenue to the commercial industry is a 20% reduction of the dockside value for the 10-year average Atlantic menhaden harvest in Maryland. The actual annual reduction will vary by year, but should average around 20% as this is the target level of reduction in landings required by the Atlantic States Marine Fisheries Commission. Seafood dealers will also see a reduction in revenue as there will be fewer menhaden for them to sell. The reduction in revenue for seafood dealers is indeterminable as there is no way to calculate the lost profits of the dealers with regards to the reduction of the menhaden harvest.

D(2). There will likely be an indeterminable amount of increased expenditure by the commercial industry because of these regulations. Atlantic menhaden is the preferred bait of crab pot fishermen. As such, a reduction in bait availability caused by these regulations could increase the price of bait and therefore increase operating costs for individual fishermen. It is likely that the industry will find alternatives for bait or compensate for lower menhaden availability through fishing behavior, but some increase in expenditures is likely.

F(1). Tackle stores often sell bait to fishermen, including Atlantic menhaden. With the reduction in the menhaden harvest, bait stores will have less access to menhaden to sell in their stores. The amount of these reductions is not quantifiable due to pricing variability and unknown distribution of sales.

F(2). Recreational anglers use Atlantic menhaden for bait in various fisheries in the Chesapeake Bay and along the Atlantic Coast. If bait prices increase due to lower than normal supply, these anglers will have to pay more to use menhaden as bait. Individual fishermen's response to increased bait price or unavailability will vary, making quantifying any effect difficult.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Please see summary of economic impact to the regulated community in Part A.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Menhaden Regulations, Fisheries Regulatory Staff, Department of Natural Resources, 580 Taylor Ave, Annapolis MD 21401, or call (410)260-8260, or email to fisheriespubliccomment@dnr.state.md.us, or fax to (410)260-8310. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

08.02.05 Fish

Authority: Natural Resources Article, §§4-206 and 4-2A-03, Annotated Code of Maryland

.07 Atlantic Menhaden.

A. Quota.

(1) *The annual total allowable landings of Atlantic menhaden for the commercial fishery is set by the Atlantic States Marine Fisheries Commission and shall be established and may be modified through a public notice issued in accordance with §F of this regulation.*

(2) *Any annual overages of the quota will be deducted from the subsequent year's quota.*

B. Seasons. *The season for harvesting Atlantic menhaden shall be established and may be modified through a public notice issued in accordance with §F of this regulation.*

C. Commercial Catch Limits.

(1) *Prior to the State quota in §A of this regulation being met or exceeded, there is no catch limit for Atlantic menhaden.*

(2) *Upon the State quota being met or exceeded, the catch limit for Atlantic menhaden and the harvest rate at which an Atlantic menhaden bycatch allowance landing permit is required shall be established and may be modified through a public notice issued in accordance with §F of this regulation.*

D. Atlantic Menhaden Bycatch Allowance Landing Permits.

(1) *An individual may apply for an Atlantic menhaden bycatch allowance landing permit if, as of February 18, 2013, the individual had a pound net site registered with the Department.*

(2) *An individual may be issued only one Atlantic menhaden bycatch allowance landing permit.*

(3) *A permittee shall have in possession the Atlantic menhaden bycatch allowance landing permit when engaged in permitted activities.*

(4) *Atlantic menhaden bycatch allowance landing permits may not be transferred and are valid only for the named individual on the permit card.*

(5) *A permittee shall be on board any boat harvesting Atlantic menhaden under an Atlantic menhaden bycatch allowance landing permit.*

E. Reporting.

(1) *In addition to the requirements of Natural Resources Article, §4-206, Annotated Code of Maryland, an individual in possession of an Atlantic menhaden landing permit shall report in the manner specified by the Department.*

(2) *The Department may suspend the holder of an Atlantic menhaden landing permit from participation in the menhaden fishery for up to 90 days per violation for failing to comply with §E(1) of this regulation.*

(3) *The Department may deny an application for an Atlantic menhaden landing permit for failing to comply with §E(1) of this regulation during the previous season.*

F. General.

(1) *The Secretary may establish or modify catch limits, quotas, and seasons for Atlantic menhaden in order to implement the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Menhaden by issuing a public notice on the Fisheries Service website.*

(2) *The Secretary shall make a reasonable effort to disseminate a public notice issued under this section through various other media so that an affected individual has a reasonable opportunity to be informed.*

(3) *A violation of the restrictions set by the Secretary in accordance with section is a violation of this regulation.*

08.02.12 Endangered and Threatened Fish Species

Authority: Natural Resources Article, §4-2A-03, Annotated Code of Maryland

.03 Listing of Species.

A. The following species are listed as in need of conservation:

- (1)—(15) (text unchanged)
- (16) Bay Scallop (*Argopecten irradians*); [and]
- (17) Snapper Grouper Complex:
 - (a)—(ppp) (text unchanged)
 - (qqq) Sand tilefish (*Malacanthus plumieri*)[.]; and
 - (18) Atlantic menhaden (*Brevoortia tyrannus*).

B. (text unchanged)

JOSEPH P. GILL
Secretary of Natural Resources

Title 09

DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 10 RACING COMMISSION

09.10.03 Prohibited Acts

Authority: Business Regulation Article, §11-210, Annotated Code of Maryland

Notice of Proposed Action

[13-172-P]

The Maryland Racing Commission proposes to amend Regulations .01, .04, and .08, and adopt new Regulation .01-1 under **COMAR 09.10.03 Prohibited Acts**. This action was considered by the Maryland Racing Commission at a public meeting held on April 16, 2013, notice of which was given pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to establish permissive levels of certain drugs and medications that may be in a horse's system on a live racing day, and to prohibit the administration of any adjunct bleeder medication to a horse on a race day.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to J. Michael Hopkins, Executive Director, Maryland Racing Commission, 300 East Towsontown Boulevard, or call 410-296-9682, or email to mhopkins@dlr.state.md.us, or fax to 410-296-9687. Comments will be accepted through August 2, 2013. A public hearing has not been scheduled.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) Drug.

(a) [Except as provided in §B(1)(b) of this regulation, "drug"] "Drug" means a substance which may have a pharmacological effect on a horse, and:

(i)—(v) (text unchanged)

(b) [Except as provided in §B(1)(c) of this regulation, "drug" does not include:

(i) Phenylbutazone, quantitated at less than 2 micrograms per milliliter of the blood plasma of a horse;

(ii) Flunixin quantitated at less than 20 nanograms per milliliter of blood plasma;

(iii) Caffeine quantitated at less than 100 nanograms per milliliter of blood plasma;

(iv) Furosemide (Lasix), as provided in Regulation .08 of this chapter;

(v) A substance administered as an adjunct to Lasix in accordance with Regulation .08 of this chapter;

(vi) Stanozolol quantitated at less than 1 nanogram per milliliter of urine;

(vii) Nandrolone quantitated at less than 1 nanogram per milliliter of urine taken from a gelding, filly, or mare;

(viii) Boldenone quantitated at less than 15 nanograms per milliliter of urine taken from a colt or horse;

(ix) Testosterone quantitated at less than 20 nanograms per milliliter of urine taken from a gelding; and

(x) Testosterone quantitated at less than 55 nanograms per milliliter of urine taken from a filly or mare.

(c) "Drug" includes the combination of phenylbutazone and flunixin [in quantities described under §B(1)(b)(i) and (ii) of this regulation.] if:

(i) Phenylbutazone is quantitated at more than 0.3 micrograms per milliliter of blood plasma or serum; and

(ii) Flunixin is quantitated at more than 3.0 nanograms per milliliter of blood plasma or serum.

(2)—(3) (text unchanged)

.01-1 Restricted Use of Medications and Other Substances.

The use of the following medications and other substances are permitted if quantitated at not more than the specified thresholds:

A. Acepromazine quantitated at not more than 10 nanograms per milliliter of HEPS in urine;

B. Betamethasone quantitated at not more than 10 picograms per milliliter of blood plasma or serum;

C. Butorphanol quantitated at not more than 300 nanograms per milliliter of total butorphanol in urine, or 2 nanograms per milliliter of free butorphanol in blood plasma or serum;

D. Caffeine quantitated at not more than 100 nanograms per milliliter of blood plasma or serum;

E. Clenbuterol quantitated at not more than 140 picograms per milliliter of urine, or the limit of detection in blood plasma or serum;

F. Dantrolene quantitated at not more than 100 picograms per milliliter of 5-hydroxydantrolene in blood plasma or serum;

G. Detomidine quantitated at not more than 1 nanogram per milliliter of carboxydetomidine in urine, or the limit of detection for detomidine in blood plasma or serum;

H. Dexamethasone quantitated at not more than 5 picograms per milliliter of blood plasma or serum;

I. Diclofenac quantitated at not more than 5 nanograms per milliliter of blood plasma or serum;

J. Dimethylsulfoxide (DMSO) quantitated at not more than 10 micrograms per milliliter of blood plasma or serum;

K. Firocoxib quantitated at not more than 20 nanograms per milliliter of blood plasma or serum;

L. Flunixin quantitated at not more than 20 nanograms per milliliter of blood plasma or serum;

M. Furosemide (Lasix), as provided in Regulation .08 of this chapter;

N. Glycopyrrolate quantitated at not more than 3 picograms per milliliter of blood plasma or serum;

O. Ketoprofen quantitated at not more than 10 nanograms per milliliter of blood plasma or serum;

P. Lidocaine quantitated at not more than 20 picograms per milliliter of total 3-hydroxylidocaine in blood plasma or serum;

Q. Mepivacaine quantitated at not more than 10 nanograms per milliliter of total hydroxymepivacaine in urine, or the limit of detection of mepivacaine in blood plasma or serum;

R. Methocarbamol quantitated at not more than 1 nanogram per milliliter of blood plasma or serum;

S. Methylprednisone quantitated at not more than 100 picograms per milliliter of blood plasma or serum;

T. Omeprazole quantitated at not more than 1 nanogram per milliliter of urine;

U. Phenylbutazone quantitated at not more than 2 micrograms per milliliter of the blood plasma or serum;

V. Prednisolone quantitated at not more than 1 nanogram per milliliter of blood plasma or serum;

W. Procaine Penicillin quantitated at not more than 25 nanograms per milliliter of blood plasma or serum;

X. Tiamcinolone acetonide quantitated at not more than 100 picograms per milliliter of blood plasma or serum;

Y. Xylazine quantitated at not more than .01 nanograms per milliliter of blood plasma or serum;

Z. Stanozolol quantitated at not more than 1 nanogram per milliliter of urine;

AA. Nandrolone quantitated at not more than 1 nanogram per milliliter of urine taken from a gelding, filly, or mare;

BB. Boldenone quantitated at not more than 15 nanograms per milliliter of urine taken from a colt or horse;

CC. Testosterone quantitated at not more than 20 nanograms per milliliter of urine taken from a gelding; and

DD. Testosterone quantitated at not more than 55 nanograms per milliliter of urine taken from a filly or mare.

.04 Drug Prohibition—Horses.

A. Other than Lasix administered in accordance with the regulations in this chapter, [An] an individual may not administer, cause to be administered, participate, or attempt to participate in any way in the administration of [a] any drug or medication to a horse:

(1)—(2) (text unchanged)

[B. Notwithstanding any other provision of this chapter, no substance of any kind may be administered to a horse within 2 hours of the scheduled post time for the race in which the horse is entered.]

[C.] B. A horse participating in a race may not carry [a drug] in its body[.]:

(1) A drug; or

(2) A medication or other substance quantitated at more than the thresholds prescribed in Regulation .01-1 of this chapter.

[D.] C. The presence of a drug or a medication or other substance quantitated at more than the thresholds prescribed in Regulation .01-1 of this chapter in the post-race urine, blood, or other sample taken from a horse is prima facie evidence that the:

(1)—(2) (text unchanged)

[D-1.] D. (text unchanged)

[E.] (proposed for repeal)

[F.] E. (text unchanged)

[G.] F. Enforcement.

(1) The stewards or judges may order the:

(a)—(b) (text unchanged)

(c) Denial, forfeiture, and prompt return of a purse, sweepstakes, trophy, or any other reward received by the owner of a horse found to have carried a drug or a medication or other substance quantitated at more than the thresholds prescribed in Regulation .01-1 of this chapter in its body during a race;

(d) Redistribution of the items denied, forfeited, and returned, resulting from the disqualification of a horse found to have carried a drug or a medication or other substance quantitated at more than the thresholds prescribed in Regulation .01-1 of this chapter in its body during a race, to those owners whose horses were advanced by the disqualification.

(2) If the stewards or judges order a disqualification due to a horse having carried a drug or a medication or other substance quantitated at more than the thresholds prescribed in Regulation .01-1 of this chapter in its body during a race, they shall issue a ruling announcing the disqualification.

[H.] G. (text unchanged)

.08 Bleeders.

A. (text unchanged)

[A-1.] (proposed for repeal)

B.—E. (text unchanged)

F. Race Day Administration of Lasix.

(1) Unless a horse has been declared off of Lasix pursuant to §G of this regulation, [A] a horse [scheduled to race] that is permitted to use Lasix shall be administered Lasix on the day of the race only by a veterinarian [licensed by the Commission before the running of the race unless, under §G of this regulation, the horse has been declared off of Lasix by its owner or trainer] designated by the Commission to perform such a function.

(2) [Post-Race Quantitation.] As indicated by post-race quantitation, a horse may not carry in its body at the time of the running of a race not more than 100 nanograms of Lasix per milliliter of plasma or serum.

(3) Reports.

(a) The veterinarian who administers Lasix to a horse scheduled to race shall prepare a written certification indicating[:

(i) That] that Lasix was administered[; and

(ii) If applicable, each adjunct medication that was administered].

(b)—(c) (text unchanged)

G. (text unchanged)

H. Program Notice.

(1) Of the horses scheduled to race, the official program shall denote the horses which have been administered:

(a) Lasix; and

(b) Lasix for the first time[; and

(c) Lasix and one or more adjunct medications].

(2) If the official program contains past performance lines, each past performance line shall indicate if the horse was administered[;

(a)] Lasix[; or

(b) Lasix and an adjunct medication].

[I.] (proposed for repeal)

J. MICHAEL HOPKINS

Executive Director

Maryland Racing Commission

Subtitle 12 DIVISION OF LABOR AND INDUSTRY

09.12.31 Maryland Occupational Safety and Health Act — Incorporation by Reference of Federal Standards

Authority: Labor and Employment Article, 2-106(b)(4), 5-309(a)(1), and 5-312(b), Annotated Code of Maryland

Notice of Proposed Action

[13-167-P]

The Commissioner of Labor and Industry proposes to adopt, through incorporation by reference under COMAR 09.12.31 Maryland Occupational Safety and Health Act — Incorporation by Reference of Federal Standards, amendments and revisions relating to Hazard Communication, 29 CFR Parts 1910 and 1926, excluding Part 1915 and 29 CFR §1910.1200(b)(6)(iv), published in 77 FR 17574 — 17896 (March 26, 2012), as amended. This action was considered by the Maryland Occupational Safety and Health Advisory Board pursuant to a meeting held on September 5, 2012, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend OSHA’s Hazard Communication Standard (HCS) to conform to the United Nations’ Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The modifications include revised criteria for classification of chemical hazards; revised labeling provisions that include requirements for use of standardized signal words, pictograms, hazard statements, and precautionary statements; a specified format for safety data sheets; and related revisions to definitions of terms used in the standard, and requirements for employee training on labels and safety data sheets. OSHA is also modifying provisions of other standards to include standards for flammable and combustible liquids, process safety management, and most substance-specific health standards, to ensure consistency with the modified HCS requirements.

Comparison to Federal Standards

In compliance with Executive Order 01.01.1996.03, this proposed regulation is more restrictive or stringent than corresponding federal standards as follows:

(1) Regulation citation and manner in which it is more restrictive than the applicable federal standard:

29 CFR §1910.1200(b)(6)(iv). Wood or wood products are exempt from the requirements under OSHA’s Hazard Communication Standard (HCS). However, the exclusion for wood and wood products set forth in 29 CFR §1910.1200(b)(6)(iv) does not apply in Maryland.

(2) Benefit to the public health, safety or welfare, or the environment:

It is assumed that this proposal will help ensure that employees are apprised of the chemical hazards to which they may be exposed, and reduce the incidence of chemical-related occupational injuries and illnesses.

(3) Analysis of additional burden or cost on the regulated person:

The majority of the costs that are associated with complying with the revisions of the HCS will generally be incurred by the affected industries as one-time transitional costs over the phase-in period of four years.

(4) Justification for the need for more restrictive standards:

As Maryland is a state plan state, Maryland Occupational Safety and Health (MOSH) Program is required to adopt the federal standard or adopt a state standard that is “at least as effective” as the federal standard. As such, Maryland is incorporating by reference the latest modifications under OSHA’s HCS, and adhering to Maryland’s Occupational Safety and Health Act, Labor and Employment Article, §5-403(c), which provides that the exclusion for wood and wood products does not apply in Maryland.

Estimate of Economic Impact

I. Summary of Economic Impact. On the national level, the estimated cost of the final rule is \$201,000,000 annually. The major cost elements associated with this final rule include the classification of chemical hazards in accordance with the GHS criteria and the corresponding revision of safety data sheets and labels to meet new format and content requirements; training for employees to become familiar with new warning symbols and the revised safety data sheet format; management familiarization and other management-related costs as may be necessary; and costs to purchase upgraded label printing equipment and supplies or to purchase pre-printed color labels in order to include the hazard warning pictogram enclosed in a red-bordered diamond on the product label.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(-)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Indeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. OSHA acknowledges that the estimated compliance costs of \$201,000,000 for the revisions to the HCS represent the additional costs necessary for employers to achieve full compliance. They do not include costs associated with current compliance that has already been achieved; nor do they include costs necessary to achieve compliance with existing requirements to the extent that some employers may currently not be fully complying with applicable regulatory requirements. The majority of the costs associated with compliance with the revisions to the HCS will generally be incurred by the affected industries as one-time transitional costs over the phase-in period of 4 years. Covered employers must complete all training regarding the new label elements and SDS format by December 1, 2013. Second, OSHA is requiring compliance with all of the provisions for preparation of new labels and safety data sheets by June 1, 2015. Distributors will have an additional 6 months (by December 1, 2015) to distribute containers with manufacturers’ labels in order to accommodate those they receive very close to the compliance date. Employers will also be given an additional year (by June 1, 2016) to update their hazard communication programs or any other workplace signs, if applicable.

F. OSHA has determined that the modifications of its HCS will enhance the effectiveness of the system in ensuring that employees are apprised of the chemical hazards to which they may be exposed, and in reducing the incidence of chemical-related occupational injuries and illnesses.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Debbie Stone, Regulations Coordinator, Department of Labor, Licensing, and Regulation, Division of Labor and Industry, 1100 North Eutaw Street, Room 606, Baltimore, Maryland 21201, or call 410-767-2225, or email to dstone@dllr.state.md.us, or fax to 410-767-2986. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

GG. Hazard Communication and [Material] Safety Data Sheets.

(1)—(3) (text unchanged)

(4) All amendments and revisions to 29 CFR §§1910 and 1926, including Appendices A—F, and excluding Part 1915 and 29 CFR §1910.1200(b)(6)(iv) that appear in the Federal Register on March 26, 2012 (77 FR 17574 — 17896) are adopted by reference, as amended. Effective date:

J. RONALD DEJULIIS
Commission of Labor and Industry

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.04 Home Health Services

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

Notice of Proposed Action [13-177-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01, .03, and .07 under **COMAR 10.09.04 Home Health Services**.

Statement of Purpose

The purpose of this action is to ensure physicians document that face-to-face encounters occur closer to the start of care in order to substantiate that the conditions exhibited by the patient at the initial encounter are related to the primary reason that home health care is needed.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2250), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(15) (text unchanged)

(16) “Nonphysician practitioner” means an individual who:

(a) Is licensed as a nurse practitioner, clinical nurse specialist, a certified nurse-midwife, or a physician assistant in the jurisdiction in which the service is provided; and

(b) Works in collaboration with or under the supervision of the attending physician.

[(16)] (17)—[(27)] (28) (text unchanged)

.03 Conditions for Participation.

A.—B. (text unchanged)

C. Plan of Treatment.

(1)—(2) (text unchanged)

(3) The attending physician shall [sign]:

(a) Sign and date the initial plan of treatment [before the provider seeks reimbursement from the Program]; and

(b) Document that the attending physician or nonphysician practitioner, who is not employed by the home health agency, has had a face-to-face encounter with the recipient no more than 90 days before the home health start of care date or within 30 days of the start of the home health care, including the date of the encounter.

(4) For recipients admitted to home health upon discharge from a hospital or post-acute setting, the attending acute or post-acute physician or nonphysician practitioner shall document the clinical findings of the face-to-face encounter.

[(4)] (5) (text unchanged)

D. (text unchanged)

.07 Payment Procedures.

A.—G. (text unchanged)

H. The Department shall reimburse for preauthorized home health services upon verification that a face-to-face encounter with the recipient was performed as described under Regulation .03C of this chapter.

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS

Notice of Proposed Action [13-174-P]

The Secretary of Health and Mental Hygiene proposes to amend:

(1) Regulations .01 and .10 under **COMAR 10.09.06 Hospital Services**;

(2) Regulation .06 under **COMAR 10.09.08 Freestanding Clinics**;

(3) Regulations .01 and .16 under **COMAR 10.09.10 Nursing Facility Services**;

(4) Regulations .02, .05-3, .08, and .10 under **COMAR 10.09.24 Medical Assistance Eligibility**;

(5) Regulations .01 and .11 under **COMAR 10.09.26 Community Based Services for Developmentally Disabled Individuals Pursuant to a 1915(c) Waiver**;

(6) Regulation .01 under **COMAR 10.09.44 Programs of All-Inclusive Care for the Elderly (PACE)** ;

(7) Regulation .03 under **COMAR 10.09.46 Home and Community-Based Services Waiver for Adults with Traumatic Brain Injury**;

(8) Regulation .03 under **COMAR 10.09.52 Service Coordination for Children with Disabilities**;

(9) Regulation .02 under **COMAR 10.09.55 Living at Home Waiver Program**;

(10) Regulation .05 under COMAR 10.09.56 Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder;

(11) Regulations .02 and .09 under COMAR 10.09.60 Primary Adult Care Program Eligibility;

(12) Regulation .01 under COMAR 10.09.62 Maryland Medicaid Managed Care Program: Definitions;

(13) Regulations .01 and .06 under COMAR 10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment;

(14) Regulation .13 under COMAR 10.09.69 Maryland Medicaid Managed Care Program: Rare and Expensive Case Management;

(15) Regulation .06 under COMAR 10.09.70 Maryland Medicaid Managed Care Program: Specialty Mental Health System; and

(16) Regulation .03 under COMAR 10.09.79 Psychiatric Residential Treatment Facility (PRTF) Demonstration Waiver.

Statement of Purpose

The purpose of this action is to replace obsolete language with current terminology in accordance with Rosa’s Law - S. 2781 (111th) Pub. L. 111-256.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to (410) 767-6483. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

10.09.06 Hospital Services

Authority: Health-General Article, §§2-104(b), 15-102.8, 15-103, and 15-105, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(17) (text unchanged)

(18) “Intermediate care facility [-mental retardation] for individuals with intellectual disabilities or persons with related conditions (ICF-IID)” means a nursing facility for the [mentally retarded] *intellectually disabled* which meets the standards for certification and participation in Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(19)—(47) (text unchanged)

.10 Billing and Reimbursement Principles.

A. Administrative Days. To be paid for administrative days, the provider shall document on forms designated by the Department information which satisfies the conditions listed below:

(1) The recipient no longer needs acute general, special psychiatric, or other special hospital care, and the following conditions are met:

(a) (text unchanged)

(b) If a hospital other than a special psychiatric hospital, the provider has:

(i) (text unchanged)

(ii) Received a determination from the Department or its designee that the recipient requires the level of care provided by a special hospital, nursing facility, intermediate care facility, intermediate care facility[-mental retardation] *for individuals with intellectual disabilities or persons with related conditions (ICF/IID)*, or a mental hospital, and a bed in an appropriate facility is not available;

(iii)—(iv) (text unchanged)

(2) (text unchanged)

B.—S. (text unchanged)

10.09.08 Freestanding Clinics

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

.06 Limitations.

The Program does not cover the following:

A.—F. (text unchanged)

G. Free-standing clinic services for inpatient recipients in State-operated [mental retardation] facilities *servicing individuals with intellectual disabilities*;

H.—U. (text unchanged)

10.09.10 Nursing Facility Services

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, 19-14B-01, and 19-310.1, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(39) (text unchanged)

(40) Nursing Facility (NF).

(a)—(b) (text unchanged)

(c) “Nursing facility” does not include an institution which is primarily for the care and treatment of mental diseases, [mental retardation,] *an intellectually disability or a developmental disability.*

(41)—(71) (text unchanged)

.16 Selected Costs — Allowable.

The following costs are allowable in establishing interim and final per diem payment rates:

A.—D. (text unchanged)

E. Administrative Days. For services provided on or after July 1, 2004, the Department will reimburse at the interim per diem rates for Administrative and Routine, Other Patient Care, and Capital cost centers, and at the standard rate for each procedure received and for 70 percent of the light care rate less patient resources for administrative days, documented on forms designated by the Department, which satisfy the conditions listed below:

(1) (text unchanged)

(2) When institutional care is no longer appropriate, and the following conditions are met:

(a) The Department or its designee has determined that the recipient no longer requires the level of care which is provided by a nursing facility or intermediate care facility[-mentally retarded] *for individuals with intellectual disabilities or persons with related conditions (ICF/IID)*.

(b)—(e) (text unchanged)

(3) (text unchanged)

F. (text unchanged)

10.09.24 Medical Assistance Eligibility

Authority: Health-General Article, §§2-104(b), 2-105(b), 15-103, 15-105, and 15-121, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(26) (text unchanged)

(27) “Intermediate care facility[-mental retardation] *for individuals with intellectual disabilities or persons with related conditions (ICF/IID)*” means a nursing facility for the [mentally retarded] *intellectually disabled* which meets the standards for certification and participation in Title XIX and has entered into a provider agreement with the Department pursuant to COMAR 10.09.11.

(28)—(29) (text unchanged).

(30) “Long-term-care facility” means a skilled nursing facility, intermediate care facility, intermediate care facility[-mental retardation] *for individuals with intellectual disabilities or persons with related conditions (ICF/IID)*, chronic hospital, tuberculosis hospital, or mental hospital.

(31)—(63) (text unchanged)

.05-3 Nonfinancial Eligibility Requirements — Residency.

A.—J. (text unchanged)

K. An adult is considered incapable of indicating intent if the individual:

(1)—(2) (text unchanged)

(3) Is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist, or other person licensed by the state in the field of [mental retardation] *intellectual disabilities*.

.08 Consideration of Resources.

A.—J. (text unchanged)

J-1. Medicaid Qualifying Trust.

(1)—(2) (text unchanged)

(3) If the beneficiary of a trust is [a mentally retarded] *an intellectually disabled* person who resides in an intermediate care facility for the [mentally retarded] *intellectually disabled*, the trust may not be considered a Medicaid qualifying trust if it was established before April 17, 1986 and is solely for the benefit of the [mentally retarded] *intellectually disabled* person.

(4) (text unchanged)

K.—O. (text unchanged)

.10 Determining Financial Eligibility for Institutionalized Persons.

A.—B. (text unchanged)

C. Retroactive Eligibility.

(1)—(3) (text unchanged)

(4) Determination of Available Income for the Retroactive Period. The following amounts shall be deducted from the total income in the following order:

(a) For dates of service beginning July 1, 2003, a personal needs allowance of:

(i)—(ii) (text unchanged)

(iii) \$100 a month for a person who resided in an [ICF—MR] *ICF/IID* or mental hospital, participated in therapeutic work activities, and received remuneration for participation in these activities. An amount greater than \$100 a month but not to exceed the MNIL may be deducted based on additional documented work-related need.

(b) For dates of service beginning July 1, 2004, a personal needs allowance of:

(i)—(ii) (text unchanged)

(iii) \$100 a month for a person who resides in an [ICF—MR] *ICF/IID* or mental hospital, participates in therapeutic work activities, and received remuneration for participation in these activities, and an amount greater than \$100 a month but not to exceed the MNIL which may be deducted from available income based on additional documented work-related need.

(c)—(h) (text unchanged)

(5)—(8) (text unchanged)

D. Current Eligibility.

(1) (text unchanged)

(2) Determination of Available Income. The following amounts shall be deducted from total income in the following order:

(a) For dates of service beginning July 1, 2003, a personal needs allowance of:

(i)—(ii) (text unchanged)

(iii) \$100 a month for a person who resides in an [ICF—MR] *ICF/IID* or mental hospital, participates in therapeutic work activities, and receives remuneration for participating in these activities. An amount greater than \$100 a month but not to exceed the MNIL may be deducted based on additional documented work-related need.

(b) For dates of service beginning July 1, 2004, a personal needs allowance of:

(i)—(ii) (text unchanged)

(iii) \$100 a month for a person who resides in an [ICF—MR] *ICF/IID* or mental hospital, participates in therapeutic work activities, and received remuneration for participation in these activities, and an amount greater than \$100 a month but not to exceed the MNIL which may be deducted from available income based on additional documented work-related need.

(c)—(h) (text unchanged)

(3)—(6) (text unchanged)

10.09.26 Community Based Services for Developmentally Disabled Individuals Pursuant to a 1915(c) Waiver

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(27) (text unchanged)

(28) “Qualified developmental disabilities professional (QDPP)” means an individual who:

(a) (text unchanged)

(b) Has a minimum of 1 year full-time or equivalent experience working directly with persons with [mental retardation] *an intellectual disability* or other developmental disability.

- (29)—(35) (text unchanged)
- (36) “State residential center” means a place that:
 - (a) (text unchanged)

(b) Provides residential services for individuals with [mental retardation] *an intellectual disability* and who, because of [mental retardation] *an intellectual disability*, require specialized living arrangements; and

(c) Admits 9 or more individuals with a diagnosis of [mental retardation] *an intellectual disability*.

- (37)—(38) (text unchanged)

.11 Participant Eligibility.

A. (text unchanged)

B. To be eligible for services under the Home and Community Based Services Waiver for the Developmentally Disabled, a person shall:

- (1)—(5) (text unchanged)

(6) Be certified for an [ICF-MR] *ICF/IID* level of care and have need for active treatment pursuant to 42 CFR §435.1009.

10.09.44 Programs of All-Inclusive Care for the Elderly (PACE)

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

- (1)—(13) (text unchanged)

(14) “Long-term care facility” means a nursing facility, intermediate care facility[—mental retardation] *for individuals with intellectual disabilities or persons with related conditions (ICF/IID)*, chronic hospital, tuberculosis hospital, or psychiatric hospital.

- (15)—(38) (text unchanged)

10.09.46 Home and Community-Based Services Waiver for Adults with Traumatic Brain Injury

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

.03 Participant Eligibility.

A.—E. (text unchanged)

F. Cause for Termination of a Participant’s Waiver Enrollment.

(1) A participant shall be disenrolled from the waiver, as of the date established by the Department, if the participant:

- (a)—(b) (text unchanged)

(c) Is an inpatient for more than 30 days in a State psychiatric hospital, nursing facility, or intermediate care facility for [people with mental retardation] *individuals with intellectual disabilities* or [other] *persons with related conditions (ICF/IID)*;

- (d)—(e) (text unchanged)

- (2)—(3) (text unchanged)

10.09.52 Service Coordination for Children with Disabilities

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

.03 Conditions for Participation.

A. (text unchanged)

B. Specific requirements for participation in the Program as a provider of Service Coordination for Children with Disabilities are that a provider shall:

- (1)—(4) (text unchanged)

(5) Maintain a file on each participant which meets the Program’s requirements and which shall include:

- (a)—(d) (text unchanged)

(e) The following documentation for a waiver participant:

- (i) (text unchanged)

(ii) Form for determination of eligibility for level of care in an intermediate care facility for the [mentally retarded] *intellectually disabled* and persons with related conditions [(ICF-MR)] (*ICF/IID*)—initial determination and redetermination, at least annually;

- (iii)—(vii) (text unchanged)

- (6)—(7) (text unchanged)

C. (text unchanged)

10.09.55 Living at Home Waiver Program

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-130, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

- (1)—(20) (text unchanged)

(21) Home.

- (a) (text unchanged)

(b) “Home” does not include a hospital, nursing facility, or other institution that is regulated under:

- (i) (text unchanged)

(ii) COMAR 10.22.03 for licensed community-based residential facilities for individuals with [mental retardation] *intellectual disabilities* or developmental disabilities; or

- (iii) (text unchanged)

- (22)—(45) (text unchanged)

10.09.56 Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-130, Annotated Code of Maryland

.05 Specific Conditions for Participation — Residential Habilitation Services.

To provide the services covered under Regulation .11 of this chapter, the provider agency shall:

A.—D. (text unchanged)

E. Have on call 24 hours a day a designated supervisor for the direct care workers, who:

- (1) (text unchanged)

(2) Meets the professional guidelines for a qualified [mental retardation] *intellectual disabilities* professional or qualified developmental disabilities professional;

F.—Q. (text unchanged)

10.09.60 Primary Adult Care Program Eligibility

Authority: Health-General Article, §§2-104(b), 15-102.1, 15-103.1, 15-124, 15-124.1, and 15-140, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(78) (text unchanged)

(79) “Long-term care facility” means a licensed chronic care hospital, rehabilitation hospital, nursing facility, institution for mental disease, or intermediate care facility [— mental retardation] for *Individuals with Intellectual Disabilities or persons with related conditions (ICF/IID)* that provides long-term care services.

(80)—(127) (text unchanged)

C. (text unchanged)

.09 Nonfinancial Eligibility Requirements — Residency.

A.—H. (text unchanged)

I. An adult is considered incapable of indicating intent if the individual:

(1)—(2) (text unchanged)

(3) Is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist, or other person licensed by the State in the field of [mental retardation] *intellectual disabilities*.

10.09.62 Maryland Medicaid Managed Care Program: Definitions

Authority: Health-General Article, §15-101, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(83) (text unchanged)

(84) “Individual with a developmental disability” means an individual who, as defined in P.L. 101-330, Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., has a physical or mental impairment arising before the age of 22, except for the sole diagnosis of mental disorder, that substantially limits one or more major life activities, and which may include, but is not limited to, [mental retardation] *an intellectual disability*, specific learning disabilities, head injury, epilepsy, and muscular dystrophy.

(85)—(91) (text unchanged)

(92) “Intermediate care facility for [the mentally retarded (ICF-MR)] *individuals with intellectual disabilities or persons with related conditions (ICF/IID)*” means a residential facility providing care and services for individuals with [mental retardation] *an intellectual disability* or developmental disabilities, or both.

(93)—(202) (text unchanged)

10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment

Authority: Health-General Article, §15-103(b)(3), (4), and (6), Annotated Code of Maryland

.01 Eligibility.

A. (text unchanged)

B. A recipient is not eligible for the Maryland Medicaid Managed Care Program if the recipient:

(1) (text unchanged)

(2) Is institutionalized in an intermediate care facility for [mentally retarded persons] *individuals with intellectual disabilities or persons with related conditions (ICF/IID)*;

(3)—(7) (text unchanged)

.06 Disenrollment.

A. (text unchanged)

B. Department-Initiated Disenrollment. The Department shall disenroll from an MCO an enrollee:

(1) (text unchanged)

(2) Upon admission to an intermediate care facility for [mentally retarded persons] *individuals with intellectual disabilities or persons with related conditions (ICF/IID)*;

(3)—(10) (text unchanged)

C.—G. (text unchanged)

10.09.69 Maryland Medicaid Managed Care Program: Rare and Expensive Case Management

Authority: Health-General Article, §§15-102.1(b)(1) and 15-103(b)(4)(i), Annotated Code of Maryland

.13 Preauthorization Requirements.

A.—B. (text unchanged)

C. Authorization of services shall be rescinded by the Department when:

(1) The participant is admitted to a hospital, residential treatment facility, institution, nursing facility, or intermediate care facility for [mental retardation] *individuals with intellectual disabilities or persons with related conditions (ICF/IID)* or addiction;

(2)—(4) (text unchanged)

10.09.70 Maryland Medicaid Managed Care Program: Specialty Mental Health System

Authority: Health-General Article, §15-103(b)(2)(i), Annotated Code of Maryland

.06 Eligibility and Referral.

A. (text unchanged)

B. Eligibility. A waiver-eligible individual is eligible for referral to the SMHS system by:

(1)—(2) (text unchanged)

(3) The REM case manager or the MCO, if the individual’s REM program primary care provider or MCO:

(a) According to a current diagnostic and statistical manual of the American Psychiatric Association that is recognized by the Secretary, establishes a probable diagnosis of a mental disorder, other than a sole diagnosis of substance abuse or dependence, dementia, or [mental retardation] *an intellectually disability*; and

(b) (text unchanged)

C.—D. (text unchanged)

10.09.79 Psychiatric Residential Treatment Facility (PRTF) Demonstration Waiver

Authority: Health-General Article, §§2-104(b), 10-901, 15-103, 15-130.1, and 16-201, Annotated Code of Maryland

.03 Participant Eligibility.

A.—F. (text unchanged)

G. Cause for Termination of a Participant’s Waiver Enrollment.

(1) A participant shall be disenrolled from the waiver, as of the date established by the Department, if the participant:

(a)—(b) (text unchanged)

(c) Is inpatient for more than 30 consecutive days in a hospital, psychiatric hospital, nursing facility, intermediate care facility for [people] *individuals with [mental retardation] intellectual disabilities* or [other] *persons with related conditions (ICF/IID)*, or residential treatment center;

(d)—(e) (text unchanged)

(2) (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene

Subtitle 15 FOOD

10.15.07 Shellfish Sanitation

Authority: Health-General Article, §§18-102, 21-211, 21-234, 21-304, 21-321, and 21-350, Annotated Code of Maryland

Notice of Proposed Action

[13-176-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .02 and .06 under **COMAR 10.15.07 Shellfish Sanitation**.

Statement of Purpose

The purpose of this action is to:

- (1) Allow longer harvest times than currently established in regulation;
- (2) Specify the harvest hours in relation to harvest start time; and
- (3) Clarify a potential exemption for a shellfish aquaculture harvester permittee who is also a dealer.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.

(1)—(5) (text unchanged)

(6) “Temperature control” means the management of the [environmental] temperature of shellstock by means of ice, [or] mechanical refrigeration [that is capable of lowering], *or other approved means necessary to lower and maintain* the [internal] temperature of the shellstock to [and maintaining the temperature at] 50°F (10°C) or below.

.06 Vibrio parahaemolyticus Control.

- A. (text unchanged)
- B. Control Measures.

(1) From June 1 through September 30, a shellfish aquaculture harvester permittee shall:

- (a)—(b) (text unchanged)
- (c) Designate a single site for landing the harvested oysters;

[and]

(d) Deliver harvested oysters to a dealer by 10 a.m. on the day of harvest.]

(d) *Document the harvest start time, which is the time the first oysters are removed from the water, on a harvest trip record or harvest tag; and*

(e) *Provide the harvest time record as set forth in §A(1)(d) of this regulation to a dealer on delivery.*

(2) *From June 1 through June 30, a shellfish aquaculture harvester permittee shall deliver harvested oysters to a dealer by 11:30 a.m. on the day of harvest.*

(3) *From July 1 through August 31, a shellfish aquaculture harvester permittee shall deliver harvested oysters to a dealer by 10:30 a.m. on the day of harvest.*

(4) *From September 1 through September 30, a shellfish aquaculture harvester permittee shall deliver harvested oysters to a dealer by 12:30 p.m. on the day of harvest.*

[(2)] (5) From June 1 through September 30, a dealer may not:

(a) Receive oysters harvested from Maryland waters [after 10 a.m.] :

(i) *After the harvest delivery times set forth in §B(2)—(4) of this regulation; and*

(ii) *Without a harvest time record as set forth in §A(1)(d) of this regulation; or*

(b) (text unchanged)

[(3)] (6) (text unchanged)

[(4)] (7) To comply with [§B(3)] §B(6) of this regulation, a dealer shall ensure that a temperature control mechanism for cooling and storing of oysters:

(a)—(b) (text unchanged)

[(5)] (8) A shellfish aquaculture harvester permittee who is a dealer shall:

(a) Comply] *comply* with the requirements set forth in [§§B(1)(a)—(c) and (2)(b)] §B(1)—(7) of this regulation[;].

(9) *The Department may except a shellfish aquaculture harvester permittee who is a dealer from the harvest delivery times set forth in §B(2)—(4) and the receiving time set forth in §B(5)(a)(i) of this regulation if the permittee/dealer:*

[(b)] (a) [Place] *Places* harvested oysters under temperature control within 5 hours of *harvest start time, which is the time the first oysters are removed from the water; and*

[(c)] (b) [Implement a] *Implements an* HACCP plan as defined in COMAR 10.15.04 that includes the control measures necessary to ensure, document, and verify that the harvested oysters are placed under temperature control within 5 hours of *harvest start time.*

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene

Subtitle 34 BOARD OF PHARMACY

10.34.03 [Inpatient] Institutional Pharmacy

Authority: Health Occupations Article, §12-205, Annotated Code of Maryland

Notice of Proposed Action

[13-178-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .02, .03, .06, and .12 and adopt new Regulation .17 under **COMAR 10.34.03 Institutional Pharmacy**. This action was considered by the Board of Pharmacy at a public meeting held on February 20, 2013, notice of which was given by publication on the Board of Pharmacy website, <http://dhmh.maryland.gov/pharmacy/SitePages/Home.aspx>, from February 1, 2013, through February 20, 2013, pursuant to the State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to address the numerous decentralized pharmacies that exist within hospitals that are operating under one hospital pharmacy permit. The Board has concerns that many times these outlying pharmacy areas, or decentralized

pharmacies, are not inspected since there is no way the Board would know that they exist. Additionally, many of the outlying pharmacy areas actually function as independent pharmacies. The revisions require separate licensure for pharmacy areas not located in the same building or pavilion as the main hospital pharmacy, include definitions for a “decentralized pharmacy” and “pavilion”, and include specific requirements for decentralized pharmacies located in hospitals.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The economic impact of this proposal depends on the number of pharmacies located on a hospital campus that do not qualify to be decentralized pharmacies. For smaller hospitals there would be no impact. For larger hospitals spread over a large campus with numerous pavilions or buildings, the impact may be the requirement of several new pharmacy permits at \$700 for initial licensure of each new pharmacy. The renewal fee for these pharmacies is \$600 every 2 years. The cost of this licensure is offset by the increased protection to the public as the Board regulates and inspects these pharmacies, over which, up until recently, the Board did not have oversight.

II. Types of Economic Impact.

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	(E-)	Minimal
B. On other State agencies:	(E-)	(E-)	Minimal
C. On local governments:	NONE		
	Benefit (+)	Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)		\$700 per pharmacy, \$600 biennial renewal
E. On other industries or trade groups:		NONE	
F. Direct and indirect effects on public:	(+)		Indeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. As hospitals license pharmacies that do not qualify to be decentralized pharmacies, the hospital will incur an initial licensure fee of \$700 per pharmacy. The renewal every two years is \$600. This may have a slight revenue increase for the Board depending on the number of pharmacies that are identified for licensure; however, it will be offset by expenditures incurred by the Board for additional pharmacies required to be annually inspected.

B. Some State hospitals may be required to acquire licenses for pharmacies on their campuses that do not qualify to be decentralized pharmacies. The Office of Health Care Quality received the proposal for informal comment.

D. Hospitals will be required to acquire licenses for pharmacies on their campuses that do not qualify to be decentralized pharmacies. The cost to license each pharmacy is \$700 for the initial licensure. There is also a \$600 biennial renewal fee. The cost would depend on the number of pharmacies located in other pavilions.

F. This proposal would have a positive effect on the public as it ensures that all pharmacies located on a hospital campus meet State regulations and are routinely inspected to protect the public.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

.02 Definitions.

- A. (text unchanged)
- B. Terms Defined.

(1) “Decentralized pharmacy” means an institutional pharmacy which provides services for the population of an institutional facility and is:

(a) Dependent on another institutional pharmacy for:

- (i) Administrative control;
- (ii) Staffing with a licensed pharmacist physically available on site in the decentralized pharmacy to supervise the performance of delegated pharmacy acts; and
- (iii) Drug procurement; and

(b) Located in the same building or pavilion as the other institutional pharmacy.

(1-1) “Direct supervision” means that a licensed pharmacist is physically available to supervise the performance of delegated pharmacy acts.

[(1)] (1-2) (text unchanged)

(2)—(10) (text unchanged)

(11) “Medication order” means a patient-specific order entered on the chart or a medical record of a patient by an authorized prescriber or the authorized prescriber’s designee for a drug or device that is transmitted in writing, verbally or by electronic means and includes the:

- (a)—(g) (text unchanged)
- (h) Signature, if appropriate, of an:
 - (i)—(ii) (text unchanged)

(12) (text unchanged)

(12-1) “Pavilion” means a detached or semidetached part of a hospital devoted to a special use.

(13)—(17) (text unchanged)

.03 Issuance of Permits.

A. An [inpatient] institutional pharmacy shall obtain required permits in compliance with State and federal laws and regulations.

B. An institutional pharmacy shall:

- (1) Staff a pharmacist at each decentralized pharmacy site within the building or pavilion in which it is located; and
- (2) List decentralized pharmacy sites within the building in which it is located, on the initial application, or on the renewal application;

C. A decentralized pharmacy that meets the definition as set forth in this chapter may operate under the same permit as the institutional pharmacy located in the same building or pavilion.

D. If full service pharmacy services are provided to discharge patients, employees, clinic patients, or others, an institutional pharmacy shall obtain a full service pharmacy permit.

E. Any other pharmacy that does not meet the requirements of a decentralized pharmacy and is located on the campus or affiliated with an institutional pharmacy shall be separately licensed.

.06 Security.

A.—B. (text unchanged)

C. Security Requirements. Entry into an [inpatient] institutional pharmacy area where prescription drugs or devices are held shall be limited to authorized personnel under a pharmacist’s direct supervision.

D. An [inpatient] institutional pharmacy shall be equipped with:
(1)—(7) (text unchanged)

.12 Drug Dispensing — Prescribers’ Orders.

A. (text unchanged)

B. Documentation.

(1)—(2) (text unchanged)

(3) The director of pharmacy or designee shall ensure that authorized personnel have access to patient information necessary for drug monitoring including the patient’s:

- (a)—(f) (text unchanged)
- (g) Pregnancy and lactation status; [and]
- (h) Vaccination status; and
- (i) Name.

.17 Requirements for a Decentralized Pharmacy.

A. A decentralized pharmacy is subject to:

(1) Health Occupations Article, Title 12, Annotated Code of Maryland;

(2) This subtitle; and

(3) Other applicable State and federal laws and regulations.

B. A decentralized pharmacy shall ensure that a licensed pharmacist is immediately available on the premises of the decentralized pharmacy to:

- (1) Supervise pharmacy operations; and
- (2) Provide the final check for preparing medication orders for administration in the institutional facility.

C. Notwithstanding §B of this regulation, a pharmacist assigned to a decentralized pharmacy may leave the decentralized pharmacy for a short period of time to perform pharmaceutical care functions in the institutional facility.

D. A director of pharmacy of the institutional pharmacy shall be responsible for pharmacy operations involving a decentralized pharmacy, including direct supervision of decentralized pharmacy personnel by a pharmacist and compliance with this chapter.

E. A pharmacy department may store prescription medications and over the counter medications that are approved for use by the institutional pharmacy as required for the treatment of patients in the nursing unit served by the decentralized pharmacy.

F. An institutional pharmacy and the decentralized pharmacy shall have shared common electronic files or appropriate technology to allow access to sufficient information necessary or required to process functions required for the care of patients within the service area of the decentralized pharmacy.

G. A decentralized pharmacy shall have a pharmacist physically located at the decentralized pharmacy to directly supervise pharmacy technicians and pharmacy technician trainees during hours of operation.

H. An institutional pharmacy shall notify the Board in writing within 14 days of a change of location, discontinuance of service, or closure of a decentralized pharmacy.

I. Security.

(1) In addition to the security requirements outlined in COMAR 10.34.05, a decentralized pharmacy shall have adequate security and procedures to:

- (a) Prohibit unauthorized access;
- (b) Comply with federal and State regulations; and
- (c) Maintain patient confidentiality.

(2) Access to the decentralized pharmacy shall be limited to pharmacists, pharmacy technicians, and pharmacy technician trainees employed by the institutional pharmacy, and other personnel authorized by the director of pharmacy.

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene

Title 14
INDEPENDENT AGENCIES
Subtitle 26 MARYLAND ENERGY
ADMINISTRATION

14.26.04 Clean Energy Grant Program

Authority: State Government Article, §9-20B-01 et seq., Annotated Code of Maryland

Notice of Proposed Action

[13-175-P]

The Maryland Energy Administration proposes to amend Regulations .02, .09, and .11, repeal existing Regulations .01 and .03—.07, and adopt new Regulations .01, .03—.07, and .12 under **COMAR 14.26.04 Clean Energy Grant Program.**

Statement of Purpose

The purpose of this action is to establish and implement the Clean Energy Grant Program, a comprehensive grant program that is a part of the Administration’s Strategic Energy Investment Program. The program offers to reimburse homeowners, business owners, local governments, and nonprofit organizations located in Maryland for a portion of the cost of purchasing, leasing, and installing eligible clean energy technologies or systems that convert renewable energy resources into electric energy, or thermal energy (i.e., heating, cooling, steam, or hot water) or use renewable fuels (i.e., solid, liquid, or gaseous fuels from renewable resources) to meet the energy demands of Maryland’s homes and buildings.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Fred Hoover, Director, Clean Energy, Maryland Energy Administration, 60 West Street, Ste. 300 Annapolis, MD 21401, or call 410-260-7655, or email to fhoover@energy.state.md.us, or fax to 410-974-2250. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

.01 Purpose and Scope.

This chapter establishes and implements the Clean Energy Grant Program, a comprehensive grant program that is part of the Administration's Strategic Energy Investment Program authorized under State Government Article, §9-20B-01 et seq., Annotated Code of Maryland. The Program replaces regulations issued pursuant to State Government Article, §§9-2007 and 9-2008, Annotated Code of Maryland, for solar and geothermal grants. The program offers to reimburse homeowners, business owners, State and local governments, and nonprofit organizations located in Maryland for a portion of the cost of purchasing, leasing, and installing eligible and qualified clean energy technologies or systems that convert renewable energy resources into electric energy, thermal energy (i.e., heating, cooling, steam, or hot water), or use renewable fuels (i.e., solid, liquid, or gaseous fuels from renewable resources) to meet the energy demands of Maryland's homes and buildings.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Applicant" means a business, individual, or local government that has applied for a grant through the Solar Energy Grant Program.

(3) "Business" means a for-profit or not-for-profit business that is registered to do business in, or physically located in, the State of Maryland.

(4) "Individual" means a natural person who is a resident of the State of Maryland according to COMAR 03.04.02.01.

(5) "Installation contractor" means the entity that is contracted by the Applicant to install photovoltaic property, solar water heating property, or both.

(6) "Local government" means a political subdivision of the State of Maryland.

(7) "National testing laboratory" means a public or private entity recognized by industry, businesses, trades, or government as establishing operational or safety requirements for products, processes, or equipment manufactured, sold, or distributed to the public.

(8) "Nonresidential property" is property whose primary purpose is not to serve as a residence.

(9) "Photovoltaic property" means solar energy property that:

(a) Uses a solar photovoltaic process to generate electricity; and

(b) Meets the applicable performance and quality standards and certification requirements as specified in Regulation .07 of this chapter.

(10) "Program" means the Solar Energy Grant Program.

(11) "Residential property" is property whose primary purpose is to serve as a residence and is the Applicant's primary residence.

(12) Solar Energy Property.

(a) "Solar energy property" means equipment that meets performance and certification standards specified in Regulation .06 and uses solar energy to:

(i) Generate electricity;

(ii) Heat or cool a structure or provide hot water for use in a structure; or

(iii) Provide solar process heat.

(b) "Solar energy property" does not include a swimming pool, hot tub, or any other energy storage medium that has a primary function other than storage.

(13) "Solar water heating property" means solar energy property that:

(a) When installed in connection with a structure, uses solar energy for the purpose of providing hot water for any use, except for those specifically excluded, within the structure; and

(b) Meets performance and quality standards and certification requirements as specified in Regulation .06 of this chapter.]

(2) "Applicant" means an eligible home owner, business owner, State or local government, or nonprofit organization that has applied for a Clean Energy Grant.

(3) "Business" means a for-profit organization that is registered to do business in, or physically located in, the State of Maryland, and is in good standing with the Department of Assessments and Taxation.

(4) Clean Energy Conversion Technologies and Systems.

(a) "Clean energy conversion technologies and systems" means commercially available, eligible, and qualified technologies and systems that convert renewable energy resources into electric or thermal energy for use in a home or building.

(b) "Clean energy conversion technologies and systems" includes but is not limited to:

(i) Solar electric (photovoltaics) technologies that convert sunshine into electricity;

(ii) Solar electric/thermal technologies that convert sunshine into electricity, hot water, or steam;

(iii) Solar thermal generation technologies that convert sunshine into electricity;

(iv) Wind technologies that convert wind into electricity;

(v) Geothermal heating and cooling technologies that convert thermal energy stored in the earth into heating, cooling, or hot water;

(vi) Bioenergy technologies that convert biomass and/or solid wastes into electricity, hot water or steam;

(vii) Energy systems that utilize biofuels, synthetic gas, or similar renewable resources to provide heat or electricity to eligible buildings or homes; and

(viii) Other technologies that convert other renewable or clean sources of energy that the Administration determines are affordable and reliable means of serving a local load for a home or building.

(5) "Clean Energy Grant" means an amount of money determined by the Administration and offered to assist homeowners, business owners, local governments, and nonprofit organizations to purchase or lease, and then install, eligible and qualified clean energy conversion technologies and systems to provide clean, renewable energy directly to residential and nonresidential buildings, or commercial, State, or local government facilities located in Maryland.

(6) "Fund" means the Strategic Energy Investment Fund and the portfolio of programs administered by the Administration under the provisions of State Government Article, §9-20B-05, Annotated Code of Maryland.

(7) "Homeowner" means an individual or individuals that hold legal or equitable title to a residential property located in Maryland that meets the eligibility criteria for a Clean Energy Grant.

(8) "Installation contractor" means a business under contract with an individual, another business, a nonprofit organization, or a unit of local government for the installation of a purchased and/or leased clean energy conversion technology or system that meets the eligibility criteria established by these regulations.

(9) "Local government" means a political subdivision of the State of Maryland.

(10) "Mixed use facility" means a building containing one or more residential units and one or more commercial units.

(11) "Nonprofit organization" means a legal entity which is exempt from taxation under the applicable provisions of the Internal Revenue Code of 1986.

(12) "Nonresidential property" means property whose primary purpose is not to serve as a residence.

(13) "Primary residence" means an applicant's principal place of habitation.

(14) "Project" means an assemblage of interconnected clean energy conversion components or technologies that operate in a coordinated manner, which may or may not be connected to a power distribution grid.

(15) "Project configuration" means the manner in which a clean energy conversion technology or system is designed, sized, configured, and installed to serve eligible buildings and facilities.

(16) Residential Property.

(a) "Residential property" means property whose primary purpose is to serve as either a single-family or multifamily residence.

(b) "Residential property" includes a property with a home office.

.03 Legal Provisions Governing Clean Energy Grants.

A. To the extent that the Clean Energy Grant Program is funded by the Fund with monies derived by the sale of allowances under the Regional Greenhouse Gas Initiative, the provisions and limitations applicable to the Strategic Energy Investment Program and the Fund, as set forth in State Government Article, §9-20B-05, Annotated Code of Maryland, apply to a Clean Energy Grant issued under this chapter.

B. Should there be an additional source of funding from other government or private sources, additional conditions may be imposed by the funding source and affect the terms and conditions of a Clean Energy Grant.

C. All grants are awarded on a discretionary basis and shall be awarded based on the Administration's judgment of an applicant's eligibility, the merits of the proposal, funding availability, and the State's policy goals.

.04 Eligible Grantees.

Clean Energy Grants are available for:

A. An owner of a residential property which:

(1) Is located in Maryland; and

(2) Is the primary residence of the applicant at the time of application;

B. A business that is:

(1) Registered to do business in, or physically located in, the State of Maryland; and

(2) In good standing with the Maryland State Department of Assessments and Taxation;

C. A State or local government or unit of a local government;

D. A Maryland-based nonprofit entity if the grant is to be used for facilities located in Maryland; and

E. An installation or leasing contractor that is:

(1) Registered to do business in the State; and

(2) Under contract with an eligible grant applicant to install qualifying clean energy technology on the applicant's eligible property.

.05 Eligible and Ineligible Properties.

A. The following properties are eligible for a Clean Energy Grant:

(1) A single-family home that is:

(a) The primary residence of the applicant, and

(b) Located within the physical boundaries of the State of Maryland;

(2) A multifamily residence that is:

(a) Owned by a Maryland resident or business; and

(b) Located in Maryland; and

(3) A commercial property including a building, multifamily building, mixed-use facility, and real property that is located within the physical boundaries of the State of Maryland, and is:

(a) Owned by a Maryland resident;

(b) Owned or leased by a State, county, or city government; or

(c) Owned by a nonprofit organization.

B. The following properties are ineligible for a Clean Energy Grant:

(1) A property of any type whose ownership share by a trust or estate except properties that are the primary residence of a grantor of a revocable trust who has the right to revoke the trust;

(2) A second home or recreational property;

(3) A property being leased by the applicant, unless the homeowner is an eligible co-applicant;

(4) A property primarily used or intended to be used, for the generation of electricity or heat in a merchant, non-net metered application for resale; and

(5) A residential property whose clean energy conversion technology or system is leased or otherwise not owned by the homeowner.

C. Multiple projects on contiguous parcels of property shall be considered one project for consideration of eligibility for a Clean Energy Grant.

D. A project shall not receive more than one grant.

.06 Eligibility Criteria for Technologies and Systems.

A. To be eligible for a residential Clean Energy Grant, a clean energy conversion technology and system shall be installed in a residential project on an eligible home.

B. To be eligible for a commercial Clean Energy Grant, a clean energy conversion technology and system shall be installed in a commercial project on an eligible commercial or institutional property.

C. To be eligible for a Clean Energy Grant, a clean energy conversion technology and system shall:

(1) Be installed in a standalone project that has not previously received a Clean Energy Grant;

(2) Meet a minimum size of 1 kW(e);

(3) Meet all applicable safety and technical standards; and

(4) Where required, be approved or certified by a recognized national testing laboratory.

D. In accordance with the Administration's Notice of Grant Availability issued pursuant to Regulation .07 of this chapter, the Administration may vary the criteria and dollar value of each technology or system Clean Energy Grant as necessary to maximize the use of available funds and to attain maximum benefit from the monies being spent from the Fund.

E. The Administration may restrict the number and dollar value of each technology or system Clean Energy Grant by various limiting factors such as:

(1) Type of application;

(2) Fiscal year;

(3) Type of clean energy conversion technology or system;

(4) Type of property;

(5) Project configuration;

(6) Project ownership; or

(7) Commercial availability.

.07 Notice of Grant Availability.

A. The Administration shall issue a notice of grant availability which shall set the amount of funding for each category of grant to be offered in a grant cycle.

B. A grant cycle shall be set at least once prior to the beginning of each fiscal year or as soon as practicable thereafter, based on available funding and annual funding priorities.

C. The Administration shall publish a notice in eMaryland Market Place, the Maryland Register, and other media to develop widest dissemination.

.09 Grant Approval Process.

A. For applications for recognized, clean energy conversion technologies, the Administration shall:

(1) (text unchanged)

(2) Determine whether the applicant is eligible to receive a grant, and the proposed technology and installation meets the requirements the [Clean Energy Grant Program Manager] Administration has established for grant eligibility.

B. Evaluating Innovative Clean Energy Conversion Technologies and Systems.

(1)—(4) (text unchanged)

(5) Should the Administration determine that a proposal is ineligible for award *in whole or in part*, it [will] shall make its determination in writing and set forth the factors and reasons why it deems the proposal ineligible.

(6) (text unchanged)

C. If it approves the application, the Administration shall [notify the Applicant in writing and] process the grant for payment in accordance with applicable accounting and payment requirements.

[D. If a grant is disapproved in whole or in part, the Administration shall notify the Applicant in writing, giving the reasons for its decision]

[E.] D. (text unchanged)

.11 Applicant Responsibilities.

A.—B. (text unchanged)

C. Grant applicants and recipients [will] shall allow Administration representatives direct access to Clean Energy Conversion Technologies and Systems for which the applicants are requesting or have received Clean Energy Grants for the purposes of verifying all claims and representations.

D. (text unchanged)

.12 Performance Standards and Certification Requirements.

A. The Administration may not:

(1) Approve grants for photovoltaic systems property equipment and solar water heating property equipment that do not meet national safety or performance standards for the type of equipment described in the standards of a nationally recognized testing laboratory;

(2) Approve projects that are not in compliance with State and local laws and ordinances;

(3) Approve projects by installation contractors who are not registered to do business in Maryland; or

(4) Approve photovoltaic projects that:

(a) Are installed on or after July 1, 2014 by installation contractors who do not maintain at least one staff member with a North American Board of Certified Energy Practitioners ("NABCEP") installation certification; or

(b) Are installed by installation contractors with at least 50 employee that do not maintain at least one staff member with a NABCEP Installation Certification for every 25 non-administrative employees, except if the installation contractor has been registered to do business in Maryland for less than 12 months prior to the submission of an application for a grant.

B. An installation contractor that falls out of compliance with a certification requirement set forth in §A(4) of this regulation due to the departure of a key employee shall be exempted from compliance with the certification requirement for a period of 6 months in order to allow for replacement of the lost certification.

ABIGAIL ROSS HOPPER
Director
Maryland Energy Administration

Title 27
CRITICAL AREA
COMMISSION FOR THE
CHESAPEAKE AND
ATLANTIC COASTAL BAYS
Subtitle 01 CRITERIA FOR LOCAL
CRITICAL AREA PROGRAM
DEVELOPMENT

27.01.09 Habitat Protection Areas in the Critical Area

Authority: Natural Resources Article, §8-1806, Annotated Code of Maryland.

Notice of Proposed Action

[13-179-P]

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays proposes to amend Regulation .01 under COMAR 27.01.09 Habitat Protection Areas in the Critical Area. This action was considered by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at an open meeting held on May 1, 2013, pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend the applicability language to require an applicant proposing a shore erosion control project to submit to the Maryland Department of the Environment (MDE) a buffer management plan when a lot is in a mapped modified buffer area (MBA). The recently updated MDE regulations require a buffer management plan to be submitted at the time of application to MDE for non-MBA lots. This amendment proposes to include MBA lots.

The amendments also clarify that expansion of a 200-foot buffer is required when it is adjacent to contiguous sensitive areas such as steep slopes, hydric soils, and highly erodible soils.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Lisa Hoerger, Regulations Coordinator, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401, or call 410-260-3478, or email to lhoerger@dnr.state.md.us, or fax to 410-974-5338. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

.01 Buffer.

A.—C. (text unchanged)

D. Authority of Secretary; Scope; Alternative Procedures and Requirements.

(1) (text unchanged)

(2) [The] *Except for a shore erosion control project in a modified buffer area, the provisions of [Regulations .01-1] this regulation through Regulation .01-7 of this chapter do not apply [to an area of the buffer that is designated as] within a modified buffer area under Regulation .01-8 of this chapter.*

(3) (text unchanged)

E. Buffer Standards.

(1)—(2) (text unchanged)

(3) Except for the [minimum] buffer widths under [§E(5)—(8)] §E(5)—(7) of this regulation and based on existing field conditions, a local jurisdiction shall require the [delineation] *measurement* of a buffer of at least 100 feet landward from:

(a)—(c) (text unchanged)

(4) To calculate the [minimum] buffer widths under [§E(5)—(8)] §E(5)—(7) of this regulation, a local jurisdiction shall require the measurement of the buffer landward from the points specified under §E(3) of this regulation.

(5) [Except as provided under §E(6) of this regulation, and in accordance with §E(3) of this regulation, if] *If a local jurisdiction grants final local approval for a subdivision or a site plan in the Resource Conservation Area on or after July 1, 2008, the local jurisdiction shall [establish] require:*

(a) [An expanded buffer in accordance with §E(7) and (8) of this regulation; and

(b) A buffer of at least 200 feet from tidal waters or a tidal wetland; *and*

(b) *An expanded buffer in accordance with §E(7) of this regulation.*

(6) The provisions of [§E(5)(b)] §E(5)(a) of this regulation do not apply if:

(a)—(b) (text unchanged)

(c) A local program procedure approved by the Commission provides for the reduction of the strict application of [the minimum] a 200-foot buffer under [§E(5)(b)] §E(5)(a) of this regulation if [that minimum] a 200-foot buffer would preclude a subdivision of the property at a density of one dwelling unit per 20 acres or an intra-family transfer authorized under Natural Resources Article, §8-1808.2, Annotated Code of Maryland.

(7) If a buffer is contiguous to a steep slope, a nontidal wetland, a nontidal wetland of special State concern under COMAR 26.23.06.01, a hydric soil, or a highly erodible soil, a local jurisdiction shall expand the [minimum] buffer *width* required under §E(3) or [(5)] (5)(a) of this regulation and shall calculate the extent of that expansion in accordance with the following requirements:

(a)—(c) (text unchanged)

(d) A highly erodible soil on a slope less than 15 percent or a hydric soil, to the lesser of:

(i) (text unchanged)

(ii) 300 feet, including the [minimum] buffer *width* required under §E(3) or [(5)] (5)(a) of this regulation.

(8) If a buffer is contiguous to a hydric soil or to a highly erodible soil on a slope less than 15 percent and that buffer is located on a lot or parcel that was created before January 1, 2010, a local jurisdiction may authorize a development activity in the expanded buffer[,] if:

(a) The location of the development activity is in the expanded portion of the buffer [for a highly erodible soil on a slope less than 15 percent or a hydric soil,] but not *in* the [100-foot] buffer *required under §E(3) of this regulation;*

(b) The buffer[, including expansion for a highly erodible soil on a slope less than 15 percent or a hydric soil,] occupies at least 75 percent of the lot or parcel; and

(c) (text unchanged)

MARGARET G. McHALE
Chair
Critical Area Commission for the
Chesapeake and Atlantic Coastal Bays

**Title 33
STATE BOARD OF
ELECTIONS**

**Subtitle 04 INSPECTION AND
COPYING OF PUBLIC RECORDS**

33.04.01 In General

Authority: Election Law Article, §§2-102(b)(4), [and] 3-204.1, and 3-506(a)(2); State Government Article, §§10-613(b), 10-615(2)(i), and 10-621; Annotated Code of Maryland

Notice of Proposed Action

[13-171-P]

The State Board of Elections proposes to amend Regulation .02 under **COMAR 33.04.01 In General**. This action was considered by the State Board of Elections at its May 23, 2013, meeting, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend the definition of “personal identification number”.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Nikki Baines Charlson, Director, Election Management & Reform, State Board of Elections, P.O. Box 6486, Annapolis MD 21401-0486, or call 410-269-2843, or email to nikki.charlson@maryland.gov, or fax to 410-974-2019. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(5) (text unchanged)

(6) Personal Identification Number.

(a) “Personal identification number” means:

(i) The Motor Vehicle Administration (MVA) identification number of an individual having a Maryland driver’s license or an MVA identification card; [or]

(ii) *The date the MVA issued a Maryland driver's license or an MVA identification card; or*

[(ii)] (iii) (text unchanged)

(b) (text unchanged)

(7) (text unchanged)

LINDA H. LAMONE
State Administrator of Elections

Subtitle 05 VOTER REGISTRATION

Notice of Proposed Action

[13-170-P]

The State Board of Elections proposes to:

(1) Amend Regulation .02 under **COMAR 33.05.01 Definitions; General Provisions;**

(2) Amend Regulation .02, adopt new Regulation .03, amend and recodify existing Regulations .03 and .04 to be Regulations .04 and .05, and recodify existing Regulation .05 to be Regulation .06 under **COMAR 33.05.02 Voter Registration Applications;**

(3) Amend Regulations .01 and .03 under **COMAR 33.05.03 Dissemination of VRA Forms;** and

(4) Amend Regulation .03 under **COMAR 33.05.04 Processing VRAs and Other Requests.**

This action was considered by the State Board of Elections at its May 23, 2013, meeting, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to define certain terms, define requirements for the online submissions of voter registration information and electronic transfer of data from another State agency, and define what constitutes a signature for online submissions.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Nikki Baines Charlson, Director, Election Management & Reform, State Board of Elections, P.O. Box 6486, Annapolis MD 21401-0486, or call 410-269-2843, or email to nikki.charlson@maryland.gov, or fax to 410-974-2019. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

33.05.01 Definitions; General Provisions

Authority: Election Law Article, 2-102(b)(4), 2-202(b), [and] 3-101, and 3-204.1, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) "*Absent uniformed services voter*" has the meaning stated in 42 U.S.C. §1973ff-6.

[(1)] (2)—[(4)] (5) (text unchanged)

[(5)] (6) "*Motor vehicle voter registration application (MVRA)*" means the voter registration application [form] that the State Board has approved for use by the MVA.

[(6)] (7) (text unchanged)

(8) "*Online voter registration system*" means the State Board's online system that allows an individual to electronically:

(a) Apply to become a registered voter; or

(b) Change the individual's name, address, or party affiliation in the individuals' existing voter registration record.

(9) "*Overseas voter*" has the meaning stated in 42 U.S.C. §1973ff-6.

[(7)] (10) *Statewide Voter Registration Application.*

(a) "*Statewide voter registration application (Statewide VRA)*" means the voter registration application [form] that the State Board has prescribed for Statewide use.

(b) *The Statewide VRA may be a paper form or an online submission using the State Board's online voter registration system.*

(11) "*Uniformed services*" has the meaning stated in 42 U.S.C. §1973-ff-6.

[(8)] (12)—[(10)] (14) (text unchanged)

33.05.02 [Forms] Voter Registration Applications

Authority: Election Law Article, 2-102(b)(4), 2-202(b), 3-101, [and] 3-202, and 3-204.1, Annotated Code of Maryland

.02 Paper Statewide VRA—Contents.

A. Required Contents. Every *paper* Statewide VRA shall:

(1)—(7) (text unchanged)

B. Required Notification. The following information shall be made available to each applicant who is completing a *paper* Statewide VRA:

(1)—(4) (text unchanged)

(5) A statement that, except for an applicant's full Social Security number or MVA identification number, voter registration records are generally available for public inspection and may be shared with jury commissioners, clerks, or other government agencies as provided by law, and that use of voter registration [records] lists for commercial solicitation purposes is prohibited; and

(6) (text unchanged)

C. (text unchanged)

.03 Online Submission of the Statewide VRA—Contents.

A. Authentication.

(1) *The online voter registration system shall authenticate each applicant.*

(2) *Except as provided in §A(3) of this regulation, each applicant shall enter:*

(a) *The applicant's Maryland driver's license or MVA identification card number;*

(b) *The date the applicant's driver's license or identification card was issued; and*

(c) *The last four digits of the applicant's Social Security number.*

(3) *If an applicant is an absent uniformed services voter or an overseas voter who does not have a Maryland driver's license or MVA identification card number, the applicant shall enter the last four digits of the applicant's Social Security number.*

(4) *The online voter registration system shall immediately verify the information required in §A(2) of this regulation with information on file with MVA.*

(a) *If the MVA verifies the information, the applicant may submit the Statewide VRA via the online voter registration system.*

(b) *If the MVA cannot verify the information, the applicant shall submit the paper Statewide VRA.*

B. Required Contents. The State Board's online voter registration system shall:

(1) Include fields for the applicant to:

(a) Enter the information required by COMAR 33.05.04.03A;

(b) Designate a party affiliation;

(c) If the applicant has a current and valid Maryland driver's license or MVA identification card, provide the MVA identification number and the date MVA issued the current license or identification card; and

(d) Provide the last four digits of the applicant's Social Security number.

(2) State the effect that a party affiliation designation will have on the ability to vote in primary elections;

(3) State the penalties for the submission of a false application;

(4) Require the applicant to affirmatively consent to use, as the applicant's signature for the Statewide VRA:

(a) The electronic copy of the applicant's signature that is on file with MVA; or

(b) If the applicant is an absent uniformed services voter or an overseas voter who does not have a Maryland driver's license or MVA identification card number, the applicant's last four digits of the applicant's Social Security number.

(5) Require the applicant to swear or affirm, subject to the penalties of perjury, that the:

(a) Information entered by the applicant is true to the best of the applicant's knowledge, information, and belief; and

(b) Applicant meets all the qualifications to become a registered voter.

C. Required Notification. The online voter registration system shall include a link to:

(1) The qualifications to become a registered voter; and

(2) A statement that, except for an applicant's MVA identification number, voter registration records are generally available for public inspection and may be shared with jury commissioners, clerks, or other government agencies as provided by law, and that use of voter registration lists for commercial solicitation purposes is prohibited.

D. Prohibited Matters. The online submission of the Statewide VRA may not require:

(1) Notarization or other formal authentication; or

(2) Any additional information, other than the information necessary to enable election officials to:

(a) Determine the eligibility of the applicant; and

(b) Administer voter registration and other parts of the election process.

[.03] .04 Paper Version of the Statewide VRA—Production and Cost.

A. In General. The State Board shall design and produce the *paper* Statewide VRA.

B.—C. (text unchanged)

[.04] .05 MVRA.

A.—B. (text unchanged)

C. The State Board shall provide language for [the] any [voter registration application] application related to voter registration [portion of the MVA change of address form and the Call Center voter registration form used by the MVA Customer Service Center and shall approve the forms] before MVA may use or distribute [them] the application.

33.05.03 Dissemination of VRA Forms

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 3-101, 3-203, [and] 3-204, and 3-204.1, Annotated Code of Maryland

.01 Responsibilities of Election Officials.

A. (text unchanged)

B. Services to Be Provided.

(1) Each local board office shall:

(a) (text unchanged)

(b) [If it has an Internet web site, provide] *On its website, provide a link to [that portion of the State Board web site where the Statewide VRA is posted] the State Board's online voter registration system;*

(c)—(e) (text unchanged)

(2) For peak periods, local boards are encouraged to:

(a) Use an automatically answered telephone service that provides 24-hour access, [notifies] *informs* callers that [VRAs are available on-line] *individuals can register to vote online at SBE's website*, and allows an individual to leave a name and mailing address, email address, or facsimile number to which a VRA shall be sent; and

(b) (text unchanged)

(3) (text unchanged)

C. (text unchanged)

.03 MVA Registration.

A. (text unchanged)

B. Receipt and Forwarding of VRAs.

(1) *Paper MVRA.*

(a) When [an] a *paper* MVRA is completed and returned to the MVA, the MVA shall stamp the MVRA with the date received.

[(2)] (b) Within 5 days after receiving the *paper* MVRA, the MVA shall forward the *paper* MVRA to the appropriate local board office. If the MVRA indicates that the applicant is currently registered to vote in Maryland and has moved, the MVA shall forward the MVRA to the local board office in the county where the current address is located.

(2) *Electronic MVRA.*

(a) When an *electronic* MVRA is completed, the MVA shall *electronically forward to the State Board the MVRA and the applicant's digitized signature.*

(b) *The MVA shall forward to the State Board all newly received MVRAs and the applicants' digitized signatures daily.*

C. (text unchanged)

33.05.04 Processing VRAs and Other Requests

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 3-101, 3-204.1, and 3-301—3-304, Annotated Code of Maryland; 42 U.S.C. 15483(b)(2)

.03 Required Information.

A. (text unchanged)

B. Signatures.

(1)—(3) (text unchanged)

(4) *For the online submission of the Statewide VRA, a signature for an absent uniformed services voter or an overseas voter is the individual's last four digits of the individual's Social Security number.*

C.—D. (text unchanged)

LINDA H. LAMONE
State Administrator of Elections

Subtitle 11 ABSENTEE BALLOTS

Notice of Proposed Action

[13-169-P]

The State Board of Elections proposes to amend:

(1) Regulation .01 under **COMAR 33.11.01 Definitions; General Provisions;**

(2) Regulations .01—.04 under **COMAR 33.11.02 Applications;** and

(3) Regulation .04 under **COMAR 33.11.03 Issuance and Return.**

This action was considered by the State Board of Elections at its May 23, 2013, meeting, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to amend the definition of a term, alter the deadlines to request an absentee ballot, define the requirements to submit online a request for an absentee ballot, and require certain documents with an absentee ballot.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Nikki Baines Charlson, Director, Election Management & Reform, State Board of Elections, P.O. Box 6486, Annapolis MD 21401-0486, or call 410-269-2843, or email to nikki.charlson@maryland.gov, or fax to 410-974-2019. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

33.11.01 Definitions; General Provisions

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 9-303, 9-305, 9-306, 11-301, 11-302, and 11-304, Annotated Code of Maryland

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(2) (text unchanged)

(3) “Electronic transmission” means transmission by:

(a) Email; [or]

(b) Internet; or

[(b)] (c) Facsimile.

(4)—(7) (text unchanged)

33.11.02 Applications

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 9-303, 9-305, 9-306, 11-301, and 11-302, Annotated Code of Maryland

.01 In General.

A. (text unchanged)

B. Methods of Applying. An application for an absentee ballot may be made by:

(1) Formal [application] request, as provided in Regulation .02 of this chapter;

(2) (text unchanged)

(3) [Late, in-person application] *In-person request*, as provided in Regulation .04 of this chapter.

C. (text unchanged)

D. *Timely Request.*

(1) *A request is timely if the local board receives the request by the applicable deadline in §D(2) of this regulation.*

(2) *If voter’s request was submitted:*

(a) *By electronic submission and the voter requested the absentee ballot be sent by:*

(i) *Mail or facsimile, the request must be received on or before 11:59:59 p.m. on the Tuesday before the election; or*

(ii) *Internet, the request must be received on or before 11:59:59 p.m. on the Friday before the election;*

(b) *By mail and the voter requested the absentee ballot be sent by:*

(i) *Mail or facsimile, the request must be received on or before 8 p.m. on the Tuesday before the election; or*

(ii) *Internet, the request must be received on or before 5 p.m. on the Friday before the election; or*

(c) *In person by the voter or the voter’s authorized agent, the request must be received on or before 8 p.m. on election day.*

[D.] E. Third-Party Submission. An individual or organization receiving a completed absentee ballot application from a voter shall submit the application to the appropriate local board within [two] 2 business days of receiving the application or by the deadline to submit an absentee ballot application established in [Regulations .02 and .03 of this chapter] §D(2) of this regulation, whichever occurs first.

[E.] F.— [F.] G. (text unchanged)

.02 Formal [Application] Request.

A. In General. A formal [application] request for an absentee ballot may be made to a local board only:

(1) On [a form] *the paper or the online version of the absentee ballot application* prescribed by the State Board; or

(2) (text unchanged)

B. Dissemination of Forms.

(1) (text unchanged)

(2) Website Posting.

(a) The State Board shall post on its website the [State Board-prescribed form] *paper version of the absentee ballot application* [on its website] and provide a link to the online absentee ballot application.

(b) A local board, on its website, shall [either:

(i) Post the State Board-prescribed form] *post the paper version of the absentee ballot application*; or] and

[(ii) Link] *link to the [form] online version of the absentee ballot application* on the State Board’s website.

(c) The [State Board-prescribed form] *absentee ballot application* shall be posted in a way that precludes altering its content.

(3) (text unchanged)

C. *Online Absentee Ballot Application—Voter Authentication.*

(1) *The online absentee ballot application shall authenticate each voter.*

(2) *Except as provided in §C(3) of this regulation, each voter shall enter:*

(a) *The voter’s driver’s license or MVA identification card number;*

(b) *The date the voter’s driver’s license or identification card was issued; and*

(c) *The last four digits of the voter’s Social Security number.*

(3) *If a voter is an absent uniformed services voter or an overseas voter who does not have a Maryland driver's license or MVA identification card number, the voter shall enter the last four digits of the voter's Social Security number.*

(4) *The online absentee ballot application shall immediately verify the information required in §C(2) of this regulation with information on file with MVA.*

(a) *If the MVA verifies the information, the voter may submit the online voter registration application.*

(b) *If the MVA cannot verify the information, the voter shall submit the paper version of the absentee ballot application.*

[C.] D. (text unchanged)

[D.] E. **Deadline for Receipt of Application.** An application under this regulation must be received by the local board [as follows:

(1) On or before 11:59:59 p.m. of the Tuesday preceding election day for an application submitted by electronic transmission; and

(2) On or before 8 p.m. of the Tuesday preceding election day for all other applications] *by the deadline in Regulation .01D of this chapter.*

[E.] F. (text unchanged)

.03 Informal, Written Request.

A.—D. (text unchanged)

E. **Deadline for Receipt of Request.** A request under this regulation must be received by the local board [as follows:

(1) On or before 11:59:59 p.m. of the Tuesday preceding election day for a request submitted by electronic transmission; and

(2) On or before 8 p.m. of the Tuesday preceding election day for all other requests] *by the deadline in Regulation .01D of this chapter.*

F. (text unchanged)

.04 [Late,] In-Person [Application] Request.

A. In General.

(1) [After the deadlines specified in Regulations .02 and .03 of this chapter, a late application may be made in person, by the voter or the voter's authorized agent, on a special, late application form prescribed by the State Board.] *A voter or a voter's authorized agent may submit a request for an absentee ballot at the local board.*

(2) [The procedure provided for in this regulation may be used until the closing of the polls on election day.] *A request under this regulation must be received by the local board by the deadline in Regulation .01D of this chapter.*

B. (text unchanged)

[C. **Electronic Transmissions.** A local board may issue a late application form by electronic transmission.]

33.11.03 Issuance and Return

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), 9-303, 9-305, 9-306, 9-310, 11-301, 11-302, and 11-304, Annotated Code of Maryland

.04 Envelopes.

A. [Special] *Outgoing* Envelopes [Required]. Absentee ballots sent by mail shall be enclosed in specially printed envelopes.

B. *Return Envelopes.*

(1) *If an absentee ballot is sent by mail, the mailing shall include an envelope for the voter to use to return the voted ballot.*

(2) *If an absentee ballot is sent by electronic transmission, the transmission shall include an envelope template showing the voter how to address the return envelope.*

[B.] C. (text unchanged)

[C.] D. **Request for Personal Identification Information on Return Envelope.** If an individual is required to show personal identification information under COMAR 33.11.02.07, the [election director]

absentee ballot mailing shall clearly indicate [on the return envelope] that personal identification information is required.

LINDA H. LAMONE
State Administrator of Elections

Subtitle 17 EARLY VOTING

33.17.03 Public Notice of Early Voting

Authority: Election Article, §§2-102(b)(4), [and] 7-105, and 10-301.1(h), Annotated Code of Maryland

Notice of Proposed Action

[13-168-P]

The State Board of Elections proposes to amend Regulation .01 under **COMAR 33.17.03 Public Notice of Early Voting**. This action was considered by the State Board of Elections at its May 23, 2013, meeting, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to establish when certain pre-election mailings must be sent.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Nikki Baines Charlson, Director, Election Management & Reform, State Board of Elections, P.O. Box 6486, Annapolis MD 21401-0486, or call 410-269-2843, or email to nikki.charlson@maryland.gov, or fax to 410-974-2019. Comments will be accepted through July 29, 2013. A public hearing has not been scheduled.

.01 Public Education Plan.

A. Plan Development.

(1) (text unchanged)

(2) Minimum Components. The plan shall include:

(a) A preelection mailing that:

(i) Is sent to all active, registered voters *at least one week before early voting starts*; and

(ii) (text unchanged)

(b)—(d) (text unchanged)

(3) (text unchanged)

B.—C. (text unchanged)

LINDA H. LAMONE
State Administrator of Elections

Errata

13A.16.01.02

At 40:8 Md. R. 758 (April 19, 2013), column 1, lines 22 — 28 from the bottom:

- For: A. Create and maintain, for at least 2 years after their creation, records of program:
- (1) (text unchanged)
 - (2) Attendance, by groups of children, which indicate:
 - (a) (text unchanged)
 - (b) Verification by each child's parent of that child's recorded daily attendance in care; [and]
- Read: A. (text unchanged)

13A.16.03.03

At 40:8 Md. R. 758 (April 19, 2013), column 1, line 10 from the top:

- For: A. (text unchanged)
- Read: A. Create and maintain, for at least 2 years after their creation, records of program:
- (1) (text unchanged)
 - (2) Attendance, by groups of children, which indicate:
 - (a) (text unchanged)
 - (b) Verification by each child's parent of that child's recorded daily attendance in care; [and]

[13-13-33]



General Notices

Notice of ADA Compliance

The State of Maryland is committed to ensuring that individuals with disabilities are able to fully participate in public meetings. Anyone planning to attend a meeting announced below who wishes to receive auxiliary aids, services, or accommodations is invited to contact the agency representative at least 48 hours in advance, at the telephone number listed in the notice or through Maryland Relay.

BOARD OF BARBERS

Subject: Public Meeting
Date and Time: September 16, 2013, 9:30 a.m. — 4:30 p.m.
Place: 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD
Add'l. Info: Center St. Entrance
Contact: Robert Wood (410) 230-6195
 [13-13-17]

BAY RESTORATION FUND ADVISORY COMMITTEE

Subject: Public Meeting
Date and Time: July 25, 2013, 1 — 4 p.m.
Place: Dept. of the Environment, 1800 Washington Blvd., Aqua/Terra Conf. Rm., Baltimore, MD 21230
Add'l. Info: Open meeting, but a portion of this meeting may be held in closed session.

NOTICE OF FUTURE MEETINGS WILL BE POSTED ON THE DEPARTMENT OF THE ENVIRONMENT'S WEBSITE.

Contact: Linda Cross (410) 537-4029
 [13-13-29]

BOARD OF CHIROPRACTIC AND MASSAGE THERAPY EXAMINERS

Subject: Public Meeting
Date and Time: July 11, 2013, 10 a.m.
Place: 4201 Patterson Ave., Rm. 108/109, Baltimore, MD
Contact: Emily Jones (410) 764-4665
 [13-13-11]

BOARD OF COSMETOLOGISTS

Subject: Public Meeting
Date and Time: September 9, 2013, 10 a.m. — 4:30 p.m.
Place: 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD
Add'l. Info: Centre St. Entrance
Contact: Robert Wood (410) 230-6195
 [13-13-16]

GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

Subject: Public Meeting
Date and Time: July 11, 2013, 1 — 3 p.m.
Place: Howard Co. Police Dept., Ellicott City, MD
Contact: Jessica Winpigler (410) 821-2852
 [13-13-04]

BOARD OF DIETETIC PRACTICE

Subject: Public Meeting
Date and Time: July 18, 2013, 12:30 — 3:30 p.m.
Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD
Contact: Lenelle Cooper (410) 764-4733
 [13-13-25]

PROFESSIONAL STANDARDS AND TEACHER EDUCATION BOARD

Subject: Public Meeting
Date and Time: July 11, 2013, 9:30 a.m. — 12:30 p.m.; Additional Date: August 1, 2013, 9:30 a.m. — 12:30 p.m.
Place: 200 W. Baltimore St., Baltimore, MD
Contact: Madeline Koum (410) 767-0385
 [13-13-08]

BOARD OF MASTER ELECTRICIANS

Subject: Public Meeting
Date and Time: July 23, 2013, 10 a.m. — 12 p.m.
Place: 500 N. Calvert St., Rm. 302, Baltimore, MD
Contact: Gae Herzberger (410) 230-6163
 [13-13-14]

BOARD FOR PROFESSIONAL ENGINEERS

Subject: Public Meeting
Date and Time: July 11, 2013, 9 a.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6262
 [13-13-35]

STATE BOARD OF STATIONARY ENGINEERS

Subject: Public Meeting
Date and Time: July 16, 2013, 10 a.m. — 12 p.m.
Place: 500 N. Calvert St., Rm. 302, Baltimore, MD
Contact: Gae Herzberger (410) 230-6163
 [13-13-13]

BOARD OF FORESTERS

Subject: Public Meeting
Date and Time: July 15, 2013, 10 a.m. — 12 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Dennis Gring (410) 230-6224
 [13-13-03]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

Subject: Public Notice of Maryland Medicaid Rate Increase for Nursing Facility Services

Add'l. Info: The Secretary of Health and Mental Hygiene proposes to amend COMAR 10.09.10.07, 08, .10, and .11 in order to increase Medicaid reimbursement for nursing facility services in accordance with the State budget appropriation for Fiscal Year 2014. Current cost containment limitations will be extended through June 30, 2014, except that interim and maximum rates in the administrative/routine, other patient care, and nursing cost centers will be increased by 3.2 percent in order to increase average overall reimbursement rates by 1.725 percent effective July 1, 2013. Total reimbursement will increase by \$22,883,000 under the provisions of the proposed amendments. In addition, the proposal deletes the requirement to update the work measurement study of nursing procedures in nursing homes. Copies of the proposed changes are available for public review at the local health department in each county and Baltimore City. Written comments may be sent to Stephen Hiltner, Office of Health Services, Department of Health and Mental Hygiene, 201 W. Preston St., Rm. 120-G, Baltimore, MD 21201, or fax to 410-333-7803.

Contact: Stephen Hiltner (410) 767-1447
 [13-13-38]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

Subject: Public Notice of Rate Increase for Targeted Case Management for Individuals with Developmental Disabilities

Add'l. Info: Delivery of targeted case management under Medicaid for three target populations of people with

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intellectual and developmental disabilities: those on Developmental Disabilities waiting list, those needing community coordination services, and those transitioning to the community.

For dates of service beginning July 1, 2013, the Maryland Medical Assistance reimbursement rates for targeted case management (also called resource coordination) will be \$450 for the initial eligibility and comprehensive assessment. For all other services, a "unit of service" means a 15-minute increment, which will be reimbursed at \$14.62 per unit. The fiscal impact is estimated to be approximately \$6,900,000 per year in total funds.

Copies of the proposed changes are available for public review at the local health department in each county and Baltimore City. Written comments may be sent to Michael Cimmino, Office of Health Services, DHMH, 201 W. Preston St., Room 128D, Baltimore, MD 21201, or call at 410-767-0579 or email to Michael.Cimmino@maryland.gov.

Contact: Michael Cimmino (410) 767-0579

[13-13-39]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

Subject: Public Notice of Increase in Reimbursement Rates for Public Mental Health System

Add'l. Info: The Secretary of Health and Mental Hygiene is proposing for dates of service on or after July 1, 2013, an increase in reimbursement rates for Specialty Mental Health Providers by 2.54 percent. This rate increase applies to all Specialty Mental Health billing codes with the exception of E&M codes which have a specific rate increase previously published in the Maryland Register, Volume 39, Issue 26.

The cost of this increase will be approximately \$13,022,128 in total funds per year.

Copies of the proposed changes are available for public review at the local health department in each county and Baltimore City. Written comments may be sent to Rebecca Frechard, Office of Health Services, DHMH, 201 W. Preston St., Rm. 213, Baltimore, MD 21201, or fax to (410) 333-5425 or call (410) 767-1750, or email to Rebecca.Frechard@maryland.gov.

Contact: Rebecca Frechard (410) 767-1750

[13-13-40]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

Subject: Public Notice

Add'l. Info: The Department of Health and Mental Hygiene will submit a 1915c home and community-based services waiver amendment for the Traumatic Brain Injury Waiver to CMS on June 21, 2013.

The purpose of this amendment is to clarify that Residential Habilitation "absence days" are not a separate service but are included in Residential Habilitation services. Additionally, the State is changing two performance measures to better reflect the effectiveness of the State's monitoring of waiver services.

Copies of the proposed changes are available for public review at the local health department in each county and Baltimore City. Written comments may be sent to Michael Cimmino, Office of Health Services, DHMH, 201 W. Preston St., Room 128D, Baltimore, MD 21201, or call at 410-767-0579 or email to Michael.Cimmino@maryland.gov.

Contact: Sandra Brownell (410) 767-5220

[13-13-42]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

Subject: Public Notice

Add'l. Info: The Department of Health and Mental Hygiene will submit a 1915c home and community-based services waiver amendment to CMS on June 29, 2013. The purpose of the amendment is to request an increase in the number of Older Adults Waiver slots from 4050 to 4400. This is an additional 350 slots.

Copies of the proposed changes are available for public review at the local health department in each county and Baltimore City. Written comments may be sent to Michael Cimmino, Office of Health Services, DHMH, 201 W. Preston St., Room 128D, Baltimore, MD 21201, or call at 410-767-0579 or email to Michael.Cimmino@maryland.gov.

Contact: Sandra Brownell (410) 767-5220

[13-13-43]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

Subject: Public Notice

Add'l. Info: Payment for Freestanding Birth Centers

For dates of service beginning July 1, 2013, the Maryland Medical Assistance reimbursement rates for freestanding birth centers will be \$2,000 for the care of the

delivering mother and \$500 for the care of the newborn. This initiative is projected to achieve savings since this is less than the costs of a hospital delivery. However, savings cannot be calculated at this time because it is unclear how often this will be the selected setting for a birth.

Copies of the proposed changes are available for public review at the local health department in each county and Baltimore City. Written comments may be sent to Michael Cimmino, Office of Health Services, DHMH, 201 W. Preston St., Room 128D, Baltimore, MD 21201, or call at 410-767-0579 or email to Michael.Cimmino@maryland.gov.

Contact: Michael Cimmino (410) 767-0579

[13-13-44]

BOARD OF HEATING, VENTILATION, AIR-CONDITIONING, AND REFRIGERATION CONTRACTORS (HVACR)

Subject: Public Meeting

Date and Time: July 10, 2013, 10:30 a.m. — 1 p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: John Papavasiliou (410) 230-6160

[13-13-36]

MARYLAND INSURANCE ADMINISTRATION

Subject: Public Hearing

Date and Time: July 24, 2013, 9:30 a.m.

Place: Maryland Insurance Administration, 200 St. Paul Pl., 24th Fl., Hearing Rm., Baltimore, MD

Add'l. Info: The purpose of the hearing is to gather information to help inform the Commissioner's determinations regarding premium rate filings submitted by American Progressive Life and Health Insurance Company of New York and Genworth Life Insurance Company ("Insurers") for certain guaranteed renewable long-term care insurance products.

Those who wish to testify at the hearing must notify the MIA in writing by July 15, 2013. Such notice should be directed to Maria Fisher, Executive Assistant to the Commissioner, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, maria.fisher@maryland.gov.

Any written testimony or exhibits also should be submitted to Ms. Fisher's attention no later than July 15, 2013. Individuals who require reasonable accommodations to participate in the

hearing should contact Ms. Fisher at 410-468-2013 within 7 days prior to the hearing.

Contact: Maria Fisher (410) 468-2013
[13-13-18]

MARYLAND INSURANCE ADMINISTRATION

Subject: Public Meeting

Date and Time: July 31, 2013, 2 p.m. — 4 p.m.

Place: 200 St Paul Pl., 24th Fl. Hearing Rm., Baltimore, MD

Add'l. Info: Meeting of the Workgroup on Access to Habilitative Services Benefits

Contact: Tinna Damaso Quigley (410) 468-2202

[13-13-19]

MARYLAND INSURANCE ADMINISTRATION

Subject: Public Meeting

Date and Time: August 7, 2013, 9:30 a.m. — 11:30 a.m.

Place: 200 St. Paul Pl., 24th Fl. Hearing Rm., Baltimore, MD

Add'l. Info: Meeting of the Workgroup on Access to Habilitative Services Benefits

Contact: Tinna Damaso Quigley (410) 468-2202

[13-13-20]

MARYLAND INSURANCE ADMINISTRATION

Subject: Public Meeting

Date and Time: August 22, 2013, 9:30 — 11:30 a.m.

Place: 200 St. Paul Pl., 24th Fl. Hearing Rm., Baltimore, MD

Add'l. Info: Meeting of the Workgroup on Access to Habilitative Services Benefits

Contact: Tinna Damaso Quigley (410) 468-2202

[13-13-21]

MARYLAND INSURANCE ADMINISTRATION

Subject: Public Meeting

Date and Time: September 18, 2013, 9:30 — 11:30 a.m.

Place: 200 St. Paul Pl., 24th Fl. Hearing Rm., Baltimore, MD

Add'l. Info: Meeting of the Workgroup on Access to Habilitative Services Benefits

Contact: Tinna Damaso Quigley (410) 468-2202

[13-13-22]

COMMISSION ON KIDNEY DISEASE

Subject: Public Meeting

Date and Time: July 25, 2013, 2 p.m.

Place: 4201 Patterson Ave., Baltimore, MD

Add'l. Info: A portion of this meeting may be closed for executive session

Contact: Eva Schwartz (410) 764-4799
[13-13-02]

DIVISION OF LABOR AND INDUSTRY/MARYLAND APPRENTICESHIP AND TRAINING COUNCIL

Subject: Public Meeting

Date and Time: July 9, 2013, 9 a.m. — 12 p.m.

Place: Associated Builders and Contractors, Inc., Metropolitan Washington Chapter, ABC CraftMasters Training, Inc., 3403 East-West Hwy., Hyattsville, MD

Add'l. Info: The Apprenticeship and Training Council will consider the approval and registration of new apprenticeship programs, revisions to presently approved apprenticeship programs, and other business which may come before the Council.

Contact: C. Edward Poarch II (410) 767-2246

[13-13-37]

MARYLAND HEALTH CARE COMMISSION

Subject: Public Meeting

Date and Time: July 18, 2013, 1 p.m.

Place: Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD

Contact: Valerie Wooding (410) 764-3460
[13-13-09]

MARYLAND HEALTH CARE COMMISSION

Subject: Notice of Receipt of Application

Add'l. Info: On June 7, 2013, the Maryland Health Care Commission (MHCC) received an application for Certificate of Need submitted by Shady Grove Fertility Center — Matter No. 13-15-2342 — Relocation of the current facility from 15001 Shady Grove Road, Rockville, to an adjacent site at 14995 Shady Grove Road, Rockville, and the addition of three procedure rooms. Proposed Cost: \$5,519,441

The MHCC shall review the application under Health-General Article, §19-101 et seq., Annotated Code of Maryland, and COMAR 10.24.01.

Any affected person may make a written request to the Commission to receive

copies of relevant notices concerning the application. All further notices of proceedings on the application will be sent only to affected persons who have registered as interested parties.

Please refer to the Matter No. listed above in any correspondence on the application. A copy of the application is available for review in the office of the MHCC, during regular business hours by appointment. All correspondence should be addressed to Paul Parker, Deputy Director, Center for Hospital Services, MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215.

Contact: Ruby Potter (410) 764-3276
[13-13-34]

GOVERNOR'S COMMISSION ON MARYLAND MILITARY MONUMENTS

Subject: Public Meeting

Date and Time: July 11, 2013, 2 — 3:30 p.m.

Place: Maryland Historical Trust, 100 Community Pl., Crownsville, MD

Contact: Khary McDonald (410) 260-3840
[13-13-31]

DEPARTMENT OF NATURAL RESOURCES/FISHERIES SERVICE

Subject: Public Notice

Add'l. Info: 2013 COMMERCIAL HORSESHOE CRAB HARVEST MODIFICATION

The Secretary of the Maryland Department of Natural Resources (DNR) pursuant to COMAR 08.02.10.01G(3) has announced a modification for the 2013 commercial horseshoe crab fishery. Effective at 12:01 a.m. Saturday, June 8, 2013, a person may not land any female horseshoe crabs, and the annual total allowable landings of male horseshoe crabs for the commercial fishery is 255,980. All other rules remain the same.

Background Information for Changes

The Department is implementing the male-only horseshoe crab cap approved by the Atlantic States Marine Fisheries Commission horseshoe crab management process. This harvest level is based on the output of a multi-year, federal, state, and non-governmental organization (NGO) partnership process that uses the Framework for Adaptive Resource Management (ARM) model to set harvest levels. The harvest levels proposed by the model are designed to be lower than necessary to ensure a sustainable harvest of horseshoe crabs and an overabundance of horseshoe crab eggs for red knots and other shorebird populations. The harvest level

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will be reevaluated annually, allowing for management to adapt to the changes in the population levels of horseshoe crabs and shorebirds as a result of the regulations.

Joseph P. Gill

Secretary

Maryland Department of Natural Resources

Contact: Tamara O'Connell (410) 260-8271

[13-13-28]

BOARD OF OCCUPATIONAL THERAPY PRACTICE

Subject: Public Meeting

Date and Time: July 19, 2013, 8:30 a.m. — 2 p.m.

Place: Catonsville, MD

Add'l. Info: Health Occupations Article, Title 10, Annotated Code of Maryland, and COMAR 10.46 amendments, additions, and revisions, including fee changes, may be discussed/voted on. Budget information may also be discussed. It may be necessary to go into executive session. Sign language interpreters and/or appropriate accommodations for qualified individuals with disabilities will be provided upon request. Please call 1-800-735-2255.

Contact: Marilyn Pinkney (410) 402-8556

[13-13-15]

BOARD OF PLUMBING

Subject: Public Meeting

Date and Time: July 18, 2013, 10 a.m. — 12:30 p.m.

Place: 500 N. Calvert St., Rm. 302, Baltimore, MD

Contact: Brenda Clark (410) 230-6164

[13-13-12]

BOARD OF PODIATRIC MEDICAL EXAMINERS

Subject: Public Meeting

Date and Time: July 11, 2013, 1 p.m.

Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD

Contact: Sheri Henderson (410) 764-4785

[13-13-06]

BOARD OF PODIATRIC MEDICAL EXAMINERS

Subject: Public Meeting

Date and Time: September 12, 2013, 1 p.m.

Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD

Contact: Sheri Henderson (410) 764-4785

[13-13-07]

BOARD OF EXAMINERS OF PSYCHOLOGISTS

Subject: Public Meeting

Date and Time: July 12, 2013, 9 a.m. — 12 p.m.

Place: 4201 Patterson Ave., Conf. Rm. 110, Baltimore, MD

Add'l. Info: Sign language interpreters/other appropriate accommodations for qualified individuals with disabilities will be provided upon request. Proposed changes to COMAR may be discussed.

Contact: Dorothy Kutcherma (410) 764-4703

[13-13-23]

RACING COMMISSION

Subject: Public Meeting

Date and Time: July 16, 2013, 12:30 — 1 p.m.

Place: Ocean Downs Raceway, Berlin, MD

Contact: J. Michael Hopkins (410) 296-9682

[13-13-26]

STATE RETIREMENT AGENCY

Subject: Public Meeting

Date and Time: July 16, 2013, 10 a.m.

Place: SunTrust Bldg., 120 E. Baltimore St., 16th Fl. Boardroom, Baltimore, MD

Add'l. Info: Meeting date and location are subject to change. Anyone interested in attending should contact the State Retirement Agency for confirmation. Please note that the meeting may include a closed session. Sign language, interpreters, and/or appropriate accommodations for qualified individuals with disabilities will be provided upon request. Please call 410-625-5609 or 1-800-735-2258 TTY.

Contact: Angie Jenkins (410) 625-5609

[13-13-10]

STATE BOARD OF INDIVIDUAL TAX PREPARERS

Subject: Public Meeting

Date and Time: July 15, 2013, 1 — 5 p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: Douglas Blackstone (410) 230-6244

[13-13-24]

MARYLAND DEPARTMENT OF TRANSPORTATION

Subject: Public Meeting

Date and Time: July 12, 2013, 10 a.m.

Place: MDOT Headquarters, 7201 Corporate Center Dr., Hanover, MD

Add'l. Info: Notice of Hearing

The Board will hear the following case:

Docket Number 395

Lockheed Martin Corporation is proposing to construct an Ocean Thermal Energy Conversion building and utilize a temporary crane during construction located at 2323 Eastern Boulevard in Baltimore, Maryland. This location is approximately 2,200 feet west of Runway 15 at Martin State Airport. The proposed height of the structure is 220 feet above ground level (AGL)/246 feet mean sea level (MSL). The proposed height of the temporary crane is 300 feet AGL/ 326 feet MSL. The structure height will exceed the Code of Federal Regulations (FAR) Part 77, Objects Affecting Navigable Airspace by 75 feet and the temporary crane will exceed by 155 feet. Code of Maryland Regulations (COMAR) 11.03.06.04, Height Limits in Airport Districts enables the proponents to seek a variance from the Board of Airport Zoning Appeals for any proposed penetration of FAR Part 77. Therefore, the Maryland Aviation Administration requests to present BAZA Case 395 to the Board of Zoning Appeals on Friday, July 12, 2013.

Appropriate auxiliary aids and services for qualified individuals with disabilities will be provided upon request. Please call 410-865-1233 (voice) or MD Relay (TTY Users).

Contact: Deborah Mahoney-Fowler (410) 865-1233

[13-13-32]

DEPARTMENT OF VETERANS AFFAIRS/MARYLAND VETERANS COMMISSION

Subject: Public Meeting

Date and Time: July 16, 2013, 10:30 a.m. — 1 p.m.

Place: Maryland Historical Trust, 100 Community Pl., Crownsville, MD

Contact: Khary McDonald (410) 260-3840

[13-13-30]

WORKERS' COMPENSATION COMMISSION

Subject: Public Meeting

Date and Time: July 25, 2013, 9 — 11 a.m.

Place: 10 E. Baltimore St., Baltimore, MD

Add'l. Info: Portions of this meeting may be held in closed session.

Contact: Amy Lackington (410) 864-5300

[13-13-01]

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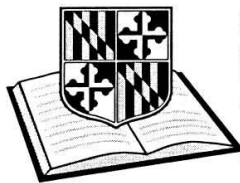
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