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# Maryland Register

Issue Date: January 28, 2011

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Volume 38 • Issue 3 • Pages 137—240

## IN THIS ISSUE

Division of State Documents  
Governor  
Attorney General  
Regulations  
Errata  
General Notices

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before January 10, 2011, 5 p.m.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 January 10, 2011.

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
- Governor's Appointments to State Offices
- 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

Each COMAR title has a Table of Contents and Index. 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](http://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 410-974-2486.

## 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 \$5.00 per issue, plus \$2.00 for postage and handling.

## 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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**Martin O'Malley**, Governor; **John P. McDonough**, Secretary of State; **Brian Morris**, Acting Administrator; **Gail S. Klakring**, Senior Editor; **Mary D. MacDonald**, Editor, Maryland Register and COMAR; **Elizabeth Ramsey**, Editor, COMAR Online; **Marcia M. Diamond**, Subscription Manager, COMAR; **Tami Cathell**, Help Desk, COMAR and Maryland Register Online. Front cover: State House, Annapolis, MD, built 1772—79.

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## CLOSING DATES and ISSUE DATES through JULY 29, 2011

Issue Date	Emergency and Proposed Regulations* 5:00 p.m.	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.
February 11	January 24	February 2	January 31
February 25	February 7	February 16	February 14
March 11**	February 18	March 2	February 28
March 25	March 7	March 16	March 14
April 8	March 21	March 30	March 28
April 22	April 4	April 13	April 11
May 6	April 18	April 27	April 25
May 20	May 2	May 11	May 9
June 3**	May 16	May 24	May 20
June 17**	May 26	June 8	June 6
July 1	June 13	June 22	June 20
July 15	June 27	July 6	July 1
July 29**	July 11	July 20	July 18

### COMAR Online

The Code of Maryland Regulations is available at [www.dsd.state.md.us](http://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](http://www.dsd.state.md.us).

For additional information, visit [www.sos.state.md.us](http://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.

\* 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 COUNTS REFLECT THIS FORMATTING REQUIREMENT.**

\*\* Note closing date changes

**The regular closing date for Proposals and Emergencies is Monday.**

## 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.

**09.12.01.01D(2)(c)(iii)**

Title		Chapter		Section		Paragraph		Subparagraph
Subtitle	Regulation	Subsection	Subparagraph					

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](http://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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**02.01.11.01—.05** • 36:24 Md. R. 1861 (11-20-09)

#### 03 COMPTROLLER OF THE TREASURY

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**03.02.06.01—.04** • 37:3 Md. R. 181 (1-29-10)  
**03.04.01.01** • 38:1 Md. R. 14 (1-3-11)  
**03.04.02.03,.06,.13** • 38:1 Md. R. 14 (1-3-11)  
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**03.04.07.04** • 38:1 Md. R. 14 (1-3-11)  
**03.04.10.13** • 38:1 Md. R. 14 (1-3-11)  
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#### 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

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**05.10.05.01—.05** • 38:3 Md. R. 153 (1-28-11)  
**05.10.06.01,.02** • 38:3 Md. R. 153 (1-28-11)

#### 07 DEPARTMENT OF HUMAN RESOURCES

**07.02.15.03** • 37:25 Md. R. 1743 (12-3-10)  
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#### 08 DEPARTMENT OF NATURAL RESOURCES

**08.02.01.02,.04,.07,.08** • 38:3 Md. R. 158 (1-28-11)  
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#### 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

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**09.32.01.18-3** • 36:26 Md. R. 2024 (12-18-09)  
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**10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Subtitles 01 — 08 (1st Volume)**

10.01.04.01—11 • 38:3 Md. R. 180 (1-28-11)

**Subtitle 09 (2nd Volume)**

10.09.01.06 • 37:26 Md. R. 1792 (12-17-10)  
 10.09.02.07 • 37:26 Md. R. 1792 (12-17-10)  
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# The Division of State Documents

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MD Department of Legislative Services  
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Contact: Johanne H. Greer  
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FAX 410-841-3850

MD State Archives  
350 Rowe Blvd. (21401)  
Contact: Christine Alvey  
410-260-6438, FAX 410-974-3895

MD State Law Library  
Robert C. Murphy Courts of Appeal Bldg.  
361 Rowe Blvd. (21401)  
Contact: Mary Jo Lazun  
410-260-1430, 888-216-8156, FAX 410-974-2063

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State Library Resource Center  
Enoch Pratt Free Library  
400 Cathedral St. (21201)  
Contact: State Depository and Distribution Program  
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Law Library  
University of Baltimore  
1415 Maryland Ave. (21201)  
Contact: Patricia Behles  
410-837-4559, FAX 410-837-4570

Thurgood Marshall Law Library  
University of Md. School of Law  
501 W. Fayette Street (21201)  
Contact: Bill Sleeman  
410-706-6502, FAX 410-706-2372

### Charlotte Hall

Southern MD Regional Library  
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P.O. Box 459 (20622)  
Contact: Pat Ward  
301-934-9442, FAX 301-884-0438

### College Park

Hornbake Library  
University of MD  
Marylandia and Rare Books Department (20742)  
Contact: Ann Hudak  
301-405-9210, FAX 301-314-2709

### Frostburg

Frostburg State University  
Lewis J. Ort Library  
1 Stadium Drive (21532)  
Contact: Jeff Maehre  
301-687-4734, FAX 301-687-7069

### Hagerstown

Government Reference Service of  
Washington County Free Library  
100 South Potomac Street (21740)  
Contact: Harry Sachs  
301-739-3250 x 149, FAX 301-739-5839

### Largo

Prince George's Community College Library  
301 Largo Road (20774)  
Contact: Priscilla Thompson  
301-322-0468, FAX 301-808-8847

### Princess Anne

Frederick Douglass Library  
University of MD Eastern Shore (21853)  
Contact: Cynthia Nyirenda  
410-651-7540, FAX 410-651-6269

### Rockville

Montgomery County Public Library  
Rockville Branch  
21 Maryland Avenue (20850)  
Contact: Caren Genison-Perilman  
240-777-0170, FAX 240-777-0155

### Salisbury

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College and Camden Avenues (21801)  
Contact: Martha Zimmerman  
410-543-6234, FAX 410-543-6203

### Towson

Albert S. Cook Library  
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8000 York Road (21252)  
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410-704-3267, FAX 410-704-3829

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101 Independence Ave., S.E. (20540)  
Contact: Richard Yarnall  
202-707-9470, FAX 202-707-0380

# The Governor

## EXECUTIVE ORDER 01.01.2010.24

WHEREAS, Maryland is subject to a great variety of natural hazards or disasters including but not limited to severe winter storms, high winds, icing, fuel capacity issues and power outages; and

WHEREAS, Having been advised and informed by the Maryland Emergency Management Agency that there is the possibility of severe winter weather, traffic dangers and power outages, an emergency exists in the State of Maryland and that resources may be requested; and

WHEREAS, In order to facilitate the deployment of requisite resources within provisions of Maryland law; and

WHEREAS, Use of resources of the Maryland National Guard may be required;

WHEREAS, In order to implement the emergency powers of the Governor, an executive order of the Governor is appropriate.

NOW, THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, DECLARE THAT A STATE OF EMERGENCY EXISTS IN MARYLAND. I CALL THE MARYLAND NATIONAL GUARD INTO STATE SERVICE AND HEREBY AUTHORIZE THE MARYLAND EMERGENCY MANAGEMENT AGENCY OR OTHER APPROPRIATE STATE AUTHORITY, DURING THIS EMERGENCY PERIOD, TO ENGAGE, DEPLOY AND COORDINATE AVAILABLE RESOURCES.

GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 25<sup>th</sup> day of December, 2010.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[11-03-36]

## EXECUTIVE ORDER 01.01.2010.25

### Rescission of Executive Order 01.01.2010.24

WHEREAS, I, Martin O'Malley, Governor of the State of Maryland, having declared a State of Emergency by Executive Order 01.01.2010.24 due to the threat to the public health and safety caused by the impact of severe weather; and

WHEREAS, The emergency conditions caused by the storm no longer exist.

NOW, THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, DO HEREBY PROCLAIM THAT THE STATE OF EMERGENCY IN THE STATE OF MARYLAND IS HEREBY TERMINATED EFFECTIVE AT 10:00 AM ON THIS DATE.

GIVEN Under My Hand and the Great Seal of the State of Maryland in the City of Annapolis, this 28<sup>th</sup> day of December, 2010.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[11-03-37]

# The Attorney General

## OPINIONS

October 5, 2010

Stephen L. Martino, Secretary  
Maryland Lottery Commission

On behalf of the State Lottery Commission (the “Lottery Commission” or the “Commission”), you have asked whether the Commission may order a video lottery terminal (“VLT”) facility licensee, Penn Cecil Maryland, Inc., and its parent company, Penn National Gaming (collectively “PNG”), to cease funding the opponents of an Anne Arundel County referendum. The referendum, if successful, would validate a County zoning ordinance that permits construction of a VLT facility adjacent to Arundel Mills Mall, a facility that PPE Casino Resorts Maryland, Inc. (“PPE”) proposes to build and operate.

In our view, the Lottery Commission has the power to enforce the conflict-of-interest and duty-to-cooperate provisions in the Request for Proposals for Video Lottery Operation Licenses 2009-0101 (the “RFP”). However, the Commission may not order PNG to cease funding opposition to the referendum because (a) the RFP provisions at issue do not prohibit PNG’s referendum-related activities; (b) the General Assembly has not authorized the Commission to regulate VLT licensees’ campaign contributions; and (c) a court would likely find such an order unconstitutional with respect to a referendum.

### I

#### Background

As a result of legislation enacted during the General Assembly’s 2007 Special Session and the ratification of a constitutional amendment in 2008, the State has authorized the licensing and operation of VLT facilities in five designated locations throughout Maryland, including one location in Cecil County and one in Anne Arundel County. See Annotated Code of Maryland, State Government Article (“SG”) §§9-1A-01, *et seq.* (the “VLT Statute”); Md. Const., Art. XIX (the “VLT Amendment”).<sup>1</sup> The VLT Amendment required that a VLT facility must “comply with all applicable local planning and zoning laws.” *Id.*

Under the VLT Statute, the Video Lottery Facility Location Commission (the “Location Commission”) selects entities to be awarded licenses to operate VLT facilities, and the Lottery Commission ultimately issues the license and regulates the operation of the VLT facility by the licensee. See SG §§ 9-1A-02, 9-1A-04, 9-1A-24, 9-1A-25, 9-1A-36(n). On October 21, 2009, the Location Commission selected PNG for the Cecil County location and, on September 16, 2010, the Lottery Commission issued PNG a video lottery facility operator license, subject to certain conditions that were fulfilled soon thereafter. On September 27, 2010, PNG announced the opening of Hollywood Casino Perryville.

The Location Commission selected PPE for the Anne Arundel County license on December 7, 2009, based on PPE’s proposal to construct a facility near Arundel Mills Mall. At the time of the Commission’s decision, however, Anne Arundel County zoning laws did not permit a VLT facility in the proposed location. After vigorous debate, the Anne Arundel County Council enacted Bill No. 82-09, a zoning ordinance that allows a VLT facility as a “conditional use” at the site adjacent to Arundel Mills where PPE had proposed to construct the facility.

Soon thereafter, opponents of locating the VLT facility near

<sup>1</sup> The other designated locations are in Baltimore City, Rocky Gap State Park, and Worcester County.

Arundel Mills Mall mounted a petition drive to place Bill 82-09 on the ballot for the 2010 election as a local referendum. The petition drive succeeded in collecting sufficient signatures to place the referendum on the ballot. PPE filed an action seeking to enjoin the certification of the ballot measure, but the Court of Appeals ultimately rejected PPE’s arguments, and the Anne Arundel County Board of Elections has certified the ballot question. A robust political debate over the referendum is now underway in Anne Arundel County, and PPE is funding support of the referendum, while PNG is funding opposition.

PPE has asked the Lottery Commission to order PNG to cease funding the opponents of the referendum, asserting that PNG’s activities violate the conflict-of-interest and duty-to-cooperate provisions of the RFP. PPE has complained that PNG’s interests in its facilities in Cecil County and Charles Town, West Virginia (and an alleged interest in obtaining a second slots license for Laurel Park) conflict with the State’s interest in the prompt establishment of a VLT facility in Anne Arundel County. PPE also complained that PNG is not cooperating with another facility licensee, PPE, to accomplish the Lottery Commission’s objective of the prompt establishment of a VLT facility in Anne Arundel County.

After receiving correspondence from counsel for PPE and PNG, the Commission considered at its September 16, 2010, meeting whether to take action against PNG, prompting this request for advice on whether the Commission has, and may lawfully exercise, the power to enter an order directing PNG to cease its referendum-related activity.

### II

#### Lottery Commission’s Authority to Enforce the RFP Provisions

Both the Location Commission and the Lottery Commission are charged with advancing “the public[’s] vital interest in video lottery operations ...,” SG §9-1A-18, an interest that includes establishing and opening VLT facilities and maximizing revenues from those facilities. However, the same legislation that encouraged the State’s VLT program to grow as quickly as possible also subjected the program to detailed and comprehensive regulation.

Accordingly, the VLT Statute mandates a regulatory scheme that affords the Lottery Commission broad authority to superintend, among other things, the conduct of licensees, contractors, and others involved in the implementation of VLT operations in Maryland. SG §9-1A-02. Towards this end, the Commission has the power to deny a license to an applicant; reprimand or fine a licensee; or suspend or revoke a license for a violation of the subtitle, a regulation adopted under that subtitle, or a condition set by the Commission. See SG §9-1A-25. In carrying out its licensing and regulatory functions, the Commission is authorized to investigate and adjudicate violations by examining licensees’ books and records, issuing subpoenas, taking testimony under oath, conducting hearings pursuant to regulations, and other means. See SG §9-1A-04.

The licensees are not only subject to the Commission’s close regulation, but must also assume a number of affirmative, continuing obligations, including an obligation “to provide to the regulatory and investigatory authorities ... any assistance or information necessary to assure that the policies” of the VLT Statute are achieved, SG §9-1A-18(a); a “continuing duty” to “cooperate in an inquiry, investigation or hearing conducted by the Commission,” SG §9-1A-07(c)(4); and a continuing obligation to comply with the RFP terms, which are incorporated into the license application and the license itself. See COMAR 14.01.11.06A; RFP §1.1.6 (“All terms and requirements of this RFP shall be incorporated into and become a part of the

License.”) Of particular relevance here are the continuing obligations to comply with the RFP terms requiring licensees (a) to resolve any real or perceived conflicts of interest during the term of the license, when so directed by the Commission, *see* RFP §4.20, and (b) to cooperate with “any subsequent licensee, contractor or any other contractor designated by the Lottery Commission to accomplish the Lottery Commission’s objectives.” RFP §4.25.

Because the Commission is authorized to enforce continuing obligations found in the RFP, it is our view that the Commission has the power to enter proper orders enforcing the conflict-of-interest and duty-to-cooperate provisions at issue here. This conclusion, however, does not end the inquiry, but raises the questions (a) whether PNG’s political advocacy in opposition to the zoning ordinance violates the meaning of the RFP provisions; (b) whether the Legislature has authorized the Commission to regulate election-related activities of its licensees; and (c) whether the First Amendment to the Constitution of the United States and Article 40 of the Maryland Declaration of Rights<sup>2</sup> would permit the entry of an order directing PNG to cease its advocacy in Anne Arundel County.

As explained below, PNG’s conduct does not violate the RFP terms, and the Legislature has not delegated authority to the Commission to regulate election-related activities of its licensees; even if it had, it is likely that a court would find that the First Amendment would protect PNG’s advocacy, and that the Commission could not lawfully exercise its powers to order PNG to cease its involvement in the debate over the Anne Arundel County referendum on zoning for an Arundel Mills VLT facility.

### III RFP Provisions

#### A. The Conflict-of-Interest Provision

The conflict-of-interest provision found in Section 4.20 of the RFP states:

The Licensee shall ensure that there is no real or perceived conflict of interest at any time during the term of the License. If the Licensee has any gaming-related affiliations which would be perceived as improper in its alliance to the Lottery Commission at the time of License award, or any such conflicts arise during the term of the License, the Licensee shall notify the Lottery Commission of such conflicts.

The Lottery Commission shall make the final determination as to whether any activity constitutes a conflict of interest, pursuant to this provision. The Lottery Commission’s decision shall be final and without recourse; however, the Lottery Commission will not make any such decision without providing the Licensee with an opportunity to present comments. Failure of the Licensee to resolve such conflicts upon notification by the Lottery Commission that a conflict exists, shall constitute a material breach of the License, and the License is subject to termination by the Lottery Commission.

Citing this language, PPE asserts that PNG’s “activities to prevent competition with its facilities in Cecil County and Charlestown, West Virginia, and its alleged interest in obtaining a second slots license

for Laurel Park, conflict with the State’s interest in the prompt establishment of a VLT facility in Anne Arundel County.” Letter from James L. Shea to John B. Howard, Jr., dated September 22, 2010. PPE presented this argument to the Lottery Commission in previous correspondence and at the September 16, 2010, meeting. At that meeting, the Commission took no administrative action against PNG, but a number of commissioners expressed their view that a VLT facility should be established at Arundel Mills as soon as possible and their unhappiness with PNG’s activities in financing the opponents of the Arundel Mills location.

Regardless of the effect PNG’s activities may have on the establishment of a VLT facility at Arundel Mills, those activities do not fall within the scope of Section 4.20’s conflict-of-interest provisions and do not provide legal grounds for the Lottery Commission to take licensing action against PNG for an alleged violation of Section 4.20. This section concerns a licensee’s or prospective licensee’s interests – in particular, other gaming-related affiliations – that may be, or appear to be, in conflict with the licensee’s performance of its obligation to the State to operate, and generate revenues from, the particular facility the licensee is licensed to operate. Section 4.20 does *not* mean that a licensee is forbidden from pursuing its other gaming-related interests, as long as they are disclosed and do not compromise the licensee’s commitment to fulfill its obligations to the State to operate a VLT facility.

Other provisions of the RFP, and consideration of the consequences of a broader reading of Section 4.20, confirm this interpretation. Although Section 4.20 itself does not define what conflicts of interest it encompasses, Section 4.31 helps to clarify what a conflict of interest in this context means. That section provides that a “Licensee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree *with the performance of its services hereunder.*” (emphasis added). In other words, the VLT operator licensee must perform – free from any undisclosed or unresolved conflict of interest – the array of services involved in running a successful VLT facility.<sup>3</sup> There is no allegation that PNG has not fully disclosed all relevant financial interests, and there is no allegation that those interests, or PNG’s participation in an Anne Arundel County referendum, pose a conflict with PNG’s performance of the services required to operate the Cecil County VLT facility.

We reject any suggestion that this interpretation loses sight of the “big picture” – *i.e.*, that we fail to appreciate the State’s interest in generating the most possible revenue through its VLT program and that, in furtherance of this objective, the Commission has the power to order a licensee to cease any activity that might conflict with Maryland’s objective of maximizing VLT revenues. If that is what the conflict-of-interest provision was intended to cover, then there is a direct and inescapable conflict between PNG’s interest in maximizing revenues from Hollywood Casino in Charles Town, West Virginia, and the State’s interest in maximizing revenues from all Maryland facilities. Simply stated, Maryland wants its citizens and others to bet at Maryland VLT facilities, while PNG wants those same citizens (at least those who do not bet in Cecil County) to bet at PNG’s West Virginia facility, depriving Maryland of potential VLT revenue. Ordering PNG to cease participating in the Anne Arundel referendum will not “resolve” any alleged conflict of interest. Nor

<sup>3</sup> Thus, for example, RFP §3.20 holds a licensee “responsible for all products, equipment and services required by this RFP”; RFP §4.11 provides that an operator licensee “may not subcontract any portion of the services provided under [its] License” without prior Commission approval and if the licensee “contracts with another person other than an employee of the Operation Licensee to provide any of the services related to operating a Facility,” that person must meet certain standards; RFP §4.28 requires the VLT operator insure “itself and any subcontractor” against “claims arising from the operations and services provided under this License.”

<sup>2</sup> Article 40 of the Maryland Declaration of Rights provides in pertinent part “that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege.” In the context here, Article 40 provides at least as much protection as the First Amendment.

does PNG's participation in the Anne Arundel County referendum somehow create an impermissible conflict of interest where none existed before.

In short, PNG committed to the State that it would perform services required by its operation license at the Cecil County VLT facility and would disclose or resolve any real or perceived conflicts of interest that would adversely affect its commitment to perform those services. As we explain below, even if the conflict-of-interest provisions were interpreted to cover PNG's financing of the opposition to a VLT facility at Arundel Mills, an order directing PNG to cease advocating that viewpoint through lawful campaign expenditures would likely be unconstitutional.

### **B. The Duty-to-Cooperate Provision**

The duty to cooperate provision found in Section 4.25 states:

The Licensee shall cooperate with any subsequent licensee, contractor or any other contractor designated by the Lottery Commission to accomplish the Lottery Commission's objectives.

PPE contends that this provision does not merely require PNG, as a VLT operation licensee, to cooperate with subsequent licensees and contractors working with PNG to operate the Cecil County VLT facility; rather, PPE asserts, "cooperation is required whenever it is necessary 'to accomplish the Lottery Commission's objectives'" and, because "[t]he Commission's objectives include the prompt establishment of a VLT facility in Anne Arundel County," PNG "is required to cooperate to accomplish that objective." Letter from James L. Shea to Kirby M. Fowler, Jr., dated September 10, 2010 (internal citation omitted).

The duty-to-cooperate provision in Section 4.25, standing alone, does not specify the nature of the cooperation contemplated. Read in the context of the other commitments imposed on licensees, the duty to cooperate in Section 4.25 plainly refers to cooperation among licensees and contractors in the operations of a given VLT facility and, in particular to cooperation between initial licensees and successor licensees and contractors. Because these parties' duties run to the State, and not to each other, the cooperation clause ensures that all parties will work together if there is a transition to a new licensee or contractor. Throughout the RFP, various provisions address cooperation among licensees and contractors for the purpose of operating a particular VLT. In contrast, we discern no provisions suggesting that one licensee or contractor must work together on non-operational matters, much less provisions relating to one video lottery operator's obligations to another with respect to local zoning, licensing issues, or other matters concerning the establishment of a new facility.

In various places, the RFP describes the contractors and licensees who must work cooperatively – even when the relationship is a "forced marriage" as a result of the State procuring a contractor to work with the licensee. The duty of cooperation ensures that the parties must work together to accomplish the objective of running a VLT facility. For example, RFP §1.1.9 provides, in relevant part that:

VLTs, Central Monitor and Control System ("Central System"), and the Associated Equipment and software ... will be obtained through separate procurements ... by the Lottery Commission. The Lottery Commission may award contracts to more than one manufacturer of VLTs and a Facility may have VLTs from more than one manufacturer installed. *Licensee shall work in cooperation with the VLT contractor, Central System contractor, and any other Lottery Commission or Lottery contractors to insure*

*smooth implementation of all systems.*

(emphasis added).

A specific illustration of such cooperation appears in RFP §6.7.4, which provides, *inter alia*, that the licensee "shall ... [p]rovide for the Central System contractor, at no cost: computer room space; HVAC, power and back-up power; cable infrastructure access to VLT floor; storage area for spare equipment"; "[p]rovide for the VLT contractor(s), at no cost: storage area for spare equipment"; "[p]rovide all necessary wiring for gaming floor that is needed for the licensee's operations, except for such wiring that may be performed by contractor of the Lottery Commission"; and so forth. Immediately following that Section, RFP §6.7.5 restates the general duty of cooperation among licensees and contractors: "The Licensee shall work in cooperation with the VLT contractor(s), Central System contractor, and any other Lottery Commission or Lottery contractors to insure smooth implementation of all systems."

Read in conjunction with these provisions, Section 4.25's duty-to-cooperate language – "The Licensee shall cooperate with any subsequent licensee, contractor or any other contractor designated by the Lottery Commission to accomplish the Lottery Commission's objectives" – refers to cooperation with respect to the operation of a facility; the duty to "subsequent" licensees and contractors is primarily intended to ensure a facility's smooth functioning during the transition from a licensee to a subsequent licensee or when the Commission has contracted with a new party, other than an operation licensee, to work at a particular facility.

It is true, however, that Section 4.25's cooperation language includes the phrase "to accomplish the Lottery Commission's objectives," a phrase not found in the other duty-to-cooperate provisions. In this context, though, we think it is clear that the relevant "objective" is that of keeping the facility open and running smoothly, efficiently, and in accordance with the objectives of the VLT law, not the Commission's broader objective of expeditiously opening VLT facilities in the various areas designated in the State Constitution.

The Commission's role with respect to the broader objective of opening facilities as promptly as possible includes ensuring that facilities comply with local zoning laws, and the determination of what zoning laws apply is committed to the local jurisdictions. The Commission has no role in formulating or overseeing the process by which zoning laws are adopted or applied. Indeed, although the General Assembly need not have required compliance with local zoning, one of the key compromises enabling the VLT facility amendment to pass and obtain ratification was deference to localities on zoning rules.

Therefore, however cumbersome and protracted the process of resolving the zoning issue in Anne Arundel County may seem to be, the Commission is required to defer to that process. And the process has been unfolding in conformance with Maryland law, the Maryland Constitution, and the United States Constitution: the Anne Arundel County Council enacted a zoning ordinance; a sufficient number of citizens of Anne Arundel County petitioned the ordinance to referendum (and the Court of Appeals held that the ordinance was referable); and, now, the people of Anne Arundel County are engaged in an intense political debate over the wisdom of the zoning ordinance, a debate in which everyone – including financially-motivated gaming entities such as PPE and PNG – are entitled to participate. Ultimately, the people will decide the issue at the ballot box.

In short, Section 4.25 does not impose on a VLT licensee an obligation to cooperate with a licensee in another jurisdiction in the other licensee's establishment of a VLT facility in the other jurisdiction. Rather, Section 4.25 and other provisions of the RFP contemplate cooperation in operating and maintaining operations at a particular facility, a clear objective of the Lottery Commission.

## IV

### Lottery Commission Authority to Regulate Licensee Campaign Contributions

As an initial matter, the VLT Statute does not provide the Lottery Commission with any express power to regulate campaign contributions, and no power to do so may be implied from the VLT Statute. If the General Assembly had intended to grant the Commission such authority, it could be expected to have done so in the same 2007 legislation that enacted the provisions now codified in the VLT Statute. That legislation, Senate Bill 3 of the 2007 Special Session (“SB3”), not only established the operational and regulatory framework for the VLT program, but also amended provisions of the State Election Law. Section 10 of SB 3 required that ballot issue committees formed to support or defeat the VLT Amendment file additional campaign finance reports and imposed disclosure and reporting requirements on corporations that made independent expenditures supporting or opposing the VLT Amendment.

The general power to license and regulate VLT operation licensees does not include the authority to regulate political speech through licensing actions. *Cf. Citizens United v. Federal Election Comm’n*, 130 S.Ct. 876, 905 (2010) (rejecting proposition that state may require forfeiture of fundamental right to engage in political speech in exchange for granting “special advantages,” such as limited liability, to corporations). Similarly, the conflict-of-interest and duty-to-cooperate provisions do not contain any language, much less clear language, concerning a waiver of First Amendment rights. *Fuentes v. Shevin*, 407 U.S. 67, 95 (1972) (“[A] waiver of constitutional rights in any context must, at the very least, be clear,” and is ineffective “when the contractual language relied upon does not, on its face, even amount to a waiver”).

## V

### First Amendment Limitations

It has long been established that a corporation has a First Amendment right to fund a campaign supporting or opposing a referendum. *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). Limits on referendum-related expenditures require a more compelling justification than limits on contributions to candidates for office because “[r]eferenda are held on issues, not candidates for public office” and, therefore, “[t]he risk of corruption perceived in cases involving candidate elections ... simply is not present in a popular vote on a public issue.” *Id.* at 790. In addition, an order requiring PNG to cease its funding of the opposition to the referendum, while allowing PPE to continue funding support for the referendum, would likely be found to amount to impermissible viewpoint discrimination. When governmental “suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended.” *Id.* at 785-86.

Cases involving the regulation of “commercial speech” have no application in this context. Corporate speech related to a referendum may be assumed to have an “economic motivation,” but that does not transform what is otherwise protected political speech into “commercial speech,” which enjoys less constitutional protection. *See Bolger v. Young’s Drug Products Corp.*, 463 U.S. 60, 67 (1983); *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976) (commercial speech “does no more than propose a commercial transaction”). Commercial speech is analyzed under an “intermediate level of scrutiny” that is “a far cry from strict scrutiny” applied to restrictions burdening political speech, where the government interest must be “compelling” and the regulation “narrowly tailored” to serve that interest. *City of Cincinnati v.*

*Discovery Network, Inc.*, 507 U.S. 410, 434 (1993) (Blackmun, J., concurring).

There can be no serious contention that PNG’s (presumably economically motivated) political activity opposing the referendum somehow “proposes a commercial transaction” and that an order restraining that activity can therefore be justified on the same grounds that justify advertising restrictions on gaming companies. Thus, cases involving restrictions on commercial speech to advance a legitimate state interest in regulating so-called “vice activities” such as gaming are irrelevant. *See, e.g., Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328 (1986) (upholding restrictions on casino advertising in light of the substantial state interest in protecting “the health, safety, and welfare” of Puerto Rico residents by “reduc[ing] demand for casino gambling”). *Posadas* and other cases following it involved commercial speech restrictions to minimize “vice activities,” including gaming. Here, the question is whether a State interest in maximizing its own gaming revenues is proffered to justify banning core political speech. In other words, the governmental interest in protecting the welfare of its citizens that has traditionally justified commercial speech restrictions on “vice activities” such as gambling can hardly justify restricting political speech that allegedly interferes with the full flourishing of those same “vice activities.”

Also irrelevant are cases that have upheld statutory restrictions on contributions by gaming interests to political candidates. *See, e.g., Casino Assoc. of Louisiana v. State*, 820 So.2d 494 (La. 2002); *Soto v. State*, 565 A.2d 1088 (N.J. 1989); *Lorenz v. State*, 928 P.2d 1274, 1282 (Col. 1996). It is well established that limits on contributions to candidates for office can be justified by the important governmental interest in “the prevention of corruption and the appearance of corruption” that would ensue if unlimited contributions to a candidate that limits on contributions to candidates passed *Buckley v. Valeo*, 424 U.S. 1 (1976). Here, PNG is not supporting any candidate. It is advocating a position in a political debate.

## VI

### Conclusion

In our view, the Lottery Commission has the authority to enforce violations of provisions of the RFP. The Commission may not, however, order PNG to cease funding opposition to the referendum on the Anne Arundel County zoning ordinance because the provisions at issue do not prohibit PNG’s such funding; because the General Assembly has not authorized the Commission to regulate VLT licensees’ campaign contributions; and because a court would likely find an order to cease funding opposition to the referendum unconstitutional.

Douglas F. Gansler, Attorney General  
John B. Howard, Jr., Deputy Attorney General  
Robert N. McDonald, Chief Counsel, Opinions and Advice

#### Editors Note:

This opinion was originally issued, in slightly different form, as a letter of advice.

[11-03-30]

# 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 05

### DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

#### Subtitle 04 SPECIAL LOAN PROGRAMS

##### 05.04.09 Group Home Financing Program

Authority: Housing and Community Development Article, §4-606, Annotated Code of Maryland; Executive Order 01.01.1992.27C

#### Notice of Final Action

[10-324-F]

On January 6, 2011, the Secretary of Housing and Community Development adopted amendments to Regulations **.02—~~.09~~**, **.11—~~.13~~**, and **.15—~~.18~~** under **COMAR 05.04.09 Group Home Financing Program**. This action, which was proposed for adoption in 37:24 Md. R. 1662—1666 (November 19, 2010), has been adopted as proposed.

**Effective Date: February 7, 2011.**

RAYMOND A. SKINNER

Secretary of Housing and Community Development

#### Subtitle 04 SPECIAL LOAN PROGRAMS

##### 05.04.11 Special Housing Opportunities Program

Authority: Housing and Community Development Article, Title 4, Subtitle 2, Annotated Code of Maryland; Executive Order 01.01.1992.27C

#### Notice of Final Action

[10-325-F]

On January 6, 2011, the Secretary of Housing and Community Development adopted amendments to Regulations **.04** and **.09** under **COMAR 05.04.11 Special Housing Opportunities Program**. This action, which was proposed for adoption in 37:24 Md. R. 1666 (November 19, 2010), has been adopted as proposed.

**Effective Date: February 7, 2011.**

RAYMOND A. SKINNER

Secretary of Housing and Community Development

## Title 07

### DEPARTMENT OF HUMAN RESOURCES

#### Subtitle 07 CHILD SUPPORT ENFORCEMENT ADMINISTRATION

##### 07.07.14 Child Support Enforcement Privatization Pilot Program

Authority: Family Law Article, §§10-119.1—10-119.2, Annotated Code of Maryland

#### Notice of Final Action

[10-297-F]

On January 4, 2011, the Interim Secretary of Human Resources adopted the repeal of Regulations **.01**, **.02**, **.04—~~.07~~**, **.09**, and **.10** under **COMAR 07.07.14 Child Support Enforcement Privatization Pilot Program**. This action, which was proposed for adoption in 37:22 Md. R. 1558 (October 22, 2010), has been adopted as proposed.

**Effective Date: February 7, 2011.**

BRIAN WILBON

Interim Secretary of Human Resources

#### Subtitle 07 CHILD SUPPORT ENFORCEMENT ADMINISTRATION

##### 07.07.14 Child Support Enforcement Privatization Program

Authority: Family Law Article, §10-114, Annotated Code of Maryland

#### Notice of Final Action

[10-296-F]

On January 4, 2011, the Interim Secretary of Human Resources adopted amendments to and the recodification of existing Regulation **.03** to be Regulation **.01** and the recodification of existing Regulation **.08** to be Regulation **.02** under **COMAR 07.07.14 Child Support Enforcement Privatization Program**. This action, which was proposed for adoption in 37:22 Md. R. 1557 (October 22, 2010), has been adopted as proposed.

**Effective Date: February 7, 2011.**

BRIAN WILBON

Interim Secretary of Human Resources

**Title 08**  
**DEPARTMENT OF NATURAL**  
**RESOURCES**

**Subtitle 02 FISHERIES SERVICE**

**08.02.03 Crabs**

Authority: Natural Resources Article, §§4-215 and 4-803, Annotated Code of Maryland

**Notice of Final Action**  
 [10-333-F]

On January 18, 2011, the Secretary of Natural Resources adopted amendments to Regulation .14 under **COMAR 08.02.03 Crabs**. This action, which was proposed for adoption in 37:25 Md. R. 1744—1745 (December 3, 2010), has been adopted as proposed.

**Effective Date: February 7, 2011.**

JOHN R. GRIFFIN  
 Secretary of Natural Resources

**Title 21**  
**STATE PROCUREMENT**  
**REGULATIONS**

**Notice of Final Action**  
 [10-312-F]

On January 5, 2011, the Board of Public Works adopted:  
 (1) Amendments to Regulation .01 and new Regulation .07 under **COMAR 21.01.03 Applicability**;  
 (2) Amendments to Regulations .01 and .04 under **COMAR 21.11.01 Small Business Procurements**;  
 (3) Amendments to Regulations .01 and .17 under **COMAR 21.11.03 Minority Business Enterprise Policies**; and  
 (4) Amendments to Regulation .03 under **COMAR 21.11.07 Miscellaneous Purchasing Preferences**.

This action, which was proposed for adoption in 37:23 Md. R. 1624—1625 (November 5, 2010), has been adopted as proposed.

**Effective Date: February 7, 2011.**

SHEILA McDONALD  
 Executive Secretary  
 Board of Public Works

**Title 14**  
**INDEPENDENT AGENCIES**  
**Subtitle 01 STATE LOTTERY AGENCY**

**Notice of Final Action**  
 [10-334-F]

On January 18, 2011, the Maryland State Lottery Agency adopted:  
 (1) Amendments to Regulation .01 under **COMAR 14.01.10 Video Lottery Terminals**; and  
 (2) New Regulations .01—.04 under a new chapter, **COMAR 14.01.20 Unannounced Inspections**.

This action, which was proposed for adoption in 37:25 Md. R. 1748—1749 (December 3, 2010), has been adopted as proposed.

**Effective Date: February 7, 2011.**

STEPHEN L. MARTINO  
 Director  
 State Lottery Agency



# 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 05

# DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

## *Subtitle 10 ASSISTED HOUSING PRESERVATION*

### Notice of Proposed Action

[11-045-P]

The Secretary of Housing and Community Development proposes to adopt:

(1) New Regulations .01—.02 under a new chapter, **COMAR 05.10.01 Purpose and Definitions;**

(2) New Regulations .01—.05 under a new chapter, **COMAR 05.10.02 Exemptions;**

(3) New Regulations .01—.06 under a new chapter, **COMAR 05.10.03 Notice of Intent to Take Protected Action;**

(4) New Regulations .01—.03 under a new chapter, **COMAR 05.10.04 Owner's Offer of Right of First Purchase;**

(5) New Regulations .01—.05 under a new chapter, **COMAR 05.10.05 Tenant Protection Assistance;** and

(6) New Regulations .01—.02 under a new chapter, **COMAR 05.10.06 Enforcement and Waivers.**

### Statement of Purpose

The purpose of this action is to implement, interpret, make specific, and otherwise carry out the provisions of the Assisted Housing Preservation Act, Housing and Community Development Article, §§7-101—7-501, Annotated Code of Maryland. The regulations will provide information to owners, tenants, and other interested persons regarding procedures to be followed by owners and protections to be offered to tenants in the event of termination or expiration of federal assistance to certain rental housing developments for low and moderate income persons and households.

## 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

**I. Summary of Economic Impact.** It is estimated there will be economic impact in the form of administrative expenses on the issuing agency and in the form of both revenue and expense effects on the public.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E-)	\$12,200
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)/(-)	\$357,500

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

A. DHCD incurs administrative expenses in the enforcement of these regulations: 5 percent of the annual salary of one supervisor (Administrator III); and 10 percent of the annual salary of one professional staff (Asset Management Officer II). Additional

expenses are anticipated for publication and distribution of information on the regulations to owners, tenant, other affected parties, and other interested members of the public.

F. DHCD estimates that approximately 250 assisted rental units per year will be affected by these regulations at a cost of: \$950 maximum per unit in one time relocation expense; and an estimated \$100 per unit per month for extended lease cost restrictions for 20 percent of the units for 24 months assuming federal tenant-based rental assistance is available and is accepted by the owner.

**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 an impact on individuals with disabilities as follows:

Individuals with disabilities who occupy assisted rental units are considered as “designated households”, and, as such, will be entitled to 24-month extended leases and/or other enhanced tenant protection benefits.

**Opportunity for Public Comment**

Comments may be sent to F. William Beans, Director of Asset Management, Division of Credit Assurance, Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032, or call 410-514-7349, or email to beans@mdhousing.org, or fax to 410-987-7238. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**05.10.01 Purpose and Definitions**

Authority: Housing and Community Development Article, §§7-101 — 7-501, Annotated Code of Maryland

**.01 General.**

A. These regulations are intended to supplement and clarify the provisions of the Assisted Housing Preservation Act, Housing and Community Development Article, Title 7, Annotated Code of Maryland. These regulations should be read in conjunction with the Act.

B. These regulations include the standards for granting, and procedures for requesting, exemptions from certain otherwise applicable requirements of the Act.

**.02 Definitions.**

A. In this chapter, the following terms shall have the meanings indicated and as defined in the Act.

**B. Terms Defined.**

(1) “Act” means the Assisted Housing Preservation Act, Housing and Community Development Article, §§7-101—7-501, Annotated Code of Maryland.

(2) “Department” means the Department of Housing and Community Development.

(3) “Designated households” means the portion of assisted households described in § 7-213 of the Act.

(4) “Designated household assistance” means the 3-year lease extensions and other special assistance available to certain designated households in accordance with §§7-214—7-219 of the Act.

(5) “Developer” means any individual, partnership, corporation, or other legal entity with experience in the ownership or operation of low-income housing developments.

(6) “Director” means the Director of the Division of Credit Assurance of the Department.

(7) “Federally-assisted mortgage” means a mortgage securing a loan made, insured, or receiving assistance or subsidies under the federal assistance programs described under § 7-102(a)(1) of the Act, or held by HUD and formerly assisted under these federal programs.

(8) “HUD” means the United States Department of Housing and Urban Development.

(9) “Individual with disability” means a person within the definition of “person with disabilities” in §3(b)(3)(E) of the United States Housing Act of 1937, 42 U.S.C. §§ 1437a(b)(3)(E), which is incorporated herein by reference.

(10) “Material violation of a lease” means a violation of the lease for which the landlord has repossessed the unit by execution of a warrant of restitution:

(a) In an action under Real Property Article, §8-401, Annotated Code of Maryland, for failure to pay rent; or

(b) Following a final judicial determination under Real Property Article, § 8-402.1, Annotated Code of Maryland, finding a substantial violation of the lease, violation of obligations under state or local landlord-tenant law, or other good cause warranting an eviction.

(11) “Minor” means a person younger than 18 years old on the date that a notice of intent is given, including unborn children of a member of an assisted household.

(12) “Nonprofit developer” means any developer that is exempt from taxation under §501(a) of the Internal Revenue Code of 1986, 26 U.S.C. §501(a), or the corresponding provision of any succeeding internal revenue law.

(13) “Public housing authority” means any housing authority authorized under the Housing Authorities Law, Housing and Community Development Article, Division II, Annotated Code of Maryland.

(14) “Reasonable relocation expenses” means the costs incurred by an assisted tenant who vacates an assisted unit under a protected action including costs to:

- (a) Transport personal property;
- (b) Pack and unpack personal property;
- (c) Disconnect and reconnect utilities;
- (d) Disconnect and install personal property;
- (e) Insure personal property to be moved;
- (f) File rental application; and
- (g) Obtain new rental housing, including security deposits.

(15) “Secretary” means the Secretary of Housing and Community Development.

(16) “Section 8 agreement” means any contract or agreement providing for project-based rental assistance under §8 of the United States Housing Act of 1937, 42 U.S.C. §1437f.

(17) “Senior citizen” means a person who is 62 years old or older on the date that a notice of intent is given.

(18) “Tenant association” means a group of tenants who reside in an assisted project organized for the purpose of protecting or advocating the rights of tenants in the project.

**05.10.02 Exemptions**

Authority: Housing and Community Development Article, §§7-101 — 7-501, Annotated Code of Maryland

**.01 Federal Preemption.**

A. These regulations and the Act shall be read in conjunction with the federal Low Income Housing Preservation and Resident Homeownership Act of 1990, 12 U.S.C. §§4101—4125 (“LIHPRHA”). To the extent that §232(a)(1) of LIHPRHA, 12 U.S.C. §4122(a)(1), expressly preempts certain portions of the Act, actions subject to LIHPRHA are exempt from the Act.

B. If a protected action is subject to LIHPRHA and, as required by §232(a)(1) of LIHPRHA, 12 U.S.C. §4122(a)(1), is exempt from the Act, the owner shall give written notice to the Secretary of the steps the owner has taken to comply with LIHPRHA.

**.02 Authorized Exemptions.**

The Secretary, by written determination, may grant exemptions from the following requirements:

- A. The right of first purchase under §§7-204—7-211 of the Act;
- B. Tenant relocation assistance under §7-212(b)(1) and (2) of the Act;
- C. One-year lease extensions under §7-212(b)(3) of the Act; and
- D. Designated household assistance of 3-year lease extensions and additional relocation assistance for certain households under §§7-214—7-219 of the Act.

**.03 Standards for Exemptions.**

A. The Secretary may grant exemptions under Regulation .02 of this chapter to:

- (1) Diminish the burdens on a project owner of complying with similar requirements in federal law and in the Act when compliance with both sets of requirements would not provide any appreciable benefit to assisted tenants beyond compliance with the federal law; or
- (2) Prevent the inconsistent or inequitable application of federal law and the Act to a property owner, when compliance with both sets of requirements would:
  - (a) Be impossible due to conflicts between the requirements;
  - (b) Impose inequitably duplicative high costs or burdens on the property owner; or
  - (c) Otherwise result in an unreasonable application of the requirements or procedures of the Act on the property owner considering full compliance with federal law.

B. The following factors shall be taken into consideration in determining whether to grant an exemption:

- (1) Type of protected action;
- (2) Size and location of the project;
- (3) Nature of the assisted households of the project;
- (4) Availability of other assisted housing in the area, including whether tenant based rental assistance will be available and accepted at these projects;
- (5) Extent of benefit to the assisted tenants which would be retained as a result of the exemption;
- (6) Availability of alternative rental subsidies or other assistance to tenants for use at the project;
- (7) Provision by the project owner of notices and other benefits to the tenants beyond the requirements of the Act;
- (8) Compliance by the owner with requirements of federal law relating to the protected action or tenant benefits generally;
- (9) Extent of conflicts which would result from the owner's full compliance with federal law and the Act;
- (10) Extent of costs or other burdens on the owner which would result from full compliance with federal law and the Act; or
- (11) Other relevant factors as determined by the Secretary.

**C. Additional Requirements.**

In granting an exemption, the Secretary may require the owner to:

- (1) Provide a portion of the benefits set forth in the Act;
- (2) Accept the use by assisted households of rental assistance at the project for a certain period following the protected action;
- (3) Provide, as is appropriate, other benefits to all or a portion of the assisted households;
- (4) Provide initial or supplemental notices to the tenants, containing some or all of the information required by §7-202(b) of the Act, as applicable to the exemption conditions being imposed and for such length of time before the protected action as the Secretary determines is necessary and desirable to carry out the purposes of the Act; or

(5) Execute a written agreement specifying, or provide other assurances of compliance by the owner with, any conditions required in connection with the granting of an exemption.

D. Failure by the owner to comply with any conditions shall be grounds for the Secretary to withdraw the exemption and require the owner to comply fully with all requirements of the Act.

**.04 Exemption Application Procedures.**

A. Requests for secretarial exemptions under this regulation shall include:

- (1) A letter requesting the exemption and outlining the reasons why the property owner believes the exemption is appropriate under the Act and these regulations;
- (2) A description of the nature of the proposed protected action;
- (3) A list of the federal program or programs which govern the federally-assisted mortgage;
- (4) A description of any federal project-based assistance;
- (5) A description of any other state, local government, or other assistance to the project;
- (6) Copies of the notices of intent given under §7-201 of the Act, and copies of all other notices delivered in connection with the proposed protected action, including notices to or required by HUD or other federal regulatory agencies, and any notices in connection with any state or local proceedings concerning the assisted households' leases at the project;
- (7) A statement as to the expected impact of the proposed protected action on rents and the continued occupancy by existing assisted households for 3 years following the date of the protected action;
- (8) Data which shows the number of:
  - (a) Assisted households;
  - (b) Assisted households with senior citizens and handicapped persons; and
  - (c) Assisted households with minors;
- (9) An explanation of any provisions planned or previously given to provide assisted households with adequate alternative housing or other assistance, including any federal rental assistance;
- (10) The timetable anticipated for taking any protected action;
- (11) The anticipated dates on which the protected action would result in dispossession of any assisted households at the project;
- (12) A statement certifying that the owner has not taken any of the following actions, or any other action before the date of the protected action in order to avoid the owner's obligations in conjunction with the protected action:
  - (a) Termination without cause of the lease of any tenant occupying an assisted unit;
  - (b) Alteration of any of the terms and conditions of executed leases of existing tenants;
  - (c) Interference with any existing rights of tenants to occupy their units in the assisted project under existing leases or under any applicable federal, state, or local law;
  - (d) Interference with the efforts of individual tenants to obtain housing subsidies or other public assistance; or
  - (e) Discrimination in the leasing of units in the project based on source of income or receipt of rent subsidies provided by governmental or other sources; and
- (13) Other supporting documentation required by the Director.

**B. Timing for Requests for Exemption.**

- (1) To permit compliance with the notice requirements of the Act, requests for exemption should ordinarily be submitted at least 1 year and 60 days before the effective date of any protected action, except as permitted under §B(2) of this regulation.
- (2) In an emergency situation when urgent action is required, requests for exemption may be considered in the discretion of the

Secretary if submitted at least 90 days before the effective date of any protected action.

C. Requests for secretarial exemption shall be submitted to the Secretary of Housing and Community Development, Department of Housing and Community Development, Attn: Director, Division of Credit Assurance, 100 Community Place, Crownsville, Maryland 21032.

D. Copies of Exemption Requests.

(1) Copies of the letter requesting an exemption described under §A(1) of this regulation shall be delivered to the following parties not later than 3 days after the request is made to the Secretary:

(a) The chief executive officers of each local jurisdiction in which the assisted project is located;

(b) Any public housing authority existing in any local jurisdiction where the assisted project is located; and

(c) Each assisted household of the assisted project.

**.05 Review and Determination of Exemption Requests.**

A. The Director or the Director's designee shall review each request to determine if the request conforms to the standards for exemption. When reviewing the request, the Director or the Director's designee shall consider the factors set forth in Regulation .03B of this chapter and any other information made available to the Director or the Director's designee concerning the impact of the protected action on the property owner and the assisted households.

B. Upon completion of the review, the Director shall make a recommendation to the Secretary for approval or disapproval of the request for exemption. Upon approval or disapproval of the request for exemption by the Secretary, a notification of the Secretary's determination shall be sent to the owner. The notification shall be issued within 30 days of receipt of the request for exemption and any required supplemental documentation.

C. The determination by the Secretary or a redetermination of any decision to grant or not to grant an exemption from any requirements of the Act is not a contested case within the meaning of the Administrative Procedure Act or COMAR 05.01.01.02.

**05.10.03 Notice of Intent to Take Protected Action**

Authority: Housing and Community Development Article, §§7-101 — 7-501, Annotated Code of Maryland

**.01 General.**

A. Each property owner who takes or intends to take a protected action shall send written notices of intent that comply with the requirements of §§7-201 and 7-202 of the Act and these regulations.

B. The purpose of providing notices of intent is to:

(1) Inform appropriate government agencies of the proposed action, and its possible impact on the tenants, and the local stock of affordable housing;

(2) Provide the Department with information to determine if the proposed action is legally permissible;

(3) Inform assisted households of the proposed actions and their rights in the event federal assistance is discontinued; and

(4) If the project is to be sold, afford other parties the opportunity to exercise a right of first purchase in accordance with §§7-204—7-211 of the Act.

**.02 Requirement to Submit Notices to the State.**

The notices of intent required under the Act and Regulations .03 and .04 of this chapter shall be submitted to the Department and the other required parties in addition to any other notification requirements imposed by the federal government. Submission of a notice to the applicable federal agency only by the owner or any

other party does not constitute compliance with the Act and these regulations.

**.03 Notice Requirements.**

In addition to any requirements specified in the Act, the notice of intent to the chief executive officers, public housing authority, tenant association, and Secretary shall be sent by certified mail, return receipt requested and include the following information or material:

A. The nature of the proposed protected action;

B. A list of the federal program or programs that govern the federally-assisted mortgage or any project-based assistance;

C. For assisted projects that are subject to federally-assisted mortgages:

(1) A copy of the assisted mortgage, the secured note, and any regulatory agreement and other related mortgage documents; and

(2) A statement setting forth the:

(a) Maturity date of the mortgage;

(b) Original and current principal balance of the mortgage;

(c) Name and address of the mortgagee; and

(d) Number of assisted units regulated by the mortgage;

D. For assisted projects that have units subsidized by project based assistance:

(1) A copy of the federal agreement to enter into a household assistance payments contract (AHAP);

(2) A copy of the federal housing assistance payments contract (HAP) evidencing the Section 8 agreement and a statement setting forth the expiration date of the Section 8 agreement, including all extensions or renewal options;

(3) The name and address of the agency responsible for administering the Section 8 agreement; and

(4) The number of units for which assistance is provided;

E. A statement as to the expected impact of the proposed protected action on rents and the continued occupancy by existing assisted households for 3 years following the date of the protected action, including:

(1) Any proposed rent increases over such period; and

(2) The size of any tenant waiting list on the project;

F. For projects that receive project-based assistance for less than 100 percent of the units:

(1) The number of unsubsidized units;

(2) The current rents for unsubsidized units; and

(3) Any planned or projected rent increases for the unsubsidized units for 3 years following the date of the protected action;

G. Financial statements:

(1) For projects encumbered by a federally assisted mortgage, copies of financial statements submitted to HUD or the United States Department of Agriculture or the Department; or

(2) For projects receiving project based assistance, audited financial statements, if available, or instead of these, compiled financial statements or certified copies of federal income tax returns;

(3) All financial statements or federal income tax returns shall be for the 3 fiscal years immediately preceding the date of the notice of intent;

H. A statement under penalty of perjury certifying that the owner has not taken any of the following actions, or any other action before the date of the notice of intent to avoid the owner's obligations in conjunction with the protected action:

(1) Termination without cause of the lease of any tenant occupying an assisted unit;

(2) Alteration of any of the terms and conditions of executed leases of existing tenants;

(3) Interference with any existing rights of tenants to occupy their units in the assisted project under existing leases or under any applicable federal, state, or local law;

(4) *Interference with the rights of applicants or eligible prospective tenants to obtain housing in the assisted project in accordance with federal admission preferences, and other applicable federal, state, or local law governing admissions to subsidized housing or the allocation of housing subsidies;*

(5) *Interference with the efforts of individual tenants to obtain housing subsidies or other public assistance;*

(6) *Discrimination in the leasing of units in the project based on source of income or receipt of housing subsidies provided by governmental or other sources; and*

*I. Any other supporting documentation required by the Director.*

**.04 Form of Notice of Intent to Assisted Households.**

A. *In addition to the notices of intent sent under Regulation .03 of this chapter, the owner shall send a notice of intent to each assisted household in accordance with §7-202(b) of the Act and this regulation.*

B. *The owner shall submit a proposed notice of intent, application for extended tenancy, and extended tenancy lease to the Director for comment and approval at least 15 days before delivery to the assisted households. The notices, applications and leases shall be in a form approved by the Department.*

C. *The Director shall develop and make available to an owner on request, samples of a notice of intent, application for extended tenancy, and extended tenancy lease.*

D. *The Director will review a notice of intent and other forms received from an owner to determine whether:*

(1) *The notice of intent meets the requirements of the Act and these regulations;*

(2) *The owner is permitted to take the protected action in accordance with these regulations.*

E. *The Director will complete the review and notify the owner of the results within 30 days of receipt of the notice.*

**.05 Notices of Intent to Tenants — Delivery.**

A. *The property owner shall send a notice of intent that complies with the requirements of Regulation .04 of this chapter to each assisted household by U.S. mail, postage prepaid.*

B. *Simultaneously with the notice of intent, the owner shall send applications for extended tenancy and extended tenant leases to all assisted households that qualify as designated households.*

C. *Within 5 days of sending the required notices and forms to the assisted households, the owner shall send the Department by certified mail, return receipt requested, an affidavit signed by the property owner or property manager certifying:*

(1) *That the notice of intent complied with the requirements of the Act and these regulations; and*

(2) *The names and addresses of each assisted household to whom a notice of intent was sent.*

**.06 Time Frames.**

*The notice periods and corresponding lease extension periods may not commence until a notice of intent, which accurately and completely provides all the information required by the Act and these regulations, is served. If the notice of intent fails to provide all required information, it does not become effective until that information is provided.*

**05.10.04 Owner’s Offer of Right of First Purchase**

*Authority: Housing and Community Development Article, §§7-101 — 7-501, Annotated Code of Maryland*

**.01 Registration.**

A. *The following entities may register with the Secretary at any time, including after a notice of intent and owner’s offer of right of*

*first purchase have been sent to the Secretary, to receive owners’ offers of first purchase by sending a written request to the Secretary:*

(1) *Any legally organized tenant association or other group representing any of the tenants at any assisted project;*

(2) *Any nonprofit developer; and*

(3) *Any other developer unrelated to the owner and experienced in the ownership or operation of low income housing projects.*

B. *On receipt of an owner’s offer of right of first purchase, the Director shall provide the owner with a list of all entities registered under this regulation.*

C. *Not later than 10 days after the owner receives the list of entities registered to receive a copy of the offer, the owner shall send by certified mail, return receipt requested, the owner’s offer to any person or entity on the registration list.*

**.02 Acceptance of Owner’s Offer of Right of First Purchase.**

A. *The acceptance of an owner’s offer of a right of first purchase is governed by §§7-204—7-211 of the Act and this regulation.*

B. *In determining which party’s acceptance will most benefit the assisted households, the Secretary shall consider the following factors as applicable to each prospective purchaser:*

(1) *The duration of the low income rental restrictions for the project following the purchase;*

(2) *The number of units to receive or continue to receive, project-based rental assistance or other subsidies, under the prospective purchaser’s ownership of the project;*

(3) *Projected tenant rents for a period of at least 5 years under the prospective purchaser’s ownership;*

(4) *Tenant ownership and operation or ownership and operation by a nonprofit developer, local government, or local housing authority;*

(5) *The experience and expertise of the purchasers in the ownership and operation of low income residential rental property;*

(6) *The economic feasibility of the project following purchase;*

(7) *The type, nature, and extent of any proposed physical improvements to the project;*

(8) *The extent of any tenant services proposed by the prospective purchaser;*

(9) *The extent to which the proposed ownership would minimize financial hardship and displacement to the tenants; or*

(10) *Any other relevant factor, including the preferences of the tenants, as determined by the Secretary.*

**.03 Withdrawal of an Acceptance.**

A. *The original party which accepts or is authorized to accept an offer of the right of first purchase by the Secretary may withdraw its acceptance by a written notice to the owner, with a copy to the Department.*

B. *The party withdrawing its acceptance will forfeit the first \$10,000 of its deposit, unless any remaining party submits an acceptance of the owner’s offer.*

C. *In the event of a withdrawal, the owner, within 3 days of receipt of the notice of withdrawal shall notify in writing:*

(1) *All other parties who received a notice of a right of first purchase;*

(2) *All parties who submitted an acceptance; and*

(3) *The Department.*

D. *The withdrawal notice shall specify the terms of the owner’s offer and the rights of the parties receiving notice to submit an acceptance in accordance with the timeframes in the Act.*

**05.10.05 Tenant Protection Assistance**

Authority: Housing and Community Development Article, §§7-101 — 7-501, Annotated Code of Maryland

**.01 General.**

A tenant is entitled to tenant protection assistance, including relocation expenses and lease extensions, in accordance with §§7-212—7-219 of the Act.

**.02 Relocation Expenses.**

A. To receive the additional \$475 for relocation expenses authorized in the Act, the tenant shall submit reasonable documentation of actual and reasonable relocation expenses to the owner within 60 days after the tenant vacates the unit.

B. The owner shall pay the additional relocation expenses to the tenant within 15 days after the documented expenses are submitted to the owner.

**.03 Lease Extensions.**

A. The owner shall offer a lease extension for a period of at least 1 year from the date of the notice of intent to each assisted household that has not committed a material violation of the lease.

B. The owner shall include in each extended lease the criteria for early termination or cessation of the extended lease that are listed in §7-218 of the Act.

**.04 Designated Households.**

A. Designated households that do not receive an extended tenancy under the Act may be eligible for rental equivalent payments and relocation expense payments under §7-219(e) of the Act.

B. All designated households are eligible upon vacating their assisted unit for reimbursement by the project owner for ordinary relocation expenses payable to all assisted households in accordance with §7-212(b)(1) and (2) of the Act.

**.05 Designated Household Assistance — Records.**

A. The owner shall create and maintain accurate records that set forth:

- (1) The relocation and reimbursement expenses paid to each assisted household;
- (2) The rates of rent charged for the assisted units; and
- (3) Any other information concerning tenant protection assistance provided by the owner.

B. The records shall be retained and available for inspection by the Department for five years after the date of the notice of intent delivered to the tenants.

**05.10.06 Enforcement and Waivers**

Authority: Housing and Community Development Article, §§7-101 — 7-501, Annotated Code of Maryland

**.01 Due Diligence.**

A. Settlement agents conducting real estate settlements involving the sale of residential rental projects, or the release of federally-assisted mortgages or related documents encumbering the projects, shall make inquiries of the owner as to the nature of the project, and the possible termination of federal assistance which may be governed by the Act and these regulations.

B. If responses to the agent's inquiries, the nature of the transaction and related documents, or any information otherwise known to the settlement agent raises a reasonable possibility that a sworn statement under §7-307 of the Act is required, the settlement agent shall use its best efforts to procure and file a sworn statement with the Department, and if unable to comply, shall notify the

Department in writing before the settlement of the circumstances of the failure to deliver the sworn statement.

C. Settlement agents failing to comply with this regulation may be subject to civil liability and civil monetary penalties in accordance with the Act.

**.02 Waiver.**

The Secretary may, by written determination, waive or vary particular provisions of these regulations, provided that:

- A. The waiver is not inconsistent with the Act; and
- B. In the written determination of the Secretary, the application of the regulations in a specific case, or in an emergency situation, would be inequitable or contrary to the purposes of the Act, and would not substantially limit any significant protections to tenants required under the Act.

RAYMOND A. SKINNER  
Secretary of Housing and Community Development

**Title 08**  
**DEPARTMENT OF NATURAL**  
**RESOURCES**  
**Subtitle 02 FISHERIES SERVICE**

**Notice of Proposed Action**

[11-062-P]

The Secretary of Natural Resources proposes to:

- (1) Amend Regulations .02 and .04 and adopt new Regulations .07 and .08 under **COMAR 08.02.01 General**;
- (2) Amend Regulation .09 under **COMAR 08.02.03 Crabs**;
- (3) Repeal Regulation .09 under **COMAR 08.02.05 Fish**;
- (4) Amend Regulation .10 under **COMAR 08.02.11 Fishing in Nontidal Waters**; and
- (5) Amend Regulation .06 under **COMAR 08.02.18 Fishing Guide Provisions**.

**Statement of Purpose**

The purpose of this action is to modify licensing requirements. Specifically, this action creates a requirement for individuals licensed, permitted, or registered by the Department to update their address within 30 days of any change. A current address is important in aiding the Department in disseminating important information to licensees. Other State agencies and other units in the Department require address updates within 30 days or less.

This action also updates recreational licensing with the requirements of the new law passed by the Maryland General Assembly during the 2010 session (H.B. 1345). H.B. 1345 improved the existing recreational license structure and enabled the Department to meet the requirements of the Federal Angler Registry.

**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 Licensing Updates, Regulatory Staff, Fisheries Service, B-2, 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 February 28, 2011. A public hearing has not been scheduled.

**08.02.01 General**

Authority: Natural Resources Article, §§4-216, 4-604, 4-701 and 4-745, Annotated Code of Maryland

**.02 General Commercial License Requirements.**

A. — C. (text unchanged)

**.04 Free Fishing Days.**

A. (text unchanged)

B. During a free fishing day, a person may catch and possess finfish in the tidal and nontidal waters of the State for recreational purposes without an angler’s license, Chesapeake Bay [sportfishing] and coastal sport fishing license, or any fishing stamp normally required by the State, but shall otherwise observe all fishing laws and regulations.

C. (text unchanged)

**.07 Recreational Fishing License and Registration.**

A. *Nontidal Angler’s License.* A person shall be licensed in accordance with Natural Resources Article, §4-604, Annotated Code of Maryland, to fish in the nontidal waters of the State.

B. *Chesapeake Bay and Coastal Sport Fishing License and Registration.*

(1) A person shall be licensed or registered in accordance with Natural Resources Article, §4-745, Annotated Code of Maryland, to fish for finfish in the Chesapeake Bay or its tidal tributaries up to tidal boundaries or in State waters of the Atlantic Ocean and the Atlantic coastal bays and tributaries.

(2) *Special Licenses.*

(a) *Charter Boat License.* The Department may issue a special charter boat license decal that is valid for all individuals on a charter boat operated by a licensed fishing guide in tidal waters of the State to an individual who pays the fee set forth in Natural Resources Article, §4-745, Annotated Code of Maryland.

(b) *Recreational Boat License.*

(i) The Department may issue a special Chesapeake Bay and coastal sport fishing license decal, which when permanently affixed to a boat registered in any state shall authorize any person on the boat to fish for finfish in the Chesapeake Bay or in its tributaries up to tidal boundaries or in State waters of the Atlantic Ocean and the Atlantic coastal bays and tributaries, to an individual who pays the fee set forth in Natural Resources Article, §4-745, Annotated Code of Maryland; and

(ii) The license decal may not be used on a boat that has been hired to take persons fishing.

(3) *License Decals.* A decal issued in place of a special license described in §B(2) of this regulation:

(a) Shall be permanently affixed and displayed on either side of the forward half of the vessel for which issued;

(b) Is not transferable;

(c) Shall be color coded, dated, serialized, and of a size to be visible;

(d) Shall, when displayed, exempt all persons aboard from the requirement of possessing an individual license to fish recreationally; and

(e) May not exempt persons aboard from the registration requirement set forth in Natural Resources Article, §4-745, Annotated Code of Maryland.

(4) *Replacement Decals.* If the decal issued in place of a Chesapeake Bay and coastal sport fishing license is lost or destroyed, the person to whom the decal was originally issued may apply for replacement decal by submitting to the Department:

(a) An application on a form required by the Department that includes a statement regarding the need for replacement; and

(b) A fee of \$5.

(5) *Registration.* A person shall be registered in accordance with Natural Resources Article, §4-745, Annotated Code of Maryland prior to fishing in the following areas that do not require a fishing license:

(a) A free fishing area described in §D of this regulation with hook and line;

(b) On private real property bordering on tidal water as an owner or tenant of the property, or a spouse or an immediate family member who resides on the property with the owner or tenant; and

(c) On a boat licensed as a recreational boat as described in §B(2)(b) of this regulation.

(6) *Possession of License or Registration.*

(a) The Chesapeake Bay and coastal sport fishing license or registration shall be in the possession of the person fishing and is not transferable.

(b) In addition to possession of the Chesapeake Bay and coastal sport fishing license or registration, the person fishing shall also possess a separate form of identification.

C. *Consolidated Senior Sport Fishing License.* A Maryland resident in the calendar year in which they attain the age of 65 shall be licensed in accordance with Natural Resources Article, §4-216, Annotated Code of Maryland, to fish for finfish in the nontidal waters of the State, Chesapeake Bay and its tributaries, or in State waters of the Atlantic Ocean and the Atlantic coastal bays and tributaries.

D. *Free Fishing Areas.* An individual fishing in an area described in this section shall be registered in accordance with Natural Resources Article, §4-745, Annotated Code of Maryland, and is exempt from all other license fees and requirements.

(1) North East — North East Community Park at mouth of North East Creek.

(2) Chestertown — Maryland Route 213 Bridge over Chester River.

(3) Cambridge — Long Wharf from south end of city-owned bulkhead associated with the Municipal Yacht Basin within Cambridge Creek to the end of east breakwater at mouth of the Municipal Yacht Basin.

(4) Denton — Pier associated with G. Daniel Crouse Memorial Park on the east side of Choptank River north of Maryland Route 404 Bridge.

(5) Sharptown — Pier and town dock off Ferry Street on the Nanticoke River.

(6) Salisbury — Designated city-owned bulkhead on the Wicomico River between Mill Street and Division Street.

(7) Snow Hill — All city-owned riverfront property, which includes Byrd Park, Sturgis Park, and city bulkheading adjacent to the municipal parking lot near the Route 12 bridge over the Pocomoke River.

(8) Pocomoke City — City docks from Laurel Street boat ramp to U.S. Route 13 overpass and Winter Quarter dock on Pocomoke River.

(9) Havre de Grace — Tydings Memorial Park within designated area, and pier at the end of Congress Street.

(10) Baltimore County — Cox’s Point on Back River and Deep Creek.

(11) Baltimore City — Canton Recreational Pier at Boston Street, Hull Street Recreational Pier, and Middle Branch Park from fishing pier south of the Hanover — Pottee Street Bridges, to Hanover Street Bridge over Middle Branch.

(12) Annapolis — Maryland Route 450 bridge over the Severn River.

(13) Worton — Bridge No. K-004 over Still Pond Creek on Still Pond Creek Road near Chestertown.

(14) Snow Hill — County bridge on Porter’s Crossing Road west of U.S. Route 113 and east of Route 354 and Pocomoke River.

(15) Pocomoke City — County-owned dock at Cedar Hall Landing near western terminus of Route 371 on Pocomoke River.

(16) Wicomico County — Tyaskin Park — County-owned park on Weitpquin Creek west of Route 349 at Tyaskin.

(17) Charles County — Friendship Landing — County-owned pier and property adjacent to the pier off Friendship Landing Road southeast of Ironsides Riverside Road (Route 425) on Nanjemoy Creek.

(18) Cecil County — Charlestown — Town-owned stone wharf on the Northeast River near the corner of Conestoga and Water Streets and the historic site of Charlestown Wharf.

(19) Princess Anne — The Manokin River Park along approximately 350 feet of the south bank of the Manokin River west of the bridge at Somerset Avenue and the west side of that bridge.

**.08 Change of Address.**

A. A person who holds or is eligible to renew a license, registration, or permit, issued under Natural Resources Article, Title 4, Annotated Code of Maryland, or its implementing regulations shall update the person’s address of record within 30 days of any change.

B. Address updates shall be submitted in writing in the form and manner prescribed by the Department.

C. Unless updated, the address of record is the address a person provides to the Department when applying for or renewing a license, registration, or permit issued under Natural Resources Article, Title 4, Annotated Code of Maryland, or its implementing regulations.

**08.02.03 Crabs**

Authority: Natural Resources Article, §4-745, Annotated Code of Maryland

**.09 Recreational Crabbing Licenses — Chesapeake Bay and Its Tidal Tributaries.**

A. Recreational Crabbing License.

(1) (text unchanged)

(2) The annual fee for a recreational crabbing license to catch or attempt to catch crabs for recreational purposes from the waters of the Chesapeake Bay and its tidal tributaries with the gear specified in §A(1) of this regulation is:

(a) (text unchanged)

(b) For a Maryland resident, in possession of a Maryland Chesapeake Bay and coastal sport fishing license or a resident consolidated senior sport fishing license — \$2;

(c) (text unchanged)

(3) (text unchanged)

B. (text unchanged)

C. Complimentary Recreational Crabbing License.

(1) (text unchanged)

(2) If a recreational crabbing boat licensee or a Chesapeake Bay and coastal sport fishing boat licensee is in possession of the complimentary recreational crabbing license, the licensee may:

(a) — (b) (text unchanged)

D. Exceptions. An individual who catches or attempts to catch crabs for recreational purposes in the waters of the Chesapeake Bay and its tidal tributaries is not required to have a recreational crabbing license if the individual:

(1) — (2) (text unchanged)

(3) Is crabbing for recreational purposes in an area which has been designated by the Department in [COMAR 08.02.05.09G] COMAR 08.02.01.07C as a free fishing area;

(4) — (6) (text unchanged)

E. (text unchanged)

**08.02.11 Fishing in Nontidal Waters**

Authority: Natural Resources Article, §4-745, Annotated Code of Maryland

**.10 Dividing Lines, Tidal and Nontidal Waters.**

The following boundaries are designated as official dividing lines for tidal and nontidal waters. These boundary lines are for the purpose of delineating those areas in which nontidal fishing licenses or Chesapeake Bay [sportfishing] and coastal sport fishing licenses are required and tidal or nontidal fishing regulations apply, and have no other legal significance.

A. — M. (text unchanged)

**08.02.18 Fishing Guide Provisions**

Authority: Natural Resources Article, §4-745, Annotated Code of Maryland

**.06 General Provisions.**

A. Licensee Requirements. In addition to a type NT, NTT, or L license, a licensee shall possess, as applicable, the following when engaged in fishing guide activities:

(1) (text unchanged)

(2) A valid Chesapeake Bay and coastal sport fishing license or registration in accordance with Natural Resources Article, §4-745, Annotated Code of Maryland;

(3) — (4) (text unchanged)

B. (text unchanged)

C. Angler Requirements. An individual guided by a licensee shall possess, as applicable:

(1) (text unchanged)

(2) A valid Chesapeake Bay and coastal sport fishing license or registration in accordance with Natural Resources Article, §4-745, Annotated Code of Maryland; and

(3) (text unchanged)

D. — H. (text unchanged)

JOHN R. GRIFFIN  
Secretary of Natural Resources

**Subtitle 02 FISHERIES SERVICE**

**08.02.01 General**

Authority: Natural Resources Article, §4-701, Annotated Code of Maryland

**Notice of Proposed Action**

[11-061-P]

The Secretary of Natural Resources proposes to amend Regulation .05 under COMAR 08.02.01 General.

**Statement of Purpose**

The purpose of this action is to modify the number of commercial fishing license authorization targets. The target numbers are based on LCC buy backs, license upgrades to an unlimited tidal fish license and mathematical errors in previous proposals and are correct as of December 3, 2010.



**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 an economic impact on the agency.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:		
(1) License buy backs	(R-)	\$6,650
(2) License conversions	NONE	Indeterminable
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude

D. On regulated industries or trade groups: NONE

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: NONE

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

A(1). There is a potential economic impact to the Department because of the decrease of authorized limited crab harvester licenses (LCC) by 133 licenses, which have been bought back by the Department. The total potential loss of revenue from license sales or renewals resulting from the lowering of the LCC target by 133 is \$6,650 (at a cost of \$50 a license).

A(2). Modifying the authorization target number of licenses will not increase the total number of licenses or income. Authorization target numbers will be adjusted to reflect a conversion of each authorized activity into a comprehensive Unlimited Tidal Fish License.

**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 2010 License Targets, Regulatory Staff, Department of Natural Resources Fisheries Service, B-2, 580 Taylor Avenue, 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 February 28, 2011. A public hearing has not been scheduled.

**.05 Targets for the Number of Tidal Fish License Authorizations and Apprenticeship Permits.**

A. The targets for the number of tidal fish license authorizations issued by the Department are the number of authorizations issued between September 1, 1998, and March 31, 1999, including adjustments made annually according to specifications listed in §B of this regulation, listed by the following categories:

Abbreviation	Authorization	Number
FGR	Fishing Guide Resident	[490] 480
FGN	Fishing Guide Nonresident	56
HLI	Finfish—Hook and Line	[306] 294
FIN	Unlimited Finfish Harvester	[278] 269
LCC	Limited Crab Harvester	[3,318] 3,125
CB3	Crab Harvester—300 Pots	[259] 258
CLM	Clam Harvester	15
OYH	Oyster Harvester	[762] 743
ODB	Oyster Dredge Boat	3
CTL	Conch, Turtles, and Lobster Harvester	10
TFL	Unlimited Tidal Fish	[2,110] 2,135

B. — I. (text unchanged)

JOHN R. GRIFFIN  
Secretary of Natural Resources

**Subtitle 02 FISHERIES SERVICE**

**08.02.04 Oysters**

Authority: Natural Resources Article, §§4-11A-04 and 4-11A-05, Annotated Code of Maryland

**Notice of Proposed Action**

[11-059-P-I]

The Secretary of Natural Resources proposes to amend Regulation .17 under **COMAR 08.02.04 Oysters**.

**Statement of Purpose**

The purpose of this action is to incorporate by reference “Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (December 2010)”. This document contains coordinates for all public shellfish fishery areas (PSFAs) in the Chesapeake Bay and its tidal tributaries.

The September 2010 document established PSFAs 119 and 121 in the Patuxent River. These PSFAs are modified in this proposal to clearly delineate around the existing aquaculture enterprise zone (AEZ) within each area. The coordinates for the two AEZs as described in COMAR 08.02.23.05 are now removed from the surrounding PSFAs along with the 150-foot buffer zone as required by Natural Resources Article, §4-11A-05, Annotated Code of Maryland. The action also adds two new PSFAs (PSFAs 176 and 177) in the South River. These PSFAs were established using commercial harvest records.

Finally, this action incorporates shell and/or seed planting areas that had been planted within the past 6 years into three existing PSFAs (PSFAs 7, 95, and 110) and one new PSFA (PSFA 175). The money used to plant in these areas came from the industry through the oyster surcharge and taxes collected on each bushel of oysters sold. The Final Programmatic Oyster Environmental Impact

Statement (EIS) found that the habitat improvement is gradually lost as planted shell becomes covered in sediment. The EIS concluded that after an average of 5½ years the bar is no longer functioning as quality habitat. Therefore, this proposal designates areas planted within the past 6 years with seed or shell as PSFAs for use by the industry.

**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 may have an economic impact on the regulated industry.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
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:		
(1) Commercial Watermen	(+)	\$205,566.33
(2) Aquaculture Industry	(-)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

D(1). Areas Being Added to PSFAs may have a positive economic impact for commercial watermen because the seed/oysters will be made exclusively available to them as part of the PSFAs. The amount was calculated based on the amount of oyster seed/shell planted at the sites. The initial seed numbers are modified to reflect mortality after being planted. The mortality rates applied were based on studies done by the Oyster Recovery Partnership. First year mortality is estimated at 80% while each following year in the water would have an additional 40% mortality applied. The final number of oysters is then divided by 300 to estimate the number of bushels available to be harvested now and multiplied by \$35 per bushel, which is the current market price.

D(2). Areas being added to PSFAs may have a negative economic impact to the aquaculture industry as these four areas will no longer be available for leasing. It is not possible to determine the impact since there are currently no applications to lease in these areas and there may never be any applications for these specific areas. An individual interested in aquaculture on an existing PSFA may petition for declassification of the PSFA in accordance with COMAR 08.02.23.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows. See assumptions under Estimate of Economic Impact.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to PSFA November 2010 Document, Regulatory Staff, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave., B-2, 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 February 28, 2011. A public hearing has not been scheduled.

Editor's Note on Incorporation by Reference  
 Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (December 2010) has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories appears on page 145 of this issue and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

**.17 Public Shellfish Fishery Area.**

A. [Public Shellfish Fishery Areas of the Chesapeake Bay and Its Tidal Tributaries (September 2010)] *Public Shellfish Areas of the Chesapeake Bay and Its Tidal Tributaries (December 2010)* designates public shellfish fishery areas in the Chesapeake Bay and its tidal tributaries and is hereby incorporated by reference.

B. (text unchanged)

JOHN R. GRIFFIN  
 Secretary of Natural Resources

**Subtitle 02 FISHERIES SERVICE**

**Notice of Proposed Action**

[11-057-P]

The Secretary of Natural Resources proposes to amend:

- (1) Regulation .02 under COMAR 08.02.05 Fish; and
- (2) Regulations .07 and .12 under COMAR 08.02.15 Striped Bass.

**Statement of Purpose**

The purpose of this action is to allow children 12 years old or younger to be aboard a vessel which is engaged in commercial hook and line fishing. Currently, these vessels are limited to two crew members per licensee or four people total on a vessel. This change was requested by the industry so that licensees may bring children on board their vessels while engaging in commercial fishing activity. The proposed action also clarifies that a charter boat captain or mate may land and possess one striped bass per boat per trip during the entire fall and summer season, including the portion in May as described in COMAR 08.02.15.09. Currently, the language is unclear as to whether the May portion of that season is included for these purposes.

**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 may have an economic impact on the regulated industry.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
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:		
Commercial hook and line watermen	(+)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

D. The proposed action may have a positive economic impact on the regulated industry. The industry had asked for this action. Part of the reason for this action is to allow watermen to take their children on their vessel with them. This will likely cut down on child care costs for these watermen.

**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 Striped Bass Commercial, Regulatory Staff, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave., B-2, 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 February 28, 2011. A public hearing has not been scheduled.

**08.02.05 Fish**

Authority: Natural Resources Article, §4-215, Annotated Code of Maryland

**.02 Definitions and General Fishing Prohibitions.**

A. (text unchanged)

B. Prohibitions and Limitations on Fishing in General.

(1) — (10) (text unchanged)

(11) [A] *Except as provided in §B(12) of this regulation, a commercial tidal fish licensee may not catch or possess fish of the species listed in Natural Resources Article, §4-215, Annotated Code*

of Maryland, except crabs or shellfish, for commercial purposes and have more than:

(a) — (b) (text unchanged)

(12) *Children 12 years old or younger may be on board a vessel engaged in commercial hook and line fishing in addition to any crew members and licensees as described in §B(11) of this regulation.*

[(12)] (13) — [(15)] (16) (text unchanged)

**08.02.15 Striped Bass**

Authority: Natural Resources Article, §4-215, Annotated Code of Maryland

**.07 Commercial Fishery.**

A. — D. (text unchanged)

E. Commercial Hook and Line Fishery Limitations.

(1) [A] *Except as provided in §E(5) of this regulation, a total of two crew members may assist a commercial tidal fish licensee with the appropriate striped bass allocation permit to catch striped bass with hook and line.*

(2) [A] *Except as provided in §E(5) of this regulation, a maximum of 4 individuals, including crew members, may be present on a vessel which is engaged in commercial hook and line fishing.*

(3) — (4) (text unchanged)

(5) *Children 12 years old or younger may be on board a vessel engaged in commercial hook and line fishing in addition to any crew members and licensees as described in §E(1) and (2) of this regulation.*

F. — G. (text unchanged)

**.12 General Restrictions.**

A. — F. (text unchanged)

G. Restrictions for Charter Boats.

(1) During a chartered fishing trip, the captain or mate:

(a) May not land or possess striped bass *for personal consumption* during the [Chesapeake Bay spring striped bass] season *described in Regulation .08 of this chapter;*

(b) May land and possess one striped bass per boat per trip during the [Chesapeake Bay summer and fall season] *seasons described in Regulation .09 of this chapter, to be retained for personal consumption only.*

(2) (text unchanged)

H. (text unchanged)

JOHN R. GRIFFIN  
Secretary of Natural Resources

**Subtitle 02 FISHERIES SERVICE**

**08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure**

Authority: Natural Resources Article, §§4-206 and 4-701, Annotated Code of Maryland

**Notice of Proposed Action**

[11-060-P]

The Secretary of Natural Resources proposes to amend Regulations .02, .03, and .06 under COMAR **08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure.**

**Statement of Purpose**

The purpose of this action is to amend the existing commercial fishing license and late-reporting penalty systems. The proposal

clarifies and corrects existing text in the late-reporting penalty system. The Department proposes to modify the commercial fishing license penalty system based upon changes suggested by the Tidal Fisheries and Sport Fisheries Advisory Commissions' Penalty Workgroup. These changes include adding several new violations to the system. The proposed additions include violating any closed fishing season; using anchored gill nets illegally to harvest striped bass; using unattended gill nets to harvest striped bass; harvesting excessive amounts over a quota or bushel limit of oysters, summer flounder, or striped bass; and illegally using fishing gear belonging to another. The action also increases penalties for specific violations based on input from the Penalty Workgroup. The proposed action removes the list of penalties without points and adds these to the point's system tier with the corresponding length of suspension. Additionally, existing text in the commercial fishing license penalty system has changed for clarification or correction purposes.

**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 Commercial Points and Reporting Suspensions, Regulatory Staff, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave., B2, 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 February 28, 2011. A public hearing will be held, February 1, 2011, at 6 p.m. in the Tawes State Office Building, C-1, 580 Taylor Ave., Annapolis, MD 21401.

**.02 Commercial License Suspension and Revocation.**

A. [A licensee] *An individual* shall be notified that [the licensee's] *the individual's* tidal fish license, authorization, or entitlement to engage in a particular activity or activities under a tidal fish license is *or may be* subject to suspension *or revocation* whenever the [licensee] *individual* has been convicted of [violating any of the provisions] *violations listed* in Regulation .03 of this chapter.

B. [At the time of notification] *If an individual is eligible for suspension or revocation*, the Department shall schedule the [licensee for a] *contested case hearing* to be conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.04 in the [licensee's] *individual's* general work area.

C. The Department may agree to a period of suspension *or revocation* with [a licensee] *an individual* before proceeding to a contested case hearing.

**D. [License] Suspension and Revocation.**

(1) The [license] suspension *and revocation* schedule in §D(3) of this regulation establishes the maximum number of days that [a] *an individual's* tidal fish license, authorization, or entitlement to engage in a particular activity or activities under a tidal fish license may be suspended *or revoked* through the accumulation of points. A lesser penalty may be imposed at the Department's discretion if the circumstances warrant it, to include consideration of the [licensee's] *individual's* disciplinary record and the [licensee's] *individual's* agreement to comply with any conditions that the Department may reasonably require.

(2) Points are assigned to convictions by tier *based on the severity of the violation*. [as follows:

Tier	Description	Points
(a) Tier I	A conviction of a basic violation of Natural Resources Article, Title 4, Annotated Code of Maryland, or regulations adopted under that title.	5
(b) Tier II	A violation that impacts a fishery resource in need of special protection or demonstrates a disregard for the law.	10
(c) Tier III	A serious violation that significantly impacts the fishery resource or demonstrates a willful intent to break the law.	15]

(3) [A licensee] *An individual* who in any 2-year period accumulates the number of points provided below shall be penalized in accordance with the following schedule:

Number of Points Accumulated in Any 2-Year Period	Maximum Period of Suspension or Revocation
10	[30 days] <i>30-day suspension</i>
15	[60 days] <i>60-day suspension</i>
20	[90 days] <i>90-day suspension</i>
25	[6 months] <i>180-day suspension</i>
30	[1 year] <i>365-day suspension</i>
35	Revocation

(4) (text unchanged)

(5) In addition to any points assigned in accordance with the schedule established in Regulation .03 of this chapter, conviction of any of the following violations shall result in:

(a) A 30-day suspension for a first offense, suspension for one complete season for a second offense, and a 5-year revocation for a third offense, for:

- (i) Operation when a license is suspended or revoked;
- (ii) Selling or possessing untagged striped bass, unreported striped bass, or untagged and unreported striped bass, in an amount of more than 200 pounds above the permitted quota;
- (iii) Using drift gill net in excess of 8 inch mesh;
- (iv) Using single strand monofilament net;
- (v) Catching or possessing oversize striped bass, if catch has 12 or more fish over 40 inches showing intent to harvest oversize fish; or

(vi) Catching or possessing undersize oysters, if catch contains 50 percent undersize oysters in total catch or 50 percent in any bushel or container that holds more than half a bushel;

(b) The suspension of a individual's tidal fish license or authorization for a period of not less than 180 days and not exceeding 365 days during the oyster harvest season for:

(i) The unlawful harvest of oysters from a leased oyster bottom or from more than 150 feet within an oyster sanctuary, oyster reserve, or area closed to harvest by the Department of the Environment, when the area is designated and marked with buoys or other signage or the individual knew or should have known that the harvest of oysters from the area was unlawful; or

(ii) A violation of a time restriction for the harvest or possession of oysters by more than 2 hours;

(c) A 90-day suspension for a first offense, 1-year suspension for a second offense, and a 5-year revocation for a third offense of harvesting clams 2 hours after the legal time period or 2 hours before the legal start time; and

(d) A 30-day suspension for a first offense, 90-day suspension for a second offense, and 365-day suspension for a third offense of tagging striped bass harvested by one gear type with a tag indicating another gear type. ]

[(6)] (5) [A person] *Unless an individual has accumulated 35 points or more on their license, an individual who receives a third suspension within a 6-year period [under any provisions] pursuant to any provisions of Regulation .02 or .03 of this chapter is subject to [a license] an additional suspension [or revocation for a minimum of 365 days and a maximum of a license revocation not to exceed 5 years.] of their tidal fish license, authorization, or entitlement to engage in a particular activity or activities under a tidal fish license for a period not to exceed 5 years.*

[E. The Department may suspend the tidal fish license at the beginning of the fishing season following the fishing season within which the particular violation or violations occurred.]

[F.] E. General Prohibitions.

(1) If [a person's] *an individual's* tidal fish license, authorization, or entitlement to [participate] *engage* in a particular activity or activities under a tidal fish license is suspended or revoked that [person may] *individual is not and may not be authorized to engage or work in the fishery or fisheries* for which the license, authorization, or entitlement was suspended or revoked whether or not [it] *the activity or activities* [requires] *require the use of another license, during the suspension or revocation period.*

(2) *When an individual's tidal fish license, authorization, or entitlement to engage in a particular activity or activities under a tidal fish license is suspended or revoked, the Department may prohibit that individual from engaging in any commercial fishing activities whether or not the activities require the use of another license, during the suspension or revocation period.*

(3)*Unless authorized by Natural Resources Article, §4-702, Annotated Code of Maryland, if an individual's license, authorization, or entitlement to deal in seafood is suspended or revoked, that individual may not deal in seafood harvested by another individual whether or not the activity requires the use of another license, during the suspension or revocation period.*

[(2)] (4) [A person] *An individual* whose license has been revoked may not apply for a new license through the apprenticeship program or transfer or purchase a license until after the revocation period has expired.

**.03 Point Assignment Schedule.**

A. [The Department shall maintain a record of each licensee's convictions for violation of offenses chargeable under Natural Resources Article, Title 4, Annotated Code of Maryland.] For each conviction of a chargeable offense listed in [§§E—G] §§D—I of this regulation, the Department shall enter on the record of the [licensee] *individual* the number of points listed for that particular conviction.

B. *Definitions.*

(1) For purposes of [these regulation] *this chapter*, ["conviction" includes any: ] *the following terms have the meanings indicated.*

(2) *Terms Defined.*

(a) "Conviction" means:

[(1)](i) [Guilty] *A guilty* verdict or accepted plea of nolo contendere; or

[(2)](ii) [Admission] *An admission* of guilt to any charge made by the prepayment of the applicable fine instead of appearing for trial.

(b) "Revocation" means *the act of the Department permanently rescinding a fishing license or authorization.*

C. The points associated with each conviction are described in [§§E—G] §§D—I of this regulation. *All statutory references are to Natural Resources Article, Annotated Code of Maryland, unless otherwise noted.*

[D. Point Assignment Schedule. The number of points shown in §§E—G of this regulation shall be assessed against a tidal fish licensee, except a fishing guide licensee, licensed under Natural

Resources Article, §4-701, Annotated Code of Maryland, for each conviction as set forth below.]

[E.] D. Tier I. The following violations are Tier I violations. [A licensee] *An individual* who receives a [single] conviction for a Tier I violation receives 5 points], but no immediate suspension].

[#]	Statute or Regulation	Type	Description
1 — 2	(text unchanged)		
3	4-1105, 4-1009.1, 4-1014, 4-1014.1, 4-1014.2, 4-1014.3, COMAR 08.02.04.13, COMAR 08.02.04.14, COMAR 08.02.04.15	Area	Harvesting Oysters on Closed Areas, Reserved Areas, or Sanctuaries: less than 150 feet within an area
4 — 5	(text unchanged)		
6	4-1012, COMAR 08.02.04.12	Area	[Power] Dredging for Oysters in Prohibited Areas: less than 150 feet within an area
7 — 22	(text unchanged)		
23	COMAR [08.02.05.02B(13)] 08.02.05.02B(15), COMAR 08.02.21.03K	Gear	Setting Fyke Nets in Certain Prohibited Areas From February 1st Through March 31st
24 — 25	(text unchanged)		
26	COMAR [08.02.07.01A—C] 08.02.07.02, COMAR 08.02.07.03	Gear	Violating Requirements Pertaining to [the] Hard-Shell Clam [Scrapes and Rakes in Worcester County: (a) number of handscrapes or rakes which may be used; or (b) size restriction]
27	COMAR 08.02.03.07C(2)—(3)	Season	Failing to Remove 5 or More Crab Pots [by the End of the Season] Within 30 Days of the End of the Season [: failure to remove 5 pots or more]
28 — 30	(text unchanged)		
[31]	COMAR 08.02.07.03E	Size	Possessing Undersized Hard-Shell Clams: 3 bags or more with over 10% per bag ]
[32] 31 — [40] 39	(text unchanged)		

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[41] 40	COMAR [08.02.06.02B] 08.03.11.04, COMAR 08.03.11.09	Species— Other	Possess/Destroy/Disturb Terrapin Eggs
[42] — [44] 43	(text unchanged)		
[45]	COMAR 08.02.07.01A—C	Gear	Violating Requirements Pertaining to the Hard- Shell Clam Scrapes and Rakes in Worcester County: (a) number of handscrapes or rakes which may be used; or (b) size restrictions]
[46] 44 — [55] 53	(text unchanged)		
[56] 54	COMAR [08.02.15.05A(3)(b)] 08.02.15.05A, 4-2A- 03, 4-215	Species— Protected	Violating Requirements Pertaining to Tagging Striped Bass: 5-10 fish
[57] 55	4-2A-05, COMAR 08.02.15.07	Species— Protected	Violating Requirements Pertaining to Striped Bass Size Limits: 6-10 [Fish] fish
[58] 56 — [64] 62	(text unchanged)		
[65] 63	4-1007, COMAR 08.02.02.12B, COMAR 08.02.07.03C	Area	Harvesting <i>clams</i> within 150 feet of a (a) natural oyster bar, (b) leased area, (c) public shellfish fishery area, or (d) sanctuary
64	COMAR 08.02.15	Species— Protected	20% — 49% Over Striped Bass Quota
65	COMAR 08.02.05.12	Species — Protected	20% — 49% Over Summer Flounder Quota

[F.] E. Tier II. The following violations are Tier II violations. [A licensee] An individual who receives a [single] conviction for a Tier II violation receives 10 points [and may be suspended for 30 days].

[#]	Statute or Regulation	Type	Description
1	(text unchanged)		
2	4-11A-15, COMAR [08.02.23.05] 08.02.23	Area	Illegally Harvesting Oysters [in an Aquaculture Enterprise Zone] on a Lease
3 — 7	(text unchanged)		
8	COMAR 08.02.15.07	Species — Protected	Violating Requirements Pertaining to Striped Bass Size Limits: 11 or [More Fish] more fish

9 — 12	(text unchanged)		
13	COMAR 08.02.04.03B—C, 4-215	Species— Protected	Time for Taking Oysters: (a) more than 2 hours after sunset; [or] (b) any time before sunrise; or (c) on a closed day
14 — 15	(text unchanged)		
16	4-1015, 4-1015.1, COMAR 08.02.04.11	Species— Protected	Possessing Unculled or Undersized Oysters: over 15% per bushel
17 — 21	(text unchanged)		
22	COMAR 08.02.02.12B, COMAR 08.02.07.03C	Area	Harvesting <i>clams</i> more than within 150 feet of a (a) natural oyster bar, (b) leased area, (c) public shellfish fishery area, or (d) sanctuary
23 — 25	(text unchanged)		
26	COMAR 08.02.15.05	Species— Protected	Tagging Striped Bass With an Incorrect Gear Tag
27	COMAR 08.02.15	Species— Protected	50% — 99% Over Striped Bass Quota
28	COMAR 08.02.05.12	Species — Protected	50% — 99% Over Summer Flounder Quota
29	COMAR 08.02.15.07	Gear	Harvesting or Attempting to Harvest Striped Bass With an Unlawful Gill Net

[G.] F. Tier III. The following violations are Tier III violations. [A licensee] An individual who receives a [single] conviction for a Tier III violation receives 15 points [and may be suspended for 60 days].

[#]	Statute or Regulation	Type	Description
1— 9	(text unchanged)		
[10]	COMAR 08.02.04.03A, 4-215	Season	Harvesting Oysters Out of Season
11	COMAR 08.02.03.11C, COMAR 08.02.03.12C, 4-215	Season	Crabbing During a Closed Season
12	COMAR 08.02.21.03A, 4-215	Season	Possessing Yellow Perch for Commercial Purposes During a Closed Season ]
[13] 10	(text unchanged)		
[14]	COMAR 08.02.12.04A, 4-2A-05(c)	Species— Protected	Taking Endangered or Threatened Species of Fish
15	4-732, COMAR 08.02.05.02B(5) and (7), COMAR 08.02.15.03	Species— Protected	Violating Any Regulation Pertaining to Striped Bass Spawning Areas During Spawning Season

16	4-731	Species— Protected	Illegally Selling, Purchasing, or Transporting Striped Bass]
[17] 11	(text unchanged)		
[18]	4-739, COMAR 08.02.05.11	Species— Protected	Violating Regulations Concerning the Catch, Possession, or Sale of Sturgeon ]
[19] 12	4-1015, 4-1015.1, COMAR 08.02.04.11	Species— Protected	Possessing Unculled or Undersized Oysters: over [25 percent] 25% per bushel
[20] 13	(text unchanged)		
[21] 14	COMAR 08.02.03.07D(5), 4-803, 4-215, 4-504	Species— Protected	Fishing A Crab Pot Licensed to Another Individual
[22] 15	(text unchanged)		
[23]	4-11A-15	Intentional	Destroying Boundary Markers for Leased Oyster Ground
24	4-503	Intentional	Dynamiting
25	4-510	Intentional	Violating Regulations Pertaining to Spear Guns ]
[26] 16	(text unchanged)		
[27]	4-708, 4-701(1)(2), COMAR 08.02.13.03F	Intentional	Operating When License is Suspended or Revoked
28	4-210(b), 4-701(f)	Intentional	Violating Fishing Guide Requirements: failure to obtain the federal license required to operate a vessel carrying passengers for hire.
29	COMAR 08.02.24A(3), COMAR 08.02.05.24B(3)	Intentional	Unlawfully Finning Sharks or Dogfish
30	COMAR 08.02.15.04, 4-215	Intentional	Possessing Striped Bass for Commercial Purposes Without a Striped Bass Allocation. ]
17	COMAR 08.02.15	Species— Protected	100% or More Over Striped Bass Quota
18	COMAR 08.02.05.12	Species — Protected	100% or More Over Summer Flounder Quota
19	4-1009(b)—(d), 4-1015.1(b), COMAR 08.02.04.06	Species— Protected	Exceeding Oyster Daily Catch Limit: 25% over catch limit
20	COMAR 08.02.15	Gear	Harvesting or Attempting to Harvest Striped Bass with an Anchored Gill Net
21	COMAR 08.02.05, COMAR 08.02.23, COMAR 08.02.15, COMAR 08.02.22, COMAR 08.02.03, COMAR	Season	Violating Closed Commercial Fishing Seasons

	08.02.04, COMAR 08.02.21, Natural Resources Article, Title 4		
22	4-505	Intentional	Fishing Gear Belonging to Another Individual

G. Tier IV. The following violations are Tier IV violations. An individual who receives a conviction for a Tier IV violation receives 20 points.

	Statute or Regulation	Type	Description
1	COMAR 08.02.15	Intentional	Selling or Possessing Untagged Striped Bass, Unreported Striped Bass, or Untagged and Unreported Striped Bass, In an Amount of More Than 200 Pounds Above the Permitted Quota
2	COMAR 08.02.15	Gear	Using a Drift Gill Net with Mesh in Excess of 8 Inches
3	4-710	Gear	Using a Single Strand Monofilament Gill Net
4	COMAR 08.02.15	Intentional	Catching or Possessing Oversized Striped Bass, If Catch Has 12 or More Fish Over 40 inches
5	COMAR 08.02.04	Intentional	Catching or Possessing Undersized Oysters, If Catch Contains 50% Undersized Oysters in Total Catch or 50% in Any Bushel or Container That Holds More Than Half a Bushel
6	COMAR 08.02.04	Intentional	Harvesting Clams 2 Hours After the Legal Time Period or 2 hours Before the Legal Start Time
7	COMAR 08.02.12.04A, 4-2A-05(c)	Species— Protected	Taking Endangered or Threatened Species of Fish
8	4-732, COMAR 08.02.05.02B(5) and (7), COMAR 08.02.15.03	Species— Protected	Violating Any Regulation Pertaining to Striped Bass Spawning Areas During Spawning Season

H. Tier V. The following violations are Tier V violations. An individual who receives a conviction for a Tier V violation receives 25 points.

	Statute or Regulation	Type	Description
1	4-739, COMAR 08.02.05.11	Species— Protected	Violating Regulations Pertaining to the Catch, Possession, or Sale of Sturgeon
2	4-11A-15	Intentional	Destroying Boundary Markers for Leased Oyster Ground
3	4-503	Intentional	Dynamiting
4	4-510	Intentional	Violating Requirements Pertaining to Spear Guns
5	50 C.F.R. §600.725	Intentional	Illegally Harvesting Striped Bass in the EEZ

I. Tier VI. The following violations are Tier VI violations. An individual who receives a conviction for a Tier VI violation receives 30 points.

	Statute or Regulation	Type	Description
1	4-708, 4-701(1)(2), COMAR 08.02.13.02E	Intentional	Operating When a License is Suspended or Revoked
2	4-701, 4-702, 4-704, 4-704.1		Operating Without a Required Commercial Fishing License or Authorization
3	4-210(b), 4-701(f)	Intentional	Violating Fishing Guide Requirements: failure to obtain the federal license required to operate a vessel carrying passengers for hire
4	COMAR 08.02.24A(3), COMAR 08.02.05.24B(3)	Intentional	Unlawfully Finning Sharks or Dogfish
5	COMAR 08.02.15.04, 4-215	Intentional	Possessing Striped Bass for Commercial Purposes Without a Striped Bass Allocation
6	16 U.S.C. § 3371—3378	Intentional	A Violation of the Lacey Act

J. In addition to any other applicable penalty, an individual may be suspended for a period of not less than 180 days and not exceeding 365 days during the oyster harvest season for:

(1) The unlawful harvest of oysters from a leased oyster bottom or from more than 150 feet within an oyster sanctuary, oyster reserve, or area closed to harvest by the Department of the Environment, when the area is designated and marked with buoys or other signage or the individual knew or should have known that the harvest of oysters from the area was unlawful; or

(2) A violation of a time restriction for the harvest or possession of oysters by more than 2 hours.

**.06 Commercial Fishing Records.**

A. — B. (text unchanged)

C. Reports.

(1) During the appropriate open seasons, the following reports shall be submitted to the Department monthly:

License Type or Authorization	Required Report
Finfish—Hook and Line	Daily Commercial Fisheries Catch Log
Finfish Harvester—All Gear	Daily Commercial Fisheries Catch Log
Unlimited Tidal Fish License	Daily Commercial Fisheries Catch Log, Daily Record of Commercial Crabbing, Maryland Monthly Oyster Report, Commercial Charter Boat [Captains] <i>Captain's</i> Daily Log, Monthly Softshell/Razor Clam Report, Monthly Hardshell Clam Report
Limited Crab Catcher, Crab Harvester, or Additional Crab Pot Authorizations	Daily Record of Commercial Crabbing

Oyster Harvester or Oyster Dredge Boat	Maryland Monthly Oyster Report
Conch, Turtles, and Lobster	Daily Commercial Fisheries Catch Log
Resident Fishing Guide	Commercial Charter Boat [Captains] <i>Captain's</i> Daily Log
Nonresident Fishing Guide	Commercial Charter Boat [Captains] <i>Captain's</i> Daily Log
Master Fishing Guide	Commercial Charter Boat Captain's Daily Log
Clam Harvester	Monthly Softshell/Razor Clam Report, Monthly Hardshell Clam Report

(2) (text unchanged)

(3) *The Commercial Charter Boat Captain's Daily Log is only required of a licensee that has paid for the charter boat license in accordance with Natural Resources Article, §4-745, Annotated Code of Maryland.*

D. (text unchanged)

E. In accordance with Natural Resources Article, §4-701(l), Annotated Code of Maryland, the Department may suspend a person's tidal fish license, authorization, or entitlement to engage in a particular activity or activities under a tidal fish license [for failing to submit] if the reports described in §C of this regulation are not received by the Department within 50 days of the due date described in §D of this regulation.

F. — K. (text unchanged)

JOHN R. GRIFFIN  
Secretary of Natural Resources

**Subtitle 02 FISHERIES SERVICE**

**08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure**

Authority: Natural Resources Article, §4-701, Annotated Code of Maryland

**Notice of Proposed Action**

[11-058-P]

The Secretary of Natural Resources proposes to adopt Regulations .07 and .08 under COMAR 08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure.

**Statement of Purpose**

The purpose of this action is to create a new penalty system for charter boat captains and fishing guides. This new system is similar to the existing commercial fishing license penalty system. The system consists of four tiers based on the gravity of the violation. Tier I infractions include basic issues such as minor size and harvest violations and accumulate five points but no immediate license suspension. Tier II violations are those that impact a fish species in need of special protection or otherwise demonstrate a willful disregard for the law. These violations earn ten points and a suspension of as much as 30 days. Tier III convictions are for serious violations that significantly impact the fishery or demonstrate a blatant intent to break the law. Significant violations of catch limits and other serious criminal actions are included in this category and they are worth 15 points and a suspension of as much as 60 days. Additionally, the system includes a fourth Tier which lists extremely egregious violations, such as guiding without a license or selling striped bass caught recreationally. These violations are eligible for 30



points and a 365-day suspension. This penalty system enables the Department to suspend a fishing guide’s license/authorization for up to 5 years once the guide receives three suspensions in any 5-year period.

**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 Charter Boat/Fishing Guide Penalty System, Regulatory Staff, Maryland Department of Natural Resources Fisheries Service, 580 Taylor Ave., B-2, 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 February 28, 2011. A public hearing will be held February 1, 2011, at 6 p.m. at the Tawes State Office Building, C-1, 580 Taylor Ave., Annapolis, MD 21401.

**.07 Commercial Charter Boat and Fishing Guide License Suspension Schedule.**

A. A person guiding fishing parties in Maryland in any capacity shall be notified that their tidal fish license, authorization, or entitlement to guide fishing parties may be subject to suspension or revocation whenever that fishing guide has been convicted for violating any of the provisions described in Regulation .08D-G of this chapter.

B. The Department may agree to a period of suspension or revocation with a fishing guide before proceeding to a contested case hearing. However, if the Department cannot agree to a period of suspension with a fishing guide, the Department shall schedule a contested case hearing to be conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.04 whenever the Department seeks to suspend a fishing guide’s tidal fish license, authorization, or entitlement to guide fishing parties.

**C. Suspension Schedule.**

(1) The suspension schedule in §C(3) of this regulation establishes the maximum number of days that a fishing guide’s tidal fish license, authorization, or entitlement to guide fishing parties may be suspended through the accumulation of points. A lesser penalty may be imposed at the Department’s discretion if the circumstances warrant it, to include consideration of the fishing guide’s disciplinary record and the fishing guide’s agreement to comply with any conditions that the Department may reasonably require.

(2) Points are assigned to convictions by tier based on the severity of the violation.

(3) A fishing guide who in any 2-year period accumulates the number of points provided below shall be penalized in accordance with the following schedule:

Number of Points Accumulated in Any 2-Year Period	Maximum Period of Suspension or Revocation
10	30-day suspension
15	60-day suspension
20	90-day suspension

25	180-day suspension
30	365-day suspension
35	Revocation

(4) The Department shall administer the point system in order to:

- (a) Deter future wrongdoing; and
- (b) Conserve fisheries.

(5) A fishing guide who has been suspended three times within a 6-year period under Regulation .07 or .08 of this chapter may have their tidal fish license, authorization, or entitlement to guide fishing parties suspended for up to 5 years.

D. When a fishing guide’s tidal fish license, authorization, or entitlement to guide fishing parties is suspended or revoked under Regulation .07 or .08 of this chapter, that fishing guide is not and may not be authorized to guide fishing parties or work for a guided fishing party during the suspension or revocation period.

**.08 Charter Boat/Fishing Guide Point Assignment Schedule.**

A. For each conviction of a chargeable violation listed in §§D — G of this regulation, the Department shall enter on the record of a fishing guide the number of points listed for that particular offense. Points accumulated under this regulation only apply to the entitlement to guide fishing parties or suspension or revocation of a tidal fish license or authorization to guide fishing parties.

B. The number of points specified in §§D — G of this regulation shall be assessed against a fishing guide for each conviction.

C. Points will only be assessed for violations that occurred during a guided fishing trip, unless otherwise noted in the table below by the phrase “points assessed for all violations”.

D. Tier I. The following violations are Tier I violations. A fishing guide who receives a conviction for a Tier I violation receives 5 points.

	STATUTE OR REGULATION	DESCRIPTION
(1)	COMAR 08.02.03.10E	Possession of Female Crabs: 5 — 10 per Bushel
(2)	COMAR 08.02.03.10	Crabs — Daily Catch Limit
(3)	COMAR 08.02.03.11B	Time for Catching Crabs
(4)	COMAR 08.02.11.03F	Keeping/Possessing Trout in Delayed Harvest Areas During Prohibited Times
(5)	COMAR 08.02.03.12B(2)	Crabs — Daily Catch Limit — Worcester County
(6)	COMAR 08.02.05.05	Possession or Sale of American Shad: 1 fish
(7)	COMAR 08.02.05.06	Possession or Sale of Hickory Shad: 1 fish
(8)	COMAR 08.02.05.10A	Size Limits — Bluefish: 1 — 2 fish under minimum size limit
(9)	COMAR 08.02.05.10B	Daily Catch Limits — Bluefish: 1 — 2 fish over daily catch limit
(10)	COMAR 08.02.05.12A(1)	Size Limits — Summer Flounder: 1 fish under minimum size limit
(11)	COMAR 08.02.05.12A(2)	Daily Catch Limits — Summer Flounder: 1 fish over daily catch limit
(12)	COMAR 08.02.05.13A	Size Limits — Weakfish and Spotted Sea Trout: 1 — 2 fish under minimum size limit
(13)	COMAR 08.02.05.13B	Daily Catch Limits — Weakfish or Spotted Sea Trout: 1 — 2 fish over daily catch limit

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(14)	COMAR 08.02.05.14A	Size Limits — Spanish Mackerel: 1 — 2 fish under minimum size limit
(15)	COMAR 08.02.05.14B	Daily Catch Limits — Spanish Mackerel: 1 — 2 fish over daily catch limit
(16)	COMAR 08.02.05.15A	Size Limits — Black Drum: 1 fish under minimum size limit
(17)	COMAR 08.02.05.15B	Daily Catch Limit — Black Drum: 1 fish over daily catch limit
(18)	COMAR 08.02.05.16A(1)	Size Limits — Red Drum: 1 fish under minimum size limit or over maximum size limit
(19)	COMAR 08.02.05.16A(2)	Daily Catch Limits — Red Drum: 1 fish over daily catch limit
(20)	COMAR 08.02.05.18A(1)	Size Limits — Croaker: 3 fish under minimum size limit
(21)	COMAR 08.02.05.18B	Daily Catch Limit — Croaker: 3 fish over daily catch limit
(22)	COMAR 08.02.05.19A	Size Limits — Black Bass (Largemouth and Smallmouth): 1 fish under minimum size limit
(23)	COMAR 08.02.05.19B	Daily Catch Limit — Black Bass (Largemouth and Smallmouth): 1 fish over daily catch limit
(24)	COMAR 08.02.05.20A(1)	Size Limits — Tautog: 1 fish under minimum size limit
(25)	COMAR 08.02.05.20A(2)	Possessing Tautog in December: 1 fish
(26)	COMAR 08.02.05.20C	Catch Limit — Tautog: 1 fish over daily catch limit
(27)	COMAR 08.02.05.21A(1)	Size Limits — Black Sea Bass: 3 fish under minimum size limit
(28)	COMAR 08.02.05.21A(2)	Catch Limits — Black Sea Bass: 3 fish over daily catch limit
(29)	COMAR 08.02.05.22A(1)	Size Limits — Scup: 5 fish under minimum size limit
(30)	COMAR 08.02.05.22C(3)	Catch Limit — Scup: 5 fish over daily catch limit
(31)	COMAR 08.02.05.28A(1)	Size Limits — Walleye: 1 fish under minimum size limit
(32)	COMAR 08.02.05.28C(2)	Catch Limits — Walleye: 1 fish over daily catch limit
(33)	COMAR 08.02.15.09A	Size Limits — Striped Bass — Early Season: 1 fish under minimum size limit or over maximum size limit
(34)	COMAR 08.02.15.09B(3)(a)	Daily Catch Limit — Striped Bass — Summer and Fall Season — Chesapeake: 1 fish over daily catch limit
(35)	COMAR 08.02.15.09B(3)(b)	Size Limits — Striped Bass — Summer and Fall Season — Chesapeake: 1 fish under minimum size limit or over maximum size limit
(36)	COMAR 08.02.15.10B	Daily Catch Limit — Striped Bass — Summer and Fall Season — Potomac River Tributaries: 1 fish over daily catch limit
(37)	COMAR 08.02.15.10C	Size Limits — Striped Bass — Summer and Fall Season — Potomac River Tributaries: 1 fish under minimum size limit or over maximum size limit

(38)	COMAR 08.02.21.02B	Size limits — Yellow Perch: 1 fish under minimum size limit
(39)	COMAR 08.02.21.02C	Daily Catch Limit — Yellow Perch: 1 fish over daily catch limit

E. Tier II. The following violations are Tier II violations. A fishing guide who receives a conviction for a Tier II violation receives 10 points.

	STATUTE OR REGULATION	DESCRIPTION
(1)	COMAR 08.02.03.10E	Possession of Female Crabs: 11 — 15 per Bushel
(2)	COMAR 08.02.11.03L	Zero Creel Limit Trout Fishing Areas — Violations
(3)	COMAR 08.02.11.04C(2)(a)(i)	Exceeding Trout Creel or Possession Limits in Put and Take Areas
(4)	COMAR 08.02.11.04C(2)(a)(ii)	Exceeding Trout Creel or Possession Limits in Other Areas
(5)	COMAR 08.02.11.04C(2)(i)	Exceeding Creel or Possession Limits — Nontidal Waters
(6)	COMAR 08.02.15.09A(2)	Daily Catch Limit — Striped Bass — Early Season — Chesapeake: 1 fish over daily catch limit
(7)	COMAR 08.02.15.09A(3)	Daily Catch Limit — Striped Bass — Early Season — Susquehanna Flats and Northeast River: 1 fish over daily catch limit
(8)	COMAR 08.02.15.09B(3)(a)	Daily Catch Limit — Striped Bass — Summer and Fall Season — Chesapeake: 2 fish over daily catch limit
(9)	COMAR 08.02.15.09A(2)	Size Limits — Striped Bass — Early Season — Chesapeake: 2 fish under minimum size limit or over maximum size limit
(10)	COMAR 08.02.15.09A(3)	Size Limits — Striped Bass — Early Season — Susquehanna Flats and Northeast River: 2 fish under minimum size limit or over maximum size limit
(11)	COMAR 08.02.15.09B(3)(b)	Size Limits — Striped Bass — Summer and Fall Season — Chesapeake: 2 fish under minimum size limit or over maximum size limit
(12)	COMAR 08.02.15.10B	Daily Catch Limit — Striped Bass — Summer and Fall Season — Potomac River Tributaries: 2 fish over daily catch limit
(13)	COMAR 08.02.15.10C	Size Limits — Striped Bass — Summer and Fall Season — Potomac River Tributaries: 2 fish under minimum size limit or over maximum size limit
(14)	COMAR 08.02.15.11A	Size Limits — Striped Bass — Atlantic Ocean and Coastal Bays: 1 fish under minimum size limit
(15)	COMAR 08.02.15.11B	Daily Catch Limit — Striped Bass — Atlantic Ocean and Coastal Bays: 1 fish over daily catch limit
(16)	COMAR 08.02.05.05	Possession or Sale of American Shad: 2 fish

F. Tier III. The following violations are Tier III violations. A fishing guide who receives a conviction for a Tier III violation receives 15 points.

(17)	COMAR 08.02.05.06	Possession or Sale of Hickory Shad: 2 fish
(18)	COMAR 08.02.05.10A	Size Limits — Bluefish: 3 fish under minimum size limit
(19)	COMAR 08.02.05.10B	Daily Catch Limits — Bluefish: 3 fish over daily catch limit
(20)	COMAR 08.02.05.12A(1)	Size Limits — Summer Flounder: 2 fish under minimum size limit
(21)	COMAR 08.02.05.12A(2)	Daily Catch Limits — Summer Flounder: 2 fish over daily catch limit
(22)	COMAR 08.02.05.13A	Size Limits — Weakfish and Spotted Sea Trout: 3 fish under minimum size limit
(23)	COMAR 08.02.05.13B	Daily Catch Limits — Weakfish or Spotted Sea Trout: 3 fish over daily catch limit
(24)	COMAR 08.02.05.14A	Size Limits — Spanish Mackerel: 3 fish under minimum size limit
(25)	COMAR 08.02.05.14B	Daily Catch Limits — Spanish Mackerel: 3 fish over daily catch limit
(26)	COMAR 08.02.05.15A	Size Limits — Black Drum: 2 fish under minimum size limit
(27)	COMAR 08.02.05.15B	Daily Catch Limit — Black Drum: 2 fish over daily catch limit
(28)	COMAR 08.02.05.16A(1)	Size Limits — Red Drum: 2 fish under minimum size limit or over maximum size limit
(29)	COMAR 08.02.05.16A(2)	Daily Catch Limits — Red Drum: 2 fish over daily catch limit
(30)	COMAR 08.02.05.18A(1)	Size Limits — Croaker: 4 — 6 fish under minimum size limit
(31)	COMAR 08.02.05.18B	Daily Catch Limit — Croaker: 4 — 6 fish over daily catch limit
(32)	COMAR 08.02.05.19A	Size Limits — Black Bass (Largemouth and Smallmouth): 2 fish under minimum size limit
(33)	COMAR 08.02.05.19B	Daily Catch Limit — Black Bass (Largemouth and Smallmouth): 2 fish over daily catch limit
(34)	COMAR 08.02.05.20A(1)	Size Limits — Tautog: 2 fish under minimum size limit
(35)	COMAR 08.02.05.20A(2)	Possessing Tautog in December: 2 fish
(36)	COMAR 08.02.05.20C	Catch Limit — Tautog: 2 fish over daily catch limit
(37)	COMAR 08.02.05.21A(1)	Size Limits — Black Sea Bass: 4 — 6 fish under minimum size limit
(38)	COMAR 08.02.05.21A(2)	Catch Limits — Black Sea Bass: 4 — 6 fish over daily catch limit
(39)	COMAR 08.02.05.22A(1)	Size Limits — Scup: 6 — 9 fish under minimum size limit
(40)	COMAR 08.02.05.22C(3)	Catch Limit — Scup: 6 — 9 fish over daily catch limit
(41)	COMAR 08.02.05.28A(1)	Size Limits — Walleye: 2 fish under minimum size limit
(42)	COMAR 08.02.05.28C(2)	Catch Limits — Walleye: 2 fish over daily catch limit

	STATUTE OR REGULATION	DESCRIPTION
(1)	4-205.1(h)	Interferences with the Abatement of a State of Nuisance
(2)	4-505 points assessed for all violations	Removing Fish, Nets or Gear of Another
(3)	4-511	Interference with State Buoys, Markers or Monuments
(4)	4-733	Possessing Fish Whose Size or Weight Cannot Be Determined
(5)	4-11A-15	Engaging in a Prohibited Act on an Aquaculture or Submerged Land Lease Area
(6)	COMAR 08.02.03.11C	Crabbing During a Closed Season
(7)	COMAR 08.02.03.10E	Possession of Female Crabs: Over 16 per Bushel
(8)	COMAR 08.02.05	Season Violations — Finfish — Tidal Waters: 1 — 9 fish
(9)	COMAR 08.02.05.01A	Unlawfully Fishing with a Spear Gun
(10)	COMAR 08.02.05.01B	Unlawfully Fishing with a Bow and Arrow
(11)	COMAR 08.02.05.01C	Fish Snagging
(12)	COMAR 08.02.05.05	Possessing American Shad: 3 or more fish
(13)	COMAR 08.02.05.06	Possessing Hickory Shad: 3 or more fish
(14)	COMAR 08.02.05.10A	Size Limits — Bluefish: 4 or more fish under minimum size limit
(15)	COMAR 08.02.05.10B	Daily Catch Limits — Bluefish: 4 or more fish over daily catch limit
(16)	COMAR 08.02.15.09A(2)	Daily Catch Limit — Striped Bass — Early Season — Chesapeake: 2 fish over daily catch limit
(17)	COMAR 08.02.15.09A(3)	Daily Catch Limit — Striped Bass — Early Season — Susquehanna Flats and Northeast River: 2 fish over daily catch limit
(18)	COMAR 08.02.15.09B(3)(a)	Daily Catch Limit — Striped Bass — Summer and Fall Season — Chesapeake: 3 fish over daily catch limit
(19)	COMAR 08.02.15.09A(2)	Size Limits — Striped Bass — Early Season — Chesapeake: 3 fish under minimum size limit or over maximum size limit
(20)	COMAR 08.02.15.09A(3)	Size Limits — Striped Bass — Early Season — Susquehanna Flats and Northeast River: 3 fish under minimum size limit or over maximum size limit
(21)	COMAR 08.02.15.09B(3)(b)	Size Limits — Striped Bass — Summer and Fall Season — Chesapeake: 3 fish under minimum size limit or over maximum size limit

PROPOSED ACTION ON REGULATIONS

(22)	COMAR 08.02.15.10B	Daily Catch Limit — Striped Bass — Summer and Fall Season — Potomac River Tributaries: 3 fish over daily catch limit	(44)	COMAR 08.02.05.20C	Catch Limit — Tautog: 3 or more fish over daily catch limit
(23)	COMAR 08.02.15.10C	Size Limits — Striped Bass — Summer and Fall Season — Potomac River Tributaries: 3 fish under minimum size limit or over maximum size limit	(45)	COMAR 08.02.05.21A(1)	Size Limits — Black Sea Bass: 3 or more fish under minimum size limit
(24)	COMAR 08.02.15.11A	Size Limits — Striped Bass — Atlantic Ocean and Coastal Bays: 2 fish under minimum size limit	(46)	COMAR 08.02.05.21A(2)	Catch Limit — Black Sea Bass: 3 or more fish over daily catch limit
(25)	COMAR 08.02.15.11B	Daily Catch Limit — Striped Bass — Atlantic Ocean and Coastal Bays: 2 fish over daily catch limit	(47)	COMAR 08.02.05.22A(1)	Size Limits — Scup: 10 or more fish under minimum size limit
(26)	COMAR 08.02.05.12A(1)	Size Limits — Summer Flounder: 3 or more fish under minimum size limit	(48)	COMAR 08.02.05.22C(3)	Catch Limit — Scup: 10 or more fish over daily catch limit
(27)	COMAR 08.02.05.12A(2)	Daily Catch Limits — Summer Flounder: 3 or more fish over daily catch limit	(49)	COMAR 08.02.05.23B(1)	Daily Catch Limit — Bluefin Tuna: 1 fish over daily catch limit
(28)	COMAR 08.02.05.13A(1)	Size Limits Spotted Sea Trout: 4 or more fish under minimum size limit	(50)	COMAR 08.02.05.23B(2)	Size Limit — Bluefin Tuna: 1 fish under minimum size limit
(29)	COMAR 08.02.05.13A(2)	Size Limits — Weakfish: 4 or more fish under minimum size limit	(51)	COMAR 08.02.05.23C(1)	Failing to Report Bluefin Tuna Catch to Reporting Station
(30)	COMAR 08.02.05.13B	Daily Catch Limits — Weakfish or Spotted Sea Trout: 4 or more fish over daily catch limit	(52)	COMAR 08.02.05.23C(2)	Failing to Obtain/Affix Bluefin Tuna Tail Tag
(31)	COMAR 08.02.05.14A	Size Limits — Spanish Mackerel: 4 or more fish under minimum size limit	(53)	COMAR 08.02.05.23D	Possession/Landing Bluefin Tuna That is not Whole
(32)	COMAR 08.02.05.14B	Daily Catch Limits — Spanish Mackerel: 4 or more fish over daily catch limit	(54)	COMAR 08.02.05.26C(1)	Daily Catch Limit — Billfish: 1 fish over daily catch limit
(33)	COMAR 08.02.05.15A	Size Limits — Black Drum: 3 or more fish under minimum size limit	(55)	COMAR 08.02.05.26C(2)	Size Limit — Billfish: 1 fish under minimum size limit
(34)	COMAR 08.02.05.15B	Daily Catch Limit — Black Drum: 3 or more fish over daily catch limit	(56)	COMAR 08.02.05.26D(1)	Failing to Report Billfish Catch to a Landing Station
(35)	COMAR 08.02.05.16A(1)	Size Limits — Red Drum: 3 or more fish under minimum size limit or over maximum size limit	(57)	COMAR 08.02.05.26D(2)	Failing to complete Billfish Catch Information
(36)	COMAR 08.02.05.16A(2)	Daily Catch Limit — Red Drum: 3 or more fish over daily catch limit	(58)	COMAR 08.02.05.26D(3)	Fail to Obtain/Affix a Billfish Tail Tag
(37)	COMAR 08.02.05.18A(1)	Size Limit — Croaker: 7 or more fish under minimum size limit	(59)	COMAR 08.02.05.26E	Billfish Landing Restrictions
(38)	COMAR 08.02.05.18B	Daily Catch Limit — Croaker: 7 or more fish over daily catch limit	(60)	COMAR 08.02.05.27C(1)	Daily Catch Limit — Swordfish: 1 fish over daily catch limit
(39)	COMAR 08.02.05.19A	Size Limits — Black Bass (Largemouth and Smallmouth): 3 or more fish under minimum size limit	(61)	COMAR 08.02.05.27C(2)	Size Limit — Swordfish: 1 fish under minimum size limit
(40)	COMAR 08.02.05.19B	Daily Catch Limit — Black Bass (Largemouth and Smallmouth): 3 or more fish over daily catch limit	(62)	COMAR 08.02.05.27D(1)	Failing to Report Swordfish Catch to a Landing Station
(41)	COMAR 08.02.05.19C(1)	Black Bass — Gear Restrictions (Largemouth and Smallmouth)	(63)	COMAR 08.02.05.27D(2)	Failing to Complete Swordfish Catch Information
(42)	COMAR 08.02.05.20A(1)	Size Limits — Tautog: 3 or more fish under minimum size limit	(64)	COMAR 08.02.05.27D(3)	Fail to Obtain/Affix a Swordfish Tail Tag
(43)	COMAR 08.02.05.20A(2)	Possessing Tautog in December: 3 or more fish	(65)	COMAR 08.02.05.27E	Swordfish Landing Restrictions
			(66)	COMAR 08.02.05.28A(1)	Size Limits — Walleye: 3 or more fish under minimum size limit
			(67)	COMAR 08.02.05.28C(2)	Catch Limits — Walleye: 3 or more fish over daily catch limit
			(68)	COMAR 08.02.11.01B	Fishing in a Put and Take Trout Stream During a Closed Season
			(69)	COMAR 08.02.11.03A(2)(a)(i)	Possession of Trout While Fishing in a Catch and Return Area
			(70)	COMAR 08.02.11.03F	Using or Possessing Illegal Gear in a Delayed Harvest Areas
			(71)	COMAR 08.02.11.03K	Keeping Black Bass Caught in a Catch-and-Return Black Bass Area
			(72)	COMAR 08.02.11.04C(1)(d) — (e)	Taking/Possessing Bass During Closed Season
			(73)	COMAR 08.02.11.04C(1) (a) — (n)	Season Violations — Nontidal Waters

(74)	COMAR 08.02.15.12A	Methods of Removing Striped Bass from the Water
(75)	COMAR 08.02.15.12 B(2)(b)	Prohibitions on Culling Striped Bass
(76)	COMAR 08.02.15.12 C	Striped Bass Filleting Violations
(77)	COMAR 08.02.21.02B	Size Limits — Yellow Perch: 11 or more fish under minimum size limit
(78)	COMAR 08.02.21.02C	Daily Catch Limit — Yellow Perch: 11 or more fish over daily catch limit
(79)	COMAR 08.02.22.02A	Possessing Prohibited Shark Species — Recreational
(80)	COMAR 08.02.22.02C	Size Limits for Designated Shark Species — Recreational: 1 fish under minimum fork length
(81)	COMAR 08.02.22.02D	Daily Catch Limit — Sharks: 1 fish over daily catch limit
(82)	COMAR 08.02.22.02E	Gear Restrictions — Sharks

G. Tier IV. The following violations are Tier IV violations. A fishing guide who receives a conviction for a Tier IV violation receives 30 points.

	STATUTE OR REGULATION	DESCRIPTION
(1)	4-210	Unlicensed Commercial Fishing Guide (Tidal)
(2)	4-503 points assessed for all violations	Dynamiting Streams
(3)	4-210.1	Unlicensed Commercial Fishing Guide (Non-Tidal)
(4)	4-701(b)(4)	Failure to Obtain a Tidal Fish License for Commercial Activity
(5)	4-731 points assessed for all violations	Unlawfully Selling Striped Bass
(6)	4-1004(a)	Taking Oysters or Clams for Commercial Purposes Without a License
(7)	COMAR 08.02.03.14A(3) points assessed for all violations	Offering to Sell or Selling Recreationally Caught Crabs
(8)	COMAR 08.02.03.14A(4) points assessed for all violations	Knowingly Buying or Attempting to Buy Recreationally Caught Crabs
(9)	COMAR 08.02.05.11	Taking/Possessing Atlantic Sturgeon
(10)	COMAR 08.02.05.19D(1)	Possessing Black Bass for Commercial Purposes
(11)	COMAR 08.02.05.23A	Possessing Bluefin Tuna During a Closed Season
(12)	COMAR 08.02.05.24A	Taking Spiny Dogfish During a Closed Season
(13)	COMAR 08.02.05.24B	Spiny Dogfish Finning Violation
(14)	COMAR 08.02.05.25	Taking Monkfish During Closed Season
(15)	COMAR 08.02.05.26B	Catch or Possess Billfish During a Closed Season
(16)	COMAR 08.02.05.27B	Catch or Possess Swordfish During a Closed Season

(17)	COMAR 08.02.12.02A, 4-2A-03	Taking, Possessing, Transporting, Exporting, Processing, Selling, Offering for Sale, Delivering, Carrying, or Shipping any Fish Listed as Endangered or Threatened
(18)	COMAR 08.02.15	Possession of Stripped Bass During a Closed Season
(19)	COMAR 08.02.15.09A(2)	Daily Catch Limit — Striped Bass — Early Season — Chesapeake: 3 or more fish over daily catch limit
(20)	COMAR 08.02.15.09A(3)	Daily Catch Limit — Striped Bass — Early Season — Susquehanna Flats and Northeast River: 3 or more fish over daily catch limit
(21)	COMAR 08.02.15.09B(3)(a)	Daily Catch Limit — Striped Bass — Summer and Fall Season — Chesapeake: 4 or more fish over daily catch limit
(22)	COMAR 08.02.15.09A(2)	Size Limits — Striped Bass — Early Season — Chesapeake: 4 or more fish under minimum size limit or over maximum size limit
(23)	COMAR 08.02.15.09A(3)	Size Limits — Striped Bass — Early Season — Susquehanna Flats and Northeast River: 4 or more fish under minimum size limit or over maximum size limit
(24)	COMAR 08.02.15.09B(3)(b)	Size Limits — Striped Bass — Summer and Fall Season — Chesapeake: 4 or more fish under minimum size limit or over maximum size limit
(25)	COMAR 08.02.15.10B	Daily Catch Limit — Striped Bass — Summer and Fall Season — Potomac River Tributaries: 4 or more fish over daily catch limit
(26)	COMAR 08.02.15.10C	Size Limits — Striped Bass — Summer and Fall Season — Potomac River Tributaries: 4 or more fish under minimum size limit or over maximum size limit
(27)	COMAR 08.02.15.11A	Size Limits — Striped Bass — Atlantic Ocean and Coastal Bays: 3 or more fish under minimum size limit
(28)	COMAR 08.02.15.11B	Daily Catch Limit — Striped Bass — Atlantic Ocean and Coastal Bays: 3 or more fish over daily catch limit
(29)	COMAR 08.02.22.02B	Season Violations for Designated Shark Species
(30)	COMAR 08.02.22.02F(4)	Failing to Land Shark with Head, Tail and Fins Attached
(31)	COMAR 08.02.22.04A	Shark Filleting or Finning Violation
(32)	COMAR 08.02.05	Season Violations — Finfish — Tidal Waters: 10 or more fish

JOHN R. GRIFFIN  
Secretary of Natural Resources

**Subtitle 18 BOATING — SPEED LIMITS AND OPERATION OF VESSELS**

**08.18.07 Chesapeake Bay**

Authority: Natural Resources Article, §8-704, Annotated Code of Maryland

**Notice of Proposed Action**

[11-049-P]

The Secretary of Natural Resources proposes to amend Regulation .01 under COMAR 08.18.07 Chesapeake Bay. This action was considered at the Maryland Boat Act Advisory Committee public comment meeting. The meeting was held October 13, 2010.

**Statement of Purpose**

The purpose of this action is to ensure safe boating on the waterway.

**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 Bob Lunsford, Regulations Coordinator, Department of Natural Resources, Boating Services, 580 Taylor Avenue, E-4, Annapolis, Maryland 21401, or call 410-260-8321, or email to blunsford@dnr.state.md.us, or fax to 410-260-8404. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.01 Eastern Shore.**

A.—J. (text unchanged)

K. *Big Thoroughfare encompasses all of the waters of Deale Island Harbor and Scott's Cove east of a line beginning at a point at the west end of the north jetty at or near Lat. 38°10.181'N., Long. 75°56.866'W., then running 218° (True) to a point at the west end of the south jetty, at or near Lat. 38°10.158'N., Long. 75°56.888'W., and west of a line beginning at a point on the southwest abutment of the Maryland Route 363 bridge at or near Lat. 38°9.991'N., Long. 75°56.749'W., then running 34° (True) to a point on the northwest abutment of the Maryland Route 363 bridge, at or near Lat. 38°10.197'N., Long. 75°56.573'W. This area has a 6 knot (6.9 MPH) speed limit all year.*

JOHN R. GRIFFIN  
Secretary of Natural Resources

**Subtitle 18 BOATING — SPEED LIMITS AND OPERATION OF VESSELS**

**08.18.18 Ocean City — Back Bay Areas**

Authority: Natural Resources Article, §8-704, Annotated Code of Maryland

**Notice of Proposed Action**

[11-051-P]

The Secretary of Natural Resources proposes to amend Regulation .02 under COMAR 08.18.18 Ocean City — Back Bay Areas. This action was considered at the Maryland Boat Act Advisory Committee public comment meeting. The meeting was held October 13, 2010.

**Statement of Purpose**

The purpose of this action is to ensure safe boating on the waterway.

**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 Bob Lunsford, Regulations Coordinator, Department of Natural Resources, Boating Services, 580 Taylor Avenue, E-4, Annapolis, Maryland 21401, or call 410-260-8321, or email to blunsford@dnr.state.md.us, or fax to 410-260-8404. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.02 Herring Creek.**

[Herring Creek encompasses the area beginning at a point Lat. 38°20.7'00"N., Long. 75°07.8'00"W., a line running 090° True to the opposite shore, Lat. 38°20.7'00"N., Long. 75°07.6'00"W., and running to the head of the creek. This area has a 6-knot (6.9 MPH) speed limit all year. ]

A. *Herring Creek encompasses all of the waters upstream of a line beginning at a point on the west shore at or near Lat. 38°20.677'N., Long. 75°7.762'W., then running 77° (True) to a point on the east shore at or near Lat. 38°20.705'N., Long. 75°7.613'W. This area has a 6 knot (6.9 MPH) speed limit all year.*

B. *Glen Riddle Basin encompasses all of the waters of Herring Creek upstream (west) of a line beginning at a point on the north shore of the Glen Riddle Basin entrance channel at or near Lat. 38°20.859'N., Long. 75°7.796'W., then running 180° (True) to a point on the south shore of the entrance, at or near Lat. 38°20.801'N., Long. 75°7.795'W. This area has a 6 knot (6.9 MPH) speed limit all year.*

JOHN R. GRIFFIN  
Secretary of Natural Resources

**Subtitle 18 BOATING — SPEED LIMITS AND OPERATION OF VESSELS**

**08.18.20 Patuxent River**

Authority: Natural Resources Article, §8-704, Annotated Code of Maryland

**Notice of Proposed Action**

[11-052-P]

The Secretary of Natural Resources proposes to amend Regulation .04 under **COMAR 08.18.20 Patuxent River**. This action was considered at the Maryland Boat Act Advisory Committee public comment meeting. The meeting was held November 18, 2010.

**Statement of Purpose**

The purpose of this action is to ensure safe boating on the waterway.

**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 Bob Lunsford, Regulations Coordinator, Department of Natural Resources, Boating Services, 580 Taylor Avenue, E-4, Annapolis, Maryland 21401, or call 410-260-8321, or email to blunsford@dnr.state.md.us, or fax to 410-260-8404. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.04 Patuxent River North Shore.**

A.—D. (text unchanged)

E. St. Leonard Creek [encompasses the area beginning at a point Lat. 38°25'00"N., Long. 76°29'15.67"W., running 090° True to the opposite shore, Lat. 38°25'00"N., Long. 76°29'06"W., then northeasterly along the shore to Lat. 38°25'13.12"N., Long. 76°29'00.92"W., then 356° True to the opposite shore, Lat. 38°25'18.98"N., Long. 76°29'01.48"W., then northerly along the shore to Lat. 38°25'26"N., Long. 76°29'14.80"W., then 270° True to the opposite shore, Lat. 38°25'26"N., Long. 76°29'34.33"W., then southerly along the shore to the point of beginning. This area has a 6-knot (6.9 MPH) speed limit Saturdays, Sundays, and State holidays, all year].

(1) *All of the waters of upper St. Leonard's Creek north of a line beginning at a point on the east shore of St. Leonard's Creek at or near Lat. 38°24.980'N., Long. 76°29.103'W., then running 256° (True) to a point on the west shore of St. Leonard's Creek, at or near Lat. 38°24.953'N., Long. 76°29.245'W., and east of a line beginning at a point on the south shore of an unnamed cove of St. Leonard's Creek at or near Lat. 38°25.222'N., Long. 76°29.007'W., then running 346° (True) to a point on the north shore off the unnamed cove, at or near Lat. 38°25.303'N., Long. 76°29.033'W., and south of a line beginning at a point on the east shore of St. Leonard's Creek, at or near Lat. 38°25.437'N., Long. 76°29.247'W., then running 270° (True) to a point on the west shore of St. Leonard's Creek, at or near Lat. 38°25.437'N., Long. 76°29.567'W. This area has a 6-knot (6.9 MPH) speed limit Saturdays, Sundays, and State holidays, all year.*

(2) *All of the waters of lower St. Leonard's Creek upstream of a line beginning at a point on the shore of Peterson Point at or near Lat. 38°23.341'N., Long. 76°30.370'W., then running 108° (True) to a point on the east shore of St. Leonard's Creek, at or near Lat. 38°23.226'N., Long. 76°29.928'W., and downstream of a line beginning at a point on the east shore of St. Leonard's Creek, at or near Lat. 38°24.980'N., Long. 76°29.103'W., then running 256° (True) to a point on the west shore of St. Leonard's Creek, at or near Lat. 38°24.953'N., Long. 76°29.245'W. This area has a 35-knot daytime and a 25-knot nighttime speed limit Saturdays, Sundays, and State holidays during the boating season.*

JOHN R. GRIFFIN  
Secretary of Natural Resources

**Subtitle 18 BOATING — SPEED LIMITS AND OPERATION OF VESSELS**

**08.18.30 Wicomico River**

Authority: Natural Resources Article, §8-704, Annotated Code of Maryland

**Notice of Proposed Action**

[11-048-P]

The Secretary of Natural Resources proposes to amend Regulation .02 under **COMAR 08.18.30 Wicomico River**. This action was considered at the Maryland Boat Act Advisory Committee public comment meeting. The meeting was held October 13, 2010.

**Statement of Purpose**

The purpose of this action is to ensure safe boating on the waterway.

**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 Bob Lunsford, Regulations Coordinator, Department of Natural Resources, Boating Services, 580 Taylor Avenue, E-4, Annapolis, Maryland 21401, or call 410-260-8321, or email to blunsford@dnr.state.md.us, or fax to 410-260-8404. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.02 Lower Ferry.**

[Lower Ferry encompasses the area bounded by the following coordinates: Lat. 38°16'06.42"N., Long. 75°47'21.76"W., Lat. 38°16'06.42"N., Long. 75°47'13.76"W., and Lat. 38°15'59.42"N., Long. 75°47'21.76"W., Lat. 38°15'59.42"N., Long. 75°47'13.76"W. This area has a 6-knot (6.9 MPH) speed limit all year. These coordinates are approximately 100 yards upriver and downriver from the cable ferry crossing.] *Lower Ferry encompasses all of the waters of the Wicomico River upstream of a line beginning at a point on the south shore of the Wicomico River at or near Lat. 38°15.967'N., Long. 75°47.526'W., then running 358° (True) to a point on the north shore of the Wicomico River, at or near Lat. 38°16.086'N., Long.*

75°47.532'W. and downstream of a line beginning at a point on the south shore of the Wicomico River at or near Lat. 38°15.962'N., Long. 75°47.148'W., then running 351° (True) to a point on the north shore of the Wicomico River, at or near Lat. 38°16.111'N., Long. 75°47.179'W. This area has a 6 knot (6.9 MPH) speed limit all year.

JOHN R. GRIFFIN  
Secretary of Natural Resources

**Subtitle 18 BOATING — SPEED LIMITS AND OPERATION OF VESSELS**

**08.18.31 Elk River**

Authority: Natural Resources Article, §8-704, Annotated Code of Maryland

**Notice of Proposed Action**

[11-050-P]

The Secretary of Natural Resources proposes to adopt new Regulation .03 under **COMAR 08.18.31 Elk River**. This action was considered at the Maryland Boat Act Advisory Committee public comment meeting. The meeting was held October 13, 2010.

**Statement of Purpose**

The purpose of this action is to ensure safe boating on the waterway.

**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 Bob Lunsford, Regulations Coordinator, Department of Natural Resources, Boating Services, 580 Taylor Avenue, E-4, Annapolis, Maryland 21401, or call 410-260-8321, or email to blunsford@dnr.state.md.us, or fax to 410-260-8404. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.03 Elk River (Elkmore).**

All of the waters of the Elk River (Elkmore) enclosed by a line beginning at a point on shore at or near Lat. 39°33.297'N., Long. 75°52.22'W., then running 107° (True) to a point at or near Lat. 39°33.266'N., Long. 75°52.087'W., then running 196° (True) to a point at or near Lat. 39°33.068'N., Lon. 75°52.158'W., then running 290° (True) to a point on shore at or near Lat. 39°33.102'N., Long. 75°52.278'W. This area has a 6-knot (6.9 MPH) speed limit Saturdays, Sundays, and State holidays during the boating season.

JOHN R. GRIFFIN  
Secretary of Natural Resources

**Title 09  
DEPARTMENT OF LABOR,  
LICENSING, AND  
REGULATION**

**Subtitle 20 BOARD OF PLUMBING**

**09.20.04 Cross Connection/Backflow Prevention Certification Program**

Authority: Business Occupations and Professions Article, §§12-207 and 12-306(c), Annotated Code of Maryland

**Notice of Proposed Action**

[11-077-P]

The Board of Plumbing proposes to adopt new Regulations .01 and .02 under a new chapter, **COMAR 09.20.04 Cross Connection/Backflow Prevention Certification Training Program**. This action was considered by the Board of Plumbing at an open meeting held on April 15, 2010, notice of which was given by publication in 37:7 Md R. 598 (March 26, 2010).

**Statement of Purpose**

The purpose of this action is to establish a set of requirements which must be met by an applicant seeking approval to be a provider of a cross connection /backflow certification program offered in accordance with Business Occupations and Professions Article §12-306(c), Annotated Code of Maryland.

**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 establishes the requirements which must be met by an applicant seeking to become a provider of Cross Connection/ Backflow Certification Training, pursuant to the Maryland Master Plumbers Act. All applicants will have to, for the first time, meet the specific requirements enumerated in the proposed regulation. A detailed set of formal requirements has not been previously promulgated. The proposed regulation offers the prospective applicant clear guidance as to space, adequate apparatus necessary for adequate training, qualifications of certified instructors, and the issuance of credentials to certified technicians. First time applicants will have information allowing them to estimate the cost of establishing a compliant program. Existing providers required to reapply pursuant to this proposed regulation could incur additional costs if their pre-existing program is not fully compliant with this regulation. This regulation seeks to assure that individuals providing cross connection/backflow services are properly trained and qualified by providers approved by the Board of Plumbing.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
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) Businesses offering plumbing services	(+)	Indeterminable
(2) Course providers	(-)	Indeterminable
E. On other industries or trade groups: NONE		
F. Direct and indirect effects on public:		
Consumers of plumbing services	(+)	Indeterminable

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

D(1). Such businesses will have a higher degree of assurance that certified individuals are competent to provide services authorized under the state plumbing law.

D(2). An existing provider seeking approval under these regulations who is not compliant with the requirements contained therein, could incur additional cost to become compliant and receive Board approval. Prospective providers will have to incur any cost related to meeting the Board standards.

F. Consumers who contract for services involving backflow/cross connection work will have greater assurance that such work will be competently performed and that the potable water supply is appropriately protected.

**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 Steven Smitson, Executive Director, DLLR, Board of Plumbing, 500 North Calvert Street, Third Floor, Baltimore MD 21202, or call 410-230-6169, or email to ssmits@dllr.state.md.us, or fax to 410-333-6314. Comments will be accepted through March 5, 2011. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Board of Plumbing during a public meeting to be held on March 17, 2011 at 10:30 a.m., at 500 North Calvert Street, Third Floor, Baltimore MD 21202.

**.01 Definitions.**

A. In this regulation, the following terms have the meaning indicated.

**B. Terms Defined.**

(1) "Certified Instructor" means an individual who possesses a master plumber or a journey plumber license issued by the Board or a reciprocating jurisdiction and has successfully completed an instructional certification program sponsored by an organization recognized by the Board, including, but not limited to, the University of Florida Treeo Center (TREEO), American Society of Sanitary Engineering (ASSE) Instructor Accreditation Certification, and University of Southern California Foundation for Cross Connection Control.

(2) "Certified Provider" means a person or organization who provides Board-approved cross connection backflow prevention

certification training in accordance with Business Occupations and Professions Article, §12-306(c) and meets the requirements of Regulation .02A–C of this chapter.

(3) "Certified Technician" means an individual who is certified to install, test, repair and make reports on mechanical cross connection backflow prevention device or assembly after successful completion of a 32-hour cross connection backflow prevention certification program approved by the Board in accordance with Business Occupations and Professions Article, §12-306(c), Annotated Code of Maryland.

**.02 Approved Cross Connection/Backflow Prevention Certification Program.**

A. In accordance with Business Occupations and Professions Article, §12-306(c), Annotated Code of Maryland, a cross connection/backflow prevention certification program may be eligible for approval by the Board if:

(1) The Certified Provider submits to the Board an application on the form that the Board provides identifying the course provider and the provider's credentials to offer cross connection/backflow prevention certification training;

(2) Each program instructor is a Certified Instructor in accordance with Regulation .01B(1) of this chapter;

(3) The course materials include a Backflow/Cross Connection training manual prepared by an organization identified in Regulation .01B(1) of this chapter;

(4) In the opinion of the Board, the course curriculum provides, at a minimum, adequate training in:

(a) Introduction to backflow prevention;

(b) Hazards of cross connection/backflow;

(c) Laws of backflow prevention;

(d) Responsibilities of certified technician;

(e) The methods, mechanisms and installation techniques used for the prevention of backflow;

(f) Field Testing;

(g) Field Reports;

(h) Troubleshooting;

(i) Repair of a Backflow Occurrence; and

(j) Recertification;

(5) The program is conducted at a facility that provides adequate space and a suitable training environment in the opinion of the Board that is:

(a) Accessible for inspection by an authorized representative or agent of the Board during normal business and class hours without prior notice; and

(b) Equipped with adequate apparatus necessary for adequate training in the opinion of the Board including:

(i) A test kit;

(ii) One of each mechanical cross connection control device and assembly necessary for compliance with ASSE 1011, 1012, 1013, 1015, 1019, 1020, 1022, 1024, 1035 and 1056; and

(iii) Mechanical cross connection control assembly set up for field testing;

(6) The Certified Provider issues to an individual who successfully completes the program a:

(a) Certificate that includes:

(i) The name of the Certified Provider;

(ii) The name of the Certified Technician to whom it is issued;

(iii) A statement that the course constitutes a 32-hour cross connection/backflow prevention certification program approved by the Maryland State Board of Plumbing;

(iv) The date of completion of the certification program;

(v) The name and signature of the course instructor; and

(vi) The certification technician number; and

**Subtitle 38 STATE BOARD OF  
INDIVIDUAL TAX PREPARERS**

**09.38.01 General Regulations**

Authority: Business Occupations and Professions Article, §§21-101, 21-203, 21-205, 21-207 and 21-301—21-304, Annotated Code of Maryland; Section 6, Ch. 623, Acts of 2008

**Notice of Proposed Action**

[11-078-P]

The State Board of Individual Tax Preparers proposes to adopt new Regulations .01—.04 under a new chapter, **COMAR 09.38.01 General Regulations**. This action was considered at a public meeting of the Board held on December 6, 2010, 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 adopt several general regulations required to implement the provisions of the “Maryland Individual Tax Preparers Act,” (Chapter 623 of the Acts of 2008) and allow qualified individuals to apply for a license. Regulation .01 codifies certain meeting requirements. Regulation .02 clarifies the education and experience requirements under which an individual may apply pursuant to uncodified Section 6 of Chapter 623. Regulation .03 establishes the terms under which the holder of an Internal Revenue Service issued federal registration as an Individual Tax Preparer may apply for a Maryland license. Regulation .04 establishes the original license, renewal fee and reinstatement fee pursuant to the Board’s fee setting authority.

**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**

**I. Summary of Economic Impact.** Individual income tax preparers who are not otherwise regulated and exempted under state law will have to assume the cost of the \$100 license fee, which would be established under proposed Regulation .04. Regulations .01—.03 have no economic impact.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency: Listed Fees	(R+)	Indeterminate
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups: Cost of Fees	(-)	Amount of the fee
E. On other industries or trade groups:	NONE	

- (b) Pocket identification card that includes:
  - (i) The name of the Certified Technician to whom it is issued;
  - (ii) The title “Certified Backflow Prevention Technician”; and
  - (iii) The dates for which the certification is valid; and
- (7) The Certified Provider notifies the Board within 10 days of any change of a certified course instructor.

B. In order for a cross connection/backflow prevention certification program to be and remain eligible for approval by the Board in accordance with Business Occupations and Professions Article, §12-306(c), Annotated Code of Maryland, the program must be able to demonstrate adequate recertification credentials including the:

- (1) Offer of recertification training for technicians every 3 years; and
- (2) Requirement that course instructors maintain instructor certification by meeting the requirements of, but not limited to, the University of Florida Treeo Center (TREEO), American Society of Sanitary Engineering (ASSE) Instruction Accreditation Certification, and University of Southern California Foundation for Cross Connection Control, which shall include completion of recertification training at a minimum of once every 5 years.

C. In addition to the requirements of §B of this regulation, in order for a cross connection/backflow prevention certification program to remain eligible for approval by the Board in accordance with Business Occupations and Professions Article, §12-306(c), Annotated Code of Maryland, every 3 years, the program provider shall provide the Board with updated information about the program which shall include:

- (1) A current list of Certified Instructors; and
- (2) Notification from the Certified Provider of changes to the course curriculum or the location of the training facility.

D. The Board may rescind its approval of a cross connection/backflow prevention certification program at any time if, in the opinion of the Board:

- (1) The Certified Provider demonstrates misconduct or incompetence in the performance of supervisory duties over the program;
- (2) A Certified Course Instructor demonstrates misconduct or incompetence in the provision of applicable training;
- (3) The Certified Provider fails to meet any of the requirements of §§A—C of this regulation.

E. In accordance with Business Occupations and Professions Article, §§12-306(c)(3) and 12-503, Annotated Code of Maryland, an individual appointed, designated or employed by a county or local government as an inspector of mechanical cross connection/backflow prevention devices shall have completed a cross connection/backflow certification program approved by the Board.

F. Completion of an approved cross connection/backflow certification program does not authorize an individual to:

- (1) Install, test or certify a mechanical cross connection/backflow prevention device unless the individual is licensed by the Board as a master or journey plumber in accordance with Business Occupations and Professions Article, §12-101(g) or (l), Annotated Code of Maryland; and
- (2) Assist in installing, testing or certifying a mechanical cross connection/backflow prevention device unless the individual is licensed by the Board as an apprentice plumber in accordance with Business Occupations and Professions Article, §12-101(c), Annotated Code of Maryland.

CHARLES J. MORGAN, JR.  
Chairman  
State Board of Plumbing

F. Direct and indirect effects on public:

Implementation of  
Licensing (+) Indeterminate

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

A. Fees will generate operating revenues allowing the Board to offset the direct and indirect cost of the regulatory program.

D. Individual tax preparers will assume the cost of fees to apply for, renew or reinstate a license. Any assumption of the cost of any of the proposed fees by a business would be voluntary.

F. The revenue generated by the proposed fees allows the implementation of the regulatory program for tax preparers. This will benefit the public by providing some assurance of the initial and continuing competence of prospective licensees, who are currently unregulated, as well as provide Maryland-based recourse for citizens aggrieved by the actions of a licensed tax preparer.

**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 Jay Hutchins, Acting Administrator, Board of Individual Tax Preparers, 500 North Calvert Street, Baltimore MD 21202, or call 410-230-6262, or email to [jhutchins@dllr.state.md.us](mailto:jhutchins@dllr.state.md.us), or fax to 410-333-0021. Comments will be accepted through March 4, 2011. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the State Board of Individual Tax Preparers during a public meeting to be held on March 14, 2011 at 1:30 p.m. at 500 North Calvert Street, Third Floor, Baltimore MD 21202.

**.01 The Board.**

A. In this chapter, the following terms have the meanings indicated.

(1) "Board" means the State Board of Individual Tax Preparers.

(2) "Examination" means the examination prepared by the Internal Revenue Service.

B. The Board shall hold an annual meeting in July of each year or at such other time as the members of the Board may vote upon, for the purpose of electing officers. Monthly meetings may be held on dates mutually convenient to the members of the Board. Special meetings shall be held, after reasonable notice, at the call of the Chairperson or any two Board members. Notice of all meetings and hearings shall be published in the Maryland Register.

C. The Chairperson shall preside at all meetings and shall perform such duties as the Board may direct. At any meeting at which the Chairperson is absent, the Vice-Chairperson shall act in the Chairperson's place.

**.02 Waiver of Examination.**

A. In General. The Board shall grant a waiver of the examination requirement for registration to any individual who:

- (1) Submits an application on the form the Board provides;
- (2) Pays the registration fee set by the Board;
- (3) Has obtained 15 consecutive years of individual tax preparation experience;
- (4) Has completed 8 hours of annual continuing education; and

(5) Is in good standing with:

- (a) The Internal Revenue Service;
- (b) The Department of Labor, Licensing and Regulation;
- (c) The Office of the Comptroller; and
- (d) The Office of the Attorney General.

**B. Qualifying Experience.**

(1) In order to meet the requirements of §A(1) of this regulation, an applicant shall have completed:

- (a) An average of 50 individual tax returns per year; and
- (b) No fewer than 25 individual tax returns per year.

(2) Both paid and unpaid individual tax preparation services may qualify under this section.

(3) Documentation. An applicant may document the experience required under this section through any of the following:

- (a) Employer certification;
- (b) Client certification; or
- (c) Copies of completed individual tax returns.

**C. Continuing Education.**

(1) Programs Which Qualify. The overriding consideration in determining whether a specific program qualifies is that it shall be a formal program of learning which contributes directly to the professional competence of the individual.

(2) Group Continuing Education Programs.

(a) Group continuing education programs will qualify only if §C(1) of this regulation is met and:

- (i) An outline is prepared in advance and preserved for review by the Board, if required;
- (ii) The program is at least 1 hour (50-minute period) in length;

- (iii) The program is conducted by a qualified instructor;
- (iv) A record of attendance is preserved; and
- (v) The sponsor agrees to admit a member of the Board on request to monitor the program.

(b) These programs would include:

- (i) Professional development programs of recognized national and state tax preparation organizations;
- (ii) Technical sessions at meetings of recognized national and state tax preparation organizations;
- (iii) Non-credit short courses at universities and colleges;
- (iv) Formal, organized in-firm education programs; and
- (v) Programs offered by other recognized professional or industrial organizations.

(3) University and college courses taken for academic credit will qualify only if §C(1) of this regulation is met. Credit towards the continuing education requirement will be calculated at 15 hours for each semester hour credit and 10 hours for each quarter hour credit.

(4) Other Programs. A program other than a group program will qualify only if:

- (a) The program meets the requirements of §C(1) of this regulation;
- (b) An outline is prepared in advance and preserved for review by the Board, if required;
- (c) The program is at least 1 hours (50-minute period) in length; and
- (d) The program provides evidence of satisfactory completion.

(5) Teacher, Lecturer, or Discussion Leader.

(a) Services as a teacher, lecturer, or discussion leader in subjects qualifying for continuing education credit will be included to the extent that it contributes to the applicant's professional competence. Repetitious presentation, that is, those that are substantially the same subject material, may be included only once each reporting period.

(b) A teacher, lecturer, or discussion leader of a qualifying continuing education program shall receive:

(i) 3 hours of continuing education credit for every hour of presentation for a first-time presentation of a program; and

(ii) 1 hour of continuing education credit for every hour of presentation for all subsequent presentations of a program.

(6) *Subject Matter.* The following general subject matter areas are acceptable to the extent that they contribute directly to the expertise of individual income tax preparation:

(a) Taxation;

(b) Practitioner ethics;

(c) Accounting and payroll theory;

(d) Estate, tax, or investment planning;

(e) Computer technology; and

(f) *Others, if the applicant can demonstrate a direct relationship between the course and individual income tax preparation.*

(7) *Documentation.* The following minimum information concerning each continuing education course shall be maintained by the applicant:

(a) Sponsoring organization;

(b) Course location;

(c) Program title;

(d) Topical course outline;

(e) Content description;

(f) Dates attended;

(g) Hours claimed;

(h) *Information reflecting the expertise of the instructor in the subject matter.*

**D. Reporting and Controls.**

(1) *An applicant for waiver of the examination shall certify under penalty of perjury that the applicant meets the requirements set forth in §A(1)—(3) of this regulation.*

(2) *The Board at its discretion may verify the information and documentation supporting an application for waiver of examination.*

(3) *An applicant shall comply with a request by the Board for additional documentation in support of an application for waiver of examination.*

**.03 Federal Registration.**

*An individual with a valid active federal registration with the Internal Revenue Service as an individual tax preparer shall be entitled to be registered by the Board provided that the individual:*

A. *Submits an application to the Board on a form that the Board provides;*

B. *Pays the registration fee set by the Board; and*

C. *Has a high school diploma or has passed an equivalency examination.*

**.04 Fees.**

*Fees charged by the Board are as follows:*

A. *Registration fee—\$100;*

B. *Renewal fee—\$100;*

C. *Reinstatement of expired registration fee—\$120.*

PATRICIA SNELL

Chair

State Board of Individual Tax Preparers

# Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

## Notice of Proposed Action

[11-053-P]

The Secretary of Health and Mental Hygiene proposes to:

(1) Repeal existing Regulations **.01—03** and adopt new Regulations **.01—03**, amend Regulations **.04—10**, and adopt new Regulation **.11** under **COMAR 10.01.04 Fair Hearing Appeals Under the Maryland State Medical Assistance Program**; and

(2) Repeal existing Regulation **.13** and adopt new Regulation **.13** under **COMAR 10.09.24 Medical Assistance Eligibility**.

At this time, the Secretary of Health and Mental Hygiene is also withdrawing the amendments to Regulations **.01—10** under **COMAR 10.01.04 Fair Hearing Appeals Under the Maryland State Medical Assistance Program** and the repeal of existing Regulation **.13** and the adoption of new Regulation **.13** under **COMAR 10.09.24 Medical Assistance Eligibility** as repropoed in 37:18 Md. R. 1233—1235 (August 27, 2010) and as originally proposed in 36:23 Md. R. 1822—1827 (November 6, 2009).

### Statement of Purpose

The purpose of this action is to eliminate outdated terminology and procedures in the Maryland Medical Assistance Program’s applicant and recipient fair hearing regulations to be consistent with comparable federal requirements and the current terminology and procedures used in the fair hearing process.

### 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 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, or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

## Subtitle 01 PROCEDURES

### 10.01.04 Fair Hearing Appeals Under the Maryland State Medical Assistance Program

Authority: Health-General Article, §2-104, Annotated Code of Maryland

#### **.01 Definitions.**

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) *“Administrative law judge” means an individual appointed by the Chief Administrative Law Judge under State Government Article, §9-1604, Annotated Code of Maryland, or designated by the*

Chief Administrative Law Judge under State Government Article, §9-1607, Annotated Code of Maryland, to adjudicate contested cases at the Maryland Office of Administrative Hearings.

(2) "Appellant" means any individual or the individual's authorized representative who requests a fair hearing for the reasons specified in Regulation .02 of this chapter.

(3) "Authorized representative" means:

(a) The appellant's spouse or domestic partner;

(b) The appellant's parent if the appellant is a minor;

(c) The appellant's legal guardian, if one has been appointed, or a person who has in good faith filed an application to be appointed the appellant's legal guardian but who has not yet been appointed the appellant's legal guardian as of the date required to request a fair hearing under Regulation .04 of this chapter if a copy of the request for guardianship is provided to the Department along with the request for a fair hearing under Regulation .04 of this chapter;

(d) An individual appointed to make legal or medical decisions on behalf of the appellant pursuant to a validly executed power of attorney if a copy of the power of attorney is provided to the Department along with the request for a fair hearing under Regulation .04 of this chapter;

(e) The appellant's health care surrogate as defined in Health General Article, §5-605, Annotated Code of Maryland;

(f) The appellant's legal counsel if the counsel files a statement attesting to his or her active, contemporaneous and ongoing representation of the appellant along with the request for a fair hearing under Regulation .04 of this chapter;

(g) The personal representative of the estate of the appellant who has been appointed by the State's Orphan's Court if a copy of the appointment is provided to the Department along with the request for a fair hearing under Regulation .04 of this chapter;

(h) Any person who in good faith is acting in the best interest and on behalf of the appellant if:

(i) The person or the person's directors, employees, officers or employers, if any, do not have a direct financial interest in the outcome of the fair hearing; and

(ii) The person provides the Department with a declaration declaring the appellant's legal incapacity along with the request for a fair hearing under Regulation .04 of this chapter; or

(i) In the event that none of the individuals listed in §B(3)(a)–(g) of this regulation exist and that no person covered by §B(3)(h) of this regulation is willing and able to act on behalf of the appellant, then and only then, any person with a direct financial interest in the outcome of the hearing or a person whose employer has a direct financial interest in the outcome of the hearing if the person provides the Department with a declaration along with the request for a fair hearing under Regulation .04 of this chapter declaring:

(i) To the best of his or her belief, the appellant's legal incapacity;

(ii) To the best of his or her belief, the nonexistence of any of the individuals listed in §B(3)(a)–(g) of this regulation;

(iii) To the best of his or her belief, the nonexistence of any person covered by §B(3)(h) of this regulation who is willing and able to act on behalf of the appellant; and

(iv) That the individual only has the authority to pursue the appellant's appeal rights regarding this specific issue, that the authority does not extend to any other representation on behalf of the appellant in any other matter, and that the authority remains in effect for all levels of the appeal process but automatically terminate thereafter.

(4) "Delegate agency" means the Department of Human Resources and its affiliate local departments which, under

contractual agreements with the Department, determine initial and continuing eligibility in the Program.

(5) "Department" means the Department of Health and Mental Hygiene, the single state agency which, pursuant to Title XIX of the Social Security Act, implements fair hearing requirements for Program applicants and recipients.

(6) "MCO" means a managed care organization qualified to participate in the Program under COMAR 10.09.65.

(7) "Program" means the Department's Medical Assistance Program.

**.02 Opportunity for a Fair Hearing.**

A. An opportunity for a fair hearing shall be granted if:

(1) A Program applicant claims their application for Program eligibility is denied;

(2) A Program applicant claims their application for Program eligibility is not acted upon within 30 days from the date of application or 60 days from the date of application in the case of determination of disability;

(3) A Program recipient asserts their claim for Program services has been erroneously denied or is not acted upon with reasonable promptness;

(4) A Program recipient asserts that the Program has acted erroneously;

(5) A Program recipient residing in a skilled nursing facility or nursing home asserts that the recipient has been or will be erroneously transferred or discharged;

(6) A Program recipient asserts that the Program has made an erroneous decision related to nursing home preadmission and annual review; or

(7) A Program recipient in a MCO asserts that the MCO has denied coverage of, or payment for, Program benefits.

B. A Program recipient in a MCO shall first exhaust all of the complaint and appeal procedures specified in COMAR 10.09.71 before filing an appeal under this chapter unless the appeal meets the Program's criteria of expedited review.

C. The administrative law judge may not grant a fair hearing if the sole issue is a federal or State law requiring an automatic change adversely affecting some or all Program recipients.

**.03 Notification of Right to Request a Fair Hearing.**

A. The Program or delegate agency shall notify an individual in writing:

(1) Of the right to obtain a fair hearing;

(2) Of the method to obtain the hearing; and

(3) That the individual may represent himself or use an authorized representative at a fair hearing.

B. The notification specified in §A of this regulation shall:

(1) Be provided by the Program or the delegate agency when:

(a) The individual applies for Program benefits;

(b) Any Program or delegate agency action affects the individual's claim to Program benefits;

(c) A skilled nursing facility or a nursing facility notifies the individual that the individual is to be transferred or discharged; and

(d) The individual receives an adverse determination by the Department or delegate agency with regard to skilled nursing facility or a nursing facility preadmission screening and annual resident review;

(2) Include a statement of the action the Program, skilled nursing facility, or nursing facility intends to take;

(3) Include the reasons for the intended action;

(4) Include the specific regulations that support, or the change in federal or State law that requires, the action;

(5) Include an explanation of the individual's right to request a fair hearing;

(6) Include a summary of the regulations relating to fair hearing procedures;

(7) Include an explanation of the circumstances under which assistance is continued if a fair hearing is requested, as provided in Regulation .04B of this chapter;

(8) Identify who may act as an authorized representative of the appellant in the fair hearing process;

(9) Specify that the appellant or the appellant's authorized representative may generally examine the appellant's records upon reasonable notice to the Program or delegate agency; and

(10) Except as specified in §C of this regulation, be mailed at least 10 days before the date of action.

C. The notice specified in §A of this regulation may be mailed less than 10 days before but not later than the date of action if:

(1) The Program has information confirming the recipient's death;

(2) The Program receives a clear written statement signed by a recipient that:

(a) The recipient no longer wishes services; or

(b) Gives information that requires termination or reduction of services and indicates that the recipient understands that this change in services is the result of supplying that information;

(3) The recipient has been admitted to an institution where the recipient is ineligible under the Program for further services;

(4) Subject to Regulation .10B(4) of this chapter, the recipient's whereabouts are unknown and the post office returns to the Program or delegate agency mail directed to the recipient indicating no forwarding address;

(5) The Program establishes that the recipient has been accepted for Program services by another local jurisdiction, State, territory, or commonwealth;

(6) The recipient's physician prescribes a change in the level of care;

(7) The notice involves an adverse determination made with regard to preadmission screening requirements;

(8) The date of action will occur in less than 10 days; or

(9) The Program has facts indicating that action should be taken because of probable fraud by the recipient and the facts have been verified, if possible, through secondary sources, in which case the notification may be mailed 5 days before the date of action.

**.04 Request for Fair Hearing.**

**A. Statement of Request.**

(1) Any individual, either himself or through [a] an authorized representative, may request a fair hearing by giving a clear written statement[, oral or written, to any member of the Department or delegate agency, that he] that the individual desires an opportunity to present for review any matter which is the proper subject of a fair hearing as provided in Regulation .02, of this chapter. [This statement shall be forwarded immediately to the Office of Hearings.] The request may be given to:

(a) The Program's Office of Health Services, if the appeal concerns services provided or denied to the recipient; or

(b) The Office of Administrative Hearings or the delegate agency, if the appeal concerns the appellant's eligibility.

(2) The [Department] Program's Office of Health Services or the delegate agency [to whom an expression] that receives the request for a hearing [is made shall] may assist the appellant or the appellant's authorized representative in [submitting and processing] preparing the request.

(3) The Program's Office of Health Services, or the delegate agency that receives a written statement requesting an appeal shall:

(a) Immediately forward an applicant's statement to the Office of Administrative Hearings; and

(b) Note in its correspondence with the Office of Administrative Hearings if the appeal:

(i) Concerns the medical necessity of a denied benefit or service to an MCO enrollee;

(ii) Meets the Program's criteria for an expedited resolution because the Program has determined that taking the time for a standard resolution could seriously jeopardize the individual's life or health or ability to attain, maintain, or regain maximum function; and

(iii) Must be heard and decided upon within 3 working days after the Office of Administrative Hearings receives the fair hearing request.

B. Acknowledgement. The [Department] Office of Administrative Hearings shall [promptly]:

(1) Promptly acknowledge any request for a fair hearing [and shall give];

(2) Give advance notice in writing of the date, time, and place of the fair hearing[.]; and

[The acknowledgement shall include]

(3) Provide the appellant with the information specified in Regulation [.03C] .03B of this chapter.

**C. Postponements.**

(1) If any party notifies the [Department] Office of Administrative Hearings that either the time or place designated by the [Department] Office of Administrative Hearings is not convenient to [him] the party, and requests a different time or place for the fair hearing, the [hearing examiner] administrative law judge shall designate another time or place convenient to the parties if [he] the administrative law judge deems that the party has sufficient reason for requesting the change.

(2) If the appellant is employed during the periods when fair hearings are normally held, the [hearing examiner] administrative law judge shall attempt to schedule the hearing so that the appellant will not be required to miss employment.

D. Timeliness of Appeal. A request for a fair hearing may not be granted unless [it is made] the request in §A of this regulation is:

(1) Postmarked, delivered in person, or sent by email or facsimile to the Office of Health Services within 90 days of the receipt of the notification specified in Regulation .03A [and B, of this chapter, or, if Regulation .03A, of this chapter, does not apply, within 90 days following the conclusion of the action or inaction which is the subject of the appeal], if the appeal concerns services provided or denied to the recipient; or

(2) Postmarked, delivered in person, or sent by facsimile to the Office of Administrative Hearings or the delegate agency within 90 days of the receipt of the notification specified in Regulation .03A, if the appeal concerns the appellant's eligibility.

**E. Dismissal.**

(1) The [Department] Program, the delegate agency, or the Office of Administrative Hearings may dismiss a request for a fair hearing when [it] the appeal has been [withdrawn] :

(a) Withdrawn in writing by the appellant or his authorized representative; or [abandoned]

(b) Abandoned.

(2) An appellant shall be deemed to have abandoned [his] the appellant's request for a fair hearing if [he does not] the appellant fails to appear for the fair hearing on the established date [and does not promptly respond to a Department letter asking whether he wishes to withdraw his request for a fair hearing] without good cause as determined by the administrative law judge.

F. Program's Response. In responding to timely filed requests for a fair hearing, the Office of Administrative Hearings:

(1) May respond to a series of individual requests for hearing by conducting a single group hearing;

(2) *May consolidate hearings only in cases in which the sole issue involved is one of federal or State law or policy;*

(3) *Shall follow the regulations of this chapter governing hearings in all group hearings; and*

(4) *Shall permit each applicant to present the appellant's own case or be represented by the appellant's authorized representative.*

**.05 Pre-Hearing Procedures.**

A. The [Department] delegate agency [shall] *may* prepare a hearing summary containing pertinent information [respecting] detailing the specific action [or inaction which] *that* is the basis for the appeal. [The] *If the delegate agency prepares a hearing summary, the summary shall be forwarded to the appellant or [his] the appellant's authorized representative [at least 6 days] reasonably before the hearing date[, and shall include notification that the appellant or his representative may examine documents and records to be used at the hearing at the office of the hearing examiner at a reasonable time before the date of the hearing].*

B. (text unchanged)

**.06 Hearing Procedures.**

A. The appellant, the [Department] Program, and the delegate agency shall have the opportunity to [present] :

(1) *Present witnesses[.];*

(2) *Present documentary evidence[, and] ;*

(3) *Present oral and written argument [, and to ] without undue interference;*

(4) *Establish all facts and circumstances the administrative law judge judges to be pertinent; and*

(5) *Question or refute any testimony or evidence, including an opportunity to confront and cross-examine all [adverse] witnesses the administrative law judge judges to be adverse.*

B. [If the appellant wishes to call as witnesses] *All parties that wish to call a witness at the hearing shall subpoena the witness in accordance with Office of Administrative Hearings procedures in COMAR 28.02.01.11. The appellant or authorized representative may subpoena any employees of the Department or delegate agency whose action [or inaction] is being contested by the appellant or whose testimony [is, in the judgment of the hearing examiner.] may be relevant to the issues under consideration [, the hearing examiner shall require their presence at the fair hearing. If the appellant has knowledge of the names or other identifying descriptions of these employees before the fair hearing, he shall supply the hearing examiner the names or other identifying descriptions at least 5 days before the fair hearing.] as determined by the administrative law judge.*

**C. Right to Review Record.**

(1) If the [Department] Program or delegate agency introduces as evidence documents from the case record, special investigation file, or other sources, the appellant shall have the opportunity to examine [persons] *the:*

(a) *Persons* who prepared the documents; and [to examine the case]

(b) *Case record or special investigation file for the purpose of discovering information favorable to [his] the appellant's case.*

(2) *Except as specified in Regulation .05A of this chapter, in addition to the rights specified in §C(1) of this regulation and for purposes of defining reasonable notice under Regulation .03B(9) of this chapter, the appellant or the appellant's authorized representative shall have the opportunity to examine the appellant's case record or investigation file upon reasonable notice to the Program or the delegate agency as specified in COMAR 07.01.02.04.*

(3) *The Program shall have access to the appellant's medical record in accordance with Health-General Article, §4-305, Annotated Code of Maryland.*

D. When a hearing involves a medical [issues] *issue*, such as [those concerning] a diagnosis, an examining physician's report or a medical review team's decision, an additional medical assessment of the appellant's condition shall be obtained and made part of the record if the [hearing examiner] *administrative law judge* considers it necessary. Any additional medical assessment shall be made by a person other than the person who made the original medical [determination] *assessment* and shall be obtained at the Department's expense.

*E. The delegate agency shall be a party to the fair hearing if the fair hearing involves an issue of eligibility.*

**F. Appeal for an Individual Enrolled in an MCO.**

(1) *If the appeal concerns the medical necessity of a denied benefit or service to an MCO enrollee, and if the fair hearing that meets the Department-established criteria for an expedited hearing as provided in Regulation .04A(3)(b)(ii) of this chapter, the Office of Administrative Hearings shall:*

(a) *Schedule the hearing and render a bench decision within 3 working days after the Office of Administrative Hearings receives the fair hearing request; and*

(b) *Issue a follow-up written decision within 30 days of rendering the bench decision if the Office of Administrative Hearings, the appellant or his authorized representative, and the Program agree that a written decision is necessary.*

(2) *All other appeals from MCO decisions shall be:*

(a) *Scheduled for a hearing within 30 days of receipt of the appeal and decided on within 30 days of the hearing; and*

(b) *Otherwise governed by COMAR 10.09.72.05.*

**.07 The Record.**

A. A verbatim recording of the fair hearing shall be made. *Nonrecorded or confidential information, which the appellant does not have an opportunity to hear or see, may not be made a part of the hearing record.* One transcribed copy of the recording shall be supplied to the appellant at no cost [whenever] *if the appellant takes a further appeal.*

B. The [recording, together with all exhibits and papers admitted into evidence,] *following* shall constitute the exclusive record [for decision. Nonrecorded or confidential information, which the appellant does not have an opportunity to hear or see, may not be made a part of the hearing record.] *of the hearing:*

(1) *The transcript or recording of testimony and exhibits, or an official report containing the substance of what happened at the hearing;*

(2) *All papers and requests filed in the proceeding; and*

(3) *The administrative law judge's decision.*

[B.] C. The recording [and copies of all exhibits and papers] *of testimony* shall remain in the custody of the Office of Administrative Hearings for a period not to exceed 2 years, or until all litigation involving the decision is terminated. *All other components of the record shall remain in the custody of the Program for a period not to exceed 2 years, or until all litigation involving the decision is terminated.*

**.08 Findings, [Conclusions, and] Timing of Decision, and Effect of Decision.**

**A. Findings.**

(1) The [hearing examiner] *administrative law judge* shall [prepare] :

(a) *Prepare a written summary of findings and conclusions based exclusively on the record; and [shall make]*

(b) *Make a decision based on his findings and conclusions.*

(2) The summary of findings and conclusions shall [state]:

(a) *State the evidence, policies, regulations, or laws upon which the [hearing examiner's] administrative law judge's decision is based; and*

(b) Provide written notice to the appellant that, if they are not satisfied with the decision, they may seek additional appeals as specified in §C of this regulation.

B. [Notice] *Timing of Hearing Decision.*

(1) [A copy of the findings, conclusions, and decision shall be forwarded to the appellant or his representative no later than 90 days after the date of the initial request for a fair hearing.] *If the appellant is not a waiver-eligible individual, the administrative law judge shall forward to the appellant a copy of the findings, conclusions, and decision within 90 days from the earlier of the following:*

(a) *The date the appellant postmarked or delivered in person to the MCO an MCO appeal, not including the number of days the appellant took to subsequently file for a State fair hearing;*

(b) *The date the appellant postmarked, delivered in person, or sent by email or facsimile to the Office of Health Services a request for a fair hearing pursuant to Regulation .04D(1) of this chapter; or*

(c) *The date the appellant postmarked, delivered in person, or sent by facsimile to the Office of Administrative Hearings or the delegate agency a request for a fair hearing pursuant to Regulation .04D(2) of this chapter.*

(2) *If the appellant is a waiver-eligible individual enrolled in an MCO, the administrative law judge shall forward to the appellant or the appellant's authorized representative a copy of the findings, conclusions, and decision within:*

(a) *3 working days after the Office of Administrative Hearings receives the fair hearing request if the appeal concerns the medical necessity of a denied benefit or service, and the hearing that meets the criteria, as determined by the Department, for an expedited hearing as provided in Regulation .04A(3)(b)(ii) of this chapter; or*

(b) *30 days of the hearing if the appeal does not concern the medical necessity of a denied benefit or service.*

[(2)] (3) *If the date of the fair hearing is postponed at the appellant's request, the length of the postponement may not be counted as part of [the 90 day period] any of the time periods specified in §B(1) or (2) of this regulation.*

[(3)] The hearing examiner shall further provide written notice to the appellant or his representative that, if he is not satisfied with the decision, he may seek administrative review as provided in the Health-General Article, §2-206, Annotated Code of Maryland, and judicial review as provided in the State Government Article, §10-215, Annotated Code of Maryland, or any other provision of law.]

[C. Final Decision; Compliance.

(1) The decision of the hearing examiner shall be final and binding upon the Department and the delegate agency and shall be implemented immediately unless otherwise specifically indicated in the decision or unless the appellant takes an appeal as provided in the Health-General Article, §2-207, Annotated Code of Maryland.

(2) When the decision requires action by the delegate agency, that agency shall notify the Department of its compliance with the decision.

(3) When the decision is favorable to the appellant, or when the Department or delegate agency grants the appellant the relief he requests before the decision, the Department, where applicable, shall authorize corrected payments or relief retroactive to the date the incorrect action was taken.

D. The Office of Hearings shall maintain a copy of the decision, with the name of the appellant and witnesses deleted, in a reference file of hearing decisions that will be accessible to the public. Copies of all decisions, either in full text or in summary form, shall be forwarded to the delegate agency and its affiliate local departments and to all local health departments.]

C. *Appeal Rights.*

(1) *Any party may seek administrative review of the administrative law judge's decision as provided in Health-General*

*Article, §§2-206 and 2-207, Annotated Code of Maryland, and subsequent judicial review as provided in State Government Article, §10-215, Annotated Code of Maryland.*

(2) *An administrative law judge's decision adverse to the appellant shall be implemented immediately.*

D. *Effect of Decision.*

(1) *When the decision requires action by the delegate agency, that agency shall notify the Program of its compliance with the decision.*

(2) *When the decision is favorable to the appellant, or when the Department, Program, or delegate agency grants the appellant the relief the appellant requests before the decision, the Department, Program, or delegate agency, where applicable, shall:*

(a) *Authorize corrected payments or relief retroactive to the date the incorrect action was taken; and*

(b) *If appropriate, provide for admission or readmission of the appellant to a facility.*

(3) *Any payment or action by the Department, Program, or delegate agency in §D(2) of this regulation may not constitute a waiver of the Department's, Program's or delegate agency's sovereign immunity from suit.*

**.09 Confidentiality.**

A. If the appellant waives in writing his privilege of confidentiality as to the fair hearing, the [hearing examiner] *administrative law judge* shall permit members of the public to attend the hearing.

B. The [hearing examiner] *administrative law judge* may cause the removal of any member of the public whose conduct impedes the orderly progress of the hearing, or recess the hearing until [such time as] it may proceed in orderly fashion.

C. The [hearing examiner] *administrative law judge* may exclude from the hearing [persons] *individuals* who have *not* given the Department [no] advance notice of their intention to attend if the size of the hearing room is too small to accommodate them.

**.10 Benefits [Pending Hearing Decision] During Appeals Process.**

[A. Whenever a recipient of medical assistance requests a fair hearing to contest a proposed termination or limitation on his eligibility for medical assistance, the proposed action may not be taken until:

(1) The right to obtain a fair hearing has expired unexercised;

(2) A request for a fair hearing has been withdrawn in writing or abandoned;

(3) A decision is made by the hearing examiner following a fair hearing and his decision upholds the Department or delegate agency in its proposed action; or

(4) The Department has made a determination that the contested matter is one of Department policy and not one of fact or judgment relating to the individual case, including a question of whether the Department regulations or policies were correctly applied to the facts of the particular case.]

A. *Benefits Pending Outcome of the Hearing.*

(1) *The Program may terminate or reduce services effective as of the date specified in the notice if the Program timely mails the notice as required under Regulation .03 of this chapter and:*

(a) *The appellant or the appellant's authorized representative does not timely request a hearing in accordance with Regulation .04 of this chapter; or*

(b) *The appellant or the appellant's authorized representative withdraws in writing or abandons a request for a fair hearing.*

(2) *Except as provided in §A(3) of this regulation, the Program may not terminate or reduce services until a decision is rendered after the hearing if:*

(a) *The Program timely mails the notice as required under Regulation .03 of this chapter; and*



(b) *The appellant requests a hearing before the date of the action.*

(3) *The Program may terminate or reduce services before an administrative law judge renders a decision after a hearing if:*

(a) *The administrative law judge determines at the hearing that the sole issue is one of federal or State law or policy, or the request for a fair hearing is withdrawn in writing or abandoned; and*

(b) *The Program includes in the notification required by Regulation .03 of this chapter that services are to be terminated or reduced pending the hearing decision.*

(4) *If the Program's action is sustained by the hearing decision, the Department may institute recovery procedures against the appellant to recoup the cost of any services furnished to the appellant to the extent that the services were furnished solely because of §A(2) of this regulation.*

B. [Other Exceptions; Reinstatement] *Reinstating Benefits.*

[(1) If the recipient requests a hearing before the effective date of the proposed action, the agency may not terminate or reduce services until a decision is rendered after the hearing unless:

(a) It is determined at the hearing that the sole issue is one of federal or State law or policy; and

(b) The agency promptly informs the recipient in writing that services are to be terminated or reduced pending the hearing decision.]

(1) *If the Program terminates or reduces services pursuant to §A of this regulation, the Program may reinstate services if a Program recipient requests a hearing not more than 10 days after the date of action.*

(2) [If a recipient requests a hearing not more than 10 days after the effective date of action, the agency may reinstate services.] The reinstated services shall continue until a hearing decision, unless, at the hearing, [it is] *the administrative law judge* [determined] *determines* that the sole issue is one of federal or State law or policy.

(3) The [agency] *Program* shall reinstate and continue services until a decision is rendered after a hearing if:

(a) Action is taken without the advance notice being given to the recipient as required by [federal regulations] *Regulation .03 of this chapter;*

(b) (text unchanged)

(c) The [agency] *Program* determines that the action resulted from other than the application of federal or State law or policy.

(4) If a recipient's whereabouts are unknown, as indicated by the return of unforwardable [agency] *Program* mail directed to [him] *the recipient*, any discontinued services shall be reinstated if [his] *the recipient's* whereabouts become known during the time [he] *the recipient* is eligible for services.

(5) The [hearing examiner] *administrative law judge* may provide for an additional period during which time the request for a fair hearing will result in reinstatement of *a recipient's* assistance to be continued until the hearing decision.

(6) If the [agency's] *Program's* action is sustained by the hearing decision, the [agency] *Department* may institute recovery procedures against the applicant or recipient to recoup the cost of any services furnished to the recipient, to the extent [they] *the services* were furnished solely [by reason] *because* of this [section] *regulation.*

**.11 Applicability of Regulations.**

*If a conflict exists between this chapter and the Rules of Procedure of the Office of Administrative Hearings in COMAR 28.02.01, this chapter shall govern.*

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.24 Medical Assistance Eligibility**

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

**.13 Hearings.**

*The procedures for the Program granting a hearing to an applicant or a recipient and the status of benefits pending a hearing are set forth in COMAR 10.01.04.*

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.24 Medical Assistance Eligibility**

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

**Notice of Proposed Action**

[11-066-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation **.08-2**, adopt new Regulations **.08-3—08-5** and recodify existing Regulation **.08-3** to be Regulation **.08-6** under **COMAR 10.09.24 Medical Assistance Eligibility.**

**Statement of Purpose**

The purpose of this action is to: (1) restructure and streamline current regulations with respect to the treatment of trusts; and (2) amend current trust regulations to include federal requirements for pooled trusts.

**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 Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to [regs@dhhm.state.md.us](mailto:regs@dhhm.state.md.us), or fax to 410-767-6483. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.08-2 Treatment of Trust Amounts.**

A. (text unchanged)

B. Treatment of Trusts Established after August 10, 1993.

(1)—(5) (text unchanged)

(6) The following trusts may not be counted in determining eligibility for Medical Assistance:

(a) Special needs trusts as defined in [§C] *Regulations .08-3 and .08-5* of this [regulation] *chapter;* and

[(b) A trust containing the assets of an individual who is disabled, and which meets all of the following conditions:

(i) The trust is established and managed by a nonprofit association,

(ii) A separate account is maintained for each beneficiary of the trust but, for purposes of investment and management of funds, the trust pools these accounts,

(iii) Accounts in the trust are established solely for the benefit of disabled individuals by the parent, grandparent, or legal guardian of the individuals, by the individuals, or by a court, and

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the Department from the amounts remaining in the account an amount equal to the total amount of Medical Assistance paid on behalf of the beneficiary.]

(b) *Pooled trusts as defined in Regulations .08-4 and .08-5 of this chapter.*

(7) *A trust established under 42 U.S.C. §1396p(d)(4)(B) shall be counted in determining eligibility for Medical Assistance.*

[C. Special Needs Trust. The following criteria shall define a special needs trust:

(1) The trust is irrevocable;]

**.08-3 Special Needs Trust — General.**

*In addition to the criteria in Regulation .08-5 of this chapter, the following criteria shall define a special needs trust:*

[(2)] A. The trust states that the beneficiary is disabled under Regulation [.05E] .05-4C of this chapter;

[(3)] B.—[(4)] C. (text unchanged)

[(5)] The trust does not contain provisions that conflict with the policies set forth under this regulation;]

[(6)] D. The trust provides that [the]:

(1) *The Department shall receive all amounts remaining in the trust upon the death of the beneficiary, or upon termination of the trust for any other reason, up to an amount equal to the total Medical Assistance benefits paid on behalf of the beneficiary[;], including any payments made:*

(a) *To a managed care organization; or*

(b) *Through the Developmental Disabilities Administration;*

and

(2) *If the trust is terminated before the beneficiary dies, all funds remaining in the trust shall be disbursed to the beneficiary after:*

(a) *Reimbursement to the Department under §D(1) of this regulation;*

(b) *Payment of federal and State taxes due to the termination of the trust; and*

(c) *Payment of reasonable fees and administrative expenses associated with the trust's termination;*

[(7)] E. The trust does not permit distribution of trust assets upon termination of the trust that would hinder or delay reimbursement to the Department under [§C(6)] §D of this regulation;

[(8)] F. The trust does not place time limits, or any other limits, on the Department's claim for reimbursement under [§C(6)] §D of this regulation;

[(9)] G. The trust contains the following provisions:

[(a)] (1)—[(b)] (2) (text unchanged)

[(c)] The trust beneficiary may not serve as trustee, cotrustee, trust protector, trust advisor, or in any other capacity that would allow the beneficiary to influence or exercise authority or control over distributions from the trust;

(d) The trustee shall administer the trust in accordance with the provisions of Estates and Trusts Article, §15-502, Annotated Code of Maryland, and may not:

(i) Have an interest in trust assets;

(ii) Have discretion to use trust assets for the trustee's own benefit;

(iii) Self-deal by selling trust assets to the trustees or buying trust assets from the trustee; or

(iv) Loan trust assets to the trustee;

(e) Compensation to the trustee shall be limited in accordance with the provisions of Estates and Trusts Article, §14-103, Annotated Code of Maryland;]

[(f)] (3) (text unchanged)

[(g)] If the trust owns titled property that is valued at more than \$500, the property shall be titled in the name of the trust, except for securities, which may be held in the name of a nominee;

(h) If the trust owns an asset jointly with another, the ownership shall be as tenants in common, and the ownership agreement shall provide that, upon termination of the trust, the property shall either be sold for fair market value or the other owners shall purchase the trust's interest in the property for fair market value;

(i) Trust assets may not be held as an ongoing business or enterprise, or as investments in new or untried enterprises;

(j) Trust distributions may not be used to supplement Medical Assistance payments to any health care provider delivering goods or services to the beneficiary;

(k) Trust assets may not be used to compensate family members of the beneficiary for serving the beneficiary in any way, including caring for the beneficiary, accompanying the beneficiary on travel, providing companionship to the beneficiary, or serving as trustees or members of a trust advisory committee;

(l) Trust assets may not be used to purchase gifts;

(m) Trust assets may not be used to purchase a life insurance policy on the life of the beneficiary;

(n) Trust assets may only be used to purchase a life insurance policy on the life of someone other than the trust beneficiary if the trust is the only beneficiary of the life insurance policy;]

[(o)] (4) (text unchanged)

[(p)] The trust may not loan trust assets without security, which may include an interest in real or personal property of at least equivalent value;]

[(q)] (5)—[(v)] (10) (text unchanged)

[(10)] If any amendments are made to the trust, the amendments shall comply with this section and a copy of the amendments shall be sent to the Division of Recoveries and Financial Services; and

(11) If the trust agreement fails to comply with any provision of this section, the full value of the assets of the trust shall be considered available resources of the trust beneficiary for Medical Assistance eligibility purposes.]

**.08-4 Pooled Trust — General.**

*In addition to the criteria in Regulation .08-5 of this chapter, the following criteria shall define a pooled trust:*

A. *A pooled trust contains the following provisions:*

(1) *Each trust beneficiary shall be disabled under Regulation .05-4C of this chapter;*

(2) *Expenditures from the trust shall be used for the sole benefit of the beneficiaries and shall be directly related to a beneficiary's health care, education, comfort, or support;*

(3) *Any leases or mortgages that the trust may hold shall contain a provision that the lease or mortgage either terminates or becomes due and payable upon the termination of the trust;*

(4) *Trust assets may not be used to purchase an annuity on the life of any beneficiary unless the annuity provides that, if such beneficiary dies before the final payments have been made, the remaining payments shall be paid directly to the State until the total*

Medical Assistance benefits paid on behalf of that beneficiary have been reimbursed;

(5) The trust may only make loans if the loan agreement provides for immediate repayment in the event of the termination of the trust for any reason;

(6) The trust may only invest in a single piece of real property for each beneficiary, which is:

(a) A single home property that is used as the residence of the beneficiary; and

(b) Titled in the name of the trust;

(7) The trust may not disburse more than \$100,000 for the purchase of property on behalf of any beneficiary without the approval of the State circuit court in the jurisdiction in which such beneficiary resides;

(8) Trust assets may not be used to pay funeral expenses of any beneficiary but may be used to purchase an irrevocable burial contract for each beneficiary to cover such beneficiary's funeral and burial expenses;

(9) The trust may not receive payments from an annuity or a structured settlement that may provide lump sum or periodic payments unless the annuity or settlement provides that, if the beneficiary dies before the annuity or settlement is fully paid, the balance shall be paid directly to the State until the total Medical Assistance benefits paid on behalf of the beneficiary have been reimbursed;

(10) The trustee shall provide the Division of Recoveries and Financial Services copies of each joinder agreement under which individual beneficiaries join and pool their assets with the pooled trust and form trust sub-accounts;

(11) The trustee shall distribute to the Department all amounts remaining in a beneficiary's sub-account upon the death of the beneficiary, or upon termination of the trust or the beneficiary's sub-account for any other reason, up to an amount equal to the total Medical Assistance benefits paid on behalf of the beneficiary, including any payments made:

(a) To a managed care organization; or

(b) Through the Developmental Disabilities Administration;

(12) To the extent that the trust does not retain the funds in a sub-account for the benefit of a beneficiary, the Department shall be listed as the first payee and have priority over payment of other debts and administrative expenses; and

(13) An annual accounting of the trust and each sub-account, including a listing of current assets, income, and itemized distributions during the previous year, shall be sent to the Division of Recoveries and Financial Services; and

(14) The Department's right to repayment under §A(11) and (12) of this regulation shall occur before any other disbursement, payment, fee or other expense of the sub-account or trust;

B. The trust may not accept a sub-account and enter into a joinder agreement unless the sub-account is valued at less than \$100,000;

C. The trust may terminate a sub-account before the death of the sub-account beneficiary only if the beneficiary's assets are transferred from one pooled trust to another pooled trust;

D. The trust does not permit distribution of trust assets upon termination of the trust that would hinder or delay reimbursement to the Department under §A(11) and (12) of this regulation;

E. The trust shall be established, held and managed by a nonprofit corporation that:

(1) Has received tax-exempt status under, §501(a) or §501(c)(3) of the United States Internal Revenue Code of 1954, as amended;

(2) Is organized under Corporations and Associations Article, Title 5, Subtitle 2, Annotated Code of Maryland, or defined in §501(c) of the Internal Revenue Code of 1954, as amended; and

(3) Has as one of its principal purposes the use of trust monies for the care and treatment of a individual or individuals with disabilities who are or could be the recipients of Program services;

F. Separate accounts shall be maintained for each beneficiary, but the funds of each sub-account may be pooled for purposes of investment and management;

G. The beneficiary of a pooled trust may be of any age, but transfers to a pooled trust after age 65 shall be subject to the transfer penalty provisions of Regulation .08-1 of this chapter;

H. A pooled trust joinder agreement under which an individual establishes a sub-account and becomes a beneficiary of the pooled trust shall provide that:

(1) The sub-account may only be expended on the beneficiary's health care, education, comfort, or support;

(2) The Department shall receive all amounts remaining in the sub-account upon the death of the beneficiary, or upon termination of the trust or sub-account for any other reason, up to an amount equal to the total Medical Assistance benefits paid on behalf of the beneficiary, including any payments made:

(a) To a managed care organization; or

(b) Through the Developmental Disabilities Administration; and

(3) The sub-account has been established by the beneficiary's parent, grandparent, legal guardian, or a court; and

I. No assets may be transferred from a special needs trust to a pooled trust.

**.08-5 Special Needs Trusts and Pooled Trusts — Additional Criteria, Prohibited Expenditures, and Permissible Expenditures.**

A. Criteria. The following criteria define a special needs trusts and a pooled trust:

(1) The trust is irrevocable;

(2) The trust may not contain provisions that conflict with the policies set forth under this chapter;

(3) The trust contains the following provisions:

(a) No trust beneficiary may serve as trustee, cotrustee, trust protector, trust advisor, or in any other capacity that would allow the beneficiary to influence or exercise authority or control over distributions from the trust;

(b) The trustee shall administer the trust in accordance with the provisions of Estates and Trusts Article, §15-502, Annotated Code of Maryland, and may not:

(i) Have an interest in trust assets;

(ii) Have discretion to use trust assets for the trustee's own benefit;

(iii) Self-deal by selling trust assets to the trustees or buying trust assets from the trustee; or

(iv) Loan trust assets to the trustee;

(c) Compensation to the trustee shall be limited in accordance with the provisions of Estates and Trusts Article, §14-103, Annotated Code of Maryland;

(d) If the trust owns titled property that is valued at more than \$500, the property shall be titled in the name of the trust, except for securities, which may be held in the name of a nominee;

(e) If the trust owns an asset jointly with another, the ownership shall be as tenants in common, and the ownership agreement shall provide that, on termination of the trust:

(i) The property shall be sold for fair market value; or

(ii) The other owners shall purchase the trust's interest in the property for fair market value;

(f) Trust assets may not be held as an ongoing business or enterprise, or as investments in new or untried enterprises;

(g) Trust distributions may not be used to supplement Medical Assistance payments to any health care provider delivering goods or services to a trust beneficiary;

(h) Trust assets may not be used to compensate family members of a trust beneficiary for serving the beneficiary in any way, including:

- (i) Caring for the beneficiary;
- (ii) Accompanying the beneficiary on travel;
- (iii) Providing companionship to the beneficiary; or
- (iv) Serving as trustees or members of a trust advisory committee;

(i) Trust assets may not be used to purchase gifts;

(j) Trust assets may not be used to purchase a life insurance policy on the life of a beneficiary;

(k) Trust assets may only be used to purchase a life insurance policy on the life of someone other than a trust beneficiary if the trust is the only beneficiary of the life insurance policy;

(l) The trust may not loan trust assets without security, which may include an interest in real or personal property of at least equivalent value;

(m) If any amendments are made to the trust:

- (i) The amendments shall comply with this chapter; and
- (ii) A copy of the amendments shall be sent to the Division of Recoveries and Financial Services; and

(n) If the trust agreement fails to comply with any provision of this chapter, the full value of the assets of the trust if a special needs trust or the full value of the trust sub-account if a pooled trust shall be considered available resources of the beneficiary for Medical Assistance eligibility purposes.

B. No payment as a result of a judgment, award, or settlement of an action or claim for which another person was legally obligated to pay because of injury or illness shall be placed into a special needs trust, a pooled trust, or a pooled trust sub-account without first repaying the Department for costs of past Program services provided to the recipient related to that action or claim, including any payments made:

- (1) To a managed care organization; and
- (2) Through the Developmental Disabilities Administration.

C. If there is any change to the trustee or co-trustee named in a special needs trust or a pooled trust, or a successor trustee is appointed, the new or successor trustee shall immediately notify the Division of Recoveries and Financial Services in writing of the name and address of the new or successor trustee.

D. The trustee shall submit a copy of the death certificate of a beneficiary to the Division of Recoveries and Financial Services within 30 days of the death of the beneficiary.

E. Trust assets may not be used to pay the following expenses:

- (1) The purchase of food or shelter for the beneficiary;
- (2) The beneficiary's monthly utility costs; or
- (3) Credit card overdraft or late fees.

F. Monies received through job related income and Social Security income:

- (1) Shall be maintained in a separate bank account from trust assets; and
- (2) May not be reported on the trust's annual account.

G. If trust assets are used to pay the balance of a credit card held in the name of the beneficiary, the trustee shall submit a copy of the monthly credit card statement paid along with the annual accounting required under Regulations .08-3G(8) and .08-4A(14) of this chapter.

H. Resources Not Considered. The following items may not be considered available resources of a special needs trust beneficiary or pooled trust beneficiary for purposes of Regulation .08 of this chapter if purchased with special needs trust assets or pooled trust assets:

(1) A home, including adjacent land, if the beneficiary lives in the home or intends to return to the home;

(2) Household goods, such as furniture, furnishings, household equipment, and household supplies;

(3) Household personal effects, such as toiletries, or items of personal care;

(4) One automobile or other vehicle limited in value to:

(a) \$4,500; or

(b) Greater than \$4,500 only if:

(i) Necessary for specific and regular medical treatments;

(ii) Modified for handicap access and use; or

(iii) Especially needed for essential daily activities;

(5) Life insurance if the cash surrender value of the life insurance and the face value of the life insurance are valued at less than \$1,500;

(6) Term life insurance;

(7) A burial plot or other burial space;

(8) An irrevocable burial fund worth any amount, or a revocable burial fund worth no more than \$1,500; and

(9) The following personal effects:

(a) Recreational equipment, games, and crafts;

(b) Books and magazines;

(c) Telephones, personal digital assistance devices, and answering machines;

(d) Television, radio, and cable service;

(e) Musical instruments and stereos;

(f) Recreation and entertainment; and

(g) Regular home maintenance expenses for the beneficiary's home that is held in the name of the trust in accordance with Regulation .08-3G(7) or Regulation .08-4A(6) of this chapter.

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

## Subtitle 09 MEDICAL CARE PROGRAMS

### Notice of Proposed Action

[11-056-P]

The Secretary of Health and Mental Hygiene proposes to amend:

(1) Regulation .19 under **COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations**; and

(2) Regulation .14 under **COMAR 10.09.76 Primary Adult Care Program**.

#### Statement of Purpose

The purpose of this action is to implement the calendar 2011 MCO's HealthChoice and PAC capitation rates and to add language to allow for interim rate adjustments to the PAC capitation rates.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The total HealthChoice and PAC capitation increases for the period of January 1, 2011—December 31, 2011 is \$121,467,314, which represents an overall 4.3 percent increase over both programs. The increase is a result of anticipated increases in the cost and utilization of services for Medicaid eligibles in calendar year 2011.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)	\$121,467,314
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	
	Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	\$121,467,314
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	
<b>III. Assumptions.</b> (Identified by Impact Letter and Number from Section II.)		
A. Base data for the rate increases is the audited calendar year 2008 MCO reported expenditures.		
D. There will be a positive impact on the MCOs due to the rate increases. See IIA above.		

**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, or email to regs@dohm.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations**

Authority: Insurance Article, §§15-112, 15-605, and 15-1008; Health-General Article, §§2-104, 15-102.3, and 15-103; Annotated Code of Maryland

- .19 MCO Reimbursement.**  
A. (text unchanged)  
B. Capitation Rate-Setting Methodology.  
(1)—(3) (text unchanged)

(4) Except to the extent of adjustments required by §D of this regulation or by Regulations .19-1—.19-4 of this chapter, the Department shall make payments monthly at the rates specified in the following tables:

[(a)]—[(c)] (tables proposed for repeal)  
(a) *Rate Table for Families and Children*  
Effective January 1, 2011—December 31, 2011

	Age/RAC	Gender	PMPM Baltimore City	PMPM Allegany, Frederick, Garrett, Montgomery, Prince George's and Washington Counties	PMPM Rest of State
	<i>Under age 1 Birth Weight 1500 grams or less</i>	<i>Both</i>	\$8,026.97	\$6,580.86	\$7,173.09
	<i>Under age 1 Birth Weight over 1500 grams</i>	<i>Both</i>	\$413.47	\$338.98	\$369.48
	<i>1-5</i>	<i>Male</i>	\$182.56	\$149.67	\$163.14
		<i>Female</i>	\$156.01	\$127.90	\$139.42
	<i>6-14</i>	<i>Male</i>	\$90.91	\$74.53	\$81.24
		<i>Female</i>	\$85.12	\$69.78	\$76.06
	<i>15-20</i>	<i>Male</i>	\$148.26	\$121.55	\$132.49
		<i>Female</i>	\$173.71	\$142.41	\$155.23
	<i>21-44</i>	<i>Male</i>	\$399.04	\$327.15	\$356.59
		<i>Female</i>	\$424.90	\$348.35	\$379.70
	<i>45-64</i>	<i>Male</i>	\$718.42	\$589.00	\$642.00
		<i>Female</i>	\$636.39	\$521.74	\$568.69

**PROPOSED ACTION ON REGULATIONS**

ACG—adjusted cells ACG 100, 200, 300, 400, 500, 600, 700, 900, 1000, 1100, 1200, 1300, 1600, 1710, 1711, 1712, 1720, 1721, 1722, 1730, 1731, 1732, 1800, 1900, 2000, 2100, 2200, 2300, 2400, 2500, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3800, 4210, 5100, 5110, 5200 5230, 5310, 5339	RAC 1F	Both	\$282.55	\$229.24	\$249.10
ACG 800, 1740., 1741, 1742, 1750, 2700, 3600, 1750, 1751, 1752, 2700, 3600, 3700, 3900, 4000, 4100, 4220, 4310, 4410, 4510, 4610, 4710, 4720, 4810, 5340	RAC 2F	Both	\$376.63	\$ 305.57	\$ 332.03
ACG 1400, 1500, 1750, 1761, 1762, 1770, 1771, 1772, 2600, 4320, 4520, 4620, 4820	RAC 3F	Both	\$508.27	\$412.38	\$448.09
ACG 4330, 4420, 4830, 4910, 4920, 5010, 5020, 5040	RAC 4F	Both	\$748.82	\$607.54	\$660.16
ACG 4430, 4730, 4930, 5030, 5050	RAC 5F	Both	\$854.52	\$693.29	\$753.34
ACG 4940, 5060	RAC 6F	Both	\$1,583.99	\$1,285.13	\$1,396.45
ACG 5070	RAC 7F	Both	\$2,022.78	\$1,641.13	\$1,783.29
ACG 100, 200, 300, 500, 600, 1100, 1600, 2000, 2400, 3400, 5100, 5110, 5200	RAC 1G	Both	\$89.00	\$ 72.21	\$ 78.46
ACG 400, 700, 900, 1000, 1200, 1300, 1710, 1711, 1712, 1800, 1900, 2100, 2200, 2300, 2800, 2900, 3000, 3100, 5310	RAC 2G	Both	\$123.81	\$100.45	\$109.15
ACG 1720, 1721, 1722, 1731, 1732, 1730, 2500, 3200, 3300, 3500, 3800, 4210, 5230, 5339	RAC 3G	Both	\$152.69	\$123.88	\$134.61
ACG 800, 1740, , 1741, 1742, 1750, 2700, 3600, 1750, 1751, 1752, 2700, 3600, 3700, 3900, 4000, 4100, 4220, 4310, 4410, 4510, 4610, 4710, 4720, 4810, 5340	RAC 4G	Both	\$214.93	\$174.38	\$189.48
ACG 1400, 1500, 1750, 1761, 1762, 1770, 1771, 1772, 2600, 4320, 4520, 4620, 4820	RAC 5G	Both	\$321.87	\$261.14	\$283.76
ACG 4330, 4420, 4830, 4910, 4920, 5010, 5020, 5040	RAC 6G	Both	\$393.47	\$319.23	\$346.89
ACG 4430, 4730, 4930,4940, 5030, 5050, 5060, 5070	RAC 7G	Both	\$781.17	\$633.78	\$688.68
SOBRA Mothers			\$699.73	\$573.67	\$625.30
Persons with HIV	ALL	Both	\$612.79	\$612.79	\$612.79

(b) Rate Table for Disabled Individuals  
Effective January 1, 2011—December 31, 2011

	Age/RAC	Gender	PMPM Baltimore City	PMPM Allegany, Frederick, Garrett, Montgomery, Prince George's and Washington Counties	PMPM Rest of State
	Under Age 1	Both	\$3,235.64	\$3,235.64	\$3,235.64
	1-5	Male	\$887.19	\$887.19	\$887.19
		Female	\$842.64	\$842.64	\$842.64
	6-14	Male	\$219.90	\$219.90	\$219.90
		Female	\$283.16	\$283.16	\$283.16
	15-20	Male	\$217.01	\$217.01	\$217.01
		Female	\$324.33	\$324.33	\$324.33
	21-44	Male	\$1,279.47	\$1,048.97	\$1,143.37
	21-44	Female	\$1,467.02	\$1,202.72	\$1,310.96
	45-64	Male	\$2,195.13	\$1,799.66	\$1,961.62
	45-64	Female	\$1,866.78	\$1,530.47	\$1,668.20
ACG—adjusted cells					
ACG 100, 200, 300, 1100, 1300, 1400, 1500, 1600, 1710, 1711, 1712, 1720, 1721, 1722, 1730, 1731, 1732, 1900, 2400, 2600, 2900, 3400, 5100, 5110, 5200, 5310	RAC 10	Both	\$299.15	\$242.71	\$263.73
ACG 400, 500, 700, 900, 1000, 1200, 1740, 1741, 1742, 1750, 1751, 1752 1800, 2000, 2100, 2200,	RAC 11	Both	\$365.65	\$296.66	\$322.36

2300, 2500, 2700, 2800, 3000, 3100, 3200, 3300, 3500, 3900, 4000, 4310, 5330					
ACG 600, 1760, 1761, 1762, 3600, 3700, 4100, 4320, 4410, 4710, 4810, 4820	RAC 12	Both	\$710.96	\$576.82	\$626.78
ACG 3800, 4210, 4220, 4330, 4420, 4720, 4910, 5320	RAC13	Both	\$767.99	\$623.09	\$677.06
ACG 800, 4430, 4510, 4610, 5040, 5340	RAC14	Both	\$1,025.00	\$831.61	\$903.64
ACG 1770, 1771, 1772, 4520, 4620, 4830, 4920, 5050	RAC15	Both	\$1,301.60	\$1,056.03	\$1,147.50
ACG 4730, 4930, 5010	RAC16	Both	\$1,536.75	\$1,246.80	\$1,354.80
ACG 4940, 5020, 5060	RAC17	Both	\$1,904.06	\$1,544.82	\$1,678.63
ACG 5030, 5070	RAC 18	Both	\$3,275.77	\$2,657.72	\$2,887.92
Persons with AIDS	All	Both	\$3,030.41	\$2,135.18	\$2,135.18
Persons with HIV	All	Both	\$1,609.69	\$1,609.69	\$1,609.69

(c) Rate Table for Supplemental Payment for Delivery/Newborn.  
Effective January 1, 2011—December 31, 2011

	Age	Gender	PMPM Baltimore City	PMPM Allegany, Frederick, Garrett, Montgomery, Prince George's and Washington Counties	PMPM Rest of State
Supplemental Payment Cells					
Delivery/Newborn—all births except live birth weight 1,500 grams or less	All	Both	\$13,191.51	\$10,814.99	\$11,788.26
Delivery/Newborn—live birth weight 1,500 grams or less	All	Both	\$72,619.63	\$72,619.63	\$72,619.63

(d)—(g) (text unchanged)  
(5) (text unchanged)  
C.—D. (text unchanged)

**10.09.76 Primary Adult Care Program**

Authority: Health-General Article, §§15-101 and 15-103, Annotated Code of Maryland

**.14 Payments.**

A. MCO Capitation. The Department shall pay an MCO a fixed monthly capitation rate for each of its PAC enrollees, at the rates specified in the following table effective January 1, 2010:

	Per Month Per Member
Age 19—44 Male	[\$136.08] \$139.83
Age 19—44 Female	[\$164.81] \$169.93
Age 45+ Male	[\$201.40] \$200.94
Age 45+ Female	[\$240.02] \$231.97

B.—F. (text unchanged)  
G. *Interim Rate Adjustments.*

(1) Under circumstances described in §G(2) of this regulation, the Department shall adjust the capitation rates set forth in §A of this regulation to reflect changes in service costs during the contract year due to an occurrence listed in §G(2) of this regulation.

(2) The Department shall adjust the payment rates specified in §A of this regulation to reflect service cost changes that qualify under §G(3) of this regulation and result from an addition or deletion of services covered under the PAC benefits package.

(3) The Department shall make an interim rate adjustment if the effect of an occurrence listed in §G(2) of this regulation is sufficient to result in program-wide overpayment or underpayment of at least 0.2 percent because of a difference between:

(a) Service cost projections used to develop the rates set forth in §A of this regulation; and

(b) Service cost for the same period, taking into account an occurrence that is listed in §G(2) of this regulation.

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS**

**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

**Notice of Proposed Action**  
[11-055-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .14 under **COMAR 10.09.69 Maryland Medicaid Managed Care Program: Rare and Expensive Case Management.**

**Statement of Purpose**

The purpose of this action is to implement the January 1, 2011, rates for the Rare and Expensive Case Management (REM) Program.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** A reduction in the REM rates will result in a cost savings for the Department of \$400,000.

**Subtitle 21 MENTAL HYGIENE REGULATIONS**

**10.21.25 Fee Schedule — Mental Health Services — Community-Based Programs and Individual Practitioners**

Authority: Health-General Article, §§10-901, 15-103, and 15-105; Title 16, Subtitles 1 and 2; Annotated Code of Maryland

**Notice of Proposed Action**

[11-084-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .03-1, .08, and .09 under **COMAR 10.21.25 Fee Schedule — Mental Health Services — Community-Based Programs and Individuals Practitioners**.

**Statement of Purpose**

The purpose of this action is to:

- (1) Clarify the reimbursement process for individual practitioners;
- (2) Clarify minimum treatment times and billing practices for partial hospitalization programs; and
- (3) Add a reimbursement rate for transitional case management services provided to individuals being discharged from an inpatient facility or an institute for mental disease.

**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 Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.03-1 General Reimbursement Conditions.**

- A. (text unchanged)
- B. Claims Retraction. The Department may retract any payments made to [the] any *PMHS* provider for paid claims if an audit indicates that:

- (1)—(2) (text unchanged)
- (3) There is no documentation that the services were provided;

[or]

- (4) The precondition for the delivery of the service was not met;

- (5) *The provider failed to comply with §H of this regulation; or*
- (6) *The provider failed to comply with the regulations that outline the requirements for the specific program.*

C.—G. (text unchanged)

**II. Types of Economic Impact.**

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude

- A. On issuing agency: (E-) \$400,000
- B. On other State agencies: NONE
- C. On local governments: NONE

	Benefit (+)	
	Cost (-)	Magnitude

- D. On regulated industries or trade groups: (-) \$400,000
- E. On other industries or trade groups: NONE
- F. Direct and indirect effects on public: NONE

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

A. A. As part of cost containment measures, the REM rates have been reduced resulting in a cost savings for the Department of \$400,000.

D. There will be a negative impact on REM case management providers due to reduced payments.

**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 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.14 Payment Procedures — Request for Payment.**

A.—D. (text unchanged)

E. Effective [July 1, 2009] *January 1, 2011*, the Department shall pay [A06] \$388.55 for case management assessment, as described in Regulation .05C of this chapter.

F. Effective [July 1, 2009] *January 1, 2011*, the Department shall make payments monthly for case management services at one of the rates specified below:

- (1) Level of Care 1: [S02] \$286.90;
- (2) Level of Care 2: [S180] \$171.00; or
- (3) Level of Care 3: [S95] \$90.25.

G. (text unchanged)

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene



H. For individual practitioners, when services are preauthorized, the following documentation is required before submitting for payment for services rendered:

(1) For each individual served, the medical record, which shall include the following documentation:

- (a) A signed consent to treatment;
- (b) A comprehensive assessment that includes the:
  - (i) Individual or family's presenting problem;
  - (ii) Individual or family's history;
  - (iii) Individual's diagnosis; and
  - (iv) Rationale for the diagnosis; and

(c) An individualized treatment plan that includes the:

- (i) Problems, needs, strengths, and goals that are measurable;
  - (ii) Interventions that are medically necessary; and
  - (iii) Signatures of the individual, or if the individual is a minor, the guardian, and the treating mental health professional; and
- (2) Progress notes for each face-to-face contact including:
- (a) Date of service;
  - (b) Start time and end time;
  - (c) Location;
  - (d) Summary of interventions provided; and
  - (e) The treating mental health professional's signature and date of service.

I. Services rendered by an individual practitioner may only be reimbursed for the licensed mental health professionals authorized by the practice board to diagnose and treat psychiatric disorders as identified in this chapter of regulations.

**.08 Fee Schedule—Treatment Services—Programs.**

A.—B. (text unchanged)

C. Partial Hospitalization. The Department shall reimburse:

(1) A non-hospital-based partial hospitalization (psychiatric day treatment) program, for services provided to an eligible Medicaid recipient:

- (a) For a full day, a minimum of [5] 6.5 hours of therapeutic activities per day — \$196.90 per day;
- (b) For a half day, or intensive, outpatient services, when the services are delivered by a multidisciplinary team, for a minimum of [3] 4 hours of therapeutic activities, including at least two group therapies — \$107.16 per day;

(2)—(3) (text unchanged)

D. The Department may not reimburse a partial hospitalization program (psychiatric day treatment) or an intensive outpatient mental health program on the same day that an intensive outpatient program or service is provided for substance abuse treatment.

[D.] E. (text unchanged)

**.09 Fee Schedule — Support Services.**

A.—H. (text unchanged)

I. Mental Health Case Management. Beginning September 1, 2009, the Department shall reimburse a designated program that is approved by the Core Service Agency for mental health case management according to COMAR 10.09.45 for providing case management services to a child or adolescent with a serious emotional disorder or an adult with a serious and persistent mental health disorder as follows:

- (1) Assessment — \$105; [and]
- (2) Case Management Service units, for a minimum of 60 minutes of face-to-face and non-face-to-face case management service at a rate of \$105 per day for:
  - (a) (text unchanged)
  - (b) Intensive level up to 5 units per month; and
- (3) When an individual is referred to case management by the Administration or its designee, and is transitioning from an institute

for mental disease or hospital, one transitional visit at a rate of \$158.16.

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 27 BOARD OF NURSING**

**10.27.10 Standards of Practice for Licensed Practical Nurses**

Authority: Health Occupations Article, §8-205(a)(1)(2)(6) and (c), Annotated Code of Maryland

**Notice of Proposed Action**

[11-046-P]

The Secretary of Health and Mental Hygiene proposes to repeal in their entirety existing Regulations .01—.03 and adopt new Regulations .01—.04 under **COMAR 10.27.10 Standards of Practice for Licensed Practical Nurses**. This action was considered by the Board of Nursing at a public meeting held on June 22, 2010, notice of which was given by publication on the Board's website on June 1, 2010.

**Statement of Purpose**

The purpose of this action is to amend the regulations for the practice of licensed practical nurses (LPN) to reflect current practice and community standards. The amendments provide definitions of terms not previously included in the existing regulations such as: comprehensive nursing assessment; circulating during the intraoperative phase of a surgical procedure; focused nursing assessment, nursing team relationship; nursing triage; supervision; and support. The amendments also clarify: the duties and position of the LPN in the nursing team relationship; what is expected in the way of assessing a client; and the duties of the LPN in implementing the nursing plan of care.

**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, or email to regs@dhhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.01 Definitions.**

A. The following terms have the meanings indicated.

B. Terms Defined.

- (1) "Assessment" means the act of gathering and identifying data about the client.
- (2) "Assign" means the transfer of responsibility from one nurse to another, each having legal authority to perform the function as permitted by the licensee's scope of practice.
- (3) "Board" means the Board of Nursing.

(4) “Case management” means a collaborative process that assesses, plans, implements, coordinates, monitors, and evaluates options and services to meet the client’s health needs through enhanced communication and use of available resources to promote quality client outcomes and cost effective care.

(5) “Client” means an individual who is under the licensee’s direct or indirect care.

(6) *Comprehensive Nursing Assessment.*

(a) “Comprehensive nursing assessment” means an assessment performed by a registered nurse which is the foundation for the analysis of the assessment data to determine:

- (i) The nursing diagnosis;
- (ii) Expected client outcomes; and
- (iii) The client’s plan of care.

(b) “Comprehensive nursing assessment” includes, but is not limited to:

- (i) Extensive initial and ongoing data collection for individuals, families, groups, and communities;
- (ii) A focused nursing assessment;
- (iii) Past history, current health status, and potential changes in the client’s condition;
- (iv) Identification of alterations to the client’s previous condition; and
- (v) Synthesis of the biological, psychological, spiritual, and social aspects of the client’s condition.

(7) “Contributes” means to participate as a team member in the nursing team relationship.

(8) “Delegating” means the act of authorizing an unlicensed individual, a certified nursing assistant, or a certified medication technician to perform selected acts of registered nursing or licensed practical nursing.

(9) “Evaluation” means the review and analysis of the extent to which the assessment, planning, and implementation were effective in resolving the client’s health problem.

(10) *Focused nursing assessment.*

(a) “Focused nursing assessment” means an appraisal of a client’s current health status and situation at hand;

(b) “Focused nursing assessment” includes the reporting of information to other members of the health care team.

(11) “Goal” means a measurable result to be achieved by a client which is either long- or short-term.

(12) “Implementation” means the carrying out of the nursing plan of care.

(13) “Licensed nurse” means a practical nurse or registered nurse licensed by the Board under the provisions of Health Occupations Article, Title 8, Annotated Code of Maryland.

(14) “Licensed practical nurse (LPN)” means an individual licensed by the Board of Nursing to practice licensed practical nursing.

(15) “Nursing plan of care” means an established set of goals, priorities, and methods designed to solve, prevent, and manage a client’s identified problems.

(16) “Nursing team relationship” means that each licensed or certified individual who participates in providing care for a client is a part of the nursing team.

(17) “Nursing triage” means the systematic collection of client data at the client’s point of entry or re-entry into the health care system for the purpose of sorting clients by acuity levels to determine the allocation of available health care resources to direct each client to the right health care provider at the right time.

(18) “Record” means a written retrievable document containing the client’s health information.

(19) “Registered nurse (RN)” means an individual licensed by the Board of Nursing to practice registered nursing.

(20) *Standards of Licensed Practical Nurse Practice”*

(a) “Standards of licensed practical nurse practice” means the minimum criteria to which the licensed nurse shall adhere in the practice of licensed practical nursing.

(b) “Standards of licensed practical nurse practice” includes standards of professional performance as described in Regulation .03 of this chapter.

(24) “Supervision” means the process of critically watching an individual’s performance with the intention of evaluating and directing the individual’s performance in the delivery of nursing care.

(25) “Support” means to promote, assist, or help.

**.02 Nursing Process.**

A. In a team relationship the licensed practical nurse contributes to the nursing process. The nursing process shall include, but is not limited to, the following elements listed in §B—C of this regulation.

B. *Nursing Assessment.* The LPN contributes to the nursing assessment by:

(1) *Collecting data for the assessment of the client:*

- (a) Through direct observation;
- (b) From interviews with the client, client’s family, and significant others;
- (c) From the review of the client’s medical records including, but not limited to:
  - (i) Past history;
  - (ii) Laboratory studies;
  - (iii) Medications; and
  - (iv) Consultations; and
- (d) By assessing the environment;

(2) *Performing a focused nursing assessment of the client’s current conditions and problems or needs which includes:*

- (a) The nursing interview;
- (b) A physical assessment;
- (c) The client’s common predictable, chronic, routine, recurrent health problems; and
- (d) Identification of any changes in the client’s symptoms and behavior;

(3) *Communicating the assessment on records that reflect:*

- (a) Changes in the client’s health status; and
- (b) A continuous collection of data by updating and revising of the nursing assessment; and
- (c) Data recorded in a manner which is:
  - (i) Complete, timely, and accurate;
  - (ii) Consistent with general standards of nursing practice, and
  - (iii) Consistent with the facility’s policies and procedures.

C. *Nursing Plan of Care.*

(1) *Development.* The LPN contributes to the development of the nursing plan of care by:

- (a) Reporting ongoing data collection;
- (b) Reporting changes that include, but are not limited to, the client’s;
  - (i) Condition;
  - (ii) Changed goals; and
  - (iii) Changed priorities;
- (c) Making recommendations to individualize interventions specific to the client;
- (d) Reporting communication with;
  - (i) The client;
  - (ii) The client’s family;
  - (iii) Significant others; and
  - (iv) Other members of the health care team; and
- (e) Documenting in appropriate records.

(2) *Implementation.* The LPN participates in the implementation of the nursing plan of care by:

- (a) Continuing to collect and report data;
  - (b) Assisting in the coordination of client care with other health care team members as directed by the RN;
  - (c) Implementing standardized or RN developed teaching plans under the direction of the RN;
  - (d) Contributing to the nursing case management by:
    - (i) Implementing assigned components of the nursing care plan; and
    - (ii) Continuing to collect and report data regarding the implemented plan including the client's response to intervention and problem identification;
  - (e) Contributing to nursing management and supervision of the certified nursing assistant and unlicensed personnel by:
    - (i) Assuring nursing functions are performed competently and timely; and
    - (ii) Reporting to the leader of the nursing team; and
  - (f) In accordance with the nursing team's plan of care for the client and with COMAR10.27.11, delegating acts of the LPN's practice to:
    - (i) The certified nursing assistant;
    - (ii) The certified medication technician; and
    - (iii) Unlicensed personnel;
  - (g) Performing nursing interventions in a competent safe manner appropriate to the LPN's scope of practice including:
    - (i) Administration of medications and treatments;
    - (ii) Administration of infusion therapy consistent with COMAR 10.27.20; and,
    - (iii) Nursing intervention consistent with any declaratory rulings and regulations issued by the Board;
  - (h) Documenting implementation of nursing care timely, completely, and accurately; and
    - (i) Utilizing identified nursing approaches which include, but are not limited to:
      - (ii) Reflecting knowledge of scientific principles;
      - (iii) Recognizing the rights of the client, the client's family, and significant others; and
      - (iv) Providing a safe and therapeutic environment.
- (3) *Evaluation.* The LPN contributes to the evaluation of the nursing plan of care by:
- (a) Collecting and communicating data on the client's goal achievement;
  - (b) Assisting in identifying barriers to the client's meeting any identified goal;
  - (c) Reporting to other members of the health care team in a timely, accurate, and complete manner on data collected from:
    - (i) The client;
    - (ii) The client's family;
    - (iii) Significant others; and
    - (iv) Other health care providers;
  - (d) Assisting in evaluating the client's competency in performing any treatment and self administering medication by utilizing established competency based evaluation tools;
  - (e) Making recommendations regarding modification of the teaching nursing plan based on the client's response;
  - (f) Making recommendations regarding any revision to the nursing plan of care; and
  - (g) Documenting the evaluation data on appropriate records.
- (4) *Nursing Team Relationship.*
- (a) The LPN as a part of the nursing team:
    - (i) Functions as a team member under the leadership of the RN who is the team leader;
    - (ii) Participates in providing care for the client; and

(iii) Provides care for the client to the fullest extent allowed by the LPN's scope of practice.

(b) Each licensed nurse has responsibility for oversight or supervision of nursing practice appropriate to his or her level of licensure which includes critically watching, instructing, directing, and evaluating another's nursing practice.

**.03 Standards of Professional Performance.**

- A. Quality of Care.**
- (1) The LPN shall participate in evaluating the quality and effectiveness of nursing practice.
  - (2) *Measurement Criteria.* The LPN shall:
    - (a) Assist in collecting quality data; and
    - (b) Participate in activities related to implementing changes designed to improve care.
- B. Performance Appraisal.**
- (1) The LPN shall be accountable for evaluating the LPN's own nursing practice on a regular basis in relation to:
    - (a) Relevant professional practice standards; and
    - (b) Relevant statutes and regulations governing licensed practical nursing.
  - (2) *Measurement Criteria.*
    - (a) The LPN shall:
      - (i) Participate in peer review as appropriate; and
      - (ii) As necessary, seek guidance, support, education, and supervision.
    - (b) The LPN shall demonstrate knowledge of and comply with:
      - (i) Relevant professional practice standards;
      - (ii) Relevant statutes and regulations governing licensed practical nursing; and
      - (iii) The policies and procedures of the practice setting.
- C. Education.**
- (1) The LPN shall acquire and maintain current knowledge and continued competency in the practice of licensed practical nursing.
  - (2) *Measurement Criteria.* The LPN shall:
    - (a) Participate in educational opportunities and experiences to maintain professional competence; and
    - (b) Obtain knowledge and skills appropriate to the practice setting.
- D. Collegiality.**
- (1) The LPN shall support the professional development of the:
    - (a) Licensed practical nurse;
    - (b) Certified nursing assistant;
    - (c) Certified medication technician; and
    - (d) Unlicensed personnel.
  - (2) *Measurement Criteria.*
    - (a) As directed by the RN, the LPN shall share knowledge and skills with:
      - (i) Other LPNs;
      - (ii) Certified nursing assistants;
      - (iii) Certified medication technicians; and
      - (iv) Unlicensed personnel.
    - (b) The LPN shall contribute to a supportive and healthy work environment.
- E. Ethics.**
- (1) The licensed practical nurse's decisions and actions shall reflect ethical principles.
  - (2) *Measurement Criteria.* The LPN shall:
    - (a) Comply with the Code of Ethics as described in COMAR 10.27.19;
    - (b) Maintain client confidentiality within legal and regulatory standards;
    - (c) Act as a client advocate;

(d) Deliver care in a nonjudgmental and nondiscriminatory manner that is sensitive to client diversity;

(e) Deliver care in a manner that preserves the client's;

- (i) Autonomy;
- (ii) Dignity; and
- (iii) Rights;

(f) Communicate with the RN regarding potential ethical issues; and

(g) Communicate to the RN, observations of actions by other health care providers which may jeopardize the client's safety and well being.

**F. Collaboration.**

(1) The LPN shall participate with the client, the client's family, significant others, the RN, and other health care providers in providing care.

(2) Measurement Criteria. The LPN shall:

(a) Participate with the client, the client's family, significant others, the RN, and other health care providers by contributing to:

- (i) The development of overall goals;
- (ii) The nursing plan of care; and
- (iii) Decisions related to care and the delivery of services; and

(b) Consult with the RN and other health care providers regarding client care.

**G. Research.**

(1) The LPN shall support research activities appropriate to the LPN's scope of practice.

(2) Measurement Criteria. The LPN shall:

(a) Have knowledge of the client's rights related to research;

(b) Participate in data collection; and,

(c) Utilize established facility-approved research protocols.

**H. Resource Utilization.**

(1) The LPN shall consider factors related to safety and cost when participating in client care planning and implementing client care.

(2) Measurement Criteria. The LPN shall:

(a) Assist the client, the client's family, and significant others to identify:

- (i) Unmet client needs; and
- (ii) Potential services to meet any unmet needs; and

(b) Evaluate factors related to client safety and cost when performing or delegating client care.

**I. Delegation and Supervision.**

(1) When the delegation does not jeopardize the client's welfare, the LPN may delegate nursing tasks to a certified nursing assistant, medication technician, or an unlicensed person who is competent to perform those acts or tasks.

(2) Measurement Criteria.

(a) When delegating a nursing task, the LPN shall assess the client and determine that the delegation is consistent with COMAR 10.27.11.

(b) When delegating nursing tasks, the LPN shall assess the capabilities, experience, and competency of a person working under the LPN's supervision.

(c) When delegating a nursing task to a certified nursing assistant, medication technician, or an unlicensed person, the LPN shall:

- (i) Instruct;
- (ii) Direct;
- (iii) Regularly evaluate the performance of nursing tasks by the certified nursing assistant, medication technician, or unlicensed person;

(iv) Rectify a situation in which the certified nursing assistant, medication technician, or unlicensed person under the

LPN's supervision is performing nursing tasks that are inconsistent with generally accepted professional standards and notify the registered nurse leader of the nursing team; and

(v) Prohibit the continued performance of the certified nursing assistant, medication technician, or unlicensed person who is performing the delegated nursing task or tasks incompetently and notify the registered nurse leader of the nursing team.

**J. Refusal.**

(1) The LPN has the right and the responsibility to refuse to perform, or delegate nursing acts.

(2) Measurement Criteria.

(a) The LPN has the right and responsibility to refuse to perform a nursing act which is beyond the parameters of the LPN's:

- (i) Education;
- (ii) Capabilities;
- (iii) Clinical competency; and
- (iv) Scope of practice.

(b) The LPN shall obtain appropriate education, training, and supervision as required to perform nursing functions which are within the LPN's scope of practice but are beyond the parameters of the licensee's clinical competency.

(c) The LPN has the right to refuse to accept responsibility and accountability for supervising, monitoring, instructing, or evaluating a certified nursing assistant, certified medication technician, or an unlicensed person performing a nursing task that has not been delegated by that licensee.

**.04 Prohibited Acts.**

The LPN may not:

A. Perform nursing triage;

B. Perform the responsibilities of, or serve in the role of, the circulating nurse in the intraoperative phase of surgery including, but not limited to:

(1) Assessing the client in the intraoperative phase of surgery to identify emerging client situations which would require anticipating and responding to the needs of the:

- (a) Client;
- (b) Anesthesiologist; and
- (c) Surgical team;

(2) Administering or transporting to the surgical field medications, infusates, or solutions that may be required by the anesthesia or surgical team during the course of the intraoperative procedure;

(3) Gathering needed equipment and anticipating resuscitation efforts during the intraoperative phase;

(4) Collaborating with other members of the surgical team for ongoing assessment and planning for the client's postoperative care; and

(5) Documenting completely, timely, and accurately on appropriate records;

C. Perform the comprehensive nursing assessment;

D. Serve as the case manager for client care;

E. Supervise the nursing practice of RNs and other LPNs; and

F. Analyze client data in order to determine client outcome identification and formulation of a nursing diagnosis.

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 41 BOARD OF EXAMINERS  
FOR AUDIOLOGISTS, HEARING AID  
DISPENSERS, AND SPEECH-  
LANGUAGE PATHOLOGISTS**

**10.41.03 Licensure and Continuing Education**

Authority: Health Occupations Article, §§2-302, 2-302.2, 2-305, 2-308, 2-310, and 2-310.2, Annotated Code of Maryland

**Notice of Proposed Action**

[11-083-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .02 under **COMAR 10.41.03 Licensure and Continuing Education**. This action was considered at a public meeting on March 18, 2010, notice of which was given by publication in 37:6 Md. R. 501 (March 12, 2010), pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to define “accredited educational institution” as a college or university located in the U.S. which is accredited by the Council for Higher Education Accreditation or the U.S. Department of Education, or as a college or university located outside the U.S. whose program meets the standards for certification established by the governing body of educational institutions in the country in which the college or university is located.

**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 Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dohm.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) “Accredited educational institution” means:

(a) A college or university located in the U.S. whose program has been accredited by a national accrediting association recognized by the:

(i) Council for Higher Education Accreditation; or

(ii) United States Department of Education; or

(b) A college or university located outside the U.S. whose program has met the standards for certification of the governing educational body that is regulated by the government of the country where the college or university is located.

[(1)] (2)—[(6)] (7) (text unchanged)

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 41 BOARD OF EXAMINERS  
FOR AUDIOLOGISTS, HEARING AID  
DISPENSERS, AND SPEECH-  
LANGUAGE PATHOLOGISTS**

**Notice of Proposed Action**

[11-082-P]

The Secretary of Health and Mental Hygiene proposes to amend:

(1) Regulation .06 under **COMAR 10.41.03 Licensure and Continuing Education**; and

(2) Regulation .11 under **COMAR 10.41.08 Hearing Aid Dispensers**.

This action was considered at a public meeting on June 17, 2010, notice of which was given by publication in 37:12 Md. R. 817 (June 4, 2010), pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to:

(1) For licensed audiologists, speech-language pathologists, and individuals licensed as both:

(a) Increase the number of required continuing education units from 20 to 30; and

(b) Increase the required hours in the area of licensure from 10 to 20; and

(2) For licensed hearing aid dispensers:

(a) Increase the number of required hours of Board-approved continuing education programs from 20 to 30; and

(b) Increase the number of hours to be completed in the area of instruction directly related to the practice of fitting hearing aids from 16 to 26.

**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 Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dohm.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**10.41.03 Licensure and Continuing Education**

Authority: Health Occupations Article, §§2-302, 2-302.2, 2-305, 2-308, 2-310, and 2-310.2, Annotated Code of Maryland

**.06 Continuing Education.**

A. Required Continuing Education Units.

(1) Within the 2 year renewal period immediately preceding the licensee’s application for renewal, the licensee shall earn [20] 30 continuing education units (CEUs) as follows:

(a) [10] 20 CEUs in the area of licensure; and

(b) (text unchanged)

(2) Within the 2 year renewal period immediately preceding the licensee’s application for renewal, an individual licensed as both an audiologist and a speech-language pathologist shall earn [30] 50 CEUs as follows:

- (a) [10] 20 CEUs in each area of licensure; and
  - (b) (text unchanged)
  - (3) (text unchanged)
- B.—G. (text unchanged)

**10.41.08 Hearing Aid Dispensers**

Authority: Health Occupations Article, §§2-101(d), 2-205, 2-302.1, 2-304, 2-308, 2-310.1, and 2-311—2-314.8, Annotated Code of Maryland

**.11 Continuing Education Requirements .**

A. A licensee applying for renewal of a license shall have successfully completed, within the 2-year licensing period, a total of [20] 30 hours of Board-approved continuing education programs. Of the [20] 30 hours, the licensee shall complete:

- (1) [16] 26 or more hours of instruction directly relating to the practice of fitting hearing aids, including the:
    - (a)—(c) text unchanged)
    - (2) (text unchanged)
- B.—C. (text unchanged)

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Title 11  
DEPARTMENT OF  
TRANSPORTATION**

**Subtitle 07 MARYLAND  
TRANSPORTATION AUTHORITY**

**11.07.05 Public Notice of Toll Schedule Revisions**

Authority: Transportation Article, §§4-205, 4-312, 21-1401, 21-1414, and 27-110, Annotated Code of Maryland

**Notice of Proposed Action**  
[11-067-P]

The Maryland Transportation Authority proposes to amend Regulations .01 — .05 under **COMAR 11.07.05 Public Notice of Toll Schedule Revisions**. This action was considered by the Chairman and members of the Maryland Transportation Authority at an open meeting held on November 24, 2010, notice of which was given through publication in the Maryland Register, pursuant to State Government Article, §10-505, Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to make certain definitions consistent with Transportation Article, §21-1401, Annotated Code of Maryland, as amended by House Bill 975, effective July 1, 2011, to revise the public notice requirements for any proposal to modify the tolls and fees applicable to Authority highways by requiring that at least one meeting to accept public comment be conducted within 30 miles of each toll location or toll zone affected by the proposed modifications, to require that comments received during the public notice period be made available to the Chairman and members of the Maryland Transportation Authority, upon request, to provide a summary of the public comments to members of the Maryland Transportation Authority, and to post that summary on the Authority website.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** Each public meeting costs approximately \$20,000 taking into consideration meeting materials, advertising, staff and consultant time for preparations and attendance, as well as audiovisual equipment and recording. When changes to fees are proposed they could affect users at all toll locations and toll zones, a minimum of six meetings (\$120,000) could be required in such a case.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$20,000 for each affected facility or \$120,000 for all six
B. On other State agencies:	NONE	
C. On local governments:	NONE	

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A. Each public meeting costs approximately \$20,000 taking into consideration meeting materials, advertising, staff and consultant time for preparations and attendance, as well as audiovisual equipment and recording. When changes to fees are proposed they could affect users at all toll locations and toll zones, a minimum of six meetings (\$120,000) could be required in such a case.

**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 Alice Brooks, Director, Office of Internal Policies and Procedures, Maryland Transportation Authority, 2310 Broening Highway, Baltimore, MD 21222, or call 410-537-1041, or email to [mdta@mdta.state.md.us](mailto:mdta@mdta.state.md.us), or fax to 410-537-1044. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.01 Scope.**

This chapter applies to the establishment or modification of tolls, *certain* fees, mileage rates, pricing periods, frequency of use, and commuter programs [at all transportation facilities projects operated by the] *that apply to Authority highways.*

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) Administrative Fee.

(a) (text unchanged)

(b) “Administrative fee” includes the expense of identifying [and], tracking [toll violations or the cost of], and recovering monies owed to the Authority from toll violations.

(2) (text unchanged)

(3) “*Authority highway*” means an Authority highway as defined in Transportation Article, §21-1401, Annotated Code of Maryland.

[(3)] (4) (text unchanged)

[(4)] (5) “Fixed-toll facility” means a highway, bridge, or tunnel where vehicles [on the facility] are subject to a toll that remains constant over time until the toll schedule is changed consistent with the provisions of this chapter.

[(5)] (6)—[(7)] (8) (text unchanged)

[(8)] (9) Service Fees.

(a) (text unchanged)

(b) “Service fees” includes the cost of:

(i) — (ii) (text unchanged)

(iii) Maintaining pre-paid or post-paid accounts for customers that pay [polls] *tolls* using transponders, video devices, or in-person cash collection.

[(9)] (10) Toll.

(a) “Toll” means the charge due as established by the Authority for passage of a vehicle [through a transportation facilities project] *using an Authority highway.*

(b) “Toll” includes the amount charged a single vehicle for passage on a variably priced facility and is based on the sum of the charges for passing through one or more toll zones during a specific pricing period.

(11) “Toll location” means the site at which the toll is charged, whether a toll booth, toll gantry, or other means of assessing the toll.

[(10)] (12) (text unchanged)

[(11)] Toll Zone.]

[(a)] (13) “Toll zone” means the [distance] Authority highway between two access points used to calculate the toll on a variably priced toll facility.

[(b)] “Toll zone” includes the toll charged a single vehicle and is based on the sum of the charges for passing through one or more toll zones during a specific pricing period.]

[(12)] (14) “Variably priced toll facility” means [a] *an Authority highway* [, bridge, or tunnel] where travel on some or all lanes [on the facility] is subject to a toll charge that varies in some fashion at different times of day.

**.03 Procedures for [Changing Service Fees, Frequency of Use or Commuter Programs, and Administrative Fees or Tolls] Changes on Fixed-Price Facilities.**

A. The Chairman of the Authority shall *submit a notice to the Maryland Register and* issue a notice to the Governor, the Senate Budget and Taxation Committee, the Senate Finance Committee, the House Appropriations Committee, the House Ways and Means Committee, and to the public of the nature and amount of the proposed changes at least 60 days prior to the adoption of changes to any service fees, to frequency of use or commuter programs, and to administrative fees or tolls on fixed-price facilities. Notice to the public shall be provided on the Authority’s official website, in public

areas of [Authority facilities, in the Maryland Register,] *Authority-owned buildings*, and through rate advisories to local media outlets.

B. The Authority shall accept comments from the public on the proposed changes for at least 60 days from the date of the initial notification *to the Governor and legislature as set forth in §A of this regulation.* Comments shall be accepted in writing and through electronic submission. *Copies of all comments received shall be made available to the Chairman and members of the Maryland Transportation Authority, upon request.*

C. The Authority shall accept oral comments during at least one public meeting held *within 30 miles of each toll location affected by the proposed changes* during the public comment period. The Executive Secretary of the Authority may conduct additional public meetings during the public comment period.

D. The Authority shall take action on the [toll schedule] *proposed changes* at a public meeting after the public comment period has ended. The date and location of the meeting shall be advertised on the Authority’s official website at least 10 days in advance. The Executive Secretary of the Authority [shall submit a report to the members on the nature of the public comments received and] may recommend modifications to the proposed [toll schedule] *changes* at least 5 working days prior to the meeting. If changes are recommended, the report] *and shall include a description of the effects of [the] any recommended modifications on projected revenues.*

E. *The Executive Secretary of the Authority shall submit a report to the Chairman and members on the nature of the public comments received. The Authority shall make the report summarizing public comments available on the Authority’s official website at least 5 working days prior to the Authority meeting where action on the proposed changes to tolls or fees will be considered.*

[E.] F. The Authority shall post a notice of the adopted service fee, administrative fee, or toll schedule on the Authority’s official website, in public areas of [Authority facilities] *Authority-owned buildings*, in the Maryland Register, and through rate advisories to local media outlets after a new service fee, administrative fee, or toll schedule [is] *has been approved.* The new service fee, administrative fee, or toll schedule shall take effect not less than 30 days after [final action] *approval* by the Authority.

**.04 Procedures for [Changing Mileage Rate Ranges, Pricing Periods, Toll Zones, and Administrative Fees for] Changes on Variably Priced Toll Facilities.**

A. The Chairman of the Authority shall *submit a notice to the Maryland Register and* issue a notice to the Governor, the Senate Budget and Taxation Committee, Senate Finance Committee, House Appropriations Committee, the House Ways and Means Committee, and to the public of proposed changes at least 60 days prior to the adoption of any changes to mileage rate ranges, pricing periods, toll zones, administrative fees, or service fees for variably priced toll facilities. Notice to the public shall be provided on the Authority’s official website, in public areas of [Authority facilities, in the Maryland Register,] *Authority-owned buildings*, and through rate advisories to local media outlets.

B. The Authority shall accept comments from the public on the proposed changes for at least 60 days from the date of the notice to the Governor, the legislature, and the public as set forth in §A of this regulation. Comments shall be accepted in writing and through electronic submission. *Copies of all comments received shall be made available to the Chairman and members of the Maryland Transportation Authority, upon request.*

C. The Authority shall accept oral comments during at least one public meeting held *within 30 miles of each toll zone affected by the proposed changes* during the public comment period. The Executive

Secretary of the Authority may conduct additional public meetings during the public comment period.

D. The Authority shall take action on the mileage rate ranges, pricing periods, toll zones, administrative fees, or service fees at a public meeting after the public comment period has ended. The date and location of the meeting shall be advertised on the Authority's official website at least 10 days in advance. The Executive Secretary of the Authority [shall submit a report to the members on the nature of the public comments received and shall] *may* recommend modifications to the proposed [mileage rate ranges, pricing periods, toll zones, administrative fees, or service fees] *changes* at least 5 working days prior to the meeting, [if appropriate. If changes are recommended, the report] *and* shall include *a description of the effects of [the] any recommended modifications on projected revenues.*

E. *The Executive Secretary of the Authority shall submit a report to the Chairman and members on the nature of the public comments received. The Authority shall make the report summarizing public comments available on the Authority's official website at least 5 working days prior to the Authority meeting where action on the proposed changes to tolls or fees will be considered.*

[E.] F. The Authority shall post a notice of the adopted mileage rate ranges, pricing periods, toll zones, administrative fees, or service fees on the Authority's official website, in public areas of [Authority facilities] *Authority-owned buildings*, in the Maryland Register, and through rate advisories to local media outlets after new mileage rate ranges, pricing periods, toll zones, administrative fees, or service fees [are] *have been* approved. The mileage rate ranges, pricing periods, toll zones, administrative fees, or service fees shall take effect not less than 30 days after [final action] *approval* by the Authority.

[F.] G. The Executive Secretary of the Authority may from time to time set or adjust the toll schedule, toll zones, or pricing periods consistent with the approval granted by the Authority in [§§A—E] §§A—F of this regulation. The Authority shall post [the approved toll schedule] *notice of such action by the Executive Secretary* on the Authority's official website at least 10 days prior to the effective date.

**.05 Emergency Procedures.**

A. If the Authority determines that it must take [actions] *action to increase tolls or fees within a time period or manner that will not permit compliance with this chapter in order* to remain in compliance with the provisions of any trust agreement, escrow deposit agreement, or resolution that provides for the payment of bonds issued by the Authority, or *to ensure* that unforeseen circumstances *do not adversely* affect the continuity of operations at one or more [of the transportation facilities] *Authority highways* [operated by the Authority], the Authority shall determine that an emergency status exists. The Authority shall adopt temporary adjustments to service fees, administrative fees, frequency of use or commuter programs, or tolls on fixed-price facilities and variably priced toll facilities.

B. If the Authority approves the [temporary adjustment, the tolls, fees, or program changes are given emergency status. After the Authority has granted emergency status, the temporary adjustments] *emergency status for temporary adjustment, the adjustment shall take effect immediately or on the effective date established by the Authority and* shall be published in the next available issue of the Maryland Register. [and the] *The* public notice procedures outlined above shall commence immediately.

C. The approval of emergency status shall be subject to a time limit not to exceed 180 days and may be subject to one or more additional conditions *imposed by the Authority*. When the emergency status expires, the temporary *adjustment to* toll, mileage rate range, service fee, administrative fee, or program change [ends] *shall end*.

HAROLD M. BARTLETT  
Acting Executive Secretary  
Maryland Transportation Authority

**Subtitle 17 MOTOR VEHICLE  
ADMINISTRATION — DRIVER  
LICENSING AND IDENTIFICATION  
DOCUMENTS**

**Notice of Proposed Action**

[11-047-P]

The Administrator of the Motor Vehicle Administration proposes to:

- (1) Amend Regulation **.01** under **COMAR 11.17.02 Expiration and Renewal of Driver's License;**
- (2) Amend Regulations **.02, .02-1, .04, and .05** under **COMAR 11.17.03 Physical and Mental Condition;**
- (3) Amend Regulations **.02** and **.03** under **COMAR 11.17.04 Epilepsy—Restoration of License Following Ineligibility;**
- (4) Amend Regulations **.01, .04, and .05** under **COMAR 11.17.08 Reinstatement of Revoked Driver's License or Privileges;**
- (5) Amend Regulations **.04—, .06** under **COMAR 11.17.09 Proof of Age, Name, Identity, Residence, and Lawful Status;**
- (6) Amend Regulations **.01** and **.02** under **COMAR 11.17.11 Unauthorized Additions to Driver's License, Permit, or Photo Identification Card;** and
- (7) Amend Regulations **.01** and **.03** and repeal existing Regulation **.02** under **COMAR 11.17.12 Social Security Number.**

**Statement of Purpose**

The purpose of this action is to clarify, update and remove obsolete or incorrect language in references, information and medical terms in the existing regulations and to update existing regulations to reflect the current statute and policies of the Administration. These amendments are the result the Regulatory Review and Evaluation Report of COMAR Title 11, Subtitle 17.

**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 Carolyn Decker, Regulations Coordinator, 6601 Ritchie Highway N.E., Room 200, 6601 Ritchie Highway N.E., Room 200, Glen Burnie, MD 21062, or call 410-424-3105, or email to [cdecker@mdot.state.md.us](mailto:cdecker@mdot.state.md.us), or fax to 410-768-7506. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**11.17.02 Expiration and Renewal of Driver's License**

Authority: Transportation Article, §§12-104(b), 16-110(b), 16-111.1, and 16-115, Annotated Code of Maryland

**.01 Expired Driver's License.**

Previously licensed Maryland drivers who fail to renew their driver's licenses as required under Transportation Article, §16-115, Annotated Code of Maryland, are required to:

- A. (text unchanged)
- B. Pay the license fee for issuance of an original license, as set forth in COMAR 11.11.05. Applicants eligible for a Class M license



in combination with any other license classification enumerated under Transportation Article, [§16-104] §16-104.1, Annotated Code of Maryland, shall pay an original license fee as set forth in COMAR 11.11.05 for issuance of a new license for each classification of license issued.

C. Be examined as required by Transportation Article, §§16-110 and 16.115(c), Annotated Code of Maryland, for each classification of license issued.

**11.17.03 Physical and Mental Condition**

Authority: Transportation Article, §§12-104(b), 16-106, 16-110, 16-118, 16-119, 16-206, and 16-208, Annotated Code of Maryland

**.02 Disorders Reported by Physicians or Other Authorized Persons.**

A. Under Transportation Article, §16-119, Annotated Code of Maryland, any physician and any other person authorized to diagnose, detect, or treat the following disorders, may report to the [Medical Advisory Board] Administration and to the subject of the report, in writing, the full name, date of birth, and address of each individual 15 years old or older who has a disorder that:

(1)—(2) (text unchanged)

B. Lapses of Consciousness.

(1) (text unchanged)

(2) Among the conditions that can cause an individual to have a significant risk of lapses of consciousness are:

(a)—(f) (text unchanged)

(g) [Recurrent, severe] Severe hypoglycemia.

[(3) Individuals with the disorders in §B(2) of this regulation do not necessarily have a significant risk of lapses of consciousness.]

[(4)] (3) (text unchanged)

C. (text unchanged)

**.02-1 Disorders Reported by Applicant or Licensee.**

A. A licensee or an applicant for a driver’s license shall notify the Administration if the licensee or applicant is diagnosed as having any of the following disorders:

(1)—(6) (text unchanged)

(7) Stroke[, ministroke,] or transient ischemic attack [(TIA)] (ministroke);

(8)—(20) (text unchanged)

B.—C. (text unchanged)

**.04 Medical Advisory Board Guidelines.**

A. (text unchanged)

B. Cardiovascular Impairments.

(1) (text unchanged)

(2) An individual who has a condition listed in §B(1) of this regulation may be considered for a license by submitting evidence acceptable to the Medical Advisory Board that the condition:

(a) (text unchanged)

(b) Is well controlled without recurrence or relapse [for a period of 4 weeks].

(3)—(4) (text unchanged)

C. (text unchanged)

D. Diseases of the Neuromusculoskeletal System. An individual who has a significant musculoskeletal impairment shall be evaluated by the Medical Advisory Board before being licensed initially or before having the individual’s license to operate a motor vehicle renewed.

E. Diseases of the Nervous System.

(1) Cerebral Hemorrhage, Infarction, or Traumatic Brain Injury (TBI). An individual who has had a cerebral hemorrhage, infarction, or TBI that has resulted in a marked change in personality, alertness, [or] ability to make decisions, [cannot safely operate any class of

motor vehicle and may not be considered for any class of license. If the individual has had a] loss of coordination, motor power, visual acuity, [or] visual field, [the individual] or any other neurological deficit shall be reviewed by the Medical Advisory Board.

(2) Seizures.

(a)—(e) (text unchanged)

(f) Unfavorable modifiers include:

(i)—(iii) (text unchanged)

(iv) Structural brain lesion; [and]

(v) Placement of a vagal nerve stimulator to control seizure activity[.]; and

(vi) Seizure control requiring three or more medications.

(g)—(i) (text unchanged)

F. (text unchanged)

G. [Mental Retardation] Intellectual or Developmental Disabilities.

(1) Mild [or Borderline Retardation] Intellectual or Developmental Disability. Before deciding whether to issue a driver’s license to an individual with [borderline or] a mild [mental retardation] intellectual or developmental disability, the Administration shall ask the Medical Advisory Board to evaluate that individual.

(2) Moderate[, or Severe[, or Profound Retardation] Intellectual or Developmental Disability. The Administration may not issue any class of driver’s license to an individual with a moderate[, or severe[, or profound retardation] intellectual or developmental disability.

[(3) Unreported Cases. Before issuing or renewing a driver’s license, the Administration may request the Medical Advisory Board to evaluate an individual whose mental function is questioned, reported, or disclosed as retarded.]

H. (text unchanged)

I. Substance [Use, Dependence, and Addiction] Abuse. In this section, a certified substance abuse treatment program means a program which has been certified by the Alcohol and Drug Abuse Administration of the Department of Health and Mental Hygiene.

(1) Substance abuse[, dependence, and addiction] is the physical or psychological dependence, or both, on certain psychoactive chemical substances, as shown through the continued use of these psychoactive chemical substances despite harmful or adverse circumstances. Substance abuse involves harmful or hazardous use of substances which can be both licit, for example medication, and illicit. These substances include, but are not limited to:

(a)—(d) (text unchanged)

(2) (text unchanged)

(3) Before being considered for a license, an individual who has been involved in two alcohol-related or other substance-related driving incidents during the past 5 years, or three or more alcohol-related or other substance-related driving incidents in a lifetime, is required to submit [evidence] satisfactory evidence to the [Medical Advisory Board] Administration of:

(a) Complete abstinence from substance use for [at least] 6 months or [longer] as determined by the [Medical Advisory Board] Administration on a case-by-case basis;

(b) Enrollment in, or completion of[, a substance [use] abuse treatment program for at least 90 days or longer as determined by the Administration on a case-by-case basis; and

(c) Participation in a self-help group for a period of time as determined by the [Medical Advisory Board] Administration on a case-by-case basis.

(4) (text unchanged)

(5) Regardless of the number of incidents, if as the result of investigation, or assessment, an applicant is determined to have alcoholism or a chemical addiction that has not been addressed, the

Administration may require evidence of at least 90 days of satisfactory completion of a certified substance abuse treatment program.

J. (text unchanged)

K. Traumatic Brain Injury.

(1) Full Recovery. If medical reports are submitted from a physician, a rehabilitation facility, an occupational therapist, or a certified driver rehabilitation instructor indicating full recovery and the absence of coexisting disorders, the Administration shall require an examination or reexamination consisting of law, vision, and driving tests.

(2) Partial Recovery.

(a) If an individual's medical reports do not satisfactorily indicate full recovery, the individual shall be evaluated by the Medical Advisory Board to determine if additional neurological or other reports are necessary. Evaluations shall be made on an individual basis.

(b) The Administration may require an examination or reexamination consisting of law, vision, and driving tests.] After the review of medical reports submitted by a physician, a rehabilitation facility, or an occupational therapist, the Medical Advisory Board or Administration may require an examination or reexamination consisting of law, vision and driving tests.

**.05 Procedures when Suspension or Refusal is Recommended.**

If the Medical Advisory Board recommends suspension or refusal of a driving privilege, and the recommendation is followed by the Administration, a letter shall be sent by certified first class mail to the individual, stating:

A.— E. (text unchanged)

F. That [he] *the individual* may be represented by an attorney at the administrative hearing.

**11.17.04 Epilepsy — Restoration of License Following Ineligibility**

Authority: Transportation Article, §§12-104(b), 16-115(c), and 16-208(a), Annotated Code of Maryland

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(2) (text unchanged)

(3) “Commercial motor vehicle” means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:

(a) Has a gross vehicle weight [(GVW)] *rating (GVWR)* of 26,001 or more pounds, inclusive of a towed unit;

(b) Has a [(GVW)] *(GVWR)* of 26,001 or more pounds;

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used for the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which requires the vehicle to be placarded under federal hazardous materials regulations, 49 CFR Part 172, Subpart F, which is incorporated by reference.

(4) “Gross vehicle weight [(GVW)] *rating (GVWR)*” and “gross combination weight [(GCW)] *rating (GCWR)*” means the greatest of the following weights for a single vehicle or combination of vehicles *value specified by the manufacturer or manufacturers as the maximum gross vehicle weight rating*:

(a)—(c) (text unchanged)

(5)—(6) (text unchanged)

**.03 Criteria for Restoration of Driver’s License.**

A. Restoration of Noncommercial Driver’s License.

(1) Class C and Class M Noncommercial Licenses.

(a) [The Administration shall issue] *An individual may apply for a Class C or Class M noncommercial driver’s license [to an individual 90 days after the revocation, suspension, cancellation, or refusal to issue or renew a license,] if the individual:*

(i) Has [not experienced another seizure within the 90-day period] *met the qualifications under COMAR 11.17.03.04 E (2) for the withdrawal of the revocation, suspension, cancellation, or refusal to issue or renew a license;* and

(ii) (text unchanged)

(b) When an [individual has been ineligible to drive for more than 6 months, or the] individual’s license has been expired for [more than 6 months] *1 year or more*, the Administration shall require the individual to pass the knowledge and skill tests for a Class C or Class M driver’s license.

(2) Class A and Class B Noncommercial Driver’s Licenses.

[The Administration shall issue] *An individual may apply for a noncommercial Class A or Class B driver’s license [to an individual 9 months after the revocation, suspension, cancellation, or refusal to issue or renew a license,] if the individual:*

(a) Has [not experienced another seizure within the 9-month period] *met the qualifications under COMAR 11.17.03.04 E (2) for the withdrawal of the revocation, suspension, cancellation, or refusal to issue or renew a license;* and

(b)—(e) (text unchanged)

B. Restoration of Commercial Driver’s License. [The Administration shall issue] *An individual may apply for a commercial driver’s license [to an individual 9 months after the revocation, suspension, cancellation, or refusal to issue or renew a license,] if the individual:*

(1) Has [not experienced another seizure within the 9-month period] *met the qualifications under COMAR 11.17.03.04 E (2) for the withdrawal of the revocation, suspension, cancellation, or refusal to issue or renew a license;*

(2)—(6) (text unchanged)

**11.17.08 Reinstatement of Revoked Driver’s License or Privileges**

Authority: Transportation Article, §§12-104(b), 16-208(b)(5), and 16-209, Annotated Code of Maryland

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(4) (text unchanged)

(5) “*Certified substance abuse treatment program*” means a program which has been certified by the Alcohol and Drug Abuse Administration of the Department of Health and Mental Hygiene.

**.04 Alcohol Abuse or Chemical Addiction Treatment Required.**

A. If an applicant has been involved in two [alcohol] *alcohol-related* or [drug] *other substance-related* driving incidents during [any period of time] *the past 5 years, or three or more alcohol-related or other substance-related driving incidents in a lifetime*, the applicant shall submit with the reinstatement application evidence of current participation in [a certified alcohol abuse or chemical addiction] *or completion of a certified substance abuse treatment program [for] of at least [6 months] 90 days*, or completion of a certified alcohol abuse or chemical addiction treatment program of at least 6 months].

B. Regardless of the number of [alcohol] incidents, if, as the result of investigation[, pre-reinstatement conference,] or [alcohol] assessment, an applicant is determined to have alcoholism or a [drinking problem] chemical addiction that has not been addressed, the Administration may require evidence of at least [6 months] 90 days of satisfactory [current participation in] completion of a certified [alcohol] substance abuse treatment program.

C. [A problem drinker or an alcoholic who is involved in drug or narcotic usage or who has other mental or physical conditions] *An individual applying for reinstatement may be required to undergo review or appear for an interview before the Medical Advisory Board.*

D. As a condition for approval, the Administration may impose certain restrictions, limitations, or other requirements determined to be appropriate to ensure an individual's safe driving of a motor vehicle, including but not limited to, enrollment in the Ignition Interlock Program.

**.05 Conditions for Reinstatement.**

As conditions for reinstatement, the Administration may require one or more of the following:

A. Participation or continued participation in a certified [alcohol abuse or chemical addiction] *substance abuse* treatment program for a specified period of time;

B.—E. (text unchanged)

**11.17.09 Proof of Age, Name, Identity, Residence, and Lawful Status**

Authority: Transportation Article, §§12-104(b), 12-301, 16-103.1, 16-104.2, 16-106, 16-115, 16-121—16-122, Annotated Code of Maryland; 6 CFR 37

**.04 Source Documents for Proof of Age, Name, Identity, Residence, Social Security Number, and Lawful Status.**

A.—F. (text unchanged)

G. Applicants requesting a change or to establish a name other than the name that appears on a source document shall submit documentation issued by a court, governmental body, or other entity acceptable to the Administration to include:

- (1) (text unchanged)
- (2) Original or certified copy of a marriage [license] *certificate*;
- (3)—(4) (text unchanged)

**.05 Source Document Exception Process.**

A.—B. (text unchanged)

C. The Administration may accept the following documents as proof of Maryland residency if submitted by an applicant under the following circumstances.

- (1) If the applicant is a dependent:
  - (a) [A statement from] *The signature on the application of the parent or guardian with whom the applicant resides, signed in the presence of a representative of the Administration;*
  - (b) Documentation of the relationship between the applicant and parent or guardian; [and]
  - (c) [A letter from the applicant's parent or guardian certifying the applicant's address;] *Documentation to prove the applicant is a dependent of the parent or guardian, if the applicant is 18 years of age or older; and*
  - (d) *Acceptable proof of the parent or guardian's Maryland residence address.*
- (2)—(5) (text unchanged)

D.—E. (text unchanged)

**.06 Renewal or Issuance of a Subsequent License or Identification Card.**

A.—B. (text unchanged)

C. *The requirement to establish proof of identity, lawful status, social security number, and Maryland residency may be waived for the holder of an existing Maryland license or identification card expired less than one year, if the applicant's:*

- (1) *Maryland license or identification card was issued prior to April 19, 2009, or on or after June 1, 2009;*
- (2) *Driver's license or identification card is not a limited term driver's license or identification card;*
- (3) *Image and signature are on file with the Administration and the applicant provides name and signature documents acceptable to the Administration;*
- (4) *Social security number is verified through the Social Security Administration, if applicable; and*
- (5) *Maryland residency address is acceptable to the Administration.*

D. *An applicant for a subsequent driver's license or identification card, who currently holds a valid limited term driver's license or identification card, shall be required to provide documentation of:*

- (1) *Proof of identity and lawful status; and*
- (2) *Valid social security number verified through the Social Security Administration or proof of ineligibility for a social security number.*

E. *An applicant for a subsequent driver's license or identification card, whose current limited term driver's license or identification card is expired, shall be required to provide documentation of:*

- (1) *Proof of identity and lawful status;*
- (2) *Valid social security number verified through the Social Security Administration or proof of ineligibility for a social security number; and*
- (3) *Proof of residency.*

**11.17.11 Unauthorized Additions to Driver's License, Permit, or Photo Identification Card**

Authority: Transportation Article, §§ 12-104(b), 16-206(a)(iii), and 16-301, Annotated Code of Maryland

**.01 Definitions.**

A. (text unchanged)

B. "Donor [decal] *designation*" means the Motor Vehicle Administration's official issued decal designating that a donor certification is on file with the Administration, authorizing legal removal of needed body organs upon death.

C. "Unauthorized addition" means any bar code, [decal] *designation*, or sticker not duly authorized by the Administration.

**.02 Unauthorized Additions Prohibited.**

A.—B. (text unchanged)

C. Donor [Decal] *Designation*. Donor [decals] *designation*, as authorized and issued by the Administration, shall be [affixed to] *indicated on* a driver's license, permit, or identification card.

**11.17.12 Social Security Number**

Authority: Transportation Article, §§12-104(b) and 16-106, Annotated Code of Maryland; 42 U.S.C. §405(c)(2)(c)(i) and 666(a)(13)

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

- (1) (text unchanged)
- (2) "Driver's license" means an original, renewal, duplicate, or corrected license or permit to drive a motor vehicle that is issued or granted by the laws of this State, including a:
  - (a)—(b) (text unchanged)
  - (c) Provisional license; [and]

- (d) Commercial license[.]; or
- (e) Moped permit.

(3) "Identification document" means [a moped permit or] an identification card issued by the Administration.

**.03 Use of the Social Security Number.**

A. The Administration may use the social security number for the following purposes:

- (1)—(2) (text unchanged)
- (3) Verifying the [identity of a person when two individuals have the same name and the same date of birth;] data provided through the Social Security Administration Database.
- (4)—(11) (text unchanged)

B. (text unchanged)

JOHN T. KUO  
 Administrator  
 Motor Vehicle Administration

**Title 13A  
 STATE BOARD OF  
 EDUCATION**

**Subtitle 05 SPECIAL INSTRUCTIONAL  
 PROGRAMS**

**13A.05.11 Juvenile Services Education**

*Authority: Education Article, §§22-301 — 22-310, Annotated Code of Maryland*

**Notice of Proposed Action**  
 [11-069-P]

The Maryland State Board of Education proposes to adopt new Regulations .01 — .10 under a new chapter, **COMAR 13A.05.11 Juvenile Services Education**. This action was considered at the December 14, 2010, meeting of the State Board of Education.

**Statement of Purpose**

The purpose of this action is to adopt new regulations to be in compliance with Education Article §§22-305 and 22-306(b).

**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 an impact on individuals with disabilities as follows:

It is consistent with the federal and State requirements to provide special education and related services to students with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Mark Mechlinski, Director, Juvenile Services Educational Program, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0500, or email to mmechlinski@msde.state.md.us, or fax to 410-333-2570. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on March 22 and 23, 2011, at 200 West Baltimore Street, Baltimore, Maryland 21201.

**.01 Scope.**

*This chapter implements Education Article, Title 22, Subtitle 3, Annotated Code of Maryland, for the conduct and management of the Juvenile Services Educational Program in residential facilities of the Department of Juvenile Services (DJS) in order to meet the special needs and circumstances of the students in the residential facility.*

**.02 Definitions.**

A. In this title, the following words have the meanings indicated.

B. Terms Defined.

(1) "Department" means the Maryland State Department of Education.

(2) "Director" means the Director of the Juvenile Services Educational Program.

(3) "Facility" means a building or buildings and related physical infrastructure at a geographically distinct location at which the Department of Juvenile Services operates a program.

(4) "Individualized education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§300.320—300.324 and COMAR 13A.05.01.08 and .09.

(5) "Program" means a discrete and defined grouping of services provided to youth in the custody of or under the supervision of the DJS to address educational needs.

(6) "Residential facility" means a facility established under Human Services Article, §9-226, Annotated Code of Maryland.

(7) "Residential facility school" means the school located in a DJS residential facility.

**.03 Education Program.**

A. The Department shall provide a comprehensive education program for youth in DJS residential facilities to meet the public school standards set forth in COMAR 13A.01.04.

B. The Program consists of instruction to allow students to achieve credit requirements and assessments necessary to progress towards the standards for graduation from a public high school in Maryland consistent with the requirements of COMAR 13A.03.02.

C. The Program prepares students to successfully obtain a Maryland High School Diploma by examination.

D. The Juvenile Services Educational Program is a local education agency as defined by 20 U.S.C. §7801(26) of the Elementary and Secondary Education Act and public agency as defined by COMAR 13A.05.01.03B(59).

**.04 Administrative Practices.**

A. The Program shall operate at least 220 school days and a minimum of 1,320 school hours during a 12-month period.

B. The Program shall have a written calendar that states the specific days and total number of days for the implementation of its educational program.

C. The Program shall have a written schedule for each school that states the beginning and end of the 6-hour school day and the specific time periods during the school day when the areas of instruction are implemented.

D. The Program shall provide unit-based instructional services a minimum of 6 hours per week to students who are unable to attend the Residential Facility School because of illness or injury.

**.05 Student Assessments.**

A. Student academic achievement will be formally assessed upon intake into the education program to determine appropriate instructional placement.

B. Student academic achievement will be formally assessed after 30 days of enrollment to determine academic gains in reading and math.

C. Certificates of achievement will be awarded to students based on demonstrated gains.

**.06 Special Education Instruction and Related Services.**

Eligible students with disabilities will receive special education and related services as specified in an existing IEP or based upon the determination of eligibility as a student with a disability by the Residential Facility School IEP team in accordance with COMAR 13A.05.01 .

**.07 Personnel Requirements.**

A. Instructional personnel shall obtain and maintain a valid Maryland Educator Certificate in accordance with COMAR 13A.12.01 and 13A.12.02.

B. Residential Facility School and Juvenile Services Educational Program administrators shall obtain and maintain a valid Maryland Educator Certificate in accordance with COMAR 13A.12.01 and 13A.12.04.

**C. Teacher Evaluation.**

(1) Teachers will be evaluated in accordance with the established State Performance and Evaluation Program set forth in COMAR 17.04.03.21.

(2) Evaluations will meet the requirements for Evaluation of Professional Certified Personnel set forth in COMAR 13A.07.04.02 and 13A.07.04.03.

**.08 Interagency Cooperation.**

A. The Department and DJS shall execute a memorandum of understanding outlining responsibilities of each agency in the provision of education to students in the residential facilities.

B. All residential facility schools shall incorporate and adhere to the residential facility behavior management program established by the DJS.

**.09 Student Records.**

A. The Juvenile Services Educational Program will establish policies and procedures to obtain, maintain, and share student records as specified in the Program Policy and Procedure Manual and consistent with COMAR 13A.08.02.

B. The Department may transfer education records to DJS personnel who have been determined by the Department to have legitimate educational interests.

**.10 Education Coordinating Council for Juvenile Services Educational Programs.**

A. Education Article, §22-305, Annotated Code of Maryland, establishes an Education Coordinating Council for Juvenile Services Educational Programs within the Maryland State Department of Education.

B. The Education Coordinating Council shall develop, recommend, and approve an educational program for each residential facility to meet the special needs and circumstances of the children in DJS residential facilities in accordance with Education Article, §22-306, Annotated Code of Maryland.

C. The Council shall actively advocate and promote the interests of educational programs and opportunities in programs of the Department of Juvenile Services.

*D. On a regular basis the Council shall meet to review the effectiveness of the program of educational instruction.*

NANCY S. GRASMICK  
State Superintendent of Schools

**Subtitle 12 CERTIFICATION**

**13A.12.02 Teachers**

Authority: Education Article, §§2-205, 2-303(g), and 6-701—6-705, Annotated Code of Maryland

**Notice of Proposed Action**

[11-068-P]

The Professional Standards and Teacher Education Board proposes to amend Regulations .06, .08, .13, .14, .16, and .17 under **COMAR 13A.12.02 Teachers**. This action was considered at the December 2, 2010, meeting of the Professional Standards and Teacher Education Board.

**Statement of Purpose**

The purpose of this action is to align the number of credit hours required for course work, from 36 to 30, with other sections in this chapter, as well as in COMAR 13A.12.01. Additionally, existing language for Work-Based Learning Coordinator is changed to clarify that this area may be added only to an existing professional certificate.

**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 Jean Satterfield, Assistant State Superintendent, Certification and Accreditation, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, or call 410-767-0385, or email to jsatterfield@msde.state.md.us, or fax to 410-333-8963. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Professional Standards and Teacher Education Board during a public meeting to be held on March 3, 2011, at 200 West Baltimore Street, Baltimore, MD 21201.

**.06 Certification in General Secondary Academic Areas (Grades 7—12).**

A. To receive certification in the areas of agriculture (agribusiness and renewable natural resources), biology, business education, chemistry, computer science, earth/space science, English, foreign language—classical, foreign language —modern, geography, history, mathematics, physical science, physics, speech communication, and theater, the applicant shall:

(1) Complete one of the following options:

(a) (text unchanged)

(b) Complete [36] 30 semester hours or more of content course work taken at an IHE in the certification area;

(2) — (3) (text unchanged)

B. — C. (text unchanged)

**.08 Family and Consumer Sciences (Grades 7—12).**

A. To receive certification in family and consumer sciences (grades 7—12), the applicant shall:

(1) Complete one of the following options:

(a) (text unchanged)

(b) Complete [at an IHE 36] 30 semester hours or more of family and consumer sciences/home economics content course work taken at an IHE with a minimum of 3 semester hours in each of the following content areas:

(i) — (vi) (text unchanged)

(2) (text unchanged)

B. — C. (text unchanged)

**.13 Social Studies (Grades 7—12).**

A. To receive certification in social studies (grades 7—12), the applicant shall:

(1) Complete one of the following options:

(a) (text unchanged)

(b) Complete [36] 30 semester hours or more of social studies content course work taken at an IHE including at least two courses each in history, geography, economics, and political science; and

(2) (text unchanged)

B. (text unchanged)

**.14 Technology Education (Grades 7—12).**

A. To receive certification in technology education (grades 7—12), the applicant shall:

(1) Complete one of the following options:

(a) (text unchanged)

(b) Complete [36] 30 semester hours or more of technology education or industrial arts/technology content course work taken at an IHE, with a minimum of 3 semester hours in each of the following content areas:

(i) — (v) (text unchanged)

(2) (text unchanged)

B. (text unchanged)

**.16 Work-Based Learning Coordinator (Grades 7—12).**

A. [To receive certification in work-based learning coordinator (grades 7—12), the applicant shall:] *An applicant may not seek initial certification as a work-based learning coordinator (grades 7—12).*

B. *To add an endorsement in work-based learning coordinator (grades 7—12), the applicant shall:*

(1) *Hold a professional certificate with certification under COMAR 13A.12.02.06—,11, .13—,15, and .17—,20 of this chapter;*

[(1)] (2) Complete [9] 6 semester hours of content course work taken at an IHE or through CPDs with a minimum of 3 semester hours in each of the following content areas:

(a) Organizing, coordinating, and marketing of work-based learning programs; and

(b) Instructional management and curriculum development for work-based learning programs; and

[(c)] Contemporary workplace practices;

(2) Meet the professional education course work required in Regulation .06A(2) of this chapter, or the teacher requirements in Regulation .06 to be certified in agriculture (agribusiness and renewable natural resources) or business education areas, or in Regulations .08, .09, .11, .14, or .15 of this chapter; and]

(3) Complete a work experience requirement through any of the following:

(a) Documented evidence of [work] *employment* equivalent to a minimum of [2,000] *1,000* hours of successful, wage-earning, nonteaching occupational experience;

(b) Documented evidence of [work] *employment* equivalent to a minimum of 1,500 hours of successful, wage-earning, nonteaching occupational experience plus 500 hours of self-employment; [or]

(c) Participating in a supervised and approved teacher externship experience, which shall, at a minimum:

(i) Be [200] *150* hours;

(ii) — (iii) (text unchanged)

(iv) Occur at a work site approved by the local school system[.]; or

(d) *Complete 3 semester hours of content course work in contemporary workplace practices taken at an IHE or through CPDs that includes:*

(i) *Site visits to business and industry settings; and*

(ii) *Exposure to all aspects of the industry.*

[B.] C. — [C.] D. (text unchanged)

**.17 Other Academic Subjects (Grades 7 — 12).**

A. To receive certification at the secondary school level (grades 7 — 12) in a certification area other than the certification areas listed Regulations .06—.16 of this chapter, the applicant shall:

(1) Complete [36] 30 semester hours or more of content course work taken at an IHE in the specific academic subject area; and

(2) (text unchanged)

B. (text unchanged)

NANCY S. GRASMICK  
State Superintendent of Schools

## Title 14

# INDEPENDENT AGENCIES

## Subtitle 01 STATE LOTTERY AGENCY

### 14.01.10 Video Lottery Terminals

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

#### Notice of Proposed Action

[11-075-P]

The Maryland State Lottery Agency proposes to amend Regulation .20 under **COMAR 14.01.10 Video Lottery Terminals**. This action was considered at the Maryland State Lottery Commission open meeting held on December 14, 2010, 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 update regulations to incorporate provisions required for the implementation and operation of the State's new Video Lottery Terminal program and for the five VLT Facilities authorized by law, which began opening with the Hollywood Casino Perryville on September 27, 2010.

#### 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 Robert W. Howells, Regulations Coordinator, Maryland State Lottery Agency, 1800 Washington Boulevard, Suite 330, Baltimore, MD 21230, or call 410-230-8789, or email to rhowells@msla.state.md.us, or fax to 410-230-8727. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.20 Identification Cards for Video Lottery Employees.**

A. — C. (text unchanged)

D. Replacement Identification Card.

(1) — (2) (text unchanged)

(3) If the Commission issues a replacement or temporary identification card to a licensee, [it shall invoice] the licensee's employer shall pay the Commission:

(a) — (b) (text unchanged)

E. (text unchanged)

STEPHEN L. MARTINO  
Director  
State Lottery Agency

**Subtitle 09 WORKERS'  
COMPENSATION COMMISSION**

**14.09.01 Procedural Regulations**

Authority: Health-General Article, §4-303; Labor and Employment Article, §§9-307, 9-309, 9-310.2, 9-314, 9-404, 9-405, 9-410, 9-603, 9-625, 9-635, 9-689, 9-701, 9-709, 9-710, 9-711, 9-721, 9-731, 9-739, and 9-6A-07; Insurance Article, §§19-405 and 19-406; State Government Article, §10-1103; Annotated Code of Maryland

**Notice of Proposed Action**

[11-072-P]

The Maryland Workers' Compensation Commission proposes to amend Regulation .05 under **COMAR 14.09.01 Procedural Regulations**. This action was considered at a public meeting on December 9, 2010, notice of which was given by publication in 37:24 Md. R. 1705 (November 19, 2010) pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to revise the regulation to comply with the statutorily mandated notice requirement set forth in Insurance Article, §19-406, Annotated Code of Maryland. Specifically, the regulations are revised to comply with the requirement that 10 days notice be given by the insurer when cancelling a workers' compensation policy for nonpayment of premium and 30 days notice be given by the insurer when cancelling a workers' compensation policy for any other reason.

**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 Amy S. Lackington, Administrator, Workers' Compensation Commission, 10 E. Baltimore Street, Baltimore, MD 21202, or call 410-864-5300, or email to alackington@wcc.state.md.us, or fax to 410-864-5301. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.05 Notices of Insurance, Cancellation, Reinstatement, and Election of Coverage.**

A. — B. (text unchanged)

C. Notice of Cancellation.

(1) (text unchanged)

(2) Time for Filing.

(a) Cancellation by Insurer.

(i) [When the cancellation is initiated by the insurer] *If the insurer cancels the insurance policy for nonpayment of premium, the Notice of Cancellation shall be filed at least 10 days before the effective date of the cancellation, in compliance with Insurance Article, §19-406(f), Annotated Code of Maryland.*

(ii) *If the insurer cancels the insurance policy for any other reason, the Notice of Cancellation shall be filed at least 30 days before the effective date of the cancellation [as required under Article 48A, §482H, Annotated Code of Maryland], in compliance with Insurance Article, §19-406(a), Annotated Code of Maryland.*

(iii) [A Notice of Cancellation received by] *If the Commission designee receives the Notice of Cancellation less than [30 days] the required number of days before the effective date of cancellation set forth in the notice, the Commission shall [be amended by the Commission] amend the notice to provide [an] a new cancellation effective date [of cancellation 30 days after] by adding 10 days or 30 days, as applicable, to the date of receipt.*

(b) (text unchanged)

D. — F. (text unchanged)

R. KARL AUMANN  
Chairman  
Workers' Compensation Commission

**Subtitle 09 WORKERS'  
COMPENSATION COMMISSION**

**14.09.03 Guide of Medical and Surgical Fees**

Authority: Labor and Employment Article, §§9-309, 9-663, and 9-731, Annotated Code of Maryland

**Notice of Proposed Action**

[11-080-P]

The Workers' Compensation Commission proposes to amend Regulations .01 and .04, and adopt new Regulation .09 under **COMAR 14.09.03 Guide of Medical and Surgical Fees**. This action was considered at a public meeting on December 9, 2010, notice of which was given by publication in 37:24 Md. R. 1705 (November 19, 2010) pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to establish a uniform fee or pricing schedule for reimbursing prescription drugs required to treat an injured covered employee irrespective of the identity of the person or entity that dispenses the prescription drug. Specifically, the pharmaceutical fee schedule is designed to eliminate the existing

disparity in reimbursement rates between physician-dispensed and pharmacy-dispensed prescriptions by establishing a single reimbursement rate tied to the average wholesale price (“AWP”) for brand drugs and to the generic equivalent average price (“GEAP”) for generic drugs. In a recent study, the Workers Compensation Research Institute found that “for several common physician-dispensed drugs, workers [in Maryland] received more prescriptions and pills than in other states where physician dispensing was not common. For these medications, physician-dispensers [in Maryland] were paid nearly double or triple the price paid to a pharmacy for the same prescription.” Workers Compensation Research Institute, Prescription Benchmarks for Maryland, at 11 (March 2010). “Maryland physicians were paid an average of \$2.59 per pill when they dispensed, while retail pharmacies were paid \$0.67 per pill.” Id., at 14.

Under the proposed fee schedule, the reimbursement rate a dispenser will be reimbursed for a brand drug is calculated by subtracting 10% of the AWP from the AWP and adding a \$5 dispensing fee:  $BR = AWP - (0.10 \times AWP) + 5$ . Similarly, the reimbursement rate a dispenser will be reimbursed for a generic drug is calculated by subtracting 15% of the GEAP from the GEAP and adding a \$7 dispensing fee as follows:  $GR = GEAP - (0.15 \times GEAP) + 7$ . For repackaged or compounded drugs, the AWP or GEAP utilized in calculating the reimbursement shall be the AWP, and corresponding NDC (National Drug Code) number, or GEAP of the primary underlying active drug product used in the repackaging or compounding. This action further directs the Commission to designate a nationally recognized pharmaceutical publication as the source of AWP and GEAP pricing and recognizes that a pharmacy and payer, or a pharmacy and a pharmacy benefits manager (“PBM”), may continue to enter into private contracts for pharmaceutical reimbursement.

**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 regulation is anticipated to have a small beneficial economic impact on self-insured businesses, self-insured governmental entities and insurance carriers, entities that directly bear the cost of pharmaceutical reimbursement, who may realize cost savings resulting from decreased pharmaceutical expenditures. National and independent pharmacies may experience a slight increase in revenues based on the mandated dispensing fee. Dispensing physicians and repackagers that provide physicians with pharmaceuticals may experience a slight decrease in revenues when reimbursement is limited to the same amount as a pharmacy.

**II. Types of Economic Impact.**

Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
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A. On issuing agency: Workers’ Compensation Commission	(E-)	Unable to estimate
B. On other State agencies:	(E-)	Unable to estimate
C. On local governments:	(E-)	Unable to estimate

Benefit (+)	Cost (-)	Magnitude
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**D. On regulated industries or trade groups:**

Insurance Carriers	(+)	Unable to estimate
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**E. On other industries or trade groups:**

(1) Maryland Self-Insured Businesses	(+)	Unable to estimate
(2) National Pharmacies	(+)	Unable to estimate
(3) Small Independent Pharmacies	(+)	Unable to estimate
(4) Dispensing Physicians	(-)	Unable to estimate
(5) Repackagers	(-)	Unable to estimate
(6) Maryland Businesses	(+)	Unable to estimate

**F. Direct and indirect effects on public:** NONE Unable to estimate

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

A. The State of Maryland and coordinate agencies may realize cost savings resulting from decreased pharmaceutical expenditures.

B. Self-insured employers including the State of Maryland, may realize cost savings resulting from decreased pharmaceutical expenditures.

C. Self-insured employers including local governments and self-insured groups, may realize cost savings resulting from decreased pharmaceutical expenditures.

D. Insurance carriers may realize cost savings resulting from decreased pharmaceutical expenditures.

E(1). Maryland businesses who are permitted to self-insure may realize cost savings resulting from decreased pharmaceutical expenditures.

E(2). National pharmacies may experience a slight increase in revenue based on dispensing fee.

E(3). Small independent pharmacies may experience a slight increase in revenue based on dispensing fee.

E(4). Dispensing physicians may experience a decrease in revenues when reimbursement is limited to the same amount as a pharmacy.

E(5). Repackagers may experience may a decrease in revenues when reimbursement is limited to the same amount as a pharmacy.

E(6). Cost savings realized by insurance carriers may result in reduced premiums for workers compensation.

**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 Amy S. Lackington, Administrator, Workers’ Compensation Commission, 10 E. Baltimore Street,



Baltimore, MD 21202, or call 410-865-5300, or email to [alackington@wcc.state.md.us](mailto:alackington@wcc.state.md.us), or fax to 410-864-5301. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.01 Definitions.**

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

(1)—(2) (text unchanged)

(3) “Average Wholesale Price (“AWP”)” means a figure reported by a commercial publisher of drug pricing data, based on wholesale pricing information provided by drug manufacturers including repackagers and relabelers.

[(3)] (4) (text unchanged)

(5) “Compounded Drug” means a prescription drug that has been prepared by a pharmacist who mixes or adjusts drug ingredients to customize a medication to meet a patient’s individual needs.

[(4)] (6)—[(9)] (11) (text unchanged)

(12) “Generic Equivalent Average Price (“GEAP”)” means the average of AWP’s for all multi-source products that have been approved as therapeutically equivalent, excluding the originator drug.

(13) “Generic Equivalent Drug” means a drug that is identical, or bioequivalent, to a brand name drug in dosage form, safety, strength, route of administration, quality, performance characteristics and intended use.

[(10)] (14)—[(15)] (19) (text unchanged)

(20) “Originator drug” means the first version of a drug, developed and patented by an originator pharmaceutical company.

(21) National Drug Code.

(a) “National drug code (NDC)” means the unique, three-segment number, that identifies the labeler, product, and trade package size of human drugs.

(b) The NDC is comprised of three segments:

(i) The first segment, the labeler code, is assigned by the FDA and identifies the manufacturer (including repackagers or relabelers), or distributor of the drug;

(ii) The second segment, the product code, identifies a specific strength, dosage form, and formulation for a particular firm; and

(iii) The third segment, the package code, identifies package sizes and types.

(22) “Pharmacy benefits manager” means a third party administrator of a prescription drug program that may process and pay prescription drug claims, contract with pharmacies, and negotiate discounts and rebates with drug manufacturers.

(23) Prescription Drug.

(a) “Prescription drug” means any drug required by federal law or regulation to be dispensed only by a prescription.

(b) “Prescription drug” includes:

(i) A biological product; and

(ii) Finished dosage forms and bulk drug substances subject to §503(b) of the Federal Food, Drug, and Cosmetic Act.

(c) “Prescription drug” does not include blood and blood components intended for transfusion or biological products that are also medical devices.

(24) Repackage.

(a) “Repackage” means to repackage or otherwise change the container, wrapper, or labeling of a prescription drug to further the distribution of the prescription drug.

(b) “Repackage” does not include changes to a container, wrapper, or labeling of a prescription drug completed by the pharmacist responsible for dispensing the prescription drug to a patient.

[(16)] (25)—[(18)] (27) (text unchanged)

**.04 MRA or Fee Not Established.**

A. The Commission has not established a medical fee schedule for dental services, and durable medical equipment[, and pharmaceuticals].

B. For products and services for which the Commission has not established an MRA or medical fee schedule, including dental services, and durable medical equipment, [and pharmaceuticals,] the insurance carrier shall assign a relative value to the product or service.

C.—F. (text unchanged)

**.09 Pharmaceutical Fee Schedule.**

A. Scope.

(1) The Pharmaceutical Fee Schedule applies to all prescription drugs required to treat an injured covered employee regardless of whether the prescription drugs are dispensed by a pharmacist, physician, dentist, or podiatrist.

(2) Unless a pharmacy and payer, or a pharmacy and a pharmacy benefits manager (“PBM”) with whom the payer contracts, have a contractual agreement governing pharmaceutical reimbursement, the Pharmaceutical Fee Schedule shall govern the reimbursement of prescription drugs.

(3) Unless the pharmacy and payer, or a pharmacy and a pharmacy benefits manager (“PBM”) with whom the payer contracts, have a contractual agreement authorizing network discounts, network discounts do not apply.

B. Generic and Brand Name Drugs.

(1) A pharmacist may dispense generic equivalent drugs to injured covered employees in accordance with Health Occupations Article, §12-504(c), Annotated Code of Maryland.

(2) A physician, dentist or podiatrist may dispense generic equivalent drugs to injured covered employees in accordance with Health Occupations Article, §12-102, Annotated Code of Maryland.

C. Rules Regarding Reimbursement.

(1) A physician, dentist, or podiatrist that dispenses prescription drugs shall be reimbursed based on the drug dispensed.

(2) A pharmacy or other entity for which a pharmacist dispenses prescription drugs shall be reimbursed based on the drug dispensed.

(3) In calculating the reimbursement rate for a brand name prescription drug, the parties shall utilize the National Drug Code (“NDC”) number and the average wholesale price (“AWP”) set forth in the nationally recognized pharmaceutical publication designated by the Commission.

(4) In calculating the reimbursement rate for a generic equivalent prescription drug, the parties shall utilize the Generic Equivalent Average Price (“GEAP”) set forth in the nationally recognized pharmaceutical publication designated by the Commission.

(5) The Commission shall post on its website (under the fee schedule link of its homepage) the name of the nationally recognized pharmaceutical publication designated by the Commission as the source of AWP and GEAP pricing.

D. Determination of AWP and GEAP.

(1) For brand name prescription drugs, the average wholesale price is the AWP established by the original manufacturer that produces the brand name drug and brings it to market, as validated by the corresponding NDC number.

(2) For generic equivalent prescription drugs, the GEAP is the average of AWP’s for all multi-source products that have been approved as therapeutically equivalent, excluding the originator drug.

(3) In calculating the reimbursement rate for a prescription drug, the parties shall determine the AWP or GEAP on the date the

drug is dispensed based on the pricing published in the most recent issue, as updated quarterly, of the pharmaceutical publication designated by the Commission.

(4) In calculating the reimbursement rate for a generic equivalent prescription drug, the parties shall utilize the GEAP associated with the smallest quantity published in the pharmaceutical publication designated by the Commission.

(5) For repackaged or compounded drugs, the AWP or GEAP utilized in calculating the reimbursement shall be the AWP, and corresponding NDC, or GEAP of the primary underlying active drug product used in the repackaging or compounding.

(6) If information concerning the original labeler of the underlying drug product is not provided or unknown, the payer may select the AWP, and corresponding NDC number, or GEAP, as published in the nationally recognized pharmaceutical publication designated by the Commission, to use in calculating reimbursement for a repackaged or compounded drug.

(7) If the quantity (tablets, pills, etc) of the dispensed prescription drug is different than the quantity published in the pharmaceutical publication, the parties shall adjust the AWP or GEAP to reflect the ratio between the quantity of drug dispensed and quantity of drug published.

**E. Calculation of Reimbursement.**

(1) For generic prescription drugs dispensed after the effective date of this regulation, the parties shall calculate the generic reimbursement rate by subtracting 15 percent of the GEAP from the GEAP and adding a \$7 dispensing fee as follows:  $GR = GEAP - (0.15 \times GEAP) + 7$ .

(2) For brand name prescription drugs dispensed after the effective date of this regulation, the parties shall calculate the brand name reimbursement rate by subtracting 10 percent of the AWP from the AWP and adding a \$5 dispensing fee as follows:  $BR = AWP - (0.1 \times AWP) + 5$ .

**F. Reimbursement Procedures.**

(1) Physicians, Dentists and Podiatrists. To obtain reimbursement under this section, a physician, dentist or podiatrist shall:

(a) Complete Form CMS-1500 in accordance with the written instructions posted on the Commission's website and in compliance with the reimbursement procedures governing reimbursement for medical services if prescription drugs were dispensed in conjunction with the provision of medical services; and

(b) Submit the completed CMS 1500 to the employer or insurer.

(2) Pharmacies. To obtain reimbursement under this section, a pharmacy shall:

(a) Transmit to the employer or insurer the information necessary to process the claim for pharmaceutical reimbursement; and

(b) Calculate the reimbursement amount including but not limited to the prescription drug, strength, and number of pills/quantity dispensed.

(3) Time for Reimbursement. Reimbursement by the employer or insurer shall be made within 45 days of the date on which the Form CMS-1500 or pharmaceutical claim information was received by the employer or insurer, unless the claim for pharmaceutical reimbursement is denied in full or in part under §5 of this regulation.

(4) Untimely Reimbursement. If an employer or insurer does not pay the fee calculated under this section or file a notice of denial of reimbursement within 45 days of receipt of the CMS-1500 or pharmaceutical claim information, the Commission may assess a fine against the employer or its insurer, and award interest to the provider in accordance with Labor and Employment Article, §§9-663 and 9-664, Annotated Code of Maryland, and COMAR 14.09.01.22.

(5) Denial of Reimbursement.

(a) If an employer or insurer denies, in full or in part, a claim for pharmaceutical reimbursement, the employer or insurer shall:

(i) Notify the provider of the reasons for the denial in writing; and

(ii) Mail the notice of denial of reimbursement to the provider within 45 days of the date on which Form CMS-1500 or pharmaceutical claim information was received.

(b) An employer or insurer who fails to file a notice of denial of reimbursement within 45 days of receipt of the CMS-1500 waives the right to deny reimbursement, and is subject to the provisions of Labor and Employment Article, §§9-663 and 9-664, Annotated Code of Maryland, and COMAR 14.09.01.22.

(6) Objection to Denial of Reimbursement.

(a) A physician, dentist, or podiatrist may contest a partial or total denial of reimbursement, by submitting to the Commission the following items:

(i) A "Claim for Medical Services" on a form provided by the Commission;

(ii) The Form CMS-1500 that relates to the unpaid claims; and

(iii) All correspondence relating to the unpaid claim.

(b) A pharmacy may contest a partial or total denial of reimbursement, by submitting to the Commission the following items:

(i) A "Claim for Pharmaceutical Reimbursement" on a form provided by the Commission; and

(ii) All correspondence relating to the unpaid claim.

(c) The Commission shall review the items submitted, without hearing, and issue its decision in an Order Nisi.

(7) Hearing on Objection to Commission's Order Nisi.

(a) The pharmacy, physician, dentist, podiatrist, employer, or insurer may contest the Commission's Order Nisi by filing with the Commission a controversion of medical claim, on a form provided by the Commission, within 30 days of the date of the Order Nisi.

(b) The Commission shall schedule a hearing on the matter and render a decision.

R. KARL AUMANN  
Chairman

**Title 15**  
**DEPARTMENT OF**  
**AGRICULTURE**  
**Subtitle 14 BOARD OF VETERINARY**  
**MEDICAL EXAMINERS**

**Notice of Proposed Action**

[11-081-P]

The State Board of Veterinary Medical Examiners proposes to:

(1) Amend Regulation .04 under COMAR 15.14.03 **Licensing and Minimum Sanitary Requirements for Veterinary Facilities**; and

(2) Amend Regulations .02—.09 under COMAR 15.14.13 **Qualifications for Examination and Registration of a Veterinary Technician**.

**Statement of Purpose**

The purpose of this action is to: (1) alter a requirement concerning respiratory equipment for small animal patients in a surgical and post-surgical setting; (2) update application eligibility requirements

for individuals seeking to become registered veterinary technicians in the State of Maryland; and (3) clearly define the expanded role of the American Association of Veterinary State Boards as it pertains to the administration of the Veterinary Technician National Examination and subsequent score reporting.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The SBVME would ordinarily incur expenses for costs associated with sending copies of revised regulatory language to its licensees. However, due to a recent adoption of other regulations affecting the SBVME’s licensees, the SBVME opted to send one notification to licensees, instead of two, via regular first class mail. Therefore, costs allocated for mailing the previous amendments have not yet been borne. One mailing covering all of the SBVME’s recent regulatory changes will be sent to all licensees. Veterinary hospital owners that do not possess a positive pressure oxygen delivery system will be required to purchase one if they provide surgical services. It is expected that a very small percentage of hospital owners would be affected by this regulation.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
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: Veterinary hospital owners	(-)	Undeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public: Individuals who own pets	(+)	Undeterminable

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

D. Owners of veterinary hospitals that do not currently possess an oxygen delivery system will need to purchase one to comply with the SBVME’s revised regulation. A delivery system that allows the user to bag an animal and deliver positive pressure ventilation can be purchased for approximately \$1,200. It is estimated that roughly 2% of the nearly 500 veterinary hospitals in Maryland may be affected by this change.

F. The requirement that hospital owners have a positive pressure oxygen delivery system reflects a change in acceptable minimal standards for the practice of veterinary medicine in a surgical or post-surgical setting. While the vast majority of veterinary hospitals that offer surgical services are currently equipped with such a device, the expectation is that those that do not have one will see a decreased rate

of morbidity among patients requiring supplemental oxygen. A patient’s increased chance of survival should correlate positively with increased consumer confidence.

**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 Laura C. Downes, Executive Director, Maryland State Board of Veterinary Medical Examiners, 50 Harry S Truman Parkway, Room 102, Annapolis, MD 21401, or call 410-841-5862, or email to [DownesLC@mda.state.md.us](mailto:DownesLC@mda.state.md.us), or fax to 410-841-5780. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**15.14.03 Licensing and Minimum Sanitary Requirements for Veterinary Facilities**

Authority: Agriculture Article, §§2-304 and 2-304.1, Annotated Code of Maryland

**.04 Facilities, Equipment, and Supplies for Animal Surgery and Post Surgical Care.**

- A. (text unchanged)
- B. A suitably equipped area shall include the following equipment and supplies:
  - (1)—(3) (text unchanged)
  - (4) Instruments and drapes appropriate for the surgical procedures used in the hospital; *and*
  - (5) [Instruments and equipment for artificial respiration (the minimal acceptable respirator is an “ambu bag”).] *A positive pressure oxygen delivery system for small animal patients where medically indicated.*

**15.14.13 Qualifications for Examination and Registration of a Veterinary Technician**

Authority: Agriculture Article, §2-309, Annotated Code of Maryland

**.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) “AAVSB” means the American Association of Veterinary State Boards.
  - (2) “AVMA” means the American Veterinary Medical Association.
  - [(1)] (3)—[(2)] (4) (text unchanged)
  - [(3)] (5) “Maryland State Veterinary Technician Examination” means both the Veterinary Technician National Examination [(VTNE)], and the State Board Examination for becoming a registered veterinary technician.
  - (6) “PES” means the Professional Examination Service.
  - [(4)] (7) (text unchanged)
  - (8) “VTNE” means the Veterinary Technician National Examination.

**.03 Qualifications for Examination.**

- [A. An examination applicant shall pay an application fee, as provided in COMAR 15.14.12.02, and file the following with the Committee at least 45 days before the announced examination date:
  - (1) A completed examination application on a form the Committee requires;

(2) A 2-inch by 3-inch photograph of the applicant taken within 6 months of the application date, with the applicant's complete signature on the photograph;]

A. *Eligibility.* To be eligible to take the State Board Examination, an examination applicant shall provide:

[(3)] (1) A final transcript from a school [authenticated certificate] showing that the applicant is a:

(a) Graduate [or candidate for graduation] from a veterinary [technician] technology program approved by the [American Veterinary Medical Association,] AVMA,

(b) (text unchanged)

(c) Graduate of a program approved by the Committee, with equivalent training and experience equal to those candidates who have graduated from a veterinary technician program approved by the [American Veterinary Medical Association;] AVMA.

[(4) A check or money order for the applicable fee, payable to the State Board of Veterinary Medical Examiners.]

B. *Board Examination.* To take the State Board Examination, an applicant shall submit the following to the State Board within 1 year from the date the Board has received the application:

(1) A complete and notarized examination application on a form provided by the Board;

(2) The application fee, as provided in COMAR 15.14.12.02, in the form of a check or money order, payable to the State Board of Veterinary Medical Examiners;

(3) A 2-inch by 3-inch photograph of the applicant taken within 6 months of the application date, with the applicant's complete signature on the photograph; and

(4) A final transcript from a school, as set forth in §A of this regulation.

[B.] C. (text unchanged)

D. VTNE.

(1) Graduate of an AVMA-Accredited Program.

(a) To sit for a scheduled VTNE, an examination applicant who has graduated from an AVMA-accredited program shall submit to the AAVSB, by a date specified by the AAVSB, the following:

(i) The information specified under §A(1)(a) of this regulation pertaining to the applicant's schooling, so that the AAVSB may determine whether the applicant is eligible to take this examination;

(ii) A completed AAVSB application to take the VTNE; and

(iii) The requisite fees associated with taking the VTNE.

(b) If the AAVSB determines that the applicant is eligible to take the VTNE, it shall notify the applicant.

(2) Other Type Graduate.

(a) To sit for a scheduled VTNE, an examination applicant who meets the eligibility requirements set forth in §A(1)(b) or (c) of this regulation shall have the school from which the applicant graduated submit to the Board a school authenticated copy of the applicant's final transcript and, if applicable, an English translation for its review. The applicant shall also provide the following information in writing to the Board:

(i) Name of applicant; and

(ii) Telephone number or email address of applicant.

(b) If the Board determines that the applicant is eligible to take the VTNE, it shall notify the applicant and the AAVSB.

(c) Upon notification of eligibility to take the VTNE, the applicant shall submit the following to the AAVSB:

(i) A completed AAVSB application to take the VTNE; and

(ii) The requisite fees associated with taking the VTNE.

**.04 Maryland Examination—Time and Place.**

[The Committee conducts the VTNE once a year, usually in the spring. The Committee shall give 75 days public notice of the time and place for the examination.] The AAVSB shall specify the times and locations for taking the VTNE.

**.05 Maryland State Examination—Subject Matter.**

A. (text unchanged)

B. The VTNE, written by veterinarians and veterinary technicians affiliated with the AAVSB, [American Veterinary Medical Association,] AVMA, the National Association of Veterinary Technicians of America and the Canadian Association of Animal Health Technologists and Technicians, tests a candidate's general knowledge on subjects relating to veterinary technology.

C. (text unchanged)

**.06 Examination—Passing Grade.**

A. A candidate shall pass the VTNE. The VTNE shall be administered for those candidates who have not previously taken and passed the VTNE. Candidates who have previously taken and passed the VTNE shall provide the Committee with a report from the [Interstate Reporting Service] AAVSB's Veterinary Information Verifying Agency showing that the candidate has passed the VTNE.

B. Passing [Grade. A passing grade for the VTNE is based upon the criterion referenced passing score of at least 425.] Score for the VTNE. The PES shall establish the passing score for the VTNE.

C. (text unchanged)

**.07 Notice of Pass or Fail of VTNE.**

The [Committee] AAVSB shall notify each candidate if the candidate passes or fails. Upon request, a candidate may be given the candidate's grade.

**.08 Taking Examination After Failure.**

After a failure on the VTNE, a candidate may take another examination by:

[A. By making application to the Committee 45 days before the next examination date; and

B. Upon payment of a fee.]

A. Making application directly to the AAVSB; and

B. Meeting all other conditions as specified by the AAVSB or its authorized representative.

**.09 Fee Refunds.**

[Unless the Committee is notified within 15 days of an examination date that a candidate does not intend to take an examination, the fee may not be refunded.]

A. The fee associated with the State Board Examination is non-refundable.

B. The fee associated with the VTNE shall be refunded in accordance with AAVSB's policy on refunds.

EARL F. HANCE  
Secretary of Agriculture

**Subtitle 21 ANTIFOULING PAINTS**

**15.21.01 Use and Sale of Antifouling Paints**

Authority: Agriculture Article, §§5-104 and 5-904, Annotated Code of Maryland

**Notice of Proposed Action**

[11-076-P]

The Secretary of Agriculture proposes to repeal Regulations .01 — .05 under **COMAR 15.21.01 Use and Sale of Antifouling Paints**.

**Statement of Purpose**

The purpose of this action is to repeal COMAR 15.21.01 Antifouling Paints. The Environmental Protection Agency (EPA) has cancelled all antifouling paints containing Tributyltin (TBT) in 2005, and an International Treaty banning TBT antifouling paints was signed in 2008. Therefore, these regulations are obsolete.

**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 Dennis W. Howard, Chief, Pesticide Regulation Section, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401, or call 410-841-5710, or email to HowardDW@mda.state.md.us, or fax to 410-841-2765. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

EARL F. HANCE  
Secretary of Agriculture

**Title 19A  
STATE ETHICS  
COMMISSION**

**Subtitle 04 LOCAL GOVERNMENT  
ETHICS LAW**

**Notice of Proposed Action**

[11-074-P]

The State Ethics Commission proposes to:

- (1) Repeal existing regulations .01—.03 under **COMAR 19A.04.01 Model Laws** and adopt new Regulations .01—.03 under a new chapter, **COMAR 19A.04.01 General Provisions**;
- (2) Repeal existing Regulations .01—.07 and adopt new Regulations .01—.07 under **COMAR 19A.04.02 Review Criteria**;
- (3) Repeal existing Regulations .01—.04 and adopt new Regulations .01—.04 under **COMAR 19A.04.03 Review Procedures**;
- (4) Adopt new Regulations .01 and .02 under a new chapter, **COMAR 19A.04.04 Model Laws**; and

(5) Repeal existing Appendices A and B and adopt new Appendices A and B under **COMAR 19A.04 Local Government Ethics Law**.

This action was considered at the State Ethics Commission open meeting held on November 4, 2010, notice of which was provided pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to implement the provisions of Ch. 277, Acts of 2010, which requires local governments to adopt conflict of interest restrictions and financial disclosure requirements for local elected officials and candidates that are at least as stringent as the requirements for public officials contained in the Public Ethics Law. Current law requires local governments to adopt conflict of interest and financial disclosure provisions for public officials that are similar to the Public Ethics Law and lobbying provisions that are substantially similar to the Public Ethics Law. This proposed action specifies the criteria and process the State Ethics Commission will follow in determining whether a local law meets these requirements. The proposed action also updates and clarifies the process the Commission will use in reviewing and taking action on local government requests for modifications to and exemptions from these requirements, as authorized in the Public Ethics Law.

The Public Ethics Law requires the State Ethics Commission to adopt model ethics provisions that meet these requirements for local governments. The proposed action adopts new model ethics provisions that reflect the changes required by Ch. 277, and that incorporate amendments to the Public Ethics Law since the previous models were adopted.

Finally, the proposed action revises the Commission’s previous regulations and models for clarity and style.

**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 Robert A. Hahn, Executive Director, State Ethics Commission, 45 Calvert Street, 3rd Floor, Annapolis, Maryland 21401, or call 410-260-7770, or email to rhahn@gov.state.md.us, or fax to 410-260-7747. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**19A.04.01 General Provisions**

Authority: State Government Article, §15-206 and Title 15, Subtitle 8, Annotated Code of Maryland

**.01 Applicability.**

*This subtitle applies to each county of the State, the City of Baltimore, and each of the incorporated municipalities of the State.*

**.02 Definitions.**

*A. In this subtitle, the following terms have the meanings indicated.*

**B. Defined Terms.**

(1) "Elected local official" has the meaning stated in State Government Article, §15-805(a), Annotated Code of Maryland.

(2) Local Employee.

(a) "Local employee" means an individual who is employed by a county of the State, the City of Baltimore, or an incorporated municipality of the State.

(b) "Local employee" does not include:

(i) An elected local official or a nonelected local official;

or

(ii) An employee or official of an executive agency, as defined in COMAR 19A.01.01.02H.

(3) Nonelected Local Official.

(a) "Nonelected local official" means an individual who is appointed to serve on a board, commission, or other entity of a county of the State, the City of Baltimore, or an incorporated municipality of the State.

(b) "Nonelected local official" does not include:

(i) A local employee;

(ii) An elected local official; or

(iii) An employee or official of an executive agency, as defined in COMAR 19A.01.01.02H.

**.03 Enactment of Local Laws.**

A. Except as provided in COMAR 19A.04.04 of this subtitle, each county and municipality shall enact a local ethics law that includes:

(1) Conflict of interest and financial disclosure provisions for elected local officials that are at least equivalent to the requirements for State officials contained in State Government Article, Title 15, Subtitles 5 and 6, Annotated Code of Maryland;

(2) Conflicts of interest and financial disclosure provisions similar to the provisions of the Public Ethics Law; and

(3) Lobbying provisions substantially similar to the provisions of the Public Ethics Law.

B. A county or municipality that has an ethics law approved by the Commission shall maintain and implement the law consistent with this subtitle.

**19A.04.02 Review Criteria**

Authority: State Government Article, [§15-102(V)] §15-206 and Title 15, Subtitle 8, Annotated Code of Maryland

**.01 Scope.**

A. The provisions of this chapter reflect the minimum elements that shall be addressed by a county or municipal ethics law in order for the law to be viewed as:

(1) Similar or substantially similar to the Public Ethics Law; and

(2) For elected local officials and candidates to be elected local officials, at least equivalent to the requirements of State Government Article, Title 15, Subtitles 5 and 6, Annotated Code of Maryland.

B. A county or municipality may adopt laws more stringent than the requirements of State Government Article, Title 15, Subtitles 5 and 6, Annotated Code of Maryland, based on local circumstances and where more stringent provisions are necessary to prevent conflicts of interest in the locality.

**.02 Coverage.**

A. To be viewed as similar to the Public Ethics Law, all elected local officials, local employees subject to the jurisdiction of the locality, and nonelected local officials shall be subject to the local ethics law.

**B. Conflicts of Interest.**

(1) A local law shall include conflict of interest provisions for elected local officials equivalent to or exceeding the requirements of State Government Article, Title 15, Subtitle 5, Annotated Code of Maryland.

(2) Conflicts of Interest — Employees and Nonelected Local Officials.

(a) A local law shall include conflict of interest provisions for local employees and nonelected local officials.

(b) A county or municipality may adopt conflict of interest provisions for local employees and nonelected local officials that are identical to the conflict of interest provisions for elected local officials.

**C. Financial Disclosure.**

(1) A local law shall include financial disclosure provisions for elected local officials and candidates to be elected local officials equivalent to or exceeding the requirements for State officials required in State Government Article, Title 15, Subtitle 6, Annotated Code of Maryland.

(2) Financial Disclosure — Employees and Nonelected Local Officials.

(a) A local law shall include financial disclosure provisions for local employees and nonelected local officials.

(b) A county or municipality may adopt financial disclosure provisions for local employees and nonelected local officials that are identical to the financial disclosure provisions for local elected officials.

**.03 Administration.**

The local law shall:

A. Identify or establish a local agency responsible for implementing the law;

B. Provide the local agency responsible for implementing the law with a structure that supports impartiality and independence of judgment by its officials and employees through the hiring and appointment process;

C. Provide for the local agency responsible for implementing the local law to issue advisory opinions as to the applicability of the law to elected local officials, nonelected local officials, and local employees and other persons subject to the law; and

D. Establish a mechanism for processing and making determinations in response to complaints filed with the appropriate local agency alleging violations of the law.

**.04 Conflicts of Interest.**

A. Similarity to Public Ethics Law.

(1) Unless the Commission grants the county or municipality a modification or exemption as provided in COMAR 19A.04.03.03, to be equivalent to the requirements of and similar to the Public Ethics Law, the local ethics law shall address conflicts of interest restrictions as described in this regulation.

(2) A local law that includes conflicts of interest restrictions more stringent than the restrictions described in this regulation may be similar to the Public Ethics Law.

B. Disqualification.

(1) Comparison to Public Ethics Law.

(a) The local law shall include, for elected local officials, the disqualification and participation restrictions included in State Government Article, §15-501, Annotated Code of Maryland.

(b) When appropriate based on the local government structure and form, the local law may include, for elected local officials, the disqualification and participation restrictions included in State Government Article, §§15-511 and 15-512, Annotated Code of Maryland.

(2) The local law shall include a disqualification provision prohibiting a nonelected local official or local employee from

participating, as a nonelected local official or local employee, in a county or municipal matter that would have a direct economic impact, distinct from the impact on the public at large, on the nonelected local official or local employee or that, to the knowledge of the nonelected local official or local employee, would have a direct economic impact on:

(a) A spouse, parent, sibling, or child of the nonelected local official or local employee; or

(b) A business entity with which any of the following is affiliated:

(i) The nonelected local official or local employee; or

(ii) A spouse, parent, sibling, or child of the nonelected local official or local employee.

(3) The local law may include provisions:

(a) Authorizing the agency responsible for implementing the law to grant exceptions to the participation restrictions when no conflict of interest exists or when the interest is too remote and insubstantial to affect the integrity of the public actions of the official or employee; and

(b) Authorizing participation notwithstanding a conflict when the disqualification would leave a body with less than a quorum capable of acting, the disqualified official or employee is required by law to act, or the disqualified official or employee is the only individual authorized to act.

C. Outside Employment.

(1) Comparison to Public Ethics Law.

(a) The local law shall include, for elected local officials, the secondary employment restrictions included in State Government Article, §§15-502, 15-503, and 15-504(a), Annotated Code of Maryland.

(b) When appropriate based on the local government structure and form, the local law may include, for elected local officials, the secondary employment restrictions included in State Government Article, §15-513, Annotated Code of Maryland.

(2) The local law shall prohibit, for local employees and nonelected local officials, outside employment with an entity that:

(a) Is subject to the authority of the local employee or nonelected local official or of the agency with which the nonelected local official or local employee is affiliated; or

(b) Is negotiating or has entered a contract with or is a subcontractor on a contract with the agency with which the nonelected local official or local employee is affiliated.

(3) The local law shall prohibit, for local employees and nonelected officials, outside employment that would impair the impartiality or independent judgment of the nonelected local official or local employee.

(4) The local law may include provisions authorizing the agency responsible for implementing the law:

(a) To grant exceptions to the outside employment restrictions when the outside employment does not create a conflict of interest or the appearance of a conflict; and

(b) To grant limited exemptions to the outside employment restrictions under extraordinary circumstances.

D. Financial Interests.

(1) Comparison to Public Ethics law.

(a) The local law shall include, for elected local officials, the financial interest restrictions included in State Government Article, §§15-502, 15-503, and 15-504(a), Annotated Code of Maryland.

(b) When appropriate, based on the local government structure and form, the local law may include, for elected local officials, the financial interest restrictions included in State Government Article, §15-513, Annotated Code of Maryland.

(2) The local law shall prohibit, for local employees and nonelected local officials, financial interests in an entity that:

(a) Is subject to the authority of the local employee or nonelected local official or of the agency with which the nonelected local official or local employee is affiliated; or

(b) Is negotiating or has entered a contract with or is a subcontractor on a contract with the agency with which the nonelected local official or local employee is affiliated.

(3) The local law may include provisions authorizing the agency responsible for implementing the law:

(a) To grant exceptions to the financial interest restrictions when the financial interest does not create a conflict of interest or the appearance of a conflict; and

(b) To grant limited exemptions to the financial interest restrictions under extraordinary circumstances.

E. Post-Employment.

(1) The local law shall include, for former elected local officials, the post-employment restrictions included in State Government Article, §15-504(d), Annotated Code of Maryland.

(2) The local law shall include a restriction on former nonelected local officials' and local employees' activities relating to cases, contracts, or other specific matters in which the former nonelected local officials or former local employees significantly participated in their local positions.

F. Prestige of Office.

(1) The local law shall include, for elected local officials, the prestige of office restrictions included in State Government Article, §15-506, Annotated Code of Maryland.

(2) The local law shall prohibit nonelected local officials and local employees from using their official positions or public positions for their private gain or the private gain of another.

G. Confidential Information.

(1) The local law shall include, for elected local officials, the restrictions on the use of confidential information included in State Government Article, §15-507, Annotated Code of Maryland.

(2) The local law shall prohibit nonelected local officials and local employees from using or disclosing, except in the discharge of an official duty, nonpublic information obtained in the course of official local duties for personal economic benefit or the economic benefit of another.

H. Gifts.

(1) The local law shall include, for elected local officials, the gift solicitation and acceptance restrictions included in State Government Article, §15-505, Annotated Code of Maryland.

(2) The local law shall prohibit nonelected local officials and local employees from:

(a) Soliciting gifts; and

(b) Directly soliciting or facilitating the solicitation of a gift, on behalf of another person, from an individual registered as a lobbyist under the local law.

(3) The local law shall prohibit nonelected local officials and local employees from accepting gifts from persons regulated by or contracting with the local entity with which the nonelected local official or local employee is affiliated.

(4) The local law shall define "gift":

(a) To include the transfer of any thing or service of value without identifiable and adequate consideration; and

(b) To exclude regulated campaign contributions similar to the provisions of the Public Ethics Law.

(5) The local law may:

(a) Include exceptions similar to the exceptions included in State Government Article, §15-505, Annotated Code of Maryland; and

(b) Include provisions to allow the local agency responsible for implementing the local ethics law to grant exceptions and exemptions from the gift acceptance prohibitions similar to the exception and exemption authority granted to the State Ethics

Commission in State Government Article, §15-505, Annotated Code of Maryland.

**I. Procurement.**

(1) The local law shall include, for elected local officials, the procurement restrictions included in State Government Article, §15-508, Annotated Code of Maryland.

(2) The local law may prohibit an individual or a person that employs an individual who assists a local government unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or request for proposals from:

- (a) Submitting a bid or proposal for that procurement; or
- (b) Assisting or representing another person, directly or indirectly, who is submitting a bid or proposal for that procurement.

**.05 Financial Disclosure.**

A. Unless the Commission grants a county or municipality a modification or exemption as provided in COMAR 19A.04.03.03, the local law shall include financial disclosure requirements as described in this regulation.

**B. Elected Local Officials.**

(1) For elected local officials, the local law shall include financial disclosure requirements for elected local officials that are at least equivalent to the requirements in State Government Article, Title 15, Subtitle 6, Annotated Code of Maryland.

(2) The local law shall require:

(a) An elected local official who is appointed to fill a vacancy in an office and who has not already filed a statement for the preceding calendar year to file a financial disclosure statement within 30 days of appointment for the preceding calendar year;

(b) An elected local official who leaves office, other than by reason of death, to file a financial disclosure statement within 60 days after leaving the office for the portion of the current calendar year during which the individual held office and, if a statement has not been filed for the preceding calendar year, for the preceding calendar year; and

(c) All other elected local officials to file a financial disclosure statement on or before April 30 of each year for the preceding calendar year.

**C. Local Employees and Nonelected Local Officials.**

(1) Unless the Commission grants the county or municipality a modification or exemption as provided in COMAR 19A.04.03.03, in accordance with State Government, §15-805(c), Annotated Code of Maryland, the local law shall require nonelected local officials and local employees who, acting alone or as members or employees of a local entity, have decision making authority or act as principal advisors to a person with that authority in making local policy or exercising quasi-judicial, regulatory, licensing, inspecting, or auditing functions:

(a) To file an annual statement, on or before a date established in the local law, disclosing gifts received from entities contracting with or regulated by the county or municipality; and

(b) To file a statement disclosing interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the employee or official, sufficiently in advance of the action to provide adequate disclosure to the public.

(2) A local law may require local employees and nonelected local officials to file financial disclosure statements disclosing the information that local elected officials are required to disclose under §B of this regulation.

**D. Candidates to Be Elected Local Officials.**

(1) The local law shall require candidates to be elected local officials to file financial disclosure statements disclosing the same

information elected local officials are required to disclose under §B of this regulation.

(2) The local law shall require that candidates to be elected local officials file required financial disclosure statements no later than the filing of the certificates of candidacy for the positions and on or before April 30 of each subsequent year until the election.

E. The local law shall provide that financial disclosure statements filed under the local law are public records and are available for public inspection and copying.

**.06 Lobbying.**

A. Unless the Commission grants a county or municipality a modification or exemption as provided in COMAR 19A.04.03.03, the local law shall include lobbying provisions as described in this regulation.

**B. Lobbying Registration.**

(1) To be substantially similar to the Public Ethics Law, the local law shall require, at a minimum, that a person who provides elected local officials, appointed officials, or employees with food, entertainment, or other gifts exceeding an amount specified in the local law during a period specified in the local law in connection with efforts to influence official local actions to register as a lobbyist with the agency responsible for implementing the local law on the form provided by that agency.

(2) The local law shall require that a lobbyist registration shall:

(a) Identify the lobbyist, the subject matters on which the lobbyist will lobby, and any other person for whom the lobbyist lobbies; and

(b) Cover a defined period of time, as specified in the local law.

C. The local law shall require periodic disclosure, including identification of recipients, of food, entertainment, and gifts to elected local officials, nonelected local officials, and local employees, from a lobbyist when the cumulative value of the gifts exceeds an amount specified in the local law.

D. A local law may adopt provisions similar to the lobbying provisions of State Government, Title 15, Subtitle 7, Annotated Code of Maryland, including:

(1) Compensation-based registration criteria, a requirement to report compensation received by a lobbyist for lobbying activities, and rules distinguishing between executive and legislative lobbying efforts;

(2) Lobbying registration and reporting requirements for lobbying related to regulations, executive orders, and procurement; and

(3) Registration requirements similar to State Government Article, §15-701(1), Annotated Code of Maryland.

E. To be substantially similar to the Public Ethics Law, the local law shall provide that lobbying registrations and reports are public records and are available for public inspection and copying.

**.07 Enforcement.**

A. A local law shall include sanctions for violations of the substantive provisions of the law.

B. Consistent with local power and authority, enforcement provisions may include:

- (1) Civil fines;
- (2) Cease and desist orders to enjoin continuation of violations;
- (3) Administrative and personnel sanctions;
- (4) Reprimands;
- (5) Late fees;
- (6) Criminal sanctions; and
- (7) Other sanctions as appropriate in the local jurisdiction.



**19A.04.03 Review Procedures**

Authority: State Government Article, §§[15-205,]15-206[, 15-208,] and 15-209[,] and Title 15, Subtitle 8, Annotated Code of Maryland

**.01 Certification and Submission to the Commission.**

A. On or before October 1 of each year, the local ethics commission or other appropriate entity of a county or municipality shall certify to the Commission on the form provided by the Commission that the county or municipality is in compliance with COMAR 19a.04.01.03 and State Government Article, §15-803, Annotated Code of Maryland.

B. In addition to the annual certification required by §A of this regulation, a county or municipality shall submit promptly a copy of any new local law or amendments or additions to a local law to the Commission for the Commission’s review and approval.

**.02 Commission Review of Local Laws.**

A. A county or municipality may submit proposed ethics provisions and amendments to the Commission for review and comment prior to final enactment.

B. The Commission shall review all finally enacted laws submitted to the Commission and shall determine if the local law meets the requirements of this subtitle and State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland.

C. In determining whether a local law meets the statutory requirements for elected local officials and for being similar to the Public Ethics Law, the Commission shall apply the criteria of COMAR 19A.04.02 and State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland.

D. If the Commission determines that a local law does not meet the requirements of this subtitle and State Government Article, Title 8, Annotated Code of Maryland, the Commission shall notify the county or municipality of the determination and Commission staff shall assist the local entity in developing local provisions that comply with these requirements.

**.03 Exemptions and Modifications.**

**A. Exemption and Modification Requests.**

**(1) Request for a Modification or Exemption.**

(a) A county may request a modification of the requirements of COMAR 19A.04.02 when appropriate based on clearly demonstrable local circumstances.

(b) A municipality may request a modification of or an exemption from the requirements of COMAR 19A.04.02 when appropriate based on clearly demonstrable local circumstances.

**(2) Commission Review of Exemption and Modification Requests.**

(a) The Commission may grant exemptions from and modifications to the requirements of COMAR 19A.04.02 as provided in this regulation.

**(b) The Commission may not grant a county:**

(i) An exemption from the requirement that a county adopt a local law; or

(ii) A modification to the requirements of COMAR 19A.04.02 for elected local officials.

(c) When demonstrable local circumstances justify departure from the basic elements of the Public Ethics Law, the Commission may grant a county or a municipality a modification to the requirements of COMAR 19A.04.02.

**(d) Commission Review of Municipality Exemption Requests.**

(i) The Commission may grant a municipality an exemption from the requirements of COMAR 19A.04.02 if because of the size of the municipality the application of all or any portion of COMAR 19A.04.02 and the Public Ethics Law would constitute an

unreasonable invasion of privacy, would significantly reduce the availability of qualified persons for public service, and is not necessary to preserve the purposes of the Public Ethics Law.

(ii) In considering whether the size of a municipality justifies an exemption or modification, the Commission shall consider the population of the municipality and other factors relating to size, including the number of public employees, the type and number of government functions performed by the municipality, and the size of the municipal budget.

**B. Exemptions and Modifications — Duration and Review Procedures.**

(1) Any exemption or modification granted to a county or municipality shall remain in effect until:

(a) The Commission determines that the original determination was in error; or

(b) The county or municipality has substantially changed since the exemption or modification was granted.

(2) A county or municipality may request a change in its exemption status at any time by submitting a written request to the Commission.

(3) The Commission shall review the status of all municipal exemptions and modifications at the end of each decennial census to determine if any municipal exemption or modification will be reconsidered based on the information available at that time.

(4) If the Commission preliminarily determines that an existing exemption or modification should be reviewed or reconsidered, the Commission shall notify the county or municipality at least 60 days before Commission review or reconsideration.

**(5) A county or municipality may:**

(a) Present information or views regarding an exemption or modification to the Commission in writing; and

(b) Appear before the Commission at the request of the county or municipality or at the request of the Commission.

(6) Members of the public may present views or information in writing.

**(7) The Commission shall:**

(a) Make decisions regarding exemptions and modification decisions in open public meetings; and

(b) Advise counties and municipalities of decisions regarding exemptions and modifications in writing.

**.04 Enforcement.**

A. The Commission and its staff will make reasonable efforts to assist counties and municipalities in developing local laws that reflect the intent of the Public Ethics Law and take account of local circumstances and needs in avoiding conflicts of interest within that jurisdiction.

**B. Nonconformance Remedies.**

(1) If the Commission determines that a county or municipality does not conform to the requirements of the Public Ethics Law, the Commission may seek appropriate relief in a court exercising equity jurisdiction in the county or city having proper venue for the purposes of requiring compliance with the Public Ethics Law.

(2) A court may grant any available equitable relief, including imposition of a model law developed by the Commission on the local jurisdiction.

**19A.04.04 Model Laws**

Authority: State Government Article, §§15-205 and 15-206 and Title 15, Subtitle 8, Annotated Code of Maryland

**.01 Model Laws.**

The model local ethics laws in Appendices A and B to this subtitle are established as alternative model provisions developed by the

Commission under State Government Article, §15-205, Annotated Code of Maryland.

**.02 Effect of Models.**

**A. Status.**

(1) The model local laws in Appendices A and B to this subtitle are informational and examples only.

(2) The Commission shall determine whether a county or municipal law complies with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland, based on the criteria and guidelines set forth in COMAR 19A.04.02 and the Public Ethics Law.

**B. Compliance with Public Ethics Law Requirements.**

(1) The model laws in Appendices A and B comply with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland.

(2) The model conflict of interest and financial disclosure provisions for elected officials in Appendices A and B are equivalent to the requirements of State Government Article, Title 15, Subtitles 5 and 6, Annotated Code of Maryland.

**C. Applicability.**

(1) The model law in Appendix A may be viewed as a guide for larger counties and municipalities.

(2) The model law in Appendix B may be viewed as a guide for smaller counties and municipalities.

**Appendix A — Model Ethics Law A**

Authority: State Government Article, §§15-205, 15-206, and Title 15, Subtitle 8, Annotated Code of Maryland

**CHAPTER \_\_\_\_\_ — ETHICS PROVISIONS**

**Section 1. Short title.**

This chapter may be cited as the \*name of County, City or Town\* Public Ethics \*Law or Ordinance\*.

**Section 2. Statement of purpose and policy.**

(a) The \*County, City, or Town\* of \*name of County, City or Town\*, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

(b) It is evident that this confidence and trust is eroded when the conduct of the \*County, City, or Town\*'s business is subject to improper influence and even the appearance of improper influence.

(c) For the purpose of guarding against improper influence, the \*County, City, or Town\* \*name of Council or other legislative body\* enacts this Public Ethics \*Law, Ordinance\* to require \*County, City, or Town\* elected officials, officials, employees, and individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for the conduct of local government business.

(d) It is the intention of the \*Council or other legislative body\* that this chapter, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.

**Section 3. Definitions.**

In this chapter, the following terms have the meanings indicated.

(a)(1) "Business entity" means a corporation, general or limited partnership, sole proprietorship, joint venture, unincorporated association or firm, institution, trust, foundation, or other organization, whether or not operated for profit.

(2) Business entity does not include a governmental entity.

(b) "Commission" means the \* name of County, City, or Town\* Ethics Commission established under §4(a) of this chapter.

(c)(1) "Compensation" means any money or thing of value, regardless of form, received or to be received by any individual covered by this chapter from an employer for service rendered.

(2) For the purposes of §8 of this chapter, if lobbying is only a portion of a person's employment, "compensation" means a prorated amount based on the time devoted to lobbying compared to the time devoted to other employment duties.

(d) "Doing business with" means:

(1) Having or negotiating a contract that involves the commitment, either in a single or combination of transactions, of \$5,000 or more of \*County, City, or Town\* controlled funds;

(2) Being regulated by or otherwise subject to the authority of \*County, City, or Town\*; or

(3) Being registered as a lobbyist under §8 of this chapter.

(e) (1) "Elected official" means any individual who holds an elective office of \*County, City, or Town\*.

(2) "Elected official" does not include the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court.

(f)(1) "Employee" means an individual who is employed by \*County, City, or Town\*.

(2) "Employee" does not include an elected local official.

(3) "Employee" does not include an employee of:

(i) The offices of the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court;

(ii) The County Health Department; or

(iii) The County Department of Social Services.

(g) "Financial interest" means:

(1) Ownership of any interest as the result of which the owner has received, within the past 3 years, or is presently receiving, or in the future is entitled to receive, more than \$1,000 per year; or

(2) Ownership, or the ownership of securities of any kind representing or convertible into ownership, of more than 3 percent of a business entity by a \*County, City, or Town\* official or employee, or the spouse of an official or employee.

(h) (1) "Gift" means the transfer of anything of economic value, regardless of the form, without adequate and lawful consideration.

(2) "Gift" does not include a political campaign contribution regulated under Election Law Article, Annotated Code of Maryland, or any other provision of State or local law regulating the conduct of elections or the receipt of political campaign contributions.

(i) "Immediate family" means a spouse and dependent children.

(j)(1) "Interest" means a legal or equitable economic interest, whether or not subject to an encumbrance or a condition, that is owned or held, in whole or in part, jointly or severally, directly or indirectly.

(2) For purposes of §6 of this chapter, "interest" includes any interest held at any time during the reporting period.

(3) "Interest" does not include:

(i) An interest held in the capacity of a personal agent, custodian, fiduciary, personal representative, or trustee, unless the holder has an equitable interest in the subject matter;

(ii) An interest in a time or demand deposit in a financial institution;

(iii) An interest in an insurance policy, endowment policy, or annuity contract under which an insurer promises to pay a fixed amount of money either in a lump sum or periodically for life or a specified period;

(iv) A common trust fund or a trust which forms part of a pension or profit sharing plan which has more than 25 participants and which has been determined by the Internal Revenue Service to be a qualified trust under the Internal Revenue Code; or

(v) A college savings plan under the Internal Revenue Code.

(k) "Lobbyist" means a person required to register and report expenses related to lobbying under §8 of this chapter.

(l) "Lobbying" means:

(1) Communicating in the presence of a \*County, City, or Town\* official or employee with the intent to influence any official action of that official or employee; or

(2) Engaging in activities with the express purpose of soliciting others to communicate with a \*County, City, or Town\* official or employee with the intent to influence that official or employee.

(m) "Official" means an elected official, an employee of the \*County, City, or Town\*, or a person appointed to or employed by the \*County, City, or Town\* or any \*County, City, or Town\* agency, board, commission, or similar entity:

(1) Whether or not paid in whole or in part with \*County, City, or Town\* funds; and

(2) Whether or not compensated.

(n) "Person" includes an individual or business entity.

(o) "Qualified relative" means a spouse, parent, child, brother, or sister.

**Section 4. Administration.**

(a)(1) There is a \*County, City or Town\* Ethics Commission that consists of \_\_\_ members, appointed by the \*Mayor or other chief executive officer\* with the concurrence of the \*Council or other legislative body\*.

(2) The Commission members shall serve \_\_\_ year overlapping terms.

(3) A Commission member may serve until a successor is appointed and qualifies.

(b)(1) The Commission shall elect a chairman from among its members.

(2) The term of the chairman is one year.

(3) The chairman may be reelected.

(c)(1) The \*County, City, or Town\* Attorney shall assist the Commission in carrying out the Commission's duties.

(2) If a conflict of interest under §5 of this chapter or other conflict prohibits the \*County, City, or Town\* Attorney from assisting the Commission in a matter, the \*County, City, or Town\* shall provide sufficient funds for the Commission to hire independent counsel for the duration of the conflict.

(d) The Commission is the advisory body responsible for interpreting this chapter and advising persons subject to this chapter regarding its application.

(e) The Commission shall hear and decide, with the advice of the \*County, City, or Town\* Attorney or other legal counsel if appropriate, all complaints filed regarding alleged violations of this chapter by any person.

(f) The Commission or an office designated by the Commission shall retain as a public record all forms submitted by any person under this chapter for at least four years after receipt by the Commission.

(g) The Commission shall conduct a public information and education program regarding the purpose and implementation of this chapter.

(h) The Commission shall certify to the State Ethics Commission on or before October 1 of each year that the \*County, City, or Town\* is in compliance with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland, for elected local officials.

(i) The Commission shall:

(1) Determine if changes to this chapter are required to be in compliance with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland; and

(2) Shall forward any recommended changes and amendments to the \*County, City, or Town\* Council for enactment.

(j)(1) Any person subject to this chapter may request an advisory opinion from the Commission concerning the application of this chapter.

(2) The Commission shall respond promptly to a request for an advisory opinion and shall provide interpretations of this chapter based on the facts provided or reasonably available to the Commission within 60 days of the request.

(3) In accordance with all applicable State and \*County, City, or Town\* laws regarding public records, the Commission shall publish or otherwise make available to the public copies of the advisory opinions, with the identities of the subjects deleted.

(4) The Commission may adopt additional policies and procedures related to the advisory opinion request process.

(k)(1) Any person may file a complaint with the Commission alleging a violation of any of the provisions of this chapter.

(2) A complaint shall be in writing and under oath.

(3) The Commission may refer a complaint to the \*County, City, or Town\* Attorney, or other legal counsel if appropriate, for investigation and review.

(4) The Commission may dismiss a complaint if, after receiving an investigative report, the Commission determines that there are insufficient facts upon which to base a determination of a violation.

(5) If there is a reasonable basis for believing a violation has occurred, the subject of the complaint shall be given an opportunity for a hearing conducted in accordance with the applicable \*County, City, or Town\* rules of procedure.

(6) A final determination of a violation resulting from the hearing shall include findings of fact and conclusions of law.

(7) Upon finding of a violation, the Commission may take any enforcement action provided for in §9 of this chapter.

(8)(i) After a complaint is filed and until a final finding of a violation by the Commission, all actions regarding a complaint are confidential.

(ii) A finding of a violation is public information.

(9) The Commission may adopt additional policies and procedures related to complaints, complaint hearings, the use of independent investigators and staff, the use of witness and document subpoenas, and cure and settlement agreements.

(l) The Commission may grant exemptions to or modifications of the conflict of interest and financial disclosure provisions of this chapter to officials or employees serving as members of \*name of County, City or Town\* boards and commissions, when the Commission finds that the exemption or modification would not be contrary to the purposes of this chapter, and the application of this chapter would:

(1) Constitute an unreasonable invasion of privacy; and

(2) Significantly reduce the availability of qualified persons for public service.

(m) The Commission may:

(1) Assess a late fee of \$2 per day up to a maximum of \$250 for a failure to timely file a financial disclosure statement required under §6 or 7 of this chapter; and

(2) Assess a late fee of \$10 per day up to a maximum of \$250 for a failure to file a timely lobbyist registration or lobbyist report required under §8 of this chapter.

**Section 5. Prohibited conduct and interests.**

(a) Participation prohibitions.

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

(A) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

(B) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

(C) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment;

(D) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

(E) An entity, doing business with the \*County, City, or Town\*, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

(F) A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(2) A person who is disqualified from participating under paragraph (1) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

(3) The prohibitions of paragraph 1 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(b) Employment and financial interest restrictions.

(1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

(A) Subject to the authority of the official or employee or the \*County, City, or Town\* agency, board, or commission with which the official or employee is affiliated; or

(B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) The prohibitions of paragraph (1) of this subsection do not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) Post-employment limitations and restrictions.

(1) A former official or employee may not assist or represent any party other than the \*County, City, or Town\* for compensation in a case, contract, or other specific matter involving the \*County, City, or Town\* if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) Until the conclusion of the next regular session that begins after the elected official leaves office, a former member of the \*County, City, or Town Council or legislative body\* may not assist or represent another party for compensation in a matter that is the subject of legislative action.

(d) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the \*County, City, or Town\*.

(e) Use of prestige of office.

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(f) Solicitation and acceptance of gifts.

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has reason to know:

(i) Is doing business with or seeking to do business with the \*County, City or Town\* office, agency, board, or commission with which the official or employee is affiliated;

(ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

(iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or

(iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(4)(i) This paragraph does not apply to a gift:

(A) That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

(B) Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

(C) Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

(A) Meals and beverages consumed in the presence of the donor or sponsoring entity;

(B) Ceremonial gifts or awards that have insignificant monetary value;

(C) Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;

(D) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

(F) A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the \*County, City, or Town\* and that the gift is purely personal and private in nature;

(G) Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

(H) Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is in no way related to the official's or employee's official position.

(g) Disclosure of confidential information. Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(h) Participation in procurement.

(1) An individual or a person that employs an individual who assists a \*County, City, or Town\* agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

**Section 6. Financial disclosure — elected officials, officials, and employees.**

(a) This section applies to all elected officials, all candidates to be elected officials, and the following county employees:

List by Job Title

(b) Except as provided in subsection (d) of this section, an elected official, employee, or candidate to be an elected official shall file the financial disclosure statement required under this subsection:

(1) On a form provided by the Commission;

(2) Under oath or affirmation; and

(3) With the Commission.

(c) Deadlines for filing statements.

(1) An incumbent official or employee shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

(2) An official or employee who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a

statement for the preceding calendar year within 30 days after appointment.

(3)(i) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(ii) The statement shall cover:

(A) The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

(B) The portion of the current calendar year during which the individual held the office.

(d) Candidates to be elected officials.

(1) Except for an official or employee who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected official shall file a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be an elected official shall file a statement required under this section:

(i) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

(ii) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and

(iii) In all other years for which a statement is required, on or before April 30.

(3) A candidate to be an elected official:

(i) May file the statement required under §6(d)(2)(i) of this chapter with the \*County, City, or Town\* Clerk or Board of Election Supervisors with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and

(ii) Shall file the statements required under §6(d)(2)(ii) and (iii) of this chapter with the Commission.

(4) If a candidate fails to file a statement required by this section after written notice is provided by the \*County, City, or Town\* Clerk or Board of Election Supervisors at least 20 days before the last day for the withdrawal of candidacy, the candidate is deemed to have withdrawn the candidacy.

(5) The \*County, City, or Town\* Clerk or Board of Election Supervisors may not accept any certificate of candidacy unless a statement required under this section has been filed in proper form.

(6) Within 30 days of the receipt of a statement required under this section, the \*County, City, or Town\*, clerk or Board of Election Supervisors shall forward the statement to the Commission, or an office designated by the Commission.

(e) Public record.

(1) The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this section.

(2) The Commission or office designated by the Commission shall make financial disclosure statements available during normal office hours for examination and copying by the public, subject to reasonable fees and administrative procedures established by the Commission.

(3) If an individual examines or copies a financial disclosure statement, the Commission or the office designated by the Commission shall record:

(i) The name and home address of the individual reviewing or copying the statement; and

(ii) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the individual whose financial disclosure statement was examined or copied, the Commission or the office designated by the Commission shall provide the official or employee

with a copy of the name and home address of the person who reviewed the official's or employee's financial disclosure statement.

(f) Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements for four years from the date of receipt.

(g) Contents of statement.

(1) Interests in real property.

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

(A) The nature of the property and the location by street address, mailing address, or legal description of the property;

(B) The nature and extent of the interest held, including any conditions and encumbrances on the interest;

(C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(D) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

(2) Interests in corporations and partnerships.

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the \*County, City, or Town\*.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(iii) An individual may satisfy the requirement to report the amount of the interest held under item (ii)(B) of this paragraph by reporting, instead of a dollar amount:

(A) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(B) For an equity interest in a partnership, the percentage of equity interest held.

(3) Interests in business entities doing business with \*County, City, or Town\*.

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with

the \*County, City, or Town\*, other than interests reported under paragraph (2) of this subsection.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The nature and amount of the interest held, including any conditions to and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(4) Gifts.

(i) A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with the \*County, City, or Town\*.

(ii) For each gift reported, the schedule shall include:

(A) A description of the nature and value of the gift; and

(B) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) Employment with or interests in entities doing business with \*County, City, or Town\*.

(i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the \*County, City, or Town\*.

(ii) For each position reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

(C) The name of each \*County, City, or Town\* agency with which the entity is involved as indicated by identifying one or more of the three categories of "doing business", as defined in §3(d) of this chapter.

(6) Indebtedness to entities doing business with \*County, City, or Town\*.

(i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with the \*County, City, or Town\* owed at any time during the reporting period:

(A) By the individual; or

(B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(ii) For each liability reported under this paragraph, the schedule shall include:

(A) The identity of the person to whom the liability was owed and the date the liability was incurred;

(B) The amount of the liability owed as of the end of the reporting period;

(C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(D) The security given, if any, for the liability.

(7) Employment with \*County, City, or Town\*. A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the \*County, City, or Town\* in any capacity at any time during the reporting period.

(8) Sources of earned income.

(i) A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.

(ii) A minor child's employment or business ownership need not be disclosed if the agency that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

(9) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(h) For the purposes of §6(g)(1), (2), and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held by a business entity in which the individual held a 30% or greater interest at any time during the reporting period.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

(i) The individual held a reversionary interest or was a beneficiary; or

(ii) If a revocable trust, the individual was a settlor.

(i)(1) The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The \*County, City, or Town\* Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

**Section 7. Financial disclosure — appointed members of boards and commissions.**

(a)(1) The \*County, City, or Town\* appointed officials listed in paragraph (b) of this section shall file the statement required by §6 of this chapter.

(2) The appointed officials shall be required to disclose the information specified in §6(g) of this chapter only with respect to those interests, gifts, compensated positions, and liabilities that may create a conflict, as provided in §5 of this chapter, between the member's personal interests and the member's official local duties.

(3) An official shall file a statement required under this section annually, not later than April 30 of each calendar year during which the official holds office.

(b) Appointed officials and employees required to file:

(list of appointed official titles and employee titles)

(c) The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in § 6(e) of this chapter.

**Section 8. Lobbying.**

(a) Except as provided in subsections (b) and (c) of this section, a person or entity who engages in lobbying as defined in §3(l) shall file

a lobbying registration with the Commission if the person or entity, during the calendar year:

(1) Expends, exclusive of personal travel and subsistence expenses, in excess of \$\_\_\_\_\_ in furtherance of this activity; or

(2) Is compensated in excess of \$\_\_\_\_\_ in connection with this activity.

(b) The following activities are exempt from regulation under this section:

(1) Professional services in drafting bills or in advising and rendering opinions to clients as to the construction and effect of proposed or pending \*Council or other legislative body\* actions when these services do not otherwise constitute lobbying activities;

(2) Appearances before the \*Council or other legislative body\* upon its specific invitation or request if the person or entity engages in no further or other activities in connection with the passage or defeat of \*Council or other legislative body\* actions;

(3) Appearances before a \*County, City, or Town\* agency upon the specific invitation or request of the agency if the person or entity engages in no further or other activities in connection with the passage or defeat of any agency executive action;

(4) Appearance as part of the official duties of a duly elected or appointed official or employee of the State or a political subdivision of the State, or of the United States, and not on behalf of any other entity;

(5) Actions of a publisher or working member of the press, radio, or television in the ordinary course of the business of disseminating news or making editorial comment to the general public who does not engage in further or other lobbying that would directly and specifically benefit the economic, business, or professional interests of the person or entity or the employer of the person or entity;

(6) Appearances by an individual before the \*Council or other legislative body\* at the specific invitation or request of a registered lobbyist if the person performs no other lobbying act and notifies the \*Council or other legislative body\* that the person or entity is testifying at the request of the lobbyist;

(7) Appearances by an individual before a government agency at the specific invitation or request of a registered lobbyist if the person or entity performs no other lobbying act and notifies agency that the person or entity is testifying at the request of the lobbyist;

(8) The representation of a bona fide religious organization solely for the purpose of protecting the right of its own members to practice the doctrine of the organization; and

(9) Appearance as part of the official duties of an officer, director, member, or employee of an association engaged exclusively in lobbying for counties and municipalities and not on behalf of any other entity.

(c) Limited exemption – employer of a lobbyist.

(1) A person or entity who compensates one or more lobbyists and who would otherwise be required to register as a lobbyist is not required to file a registration and submit lobbying reports if the person or entity reasonably believes that all expenses incurred in connection with the lobbying activities will be reported by a properly registered person or entity acting on behalf of the person or entity.

(2) A person or entity exempted under this subsection becomes subject to this section immediately upon failure of the lobbyist to report any information required under this section.

(d)(1) The registration filed under this section shall be filed on or before the later of the beginning of the calendar year in which the person or entity expects to lobby and within five days of first engaging in lobbying activities in the calendar year.

(2) The registration filed under this section:

(i) Shall be dated and on a form developed by the Commission;

(ii) Shall include:

(A) The lobbyist's full and legal name and permanent address;

(B) The name, address, and nature of business of any person or entity on whose behalf the lobbyist acts; and

(C) The written authorization of any person or entity on whose behalf the lobbyist acts or an authorized officer or agent, who is not the lobbyist, of the person or entity on whose behalf the lobbyist acts;

(iii) A statement of whether the person or entity on whose behalf the lobbyist acts is exempt from registration under subsection (c) of this section;

(iv) The identification, by formal designation, if known, of matters on which the lobbyist expects to act;

(v) Identification of the period of time within a single calendar year during which the lobbyist is authorized to engage in these activities, unless terminated sooner; and

(vi) The full legal signature of the lobbyist and, when appropriate, the person or entity on whose behalf the lobbyist acts or an agent or authorized officer of the person or entity on whose behalf the lobbyist acts.

(e) A lobbyist shall file a separate registration for each person or entity that has engaged or employed the lobbyist for lobbying purposes.

(f) A lobbyist may terminate the lobbyist's registration by providing written notice to the Commission and submitting all outstanding reports and registrations.

(g) A person or entity may not engage in lobbying activities on behalf of another person or entity for compensation that is contingent upon the passage or defeat of any action by the \*Council or other legislative body\* or the outcome of any executive action.

(h) Activity report.

(1) A lobbyist shall file with the Commission or the office designated by the Commission:

(i) By July 31, one report concerning the lobbyist's lobbying activities covering the period beginning January 1 through June 30; and

(ii) By January 31, one report covering the period beginning July 1 through December 31.

(2) A lobbyist shall file a separate activity report for each person or entity on whose behalf the lobbyist acts.

(3) If the lobbyist is not an individual, an authorized officer or agent of the entity shall sign the form.

(4) The report shall include:

(i) A complete and current statement of the information required to be supplied with the lobbyist's registration form.

(ii) Total expenditures on lobbying activities in each of the following categories:

(A) Total compensation paid to the lobbyist not including expenses reported under items (B) — (I) of this subparagraph;

(B) Office expenses of the lobbyist;

(C) Professional and technical research and assistance not reported in item (i) of this subparagraph;

(D) Publications which expressly encourage persons to communicate with \*County, City, or Town\* officials or employees;

(E) Names of witnesses, and the fees and expenses paid to each witness;

(F) Meals and beverages for \*County, City, or Town\* officials and employees;

(G) Reasonable expenses for food, lodging, and scheduled entertainment of \*County, City, or Town\* officials or employees for a meeting which is given in return for participation in a panel or speaking engagement at the meeting;

(H) Other gifts to or for officials or employees or their spouses or dependent children; and

(I) Other expenses.

(i) Special gift report.

(1)(i) With the six-month activity report required under subsection (h) of this section, a lobbyist shall report, except for gifts reported in item (h)(4)(ii)(G) of this section, gifts from the lobbyist with a cumulative value of \$75 or more during the reporting period to an official, employee, or member of the immediate family of an official or employee.

(ii) The lobbyist shall report gifts under this paragraph regardless of whether the gift was given in connection with lobbying activities.

(2) The report shall include the date, beneficiary, amount or value, and nature of the gift.

(j) Notification to official and confidentiality.

(1) If any report filed under this section contains the name of an official or employee or a member of the immediate family of an official or employee, the Commission shall notify the official or employee within 30 days.

(2) The Commission shall keep the report confidential for 60 days following receipt by the Commission.

(3) Within 30 days of the notice required under paragraph (1) of this subsection, the official or employee may file a written exception to the inclusion in the report of the name of the official, employee, or member of the immediate family of the official or employee.

(k) The Commission may require a lobbyist to submit other reports the Commission determines to be necessary.

(l) The Commission or office designated by the Commission shall maintain all registrations and reports filed under this section.

(m)(1) The Commission shall review the registrations and reports filed under this section for compliance with this section and shall notify persons engaging in lobbying activities of any omissions or deficiencies.

(2) The Commission may take appropriate enforcement action to ensure compliance with this section.

(n) Annual report.

(1) The Commission shall compute and make available a subtotal under each of the ten required categories in subparagraph (h)(4)(ii) of this section.

(2) The Commission shall compute and make available the total amount reported by all lobbyists for their lobbying activities during the reporting period.

(o) The Commission shall make lobbying registrations and reports available during normal business hours for examination and copying subject to reasonable fees and procedures established by the Commission.

**Section 9. Enforcement.**

(a)(1) Upon a finding of a violation of any provision of this chapter, the Commission may:

(i) Issue an order of compliance directing the respondent to cease and desist from the violation;

(ii) Issue a reprimand; or

(iii) Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.

(2) If the Commission finds that a respondent has violated §8 of this chapter, the Commission may:

(i) Require a respondent who is a registered lobbyist to file any additional reports or information that reasonably related to the information that is required under §8 of this chapter;

(ii) Impose a fine not exceeding \$5,000 for each violation; and

(iii) Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist has knowingly and



willfully violated §8 of this chapter or has been convicted of a criminal offense arising from lobbying activities.

(b)(1) Upon request of the Commission, the \*County, City, or Town\* Attorney may file a petition for injunctive or other relief in the circuit court of \_\_\_\_\_ County, or in any other court having proper venue for the purpose of requiring compliance with the provisions of this chapter.

(2)(i) The court may:

(A) Issue an order to cease and desist from the violation;

(B) Except as provided in subparagraph (ii) of this paragraph, void an official action taken by an official or employee with a conflict of interest prohibited by this chapter when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within 90 days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public; or

(C) Impose a fine of up to \$5,000 for any violation of the provisions of this chapter, with each day upon which the violation occurs constituting a separate offense.

(ii) A court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or other evidences of public obligations.

(c)(1) Any person who knowingly and willfully violates the provisions of §8 of this chapter is guilty of a misdemeanor, and upon conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

(2) If the person is a business entity and not a natural person, each officer and partner of the business entity who knowingly authorized or participated in the violation is guilty of a misdemeanor and, upon conviction, is subject to the same penalties as the business entity.

(d) In addition to any other enforcement provisions in this chapter, a person who the Commission or a court finds has violated this chapter:

(1) Is subject to termination or other disciplinary action; and

(2) May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or a court.

(e)(1) A person who is subject to the provisions of this chapter shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to complete and substantiate a report, statement, or record required under this chapter for three years from the date of filing the report, statement, or record.

(2) These papers and documents shall be available for inspection upon request by the Commission or the \*Council or other legislative body\* after reasonable notice.

**Section 10. Severability.**

If any section, sentence, clause, or phrase of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, the ruling shall not affect the validity of the remaining portions of this chapter.

**Appendix B — Model Ethics Law B**

Authority: State Government Article, §§15-205, 15-206, and Title 15, Subtitle 8, Annotated Code of Maryland

**CHAPTER \_\_\_\_\_ —ETHICS PROVISIONS**

**Section 1. Short title.**

This chapter may be cited as the \*County, City or Town\* Public Ethics \*Law or Ordinance.\*

**Section 2. Applicability.**

The provisions of this chapter apply to all \*County, City or Town\* elected officials, employees, and appointees to boards and commissions of \*County, City or Town\*.

**Section 3. Ethics Commission.**

(a) There is a \*name of County, City or Town\* Ethics Commission that consists of \_\_\_\_ members appointed by the \*Mayor or other chief Executive Officer\*.

(b) The Commission shall:

(1) Devise, receive, and maintain all forms required by this chapter;

(2) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this chapter regarding the applicability of the provisions of this chapter to them;

(3) Develop procedures and policies for the processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this chapter; and

(4) Conduct a public information program regarding the purposes and application of this chapter.

(c) The \*County, City, or Town\* Attorney shall advise the Commission.

(d) The Commission shall certify to the State Ethics Commission on or before October 1 of each year that the \*County, City, or Town\* is in compliance with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland, for elected local officials.

(e) The Commission shall determine if changes to this chapter are required to be in compliance with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland, and shall forward any recommended changes and amendments to the \*County, City, or Town\* Council for enactment.

(f) The Commission may adopt other policies and procedures to assist in the implementation of the Commission's programs established in this chapter.

**Section 4. Conflicts of interest.**

(a) In this section, "qualified relative" means a spouse, parent, child, or sibling.

(b) All \*County, City, or Town\* elected officials, officials appointed to \*County, City, or Town\* boards and commissions subject to this chapter, and employees are subject to this section.

(c) Participation prohibitions. Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(1) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee, or a qualified relative of the official or employee has an interest.

(2) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

(i) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

(ii) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

(iii) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment.

(iv) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and

the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

(v) An entity, doing business with the \*County, City, or Town\*, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

(vi) A business entity that:

(A) The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

(B) As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(3) A person who is disqualified from participating under paragraphs (1) or (2) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

(4) The prohibitions of paragraph 1 and 2 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(d) Employment and financial interest restrictions.

(1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

(A) Subject to the authority of the official or employee or the \*County, City, or Town\* agency, board, commission with which the official or employee is affiliated; or

(B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) This prohibition does not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted by and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(e) Post-employment limitations and restrictions.

(1) A former official or employee may not assist or represent any party other than the \*County, City, or Town\* for compensation in a case, contract, or other specific matter involving the \*County,

City, or Town\* if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) Until the conclusion of the next regular session that begins after the elected official leaves office, a former member of the \*County, City, or Town Council or legislative body\* may not assist or represent another party for compensation in a matter that is the subject of legislative action.

(f) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the \*County, City, or Town\*.

(g) Use of prestige of office.

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected local official without additional compensation.

(h) Solicitation and acceptance of gifts.

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:

(i) Is doing business with or seeking to do business with the \*County, City or Town\* office, agency, board, or commission with which the official or employee is affiliated;

(ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

(iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or

(iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(4) This paragraph does not apply to a gift:

(i) That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

(ii) Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

(iii) Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(5) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

(i) Meals and beverages consumed in the presence of the donor or sponsoring entity;

(ii) Ceremonial gifts or awards that have insignificant monetary value;

(iii) Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;

(iv) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

(v) Gifts of tickets or free admission extended to an elected local official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

(vi) A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the \*County, City, or Town\* and that the gift is purely personal and private in nature;

(vii) Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

(viii) Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is in not related in any way to the official's or employee's official position.

(i) Disclosure of confidential information. Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(j) Participation in procurement.

(1) An individual or a person that employs an individual who assists a \*County, City, or Town\* agency in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

**Section 5. Financial disclosure — local elected officials and candidates to be local elected officials.**

(a) (1) This section applies to all local elected officials and candidates to be local elected officials.

(2) Except as provided in subsection (b) of this section, a local elected official or a candidate to be a local elected official shall file the financial disclosure statement required under this section:

- (i) On a form provided by the Commission;
- (ii) Under oath or affirmation; and
- (iii) With the Commission.

(3) Deadlines for filing statements.

(i) An incumbent local elected official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

(ii) An individual who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after appointment.

(iii)(A) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(B) The statement shall cover:

1. The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

2. The portion of the current calendar year during which the individual held the office.

(b) Candidates to be local elected officials.

(1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected local official shall file under a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be an elected local official shall file a statement required under this section:

(i) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

(ii) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and

(iii) In all other years for which a statement is required, on or before April 30.

(3) A candidate to be an elected official:

(i) May file the statement required under §5(b)(2)(A) of this chapter with the \*County, City, or Town\* Clerk or Board of Election Supervisors with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and

(ii) Shall file the statements required under §5(b)(2)(B) and (C) with the Commission.

(4) If a candidate fails to file a statement required by this section after written notice is provided by the \*County, City, or Town\* Clerk or Board of Election Supervisors at least 20 days before the last day for the withdrawal of candidacy, the candidate is deemed to have withdrawn the candidacy.

(5) The \*County, City, or Town\* Clerk or Board of Election Supervisors may not accept any certificate of candidacy unless a statement has been filed in proper form.

(6) Within 30 days of the receipt of a statement required under this section, the \*County, City, or Town\* Clerk or Board of Election Supervisors shall forward the statement to the Commission or the office designated by the Commission.

(c) Public record.

(1) The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this section.

(2) Financial disclosure statements shall be made available during normal office hours for examination and copying by the public subject to reasonable fees and administrative procedures established by the Commission.

(3) If an individual examines or copies a financial disclosure statement, the Commission or the office designated by the Commission shall record:

(i) The name and home address of the individual reviewing or copying the statement; and

(ii) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the official or employee whose financial disclosure statement was examined or copied, the Commission or the office designated by the Commission shall provide the official with a copy of the name and home address of the person who reviewed the official's financial disclosure statement.

(d) Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements for four years from the date of receipt.

(e) Contents of statement.

(1) Interests in real property.

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

(A) The nature of the property and the location by street address, mailing address, or legal description of the property;

(B) The nature and extent of the interest held, including any conditions and encumbrances on the interest;

(C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(D) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

(2) Interests in corporations and partnerships.

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the \*County, City, or Town\*.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(iii) An individual may satisfy the requirement to report the amount of the interest held under item (B)(ii) of this paragraph by reporting, instead of a dollar amount:

(A) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(B) For an equity interest in a partnership, the percentage of equity interest held.

(3) Interests in business entities doing business with \*County, City, or Town\*.

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with the \*County, City, or Town\*, other than interests reported under paragraph (2) of this subsection.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The nature and amount of the interest held, including any conditions to and encumbrances in the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(4) Gifts.

(i) A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with or is regulated by the \*County, City, or Town\*.

(ii) For each gift reported, the schedule shall include:

(A) A description of the nature and value of the gift; and

(B) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) Employment with or interests in entities doing business with \*County, City, or Town\*.

(i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the \*County, City, or Town\*.

(ii) For each position reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

(C) The name of each \*County, City, or Town\* agency with which the entity is involved.

(6) Indebtedness to entities doing business with \*County, City, or Town\*.

(i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with the \*County, City, or Town\* owed at any time during the reporting period:

(A) By the individual; or

(B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(ii) For each liability reported under this paragraph, the schedule shall include:

(A) The identity of the person to whom the liability was owed and the date the liability was incurred;

(B) The amount of the liability owed as of the end of the reporting period;

(C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(D) The security given, if any, for the liability.

(7) A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the \*County, City, or Town\* in any capacity at any time during the reporting period.

(8) Sources of earned income.

(i) A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.

(ii) A minor child's employment or business ownership need not be disclosed if the agency that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

(9) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(f) For the purposes of §5(g)(1), (2), and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held by a business entity in which the individual held a 30% or greater interest at any time during the reporting period.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

(i) The individual held a reversionary interest or was a beneficiary; or

(ii) If a revocable trust, the individual was a settlor.

(g)(1) The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The \*County, City, or Town\* Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

**Section 6. Financial disclosure — employees and appointed officials.**

(a) This section only applies to the following appointed officials and employees:

(list of appointed official titles and employee titles)

(b) A statement filed under this section shall be filed with the Commission under oath or affirmation.

(c) On or before April 30 of each year during which an official or employee holds office, an official or employee shall file a statement disclosing gifts received during the preceding calendar year from any person that contracts with or is regulated by \*County, City, or Town\*, including the name of the donor of the gift and the approximate retail value at the time of receipt.

(d) An official or employee shall disclose employment and interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the employee or official sufficiently in advance of the action to provide adequate disclosure to the public.

(e) The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in §5(e) and (f) of this chapter.

**Section 7. Lobbying.**

(a) A person shall file a lobbying registration statement with the Commission if the person:

(1) Personally appears before a \*County, City, or Town\* official or employee with the intent to influence that person in performance of the official duties of the official or employee; and

(2) In connection with the intent to influence, expends or reasonably expects to expend in a given calendar year in excess of \$\*-----\* on food, entertainment, or other gifts for officials or employees of \*County, City, or Town\*.

(b) A person shall file a registration statement required under this section on or before the later of January 15 of the calendar year or within 5 days after first performing an act that requires registration in the calendar year.

(c)(1) The registration statement shall identify:

(i) The registrant;

(ii) Any other person on whose behalf the registrant acts; and

(iii) The subject matter on which the registrant proposes to make appearances specified in subsection (a) of this section.

(2) The registration statement shall cover a defined registration period not to exceed one calendar year.

(d) Within 30 days after the end of any calendar year during which a person was registered under this section, the person shall file a report with the Commission disclosing:

(1) The value, date, and nature of any food, entertainment, or other gift provided to a \*County, City, or Town\* official or employee; and

(2) If a gift or series of gifts to a single official or employee exceeds \$\*-----\* in value, the identity of the official or employee.

(e) The Commission shall maintain the registrations and reports filed under this section as public records available for public inspection and copying for four years after receipt by the Commission.

**Section 8. Exemptions and modifications.**

The Commission may grant exemptions and modifications to the provisions of §§4 and 6 of this chapter to employees and to appointed members of \*name of County, City or Town\* Boards and Commissions, when the Commission finds that an exemption or modification would not be contrary to the purposes of this chapter, and the application of this chapter would:

(a) Constitute an unreasonable invasion of privacy; and

(b) Significantly reduce the availability of qualified persons for public service.

**Section 9. Enforcement.**

(a) The Commission may:

(1) Assess a late fee of \$2 per day up to a maximum of \$250 for a failure to timely file a financial disclosure statement required under §6 or 7 of this chapter;

(2) Assess a late fee of \$10 per day up to a maximum of \$250 for a failure to file a timely lobbyist registration or lobbyist report required under §8 of this chapter; and

(3) Issue a cease and desist order against any person found to be in violation of this chapter.

(b)(1) Upon a finding of a violation of any provision of this chapter, the Commission may:

(i) Issue an order of compliance directing the respondent to cease and desist from the violation;

(ii) Issue a reprimand; or

(iii) Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.

(2) If the Commission finds that a respondent has violated §7 of this chapter, the Commission may:

(i) Require a respondent who is a registered lobbyist to file any additional reports or information that reasonably related to the information that is required under §8 of this chapter;

(ii) Impose a fine not exceeding \$5,000 for each violation; and

(iii) Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist has knowingly and willfully violated §7 of this chapter or has been convicted of a criminal offense arising from lobbying activities.

(c)(1) Upon request of by the Commission, the \*County, City, or Town\* Attorney may file a petition for injunctive or other relief in the circuit court of \_\_\_\_\_ County, or in any other court having proper venue for the purpose of requiring compliance with the provisions of this chapter.

(2)(i) The court may:

(A) Issue an order to cease and desist from the violation;

(B) Except as provided in subparagraph (ii) of this paragraph, void an official action taken by an official or employee with a conflict of interest prohibited by this chapter when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within 90 days of the occurrence of the official

action, if the court deems voiding the action to be in the best interest of the public; or

(C) Impose a fine of up to \$5,000 for any violation of the provisions of this chapter, with each day upon which the violation occurs constituting a separate offense.

(ii) A court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or other evidences of public obligations.

(d) In addition to any other enforcement provisions in this chapter, a person who the Commission or a court finds has violated this chapter:

(1) Is subject to termination or other disciplinary action; and

(2) May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or a court.

(e) A \*County, City, or Town\* official or employee found to have violated this chapter is subject to disciplinary or other appropriate personnel action, including removal from office, disciplinary action, suspension of salary, or other sanction.

(f) Violation of §7 of this chapter shall be a misdemeanor subject to a fine of up to \$\*10,000\* or imprisonment of up to one year.

(g) A finding of a violation of this chapter by the Commission is public information.

ROBERT A. HAHN  
Executive Director

**Title 21**  
**STATE PROCUREMENT**  
**REGULATIONS**

**Subtitle 11 SOCIOECONOMIC**  
**POLICIES**

**21.11.11 Prevailing Wage — Contracts for**  
**Public Works**

Authority: State Finance and Procurement Article, §17-224(a), Annotated Code of Maryland

**Notice of Proposed Action**  
[11-079-P]

The Commissioner of Labor and Industry proposes to adopt new Regulation .05 under **COMAR 21.11.11 Prevailing Wage — Contracts for Public Works**.

**Statement of Purpose**

The purpose of this action is to implement Ch. 562, Acts of 2010 and, specifically, State Finance and Procurement Article, §17-224, Annotated Code of Maryland, which provides a mechanism for an employee working under a public work contract to file a complaint with the Commissioner of Labor and Industry if they were paid less than the prevailing wage rate for that employee’s classification. This regulation sets the time of 90 days for the Commissioner of Labor and Industry to investigate prevailing wage complaints.

**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 Debbie Stone, Regulations Coordinator, Department of Labor, Licensing, and Regulation, Division of Labor and Industry, 1100 N. 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 February 28, 2011. A public hearing has not been scheduled.

**.05 Commissioner’s Investigation.**

If the Commissioner receives a complaint that an employee under a public work contract was paid less than the prevailing wage rate for that employee’s classification, the Commissioner shall investigate the complaint and attempt to resolve the complaint informally within 90 days of receipt of the complaint.

J. RONALD DEJULIIS  
Commissioner of Labor and Industry

**Title 31**  
**MARYLAND INSURANCE**  
**ADMINISTRATION**

**Subtitle 04 INSURERS**

**31.04.21 Payment of Actuarial Review of Rate**  
**Filings**

Authority: Insurance Article, §§2-205, 2-208, 11-207(a)(2), 12-205, 14-126(a)(2), and 15-605(c); Health-General Article, §19-713; Annotated Code of Maryland

**Notice of Proposed Action**  
[11-073-P]

The Acting Insurance Commissioner proposes to adopt new Regulations .01—.03 under a new chapter, **COMAR 31.04.21 Payment of Actuarial Review of Rate Filings**.

**Statement of Purpose**

The purpose of this action is to adopt regulations to require companies to pay for actuarial reviews completed by the Maryland Insurance Administration during rate filings.

**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 Katrina Lawhorn, Regulations and Facilities Supervisor, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202, or call (410) 468-

2450, or email to klawhorn@mdinsurance.state.md.us, or fax to (410) 468-2020. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.01 Scope.**

*This chapter applies to the examination of rate filings made pursuant to:*

- A. Health-General Article, §19-713, Annotated Code of Maryland;
- B. Insurance Article, Title 11, Subtitles 2 and 3, and §§12-205 and 14-126(a)(2), Annotated Code of Maryland; and
- C. COMAR 31.10.01.02A.

**.02 Definitions.**

A. *In this chapter, the following terms have the meanings indicated.*

**B. Terms Defined.**

- (1) "Advisory organization" has the meaning stated in Insurance Article, §11-101, Annotated Code of Maryland.
- (2) "Carrier" means an authorized insurer, nonprofit health service plan, or health maintenance organization.
- (3) "Commissioner" means the Maryland Insurance Commissioner.
- (4) "Rating organization" has the meaning stated in Insurance Article, §11-101, Annotated Code of Maryland.

**.03 Examination of Rate Filings by an Actuarial Consultant.**

A. *The Commissioner may retain an actuarial consultant to examine a rate filing submitted by an advisory organization, carrier, or rating organization.*

B. *If the Commissioner retains an actuarial consultant to examine a rate filing submitted by an advisory organization, carrier, or rating organization the Commissioner shall notify the advisory organization, carrier, or rating organization that the Commissioner has retained an actuarial consultant to examine the rate filing.*

C. *The Commissioner or the actuarial consultant shall make a complete report of the examination in accordance with the provisions of Insurance Article, §2-209, Annotated Code of Maryland.*

D. *The advisory organization, carrier, or rating organization shall pay the expenses for the actuarial consultant's examination of a rate filing in accordance with the provisions of Insurance Article, §2-208, Annotated Code of Maryland.*

ELIZABETH SAMMIS  
Acting Insurance Commissioner

**Subtitle 09 LIFE INSURANCE AND ANNUITIES**

**31.09.12 Suitability in Annuity Transactions**

Authority: Insurance Article, §§2-109(a), 4-113, 10-126(a)(13), 27-102, 27-202, and 27-203, Annotated Code of Maryland

**Notice of Proposed Action**

[11-070-P]

The Acting Insurance Commissioner proposes to amend Regulations .01—.05, adopt new Regulations .06 and .08, amend and recodify existing Regulations .06 and .07 to be Regulations .07 and .09, respectively, and recodify existing Regulations .08 and .09 to be Regulations .10 and .11 under COMAR 31.09.12 Suitability in Annuity Transactions.

**Statement of Purpose**

The purpose of this action is to amend the chapter to bring it into compliance with the National Association of Insurance

Commissioner's Suitability in Annuity Transactions Model Regulation.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** These amended regulations have an economic impact on insurers that sell annuities in Maryland. These insurers will be required to comply with the new requirements that appear in these regulations regarding suitability in annuity transactions, including new training requirements for insurance producers.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
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:	(-)	Unknown
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Unquantifiable

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

D. Insurers that sell annuity contracts will be required to comply with this chapter in their conduct regarding annuity transactions. New training requirements for insurance producers who are involved in annuity transactions are required by the amended chapter. The exact cost of complying with these amended regulations is unknown.

F. Consumers will benefit from the new consumer protections found in the amended chapter.

**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 Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Baltimore, Maryland 21202, or call 410-468-2450, or email to klawhorn@mdinsurance.state.md.us, or fax to 410-468-2020. Comments will be accepted through February 28, 2011. A public hearing has not been scheduled.

**.01 Purpose.**

The purpose of this chapter is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for each recommendation to a consumer that results in a transaction involving an annuity product so that the insurance needs

and financial objectives of the consumer at the time of the transaction are appropriately addressed.

**.02 Scope.**

A. In General. This chapter applies to each recommendation to purchase, [or] exchange, or replace an annuity made to a consumer by an insurance producer, or an insurer where no insurance producer is involved, that results in the purchase, [or] exchange, or replacement recommended.

B. Exceptions. Unless otherwise specifically included, this chapter does not apply to recommendations involving:

- (1) (text unchanged)
- (2) Contracts used to fund:
  - (a) (text unchanged)
  - (b) A plan described by §401(a), §401(k), §403(b), §408(k), or §408(p) of the Internal Revenue Code, as amended, if established or maintained by an employer;
  - (c)—(f) (text unchanged)

**.03 Definitions.**

A. (text unchanged)

B. Terms Defined.

- (1) — (2) (text unchanged)
- (3) “Continuing education credit” means one continuing education credit hour as defined in COMAR 31.03.02.02B(5).
- (4) “Continuing education provider” means a sponsor as defined in COMAR 31.03.02.02B(12).
- (5) “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.
- [(3)] (6) — [(4)] (7) (text unchanged)
- [(5)] (8) “Recommendation” means advice provided by an insurance producer, or an insurer where no insurance producer is involved, to an individual consumer that results in a purchase, [or] exchange, or replacement of an annuity in accordance with that advice.
- (9) “Replacement” has the meaning stated in COMAR 31.09.05.03B(11).
- (10) “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:
  - (a) Age;
  - (b) Annual income;
  - (c) Financial situation and needs, including the financial resources used for the funding of the annuity;
  - (d) Financial experience;
  - (e) Financial objectives;
  - (f) Intended use of the annuity;
  - (g) Financial time horizon;
  - (h) Existing assets, including investments and life insurance holdings;
  - (i) Liquidity needs;
  - (j) Liquid net worth;
  - (k) Risk tolerance; and
  - (l) Tax status.

**.04 Duties of Insurers and of Insurance Producers.**

A. In recommending to a consumer the purchase of an annuity, [or] the exchange of an annuity [that results], or the replacement of an annuity, any of which results in another insurance transaction or series of insurance transactions, an insurance producer, or an insurer where no insurance producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer based on:

- (1) [the] The facts disclosed by the consumer as to the consumer’s:
  - [(1)] (a) (text unchanged)

[(2)] (b) Financial situation and needs, including the consumer’s suitability information; and

(2) All of the following:

(a) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;

(b) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, death benefit, or living benefit;

(c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer’s suitability information; and

(d) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(ii) The consumer would benefit from product enhancements and improvements; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

B. Prior to the execution of a purchase, [or] exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain [information concerning:

- (1) The consumer’s financial status;
- (2) The consumer’s tax status;
- (3) The consumer’s investment objectives; and
- (4) Any other information used or considered to be reasonable

by the insurance producer, or the insurer where no insurance producer is involved, in making recommendations to the consumer] the consumer’s suitability information.

C. Except as provided under §D of this regulation, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer’s suitability information.

[C.] D. Circumstances When No Obligation Exists.

(1) Except as provided under [§C(2)] §D(2) of this regulation, neither an insurance producer, nor an insurer where no insurance producer is involved, has any obligation to a consumer under §A or C of this regulation related to any [recommendation if the consumer] annuity transaction if:

[(a)] Refuses to provide relevant information requested by the insurer or insurance producer;

(b) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(c) Fails to provide complete or accurate information.]

(a) No recommendation is made;

(b) A recommendation was made and was later found to have been prepared based on inaccurate material information provided by the consumer;

(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or



(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(2) An [insurer or insurance producer's recommendation] insurer's issuance of an annuity subject to subsection (1) of this section shall be reasonable under all the circumstances actually known to the insurer [or insurance producer at the time of the recommendation] at the time the annuity is issued.

E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative shall at the time of sale:

(1) Make a record of any recommendation subject to §A of this regulation;

(2) Obtain a consumer signed statement documenting a consumer's refusal to provide suitability information, if applicable; and

(3) Obtain a consumer signed statement acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

**.05 System to Supervise Recommendations.**

A. *Supervision System.*

(1) An insurer shall:

(1) Assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter is established and maintained by complying with §§C—E of this regulation; or

(2) Establish and maintain] *establish a supervision system* [to supervise recommendations] that is reasonably designed to achieve the insurer's and the insurance producer's compliance with this chapter, including, at a minimum:

(a) Maintaining [written] *reasonable procedures to inform its insurance producers of the requirements of this chapter and incorporating the requirements of this chapter into relevant insurance producer training manuals;* [and

(b) Conducting periodic reviews of the insurer's records that are reasonably designed to assist in detecting and preventing violations of this chapter.]

(b) *Establishing standards for insurance producer product training and maintaining reasonable procedures to require its insurance producers to comply with the requirements of Regulation .08 of this chapter;*

(c) *Providing product specific training and training materials, which explain all material features of its annuity products to its insurance producers;*

(d) *Maintaining procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable, including review procedures that may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review, that may be designed to require additional review only of those transactions identified for additional review by the selection criteria;*

(e) *Maintaining reasonable procedures to detect recommendations that are not suitable which may include, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring; and*

(f) *Providing annually a report to senior management, including the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.*

(2) Nothing in §A(1)(e) of this regulation prevents an insurer from complying with that paragraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity.

(3) Nothing in this regulation restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under §A(1) of this regulation.

(4) An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Regulation .09 of this chapter regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with §A(5) of this regulation.

(5) An insurer's supervision system under §A(1) of this regulation shall include supervision of contractual performance under §A(3) of this regulation, including:

(a) *Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and*

(b) *Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.*

[B.] — [E.] (proposed for repeal)

[F.] B. An insurer[, general agent, or independent agency] is not required [by §A or B of this regulation] to:

(1) Review, or provide for review of, all insurance producer solicited transactions; or

(2) Include] *include* in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer[, general agent, or independent agency].

[G. A general agent or independent agency contracting with an insurer pursuant to §C of this regulation shall promptly, when requested by the insurer pursuant to §D of this regulation, give:

(1) A certification as described in §D(2)(a) of this regulation; or

(2) A clear statement that it is unable to meet the certification criteria

H. A person may not provide a certification under §D(2)(a) of this regulation unless the person:

(1) Is a senior manager with responsibility for the delegated functions; and

(2) Has a reasonable basis for making the certification.]

**.06 Prohibited Acts — Insurance Producers.**

An insurance producer may not dissuade, or attempt to dissuade, a consumer from:

A. Truthfully responding to an insurer's request for confirmation of suitability information;

B. Filing a complaint; or

C. Cooperating with the investigation of a complaint.

**[.06].07 Compliance with [National Association of Securities Dealers Conduct Rule 2310] FINRA Requirements.**

A. *FINRA Requirements.*

(1) [Compliance with this chapter shall be satisfied by compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability for the recommendation of variable annuities, so long as the NASD Conduct Rules are substantially similar to, and continue to reflect each of the requirements set out in, §B of this regulation] *Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this chapter.*

(2) *This regulation applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision are similar to those applied to variable annuity sales.*

(3) *Noncompliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this chapter.*

(4) [However, nothing] *Nothing in this [section] regulation shall limit the [insurance commissioner's] Commissioner's ability to enforce the provisions of this regulation.*

B. [Recommendations to Customers (Suitability).] *Insurer Requirements. For §A of this regulation to apply, an insurer shall:*

[(1) In recommending to a customer the purchase, sale, or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs.

(2) Prior to the execution of a transaction recommended to a noninstitutional customer, other than transactions with customers where investments are limited to money market mutual funds, a member shall make reasonable efforts to obtain information concerning:

- (a) The customer's financial status;
- (b) The customer's tax status;
- (c) The customer's investment objectives; and
- (d) Other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.]

(1) *Monitor the FINRA member broker-dealer using information collected in the normal course of the insurer's business; and*

(2) *Provide the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.*

**.08 Insurance Producer Training.**

A. *Requirements of Adequate Knowledge.*

(1) *An insurance producer may not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training.*

(2) *An insurance producer may rely on insurer-provided, product-specific training standards and materials to comply with this section.*

B. *An insurance producer who engages in the sale of annuity products shall complete a one-time, four-credit training course approved by the Administration and provided by an Administration-approved continuing education provider.*

C. *Dates by Which Training Must Be Met.*

(1) *Insurance producers who hold a license as an insurance producer for life insurance on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this regulation within 6 months after the effective date of this regulation.*

(2) *Individuals who obtain a license as an insurance producer for life insurance on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this regulation has been completed.*

D. *The minimum length of the training required under this regulation shall be sufficient to qualify for at least four continuing education credits but may be longer.*

E. *The training required under this regulation shall include information on the following topics:*

- (1) *The types of annuities and various classifications of annuities;*
- (2) *Identification of the parties to an annuity;*
- (3) *How fixed, variable, and indexed annuity contract provisions affect consumers;*

(4) *The application of income taxation of qualified and nonqualified annuities;*

(5) *The primary uses of annuities; and*

(6) *Appropriate sales practices, and requirements for replacement and disclosure.*

F. *Training Courses.*

(1) *A continuing education provider of courses intended to comply with this regulation shall cover all topics listed in the prescribed outline and may not present any marketing information, provide training on sales techniques, or provide specific information about a particular insurer's products.*

(2) *Additional topics may be offered in conjunction with and in addition to the required outline.*

G. *A continuing education provider of an annuity training course intended to comply with this regulation shall comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in COMAR 31.03.02.07.*

H. *Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with COMAR 31.03.02.03.*

I. *A continuing education provider of annuity training shall comply with the reporting requirements in accordance with COMAR 31.03.02.09.*

J. *The satisfaction of the training requirements of another state that are substantially similar to the provisions of this regulation shall be deemed to satisfy the training requirements of this regulation in this State, at the discretion of the Commissioner.*

K. *Insurer Responsibilities.*

(1) *An insurer shall verify that an insurance producer has completed the annuity training course required under this regulation before allowing the producer to sell an annuity product for that insurer.*

(2) *An insurer may satisfy its responsibility under this regulation by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.*

**[.07] .09 [Mitigation of Responsibility] Compliance and Penalties.**

A. [The] *An insurer is responsible for compliance with this chapter.*

B. *If a violation of this chapter occurs, because of either the action or the inaction of the insurer or its insurance producer, the Commissioner may order:*

(1) *(text unchanged)*

(2) [An] *A general agency, independent agency, or an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this chapter; and*

(3) [A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this chapter] *Appropriate penalties and sanctions.*

[B.] C. *Penalties.*

(1) *An insurance producer who violates this chapter is subject to a penalty or other appropriate sanction under Insurance Article, §10-126, Annotated Code of Maryland.*

(2) *An insurer that violates this chapter is subject to a penalty or other appropriate sanction under Insurance Article, §4-113, Annotated Code of Maryland.*

ELIZABETH SAMMIS  
Acting Insurance Commissioner

# Errata

## COMAR 09.03.12

At 38:2 Md. R. 79 (January 14, 2011), column 2, line 3 from the bottom:

For: .04—.07, .09, and .10 under **COMAR 09.03.12**

### Foreclosure

Read: .03—.07, .09, and .10 under **COMAR 09.03.12**

### Foreclosure

## COMAR 10.09.14

At 38:2 Md. R. 84 (January 14, 2011), column 1, line 15 from the top:

For: Regulation .14 under **COMAR 10.09.14 Vision Care**

Read: Regulation .10 under **COMAR 10.09.14 Vision Care**

## COMAR 14.01.10

At 38:2 Md. R. 80 (January 14, 2011), column 1, lines 29 —31 from the top:

For: (3) The Commission may deny a license to an applicant whose gaming license has been suspended or revoked in another jurisdiction.

Read: *(3) The Commission may deny a license to an applicant whose gaming license has been suspended or revoked in another jurisdiction.*

At 38:2 Md. R. 80 (January 14, 2011), column 1, lines 5—7 from the bottom:

For: (6) Demonstrated that within the 365 days before the application is submitted, the applicant has not served as a Commission member or been employed by the Agency.

Read: *(6) Demonstrated that within the 365 days before the application is submitted, the applicant has not served as a Commission member or been employed by the Agency.*

At 38:2 Md. R. 80 (January 14, 2011), column 21, lines 1—4 from the top:

For: F. A principal employee may not play a video lottery terminal at, or receive a jackpot or complimentary service from, a Facility:

- (1) Where the individual is employed; or
- (2) That is operated by the individual's employer.

Read: *F. A principal employee may not play a video lottery terminal at, or receive a jackpot or complimentary service from, a Facility:*

- (1) Where the individual is employed; or*
- (2) That is operated by the individual's employer.*

## COMAR 31.03.15.05

At 38:2 Md. R. 131 (January 14, 2011), column 1, lines 21 —23 from the top:

For: (a) *The American National Standards Institute or The National Commission for Certifying Agencies; or*

(b) *The organization is on the United States Department of*

Read: (a) *The American National Standards Institute; or*  
 (b) *The National Commission for Certifying Agencies; or*  
 (2) *The organization is on the United States Department of*

## 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 PROFESSIONAL COUNSELORS AND THERAPISTS

**Subject:** Public Meeting  
**Date and Time:** February 18, 2011, 9 a.m. — 1 p.m.  
**Place:** 4201 Patterson Ave., Baltimore, MD  
**Contact:** Tracey DeSheilds (410) 764-4732

[11-03-11]

#### GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

**Subject:** Public Meeting  
**Date and Time:** March 14, 2011, 3 — 5 p.m.  
**Place:** Baltimore County, Loch Raven Library, Baltimore, MD  
**Contact:** Jessica Winpigler (410) 821-2829

[11-03-01]

#### BOARD OF MASTER ELECTRICIANS

**Subject:** Public Meeting  
**Date and Time:** February 22, 2011, 10 a.m. — 12 p.m.  
**Place:** 500 N. Calvert St., Baltimore, MD  
**Contact:** Gae Herzberger (410) 230-6163

[11-03-13]

#### ELEVATOR SAFETY REVIEW BOARD

**Subject:** Public Meeting  
**Date and Time:** February 10, 2011, 1:30 — 3:30 p.m.  
**Place:** 500 N. Calvert St., Baltimore, MD  
**Contact:** Raquel Meyers (410) 230-6379

[11-03-31]

#### BOARD FOR PROFESSIONAL ENGINEERS

**Subject:** Public Meeting  
**Date and Time:** February 10, 2011, 9 a.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Pamela J. Edwards (410) 230-6263

[11-03-28]

#### BOARD OF EXAMINING ENGINEERS

**Subject:** Public Meeting  
**Date and Time:** March 15, 2011, 10 a.m. — 12 p.m.  
**Place:** 500 N. Calvert St., Baltimore, MD  
**Contact:** Gae Herzberger (410) 230-6163

[11-03-12]

#### DEPARTMENT OF THE ENVIRONMENT/LAND MANAGEMENT ADMINISTRATION

**Subject:** Public Meeting  
**Date and Time:** February 3, 2011, 9:30 — 11:30 a.m.  
**Place:** MDE, 1800 Washington Blvd., Stat Rm., Baltimore, MD  
**Add'l. Info:** Meeting of the Governor's Lead Poisoning Prevention Commission  
**Contact:** Tracy Smith (410) 537-3847

[11-03-16]

#### BOARD OF ENVIRONMENTAL SANITARIANS

**Subject:** Public Meeting  
**Date and Time:** February 2, 2011, 9 a.m. — 3:30 p.m.  
**Place:** Howard Co. Bureau of Utilities, 8250 Old Montgomery Rd., Columbia, MD  
**Add'l. Info:** A portion of this meeting may be held in closed session.  
**Contact:** Pat Kratochvil (410) 537-3597

[11-03-17]

#### BOARD OF ENVIRONMENTAL SANITARIANS

**Subject:** Public Meeting  
**Date and Time:** March 3, 2011, 9 a.m. — 4:30 p.m.  
**Place:** Howard Co. Bureau of Utilities, 8250 Old Montgomery Rd., Columbia, MD  
**Add'l. Info:** A portion of this meeting may be held in closed session.  
**Contact:** Pat Kratochvil (410) 537-3167

[11-03-05]

#### COMMISSIONER OF FINANCIAL REGULATION

**Subject:** Receipt of Application  
**Add'l. Info:** Bank Holding Company Merger  
On November 29, 2010, Old Line Bancshares, Inc., a bank holding company

located in Bowie, Maryland, filed an application pursuant to Financial Institutions Article, §3-703, Annotated Code of Maryland, for approval to merge with Maryland Bankcorp, Inc., located in Lexington Park, Maryland. The surviving institution will be Old Line Bancshares, Inc.

The public file on this application is available at the Office of Commissioner of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202. Comments regarding this application must be submitted in writing and must be received by the Commissioner within 20 calendar days of the publication date of this notice.

For further information, contact Marcia A. Ryan, Assistant Commissioner at 410-230-6104.

**Contact:** Marcia A. Ryan (410) 230-6104  
[11-03-25]

#### COMMISSIONER OF FINANCIAL REGULATION

**Subject:** Receipt of Application  
**Add'l. Info:** Bank Merger

On November 29, 2010, Old Line Bank, a state-chartered bank located in Bowie, Maryland, filed an application pursuant to Financial Institutions Article, §3-703, Annotated Code of Maryland, for approval to merge with Maryland Bank & Trust Company, N.A., located in Lexington Park, Maryland. The surviving institution will be Old Line Bank.

The public file on this application is available at the Office of Commissioner of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202. Comments regarding this application must be submitted in writing and must be received by the Commissioner within 20 calendar days of the publication date of this notice.

For further information, contact Marcia A. Ryan, Assistant Commissioner at 410-230-6104.

**Contact:** Marcia A. Ryan (410) 230-6104  
[11-03-26]

#### FIRE PREVENTION COMMISSION

**Subject:** Public Meeting  
**Date and Time:** February 17, 2011, 9:30 a.m.

**Place:** Laurel Municipal Bldg., Council Chambers, 8103 Sandy Spring Rd., Laurel, MD

**Add'l. Info:** If public schools in Prince George's County are closed due to inclement weather, the meeting and any appeals will be rescheduled.

**Contact:** Heidi Ritchie (877) 890-0199

[11-03-10]

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Subject:** Public Meeting

**Date and Time:** February 17, 2011, 10 a.m. — 2 p.m.; Snow Date: February 24, 2011

**Place:** Howard Co. Health Dept., 7178 Columbia Gateway Dr., Conf. Rm. A, Columbia, MD

**Contact:** Linda Rudie (410) 767-8419

[11-03-18]

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Subject:** Public Meeting

**Date and Time:** March 1, 2011, 8:30 a.m. — 12 p.m.

**Place:** O'Connor Bldg., 201 W. Preston St., Rm. L-37, Baltimore, MD

**Contact:** Georgette P. Zoltani (410) 764-2899

[11-03-23]

**BOARD OF HEATING, VENTILATION, AIR-CONDITIONING, AND REFRIGERATION CONTRACTORS (HVACR)**

**Subject:** Public Meeting

**Date and Time:** February 9, 2011, 9:30 a.m. — 12 p.m.

**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

**Contact:** Steve Smitson (410) 230-6169

[11-03-08]

**BOARD OF HEATING, VENTILATION, AIR-CONDITIONING, AND REFRIGERATION CONTRACTORS (HVACR)**

**Subject:** Public Meeting

**Date and Time:** March 9, 2011, 9:30 a.m. — 12 p.m.

**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

**Contact:** Steve Smitson (410) 230-6169

[11-03-09]

**STATE HIGHWAY ADMINISTRATION/PROJECT PLANNING DIVISION**

**Subject:** Notice of the Finding of No Significant Impact and Receipt of Location/Design Approvals

**Add'l. Info:** The Maryland State Highway Administration (SHA) provides notice that the Finding of No Significant Impact (FONSI) for the I-81 Improvement Project in Washington County is available for review and copying. It was prepared by SHA and approved by the Federal Highway Administration (FHWA). The FHWA granted Location Approval on February 25, 2010, and the Maryland State Highway Administrator granted Design Approval for the Selected Alternative on November 8, 2010.

Having received Design Approval, SHA will develop design plans once the project is funded for the Design phase.

Citizen comments received at and after the October 6, 2004, Location/Design Public Hearing were evaluated, made part of the FONSI, and considered as part of the decision on the selected alternative, Alternative 3A, Option A—Inside Widening with Collector-Distributor Roads. The public hearing transcript was previously available for public inspection and review and can also be found on SHA's website at the address noted in the last paragraph.

Beginning on January 12, 2011, the FONSI will be available on our website and during normal business hours at the following locations:

Washington County Free Library, Downtown Branch, 59 West Washington Street, Hagerstown, MD 21740, (301) 791-5149

Washington County Free Library, North Pointe Branch, 18739 North Pointe Drive, Hagerstown, MD 21742, (301) 733-8655

Williamsport Memorial Library, 104 East Potomac Street, Williamsport, MD 21795, (301) 223-7027

State Highway Administration, District 6 Office, 1251 Vocke Road, LaVale, MD 21502, (301) 729-8400, 1-800-760-7138

Project Management Division, 707 North Calvert Street, 3rd Floor, Baltimore, MD 21202, (410) 545-8521, 1-800-548-5026

Please address all questions and requests for information to Ms. Jane Wagner, Project Manager, Maryland State Highway Administration, 707 North Calvert Street, MS C-301, Baltimore, MD 21202, or by calling (410) 545-8523 or toll-free 1-800-548-5026, or email at [jwagner@sha.state.md.us](mailto:jwagner@sha.state.md.us). The Maryland Relay Service can assist teletype users at 711. For more information on this and

other SHA projects, visit [www.roads.maryland.gov](http://www.roads.maryland.gov) and click on Projects and Studies/Washington County.

**Contact:** Diane Rathmann (410) 545-8551

[11-03-21]

**DEPARTMENT OF HUMAN RESOURCES**

**Subject:** Public Meeting

**Date and Time:** March 3, 2011; Additional Dates: May 5, July 7, September 1, November 3, 2011; All Meetings: 1 — 3 p.m.

**Place:** To Be Determined

**Contact:** Claudia Remington (410) 585-2250

[11-03-33]

**MARYLAND HEALTH CARE COMMISSION**

**Subject:** Public Meeting

**Date and Time:** February 17, 2011, 1 p.m.

**Place:** Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD

**Add'l. Info:** Individuals requiring special accommodations are requested to contact Valerie Wooding at (410)764-3460, or the Department of Health and Mental Hygiene TTY at (410) 383-7755, not later than 20 working days before the meeting to make arrangements.

**Contact:** Valerie Wooding (410) 764-3460

[11-03-03]

**MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE**

**Subject:** Public Meeting

**Date and Time:** February 16, 2011, 8:30 a.m. — 5 p.m.

**Place:** Harry R. Hughes Dept. of Transportation Bldg., 7201 Corporate Center Dr., 1st Fl., Richard Trainor Conf. Rm., Hanover, MD

**Contact:** Pam Gregory (410) 865-1253

[11-03-07]

**BOARD OF MORTICIANS AND FUNERAL DIRECTORS**

**Subject:** Public Meeting

**Date and Time:** February 9, 2011, 10:30 a.m. — 12:30 p.m.

**Place:** 4201 Patterson Ave., Rms. 108/109, Baltimore, MD

**Add'l. Info:** Review statutes and regulations and vote as necessary. Sign language interpreter and/or appropriate accommodations for qualified individuals with disabilities will be provided upon request.

**Contact:** Robin Bailey (410) 764-4792

[11-03-32]

## GENERAL NOTICES

## BOARD OF NURSING

**Subject:** Disciplinary Action Taken Against RNs and LPNs in Maryland

**Date and Time:** January 6, 2011

**Add'l. Info:** Kafi Cunningham, R125076, Revocation; Karen Karesh, R158115, Revocation; Carole Meldrom, R124629, Voluntary Surrender; Tricia Cornell, R136981, Voluntary Surrender; Jaselle French, R174893, Revocation; Julia Morrison, R126735, Revocation; Diane Marcy, LP12572, Revocation; Cathgerine (Cox) Radi, R174561; Voluntary Surrender; Darlene Scott, LP15540, Revocation; Philip Harris, LP28955, Summary Suspension; Augustine Okafor, LP35675, Revocation; Stephanie Saltzgeber, R165401, Voluntary Surrender; Lori Parsons, R180221, Voluntary Surrender; Libbie Young, LP38326, Revocation; Pamela McGuire, R097359, Voluntary Surrender; Ruth Baublitz, R102534, Summary Suspension; Bryan Solesky, R115196, Voluntary Surrender; Carla Beavers, R167048, Voluntary Surrender; Marylou Phoebus, LP31363, Voluntary Surrender; Brenda McAuliffe, R078368, Voluntary Surrender; Barton Conchar, R168502, Voluntary Surrender; Frances Darby, LP17320, Revocation; Patricia Hunt, R107753, Voluntary Surrender; Antoinette Holman, LP42184, Voluntary Surrender; Jessica Peters, R179082, Voluntary Surrender; Alida Holyoke, R170777, Voluntary Surrender; Christian Oparah, R144459, Voluntary Surrender; Salvatore Fazzino, R136991, Voluntary Surrender; Fay Blueford, R118365, Voluntary Surrender; Denise Duffin, LP20891, Voluntary Surrender; Cyntella Doswell, R148805, Voluntary Surrender; Herbert Hewlett, R143075, Voluntary Surrender; Nancy Patterson, R069898, Revocation; Laurian Lucas, R125865, Revocation; Bonnie Parker, R053205, Summary Suspension; Leslie Kummer, R066279, Revocation; Ruth Baublitz, R102534, Revocation; Fatoumata Doumbia, R15217, Revocation; Michelle Clauze, R161366, Summary Suspension; Sandra Bayliss, LP24456, Voluntary Surrender; Sheila Rogers, R111566, Revocation; Denise Lantz, R109974, Summary Suspension; Wendy Marvel Williams, R113807, Summary Suspension; Lorraine Lee, R129528, Summary Suspension; William Stuersel, R181635, Revocation; Kellie Loock, R121307, Summary Suspension; Susan Hoeckel, LP15828, Voluntary Surrender; Tracy McGregor, LP39123, Voluntary Surrender; Christina Kratz, R139834, Voluntary Surrender; Denetria Ngati, R146619, Revocation; Dawn Rodney, R175212, Revocation; Deborah Reid, R113264,

Revocation; Gary Westbrook, LP23956, Summary Suspension; Deborah Johnson, R121597, Voluntary Surrender; Brenda Schwarz Bell, R107392, Voluntary Surrender; Aminata Esema, R167810, Voluntary Surrender; Michele Barnes, R180084, Revocation; Denise Williams, R136197, Revocation; Dawn Valerio, R169460, Revocation; Sulieman Gabisi, LP43705, Revocation; Mary Keithley, R152216, Revocation; Sonya Eberhardt, LP23915, Revocation; Natalie Stafford, R147316, Revocation; Yaroslav Vaynshteyn, R147752, Summary Suspension; Carol Zeisweiss, R108291, Voluntary Surrender; Yaroslav Vaynshteyn, R147752, Voluntary Surrender; Lorraine Lee, R129528, Revocation; Kelly Mohen, R122116, Revocation; Deborah Doering, R158256, Revocation; Mary Grider, R184950, Summary Suspension; Syrita Lindsey, R155357, Summary Suspension; Shawn Sandlin, LP36029, Summary Suspension; Yvonne Greene, R083414, Revocation; Linda Bauguess, R134936, Voluntary Surrender; Jennifer Blair, R127678, Voluntary Surrender; Valerie Grove, R126527 Voluntary Surrender

**Contact:** Bonnie Kuchta (410) 585-1953

[11-03-22]

## BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

**Subject:** Public Meeting on Regulations

**Date and Time:** February 9, 2011, 9:30 a.m.

**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD

**Contact:** Patricia A. Hannigan (410) 764-4750

[11-03-29]

## BOARD OF OCCUPATIONAL THERAPY PRACTICE

**Subject:** Public Meeting

**Date and Time:** February 18, 2011, 8:30 a.m. — 2 p.m.

**Place:** Spring Grove Hospital Center, 55 Wade Ave., 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

[11-03-04]

## BOARD OF PLUMBING

**Subject:** Public Meeting

**Date and Time:** February 17, 2011, 10:30 a.m. — 12:30 p.m.

**Place:** 500 N. Calvert St., Rm. 302, Baltimore, MD

**Contact:** Brenda Clark (410) 230-6164

[11-03-14]

## BOARD OF EXAMINERS OF PSYCHOLOGISTS

**Subject:** Public Meeting

**Date and Time:** February 4, 2011, 9 a.m. — 1 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.

**Contact:** Dorothy Kutcherman (410) 764-4703

[11-03-24]

## BOARD OF PUBLIC ACCOUNTANCY

**Subject:** Public Meeting

**Date and Time:** March 1, 2011, 9 a.m. — 12 p.m.

**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

**Contact:** Dennis L. Gring (410) 230-6224

[11-03-15]

## BOARD OF TRUSTEES OF THE PUBLIC DEFENDER SYSTEM FOR THE STATE OF MARYLAND

**Subject:** Public Meeting

**Date and Time:** February 4, 2011, 3 p.m.

**Place:** The Judiciary Education and Conference Center, 2011D Commerce Park Dr., Annapolis, MD

**Add'l. Info:** This is an orientation session for new Board members conducted by staff of the Office of Public Defender.

**Contact:** T. Wray McCurdy (410) 686-2200

[11-03-34]

## RACING COMMISSION

**Subject:** Public Meeting

**Date and Time:** February 15, 2011, 12:30 — 1 p.m.

**Place:** Laurel Park, Laurel, MD

**Contact:** J. Michael Hopkins (410) 296-9682

[11-03-19]

**BOARD OF SOCIAL WORK  
EXAMINERS**

**Subject:** Public Meeting

**Date and Time:** February 11, 2011, 12 —  
3 p.m.

**Place:** 4201 Patterson Ave., Rm. 109,  
Baltimore, MD

**Add'l. Info:** The Board may discuss/vote  
on proposed regulations. A portion of this  
meeting may be held in closed session.

**Contact:** James T. Merrow (410) 764-4788  
[11-03-27]

**WORKERS' COMPENSATION  
COMMISSION**

**Subject:** Public Meeting

**Date and Time:** February 10, 2011, 9 —  
11 a.m.

**Place:** 10 E. Baltimore St., Baltimore, MD

**Add'l. Info:** A portion of this meeting may  
be held in closed session.

**Contact:** Amy Lackington (410) 864-5300  
[11-03-02]

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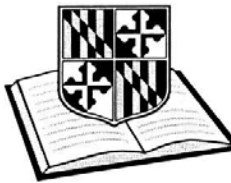
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